

The Securities Regulation Code on Takeovers and Mergers

The Code

Section A. Introduction

1.

The Status of the Introduction, The Definitions and General Principles

The Introduction, the Definitions and the General Principles are intended as amplification of the Rules, and are therefore binding as part of the Code.

2.

The Code in Practice

A) General Principles and Rules

The provisions of the Code fall into two categories. On the one hand the Code sets out certain General Principles to be observed in affected transactions. These General Principles are essentially a codification of acceptable standards of commercial behaviour and they have an obvious and universal application. On the other hand, the Code lays down a series of Rules. Some of the Rules are no more than examples of the application of the General Principles and the Panel seeks to interpret them in accordance with those principles. Others are Rules of procedure designed to govern specific types of affected transactions. Accordingly, the Code, through the General Principles, may apply to a situation not specifically covered by a Rule. Also the Panel is allowed a discretion to relax the application of a Rule in exceptional circumstances, for example, when it considers that its strict application would operate unduly harshly.

B) Responsibilities of Directors and Financial Advisers

The boards of an offeror and the offeree company and their respective advisers have a duty to act in the best interests of the holders of the respective securities. The General Principles and the Code will, inevitably, impinge on the freedom of action of boards and persons involved in affected transactions.

Each director of an offeror and of the offeree company has a responsibility to ensure, so far as he is reasonably able, that the Code is complied with in the conduct of an affected transaction.

Financial advisers have a particular responsibility to comply with the Code and to ensure, so far as they are reasonably able, that an offeror and the offeree company, and their respective directors, are aware of their responsibilities under the Code and comply with them. Financial advisers shall ensure that the Panel is consulted whenever necessary or desirable and shall co-operate fully with the Panel on any inquiries made by it. Financial advisers should also be mindful of conflicts of interest.

C) Consulting the Executive Director, the Executive Committee or the Panel

The Panel has appointed an Executive Director, and an Executive Committee [see sections 440B(11) and (12) of the Act]. A Deputy Executive Director will be appointed.

When there is any doubt as to whether a proposed course of conduct is in accordance with the General Principles or the Rules, parties or their advisers may consult the Executive Director in

advance. In this way, the parties can obtain clarification of the basis on which they can properly proceed on the facts presented and so avoid taking action which might, in the event, be a breach of the Code.

Both principals and their advisers are encouraged to make full use of this service.

A ruling on the application or interpretation of the Code is generally given in the first place by the Executive Director on the basis of hearing the applicant alone. In some cases, however, it may not be possible for a ruling to be given unless the Executive Director is able to hear the views of other parties. The requirements of confidentiality shall be respected unless the circumstances require otherwise.

The Executive Director may refer a matter to the Executive Committee or to the Panel for decision without himself giving a ruling when he considers that there is an unusual, important or difficult point at issue. He may make such reference *mero motu* or on the application of any party.

The Panel expects prompt co-operation from those to whom inquiries are directed so that decisions may be both properly informed and given as speedily as possible.

D) Appears

If a party or his adviser wishes to contest a ruling of the Executive Director, he may take the matter on appeal to the Executive Committee, a quorum for which is three members, which committee can be convened at short notice. The same right is given to an aggrieved holder of relevant securities, subject to certain safeguards designed to discourage frivolous or vexatious appeals. A similar right of appeal exists against rulings of the Executive Committee, such further appeal being to the panel. In the case of appeals to the Panel, the quorum is five members.

Appeals shall be noted within three business days of notification of the ruling against which the appeal is directed, provided that the Executive Director or the Executive Committee, as the case may be, may direct that the appeal be noted within a shorter period if the circumstances so require, or within a longer period if justified. An appeal from the Executive Director, or from the Executive Committee, as the case may be, involves a rehearing, save to the extent that the party or parties involved may otherwise agree.

E) Procedure before the Panel

At hearings by the Executive Director and in appeals the case is normally presented in person by the parties or their advisers. Formal legal representation will not normally be permitted. Normally, each party shall set out its case briefly in writing beforehand. The parties are permitted to call such witnesses as may give relevant and material evidence. There are no rules of evidence other than those requisite to ensure fairness. All rulings by the Executive Director, Executive Committee or the Panel shall be confirmed in writing.

In general parties with a direct interest in the hearing are entitled to be present throughout the hearing and to see all papers submitted. However, a party may wish to present evidence which is of a confidential commercial nature. In such cases, if such course is considered justified, the evidence in question may be received in the absence of some, or all, of the other parties involved. Representations by holders of relevant securities or other interested parties may be made in writing.

Proceedings are informal and private. The Executive Director, Executive Committee or Panel, as

the case may be, may himself or itself call any such evidence where it deems that course to be desirable. A recording may be taken, but it will not necessarily be transcribed or retained.

It is the panel's policy in the case of important decisions to publish its conclusions and the reasons for them. The Panel's decisions will be announced to the parties as soon as possible.

F) Accessibility of Panel

Any holder of relevant securities shall have the right to approach the Panel at any time in respect of any matter within the competence of the Panel either personally, by prior appointment, or in writing and to be informed of the decision of the Panel with regard to his approach.

3.

Companies to which the Code applies

In the determination of whether or not the Code applies, it is the nature of the company which is the offeree or potential offeree company, or in which control (as defined) may change, that is relevant.

The Code applies where the offeree company is a public company, whether or not listed on The Stock Exchange, and to statutory corporations, which are or are deemed to be resident in the Republic of South Africa. It also applies where the offeree company is a private company which is or which is deemed to be so resident, but only where the shareholders' interests valued at the offer price, and the shareholders' loan capital, exceed R5 000 000 and there is more than ten beneficial shareholders, provided that the Executive Director may exempt any particular transaction affecting a private company if satisfied that there can be no prejudice to minority shareholders.

A company shall be deemed to be resident in the Republic of South Africa if it is incorporated or registered here, or has its head office and/or place of central management here.

The Panel appreciates that the application of the provisions of the Code may not be appropriate to all companies or corporations in the categories referred to above, and will therefore, apply the Code with a degree of flexibility where the circumstances demand

4.

Practice Notes

The Panel may from time to time issue for information Practice Notes on the interpretation of the Code and its application in practice. The Panel may also from time to time issue information on current policy to serve as guidelines in regard to proposed affected transactions.

Section B. Definitions

1.

Under Section 440A(1) of the Act

Section 440A(1) of the Act includes the following definitions which apply unless the context otherwise indicates:

"acquisition", in relation to shares or other securities of any company, means the acquisition of shares or other securities in such company by any means whatsoever, including purchase or

subscription;

"acting in concert" means, subject to subsection (2) (a) [of section 440A], acting in pursuance of an agreement, an arrangement or understanding (whether formal or informal) between two or more persons pursuant to which they or any of them co-operate for the purposes of entering into or proposing an affected transaction.

"affected transaction" means any transaction including a transaction which forms part of a series of transactions or scheme, whatever form it may take, which -

a) taking into account any securities held before such transaction or scheme, has or will have the effect of-

i) vesting control of any company (excluding a close corporation) in any person, or two or more persons acting in concert, in whom control did not vest prior to such transaction or scheme; or

ii) any person, or two or more persons acting in concert, acquiring or becoming the sole holder or holders of, all the securities, or all the securities of a particular class, of any company (excluding a close corporation); or

b) involves the acquisition by any person, or two or more persons acting in concert, in whom control of any company (excluding a close corporation) vests on or after the date of commencement of section 1(c) of the Companies Second Amendment Act, 1990, of further securities of that company in excess of the limits prescribed in the rules;

"control" means, subject to subsection (2) (b) [of section 440A], a holding or aggregate holdings of shares or other securities in a company entitling the holder thereof to exercise, or cause to be exercised, the specified percentage or more of the voting rights at meetings of that company, irrespective of whether such holding or holdings confers de facto control;

"offeree company" means any company the securities or part of the securities of which are or are to be the subject of any affected transaction or proposed affected transaction;

"offeror" means any person or two or more persons acting in concert who enter into or propose any affected transaction;

"security" means any shares in the capital of a company and includes stock and debentures convertible into shares and any rights or interests in a company or in respect of any such shares, stock or debentures, and includes any "financial instrument" as defined in the Financial Markets Control Act, 1989 (Act No 55 of 1989);

"specified percentage" means the percentage, or different percentages in respect of different types of companies, prescribed in the Rules for the purposes of determining control as defined above.

2.

Section 440A(2) of the Act

Section 440A(2) of the Act provides that for the purposes of subsection (1) -

a) the following persons shall be deemed to be acting in concert with one another unless the contrary is established, namely-

i) a company, its holding company, its subsidiaries, companies which are subsidiaries of its

holding company and their subsidiaries, and companies of which such companies are associated companies, and for the purposes hereof ownership or control by a company of 20 per cent or more of the equity share capital of another company shall constitute the latter company the former company's associate;

ii) a company with-

(aa) any of its directors or holders of its securities who are beneficial owners as referred to in section 440G(1);

(bb) any company controlled by one or more of its directors;

(cc) any trust of which any one or more of its directors is a beneficiary;

iii) a company with any of its pension, provident or benefit funds;

b) a security which is convertible into a voting security shall, even before its conversion, be deemed to confer those voting rights which it would confer after conversion.

3.

Additional Definitions

The following additional definitions which are to apply unless the context otherwise indicates have been formulated for the purpose of these Rules:

"the Act" means the Companies Act, No. 61 of 1973, as amended;

"business day" means a day on which The Stock Exchange is open for the transaction of business;

"Code" means these Rules, including the Introduction, Definitions and General Principles;

"concert party" means any person acting in concert with any other person in relation to an affected transaction;

"equity share capital" and "equity shares", in relation to a company, mean its issued share capital and shares, excluding any part thereof which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution (see these definitions in section 1 of the Act), and "equity securities capital", "equity capital" and "equity securities" shall bear corresponding meanings;

"holder" means the direct or indirect holder of securities, and "holding" shall bear a corresponding meaning;

"non-voting securities" means securities other than voting securities, and

"non-voting shares" shall bear a corresponding meaning;

"offer" includes, an offer in respect of an affected transaction, however effected;

"offer period" means the period from the time when an announcement is made of a proposed or possible offer (with or without terms) until the first closing date or, if this is later, the date when such offer becomes or is declared unconditional as to acceptances or lapses;

"pyramid company"-

a) for the purposes of these Rules a pyramid company is one:

i) which holds 50% or more of the equity securities capital of another company (the controlled company); and

ii) which derives more than 75% of its total attributable income before tax from such controlled company, or the shareholding of which in the controlled company represents more than 50% of its total assets;

b) notwithstanding the provisions of paragraph (a), the Panel may classify as a pyramid company any company which, in the opinion of the Panel, holds or acquires or proposes to acquire a shareholding in another company (the controlled company) which shareholding:

i) gives or will give it de facto control of the controlled company; and

ii) represents or will represent 50% or more of its total assets or produces or will produce 50% or more of its total attributable income before tax;

"reverse take-over" means a securities exchange offer which results in the holder of the controlling interest in the offeree company becoming the holder of the controlling interest of the offeror on acceptance of the offer,

"rights over securities" includes any rights acquired by a person by virtue of an agreement to purchase securities or an option to acquire securities or an irrevocable commitment to accept an offer for securities to be made by him;

"securities exchange offer" means an offer in which the consideration includes securities of the offeror of any other party;

"scheme of arrangement" means a compromise or arrangement between a company and its members or any class of them in terms of section 311 to 313 of the Act;

"The Stock Exchange" means The Johannesburg Stock Exchange;

"voting securities" means securities which carry voting rights, and "voting shares" and "voting rights" shall bear corresponding meanings; provided that non-voting securities which are convertible to voting securities shall be deemed to be voting securities, and preference shares which are not convertible into voting securities and which do not confer voting rights save in certain circumstances shall be deemed to be voting securities only during such time as such circumstances apply.

4.

Calculation of Time

Unless otherwise determined in the Code where a period of time is calculated from a stated event, the day on which that event occurs shall be excluded from the calculation of the period. If any day prescribed for any purpose falls on a day which is not a business day then the day prescribed shall be the next business day.

5.

Implementation of Definitions of "Control" and "Specified Percentage" in the Act

For the purposes of determining control as defined in the Act, the specified percentage is hereby prescribed as being 35% or more of the voting rights of a company.

Section C. General Principles

1.

Introduction

It is impracticable to devise rules in sufficient detail to cover all circumstances which can arise in affected transactions. Accordingly, persons engaged in affected transactions should be aware that the spirit as well as the precise wording of the General Principles and the ensuing Rules are to be observed. Moreover, the General Principles and the spirit of the Code may apply by necessary implication in areas or circumstances not expressly covered by any Rule.

2.

General Principles

- 1) All holders of the same class of securities of an offeree company shall be treated similarly by an offeror.
- 2) During the course of an offer, or when an offer is in contemplation, neither the offeror or would be offeror, nor the offeree company, nor any of their respective advisers, shall furnish information to some holders of relevant securities which is not made available to all holders of such securities except with the consent of the Panel.
- 3) An offeror shall only announce an offer or its intention to make one after the most careful and responsible consideration. Such an announcement shall be made only when the offeror has proper grounds for believing that it can and will continue to be able to implement the offer. Responsibility in this connection also rests on the financial adviser to the offeror.
- 4) Holders of relevant securities shall be given sufficient information and advice to enable them to reach a properly informed decision and shall have sufficient time to do so. No relevant information shall be withheld from them.
- 5) Any document or advertisement addressed to holders of relevant securities containing information or advice from an offeror or the board of the offeree company or their respective advisers shall, as in the case of a prospectus, be prepared with the highest standards of care and accuracy.
- 6) All parties to an offer shall take all reasonable steps to prevent the creation of a false market in the securities of an offeror or the offeree company. Parties involved in offers shall take care that statements are not made which may mislead holders of relevant securities or the market.
- 7) After a bona fide offer has been communicated to the board of the offeree company, or after the board of the offeree company has reason to believe that a bona fide offer might be imminent, such board may not take any action without the approval of the holders of the relevant securities in general meeting, in relation to the affairs of the company, which could effectively result in any bona fide offer being frustrated or in the holders of relevant securities being denied an opportunity to decide on its merits.
- 8) Rights of control shall be exercised in good faith and the oppression of a minority is unacceptable.
- 9) The directors of an offeror and the offeree company shall at all times, in advising the

holders of relevant securities, act only in their capacity as directors and not have regard to their personal or family shareholdings or to their personal relationships with the companies. It is the interests of holders of relevant securities taken as a whole which shall be considered when the directors are giving advice to such holders.

10) An affected transaction normally gives rise to an obligation to make a general offer to all other holders of the relevant securities. Where an acquisition is contemplated as a result of which a person may incur such an obligation, he shall, before making the acquisition, ensure that he is and will continue to be able to implement such an offer.

11) The underlying principle is that persons holding an equity interest in an offeree company through shares or other securities in that company (whether or not such carry voting rights) shall be entitled to dispose of their said interest on terms comparable to those of any affected transaction in the relevant securities.

Section D. The Approach, Announcements and Independent Advice

Rule 1.

The Approach

- a) The offer when made shall be put forward to the board of the offeree company or to its authorised advisers.
- b) If the offer, or an approach with a view to an offer being made, is not made by the ultimate offeror or potential offeror, the identity of that person shall be disclosed when the offer is put forward to the board of the offeree company or to its authorised advisers.
- c) A board so approached is entitled to be satisfied on reasonable grounds that the offeror is, or will be, in a position to implement the offer in full.

Rule 2.

Secrecy Before Announcements: The Timing and Contents of Announcements

2.1) Secrecy

Secrecy shall be observed before the announcement of a firm intention to make an offer. All persons privy to confidential information, price-sensitive or otherwise, concerning an offer or contemplated offer shall treat that information as secret.

All persons concerned in an offer or contemplated offer shall conduct themselves so as to minimize the chances of an accidental leak of information. Accordingly the issue of news releases under embargo until a future time may only take place with the prior approval of the Panel.

2.2) The cautionary announcement

2.2.1) Definition and contents of a cautionary announcement

A cautionary announcement is a brief announcement to be published in the press and is intended to preserve the integrity of trading in a company's securities on The Stock Exchange preceding or during negotiations which may lead to an announcement of a firm intention to make an offer. It may be couched in general terms and would normally state that talks are taking place or that a potential offeror is considering making an offer or that an announcement is pending which

could have a material effect on the price of the offeror or the offeree company's securities. It shall state that the holders of the securities concerned are advised to exercise caution in dealing in their securities. The potential offeror must be named in the cautionary announcement unless the Panel rules otherwise.

2.2.2) When a cautionary announcement shall be made

A cautionary announcement shall be made when an offer is under discussion and -

a) the offeree company is the subject of rumour and speculation or there is an abnormal movement in the price of the offeree company's securities or in the volume of such securities traded on The Stock Exchange; or

b) negotiations or discussions are about to be extended to include more than a very restricted number of persons (outside those in the companies concerned who need to know and their immediate advisers).

2.3) The Announcement of a Firm Intention to make an Offer

An Announcement of a firm intention to make an offer is an announcement published in the press in the circumstances and containing the information set out in this Rule.

An offeror shall not take any action which would give rise to the requirement to make an announcement of a firm intention to make an offer unless the offeror and its financial adviser have proper grounds for believing that the offeror is and will continue to be able to implement the offer.

2.3.1) When an announcement of a firm intention to make an offer shall be made

An announcement of a firm intention to make an offer shall be made-

a) when the board of the offeree company has been notified in writing of a firm intention to make an offer from a serious source, irrespective of the attitude of the board to the offer;

b) immediately upon an acquisition of securities which gives rise to an obligation to make an offer under Rule 8.

The announcement shall not be delayed while full information is being obtained. Additional information can be the subject of the later supplementary announcement

2.3.2) Contents of the announcement of a firm intention to make an offer

a) The announcement of a firm intention to make an offer shall contain-

i) the terms of the offer;

ii) the identity of the offeror;

iii) details of any existing holding of securities in the offeree company.

(aa) which the offeror owns or over which it has control;

(bb) which is owned or controlled by any person acting in concert with the offeror or in respect of which the offeror has received an irrevocable commitment to accept the offer;

(cc) in respect of which the offeror holds an option to purchase; and

(dd) in respect of which any person acting in concert with the offeror holds an option to purchase;

iv) all material conditions (including normal conditions relating to acceptances, listing an increase of capital) to which the offer or the posting of it is to be subject; and

v) details any arrangement which exists with any offeror, with the offeree company or with any person acting in concert with the offeror or with the offeree company in relation to relevant securities, whether or not any dealings have taken place.

b) The announcement of a firm intention to make an offer containing a wholly or partial cash consideration shall include confirmation by the financial adviser or by another appropriate third party that resources are available to the offeror sufficient to satisfy full acceptance of the offer. Except with the consent of the Panel, the confirming party shall be expected to produce the cash itself if, in giving the confirmation, it acted irresponsibly or failed to take all reasonable steps to assure itself that the cash was available.

2.3.3) Consequences of the announcement of a firm intention to make an offer

When there has been an announcement of a firm intention to make an offer, the offeror shall, except with the consent of the Panel, proceed with the offer unless the posting of the offer is subject to the prior fulfillment of a previously disclosed specific condition and that condition has not been fulfilled.

2.4) Responsibility for making Announcements and Medium of Publication

2.4.1) The responsibility for making an announcement under-

a) Rule 2.2 rests with the offeror and the offeree company depending on the circumstances;

b) Rule 2.3.1(a) rests with the offeree company; and

c) Rule 2.3.1(b) rests with the offeror.

2.4.2) Announcements shall be published in an English and Afrikaans daily newspaper circulating in Johannesburg and, if the registered office of any party to the announcement is not in Johannesburg also in an English and Afrikaans daily newspaper circulating in the region where the registered office is situated if there are such newspapers circulating in such region. Prior to such publication, the text of the announcement shall be released to Reuters, the South African Press Association and to The Stock Exchange.

Rule 3.

Appropriate External Advice

3.1) Board of the offeree company

The board of the offeree company shall obtain appropriate external advice on any offer as to how it affects all holders of securities, including specifically, where applicable, minority holders of securities, and the substance of such advice shall be made known to holders of relevant securities in the offeree company in a form and manner approved by the Panel.

3.2) Board of an offeror company

The board of an offeror company shall obtain competent independent advice on any offer when the offer being made is a reverse take-over or when the directors are faced with a conflict of interest. The substance of such advice shall be made known to holders of relevant securities in the offeror company in a form and manner approved by the Panel.

3.3) Disqualified Advisers

The Panel will not regard as an appropriate external adviser:

- a) any person who is not a practising member of an appropriate professional body or association; or
- b) to the board of the offeree company and, where applicable, its minority shareholders, any person who holds any office or appointment in or in relation to the offeror; or
- c) to the board of the offeror company, any person who holds any office or appointment in or in relation to the offeree company; or
- d) any person who has any material conflict of interest in respect of the offer: Provided that this Rule may be relaxed in appropriate cases with the approval of the Panel and on such conditions as it may impose.

Where the advice concerned is given by an external adviser who has an interest and that interest does not give rise to a material conflict of interest or the Rule has been relaxed on the terms set out above, the nature and extent of that interest shall be disclosed in a form and manner approved by the Panel in the Offer Documents issued in terms of Rule 21 or the Offeree Board Circulars issued in terms of Rule 22, as the case may be.

3.4) Second Opinions

Notwithstanding any prior approval given by the Panel, the Panel may at any time either itself or in response to written representations by holders of relevant securities require the appointment by either or both of the offeror and the offeree company of further appropriate external advisers approved by the Panel to report on the offer concerned in the same form and manner as required in terms of 3.1 and 3.2 and subject to 3.3.

Section E. Dealings and Restrictions on the Acquisition of Securities and Rights over Securities

Rule 4.

Prohibited Dealings before and during the Offer by the Offeror and Concert Parties

During an offer period, the offeror and persons acting in concert with it shall not sell any securities in the offeree company except with the prior consent of the Panel and following 24 hours public notice as prescribed in Rule 7.1(a) that such sales might be made. The Panel will not give consent for sales where a mandatory offer under Rule 8 is being made. Sales below the value of the offer will not be permitted. After there has been an announcement that sales may be made, neither the offeror nor persons acting in concert with it shall make further purchases.

Rule 5.

Acquisitions Resulting in an Obligation to Offer a Minimum Level of Consideration

5.1) Acquisition before an Offer Period

When an offeror or any person acting in concert with it has acquired relevant securities in the offeree company –

- a) within the three month period prior to the commencement of the offer period, and otherwise than with the consent of the Panel;
- b) prior to the three month period referred to in (a), if in the view of the Panel there are circumstances which render such a course necessary in order to give effect to General Principle 1,

the offer to the holders of relevant securities of the same class shall be on terms similar to the most favourable of such acquisitions.

5.2) Acquisitions at above the offer price

- a) If, after the commencement of the offer period and before the offer closes for acceptance, an offeror or any person acting in concert with it purchases relevant securities in the offeree company at above the offer price (being the then current offer price), it shall increase its offer to not less than the highest price paid for the shares so acquired.
- b) Immediately after the acquisition, an announcement is required that a revised offer will be made in accordance with this Rule (see also Rule 30). The announcement shall also state the number of shares acquired and the price paid.

Rule 6.

Consequences of Certain Dealings

6.1) Immediate Announcement required if the Offer has to be Amended

Acquisitions of offeree company securities by an offeror or any person acting in concert with it may give rise to obligations under Rule 5 (requirement to increase offer), or Rule 8 (mandatory offer) or Rule 9 (cash offer). Immediately after such an acquisition, an appropriate announcement shall be made. Whenever practicable, the announcement shall also state the number of securities acquired and the consideration therefor.

6.2) Dealings by Concert Parties of the Offeror during an Offer Period

Any person who manages an investment account and who is a concert party of the offeror shall make prompt disclosure to the Panel of dealings during the offer period in securities of the offeror or offeree company.

When obligations under, or infringements of, the above-mentioned rules could arise, the persons concerned shall consult the Panel before dealing in securities of an offeror or the offeree company. The Panel may determine whether or not disclosure, as prescribed in Rule 7.1 (a), is required.

6.3) Change of Control in Respect of Pyramid Companies

Where a change in control takes place and the offeree company is a pyramid company, the offeror shall make a comparable offer to the holders of the relevant securities of the controlled company, unless at the time of the creation of pyramid company the holders of the relevant

securities in the controlled company were offered relevant securities in the pyramid company in proportion to their holdings in the controlled company on the same terms as applicable to the holders of the controlling interest in such controlled company.

Rule 7.

Public Disclosure of Dealings during the Offer Period

7.1) Dealings by Parties and Concert Parties for themselves or for Clients

a) Own account

Dealings in relevant securities of the offeror or the offeree company by an offeror or the offeree company, and by any concert party, for their own account during an offer period shall be disclosed forthwith by the party concerned to the Panel, to The Stock Exchange in the case of a listed company in such manner as required by The Stock Exchange for immediate public release, and in a press release. In addition the Panel shall have the power to publicise such information in whatever manner it may deem appropriate from time to time.

b) For clients

Dealings in relevant securities of the offeror or the offeree company by an offeror or the offeree company, and by any concert party, for the account of clients during an offer period shall be disclosed forthwith by the party concerned as aforesaid. The names of clients need not be disclosed.

c) In the case of investment accounts managed on a discretionary basis, relevant securities so managed will be treated, for the purpose of this Rule, as controlled by that manager and not by the person on whose behalf the relevant securities are managed.

7.2) Form SRP1

Form SRP 1 specifying the information to be disclosed in terms of Rule 7.1 is obtainable from the Panel.

Section F. The Offer and its Terms

Rule 8

8.1) The Mandatory Offer

Whenever an affected transaction occurs, then the person or persons who have acquired control of a company, or who acquire further securities in excess of the limits prescribed by the rules, shall unless the Panel rules otherwise, extend offers to the holders of any class of equity capital, whether voting or non-voting, and also to the holders of any class of voting non-equity capital of which such person or persons acting in concert with him are holders, to acquire their securities for the same or comparable consideration. Offers for different classes of equity capital shall be comparable and the Panel shall be consulted in advance in such cases.

Provided that for the purposes of this rule the limit prescribed shall be the acquisition in any period of 12 months of securities carrying more than 5% of the voting rights by the person or persons holding not less than the specified percentage but not more than 50% of the voting rights of a company.

8.1A) A Proposal or Offer which if successfully completed may result in an affected Transaction

Where any person or persons make a proposal or offer to the shareholders of any company, which on completion or implementation may result in an affected transaction, then such proposal or offer must comply with the Rules with regard to disclosure and conduct during the proposal or offer.

8.2) Obligations of other persons

In addition to the person specified in Rule 8.1, each of the members of a group of persons acting in concert with him shall, according to the circumstances of the case, have the obligation to extend an offer.

8.3) Conditions and consents

An acquisition of securities which would give rise to a requirement for an offer under this Rule may be made notwithstanding the fact that if the making or implementation of such offer would or might be dependent on the passing of a resolution at any meeting of shareholders of the offeror or upon any other conditions, consents or arrangements provided that the foregoing are clearly communicated to all relevant parties.

8.4) Consideration to be offered

a) Offers made under this Rule shall, in respect of each class of securities involved, be for the same consideration as was operative in the relevant acquisition and, where applicable, shall be accompanied by a cash alternative at not less than the highest price paid by the offeror or any person acting in concert with it for securities of that class within the preceding three months. The offer and any cash alternative shall remain open after the offer has become or is declared unconditional as to acceptances for not less than 14 days after the date on which it would otherwise have expired (see Rule 28.4). The Panel shall be consulted where there is more than one class of securities involved.

b) If the offeror considers that the highest price should not apply in a particular case, the offeror shall consult the Panel which may in its discretion agree to an adjusted price.

8.5) Obligations of directors selling securities

When directors of a company sell securities owned or controlled by them in that company to an identifiable purchaser as a result of which the purchaser is required to make an offer under this Rule, such directors shall stipulate as a condition of the sale that the purchaser undertakes to fulfil his obligations under the Rule. In addition, except with the consent of the Panel, such directors shall not resign from the board until the first closing date of the offer or the date upon which the offer becomes or is declared unconditional, whichever is the later.

8.6) Restrictions on exercise of control by an offeror

Except with the consent of the Panel, no nominee of an offeror or persons acting in concert with it shall be appointed to the board of the offeree company, nor shall an offeror and persons acting in concert with it exercise the votes attaching to any securities held in the offeree company, until the offer document has been posted.

8.7) Vote of independent holders of securities on the issue of new securities

When the issue of new securities as consideration for an acquisition or a cash subscription would otherwise result in an obligation to make a mandatory offer under this Rule, the Panel

will normally dispense with the obligation if there is a waiver thereof by a majority of independent votes at a meeting of the holders of relevant securities. The requirement for a mandatory offer will also be dispensed with, provided there has been a majority of independent votes at a properly constituted meeting of holders of relevant securities, in cases involving the underwriting of an issue of securities. The Panel may in its discretion grant a dispensation in cases where an underwriter incurs an obligation under this Rule unexpectedly, for example as a result of an inability to obtain sub-underwriters for all or part of his liability.

When a person or group of persons acting in concert may, as a result of such arrangements, come to control more than 45 % of the voting rights of the company (and so have the freedom to move to 50 % or more without incurring an obligation to make a mandatory offer under these Rules), the offer document shall contain specific and prominent reference to that possibility and to the fact that the holders of the controlling interest will be able to exercise their control and increase their overall interest without incurring any further obligation under Rule 8.1 to make a mandatory offer.

Notwithstanding the fact that, at a general meeting of the company, the issue of new securities is made conditional upon the prior approval of a majority of votes of the holders of the relevant securities independent of the transaction-

a) the Panel will not normally dispense with an obligation under this Rule if the person to whom the new securities are to be issued or any persons acting in concert with him have acquired relevant securities in the offeree company in the 12 months prior to the posting to holders of relevant securities of the circular relating to the proposals but subsequent to negotiations, discussions or the reaching of understandings or agreements with the directors of the offeree company in relation to the proposed issue of new securities;

b) a waiver by independent votes shall be invalidated if any acquisitions are made in the period between the posting of the circular to the holders of the relevant securities and the meeting.

The Panel may dispense with the requirement of a mandatory offer where the approval of independent votes to the transfer of existing securities from one holder to another is obtained.

Section G. Nature of Consideration to be Offered

Rule 9

9.1) When a cash offer is required

Where-

a) except with the consent of the Panel, the securities of any class under offer in the offeree company acquired for cash by an offeror or any person acting in concert with it during the offer period or within three months prior to its commencement carry 10 % or more of the voting rights currently exercisable at a class meeting of that class: or

b) in the view of the Panel there are circumstances which render such a course necessary in order to give effect to General Principle 1,

the offer for that class shall be in cash or accompanied by a cash alternative at not less than the highest price paid by the offeror or any person acting in concert with it for securities of that class during the offer period or within three months prior to its commencement.

9.2) Dispensation from highest price

If the offeror considers that the highest price (for the purpose of Rule 9.1) ought not to apply in a particular case, it shall consult the Panel, which in its discretion may agree to an adjusted price.

Rule 10.

Subjective Conditions

Save with the consent of the Panel an offer shall not be subject to conditions which depend solely on subjective judgments by the directors of the offeror or the fulfillment of which is in their hands.

Section H. Provisions Applicable to all Offers

Rule 11.

Where there is more than one class of securities

11.1) Comparable offers

Where a company has more than one class of security as its capital, a comparable offer must be made for each class whether such capital carries voting rights or not; the Panel shall be consulted in advance. An offer for non-voting securities shall not be made conditional on any particular level of acceptances in respect of that class unless the offer for the voting securities is also conditional on the success of the offer for the non-voting securities. Classes of non-equity securities need not be the subject of an offer, except in the circumstances referred to in Rule 8.1.

11.2) Separate offers for each class

Where an offer is made for more than one class of securities separate offers shall be made for each class.

Rule 12.

Appropriate Offer for Convertible or other Relevant Securities

a) When an offer is made for equity securities and the offeree company has convertible securities outstanding, or other securities which in substance partake of the nature of equity the offeror shall make an appropriate offer to the holders of convertible securities and other relevant securities to ensure that their interests are safeguarded. Equality of treatment is required.

b) The board of the offeree company is required to obtain appropriate external advice on the offer to the holders of convertible securities and other relevant securities and the substance of such advice shall be made known to such holders, together with the board's view on the offer.

c) Whenever practicable, the offer shall be dispatched to holders of convertible securities and other relevant securities at the same time as the offer document is posted but, if this is not practicable, the Panel shall be consulted and the offer shall be dispatched as soon as possible thereafter. A copy of the offer shall be lodged with the Panel at the time of issue.

d) The offer to holders of convertible securities and other relevant securities required by this Rule shall not without the consent of the Panel be made conditional on any particular level of acceptances. It may, however, be put by way of a scheme of arrangement or other method referred

to in Rule 29 to be considered at a meeting of such holders.

e) If an offeree company has options or subscription rights outstanding in respect of relevant securities, the provisions of this Rule shall apply mutatis mutandis.

Rule 13.

Special Deals with Favourable Conditions

Except with the consent of the Panel, an offeror or persons acting in concert with it shall not make any arrangements with holders of the relevant securities and shall not deal or enter into arrangements to deal in securities of the offeree company, or enter into arrangements which involve acceptance of an offer, either during an offer or when one is reasonably in contemplation, if there are favourable conditions attached which are not being extended to all holders of the relevant securities.

Rule 14.

Announcement of Acceptance Levels

Timing and Contents

By 09:00 at the latest on the fourth business day following the day on which an offer is due to expire, or becomes or is declared unconditional as to acceptances, or is extended, the offeror shall make an appropriate announcement and, simultaneously inform the Panel, and The Stock Exchange (except in the case of an offer for a company whose securities are not dealt in on The Stock Exchange). The announcement shall also state the total numbers of securities and rights over securities (as nearly as practicable) –

- a) for which acceptances of the offer have been received;
- b) held before the offer period; and
- c) acquired or agreed to be acquired during the offer period, and shall specify the percentages of the relevant classes of the securities represented by these numbers (see also Rule 28.2).

Rule 15.

The Use of Proxies and other Authorities in Relation to Acceptances

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

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

Section I. Conduct during the Offer

Rule 16.

Supply of Information

16.1) Equality of information to holders of securities

Information about companies involved in an offer shall be made equally available to all shareholders as nearly as possible at the same time and in the same manner; but this Rule shall not apply to the furnishing with the prior approval of the Panel of information in confidence by an offeree company to a bona fide potential offeror or vice versa or the issue of circulars to their own investment clients by brokers or advisers to any party to the transaction provided such issue has previously been approved by the Panel.

16.2) Advertisements

The publication of advertisements connected with an affected transaction or potential affected transaction shall be subject to the prior approval of the Panel.

16.3) Approval and distribution of documents and announcements

Copies of all relevant documents and announcements bearing on an affected transaction and of advertisements and any material to be released to the media bearing on an affected transaction shall be lodged with the Executive Director for approval prior to issue.

Copies of all relevant documents and public announcements when issued or made shall also be made available at the same time to the advisers to all other parties to the offer.

16.4) Equality of information to competing offerors

Any information, including particulars of holders of relevant securities, given to a preferred offeror or potential offeror (but usually only when there has been a public announcement of the existence of the preferred or potential offeror) shall on request be furnished equally and as promptly to a less welcome but bona fide offeror or potential offeror.

16.5) Telephone campaigns

Except with the prior approval of the Panel, campaigns in which holders of relevant securities are contacted by telephone shall be conducted only by staff of the financial advisers who are fully conversant with the requirements of, and their responsibilities under, the Code. Only previously published information which remains accurate, and is not misleading at the time it is quoted, shall be used in telephone campaigns. Holders of relevant securities shall not be put under pressure and shall be encouraged to consult their professional advisers.

Rule 17.

Management Buy-Outs

If the offer or potential offer is for a management buy-out or similar transaction, the offeror or potential offeror shall, on request, forthwith furnish the independent directors of the offeree company and its advisers with all information which has been furnished by the offeror or potential offeror to external providers or potential providers of finance (whether equity or debt) for the buy-out.

Rule 18.

Statements by Parties during the Course of an Offer

Parties to an offer shall take care not to issue statements which, while not factually inaccurate, may mislead holders of relevant securities and the market or may create uncertainty. In particular, an offeror shall not make a statement to the effect that it may improve its offer without committing itself to doing so and specifying the improvement.

Rule 19.

Restrictions on Frustrating Action

During the course of an offer, or even before the date of the offer if the board of the offeree company has reason to believe that a bona fide offer might be imminent, the board shall not, except in pursuance of a contract entered into earlier, without the approval of the holders of relevant securities in general meeting –

- a) issue any authorised but unissued securities;
- b) issue or grant options in respect of any unissued securities;
- c) create or issue, or permit the creation or issue of, any securities carrying rights of conversion into or subscription for other securities;
- d) sell, dispose of or acquire, or agree to sell, dispose of or acquire, assets of a material amount;
- e) enter into contracts otherwise than in the ordinary course of business;
- f) pay any dividend which is abnormal as to timing and amount.

The notice convening the general meeting of holders of relevant securities shall include information about the offer or anticipated offer.

Where it is believed that an obligation or other special circumstance already exists, although a formal contract has not been entered into, the Panel shall be consulted and its consent obtained to proceed without a meeting of the holders of the relevant securities.

Section J. Documents from the Offeror and the Offeree Board

Rule 20.

General Obligations and Responsibilities

20.1) Standards of care

Each document issued to holders of relevant securities or advertisement in connection with an offer shall, as in the case of a prospectus, satisfy the highest standards of accuracy and the information contained therein shall be adequately and fairly presented. This applies whether it is issued directly by the company or by an adviser on its behalf.

20.2) The general obligation as to information

Holders of relevant securities shall be given sufficient information and advice to enable them to reach a properly informed decision as to the merits or demerits of an offer. Such information shall be available to holders of relevant securities early enough to enable them to make a decision in good time.

20.3) Responsibility for documents

a) Each document issued to holders of relevant securities in connection with an offer and all advertisements published in respect thereof, in which there is a material expression of opinion shall state that the offeror and/ or, where appropriate, the directors of the offeree company, accept responsibility for the information contained in the document or advertisement and that to the best of their knowledge and belief (having taken all reasonable care to ensure that such is the case) the information contained in the document or advertisement is in accordance with the facts and, where appropriate, that it does not omit anything likely to affect the import of such information.

b) If it is proposed that any director shall be excluded from such a statement, the omission and the reasons for it shall be stated in the document or advertisement.

Rule 21.

Offeror Documents

21.1) Reasons for offer and intentions regarding the directors of the offeree company

An offeror shall furnish in the offer document its reasons for the offer and its intentions regarding the continuation of the business of the offeree company and the continuation in office of the directors of the offeree company.

21.2) Financial and other information on the offeror and on the offeree company

a) The offer document shall contain the following information wherever it is reasonably available about the offeree company and where the Panel so determines, about the offeror:

i) For the past four financial years for which the information has been published, turnover, net profit or loss before and after taxation, the amount of tax, extraordinary items, outside shareholders' interests, the amount absorbed by dividends and earnings and dividends per share;

ii) a statement of the assets and liabilities shown in the latest published audited accounts;

iii) all known material changes in the financial or trading position of the company subsequent to the latest published audited accounts or a statement that there are no known material changes;

iv) details relating to items referred to in paragraph (a) (i) above in respect of any interim statement or preliminary announcement made since the latest published audited accounts;

v) inflation-adjusted information relating to (a) (i) and (a) (ii) if any has been published;

vi) significant accounting policies together with any points from the notes to the accounts which are of major relevance to an appreciation of the figures, including those relating to inflation-adjusted information;

vii) where the offeror is a company, the names of its directors and their direct and indirect interests, if any, in the offeror and offeree company; and

viii) any other relevant information required by the Panel.

b) The figures to be disclosed under paragraphs (a) (i) and (ii) are to be adjusted to eliminate

material unusual and non-recurring items and the nature of the adjustments made shall be disclosed.

c) Where, because of a change in accounting policy, figures are not comparable to a material extent, this shall be disclosed and where possible the approximate amount of the resultant variation shall be stated.

d) In a highly-leveraged offer, the Panel will require that the offer document contains a description of the financing arrangements. An offer shall be considered to be highly-leveraged if, as a result of the offer, the offeror will incur a high level of debt and the payment of interest, repayments or security for the debt will substantially depend on the business of the offeree company. In cases of doubt, the Panel shall be consulted.

21.3) Holdings of securities and dealings

a) The offer document shall state-

i) the holdings of securities by the offeror in the offeree company;

ii) the holdings of securities in the offeror (in the case of a securities exchange offer only) and in the offeree company in which each director of the offeror is directly or indirectly interested;

iii) the holdings of securities by the offeror (in the case of a securities exchange offer only) and in the offeree company which any person acting in concert with the offeror owns or controls together with the name of such person acting in concert;

iv) the holdings of securities in the offeror (in the case of a securities exchange offer only) and in the offeree company owned or controlled by any person who, prior to the posting of the offer document, has irrevocably committed himself to accept the offer, together with the name of such person.

b) If in any of the above categories there are no holdings of securities, this fact shall be stated. This will not apply to category (a) (iv) if there are no such irrevocable commitments.

c) If any party whose holdings of securities are required by this Rule to be disclosed has dealt for value in the securities in question during the period beginning 6 months prior to the offer period and ending with the latest practicable date prior to the posting of the offer document, the details, including dates and prices, shall be stated. If no such dealings have taken place this fact shall be stated.

21.4) Directors' Emoluments

Unless an exemption is obtained from the Panel, the offer document shall state whether and in what manner the emoluments of the offeree company's directors will be affected by the acquisition of the offeree company or by any other associated transaction. If there will be no effect, this shall be stated.

21.5) Special arrangements

Unless otherwise agreed by the Panel, the offer document shall contain a statement on whether or not any agreement, arrangement or understanding (including any compensation arrangement) exists between the offeror or any person acting in concert with it and any of the directors of the offeree company or persons who were directors within the preceding 12 months, or holders of

relevant securities or persons who were holders thereof within the preceding 12 months, having any connection with or dependence upon the offer, and full particulars of any such agreement, arrangement or understanding.

21.6) Terms and mechanics of the offer

The offer document shall incorporate the terms of the offer and its proposed implementation and the mechanics thereof.

21.7) Cash confirmation

Unless otherwise permitted by the Panel when the offer is for cash or includes an element of cash, the offer document shall include a statement that an irrevocable guarantee or other proof by an appropriate third party (e.g. the offeror's bank or financial adviser) has been furnished in favour of the holders of the relevant securities that resources will be available to the offeror sufficient to satisfy full acceptance of the offer. The party confirming that resources will be available will not be expected to produce the cash itself if, in giving the confirmation, it acts responsibly and has taken all reasonable steps to assure itself that the cash will be available.

21.8) Ultimate owner of securities acquired

Unless otherwise agreed by the Panel, the offer document shall contain a statement on the number of any securities acquired in pursuance of the offer which will be transferred to any other person, together with the names of the parties to any such agreement, arrangement or understanding and particulars of all securities in the offeree company held by such persons, or a statement that no such securities are held.

21.9) Valuation of unlisted securities consideration

When the offer involves the issue of unlisted securities, the offer document and any subsequent circular from the offeror shall contain an appropriate independent valuation thereof and the information required by Rule 21.2.

21.10) No set-off of consideration

Except with the consent of the Panel, the offer document shall contain a statement to the effect that settlement of the consideration to which any holder of relevant securities is entitled under the offer will be implemented in full in accordance with the terms of the offer without regard to any lien, right of set-off, counterclaim or other analogous right to which the offeror may otherwise be, or claim to be, entitled against such holder of relevant securities.

The Panel will only grant consent in exceptional circumstances and where all holders of relevant securities are to be treated similarly.

21.11) Arrangements, undertakings or agreements in relation to offers

Any arrangements with, undertakings by, or agreements between an offeror and the offeree company and persons acting in concert with either of them in relation to relevant securities to the extent that such are reasonably ascertainable shall be disclosed in the offer document. If there are none this shall be stated.

Rule 22.

Offeree Board Circulars

22.1) Views of the board

The board of the offeree company shall circulate its views on the offer, including any alternative offers, and shall, at the same time, make known to the holders of relevant securities in the offeree company the substance of the advice given to it by its external advisors.

22.2) Views of the board on the offeror's plans for the company and its directors

The board of the offeree company should, insofar as relevant, comment upon the statements in the offer document regarding the offeror's intentions in respect of the offeree company and its directors made pursuant to Rule 21.1.

22.3) Holdings of securities and dealings

a) The first major circular from the offeree board advising holders of relevant securities on an offer (whether recommending acceptance or rejection of the offer) shall state-

i) the holdings of relevant securities of the offeree company in the offeror;

ii) the holdings of relevant securities in the offeree company and in the offeror in which directors of the offeree company are directly or indirectly interested;

iii) the holdings of relevant securities in the offeree company and (in the case of a securities exchange offer only) in the offeror which any person acting in concert with the offeree company owns or controls and the holdings of relevant securities in the offeree company and, (in the case of a securities exchange offer only) in the offeror, owned or controlled by a subsidiary of the offeree company, or by any person acting in concert with it;

iv) the holdings of relevant securities in the offeree company and (in the case of a securities exchange offer only) in the offeror owned or controlled by a person who has any arrangement, undertaking or agreement of the kind referred to in Rule 21.11 with the offeree company or with any person acting in concert with the offeree company;

v) whether the directors of the offeree company intend, in respect of their own beneficial holdings of relevant securities, to accept or reject the offer.

a. If in any of the above categories, there are no holding of relevant securities, that fact shall be stated.

b.

i. If any party whose holdings of relevant securities are required by paragraphs (a) (i) and (ii) of this Rule to be disclosed has dealt for value in the securities in question during the period beginning six months prior to the offer period and ending with the latest practicable date prior to the posting of the circular, the details, including dates and prices, shall be stated.

ii. If any party whose holdings of relevant securities are required by paragraphs (a) (iii) or (iv) of this Rule to be disclosed has dealt for value in the securities in question during the period beginning six months prior to the offer period and ending with the latest practicable date prior to the posting of the circular, similar details shall be stated.

iii. In all cases, if no such dealings have taken place that fact shall be stated.

22.4) Directors' Service Contracts

- a) The first major circular from the offeree board advising holders of the relevant securities on an offer (whether recommending acceptance or rejection of the offer) shall disclose material particulars of all service contracts of any director or proposed director of the offeree company with the company or any of its subsidiaries. If there are none, this shall be stated.
- b) If any such contracts have been entered into or amended within 6 months of the date of the document, particulars shall be given in respect of the earlier contracts (if any) which have been replaced or amended as well as in respect of the current contracts. If there have been none, that shall be stated.

22.5) Arrangements in relation to dealings

The first major circular from the offeree board advising holders of the relevant securities on an offer, whether recommending acceptance or rejection of the offer, shall disclose any arrangements, undertakings or agreements of the kind referred to in Rule 21.1 1. If there are none, this shall be stated.

Rule 23.

Documents to be available for Inspection

Except with the consent of the Panel, copies of the documents contemplated in paragraphs (a) to (e) below shall be made available for inspection from the time the offer document or offeree board circular, as appropriate, is published until the end of the offer period. The offer document or offeree board circular shall state which documents are so available and the place in Johannesburg and at the registered office of the company if this is not in Johannesburg where inspection can be made.

a) Where a profit forecast has been made-

- i) the reports of the auditors or reporting accountants (Rule 25.3);
- ii) the letters giving the consents of the auditors or reporting accountants, and appropriate external valuers to the issue of the relevant document with the report in the form and context in which it is included or, if appropriate, to the continued use of the report in a subsequent document (Rules 25.4 and 25.5);

b) Where an asset valuation has been made-

- i) the valuation certificate and associated report or a schedule containing details of the aggregate valuation (Rule 26.3);
- ii) a letter stating that the valuer has given and not withdrawn his consent to the publication of his valuation certificate in the form and context in which it is included in the relevant document.

c) Any document evidencing an irrevocable commitment to accept an offer or any arrangement, undertaking or agreement of the kind referred to in Rule 21.11.

d) The memorandum and articles of association of the offeree company, and where there is a securities exchange offer, also of the offeror company.

e) The annual financial statements of the offeree company, and, where there is a securities exchange offer, also of the offeror company for the last four completed financial years in respect of which audited annual financial statements have been issued.

Rule 24.

Documents subsequently sent to Holders of Relevant Securities

24.1) Material Changes

Documents subsequently sent to holders of relevant securities of the offeree company by either party shall contain details of any material changes in information previously published by or on behalf of the relevant party during the offer period; if there have been no such changes, this shall be stated. In particular, the following matters shall be updated:

- a) Holdings of relevant securities and dealings (Rules 21.3 and 22.3);
- b) directors' emoluments (Rule 21.4);
- c) special arrangements (Rule 21.5);
- d) ultimate owner of securities acquired under the offer (Rule 21.8);
- e) changes to directors' service contracts (Rule 22.4); and
- f) arrangements, undertakings and agreements in relation to offers (Rules 21.11 and 22.5).

Section K. Profit Forecasts

Rule 25

25.1) Standards of care

The hazards attached to the forecasting of profits shall in no way detract from the necessity of maintaining the highest standards of accuracy and fair presentation in all communications to holders of relevant securities in an offer. A profit forecast shall be compiled with great care and objectivity by the directors, whose sole responsibility it is.

25.2) Assumptions

a) When a profit forecast appears in any document addressed to holders of relevant securities in connection with an offer, the material assumptions, including the commercial assumptions, upon which the directors have based their profit forecast, shall be stated in the document.

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

25.3) Reports required in connection with profit forecasts

a) In all cases, the assumptions, accounting policies and calculations for the forecasts shall be examined and reported on by the auditors or reporting accountants.

b) When income from land and buildings is a material element in a forecast, that part of the forecast shall be examined and reported on by an appropriate external valuer: this requirement

does not apply where the income is virtually certain, e.g. known rents receivable under existing leases.

c) Exceptionally, the Panel may accept that, because of the uncertainties involved, it is not possible for a forecast previously made to be reported on in accordance with the Code nor for a revised forecast to be made. In these circumstances, the Panel requires that holders of relevant securities be given a full explanation of why the requirements of the Code are not capable of being met.

25.4) Publication of reports and consent letters

When an offer document has been posted, the reports shall be included in the document containing the forecast or, when the forecast has been made in a press announcement, in a document which shall be sent to holders of relevant securities with a minimum of delay after the announcement is published. The reports shall be accompanied by a statement that those making them have given and not withdrawn their consent to publication.

25.5) Subsequent documents—continuing validity of forecast

When a company includes a forecast in a document, any document subsequently sent out by that company in connection with that offer shall, except with the consent of the Panel, contain a statement by the directors that the forecast remains valid for the purpose of the offer and that the accountants and others who reported on the forecast have indicated that they have no objection to their reports continuing to apply.

25.6) Statements which will be treated as profit forecasts

a) When no figure is mentioned

Even when no particular figure is mentioned or even if the word "profit" is not used, certain forms of words may constitute a profit forecast, particularly when considered in context. Examples are "profits will be somewhat higher than last year" and "performance in the second half-year is expected to be similar to our performance and results in the first half-year" (when interim figures have already been published). Whenever a form of words puts a floor under, or a ceiling on, the likely profits of a particular period or contains the data necessary to calculate an approximate figure for future profits, it will be treated by the Panel as a profit forecast which shall be reported on. In cases of doubt the Panel shall be consulted.

b) Forecasts before the offer period

Except with the consent of the Panel, any relevant profit forecast which has been made before the commencement of the offer period shall be examined, repeated and reported on in the document sent to holders of relevant securities.

c) Estimates of profit for a completed period

An estimate of profit for a period which has already expired shall be treated as a profit forecast.

d) Interim and preliminary figures

Except with the consent of the Panel, any profit figures published during an offer period shall be audited, or, if unaudited, shall be reported on by the auditors on a basis consistent with previous years.

e) Forecasts for a limited period

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

f) Dividend forecasts

Except with the consent of the Panel, a dividend forecast will be considered to be a profit forecast.

25.7) Pre-tax profit forecasts

When a forecast of profit before taxation appears in a document addressed to holders of relevant securities, it shall be accompanied by a forecast of earnings per share arising from the said profit.

25.8) When a forecast relates to a period which has commenced

Whenever a profit forecast is made in relation to a period in which trading has already commenced, any previously published profit figures in respect of any expired part of that trading period, together with comparable figures for the same part of the preceding year, shall be stated.

25.9) Inflation-Adjusted forecasts

In general, all the relevant provisions of this rule apply also to a profit forecast prepared on an inflation adjusted basis. The basis of computation underlying such a forecast shall be stated. Any such forecast shall also be accompanied by a corresponding forecast prepared on an historical cost basis.

Section L. Asset Valuations

Rule 26

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

When a valuation of assets is given in connection with an offer, it shall be supported by the opinion of an appropriate external valuer.

a) Type of asset

This Rule applies not only to land, buildings and process plant and machinery but also to other assets, e.g. stocks, ships, aircraft, television rental contracts and individual parts of a business. Where such assets are involved, the Panel shall be consulted in advance.

b) In connection with an offer

In certain cases documents issued by the offeror or the offeree company will include statements of assets reproducing directors' estimates of asset values published with the company's accounts in accordance with the Fourth Schedule to the Act. The Panel will not regard such estimates as "given in connection with an offer" except where asset values are a particularly significant factor in assessing the offer and the estimates are, accordingly given considerably more prominence in the relevant documents than merely being referred to in a note to a statement of assets in an appendix.

26.2) Current valuation

A valuation shall state the effective date as at which the assets were valued and the professional qualifications and address of the valuer. If a valuation is not current, the valuer shall state that a current valuation would not be materially different. If this statement cannot be made, the valuation shall be updated.

26.3) Opinion and consent letters

a) Publication of opinion

The opinion of value shall be contained in the document containing the asset valuation.

b) Consent

The document shall also state that the valuer has given and not withdrawn his consent to the publication of his valuation certificate.

c) Valuation certificate to be available for inspection

Where a valuation of assets is given in any document addressed to holders of relevant securities, the valuation certificate shall be made available for inspection, in the manner described in Rule 23, together with an associated report or schedule containing details of the aggregate valuation. Where the Panel is satisfied that such disclosure may be commercially disadvantageous to the company concerned, it may allow the report or schedule to appear in a summarized form. In certain cases, the Panel may require any of these documents to be reproduced in full in a document sent to holders of relevant securities.

26.4) Waiver in certain circumstances

In exceptional cases, certain companies, in particular mining and property companies, which are the subject of an unexpected offer may find difficulty in obtaining, within the time available, the opinion of an appropriate external valuer to support an asset valuation, as required by this Rule, before the board's circular has to be sent out. In such cases, the Panel may waive strict compliance with this requirement. The Panel will only do this where the interests of holders of relevant securities appear on balance to be best served by permitting informal valuations to appear coupled with such substantiation as is available. Offeree companies or their advisers who wish to make use of this procedure shall consult the Panel at the earliest opportunity.

Section M. Timing And Revision

Rule 27.

Posting the Offer Document and the Offeree Board Circular

27.1) The offer document

The offer document shall be posted within 30 days of the announcement of a firm intention to make an offer. The Panel is to be consulted if the offer document is not to be posted within this period and may, in its discretion, require that interest for the period of delay be included in the offer.

27.2) The offeree board circular

The board of the offeree company shall advise its holders of relevant securities of its views on the offer within 14 days of publication of the offer document.

Rule 28.

Timing of the Offer

28.1) First Closing Date

An offer shall initially be open for at least 21 days following the date on which the offer document is posted.

28.2) Further closing dates to be stated

In any announcement of an extension of an offer, either the next closing date shall be stated or, if the offer is unconditional as to acceptances, a statement may be made that the offer will remain open until further notice. In the latter case, at least 14 days notice in writing shall be given, before the offer is closed, to those holders of relevant securities who have not accepted.

28.3) No obligation to extend

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

28.4) Offer to remain open for at least 14 days after unconditional as to acceptances

After an offer has become or is declared unconditional as to acceptances, the offer shall remain open for not less than 14 days after the date on which it would otherwise have expired. When, however, an offer is unconditional as to acceptances from the outset, a 14 day extension is not required but the position shall be set out clearly and prominently in the offer document.

28.5) No extension statements

If statements in relation to the duration of an offer such as "the offer will not be extended beyond a specified date unless it is unconditional as to acceptances" ("no extension statements") are included in documents sent to holders of relevant securities in the offeree company, or are made by or on behalf of an offeror, its directors, officers or advisers, and not withdrawn immediately if incorrect, then only in exceptional circumstances will the offeror be allowed subsequently to extend its offer beyond the stated date except where the right to do so has been specifically reserved. The provisions of Rule 28.4 will apply mutatis mutandis.

28.6) Final day rule (fulfillment of acceptance condition, timing and announcement)

a) Except with the consent of the Panel, an offer (whether revised or not) may not become or be declared unconditional as to acceptances after midnight on the 60th day after the day the initial offer document was posted. The Panel's consent will normally only be granted—

i) if a competing offer has been announced (in which case both offerors will normally be bound by the time-table established by the posting of the competing offer document); or

ii) if the board of the offeree company consents to an extension.

b) Except with the consent of the Panel, on the 60th day after the day upon which the initial offer document was posted (or any other date beyond which the offeror has stated that its offer

will not be extended) a press release shall be made by 17h00 as to whether the offer is unconditional as to acceptances or has lapsed.

c) In the case of an affected transaction to which the provisions of section 440K of the Act are applied, the periods referred to in paragraph (a) and (b) hereof shall be the periods prescribed in the said section.

28.7) Time for fulfillment of all other conditions

Except with the consent of the Panel, all other conditions shall be fulfilled or the offer shall lapse within 21 days of the first closing date, or the date on which the offer becomes unconditional as to acceptances whichever is the later.

28.8) Settlement of consideration

Except with the consent of the Panel, the consideration shall be posted within seven days of the date of the offer becoming or being declared unconditional or acceptance thereof, whichever is the later.

Rule 29.

Offers Implemented by Schemes of Arrangement or Other Methods

a) Where an offer is implemented by a scheme of arrangement or by a reduction of capital or conversion of securities or any other method, then, for the purposes of these Rules-

i) in the case of a scheme of arrangement, the company in respect of which the scheme is proposed shall be deemed to be the offeree company, and the persons who will be the holders of relevant equity securities of the company after the scheme of arrangement has been sanctioned shall be deemed to be the offeror,

ii) in the case of a reduction of capital or conversion of securities, the company undertaking the reduction or conversion shall be deemed to be the offeree company and the persons who will be the holders of the relevant equity securities of the company after the reduction or conversion shall be deemed to be the offerors;

iii) in the case of any other method being utilised to implement an offer the Panel shall be consulted in advance;

iv) save in so far as the Panel may otherwise permit, or unless the Supreme Court has ordered otherwise, the provisions of these Rules relating to disclosure and, where possible, timing and periods of notice shall apply mutatis mutandis.

b) In the case of a reduction of capital or a conversion of securities which has as its purpose the elimination of a minority shareholding, the Panel may in appropriate circumstances required that at the relevant meetings the majority votes shall be excluded.

c) Standby Offers Where subsequent to the announcement of a firm intention to make an offer, but prior to the opening date of the offer, the market price of the relevant securities exceeds that which it is intended to offer, the offeror may, with the permission of the Panel, make a standby offer on such terms and conditions as the panel may determine.

d) Where the directors of a company will require the authority of a general meeting of shareholders of the company pursuant to the provisions of section 228 of the Act in order to enter into an affected transaction, the Panel shall have the right in its sole and absolute

discretion, to direct that any shareholder, whose vote may as a result of any direct or indirect conflict of interest result in an inequity to any other shareholder, shall not vote or cause its votes to be exercised in whole or in part at the said general meeting or any adjournment thereof.

Rule 30.

Revision

30.1) Offer open for 21 days after revision

Save with the consent of the Panel, an offer if revised, shall be kept open for at least 21 days following the date on which the revised offer document is posted. Subject to such consent, no document revising the offer may therefore be posted within the 21 days ending on the last day the offer may become unconditional as to acceptances.

30.2) No increase statements

If statements in relation to the value or type of consideration such as "the offer will not be further increased" or "our offer remains at x cents per share and it will not be raised" ("no increase statements") are included in documents sent to holders of relevant securities of the offeree company, or are made by or on behalf of an offeror, its directors, officers or advisers, and not withdrawn immediately if incorrect, then only in exceptional circumstances will the offeror be allowed subsequently to amend the terms of its offer in any way even if the amendment would not result in an increase of the value of the offer except where the right to do so has been specifically reserved.

30.3) Entitlement to revised consideration

If an offer is revised, all holders of relevant securities who accepted the original offer shall be entitled to the revised consideration.

30.4) New conditions for increased or improved offers

Subject to the prior consent of the Panel, and only to the extent necessary to implement an increased or improved offer, the offeror may introduce new conditions.

Rule 31.

Alternative Offers

31.1) Timing and revision

Save with the prior consent of the Panel, the provisions of Rules 28 and 30 apply equally to alternative offers, including cash alternatives.

31.2) Reintroduction of alternative offers

Where a firm statement has been made that an alternative offer will not be extended or reintroduced and that that alternative offer has ceased to be open for acceptance, neither that alternative, nor any substantially similar alternative, may be reintroduced. Where, however, such a statement has not been made and an alternative offer has closed for acceptance, an offeror will not be precluded from reintroducing that alternative at a later date. Reintroduction would constitute a revision of the offer and would, therefore, be subject to the requirements of, and only be permitted as provided in Rule 30.

Section N. Restrictions following Offers

Rule 32

32.1) Delay of 12 months before subsequent offer

Except with the consent of the Panel, where an offer has been announced or posted but has not become or been declared unconditional and has been withdrawn or has lapsed, neither the offeror, nor any person who acted in concert with the offeror in the course of the original offer, nor any person who is subsequently acting in concert with any of them, may within 12 months from the date on which such offer is withdrawn or lapses either-

- a) make an offer for the relevant securities of the offeree company; or
- b) acquire any securities of the offeree company if the offeror or any such person would thereby become obliged under Rule 8 to make an offer.

32.2) Partial offers

The restrictions in Rule 32.1 also apply following a partial offer which could result in a holding of not less than the specified percentage and not more than 50% of the voting rights of the offeree company whether or not the offer has become or been declared unconditional. When such an offer has become or been declared unconditional, the period of 12 months runs from that date.

Section O. Redemption or Reduction by a Company of its own Securities

Rule 33.

Redemption or Reduction of Securities by the Offeror/Offeree Company

Any redemption or reduction of securities of the offeror company or the offeree company made or to be made in terms of an offer or any such redemption or reduction effected within 12 months prior to the commencement of the offer period shall be disclosed in terms of Rule 7 and in all relevant offer documents.

Section P. Power of Panel to Grant Exemption from any Requirement

Rule 34.

Panel's General Discretion

Without derogation from any specific provision of the Rules whereby the Panel may grant exemption or dispensation from any requirement or permission or consent to depart from any requirement, the Panel shall enjoy a general discretion to authorize, subject to such terms and conditions as it may prescribe, noncompliance with or departure from any requirement of the Code and to excuse or exonerate any party from failure to comply with any such requirement.

Section Q. Co-Operation with Bodies in other Countries

Rule 35.

Co-Operation with Similar Bodies

The Panel is empowered to co-operate with similar bodies in other countries for the purpose of

obtaining or furnishing information relevant to any aspect of the duties of the Panel or of such other bodies.

Section R. When Code comes into Operation

Rule 36.

Date of Coming into Operation

- 1) The Code shall apply to affected transactions entered into with effect from 1 February 1991.
- 2) Notwithstanding the repeal of section 321 of the Act the provisions thereof shall continue to be available in respect of any offer made prior to the coming into operation of the Code.

Rules under Sections 440C(4) (a), (b), (c) and (f) of Act No. 61 of 1973, as amended

1.

Administration of the Panel

- 1) The Panel shall appoint a Deputy Chairman to act as Chairman when the latter is not available.
- 2) Subject to any directions by the Panel the day to day business of the Panel shall be administered by the Executive Director who shall have full powers to administer the Code and these regulations and to make rulings and give decisions.
- 3) The same powers may also be exercised by the Executive Committee appointed under section 440B (12) of the Act.
- 4) The Panel shall open and maintain a bank account.
- 5) The financial affairs of the Panel shall be subject to audit and an annual financial report shall be submitted by it to the Minister and published.
- 6) The Securities Regulation Code on Take-Overs and Mergers (the Code) shall be administered by the Panel. The Executive Committee and the Executive Director respectively shall have full powers to make rulings and decisions under the Code, subject to the right of appeal provided in the Code.
- 7) In any matters arising under the Code the Executive Director or members of the Panel charged with making any ruling or decision may consult the Chairman.
- 8) Should any member of the Panel, charged with any other members with the duty of making a ruling or decision in any matter arising under the Code, become unable to complete that duty, the remaining members shall continue without him, and, if necessary for the purposes of maintaining a quorum, such member shall be replaced by another member designated by the Executive Director in consultation with the Chairman.
- 9) The location of the Panel and its offices shall be in Johannesburg, but where appropriate, the Panel or the Executive Committee or the Executive Director may hear matters at any other place.

10) Hearings of matters under the Code shall be held in camera unless otherwise directed by the Executive Director, or the Chairman of the body hearing the matter, as the case may be.

11)

a) Should a hearing of any matter (other than an appeal) by the Panel or the Executive Committee or any meeting of the Panel or the Executive Committee be required, the Executive Director, in consultation with the Chairman, shall convene the necessary meeting for which a quorum shall be five members in the case of the Panel and three members in the case of Executive Committee.

b) In appeals the appellant shall be responsible for preparing and delivering at least 24 hours before the hearing 7 copies of all relevant documents, and to each of the other parties one copy thereof provided that this requirement may be waived.

c) Should a deadlock occur in the decision of any matter, the Chairman of the body hearing it shall have a casting vote or, depending on the importance of the matter, may request the Chairman of the Panel to order a rehearing before a different or enlarged body of members.

12) Where deemed necessary a record of the proceedings or part of the proceedings in any matter may be made.

13) The Panel may engage any suitably qualified person to assist it in any investigation or hearing.

14) A summons under section 440D(2) of the Act, whether in respect of a hearing into an affected transaction or an investigation into an allegation of insider trading shall be in the form of a direction to the person summoned to attend before the Panel or the Executive Committee or Executive Director upon the days and at the times fixed in such summons.

15) Service of a summons shall be by delivery at or by registered post addressed to the residence or place of business of the addressee, or by the Sheriff of the Division of the Supreme Court having jurisdiction at either such place.

a) Where there is urgency or difficulty in effecting service, other forms of service appropriate to the requirements may be used, including telegrams, cables, telexes, telefaxes and telephone messages.

16) Where the Panel or any committee thereof makes a ruling on the payment of the Panel's fees and charges by any party, the party in whose favour such ruling is made may have the amount thereof determined by taxation by the Executive Director.

17) Any decision to enforce the Code and on the procedure to be adopted shall be in the discretion of the Panel.

18) The services of the Executive Director and the Panel, depending on the urgency of the matter, will be available after normal office hours.

2.

Financing of the Panel

1) Until such time as the fees and charges laid down in the Schedule to the Rules are adequate to finance the Panel, the necessary funds will be provided, with the consent of The Stock Exchange, from a fixed proportion of the annual subscriptions paid to The Stock Exchange by listed companies.

2) The fees and charges to be paid to the Panel shall be set by the Panel from time to time and published in the Gazette.

3) The fees and charges in force from time to time shall be those set forth in the Schedule to these Rules.

3.

The Remuneration and Allowances of The Executive Director and the Conditions upon which he is appointed

1) The Executive Director shall be appointed by the Panel.

2) The salary and allowances of the Executive Director shall be as determined by the Chairman in consultation with the executive Committee with due regard to comparable remuneration of persons with similar qualifications and responsibilities in similar employment in the South African securities industry.

3) The conditions of employment of the Executive Director shall be determined by the Chairman in consultation with the Executive Committee

4.

The Remuneration and Allowances of Members of The Panel

1) The Chairman and members who attend meetings of the Panel or any committee thereof or who are engaged in hearings or appeals or deliberations in respect thereof or who render other services to the Panel, shall be entitled to remuneration and travelling and subsistence allowances corresponding to the rate applicable to the Chairman and members of the standing Advisory Committee on Company Law appointed under section 18 of the Act.

2) Where services have to be rendered outside normal office hours, the Chairman, in consultation with the Executive Committee, may increase the remuneration of members by not more than 100 %.

3) Where the Panel is remunerating a member for services which have been rendered other than that at a formal meeting, the rate for such services rendered by such member shall be determined by the Panel or by any designated sub-committee.

5.

The Remuneration and Allowances of Officers and Employees of the Panel and the Conditions upon which they are Appointed

1) The Executive Director in consultation with the Executive Committee shall appoint such officers and other senior employees of the Panel as are reasonably required for the proper discharge of its functions.

2) The remuneration and allowances of such persons and their conditions of appointment shall be determined by the Executive Director in consultation with the Executive Committee.

6.

Dissolution of The Panel

The Panel may be dissolved by the Minister upon the written request of not less than three-quarters of the members thereof, and upon dissolution its assets shall be transferred to some other institution, board or body which has been granted exemption from tax in terms of section 10(1) (cA) of the Income Tax Act, 1962, and which has objects similar to those of the Panel, or

to the State.

Securities Regulation Panel Schedule of Fees and Charges

1)

The services provided by the Panel fall into the following categories :

1.1)

Providing information and advice of a preliminary and general nature on the provisions of Chapter XVA of the Act and the Rules;

1.2)

consultations, interviews and advice or rulings on written or oral submissions requesting guidance or rulings on compliance with the Rules, or with the requirements of the Panel, in specific matters;

1.3)

examination of documents submitted for the Panel's approval;

1.4)

hearings, including appeals;

1.5)

other.

2)

The fees chargeable (exclusive of Value-Added Tax) for the several categories of service referred to above are as follows:

2.1)

No fees will be charged for these services;

2.2)

the fees for these services shall be at the rate of R700 per hour or part thereof;

2.3)

the fees for these services shall be at the rate of R3 475 per document or R100 per 200 words, whichever is the greater;

2.4)

2.4.1)

for hearings before the Executive Director alone, the fees shall be at the rate of R700 per hour or part thereof;

2.4.2)

for hearings before members of the Panel, the fees shall be at the rate of R2 075 per hour or part thereof plus an additional R700 per hour or part thereof in respect of each member in excess of three hearing the matter;

2.5)

the fees for other services shall be determined by the Executive Director or the members of the Panel dealing with the matter, as the case may be. by reference to the fees chargeable for that category of service which, in the opinion of the Executive Director or such members, is closest in character to the services in the matter under consideration: Provided that for as long as the

provisions of Rule 2.1 of the Rules under sections 440C (4) (a), (b), (c) and (f) of the Companies Act, 1973 (Act No. 61 of 1973), as amended, remain in operation, the scale of fees in respect of companies which have not paid or timeously paid such fixed proportion of the annual subscriptions referred to in that Rule, shall be at the rate of 200 per cent of the above fees.

3)

To the fees as aforesaid there may be added the cost of serving any subpoenas, the cost of recording the proceedings, the cost of any expert engaged by the Panel and any other necessary or desirable disbursements incurred in connection with the particular matter. The word "fees" as used in this Schedule shall, unless the context indicates otherwise, be deemed to include all such costs.

4)

Fees shall be paid -

4.1)

in the case of services referred to in paragraph 1.2, by the party requesting the service;

4.2)

in the case of services referred to in paragraph 1.3, by the party submitting the documents;

4.3)

in the case of services referred to in paragraph 1.4, by the applicant or appellant, but subject to a discretion on the part of the Executive Director, the relevant committee or the Panel, as the case may be to order any other party involved in the application or appeal to pay the fees or to make a contribution in respect thereof;

4.4)

in the case of services referred to in paragraph 1.5, and in cases where it is uncertain which party is to bear the fees, by the party or parties who, in the opinion of the Panel, should pay such fees or part thereof on equitable grounds.

5)

Notwithstanding anything to the contrary herein contained, minority holders of securities in an offeree company who consult the Panel, or make application for a ruling in opposition to the terms of an offer or the manner in which the offer is submitted by the offeror or is handled by the board of the offeree company, shall not be liable for fees for services under paragraphs 1.2, 1.3 or 1.4 of this Schedule: Provided that the minority shareholders who have participated in such action may be ordered jointly and severally to pay such fees if, in the opinion of the Executive Director or committee concerned or the Panel, they have in taking any such action acted vexatiously or unreasonably.

6)

The Panel may in its discretion waive or reduce any fees.

7)

Copies of the Rules may be obtained from the Panel at a charge of R100 per copy, with a further charge of R150 per annum for the updating service.