

Reprint  
as at 31 March 2017



## Takeovers Code Approval Order 2000 (SR 2000/210)

Michael Hardie Boys, Governor-General

### Order in Council

At Wellington this 16th day of October 2000

Present:

His Excellency the Governor-General in Council

Pursuant to section 28(3) of the Takeovers Act 1993, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, and on the advice of the Minister makes the following order.

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#### Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This order is administered by the Ministry of Business, Innovation, and Employment.**

## Order

**1 Title**

This order is the Takeovers Code Approval Order 2000.

**2 Approval of takeovers code**

The takeovers code recommended to the Minister by the Takeovers Panel and set out in the Schedule is approved.

## Schedule Takeovers code

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## 1 Title

This code is the Takeovers Code.

## 2 Commencement

This code comes into force on 1 July 2001.

## Part 1 Preliminary provisions

### *Interpretation*

## 3 Interpretation

- (1) In this code, unless the context otherwise requires,—
- acquisition notice** has the meaning set out in rule 50
  - Act** means the Takeovers Act 1993
  - code company** has the meaning given to it in rule 3A
  - company** has the same meaning as in section 2(1) of the Companies Act 1993
  - compulsory sale** has the meaning set out in rule 50
  - control**, in relation to a voting right, means having, directly or indirectly, effective control of the voting right; and **controller** has a corresponding meaning



**custodian** means a person who, in the ordinary course of business, holds financial products directly or indirectly on behalf of the beneficial owner of the financial products

**derivative** has the meaning set out in section 8(4) of the Financial Markets Conduct Act 2013

**despatch notice** means the notice referred to in rule 45

**director**,—

- (a) in relation to a company, means a person occupying the position of a director of the company, by whatever name called; and
- (b) in relation to a partnership (other than a special partnership or limited partnership), means a partner; and
- (c) in relation to a special partnership or limited partnership, means a general partner; and
- (d) in relation to a body corporate or unincorporate not referred to in paragraphs (a) to (c), means a person occupying a position in the body corporate or unincorporate that is comparable with that of a director of a company; and
- (e) in relation to any other person, means that person; and
- (f) includes a person in accordance with whose directions or instructions a person referred to in paragraphs (a) to (e) may be required or is accustomed to act in respect of the performance or exercise of duties or powers as, or comparable to those of, a director

**dominant owner** has the meaning set out in rule 50

**engaging in conduct** means doing or refusing to do an act, and includes,—

- (a) omitting to do an act; or
- (b) making it known that an act will or will not be done

**entitled voter** has the meaning set out in rule 10(1A)

**equity security**—

- (a) means any interest in or right to (whether carrying voting rights or not)—
  - (i) a share in a company or other body corporate; or
  - (ii) the share capital of a company or other body corporate; and
- (b) includes an option or right to acquire any such interest or right unless that option or right is exercisable only with the agreement of the issuer; but
- (c) does not include redeemable financial products that are redeemable only for cash

**financial product**, in relation to a code company,—

- (a) means—
- (i) an equity security within the meaning of section 8 of the Financial Markets Conduct Act 2013, whether or not the security carries voting rights;
  - (ii) a debt security, within the meaning of section 8 of the Financial Markets Conduct Act 2013, that carries the right to vote at any annual or general meeting of the code company;
  - (iii) a managed investment product, within the meaning of section 8 of the Financial Markets Conduct Act 2013, that carries the right to vote at any annual or general meeting of the code company; and
- (b) includes a financial product that is convertible, at the option of the product holder, into a financial product of the type referred to in paragraph (a)(i), (ii), or (iii)

**full offer** means an offer under rule 8

**further required voting securities** has the meaning set out in rule 12(3)

**independent adviser** means an adviser whom the Panel considers is independent and who is approved by the Panel for the purposes of this code

**licensed market** has the meaning set out in section 6(1) of the Financial Markets Conduct Act 2013

**licensed market operator** has the meaning set out in section 6(1) of the Financial Markets Conduct Act 2013

**listed issuer** has the meaning set out in section 6(1) of the Financial Markets Conduct Act 2013

**minimum acceptance condition** means—

- (a) a condition referred to in rule 23; or
- (b) any condition to which an offer is subject that relates to the offeror receiving a specified minimum level of acceptances in respect of voting securities

**offer** means an offer to which this code applies for voting securities and any other financial products to which the offer is required to extend under this code

**offer document** means the offer and all accompanying information referred to in rule 44

**offer period** means the period referred to in rules 24 to 24B

**offeree** means,—

- (a) before an offer is made, a person who holds financial products in a target company that has received a takeover notice relating to those financial products; and
- (b) after an offer is made, a person to whom an offer is made

**offeror** means a person who has made an offer or a person who has sent a takeover notice

**ordinary resolution**, in relation to a code company, means a resolution that is passed at a meeting of the holders of voting securities of the code company by a simple majority of the votes of those holders who voted on the resolution

**outstanding securities** has the meaning set out in rule 50

**outstanding security holders** has the meaning set out in rule 50

**Panel** means the Takeovers Panel established under Part 1 of the Act

**partial offer** means an offer under rule 9

**quoted**, in relation to financial products of a person, means financial products of the person that are approved for trading on a licensed market (and, to avoid doubt, financial products do not cease to be quoted merely because trading in those financial products is suspended)

**record date**, in relation to an offer, means the latest date specified by the offeror under rule 43A(1)

**related company** has the same meaning as in section 2(3) of the Companies Act 1993

**relevant interest** has the meaning set out in sections 235 to 238 of the Financial Markets Conduct Act 2013

**specified holder** has the meaning set out in rule 14A

**specified percentage** means the percentage calculated in accordance with rule 9(6)

**specified person** has the meaning set out in rule 14A

**stock exchange** has the meaning set out in section 2(1) of the Companies Act 1993

**subsidiary** has the same meaning as in sections 5 to 8 of the Companies Act 1993

**surplus acceptance voting securities** has the meaning set out in rule 12(3)

**takeover notice** means the notice referred to in rule 41

**target company** means a code company—

- (a) whose voting securities are the subject of an offer; or
- (b) that has received a takeover notice

**target company statement** means the statement referred to in rule 46

**target security** has the meaning set out in rule 14A

**underlying** has the meaning set out in section 6(1) of the Financial Markets Conduct Act 2013

**variation notice** means the notice referred to in rule 28

**voluntary sale** has the meaning set out in rule 50

**voting period** has the meaning set out in rule 10(1A)

**voting right** means a currently exercisable right to cast a vote at meetings of shareholders of a company or financial product holders of another body corporate, not being a right to vote that is exercisable only in 1 or more of the following circumstances:

- (a) during a period in which a payment or distribution (or part of a payment or distribution) in respect of the financial product that confers the voting right is in arrears or some other default exists:
- (b) on a proposal that affects rights attached to the financial product that confers the voting right:
- (c) on a proposal to put the company or body corporate into liquidation or voluntary administration:
- (d) on a proposal for the disposal of the whole, or a material part, of the property, business, and undertaking of the company or body corporate:
- (e) during the liquidation or voluntary administration of the company or body corporate:
- (f) in respect of a special, immaterial, or remote matter that is inconsequential to control of the company or body corporate

**voting security** means an equity security that confers a voting right.

- (2) If, under this code, the time within which or the day on which any thing is to be done expires or falls on a day other than a working day as defined in section 2 of the Companies Act 1993, the time so limited is extended to, and such thing may be done, on the next day that is a working day as so defined.
- (3) *[Revoked]*
- (4) A requirement in this code for an offeror (including, for the purposes of this rule, a dominant owner under Part 7 of this code) to send or pay or provide consideration is fulfilled if the offeror—
  - (a) vests the consideration in the offeree (for example, by electronically vesting financial products or electronically transferring money); and
  - (b) sends or provides written notice to the offeree that this has been done.

Schedule rule 3(1) **code company**: replaced, on 31 August 2012, by section 8(1) of the Takeovers Amendment Act 2012 (2012 No 68).

Schedule rule 3(1) **custodian**: inserted, on 1 June 2013, by regulation 4(1) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 3(1) **custodian**: amended, on 1 December 2014, by regulation 4(1) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule rule 3(1) **derivative**: inserted, on 1 December 2014, by regulation 4(2) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule rule 3(1) **director** paragraph (b): amended, on 1 June 2013, by regulation 4(2)(a) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 3(1) **director** paragraph (c): amended, on 1 June 2013, by regulation 4(2)(a) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 3(1) **director** paragraph (d): replaced, on 3 July 2014, by section 32(3) of the Companies Amendment Act 2014 (2014 No 46).

Schedule rule 3(1) **director** paragraph (d): amended, on 1 December 2014, by regulation 4(3) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule rule 3(1) **director** paragraph (f): replaced, on 3 July 2014, by section 32(4) of the Companies Amendment Act 2014 (2014 No 46).

Schedule rule 3(1) **engaging in conduct**: inserted, on 25 October 2006, by section 27(2) of the Takeovers Amendment Act 2006 (2006 No 48).

Schedule rule 3(1) **entitled voter**: inserted, on 1 June 2013, by regulation 4(4) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 3(1) **equity security** paragraph (a): replaced, on 1 June 2013, by regulation 4(5) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 3(1) **equity security** paragraph (c): amended, on 1 December 2014, by regulation 4(4) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule rule 3(1) **financial product**: inserted, on 1 December 2014, by regulation 4(2) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule rule 3(1) **licensed market**: inserted, on 1 December 2014, by regulation 4(2) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule rule 3(1) **licensed market operator**: inserted, on 1 December 2014, by regulation 4(2) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule rule 3(1) **listed**: revoked, on 1 December 2014, by regulation 4(5) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule rule 3(1) **listed issuer**: inserted, on 1 December 2014, by regulation 4(2) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule rule 3(1) **minimum acceptance condition**: inserted, on 1 December 2014, by regulation 4(2) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule rule 3(1) **offer**: amended, on 1 December 2014, by regulation 4(6) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule rule 3(1) **offer period**: replaced, on 1 July 2007, by regulation 4(2) of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 3(1) **offeree**: replaced, on 1 June 2013, by regulation 4(6) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 3(1) **offeree** paragraph (a): amended, on 1 December 2014, by regulation 4(7) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule rule 3(1) **offeror**: replaced, on 1 June 2013, by regulation 4(7) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 3(1) **quoted**: inserted, on 1 December 2014, by regulation 4(2) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule rule 3(1) **record date**: replaced, on 1 July 2007, by regulation 4(3) of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 3(1) **registered exchange**: revoked, on 1 December 2014, by regulation 4(5) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule rule 3(1) **registered exchange's securities market**: revoked, on 1 December 2014, by regulation 4(5) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule rule 3(1) **relevant interest**: inserted, on 1 December 2014, by regulation 4(2) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule rule 3(1) **specified holder**: inserted, on 1 June 2013, by regulation 4(8) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 3(1) **specified percentage**: amended, on 1 June 2013, by regulation 4(9) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 3(1) **specified person**: inserted, on 1 June 2013, by regulation 4(8) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 3(1) **stock exchange**: inserted, on 1 December 2014, by regulation 4(2) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule rule 3(1) **target security**: inserted, on 1 June 2013, by regulation 4(10) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 3(1) **underlying**: inserted, on 1 December 2014, by regulation 4(2) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule rule 3(1) **voting period**: inserted, on 1 June 2013, by regulation 4(10) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 3(1) **voting right**: replaced, on 1 June 2013, by regulation 4(11) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 3(1) **voting right**: amended, on 1 December 2014, by regulation 4(8) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule rule 3(1) **voting right** paragraph (a): amended, on 1 December 2014, by regulation 4(9) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule rule 3(1) **voting right** paragraph (b): amended, on 1 December 2014, by regulation 4(9) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule rule 3(3): revoked, on 31 August 2012, by section 8(2) of the Takeovers Amendment Act 2012 (2012 No 68).

Schedule rule 3(4): inserted, on 1 June 2013, by regulation 4(12) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 3(4)(a): amended, on 1 December 2014, by regulation 4(10) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

### 3A Meaning of code company

- (1) **Code company** means a company that—
  - (a) is a listed issuer that has financial products that confer voting rights quoted on a licensed market; or
  - (b) was within paragraph (a) at any time during the period of 12 months before a date or the occurrence of an event referred to in this code; or
  - (c) has 50 or more shareholders and 50 or more share parcels.
- (2) However, if, as a result of a transaction or an event regulated under this code, a company that previously satisfied subclause (1)(c) ceases to have 50 or more shareholders and 50 or more share parcels, that company continues to be a code company for the purposes of Part 7.
- (3) In this rule, **shareholder** means a shareholder holding a financial product that confers a voting right.
- (4) The definition of **code company** in this rule specifies the period of time to be specified by the code for the purposes of the definition of code company in the Act.

Schedule rule 3A: inserted, on 31 August 2012, by section 9 of the Takeovers Amendment Act 2012 (2012 No 68).

Schedule rule 3A(1)(a): replaced, on 1 December 2014, by regulation 5(1) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule rule 3A(3): amended, on 1 December 2014, by regulation 5(2) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

#### 4 **Meaning of associate**

- (1) For the purposes of this code, a person is an **associate** of another person if—
- (a) the persons are acting jointly or in concert; or
  - (b) the first person acts, or is accustomed to act, in accordance with the wishes of the other person; or
  - (c) the persons are related companies; or
  - (d) the persons have a business relationship, personal relationship, or an ownership relationship such that they should, under the circumstances, be regarded as associates; or
  - (e) the first person is an associate of a third person who is an associate of the other person (in both cases under any of paragraphs (a) to (d)) and the nature of the relationships between the first person, the third person, and the other person (or any of them) is such that, under the circumstances, the first person should be regarded as an associate of the other person.
- (2) A director of a company or other body corporate is not an associate of that company or body corporate merely because he or she is a director of that company or body corporate.

#### 4A **Transitional, savings, and related provisions**

The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.

Schedule rule 4A: replaced, on 1 December 2014, by regulation 6 of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

*No contracting out of code*

#### 5 **No contracting out of code**

This code has effect despite any provision to the contrary in any agreement, constitution of a company or similar document relating to another body corporate, resolution of the financial product holders of a company or of any other body corporate, deed, or otherwise.

Schedule rule 5: amended, on 1 December 2014, by regulation 7 of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

## Part 2

### Fundamental rule and exceptions

#### 6 Fundamental rule

- (1) Except as provided in rule 7, a person who holds or controls—
  - (a) no voting rights, or less than 20% of the voting rights, in a code company may not become the holder or controller of an increased percentage of the voting rights in the code company unless, after that event, that person and that person's associates hold or control in total not more than 20% of the voting rights in the code company;
  - (b) 20% or more of the voting rights in a code company may not become the holder or controller of an increased percentage of the voting rights in the code company.
- (2) For the purposes of subclause (1), if—
  - (a) a person and any other person or persons acting jointly or in concert together become the holders or controllers of voting rights, that person is deemed to have become the holder or controller of those voting rights;
  - (b) a person or persons together hold or control voting rights and another person joins that person or all or any of those persons in the holding or controlling of those voting rights as associates, the other person is deemed to have become the holder or controller of those voting rights;
  - (c) voting rights are held or controlled by a person together with associates, any increase in the extent to which that person shares in the holding or controlling of those voting rights with associates is deemed to be an increase in the percentage of the voting rights held or controlled by that person.

#### 7 Exceptions to fundamental rule

A person may become the holder or controller of an increased percentage of the voting rights in a code company—

- (a) by an acquisition under a full offer (the main provisions are contained in rule 8, Parts 4 to 6, and Schedules 1 to 3);
- (b) by an acquisition under a partial offer (the main provisions are contained in rules 9 to 14, Parts 4 to 6, and Schedules 1 to 3);
- (c) by an acquisition by a person of voting securities in the code company or in any other body corporate from 1 or more other persons if the acquisition has been approved by an ordinary resolution of the code company in accordance with this code (the main provisions are contained in rules 15 and 17 to 19A);
- (d) by an allotment to a person of voting securities in the code company or in any other body corporate if the allotment has been approved by an or-



dinary resolution of the code company in accordance with this code (the main provisions are contained in rules 16 to 19B):

- (e) if—
  - (i) the person holds or controls more than 50%, but less than 90%, of the voting rights in the code company; and
  - (ii) the resulting percentage of the total voting rights in the code company that is held or controlled by the person does not exceed by more than 5 the lowest percentage of the total voting rights in the code company that was held or controlled by the person in the 12-month period ending on, and inclusive of, the date of the increase:
- (f) if the person already holds or controls 90% or more of the voting rights in the code company.

Schedule rule 7(a): amended, on 1 July 2007, by regulation 5(1) of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 7(b): amended, on 1 July 2007, by regulation 5(2) of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 7(c): amended, on 1 July 2007, by regulation 5(3)(a) of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 7(c): amended, on 1 July 2007, by regulation 5(3)(b) of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 7(d): amended, on 1 June 2013, by regulation 6 of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 7(d): amended, on 1 July 2007, by regulation 5(4)(a) of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 7(e)(ii): replaced, on 1 July 2007, by regulation 5(5) of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

### Part 3

#### Specific requirements for exceptions to fundamental rule

##### Subpart 1—Full offers

#### 8 Full offer

- (1) An offer may be made under this code for all the voting securities of the target company not already held by the offeror.
- (2) A full offer must include offers in respect of all the securities in each class of equity securities, whether voting or non-voting, of the target company (other than those that are already held by the offeror).
- (3) If there is more than 1 class of voting securities included in a full offer, the consideration and terms offered for each class of voting securities must be fair and reasonable as between the classes of voting securities.
- (4) If non-voting securities are included in a full offer, the consideration and terms offered for non-voting securities must be fair and reasonable in comparison

with the consideration and terms offered for voting securities and as between classes of non-voting securities.

## Subpart 2—Partial offers

### *General provisions*

#### **9 Partial offer**

- (1) An offer may be made under this code for less than all the voting securities of a target company.
- (2) A partial offer must be extended to all holders of voting securities of the target company other than the offeror.
- (3) If there is only 1 class of voting securities of the target company, a partial offer must be made for a specified percentage of the voting securities of the target company not already held or controlled by the offeror.
- (4) If there is more than 1 class of voting securities of the target company, a partial offer must be made for a specified percentage of the voting securities of each class not already held or controlled by the offeror, and such specified percentage must be the same percentage in respect of each class.
- (5) The consideration and terms offered for each class of voting securities of the target company must be fair and reasonable as between the classes of voting securities.
- (6) For the purposes of this rule and this code, the **specified percentage** of the voting securities of each class under offer must be calculated as follows:

$$\frac{\text{number of voting securities of the particular class sought by offeror}}{\text{number of voting securities of that class not already held or controlled by offeror}} \times 100 = \text{the specified percentage}$$

- (7) If the offeror already holds or controls voting securities of a class of voting securities included in the offer, and if the number of voting securities in that class not already held or controlled by the offeror is increased or decreased during the period that commences with the sending of the takeover notice and ends with the close of the offer period, the specified percentage is adjusted to the extent required to ensure that the maximum aggregate percentage of voting securities in that class that the offeror could hold or control following completion of the offer is the same as that which it could have held or controlled had the increase or decrease not occurred.

Schedule rule 9(6): inserted, on 1 June 2013, by regulation 7 of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 9(7): inserted, on 1 June 2013, by regulation 7 of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

**10 When offeror does not hold or control more than 50% of voting rights**

- (1) If, on the date of a partial offer, the offeror does not hold or control more than 50% of the voting rights in the target company, the partial offer must be 1 only of the following:
- (a) a partial offer for a specified percentage of the voting securities of each class not already held or controlled by the offeror that, when taken together with the voting securities already held or controlled by the offeror, confers more than 50% of the voting rights in the target company; or
  - (b) a partial offer for a specified percentage of the voting securities of each class not already held or controlled by the offeror that, when taken together with the voting securities already held or controlled by the offeror, confers 50% or less of the voting rights in the target company if approval is obtained in accordance with the following provisions:
    - (i) the takeover notice and the offer must include a statement that approval is sought under rule 10 of the Takeovers Code and that the offer is conditional on approval being obtained;
    - (ii) the offer must be accompanied by a separate voting document that provides for entitled voters to approve or object to the offer conferring on the offeror the percentage of voting rights that the offeror would hold or control in the target company after successful completion of the offer;
    - (iii) the offer and the voting document must specify the voting period;
    - (iv) approval under this rule is obtained if the entitled voters who approve hold more voting rights in the target company than are held by entitled voters who object;
    - (v) only entitled voters may vote;
    - (vi) for an approval or objection to be valid, the completed voting document must be received by the target company or its agent before the end of the voting period.

(1A) For the purposes of this rule and this code,—

**entitled voters** are—

- (a) those persons recorded on the target company's financial products register (as at the end of the voting period) as holders of voting securities to which the offer relates; but
- (b) not the offeror or its associates

**voting period** is a period that commences with the date of the offer and ends with a date that is—

- (a) no later than 7 days before the date first specified in the offer (under rule 24(2)) as the end of the offer period; and

- (b) at least 14 days after the date on which the offer document is sent in accordance with rule 43B.
- (2) A target company, or its agent, that receives an approval or objection before the expiration of the voting period must, if requested by the offeror, send a copy of the approval or objection to the offeror within 2 days of its receipt.
- Schedule rule 10(1): amended, on 1 July 2007, by regulation 6(1) of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).
- Schedule rule 10(1)(a): replaced, on 1 July 2007, by regulation 6(2) of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).
- Schedule rule 10(1)(b): replaced, on 1 July 2007, by regulation 6(2) of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).
- Schedule rule 10(1)(b)(ii): replaced, on 1 June 2013, by regulation 8(1) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).
- Schedule rule 10(1)(b)(iii): replaced, on 1 June 2013, by regulation 8(1) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).
- Schedule rule 10(1)(b)(iv): replaced, on 1 June 2013, by regulation 8(1) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).
- Schedule rule 10(1)(b)(v): replaced, on 1 June 2013, by regulation 8(1) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).
- Schedule rule 10(1)(b)(vi): inserted, on 1 June 2013, by regulation 8(1) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).
- Schedule rule 10(1A): inserted, on 1 June 2013, by regulation 8(2) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).
- Schedule rule 10(1A) **entitled voters** paragraph (a): amended, on 1 December 2014, by regulation 8 of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).
- Schedule rule 10(2): amended, on 1 June 2013, by regulation 8(3) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

### *Excess acceptances*

#### **11 Excess acceptances: application**

If a partial offer is accepted in respect of more voting securities than those sought by the offeror, rules 12 and 13 apply.

Schedule rule 11: amended, on 1 December 2014, by regulation 9 of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

#### **12 Excess acceptances: 1 class of voting securities**

- (1) If there is only 1 class of voting securities included in the partial offer, the offeror must take up from each offeree the lesser of—
- (a) the number of the offeree's securities that represents the specified percentage of the voting securities held by the offeree; or
  - (b) the number of securities in respect of which the offeree has accepted the offer.
- (2) If the number of voting securities that the offeror takes up under subclause (1) is less than the number of voting securities sought by the offeror under the

offer, the offeror must acquire the further required voting securities by taking up, from each offeree with surplus acceptance voting securities, voting securities bearing the same proportion to the offeree's surplus acceptance voting securities as the further required voting securities bear to the total surplus acceptance voting securities.

- (3) For the purposes of this rule and rule 13,—

**further required voting securities** means the balance of voting securities required by an offeror

**surplus acceptance voting securities** means the voting securities in respect of which an offer has been accepted, but that have not been taken up under sub-clause (1).

### 13 Excess acceptances: more than 1 class of voting securities

If there is more than 1 class of voting securities included in the partial offer,—

- (a) rule 12 applies in respect of each class of voting securities separately; and
- (b) if the application of paragraph (a) does not provide the offeror with the voting securities sought by the offeror under the partial offer, rule 12(2) and (3) applies (with any necessary modifications) in relation to the—
  - (i) total remaining surplus acceptance voting securities of all classes; and
  - (ii) total remaining further required voting securities of all classes needed to bring the voting rights acquired under the partial offer up to the total voting rights conferred by the voting securities sought under the partial offer; and
- (c) if the voting securities confer different voting rights as between classes, the number of surplus acceptance voting securities taken up from each offeree under paragraph (b) must be calculated by reference to the—
  - (i) voting rights conferred by each remaining surplus acceptance voting security; and
  - (ii) voting rights conferred by the total remaining surplus acceptance voting securities; and
  - (iii) remaining voting rights sought under the partial offer.

### 14 Voting securities subject to disposition

The number of voting securities that may be disposed of by an offeree under a partial offer in accordance with the terms of the offer and this code must be determined by reference to the number of voting securities of each class under offer held by the offeree at the expiration of the offer period, as recorded in the financial products register of the target company.

Schedule rule 14: amended, on 1 December 2014, by regulation 10 of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

*Scaling excess acceptances when target securities held on behalf of another*

Heading: inserted, on 1 June 2013, by regulation 9 of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

**14A Interpretation of rules 14A to 14E**

For the purposes of this rule and rules 14B to 14E,—

**specified holder** means an offeree under a partial offer who holds target securities on behalf of more than 1 specified person, regardless of—

- (a) whether the holdings are direct or indirect;
- (b) whether the specified holder is a custodian or not;
- (c) the particular arrangements between the specified holder and specified persons

**specified person** means a person on whose behalf a specified holder holds target securities

**target security** means a voting security in the target company.

Schedule rule 14A: inserted, on 1 June 2013, by regulation 9 of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

**14B Specified holders must provide certificate**

Specified holders must, by the close of the last day of the offer period, provide a certificate that complies with rule 14D to—

- (a) the offeror; and
- (b) the person who administers the target company's share register.

Schedule rule 14B: inserted, on 1 June 2013, by regulation 9 of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

**14C Acceptance by specified holder who has not provided certificate is invalid**

An acceptance under a partial offer by a specified holder who has not provided a certificate in accordance with rule 14B is invalid.

Schedule rule 14C: inserted, on 1 June 2013, by regulation 9 of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

**14D Certificate requirements**

The certificate that a specified holder must provide in accordance with rule 14B must—

- (a) state the date of the certificate; and
- (b) include a statement that the offeree holds target securities as a specified holder on behalf of specified persons; and

- (c) state the total number and class of target securities that are held by the offeree on behalf of specified persons; and
- (d) state the number of specified persons on whose behalf the offeree holds those target securities; and
- (e) identify as **Pool A**—
  - (i) the number of specified persons on behalf of whom the specified holder has not accepted the offer, along with the number and class of target securities held by the specified holder on behalf of each such specified person; and
  - (ii) the number of specified persons on behalf of whom the specified holder has accepted the offer for the specified percentage, or any smaller percentage, of target securities held by the specified holder on behalf of each such specified person, along with the number and class of target securities that are held by the specified holder on behalf of each such specified person and to which the acceptance relates; and
- (f) identify as **Pool B** the number of specified persons who have accepted the offer in relation to more than the specified percentage of target securities that are held by the specified holder on behalf of each such specified person, along with the number and class of target securities that are held by the specified holder on behalf of each such specified person and to which the acceptance relates; and
- (g) state the total number of target securities and acceptances in each of Pool A and Pool B.

Schedule rule 14D: inserted, on 1 June 2013, by regulation 9 of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

#### **14E Offeror's obligations on receiving certificate**

An offeror who receives a certificate that complies with rule 14D must,—

- (a) in relation to Pool A, take up the target securities from the specified holder (not from the specified person); and
- (b) in relation to Pool B, take up the target securities from the specified holder (not from the specified person) as if each specified person in pool B were an offeree in relation to which the offer was accepted, in accordance with rules 12 and 13.

Schedule rule 14E: inserted, on 1 June 2013, by regulation 9 of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

### Subpart 3—Acquisitions and allotments

#### *Notice of meeting*

#### **15 Notice of meeting: acquisition of voting securities**

The notice of meeting sent by the code company containing the proposed resolution in respect of an acquisition of voting securities referred to in rule 7(c) must contain, or be accompanied by,—

- (a) the identity of the following:
  - (i) the person acquiring the voting securities; and
  - (ii) (if different from the person described in subparagraph (i)) any person who will become a controller of an increased percentage of voting securities in the code company as a result of the acquisition; and
  - (iii) the person disposing of the voting securities; and
- (b) particulars of the voting securities to be acquired, including—
  - (i) the number being acquired; and
  - (ii) the percentage of all voting securities that that number represents; and
  - (iii) the percentage of all voting securities that will be held or controlled by the person acquiring the voting securities after completion of the acquisition; and
  - (iv) the aggregate of the percentages of all voting securities that will be held or controlled by the person acquiring the voting securities and by that person's associates after completion of the acquisition; and
- (c) if the voting securities being acquired are voting securities of a body corporate other than the code company,—
  - (i) the number of voting securities in the code company that are held or controlled by that body corporate; and
  - (ii) the percentage of the total voting securities of the code company that that number represents; and
- (d) the consideration for the acquisition or the manner in which the consideration will be determined and when the consideration is payable; and
- (e) the reasons for the transaction; and
- (f) a statement to the effect that the acquisition, if approved, will be permitted under rule 7(c) of the Takeovers Code as an exception to rule 6 of the Takeovers Code; and
- (g) a statement by the person acquiring the voting securities setting out particulars of any agreement or arrangement (whether or not legally



enforceable) that has been, or is intended to be, entered into between the person and any other person (other than between that person and the person disposing of the voting securities in respect of the matters referred to in paragraphs (a) to (e)) relating to the acquisition, holding, or control of the voting securities to be acquired, or to the exercise of voting rights in the code company; and

- (h) the report from an independent adviser that complies with rule 18; and
- (i) the statement by the directors of the code company referred to in rule 19.

Schedule rule 15: amended, on 1 June 2013, by regulation 10(1) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 15(a): replaced, on 1 June 2013, by regulation 10(2) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 15(b)(iv): inserted, on 1 July 2007, by regulation 7 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

## **16 Notice of meeting: allotment of voting securities**

The notice of meeting sent by the code company containing the proposed resolution in respect of an allotment or allotments of voting securities referred to in rule 7(d) must contain, or be accompanied by,—

- (a) the identity of the allottee and, if different from the allottee, the identity of any person who will become a controller of an increased percentage of voting securities in the code company as a result of the allotment or allotments; and
- (b) particulars of the voting securities to be allotted, including—
  - (i) the particulars required by Schedule 4; or
  - (ii) if the particulars required by Schedule 4 are not ascertainable, the particulars required by Schedule 5 (note that rule 19B applies); and
- (c) if the voting securities being allotted are voting securities of a body corporate other than the code company—
  - (i) the number of voting securities in the code company that are held or controlled by that body corporate; and
  - (ii) the percentage of the total voting securities of the code company that that number represents; and
- (d) the issue price for the voting securities to be allotted and when it is payable; and
- (e) the reasons for the allotment or allotments; and
- (f) a statement to the effect that the allotment or allotments, if approved, will be permitted under rule 7(d) of the Takeovers Code as an exception to rule 6 of the Takeovers Code; and

- (g) a statement by the allottee setting out particulars of any agreement or arrangement (whether legally enforceable or not) that has been, or is intended to be, entered into between the allottee and any other person (other than between the allottee and the code company in respect of the matters referred to in paragraphs (a) to (e)) relating to the allotment or allotments, holding, or control of the voting securities to be allotted, or to the exercise of voting rights in the code company; and
- (h) the report from an independent adviser that complies with rule 18; and
- (i) the statement by the directors of the code company referred to in rule 19.

Schedule rule 16: amended, on 1 June 2013, by regulation 11(1) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 16: amended, on 1 June 2013, by regulation 11(4) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 16(a): amended, on 1 June 2013, by regulation 11(2) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 16(a): amended, on 1 June 2013, by regulation 11(4) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 16(b): replaced, on 1 June 2013, by regulation 11(3) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 16(b)(iv): inserted, on 1 July 2007, by regulation 8 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 16(e): amended, on 1 June 2013, by regulation 11(4) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 16(f): amended, on 1 June 2013, by regulation 11(4) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 16(g): amended, on 1 June 2013, by regulation 11(4) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

### *Voting restrictions*

#### **17 Voting restrictions**

- (1) The persons acquiring and disposing of the voting securities and their associates must not vote on a resolution for the approval of the acquisition referred to in rule 7(c).
- (2) The allottee and its associates must not vote on a resolution for the approval of the allotment referred to in rule 7(d).

Schedule rule 17(1): amended, on 1 December 2014, by regulation 11 of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

### *Independent adviser's report*

#### **18 Independent adviser's report**

- (1) The directors of the code company must obtain a report from an independent adviser on the merits of any proposed acquisition under rule 7(c) or allotment

- under rule 7(d) having regard to the interests of those persons who may vote to approve the acquisition or allotment.
- (2) The report that is to be contained in, or to accompany, the notice of meeting referred to in rule 15 or rule 16 (as the case may be) may be either the full report given by the independent adviser or a summary report prepared by the adviser.
  - (3) If only a summary of the independent adviser's full report is contained in, or accompanies, the notice of meeting,—
    - (a) the full report must be available for inspection at the registered office of the code company on and after the date of the notice of meeting; and
    - (b) a copy of the full report must be provided to any person entitled to attend the meeting on request.
  - (4) The full report and any summary report of an independent adviser must include—
    - (a) a statement of the qualifications and expertise of the adviser; and
    - (b) a statement that the adviser has no conflict of interest that could affect the adviser's ability to provide an unbiased report; and
    - (c) if the report is a summary report, a statement that—
      - (i) the summary report is a fair summary and not misleading; and
      - (ii) the full report is available for inspection at the registered office of the code company on and after the date of the notice of meeting; and
      - (iii) a copy of the full report will be sent to any person entitled to attend the meeting on request.

*Directors' statement*

**19 Directors' statement**

- (1) The directors of the code company must—
  - (a) provide a written statement as to whether they recommend approval or disapproval of any proposed acquisition under rule 7(c) or allotment under rule 7(d) and give their reasons; or
  - (b) provide a written statement that the directors of the code company are unable to make, or are not making, a recommendation and give their reasons.
- (2) If any of the directors dissent from a recommendation or from any statement under subclause (1)(b) made by the directors or abstain from making a recommendation or any statement under subclause (1)(b), their names and their reasons for dissenting or abstaining must be stated.

*Documents for Panel*

Heading: inserted, on 1 July 2007, by regulation 9 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

**19A Documents for Panel in respect of shareholder meetings**

- (1) A code company that sends a notice of meeting for the purposes of rule 15 or 16 must at the same time send to the Panel, in hard copy and (if possible) electronic form, a copy of that notice and any document accompanying it that relates to the meeting to be held for the purposes of rule 7(c) or 7(d).
- (2) A person who publishes or sends to any holder of voting securities, in respect of a meeting held for the purposes of rule 7(c) or (d), a statement or information that is not required to be published or sent by the rules of this code must at the same time send to the Panel, in hard copy and (if possible) in electronic form, a copy of that statement or information.

Schedule rule 19A: inserted, on 1 July 2007, by regulation 9 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

*Extra requirements where particulars required by Schedule 5 given (in accordance with rule 16(b)(ii))*

Heading: inserted, on 1 June 2013, by regulation 12 of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

**19B Extra requirements where particulars required by Schedule 5 given (in accordance with rule 16(b)(ii))**

- (1) This rule applies if—
  - (a) the particulars required by Schedule 5 were contained in, or accompanied, a notice of meeting (in accordance with rule 16(b)(ii)); and
  - (b) shareholders approved the allotment or allotments particularised in that notice of meeting to the allottee (the **approved allotment package**).

*Annual report requirements*

- (2) If allotments under the approved allotment package are to occur over an allotment period that is more than 12 months long, the code company must include in a prominent position in every annual report issued during the allotment period, and in the first annual report issued after the end of the allotment period,—
  - (a) a summary of the terms of the approved allotment package; and
  - (b) particulars, as at the end of the financial year to which the annual report relates, of—
    - (i) the number of voting securities already allotted to the allottee under the approved allotment package; and

- (ii) the number of voting securities on issue that are held or controlled by the allottee, and the percentage of all voting securities on issue that that number represents; and
- (iii) the aggregate of the percentages of all voting securities that are held or controlled by the allottee and the allottee's associates; and
- (iv) the maximum percentage of all voting securities that could be held or controlled by the allottee on completion of all the allotments; and
- (v) the maximum aggregate of the percentages of all voting securities that could be held or controlled by the allottee and the allottee's associates on completion of all the allotments; and
- (vi) the assumptions on which these particulars are calculated.

*Internet publication requirements*

- (3) If allotments under the approved allotment package are to occur over an allotment period that is more than 12 months long, the code company must show the following information in a prominent position on its Internet site (if it has one) from the date of the first annual report issued during the allotment period until the date of the first annual report issued after the end of the allotment period:
- (a) the information required by subclause (2) to be in the code company's latest annual report; and
  - (b) as soon as the code company is aware of it or ought reasonably to be aware of it, any aggregate increase of 1% or more in the voting securities held or controlled by the allottee.

*Subsequent increases of voting rights by allottee*

- (4) During the allotment period, the allottee must not increase the percentage of voting rights in the code company held or controlled by it except in accordance with—
- (a) the approved allotment package; or
  - (b) an exemption from the Panel under section 45 of the Act; or
  - (c) rule 7(c) or (d), in which case the new notice of meeting containing the resolution to approve the proposed increase must contain or be accompanied by—
    - (i) a summary of the terms of the approved allotment package; and
    - (ii) particulars, as at the date of the new notice of meeting, of—
      - (A) the number of voting securities already allotted to the allottee under the approved allotment package; and
      - (B) the number of voting securities on issue that are held or controlled by the allottee, and the percentage of all voting securities that that number represents; and

- (C) the aggregate of the percentages of all voting securities that are held or controlled by the allottee and the allottee's associates; and
- (D) the maximum percentage of all voting securities that could be held or controlled by the allottee after the completion of both the approved allotment package and the proposed increase; and
- (E) the maximum aggregate of the percentages of all voting securities that could be held or controlled by the allottee and the allottee's associates after the completion of both the approved allotment package and the proposed increase; and
- (F) the assumptions on which these particulars are calculated.

*Change of control of allottee*

- (5) During the allotment period, there must be no change of control of the allottee that results in another person becoming the holder or controller of an increased percentage of voting rights in the code company, except in accordance with—
  - (a) an exemption from the Panel under section 45 of the Act; or
  - (b) rule 7(c) or (d), in which case the new notice of meeting containing the resolution to approve the proposed increase must contain or be accompanied by—
    - (i) a summary of the terms of the approved allotment package; and
    - (ii) particulars, as at the date of the new notice of meeting, of—
      - (A) the number of voting securities already allotted to the allottee under the approved allotment package; and
      - (B) the number of voting securities on issue that are held or controlled by the allottee, and the percentage of all voting securities that that number represents; and
      - (C) the aggregate of the percentages of all voting securities that are held or controlled by the allottee and the allottee's associates; and
      - (D) the maximum percentage of all voting securities that could be held or controlled by the allottee on completion of all the allotments; and
      - (E) the maximum percentage of all voting securities that could be held or controlled by the allottee and the allottee's associates on completion of all the allotments; and
      - (F) the assumptions on which these particulars are calculated.

*Definitions in this rule*

- (6) For the purposes of this rule and Schedule 5,—

**allotment period** means the period starting on the date of the meeting at which the shareholders approved the approved allotment package and ending on the date of the last allotment under the approved allotment package

**annual report** includes any concise annual report.

Schedule rule 19B: inserted, on 1 June 2013, by regulation 12 of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

## Part 4 Code offers

### *General provisions*

#### **20 Same terms and consideration**

An offer must be made on the same terms and provide the same consideration for all securities belonging to the same class of equity securities under offer.

#### **21 Independent adviser's report**

The directors of a target company must obtain a report from an independent adviser on the merits of an offer.

#### **22 Independent adviser's report on fairness between classes**

- (1) An offeror must obtain—
  - (a) a report from an independent adviser if rule 8(3) or 8(4) or 9(5) applies:
  - (b) a report or an amended report from an independent adviser if rule 44(3) applies.
- (2) In the report, the independent adviser must certify that, in the adviser's opinion, the offer complies with rule 8(3) or 8(4) or 9(5), as the case may be.
- (3) If an independent adviser's report is obtained, the offer is deemed to comply with rule 8(3) or 8(4) or 9(5), as the case may be.
- (4) The report must contain the information specified in Schedule 3.
- (5) The offeror must—
  - (a) send the report referred to in subclause (1)(a) to the prospective target company at the same time that it sends the takeover notice:
  - (b) send the report or amended report referred to in subclause (1)(b) to the prospective target company at the same time that it sends the notice of variation under rule 44(3)(b).

Schedule rule 22(1): replaced, on 1 July 2007, by regulation 10(1) of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 22(2): amended, on 1 July 2007, by regulation 10(2) of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 22(3): amended, on 1 July 2007, by regulation 10(3) of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 22(4): inserted, on 1 July 2007, by regulation 10(4) of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 22(5): inserted, on 1 July 2007, by regulation 10(4) of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

### **23 Minimum acceptance condition if offeror does not hold or control more than 50% of voting rights**

- (1) If, on the date of an offer, the offeror does not hold or control more than 50% of the voting rights in the target company, the offer must be conditional on the offeror receiving acceptances in respect of voting securities that, when taken together with voting securities already held or controlled by the offeror, confer—
  - (a) more than 50% of the voting rights in the target company; or
  - (b) in the case of a partial offer, any lesser percentage approved under rule 10(1)(b).
- (2) The offeror must not take up any equity securities under the offer unless the condition referred to in subclause (1) is satisfied by the end of the offer period.

Schedule rule 23 heading: replaced, on 1 December 2014, by regulation 12 of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

### **24 Offer period**

- (1) An offer must specify the period for which it will remain open and, subject to rules 25(4) and 26(1), must remain open for that period.
- (2) The offer period must—
  - (a) commence with the date of the offer; and
  - (b) be not shorter than 30 days, and not longer than 90 days.
- (3) *[Revoked]*
- (4) *[Revoked]*

Schedule rule 24(3): revoked, on 1 July 2007, by regulation 11 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 24(4): revoked, on 1 July 2007, by regulation 11 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

### **24A Extension of offer period**

- (1) The offer period may be extended by a variation of the offer, but, subject to subclause (2) and rules 24B and 24C, must not be extended beyond the maximum period.
- (2) The Panel may extend the offer period by an order made under section 32(4)(d) of the Act, and the order may extend the offer period beyond the maximum period.
- (3) The additional period for which an offer is extended under subclause (1) or (2) or rule 24B or 24C is deemed to be included in the offer period for the purposes of this code unless otherwise expressly provided.



- (4) In this rule and in rules 24B and 25(3A), **maximum period** means the period of 90 days beginning with the date of the offer.

Schedule rule 24A: inserted, on 1 July 2007, by regulation 12 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 24A(1): amended, on 1 June 2013, by regulation 13(1) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 24A(3): amended, on 1 June 2013, by regulation 13(2) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

**24B Extension of offer period in case of full offer conditional at outset as to level of acceptances**

- (1) This rule applies only to a full offer and only if—
- (a) the offer at its outset was subject to a condition or conditions as to a minimum level of acceptances; and
  - (b) the condition or conditions have been satisfied or waived before the end of the offer period.
- (2) The offer period in respect of an offer to which this rule applies may be extended beyond the maximum period by a period of up to 60 days beginning on the day on which the offer becomes unconditional as to a minimum level of acceptances.

Schedule rule 24B: inserted, on 1 July 2007, by regulation 12 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

**24C Extension of offer period if minimum acceptance condition satisfied or waived in final week**

- (1) This rule applies if—
- (a) the offer is subject to a minimum acceptance condition; and
  - (b) that condition is satisfied or waived in the period that begins 7 days before the end of the offer period.
- (2) If this rule applies, the offer period is extended for 14 days from the day on which the condition referred to in subclause (1) is satisfied or waived.

- (3) *See* rule 49B.

Schedule rule 24C: inserted, on 1 June 2013, by regulation 14 of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 24C(1)(a): amended, on 1 December 2014, by regulation 13 of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

**25 Conditions**

- (1) An offer may be subject to any conditions, except those that depend on the judgement of the offeror or any associate of the offeror, or the fulfilment of which is in the power, or under the control, of the offeror or any associate of the offeror.
- (1A) An offeror may not allow an offer to lapse—

- (a) in unreasonable reliance on a condition of the offer; or
  - (b) in reliance on a condition of the offer that restricts the target company's activities in the ordinary course of the target company's business during the period that begins with the sending of a takeover notice and ends on the specified date referred to in subclause (2) (or on the latest specified date referred to in subclause (3A), whichever is later).
- (2) An offer that is subject to any conditions must specify a date by which the offer is to become unconditional.
  - (3) The specified date referred to in subclause (2) may be changed to a later specified date if the offer is varied under rule 27(e).
  - (3A) The latest specified date referred to in subclause (2) or (3) must not be later than 14 days, or, if the acquisition requires statutory approval, 30 days, after the end of the offer period (excluding any part of the offer period that is extended beyond the maximum period under rule 24B or 24C).
  - (4) No condition contained in the offer has effect beyond the specified date referred to in subclause (3A), and the offer lapses if it does not become unconditional by that specified date.
  - (5) *See* rule 49C.

Schedule rule 25(1A): inserted, on 1 June 2013, by regulation 15(1) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 25(3): replaced, on 1 July 2007, by regulation 13(1) of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 25(3A): inserted, on 1 July 2007, by regulation 13(1) of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 25(3A): amended, on 1 June 2013, by regulation 15(2) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 25(4): amended, on 1 July 2007, by regulation 13(2) of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 25(5): replaced, on 1 June 2013, by regulation 15(3) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

## **26 Withdrawal or lapse of offer**

- (1) An offer may be withdrawn only with the consent of the Panel.
- (2) An offeror must immediately send a written notice that the offer is withdrawn or has lapsed in accordance with the terms of the offer to—
  - (a) the target company; and
  - (b) the Panel; and
  - (c) the licensed market operator (if any voting securities of the target company are quoted on a licensed market operated by the operator).

Schedule rule 26(2)(c): replaced, on 1 December 2014, by regulation 14 of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

*Variation of offer*

**27 Permissible variations**

The offeror may vary the offeror's offer only if the variation is to do any of the following things:

- (a) to increase an existing component or components of the consideration:
- (b) to add a cash component to the consideration:
- (c) to add to the offer a cash alternative (if the directors of the target company have given their prior written approval):
- (d) to extend the offer period in accordance with rule 24A or 24B:
- (e) if the offer period is extended, to vary the date that must be specified under rule 25(2), provided that the date is not varied by more than the period of time by which the offer period is extended.

Schedule rule 27(c): replaced, on 1 July 2007, by regulation 14 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 27(d): replaced, on 1 July 2007, by regulation 14 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 27(e): inserted, on 1 July 2007, by regulation 14 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

**28 Variation notice**

- (1) Subject to subclause (2), an offeror must immediately send a written notice of any variation of the offeror's offer to—
  - (a) every offeree; and
  - (b) the target company; and
  - (c) the Panel; and
  - (d) the licensed market operator (if any voting securities of the target company are quoted on a licensed market operated by the operator).
- (2) If the offer is unconditional and the variation only extends the offer period, the notice referred to in subclause (1) need not be sent to offerees who have already accepted the offer.
- (3) If the offer is subject to conditions that have not been satisfied or waived and the variation extends the offer period, the notice referred to in subclause (1) must specify the date by which the offer is to become unconditional.
- (4) In the case of a variation of a kind referred to in rule 31(2) or (3), the notice must—
  - (a) prominently set out the relevant rights and obligations of the offerees under rules 31(2) to (5), 32(2), and 33; and
  - (b) be accompanied by a form, for acceptance of the variation, that is consistent with the rights and obligations of the offerees referred to in paragraph (a); and

- (c) be accompanied by any documents necessary to revest in the offeror any consideration that must be returned by the offeree.

Schedule rule 28(1): replaced, on 24 November 2009, by section 23(4) of the Securities Markets Amendment Act 2009 (2009 No 54).

Schedule rule 28(1)(d): replaced, on 1 December 2014, by regulation 15 of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule rule 28(3): inserted, on 1 July 2007, by regulation 15 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 28(4): inserted, on 1 July 2007, by regulation 15 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

## **29 Timing of variation**

- (1) An offer may not be varied, and a variation notice may not be sent, later than 14 days before the end of the offer period.
- (2) The offer must remain open for at least 14 days after a variation notice has been sent.
- (3) Subclause (1) does not apply in the case of a full offer if—
  - (a) the offer is varied only by—
    - (i) extension of the offer period; or
    - (ii) extension of the offer period and consequent change of the specified date referred to in rule 25(2); and
  - (b) the offer is, or has become, unconditional as to level of acceptances.

Schedule rule 29(3): replaced, on 1 July 2007, by regulation 16 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

## **30 Further reports required for certain variations**

- (1) If any of rules 8(3) and (4) and 9(5) apply to an offer and the offer is to be varied under any of rule 27(a) to (c),—
  - (a) a further report must be obtained by the offeror under rule 22 in relation to the offer as proposed to be varied; and
  - (b) the further report must contain the information specified in Schedule 3; and
  - (c) unless subclause (2) applies, the further report must accompany the variation notice sent under rule 28(1); and
  - (d) the variation notice must contain a statement as to how the consideration and terms of the offer, as varied, have been calculated so as to be fair and reasonable as between the classes of financial products.
- (2) If the variation notice will be sent under rule 28 before the target company statement is sent under rule 46(a)(ii), the offeror must send the further report to the target company and the Panel at the same time that the offeror sends the variation notice under rule 28.

- (3) If subclause (2) applies, the further report must accompany the target company statement that the target company sends under rule 46(a)(ii).
- (4) The further report must not be sent to offerees before the target company statement has been sent to offerees.

Schedule rule 30(1)(b): replaced, on 1 July 2007, by regulation 17(1) of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 30(1)(c): inserted, on 1 July 2007, by regulation 17(1) of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 30(1)(d): inserted, on 1 July 2007, by regulation 17(1) of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 30(1)(d): amended, on 1 December 2014, by regulation 16 of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule rule 30(2): inserted, on 1 July 2007, by regulation 17(2) of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 30(3): inserted, on 1 July 2007, by regulation 17(2) of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 30(4): inserted, on 1 July 2007, by regulation 17(2) of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

### **31 Variation of consideration and consideration alternatives**

- (1) If an offer does not contain alternative consideration options and a variation is made under rule 27(a) or 27(b), the additional consideration must be provided to every offeree who accepts the offer.
- (2) If an offer contains alternative consideration options and a variation is made under rule 27(a) or 27(b), any offeree may accept the varied alternative or, if more than 1 alternative is varied, one of those varied alternatives.
- (3) If a variation is made under rule 27(c), any offeree may accept that alternative.
- (4) Subclauses (1) to (3) apply whether an offeree has accepted the offer before the variation or not.
- (5) An offeree's acceptance of a consideration alternative under subclause (2) or (3) is only valid if the offeree complies with rule 32(2).

Schedule rule 31: replaced, on 1 July 2007, by regulation 18 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

### **32 Procedure on variation of consideration and consideration alternatives**

- (1) If rule 31(1) applies after the consideration has been sent to offerees who have accepted the offer, the additional consideration must be sent, no later than 7 days after the date on which the offer is varied, to every offeree to whom the consideration under the offer was sent before the variation.
- (2) If rule 31(2) or (3) applies after the consideration has been sent to offerees who have accepted the offer, and an offeree accepts a different consideration alternative, the acceptance by that offeree of a different consideration alternative is not valid unless the offeree repays or returns, with the form of acceptance of the different consideration alternative, the consideration already sent by the of-

feror and any documents necessary to re-vest the returned consideration in the offeror.

Schedule rule 32: replaced, on 1 July 2007, by regulation 18 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

### *Consideration*

#### **33 Offer to specify date for payment of consideration**

- (1) The offer must specify a date by which the consideration for the offer must be sent to the persons whose financial products are taken up under the offer.
- (2) The date referred to in subclause (1) must not be later than 7 days after the later of—
  - (a) the date on which the offer becomes unconditional; or
  - (b) the date on which an acceptance is received; or
  - (c) the end of the offer period first specified in the offer under rule 24(2).

Schedule rule 33(1): amended, on 1 December 2014, by regulation 17 of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

#### **34 Withdrawal of acceptance for non-payment of consideration**

- (1) If the consideration is not sent within the period specified in the offer to any person whose financial products are taken up under the offer, the person may withdraw acceptance of the offer—
  - (a) by notice in writing to the offeror; but only
  - (b) after the expiration of 7 days' written notice to the offeror of the person's intention to do so.
- (2) However, the right to withdraw acceptance of the offer does not apply if the person receives the consideration during the 7-day period referred to in subclause (1)(b).

Schedule rule 34(1): amended, on 1 December 2014, by regulation 18 of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

## **Part 5**

### **Dealings and defensive tactics**

#### *Certain dispositions and acquisitions*

#### **35 Dispositions**

During the offer period, neither the offeror nor any person acting jointly or in concert with the offeror may dispose of any equity securities in the target company other than to the offeror or to another offeror under another offer that is made under this code.

Schedule rule 35: amended, on 1 June 2013, by regulation 16 of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

### **36 Acquisitions**

- (1) During the offer period, the offeror, any related company of the offeror, any person acting jointly or in concert with the offeror, or any of the directors of any of them, must not acquire any equity securities in the target company otherwise than under the offer unless—
  - (a) the offeror has made a full offer for cash, or a full offer with a cash alternative; and
  - (b) the acquisition is made no later than 14 days before the end of the offer period; and
  - (c) the acquisition is made only for cash; and
  - (d) the acquisition of any equity securities will not result in the offeror and the offeror's associates holding or controlling in total more than 20% of the voting rights in the target company (excluding any equity securities in respect of which the offeror has received acceptances of the offeror's offer), unless the offer has become unconditional; and
  - (e) notice is given under subclause (2) by the offeror.
- (2) Notice of the acquisition of securities under subclause (1) must—
  - (a) be given no later than the day after the date of acquisition,—
    - (i) if any of the offeror, any holding company of the offeror, or the target company is a listed issuer, to the target company, the licensed market operator, and the Panel; or
    - (ii) if none of the offeror, any holding company of the offeror, or the target company is a listed issuer, to the target company and the Panel; and
  - (b) state, in respect of the date of acquisition of the securities,—
    - (i) the aggregate number of securities, per class, acquired; and
    - (ii) the weighted average price, per class, paid.

Schedule rule 36: replaced, on 1 July 2007, by regulation 19 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 36(2)(a): replaced, on 1 December 2014, by regulation 19 of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

### **37 Position if consideration exceeds consideration specified in offer**

If the consideration paid in any acquisition under rule 36 exceeds the cash consideration or cash alternative consideration specified in the offer,—

- (a) the offer is deemed to be varied under rule 27 as from the date of the acquisition so that the cash consideration or cash alternative consideration under the offer is equal to the consideration paid for the acquisition; and

- (b) the provisions of this code relating to variation of an offer apply (with any necessary modifications).

*Defensive tactics*

**38 Defensive tactics restricted**

- (1) If a code company has received a takeover notice or has reason to believe that a bona fide offer is imminent, the directors of the company must not take or permit any action, in relation to the affairs of the code company, that could effectively result in—
  - (a) an offer being frustrated; or
  - (b) the holders of equity securities of the code company being denied an opportunity to decide on the merits of an offer.
- (2) Subclause (1) does not prevent the directors of a code company taking steps to encourage competing bona fide offers from other persons.
- (3) Subclause (1) is subject to rule 39.

**39 When action permitted**

The directors of a code company may take or permit the kind of action referred to in rule 38(1) if—

- (a) the action has been approved by an ordinary resolution of the code company; or
- (b) the action is taken or permitted under a contractual obligation entered into by the code company, or in the implementation of proposals approved by the directors of the code company, and the obligations were entered into, or the proposals were approved, before the code company received the takeover notice or became aware that the offer was imminent; or
- (c) if paragraphs (a) and (b) do not apply, the action is taken or permitted for reasons unrelated to the offer with the prior approval of the Panel.

**40 Notice of meeting**

The notice of meeting containing the proposed resolution for the approval of the action referred to in rule 39(a) must contain, or be accompanied by,—

- (a) full particulars of the proposed action; and
- (b) the reasons for it; and
- (c) a statement explaining the significance of the resolution under this code.



## Part 6 Offer procedure

### 41 Takeover notice

- (1) The offeror must send to the prospective target company a notice in writing that—
  - (a) states the offeror's intention to make an offer under this code; and
  - (b) contains, or is accompanied by, the information specified in Schedule 1 (except clauses 1 and 4) stated as at the date of the notice.
- (2) If the offer will include a regulated offer under the Financial Markets Conduct Act 2013, the notice referred to in subclause (1) must be accompanied by a copy of every relevant document.
- (3) In subclause (2), **every relevant document** means every product disclosure statement or other document that must be registered or lodged with, or produced to, any of the following persons or bodies for the offer to comply with the Financial Markets Conduct Act 2013 (including any exemption granted under that Act or any mutual recognition scheme established under that Act) or with the laws of any overseas jurisdiction in which the offer of the financial products is to be made:
  - (a) the Registrar of Financial Service Providers (including any equivalent person or body in an overseas jurisdiction):
  - (b) any regulatory body (including a regulator in an overseas jurisdiction):
  - (c) any offeree of the financial products.
- (4) The notice may contain, or be accompanied by, any additional information that the directors of the offeror determine could affect the decision of the offerees to accept or reject the offer.

Schedule rule 41(2): replaced, on 1 July 2007, by regulation 20 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 41(2): amended, on 1 December 2014, by regulation 20(1) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule rule 41(3): replaced, on 1 December 2014, by regulation 20(2) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule rule 41(4): inserted, on 1 July 2007, by regulation 20 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

### 41A Offeror's notification obligations when takeover notice sent

- (1) If the target company is a listed issuer, the offeror must send (electronically, if possible) to the licensed market operator a copy of the documents that the offeror is required to send under rule 41.
- (2) The offeror must send the documents to the licensed market operator at the same time that the offeror sends the documents under rule 41.

- (3) The offeror must send (electronically, if possible and if requested) within 1 day of receipt of the request, free of charge, a copy of the takeover notice and any of the documents that accompanied it under rule 41 to any person who requests them.

Schedule rule 41A: inserted, on 1 July 2007, by regulation 21 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 41A(1): replaced, on 1 December 2014, by regulation 21(1) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule rule 41A(2): amended, on 1 December 2014, by regulation 21(2) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

#### **42 Target company's notification obligations when takeover notice received**

- (1) If it is a listed issuer, the target company must, immediately on receipt of a takeover notice,—
- (a) notify the licensed market operator in writing that a takeover notice has been received; and
  - (b) send (electronically, if possible) to the licensed market operator a copy of the notice and the documents that accompanied it under rule 41.
- (2) If it is not a listed issuer, the target company must, immediately on receipt of a takeover notice, do all that is reasonably practicable to ensure that every person to whom the offer will be made is given a notice in writing that states—
- (a) that the target company has received a takeover notice; and
  - (b) the identity of the offeror; and
  - (c) the main terms and conditions of the proposed offer; and
  - (d) that a copy of the notice and any of the documents that accompanied it under rule 41 are available from the target company and the offeror free of charge on request.
- (3) The target company must send (electronically, if possible and if requested) within 1 day of receipt of the request, free of charge, a copy of the takeover notice and of any of the documents that accompanied it under rule 41 to any person who requests them.

Schedule rule 42: replaced, on 1 July 2007, by regulation 22 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 42(1): replaced, on 1 December 2014, by regulation 22(1) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule rule 42(2): amended, on 1 December 2014, by regulation 22(2) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

#### **42A Target company must give offeror class notice**

- (1) In this rule, **class notice** means a written notice by the target company containing a description of,—
- (a) in the case of a full offer, each class of its equity securities whether voting or non-voting; or

- (b) in the case of a partial offer, each class of its voting securities.
- (2) Not later than 2 days after receiving a takeover notice, the target company must send the offeror a class notice.
- (3) The class notice must contain sufficient information about each class of equity security (in the case of a full offer) or voting security (in the case of a partial offer) to enable—
  - (a) the offeror to formulate an offer; and
  - (b) an independent adviser to provide a report under rule 22.
- (4) In subclause (3), **sufficient information** includes the terms of issue of each relevant class of security and the number of those securities on issue in each class, as at the date of the class notice.

Schedule rule 42A: inserted, on 1 July 2007, by regulation 22 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

#### **42B Target company must send offeror copy of financial products register**

Not later than 2 days after the record date, the target company must send to the offeror, in electronic form (or in such other form as the target company and the offeror may agree), a copy of the target company's financial products register relating to the financial products to which the offer relates as at the record date.

Schedule rule 42B: inserted, on 1 July 2007, by regulation 22 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 42B heading: amended, on 1 December 2014, by regulation 23(1) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule rule 42B: amended, on 1 December 2014, by regulation 23(2) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule rule 42B: amended, on 1 December 2014, by regulation 23(3) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

#### **43 To whom offer must be sent**

- (1) The offer must be sent to those persons recorded in the target company's financial products register (as at the record date) as holders of financial products to which the offer relates.
- (2) Nothing in subclause (1) prevents the offeror from sending the offer to persons who acquire financial products in the target company to which the offer relates after the record date.

Schedule rule 43: replaced, on 1 July 2007, by regulation 23 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 43 heading: replaced, on 1 June 2013, by regulation 17(1) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 43(1): replaced, on 1 June 2013, by regulation 17(2) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 43(1): amended, on 1 December 2014, by regulation 24(1) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule rule 43(1): amended, on 1 December 2014, by regulation 24(2) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule rule 43(2): amended, on 1 December 2014, by regulation 24(3) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

#### **43A Record date**

- (1) The offeror must send to the target company a notice in writing that specifies the record date for the purposes of the offer.
- (2) The record date must not be more than 10 days before the date of the offer.
- (3) The notice referred to in subclause (1) must be sent no later than 2 days before the record date.
- (4) Before the offeror has sent the offer in accordance with rule 43(1), the offeror may change the record date to a later record date by giving a further notice or notices under subclause (1), and in that case subclauses (2) and (3) apply to that notice or those notices as well.

Schedule rule 43A: inserted, on 1 July 2007, by regulation 23 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 43A(4): amended, on 1 June 2013, by regulation 18 of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

#### **43B When offer must be sent**

The offeror must send the offer in accordance with rule 43(1) on a date that is—

- (a) no later than 3 days after the date of the offer specified under rule 44(1)(c); and
- (b) during the period beginning 14 days, and ending 30 days, after the takeover notice relating to the offer has been sent to the target company.

Schedule rule 43B: inserted, on 1 July 2007, by regulation 23 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 43B: amended, on 1 June 2013, by regulation 19 of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

#### **44 Offer document**

- (1) The offer must—
  - (a) be in writing; and
  - (b) be on the same terms and conditions as those contained in or accompanying the takeover notice, except for—
    - (i) conditions that have been satisfied or waived; and
    - (ii) any variations to which the directors of the target company have given their prior written approval; and
    - (iii) any variation or amendment made in accordance with subclause (3); and

- (iv) consequential amendments; and
  - (c) be dated; and
  - (d) contain, or be accompanied by,—
    - (i) the information specified in Schedule 1 stated as at the date of the offer; and
    - (ii) any document required to accompany the takeover notice sent under rule 41(2) that is required by the Financial Markets Conduct Act 2013 or any other applicable law to be given in relation to, or to accompany, an offer of financial products; and
    - (iii) any additional information contained in, or that accompanied, the takeover notice under rule 41(4); and
    - (iv) a copy of the target company statement (if the target company statement has been given to the offeror under rule 46(a)(i)); and
  - (e) contain a term that the offeror may not allow the offer to lapse—
    - (i) in unreasonable reliance on a condition of the offer; or
    - (ii) in reliance on a condition of the offer that restricts the target company's activities in the ordinary course of the target company's business during the period that begins with the sending of the takeover notice and ends on the specified date referred to in rule 25(2) (or on the latest specified date referred to in rule 25(3A), whichever is later).
- (2) The offer may contain, or be accompanied by, additional information of the kind described in rule 41(4).
- (3) The offer may be varied to extend the offer to an additional class or classes of financial product, or to amend the terms or conditions of the offer relating to a class or classes of financial product, without the approval of the directors of the target company if—
  - (a) the class or classes were included in the class notice given under rule 42A but—
    - (i) were not included in the terms or conditions contained in or accompanying the takeover notice; or
    - (ii) were included in the terms or conditions contained in or accompanying the takeover notice but those terms or conditions did not accurately or completely account for the information in the class notice; and
  - (b) the offeror has sent a notice of the variation referred to in subclause (1)(b)(iii) to the target company not less than 7 days before the date of the offer; and

- (c) the offeror has obtained a report or an amended report under rule 22 if any of rules 8(3) or 8(4) or 9(5) apply in relation to the offer as varied under subclause (1)(b)(iii); and
- (d) the notice of variation referred to in paragraph (b) is accompanied by a report or an amended report (as the case may be) under rule 22.

Schedule rule 44(1)(b): replaced, on 1 July 2007, by regulation 24(1) of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 44(1)(b)(iii): replaced, on 1 June 2013, by regulation 20(1) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 44(1)(d)(ii): replaced, on 1 December 2014, by regulation 25(1) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule rule 44(1)(d)(iii): replaced, on 1 July 2007, by regulation 24(2) of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 44(1)(d)(iv): inserted, on 1 July 2007, by regulation 24(2) of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 44(1)(d)(iv): amended, on 1 June 2013, by regulation 20(2) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 44(1)(e): inserted, on 1 June 2013, by regulation 20(3) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 44(2): amended, on 1 July 2007, by regulation 24(3) of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 44(3): inserted, on 1 July 2007, by regulation 24(4) of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 44(3): amended, on 1 December 2014, by regulation 25(2) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule rule 44(3): amended, on 1 June 2013, by regulation 20(4) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 44(3)(a): replaced, on 1 June 2013, by regulation 20(5) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

#### **45 Despatch notice**

- (1) Immediately on sending the offer document in accordance with rule 43(1), the offeror must—
  - (a) send to the target company—
    - (i) a notice in writing stating that the offer document has been sent in accordance with rule 43(1); and
    - (ii) a copy of the offer document; and
  - (b) send to the licensed market operator a copy of—
    - (i) the notice referred to in paragraph (a)(i); and
    - (ii) the offer document; and
  - (c) deliver to the Registrar of Companies for registration a copy of—
    - (i) the notice referred to in paragraph (a)(i); and
    - (ii) the offer document.

- (2) Subclause (1)(b) applies only if the offeror's or the target company's voting securities are quoted on a licensed market that is operated by the licensed market operator.

Schedule rule 45(1): amended, on 1 June 2013, by regulation 21 of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 45(1)(a)(i): amended, on 1 June 2013, by regulation 21 of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 45(1)(b): amended, on 1 December 2014, by regulation 26(1) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule rule 45(2): replaced, on 1 December 2014, by regulation 26(2) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

#### **46 Target company statement**

- (1) The target company must—
- (a) either,—
    - (i) within 14 days after it receives the takeover notice (or any longer period as the offeror may allow), send to the offeror a statement containing, or accompanied by, the information specified in Schedule 2 to accompany the offer; or
    - (ii) within 14 days after it receives the despatch notice, send the statement referred to in subparagraph (i) to—
      - (A) those persons recorded in the target company's financial products register (as at the record date) as holders of financial products to which the offer relates; and
      - (B) the offeror; and
      - (C) the licensed market operator (if the voting securities of the target company or the offeror are quoted on a licensed market that is operated by the operator); and
  - (b) deliver a copy of the statement referred to in paragraph (a)(i) to the Registrar of Companies for registration—
    - (i) immediately on receipt of the despatch notice (if the target company has sent the statement referred to in paragraph (a)(i) to the offeror under paragraph (a)(i)); or
    - (ii) immediately on sending the statement referred to in paragraph (a)(i) to the persons referred to in paragraph (a)(ii) (if subparagraph (i) does not apply).
- (2) Nothing in subclause (1) prevents the target company from sending the target company statement to persons who acquire financial products in the target company to which the offer relates after the record date.

Schedule rule 46(1)(a)(ii)(A): amended, on 1 December 2014, by regulation 27(1) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule rule 46(1)(a)(ii)(A): amended, on 1 December 2014, by regulation 27(2) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule rule 46(1)(a)(ii)(A): amended, on 1 June 2013, by regulation 22(1) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 46(1)(a)(ii)(C): replaced, on 1 December 2014, by regulation 27(3) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule rule 46(2): inserted, on 1 June 2013, by regulation 22(2) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 46(2): amended, on 1 December 2014, by regulation 27(4) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

#### **47 Documents that must be sent to Panel or that Panel may require**

- (1) A copy of a notice, statement, or other document that must be given or sent under rules 41 to 46 (excluding rule 42B) and rule 48 must at the same time be given or sent to the Panel in hard copy and (if possible) in electronic form.
- (2) The notice, statement, or other document must be given or sent to the Panel by or on behalf of the person who is responsible for giving or sending it under the relevant rule.
- (3) On request by the Panel the target company must send to the Panel a copy of the financial products register that the target company must send to the offeror under rule 42B, and in that case the Panel's copy must be in the same form as the offeror's copy.
- (4) An offeror or target company or person acting on behalf of any of them who, in relation to an offer or a takeover notice, publishes or sends to any offeree any statement or information that is not required to be published or sent by the rules of this code must, at the same time that the statement or information is published or sent, also send a copy of it to the Panel in hard copy and (if possible) in electronic form.

Schedule rule 47: replaced, on 1 July 2007, by regulation 25 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 47(3): amended, on 1 December 2014, by regulation 28 of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule rule 47(4): amended, on 1 June 2013, by regulation 23 of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

#### **48 Notification of altered offer document**

The offeror must notify the target company, as soon as practicable before it sends the offer document in accordance with rule 43(1), of all information to be included in the offer document that is altered from, or additional to, the information that was contained in, or accompanied, the takeover notice.

Schedule rule 48: amended, on 1 June 2013, by regulation 24 of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).



#### **49 Reimbursement of directors and target company**

*[Revoked]*

Schedule rule 49: revoked, on 31 March 2017, by section 135(2) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

#### **49A Offeror must notify Panel, etc, of increases in acceptances of offer**

- (1) The offeror must as soon as practicable notify the Panel and the target company in writing on each occasion when the total level of acceptances received for each class of equity securities subject to the offer increases by 1% or more of the total issued equity securities in each class in the target company.
- (2) If the target company or the offeror or any holding company of the offeror is a listed issuer, the offeror must provide the licensed market operator with the same notification that is required under subclause (1).

Schedule rule 49A: inserted, on 1 July 2007, by regulation 26 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 49A(2): replaced, on 1 December 2014, by regulation 29 of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

#### **49B Notice if rule 24C applies**

- (1) If rule 24C applies, the offeror must immediately send a written notice to those referred to in subclause (2) stating—
  - (a) that the minimum acceptance condition has been satisfied or waived; and
  - (b) the date to which the offer period has been extended.
- (2) The notice must be sent to—
  - (a) every offeree who has not accepted the offer; and
  - (b) the target company; and
  - (c) the Panel; and
  - (d) the licensed market operator (if any voting securities of the target company are quoted on a licensed market that is operated by the operator).

Schedule rule 49B: inserted, on 1 June 2013, by regulation 25 of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 49B(1)(a): amended, on 1 December 2014, by regulation 30(1) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule rule 49B(2)(d): replaced, on 1 December 2014, by regulation 30(2) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

#### **49C Notice of conditions to which offer subject 14 days before end of offer period**

- (1) If an offer is still subject to 1 or more conditions, the offeror must, not earlier than 14 days before the end of the offer period and not later than 7 days before the end of the offer period, send a written notice that includes the following information:

- (a) that the offer is still subject to conditions (which are set out in the offer document):
  - (b) whether the offeror has the right to waive any of the conditions to which the offer remains subject as at the date of the notice and, if so, which conditions:
  - (c) whether, to the best knowledge and belief of the offeror, after making proper inquiry, any (and, if so, which) conditions have been satisfied or waived as at the date of the notice:
  - (d) the percentage of voting rights in the target company in respect of which the offeror has received acceptances as at the date of the notice together with any percentage of voting rights already held or controlled by the offeror.
- (2) If the offer period is extended after a notice has been sent under subclause (1), a new notice must be given in accordance with subclause (1).
- (3) If an offer has become unconditional, both in respect of any condition referred to in rule 23 and in respect of any condition referred to in rule 25, the offeror must immediately send a written notice to that effect.
- (4) The notice must be sent to—
- (a) the target company; and
  - (b) the Panel; and
  - (c) the licensed market operator (if any voting securities of the target company are quoted on a licensed market that is operated by the operator).

Schedule rule 49C: inserted, on 1 June 2013, by regulation 25 of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 49C(3): amended, on 1 December 2014, by regulation 31(1) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule rule 49C(4)(c): replaced, on 1 December 2014, by regulation 31(2) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

## Part 7

### Compulsory acquisitions

#### 50 Interpretation

In this Part, unless the context otherwise requires,—

**acquisition notice** means the notice referred to in rule 54

**compulsory sale**, in relation to a code company, means that the outstanding security holders must sell their equity securities in the code company to the dominant owner

**dominant owner**, in relation to a code company, means a person who, after this code comes into force, becomes the holder or controller, or 2 or more persons acting jointly or in concert who, after this code comes into force, become

the holders or controllers, of 90% or more of the voting rights in the code company (whether by reason of acceptances of an offer or otherwise)

**outstanding securities**, in relation to a code company, means all the equity securities in the code company that the dominant owner does not already hold or control

**outstanding security holders**, in relation to a code company, means the holders of the outstanding securities

**voluntary sale**, in relation to a code company, means that the outstanding security holders have the right to sell their equity securities in the code company to the dominant owner.

### *Rights and obligations*

#### **51 Notification of dominant ownership**

If a person becomes a dominant owner in a code company, that person must immediately send a written notice of that fact to the code company, the Panel, and (if any voting securities of the code company are quoted on a licensed market that is operated by a licensed market operator) the licensed market operator.

Schedule rule 51: replaced, on 1 December 2014, by regulation 32 of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

#### **52 Dominant owner's right**

The dominant owner has the right to acquire all the outstanding securities in the code company in accordance with this Part.

#### **53 Outstanding security holder's right**

The outstanding security holders have the right to sell their outstanding securities in the code company to the dominant owner in accordance with this Part.

### *Acquisition notice*

#### **54 Acquisition notice**

- (1) The dominant owner must send to the outstanding security holders a notice in writing (the **acquisition notice**) that complies with rule 55.
- (2) If the dominant owner becomes the dominant owner by reason of acceptances of an offer (whether or not the dominant owner has also acquired equity securities under rule 36), the acquisition notice must be sent not later than 30 days after the end of the offer period.
- (3) If subclause (2) does not apply, the acquisition notice must be sent not later than 30 days after the dominant owner becomes the dominant owner.
- (4) A copy of the acquisition notice must be—
  - (a) sent immediately to the code company, the Panel, and (if the code company is a listed issuer) the licensed market operator; and

(b) delivered immediately to the Registrar of Companies for registration.

Schedule rule 54: replaced, on 1 July 2007, by regulation 27 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 54(a): replaced, on 1 December 2014, by regulation 33 of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

## **55 Contents of acquisition notice**

- (1) An acquisition notice must—
- (a) state that the dominant owner holds or controls 90% or more of the voting rights in the code company; and
  - (b) state either—
    - (i) that the outstanding security holders must sell their equity securities in the code company to the dominant owner; or
    - (ii) that the outstanding security holders have the right to sell their equity securities in the code company to the dominant owner; and
  - (c) unless rule 56A applies, specify the consideration to be provided for the outstanding securities; and
  - (ca) if rule 56A applies, state—
    - (i) the alternative consideration options; and
    - (ii) the procedure for nominating an alternative consideration option; and
    - (iii) what happens if an outstanding security holder does not nominate an alternative consideration option; and
  - (d) set out the outstanding security holders' rights under this Part; and
  - (e) specify the date on which the acquisition notice is sent to the outstanding security holders; and
  - (f) subject to subclause (2), be accompanied by an instrument of transfer for the outstanding securities held by the outstanding security holder to whom the acquisition notice is sent; and
  - (g) specify the return address for the instrument referred to in paragraph (f).
- (2) If rule 56A applies, the instrument of transfer must provide for the outstanding security holder to nominate an alternative consideration option.

Schedule rule 55(1)(c): replaced, on 1 July 2007, by regulation 28(1) of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 55(1)(ca): inserted, on 1 July 2007, by regulation 28(1) of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 55(1)(f): amended, on 1 July 2007, by regulation 28(2) of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 55(2): inserted, on 1 July 2007, by regulation 28(3) of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

*Determination of consideration*

**56 Dominant owner through acceptances of offer**

- (1) If a person becomes the dominant owner by reason of acceptances of an offer (whether or not the dominant owner has also acquired equity securities under rule 36), the consideration payable in respect of equity securities in any class must be the same as the consideration provided under the offer for equity securities in the same class.
- (2) Subclause (1) applies only if acceptances of the offer were received in respect of more than 50% of the equity securities that were the subject of the offer in the class in respect of which the consideration is to be determined.
- (3) In subclause (2), equity securities controlled by the dominant owner or held or controlled by associates of the dominant owner are not included for the purposes of calculating the following:
  - (a) the acceptances of the offer:
  - (b) the equity securities that were the subject of the offer.

Schedule rule 56(3): replaced, on 1 July 2007, by regulation 29 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

**56A Alternative consideration options**

- (1) This rule applies if rule 56 applies and the offer provided for alternative consideration options.
- (2) If the offer provided for alternative consideration options, an outstanding security holder may nominate one of those options as the consideration payable and the dominant owner must provide that consideration.
- (3) If the offer provided for alternative consideration options with a default consideration, and an outstanding security holder does not nominate one of the options, the dominant owner must provide the default consideration.
- (4) If the offer provided for alternative consideration options without a default consideration, and an outstanding security holder does not nominate one of the options, the dominant owner must provide the consideration containing the greatest cash component.
- (5) In this rule, **default consideration** means the consideration that was specified in the offer document to be payable if an accepting offeree did not nominate one of the alternative consideration options.

Schedule rule 56A: inserted, on 1 July 2007, by regulation 30 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

**57 Determination of consideration in other cases**

- (1) If the consideration cannot be established under rule 56, the consideration specified in the acquisition notice—

- (a) must be a cash sum certified as fair and reasonable by an independent adviser; or
  - (b) if a person becomes the dominant owner by reason of acceptances of an offer (whether or not the dominant owner has also acquired equity securities under rule 36) and the consideration under the offer was a cash sum or included a cash alternative, must be the same cash sum or cash alternative provided as consideration under the offer for equity securities of the same class.
- (1A) The consideration specified under subclause (1) is the consideration payable for the outstanding securities.
- (2) Subclause (1A) does not apply if, within 14 days after sending the acquisition notice, the dominant owner receives written objections to the specified consideration from outstanding security holders who hold the lesser of—
- (a) 2% or more of a class of equity securities; or
  - (b) 10% or more of the outstanding securities of a class.
- (3) If the dominant owner receives objections that together comply in all respects with subclause (2), the dominant owner must immediately refer to expert determination the amount of the consideration to be provided for the securities of the relevant class that must be a cash sum equal to the fair and reasonable value of those securities.
- (4) For the purposes of this rule, the fair and reasonable value of an equity security must be calculated by—
- (a) first assessing the value of all the equity securities in the class of equity securities of which the equity security forms part; and
  - (b) then allocating that value pro rata among all the securities of that class.
- (5) On receipt of the independent adviser's certificate required under subclause (1)(a), the dominant owner must send a copy of it free of charge—
- (a) immediately to the Panel and, if the target company is a listed issuer, to the licensed market operator; and
  - (b) on request to any other person within 1 day of receipt of the request.
- (6) On receipt of the expert determination required under subclause (3), the dominant owner must send a copy of it free of charge—
- (a) immediately to the Panel and, if the target company is a listed issuer, to the licensed market operator; and
  - (b) on request to any other person within 1 day of receipt of the request.

Schedule rule 57(1): replaced, on 1 July 2007, by regulation 31(1) of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 57(1A): inserted, on 1 July 2007, by regulation 31(1) of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 57(2): amended, on 1 July 2007, by regulation 31(2) of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 57(5): replaced, on 1 July 2007, by regulation 31(3) of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 57(5)(a): replaced, on 1 December 2014, by regulation 34(1) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule rule 57(6): inserted, on 1 July 2007, by regulation 31(3) of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 57(6)(a): replaced, on 1 December 2014, by regulation 34(2) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

## **58 Expert determination**

- (1) A reference to expert determination under rule 57(3) is a reference to an independent person appointed by the Panel.
- (2) The independent person acts as an expert and not as an arbitrator in making the determination.
- (3) The dominant owner must pay the costs of the expert determination.
- (4) The independent person must make the expert determination within 28 days after the date of his or her appointment to make the expert determination.

### *Payment of consideration and transfer of outstanding securities*

## **59 Return of instrument of transfer**

- (1) An outstanding security holder who receives an acquisition notice accompanied by an instrument of transfer may, within 21 days after the date on which the acquisition notice is sent, return to the dominant owner, at the address specified in the acquisition notice, the duly executed instrument of transfer along with any other documents that are necessary to enable the dominant owner to be registered as the holder of the securities belonging to the outstanding security holder.
- (2) Subclause (1) applies whether or not the outstanding security holder has objected to the specified consideration under rule 57(2).

## **60 Payment of consideration if documents returned**

- (1) If an outstanding security holder returns to the dominant owner the documents referred to in rule 59, the dominant owner must, within 7 days after the dominant owner receives those documents, send to the outstanding security holder—
  - (a) the consideration specified in the acquisition notice; or
  - (b) if rule 56A applies, the consideration that is payable under that rule.
- (2) Subclause (1) applies whether or not there has been a reference to expert determination under rule 57(3).

Schedule rule 60 heading: amended, on 1 June 2013, by regulation 26 of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 60(1): replaced, on 1 July 2007, by regulation 32 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

**61 Payment of consideration if documents not returned**

- (1) If an outstanding security holder does not return to the dominant owner the documents referred to in rule 59, then, in the case of a compulsory sale, the dominant owner must, within 7 days after the expiration of the 21-day period referred to in rule 59,—
  - (a) deal with in accordance with subclause (2) or (3) (whichever applies)—
    - (i) the consideration specified in the acquisition notice; or
    - (ii) if rule 56A applies, the consideration that is payable under that rule; and
  - (b) send to the code company an instrument of transfer for the outstanding securities, executed on behalf of the outstanding security holder by the dominant owner or its agent.
- (2) If the consideration is, or includes, cash, the dominant owner must pay the cash to the code company, which must—
  - (a) deposit it in an interest-bearing trust account with a registered bank; and
  - (b) hold it in trust for the outstanding security holder until it is claimed.
- (3) If the consideration is, or includes, financial products, the dominant owner must—
  - (a) vest the financial products in the outstanding security holder; and
  - (b) send written notice to the outstanding security holder and the code company that this has been done.
- (4) Subclause (1) applies whether or not there has been a reference to expert determination under rule 57(3).

Schedule rule 61 heading: amended, on 1 June 2013, by regulation 27(1)(a) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 61 heading: amended, on 1 June 2013, by regulation 27(1)(b) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 61(1)(a): replaced, on 1 July 2007, by regulation 33 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule rule 61(1)(a): amended, on 1 June 2013, by regulation 27(2) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 61(1)(b): amended, on 1 June 2013, by regulation 27(3) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 61(2): replaced, on 1 June 2013, by regulation 27(4) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 61(3): replaced, on 1 June 2013, by regulation 27(4) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 61(3): amended, on 1 December 2014, by regulation 35 of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule rule 61(3)(a): amended, on 1 December 2014, by regulation 35 of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).



**62 Position if consideration fixed by expert determination**

- (1) If the consideration fixed by expert determination under rule 57(3) exceeds the consideration specified in the acquisition notice, the dominant owner must immediately pay, in the same manner as the consideration specified in the acquisition notice is to be paid, the balance owing to—
  - (a) the outstanding security holders; or
  - (b) the code company.
- (2) If the consideration fixed by expert determination is less than the consideration specified in the acquisition notice, the dominant owner may recover the excess paid from—
  - (a) the outstanding security holder; or
  - (b) the code company (if the consideration is held by the code company).

**63 Registration of dominant owner as holder of outstanding securities**

- (1) In the case of a compulsory sale, the directors of the code company must register the dominant owner or its nominee as the holder of the outstanding securities on receipt by the code company of,—
  - (a) in relation to outstanding security holders who have returned the documents referred to in rule 59,—
    - (i) the executed instruments of transfer and related documents; and
    - (ii) evidence to the reasonable satisfaction of the code company that the consideration has been sent to the outstanding security holders in accordance with rule 60; and
  - (b) in relation to outstanding security holders who have not returned the documents referred to in rule 59,—
    - (i) the executed instrument or instruments of transfer; and
    - (ii) evidence to the reasonable satisfaction of the code company that the consideration has been dealt with in accordance with rule 61(2) or (3) (whichever applies).
  - (c) *[Revoked]*
- (2) In the case of a voluntary sale, the directors of the code company must register the dominant owner or its nominee as the holder of the outstanding securities on receipt by the code company of—
  - (a) the executed instruments of transfer and related documents received by the dominant owner in accordance with rule 59; and
  - (b) evidence to the reasonable satisfaction of the code company that the consideration has been sent to the outstanding security holders in accordance with rule 60.

Schedule rule 63(1): amended, on 1 June 2013, by regulation 28(1) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 63(1)(a): replaced, on 1 June 2013, by regulation 28(2) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 63(1)(b): replaced, on 1 June 2013, by regulation 28(2) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule rule 63(1)(c): revoked, on 1 June 2013, pursuant to regulation 28(2) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

## **Part 8**

### **Market manipulation**

Schedule Part 8: inserted, on 29 February 2008, by section 29 of the Takeovers Amendment Act 2006 (2006 No 48).

#### **64 Misleading or deceptive conduct**

- (1) A person must not engage in conduct that is—
  - (a) conduct in relation to any transaction or event that is regulated by this code; and
  - (b) misleading or deceptive or likely to mislead or deceive.
- (2) A person must not engage in conduct that is—
  - (a) incidental or preliminary to a transaction or event that is or is likely to be regulated by this code; and
  - (b) misleading or deceptive or likely to mislead or deceive.

Schedule rule 64: inserted, on 29 February 2008, by section 29 of the Takeovers Amendment Act 2006 (2006 No 48).

#### **65 Exception for disclosure by investment advisers or brokers**

*[Revoked]*

Schedule rule 65: revoked, on 1 July 2011, by section 50 of the Financial Advisers Amendment Act 2010 (2010 No 40).

## **Part 9**

### **Application, savings, and transitional provisions relating to amendments to code**

*[Revoked]*

Schedule Part 9: revoked, on 1 December 2014, by regulation 36 of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

#### **66 Application, savings, and transitional provisions relating to amendments to code**

*[Revoked]*

Schedule rule 66: revoked, on 1 December 2014, by regulation 36 of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

## **Schedule 1AA**

### **Transitional, savings, and related provisions**

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Schedule Schedule 1AA: replaced, on 1 December 2014, by regulation 37 of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

#### *Transitional provisions relating to Takeovers Code Approval Amendment Regulations 2014*

#### **1 Transitional provisions for matters before commencement of Takeovers Code Approval Amendment Regulations 2014**

The takeovers code that is in force immediately before the commencement of the Takeovers Code Approval Amendment Regulations 2014 (the **pre-2014 amendment code**) continues to apply, and the takeovers code as amended by the Takeovers Code Approval Amendment Regulations 2014 does not apply, to—

- (a) any offer made pursuant to a takeover notice that has been sent to a target company before the commencement of the Takeovers Code Approval Amendment Regulations 2014;
- (b) any compulsory sale or voluntary sale pursuant to an acquisition notice that is sent by the dominant owner who becomes the dominant owner by reason of acceptances of an offer to which paragraph (a) applies;
- (c) any notice of meeting of shareholders to be held for the purposes of rule 7(c) or (d) of the pre-2014 amendment code that has been sent to shareholders before the commencement of the Takeovers Code Approval Amendment Regulations 2014.

#### **2 Transitional provision relating to rule 41 (Takeover notice)**

Rule 41(2) and (3), as in force immediately before the commencement of this clause, continues to apply to an offer of securities to which the Securities Act 1978 applies as if the Takeovers Code Approval Amendment Regulations 2014 had not been made.

#### **3 Transitional provision relating to rule 44 (Offer document)**

Rule 44(1)(d)(ii), as in force immediately before the commencement of this clause, continues to apply to an offer of securities to which the Securities Act 1978 applies as if the Takeovers Code Approval Amendment Regulations 2014 had not been made.

**Schedule 1**  
**Information that must be contained in, or must accompany, takeover  
notice and offer document**

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Schedule Schedule 1 heading: replaced, on 1 July 2007, by regulation 34 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

**1 Date**

The date of the offer.

**2 Offeror and its directors**

- (1) The name and address of the offeror.
- (2) The names of every director of the offeror (if the offeror is not an individual).

**3 Target company**

The name of the target company.

**4 Advice statement**

A statement in the following form, to be set out in a prominent position at the front of the offer document:

“IMPORTANT

“If you are in doubt as to any aspect of this offer, you should consult your financial or legal adviser.

“If you have sold all your shares in [*name of target company*] to which this offer applies, you should immediately hand this offer document and the accompanying acceptance form to the purchaser or the agent (eg the broker) through whom the sale was made, to be passed to the purchaser.

“[*Name of target company*]’s target company statement, together with an independent adviser’s report on the merits of this offer [and another independent adviser’s report on the fairness and reasonableness of the consideration and terms of this offer as between classes of financial products]\* either accompanies this offer or will be sent to you within 14 days and should be read in conjunction with this offer.

*\*omit if rule 22 report not required”.*

Schedule Schedule 1 clause 4: replaced, on 1 July 2007, by regulation 35 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule Schedule 1 clause 4: amended, on 1 December 2014, by regulation 38 of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

**5 Offer terms**

All the terms and conditions of the offer.

## 5A Partial offers: particulars of voting securities sought

- (1) If the offer is a partial offer, the following particulars of the voting securities of each class sought by the offeror under the offer:

### Number

The number (A) of voting securities of that class that the offeror would hold or control in the target company after successful completion of the offer

The number (B) of voting securities of that class that the offeror would hold or control in the target company if the offeror receives acceptances in respect of the minimum number of voting securities required to satisfy the condition included in the offer under rule 23

The number (C) of voting securities of that class that the offeror already holds or controls in the target company

The number (D) of voting securities of that class sought by the offeror

The number (E) that is the aggregate of A together with the number of voting securities in that class held or controlled by the offeror's associates

### Percentage

The percentage of all voting securities of that class that A represents

The percentage of all voting securities of that class that B represents

The percentage of all voting securities of that class that C represents

D expressed as a percentage of all voting securities of that class not already held or controlled by the offeror (being the specified percentage as calculated in accordance with rule 9(6))

The percentage of all voting securities of that class that E represents

- (2) A statement of the assumptions on which the particulars in subclause (1) are calculated.

Schedule Schedule 1 clause 5A: inserted, on 1 June 2013, by regulation 30 of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule Schedule 1 clause 5A(1): amended, on 1 December 2014, by regulation 39 of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

## 6 Ownership of equity securities of target company

- (1) A statement of the number, designation, and percentage of equity securities of any class of the target company held or controlled by—

- (a) the offeror; and
- (b) any related company of the offeror; and
- (c) any person acting jointly or in concert with the offeror; and
- (d) any director of any of the persons described in paragraphs (a) to (c); and
- (e) any other person holding or controlling 5% or more of the class, to the knowledge of the offeror.

- (2) A statement that except for those persons who are specified in the statement made under subclause (1) as holding or controlling equity securities of the target company, no person referred to in clause 6(1)(a) to (d) holds or controls equity securities of the target company.

- (3) For the purposes of this clause, if a person has a relevant interest in a derivative for which the underlying is 1 or more equity securities of the target company,

the person must be treated as holding or controlling the number of the underlying equity securities that is determined under clause 7C.

Schedule Schedule 1 clause 6(1): amended, on 1 July 2007, by regulation 36(1) of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule Schedule 1 clause 6(1)(e): replaced, on 1 July 2007, by regulation 36(2) of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule Schedule 1 clause 6(2): replaced, on 1 July 2007, by regulation 36(3) of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule Schedule 1 clause 6(3): inserted, on 1 December 2014, by regulation 40 of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

## 7 Trading in target company equity securities

- (1) If any of the persons referred to in clause 6(1)(a) to (d) has, during the 6-month period referred to in subclause (3), acquired or disposed of any equity securities of the target company, in respect of each such person—
  - (a) the total number and the designation of each class of the equity securities acquired or disposed of; and
  - (b) in the case of a single transaction on any day to which this subclause applies, the number of securities, the consideration per security, and the date of the transaction; and
  - (c) in the case of multiple transactions on any day to which this subclause applies, the total number of securities acquired or disposed of on that day, in each class, and the weighted average consideration per security per class.
- (2) If no person referred to in clause 6(1)(a) to (d) has, during the 6-month period referred to in subclause (3), acquired or disposed of any equity securities of the target company, a statement to that effect.
- (3) The 6-month period referred to in subclauses (1) and (2) is,—
  - (a) if the information is specified under rule 41, the 6-month period before the date of the takeover notice;
  - (b) if the information is specified under rule 44, the 6-month period before the date of the offer.
- (4) For the purposes of subclauses (1)(a) and (2),—
  - (a) if a person (A) has acquired or disposed of a relevant interest in a derivative for which the underlying is 1 or more equity securities of the target company, A must be treated as having acquired or disposed of the number of the underlying equity securities that is determined under clause 7C; and
  - (b) A must be treated as having acquired or disposed of those underlying equity securities on the same day on which A acquires or disposes of the relevant interest in the derivative; and

- (c) **disposed of**, in relation to a relevant interest in a derivative, does not include A ceasing to have a relevant interest in a derivative because the relevant agreement has expired.
- (5) Nothing in subclause (4) applies to subclause (1)(b) or (c).  
Schedule Schedule 1 clause 7: replaced, on 1 July 2007, by regulation 37 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).  
Schedule Schedule 1 clause 7(4): inserted, on 1 December 2014, by regulation 41 of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).  
Schedule Schedule 1 clause 7(5): inserted, on 1 December 2014, by regulation 41 of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

## 7A Composition of non-derivative and derivative holdings

- (1) This clause applies if—
  - (a) a person (A) referred to in clause 6(1) has a relevant interest in a derivative as referred to in clause 6(3); or
  - (b) a person (B) referred to in clause 6(1)(a) to (d) has, during the 6-month period referred to in clause 7(3), acquired or disposed of a relevant interest in a derivative as referred to in clause 7(4).
- (2) If this clause applies, it applies to—
  - (a) each statement made under clause 6(1) for A in which the number of equity securities includes a number of equity securities that A is treated as holding or controlling under clause 6(3) (including where the number that A is treated as holding or controlling is 0); and
  - (b) each statement made under clause 7(1)(a) for B in which the number of equity securities includes a number of equity securities that B is treated as having acquired or disposed of under clause 7(4) (including where the number that B is treated as having acquired or disposed of is 0).
- (3) For each statement made under clause 6(1) for A, a further statement that discloses for each number of each class of equity securities of the target company held or controlled by A—
  - (a) the number, designation, and percentage of the class of equity securities held or controlled by A before applying clause 6(3); and
  - (b) the number that A is treated as holding or controlling under clause 6(3); and
  - (c) for each derivative, the details in clause 7B.
- (4) For each statement made under clause 7(1)(a) for B, a further statement that discloses for each total number of each class of equity securities of the target company acquired or disposed of by B—
  - (a) the total number and the designation of the class of equity securities acquired or disposed of by B before applying clause 7(4); and

- (b) the total number that B is treated as having acquired or disposed of under clause 7(4); and
- (c) for each derivative,—
  - (i) the date on which the derivative was entered into; and
  - (ii) the details in clause 7B.

Schedule Schedule 1 clause 7A: inserted, on 1 December 2014, by regulation 42 of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

### **7B Disclosure about derivatives**

For the purposes of clause 7A, the details of the derivative to be disclosed are—

- (a) the type of derivative (for example, option or swap agreement); and
- (b) the full names of the parties to the derivative; and
- (c) if the person to whom the statement relates is not a party to the derivative, the nature of the relevant interest in the derivative; and
- (d) the notional value of the derivative (if any) (which is the face value or the notional amount in respect of the derivative as at the date on which the relevant agreement is entered into) or the notional number of underlying equity securities; and
- (e) whether the derivative is cash settled or physically settled; and
- (f) the maturity date of the derivative (if any); and
- (g) the expiry date of the derivative (if any); and
- (h) the prices specified in the terms of the derivative (if any) (for example, the strike price of an option or the price at which a contract for difference was acquired); and
- (i) any other details needed to understand how the amount of the consideration payable under the derivative or the value of the derivative is affected by the value of the underlying equity securities.

Schedule Schedule 1 clause 7B: inserted, on 1 December 2014, by regulation 42 of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

### **7C How to determine number of equity securities underlying derivatives**

- (1) In clauses 6 and 7, the number of equity securities that a person (A) must be treated, at a particular date, as holding or controlling, or as having acquired or disposed of, is determined as follows:
  - (a) if the derivative gives A, in economic substance, the financial benefits of holding an ascertainable number of the equity securities for a period determined under the derivative and the derivative is a cash-settled derivative, that number of equity securities:
  - (b) if the derivative is a cash-settled option to buy or sell an ascertainable number of equity securities at an agreed price on, or on or before, an



- agreed date and the derivative gives A a long position on those securities, the number that is equal to the ascertainable number of those securities multiplied by the delta of the derivative at the end of the most recent trading day:
- (c) in any other case for which there is a framework or methodology issued under subpart 4 of Part 9 of the Financial Markets Conduct Act 2013 in relation to regulation 132 of the Financial Markets Conduct Regulations 2014, the number calculated in accordance with that framework or methodology.
- (2) However, if A is a derivatives issuer, the offeror, in determining the number of equity securities that A must be treated as holding or controlling, or as having acquired or disposed of, must not take account of any number to the extent that—
- (a) the number arises as a result of the application of clause 6(3) or 7(4) to derivatives entered into in the ordinary course of A's derivatives-issuing business for the purpose of hedging A's obligations under other derivatives entered into with 1 or more investors in a client-serving capacity; and
  - (b) A and the investor or investors are not associated persons; and
  - (c) the exemption in regulation 145 of the Financial Markets Conduct Regulations 2014 applies to A.
- (3) Subclause (2) applies only to the extent that the offeror is aware of the matters referred to in that subclause.
- (4) In this clause,—
- (a) **ascertainable number**, in relation to the particular date referred to in subclause (1), means a number that is specified in, is determined in accordance with, or can be ascertained on that date under the terms of the derivative:
  - (b) **associated person** has the meaning set out in section 12(1) of the Financial Markets Conduct Act 2013:
  - (c) **dealing**, **derivatives issuer**, **FMA**, and **investor** have the meanings set out in section 6(1) of the Financial Markets Conduct Act 2013:
  - (d) **financial benefit** means capital, earnings, or other financial returns.
- (5) For the purposes of subclause (1)(b),—
- (a) A will have a **long position** if, under the terms of the derivative, A may benefit if the price of the underlying equity securities increases (rather than decreases); and
  - (b) the delta of the derivative must be calculated in accordance with accepted market practice for applying a delta calculation to determine how many equity securities a counterparty should hold at the end of the most

recent trading day to hedge the counterparty's obligations under the derivative (whether or not the counterparty chooses to hedge this way in practice).

- (6) For the purposes of subclause (2)(a), a derivatives issuer acts in a **client-serving capacity** when it deals in derivatives by fulfilling orders received from an investor or responding to an investor's request to trade (rather than dealing on its own behalf).

Schedule Schedule 1 clause 7C: inserted, on 1 December 2014, by regulation 42 of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

## **8 Agreements to accept offer**

The names of any person who has agreed conditionally or unconditionally to accept the offer and the material terms of the agreement.

## **9 Arrangements to pay consideration**

- (1) Confirmation by the offeror that resources will be available to the offeror sufficient to meet the consideration to be provided on full acceptance of the offer and to pay any debts incurred in connection with the offer (including the debts arising under sections 47 to 53 of the Act).
- (2) A statement setting out the rights of the offeree under rule 34.

Schedule Schedule 1 clause 9(1): amended, on 31 March 2017, by section 135(3) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

## **10 Arrangements between offeror and target company**

Particulars of any agreement or arrangement (whether legally enforceable or not) made, or proposed to be made, between the offeror or any associates of the offeror, and the target company or any related company of the target company, in connection with, in anticipation of, or in response to, the offer.

## **11 Arrangements between offeror, and directors and officers of target company**

Particulars of any agreement or arrangement (whether legally enforceable or not) made, or proposed to be made, between the offeror or any associates of the offeror, and any of the directors or senior officers of the target company or of any related company of the target company (including particulars of any payment or other benefit proposed to be made or given by way of compensation for loss of office, or as to their remaining in or retiring from office) in connection with, in anticipation of, or in response to, the offer.

## **12 Financial assistance**

Particulars of any agreement or arrangement made, or proposed to be made, under which the target company or any related company of the target company will give (directly or indirectly) financial assistance for the purpose of, or in connection with, the offer.

### **13 Market acquisitions of securities**

*[Revoked]*

Schedule Schedule 1 clause 13: revoked, on 1 July 2007, by regulation 38 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

### **14 Intentions about material changes to target company**

- (1) A statement of the offeror's intentions about—
  - (a) material changes to the business activities of the target company or its subsidiaries; and
  - (b) material changes to the material assets of the target company or its subsidiaries; and
  - (c) material changes to the capital structure of the target company (including the target company's dividend policy, raising capital, and taking on debt); and
  - (d) any other information about the likelihood of changes to the target company or its subsidiaries that could reasonably be expected to be material to the making of a decision by an offeree to accept or reject the offer.
- (2) If the offeror has no intentions in respect of the particulars listed in subclause (1), a statement to that effect.
- (3) A statement that statements made under this clause are consistent with any information that has been given by the offeror to any regulatory body (in New Zealand or in an overseas jurisdiction) in relation to the offer.
- (4) The statements referred to in subclauses (1) to (3) are not required if—
  - (a) the offer is a full offer conditional on the offeror receiving acceptances that will result in the offeror being required to give an acquisition notice under rule 54; and
  - (b) the condition cannot be waived.

Schedule Schedule 1 clause 14: replaced, on 1 June 2013, by regulation 31 of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

### **15 Pre-emption clauses in target company's constitution**

- (1) Particulars of any restriction on the right to transfer equity securities to which the offer relates that—
  - (a) is contained in the constitution of the target company; and
  - (b) has the effect of requiring the holders of the securities to offer the securities for purchase to members of the target company or to any other person before transferring the securities.
- (2) If there is any such restriction, the arrangements (if any) being made to enable the securities to be transferred.

**16 Escalation clauses**

Particulars of any agreement or arrangement (whether legally enforceable or not) under which—

- (a) any existing holder of equity securities in the target company will or may receive in relation to, or as a consequence of, the offer any additional consideration or other benefit over and above the consideration set out in the offer; or
- (b) any prior holder of equity securities in the target company will or may receive any consideration or other benefit as a consequence of the offer.

**17 Classes of financial products**

(1) If the offer is for more than 1 class of financial products,—

- (a) a statement as to how the consideration and terms offered for each class of financial products have been calculated to be fair and reasonable in compliance with rule 8(3) or 8(4) or 9(5), whichever applies; and
- (b) a statement that—
  - (i) the offeror has obtained a report by [*name of independent adviser*] concerning the fairness and reasonableness of the consideration and terms of the offer in relation to the different classes of financial products; and
  - (ii) the report will be sent to offerees with the target company statement; and
  - (iii) the offer should be read in conjunction with the report and with the report obtained by the target company on the merits of the offer.

(2) If the offer is for only 1 class of financial products, the following statement:

No report is required under rule 22 of the Takeovers Code (which, if the offer is for more than 1 class of financial products, requires a report by an independent adviser on the fairness and reasonableness of the consideration and terms of the offer as between different classes of financial products).

Schedule Schedule 1 clause 17: replaced, on 1 July 2007, by regulation 39 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule Schedule 1 clause 17 heading: amended, on 1 December 2014, by regulation 43(1) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule Schedule 1 clause 17(1): amended, on 1 December 2014, by regulation 43(2) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule Schedule 1 clause 17(1)(a): amended, on 1 December 2014, by regulation 43(2) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule Schedule 1 clause 17(1)(b)(i): amended, on 1 December 2014, by regulation 43(2) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule Schedule 1 clause 17(2): amended, on 1 December 2014, by regulation 43(2) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

**18 Additional disclosures required if consideration includes securities**

*[Revoked]*

Schedule Schedule 1 clause 18: revoked, on 1 July 2007, by regulation 40 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

**19 Certificate**

- (1) A certificate in the following form signed by the persons specified in subclause (2):

“To the best of our knowledge and belief, after making proper enquiry, the information contained in or accompanying the takeover notice *or* the offer document\* [*\*omit whichever does not apply*] is, in all material respects, true and correct and not misleading, whether by omission of any information or otherwise, and includes all the information required to be disclosed by the offeror under the Takeovers Code.”

- (2) The persons referred to in subclause (1) are,—
- (a) if the offeror is an individual, the offeror or the offeror’s agent authorised in writing; or
  - (b) if the offeror is not an individual,—
    - (i) the chief executive officer and the chief financial officer of the offeror, or their respective agents authorised in writing, or, if there is no chief executive officer or chief financial officer, the person or persons fulfilling those roles respectively, or their respective agents authorised in writing; and
    - (ii) 2 directors of the offeror (or the sole director of the offeror), not being the chief executive officer or the chief financial officer unless there is an insufficient number of other directors who must sign on behalf of the board of directors with the authority of a resolution of the board of directors.

Schedule Schedule 1 clause 19(1): amended, on 1 July 2007, by regulation 41 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

**Schedule 2**  
**Information that must be contained in, or must accompany, target  
company statement**

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Schedule Schedule 2 heading: replaced, on 1 July 2007, by regulation 42 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

- 1 Date**  
The date of the target company statement.
- 2 Offer**  
A brief identification of the offer to which the statement relates.
- 3 Target company**  
The name of the target company.
- 4 Directors of target company**  
The names of the directors of the target company.
- 5 Ownership of equity securities of target company**
  - (1) The number, designation, and the percentage of equity securities of any class of the target company held or controlled by—
    - (a) each director or senior officer of the target company and their associates; and
    - (b) any other person holding or controlling 5% or more of the class, to the knowledge of the target company.
  - (2) If any of the persons referred to in subclause (1) do not hold or control equity securities of the target company, a statement to that effect.
  - (2A) For the purposes of subclause (1) and (2), and in clause 6(3), if a person has a relevant interest in a derivative for which the underlying is 1 or more equity securities of the target company, the person must be treated as holding or controlling the number of the underlying equity securities that is determined under clause 6C.
  - (3) The number of equity securities of the target company—
    - (a) that have, during the period specified in subclause (5), been issued to the directors and senior officers of the target company or their associates; or
    - (b) in which the directors and senior officers or their associates have, during the period specified in subclause (5), obtained a beneficial interest under any employee share scheme or other remuneration arrangement.
  - (4) The price at which the securities in subclause (3) were issued or provided.

- (5) The period referred to in subclause (3) is the 2-year period that ends with the date of the target company statement.

Schedule Schedule 2 clause 5(1)(b): amended, on 1 July 2007, by regulation 43 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule Schedule 2 clause 5(2A): inserted, on 1 December 2014, by regulation 44 of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

## **6 Trading in target company equity securities**

- (1) If any of the persons referred to in clause 5(1) has, during the 6-month period before the latest practicable date before the date of the target company statement, acquired or disposed of any equity securities of the target company,—
- (a) in respect of each such person, the total number and the designation of each class of the equity securities acquired or disposed of; and
  - (b) in the case of a person referred to in—
    - (i) clause 5(1)(a), the number of securities, the consideration per security, and the date of each transaction to which this subclause applies; or
    - (ii) clause 5(1)(b)—
      - (A) in the case of a single transaction in any week to which this subclause applies, the number of securities, the consideration per security, and the week of each transaction; and
      - (B) in the case of multiple transactions in any week to which this subclause applies, the total number of securities acquired or disposed of in a week, in each class, and the weighted average consideration per security per class.
- (2) If no person referred to in clause 5(1) has, during the 6-month period referred to in subclause (1), acquired or disposed of equity securities of the target company, a statement to that effect.
- (3) If a person referred to in clause 5(1) holds equity securities of any class in the target company as a custodian who only acts in relation to those securities on the direction of their beneficial owner, and if the beneficial owner controls less than 5% of the total equity securities in that class in the target company, the information required by subclause (1) in respect of those securities is not required in respect of the beneficial owner or the custodian.
- (4) For the purposes of subclauses (1)(a) and (2),—
- (a) if a person (A) has acquired or disposed of a relevant interest in a derivative for which the underlying is 1 or more equity securities of the target company, A must be treated as having acquired or disposed of the number of the underlying equity securities that is determined under clause 6C; and

- (b) A must be treated as having acquired or disposed of those underlying equity securities on the same day on which A acquires or disposes of the relevant interest in the derivative; and
  - (c) **disposed of**, in relation to a relevant interest in a derivative, does not include A ceasing to have a relevant interest in a derivative because the relevant agreement has expired.
- (5) Nothing in subclause (4) applies to subclause (1)(b).
- Schedule Schedule 2 clause 6: replaced, on 1 July 2007, by regulation 44 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).
- Schedule Schedule 2 clause 6(3): inserted, on 1 June 2013, by regulation 32 of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).
- Schedule Schedule 2 clause 6(4): inserted, on 1 December 2014, by regulation 45 of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).
- Schedule Schedule 2 clause 6(5): inserted, on 1 December 2014, by regulation 45 of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

#### **6A Composition of non-derivative and derivative holdings**

- (1) This clause applies if a person (A) referred to in clause 5(1)—
- (a) has a relevant interest in a derivative as referred to in clause 5(2A); or
  - (b) has, during the 6-month period referred to in clause 6(1), acquired or disposed of a relevant interest in a derivative as referred to in clause 6(4).
- (2) If this clause applies, it applies to—
- (a) each statement made under clause 5(1) for A in which the number of equity securities includes a number of equity securities that A is treated as holding or controlling under clause 5(2A) (including where the number that A is treated as holding or controlling is 0); and
  - (b) each statement made under clause 6(1)(a) for A in which the number of equity securities includes a number of equity securities that A is treated as having acquired or disposed of under clause 6(4) (including where the number that A is treated as having acquired or disposed of is 0).
- (3) For each statement made under clause 5(1) for A, a further statement that discloses for each number of each class of equity securities of the target company held or controlled by A—
- (a) the number, designation, and percentage of the class of equity securities held or controlled by A before applying clause 5(2A); and
  - (b) the number that A is treated as holding or controlling under clause 5(2A); and
  - (c) for each derivative, the details in clause 6B.
- (4) For each statement made under clause 6(1)(a) for A, a further statement that discloses for each total number of each class of equity securities of the target company acquired or disposed of by A—



- (a) the total number and the designation of the class of equity securities acquired or disposed of by A before applying clause 6(4); and
- (b) the total number that A is treated as having acquired or disposed of under clause 6(4); and
- (c) for each derivative,—
  - (i) the date on which the derivative was entered into; and
  - (ii) the details in clause 6B.

Schedule Schedule 2 clause 6A: inserted, on 1 December 2014, by regulation 46 of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

### **6B Disclosure about derivatives**

For the purposes of clause 6A, the details of the derivative to be disclosed are—

- (a) the type of derivative (for example, option or swap agreement); and
- (b) the full names of the parties to the derivative; and
- (c) if the person to whom the statement relates is not a party to the derivative, the nature of the relevant interest in the derivative; and
- (d) the notional value of the derivative (if any) (which is the face value or the notional amount in respect of the derivative as at the date on which the relevant agreement is entered into) or the notional number of underlying equity securities; and
- (e) whether the derivative is cash settled or physically settled; and
- (f) the maturity date of the derivative (if any); and
- (g) the expiry date of the derivative (if any); and
- (h) the prices specified in the terms of the derivative (if any) (for example, the strike price of an option or the price at which a contract for difference was acquired); and
- (i) any other details needed to understand how the amount of the consideration payable under the derivative or the value of the derivative is affected by the value of the underlying equity securities.

Schedule Schedule 2 clause 6B: inserted, on 1 December 2014, by regulation 46 of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

### **6C How to determine number of equity securities underlying derivatives**

- (1) In clauses 5, 6, and 13A, the number of equity securities that a person (A) must be treated, at a particular date, as holding or controlling, or as having acquired or disposed of, is determined as follows:
  - (a) if the derivative gives A, in economic substance, the financial benefits of holding an ascertainable number of the equity securities for a period determined under the derivative and the derivative is a cash-settled derivative, that number of equity securities:

- (b) if the derivative is a cash-settled option to buy or sell an ascertainable number of equity securities at an agreed price on, or on or before, an agreed date and the derivative gives A a long position on those securities, the number that is equal to the ascertainable number of those securities multiplied by the delta of the derivative at the end of the most recent trading day:
  - (c) in any other case for which there is a framework or methodology issued under subpart 4 of Part 9 of the Financial Markets Conduct Act 2013 in relation to regulation 132 of the Financial Markets Conduct Regulations 2014, the number calculated in accordance with that framework or methodology.
- (2) However, if A is a derivatives issuer, the target company, in determining the number of equity securities that A must be treated as holding or controlling, or as having acquired or disposed of, must not take account of any number to the extent that—
  - (a) the number arises as a result of the application of clause 5(2A), 6(4), or 13A(5) to derivatives entered into in the ordinary course of A's derivatives-issuing business for the purpose of hedging A's obligations under other derivatives entered into with 1 or more investors in a client-serving capacity; and
  - (b) A and the investor or investors are not associated persons; and
  - (c) the exemption in regulation 145 of the Financial Markets Conduct Regulations 2014 applies to A.
- (3) Subclause (2) applies only to the extent that the target company is aware of the matters referred to in that subclause.
- (4) In this clause,—
  - (a) **ascertainable number**, in relation to the particular date referred to in subclause (1), means a number that is specified in, is determined in accordance with, or can be ascertained on that date under the terms of the derivative:
  - (b) **associated person** has the meaning set out in section 12(1) of the Financial Markets Conduct Act 2013:
  - (c) **dealing, derivatives issuer, FMA**, and **investor** have the meanings set out in section 6(1) of the Financial Markets Conduct Act 2013:
  - (d) **financial benefit** means capital, earnings, or other financial returns.
- (5) For the purposes of subclause (1)(b),—
  - (a) A will have a **long position** if, under the terms of the derivative, A may benefit if the price of the underlying equity securities increases (rather than decreases); and

- (b) the delta of the derivative must be calculated in accordance with accepted market practice for applying a delta calculation to determine how many equity securities a counterparty should hold at the end of the most recent trading day to hedge the counterparty's obligations under the derivative (whether or not the counterparty chooses to hedge this way in practice).
- (6) For the purposes of subclause (2)(a), a derivatives issuer acts in a **client-serving capacity** when it deals in derivatives by fulfilling orders received from an investor or responding to an investor's request to trade (rather than dealing on its own behalf).

Schedule Schedule 2 clause 6C: inserted, on 1 December 2014, by regulation 46 of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

## 7 **Acceptance of offer**

The name of every person referred to in clause 5(1)(a) who has accepted, or intends to accept, the offer, and the number of securities in respect of which the person has accepted, or intends to accept, the offer.

## 8 **Ownership of equity securities of offeror**

- (1) If the offeror is a company, the number, designation, and percentage of equity securities of any class of the offeror held or controlled by the target company and each director and senior officer of the target company and their associates.
- (2) If none of the persons referred to in subclause (1) hold or control any equity securities of the offeror, a statement to that effect.

## 9 **Trading in equity securities of offeror**

- (1) If the offeror is a company,—
  - (a) the number and designation of any equity securities of the offeror that were acquired or disposed of by the persons referred to in clause 8 during the 6-month period referred to in clause 6(1); and
  - (b) the consideration for, and the date of, every such transaction.
- (2) If no such securities were acquired or disposed of, a statement to that effect.

## 10 **Arrangements between offeror and target company**

Particulars of any agreement or arrangement (whether legally enforceable or not) made, or proposed to be made, between the offeror or any associates of the offeror, and the target company or any related company of the target company, in connection with, in anticipation of, or in response to, the offer.

## 11 **Relationship between offeror, and directors and officers of target company**

- (1) Particulars of any agreement or arrangement (whether legally enforceable or not) made, or proposed to be made, between the offeror or any associates of the offeror, and any of the directors or senior officers of the target company or any

related company of the target company (including particulars of any payment or other benefit proposed to be made or given by way of compensation for loss of office, or as to their remaining in or retiring from office) in connection with, in anticipation of, or in response to, the offer.

- (2) A statement as to whether any directors or senior officers of the target company are also directors or senior officers of the offeror, or any related company of the offeror, and to identify those persons.

## **12 Agreement between target company, and directors and officers**

Particulars of any agreement or arrangement (whether legally enforceable or not) made, or proposed to be made, between the target company or any related company of the target company, and any of the directors or senior officers or their associates of the target company or its related companies, under which a payment or other benefit may be made or given by way of compensation for loss of office, or as to their remaining in or retiring from office in connection with, in anticipation of, or in response to, the offer.

## **13 Interests of directors and officers of target company in contracts of offeror or related company**

- (1) A statement as to whether any director or senior officer of the target company or their associates has an interest in any contract to which the offeror, or any related company of the offeror, is a party.
- (2) Particulars of the nature of any interest referred to in subclause (1).
- (3) The extent and (if capable of quantification) monetary value of any interest referred to in subclause (1).
- (4) Subclause (3) does not apply if the contract was entered into in the ordinary course of business of the offeror or its related company and on usual terms and conditions.

Schedule Schedule 2 clause 13: replaced, on 1 July 2007, by regulation 45 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

## **13A Interests of target company's substantial security holders in material contracts of offeror or related company**

- (1) A statement as to whether any person who, to the knowledge of the directors or the senior officers of the target company holds or controls 5% or more of any class of equity securities of the target company, has an interest in any material contract to which the offeror, or any related company of the offeror, is a party.
- (2) Particulars of the nature of any interest referred to in subclause (1).
- (3) The extent and (if capable of quantification) monetary value of any interest referred to in subclause (1).
- (4) Subclause (3) does not apply if the contract was entered into in the ordinary course of business of the offeror or its related company and on usual terms and conditions.

- (5) For the purposes of subclause (1), if a person has a relevant interest in a derivative for which the underlying is 1 or more equity securities of the target company, the person must be treated as holding or controlling the number of the underlying equity securities that is determined under clause 6C.

Schedule Schedule 2 clause 13A: inserted, on 1 July 2007, by regulation 45 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

Schedule Schedule 2 clause 13A(5): inserted, on 1 December 2014, by regulation 47 of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

#### **14 Additional information**

If, in the opinion of the directors of the target company, any information in the offer document is incorrect or misleading, any additional information within the knowledge of the target company that would make the information in the offer document correct or not misleading.

#### **15 Recommendation**

- (1) Either—
- (a) a recommendation by the directors of the target company to accept or reject the offer and the reasons for such recommendation; or
  - (b) a statement that the directors of the target company are unable to make, or are not making, a recommendation and the reasons for not making a recommendation.
- (2) If any of the directors dissent from a recommendation or from any statement under subclause (1)(b) made by the directors or abstain from making a recommendation or any statement under subclause (1)(b), their names and their reasons for dissenting or abstaining.
- (3) If no recommendation is made, but all or any of the directors of the target company propose to make a recommendation, or to reconsider their decision not to make a recommendation, a statement to that effect and, if the directors consider it appropriate, a statement to the effect that offerees should not accept the offer in the meantime.

#### **16 Actions of target company**

- (1) Particulars of any material agreement or arrangement (whether legally enforceable or not) of the target company and its related companies entered into as a consequence of, in response to, or in connection with, the offer.
- (2) A statement as to whether there are any negotiations underway as a consequence of, in response to, or in connection with, the offer that relate to or could result in—
- (a) an extraordinary transaction, such as a merger, amalgamation, or reorganisation, involving the target company or any of its related companies; or

- (b) the acquisition or disposition of material assets by the target company or any of its related companies; or
- (c) an acquisition of equity securities by, or of, the target company or any related company of the target company; or
- (d) any material change in the equity securities on issue, or policy relating to distributions, of the target company.

### **17 Equity securities of target company**

- (1) Details of the issued equity securities in the target company and the rights of the holders in respect of capital, distributions, and voting.
- (2) The material terms of equity securities that are options, or rights to acquire, equity securities.

### **18 Financial information**

- (1) A statement that the offeree is entitled to obtain from the target company a copy of the most recent annual report of the target company.
- (2) A copy of the most recent half-yearly report of the target company, if any, since the annual report referred to in subclause (1).
- (3) A copy of the most recent interim report of the target company, if any, since the annual report referred to in subclause (1), or, if a copy of a half-yearly report has been disclosed under subclause (2), a copy of any interim report of the target company relating to a period after that half-yearly report, if any.
- (4) All material changes in the financial or trading position, or prospects, of the target company since the annual report referred to in subclause (1) or a statement that there are no known material changes.
- (5) Any other information about the assets, liabilities, profitability, and financial affairs of the target company that could reasonably be expected to be material to the making of a decision by the offerees to accept or reject the offer.
- (6) For the purposes of this clause,—

**annual report** means,—

- (a) if any voting securities of the target company are quoted on a licensed market, the annual report and financial statements (including the auditor's report on those financial statements) that the target company is required by the licensed market operator to send or make available to the target company's equity security holders; or
- (b) if paragraph (a) does not apply, the annual report prepared in accordance with sections 208(1) and 211(1) of the Companies Act 1993 and sent or made available to shareholders of the target company under sections 209, 209A, and 209B of the Companies Act 1993

**half-yearly report** means,—

- (a) if any voting securities of the target company are quoted on a licensed market, the half-yearly report and half-yearly financial statements (including the auditor's report on such financial statements, if any) that the issuer is required by the rules of the licensed market to send or make available to equity security holders of the issuer; or
- (b) if paragraph (a) does not apply, any half-yearly report and half-yearly financial statements (including the auditor's report on those financial statements, if any) that have been sent or made available to the shareholders of the target company

**interim report** means any interim report and interim financial statements (including the auditor's report on such financial statements, if any) that the issuer has sent to equity security holders of the issuer (other than the half-yearly report).

Schedule Schedule 2 clause 18(6) **annual report** paragraph (a): replaced, on 1 December 2014, by regulation 48(1) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule Schedule 2 clause 18(6) **annual report** paragraph (b): amended, on 1 June 2013, by regulation 33(2)(a) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule Schedule 2 clause 18(6) **annual report** paragraph (b): amended, on 1 June 2013, by regulation 33(2)(b) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

Schedule Schedule 2 clause 18(6) **half-yearly report** paragraph (a): replaced, on 1 December 2014, by regulation 48(2) of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule Schedule 2 clause 18(6) **half-yearly report** paragraph (b): amended, on 1 June 2013, by regulation 33(4) of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

## 19 Independent advice on merits of offer

- (1) The identity of the independent adviser who has provided a report under rule 21 and a copy of the adviser's full report or a summary of the full report prepared by the adviser.
- (2) If only a summary of the full report is provided under subclause (1),—
  - (a) a statement that the full report is available for inspection at a specified address; and
  - (b) a statement that a copy of the full report will be sent to any offeree on request; and
  - (c) a statement that the summary report is a fair summary and not misleading.
- (3) The full report and summary report must include—
  - (a) a statement of the qualifications and expertise of the adviser; and
  - (b) a statement that the adviser has no conflict of interest that could affect the adviser's ability to provide an unbiased report.

## 19A Different classes of securities

- (1) If an independent adviser's report is required under rule 22,—

- (a) the identity of the independent adviser; and
  - (b) a copy of the adviser's full report.
- (2) If a further report obtained by the offeror under rule 30 is to be sent by the target company with the target company statement under rule 30(3),—
- (a) the identity of the independent adviser from whom the further report was obtained; and
  - (b) a copy of the adviser's full further report; and
  - (c) an explanation of why the further report is required in addition to the initial report required under rule 22.

Schedule Schedule 2 clause 19A: inserted, on 1 July 2007, by regulation 46 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

## **20 Asset valuation**

If any information provided in the target company statement refers to a valuation of any asset,—

- (a) the date of the valuation, the identity of the valuer, and a summary of the valuation, that discloses the basis of computation and the key assumptions on which the valuation is based; and
- (b) an address or addresses where copies of the valuation are available for inspection and a statement that a copy of the valuation will be sent to any offeree on request.

## **21 Prospective financial information**

If any information provided in the target company statement refers to prospective financial information, the principal assumptions on which the prospective financial information is based.

## **22 Sales of unquoted equity securities under offer**

If the equity securities that are the subject of the offer are not quoted on a stock exchange, all the information that the target company has as to the number of those equity securities that have been disposed of in the 12 months ending on the latest practicable date before the date on which the target company statement is sent by the target company, and the consideration for those dispositions.

## **23 Market prices of quoted equity securities under offer**

- (1) The closing price on each stock exchange where they are quoted (expressed in the currency in which they are quoted) of the equity securities of the target company that are the subject of the offer—
- (a) on the latest practicable working day before the date on which the target company statement is sent by the target company; and



- (b) on the last day on which the exchange was open for business before the date on which the target company received the takeover notice.
- (2) The highest and lowest closing market prices on each exchange, with the relevant date, during the 6 months before the date on which the target company received the takeover notice.
- (3) Particulars of any issue of equity securities, any changes in the equity securities on issue, and any distributions that could have affected the market prices referred to in this clause.
- (4) Any other information about the market price of the securities that would reasonably be expected to be material to the making of a decision by the offeres to accept or reject the offer.

#### **24 Other information**

Any other information not required to be disclosed by this schedule that could reasonably be expected to be material to the making of a decision by the offeres to accept or reject the offer.

#### **25 Approval of target company statement**

- (1) A statement that the contents of the target company statement have been approved by the board of directors of the target company.
- (2) If any of the directors of the target company do not approve of the statement, their names and their reasons for not approving.

#### **26 Certificate**

- (1) A certificate in the following form signed by the persons specified in subclause (2):
  - “To the best of our knowledge and belief, after making proper enquiry, the information contained in or accompanying this statement is, in all material respects, true and correct and not misleading, whether by omission of any information or otherwise, and includes all the information required to be disclosed by the target company under the Takeovers Code.”
- (2) The persons referred to in subclause (1) are—
  - (a) the chief executive officer and the chief financial officer of the target company, or their respective agents authorised in writing, or, if there is no chief executive officer or chief financial officer, the person or persons fulfilling those roles respectively, or their respective agents authorised in writing; and
  - (b) 2 directors of the target company (or the sole director of the target company), not being the chief executive officer or the chief financial officer unless there is an insufficient number of other directors who must sign on behalf of the board of directors with the authority of a resolution of the board of directors.

**Schedule 3**  
**Information that must be contained in reports required under rule 22**

cls 22(4), 30(1)(b)

Schedule Schedule 3: inserted, on 1 July 2007, by regulation 47 of the Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122).

**1 Identity of adviser**

The name of the adviser.

**2 Adviser's qualifications and expertise**

A statement of the adviser's qualifications and expertise.

**3 No conflict of interest**

A statement that the adviser has no conflict of interest that could affect the adviser's ability to provide an unbiased report.

**4 Statement in relation to rule 22 report and further rule 22 report**

- (1) This clause applies to a report that is required under rule 22 (a **rule 22 report**) or a further rule 22 report obtained under rule 30 (a **further rule 22 report**).
- (2) A rule 22 report must contain the following statement in a prominent position at the front of the report:

*"Purpose of report*

"1 This report is **not** a report on the merits of the offer.

"2 This report has been obtained by the offeror.

"3 The purpose of this report is solely to compare the consideration and terms offered for the different classes of financial products, and to certify as to the fairness and reasonableness of that consideration and terms as between the different classes.

"4 A separate independent adviser's report on the merits of the offer, commissioned by the directors of [*name of target company*], must accompany [*name of target company*]'s target company statement.

"5 The offer should be read in conjunction with this report and the separate independent adviser's report on the merits of the offer."

- (3) A further rule 22 report must contain the following statement in a prominent position at the front of the report:

*"Purpose of report*

"1 This report is **not** a report on the merits of the offer as varied by the variation notice dated [*date of variation notice*].

"2 This report has been obtained by [*name of offeror*] in connection with the variation to the offer.

- “3 The purpose of this report is solely to compare the consideration and terms offered for the different classes of financial products, and to certify as to the fairness and reasonableness of that consideration and terms as between the different classes.
- “4 The offer should be read in conjunction with this report and the separate independent adviser’s report on the merits of the offer (which you will have received with [*name of target company*]’s target company statement).”

Schedule Schedule 3 clause 4(2): amended, on 1 December 2014, by regulation 49 of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

Schedule Schedule 3 clause 4(3): amended, on 1 December 2014, by regulation 49 of the Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340).

## **5 Explanation for further rule 22 report**

If the report is a further rule 22 report, an explanation of why the further rule 22 report is required in addition to the rule 22 report.

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**Schedule 4**  
**Rule 16(b)(i): Particulars of voting securities**

r 16(b)(i)

Schedule Schedule 4: inserted, on 1 June 2013, by regulation 34 of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

The particulars of the voting securities for the purposes of rule 16(b)(i) are—

- (a) the number being allotted; and
- (b) the percentage of the aggregate of all existing voting securities and all voting securities being allotted that that number represents; and
- (c) the percentage of all voting securities that will be held or controlled by the allottee after completion of the allotment; and
- (d) the aggregate of the percentages of all voting securities that will be held or controlled by the allottee and the allottee's associates after completion of the allotment.

## Schedule 5

### Rule 16(b)(ii): Particulars of voting securities

r 16(b)(ii)

Schedule Schedule 5: inserted, on 1 June 2013, by regulation 34 of the Takeovers Code Approval Amendment Regulations 2013 (SR 2013/120).

The particulars of voting securities for the purposes of rule 16(b)(ii) are—

- (a) the maximum number of voting securities that could be allotted (the **approved maximum number**) to the allottee; and
- (b) the percentage of the aggregate of all existing voting securities and all voting securities that could be allotted that the approved maximum number represents; and
- (c) the maximum percentage of all voting securities that could be held or controlled by the allottee after completion of the allotment or allotments; and
- (d) the maximum aggregate of the percentages of all voting securities that could be held or controlled by the allottee and the allottee's associates after completion of the allotment or allotments (not including voting securities of any of the allottee's associates who are also relying on rule 7(d) in relation to the allotment or allotments (the **relying associates**)); and
- (e) if there are relying associates, the maximum aggregate of the percentages of all voting securities that could be held or controlled by the allottee and the allottee's associates after completion of the allotment or allotments; and
- (f) the date used to determine the information referred to in this clause (the **calculation date**); and
- (g) the assumptions on which the particulars in paragraphs (a) to (f) are calculated, which must include—
  - (i) that the number of voting securities is the number of voting securities on issue on the calculation date; and
  - (ii) that there is no change in the total number of voting securities on issue between the calculation date and the end of the allotment period (other than as a result of the allotment or allotments); and
  - (iii) that, in relation to paragraphs (a) to (c), the allottee is allotted the approved maximum number under the allotment or allotments; and
  - (iv) that, in relation to paragraph (d), the allottee and each of the allottee's associates (not including the relying associates) are allotted the maximum number of voting securities; and
  - (v) that, in relation to paragraph (e) (if applicable), the allottee and each of the allottee's associates are allotted the maximum number of voting securities; and
  - (vi) any other assumptions that are reasonably necessary to ensure that shareholders in the code company are provided with the material information

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required for them to be able to determine whether to approve the resolution.

Martin Bell,  
for Clerk of the Executive Council.

Issued under the authority of the Legislation Act 2012.  
Date of notification in *Gazette*: 19 October 2000.

## **Reprints notes**

### **1    *General***

This is a reprint of the Takeovers Code Approval Order 2000 that incorporates all the amendments to that order as at the date of the last amendment to it.

### **2    *Legal status***

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### **3    *Editorial and format changes***

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### **4    *Amendments incorporated in this reprint***

Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12): section 135

Takeovers Code Approval Amendment Regulations 2014 (LI 2014/340)

Companies Amendment Act 2014 (2014 No 46): section 32

Takeovers Amendment Act 2012 (2012 No 68): sections 8, 9

Financial Advisers Amendment Act 2010 (2010 No 40): section 50

Securities Markets Amendment Act 2009 (2009 No 54): section 23(2), (4)

Takeovers Amendment Act 2006 Commencement Order 2007 (SR 2007/368)

Takeovers Code Approval Amendment Regulations 2007 (SR 2007/122)

Takeovers Amendment Act 2006 (2006 No 48): sections 27, 29