

THE SINGAPORE CODE ON TAKE-OVERS AND MERGERS

TABLE OF CONTENTS

| | |
|--|-----------|
| INTRODUCTION | 1 |
| DEFINITIONS | 5 |
| GENERAL PRINCIPLES | 19 |
| RULES | 22 |
| <u>The Approach and Announcements</u> | |
| 1. Approach | 22 |
| 2. Secrecy before announcements | 23 |
| 3. Timing and contents of announcements | 24 |
| <u>Conduct during the Offer</u> | |
| 4. No withdrawal of an offer | 31 |
| 5. Frustration of offers by an offeree board | 32 |
| 6. Directors' responsibilities | 36 |
| 7. Independent advice | 38 |
| 8. Information | 43 |
| 9. Equality of information | 52 |
| 10. No special deals | 55 |
| 11. Restrictions on dealings before and during the offer | 58 |
| 12. Disclosure of dealings during the offer | 61 |
| 13. Break Fees | 68 |
| <u>Types of Offers and Their Terms</u> | |
| 14. Mandatory offer | 71 |
| 15. Voluntary offer | 102 |
| 16. Partial offer | 105 |
| 17. Type of consideration required | 110 |
| 18. Comparable offers for different classes of capital | 114 |
| 19. Appropriate offers to holders of convertibles, etc | 115 |
| 20. Revision | 118 |
| 21. Purchases at above offer price | 122 |
| <u>Timings</u> | |
| 22. Offer timetable | 124 |
| <u>Documents</u> | |
| 23. Offer documents | 127 |
| 24. Offeree board circulars | 138 |
| 25. Profit forecasts | 146 |
| 26. Asset valuations | 158 |
| 27. Lodgement of documents | 161 |

Other Provisions

| | |
|---|-----|
| 28. Acceptances | 162 |
| 29. Acceptors' right to withdraw | 167 |
| 30. Settlement of consideration | 168 |
| 31. Proxies | 169 |
| 32. Prompt registration of transfers | 170 |
| 33. Restrictions following offers and possible offers | 171 |
| 34. Fees leviable by the Council | 174 |

APPENDICES

| | |
|---|-----|
| Appendix 1 – Whitewash guidance note | 175 |
| Appendix 2 – Share buy-back guidance note | 182 |
| Appendix 3 – Guidance note on the merger procedures of the Competition Commission of Singapore | 191 |

SCHEDULES

| | |
|---|-----|
| Schedule 1 – Fees levied for lodgement of documents | 194 |
|---|-----|

INTRODUCTION

1 Nature and purpose of the Code

The Singapore Code on Take-overs and Mergers is issued by the Monetary Authority of Singapore pursuant to section 321 of the Securities and Futures Act. The Code is nevertheless non-statutory in that it does not have the force of law. Its primary objective is fair and equal treatment of all shareholders in a take-over or merger situation.

The Code is not concerned with the financial or commercial advantages or disadvantages of a take-over or merger; such matters should be decided by the company and its shareholders. The Code represents the collective public opinion on the standard of conduct to be observed in general, and how fairness can be achieved in particular, in a take-over or merger transaction. A fundamental requirement is that shareholders in the company subject to a take-over offer must be given sufficient information, advice and time to consider and decide on the offer.

2 Enforcement of the Code

The spirit as well as the precise wording of the Code must be adhered to by parties in a take-over or merger transaction - this is emphasised in General Principle 1 of the Code. Furthermore, it must be accepted that the General Principles and the spirit of the Code will apply in areas or circumstances not explicitly covered by any Rule.

The Code applies to both take-overs and mergers. It applies to corporations with a primary listing of their equity securities, business trusts with a primary listing of their units in Singapore and REITs. While the Code is drafted with listed public companies, listed registered business trusts and REITs in mind, unlisted public companies and unlisted registered business trusts with more than 50 shareholders or unitholders, as the case may be, and net tangible assets of \$5 million or more must also observe the letter and spirit of the General Principles and Rules, wherever this is possible and appropriate. The Code does not apply to take-overs or mergers of other unlisted public companies and unlisted business trusts, or private companies. The Code applies to all offerors, whether they are natural persons (be they resident in Singapore or not and whether citizens of Singapore or not), corporations or bodies unincorporate (be they incorporated or carrying on business in Singapore or not); and extends to acts done or omitted to be done in and outside Singapore.

The Code is administered and enforced by the Securities Industry Council whose members comprise representatives mostly from the private sector and some from the public sector. The Council may, from time to time, issue notes on the interpretation of the General Principles and the Rules. It also has powers under the law to investigate any dealing in securities that is connected with a take-over or merger transaction. The duty of the Council is the enforcement of good business standards and not the enforcement of law. The Council expects prompt co-operation from those to whom enquiries are directed to ensure efficient administration of the Code.

The Council, as the administering body, performs its day-to-day business through its Secretariat headed by the Secretary to the Council. The Secretariat is available at all times for confidential consultation on points of interpretation of the Code. When there is any doubt as to whether a proposed course of conduct accords with the General Principles or the Rules, parties or their advisers should consult the Secretariat in advance. Such confidential consultation minimises the risk of breaches of the Code.

If there appears to be a breach of the Code, the Secretary will summon the alleged offender to appear before the Council for a hearing. Every alleged offender will have the opportunity to answer allegations and to call witnesses. The Council may also summon witnesses. As a rule, the Council's proceedings are informal and parties appearing before the Council, whether for disciplinary or other purposes, should present their case in person and lodge written submissions in their own name. While alleged offenders and witnesses may consult their legal advisers during hearings before the Council, these advisers may not examine or cross-examine witnesses nor answer questions on behalf of their clients.

If the Council finds that there has been a breach of the Code, it may have recourse to private reprimand or public censure or, in a flagrant case, to further action as the Council thinks fit, including actions designed to deprive the offender temporarily or permanently of its ability to enjoy the facilities of the securities market. In the case of advisers, the Council may also require such adviser to abstain from taking on Code-related work for a stated period. If the Council finds evidence to show that a criminal offence has taken place whether under the Companies Act, the Securities and Futures Act or under the criminal law, it will refer the matter to the appropriate authority.

Where a person has breached the Code, the Council may also make a ruling requiring the person concerned to pay, within such period as is specified, to the holders, or former holders, of securities of the offeree company such amount as it thinks just and reasonable so as to ensure that such holders receive what they would have been entitled to receive if the relevant Rule had been complied with. Such Rules normally include but are not limited to Rules 10, 14, 15, 16.4(g), 16.4(h), 17, 18, 19, 20.4, 21 and 33.2 of the Code. In addition, the Council may make a ruling requiring simple or compound interest to be paid at a rate and for a period to be determined, including any period prior to the date of the ruling and until full payment is made.

NOTE ON SECTION 2

Corporations and business trusts with a primary listing in Singapore, public companies and registered business trusts with a primary listing overseas as well as unlisted public companies and unlisted registered business trusts with more than 50 shareholders, or unitholders, as the case may be, and net tangible assets of \$5 million or more may apply to the Council to waive the application of the Code. In considering such applications, Council would take into account, amongst others, the following factors:

- (a) the number of Singapore shareholders or unitholders and the extent of trading in Singapore; and*
- (b) the existence of protection available to Singapore shareholders or unitholders provided under any statute or code regulating take-overs and mergers outside Singapore.*

3 Code responsibilities

The primary responsibility for ensuring compliance with the Code rests with parties (including company directors) to a take-over or merger and their advisers, not with the Council. This is the essence of self-regulation. Documents issued in a take-over or merger should not be submitted to the Council in advance, except where required by the Council (e.g. circulars to shareholders in relation to whitewash resolutions). This means that anything contained in them which the Council finds misleading or incomplete (in terms of information which the shareholders could reasonably expect) will require correction by further circulars or announcements. Responsibility for the

contents of documents rests with the offeror, the offeree company, their directors and advisers. The Securities Exchange also plays a part in that it may require clearance of certain documents with it in advance of their publication.

4 Organisation of the Code

The Code is organised as a set of General Principles and Rules. The General Principles are essentially standards of good commercial conduct. These General Principles apply to all transactions with which the Code is concerned. They are, however, expressed in broad terms and the Code does not define the precise extent of, or limitations on, their application. They are applied by the Council in accordance with their spirit to achieve their underlying purpose. The Council may modify the effect of their precise wording accordingly.

In addition to the General Principles, the Code contains a series of Rules, of which some are effectively expansions of the General Principles and examples of their application and others are provisions governing specific aspects of take-over procedure. Although most of the Rules are more detailed than the General Principles, they too are not framed in technical language and, like the General Principles, are to be interpreted in such a way as to achieve their underlying purpose. Therefore, their spirit must be observed as well as their letter and the Council may modify the application of a Rule if it considers that, in the particular circumstances of the case, it would otherwise operate in an inappropriate manner.

To assist with interpretation of the Rules, notes have been inserted under the Rules, where appropriate, to provide guidance as to how the Rules will normally be applied by the Council.

5 Communication with the Council

Postal communications should be addressed to the Secretary, Securities Industry Council, 10 Shenton Way, MAS Building, Singapore 079117. Contact details are 6225 5577 (telephone) and 6225 1350 (facsimile).

Securities Industry Council
Singapore

9 April 2012

DEFINITIONS

- 1 **Acting in Concert:** Persons acting in concert comprise individuals or companies who, pursuant to an agreement or understanding (whether formal or informal), cooperate, through the acquisition by any of them of shares in a company, to obtain or consolidate effective control of that company.

Without prejudice to the general application of this definition, the following individuals and companies will be presumed to be persons acting in concert with each other unless the contrary is established:-

- (a) the following companies:-
 - (i) a company;
 - (ii) the parent company of (i);
 - (iii) the subsidiaries of (i);
 - (iv) the fellow subsidiaries of (i);
 - (v) the associated companies of any of (i), (ii), (iii) or (iv);
 - (vi) companies whose associated companies include any of (i), (ii), (iii), (iv) or (v); and
 - (vii) any person who has provided financial assistance (other than a bank in the ordinary course of business) to any of the above for the purchase of voting rights.
- (b) a company with any of its directors (together with their close relatives, related trusts as well as companies controlled by any of the directors, their close relatives and related trusts);
- (c) a company with any of its pension funds and employee share schemes;
- (d) a person with any investment company, unit trust or other fund whose investment such person manages on a discretionary basis, but only in respect of the investment account which such person manages;
- (e) a financial or other professional adviser, including a stockbroker, with its client in respect of the shareholdings of:-

- (i) the adviser and persons controlling, controlled by or under the same control as the adviser; and
 - (ii) all the funds which the adviser manages on a discretionary basis, where the shareholdings of the adviser and any of those funds in the client total 10% or more of the client's equity share capital;
- (f) directors of a company (together with their close relatives, related trusts and companies controlled by any of such directors, their close relatives and related trusts) which is subject to an offer or where the directors have reason to believe a bona fide offer for their company may be imminent;
- (g) partners; and
- (h) the following persons and entities:-
- (i) an individual;
 - (ii) the close relatives of (i);
 - (iii) the related trusts of (i);
 - (iv) any person who is accustomed to act in accordance with the instructions of (i); and
 - (v) companies controlled by any of (i), (ii), (iii) or (iv); and
 - (vi) any person who has provided financial assistance (other than a bank in the ordinary course of business) to any of the above for the purchase of voting rights.

NOTES ON DEFINITION OF ACTING IN CONCERT

1. *Rebuttal of concert-party presumption between close relatives*

Factors which the Council would consider in deciding whether the concert-party presumption between close relatives is rebutted includes (i) the pattern, volume, timing and price of share purchases by the close relatives; (ii) voting pattern of the shares by the close relatives; and (iii) whether the close relatives are of independent financial means commensurate with their acquisitions.

2. Full information required

In cases where the question of whether parties are acting in concert is being investigated, all parties will be required to disclose all relevant information including their dealings in shares in the offeree or potential offeree company. Failure to do so may result in disciplinary proceedings or in an inference being drawn that they are acting in concert.

3. Break up of concert parties

Where a ruling or admission has been made that a group of persons is or has been acting in concert, the Council will require clear evidence to the contrary to rule that they are no longer acting in concert.

4. Underwriting arrangements

Underwriting arrangements on arm's length commercial terms would not normally amount to an agreement or understanding within the meaning of acting in concert. However, some features of underwriting arrangements, for example the proportion of the ultimate total liability assumed by an underwriter, the commission structure or the degree of involvement of the underwriter with the offeror in connection with the offer, may be such as to lead the Council to conclude that a sufficient level of understanding has been created between the offeror and the underwriter to amount to an agreement or understanding within the meaning of acting in concert. In cases of doubt, the Council should be consulted.

5. Banks

A bank refers to a corporation that is licensed to carry on a banking or financing business. An arm's length agreement between a shareholder and a bank (including agreements under which the shareholder borrows money for the acquisition of shares) will not normally lead the Council to conclude that the bank is a concert party. In the event that such agreement involves the bank acquiring offeree company shares or an option over such shares, or otherwise creates an incentive for the bank to assist the shareholder in obtaining or consolidating effective control of the offeree company, the Council should be consulted.

6. Registered business trusts and business trusts

Where a reference to a company should be taken as a reference to a registered business trust or a business trust, the concert party relationship is with the trustee-manager of the registered business trust or business trust.

The Council should be consulted if the trustee-manager acts at the same time for more than one of the following:

- (a) offeror or possible offeror;*
- (b) competing offeror or possible competing offeror; and*
- (c) offeree registered business trust or business trust.*

7. REITs

Where a reference to a company should be taken as a reference to a REIT, the concert party relationship is with the REIT's:

- (a) manager; and*
- (b) trustee.*

In relation to the trustee, the concert party relationship is normally limited to the trustee (including its directors) acting in the capacity as trustee of the REIT.

The Council should be consulted if a manager or a trustee, in its capacity as trustee of a REIT, acts at the same time for more than one of the following:

- (a) offeror or possible offeror;*
- (b) competing offeror or possible competing offeror; and*
- (c) offeree REIT.*

For the purposes of calculating the voting rights held by a group acting in concert, the voting rights held by a trustee of unrelated trusts will not normally be counted. In cases of doubt, the Council should be consulted.

8. Standstill agreements

Agreements between a company, or the directors of a company, and a shareholder which restrict the shareholder or the directors from either offering

for, or accepting an offer for, the shares of the company or from increasing or reducing shareholdings, may be relevant for the purpose of this definition. In cases of doubt, the Council should be consulted.

2 Associate: It is not practicable to define "associate" in precise terms which would cover all the different relationships which may exist in a take-over or merger transaction. The term "associate" is intended to cover all persons (whether or not acting in concert with the offeror, offeree company or with one another) who directly or indirectly own, or deal in, the shares of the offeror or offeree company in a take-over or merger transaction and who have (in addition to their normal interests as shareholders) an interest or potential interest, whether commercial, financial or personal, in the outcome of the offer.

Without prejudice to the generality of the foregoing, the term "associate" will normally include the following:-

- (a) the following companies in relation to the offeror (if it is a company) or the offeree company:-
 - (i) the parent company of the offeror or the offeree company;
 - (ii) the subsidiaries of the offeror or the offeree company;
 - (iii) the fellow subsidiaries of the offeror or the offeree company;
 - (iv) the associated companies of any of the offeror, the offeree company, (i), (ii) or (iii); and
 - (v) companies whose associated companies include any of the offeror, the offeree company, (i), (ii), (iii) or (iv);
- (b) any person who has provided financial assistance (other than a bank in the ordinary course of business) to the offeror or the offeree company or any of the above for the purchase of voting rights;
- (c) banks, stockbrokers, financial and other professional advisers to the offeror, the offeree company or appointed for or in connection with the take-over or merger transaction by any company mentioned in (a) including persons controlling, controlled by or under the same control as such banks, stockbrokers, financial and other professional advisers;

- (d) the directors (together with their close relatives and related trusts as well as companies controlled by any of the directors, their close relatives and related trusts) of the offeror, the offeree company or any company mentioned in (a);
- (e) the pension funds and employee share schemes of the offeror, the offeree company or any company mentioned in (a);
- (e) any investment company, unit trust or other fund whose investments an associate manages on a discretionary basis, but only in respect of the investment account which the associate manages;
- (f) a holder of 5% or more of the equity share capital of the offeror or offeree company. This includes a holder who acquires shares which takes him through 5%. Where two or more persons act as a syndicate or other group, pursuant to an agreement or understanding (whether formal or informal) to acquire or hold such equity share capital, they will be deemed to be a single holder for the purpose of this paragraph;
- (g) any trustee-manager (together with its parent company, subsidiaries, and fellow subsidiaries, and its associated companies and companies of which it is an associated company) of the offeror, the offeree or any registered business trust or business trust that relates to the offeror or offeree in (a) above;
- (h) any trustee (in its capacity as trustee of a REIT) of the offeror, the offeree or any REIT that relates to the offeror or offeree in any of the ways set out in (a) above;
- (i) any manager (together with its parent, subsidiaries, and fellow subsidiaries, and its associated companies and companies of which it is an associated company) of the offeror, the offeree or any REIT that relates to the offeror or offeree in any of the ways set out in (a) above; and
- (j) a company having a material trading arrangement with the offeror or offeree company.

- 3 Associated Company:** A company is an associated company of another company if the second company owns or controls at least 20% but not more than 50% of the voting rights of the first-mentioned company.
- 4 Cash Purchases:** References to purchases for cash and cash prices paid for shares are deemed to include contracts or arrangements for the acquisition of shares where the consideration consists of a debt instrument maturing for payment or capable of being redeemed in less than 12 months.
- 5 Close Relatives:** Close relatives include immediate family (i.e. parents, siblings, spouse and children), siblings of parents (i.e. uncles and aunts) as well as their children (i.e. cousins), and children of siblings (i.e. nephews and nieces).
- 6 Code:** Code means the Singapore Code on Take-overs and Mergers.
- 7 Convertible Securities:** Convertible securities means securities convertible or exchangeable into new shares or existing shares in the company.
- 8 Council:** Council means the Securities Industry Council.
- 9 Derivative:** Derivative includes any financial product whose value in whole or in part is determined directly or indirectly by reference to the price of an underlying security or securities.

NOTE ON DEFINITION OF DERIVATIVE

The term “derivative” is intentionally widely defined to encompass all types of derivative transactions. However, it is not the intention of the Code to restrict transactions in derivatives which are not connected to an offer or potential offer. The Council will not normally regard a derivative which is referenced to a basket or index of securities, including relevant securities, as connected with an offeror or potential offeror if at the time of dealing, the relevant securities in the basket or index represent less than 1% of the class in issue and, in addition, less than 20% of the value of securities in the basket or index. Nonetheless, derivatives referenced to a basket or index which meet these tests but in effect causes the holder to have a predominant long economic exposure to a relevant security would be regarded as being connected to an offer or potential offer. In cases of doubt, the Council should be consulted.

- 10 Director:** A director includes any person occupying the position of director of a corporation by whatever name called and includes a person in accordance with whose directions or instructions the director of a corporation is accustomed to act, and an alternate or substitute director.
- 11 Effective Control:** Effective control means a holding, or aggregate holdings, of shares carrying 30% or more of the voting rights (as defined below) of a company, irrespective of whether that holding (or holdings) gives de facto control. "Acquiring effective control" of a company refers to a situation where a person and parties acting in concert with him, who previously held in aggregate less than 30% of the company's voting rights, increase their aggregate holding of voting rights in the company to 30% or more. "Consolidating effective control" in a company refers to a situation where a person and parties acting in concert with him, who already owned between 30% and 50% of the company's voting rights, increase their aggregate holding of voting rights in the company by more than 1% within a 6 month period.
- 12 Offer:** Offer includes, wherever appropriate, take-over and merger transactions, howsoever effected, including reverse take-overs, schemes of arrangement, trust schemes, amalgamations, partial offers and also offers by a parent company for shares in its subsidiary. But offers for non-voting non-equity capital do not come within the Code.

NOTE ON DEFINITION OF OFFER

Scheme of Arrangement, Trust Schemes and Amalgamations

All schemes of arrangement, trust schemes and amalgamations are subject to the provisions of the Code. However, the Council may, subject to conditions, exempt:-

- (a) *a scheme of arrangement or a trust scheme from:-*
- (i) *Rule 14 on mandatory offers;*
 - (ii) *Rule 15 on voluntary offers;*
 - (iii) *Rule 16 on partial offers;*
 - (iv) *Rule 17 on type of consideration required;*

- (v) *Note 1(b) on Rule 19 on appropriate offers to holders of convertibles, etc;*
 - (vi) *Rule 20.1 on requirement to keep offer open for 14 days after it is revised;*
 - (vii) *Rule 21 on purchases of voting rights in any scheme company at above the offer price;*
 - (viii) *Rule 22 on the offer timetable;*
 - (ix) *Rule 28 on acceptances;*
 - (x) *Rule 29 on the right of acceptors to withdraw their acceptances; and*
 - (xi) *Rule 33.2 on 6 months delay before acquisition of voting rights in the scheme company at above the offer price; and*
- (b) *an amalgamation from:-*
- (i) *Rule 20.1 to keep the offer open for 14 days after it is revised;*
 - (ii) *Rule 22 on offer timetable;*
 - (iii) *Rule 28 on acceptances; and*
 - (iv) *Rule 29 on the right of acceptors to withdraw their acceptances.*

The Council will normally grant such exemption if:-

- (a) the offeror and its concert parties as well as the common substantial shareholders of the merging companies (i.e. those holding 5% or more interests in both the companies to be merged) abstain from voting on the scheme of arrangement, trust scheme or amalgamation;*
- (b) those persons and their concert parties who, as a result of the scheme of arrangement, trust scheme or amalgamation, would acquire 30% or more voting rights in a merging company or a new entity that holds one or both of the merging companies, or, if they together already hold between 30% and 50% of the merging company's voting rights before the scheme of arrangement, trust scheme or amalgamation, would increase their voting rights in such merging company by more than 1% in any period of 6 months, abstain from voting at the meeting of that merging company to approve the scheme of arrangement, trust scheme or amalgamation. The scheme, trust scheme or amalgamation document for that merging company must contain advice to the effect that by voting for the scheme, trust scheme, or amalgamation, shareholders are agreeing to such persons and their concert parties acquiring or consolidating effective control in the merging company without having to make a general offer for the company. In addition, the scheme, trust scheme or amalgamation document must disclose the names of such persons, their current voting rights in the merging company and their voting rights in the merging company and/or new entity after the scheme of arrangement, trust scheme or amalgamation;*
- (c) the directors of a merging company who are also directors of the other merging company or who are acting in concert with those persons in (a) or (b) above abstain from making a recommendation on the scheme of arrangement, trust scheme or amalgamation to shareholders of the merging companies;*
- (d) the merging company which is in effect the offeree company appoints an independent financial adviser to advise its shareholders on the scheme of arrangement, trust scheme or amalgamation. Where the scheme of arrangement, trust scheme or amalgamation involves a reverse take-over or a "merger of equals", each of the merging companies must appoint an*

independent financial adviser to advise their respective shareholders. In cases of doubt, the Council should be consulted;

- (e) *in the case of trust schemes, in addition to (a), (b), (c) and (d) above:*

 - (i) *the trust scheme is approved by a majority in number representing three-fourths in value of unitholders or class of unitholders present and voting either in person or by proxy at a meeting convened to approve the trust scheme; and*
 - (ii) *the trustee or trustee-manager obtains Court approval for the trust scheme under Order 80 of the Rules of Court; and*

- (f) *in the case of amalgamations, in addition to (a), (b), (c) and (d) above:*

 - (i) *the amalgamation document must be posted within 35 days of the announcement of the trust scheme or amalgamation; and*
 - (ii) *the amalgamation must be effective by 5:30 pm on the 60th day after the date of posting of the trust scheme or amalgamation document.*

13 Offeror: Offeror includes corporations and bodies unincorporate (be they incorporated or carrying on business in Singapore or not), as well as natural persons (be they resident in Singapore or not and whether citizens of Singapore or not).

14 Offer Period: Offer period means the period from the date when an announcement is made of a proposed or possible offer (with or without terms) until the date such offer is declared to have closed or lapsed.

15 Options: Options means options to subscribe for or purchase new shares or existing shares in the company.

16 Persons: Persons include bodies corporate.

17 Price: In calculating the price paid for shares purchased, stamp duty and dealing costs should be excluded. When accepting shareholders are entitled under the offer to retain a dividend declared by the offeree company but not yet paid, the offeror, in

establishing the offer price, may deduct from the highest price paid the net dividend to which offeree company shareholders are entitled.

- 18 Registered Business Trust and Business Trust:** Registered business trust and business trust have the same meanings as attributed to such terms by section 2 of the Business Trusts Act (Cap. 31A).

NOTE ON DEFINITION OF REGISTERED BUSINESS TRUST AND BUSINESS TRUST

References to company throughout the Code should be taken as a reference to a registered business trust or business trust and/or a company as the context requires. In the context of a registered business trust and a business trust, references to shares, shareholders and board of a company would, where appropriate refer to units, unitholders and the trustee-manager.

Where a reference to a company should refer to a registered business trust or business trust, an action taken by the company should refer to an action taken by the trustee-manager and/or any of its directors (in their respective capacity on behalf of a registered business trust or business trust). In cases of doubt, the Council should be consulted.

Where a reference to a company should refer to a registered business trust or business trust, voting rights owned, controlled or held by the company should refer to voting rights owned, controlled or held, whether directly or indirectly, by the trustee-manager and/or any of its directors (in their respective capacity on behalf of the registered business trust or business trust). In cases of doubt, the Council should be consulted.

Where a reference to a company should refer to a registered business trust or business trust, assets owned, controlled or held by the company should refer to assets owned, controlled or held by the trustee-manager. This would include assets owned, controlled or held by the trustee-manager through any special purpose vehicle. In cases of doubt, the Council should be consulted.

- 19 REIT:** REIT refers to a real estate investment trust under the Securities and Futures Act (Cap 289).

NOTE ON DEFINITION OF REIT

References to company throughout the Code should be taken as a reference to a REIT and/or a company as the context requires. In the context of a REIT, references to shares, shareholders and board of a company would, where appropriate refer to units, unitholders and manager.

Where a reference to a company should refer to a REIT, an action taken by the company should refer to an action taken by the trustee (in its capacity as trustee of a REIT) or the manager and/or any of its directors (in their respective capacity on behalf of a REIT). In cases of doubt, the Council should be consulted.

Where a reference to a company should refer to a REIT, voting rights owned, controlled or held by the company should refer to voting rights owned, controlled or held, whether directly or indirectly, by the trustee (in its capacity as trustee of a REIT) or the manager and/or any of its directors (in their respective capacity on behalf of a REIT). In cases of doubt, the Council should be consulted.

Where a reference to a company should refer to a REIT, assets owned, controlled or held by the company should refer to assets owned, controlled or held by the trustee (in its capacity as trustee of a REIT). This would include assets owned, controlled or held by the trustee through any special purpose vehicle. In cases of doubt, the Council should be consulted.

- 20 Reverse Take-over:** A reverse take-over refers to a transaction that would lead to an offeree company shareholder and his concert parties acquiring effective control (i.e. 30% or more of the voting rights) of the offeror.
- 21 Securities Exchange Offer:** Securities exchange offer means an offer in which the consideration includes securities of the offeror or any other body corporate.
- 22 Securities Exchange:** Any securities exchange approved by the Monetary Authority of Singapore under the Securities and Futures Act.
- 23 Statutory Control:** Statutory control means a holding, or aggregate holdings, of shares carrying more than 50% of the voting rights of a company.

24 Voting Rights: Voting rights means all the voting rights attributable to the share capital of a company which are currently exercisable at a general meeting.

25 Warrants: Warrants means rights to subscribe for or purchase new shares or existing shares in the company.

NOTES ON DEFINITIONS

1. Control

For the purpose of the above, control of a company is defined as ownership of 20% or more of the voting rights of the company.

2. References to bank or financial and other professional advisers

References to a "bank" do not apply to a bank whose sole relationship with a party to an offer is the provision of normal commercial banking services or such activities in connection with the offer as confirming that cash is available, handling acceptances and other registration work.

References to "financial and other professional advisers (including stockbrokers)", in relation to a party to an offer, do not include an organisation which has stood down, because of a conflict of interest or otherwise, from acting for that party in connection with the offer. If the organisation is to have a continuing involvement with that party during the offer, the Council must be consulted.

3. Calculation of time

Where a period laid down by the Code ends on a day which is not a business day, the period is extended until the next business day.

GENERAL PRINCIPLES

1 The spirit of the Code

It is impracticable to devise rules in sufficient detail to cover all circumstances which can arise in take-over or merger transactions. Accordingly, persons engaged in such transactions must observe both the spirit and the precise wording of the General Principles and Rules. Moreover, the General Principles and the spirit of the Code will apply in areas not explicitly covered by any Rule.

2 Limitations on directors' action

While the boards of an offeror and an offeree company and their respective advisers and associates have a primary duty to act in the best interests of their respective shareholders, the General Principles and Rules will inevitably impinge on the freedom of action of boards and persons involved in take-over and merger transactions. They must therefore accept that there are limitations on the manner in which those interests can be pursued in a take-over or merger transaction.

3 Equality of treatment

An offeror must treat all shareholders of the same class in an offeree company equally.

4 Oppression of minority

Rights of control must be exercised in good faith and oppression of the minority is wholly unacceptable.

5 Acquisition or consolidation of effective control

Where effective control of a company is acquired or consolidated by a person, or persons acting in concert, a general offer to all other shareholders is normally required.

6 Announcements

An offeror should announce an offer only after the most careful consideration. Before taking any action which may lead to an obligation to make a general offer, a person and his financial advisers should be satisfied that he can and will continue to be able to implement the offer in full.

7 Frustration of an offer by offeree board

If the board of an offeree company has received a bona fide offer or has reason to believe that a bona fide offer is imminent, it must not, without the approval of its shareholders in general meeting, take any action on the affairs of the offeree company that could effectively result in any bona fide offer being frustrated or the shareholders being denied an opportunity to decide on its merits.

8 Competent independent advice

An offeree board which receives an offer or is approached with a view to an offer being made, should, in the interests of its shareholders, seek competent independent advice.

9 Information to all shareholders

In the course of a take-over or merger transaction, or when such transaction is in contemplation, the offeror, the offeree company and their respective advisers must not give information to some shareholders that is not made available to all shareholders. This principle does not apply to the provision of information in confidence by the offeree company to a bona fide potential offeror or vice versa.

10 Sufficient information and time to shareholders

Shareholders should be given sufficient information, advice and time to enable them to reach an informed decision on an offer. No relevant information should be withheld from them.

11 Standards of care in documents

Any document or advertisement addressed to shareholders containing information, opinions or recommendations from the board of an offeror or offeree company or its advisers, should, as with a prospectus, meet the highest standards of care and accuracy. Profit forecasts require special care.

12 Prevention of a false market

All parties to a take-over or merger transaction should make full and prompt disclosure of all relevant information and use every endeavour to prevent the creation of a false market in the shares of an offeror or offeree company. Parties to such transactions must take care not to make statements which may mislead shareholders or the market.

13 Duties of directors with personal interests

Directors of an offeror or an offeree company should, in advising their shareholders, have regard to the interests of shareholders as a whole, and not to their own interests or those derived from personal or family relationships. Shareholders of companies which are effectively controlled by their directors must accept that the attitude of their board on any offer will be decisive. There may be good reasons for the board rejecting an offer or preferring the lower of two offers. The board must carefully examine its reasons for doing so and be prepared to explain its decision to shareholders.

RULES

1 APPROACH

1.1 Offers to be put to board or advisers

The offer should be put forward in the first instance to the board of the offeree company or to its advisers.

1.2 Identity of offeror

If the offer or an approach with a view to putting forward an offer is not made by the ultimate offeror or potential offeror, the identity of the ultimate or potential offeror must be disclosed at the outset to the board of the offeree company.

1.3 Implementation of offer

A board which is approached is entitled to be satisfied that the offeror will be in a position to implement the offer in full.

2 **SECRECY BEFORE ANNOUNCEMENTS**

There must be absolute secrecy before an announcement. All persons privy to confidential information, particularly relating to an offer or contemplated offer, must treat that information as secret and may pass it to another person only if it is necessary to do so and if that person is made aware of the need for secrecy. No person who is privy to such information should make any recommendation to any other person as to dealing in the relevant securities. All such persons must conduct themselves so as to minimise the risk of an accidental leak of information.

NOTE ON RULE 2

Warning Clients

Advisers should warn clients of the importance of secrecy and security. Attention should be drawn to the Code, in particular this Rule and restrictions on dealings.

3 TIMING AND CONTENTS OF ANNOUNCEMENTS

3.1 Announcements to be made by offeror or potential offeror

Before the board of the offeree company is approached, the responsibility for making an announcement will normally rest with the offeror or potential offeror. The offeror or potential offeror should keep a close watch on the offeree company's share price and volume for signs of undue movement.

The offeror or potential offeror must make an announcement:-

- (a) when, before an approach has been made to the offeree company, the offeree company is the subject of rumour or speculation about a possible offer, or there is undue movement in its share price or a significant increase in the volume of share turnover, and there are reasonable grounds for concluding that it is the potential offeror's actions (whether through inadequate security, purchase of the offeree company's shares or otherwise) which have directly contributed to the situation; or
- (b) immediately upon an acquisition of shares which gives rise to an obligation to make an offer under Rule 14.

In all cases of doubt, the Council should be consulted.

3.2 Announcements to be made by offeree company

Following an approach to the board of the offeree company which may or may not lead to an offer, the primary responsibility for making an announcement will normally rest with the board of the offeree company. The offeree board should keep a close watch on the offeree company's share price and volume for signs of undue movement.

The offeree board must make an announcement:-

- (a) when the offeree board receives notification of a firm intention to make an offer from a serious source. Irrespective of whether the offeree board views the offer favourably or otherwise, it must inform its shareholders without

delay. The board of the offeree company must issue a paid press notice or, where the offeror has published a paid press notice, an announcement;

- (b) when, following an approach to the offeree company, the offeree company is the subject of rumour or speculation about a possible offer, or there is undue movement in its share price or a significant increase in the volume of share turnover, whether or not there is a firm intention to make an offer;
- (c) when negotiations or discussions between the offeror and the offeree company are about to be extended to include more than a very restricted number of people; or
- (d) when the board of a company is aware that there are negotiations or discussions between a potential offeror and the holder, or holders, of shares carrying 30% or more of the voting rights of a company or when the board of a company is seeking potential offerors, and:-
 - (i) the company is the subject of rumour or speculation about a possible offer, or there is undue movement in its share price or a significant increase in the volume of share turnover; or
 - (ii) more than a very restricted number of potential purchasers or offerors are about to be approached.

3.3 Announcements to be made by potential vendor

The holder(s) of shares carrying 30% or more of the voting rights of a company may, on occasions, hold negotiations or discussions with a potential offeror before the offeror makes an approach to the board of the company. If the company then becomes the subject of rumour or speculation about a possible offer, or there is undue movement in its share price or a significant increase in the volume of share turnover, and there are reasonable grounds for concluding that the actions of the potential vendor(s) (whether through inadequate security or otherwise) have contributed to the situation, the potential vendor(s) must make an announcement. In all cases of doubt, the Council should be consulted.

NOTES ON RULES 3.1, 3.2 AND 3.3

1. Conditional offers
When a proposed offer is conditional on acceptances or undertakings to accept by one or more shareholders, the proposed announcement must include a statement by those shareholders who have accepted or undertaken to accept the offer, whether such acceptances or undertakings are revocable, and if so, the conditions under which such acceptances or undertakings may be revoked.

2. Agreements and letters of intent
Agreements and letters of intent relating to an offer or possible offer should be announced publicly.

3. Undue movement in share price
A movement of approximately 20% above the lowest share price since the time of the approach or above an appropriate market index should be regarded as untoward. When there is such a movement or the offeree company is subject to rumour or speculation, the Council should be consulted if no immediate announcement is proposed to be made. In determining whether there has been undue movement in the share price, the Council may have regard to general market and sector movements, publicly available information about the company, trading activity in the company's securities, the time period over which the price movement has taken place, and any such other factors as it considers appropriate.

4. Tender for Shares
When the potential vendor calls a public tender for the sale of his shares in the offeree company, an announcement must be made. In the case of a closed tender, where there is rumour or speculation about a possible tender, or undue movement in the share price of the offeree company, or a significant increase in the volume of share turnover, an announcement must also be made.

5. Holding Announcement
In cases where an announcement of a firm intention to make an offer is premature or inappropriate, a holding announcement that talks are taking place (without naming the potential offeror) or that a potential offeror is

considering making an offer may be made. If following such announcement, no further announcement has been made in respect of the offer or possible offer within 1 month, an announcement must be made setting out the progress on the talks or the consideration of the offer or possible offer. This obligation to provide monthly updates continues until a firm intention to make an offer or a decision not to proceed with an offer is announced. When talks are terminated or a potential offeror decides not to proceed with an offer, an announcement must be made to that effect.

A possible alternative to an immediate announcement may be to obtain a suspension of trading of the offeree company's shares to be followed shortly by an announcement. In all cases of doubt, the Council should be consulted.

3.4 Suspension of trading

A potential offeror should not attempt to prevent the board of an offeree company from making an announcement or requesting the Securities Exchange to grant a temporary halt in dealings at any time the offeree board considers appropriate.

3.5 Announcement of firm intention to make an offer

When a firm intention to make an offer is announced, the announcement must state:-

- (a) the terms of the offer;
- (b) the identities of the offeror and the ultimate offeror or ultimate controlling shareholder of the offeror, where applicable;
- (c) details of any existing holding of securities which are being offered for or which carry voting rights, or convertible securities, warrants, options or derivatives in respect of securities which are being offered for or which carry voting rights in the offeree company:-
 - (i) which the offeror owns or over which it has control;

- (ii) which is owned or controlled by any person acting in concert with the offeror; or
 - (iii) in respect of which the offeror or any person acting in concert with it has received an irrevocable commitment to accept the offer;
- (d) all conditions (including normal conditions relating to acceptances, listing and increase of capital) to which the offer or the posting of it is subject;
- (e) details of any arrangement (whether by way of option, indemnity or otherwise) in relation to shares of the offeror or the offeree company which might be material to the offer; and
- (f) the number and percentage of any relevant securities in the offeree company which the offeror or any person acting in concert with it has:-
- (i) granted a security interest to another person, whether through a charge, pledge or otherwise;
 - (ii) borrowed from another person (excluding borrowed securities which have been on-lent or sold); or
 - (iii) lent to another person.

Where the offer is for cash or involves an element of cash, the announcement of an offer should include an unconditional confirmation by the financial adviser or by another appropriate third party that the offeror has sufficient resources available to satisfy full acceptance of the offer.

NOTES ON RULE 3.5

1. Unambiguous language

The language used in announcements should clearly and concisely reflect the position being described. Statements which may give the impression that persons have committed themselves to certain courses of action (e.g. accepting in respect of their own shares) when they have not in fact done so should be avoided.

2. Holdings by close relatives and/or a group of which an offeror or an adviser is a member

To maintain secrecy, it may not be prudent to make enquiries beforehand into details of any holdings of offeree company shares or options in respect of shares held by or entered into by close relatives and/or other parts of an offeror or adviser's group (see "acting in concert" in Definitions section) for inclusion in an announcement. In such circumstances, the Council should be consulted and the relevant details should be obtained as soon as possible after the announcement has been made. If the holdings are significant, a further announcement may be required.

3. Irrevocable commitments

References to commitments to accept an offer must specify in what circumstances, if any, they will cease to be binding; for example, if a higher offer is made.

4. Confirmation of resources

The Council may require evidence to support a statement that resources are available to satisfy the offeror's obligations. The Council may also require evidence that the offeror has sufficient resources to complete the purchase of shares which gives rise to the obligations.

3.6 Announcements of certain purchases

Acquisitions of voting rights of an offeree company by an offeror or by any person acting in concert with the offeror may give rise to an obligation to make a mandatory offer (Rule 14), to make a cash offer (Rule 17.1) or to revise an offer (Rule 20). Immediately after any acquisition giving rise to any such obligation, an announcement must be made, stating the number of voting rights acquired, the price paid and any revisions to the terms of the offer, together with other information required by Rule 3.5 (to the extent that it has not previously been announced).

NOTE ON RULE 3

Timing of announcements

Within 30 minutes of incurring an obligation to make an offer or to revise an offer already made, the offeror must either make an announcement, or request the

Securities Exchange for a temporary halt in trading of the offeree company's shares and make an announcement before the trading suspension is lifted.

4 NO WITHDRAWAL OF AN OFFER

Where the offeror has announced a firm intention to make an offer (as opposed to an announcement that talks are taking place which may lead to an offer), it cannot withdraw the offer without the Council's consent, unless the posting of the offer was expressed as being subject to the prior fulfilment of a specific condition and that condition has not been met.

NOTES ON RULE 4

1. Competing offer

An offeror need not normally proceed with an announced offer if a competitor has already posted a higher offer, which carries no additional conditions other than those necessary for the implementation of the original offer. The Council should be consulted if either offer is a securities exchange offer.

2. Announcement required

If an offeror is permitted to withdraw or an offer lapses because of non-fulfilment of a condition, the offeror will be required to make an announcement to explain why the offer is withdrawn or has lapsed.

5 FRUSTRATION OF OFFERS BY AN OFFEREE BOARD

In the course of an offer, or even before the date of the offer, if the board of the offeree company has reason to believe that a bona fide offer is imminent, the board must not, except pursuant to a contract entered into earlier, take any action, without the approval of shareholders at a general meeting, on the affairs of the offeree company that could effectively result in any bona fide offer being frustrated or the shareholders being denied an opportunity to decide on its merits. Such actions include but are not limited to:-

- (a) issue any authorised but unissued shares;
- (b) issue or grant options in respect of any unissued shares;
- (c) create or issue or permit the creation or issue of any securities carrying rights of conversion into or subscription for shares of the company;
- (d) sell, dispose of or acquire or agree to sell, dispose of or acquire assets of material amount;
- (e) enter into contracts, including service contracts, otherwise than in the ordinary course of business; or
- (f) cause the offeree company or any subsidiary or associated company to purchase or redeem any shares in the offeree company or provide financial assistance for any such purchase.

The notice convening such a meeting of shareholders must include information about the offer or anticipated offer.

If the offeree board considers that an obligation to take any of the above actions or other special circumstance exists, although a formal contract has not been entered into, it should consult the Council and obtain its consent to proceed without a shareholders' meeting.

NOTES ON RULE 5

1. Consent by the offeror

For any transaction that falls within this Rule and requires shareholders' approval at a general meeting, the Council would normally waive this requirement if the offeror has expressed no objections to the proposed transaction.

2. "Material amount"

To determine whether a disposal or acquisition is of "a material amount", the Council will generally consider the following:-

- (a) the value of the assets to be disposed of or acquired compared with the assets of the offeree company;*
- (b) where appropriate, the aggregate value of the consideration to be received or given compared with the assets of the offeree company;
and*
- (c) where appropriate, net profits (after deducting all charges except taxation and excluding exceptional items) attributable to the assets to be disposed of or acquired compared with those of the offeree company.*

For these purposes, the term "assets" will normally mean fixed assets plus current assets less current liabilities.

The Council will normally consider relative values of 10% or more as material, although relative values lower than 10% may be considered material if the asset is of particular significance.

If several transactions that are not individually material occur or are intended, the Council will aggregate such transactions to determine whether the requirements of this Rule are applicable to any of them.

The Council should be consulted in advance where there is any doubt as to the application of the above.

3. Interim dividends

The declaration and payment of dividends by the offeree company, other than in the normal course and the usual quantum, during an offer period may in certain circumstances be contrary to this Rule in that it could effectively frustrate an offer. Offeree companies and their advisers must, therefore, consult the Council in advance. The scheduled payment of dividends declared before the offer period or before the board of the offeree company has reason to believe that a bona fide offer is imminent, whichever is earlier, does not fall within this Rule.

4. Service contracts

For the purposes of this Rule, the Council will regard any change to a director's service contract or terms of employment which leads to a significant improvement in his terms of service as entering into a contract "other than in the ordinary course of business".

This will not prevent any such improvement which results from a genuine promotion or new appointment, but the Council must be consulted in advance in such cases.

5. Established share option schemes

The Council will normally allow the offeree company to grant options over shares under an established share option scheme if its timing and level are in accordance with the company's normal practice.

6. Registered business trusts, business trusts and REITs

For the avoidance of doubt, no frustrating action should be undertaken by:

- (a) in the case of an offeree registered business trust or business trust, the trustee-manager and/or the directors of the trustee-manager; and*
- (b) in the case of an offeree REIT, the manager and/or any of the directors of the manager and/or the trustee (in its capacity as trustee of such offeree REIT).*

In particular, in addition to the matters set out in this Rule, the relevant parties must not, without the approval of the unitholders, do or agree to do the following:

- (i) in the case of a registered business trust or business trust, otherwise than in the ordinary course of business:
 - (A) alter the terms of engagement between the offeree registered business trust or business trust and its trustee-manager; or*
 - (B) enter into or alter the terms of, the service contracts between the trustee-manager and any of its directors; and**
- (ii) in the case of an offeree REIT, otherwise than in the ordinary course of business:
 - (A) alter the terms of engagement between the offeree REIT and its manager; or*
 - (B) enter into or alter the terms of, the service contracts between the manager and any of its directors.**

7. When there is no need to post

The Council may allow an offeror not to proceed with its offer if, at any time during the offer period prior to the posting of the offer document, the offeree company:-

- (a) passes a resolution in a general meeting which has the effect of frustrating the offer; or*
- (b) announces or enters into a transaction pursuant to a contract entered into earlier which has the effect of frustrating the offer.*

6 DIRECTORS' RESPONSIBILITIES

6.1 Conduct of offer

While a board of directors may delegate the day-to-day conduct of an offer to individual directors or a committee of directors, the board as a whole must ensure that proper arrangements are in place to enable it to monitor that conduct so that each director may fulfil his responsibilities under the Code. These arrangements should ensure that:-

- (a) the board is provided promptly with copies of all documents and announcements issued by or on behalf of their company which bear on the offer; the board receives promptly details of all dealings in relevant securities made by their company or its associates and details of any agreements, understandings, guarantees, expenditure (including fees) or other obligations entered into or incurred by or on behalf of their company in the context of the offer which do not relate to routine administrative matters;
- (b) those directors with day-to-day responsibility for the offer are in a position to justify to the board all their actions and proposed courses of action; and
- (c) the opinions of advisers are available to the board where appropriate.

The above procedures should be followed, and board meetings held, as and when necessary throughout the offer in order to ensure that all directors are kept up-to-date with events and with actions taken.

The Council expects the directors to co-operate with it in connection with its enquiries. This includes providing, promptly on request, copies of minutes of board meetings and other information in their possession, or in the possession of an offeror or the offeree company as appropriate, which may be relevant to the enquiry.

6.2 Conflicts of interests

Directors who believe that they may face conflicts of interests in situations other than those set out in Note 1 on Rule 8.3 should consult the Council on whether it is appropriate for them to assume responsibility for any recommendations on the offer that the board may make to shareholders.

6.3 Resignation of directors of offeree company

Except with the Council's consent, the directors of the offeree company should not resign from the board until the offeror has clearly indicated that the offer will not be revised and the later of the date of posting of the offeree board circular or the date the offer becomes or is declared unconditional in all respects. This rule applies once a bona fide offer has been communicated to the offeree board or the offeree board has reason to believe that a bona fide offer is imminent.

6.4 Sale of shares by directors

Where directors (and their close relatives, related trusts and companies controlled by such directors, close relatives and related trusts) or shareholders or groups of shareholders acting collectively holding effective control, whether represented on the board or not, sell shares to a purchaser, as a result of which the purchaser is required to make an offer under Rule 14, the vendors must ensure that as a condition of the sale the purchaser undertakes to fulfill his obligations under Rule 14.

7 INDEPENDENT ADVICE

7.1 Board of offeree company

The board of the offeree company must obtain competent independent advice on any offer and the substance of such advice must be made known to its shareholders.

NOTES ON RULE 7.1

1. Management buy-outs and offers by controlling shareholders

The requirement for competent independent advice is particularly important where the offer is a management buy-out or similar transaction or is being made by or with the co-operation of the existing controlling shareholder or group of shareholders. As the responsibility borne by the adviser is considerable, the board of the offeree company or potential offeree company should appoint an independent adviser as soon as possible after it becomes aware that such an offer may be made.

2. When there is uncertainty about financial information

When there is a significant area of uncertainty in the most recently published accounts or interim figures of the offeree company (e.g. a qualified audit report, a material provision or contingent liability or doubt over the real value of a substantial asset, including a subsidiary company), the board and the independent adviser should highlight the factors which they consider important.

3. When no recommendation is given or there is a divergence of views

When directors are unable to give a firm recommendation or when there is a divergence of views amongst board members or between the board and the independent adviser as to either the merits of an offer or the recommendation being made, this must be drawn to shareholders' attention and an explanation given, including the arguments for acceptance or rejection, emphasising the important factors.

4. Partial offer for less than 30%

The requirement for competent independent advice does not apply to partial offers which could not result in the offeror and persons acting in concert with it holding shares carrying 30% or more of the voting rights of the offeree company.

7.2 Board of a Singapore-incorporated offeror company

The board of a Singapore-incorporated offeror must obtain competent independent advice on an offer where the offer being made is a reverse take-over. The board of a Singapore-incorporated offeror must also obtain competent independent advice when it faces a material conflict of interests. The board must make known the substance of the advice obtained to its shareholders.

NOTES ON RULE 7.2

1. General

When the board of an offeror is required to obtain competent independent advice, it should do so before announcing an offer or any revised offer. Such advice should be concerned with whether or not the making of the offer is in the interests of the company's shareholders. Shareholders must have sufficient time to consider advice given to them prior to any general meeting held to implement the proposed offer. Any documents or advertisements issued by the board in such cases must include a responsibility statement by the directors as set out at Note 6 on Rule 8.3.

2. Conflicts of interests

A conflict of interests will exist, for instance, where there are significant cross-shareholdings between an offeror and the offeree company, where there are a number of directors common to both companies, or where a common substantial shareholder in both companies is a director of or has a nominee director in either company.

7.3 Disqualified advisers

The Council would not normally regard as an appropriate person to give competent independent advice a person who is in the same group as the financial or professional adviser (including a stockbroker) to the offeror or who has a substantial

interest in or financial connection with either the offeror or the offeree company of such a kind as to create a conflict of interests for that person.

NOTES ON RULE 7.3

1. *Independence of adviser*

The Rule requires the offeree company's adviser to have a sufficient degree of independence from the offeror to ensure that the advice given is properly objective. Accordingly, in certain circumstances it may not be appropriate for a person who has had a recent advisory relationship with an offeror to give advice to the offeree company. In such cases the Council should be consulted. The views of the board of the offeree company will be an important factor in Council's consideration whether such a person should advise the offeree company.

2. *Conflicts of interests*

Instances where conflicts of interest may arise include those resulting from the possession of material confidential information or where the adviser is part of a multi-service financial organisation, as exemplified below.

It is incumbent upon multi-service financial organisations to familiarise themselves with the implications under the Code of conducting other businesses in addition to, for example, corporate finance or stockbroking. If one part of such an organisation is involved in an offer, for example, in giving advice to an offeror or the offeree company, a number of Rules of the Code may be relevant to other parts of that organisation, whose actions may have serious consequences under the Code. Compliance departments of such organisations have an important role in this respect and are encouraged to liaise with the Council in cases of doubt.

It may be a fact that corporate finance, stockbroking, fund management and corporate advisory activities may be conducted on a day-to-day basis quite separately within the same organisation, but it is necessary for such organisation to satisfy the Council that it arranges its affairs to ensure that there is total and effective segregation of those operations, and those operations are conducted without regard for the interests of other parts of the same organisation or of its clients.

A financial or professional adviser may have the opportunity to act for an offeror or the offeree company in circumstances where the adviser is in possession of material confidential information relating to the other party, for example, because that other party was a previous client or because of the adviser's involvement in an earlier transaction. In certain circumstances, this may necessitate the adviser declining to act, for example, because the information is such that a conflict of interests is likely to arise. It may not be possible to resolve such a conflict simply by isolating information within the relevant organisation or by assigning different personnel to the transaction.

When the adviser had previous dealings (other than the provision of credit facilities on an arm's length basis) with the offeree company, the adviser may act for the offeror only if the adviser, in its professional judgment, is satisfied that its previous dealings with the offeree company would not give the offeror an advantage in its take-over offer for the offeree company (i.e. the information the adviser possesses on the offeree company from its previous dealings is no longer material or relevant in the context of the offer). The adviser must consult the Council and be ready to justify the basis of its judgment to the Council before acting for the offeror. Where appropriate, the Council may take into account the views of the offeree company when deciding on whether to allow such an adviser to act for the offeror. When an adviser has been actively advising a company which becomes an offeree company, it may be acceptable for it to continue to act for the offeree company.

Where a financial adviser proposing to act for the offeree company has a financial connection with the offeror or persons acting in concert with the offeror or the offeree company or persons acting in concert with the offeree company, the adviser should consult the Council. The Council would normally allow the financial adviser to act for the offeree company if:-

- (a) the financial connection is not material enough to create a conflict of interests; and*
- (b) the independent directors of the offeree company confirm in writing to the Council that, in their opinion, it is appropriate to appoint such financial adviser to render independent advice on the take-over offer.*

In the case of a competitive offer, it is not acceptable for an adviser to act for more than one of the competing offerors in relation to the offer at any point in time. It is also not acceptable for an adviser who was acting, or had previously acted, for one offeror in a competitive offer to subsequently switch to acting for a competing offeror in relation to the same offer. This restriction does not apply to the provision of credit facilities to an offeror on an arm's length basis.

3. *Success fees*

Certain fee arrangements between an adviser and the offeree company may create a conflict of interests which would disqualify the adviser as an independent adviser to the offeree company. For example, a fee which becomes payable to the adviser only if the offer fails will normally create such a conflict of interests. In cases of doubt, the Council should be consulted.

8 INFORMATION

8.1 Information to Shareholders

Shareholders must be given all the facts necessary to make an informed judgment on the merits or demerits of an offer. Such facts require accurate and fair presentation and must be given to the shareholders early enough to enable them to make a decision in good time. The obligation of the offeror in these respects towards the shareholders of the offeree company is no less than the offeror's obligation towards its own shareholders. In particular, whether or not the offer consideration is cash, information should be given about the offeror.

NOTES ON RULE 8.1

1. Material changes

Any document issued to shareholders must include information about any material change in any information previously published by or on behalf of the relevant company during the offer period. If there have been no such changes, this should be stated.

2. Pre-conditional offers

When an offer has been announced, the making of which is subject to a pre-condition relating to action by offeree company shareholders (e.g. the rejection of a proposed acquisition or disposal), the first major circular sent by the potential offeror to those shareholders must normally include the information which would be required if it were an offer document.

8.2 Standard of Care

Any document or advertisement addressed to shareholders in connection with an offer or any announcement issued in connection with an offer must, as is the case with a prospectus, satisfy the highest standard of accuracy and present the information contained therein adequately and fairly. This applies whether the offeror, the offeree company, or any of their advisors or agents issues the document, advertisement or announcement.

NOTES ON RULE 8.2

1. Adviser's responsibility

The Council regards advisers as being responsible for guiding their clients and any relevant public relations advisers with regard to any information released during the course of an offer.

Advisers must ensure, at the outset, that directors and officials of companies are warned that they must consider carefully the Code implications of what they say, particularly during interviews and discussions with the media. It is very difficult after publication to alter an impression given or a view or remark attributed to a particular person. In appropriate circumstances, the Council will require a statement of retraction. Particular areas of sensitivity on which comment must be avoided include future profits and prospects, asset values and the likelihood of the offer being revised.

2. Source

The source for any information which is material to an argument must be clearly stated, including sufficient details to enable the significance and/or reliability of such information to be assessed.

3. Quotations

A quotation (e.g. from a newspaper or other source) must not be used out of context and details of the origin must be included. Since quotations will necessarily carry the implication that the comments quoted are endorsed by the board, such comments must not be quoted unless the board is prepared, where appropriate, to corroborate or substantiate them and the directors' responsibility statement is included.

4. Diagrams etc.

Pictorial representations, charts, graphs and diagrams must be presented without distortion and, when relevant, must be to scale.

5. Unambiguous language

The language used in documents, releases or advertisements must clearly and concisely reflect the position being described. Statements which may give the impression that persons have committed themselves to certain courses of

action (e.g. accepting in respect of their own shares) when they have not in fact done so must be avoided.

8.3 Responsibility

Each document or advertisement addressed to shareholders and each announcement issued in connection with an offer must state that the directors of the company issuing the document or advertisement (including any who may have delegated detailed supervision of the document, advertisement or announcement) have taken all reasonable care to ensure that the facts stated and all opinions expressed therein are fair and accurate and, where appropriate, no material facts have been omitted and also state that they jointly and severally accept responsibility accordingly.

If it is proposed that any director should be excluded from such a statement, the Council's consent is required. Such consent is given only in exceptional circumstances. In such cases, the exclusion and the reasons for it must be stated in the document, advertisement or announcement.

A copy of the authority on behalf of the relevant board of directors for the issue of such document, advertisement or announcement must be lodged with the Council.

NOTES ON RULE 8.3

1. *Exclusion from directors' responsibility statement*

Where it is proposed that any director be excluded from a directors' responsibility statement, an application for the Council's consent should be made by or on behalf of the director concerned, stating clearly the reasons for the application. If it is expected that the director concerned will be away during the material period of time, arrangements should be made to ensure that the Council's consent is sought in good time.

The Council will normally exempt a director of the offeree company who is, or has entered into an agreement to become, a director, employee or nominee of the offeror or a person acting in concert with the offeror from assuming responsibility for any recommendations on the offer that the board of the offeree company may make to its shareholders. Such director of the offeree company must, however, still assume responsibility for the accuracy of facts

stated in documents which the offeree company sends to its shareholders in connection with the offer.

Directors of the offeree company who have sold offeree company shares to the offeror or persons acting in concert with the offeror are not deemed to have an irreconcilable conflict of interests. The same holds true for directors of the offeree company who are directors, employees or nominees of the vendor company which has sold offeree company shares to the offeror or persons acting in concert with the offeror. The Council will not normally exempt these directors from assuming responsibility for any recommendations on the offer that the offeree board may make to shareholders.

2. *Delegation of responsibility*

If detailed supervision of any document has been delegated to a committee of the board, each of the remaining directors of the company must reasonably believe that the persons to whom supervision has been delegated are competent to carry it out. Each director must also disclose to the committee:-

(a) *all relevant facts directly relating to himself (including his close relatives, related trusts and companies controlled by him, his close relatives and related trusts); and*

(b) *all other relevant facts known to him and relevant opinions held by him which, to the best of his knowledge and belief, either are not known to any member of the committee or, in the absence of his specifically drawing attention thereto, are unlikely to be considered by the committee during the preparation of the document.*

3. *Composite document*

When the offer document and the offeree board circular are combined in a composite document, all directors of the offeror should take responsibility for the composite document, other than for the information in the document relating to the offeree company for which all directors of the offeree company should take responsibility.

4. When an offeror is controlled by another person

If the offeror is controlled, directly or indirectly, by another person or company, the Council will normally require that, in addition to the directors of the offeror, such other person or the directors of an ultimate parent company or, if there is a listed company in the chain between the ultimate parent company and the offeror, the directors of the listed company take responsibility for documents issued by or on behalf of the offeror. The Council may dispense with this requirement if the offeror in question is of sufficient substance in relation to the person or company which controls it.

In the case of professional trustee companies, the Council would look to the person in accordance with whose directions or wishes the trustees are accustomed to act and such person would be required to take responsibility.

5. Origin

Advertisements, announcements and documents sent to shareholders must identify clearly and prominently at their start from whom they originate. Shareholders should not be left in any doubt as to their origin. Advertisements and announcements should also include the directors' responsibility statement unless the information published is contained in a circular to shareholders which includes such a statement.

6. Directors' joint and several responsibility

Documents should state that all directors of the company issuing the document, jointly and severally accept full responsibility for the accuracy of information contained in the document and confirm, having made all reasonable inquiries, that to the best of their knowledge, opinions expressed in the document have been arrived at after due and careful consideration and there are no other facts not contained in the document, the omission of which would make any statement in the document misleading.

8.4 Unacceptable statements

Parties to an offer or potential offer and their advisers must take care not to issue statements which, while not factually inaccurate, may mislead shareholders and the market or may create uncertainty. In particular, an offeror must not make a statement

to the effect that it may improve its offer without committing itself to doing so and specifying the improvement.

NOTE ON RULE 8.4

Statements of support

The board of the offeree company must not make statements about the level of support from its shareholders unless their up-to-date intentions have been clearly stated to the offeree company or its advisers. The Council will require such statements to be verified to its satisfaction; this may include immediate confirmation being given directly to the Council by the relevant shareholders.

8.5 Advertisements

The publication of advertisements connected with an offer or potential offer is prohibited unless the advertisement falls within one of the categories listed below:-

- (a) product advertisements not bearing on an offer or potential offer (where there could be any doubt, the Council must be consulted);
- (b) corporate image advertisements not bearing on an offer or potential offer;
- (c) advertisements confined to non-controversial information about an offer (e.g. reminders as to closing times or the value of an offer). Such advertisements must avoid argument or invective;
- (d) advertisements comprising preliminary or interim results and their accompanying statement, provided the latter is not used for argument or invective concerning an offer; or
- (e) advertisements to give information, the publication of which by advertisement is required by the Securities Exchange.

NOTES ON RULE 8.5

1. Accurate and fair advertisement

The Code requires accuracy and fair representation in advertisements. The making of a misleading statement is a serious matter. Advertisements should therefore be prepared with care by the parties concerned. If a published

advertisement has had a misleading effect, the Council will take a serious view of the matter. If there appears to have been no intention to mislead, the Council may decide that a simple correction will suffice. Any correction must be immediate.

2. *Use of alternative media*

For the purposes of this Rule, advertisements include not only press advertisements but also advertisements in other media, such as television, radio, video, audio tape, poster and the Internet.

8.6 Telephone campaigns and other forms of solicitations

Except with the Council's consent, campaigns in which shareholders are contacted by telephone or other medium may be conducted only by staff of the financial adviser who are fully conversant with the requirements of, and their responsibilities under, the Code. Only previously published information which remains accurate, and not misleading at the time it is quoted, may be used in such campaigns. Shareholders must not be put under pressure and must be encouraged to consult their professional advisers.

NOTES ON RULE 8.6

1. *Consent to use other callers*

If it is impossible to use staff of the type mentioned in this Rule, the Council may consent to the use of other people subject to:-

- (a) an appropriate script for callers being approved by the Council;*
- (b) the financial adviser carefully briefing the callers prior to the start of the operation and, in particular, stressing:-*
 - (i) that callers must not depart from the script;*
 - (ii) that callers must decline to answer questions the answers to which fall outside the information given in the script; and*
 - (iii) the callers' responsibilities under General Principle 9; and*

(c) *the operation being supervised by the financial adviser.*

2. *New information*

In spite of this Rule, if new information is given to some shareholders, such information must immediately be made available to all shareholders.

3. *Gathering of irrevocable commitments*

The Council must be consulted before a telephone campaign is conducted with a view to gathering irrevocable commitments in connection with an offer. Where irrevocable commitments are to be sought, the financial adviser should be satisfied that the proposed arrangements will provide adequate information as to the nature of the commitment sought; and a realistic opportunity to consider whether or not that commitment should be given and to obtain independent advice if required. The financial adviser concerned will be responsible for ensuring compliance with all relevant legislation and other regulatory requirements.

8.7 Information to offeror

Immediately following the announcement of a firm intention to make an offer, the offeree company must, on the offeror's request, provide the offeror with information on its outstanding voting equity share capital. The offeree company must also update the offeror on any subsequent changes thereto during the offer period.

NOTES ON RULE 8.7

1. *Offeree company's obligation following offeror's announcement*

After the announcement of a firm intention to make an offer, the offeree company must, within 48 hours of the offeror's request, provide the offeror with all relevant details of its outstanding voting rights, the issued shares and, to the extent not issued, the allotted shares and details of any conversion or subscription rights or any other rights pursuant to the exercise of which shares may be unconditionally allotted or issued during the offer period. In the case of conditionally allotted shares, the details should include the conditions and the date on which such conditions may be satisfied. In the case of rights, the details should include the number of shares which may be unconditionally allotted or issued during the offer period as a result of the exercise of such rights, identifying separately those attributable to rights which commence or

expire on different dates, and the various prices at which these rights could be exercised.

2. *Allotment of shares by offeree company during offer period*

The offeree company must immediately notify the offeror of any allotment or issue of shares and of the exercise of any such rights during the offer period and provide the offeror as soon as possible with all relevant details. The offeror must make appropriate arrangements to ensure that any person to whom shares of a type to which the offer relates are unconditionally allotted or issued during the offer period will have an opportunity of accepting the offer in respect of such shares. In cases of doubt, the Council must be consulted.

9 EQUALITY OF INFORMATION

9.1 Equality of information to shareholders

Information about companies involved in an offer must be made equally available to all shareholders as nearly as possible at the same time and in the same manner.

NOTES ON RULE 9.1

1. Furnishing of information to offerors

This Rule does not prevent the furnishing of information in confidence by an offeree company to a bona fide offeror or vice versa.

2. Briefings

Companies and their advisers may hold "briefings" for shareholders, analysts or stockbrokers during the offer period, provided no material new information is forthcoming, no significant new opinions are expressed and the following provisions are observed:-

(a) *an appropriate representative of the financial adviser to the party convening the briefing must be present. That representative will be responsible for confirming in writing to the Council, not later than 12 noon on the business day following the date of the briefing, whether any material new information was forthcoming and whether any significant new opinions were expressed at the briefing; and*

(b) *if at the briefing any material new information was forthcoming or significant new opinions were expressed, a circular giving such details should be sent to shareholders immediately thereafter: in the later stages of a take-over or merger it may be necessary to make use of paid newspaper space as well as a circular. The circular or advertisement should include a directors' responsibility statement. If such new information is not capable of being substantiated in the manner required by the Code – e.g. a profit forecast - this should be made clear and it should be formally withdrawn in the circular or advertisement.*

Should there be any dispute as to whether the provisions above have been complied with, the relevant financial adviser will be expected to satisfy the Council that they have been. Financial advisers may therefore find it useful to record the proceedings of such briefings, although this is not a requirement. The financial adviser must ensure that no briefings are arranged without its knowledge.

3. *Press, television, radio interviews, etc*

Parties to a take-over or merger transaction must take particular care not to release new information during interviews or discussions with the media. If, notwithstanding this Note, any new information is made public in this way, a circular must be sent to shareholders and, where appropriate, paid newspaper space taken as required in Note 2(b) above.

4. *Circulars issued by brokers*

Stockbrokers or advisers to any party to a take-over or merger transaction who wish to circulate to their clients information on the company with which they are associated must clear the circular with the Council first. When giving their clients information on companies which are parties to an offer, stockbrokers and advisers must bear in mind that new information must not be restricted to a small group. Accordingly, such circulars should not contain any statements of fact or opinion derived from information not generally available; in particular, profit forecasting (unless, and then only to the extent that, the offer documents contain forecasts) should normally be avoided. The role of the stockbroker and adviser in relation to the offer must be clearly disclosed. Clearance before the issue of such circular or material may normally be effected by telephone but where there is doubt, a draft of the circular should be sent to the Council before circulation. In all cases, copies of the circular or material must be sent to the Council at the time of issue.

9.2 Information to competing offeror

Any information, including particulars of shareholders, given to one offeror or potential offeror must, on request, be furnished equally and promptly to any other bona fide offeror or potential offeror, who should specify the questions to which it requires answers. In cases where information on the offeree company's trade and business secrets had been given earlier by the offeree company to one offeror or

potential offeror, the offeree company should consult the Council before rejecting a request by any other bona fide offeror or potential offeror for the same information.

This Rule also applies to a person seeking to acquire all or materially all of the assets and/or businesses of a company which is the subject of an offer or bona fide potential offer. In such cases, the Rule applies equally to such person and the offeror and/or the bona fide offeror. The Council should be consulted in cases of doubt.

NOTE ON RULE 9.2

1. Management buy-outs

If the offer or potential offer is a management buy-out or similar transaction, the information which this Rule requires to be given to a competing or potential offeror which has specified the questions to which it requires answers is:-

- (a) *the information generated by the offeree company (including the management of the offeree company acting in their capacity as such) which is passed to external providers or potential providers of finance (whether equity or debt) to the offeror or potential offeror; and*
- (b) *any other information that is material in the context of making an offer insofar as the board of the offeree company is aware that the management is in possession of such information.*

This, however, does not include providing information on the offeree company's trade and business secrets. The Council expects the directors of the offeree company who are involved in making the offer to co-operate with the independent directors of the offeree company and its advisers in the assembly of information.

2. Offer for assets or business of the offeree company

For the purpose of this Rule, the Council would normally regard a person to be seeking to acquire materially all of the assets and/or businesses of a company if such assets and/or businesses account for or contribute more than 30% of the offeree company's sales, earnings, assets or market capitalisation. The Council should be consulted in cases of doubt.

10 NO SPECIAL DEALS

Except with the Council's consent, the offeror or persons acting in concert with it may not make any arrangements with selected shareholders and may not deal or enter into arrangements to deal or make purchases or sales of shares of the offeree company, or enter into arrangements concerning acceptance of an offer, either during an offer or when one is reasonably in contemplation, if there are favourable conditions attached which are not being extended to all shareholders.

NOTES ON RULE 10

1. Top-ups and other arrangements

An arrangement with special conditions attached includes any arrangement where there is a promise to make good to a vendor of shares any difference between the sale price and the price of any subsequent successful offer, revised offer or successful competing offer. An irrevocable commitment to accept an offer combined with an option to put the shares to the offeror should the offer fail will also be regarded as such an arrangement.

Arrangements made by an offeror with a person acting in concert with it, whereby shares in the offeree company are purchased by the person acting in concert on the basis that the offeror will bear all the risks and receive all the benefits, are not prohibited by this Rule. Arrangements which contain a benefit or potential benefit to the person acting in concert (beyond normal expenses and carrying costs) are, however, normally prohibited. In cases of doubt, the Council must be consulted.

2. Two-tier offers

Two-tier offers where shareholders who accept the offer before a stipulated cut-off date would receive a higher consideration than those who accept the offer after the cut-off date will be regarded as arrangements with special conditions.

A two-tier offer that offers to pay a higher offer price if a certain level of acceptances is reached will not be regarded as an arrangement with special conditions if the higher offer price is payable to all accepting shareholders.

3. Fees

The Rule also covers cases where a shareholder in an offeree company is to be remunerated for playing a part in promoting an offer. The Council will normally consent to such remuneration, provided that the shareholding is not substantial and it can be demonstrated that a person who had performed the same services, but had not at the same time been a shareholder, would be entitled to receive no less remuneration.

4. Management retaining an interest

The Council should be consulted if the management of the offeree company is to remain financially interested in the business after the offer is completed. The methods by which this may be achieved vary but the principle which the Council is concerned to safeguard is that the risks as well as the rewards associated with an equity shareholding should apply to the management's retained interest. For example, the Council would not normally find acceptable an option arrangement which guaranteed the original offer price as a minimum.

5. Disposal of offeree company assets

In some cases, certain assets of the offeree company may be of no interest to the offeror. If a shareholder in the offeree company seeks to acquire the assets in question, there is a possibility that the terms of the transaction will be such as to confer a special benefit on him. The arrangement is also not capable of being extended to all shareholders. The Council will normally consent to such a transaction, provided that the independent adviser to the offeree company publicly states that in his opinion the terms of the transaction are fair and reasonable.

6. Joint offerors

When two or more persons come together to form a consortium on such terms and in such circumstances that each of them can be considered to be a joint offeror, Rule 10 is not breached if one (or more) of them is already a shareholder in the offeree company. Subject to that, joint offerors may make arrangements between themselves regarding the future membership, control and management of the business being acquired. The factors that the Council will take into account in determining whether a person is a joint offeror include the following:

- (a) *the proportion of equity share capital of the bid vehicle the person will own after completion of the acquisition;*
- (b) *whether the person will be able to exert a significant influence over the future management and direction of the bid vehicle;*
- (c) *the contribution the person is making to the consortium;*
- (d) *whether the person will be able to influence significantly the conduct of the bid; and*
- (e) *whether there are arrangements in place to enable the person to exit from his investment in the bid vehicle within a short time or at a time when other equity investors cannot.*

11 RESTRICTIONS ON DEALINGS BEFORE AND DURING THE OFFER

11.1 Restrictions on dealings before the offer

No dealings of any kind in the securities of the offeree company (including convertible securities, warrants, options and derivatives in respect of such securities) may be transacted by any person, not being the offeror, who has confidential price-sensitive information concerning an actual or contemplated offer or revised offer between the time when there is reason to suppose that an approach or an offer or revised offer is contemplated and the announcement of the approach, the offer, the revised offer, or of the termination of the discussions. Such restriction does not apply to persons acting in concert with an offeror in respect of such dealings where such dealings are excluded from the offer or where there are no-profit arrangements in place.

No such dealings may take place in the securities of the offeror (including convertible securities, warrants, options and derivatives in respect of such securities) except where the proposed offer is not deemed price-sensitive in relation to such securities.

Without prejudice to the generality of the foregoing, the Council will regard a person "to have confidential price-sensitive information concerning an offer or contemplated offer" if:-

- (a) he is a director or employee of one of the companies concerned or engaged in the proposed offer; or
- (b) he is a professional adviser either to one of the companies concerned or engaged in the proposed offer or to any person referred to in (a); or
- (c) he is in a position to have received information in the context of a confidential relationship,

and he actually received such information.

The close relatives and related trusts of such a person as well as companies controlled by such person, his close relatives or related trusts would be deemed to be in the same position as such person.

NOTE ON RULE 11.1

No-profit arrangements

Arrangements made by a potential offeror with a person acting in concert with it whereby offeree securities are purchased (which would include entering into options in respect of securities of the offeree company) by the person acting in concert, on the basis that the offeror will bear all the risks and receive all the benefits, are not prohibited by this Rule. Arrangements which contain a benefit or potential benefit to the person acting in concert (beyond normal expenses and carrying costs) will not be considered as no-profit arrangements for the purposes of this Rule. In cases of doubt, the Council must be consulted.

11.2 Restrictions on dealings during the offer

The offeror and persons acting in concert with it must not sell any securities in the offeree company during the offer period except:-

- (a) For sales before the offer has become or been declared unconditional as to acceptances:-
 - (i) with the prior consent of the Council;
 - (ii) only after 24 hours' advance notice by public announcement of the intention to sell has been given; and
 - (iii) the sale is not at below the offer price.

After an announcement of an intention to sell the securities of the offeree company has been made, neither the offeror nor persons acting in concert with it can make further purchases and only in exceptional circumstances will the Council permit the offeror to revise the offer price. If the offer is one made under Rule 14, the Council will not give consent for the sale unless it is satisfied that circumstances exist to warrant such a sale.

- (b) For sales after the offer has become or been declared unconditional as to acceptances:-
- (i) such intention must have been disclosed in the offer document; and
 - (ii) 24 hours' advance notice by public announcement must be given before the sale.

NOTES ON RULES 11.1 AND 11.2

1. *Dealings after termination of discussions*

If discussions are terminated or the offeror decides not to proceed with an offer after an announcement has been made that offer discussions are taking place or that an approach or offer is contemplated, no dealings in securities (including convertible securities, warrants, options and derivatives in respect of such securities) of the offeree company by any person privy to this information may take place prior to an announcement of the position.

2. *No dealing contrary to published advice*

Directors and financial advisers to a company who own securities in that company must not deal in such securities contrary to any advice they have given to shareholders, or to any advice with which it can reasonably be assumed that they were associated, without giving at least 24 hours' advance notice of their intentions together with any appropriate explanation.

3. *Discretionary clients*

Sales of offeree company securities for discretionary clients by fund managers connected with the offeror may be relevant.

11.3 Restriction on dealings by offeror in offeror shares during non-cash offers

Where the consideration for an offer includes securities of the offeror or any other body corporate, neither the offeror nor its concert parties may deal in any such securities (whether through share repurchases or otherwise) during the offer period.

12 DISCLOSURE OF DEALINGS DURING THE OFFER

Save insofar as appears from the Code, it is undesirable to fetter the market. Accordingly, all parties to a take-over and merger transaction (other than a partial offer) and associates are free to deal subject to this Rule.

12.1 Dealings by parties and their associates for themselves or for discretionary clients

Dealings in relevant securities by the offeror, the offeree company or any of their associates for their own accounts or for the accounts of discretionary investment clients during the offer period must be publicly disclosed in accordance with Notes 4, 5 and 6 on Rule 12 below.

NOTE ON RULE 12.1

Discretionary accounts

Discretionary investment clients include individuals and funds for whom or which the offeror, the offeree company or any of their associates is accustomed to make investment decisions without prior reference. The principle which the Council normally applies is that if a person manages investment accounts on a discretionary basis, the relevant securities so managed will be treated, for the purposes of this Rule, as controlled by that person and not by the person on whose behalf the relevant securities are managed.

12.2 Dealings by parties and their associates for non-discretionary clients

Except with the Council's consent, dealings in relevant securities during the offer period by an offeror, the offeree company or any of their associates for the account of non-discretionary investment clients (other than an offeror, the offeree company and any of their associates) must be privately disclosed in accordance with Notes 4, 5 and 6 on Rule 12 below.

NOTE ON RULES 12.1 and 12.2

Multiple investment management operations

Except with the Council's consent, where more than one investment management operation is conducted in the same group, the relevant securities controlled by all such operations will be treated for the purposes of Rules 12.1 and 12.2 as those of a single person and must be aggregated (see Note 11 on Rule 12 below).

12.3 Dealings by parties and their associates in their capacities as agents

Where the offeror, the offeree company or any of their associates deal in relevant securities during the offer period only as brokerage agents for investment clients and not as principal, such transactions need not be disclosed.

NOTES ON RULE 12

1. **Consultation with the Council**

In any case of doubt as to the application of Rule 12, the Council should be consulted.

2. **Disclosure of dealings in offeror securities**

Disclosure of dealings in relevant securities of an offeror is required only in the case of a securities exchange offer.

3. **Relevant securities**

Relevant securities for the purposes of this Rule include:-

- (a) *securities of the offeree company which are being offered for or which carry voting rights;*
- (b) *equity share capital of the offeree company and an offeror;*
- (c) *securities of an offeror which carry the same or substantially the same rights as any to be issued as consideration for the offer;*
- (d) *securities carrying conversion or subscription rights into any of the foregoing; and*
- (e) *options and derivatives in respect of any of the foregoing.*

The taking, granting, acquisition, disposal, exercising (by either party), lapsing, closing out or variation of an option (including a traded option contract) in respect of any of the foregoing or the exercise or conversion of any security under (d) above, whether in respect of new or existing securities, and the acquisition of, disposal of, entering into, closing out, exercise (by either party) of any rights under, or issue or variation of, a derivative will be regarded as a dealing in relevant securities (see also Notes 6 and 8 below).

4. *Timing of disclosure*

Disclosure must be made no later than 12 noon on the dealing day following the date of the relevant transaction.

5. *Method of disclosure*

(a) *Public disclosure (for Rule 12.1)*

Dealings should be disclosed in writing to the Securities Exchange, the Council and the press. Persons proposing to engage in dealings should also acquaint themselves with the disclosure requirements of the Companies Act and the Securities and Futures Act.

If parties to an offer and their associates choose to make press announcements regarding dealings in addition to making formal disclosures, they must ensure that no confusion results.

Public disclosure may be made by the party concerned or by an agent acting on its behalf. Where there is more than one agent (e.g. a merchant bank and a stockbroker), particular care should be taken to ensure that the responsibility for disclosure is agreed between the parties and that it is neither overlooked nor duplicated.

(b) *Private disclosure (for Rule 12.2)*

Dealings should be disclosed in writing to the Council. Council reserves the right to make public such information when circumstances warrant it.

6. Details to be included in disclosures

(a) *Public disclosure (for Rule 12.1)*

A disclosure of dealings must include the following information:-

- (i) the total of the relevant securities in question purchased or sold, or redeemed or repurchased by the company itself;*
- (ii) the prices paid or received;*
- (iii) in the case of dealings in options or derivatives, full details should be given so that the nature of the dealings can be fully understood. For options, this should include the number of securities under option, the exercise period (or in the case of exercise, the exercise date), the exercise price and any option money paid or received. For derivatives, this should include, at least, the number of reference securities to which they relate (when relevant), the maturity date (or if applicable, the closing out date) and the reference price;*
- (iv) the identity of the principal or associate or other person dealing and, if different, the ultimate beneficial owner or controller. Dealings by or on behalf of a principal include any dealings where the investment risk is directly or indirectly borne by one of the principals, eg. where an associate has the right to sell to one of the principals at an agreed price any securities bought;*
- (v) nature of the investment clients (i.e. discretionary or non-discretionary) must be stated where dealings are by associates on behalf of investment clients. Subject to Note 9 below, the clients' names need not be disclosed;*
- (vi) the resultant total amount of relevant securities owned or controlled by the associate or other person in question (including those of any person with whom there is an agreement or understanding) and the percentage which it represents. For dealings by a principal, the total number of*

securities owned or controlled by the principal and persons acting in concert with it must be disclosed. For dealings by an associate, the total number of securities owned or controlled by the associate and by investment accounts under the discretionary management of the associate must be disclosed; and

(vii) if relevant, details of any arrangements required by Note 7 below.

(b) Private disclosure (for Rule 12.2)

A private disclosure under Rule 12.2 must include the identity of the associate dealing, the total of relevant securities purchased or sold and the prices paid or received (in the case of an average price bargain, each underlying trade should be disclosed). In the case of dealings in options the same information as specified in (a)(iii) above is required.

7. Indemnity and other arrangements

For the purposes of this Note, an arrangement includes indemnity or option arrangements, and any agreement or understanding, formal or informal, of whatever nature, relating to relevant securities which may be an inducement to deal or refrain from dealing.

When an arrangement exists with any offeror, with the offeree company or with an associate of any offeror or the offeree company in relation to relevant securities, details of the arrangement must be publicly disclosed, whether or not any dealing takes place.

8. Dealings in convertible securities, warrants, options and derivatives

For the purposes of Rules 12.1 and 12.2, a disclosure of dealings in convertible securities, warrants, options and derivatives is required only if the person dealing in such instruments owns or controls 5% or more of the class of securities which is the subject of the instruments. Disclosure of dealings in such instruments is limited to those which cause the holder to have a long economic exposure to the underlying securities.

A person who has a long economic exposure to changes in the price of a security would benefit economically if the price of the security goes up and will suffer economically if the price of that security goes down.

9. *Responsibilities of stockbrokers, bankers and other intermediaries*

Stockbrokers, bankers and others who deal in relevant securities on behalf of clients have a general duty to ensure, so far as they are able, that those clients are aware of the disclosure obligations attaching to associates and other persons and that those clients are willing to comply with them. Dealers who deal directly with investors should, in appropriate cases, likewise draw their attention to the relevant Rules.

Intermediaries are expected to co-operate with the Council in its dealings enquiries. Therefore, those who deal in relevant securities should appreciate that stockbrokers and other intermediaries will supply the Council with relevant information as to those dealings, including identities of clients, as part of that co-operation.

10. *Unlisted public companies*

The requirements to disclose dealings apply also to dealings in relevant securities of unlisted public companies.

11. *Disclosure by advisers belonging to a large group*

For a financial or professional adviser that belongs to a group with an extensive network of companies worldwide, the Council will normally exempt the companies within the group (other than the adviser itself, the other Singapore entities of the group and their respective subsidiaries and associated companies) from the requirements of this Rule if:-

(a) *the group has in place distinct and effective "Chinese Walls" between its various operations; and*

(b) *the offeror is not part of the group.*

Such exemption would be invalidated if the companies within the group acquire/have acquired shares in the offeree company before or during the offer period that would give rise to inferences that such acquisitions are/were

for the purpose of assisting the offeror in obtaining or consolidating effective control of the offeree company.

12. Potential offerors

If a potential offeror has been the subject of an announcement that talks are taking place (whether or not the potential offeror has been named) or has announced that he is considering making an offer, the potential offeror, and persons acting in concert with him, must disclose dealings in accordance with this Rule, and such disclosure must include the identity of the potential offeror.

In a contested take-over or merger situation, dealings by an offeror (or his associates) in the shares of any other offeror should be disclosed. This applies whether the deals are for their own accounts or for the account of their investment clients.

13. Exemption from disclosure requirements

Dealings in securities of an offeror where the consideration for the offer is cash or fixed income securities not carrying conversion or subscription rights need not be disclosed.

13 BREAK FEES

In all cases where a break fee is proposed, certain safeguards must be observed. In particular, a break fee must be minimal (normally no more than 1% of the value of the offeree company calculated by reference to the offer price) and the offeree company board and its financial adviser must provide, in writing, to the Council:-

- (a) a confirmation that the break fee arrangements were agreed as a result of normal commercial negotiations;
- (b) an explanation of the basis (including appropriateness) and the circumstances in which the break fee becomes payable;
- (c) any relevant information concerning possible competing offerors, e.g. the status of any discussions, the possible terms, any pre-conditions to the making of an offer, the timing of any such offer etc.;
- (d) a confirmation that all other agreements or understandings in relation to the break fees arrangements have been fully disclosed; and
- (e) a confirmation they each believe the fee to be in the best interests of offeree company shareholders.

Any break fee arrangement must be fully disclosed in the announcement made under Rule 3 and in the offer document. Relevant documents must be made available for inspection.

The Council should be consulted at the earliest opportunity in all cases where a break fee or any similar arrangement is proposed.

NOTES ON RULE 13

1. Arrangements to which the Rule applies

A break fee is an arrangement which may be entered into between an offeror or a potential offeror and the offeree company pursuant to which a cash sum will be payable by the offeree company if certain specified events occur which have the effect of preventing the offer from proceeding or causing it to fail

(e.g. the recommendation by the offeree company board of a higher competing offer).

This Rule will also apply to any other favourable arrangements with an offeror or potential offeror which have a similar or comparable financial or economic effect, even if such arrangements do not actually involve any cash payment.

Such arrangements also include, but are not limited to, penalties, put or call options or other provisions having similar effects, regardless of whether such arrangements are considered to be in the ordinary course of business. In cases of doubt, the Council should be consulted.

2. *Statutory provisions*

Any view expressed by the Council in relation to such fees or arrangements can only relate to the Code and must not be taken to extend to any other relevant law or regulation.

3. *"Whitewashes"*

This Rule also applies to the payment of an inducement fee in the context of a "whitewash" transaction. In this context, the 1% test will normally be calculated by reference to the value of the offeree company immediately prior to the announcement of the proposed "whitewash" transaction.

4. *The 1% limit*

The 1% limit can be calculated on the basis of the fully diluted equity share capital of the offeree company. In this regard, only options and warrants which are "in the money" may be included in the calculation. When determining the value of the fully diluted share capital, the value to be attributed to such warrants and options is their "see-through" value, taking into account the offer price for the relevant shares and any exercise price. The value attributable to convertible securities is the offer price multiplied by the conversion ratio. Any taxes payable as a result should be taken into account in determining whether the 1% limit would be exceeded (except to the extent that such taxes is recoverable by the offeree company). In the case

of a securities exchange offer, the value of the offeree company for these purposes will be fixed by reference to the value of the offer at the time of announcement of the transaction (and will not fluctuate as a result of subsequent movements in the price of the consideration securities after announcement).

14 MANDATORY OFFER

14.1 When mandatory offers are triggered

Except with the Council's consent, where:-

- (a) any person acquires whether by a series of transactions over a period of time or not, shares which (taken together with shares held or acquired by persons acting in concert with him) carry 30% or more of the voting rights of a company; or
- (b) any person who, together with persons acting in concert with him, holds not less than 30% but not more than 50% of the voting rights and such person, or any person acting in concert with him, acquires in any period of 6 months additional shares carrying more than 1% of the voting rights,

such person must extend offers immediately, on the basis set out in this Rule, to the holders of any class of share capital of the company which carries votes and in which such person, or persons acting in concert with him, hold shares. In addition to such person, each of the principal members of the group of persons acting in concert with him may, according to the circumstances of the case, have the obligation to extend an offer.

Transitional Provisions for Rule 14.1

A person who, together with his concert parties, holds shares carrying 25% or more but less than 30% of the voting rights of a company immediately prior to 1 Jan 2002 will be permitted to acquire additional voting rights in the company without incurring a general offer obligation for the company, as long as his and his concert parties' total voting rights in the company are less than 30%. Any acquisitions that would result in the person and his concert parties acquiring 30% or more of the voting rights of the company will be subject to Rule 14.1(a).

Any person who, together with his concert parties, holds shares carrying not less than 30% but not more than 50% of the voting rights of the company immediately prior to 1 Jan 2002 will be subject to Rule 14.1(b). Voting rights acquired prior to 1 Jan 2002 will be taken into account in determining whether such person and his concert parties have acquired more than 1% of the voting rights of the company in

the last 6 months. If such person and his concert parties had acquired 1% or more of the voting rights of the company within the last 6 months but prior to 1 Jan 2002, they will not be required to make a general offer for the company on or after 1 Jan 2002 solely as a result of such acquisitions. But the person and his concert parties will incur a general offer obligation for the company under Rule 14.1(b) if any of them were to acquire any further voting rights in the company on or after 1 Jan 2002.

NOTES ON RULE 14.1

1. Shareholders coming together to act in concert

Acting in concert requires the co-operation of two or more parties. Where a party has acquired shares independently of other shareholders or potential shareholders but subsequently joins them to co-operate to obtain or consolidate effective control of a company, the Council would not normally require a general offer to be made under Rule 14.1 even if their existing aggregate shareholdings amount to 30% or more of the voting rights of that company. However, once such parties have joined together, the provisions of Rule 14.1 would apply so that:-

(a) if the combined shareholdings amounted to less than 30% of the voting rights of that company, an obligation to make an offer would arise if any member of that group acquired further shares such that the group's aggregate holdings of voting rights reached 30% or more;
or

(b) if the combined shareholdings amounted to between 30% and 50% of the voting rights of that company, no member of that group could acquire shares which would result in aggregate acquisitions by the group amounting to more than 1% of the voting rights of the company in any 6 month period without incurring a similar obligation.

2. Shareholders voting together

The Council will not normally regard the action of shareholders voting together on particular resolutions at one general meeting as action which of itself should lead to an offer obligation. Such voting pattern at more than one general meeting may, however, be taken into account as one indication that the shareholders are acting in concert.

3. Collective shareholders' action

Notwithstanding Note 2 above, the Council will normally presume shareholders who requisition or threaten to requisition the consideration of a board control-seeking proposal at a general meeting, together with their supporters as at the date of requisition or threat, to be acting in concert with each other and with the proposed directors. Such parties will be presumed to be acting in concert once an agreement or understanding is reached between them in respect of a board control-seeking proposal with the result that subsequent acquisitions of interests in shares by any member of the group could give rise to an obligation to make a general offer under this Rule.

In determining whether a proposal is board control-seeking, the Council will have regard to a number of factors including the following:

(a) *the relationship between any of the proposed directors and any of the shareholders proposing them or their supporters. Relevant factors in this regard would include:*

(i) *whether there is or has been any prior relationship between any of the proposing shareholders, or their supporters, and any of the proposed directors;*

(ii) *whether there are any agreements, arrangements or understandings between any of the proposing shareholders, or their supporters, and any of the proposed directors with regard to their proposed appointment; and*

(iii) *whether any of the proposed directors will be remunerated in any way by any of the proposing shareholders, or their supporters, as a result of or following their appointment.*

If, on this analysis, there is no relationship between any of the proposed directors and any of the proposing shareholders or their supporters, or if any such relationship is insignificant, the proposal will not be considered to be board control-seeking such that the parties

will not be presumed to be acting in concert and it will not be necessary for the factors set out at paragraphs (b) to (f) below to be considered. If, however, such a relationship does exist which is not insignificant, the proposal may be considered to be board control-seeking, depending on the application of the factors set out at paragraph (b) below or, if appropriate, paragraphs (b) to (f) below;

(b) the number of directors to be appointed or replaced compared with the total size of the board;

If it is proposed to appoint or replace only one director, the proposal will not normally be considered to be board control-seeking. If it is proposed to replace the entire board, or if the implementation of the proposal would result in the proposed directors representing a majority of the directors on the board, the proposal will normally be considered to be board control-seeking.

If, however, the implementation of the proposal would not result in the proposed directors representing a majority of the directors on the board, the proposal will not normally be considered to be board control-seeking unless an analysis of the factors set out at paragraphs (c) to (f) below would indicate otherwise;

(c) the board positions held by the directors being replaced and to be held by the proposed directors;

(d) the nature of the mandate, if any, for the proposed directors;

(e) whether any of the proposing shareholders, or any of their supporters, will benefit, either directly or indirectly, as a result of the implementation of the proposal other than through its interest in shares in the company; and

(f) the relationship between the proposed directors and the existing directors and/or the relationship between the existing directors and the proposing shareholders or their supporters.

In determining whether it is appropriate for such parties to be held no longer to be acting in concert, the Council will take account of a number of factors, including the following:

- (a) whether the parties have been successful in achieving their stated objective;*
- (b) whether there is any evidence to indicate that the parties should continue to be held to be acting in concert;*
- (c) whether there is any evidence of an ongoing struggle between the proposing shareholders, or their supporters, and the board of the company;*
- (d) the types of proposing shareholders involved and the relationship between them; and*
- (e) the relationship between the proposing shareholders, or their supporters, and the proposed/new directors.*

4. *Directors of a company*

Directors of a company will be presumed to be acting in concert during an offer period or when they have a reason to believe that a bona fide offer is imminent. In such circumstances, the provisions of this Rule will apply. At other times, directors of a company are not presumed to be acting in concert in relation to control of their company. Subject to the constraints imposed by the Code, particularly the normal application of Rule 14 to the shareholdings which each director controls, directors are free to deal in the shares of their company. The Council reserves the right, however, to examine situations closely should the actions of the directors suggest that they are acting in concert.

The directors of companies defending against an offer, their advisers and others acting in concert with them should consult the Council before acquiring any voting rights which might lead them to incur an obligation under this Rule.

5. Acquisition of voting rights by members of a group acting in concert

While the Council accepts that the concept of persons acting in concert recognises a group as being the equivalent of a single person, the membership of such groups may change at any time. This being the case, there will be circumstances when the acquisition of voting rights by one member of a group acting in concert from another member will result in the acquirer of the voting rights having an obligation to make an offer. Whenever the holdings of a group acting in concert total 30% or more of the voting rights of a company, an obligation to make an offer will normally arise when, as a result of an acquisition of voting rights from another member of the group, a single member or a sub-group comes to hold 30% or more or, if already holding between 30% and 50%, to have acquired more than 1% of the voting rights in any 6 month period. The factors which the Council will take into account in considering whether to waive the obligation to make an offer include:-

- (a) whether the leader of the concert-party group or the largest individual shareholding has changed and whether the balance between the shareholdings in the group has changed significantly;
- (b) the price paid for the shares acquired; and
- (c) the relationship between the persons acting in concert and how long they have been acting in concert.

When the group holds between 30% and 50% of the voting rights, an offer obligation will arise if there are acquisitions from non-members of more than 1% in aggregate in any 6 month period.

When the group holds over 50%, no obligation normally arises from acquisitions by any member of the group. However, subject to considerations similar to those set out above, the Council may regard as giving rise to an obligation to make an offer any acquisition by a single member or sub-group of the group of voting rights sufficient to increase his/its holding to 30% or more or, if he/it already holds between 30% and 50%, by more than 1% in any 6 month period.

In applying this Rule, concert parties who are close relatives will be treated no differently from unrelated concert parties. However, the Council will normally waive this Rule in the case where a person bequeaths his shareholding in a company to his close relatives without consideration.

6. *Vendor of part only of a shareholding*

Shareholders sometimes wish to sell part only of their holdings or a purchaser may be prepared to acquire part only of a holding. This arises particularly where an acquirer wishes to acquire under 30%, thereby avoiding an obligation under this Rule to make a general offer. The Council will be concerned to see whether in such circumstances the arrangements between the purchaser and vendor effectively allow the purchaser to exercise a significant degree of control over the retained voting rights, in which case a general offer would normally be required. These concerns will also apply when the purchaser is already a member of a group acting in concert with the vendor, or when the purchaser joins such a group.

The Council will also take into account any other transactions between the purchaser and the vendor, and between the purchaser and other members of the group acting in concert with the vendor. This could include, for example, the aggregation of transfers of voting rights to the purchaser over a period of time, or arrangements which have an effect similar to transfer, such as the underwriting by a purchaser of a rights issue which the vendor has agreed not to take up, or a placing of shares with the purchaser.

A judgement on whether such a significant degree of control exists will obviously depend on the circumstances of each case. By way of guidance, the Council would regard the following points as relevant:-

- (a) a significant degree of control over the retained voting rights would be less likely if the vendor was not an “insider”;*
- (b) the payment of a very high price for the voting rights would tend to suggest that control over the entire holding was being secured;*

- (c) *if the parties negotiate options over the retained voting rights it may be more difficult for them to satisfy the Council that a significant degree of control is absent;*
- (d) *where the retained voting rights are in themselves a significant part of the company's capital (or even in certain circumstances represent a significant sum of money in absolute terms) a correspondingly greater element of independence may be presumed; and*
- (e) *it would be natural for a vendor of part of a controlling holding to select a purchaser whose ideas as regards the way the company is to be directed are reasonably compatible with his own. It is also natural that a purchaser of a substantial holding in a company should press for board representation and perhaps make the vendor's support for this a condition of purchase. Accordingly, these factors, without any other evidence of a significant degree of control over the retained voting rights, would not lead the Council to conclude that a general offer should be made.*

7. *The chain principle*

Occasionally, a person or group of persons acting in concert to acquire statutory control of a company (which need not be a company to which the Code applies) will thereby acquire or consolidate effective control, as defined in the Code, of a second company because the first company itself holds, either directly or indirectly through intermediate companies, a controlling interest in the second company, or holds voting rights which, when aggregated with those already held by the person or group, secure or consolidate effective control of the second company. The Council will not normally require an offer to be made under this Rule in these circumstances unless the second company constitutes or contributes significantly to the first company in the following aspects:-

- (a) *assets;*
- (b) *market capitalisation (where the first and second companies are listed);*

(c) sales; or

(d) earnings.

Where the first company is unlisted, the pro-rated book NTA or market value of shares in the second company held by the unlisted first company is compared against the first company's book NTA. If the second company is unlisted, the pro-rated book NTA of the second company is compared against the first company's (i) book NTA; or (ii) market capitalisation.

The Council should be consulted in all cases which may come within the scope of this Note to establish whether, in the circumstances, any obligation arises under this Rule.

8. *Pro-rata distribution of voting shares in a downstream company by an upstream company to its shareholders*

There may be occasions when an upstream company distributes, on a pro-rata basis, its shareholdings in a downstream company to shareholders in the upstream company. For the purposes of this Rule, an upstream shareholder and his concert parties who acquire or consolidate effective control in the downstream company pursuant to such distribution will not incur a general offer obligation for the downstream company under Rule 14 if:-

(a) *the upstream shareholder and his concert parties own or control more than 50% of the voting rights in the upstream company; or*

(b) *the upstream shareholder and his concert parties are not acting in concert with the directors of the upstream company and have not acquired any voting rights in the upstream company and/or downstream company during the period between the announcement of the distribution proposal and the date on which upstream shareholders' approval is obtained for the distribution.*

If an upstream shareholder and his concert parties would acquire or consolidate effective control in the downstream company as a result of a proposed distribution but does not meet any of the two conditions above, then he and/or his concert parties must:-

- (a) *make a general offer for the downstream company as required under Rule 14. Such offer must be announced within 6 months (or such longer period of time as the Council may allow under paragraph (b) below) after the date of the distribution (i.e. the date on which downstream company shares are transferred to the upstream shareholders).*

The upstream shareholder and/or his concert parties must announce immediately a general offer for the downstream company as required under Rule 14 if they:-

- (i) *after becoming aware that the announcement of the distribution proposal is imminent, acquire before the date of the distribution (i.e. the date on which downstream company shares are transferred to the upstream shareholders) additional voting rights in the upstream company and/or acquire before or after the date of the distribution additional voting rights in the downstream company; or*
- (ii) *after the date of the distribution (i.e. the date on which downstream company shares are transferred to the upstream shareholders), exercise the voting rights attached to such number of their downstream company shares which is above the higher of the thresholds specified in paragraphs (b)(i) and (b)(ii) below,*

without first disposing of the required number of downstream company shares as per paragraph (b) below or obtaining a Whitewash waiver as per paragraph (c) below;

- (b) *dispose within 6 months (or such longer period of time as the Council may allow where exceptional circumstances warrant such extension of time) of the date of the distribution (i.e. the date on which downstream company shares are transferred to the upstream shareholders) such number of downstream company shares as is necessary to reduce their aggregate voting rights in the downstream company to the higher of:-*

- (i) *a level which is within the thresholds stipulated in Rule 14.1; and*

- (ii) *the minimum percentage aggregate effective interest (whether owned or controlled directly or indirectly via the upstream company on a pro-rata basis) of the upstream shareholder and his concert parties in the downstream company in the last 3 years. The aggregate indirect interest of the upstream shareholder and his concert parties in the downstream company will be computed by multiplying the minimum percentage voting rights of the upstream shareholder and his concert parties in the upstream company in the last 3 years by the upstream company's voting rights in the downstream company which will be distributed. For example, if the upstream company is distributing 60% of the downstream company's voting rights (out of its total holdings of 80%) under the distribution proposal and the minimum percentage voting rights of the upstream shareholder and his concert parties in the upstream company in the last 3 years is 40%, their indirect interest in the downstream company is 24% (40% times 60%). Where the upstream company has acquired significant voting rights in the downstream company within 3 years of the distribution proposal, the Council should be consulted.*

The upstream shareholder and/or his concert parties must announce immediately a general offer for the downstream company as required under Rule 14 if they have not obtained a Whitewash waiver as per paragraph (c) below and they:-

- (i) *after becoming aware that the announcement of the distribution proposal is imminent and pending the divestment of such number of their downstream company shares which is above the higher of the thresholds specified in paragraphs (b)(i) and (b)(ii) above, acquire before the date of the distribution (i.e. the date on which downstream company shares are transferred to the upstream shareholders) additional voting rights in the upstream company and/or acquire before or after the date of the distribution additional voting rights in the downstream company;*

- (ii) *after the date of the distribution (i.e. the date on which downstream company shares are transferred to the upstream shareholders) and pending the divestment of such number of their downstream company shares which is above the higher of the thresholds specified in paragraphs (b)(i) and (b)(ii) above, exercise the voting rights attached to such downstream company shares; or*
 - (iii) *fail to divest such number of their downstream company shares which is above the higher of the thresholds specified in paragraphs (b)(i) and (b)(ii) above within 6 months (or such longer period of time as the Council may allow) of the date of the distribution (i.e. the date on which downstream company shares are transferred to the upstream shareholders); or*
- (c) *obtain the approval of the independent shareholders of the downstream company for a Whitewash Resolution (see Note 1 of Notes on Dispensation from Rule 14 and Appendix 1 “Whitewash Guidance Note”) to waive the requirement for the upstream shareholder to make a general offer for the downstream company. Such Whitewash waiver by downstream shareholders may be obtained either before or after the distribution.*

If the Whitewash waiver by downstream shareholders is sought before the distribution, any exemption from the requirement to make an offer under Rule 14 granted by the Council will be subject to the following conditions:-

Shareholders meeting at the downstream company

- (i) *the Whitewash Resolution to be approved by independent downstream shareholders at a shareholders meeting of the downstream company;*

Shareholders meeting at the upstream company

- (ii) *the circular to upstream shareholders for the shareholders meeting at the upstream company to authorise the distribution to contain advice to the effect that by voting for the distribution resolution and if downstream shareholders approve the Whitewash Resolution at the downstream company, upstream shareholders are waiving*

their right to a general offer at the required price by the upstream shareholder and his concert parties who would acquire or consolidate effective control in the downstream company for downstream company shares after the distribution; and the names of the upstream shareholder and his concert parties, as well as their voting rights in the downstream company at the time of the resolution and after the proposed distribution to be disclosed in the same circular;

- (iii) the resolution to authorise the distribution to be approved by a majority of those upstream shareholders present and voting at the meeting on a poll who could not become obliged to make an offer for the downstream company as a result of the distribution;*
- (iv) the upstream shareholder and his concert parties who could become obliged to make an offer for the downstream company as a result of the distribution to abstain from voting for the resolution to authorise the distribution;*
- (v) directors of the upstream company who are acting in concert with the upstream shareholder who could become obliged to make an offer for the downstream company as a result of the distribution to abstain from making a recommendation on the resolution to authorise the distribution; and*

Disqualifying transactions

- (vi) the upstream shareholder and his concert parties who could become obliged to make an offer for the downstream company as a result of the distribution not to have acquired and not to acquire any shares in the upstream company and/or downstream company during the period between when they become aware that the announcement of the distribution proposal is imminent, and the later of the date on which upstream shareholders' approval is obtained for the distribution and the date on which downstream shareholders approve the Whitewash Resolution. The upstream shareholder and/or his concert parties must*

announce immediately a general offer for the downstream company as required under Rule 14 if this condition is not met.

If the Whitewash waiver by downstream shareholders is sought after the distribution, any exemption from the requirement to make an offer under Rule 14 granted by the Council will be subject to the following conditions:-

(i) the Whitewash Resolution to be approved by independent downstream shareholders at a shareholders meeting of the downstream company to be held as soon as practicable, but in any case not later than 3 months after the date of the distribution (i.e. the date on which downstream company shares are transferred to the upstream shareholders);

(ii) the upstream shareholder and his concert parties who could become obliged to make an offer for the downstream company as a result of the distribution not to have acquired and not to acquire:-

- any shares in the upstream company during the period between when they become aware that the announcement of the distribution proposal is imminent and the date of the distribution (i.e. the date on which downstream company shares are transferred to the upstream shareholders); and/or*
- any shares in the downstream company during the period between when they become aware that the announcement of the distribution proposal is imminent and the date on which downstream shareholders approve the Whitewash Resolution.*

The upstream shareholder and/or his concert parties must announce immediately a general offer for the downstream company as required under Rule 14 if this condition is not met; and

(iii) the upstream shareholder and/or his concert parties not to exercise the voting rights attached to such number of their downstream

company shares which is above the higher of the thresholds specified in paragraphs (b)(i) and (b)(ii) during the period between the date of the distribution (i.e. the date on which downstream company shares are transferred to the upstream shareholders) and the date on which downstream shareholders approve the Whitewash Resolution. The upstream shareholder and/or his concert parties must announce immediately a general offer for the downstream company as required under Rule 14 if this condition is not met.

Regardless of whether the Whitewash waiver by downstream shareholders is sought before or after the distribution, if such Whitewash waiver is not approved by downstream shareholders but the distribution takes place or has taken place, the upstream shareholder and/or his concert parties must make a general offer for the downstream company as required by Rule 14 or reduce their aggregate voting rights in the downstream company by such amount and within such time period as per paragraph (b) above.

For the purposes of this Note, a distribution proposal means an announcement made by the upstream company that contains details of the number of shares and the percentage shareholding in the downstream company to be distributed to shareholders in the upstream company.

9. *Triggering a mandatory offer during a voluntary offer*

If the offeror in a voluntary offer or any person acting in concert with it incurs an obligation under this Rule during the offer by acquiring voting rights otherwise than through acceptances of the voluntary offer, the Council must be consulted. Once such an obligation is incurred, an offer in compliance with this Rule must be announced immediately.

If there is no change in the offer price, it will be sufficient, following the announcement, simply to notify offeree company shareholders in writing of the new total holding of the offeror, of the fact that the acceptance condition in the form required by Rule 14.2 is the only condition remaining, and of the period for which the offer will remain open following posting of the document. (See also Note 4 on Rule 20.1)

10. Instruments convertible into, rights to subscribe for and options in respect of new shares which carry voting rights

In general, the acquisition of instruments convertible into, rights to subscribe for and options in respect of new shares which carry voting rights does not give rise to an obligation under this Rule to make an offer. However, the exercise of any conversion or subscription rights or options will be considered to be an acquisition of voting rights for the purpose of this Rule.

The Council will not normally require an offer to be made following the exercise of instruments convertible into, rights to subscribe for, and options in respect of, new securities which carry voting rights provided that the issue of such instruments, subscription rights or options to the person exercising the rights is approved by a vote of independent shareholders in general meeting in the manner described in Note 1 of the Notes on Dispensation from Rule 14. This dispensation may be invalidated if there are any purchases of voting rights prior to such exercise.

Where there are conversion or subscription rights or options currently capable of being exercised, this Rule is invoked at a level of 30% of the existing voting rights.

11. The reduction or dilution of a shareholding

If a shareholder or group of shareholders acting in concert holding 30% or more sells shares, the provisions of this Rule will apply to the reduced holding. As a result, an offer obligation will arise if:

- (a) following a reduction of the holding below 30%, it is increased to 30% or more; or*
- (b) the reduced holding is 30% or more, and is increased by more than 1% in any 6 month period.*

In this context, sales of shares may not be netted off against purchases.

Shareholdings in a company may be diluted following the issue by that company of new shares. Normally, the Council will regard such dilution in the

same light as the sale of shares described above. However, the Council will consider waiving the requirements of this Rule for the restoration of a diluted holding by purchases from those to whom new shares are issued if shareholders' approval was sought beforehand in the manner outlined in Note 1 of the Notes on Dispensation from Rule 14.

12. Acquisitions of up to 1% in any 6 month period

For the purpose of the 1% limit on acquisitions in any 6 month period by a person or group of persons acting in concert, shares acquired before or during a previous mandatory offer are not taken into account. This also applies to shares acquired with the prior approval of independent shareholders within the terms of Note 1 of the Notes on Dispensation from Rule 14.

13. Acquisition or control of voting rights

If voting rights or general control of them, as distinct from the shares themselves, are acquired, the Council will deem this to be the acquisition of relevant shares for the purpose of this Rule. This will not normally apply in the case of a bank taking security over shares in the normal course of its business (see also Note 2 of the Notes on Dispensation from Rule 14).

14. Allotted but unissued shares

When shares of a company carrying voting rights have been allotted (even if only provisionally) but have not yet been issued, for example, under a rights issue when the shares are represented by renounceable letters of allotment, the Council should be consulted.

15. Securities borrowing and lending

In a securities borrowing and lending transaction, the borrower of the shares is deemed to have acquired the voting rights attached to the shares for the purpose of Rule 14, unless he can show that he cannot exercise, direct, or influence the exercise of such voting rights. When the borrower returns the shares, he is deemed to have disposed of the voting rights attached to those shares for the purpose of Rule 14.

For the purpose of Rule 14, the lender is deemed to have disposed of the voting rights attached to the shares that he lent out. On the return of those

shares, the lender is deemed to have acquired the voting rights attached to the shares.

However, if the lender has the right to recall the borrowed shares by giving advance notice of 7 days or less to the borrower any time during the period of the loan, the lender, for the purpose of Rule 14, will not be deemed to have disposed of the voting rights attached to those shares when he lends them out, nor will he be deemed to have acquired the voting rights attached to those shares when they are returned to him. The borrower will, nevertheless, be deemed to have acquired the voting rights attached to such borrowed shares during the entire loan period and to have disposed of such voting rights on returning such borrowed shares to the lender.

16. Options and derivatives

For the purposes of Rule 14, a person who has acquired or written any option or derivative which causes him to have a long economic exposure, whether absolute or conditional, to changes in the price of securities will normally be treated as having acquired those securities. Such options and derivatives would exclude instruments convertible into, rights to subscribe for and options in respect of new shares (see Note 10 on Rule 14.1). Any person who would breach the thresholds stipulated in Rule 14.1 as a result of acquiring such options or derivatives, or, acquiring securities underlying options or derivatives when already holding such options or derivatives, must consult the Council beforehand to determine if an offer is required, and, if so, the terms of the offer to be made.

In determining if an offer is required, the Council will consider, amongst others, the time when the option or derivative is entered into, the consideration paid for the option or derivative, and the relationship and arrangements between the parties to the option or derivative.

A person who has a long economic exposure to changes in the price of a security would benefit economically if the price of the security goes up and will suffer economically if the price of that security goes down.

For the avoidance of doubt, a conditional put and call option agreement, the nature of which is no different from a conditional share purchase agreement, will not be regarded as an option or derivative.

17. *Persons holding 25% or more but less than 30% before 1 Jan 2002*

A person who, together with his concert parties, holds 25% or more but less than 30% of the voting rights of a public company before 1 Jan 2002 can acquire additional voting rights in the company on or after 1 Jan 2002 without making a general offer for the company, as long as the total voting rights in the company held by him and his concert parties are less than 30%.

Except with the Council's prior consent, any acquisitions that would result in such a person and his concert parties acquiring 30% or more of the voting rights of the company on or after 1 Jan 2002 will be subject to Rule 14.1(a). The Council will normally consent to waiving Rule 14.1(a) where a person and his concert parties acquire not more than 30% of the voting rights of the company if that person applies to the Council with satisfactory evidence to show that he and his concert parties held 25% or more but less than 30% of the voting rights in the company before 1 Jan 2002. After increasing their aggregate voting rights to 30% pursuant to the Council's consent, such person and his concert parties will be subject to Rule 14.1(b).

14.2 Conditions

Except with the Council's consent:-

- (a) offers made under this Rule must be conditional upon, and only upon, the offeror having received acceptances in respect of voting rights which, together with voting rights acquired or agreed to be acquired before or during the offer, will result in the offeror and any person acting in concert with it holding more than 50% of the voting rights;
- (b) no acquisition of voting rights which would give rise to a requirement for an offer under this Rule may be made if the making or implementation of such offer would or might be dependent on the passing of a resolution at any meeting of shareholders of the offeror or upon any other conditions, consents or arrangements (including the approval of a foreign regulatory authority); and

- (c) notwithstanding (a) and (b) above, offers under this Rule must, if appropriate, contain the terms set out in Appendix 3 in relation to such offers.

NOTES ON RULE 14.2

1. Conditional agreements & put and call option agreements

An offeror is, however, permitted to attach conditions to a share acquisition agreement or a put and call option agreement which, on fulfilment of the conditions precedent, would trigger a mandatory bid obligation under this Rule, subject to the following:-

- (a) the pre-conditions should be stated clearly in the conditional agreements or put and call agreements;*
- (b) the pre-conditions should be objective and reasonable;*
- (c) the conditional agreements or put and call agreements must specify a reasonable period for the fulfilment of the pre-conditions failing which the offer will lapse; and*
- (d) no condition should be invoked to cause a conditional agreement or a put and call agreement to lapse unless:-*
 - (i) the offeror has demonstrated reasonable efforts to fulfil the conditions within the time period specified; and*
 - (ii) the circumstances that give rise to the right to invoke the conditions are material in the context of the proposed transaction.*

Immediately upon entering into such an agreement, the potential offeror must make an announcement stating the terms of the offer, the identity of the potential offeror, the conditions to be fulfilled before the offer is made, and the time period for the fulfilment of these pre-conditions failing which the offer will lapse.

2. When more than 50% is held
An offer made under this Rule should be unconditional as to acceptances when the offeror and persons acting in concert with it hold more than 50% of the voting rights before the offer is made.
3. When dispensations may be granted
The Council will not normally consider a request for a dispensation under this Rule.

14.3 Consideration

- (a) Offers made under this Rule must, in respect of each class of equity share capital involved, be in cash or be accompanied by a cash alternative at not less than the highest price paid by the offeror or any person acting in concert with it for voting rights of the offeree company during the offer period and within 6 months prior to its commencement. Where any such shares have been acquired for a consideration other than cash, General Principle 3 may be relevant and the Council should be consulted. The Council should be consulted as to the offer to be made for any class of share capital in respect of which no acquisitions have taken place within the preceding 6 months or when there is more than one class of equity share capital involved.
- (b) The Council's consent is required if the offeror considers that the highest price should not apply in a particular case.

NOTES ON RULE 14.3

1. Nature of consideration
When voting rights have been acquired for a consideration other than cash, the offer must nevertheless be in cash or be accompanied by a cash alternative of at least equal value, which must be determined by an independent valuation.
2. Calculation of the price
The minimum offer price should be the highest of:-

- (a) *the highest price paid by the offeror and its concert parties for outright purchase of shares in the offeree company within 6 months of the offer and during the offer period. If voting rights have been acquired in exchange for listed securities, the price will normally be established by reference to the volume weighted average traded price of the listed securities on the date of the acquisition. However, the Council reserves the right to set aside any inexplicably high or low traded prices;*
- (b) *the highest price paid by the offeror and its concert parties for shares in the offeree company acquired through the exercise of instruments convertible into securities which carry voting rights within 6 months of the offer and during the offer period. The price paid for shares acquired through the exercise of such instruments is deemed to be:-*
- (i) *where the offeror and its concert parties have not acquired any such instruments within 6 months of the offer or during the offer period: the highest of the volume weighted average traded prices of shares of the offeree company on the days the conversion rights were exercised. The Council reserves the right to set aside any inexplicably high or low traded prices; or*
- (ii) *where the offeror and/or its concert parties have acquired such instruments within 6 months of the offer or during the offer period: the highest price paid by the offeror and its concert parties for such instruments, adjusted by the conversion ratio. For example, if the offeror paid \$20 for an instrument convertible into 5 voting shares, the minimum offer price should be \$4 (i.e. \$20 divided by 5); and*
- (c) *the highest price paid by the offeror and its concert parties for shares in the offeree company acquired through the exercise of rights to subscribe for, and options in respect of, securities which carry voting rights within 6 months of the offer and during the offer period. The price paid for shares acquired through the exercise of such subscription rights or options is deemed to be:-*

- (i) *where the offeror and its concert parties have not acquired any such subscription rights or options within 6 months of the offer or during the offer period: the higher of:*
- *the highest of the volume weighted average traded prices of shares of the offeree company on the days such subscription rights or options were exercised. The Council reserves the right to set aside any inexplicably high or low traded prices; and*
 - *the exercise price of such subscription rights and options;*
or
- (ii) *where the offeror and/or its concert parties have acquired such subscription rights or options within 6 months of the offer or during the offer period: the highest price paid by the offeror and its concert parties for such subscription rights or options plus the exercise price of such subscription rights or options.*

The Council should be consulted in advance in situations involving the exercise of instruments convertible into, rights to subscribe for and options in respect of securities which carry voting rights or where reference is to be drawn to volume weighted average traded prices.

The prices paid for voting rights transferred between members of a group acting in concert may be relevant where, for example, all voting rights held within a group are transferred to that member making the offer or where prices paid between members are materially above the market price.

3. *Chain Principle*

If the offeror and its concert parties did not acquire shares in the second company in the 6 months prior to the date it acquired more than 50% of the voting rights in the first company or the date it announced an offer for the first company whichever is earlier (the "Relevant Date"), the Council will generally require the offer price to be the simple average of daily volume weighted average traded prices of the second company on either the latest 20 trading days or whatever number of trading days there were within the 30 calendar

days prior to the Relevant Date. The Council, however, reserves the right to disregard any inexplicably high or low traded prices during the said 30 calendar days when computing the offer price.

The Council may still invoke the averaging formula above if the offeror and/or its concert parties acquired shares in the second company in the 6 months prior to the Relevant Date and the Council has reason to believe that such purchases were made with a view to avoiding the application of the averaging formula.

4. Pro-rata distribution of voting rights in a downstream company by an upstream company to its shareholders

The offer price will be the highest price that the offeror and/or its concert parties have paid for voting rights in the downstream company in the 6 months prior to the date of announcement of the distribution proposal. If the offeror and its concert parties did not acquire shares in the downstream company in the 6 months prior to the date of announcement of the distribution proposal, the Council will generally require the offer price to be the simple average of the daily volume weighted average traded prices of the downstream company on either the latest 20 trading days or whatever number of trading days there were within the 30 calendar days prior to the date of announcement of the distribution proposal. The Council, however, reserves the right to disregard any inexplicably high or low traded prices during the said 30 calendar days when computing the offer price.

5. Conditional agreements and put and call option agreements

When listed shares are offered as consideration under a conditional share acquisition agreement or put and call option agreement referred to in Note 1 on Rule 14.2, the relevant price for the purpose of Rule 14.3 is to be established by reference to the volume weighted average traded price of the listed securities on the date of the announcement of the conditional share acquisition or put and call option agreement.

If the relevant price so established represents the highest price paid by the offeror and his concert parties in the 6 months prior to the date of the announcement of the share acquisition or put and call option agreement and the offeror does not acquire any further voting rights in the offeree company

at a higher price, then the offeror may make the consequent mandatory offer at such relevant price as long as the conditions precedent are fulfilled and the mandatory offer is triggered within 3 months of the date of the announcement of the share acquisition or put and call option agreement.

If the conditions precedent are fulfilled and the mandatory offer is triggered more than 3 months after the date of the announcement of the share acquisition or put and call option agreement, the relevant price for the purpose Rule 14.3 is to be established by reference to the volume weighted average traded price of the listed securities on the date the conditions precedent are fulfilled and the mandatory offer is triggered. The offeror may make the mandatory offer at such relevant price if the offeror and his concert parties have not acquired any shares at higher than the relevant price during the offer period and in the 6 months prior to the date of its commencement.

In cases of doubt, the Council should be consulted. The Council may, on application by the offeror, extend the validity of the price established by reference to the volume weighted average traded price of the listed securities on the date of the announcement of the conditional share acquisition or put and call option agreement beyond 3 months.

6. *Packaged deals*

The Council will pay particular attention to any transaction structured as a packaged deal, where the offeror acquires voting rights in the offeree company together with other assets. In certain instances, the Council may require the appointment of an independent valuer to assess a fair market value for the assets in question.

7. *Dispensation from highest price*

If the offeror considers that the highest price should not apply to a particular case, it should consult the Council which will have the discretion to agree on an adjusted price.

Factors which the Council might take into account when considering an application for an adjusted price include:-

- (a) *the size and timing of the relevant purchases;*

- (b) *the attitude of the board of offeree company;*
- (c) *whether shares have been purchased at high prices from directors or other persons closely connected with the offeror or the offeree company; and*
- (d) *the number of shares purchased in the preceding 6 months.*

14.4 Restrictions on control by offeror

Except with the Council's consent, no nominee of an offeror or persons acting in concert with it may be appointed to the board of the offeree company, before the offer document is despatched. Any such nominee should refrain from becoming engaged in matters relating to the offer. In addition, the offeror and persons acting in concert with it should not exercise the votes attaching to any shares held in the offeree company before the offer document is despatched, and following the despatch of the offer document should not exercise such voting rights to frustrate the offer.

NOTES ON DISPENSATION FROM RULE 14

1. *Vote of independent shareholders on the issue of new securities ("Whitewash")*

[See Whitewash Guidance Note at Appendix 1 for the detailed requirements of the Code under this dispensation.]

When the issue of new securities as consideration for an acquisition, a cash subscription, or the taking of a scrip dividend would otherwise result in an obligation to make a general offer under this Rule, the Council will normally waive the obligation if there is an independent vote at a shareholders' meeting. For this purpose, "independent vote" means a vote by shareholders who are not involved in, or interested in, the transaction in question. The requirement for a general offer will also be waived in cases involving the underwriting of an issue of new shares, provided there has been an independent vote of shareholders and the underwriter puts in place clear and effective arrangements not to exercise the voting rights attached to those shares. If an underwriter incurs an obligation under this Rule unexpectedly,

for example as a result of an inability to sub-underwrite all or part of his liability, the Council should be consulted.

The appropriate provisions of the Code apply to Whitewash proposals. Full details of the potential holding of voting rights must be disclosed in the document sent to shareholders relating to the issue of the new securities. The document must also include competent independent advice on the proposals the shareholders are being asked to approve, together with a statement that the Council has agreed to waive any consequent obligation under this Rule to make a general offer. Voting on the resolution must be by way of a poll.

The Council must be consulted and a draft document submitted at an early stage. The document must not be despatched until the Council has confirmed that it has no further comments thereon.

When a person or group of persons acting in concert may, as a result of such arrangements, come to control more than 49% of the voting rights of the company (and so have the freedom to move to 50% or more without incurring an obligation under this Rule), specific and prominent reference to the possibility must be contained in the document and to the fact that the controlling shareholders will be able to exercise their control and increase their overall shareholding without incurring any further obligation under this Rule to make a general offer.

Notwithstanding the fact that the issue of new securities is made conditional upon the prior approval by independent vote of a majority of the shareholders at a general meeting of the company: -

- (a) The Council will not normally waive an obligation under this Rule if the person to whom the new securities are to be issued or any persons acting in concert with him have acquired voting rights in the company in the 6 months prior to the announcement of the proposal but subsequent to negotiations, discussions or the reaching of understandings or agreements with the directors of the company in relation to the proposed issue of new securities;*

(b) *a waiver will be invalidated if any acquisitions are made in the period between the announcement of the proposal and the shareholders' meeting.*

Following the meeting at which the proposals are considered by shareholders, an announcement must be made by the offeree company giving the result of the meeting and the number and percentage of voting rights attaching to the shares to which the potential controlling shareholders have become entitled as a result.

Where the final controlling shareholding is dependent on the results of underwriting, the offeree company must make an announcement following the issue of new securities stating the number of shares and percentage of voting rights held by the controlling shareholders at that time.

2. *Enforcement or foreclosure of security for a loan, receivers, etc.*

Where a shareholding in a company is charged to a bank or lending institution on an arm's length basis and in the ordinary course of its business as security for a loan, and, as a result of enforcement or foreclosure, the lender would otherwise incur an obligation to make a general offer under this Rule. The Council will normally waive the requirement, provided that the security was not given at a time when the lender had reason to believe that enforcement or foreclosure was likely. In any case where arrangements are to be made involving a transfer of voting rights to the lender, but which do not amount to enforcement or foreclosure of the security, the Council will wish to be satisfied that such arrangements are necessary to preserve the lender's security and will also take into account the provisions above. When following enforcement or foreclosure a lender wishes to sell all or part of his shareholding, the provisions of this Rule apply to the purchaser.

Although a receiver, liquidator or administrator of a company is not required to make an offer when he takes control of a holding of 30% or more of the voting rights of another company, the provisions of this Rule apply to a purchaser from such a person.

3. Balancing block: where 50% will not accept

Situations may arise where a person, or group of persons acting in concert, acquires 30% or more of the voting rights of a company at a time when another person, or group of persons acting in concert, already holds 30% or more of the voting rights of that company. In such a situation, the Council will not normally waive the requirement for that person or group of persons to make a general offer under this Rule unless:-

- (a) there is a single person holding 50% or more of the voting rights of the company who provides a written confirmation to the Council that he will not accept the offer which the purchaser would otherwise be obliged to make; or*
- (b) the Council is provided with written confirmation from the holders of 50% or more of the voting rights of that company that they would not accept the offer which the purchaser would be obliged to make.*

Waivers under this Rule are subject to the following:-

- (a) the purchaser and persons acting in concert with him are not to acquire voting rights via nominees or procure other persons to acquire voting rights on their behalf for the purpose of giving the written confirmation;*
- (b) the purchaser and persons acting in concert with him are not to offer any consideration, promise or inducement in return for undertakings by holders of voting rights that they will not accept the offer which the purchaser would otherwise be obliged to make;*
- (c) holders of voting rights are given the full facts, in particular, their giving up their right to a general offer to be made by the purchaser at not less than the highest price paid by the purchaser or any person acting in concert with him for voting rights in the company during the offer period and within the 6 months prior to the commencement of the offer;*

- (d) *the purchaser to produce evidence to satisfy the Council that those shareholders who have undertaken not to accept the offer are indeed the beneficial owners of such shares; and*
- (e) *the undertakings are procured just before the purchaser raises his shareholding to 30% or more of the voting rights of the company.*

4. *Placing and top-up transactions*

A waiver from the obligation to make a general offer under this Rule will normally be granted where a shareholder, who together with persons acting in concert with him holds 50% or less of the voting rights of a company, places part of his holding with one or more independent persons (see Note 5 below) and then, as soon as is practicable, subscribes for up to such additional shares as he requires to maintain the percentage interest in the offeree company which he held prior to the placement, at a price substantially equivalent to the placing price after taking account of expenses incurred in the transaction. Such a waiver is required even if the placing and top-up are to be effected simultaneously whether by way of placing and subscription agreements that are inter-conditional or otherwise. For purposes of Rule 14.1(b), the placing shareholder will be deemed to have a percentage holding equal to the lowest percentage holding which he had in the 6 month period prior to or immediately after the placing and top-up transaction. A waiver from the obligation to make a general offer under this Rule will not be required where a shareholder, who together with persons acting in concert with him holds more than 50% of the voting rights of a company, just after carrying out a placing and top-up transaction as described above. However, the Council will require confirmation from the financial adviser or placement agent of the controlling shareholder of the identity of the placee or placees and whether they are independent.

5. *Verification of independence of placees*

When compliance with a Rule or a waiver depends on a disposition or placement of voting rights to independent persons, the Council will normally require the financial adviser, placement agent or acquirer of the voting rights to verify and/or confirm that the purchaser is independent of, and does not act in concert with, the vendor of the voting rights. In the case of a single placee, the Council will be particularly concerned with verifying the independence of

the placee. The offeror or its concert parties should not be involved in screening or selecting the placees.

6. *Share buy-back*

Please see the Share Buy-back Guidance Note at Appendix 2.

15 VOLUNTARY OFFER

15.1 Conditions

A voluntary offer is a take-over offer for the voting shares of a company made by a person when he has not incurred an obligation to make a general offer for the company under Rule 14.1. A voluntary offer must be conditional upon the offeror receiving acceptances in respect of voting rights which, together with voting rights acquired or agreed to be acquired before or during the offer, will result in the offeror and person acting in concert with it holding more than 50% of the voting rights. In addition, a voluntary offer must not be made subject to conditions whose fulfilment depends on the subjective interpretation or judgement by the offeror or lies in the offeror's hands. Normal conditions, such as level of acceptance, approval of shareholders for the issue of new shares and the Securities Exchange's approval for listing, may be attached without reference to the Council. Where appropriate, a voluntary offer must contain terms set out in Appendix 3. The Council should be consulted where other conditions would be attached.

NOTES ON RULE 15.1

1. An element of subjectivity

The Council will normally wish to be satisfied that fulfilment of the condition does not depend to an unacceptable degree on the subjective judgement of the offeror as such conditions can create uncertainty. Where, however, there are reasonable grounds for an offer to be conditional on specific statements, facts or estimates relating to the offeree company's business being satisfactorily confirmed, the Council will normally allow such conditions to be included provided that the test is sufficiently objective and depends on the judgement of parties other than the offeror or persons acting in concert with it.

2. Invoking conditions

An offeror should not invoke any condition, other than the acceptance condition, so as to cause the offer to lapse unless the circumstances which give rise to the right to invoke the condition are of material significance to the offeror in the context of the offer, and information about the condition is not available from public records or is not known to the offeror before the offer announcement.

3. Approval of regulatory authority

Where any condition states that the approval of a regulatory authority is required and where such approval is given subject to certain terms and conditions which substantially change the terms and circumstances of the offer, the offeror may, with the Council's consent, be permitted to withdraw its offer.

4. Voluntary offers conditional on high-level acceptances

The Council will allow voluntary offers conditional on high-level acceptances subject to the following:-

(a) the offeror must state clearly in the offer document the level of acceptances upon which the offer is conditional i.e. an offer cannot be declared unconditional as to acceptances unless it receives the stipulated level of acceptances; and

(b) the offeror has to satisfy the Council that it is acting in good faith in imposing such high level of acceptances.

The Council will consider allowing the offeror to revise the initial acceptance level to a lower level (but above 50% as required by Rule 15.1) during the course of the voluntary offer, provided the revised offer remains open for another 14 days following the revision. In addition, shareholders who have accepted the initial offer should be permitted to withdraw their acceptance within 8 days of notification of the revision. The revised acceptance level will take into account withdrawals and new acceptances as at the close of the offer.

15.2 Consideration

Offers made under this Rule must, in respect of each class of equity share capital involved, be in cash or securities or a combination thereof at not less than the highest price paid by the offeror or any person acting in concert with it for voting rights of the offeree company during the offer period and within 3 months prior to its commencement.

NOTES ON RULE 15.2

1. Calculation of the price

Note 2 on Rule 14.3 also applies to this Rule, except the reference period for share purchases is 3 months and not 6 months.

2. Packaged deals

Note 6 on Rule 14.3 also applies to this Rule.

3. Dispensation from highest price

Note 7 on Rule 14.3 also applies to this Rule, except the reference period for share purchases is 3 months and not 6 months.

16 PARTIAL OFFER

16.1 Council's consent required

The Council's consent is required for any partial offer.

16.2 Offers for less than 30%

The Council will normally consent to a partial offer which could not result in the offeror and persons acting in concert with it holding shares carrying 30% or more of the voting rights of the offeree company.

NOTE ON RULE 16.2

The Council would normally consent to a partial offer for less than 30% of the voting rights of the offeree company, subject to the offeror complying with Rule 16.4(d), (f), (g), (h) and (i). In addition, the offeror and its concert parties must not acquire any voting rights in the offeree company during the offer period. However, the offeror may acquire voting rights in the offeree company before the commencement of the offer period and immediately after the close of a successful partial offer. (See also Note 4 on Rule 7.1)

16.3 Offers for between 30% and 50%

The Council will not consent to any partial offer which could result in the offeror and its concert parties holding shares carrying not less than 30% but not more than 50% of the voting rights of the offeree company.

16.4 Offers for more than 50%

The Council will not normally consent to a partial offer which could result in the offeror and its concert parties holding shares carrying more than 50% of the voting rights of the offeree company, unless:

- (a) the partial offer is not a mandatory offer under Rule 14;
- (b) the offeror confirms and undertakes in its application for consent that it and its concert parties did not and will not acquire any voting shares (excluding

voting shares acquired by the offeror and its concert parties via a rights issue and/or bonus issue without increasing their aggregate percentage shareholdings) in the offeree company:-

- (i) in the 6 months prior to the date of the offer announcement (and confirms this fact in the offer announcement);
 - (ii) in the period between submitting the application for the Council's consent and the making of the partial offer;
 - (iii) during the offer period (except pursuant to the partial offer); and
 - (iv) during a period of 6 months after the close of the partial offer, if the partial offer becomes unconditional as to acceptances. The Council's consent for purchases of shares in the offeree company by the offeror and its concert parties within 12 months of the close of a successful partial offer will normally be granted if such purchases are proposed to be made more than 6 months after the partial offer;
- (c) the partial offer is conditional, not only on the specified number or percentage of acceptances being received, but also on approval by the offeree company's shareholders, where the offeror together with parties acting in concert with it hold 50% or less in the offeree company prior to the announcement of the partial offer. Where the offeror together with parties acting in concert with it hold more than 50% of the voting rights of the offeree company, approval by the offeree company's shareholders is still required if the partial offer could result in the offeror and parties acting in concert with it holding more than 90%, or the offeree company failing to comply with the Securities Exchange's rules on minimum free float. The offeror, parties acting in concert with it and their associates are not allowed to vote on the partial offer. Voting should be:-
- (i) if a general meeting is convened, by way of a poll on a separate ordinary resolution on the partial offer. The partial offer must be approved by shareholders (present and voting either in person or by proxy) of more than 50% of the votes cast; or

- (ii) if it is on the form of acceptance for the partial offer, in a separate box with the number of voting shares indicated. The partial offer must be approved by shareholders of more than 50% of the votes received. Upon the close of the partial offer, the receiving agent must confirm in writing to the Council that it has done the necessary checks and verification to ensure that votes (if any) cast by shareholders not allowed to vote, are disregarded and excluded for the purpose of determining shareholders' approval for the partial offer;

Where approval for a partial offer has been obtained from the offeree company's shareholders before the partial offer is made, the offeror must announce the offer on the date of the shareholders' meeting to approve the partial offer;

- (d) arrangements are made with the Securities Exchange prior to the posting of the offer document to provide a temporary trading counter to trade odd-lots in the offeree company's shares after the close of the partial offer. Such counter should be open for a reasonable period of time, which in any case should not be shorter than 1 month;
- (e) the offer document contains a specific and prominent statement to the effect that if the partial offer succeeds, the offeror will be able to exercise statutory control over the offeree company and that the offeror and its concert parties will be free, subject to the 6-month rest in Para 16.4(b)(iv) above, to acquire further shares without incurring any obligation to make a general offer;
- (f) the partial offer is made to all shareholders of the class and arrangements are made for those shareholders who wish to accept in full for the relevant percentage of their holdings. Shares tendered in excess of this percentage should be accepted by the offeror from each shareholder in the same proportion as the number tendered to the extent necessary to enable the offeror to obtain the total number of shares for which he has offered. The offeror should arrange its acceptance procedure to minimise the number of new odd-lot shareholdings;
- (g) when a partial offer is made for a company with more than one class of equity share capital, a comparable offer is made for each other class;

- (h) an appropriate partial offer is made for outstanding instruments convertible into, rights to subscribe for, and options in respect of, securities which carry voting rights. In addition, the partial offer to shareholders must be extended to holders of newly issued shares arising from the exercise of such instruments, subscription rights or options during the offer period; and
- (i) the precise number of shares, percentage or proportion offered is stated, and the offer may not be declared unconditional as to acceptances unless acceptances are received for not less than that number, percentage or proportion.

NOTE ON RULES 16.1, 16.2 and 16.4

Entitlement to partial offer

The entitlements of offeree company shareholders to the partial offer will be in proportion to the number of offeree company shares held in their securities accounts as at the books closure date, which must be on the 14th day before the first closing date of the offer (if such day falls on a non-business day, the next business day will be the relevant book closure date). Such entitlements are not transferable.

16.5 Consideration

Partial offers may, in respect of each class of share capital involved, be in cash or securities or a combination of cash and securities.

NOTE ON RULE 16.5

When cash offer is required

Rule 17.1 on when a cash offer is required also applies to partial offers made under this Rule.

16.6 Settlement of consideration

Shares represented by acceptances in a partial offer should not be acquired by the offeror prior to expiry of the partial offer. Such shares must be paid for by the offeror as soon as possible following expiry of the partial offer but in any event within 10 days of the partial offer's expiry date.

16.7 Council's consent for subsequent offers

Any person who intends to make a partial offer for the same offeree company within 12 months from the date of the close of a previous partial offer (whether successful or not) must seek the Council's prior consent. The Council will not normally grant its consent unless the subsequent partial offer is, as would be normally required, recommended by the board of the offeree company and proposed to be made by a person not acting in concert with the previous offeror. All such subsequent partial offers must comply with all the requirements in this Rule.

In the case of subsequent offers other than partial offers:-

- (a) the restrictions in Rule 33.1(a) apply following a partial offer:-
 - (i) for more than 50% of the voting rights of the offeree company which has not become or been declared unconditional; and
 - (ii) for less than 30% of the voting rights of the offeree company which has not become or been declared unconditional.
- (b) the restrictions in Rule 33.1(b) apply following a partial offer for less than 30% of the voting rights of the offeree company which has become or been declared wholly unconditional.

17 TYPE OF CONSIDERATION REQUIRED

17.1 When a cash offer is required

Except with the Council's consent, a cash offer is required where: -

- (a) the offeror and any person acting in concert with it has bought for cash (see Note 4 below), during the offer period and within 6 months prior to its commencement, shares of any class under offer in the offeree company carrying 10% or more of the voting rights of that class; or
- (b) in the view of the Council there are circumstances which render such a course necessary.

The offer for each class of shares must be in cash or accompanied by a cash alternative at not less than the highest price paid by the offeror or any person acting in concert with it for shares of the class during the offer period and within 6 months prior to its commencement.

NOTES ON RULE 17.1

1. Gross purchases

For the purpose of Rule 17.1(a), the Council will normally consider gross purchases of shares over the relevant period and will not allow the deduction of any shares sold over that period.

2. Where less than 10% has been purchased for cash

The discretion given to the Council in Rule 17.1(b) to require cash to be made available in certain cases where less than 10% has been purchased for cash during the offer period and within 6 months prior to its commencement will not normally be exercised unless the vendors are directors or other persons closely connected with the offeror or the offeree company. In such cases, relatively small purchases could be relevant.

Rule 17.1(b) may also be relevant when 10% or more has been acquired in the previous 6 months for a mixture of securities and cash.

3. Acquisitions for securities

Shares acquired in exchange for securities during the offer period or in the 6 months prior to the commencement of the offer period will be deemed to be purchases for cash for the purpose of this Rule on the basis of the value of the securities at the time of the transaction. However, if the vendor of the offeree company shares is required to hold the securities until either the offer has lapsed or the offer consideration has been posted to accepting shareholders, the shares acquired will not be deemed to be purchases for cash.

4. Dispensation from highest price

Note 7 on Rule 14.3 also applies to this Rule.

5. Allotted but unissued shares

When shares of a company carrying voting rights have been allotted (even provisionally) but have not yet been issued, for example under a rights issue when the shares are represented by renounceable letters of allotment, the Council should be consulted. Such shares are likely to be relevant for the purpose of calculating percentages under this Rule.

17.2 When a securities offer is required

Where purchases of any class of the offeree company shares carrying 10% or more of the voting rights have been made by an offeror and any person acting in concert with it in exchange for securities during the offer period and in the 3 months prior to the commencement of the offer period, such securities will normally be required to be offered to all other holders of shares of that class.

Unless the vendor is required to hold the securities received until either the offer has lapsed or the offer consideration has been posted to accepting shareholders, an obligation to provide a cash alternative will also arise under Rule 17.1. (See Note 3 on Rule 17.1)

NOTES ON RULE 17.2

1. Basis on which securities are to be offered

Any securities required to be offered pursuant to this Rule must be offered on the basis of the actual number of consideration securities received by the

vendor for each offeree company share. Where there has been more than one relevant purchase, offeror securities must be offered on the basis of the largest number of consideration securities received for each offeree company share.

When shares of a company carrying voting rights have been allotted (even provisionally) but have not yet been issued, for example under a rights issue when the shares are represented by renounceable letters of allotment, the Council should be consulted. Such shares are likely to be relevant for the purpose of calculating percentages under this Rule.

2. Equality of treatment

The Council may require securities to be offered on the same basis to all other holders of shares of that class even though the amount purchased is less than 10% or the purchase took place more than 3 months prior to the commencement of the offer period. However, this discretion will not normally be exercised unless the vendors are directors or other persons closely connected with the offeror or the offeree company.

3. Vendor placings

Shares acquired in exchange for securities will normally be deemed to be purchases for cash for the purposes of this Rule if an offeror or any of its associates have in place arrangements for the immediate placing of such consideration securities for cash, in which case no obligation to make a securities offer under this Rule will arise.

4. Management retaining an interest

In a management buy-out or similar transaction, if the only offeree company shareholders who receive offeror securities are members of the management of the offeree company, the Council will not, so long as the requirements of Note 4 on Rule 10 are complied with, require all offeree company shareholders to be offered offeror securities under this Rule, even though such members of the management of the offeree company propose to sell, in exchange for offeror securities, more than 10% of the offeree company's shares.

If, however, offeror securities are made available to any non-management shareholders (regardless of the size of their holding of offeree company shares), the Council will normally require such securities to be made available to all shareholders on the same terms.

5. *Acquisition for a mixture of cash and securities*

The Council should be consulted when 10% or more of the voting rights of the offeree company has been acquired during the offer period and 6 months prior to the commencement of the offer period for a mixture of securities and cash.

6. *Purchases in exchange for securities to which selling restrictions are attached*

Where an offeror and any person acting in concert with it has purchased 10% or more of the voting rights in the offeree company during the offer period and within 6 months prior to the commencement and the consideration received by the vendor includes shares to which selling restrictions of the kind set out in the second sentence of Rule 17.2 are attached, the Council should be consulted.

18 COMPARABLE OFFERS FOR DIFFERENT CLASSES OF CAPITAL

Where a company has more than one class of equity share capital, a comparable offer must be made for each class; the Council should be consulted in advance in such cases. An offer for non-voting equity capital should not be made conditional on any particular level of acceptances in respect of that class unless the offer for the voting capital is also conditional on the success of the offer for the non-voting equity capital.

NOTES ON RULE 18

1. Ratio of offer values
In the case of offers involving two or more classes of equity share capital, the ratio of the offer values must be justified to the Council in advance.

2. Offer for non-voting shares only
Where an offer for non-voting shares only is being made, comparable offers for voting classes are not required.

19 APPROPRIATE OFFERS TO HOLDERS OF CONVERTIBLES, ETC

The following applies to an offeree company with outstanding instruments convertible into, rights to subscribe for and options in respect of securities being offered for or which carry voting rights:

- (a) Where an offer is made for equity share capital and the offeree company has instruments convertible into, rights to subscribe for and options in respect of securities being offered for or which carry voting rights (hereinafter referred to as "stocks") outstanding, the offeror must make an appropriate offer or proposal to the holders of the stocks (hereinafter referred to as "stockholders"). Equality of treatment is required.
- (b) The board of the offeree company must obtain competent independent advice on any offer or proposal to the stockholders and disclose the substance of such advice to its stockholders together with the board's views on the offer or proposal.
- (c) Whenever practicable the offeror should despatch the offer or proposal to stockholders at the same time that it posts the offer document to shareholders. If this is not practicable, the offeror should inform the Council and despatch the offer or proposal as soon as possible thereafter.
- (d) The offer or proposal to stockholders required by this Rule should not be made conditional on any particular level of acceptances unless the share offer itself is conditional on the stock offer achieving that level of acceptances. The offer or proposal to stockholders required by this Rule may be carried out by way of a scheme to be considered by a stockholders' meeting.

NOTES ON RULE 19

1. *Appropriate offer price for instruments convertible into, rights to subscribe for and options in respect of securities being offered for or which carry voting rights*

For outstanding instruments convertible into, rights to subscribe for, and options in respect of, securities being offered for or which carry voting rights, the "see-through" price is normally used to determine the appropriate offer

price. An appropriate offer or proposal for such instruments, subscription rights or options is at least the higher of the following:-

- (a) the "see-through" price. For rights to subscribe for, and options in respect of, securities being offered for or which carry voting rights, the "see-through" price is the excess of the offer price for the underlying securities over the exercise or subscription price of such subscription rights or options. For instruments convertible into securities being offered for or which carry voting rights, the "see-through" price is the offer price for the underlying securities multiplied by the conversion ratio. For example, if the share offer price is \$4, the "see-through" price for an instrument convertible into 5 shares should be \$20 (\$4 times 5); and*

- (b) the highest price paid by the offeror and persons acting in concert with it for such instruments, subscription rights or options during the offer period and:-*
 - (i) for a mandatory offer: within 6 months of commencement of the offer period; or*

 - (ii) for a voluntary offer: within 3 months of commencement of the offer period.*

Where the offeror and persons acting in concert with it have not acquired any instruments convertible into, rights to subscribe for, nor options in respect of, securities being offered for or which carry voting rights during the time periods set out in Para (b) above and the see-through price is zero or negative, the offeror may offer a nominal amount for such instruments, subscription rights or options.

A higher offer would not be considered appropriate if it is part of a special deal to provide an incentive to persons who also hold shares or other securities of the offeree company to accept the offer.

There may be cases where a basis other than the “see-through” price is more appropriate, and if the offeror is of the view that the consideration should be determined on some other basis, the Council should be consulted in advance.

2. *Equality of treatment*

“Equality of treatment” under this Rule should be taken to mean equality of treatment within a class of security holders as opposed to equality of treatment between different classes of securities.

3. *When instruments convertible into, rights to subscribe for and options in respect of securities being offered for or which carry voting rights are exercisable during an offer*

The offeror is required to extend the share offer to holders of new shares arising from the exercise of outstanding instruments convertible into, rights to subscribe for, and options in respect of, securities being offered for or which carry voting rights during the offer period. When such instruments, subscription rights or options are exercisable during an offer, all relevant documents issued to shareholders of the offeree company in connection with the offer must also, where practicable, be issued simultaneously to the holders of these instruments, subscription rights or options.

20 REVISION

20.1 Offer open for 14 days after revision

If revised, an offer must be kept open for at least 14 days from the date of posting of the written notification of the revision to shareholders.

NOTES ON RULE 20.1

1. Announcements which may increase the value of an offer

In a securities exchange offer, an offeror's announcement of trading results, profit or dividend forecasts, asset valuations or proposals for dividend payments may increase the value of the offer. Therefore, an offeror will not normally be permitted to make such announcements after it is precluded from revising the offer. This restriction does not apply to the announcement of trading results and dividends in order to comply with the law or the listing rules of the Securities Exchange. The Council must be consulted beforehand, and be satisfied that every effort has been made to bring the announcement forward and it does not appear likely to influence materially the outcome of the offer.

2. When revision is required

An offeror will be required to revise its offer if it, or any person acting in concert with it, purchases shares at above the offer price or it becomes obliged to introduce a cash offer or to make a cash offer, or to increase the existing cash offer.

3. When revision is not permissible

An offeror must not place itself in a position where it would be required to revise its offer if:-

(a) *it has made a no increase statement; or*

(b) *such revision would require the offer period to be extended beyond the last day on which the offer is capable of becoming or being declared unconditional as to acceptances stipulated in Rule 22.9.*

4. Triggering a mandatory offer

When an offeror, which is making a voluntary offer either in cash or with a cash alternative, makes an acquisition which causes it to have to extend a mandatory offer at no higher than the existing cash offer, the change in the nature of the offer will not be viewed as a revision (and will thus not be precluded by an earlier no increase statement), even if the offeror is obliged to waive any outstanding condition. But such an acquisition can be made only if the offer can remain open for acceptance for a further 14 days following the date on which the amended offer document is posted. If the offeror has earlier made a no increase statement but subsequently makes an acquisition which causes it to incur a mandatory bid obligation at a higher offer price, then the offeror must implement the mandatory offer at the higher offer price. The Council takes a serious view of such breaches of the Code, and reserves the right to reprimand and or caution the offeror for going back on his earlier no increase statement. (See also Note 8 on Rule 14.1)

20.2 No increase statements

If the offeror or a person on behalf of the offeror has made a "no increase" statement and it is not withdrawn immediately if incorrect, the offeror will not be allowed subsequently to amend the terms of the offer in any way even if the amendment would not result in an increase in the value of the offer, except in wholly exceptional circumstances or where the right to do so has been specifically reserved.

NOTES ON RULE 20.2

1. Firm statements

In general, an offeror will be bound by any firm statement as to the finality of its offer. In this respect, the Council will treat any indication of finality as absolute, unless the offeror clearly states the specific circumstances in which the statement will not apply. The Council will not distinguish between the precise words used, e.g. the offer is "final" or will not be "increased", "amended", "revised", "improved" or "changed". The Council will regard any statement of intention as a firm statement.

2. Reservation of right to set statements aside

A no increase statement may be set aside only if the offeror has specifically reserved the right to do so at the time the statement was made; this applies

whether or not the offer was recommended at the outset. The first document sent to shareholders in which mention is made of the no increase statement must contain prominent reference to this reservation (precise details of which must also be included in the document.) Any subsequent mention by the offeror of the no increase statement must be accompanied by a reference to the reservation or, at the least, to the relevant sections in the document containing the details.

If a competitive situation arises (see Notes on Rule 22.6 and Rule 29) after a no increase statement is made, the offeror can choose not to be bound by it and be free to increase the offer only if he has specifically reserved the right to set aside the no increase statement when such statement was made and provided that:-

- (a) the offeror gives notice to increase the offer within four business days of the announcement of the competing offer; and*
- (b) the offeree company's shareholders, who accepted the offer after the date of the no increase statement, are given a right of withdrawal for a period of 8 days following the date on which the notice to increase the offer is posted.*

3. *Recommended offers*

The offeror can choose not to be bound by a no increase statement where an increased or improved offer is recommended for acceptance by the board of the offeree company if the first document sent to shareholders, where the no increase statement was mentioned, includes prominent reference to this Note.

20.3 New conditions for increased or improved offer

An offeror may attach new conditions to an increased or improved offer, but only to the extent necessary to implement the revised offer and subject to the Council's consent.

20.4 Entitlement to revised consideration

If an offer is revised, all shareholders who accepted the original offer must receive the revised consideration.

21 PURCHASES AT ABOVE OFFER PRICE

21.1 Highest price paid

If an offeror or any person acting in concert with it buys securities in the offeree company at above the offer price (being the then current value of the offer during the offer period), it must increase its offer to not less than the highest price paid for any securities so acquired.

NOTE ON RULE 21.1

Subscription for new securities

Subscription for new securities at a price above the offer price will be treated as a purchase for the purposes of this Rule.

21.2 Offers involving a further issue of listed securities

For the purposes of this Rule, if the offer entails a further issue of securities of a class already listed on the Securities Exchange, the current value of the offer on a given day should normally be established by reference to the volume weighted average traded price of such securities during the immediately preceding trading day. If there were no dealings in the relevant securities on the immediately preceding trading day, the latest trading day on which there were dealings.

The Council reserves the right to set aside any inexplicably high or low traded prices.

If the offer involves a combination of cash and securities and further purchases of the offeree company's shares oblige the offeror to increase the value of the offer, the offeror must endeavour, as far as practicable, to effect such increase while maintaining the same ratio of cash to securities as is represented by the offer.

21.3 Shareholder notification

Within 30 minutes after the purchase of securities at above the offer price, it must be announced that a revised offer will be made in accordance with this Rule (see also Rule 20). The announcement should also state the number and class of securities purchased and the price paid.

Shareholders of the offeree company must be notified in writing of the increased price payable under this Rule at least 14 days before the offer closes.

NOTES ON RULE 21

1. *Instruments convertible into, rights to subscribe for and options in respect of securities being offered for or which carry voting rights*

Purchases of instruments convertible into, rights to subscribe for and options in respect of securities being offered for or which carry voting rights will normally be relevant to this Rule if they are converted or exercised (as applicable). Such purchases will then be treated as if they were purchases of the underlying securities at a price calculated by reference to the purchase price and the relevant conversion or exercise terms. In any case of doubt, the Council should be consulted.

2. *Estimate of value*

If the offer entails the issue of securities of a class which is not already quoted, the value should be based on a reasonable estimate, by an appropriate adviser, of what the price would have been had they been quoted. When appropriate, an updated valuation should be announced.

3. *Restricted market*

Where there is a restricted market in the securities of an offeror, or if the amount of securities to be issued is large in relation to the amount already quoted, the Council may require justification of prices used to determine the value of the offer.

4. *Securities not to be listed*

If it is not intended to seek an immediate listing of the securities to be issued as consideration, the Council should be consulted in advance.

22 OFFER TIMETABLE

22.1 Despatch of offer document

The offer document, which must not be dated more than 3 days prior to despatch, should normally be posted not earlier than 14 days but not later than 21 days from the date of the offer announcement. The offeror should consult the Council in advance if the offer document is not to be posted within the prescribed period.

22.2 Despatch of the offeree board circular

The board of the offeree company should advise its shareholders of its views of the offer within 14 days of the posting of the offer document.

22.3 First closing date

An offer must initially be open for at least 28 days after the date on which the offer document is posted.

22.4 Further closing dates to be specified

Any announcement of an extension of an offer must state the next closing date or if the offer is unconditional as to acceptances, a statement may be made that the offer will remain open until further notice. In the latter case, those shareholders who have not accepted the offer should be notified in writing at least 14 days before the offer is closed.

22.5 No obligation to extend

There is no obligation to extend an offer the conditions of which are not met by the first or subsequent closing date.

22.6 Offer to remain open for 14 days after unconditional as to acceptances

After an offer has become or is declared unconditional as to acceptances, the offer must remain open for acceptance for not less than 14 days after the date on which the offer would otherwise have closed. This requirement does not apply if, before the

offer becomes or is declared unconditional as to acceptances, the offeror has given notice in writing to shareholders of the offeree company at least 14 days before the specified closing date that the offer will not be open for acceptance beyond such date. Such notice may not be given, or if already given, will not be capable of being enforced in a competitive situation. This requirement also applies to an offer that is unconditional in all respects before the posting of the offer document, unless the offeror has stated in the offer document that the offer will not be extended beyond the first closing date.

NOTE ON RULE 22.6

Council would normally regard a competitive situation to have arisen if a competing offer has been announced. In the case where a pre-conditional offer or a proposal to acquire materially all of the assets and/or businesses is announced, the Council should be consulted.

22.7 No extension statements

If statements in relation to the duration of an offer such as "the offer will not be extended beyond a specified date unless it is unconditional as to acceptances" ("no extension statements") are included in documents sent to offeree company shareholders, or are made by or on behalf of an offeror, its directors, officials or advisers, and not withdrawn immediately if incorrect, the offeror will not be allowed subsequently to extend the offer beyond the stated date except where required by Rule 22.6, where the right to do so has been specifically reserved or in wholly exceptional circumstances.

NOTES ON RULE 22.7

1. *Firm statements*
Note 1 on Rule 20.2 also applies to this Rule, except all references to "finality" should be taken to be references to "duration".
2. *Reservation of right to set statements aside*
Note 2 on Rule 20.2 also applies to this Rule, except all references to "no increase statement" and "increase the offer" should be taken to be references to "no extension statement" and "extend the offer" respectively.

3. Recommended Offers

Note 3 on Rule 20.2 also applies to this Rule, except all references to “no increase statement” should be taken to be references to “no extension statement”.

22.8 Offeree company announcements after day 39

Except with the Council’s consent, the board of the offeree company should not announce trading results, profit or dividend forecasts, asset valuations or major transactions after the 39th day following the posting of the initial offer document. Where the announcement of trading results and dividends would normally take place after the 39th day, every effort should be made to bring forward the date of the announcement, but, where this is not practicable, the Council will normally give its consent to a later announcement. If an announcement of the kind referred to in this paragraph is made after the 39th day, the Council will normally be prepared to grant an extension of the period of 60 days referred to in Rule 22.9.

22.9 Final day rule

No offer (whether revised or not) will be capable of becoming or being declared unconditional as to acceptances after 5.30 pm on the 60th day after the date the offer document is initially posted nor of being kept open after the expiry of such period unless it has previously become or been declared unconditional as to acceptances. An offer may be extended beyond that period of 60 days with the permission of the Council. The Council will consider granting such permission in circumstances, including but not limited to, where a competing offer has been announced.

22.10 Time for fulfilment of other conditions

Except with the Council’s consent, all conditions must be fulfilled or the offer must lapse within 21 days of the first closing date or of the date the offer becomes or is declared unconditional as to acceptances, whichever is the later.

23 OFFER DOCUMENTS

23.1 Advisory statement

Every offer document must contain the following words which are to be displayed prominently in that document:-

"If you are in doubt about this offer you should consult your stockbroker, bank manager, solicitor or other professional adviser."

23.2 Intentions relating to the offeree company and its employees

An offeror should cover the following points in the offer document:-

- (a) its intentions regarding the business of the offeree company;
- (b) its intentions regarding any major changes to be introduced in the business, including any redeployment of the fixed assets of the offeree company;
- (c) the long-term commercial justification for the proposed offer; and
- (d) its intentions with regard to the continued employment of the employees of the offeree company and of its subsidiaries.

23.3 Disclosure of interests in securities and dealings

The offer document must state:-

- (a) the shareholdings of the offeror in the offeree company;
- (b) the shareholdings in the offeror (in the case of a securities exchange offer only) and in the offeree company in which directors of the offeror are interested;
- (c) the shareholdings in the offeror (in the case of a securities exchange offer only) and in the offeree company which any person acting in concert with the offeror owns or controls (with the names of such persons acting in concert);

- (d) the shareholdings in the offeror (in the case of a securities exchange offer only) and in the offeree company owned or controlled by any persons who, prior to the posting of the offer document, have irrevocably committed themselves to accepting the offer together with the names of such persons; and
- (e) the shareholdings in the offeror (in the case of a securities exchange offer only) and in the offeree company owned or controlled by a person with whom the offeror or any person acting in concert with the offeror has any arrangement of the kind referred to in Note 7 on Rule 12.
- (f) the number and percentage of any shareholdings in the offeree company which the offeror or any person acting in concert with it has:-
 - (i) granted a security interest to another person, whether through a charge, pledge or otherwise;
 - (ii) borrowed from another person (excluding borrowed shares which have been on-lent or sold); or
 - (iii) lent to another person.

If in any of the above categories there are no shareholdings, this fact should be stated.

If any party whose shareholdings are required by this Rule to be disclosed has dealt for value in the shares in question during the period commencing 6 months (3 months in the case of a voluntary offer) prior to the beginning of the offer period and ending with the latest practicable date prior to the posting of the offer document, the details, including dates and prices, must be stated. If no such deals have been made, this fact should be stated.

NOTES ON RULE 23.3

1. Relevant shareholdings

References in this Rule to shareholdings include:-

(a) for shareholdings in the offeree company, holdings of:-

(i) securities which are being offered for or which carry voting rights; and

(ii) convertible securities, warrants, options and derivatives in respect of (i); and

(b) for shareholdings in the offeror company, holdings of-

(i) equity share capital;

(ii) securities which carry substantially the same rights as any to be issued as consideration for the offer; and

(iii) convertible securities, warrants, options and derivatives in respect of (i) or (ii).

2. Meaning of "interested"

References to directors being 'interested' in shareholdings should be interpreted according to Section 164 of the Companies Act.

3. Conversion rights and options

Where holdings of conversion or subscription rights or options (including traded options) are disclosed, the exercise period and exercise price must be given. Where dealings in options are disclosed, the date of buying, granting or writing the options, the exercise period, the exercise price and any option money paid or received must be stated.

Where holdings of derivatives are disclosed, the number of reference securities to which they relate (when relevant), the maturity date and the reference price must be given. Where dealings involving derivatives are

disclosed, the number of reference securities to which they relate, the date of entering into or closing out of the derivative, the maturity date and the reference price must be stated. In each case, full details must be given so that the nature of the holding or dealing can be fully understood.

4. Commitments to accept an offer

References to irrevocable commitments to accept an offer must make it clear if there are circumstances in which they cease to be binding, for example, if a higher offer is made.

23.4 Financial information

Except with the Council's consent, the offer document must contain the following information about the offeror, whether the offer consideration is securities or cash:-

- (a) names, descriptions and addresses of all its directors;
- (b) a summary of its principal activities;
- (c) details, for the last three financial years, of turnover, exceptional items, net profit or loss before and after tax, minority interests, net earnings per share and net dividends per share;
- (d) a statement of the assets and liabilities shown in the last published audited accounts;
- (e) particulars of all known material changes in the financial position of the company subsequent to the last published audited accounts or a statement that there are no such known material changes;
- (f) details relating to items referred to in (c) and (d) in respect of any interim statement or preliminary announcement made since the last published audited accounts;
- (g) significant accounting policies together with any points from the notes of the accounts which are of major relevance for the interpretation of the accounts;
and

- (h) where, because of a change in accounting policy, figures are not comparable to a material extent, this should be disclosed and the approximate amount of the resultant variation should be stated.

The offer document should also state whether or not there has been, within the knowledge of the offeror, any material change in the financial position or prospects of the offeree company since the date of the last balance sheet laid before the company in general meeting, and, if so, particulars of any such change.

NOTE ON RULE 23.4

Where the offeror is a subsidiary company

If the offeror is a subsidiary, its ultimate holding company will normally have to disclose the prescribed information on a consolidated basis in the offer document. The Council may dispense with this requirement if the subsidiary in question is of sufficient substance in relation to the group and the offer.

23.5 Conditions of offer

The offer document must set out clearly:-

- (a) the price or other considerations to be paid for the securities;
- (b) all conditions attached to acceptances, in particular whether the offer is conditional upon acceptances being received in respect of a minimum number and the last day on which the offer can become unconditional as to acceptances; and
- (c) a statement whether or not the offeror intends to avail itself of powers of compulsory acquisition.

23.6 Special arrangements

Unless otherwise agreed with the Council, every offer document must include:-

- (a) a statement as to whether or not any agreement, arrangement or understanding exists between the offeror or any person acting in concert with

it and any of the directors, or recent directors, shareholders or recent shareholders of the offeree company having any connection with or dependence upon the offer, and full particulars of any such agreement, arrangement or understanding; and

- (b) a statement as to whether or not any securities acquired pursuant to the offer will be transferred to any other person, together with the names of the parties to any such agreement, arrangement or understanding, particulars of all securities in the offeree company held by such persons, or a statement that no such securities are held, and particulars of all securities which will or may be transferred.

Any document evidencing an irrevocable undertaking to accept the offer should be made available for inspection.

NOTES ON RULE 23.6

1. Arrangements with directors or any person connected with offer

Information on the following arrangements, if any, must be provided:-

(a) *details of any payment or other benefit which will be made or given to any director of the offeree company or of any corporation which is by section 6 of the Companies Act deemed to be related to that company as compensation for loss of office or otherwise in connection with the offer; and*

(b) *details of any agreement or arrangement made between the offeror and any of the directors of the offeree company or any other person in connection with or conditional upon the outcome of the offer or otherwise connected with the offer.*

2. Restriction on transfers

The offer document should contain particulars of any restriction on the right to transfer the securities to which the offer relates, and the arrangements, if any, being made to enable the securities to be transferred pursuant to the offer.

23.7 Directors' service contracts

The offer documents should, except in the case of an offeror offering solely cash, contain a statement (if appropriate, a negative statement) indicating whether and in what manner the emoluments of the directors of the offeror will be affected by the acquisition of the offeree company, or any other associated relevant transaction. Such information should include any alterations to fixed amounts receivable or the effect of any factor governing commissions or other variable amounts receivable. Grouping or aggregating the effect of the transaction on the emoluments of several or all the directors will normally be acceptable.

23.8 Availability of financial resources

Where the offer is for cash or includes an element of cash, the offer document must include an unconditional confirmation by an appropriate third party (e.g. the offeror's banker or financial adviser) that resources are available to the offeror sufficient to satisfy full acceptance of the offer. The party confirming that resources are available will not be expected to produce the cash itself if, in giving the confirmation, it acted responsibly and took all reasonable steps to assure itself that the cash would be available to satisfy full acceptance of the offer. The Council reserves the right to require evidence to support such confirmation.

23.9 Ultimate owner of securities acquired

Unless otherwise agreed with the Council, the offer document must contain a statement as to whether or not any securities acquired pursuant to the offer will be transferred to any other persons, together with the names of the parties to any such agreement, arrangement or understanding and particulars of all securities in the offeree company held by such persons, or a statement that no such securities are held.

23.10 Market prices of offeree's shares

The offer document should state:-

- (a) the closing price on the Securities Exchange (or on a securities exchange where they are listed) of the securities of the offeree company which are the subject of the offer:-
 - (i) on the latest practicable date prior to publication of the document;
 - (ii) on the latest business day immediately preceding the date of the initial announcement of the offer; and
 - (iii) at the end of each of the 6 calendar months preceding the date of the initial announcement; and
- (b) the highest and lowest closing prices during the period between the start of the 6 months preceding the date of the initial announcement and the latest practicable date prior to the posting of the offer document, and the respective dates of the relevant sales.

23.11 Shares offered for and dividends

The offer document should contain details of the securities for which the offer is made and a statement whether they are to be acquired cum or ex any dividend or other distribution which has been or may be declared.

23.12 Further information in cases of securities exchange offers

The following additional information should be given by the offeror when it is offering its securities in exchange for the securities of the offeree company:-

- (a) the nature and particulars of its business;
- (b) the date and country of its incorporation;
- (c) the address of its principal office in Singapore;

- (d) the authorised and issued share capital, and the rights of the shareholders in respect of capital, dividends and voting;
- (e) whether the shares being offered will rank pari passu with the existing issued shares of the offeror, and if not, a precise description of how the shares will rank for dividends and capital;
- (f) the number of shares issued since the end of the last financial year of the offeror;
- (g) where the securities are quoted or dealt in on a securities exchange, this fact and the securities exchange(s) concerned should be stated. The following information should also be included:-
 - (i) the closing price on the latest practicable date prior to the publication of the document. Where the securities are quoted or dealt in on more than one securities exchange, it is sufficient to state the latest available closing price in relation to the securities exchange with the greatest number of recorded dealings in the securities in the 6 months immediately preceding the date of the initial announcement;
 - (ii) where the take-over offer has been the subject of a public announcement in newspapers or by any other means, the closing price on the latest business day immediately preceding the date of the initial announcement of the offer;
 - (iii) the closing price at the end of each of the 6 calendar months preceding the date of the initial announcement; and
 - (iv) the highest and lowest closing prices during the period between the start of the 6 months preceding the date of the initial announcement and the latest practicable date prior to the posting of the offer document, and the respective dates of the relevant sales;
- (h) where the securities are not quoted or dealt in on a securities exchange, the statement should contain all information which the offeror may have as to the

number, amount and price at which the securities may have been sold during the period between the start of the 6 months preceding the date of the initial announcement and the latest practicable date prior to the publication of the offer document. If the offeror has no such information, a statement to that effect should be made;

- (i) details of the outstanding instruments convertible into, rights to subscribe for and options in respect of securities which carry voting rights affecting shares in the offeror;
- (j) details of any re-organisation of capital during the three financial years preceding the date of the offer;
- (k) details of any bank overdrafts or loans, or other similar indebtedness, mortgages, charges, or guarantees or other material contingent liabilities of the offeror and any of its subsidiaries, or, if there are no such liabilities, a statement to that effect;
- (l) details of any material litigation to which the offeror is, or may become, a party;
- (m) details of every material contract entered into with an interested person not more than three years before the date of the offer, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the offeror; and
- (n) how and when the documents of title to the securities will be issued.

NOTE ON RULE 23.12

"Interested person"

An interested person is:-

- (a) *a director, chief executive officer, or substantial shareholder of the company;*
- (b) *the immediate family of a director, the chief executive officer, or a substantial shareholder (being an individual) of the company;*

- (c) *the trustees, acting in their capacity as such trustees, of any trust of which a director, the chief executive officer or a substantial shareholder (being an individual) and his immediate family is a beneficiary;*
- (d) *any company in which a director, the chief executive officer or a substantial shareholder (being an individual) together and his immediate family together (directly or indirectly) have an interest of 30% or more;*
- (e) *any company that is the subsidiary, holding company or fellow subsidiary of the substantial shareholder (being a company); or*
- (f) *any company in which a substantial shareholder (being a company) and any of the companies listed in (e) above together (directly or indirectly) have an interest of 30% or more.*

23.13 Rights of offeree company shareholders

The obligations of the offeror and the rights of the offeree company shareholders under Rules 18, 22 and 28 must be specifically incorporated in the offer document.

24 OFFEREE BOARD CIRCULARS

24.1 Recommendations of offeree board and financial adviser

- (a) The offeree board circular should indicate whether or not the board of directors of the offeree company recommends to shareholders the acceptance or rejection of take-over offer(s) made, or to be made, by the offeror.
- (b) The board of the offeree company must obtain competent independent advice on any offer and the substance of such advice must be made known to its shareholders in the offeree board circular.
- (c) If any document issued to shareholders of the offeree company in connection with an offer includes a recommendation or an opinion of a financial adviser for or against acceptance of the offer, the document must, unless issued by the financial adviser in question, include a statement that the financial adviser has given and not withdrawn his consent to the issue of the document with the inclusion of his recommendation or opinion in the form and context in which it is included.

NOTES ON RULE 24.1

1. *When a board has effective control*

A board whose shareholdings confer effective control over a company which is the subject of an offer must carefully examine the reasons behind the advice it gives to shareholders and must be prepared to explain its decisions publicly. Shareholders in companies which are effectively controlled by the directors must accept that in respect of any offer the attitude of their board will be decisive.

2. *Split boards*

If the board of the offeree company is split in its views on the offer, the directors who hold dissenting views and are the minority on the board should also publish their views. The Council will normally require that the offeree company circulate such directors' views to its shareholders.

3. Conflicts of interests

Directors who have an irreconcilable conflict of interests and those who have been exempted by the Council from making recommendations to shareholders on an offer should not join with the remainder of the board in the expression of its views on the offer. In such cases, the reasons for their exclusion should be clearly explained to shareholders. In the case where all the directors on the offeree company board have been exempted by the Council, the responsibility for making a recommendation to shareholders shall reside primarily with the independent financial adviser.

4. Updated recommendations

The Council will normally not object to the offeree board issuing an updated recommendation to its shareholders if the circumstances justify it. For example, the offeree board may decide to recommend an offer, after having rejected it initially, when the offeror increases the offer price. It is not acceptable, however, for the offeree board or its adviser to make a recommendation on the offer merely for tactical purposes when such recommendation is not in the best interests of all shareholders. The offeree board must give its shareholders sufficient time to consider the updated recommendation. To ensure prompt and wide dissemination of the updated recommendation, a paid press notice may be needed.

24.2 Views of the board on the offeror's plans for the company and its employees

Where relevant, the board of the offeree company should comment in a letter to its shareholders on statements regarding the offeror's intentions with respect to the offeree company and its employees made pursuant to Rule 23.2.

24.3 Shareholdings and dealings

- (a) The document of the offeree company advising its shareholders on an offer (whether recommending acceptance or rejection of the offer) must state:-
 - (i) the shareholdings of the offeree company in the offeror;
 - (ii) the shareholdings in the offeree company and in the offeror in which directors of the offeree company are interested;

- (iii) the shareholdings in the offeree company and in the offeror (in the case of a securities exchange offer only) owned or controlled by the independent financial adviser to the offeree company, or by funds whose investments are managed by the adviser on a discretionary basis (the funds need not be named); and
 - (iv) whether the directors of the offeree company intend, in respect of their own beneficial shareholdings, to accept or reject the offer.
- (b) If in any of the above categories [with the exception of paragraph (a)(iii)] there are no shareholdings, then this fact should be stated.
- (c) If any party whose shareholdings are required by paragraph (a) to be disclosed has dealt for value in the shares in question during the period commencing 6 months prior to the beginning of the offer period and ending with the latest practicable date prior to the posting of the offeree board circular, the details, including dates and prices, must be stated. If no such deals have been made, this fact should be stated.

NOTES ON RULE 24.3

1. Shareholdings

References in this Rule to shareholdings include-

(a) *for shareholdings in the offeree company, holdings of:-*

(i) *securities which are being offered for or which carry voting rights; and*

(ii) *convertible securities, warrants, options and derivatives in respect of (i); and*

(b) *for shareholdings in the offeror company, holdings of:-*

(i) *equity share capital;*

- (ii) *securities which carry substantially the same rights as any to be issued as consideration for the offer; and*
- (iii) *convertible securities, warrants, options and derivatives in respect of (i) or (ii).*

2. *"Interested" in Shareholdings*

References to directors being 'interested' in shareholdings should be interpreted according to section 164 of the Companies Act.

3. *Conversion rights and options*

Where holdings of conversion or subscription rights or options (including traded options) are disclosed, the exercise period and exercise price must be given. Where dealings in options are disclosed, the date of buying, granting or writing the options, the exercise period, the exercise price and any option money paid or received must be stated.

4. *Commitments to accept an offer*

The offeree board circular must specify the circumstances, if any, under which commitments to accept the offer will cease to be binding.

5. *When directors resign*

When, as part of the transaction leading to an offer being made, some or all of the directors of the offeree company resign, this Rule applies to them and their shareholdings and dealings must be disclosed in the circular in the usual way.

24.4 Financial Information

Except with the Council's consent, the offeree circular must contain the following information about the offeree company:-

- (a) names, descriptions and addresses of its directors;
- (b) its principal activities;

- (c) details, for the last three financial years, of turnover, exceptional items, net profit or loss before and after tax, minority interests, net earnings per share and net dividends per share;
- (d) a statement of the assets and liabilities shown in the last published audited accounts;
- (e) particulars of all known material changes in the financial position of the company subsequent to the last published audited accounts or a statement that there are no such known material changes;
- (f) details relating to items referred to in (c) in respect of any interim statement or preliminary announcement made since the last published audited accounts;
- (g) significant accounting policies together with any points from the notes of the accounts which are of major relevance for the interpretation of the accounts; and
- (h) where, because of a change in accounting policy, figures are not comparable to a material extent, this should be disclosed and the approximate amount of the resultant variation should be stated.

24.5 Share capital of the offeree company

The following information about the offeree should be disclosed:-

- (a) the authorised and issued capital, and the rights of the shareholders in respect of capital, dividends and voting;
- (b) the number of shares issued since the end of the last financial year;
- (c) details of outstanding instruments convertible into, rights to subscribe for, and options in respect of, securities being offered for or which carry voting rights affecting shares in the offeree company; and
- (d) if the shares to which the offer relates are not quoted or dealt in on a securities exchange, all the information which the offeree company may have

as to the number, amount and price at which any such shares have been sold during the period starting from the 6 months preceding the date of the initial announcement until the latest practicable date prior to the publication of the offeree board circular.

24.6 Material contracts

The offeree circular should contain a summary of the principal contents of each material contract with interested persons (not being a contract entered into in the ordinary course of business) entered into by the offeree company or any of its subsidiaries during the period beginning three years before the commencement of the offer period, including particulars of dates, parties, terms and conditions and any consideration passing to or from the offeree company or any of its subsidiaries.

NOTE ON RULE 24.6

"Interested person"

An interested person is as defined in Note on Rule 23.12.

24.7 Directors' service contracts

Documents sent to shareholders of the offeree company recommending acceptance or rejection of offers must contain particulars of all service contracts of any director or proposed director with the offeree company or any of its subsidiaries which have more than 12 months to run and which cannot be terminated by the company within the next 12 months without paying any compensation. If there are no such contracts, this fact should be stated. If any such contracts have been entered into or amended during the period between the start of 6 months preceding the date of the initial announcement and the latest practicable date prior to the publication of the offeree board circular, particulars of the earlier contracts (if any) which have been amended or replaced as well as the current contracts must be disclosed. If there have been no new contracts or amendments to existing contracts, this should be stated.

NOTES ON RULE 24.7

1. Service contracts of directors of offeree company

For the purpose of this Rule, the following particulars of service contracts should be disclosed:-

- (a) *the name of the director or proposed director under contract;*
- (b) *the expiry date of the contract;*
- (c) *the amount of fixed remuneration payable under the contract (irrespective of whether received as a director or for management, but excluding arrangements for company payments in respect of a pension or similar scheme); and*
- (d) *the amount of any variable remuneration payable under the contract (e.g. commission on profits) with details of the formula for calculating such remuneration.*

Where there is more than one contract, a statement of the aggregate remuneration payable thereunder is normally regarded as fulfilling the requirements under (c) and (d) above, except to the extent that this method would conceal material anomalies which ought to be disclosed (e.g. because one director is remunerated at a very much higher rate than the others). It is not regarded as sufficient to refer to the latest annual accounts, indicating the information regarding service contracts may be found there, or to state that the contracts are open for inspection at a specified place.

24.8 Arrangements affecting directors

Information on the following arrangements must be provided, if any:-

- (a) details of any payment or other benefit which will be made or given to any director of the offeree company or of any other corporation which is by virtue of section 6 of the Companies Act deemed to be related to that company, as compensation for loss of office or otherwise in connection with the offer;
- (b) details of any agreement or arrangement made between any director of the offeree company and any other person in connection with or conditional upon the outcome of the offer ; and

- (c) details of any material contract entered into by the offeror in which any director of the offeree company has a material personal interest, whether direct or indirect.

25 PROFIT FORECASTS

25.1 Standards of care

There are obvious hazards attached to the forecasting of profits. But this should in no way detract from the necessity of maintaining the highest standards of accuracy and fair presentation in all communications to shareholders in an offer. The responsibility for compiling a profit forecast lies solely with the directors. They must do so with due care and consideration. The financial adviser must satisfy himself that the forecast has been prepared in this manner by the directors.

25.2 The assumptions

When a profit forecast appears in any document addressed to shareholders in connection with an offer, the directors must state in the document the assumptions, including the commercial assumptions, upon which they have based their profit forecast.

When, after an offer document has been posted, a profit forecast is given in a press announcement, any assumptions on which the forecast is based should be included in the announcement.

NOTES ON RULE 25.2

1. *Reasonableness and reliability of forecast*

One of the main objectives of documents issued in connection with a take-over or merger transaction is to persuade shareholders either to accept or to reject an offer. However objective the directors try to be, their forecast may be influenced by the position they or their advisers advocate. Profit forecasting entails judgement and is subject to various uncertainties. By listing the assumptions on which the forecast is based, the directors can give useful information to shareholders to assist them in forming a view on the reasonableness and reliability of the forecast. The assumptions should include a summary of uncertain events or factors on which the directors passed judgement. The directors should also draw the shareholders' attention to and, where possible, quantify those uncertain events or factors which could affect the achievement of the forecast.

The directors should explain any uncertainties surrounding the profit forecast. Not only is this useful to shareholders in evaluating the merits of the offer, it also protects directors from subsequent unjustified criticism if the forecast is not achieved.

2. *Duties of parties*

The directors must prepare a profit forecast with scrupulous care and objectivity. The forecast and the assumptions on which it is based are the sole responsibility of the directors. However, the financial adviser has a duty to discuss the assumptions with his client and to satisfy himself that the forecast has been made with due care and consideration. In addition, the auditor or reporting accountant should satisfy himself that the forecast, so far as the accounting policies and calculations are concerned, has been properly compiled on the footing of the assumptions made.

The directors should make the assumptions underlying a forecast as meaningful as possible. The financial adviser and auditor or reporting accountant should assist the directors in achieving this objective.

Although the auditor or reporting accountant has no responsibility for the assumptions, he will as a result of his review be in a position to advise the company on what assumptions should be listed in the circular and the way in which they should be described. The financial adviser and auditor or reporting accountant obviously have substantial influence on the information given in a circular about assumptions. Neither of them should allow an assumption to be published (if it appears to be unrealistic) or to be omitted (if it appears to be important), without commenting on it in their reports.

3. *General rules*

The following general rules should apply to the selection and drafting of assumptions:

- (a) *The shareholder should be able to understand their implications and so be helped in forming a judgment on the reasonableness of the forecast and the main uncertainties affecting it.*

(b) *The assumptions should, wherever possible, be specific rather than general, definite rather than vague.*

(c) *All-embracing assumptions and those concerning the general accuracy of the estimates should be avoided. The following assumptions are not acceptable:-*

"Sales and profits for the year will not differ materially from those budgeted for."

"There will be no increases in costs other than those anticipated and provided for."

Every forecast entails estimates of income and costs, and obviously depends on these estimates. Assumptions like those stated above do not help the shareholder in considering the forecast and should be omitted unless additional information is given to make them meaningful, e.g. sales x% up on last year's sales have been budgeted for.

(d) *The assumptions should not relate to the accuracy of the accounting systems. If the systems of accounting and forecasting are such that full reliance cannot be placed on them, this should be the subject of some qualification in the forecast itself (perhaps also requiring a qualification in the reports of the financial adviser and auditor or reporting accountant). It is not satisfactory for such deficiency to be covered by the assumptions. The following assumptions are not acceptable:*

"The book record of stocks and work in progress will be confirmed at the end of the financial year".

"The estimate of stocks on hand as at 31st December, 2000 will prove substantially accurate".

(e) *Even some specific assumptions may still leave the shareholder in doubt as to their implications, for instance:*

"No abnormal liabilities will arise under guarantee".

"Provisions for outstanding legal claims will prove adequate".

The first assumption above relates to the unforeseen and the second to the adequacy of the estimating system. The directors probably consider it necessary to include such assumptions because of the uncertainty about the liabilities arising from guarantees given or legal claims. In both these examples, information should be given about the extent or basis of the provision already made and/or about the circumstances in which liabilities unprovided for might arise.

- (f) The assumptions should relate only to matters which may have a material bearing on the forecast.*
- (g) There may be occasions, particularly when the estimate relates to a period already ended, when no assumptions are required.*
- (h) The larger and more complex the group, the more difficult it is to make the assumptions specific, definite, and brief. In such instances it may be appropriate to give a profit forecast by division and relate the assumptions specifically to the various divisions.*
- (i) In some circumstances, it may be useful to indicate the effect on the profit forecast if the major assumptions prove to be wholly or partly invalid. For example, the effect on the forecast can be shown if sales volume, selling price, raw material costs etc, were y% above or below estimate or if full production from a new factory were delayed by z months. It may also be appropriate to give a range of forecast profits rather than a single figure.*

4. *Breakdown of forecasts by activities*

There are inevitable limitations on the accuracy of some forecasts; these limitations should be made clear to assist the shareholder in reviewing the forecasts. A description of the general nature of the business or businesses with an indication of any major hazards in forecasting in these particular

businesses should normally be included. To show the significance of any such hazards, it may be useful to give a breakdown of forecast sales and profits before tax by activity or business together with published figures in recent years.

5. *Unforeseen circumstances*

It must be expected that a forecast will take account all foreseen circumstances and it does not seem necessary or helpful to have a general assumption about the unforeseen such as those as follows:-

"The profits anticipated will not be unduly affected by any unforeseen factors.";

"There will be no significant unforeseen circumstances".

Although it is a general practice for a prospectus containing a profit forecast to use such a phrase, that practice requires modification in a take-over document containing a profit forecast. Instead of making an assumption about the unforeseen circumstances, the directors can state in the document that:

"The directors forecast that, in the absence of unforeseen circumstances, the profits before tax for the year"

6. *Examples*

Examples of assumptions that comply with the general rules are as follows:

(a) *"The company's present management and accounting policies will not be changed" (for a company being acquired);*

(b) *"Interest rates and the bases and rates of taxation, both direct and indirect, will not change materially";*

(c) *"There will be no material change in international exchange rates or import duties and regulations";*

(d) *"Percentage of time lost on building sites, due to adverse weather conditions, will be average for the time of the year";*

- (e) *"Turnover for the year will be \$1 million on the basis that sales will continue in line with levels and trends experienced to date, adjusted for normal seasonal factors; a reduction of \$100,000 in turnover would result in a reduction of approximately \$10,000 in the profit forecast";*
- (f) *"Beer sales will increase in line with the trend established in the previous year, which corresponds to the national average rate of increase";*
- (g) *"An increase of about 10% in subscriptions will be achieved as a result of increases in the prices of certain journals and an increase in the number of subscribers";*
- (h) *"Trading results will not be affected by industrial disputes in the company's factories or in those of its principal suppliers";*
- (i) *"The current national dock strike will not last longer than six weeks";*
- (j) *"The new factory at Jurong will be in full production by the end of the first quarter. A delay of one month would cause the profit forecast to be reduced by \$5,000";*
- (k) *"Increases in labour costs will be restricted to those recently agreed with the trade unions";*
- (l) *"Increases in the level of manufacturing costs for the remainder of the year will be kept within the margin of 2% allowed for in the estimates";
and*
- (m) *"The conversion rights attaching to all the convertible loan stock will be exercised on the next conversion date".*

25.3 Reports required in connection with profit forecasts

A forecast made by an offeror offering solely cash need not be reported on. With the Council's consent, this exemption may be extended to an offeror offering as

consideration a non-convertible debt instrument maturing for payment or capable of being redeemed in less than 12 months.

In all other cases, the following reports are required:-

- (a) The auditor or reporting accountant must examine and report on the accounting policies and calculations for the forecast.
- (b) The financial adviser, if he is mentioned in the document containing the forecast, must examine the forecast and report whether, in his view, the forecast has been made after due and careful enquiry.
- (c) Where revenue or profit from land and buildings is a material element in a forecast that part of the forecast should normally be examined and reported on by an independent valuer. As a general rule, the Council considers revenue or profit from the sale of or rental of properties material if it exceeds 25% of the total forecast revenue or profit. This requirement does not apply where the income is virtually certain e.g. known rents receivable under existing leases.

It is not necessary for copies of the above reports to be lodged with the Council.

25.4 Publication of reports and consent letters

Whenever a profit forecast is made during an offer period, the reports must be included in the document addressed to shareholders containing the forecast. When the forecast is made in a press announcement, that announcement must contain a statement that the forecast has been reported on in accordance with the Code. If a company's forecast is published first in a press announcement, it must be repeated in full, together with the reports, in the next document sent to shareholders by that company. If no such document is planned, a paid press notice containing the forecast in full together with the reports should be issued. The reports must be accompanied by a statement that those making them have given and not withdrawn their consent to publication.

25.5 Validity of forecast

Once a forecast has been reported on in accordance with this Rule, reference may be made to that profit forecast in any document published within 60 days thereafter. However, where a forecast is repeated in the context of a different transaction from that for which the forecast was initially reported on, the Council will accept the reproduction of the original reporting letters if the directors confirm in the document that they know of no reason why the original forecast should not stand and the financial adviser and auditor or reporting accountant who reported on the forecast have given their consent in writing to the extended use of their reports. The letters of consent of the financial adviser and auditor or reporting accountant and their original reports must be contained in the document.

When a company includes a forecast in a document, any document subsequently sent out by that company in connection with that offer must, except with the Council's consent, contain a statement by the directors that the forecast remains valid for the purpose of the offer and that the financial adviser and auditor or reporting accountant who reported on the forecast have indicated that they have no objection to their reports continuing to apply.

25.6 Statements which will be treated as profit forecasts

(a) When no figure is mentioned

Even when no particular figure is mentioned or even if the word "profit" is not used, certain forms of words may constitute a profit forecast. Examples are "profits will be somewhat higher than last year" and "the profits of the second half-year are expected to be similar to those earned in the first half-year" (when interim figures have already been published). Whenever a form of words puts a floor under or a ceiling on the likely profit of a particular period or contains the data necessary to calculate an approximate figure for future profits, the Council will treat it as a profit forecast which must be reported on in accordance with this Rule. In cases of doubt, professional advisers should consult the Council in advance.

(b) Forecasts before the offer period

Except with the Council's consent, any profit forecast which has been made before the commencement of the offer period must be examined, repeated and reported in the document sent to shareholders. At the outset, an adviser

should invariably check whether or not his client has a forecast on the public record so that the procedures required by this Rule can be set in train with a minimum of delay.

Exceptionally, the Council may accept that, because of the uncertainties involved, it is not possible for a forecast previously made to be reported on in accordance with the Code nor for a revised forecast to be made. In these circumstances, the Council would insist on shareholders being given a full explanation as to why the requirements of the Code could not be met.

(c) Estimates, interim and preliminary figures

An estimate of profit for a period which has already expired constitutes a profit forecast for the purpose of this Rule. Except with the Council's consent, any unaudited profit figures published during an offer period must be reported on by the auditor or reporting accountant and financial adviser in accordance with this Rule.

This provision does not, however, apply to: -

- (i) unaudited statements of annual or interim results which have already been published;
- (ii) unaudited statements of annual results which comply with the requirements for preliminary profits statements as set out in the Singapore Exchange Listing Manual;
- (iii) unaudited statements of interim results which comply with the requirements for periodic reports as set out in the listing rules of the Securities Exchange in cases where the offer has been publicly recommended by the board of the offeree company; or
- (iv) unaudited statements of interim results by offerors which comply with the requirements for periodic reports as set out in the listing rules of the Securities Exchange, whether or not the offer has been publicly recommended by the board of the offeree company but provided the offer could not result in the issue of securities which would represent 10% or more of the enlarged voting share capital of the offeror.

The Council should be consulted in advance if the company is not listed on the Securities Exchange but wishes to take advantage of the exemptions under (ii), (iii) or (iv) above.

(d) Forecasts for a limited period

A profit forecast for a limited period (e.g. the following quarter) is subject to this Rule.

(e) Dividend forecasts

A dividend forecast does not normally constitute a profit forecast unless, for example, it is accompanied by an estimate as to dividend cover. A dividend forecast of a REIT would normally be regarded as a profit forecast. In cases of doubt, the Council should be consulted.

(f) Profit warranties

The Council must be consulted in advance if a profit warranty is to be published in connection with an offer as it may be regarded as a profit forecast.

(g) Merger benefits statements

A quantified statement about the expected financial benefits of a proposed take-over or merger (for example, a statement by an offeror that it would expect the offeree company to contribute an additional \$x million of profit post acquisition) is deemed to be a profit forecast for the purpose of this Rule. In addition to meeting the standards of information required under Rule 8, a person issuing such a statement must provide:-

(i) the bases of the belief (including sources of information) supporting the statement;

(ii) reports by financial adviser and auditor or reporting accountant on the statement as required by Rule 25.3;

(iii) an analysis and explanation of the constituent elements sufficient to enable shareholders to understand the relative importance of these elements; and

- (iv) a base figure for any comparison drawn.

These requirements may also be applicable to statements to the effect that an acquisition will enhance an offeror's earnings per share where such enhancement depends in whole or in part on material merger benefits.

Parties wishing to make earnings enhancement statements which are not intended to be profit forecasts must include an explicit and prominent disclaimer to the effect that such statements should not be interpreted to mean that earnings per share will necessarily be greater than those for the relevant preceding financial period.

Parties should also be aware that the inclusion of earnings enhancement statements, if combined with merger benefits statements and/or other published financial information, may result in the market being provided with information from which the prospective profits for the offeror or the enlarged offeror group or at least a floor or ceiling for such profits can be inferred. Such statements would then be subject to this Rule. If parties are in any doubt as to the implications of the inclusion of such statements, they should consult the Council in advance.

NOTE ON RULE 25.6

Statement of prospects

The statements "profits are expected to increase in the next financial year", "the next year is going to be better", "hotel operations are expected to continue showing a loss in the current year", and "we expect the China venture to break-even in year 2002 or earlier" etc, constitute profit forecasts for the purpose of this Rule. However, as a point forecast has not been made, it will suffice for a statement of prospects (setting out all the bases and commercial assumptions) for that financial year to be included in the offeree circular. The statement of prospects must be examined and reported on by the auditors or reporting accountant and the financial adviser must examine the statement of prospects and state whether in their view, the statement has been made after due and careful enquiry.

25.7 Taxation, exceptional items and minority interests

When a profit forecast appears in a document addressed to shareholders, there should be included, where possible, forecasts of profit before taxation, taxation, minority interests and exceptional items.

25.8 When a forecast relates to a period which has commenced

When there is a profit forecast made for a period in which trading has already commenced, the latest published profit figures for any expired part of that trading period together with comparable figures for the corresponding period in the preceding year must be stated. If there are no such published profit figures, that fact must be stated.

26 ASSET VALUATIONS

26.1 Valuations to be reported on if given in connection with an offer

When there is a valuation of assets given in connection with an offer, such valuation must be supported by the opinion of a named independent professional expert. The directors must state in the document containing the asset valuation the basis of the valuation. The document must also state that the expert has given and not withdrawn his consent to the publication of his valuation.

NOTES ON RULE 26.1

1. Type of asset

This Rule applies not only to land and buildings but also to other assets, e.g. plant and machinery, ships, TV rental contracts and individual parts of a business.

2. In connection with an offer

Sometimes, directors' estimates of asset values which are published with a company's accounts in accordance with the Companies Act, are reproduced in an offer document or offeree board circular. The Council would not regard such estimates as "given in connection with an offer" unless asset values are a particularly significant factor in assessing the relevant take-over or merger transaction and the estimates are accordingly given considerably more prominence in the appropriate circulars than merely being referred to in a note to a statement of assets in an appendix. In those circumstances, of course, such estimates must be supported (subject to Rule 26.5 below) by a named independent expert in accordance with this Rule.

3. Where no report is required

If the net book value of the assets to be valued represents less than 30% of the offer value, the Council will normally waive the requirement under this Rule.

26.2 Basis of Valuation

- (a) The basis of valuation must be stated and for non-specialised properties this will normally be open market value. A property which is occupied for purposes of the business must be valued at open market value for the existing use. Assumptions should be kept to a minimum and should be fully explained.

- (b) For land which is being developed or with development potential, the valuation should include, in addition to the open market value of the land in its existing state at the date of valuation, the following:-
 - (i) the value after the development has been completed and is ready for occupation;

 - (ii) the estimated total cost including carrying charges of completing the development and the expected dates of (i) completion, and (ii) letting or occupation; and

 - (iii) a statement whether planning consent has been obtained and, if so, the date thereof and the nature of any conditions attaching to the consent which affect the value.

- (c) Where a property which is occupied for the purposes of the business is valued at open market value for an alternative use, the costs of conversion and/or adaptation should be estimated and shown.

26.3 Potential tax liability

When a valuation is given in connection with an offer, there should be a statement regarding any potential tax liability which would arise if the assets were to be sold at the amount of the valuation, accompanied by an appropriate comment as to the likelihood of any such liability crystallising.

26.4 Current valuation

A valuation must state the date on which the assets were valued and the professional qualifications and address of the valuer. If a valuation is not current, the valuer must state whether a current valuation would be materially different. If the current valuation would be materially different, the valuation must be updated.

26.5 Waiver in certain circumstances

In exceptional cases, companies, in particular property companies, which are the subject of an unexpected bid may encounter difficulty in obtaining the opinion of an independent professional expert to support an asset valuation, as required by Rule 26.1, before the circular to shareholders containing the board's recommendations has to be sent out. In such cases, the Council may consider waiving strict compliance with Rule 26.1. The Council will only do so where the interests of shareholders seem, on balance, to be best served by permitting informal valuations to appear in the circular together with such substantiation as is available. Advisers to offeree companies who wish to make use of this procedure should consult the Council in good time.

26.6 Inspection

Where a valuation of assets is given in an offer document, the valuation should be made available for inspection.

27 LODGEMENT OF DOCUMENTS

In order to facilitate the work of the Council, copies of all public announcements made and all documents bearing on a take-over or merger transaction must be lodged with the Council at the same time as they are made or despatched.

28 ACCEPTANCES

28.1 Timing and contents

By 8.00 am at the latest on the dealing day ("the relevant day") immediately after the day on which an offer is due to expire, or becomes or is declared unconditional as to acceptances, or is revised or extended, the offeror must announce the total number of shares (as nearly as practicable):-

- (a) for which acceptances of the offer have been received;
- (b) held before the offer period; and
- (c) acquired or agreed to be acquired during the offer period,

and specify the percentages of the relevant classes of share capital represented by these figures.

If the offeree company is quoted on the Securities Exchange, the offeror must also inform the Securities Exchange of the above.

NOTES ON RULE 28.1

1. *Adequate measures to ensure accurate reporting*
The Code requires all offers to be conditional upon a prescribed level of acceptance. It is therefore essential that the offeror adopts the necessary measures and procedures so that all parties to the offer may be confident that the result of the offer is arrived at by an objective procedure which, as far as possible, eliminates errors or uncertainty.
2. *Acceptances*
An acceptance may not be counted towards fulfilling an acceptance condition unless:-
 - (a) *it is received by the offeror's receiving agent on or before the closing time for acceptance set out in the offeror's relevant document or announcement and the offeror's receiving agent has recorded that the*

acceptance and any relevant documents required by this Note have been so received; and

- (b) *the acceptance form is duly completed and:-*
- (i) *accompanied by share certificates in respect of the relevant shares and, if those certificates are not in the name of the acceptor, such other documents (e.g. a duly stamped transfer of the relevant shares in blank or in favour of the acceptor executed by the registered holder) in order to establish the right of the acceptor to become the registered holder of the relevant shares;*
 - (ii) *is from a registered holder or his personal representatives (but only up to the amount of the registered holding and only to the extent that the acceptance relates to shares which are not taken into account under another sub-paragraph of this paragraph (b)); or*
 - (iii) *is certified by the offeree company's registrar, the Securities Exchange, or a depository agent of the Securities Exchange.*

If the acceptance form is executed by a person other than the registered holder or a person who is capable of becoming a registered holder, appropriate evidence of authority (e.g. certified copy of grant of probate, letters of administration or power of attorney) must be produced.

3. *Offeror's receiving agent's certificate*

Before an offer may become or be declared unconditional as to acceptances, the offeror's receiving agent must deliver to the offeror or its financial adviser a certificate which states the number of acceptances received which comply with Note 2 on this Rule. Such certificate need not include those shares:-

- (i) *held by the offeror and its concert parties before the offer period; or*

- (ii) *acquired or agreed to be acquired by the offeror and its concert parties during the offer period.*

The offeror or its financial adviser must send copies of the receiving agent's certificate to the Council and the offeree company's financial adviser as soon as possible after it is issued.

4. *Instruments convertible into, rights to subscribe for and options in respect of securities which carry voting rights*

In situations where the offeree company has outstanding instruments convertible into, rights to subscribe for, or options in respect of, securities which carry voting rights, an offeror who pursuant to a take-over offer acquires more than 50% of the voting rights of the offeree company before the closing date of the offer might find that its holdings of voting rights in the offeree company may be diluted to below 50% on the closing date if such instruments, subscription rights or options not acquired by the offeror are exercised. Accordingly, in cases where the offeree company has such instruments, subscription rights or options, the offer will become or can be declared unconditional as to acceptances only if:-

- (a) *before the closing date, the offeror and persons acting in concert with it have acquired or agreed to acquire (either before, or during the offer period, through the exercise of such instruments, subscription rights or options or otherwise) offeree company shares carrying more than 50% of the voting rights attributable to the maximum potential share capital of the offeree company on the date of such declaration. For this purpose, the maximum potential share capital will be the total number of offeree company shares which would then be in issue had all the outstanding instruments convertible into, rights to subscribe for, and options in respect of, securities which carry voting rights of the offeree company (other than those acquired or agreed to be acquired by the offeror and person acting in concert with it) have been exercised as at the date of such declaration; or*
- (b) *on the closing date, the offeror and persons acting in concert with it have acquired or agreed to acquire (either before or during the offer period, through the exercise of these instruments, such number of*

offeree company shares which, when taken together with the offeree company shares owned or controlled by the offeror and persons acting in concert with it, result in the offeror holding shares of the offeree company carrying over 50% of the voting rights then attributable to the offeree shares issued or to be issued pursuant to instruments convertible into, rights to subscribe for and options in respect of securities which carry voting rights which have been validly exercised by the closing date.

5. *Purchases of shares*

Purchases made through the Securities Exchange by the offeror and parties acting in concert with it with no pre-agreement or collusion between the parties to such transactions or their agents, may be counted towards satisfying the acceptance condition. All other purchases by the offeror and parties acting in concert with it (i.e. off market purchases) may only be counted when fully completed and settled.

6. *General statements about acceptance levels*

If, during an offer, any statements, either oral or in writing, are made by an offeror or any of its concert parties, advisers or agents about the level of acceptances of the offer or the number or percentage of shareholders who have accepted the offer, an immediate announcement must be made in conformity with this Rule.

7. *Securities not dealt in on the Securities Exchange*

In the case of companies whose securities are not dealt in on the Securities Exchange, it would normally be appropriate to write to all shareholders or issue a paid press notice instead of making an announcement.

8. *Statements about withdrawal*

When the offeree company is proposing to draw attention to withdrawals of acceptance, the Council must be consulted before an announcement is made. The Council will normally allow such announcements if the level of acceptances of an offer, which has been declared unconditional as to acceptances previously, later falls below that level needed for the offer to become or be declared unconditional as to acceptances.

9. Persons acting in concert

An announcement made under this Rule must make it clear to what extent acceptances have been received from persons acting in concert with the offeror and must state the number of shares and rights over shares (as nearly as practicable) held before the offer period and acquired or agreed to be acquired during the offer period by persons acting in concert with the offeror.

10. Borrowed shares

Shares which have been borrowed by the offeror or any person acting in concert with it may not be counted towards fulfilling an acceptance condition except with the consent of the Council. In the case where a person triggers a mandatory bid obligation under Rule 14 as a result of shareholdings that include shares that are borrowed (see Note 15 on Rule 14.1), the Council should be consulted on how the borrowed shares should be treated for the purpose of the acceptance condition.

28.2 Consequences of failure to announce

- (a) If the offeror is unable within the time limit to comply with any of the requirements of Rule 28.1, the Council will consider requesting the Securities Exchange to suspend dealings in the offeree company's shares and, where appropriate, in the offeror's shares until the relevant information is given.
- (b) If an offer has become or been declared unconditional as to acceptances, but the offeror fails by 3.30 pm on the relevant day to comply with any of the requirements of Rule 28.1, then immediately thereafter any acceptor will be entitled to withdraw his acceptance. Subject to Rule 22.9 (Final day rule), this right of withdrawal may be terminated not less than 8 days after the relevant day by the offeror confirming (if that be the case) that the offer is still unconditional as to acceptances and complying with Rule 28.1.
- (c) For the purpose of Rule 22.6, the period of 14 days referred to therein will run from the date of such confirmation, or the date on which the offer would otherwise have expired, whichever is later.

29 ACCEPTORS' RIGHT TO WITHDRAW

An acceptor will be entitled to withdraw his acceptance after 14 days from the first closing date of the offer, if the offer has not by then become unconditional as to acceptances. Such entitlement to withdraw will be exercisable until the offer becomes unconditional as to acceptances. In a competitive situation, if one offer becomes unconditional as to acceptances, then offeree company shareholders who have tendered their acceptances for the other offer (the "unsuccessful offer") can, if they so wish, immediately withdraw their acceptances for the unsuccessful offer. This means that offeree company shareholders who have accepted the unsuccessful offer do not have to wait until the expiry of 14 days from the first closing date of the unsuccessful offer before they are entitled to withdraw their acceptances.

NOTE ON RULE 29

Council would normally regard a competitive situation to have arisen if a competing offer has been announced. In the case where a pre-conditional offer or a proposal to acquire materially all of the assets and/or businesses is announced, the Council should be consulted.

30 SETTLEMENT OF CONSIDERATION

Shares represented by acceptances in any offer, other than a partial offer (see Rule 16.6), must not be acquired by the offeror until the offer has become or been declared unconditional in all respects. Such shares must be paid for by the offeror as soon as practicable, but in any event within 10 days after:-

- (a) the offer becomes or is declared unconditional in all respects; or
- (b) receipt of valid acceptances where such acceptances were tendered after the offer has become or been declared unconditional in all respects.

NOTE ON RULE 30

Equality of treatment

All shareholders should be treated equally. Any commitment or arrangement to pay or settle the consideration for certain shareholders at a particular time or currency may constitute a special deal prohibited by Rule 10.

31 PROXIES

An offeror may not require a shareholder as a term of his acceptance of an offer to appoint a particular person as his proxy to vote in respect of his shares in the offeree company or to appoint a particular person to exercise any other rights or take any other action in relation to those shares unless the appointment is on the following terms, which must be set out in the offer document:-

- (a) the proxy may not vote, the rights may not be exercised and no other action may be taken unless the offer is unconditional in all respects or, in the case of voting by the proxy, it will become unconditional in all respects or lapse immediately upon the outcome of the resolution in question;
- (b) where relevant, the votes are to be cast as far as possible to satisfy any outstanding condition of the offer;
- (c) the appointment ceases to be valid if the acceptance is withdrawn; and
- (d) the appointment applies only to shares assented to the offer.

32 PROMPT REGISTRATION OF TRANSFERS

The board and officials of an offeree company should take action to ensure, during a take-over or merger transaction, the prompt registration of transfers so that shareholders can freely exercise their voting and other rights. Provisions in Articles of Association that lay down a qualifying period after registration during which the registered holder cannot exercise his vote are highly undesirable.

33 RESTRICTIONS FOLLOWING OFFERS AND POSSIBLE OFFERS

33.1 Delay before subsequent offer

- (a) Except with the Council's consent, where any offer other than a partial offer (see Rule 16.7) has been announced or posted but has not become or been declared unconditional in all respects and has been withdrawn or has lapsed, neither the offeror, any persons who acted in concert with it in the course of the original offer nor any person who is subsequently acting in concert with any of them may within 12 months from the date on which such offer is withdrawn or lapses:-
 - (i) announce an offer or possible offer for the offeree company, or
 - (ii) acquire any voting rights of the offeree company if the offeror or persons acting in concert with it would thereby become obliged under Rule 14 to make an offer.

- (b) The restrictions in this Rule may also apply where a person had made an announcement which, although not amounting to the announcement of an offer, raises or confirms the possibility that an offer might be made, but does not announce a firm intention either to make or not to make an offer within a reasonable time thereafter.

- (c) Where a person makes an announcement that he does not intend to make an offer for a company, the restrictions in this Rule will normally apply for 6 months from the date of the announcement. If that person changes his mind and wants to make an offer within the 6-month period, the person must seek the Council's approval, which will normally not be granted unless there is good reason.

NOTES ON RULE 33.1

1. Recommended and competing offers

The Council will normally grant consent under this Rule when:-

- (a) the new offer is recommended by the board of the offeree company and the offeror is not, or is not acting in concert with, a director or substantial shareholder of the offeree company; or*
- (b) the new offer follows the announcement of an offer by a third party for the offeree company.*

2. Rule 33.1 (b)

Paragraph (b) of Rule 33.1 applies irrespective of the precise wording of the announcement and the reason it was made. For example, it is relevant in the case of an announcement that a person is “considering his options” if, in all the circumstances, those options may reasonably be understood to include the making of an offer. However, the Council envisages that this provision will only be applied occasionally and usually only if the Council is persuaded by the potential offeree company that the damage to its business from the uncertainty outweighs the disadvantage to its shareholders of losing the prospect of an offer.

The question as to what is “a reasonable time” has to be determined by reference to all the circumstances of the case: the stage which the offeror’s preparations had reached at the time the announcement was made is likely to be relevant.

33.2 6 months delay before acquisition at above offer price

Except with the Council’s consent, if a person, together with any person acting in concert with him, holds shares carrying more than 50% of the voting rights of a company, neither that person nor any person acting in concert with him may, within 6 months of the closure of any previous offer other than a partial offer (see Rule 16.4(b)(iv)) made by him to the shareholders of that company which became or was declared unconditional in all respects, make a second offer to, or acquire any shares from, any shareholder in that company on terms better than those made available

under the previous offer. They must also not enter into any special deals with any shareholder (see Rule 10).

NOTES ON RULE 33.2

1. Issue of new shares

For the avoidance of doubt the issue of new shares by placing, subscription or in exchange for assets does not need the Council's consent under this Rule.

2. Instruments convertible into, rights to subscribe for and options in respect of securities being offered for or which carry voting rights

The exercise of instruments convertible into, rights to subscribe for, and options in respect of, securities being offered for or which carry voting rights will be considered to be an acquisition of shares for the purpose of this Rule. The acquisition of such instruments, subscription rights or options at a price based on the acquisition price and the relevant conversion and exercise terms, above the offer price may be relevant for the purposes of this Rule. In any such case, the Council must be consulted.

3. Securities exchange offers

For the purposes of this Rule, the value of a securities exchange offer should be calculated as at the day the offer is declared to have closed or lapsed.

34 FEES LEVIABLE BY THE COUNCIL

The Minister may prescribe the fees that will be leviable by the Council in respect of the lodgement and processing of offer documents. See Schedule 1.

APPENDIX 1
WHITEWASH GUIDANCE NOTE

(See Note 1 of Notes on Dispensation from Rule 14)

1 Introduction

- (a) This note sets out the procedures to be followed if Council is to be asked to waive the obligation to make a general offer under Rule 14 which would otherwise arise where, as a result of the issue of new securities as consideration for an acquisition or a cash injection or in fulfilment of obligations under an agreement to underwrite the issue of new securities, a person or group of persons acting in concert acquire shares which give rise to an obligation to make a general offer.
- (b) Where the word "offeror" is used, it should be taken in the context of a whitewash as a reference to the potential controlling shareholders. Similarly, the phrase "offeree company" should be taken as a reference to the company which is to issue the new securities and in which the actual or potential controlling position will arise.
- (c) For the purposes of this Appendix, the word "convertibles" refers to instruments convertible into, rights to subscribe for and options in respect of new shares in the offeree company which carry voting rights.

2 Specific grant of waiver required

In each case, specific grant of a waiver from the Rule 14 obligation is required. Such grant will be subject to: -

- (a) a majority of holders of voting rights of the offeree company approve at a general meeting, before the issue of new securities to the offeror, a resolution (the "Whitewash Resolution") by way of a poll to waive their rights to receive a general offer from the offeror and parties acting in concert with the offeror;
- (b) the Whitewash Resolution is separate from other resolutions;

- (c) the offeror, parties acting in concert with them and parties not independent of them abstain from voting on the Whitewash Resolution;
- (d) the offeror and its concert parties did not acquire or are not to acquire any shares or instruments convertible into and options in respect of shares of the offeree company (other than subscriptions for, rights to subscribe for, instruments convertible into or options in respect of new shares which have been disclosed in the circular):-
 - (i) during the period between the announcement of the proposal and the date shareholders' approval is obtained for the Whitewash Resolution; and
 - (ii) in the 6 months prior to the announcement of the proposal to issue new securities but subsequent to negotiations, discussions or the reaching of understandings or agreements with the directors of the company in relation to such issue;
- (e) the offeree company appoints an independent financial adviser to advise its independent shareholders on the Whitewash Resolution;
- (f) the offeree company sets out clearly in its circular to shareholders:-
 - (i) details of the proposed issue of new securities or convertibles;
 - (ii) the dilution effect of issuing the new shares, or upon the exercise or conversion of the convertibles to be issued, to existing holders of voting rights;
 - (iii) the number and percentage of voting rights in the offeree company as well as the number of instruments convertible into, rights to subscribe for and option in respect of shares in the offeree company (other than the convertibles to be issued) held by the offeror and its concert parties as at the latest practicable date;

- (iv) the number and percentage of voting rights to be issued to the offeror, or to be acquired by the offeror upon the exercise or conversion of the convertibles to be issued;
 - (v) in the case where the proposal could result in the offeror holding shares carrying over 49% of the voting rights of the offeree company, there must be specific and prominent reference to this and the fact that the offeror will be free to acquire further shares without incurring any obligation under Rule 14 to make a general offer;
 - (vi) that shareholders, by voting for the Whitewash Resolution, are waiving their rights to a general offer from the offeror at the highest price paid by the offeror and parties acting in concert with it for the offeree company shares in the past 6 months preceding the commencement;
 - (vii) for a Whitewash Resolution involving convertibles, that shareholders by voting for the Whitewash Resolution, could be forgoing the opportunity to receive a general offer from another person who may be discouraged from making a general offer in view of the potential dilution effect of the convertibles;
- (g) the circular by the offeree company to its shareholders states that the waiver granted by Council to the offeror and parties acting in concert with them from the requirement to make a general offer under Rule 14 is subject to the conditions stated at (a) to (f) above;
- (h) the offeror obtains Council's approval in advance for those parts of the circular that refer to the Whitewash Resolution; and
- (i) to rely on the Whitewash Resolution, the acquisition of new shares or convertibles by the offeror pursuant to the proposal must be completed within 3 months of the approval of the Whitewash Resolution. For a Whitewash Resolution involving convertibles, the acquisition of new shares by the offeror upon the exercise or conversion of the convertibles must be completed within 5 years of the date of issue of the convertibles. (See Note 2 on Section 2.)

NOTE ON SECTION 2

1. Early consultation

Consultation with Council at an early stage is essential. Late consultation may well result in delays to planned timetables.

2. Convertibles

For the purposes of a Whitewash waiver for the issue of convertibles, the Whitewash Resolution must be approved by independent shareholders of the offeree company prior to the issue of the convertibles. Subsequently, the issue of new shares upon the exercise or conversion of the convertibles issued pursuant to such Whitewash Resolution need not be approved again by independent shareholders of the offeree company.

Details of any valid Whitewash waiver must be disclosed or made available via the following avenues or documents, where applicable, for as long as any of the convertibles issued pursuant to the Whitewash waiver and held by the offeror and its concert parties remain outstanding:-

- (a) the interim and full-year financial statements of the offeree company for release through SGXNET and to be posted on the web-site of the Securities Exchange;*
- (b) the annual report of the offeree company;*
- (c) public documents of the offeree company including circulars to shareholders, abridged prospectuses, prospectuses or information memoranda;*
- (d) periodic announcements made by the offeror and its concert parties pursuant to Sections 82, 83, 84, 85, 165 and 166 of the Companies Act (as well as Section 137 of the Securities and Futures Act), and the listing rules of the Securities Exchange whenever the offeror or any of its concert parties buys or sells shares or exercises or converts convertibles in the offeree company;*
- (e) at the offeree company's registered office;*

- (f) *at the offeree company's web-site (if any); and*
- (g) *the web page setting out the offeree company's corporate information on the web-site of the Securities Exchange.*

[Note: For items (e), (f), and (g), the required information should be updated within 2 days of any change in the voting rights held by the offeror and its concert parties in the offeree company upon the exercise or conversion of the convertibles.]

The disclosures should be clear and prominent. As a guide, the font size of the disclosure should not be smaller than that for the rest of the document in which the disclosure is made and should in any case be at least 8-point Times New Roman or the equivalent. The following must be disclosed in all cases:-

- (a) *details of the Whitewash Resolution, including the time period for which the waiver has been approved;*
- (b) *the number and percentage of voting rights in the offeree company, the number of instruments convertible into, rights to subscribe for and options in respect of shares in the offeree company (other than the convertibles to be issued), and the number of convertibles held by the offeror and its concert parties as at the latest practicable date prior to the disclosure;*
- (c) *the maximum potential voting rights of the offeror and its concert parties in the offeree company, assuming that only the offeror and its concert parties (but not other shareholders) exercise their convertibles in full;*
- (d) *that, having approved the Whitewash Resolution, shareholders have waived their rights to receive a general offer from the offeror at the highest price paid by the offeror and parties acting in concert with it for offeree company shares in the past 6 months preceding the commencement of the offer; and*

(e) *that, having approved the Whitewash Resolution, shareholders could be forgoing the opportunity to receive a general offer from another person who may be discouraged from making a general offer in view of the potential dilution effect of the convertibles.*

3 Waiver is not transferable

Only the person(s) whose name(s) appear in the circular to shareholders on the Whitewash Resolution as the offeror can avail himself of the Whitewash waiver if the Whitewash Resolution is approved subject to the conditions at Section 2 above. A Whitewash waiver cannot be transferred or assigned to another person. If the offeror is a company and there is a change in statutory control of the offeror on or after the date of shareholders' approval of the Whitewash Resolution, the Whitewash waiver will normally cease to be valid. In cases of doubt, the Council should be consulted.

4 Underwriting and placing

In cases involving the underwriting or placing of offeree company securities, the Council must be given details of all the proposed underwriters or placees, including any relevant information to establish whether or not there is a group acting in concert, and the maximum percentage which they could come to hold as a result of the implementation of the proposals.

5 Announcements following shareholders' approval

Following the meeting at which the proposals are considered by shareholders, an announcement must be made by the offeree company giving the result of the meeting and the number and percentage of offeree company shares to which the offeror have become entitled as a result.

6 Subsequent acquisitions by the offeror

Immediately following approval of the proposals at the shareholders' meeting, the offeror will be free to acquire shares in the offeree company, subject to the provisions of Rule 14.

NOTES ON SECTION 6

1. Offeror with 49% or less

Where, as a result of the implementation of the proposals, the offeror holds shares representing between 30% and 49% of the votes of the company, they will be subject to Rule 14.1(b) as regards to purchases totalling, in the aggregate, more than 1% in any 6 month period following the shareholders' meeting.

2. Offeror with over 49%

Where, as a result of the implementation of the proposals, the offeror hold over 49%, they are free to purchase any number of shares, subject to Notes 3 and 4 below.

3. Concert party group

In the case of a concert party group, Council will also look at the position of each individual member. Thus, a member holding under 30% will be entitled to make acquisitions taking his total holding to just under 30% without triggering a Rule 14 obligation whilst a member holding between 30% and 49% will be permitted to purchase no more than 1% in any 6 month period without triggering a similar obligation. Notwithstanding the foregoing, purchases by individual members of a concert party group holding 49% or less have to be kept within the aggregate total permitted for the group as a whole as set out in Note 1 above.

4. Switching between members of a concert party group

The Council must be consulted before any switch takes place; however, acquisitions made by one member of a concert party from another will generally be permitted to the extent that no significant change in the nature of the concert party is thereby affected. The Council will take into account the factors stated in Note 4 on Rule 14.1 in examining proposals for such switching.

APPENDIX 2
SHARE BUY-BACK GUIDANCE NOTE

(See Note 6 of Notes on Dispensation from Rule 14)

1 Increases in percentage shareholding deemed to be acquisitions

When a company buys back its shares, any resulting increase in the percentage of voting rights held by a shareholder and persons acting in concert with him will be treated as an acquisition for the purpose of Rule 14. Consequently, a shareholder or group of shareholders acting in concert could obtain or consolidate effective control of the company and become obliged to make an offer under Rule 14. The Council should be consulted at the earliest opportunity as to whether an obligation to make an offer would arise.

2 A shareholder not acting in concert with the directors

A shareholder, who is not acting in concert with the directors, will not be required to make an offer under Rule 14 if, as a result of a company buying back its own shares, the voting rights of the shareholder in the company would increase to 30% or more, or, if the shareholder holds between 30% and 50% of the company's voting rights, would increase by more than 1% in any period of 6 months, as a result of the company buying back its shares. Such a shareholder need not abstain from voting on the resolution to authorise the share buy-back, unless so required under the Companies Act, e.g. for a shareholder whose shares are to be bought via a selective buy-back by an unlisted public company.

3 Directors and persons acting in concert with them

(a) Listed companies

For a market acquisition under Section 76E of the Companies Act or an off-market acquisition on an equal access scheme under Section 76C of the Companies Act by a listed company, directors and persons acting in concert with them will be exempted from the requirement to make an offer under Rule 14, subject to the following conditions:-

- (i) the circular to shareholders on the resolution to authorise a buy-back to contain advice to the effect that by voting for the buy-back resolution, shareholders are waiving their right to a general offer at the required price from directors and parties acting in concert with them who, as a result of the company buying back its shares, would increase their voting rights to 30% or more, or, if they together hold between 30% and 50% of the company's voting rights, would increase their voting rights by more than 1% in any period of 6 months; and the names of such directors and persons acting in concert with them, their voting rights at the time of the resolution and after the proposed buy-back to be disclosed in the same circular;
- (ii) the resolution to authorise a share buy-back to be approved by a majority of those shareholders present and voting at the meeting on a poll who could not become obliged to make an offer as a result of the share buy-back;
- (iii) directors and/or persons acting in concert with them to abstain from voting for and/or recommending shareholders to vote in favour of the resolution to authorise the share buy-back;
- (iv) within 7 days after the passing of the resolution to authorise a buy-back, each of the directors to submit to the Council a duly signed form as prescribed by the Council;
- (v) directors and/or persons acting in concert with them not to have acquired and not to acquire any shares between the date on which they know that the announcement of the share buy-back proposal is imminent and the earlier of:-
 - the date on which the authority of the share buy-back expires; and
 - the date on which the company announces it has bought back such number of shares as authorised by shareholders at the latest general meeting or it has decided to cease buying back its shares, as the case may be,

if such acquisitions, taken together with the buy-back, would cause their aggregate voting rights to increase to 30% or more; and

(v) directors and/or persons acting in concert with them, together holding between 30% and 50% of the company's voting rights, not to have acquired and not to acquire any shares between the date on which they know that the announcement of the share buy-back proposal is imminent and the earlier of:-

- the date on which the authority of the share buy-back expires; and
- the date on which the company announces it has bought back such number of shares as authorised by shareholders at the latest general meeting or it has decided to cease buying back its shares, as the case may be,

if such acquisitions, taken together with the buy-back, would cause their aggregate voting rights to increase by more than 1% in the preceding 6 months.

It follows that where the aggregate voting rights held by a director and persons acting in concert with him increase by more than 1% solely as a result of the share buy-back and none of them has acquired any shares during the relevant period defined above, then such director and/or persons acting in concert with him would be eligible for Council's exemption from the requirement to make a general offer under Rule 14, or where such exemption had been granted, would continue to enjoy the exemption.

(b) Unlisted public companies

For a selective off-market acquisition under Section 76D of the Companies Act or an off-market acquisition on an equal access scheme under Section 76C of the Companies Act by an unlisted public company, any exemption from the requirement to make an offer under Rule 14 granted by the Council

to directors and persons acting in concert with them will be subject to the following conditions:-

- (i) the notice to shareholders on the resolution to authorise a buy-back to contain advice to the effect that by voting for the buy-back resolution, shareholders are waiving their right to a general offer at the required price from directors and parties acting in concert with them who, as a result of the company buying back its shares, would increase their voting rights to 30% or more, or, if they together hold between 30% and 50% of the company's voting rights, would increase their voting rights by more than 1% in any period of 6 months; and the names of such directors and persons acting in concert with them, their voting rights at the time of the resolution and after the proposed buy-back to be disclosed to shareholders in the same notice;
- (ii) the resolution to authorise a share buy-back to be approved by a simple three-fourths majority, as the case may be, of those shareholders present and voting at the meeting on a poll who could not become obliged to make an offer as a result of the share buy-back;
- (iii) directors and/or persons acting in concert with them to abstain from voting for and/or recommending shareholders to vote in favour of the resolution to authorise the share buy-back;
- (iv) directors and/or persons acting in concert with them not to have acquired and not to acquire any shares between the date on which they know that the announcement of the share buy-back proposal is imminent and the earlier of:-
 - the date on which the authority of the share buy-back expires; and
 - the date on which the company announces it has bought back such number of shares as authorised by shareholders at the latest general meeting or it has decided to cease buying back its shares, as the case may be,

if such acquisitions, taken together with the buy-back, would cause their aggregate voting rights to increase to 30% or more; and

(v) directors and/or persons acting in concert with them, together holding between 30% and 50% of the company's voting rights, not to have acquired and not to acquire any shares between the date on which they know that the announcement of the share buy-back proposal is imminent and the earlier of:-

- the date on which authority of the share buy-back expires; and
- the date on which the company announces it has bought back such number of shares as authorised by shareholders at the latest general meeting or it has decided to cease buying back its shares, as the case may be,

if such acquisitions, taken together with the buy-back, would cause their aggregate voting rights to increase by more than 1% in the preceding 6 months.

It follows that where the aggregate voting rights held by a director and persons acting in concert with him increase by more than 1% solely as a result of the share buy-back and none of them has acquired any shares during the relevant period defined above, then such director and/or persons acting in concert with him would be eligible for Council's exemption from the requirement to make a general offer under Rule 14, or where such exemption had been granted, would continue to enjoy the exemption.

NOTE ON SECTION 3

Requirement for directors and their concert parties to make an offer

If directors and parties acting in concert with them could become obliged to make an offer under Rule 14 as a result of a company's share buy-back and an exemption from the offer requirement is not granted or such exemption granted is subsequently invalidated, an obligation to make an offer will arise after the company has bought

back the relevant number of shares which are deemed cancelled on purchase or when the exemption is invalidated, as the case may be.

4 Consideration

For directors and parties acting in concert with them, the offer must be in cash or be accompanied by a cash alternative at the higher of:

- (a) the highest price paid by the directors and/or persons acting in concert with them for the company's shares in the preceding 6 months, or
- (b) the highest price paid by the company for its own shares in the preceding 6 months.

5 Validity and expiry of exemption

An exemption granted under this Rule (whether or not voting shares have in fact been bought back by a company) will be valid only for such buy-back authority pursuant to a resolution approved by shareholders at a general meeting. The exemption will expire at the earlier of:-

- (a) the date such authority for the share buy-back expires under Section 76C (for off-market acquisition on equal access scheme), Section 76D (for selective off-market acquisition) and Section 76E (for market acquisition) of the Companies Act; or
- (b) when the company has bought back such number of shares as authorised by shareholders at the latest general meeting or when the company has decided to cease buying back its shares, as the case may be.

6 Cessation of buy-back

- (a) Companies which have decided to cease buying back their shares before they have purchased such number of shares as authorised by shareholders at the latest general meeting should promptly inform their shareholders of such cessation. This will assist shareholders in determining whether they can

buy more shares without incurring an obligation to make an offer under Rule 14.

- (b) Where a director and his concert parties held in aggregate less than 30% of the voting rights of the company immediately prior to the buy-back

If a company has bought back such number of its shares as authorised by its shareholders at the latest general meeting or has ceased to buy back its shares and the aggregate voting rights held by the director and his concert parties at such time have increased to 30% or more as a result of the buy-back, the director and his concert parties will incur a bid obligation for the company if they acquire additional voting rights in the company (other than as a result of the company's share buy-back) before the date of the company's next annual general meeting is or is required to be held.

If a company has ceased to buy back its shares and the aggregate voting rights held by the director and his concert parties at the such time are less than 30%, the director and his concert parties will incur a general offer obligation for the company if they acquire additional voting rights (other than as a result of the company's share buy-back) that cause them to hold 30% or more of the voting rights of the company.

- (c) Where a director and his concert parties held in aggregate not less than 30% but not more than 50% of the voting rights of the company immediately prior to the buy-back

If a company has bought back such number of its shares as authorised by its shareholders at the latest general meeting or has ceased to buy back its shares and the aggregate voting rights held by the director and his concert parties at such time have increased by 1% or more as a result of the buy-back, the director and his concert parties will incur a bid obligation for the company if they acquire additional voting rights in the company (other than as a result of the company's share buy-back) before the date of the company's next annual general meeting is or is required to be held.

If a company has ceased to buy back its shares and the increase in the voting rights held by the director and his concert parties as a result of the company repurchasing its shares at such time is less than 1%, the director and his concert parties may acquire further voting rights in the company. However,

any increase in the director's and his concert parties' percentage voting rights as a result of the company's share repurchase will be taken into account together with any voting rights acquired by the director and his concert parties (by whatever means) in determining whether the director and his concert parties have increased their aggregate voting rights in the company by more than 1% in any 6-month period.

7 Acquisitions of shares after the buy-back

Shareholders will be subject to the provisions of Rule 14 if they acquire voting shares after the company's share buy-back. For this purpose, an increase in the percentage of voting rights as a result of the share buy-back will be taken into account in determining whether a shareholder and persons acting in concert with him have increased their voting rights by more than 1% in any period of 6 months.

8 Share buy-backs during the offer period

(a) Buy-backs by the offeree company

During the course of an offer or if the board of the offeree company has reason to believe that a bona fide offer is imminent, no buy-back by the offeree company of its own shares may, except pursuant to an agreement authorised in advance by shareholders under Section 76D of the Companies Act, be made without the approval of the shareholders at a general meeting which should be held during the offer period or after the board of the offeree company has reason to believe that a bona fide offer is imminent. Directors and persons acting in concert with them are not to vote for and/or recommend shareholders to vote in favour of such a resolution. However, the Council will normally waive the requirement for such shareholders' approval if the offeror has informed the Council in writing that the offeror has no objection to the offeree company buying back its shares during the offer period.

(b) Buy-backs by the offeror or its concert parties

During an offer where the consideration includes securities of the offeror or any body corporate, the offeror and its concert parties may not engage in share repurchases of those securities, until the offeror abandons its intention to conduct the offer or the offer period expires, whichever is later.

NOTES ON SECTION 8

1. Withdrawal of offer

An offer made other than under Rule 14 may be subject to the condition that such an offer may be withdrawn if, at any time during the offer period but prior to the posting of the offer document, the offeree company passes a resolution in a general meeting to buy back its shares during the offer period. The offeror cannot invoke this condition if he and/or parties acting in concert with him have shareholdings in the offeree company and he and/or they have voted for the resolution to authorise the share buy-back at that general meeting.

2. Disclosure of dealings

For the purpose of Rule 12, purchase of shares includes the purchase of its own shares by the offeree company. The total amount of shares of the relevant class remaining in issue following the share buy-back must also be disclosed.

3. Offeror document

The offeror document must state (in the case of a securities exchange offer only) the amount of the relevant securities of the offeror which the offeror has purchased during the period commencing 6 months prior to the offer period and ending with the latest practicable date prior to the posting of the offer document and details of such purchases, including the total number of shares purchased, the purchase price per share or the highest and lowest prices paid for the purchases, where relevant, and the total consideration paid for the purchases.

4. Offeree circular

The offeree board's circular advising shareholders on an offer must state the amount of the relevant securities of the offeree company which the offeree company has purchased during the period commencing 6 months prior to the offer period and ending with the latest practicable date prior to the posting of the circular, and details of such buy-back including the total number of shares purchased, the purchase price per share or the highest and lowest prices paid for the purchases, where relevant, and the total consideration paid for the purchases.

APPENDIX 3
GUIDANCE NOTE ON THE MERGER PROCEDURES OF THE COMPETITION
COMMISSION OF SINGAPORE (“CCS”)

(See Rule 14.2(c) and Rule 15.1)

1 Introduction

An offer which is subject to the Singapore Code on Take-overs and Mergers (the “Code”) may also fall within the ambit of the merger provisions of the Competition Act (Chapter 50B) (the “Act”). In such cases, parties to the take-over offer will need to comply with the requirements under both the Code and the Act.

2 Pre-conditional Offers

To comply with both the Code and the Act, an offeror may announce:

- (a) a pre-conditional share purchase or put and call option agreement which, when the pre-conditions are fulfilled, will result in the offeror triggering a mandatory offer; or
- (b) a pre-conditional voluntary offer,

where one of the pre-conditions includes the condition that the CCS issues a favourable decision on the offer permitting it to proceed.

3 Conditional Offers

In the case where an offeror announces an offer without prior clearance by the CCS by way of a pre-conditional offer as described above, the following apply:

Mandatory offers

- (a) A mandatory offer under Rule 14 is required to be subject (in addition to the acceptance condition) to the condition that the offer lapses when the CCS (i) makes a decision to proceed to a Phase 2 review or (ii) issues a direction that prohibits the offeror from acquiring voting rights in the offeree company, before the first closing date or the date when the offer becomes or is declared unconditional as to acceptances, whichever is the later (the “Relevant Condition”).

- (b) In the event the mandatory offer lapses pursuant to the Relevant Condition, the obligation under Rule 14 does not lapse. Accordingly, if the CCS subsequently issues a favourable decision, the mandatory offer must be reinstated on the same terms and at not less than the same price as soon as practicable. On the other hand, if the CCS issues an unfavourable decision prohibiting the mandatory offer, the Council will consider whether, if there is no order to such effect by the CCS, to require the offeror to reduce the percentage of shares carrying voting rights in which it and persons acting in concert with it control to below 30% or a level which is less than the 1% limit on acquisitions in any 6-month period before the mandatory offer was incurred. The Council would normally expect an offeror whose offer has lapsed pursuant to the Relevant Condition to proceed with all due diligence before the CCS. However, if, with the consent of the Council and within a limited period, the offeror reduces the percentage of shares carrying voting rights in which it and persons acting in concert with it control to below 30%, or to a level which is less than the 1% limit on acquisitions in any 6-month period before the mandatory offer was incurred, the Council will regard the obligation as having lapsed.
- (c) During the Phase 2 review by the CCS, the offeror and persons acting in concert with it may not acquire any further shares in the offeree company.

Voluntary offers

- (d) A voluntary offer is required to include the Relevant Condition as one of the conditions to the offer. In addition, the voluntary offer may be subject to the condition that the CCS issues a favourable decision during the Phase 1 review to allow the voluntary offer to proceed. In this regard, notwithstanding Rule 15.1 (including Notes 1 and 2 on Rule 15.1), the offeror may state that such favourable decision must be on terms satisfactory to it.
- (e) In the event the CCS issues a favourable decision permitting the voluntary offer to proceed following the lapse of the voluntary offer pursuant to the Relevant Condition, the offeror may, notwithstanding Rule 33.1(a), announce a new offer within 21 days of the date of issue of such favourable decision. In any case, a new offer period will be deemed to begin following the date of issue of the favourable decision. If there is no announcement of a new offer subsequently, this offer period will last until either the end of 21 days or the

day the offeror announces that it does not intend to make an offer, whichever is earlier.

- (f) When the new offer period begins upon the CCS' clearance of an offer, the 3-month period referred to in Rule 15.2 will be deemed to be the period between the date the Relevant Condition is invoked and the date of issue of the favourable decision by the CCS.

In the case of both mandatory and voluntary offers, the effect of lapsing an offer pursuant to the Relevant Condition means not only that the offer will cease to be capable of further acceptance but also that shareholders and the offeror will thereafter cease to be bound by prior acceptances. In addition, (i) General Principle 7 and Rule 5 on frustration of offers by an offeree board, and (ii) Rule 9.2 on information to competing offeror will continue to apply until the CCS issues a decision on the offer. For the purposes of Rule 9.2, the Council will normally deem the offeror whose offer is under Phase 1 or Phase 2 review to be a bona fide potential offeror. In the event that there is a delay in the Phase 1 review, the Council may consider extending the offer timetable by deeming "Day 39" (Rule 22.8) to be the second day following the announcement of a decision on the Phase 1 review by the CCS, with consequent changes to the Final Day Rule (Rule 22.9).

SCHEDULE 1
FEES LEVIED FOR LODGEMENT OF DOCUMENT

(See Rule 34)

1 Fees for lodgement of offer document

The amount of fees payable will depend on the value of the offer according to the table below:-

| Value of offer (\$ million) | Charge (\$) |
|--|--------------------|
| Less than 15 | 3,000 |
| Over 15 to 30 | 15,000 |
| Over 30 to 50 | 30,000 |
| Over 50 to 100 | 40,000 |
| Over 100 to 250 | 70,000 |
| Over 250 | 100,000 |

2 Fees for lodgement of Whitewash circular

A fee of \$2,000 is payable for the lodgement of a Whitewash circular.

3 Value of Offer

For the purposes of this Schedule, value of offer refers to:-

- (a) where the shares which are the subject of the offer are to be acquired for cash, the total amount of such cash; and
- (b) where the shares which are the subject of the offer are to be acquired for listed securities, the value of such listed securities established by reference to the volume weighted average traded price (of the listed securities on the date of the offer announcement).

The Council should be consulted in the event the shares which are the subject of the offer are to be acquired for a consideration other than cash or listed securities.

In the case where the offer document contains alternative offers to the same offeree company, or contains 2 or more offers of different values to different offeree

companies, the value of the offer used to determine the fee to be levied shall be the lower or lowest value.

4 Payment

Fees must be paid by cheque made payable to “The Monetary Authority of Singapore” at the time of lodgement of the offer document. Subsequently, on the date of posting of any written notification of a revised offer to offeree shareholders, there shall be payable to the Monetary Authority of Singapore a fee equal to the difference between the fee previously paid based on the value of the offer determined on lodgement of the offer document (including any revisions other than the current one) and the fee which would be payable based on the revised offer.