

**DRAFT**

**TAKEOVERS CODE**

## INTRODUCTION TO THE TAKEOVERS CODE

This introduction has been prepared by the Takeovers Panel to promote an understanding of the Takeovers Code (the "Code"), the Takeovers Act 1993, (the "Act") and the role of the Panel.

The introduction is intended for general guidance only. The Code and the Act should be referred to for their detailed provisions.

### **Establishment and operation**

The Code was formulated by the Takeovers Panel and approved by the Governor General by Order in Council under the Act. The Code came into force on [                      ] 1993.

The Code is administered by the Panel whose constitution and powers are set out in the Act. The Panel has seven members, appointed by the Minister of Justice.

The Code consists of a number of basic rules for the conduct of takeovers, together with procedures which are to be followed, and information to be supplied, in making and responding to an offer under the Code.

The Code does not try to anticipate all the specific circumstances that may arise in practice. The Panel encourages early consultation with takeover participants and has an exemption power which can be used where appropriate.

The Panel will be seeking compliance with the spirit and intent of the Code as a whole.

The Panel has primary responsibility for initiating enforcement of the Code.

### **Code companies**

The Code applies to "Code companies" which are companies which are listed on the New Zealand Stock Exchange or have ceased to be listed for less than 12 months.

### **Fundamental rule**

The starting point for the Code is a fundamental rule that prevents a person who holds or controls less than 20% of the voting rights in a Code company from becoming, either individually or together with associates, the holder or controller of an increased percentage of voting rights, except by way of an offer which complies with the Code, unless after the increase the person and associates of the person hold or control in total not more than 20% of the voting rights (**Rule 3**).

A person who already holds or controls 20% or more of the voting rights may not increase that percentage without making a Code offer.

The rule can be breached not only by the acquisition of voting rights, but also by involuntary increases in the percentage of voting rights held (such as through a repurchase by the company of its own shares other than on a pro rata basis).

A person holding or controlling voting rights of 20% or more when the Code came into force is not, by reason of that fact alone, in breach of the Code. A breach will only occur as a result of increases after that date.

### **Exceptions**

#### **(Rule 4)**

There are three exceptions to the fundamental rule:

- Specific purchases or issues of equity securities approved by the shareholders of a Code company in general meeting are permitted (interested parties cannot vote).
- A person holding or controlling more than 50% but less than 90% of the voting rights in a Code company, can increase that holding by up to 5% of the total voting rights in the Code company in any 12 month period, the maximum increase being calculated from the lowest percentage held in that period.
- A person holding or controlling 90% or more of the voting rights in a Code company, may increase that holding without restriction.

### **Key terms**

The Code defines several terms which are of particular importance for the interpretation of the Code (**Rule 1**). These include "voting right", "voting security" and "equity security".

A "voting right" does not include, for example, the right to vote attached to a preference share which is only exercisable when the dividend is in arrears.

A "voting security" is an equity security which confers a voting right.

An "equity security" includes an option or convertible security, whether voting or non-voting. The fundamental rule, which refers to "voting rights", will not be breached by the acquisition of non-voting convertible securities or options. It will be a breach of the rule, however, if the exercise of options or conversion rights causes the voting rights held or controlled by a person and the person's associates to increase beyond 20%.

The term "associate" is also important in interpreting the fundamental rule. It is defined in general terms and is potentially wide in its scope, depending on the circumstances. In determining whether the 20% threshold is exceeded, account must be taken, for example, of the voting rights carried by securities owned by a spouse, business partner or family trust. Associates of a company will include its directors and its related companies.

The term "control" is defined in relation to a voting right to include direct or indirect effective control of the voting right.

Where there is any doubt about the interpretation of these terms, the Panel should be consulted.

### **Offers under the Code**

The Code places no restriction on the manner in which a person acquires up to 20% of the voting rights in a Code company, acquires not more than 5% in any 12 month period when holding from more than 50% up to 90%, or makes any acquisitions beyond the 90% level (subject to the compulsory acquisition Rule) referred to below. However any other acquisitions can only take place by way of an offer made under the Code unless shareholder approval is obtained under **Rule 4**.

A Code offer can be a "full offer" (for all the **equity** securities in the target company) or a "partial offer" (for less than all the **voting** securities), subject to the requirements mentioned below.

In either case, the Code calls for equal treatment of security holders.

### **Full offers**

A full offer must extend to all equity securities (voting or non-voting) and must be fair and reasonable as between different classes of securities (**Rule 5**).

### **Partial offers**

Partial offers are permitted. They must be extended to all holders of voting securities in the target company and be for a specific percentage of each holder's securities. If the existing holding of the offeror is 50% or less of the voting rights in the target company, the offer must be for securities which will result in the offeror holding more than 50% of the voting rights, unless the target company by resolution in general meeting has agreed to a lesser percentage (**Rule 6**). The offeror and its associates cannot vote on that resolution.

The offer must be fair and reasonable as between different classes of voting securities.

The partial offer need not extend to non-voting securities.

The Code regulates the manner in which a partial offer may be made and accepted, and in particular prescribes the method of applying excess acceptances from some offerees to meet any shortfall in acceptances from other offerees (**Rules 6 and 10**).

### **Same offer to all**

Under any Code offer, the offer price can be different to any price paid by the offeror in previous transactions. However, under the offer, the same price must be paid for all securities in a class (**Rule 8**).

The fairness and reasonableness of any Code offer, as between different classes of securities, must be supported by a report from an independent advisor approved by the Panel (**Rule 7**).

### **Minimum acceptance condition**

Any Code offer by a person entitled to less than 50% of the voting rights in the target company, must be subject to a condition that the offeror obtain acceptances which will bring the offeror's total holding to more than 50% (**Rule 9**).

This means that a person who already holds, for example, 25% of the voting securities in the target company, must obtain acceptances in respect of more than a further 25% of all the voting securities in the company (which represents more than one third of the outstanding securities) before the offeror can take up any securities under the offer.

### **Offer period**

An offer must remain open for a fixed period of not less than 30 days and not more than 60 days. However, a full offer can be extended for up to a further 30 days beyond the maximum period of 60 days if it has become unconditional as to any minimum level of acceptances (**Rule 11**).

### **No withdrawal of an offer**

The Code provides that an offer cannot be withdrawn (**Rule 12**).

### **Variation of an offer**

An offer can only be varied to increase the consideration, to add a cash element to the consideration, to include a cash alternative (with the approval of the target company directors) or to extend the offer period within the time limits mentioned above (**Rule 13**).

An offer must remain open for at least 14 days after it is varied and cannot be varied later than 14 days before the end of the maximum offer period.

If the offer price is increased, the higher price must be paid to all acceptors, whether they accept before or after the variation is made (**Rule 14**).

### **Dealings during the offer period**

Sales of securities in the target company by the offeror and its associates are prohibited during the offer period.

Purchases outside the offer are permitted, subject to certain conditions, when the offer is a full offer for cash or with a cash alternative, provided that the purchases are also for cash and the offeror's total holding (excluding acceptances under the offer) does not exceed 20%, although this last requirement does not apply if the offer has become unconditional (**Rule 17**).

Where purchases outside the offer are made at a higher price than the offer price, the offer is deemed to be varied, increasing the offer price to the same level.

### **Conditions**

An offer may contain conditions, as long as they do not rely on the judgment of the offeror or are within the control of the offeror or its security holders as to whether they are fulfilled (**Rule 15**).

This allows for conditions which the offeror may require to protect its interests (such as those relating to changes in the target company, statutory approvals, or events which are pre-requisites to the offer proceeding) while at the same time prohibiting conditions which render an offer little more than an "option".

There must be a specified date by which an offer must become unconditional. This can be no later than 15 days (or 30 days where statutory approvals are required) after the end of the offer period (which can be up to 60 days).

### **Payment**

The consideration for the offer must be paid at the time set out in the offer which may be no later than 7 days after the **later** of the date on which the offer becomes unconditional, the date on which an acceptance is received, or the end of the offer period first specified in the offer (**Rule 16**).

If payment is not made within the 7 day period, an acceptor can withdraw.

### **Offer procedures**

The offeror must send the target company a takeover notice setting out the terms of the offer and additional information specified in the First Schedule to the Code (**Rule 21**).

A target company must notify offerees of receipt of the notice.

The offer and First Schedule information must be sent to offerees between 14 and 28 days after the notice is given.

The offer can be accompanied by the target company statement containing information required in the Second Schedule to the Code, including the recommendation of the directors of the target company. Alternatively, the target company may send out that statement separately no later than 14 days after the offer is despatched.

The information prescribed by the Schedules to the Code must be certified to be true, correct and not misleading, by the directors, chief executive officer and chief financial officer of the offeror (in relation to the First Schedule) and the target company (in relation to the Second Schedule). That information is more extensive than previously required under the Companies Amendment Act 1963 and is intended to ensure that offerees have full information on which to judge the merits of an offer in all the circumstances.

The Panel and the Stock Exchange (in the case of listed companies) are required to be advised of the various steps taken in terms of the Code and to be provided with copies of notices and documents.

The Panel must also be notified of purchases by an offeror outside the offer during the offer period and whenever any person holding more than 50% but less than 90% of the voting rights increases or reduces that holding by 1% of the voting rights.

Other disclosures required by securities and companies legislation will continue to apply.

### **Compulsory acquisition**

When a person (the "dominant owner") obtains more than 90% of the voting rights in a Code company, whether through an offer under the Code or otherwise, the Panel and the outstanding security holders must be notified, and those holders must either be **required** by the dominant owner to sell the equity securities (a "compulsory sale") or must be given the **right** to sell their securities to the dominant owner (a "voluntary sale").

When the 90% holding results from acceptances under a Code offer, the offer price for each class becomes the compulsory acquisition price, as long as acceptances are received under the offer for at least 50% of the shares in that class. Otherwise the price is fixed by the dominant owner, but must be certified as fair and reasonable by an independent advisor to the dominant owner. If outstanding security holders holding at least 2% of the securities in any class object to that price, the price for that class is referred to an expert appointed by the Panel.

The Code sets out a detailed procedure for carrying out the compulsory or voluntary sales (**Rule 20**).

### **Defensive tactics**

The Code prohibits directors of the target company from taking any action which could result in an offer being frustrated or shareholders being denied the opportunity to decide on the merits of the offer. Shareholder approval is required for any such action. (**Rule 19**).

This Rule would apply, for example, if directors, in order to defeat a takeover offer, caused the company to issue new shares, purchase back its own shares or sell significant assets.

Certain existing commitments or proposals in place prior to there being knowledge of an offer may be implemented with Panel approval. Other action sought to be taken for reasons unrelated to the offer but which could breach the Rule may also be carried out with Panel approval.

### **Exemptions**

The Panel has the power to grant exemptions from compliance with the Code and to vary or revoke exemptions.

Because of the way in which the Code is constructed, and the role of the Panel envisaged by the Code and the Act, it is anticipated that exemptions will be required in a variety of circumstances. Requests or enquiries about the need for exemptions should be directed to the Panel at the earliest opportunity.

The Code does not replace the general law that might be applicable in any takeover, including contract law, so that if an exemption is obtained in the course of an offer, whether the action permitted by the exemption can occur may also depend on the wording of the offer and the legal principles relating to it.

### **Enforcement**

The Panel is central to the enforcement of the provisions of the Act.

Where the Panel suspects a breach or intended breach of the Code, it can issue a restraining order of limited duration and can call a meeting with the person concerned.

If the Panel determines that it is not satisfied that there is compliance with the Code, the Panel can extend the restraining order for a further period and can apply to the Court for a wide range of restraining or remedial orders, including orders for the disposal or forfeiture of shares, removal of voting rights, avoidance of agreements or payment of compensation.

The Panel having made a determination that it is not satisfied, various other interested parties may also apply for orders from the Court if they have obtained the Panel's consent to do so, or if they have asked the Panel to apply to the Court and the Panel has not done so within a stipulated period.

Those other parties are the Stock Exchange, Code company, members and affected former members of the Code company and parties who have made offers under the Code in respect of the same Code company in the six month period prior to the application to the Court. Any other person may apply with the leave of the Court.

Any of those parties may also apply to the Court for orders where the Panel does not make a determination that it is (or is not) satisfied as to compliance within a stipulated period after the party has requested that the Panel convene a meeting with the person who may have breached the Code.

The Court can have regard to determinations and recommendations of the Panel in deciding on an application made to it.

The Court has power to excuse non-compliance with the Code in appropriate circumstances.

It is a criminal offence, punishable by a fine, to:

- give false or misleading information or evidence to the Panel;
- deceive or mislead the Panel;
- fail to appear before the Panel or answer questions or produce documents;
- contravene a Panel restraining order.

Maximum fines for individuals are \$10,000 or \$30,000 (depending on the offence) and for companies are \$100,000. Where a company commits an offence, every director also commits an offence and is liable for a fine of up to \$30,000.

The Panel is given various powers under the Act to enable it to carry out its enforcement functions. These include powers to take evidence, summon witnesses and call for production of information.

### **Administration**

The Panel will delegate day-to-day administration of the Code to executive staff, who will deal with routine enquiries, monitor takeover activity, and investigate applications for exemptions and breaches of the Code, for Panel determination.

The Panel can employ experts and delegate its functions as necessary.

The Panel and its staff will be seeking to promote public understanding of the Code and may issue statements and guidelines from time to time.

### **Contact with the Panel**

Approaches to the Panel should be made in the first instance to : [insert details].

## **TAKEOVERS CODE**

This Code is formulated by the Takeovers Panel and approved by the Governor General by Order in Council under the Takeovers Act 1993. The Code shall come into force on [            ] 1993.

### **1. Definitions and interpretation**

(1) In this Code, unless the context otherwise requires:

"Act" means the Takeovers Act 1993;

"Code" means this Takeovers Code;

"Code company" means :

- (a) a company that is a party to a listing agreement with the Stock Exchange; and
- (b) a company that was a party to a listing agreement with the Stock Exchange and has ceased to be a party to that agreement for less than 12 months.

"control" in relation to a voting right means having, directly or indirectly, effective control of the voting right; and "controller" has a corresponding meaning;

"despatch notice" means the document identified by that term in Rule 21;

"director" means:

- (a) in relation to a company, any person occupying the position of a director of the company, by whatever name called;
- (b) in relation to a partnership (other than a special partnership), any partner;
- (c) in relation to a special partnership, any general partner;
- (d) in relation to a body corporate or unincorporate, other than a company, partnership, or special partnership, any person occupying a position in the body that is comparable with that of a director of a company;
- (e) in relation to any other person, that person:

and, in relation to a company or other body corporate or unincorporate to which paragraphs (a) and (d) of this definition apply, includes a person in accordance with whose directions or instructions the persons referred to in those paragraphs, or any of those persons, may be required, or are accustomed, to act in respect of the exercise of duties or powers as, or comparable to those of, a director;

"equity security" means any interest, or right to participate, in the share capital of a company, whether carrying voting rights or not, and includes an option or right to acquire any such interest or right, but does not include redeemable securities which are redeemable only for cash;

"full offer" has the meaning set out in Rule 5;

"offer" means an offer made under the Code for voting securities and any other securities to which the offer is required to extend under the Code;

"**offeree**" means a person to whom an offer is made;

"**offeror**" means a person who makes an offer;

"**offer document**" means the offer and other information identified by that term in Rule 21;

"**offer period**" has the meaning set out in Rule 11;

"**Panel**" means the Takeovers Panel established under the Act;

"**partial offer**" has the meaning set out in Rule 6;

"**Stock Exchange**" means the New Zealand Stock Exchange;

"**specified percentage**" has the meaning set out in Rule 6;

"**subsidiary**", "**holding company**" and "**related company**" have the meanings set out in Sections 2(2) and 178 of the Companies Act 1993;

"**takeover notice**" means the notice identified by that term in Rule 21;

"**target company**" means a Code company whose voting securities are the subject of an offer;

"**target company statement**" means the statement identified by that term in Rule 21;

"**variation notice**" has the meaning set out in Rule 13;

"**voting right**" means a currently exercisable right to cast a vote at general meetings of members of a company, not being a right to vote that is exercisable only in special circumstances; and

"**voting security**" means an equity security which confers a voting right.

- (2) Where under the Code the last day for doing any act falls on a day when the Stock Exchange is not open for business, that act may be done on the next day when the Stock Exchange is open for business.

## 2. **Associates**

For the purposes of the Code, one person is an associate of another person if:

- (a) the two persons are acting jointly or in concert; or
- (b) the one person acts, or is accustomed to act, in accordance with the wishes of the other person; or
- (c) the two persons have a business relationship, personal relationship or ownership relationship such that they should, under the circumstances, be regarded as associates; or
- (d) the one person is an associate of a third person who is an associate of the other person (in both cases under the preceding provisions of this Rule) and the nature of the relationships between the one person, the third person and the other person (or any of them) are such that, under the circumstances, the one person should be regarded as an associate of the other person.

### 3. Fundamental rule

- (1) Except pursuant to an offer made in compliance with the Code, or as permitted under Rule 4:
  - (a) a person who holds or controls less than 20% of the voting rights in a Code company may not become, either individually or together with associates, the holder or controller of an increased percentage of the voting rights in that Code company unless after that event that person and that person's associates shall hold or control in total not more than 20% of the voting rights in that Code company; and
  - (b) a person who holds or controls 20% or more of the voting rights in a Code company may not become, either individually or together with associates, the holder or controller of an increased percentage of the voting rights in that Code company.
- (2) For the purposes of subsection (1) of this Rule, where voting rights are held or controlled by a person together with associates, any increase in the extent to which that person shares in the holding or controlling of those voting rights with associates shall be deemed to be an increase in the percentage of the voting rights held or controlled by that person.

### 4. Exceptions to fundamental rule

- (1) Notwithstanding Rule 3:
  - (a) a person may become the holder or controller of an increased percentage of the voting rights in a Code company by:
    - (i) an allotment of voting securities in the Code company to that person; or
    - (ii) an acquisition by that person of voting securities in the Code company from one or more other persons;if the Code company has approved the allotment or acquisition by resolution in general meeting.
  - (b) a person who holds or controls more than 50%, but less than 90%, of the voting rights in a Code company, may increase the percentage of voting rights held or controlled by that person if the resulting percentage does not exceed by more than 5 the lowest percentage of voting rights held or controlled by that person in the 12 month period ending on, and inclusive of, the date of the increase.
  - (c) a person may increase the percentage of voting rights held or controlled by that person in a Code company if that person already holds or controls 90% or more of the voting rights in that Code company.
- (2) The notice of meeting containing the proposed resolution in respect of an allotment under sub-section (1)(a)(i) of this Rule shall contain, or be accompanied by, the identity of the allottee, the issue price, the reasons for the allotment and the significance of the resolution under the Code. An allottee and its associates may not vote on the resolution.

- (3) The notice of meeting containing the proposed resolution in respect of an acquisition under sub-section (1)(a)(ii) of this Rule shall contain, or be accompanied by, the identity of the persons acquiring and disposing of the equity securities, the consideration for the acquisition, the reasons for the transaction and the significance of the resolution under the Code. The persons acquiring and disposing of the securities and their associates may not vote on the resolution.

#### 5. Full offer

- (1) An offer may be made under the Code for all the voting securities of the target company (a "**full offer**").
- (2) A full offer shall include offers in respect of all the securities in each class of equity securities, whether voting or non-voting, of the target company.
- (3) If there is more than one class of voting securities included in a full offer, the consideration and terms offered for each class of voting securities shall be fair and reasonable as between the classes of voting securities.
- (4) If non-voting securities are included in a full offer, the consideration and terms offered for non-voting securities shall be fair and reasonable in comparison with the consideration and terms offered for voting securities.

#### 6. Partial offer

- (1) An offer may be made under the Code for less than all the voting securities of a target company (a "**partial offer**").
- (2) If, on the date of a partial offer, the offeror does not hold or control more than 50% of the voting rights in the target company, the partial offer shall be for voting securities which, when taken together with voting securities already held or controlled by the offeror, carry:
  - (a) more than 50% of the voting rights in the target company; or
  - (b) a lesser percentage of the voting rights in the target company which has been approved by a resolution of the target company in general meeting on which no votes were cast by the offeror or its associates.
- (3) A partial offer shall be extended to all holders of voting securities of the target company.
- (4) If there is only one class of voting securities of the target company, a partial offer shall be for a specified percentage of the voting rights of the target company not already held or controlled by the offeror (the "**specified percentage**").
- (5) If there is more than one class of voting securities of the target company:
  - (a) a partial offer shall be for voting securities carrying a specified percentage of the voting rights carried by each class of voting securities of the target company and not already held or controlled by the offeror, being the same percentage in respect of each class (the "**specified percentage**"); and

- (b) the consideration and terms offered for each class of voting securities of the target company shall be fair and reasonable as between the classes of voting securities.
- (6) The number of voting securities that may be disposed of by an offeree under a partial offer in accordance with the terms of the offer and the Code shall be determined by reference to the number of voting securities of each class under offer held by the offeree at the expiry of the offer period, as recorded in the share register of the target company.

**7. Independent advice on terms**

If Rule 5(3), 5(4) or 6(5)(b) applies, the offeror shall obtain a report from an independent adviser approved by the Panel, in which the adviser certifies that in the adviser's opinion the relevant Rule is complied with. The certificate shall be conclusive on that matter.

**8. Same offer for all securities of a class**

Any offer shall be made on the same terms for all securities belonging to the same class of equity securities under offer.

**9. Minimum acceptance condition**

If, on the date of an offer, the offeror does not hold or control more than 50% of the voting rights in the target company, the offer shall be conditional upon receipt of acceptances in respect of voting securities which, when taken together with voting securities already held or controlled by the offeror, carry:

- (a) more than 50% of the voting rights in the target company; or
- (b) in the case of a partial offer, any lesser percentage approved under Rule 6(2).

**10. Excess acceptances of a partial offer**

If a partial offer is accepted in respect of more securities than those sought by the offeror, the following provisions of this Rule shall apply:

- (a) If there is only one class of voting securities included in the offer, the offeror shall take up from each offeree the lesser of:
  - (i) the number of the offeree's securities which represents the specified percentage of the voting rights held by the offeree; or
  - (ii) the number of securities in respect of which the offeree has accepted the offer.
- (b) If securities acquired under sub-section (a) of this Rule do not provide the offeror with voting rights equal to the specified percentage, then for the purposes of sub-section (c) of this Rule:
  - (i) the balance of voting rights required by the offeror is referred to as "**further required voting rights**"; and

- (ii) the voting rights attached to voting securities in respect of which the offer has been accepted, but which have not been taken up under sub-section (a) of this Rule, are referred to as "**surplus acceptance voting rights**".
- (c) If sub-section (b) of this Rule applies, the offeror shall acquire the further required voting rights by taking up, from each offeree with surplus acceptance voting rights, voting securities carrying the proportion of the offeree's surplus acceptance voting rights which the further required voting rights bears to the total surplus acceptance voting rights.
- (d) If there is more than one class of voting securities included in the offer:
  - (i) the provisions in sub-sections (a), (b) and (c) of this Rule shall be applied in respect of each class of voting securities separately; and
  - (ii) if the application of sub-section (d)(i) of this Rule does not provide the offeror with the securities sought by the offeror under the offer, the provisions of sub-sections (b) and (c) of this Rule shall then be applied on the basis that references to "surplus acceptance voting rights" shall be deemed to be references to voting rights carried by voting securities of all classes in respect of which the offer has been accepted, but which have not been taken up under sub-section (d)(i) of this Rule.

#### **11. Duration of the offer period**

- (1) An offer shall remain open for a fixed period specified in the offer (the "**offer period**").
- (2) The offer period shall:
  - (a) commence with the date of the offer; and
  - (b) be not shorter than 30 days, and not longer than 60 days.
- (3) If the offer is a full offer, and there are no conditions in the offer requiring a minimum number of acceptances, or any such conditions have been satisfied, then the offer period may be extended beyond the maximum period otherwise permitted under sub-section (2) of this Rule by up to a further 30 days.

#### **12. Withdrawal of the offer**

An offer may not be withdrawn.

#### **13. Variation of the offer**

- (1) The offeror may not vary the terms of an offer, except:
  - (a) to increase an existing component or components of the consideration; or
  - (b) to add a cash component to the consideration; or

- (c) with the prior written approval of the directors of the target company, to include in the offer a cash alternative; or
  - (d) to extend the offer period, but not beyond the maximum period permitted under Rule 11.
- (2) Written notice of a variation under this Rule (a "**variation notice**") shall be sent forthwith to all offerees, to the Panel and, if the securities of the target company or the offeror are listed on the Stock Exchange, to the Exchange.
  - (3) The offer shall remain open for at least 14 days after a variation notice has been sent.
  - (4) An offer may not be varied, and a variation notice may not be sent, later than 14 days before the date on which the maximum period permitted under Rule 11 would end.
  - (5) If Rule 5(3), 5(4) or 6(5)(b) applies to an offer, the offer may not be varied under sub-section (1)(a), (b), or (c) of this Rule, unless:
    - (a) the consideration for each class of securities included in the offer is increased in a comparable manner; or
    - (b) a further report has been obtained by the offeror under Rule 7, in relation to the offer as proposed to be varied. That report shall be contained in, or shall accompany, the variation notice.

**14. Increases in consideration available to all accepting parties**

If a variation to an offer increases the consideration offered, the offeror shall provide such increased consideration to each person whose securities are taken up, whether or not the person accepted the offer before or after the variation was made.

**15. Conditions**

- (1) An offer may be subject to any conditions, except those which depend on the judgment of the offeror, or the fulfilment of which lies in the offeror's hands or the hands of its security holders.
- (2) The offer shall specify a date by which it is required to become unconditional, which shall be no later than:
  - (a) 15 days; or
  - (b) where the acquisition requires statutory approval, 30 daysafter the end of the offer period (excluding any part of the offer period which is extended under Rule 11(3) beyond the maximum period otherwise permitted under Rule 11(2)).
- (3) No condition contained in the offer shall have effect beyond the date referred to in sub-section (2) of this Rule, and the offer shall lapse if it does not become unconditional by that date.

**16. Payment of consideration**

- (1) The consideration for an offer shall be sent in accordance with the terms of the offer to the persons whose securities are taken up under the offer but shall be sent not later than 7 days after the later of:
  - (a) the date on which the offer becomes unconditional; or
  - (b) the date on which an acceptance is received; or
  - (c) the end of the offer period first specified in the offer in accordance with Rule 11(2).
- (2) If an offer is varied under Rule 13 (1)(a) after the consideration has been sent to persons who have accepted the offer, the additional consideration to be provided as a consequence of the variation shall be sent to those persons no later than 7 days after the date on which the offer is varied.
- (3) If the offeror fails to comply with sub-section (1) of this Rule, a person who has accepted the offer may withdraw the acceptance.

**17. Dealings during the offer period**

- (1) During the offer period, the offeror and its associates shall not dispose of any equity securities in the target company.
- (2) During the offer period, the offeror and its associates shall not acquire any equity securities in the target company otherwise than under the offer, unless:
  - (a) the offeror has made a full offer for cash, or a full offer with a cash alternative; and
  - (b) the possibility of such acquisitions is disclosed in the offer document; and
  - (c) the acquisitions are made no later than 14 days before the expiry of the offer period; and
  - (d) the acquisitions are made only for cash; and
  - (e) after taking into account the equity securities so acquired the offeror and the offeror's associates will not hold or control in total more than 20% of the voting rights in the target company (excluding any equity securities acquired under the offer) but this requirement shall not apply if the offer has become unconditional; and
  - (f) the acquisitions are notified to the Panel by 9.00 am on the day after the day on which they were acquired.
- (3) If the consideration paid in any acquisition under sub-section (2) of this Rule exceeds the cash consideration or cash alternative consideration stipulated in the offer, the offer shall be deemed to be varied under Rule 13 as from the date of such acquisition so that the cash consideration or cash alternative consideration under the offer is equal to the consideration paid for that acquisition, and the provisions of the Code relating to variation of an offer shall apply accordingly.

**18. Disclosure of dealings by majority holders**

If a person holds or controls more than 50%, but less than 90%, of the voting rights in a Code company, each increase or decrease of 1% in the voting rights in that company held or controlled by that person, and the total voting rights which that person then holds or controls, shall be notified by that person to the Panel by 9.00 a.m. on the day after the day on which the increase or decrease occurs.

**19. Defensive tactics**

- (1) Once the target company has received a takeover notice, or becomes aware that an offer is imminent, no action which could effectively result in an offer being frustrated, or in the shareholders of the target company being denied an opportunity to decide on the merits of an offer, shall be taken by the directors of the target company in relation to the affairs of the target company, unless:
  - (a) the target company has approved the action by resolution in general meeting; or
  - (b)
    - (i) the action is taken pursuant to a contractual obligation entered into by the target company, or in implementation of proposals approved by the directors of the target company, and the obligations were entered into, or the proposals were approved, prior to the target company receiving the takeover notice or becoming aware that the offer was imminent; or
    - (ii) the action is taken in other circumstances for reasons unrelated to the offer,and the prior consent of the Panel has been obtained to the action taken under this sub-section (1)(b).
- (2) The notice of meeting containing the proposed resolution for the purposes of sub-section 1(a) of this Rule shall contain, or be accompanied by, full particulars of the proposed action, the reasons for it and the significance of the resolution under the Code.

**20. Compulsory acquisition**

- (1) When a person holds or controls, or two or more persons jointly, or acting in concert, hold or control, 90% or more of the voting rights in a Code company, whether by reason of acceptances of an offer or otherwise (the "**dominant owner**"):
  - (a) the dominant owner shall notify the Panel of that fact by 9.00 am on the day after the day on which that occurs; and
  - (b) the dominant owner shall have the right to acquire all the equity securities which the dominant owner does not already hold or control (the "**outstanding securities**"), and the holders of those securities (the "**outstanding security holders**") shall have the right to sell all their equity securities to the dominant owner, in accordance with this Rule.
- (2) Within 30 days after becoming a dominant owner, the dominant owner shall send to the outstanding security holders a notice (an "**acquisition notice**") which:

- (a) states that the dominant owner holds or controls 90% or more of the voting rights in the Code company; and
  - (b) states either:
    - (i) that the outstanding security holders must sell their equity securities in the Code company to the dominant owner (a "**compulsory sale**"); or
    - (ii) that the outstanding security holders have the right to sell their equity securities in the Code company to the dominant owner (a "**voluntary sale**"); and
  - (c) specifies the consideration to be provided for the securities; and
  - (d) informs the outstanding security holders of their rights under this Rule; and
  - (e) provides the outstanding security holders with the instrument of transfer referred to in sub-section (4)(a) of this Rule; and
  - (f) specifies the date on which the acquisition notice is sent to the outstanding security holders.
- (3) The consideration to be provided for the outstanding securities shall be determined as follows:
- (a) If the dominant owner becomes a dominant owner by reason of acceptances of an offer, the consideration payable in respect of equity securities in any class shall be the same as the consideration provided under the offer for securities in the same class, provided that acceptances were received in respect of more than 50% of the securities in that class that were the subject of the offer.
  - (b) If the consideration cannot be established by the dominant owner under sub-section 3(a) of this Rule:
    - (i) the consideration specified in the acquisition notice shall be certified as fair and reasonable by an independent adviser to the dominant owner; and
    - (ii) the consideration specified in the acquisition notice shall be the consideration payable for the outstanding securities unless, within 14 days after sending the acquisition notice, the dominant owner receives written objections to that specified consideration from outstanding security holders holding not less than 2% of a class of equity securities; if such objections are received, the dominant owner shall forthwith refer to expert determination the question of the consideration to be provided for the securities of that class.
- (4) (a) The dominant owner shall supply to each outstanding security holder, with the acquisition notice, an instrument of transfer in respect of that holder's outstanding securities, and the outstanding security holder may elect, within 21 days after the date on which the acquisition notice is sent, to return the instrument of transfer duly executed by the outstanding security holder, or the holder's attorney, to the dominant owner at an address specified in the acquisition notice, together with the certificates for the outstanding securities or a completed declaration of loss in usual or common form (the "**election**").

- (b) If the outstanding security holder exercises the election, the dominant owner shall send the consideration specified in the acquisition notice to the outstanding security holder within 7 days after receipt of the documents sent by the outstanding security holder under the election.
  - (c) If any outstanding security holders fail to exercise the election then, in the case of a compulsory sale, the dominant owner, within 7 days after the expiry of the election period, shall deliver to the Code company the consideration specified in the acquisition notice in respect of the outstanding securities for which elections are not made, to be held by the Code company in trust for the outstanding security holders until claimed, and shall send to the Code company an instrument or instruments of transfer in respect of those outstanding securities, executed on behalf of the outstanding security holders by the dominant owner or its agent. Consideration in cash shall be placed by the Code company in an interest bearing trust account with a registered bank.
  - (d) Upon presentation to the Code company of the executed instruments of transfer and related documents received by the dominant owner in valid exercise of elections, together with a certificate signed by two directors of the dominant owner stating that the consideration has been sent to the outstanding security holders in accordance with sub-section (4)(b) of this Rule, and, in the case of a compulsory sale, upon receipt of the executed instrument or instruments of transfer and the consideration under sub-section (4)(c) of this Rule in respect of outstanding securities for which no elections have been made, the directors of the Code company shall register the dominant owner or its nominee as the holder of the outstanding securities (in the case of a compulsory sale), or the outstanding securities which have been the subject of elections (in the case of a voluntary sale).
- (5) If the consideration fixed by expert determination:
- (a) exceeds the consideration specified in the acquisition notice, the dominant owner shall forthwith pay the balance owing to the outstanding security holder, or to the Code company, in the same manner as the consideration specified in the acquisition notice is paid; or
  - (b) is less than the price specified in the acquisition notice, the dominant owner may recover the excess paid from the outstanding security holder or, if held by the Code company, from the Code company.
- (6) A reference to expert determination under this Rule is a reference to an independent person appointed by the Panel who, in making the determination, shall be acting as an expert and not as an arbitrator.

**21. Takeover notice, offer document, despatch notice and target company statement**

- (1) The offeror shall send to the target company a notice in writing (a "takeover notice") which:
  - (a) states the offeror's intention to make an offer under the Code; and

- (b) contains, or is accompanied by, the information specified in the First Schedule to the Code, excluding clauses 1 and 4 of that Schedule, stated as at the date of the takeover notice; and
  - (c) may contain or be accompanied by such additional information as the directors of the offeror determine could affect the decision of the offerees to accept or reject the offer.
- (2) Forthwith upon receipt of a takeover notice, the target company shall:
- (a) if its shares are quoted on the Stock Exchange, inform the Exchange in writing that a takeover notice has been received; or
  - (b) if its shares are not so quoted, do all that is reasonably practicable to ensure that all persons who will be offerees under the offer are informed in writing of the receipt of the notice.
- (3) An offer shall be sent to the offerees only during the period beginning 14 days after the sending of the takeover notice relating to the offer, and ending 28 days after the sending of the notice. The offer:
- (a) shall be in writing; and
  - (b) shall be on the same terms and conditions as are set out in the takeover notice; and
  - (c) shall be dated and shall be sent to the offerees within 3 days after that date; and
  - (d) shall contain or be accompanied by the information specified in the First Schedule to the Code stated as at the date of the offer, and any additional information contained in, or which accompanied, the takeover notice under sub-section (1) of this Rule; and
  - (e) may contain, or be accompanied by, further information of the kind described in sub-section (1)(c) of this Rule; and
  - (f) if the target company has given to the offeror the target company statement under sub-section (5)(a) of this Rule, shall be accompanied by a copy of that statement.

The offer and all accompanying information referred to in paragraphs (d) and (e) of this sub-section shall be referred to as the "**offer document**".

- (4) Forthwith upon sending the offer document to the offerees, the offeror shall:
- (a) send to the target company a notice in writing (a "**despatch notice**") stating that the offer document has been sent to the offerees, and a copy of the offer document; and
  - (b) where the equity securities of the target company, or the offeror, are listed on the Stock Exchange, send a copy of the despatch notice to the Exchange, together with a copy of the offer document.
- (5) The target company shall either:

- (a) within 14 days after receipt of the takeover notice (or such longer period as the offeror may allow), give the offeror a statement containing, or accompanied by, the information specified in the Second Schedule to the Code (the "**target company statement**") to accompany the offer; or
  - (b) within 14 days after receipt of the despatch notice, send to every offeree and, where the shares of the target company or the offeror are listed on the Stock Exchange, to the Exchange, the target company statement.
- (6) At the time when a person sends a notice or document under sub-sections 1 to 5 of this Rule, the person shall send a copy of the notice or document to the Panel.
- (7) If sub-section 3(f) and sub-section 5(a) of this Rule apply, the offeror shall notify the target company, as soon as practicable prior to sending the offer document to offerees, of all information to be included in the offer document which is altered from, or additional to, the information which was contained in, or accompanied, the takeover notice.

## **22. Reimbursement of target company and directors**

- (1) Notwithstanding anything in the constitution of the target company, the directors of the target company shall be entitled to have refunded to them by the target company any expenses properly incurred by them on behalf, and in the interests, of holders of equity securities of the target company in relation to an offer.
- (2) The target company may recover from the offeror, as a debt due to the target company, any expenses properly incurred by the target company in relation to an offer, whether as a result of refunds made under sub-section (1), or otherwise.

## **23. No contracting out of Code**

The provisions of the Code shall have effect notwithstanding any provision to the contrary in any agreement, in a company's constitution, in any resolution of the security holders of a company, or otherwise.

## **24. Transition**

Subject to Section [13A] of the Act the Code shall apply to any transaction or event under which, or as a consequence of which, a person increases the voting rights in a Code company which are held or controlled by that person, which commenced prior to the Code coming into force but is completed after the Code comes into force.

## **25. Exemptions**

- (1) The Panel may, from time to time, in its discretion and on such terms and conditions as it thinks fit, exempt any person from compliance with any provision of the Code and may in like manner vary or revoke any such exemption.
- (2) Every such exemption shall have effect according to its tenor.

**FIRST SCHEDULE**

**INFORMATION TO BE PROVIDED BY THE OFFEROR TO THE  
TARGET COMPANY AND OFFEREES**

**1. Date**

The date of the offer.

**2. Offeror**

The name of the offeror.

**3. Target company**

The name of the target company.

**4. Advice statement**

The following statements, in a prominent position at the front of the offer document:

**IMPORTANT**

If you are in doubt as to any aspect of this offer, you should consult a member of the New Zealand Stock Exchange or a financial or legal adviser.

If you have sold all your shares in [name of target company] you should immediately hand this offer document and the accompanying acceptance form to the purchaser, or to the member of the New Zealand Stock Exchange or other agent through whom the sale was made, to be passed to the purchaser.

**5. Offer terms**

All the terms and conditions of the offer.

**6. The offeror and its directors**

- (1) The name and address of the offeror.
- (2) Unless the offeror is an individual, the names of the directors of the offeror.

**7. Ownership of equity securities of the target company**

The number, designation and percentage of equity securities of any class of the target company held or controlled by:

- (a) the offeror; and
- (b) each associate of the offeror, excluding any associates holding or controlling in aggregate not more than 5% of any class of equity securities of the target company; and

- (c) any other person holding or controlling more than 5% of any class of equity securities of the target company, if within the knowledge of the offeror;

or, in each case where such persons do not hold or control equity securities of the target company as above, a statement to that effect.

**8. Trading in target company equity securities**

The number and designation of any equity securities of the target company acquired or disposed of by the persons referred to in clause 7 (a) and (b) of this Schedule during the 6 month period preceding the date of the offer, the consideration for, and the date of, each such transaction. If no such securities were acquired or disposed of, so state.

**9. Agreements to accept the offer**

The names of any persons who have agreed to accept the offer and the material terms of the agreement.

**10. Arrangements to pay consideration**

Confirmation by the offeror that resources are available to the offeror sufficient to meet the consideration to be provided on full acceptance of the offer and to pay any debts incurred in connection with the offer, including the debts arising under Rule 22 of the Code.

**11. Arrangements between offeror and target company**

Particulars of any agreement or arrangement made or proposed to be made between the offeror or any associates of the offeror, and the target company or any related company of the target company, in connection with, in anticipation of, or in response to, the offer.

**12. Arrangements between the offeror and the directors and officers of the target company**

Particulars of any agreement or arrangement made or proposed to be made between the offeror or any associates of the offeror, and any of the directors or senior officers of the target company or any related company of the target company, including particulars of any payment or other benefit proposed to be made or given by way of compensation for loss of office, or as to their remaining in or retiring from office, if the offer is successful.

**13. Financial assistance**

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

**14. Market purchases of securities**

If the offer is a full offer for cash or with a cash alternative, a statement as to whether or not the offeror intends to purchase equity securities in the target company otherwise than under the offer under Rule 17(2) of the Code.

**15. Likelihood of changes in the target company**

Unless the offer is a full offer conditional upon the offeror receiving acceptances which will result in the offeror being required to give an acquisition notice under Rule 20 and such condition cannot be waived or varied, a statement as to the likelihood of any material changes being implemented by the offeror to the following, in relation to the target company and its subsidiaries:

- (a) business activities; and
- (b) financial structure; and
- (c) employment of the present directors, officers and employees; and
- (d) ownership and use of assets.

**16. Pre-emption clauses in target company's constitution**

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

**17. Escalation clauses**

Particulars of any agreement or arrangement whereby:

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

**18. Independent advisers**

Where an independent adviser's report is required under Rule 7, the identity of the independent adviser, and a copy of the adviser's report.

**19. Additional disclosures required where consideration includes securities**

Where the consideration for the offer includes securities (within the meaning of that term under the Securities Act 1978), the offeror shall comply with the Securities Act 1978 in respect of the offer of those securities, unless the issuer of the securities is an issuer of a class of equity securities which has been listed on the Stock Exchange for at least 12 months preceding the date of the offer, in which case the offeror shall, instead of complying with that Act:

- (1) make available to offerees upon request the latest annual report and financial statements of the issuer of the securities; and
- (2) disclose the following information:
  - (a) the name of the issuer of the securities offered as consideration, and its relationship to the offeror; and
  - (b) the material terms and conditions of the securities; and
  - (c) any interim report and financial statements of the issuer subsequent to the last annual report and financial statements; and
  - (d) any announcements made to the Stock Exchange by the issuer for public release, which have been made subsequent to the last annual report and financial statements, or the last interim report and financial statements, whichever is later; and
  - (e) any other information known to the offeror which is not publicly available and would, or would be likely to, affect materially the price of the securities of the issuer if it was publicly available; if there is no such information, a statement to that effect.

[Note: Subject to an appropriate amendment to the Securities Act being included in the Takeovers Act].

## 20. Certificate

A certificate in the following form signed:

- (a) If the offeror is an individual, by the offeror or the offeror's agent authorised in writing; or
- (b) If the offeror is not an individual, by:
  - (i) the chief executive officer and the chief financial officer of the offeror or their respective agents authorised in writing or, if there is no chief executive officer or chief financial officer, the person or persons fulfilling those roles or their respective agents authorised in writing; and
  - (ii) two directors of the offeror, not being the chief executive officer or the chief financial officer unless there is an insufficient number of other directors, who shall sign on behalf of all the directors, with the authority of a resolution of the directors:

**"To the best of our knowledge and belief, after making proper enquiry, the information contained in the offer document is true and correct, is not misleading in any material respect, whether by omission of any information or otherwise, and includes all the information required to be disclosed by the offeror under the Takeovers Code."**

**SECOND SCHEDULE**

**INFORMATION TO BE PROVIDED TO OFFEREES BY THE TARGET COMPANY  
IN THE TARGET COMPANY STATEMENT**

**1. Date**

The date of the statement.

**2. Offer**

A brief identification of the offer to which the statement relates.

**3. Target company**

The name of the target company.

**4. Directors of the target company**

The names of the directors of the target company.

**5. Ownership of equity securities of the target company**

(1) The number, designation and the percentage of equity securities of any class of the target company held or controlled by:

(a) the target company and each director or senior officer of the target company and their associates, excluding any associates holding or controlling in aggregate not more than 5% of any class of equity securities of the target company; and

(b) any other person holding or controlling more than 5% of any class of equity securities of the target company, to the knowledge of the target company;

or, in each case where such persons do not hold or control equity securities of the target company as above, a statement to that effect.

(2) The number of equity securities of the target company:

(a) that have been issued to the directors and senior officers of the target company or their associates; or

(b) in which the directors and senior officers or their associates have obtained a beneficial interest under any employee share scheme or other remuneration arrangement,

during the 2 year period which ends with the date specified in clause 1 of this Schedule, and the price at which those securities were issued or provided.

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

The number and designation of any equity securities of the target company acquired or disposed of by the persons referred to in clause 5(1)(a) of this Schedule during the 6 month period preceding the date of the offer, including the consideration and the date of each such transaction. If no such securities were acquired or disposed of, so state.

**7. Acceptance of offer**

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

**8. Ownership of equity securities of offeror**

Where the offeror is a company, the number, designation and percentage of equity securities of any class of the offeror held or controlled by the target company and each director and senior officer of the target company and their associates, excluding any associates holding or controlling in aggregate not more than 5% of any class of equity securities of the offeror, or, in each case where such persons do not hold or control any securities of the offeror, a statement to that effect.

**9. Trading in equity securities of the offeror**

Where the offeror is a company, the number and designation of any equity securities of the offeror acquired or disposed of by the persons referred to in clause 8 of this Schedule during the 6 month period preceding the date of the offer, the consideration for, and the date of, each such transaction. If no such securities were acquired or disposed of, so state.

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

Particulars of any agreement or arrangement made, or proposed to be made, between the offeror or any associates of the offeror, and the target company or any related company of the target company, in connection with, in anticipation of, or in response to the offer.

**11. Relationship between the offeror and the directors and officers of the target company**

Particulars of any agreement or arrangement made, or proposed to be made, between the offeror or any associates of the offeror, and any of the directors or senior officers of the target company or any related company of the target company, including particulars of any payment or other benefit proposed to be made or given by way of compensation for loss of office, or as to their remaining in or retiring from office, if the offer is successful. State also whether any directors or senior officers of the target company are also directors or senior officers of the offeror, or any related company of the offeror, and identify such persons.

**12. Agreement between target company and directors and officers**

Particulars of any agreement or arrangement made, or proposed to be made, between the target company or any related company of the target company, and any of the directors or senior officers or their associates of the target company or its related companies, pursuant to which a payment or other benefit may be made or given by way of compensation for loss of office, or as to their remaining in or retiring from office, if the offer is successful.

**13. Interests of directors and officers of the target company in material contracts of the offeror**

A statement as to whether:

- (a) any director or senior officer of the target company or their associates; or
- (b) any person who holds or controls more than 5 percent of any class of equity securities of the target company, to the knowledge of the directors or the senior officers of the target company,

has any interest in any material contract to which the offeror, or any related company of the offeror, is a party, and the particulars of the nature and extent of such interest.

**14. Additional information**

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

**15. Recommendation**

- (1) Either a recommendation by the directors of the target company to accept or reject the offer and the reasons for such recommendation, or a statement that the directors of the target company or any of them are unable to make, or are not making, a recommendation and if no recommendation is made, the reasons for not making a recommendation.
- (2) If no recommendation is made, but the directors of the target company or any of them propose to make a recommendation, or to reconsider their decision not to make a recommendation, a statement to that effect and, if the directors consider it appropriate, a statement to the effect that offerees should not accept the offer in the meantime.

**16. Actions of the target company**

- (1) Particulars of any transaction, agreement, arrangement, or understanding (in any case whether or not legally binding) of the target company entered into as a consequence of, in response to, or in connection with, the offer.
- (2) A statement as to whether there are any negotiations underway as a consequence of, in response to, or in connection with, the offer which relate to or could result in:
  - (a) an extraordinary transaction, such as a merger or reorganisation, involving the target company or any of its related companies; or
  - (b) the acquisition or disposition of material assets by the target company or any of its related companies; or
  - (c) an acquisition of equity securities by, or of, the target company or any related company of the target company; or

- (d) any material change in the present share capital, or dividend policy, of the target company.

**17. Equity Securities of the target company**

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

**18. Financial information**

- (1) A statement that the offeree is entitled to obtain from the target company a copy of the latest annual report and financial statements of the target company.
- (2) Any interim report and financial statements of the target company subsequent to the last annual report and financial statements.
- (3) Any announcements made to the Stock Exchange for public release, relating to the affairs of the target company, which have been made subsequent to the last annual report and financial statements or last interim report and financial statements, whichever is later.
- (4) All material changes in the financial or trading position, or prospects, of the target company subsequent to the most recent financial statements issued to shareholders, which are not disclosed under the preceding provisions of this clause, or a statement that there are no known other material changes.
- (5) Such other information about the assets, liabilities, profitability and financial affairs of the target company as the directors of the target company determine, in view of the nature and terms of the offer, is material to the making of a decision by an offeree as to whether or not to accept the offer.

**19. Independent advice**

Where the directors of the target company have received independent advice on the adequacy of the offer, particulars of that advice, including:

- (a) the identity of the adviser; and
- (b) particulars of any interest of the adviser that could affect the adviser's ability to provide an unbiased opinion in relation to the offer.

Where the target company has received independent advice on the adequacy of the offer from two or more persons, these particulars in respect of each adviser.

**20. Asset valuation**

Where any information provided in the target company statement refers to a valuation of any asset:

- (a) the identity of the valuer, a summary of the valuation, disclosing the basis of computation and the key assumptions on which the valuation is based; and
- (b) an address or addresses where copies of the valuation are available for inspection and a statement that a copy of the valuation will be sent to any offeree upon request and payment of a stipulated charge, which shall not exceed the cost of copying and posting the valuation.

**21. Financial forecast**

Where any information provided in the target company statement refers to a financial forecast, the principal assumptions on which the forecast is based.

**22. Sales of unlisted equity securities under offer**

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

**23. Market prices of listed equity securities under offer**

- (1) The closing price on each stock exchange where they are listed, of the equity securities of the target company which are the subject of the offer:
  - (a) on the latest practicable day prior to the date on which the target company statement is sent by the target company; and
  - (b) on the last day on which the exchange was open for business prior to the date on which the target company received the takeover notice.
- (2) The highest and lowest closing market prices on each exchange, with the relevant date, during the 6 months preceding the date on which the target company received the takeover notice.
- (3) Particulars of any issue of equity securities, changes in the equity securities on issue and dividend payments, which could have affected the market prices referred to in this clause.
- (4) Any other information about the market price of the securities which the directors determine is material to the making of a decision by the offeree to accept or reject the offer.

**24. Other information**

Any other information not required to be disclosed by this Schedule but known to the directors of the target company which would reasonably be expected to affect the decision of the offerees to accept or reject the offer.

**25. Approval of target company statement**

A statement that the despatch and contents of the target company statement have been approved by the directors of the target company.

**26. Certificate**

A certificate in the following form signed by:

- (a) the chief executive officer and the chief financial officer of the target company or their respective agents authorised in writing, or if there is no chief executive officer or chief financial officer, the person or persons fulfilling those roles respectively or their respective agents authorised in writing; and
- (b) by two directors of the target company, not being the chief executive officer or the chief financial officer unless there is an insufficient number of other directors, who shall sign on behalf of all the directors, with the authority of a resolution of the directors:

**"To the best of our knowledge and belief, after making proper enquiry, the information contained in or accompanying this statement is true and correct, is not misleading in any material respect whether by omission of any information or otherwise, and includes all the information required to be disclosed by the target company under the Takeovers Code."**