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THE TAKEOVER PANEL

PUBLIC CONSULTATION PAPER BY THE CODE COMMITTEE OF THE PANEL

ASSET VALUATIONS



The Code Committee of the Takeover Panel (the “**Panel**”) invites comments on this Public Consultation Paper. Comments should reach the Code Committee by Friday, 7 December 2018.

Comments may be sent by email to:

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Alternatively, please send comments in writing to:

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All responses to formal consultation will be made available for public inspection and published on the Panel’s website at www.thetakeoverpanel.org.uk, unless the respondent explicitly requests otherwise. A standard confidentiality statement in an email message will not be regarded as a request for non-disclosure. Personal information, such as telephone numbers or email addresses, will not be edited from responses.

Unless the context otherwise requires, words and expressions defined in the Takeover Code have the same meanings when used in this Public Consultation Paper.

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1. Introduction and summary of proposals

(a) Introduction

- 1.1 In this Public Consultation Paper (“**PCP**”), the Code Committee of the Panel (the “**Code Committee**”) proposes amendments to Rule 29 of the Takeover Code (the “**Code**”), which relates to asset valuations.
- 1.2 Rule 29 requires that when a valuation of assets is given by a party to an offer “in connection with an offer” an independent valuer’s opinion must be provided in support of that valuation. The philosophy underlying Rule 29 is that if a valuation of assets is given in connection with an offer, it is likely to be of such fundamental importance to offeree company shareholders’ decisions on the offer that they should have the benefit of an opinion on the valuation from an expert valuer of appropriate independence and competence.
- 1.3 Rule 29 requires that a valuation given in connection with an offer must be “current” or, if the valuation is not current, that the valuer must state that a current valuation would not be materially different. If this cannot be stated, the valuation must be updated. Rule 29 also includes requirements as to the qualifications of the valuer, the basis of valuation and the publication of the opinion of value.
- 1.4 For ease of reference, the current Rule 29 is set out in **Appendix A**.
- 1.5 At the request of the Code Committee, the Panel Executive (the “**Executive**”) has undertaken a review of the purpose and operation of Rule 29. Having considered the outcome of that review, the Code Committee generally agrees with the way that Rule 29 is currently applied in practice by the Executive. However, certain aspects of the Executive’s practice are not currently reflected in Rule 29 itself. The Code Committee therefore proposes to amend Rule 29 as set out in this PCP in order to better reflect current practice. It is not proposed to alter materially the way in which Rule 29 is currently applied by the Executive.
- 1.6 As well as ensuring that Rule 29 better reflects current practice, the proposed amendments are intended to provide a more logical framework for the rule. In addition, the proposed Rule 29 is intended to provide better clarity in certain areas, including the circumstances in which a valuation is subject to Rule 29. In order to achieve this, the Code Committee proposes the deletion of the current Rule 29 and the introduction of a new Rule 29. The proposed Rule 29 is drafted broadly so that it is clear that it applies not only to property valuations but also to valuations of other classes of assets, in particular to mineral, oil and gas reserves and unquoted investments.

- 1.7 The structure of this PCP follows the structure of the proposed new Rule 29. Where relevant, the beginning of each section of this PCP includes a summary of the relevant provisions of the current Rule 29.

(b) Summary of proposals

(i) Valuations to which Rule 29 applies

- 1.8 Section 2 of this PCP proposes that Rule 29 should apply to an asset valuation published by the offeree company or a securities exchange offeror:

- (a) during the offer period;
- (b) in the 12 months prior to the commencement of the offer period; or
- (c) more than 12 months prior to the commencement of the offer period, but only if attention is drawn to that valuation by the offeree company or the securities exchange offeror (as applicable) in the context of the offer,

unless the Panel considers that the valuation is not material to offeree company shareholders in making a properly informed decision as to the merits or demerits of the offer.

(ii) Types of asset to which Rule 29 applies

- 1.9 Section 3 of this PCP identifies that Rule 29 has principally been applied to valuations of:

- (a) land, buildings, plant or equipment;
- (b) mineral, oil or gas reserves; and
- (c) unquoted investments,

and proposes that this is codified.

- 1.10 Section 3 of this PCP also proposes that Rule 29 should continue to be capable of being applied to valuations of other types of assets in addition to those set out above and to valuations of liabilities.

(iii) Net asset values and adjusted net asset values

- 1.11 Section 4 of this PCP proposes that Rule 29 should require that, if an offeree company or a securities exchange offeror publishes, or has published, a net asset value figure or an adjusted net asset value figure in circumstances where Rule 29 would apply if a valuation had been published in respect of the underlying assets, a valuation of those underlying

assets must be published. That valuation would then be subject to the requirements of Rule 29.

(iv) *Requirement for a valuation report*

1.12 Section 5 of this PCP proposes that:

- (a) a valuation published during the offer period should be in the form of, or accompanied by, a valuation report; and
- (b) a valuation published before the commencement of the offer period must be confirmed in, or updated by, a valuation report.

(v) *The valuer*

1.13 Section 6 of this PCP sets out the requirements which it is proposed that a valuer appointed under Rule 29 must satisfy, i.e. that the valuer must:

- (a) be considered by the Panel to be independent of the parties to the offer;
- (b) be appropriately qualified to give a valuation report on the valuation;
- (c) satisfy any relevant legal or regulatory requirements; and
- (d) have sufficient current knowledge of each relevant market and the necessary skills and understanding to prepare the valuation report.

(vi) *The valuation report*

1.14 Section 7 of this PCP sets out the proposed content requirements for a valuation report prepared in accordance with Rule 29. The proposed requirements are as follows:

- (a) the name, business address and professional qualifications of the valuer;
- (b) the date as at which the assets were valued;
- (c) details of the assets or liabilities which are the subject of the valuation report;
- (d) separate valuations of each category of assets, and/or individual significant assets, consistent with any previously published valuations of those assets or liabilities or with normal valuation reporting practice for such assets or liabilities;
- (e) details of the valuation standards to which the valuation report has been prepared; and
- (f) the basis of valuation.

(vii) *No material difference statement*

1.15 Section 8 of this PCP proposes that Rule 29 should require that, if the date as at which the assets were valued is not the same as the date of the document or announcement in which the valuation report is published:

- (a) the document or announcement must include a statement by the directors of the offeree company or the securities exchange offeror that the valuer has confirmed to the directors that an updated valuation would not be materially different; or,
- (b) if such a statement cannot be made, an updated valuation must be published.

(viii) *Other proposals and consequential amendments*

1.16 Section 9(a) of this PCP proposes that the current requirement for a statement as to the tax consequences of a sale of assets should be retained. It also proposes to clarify that an estimate of the amount of the tax liability which would arise from a sale of the assets should be given unless the Panel consents otherwise. If the Panel so consents, an explanation must be provided as to why a meaningful estimate cannot be given and as to the tax consequences of a sale of the assets.

1.17 Section 9(b) of this PCP proposes to introduce a new requirement to consult the Panel in advance if the publication of information contained in a valuation report could constitute a profit forecast.

1.18 Section 9(c) of this PCP proposes that the existing rule that a party to an offer is not normally permitted to publish a valuation of the assets of another party unless supported by an unqualified valuation report should be retained with some minor amendments.

1.19 Section 9(d) of this PCP proposes consequential amendments to Rule 23.2 (*Consent to inclusion of advice, opinions and reports*), Rule 26.3 (*Documents to be published on a website following the making of an offer*) and Rule 27.2 (*Subsequent documents*).

(c) ***Informal pre-consultation***

1.20 The Executive, on behalf of the Code Committee, has consulted the Royal Institution of Chartered Surveyors (“RICS”), the Institute of Chartered Accountants in England and Wales, representatives of institutional investors, professional valuers and financial advisers, on a confidential basis, to ascertain their views on Rule 29 and various aspects of its application in practice.

1.21 The Code Committee would like to express its thanks to all those who took part in the pre-consultation for their valuable input.

(d) Proportionality, benefits and cost implications

1.22 An assessment of the impact of the proposals is set out in Section 10 of this PCP.

(e) Invitation to comment

1.23 The Code Committee invites comments on the amendments to the Code proposed in this PCP. Comments should reach the Code Committee by Friday, 7 December 2018 and should be sent in the manner set out at the beginning of this PCP.

1.24 The full text of the proposed amendments is set out in **Appendix B**:

(a) **Part 1 of Appendix B** sets out the proposed new Rule 29. Since it is proposed to delete Rule 29 in its entirety and to replace it with a new Rule 29, and since the current Rule 29 is set out in full in Appendix A, the provisions of the new Rule 29 are not “marked up” against the current Rule 29 in Part 1 of Appendix B; and

(b) **Part 2 of Appendix B** sets out the proposed amendments to provisions of the Code other than Rule 29. In Part 2 of Appendix B, underlining indicates proposed new text and striking-through indicates text that is proposed to be deleted.

1.25 For ease of reference, a list of the questions that are put for consultation is set out in **Appendix C**.

2. Valuations to which Rule 29 applies

(a) Summary

- 2.1 Rule 29 currently applies when a valuation of assets is given “in connection with an offer”.
- 2.2 Whilst Rule 29 does not specify what is meant by “in connection with an offer”, an asset valuation will normally be considered by the Executive to be given “in connection with an offer” if it is published during the offer period.
- 2.3 Asset valuations published prior to the commencement of an offer period (and not superseded by a later valuation) have also been considered by the Executive to have been given “in connection with an offer” in certain circumstances.
- 2.4 The Code Committee agrees with this application of Rule 29 and proposes to introduce a new Rule 29.1(a) in order to clarify the circumstances in which a valuation may be subject to the requirements of Rule 29. In particular, the Code Committee proposes to make clear the circumstances in which a valuation which is published prior to the commencement of an offer period may be subject to the requirements of Rule 29.
- 2.5 Irrespective of when a valuation is published, the Code Committee considers that Rule 29 should not apply to a valuation which is not considered by the Panel to be material to offeree company shareholders in making a properly informed decision as to the merits or demerits of an offer.

(b) Tests of time and relevance

(i) Introduction

- 2.6 The Code Committee proposes that Rule 29 should apply to an asset valuation published by the offeree company or a securities exchange offeror:
- (a) during the offer period;
 - (b) in the 12 months prior to the commencement of the offer period; or
 - (c) more than 12 months prior to the commencement of the offer period, but only if attention is drawn to that valuation by the offeree company or the securities exchange offeror (as applicable) in the context of the offer.
- 2.7 Irrespective of when a valuation is published, the Code Committee considers that Rule 29 should not apply to a valuation that is not considered by the Panel to be material to offeree company shareholders in making a properly informed decision as to the merits or

demerits of the offer. The Code Committee understands that this accords with the Executive's current application of Rule 29, with which it agrees.

(ii) *Valuations published during the offer period*

2.8 Under the current Rule 29, an asset valuation will normally be considered to be given "in connection with an offer" if it is published during the offer period. The Code Committee agrees with this approach and the proposal in paragraph 2.6(a) that Rule 29 should apply to a valuation published during an offer period is consistent with this.

2.9 The Code Committee considers that a valuation published during an offer period (other than a valuation published in a company's financial statements only as a result of accounting practice (as to which see Section 2(c) below)) will normally be material to offeree company shareholders in making a properly informed decision as to the merits or demerits of the offer and, accordingly, that Rule 29 should apply to such a valuation.

(iii) *Valuations published in the 12 months prior to the commencement of an offer period*

2.10 An asset valuation published prior to the commencement of an offer period and not superseded by a later valuation has, in certain circumstances, been considered by the Executive to have been given "in connection with an offer", for example, where:

- (a) the valuation was used in the argument or debate on the merits or demerits of an offer; or
- (b) the valuation was otherwise considered to be material to offeree company shareholders in making a properly informed decision as to the merits or demerits of an offer.

2.11 The Code Committee considers that the circumstances at the time will determine whether or not a valuation published in the 12 months prior to the commencement of the offer period will be considered to be material to offeree company shareholders in making a properly informed decision as to the merits or demerits of the offer, and thus whether or not Rule 29 will apply to that valuation.

2.12 For example, the latest valuation or net asset value ("**NAV**") published by a property company in the 12 months prior to the commencement of the offer period is likely to be such an important reference point for offeree company shareholders in assessing an offer that, even if the property company itself does not refer to that valuation or NAV in the offer announcements or documentation, a valuation report prepared in accordance with Rule 29 is likely to be required.

(iv) *Historical valuations*

2.13 The Code Committee proposes that, if an offeree company or a securities exchange offeror has published a valuation more than 12 months prior to the commencement of an offer period (a “**historical valuation**”), and attention is drawn to that historical valuation in the context of the offer by the offeree company or the securities exchange offeror (as applicable), that historical valuation should be subject to the requirements of Rule 29. By drawing attention to the historical valuation, the relevant party is likely to be using it in the argument or debate on the merits or demerits of the offer. Accordingly, Rule 29 should apply to such a historical valuation. However, if it has been superseded by a more recent valuation which is subject to the requirements of Rule 29, the historical valuation should not be subject to the requirements of Rule 29.

2.14 Whether an offeree company or a securities exchange offeror should be considered to have drawn attention to a historical valuation will depend on the circumstances. However, drawing attention to a historical valuation would be likely to involve a particular reference to it in the context of the offer, as opposed to, for example, a historical valuation simply having been included in accounts which are incorporated by reference into an offer announcement or documentation.

2.15 The circumstances in which a party to an offer would choose to draw attention to a historical valuation which has not been superseded by a more recent valuation are likely to be rare. However, the purpose of Rule 29 should not be capable of being avoided by a party drawing attention to a historical valuation while not giving or referring to a more recent valuation.

(c) ***Valuations of assets or liabilities published solely in a company’s financial statements***

2.16 A valuation published by a company in its report and accounts or half-yearly financial reports under its accounting policies (for example, on its balance sheet or in the notes to the accounts) may not be material to offeree company shareholders in making a properly informed decision as to the merits or demerits of the offer. Such “accounting” valuations may include:

- (a) a valuation of an asset classified as “held for sale” and consequently separately reported on in a company’s financial statements on that basis;
- (b) an impairment valuation calculated on the basis of fair value less costs of disposal;
- (c) the “mark to market” valuation of fixed rate borrowings or derivatives or other financial assets;

- (d) a valuation of finance leases; or
 - (e) a valuation of “right to use” leased assets (which may be more likely to be included on a company’s balance sheet upon the introduction of IFRS 16).
- 2.17 If such a valuation is published in a company’s financial statements but is not otherwise referred to by the relevant party in the arguments as to the merits or demerits of the offer, the Code Committee would not normally expect the valuation to be material to offeree company shareholders in making a properly informed decision as to the merits or demerits of the offer. Accordingly, the Code Committee would not normally expect Rule 29 to be applied to such a valuation.
- 2.18 However, if such a valuation is referred to by the relevant party in the arguments as to the merits or demerits of the offer, this may suggest that the valuation is material to offeree company shareholders in making a properly informed decision as to the merits or demerits of the offer, such that Rule 29 should be applied.
- 2.19 The Code Committee proposes to introduce a Note on Rule 29.1 to make clear that Rule 29.1 is not intended to apply to a valuation which is set out in a company’s financial statements only as a result of accounting practice and which is not otherwise referred to by the relevant party in the arguments as to the merits or demerits of the offer.
- 2.20 The current Rule 29.1(c) contains an exemption from the requirements of Rule 29 for directors’ estimates of asset values published in accordance with Part 1 of Schedule 7 of the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (“**Schedule 7**”). Paragraph 2 of Schedule 7 (which is the relevant provision of Part 1 for these purposes) was revoked by The Companies Act 2006 (Strategic Report and Directors Report) Regulations 2013. Accordingly, it is not proposed to retain the reference to Schedule 7.
- 2.21 The Code Committee has considered whether Rule 29 should include a list of asset valuations given by the directors of an offeree company or a securities exchange offeror in relation to which the Panel would normally grant a dispensation from Rule 29, such as those referred to in paragraph 2.16. It has concluded that the question of whether an asset valuation given by directors should be subject to the requirements of Rule 29 should be determined by reference to the proposed Rule 29.1(a), including whether or not the Panel considers the valuation to be material to offeree company shareholders in making a properly informed decision as to the merits or demerits of the offer. Accordingly, although it is likely that Rule 29 would not normally apply, the proposed Rule 29 does not include a specific exemption for asset valuations given by the directors of an offeree company or a securities exchange offeror under the company’s accounting policies (although see the proposed new Note on Rule 29.1 referred to in paragraph 2.19).

(d) *Asset valuations published by an offeror in respect of its own assets*

- 2.22 The Code Committee understands that the Executive applies Rule 29 to an asset valuation published by a securities exchange offeror in respect of its own assets, on the basis that such a valuation may have an impact on the value of the securities of that offeror and, consequently, on the value of the offer.
- 2.23 The Executive does not, however, apply Rule 29 to an asset valuation published by a cash offeror in respect of its own assets, on the basis that the value of that offeror's securities does not have an impact on the value of the cash offer. Whilst this application of Rule 29 is not stated in the current Rule 29, it is consistent with the approach taken in Rule 28 in relation to profit forecasts. The Code Committee agrees with this application of Rule 29 and proposes that it should be made clear at the beginning of Rule 29 that it does not apply to an asset valuation published by cash offeror in respect of its own assets.
- 2.24 The proposed Rule 29.8 (*Valuation of another party's assets*) (see Section 9(c) of this PCP) would, however, apply to a cash offeror if, in the circumstances permitted by the proposed Rule 29.8, it published a valuation of the assets of another party to the offer.
- 2.25 Where it would be disproportionate or otherwise inappropriate to apply Rule 29 to an asset valuation by a securities exchange offeror in respect of its own assets, for example, where the consideration securities will not represent a material proportion of the securities exchange offeror's enlarged share capital or of the value of the offer, it may be appropriate for a party to an offer to apply to the Panel for a dispensation from the requirements of Rule 29 under section 2(c) (*Derogations and waivers*) of the Introduction to the Code. Accordingly, the Code Committee does not consider that it is necessary to provide for this in the proposed new Rule 29.

(e) *"Ordinary course" valuations*

- 2.26 Under Note 2 on Rule 28.1 (*Ordinary course profit forecasts*), the requirement for reports may be disapplied in certain circumstances in relation to an "ordinary course profit forecast", which is defined in the Definitions Section of the Code as a profit forecast published by a party to an offer "in accordance with its established practice and as part of the ordinary course of its communications with its shareholders and the market".
- 2.27 The Code Committee has considered whether there should be an equivalent ability for the Panel to disapply the requirements of Rule 29 where:
- (a) a valuation or NAV that is considered by the Panel to be material to offeree company shareholders in making a properly informed decision as to the merits or demerits of an offer has been published in the ordinary course of a party's communications prior to the commencement of an offer period; and

- (b) the directors of the relevant party consider that there has not been any material change in the assets or in market conditions,

provided that the directors of the relevant party confirm after the commencement of the offer period that the valuation remains valid.

2.28 The Code Committee has concluded that it would not be appropriate to introduce such a potential disapplication of Rule 29 in relation to ordinary course asset valuations to which the proposed Rule 29.1 would otherwise apply. This is on the basis that such an asset valuation, even if given in the ordinary course:

- (a) is likely to be a fundamental reference point for offeree company shareholders in assessing an offer;
- (b) is more dependent on subjective judgements by the directors of the relevant company than a profit forecast;
- (c) will not usually be capable of comparison with an actual out-turn (unlike a profit forecast, where the company will be required to publish audited financial statements at the end of the relevant period); and
- (d) in practice is often given after seeking an opinion from a valuer, in which event it would not be appropriate for the directors to confirm that the valuation remains valid without seeking an updated opinion. By contrast, the directors of a company will usually publish an ordinary course profit forecast without seeking an opinion from the company's accountants.

2.29 If an asset valuation given in the ordinary course is not considered by the Panel to be material to offeree company shareholders in making a properly informed decision as to the merits or demerits of an offer, Rule 29 will not apply to that ordinary course valuation (see the proposed new Rule 29.1(a)).

(f) Proposal

2.30 In the light of the above, the Code Committee proposes to introduce:

- (a) a new NB at the beginning of Rule 29, as follows:

“NB The requirements of Rule 29 do not apply to a valuation published by a cash offeror in respect of assets of that cash offeror.”;

- (b) a new Rule 29.1(a), as follows:

“29.1 APPLICABLE VALUATIONS

(a) Rule 29 applies to a valuation published by the offeree company or a securities exchange offeror:

(i) during the offer period;

(ii) in the 12 months prior to the commencement of the offer period; or

(iii) more than 12 months prior to the commencement of the offer period if attention is drawn to the valuation in the context of the offer by the offeree company or a securities exchange offeror (as applicable),

unless the Panel considers that the valuation is not material to offeree company shareholders in making a properly informed decision as to the merits or demerits of the offer.; and

(c) a new Note on Rule 29.1, as follows:

“NOTE ON RULE 29.1

Valuations solely in financial statements

Rule 29.1 is not intended to apply to a valuation which is set out in a company’s financial statements only as a result of accounting practice and which is not otherwise referred to by the relevant party in the arguments as to the merits or demerits of the offer.”.

- Q1** Is a period of 12 months prior to the commencement of the offer period an appropriate “look back” period in order for Rule 29 to apply to a valuation under the proposed Rule 29.1(a)(ii)?
- Q2** Do you have any comments on the application of Rule 29 to a valuation published in the circumstances described in the proposed Rule 29.1(a)(i), (ii) or (iii)?
- Q3** Do you have any comments on the proposed wording “unless the Panel considers that the valuation is not material to offeree company shareholders in making a properly informed decision as to the merits or demerits of the offer”?
- Q4** Do you have any other comments on the proposed new NB at the beginning of Rule 29, the proposed Rule 29.1(a) or the proposed new Note on Rule 29.1?

3. Types of assets to which Rule 29 applies

(a) Summary

3.1 The current Rule 29.1 includes a non-exhaustive list of the types of asset to which Rule 29 applies. Rule 29.1(a) states as follows:

“(a) Type of asset

This Rule applies not only to land, buildings, plant and equipment but also to other assets, eg contracts, stocks, intangible assets and individual parts of a business. Where such other assets are involved, the Panel should be consulted in advance.”.

3.2 In practice Rule 29 has principally been applied to valuations of:

- (a) land, buildings, plant or equipment;
- (b) mineral, oil or gas reserves; and
- (c) unquoted investments.

3.3 In addition, Rule 29 has also been applied on occasion to valuations of other assets such as brands, ships, diamond gemstones and public-to-private infrastructure.

3.4 There are a number of other types of assets or liabilities in respect of which valuations have been given, which could be regarded as “given in connection with an offer” where Rule 29 has not been applied in the past. These overlap with the “accounting” valuations referred to in paragraph 2.16, but are also generally the subject of significant actuarial review, and include:

- (a) the embedded value of life assurance contracts;
- (b) pension fund surpluses or deficits; and
- (c) reserves of property and casualty insurance companies.

3.5 The Code Committee considers that the existing practice in respect of the types of assets to which Rule 29 applies should be codified and therefore proposes to introduce:

- (a) a new Rule 29.1(b) to better reflect the specific types of asset to which it considers that Rule 29 should most commonly apply; and
- (b) a new Rule 29.1(c) in relation to other types of assets and liabilities to which it considers that Rule 29 may be applied by the Panel,

as explained below.

(b) Specific asset types

3.6 The assets to which Rule 29 has principally been applied in practice are real property, mineral, oil and gas reserves and unquoted investments. The Code Committee agrees with this practice and proposes to introduce a new Rule 29.1(b) which would provide that Rule 29 applies to valuations of:

- (a) land, buildings, plant or equipment;
- (b) mineral, oil or gas reserves; and
- (c) unquoted investments representing in aggregate 10% or more of the gross asset value of an investment company.

3.7 For clarification, the Code Committee does not consider that a volume quantification of mineral, oil or gas reserves alone, without a value being stated, would constitute a valuation of those reserves.

(c) Other assets and liabilities

3.8 The Code Committee considers that Rule 29 should also continue to be capable of being applied to other types of assets in addition to those set out in paragraph 3.6. The Code Committee does not consider it possible or desirable to list all asset types to which Rule 29 could ever be applied. Accordingly, the Code Committee proposes to introduce a new Rule 29.1(c), which would provide that the Panel may apply Rule 29 to a valuation of assets or liabilities falling within Rule 29.1(a) other than those specifically referred to in the proposed Rule 29.1(b), with a requirement to consult the Panel if such a valuation has been or is proposed to be published.

3.9 Consistent with current practice, the Code Committee would not normally expect Rule 29 to apply to valuations of the types of assets and liabilities referred to in paragraph 3.4.

3.10 The wording of the current Rule 29.1(a) is broad and the proposed Rule 29.1(c) is not intended to extend the scope of the assets to which Rule 29 applies. It is intended, however, to give the Panel (as it has now) the scope to apply Rule 29 to valuations of other more unusual classes of assets and liabilities, where appropriate.

3.11 Whilst it understands that a valuation of a business which forms part of a company is rarely given in the context of an offer, the Code Committee notes that a valuation of such a business would fall within the proposed Rule 29.1(c).

- 3.12 However, the Code Committee considers that an “illustration of value” (where a company seeks to show that if, for example, a particular division were to be valued on the same EBITDA multiple as its market competitors, it would be worth a specified amount) should not be treated as subject to the requirements of Rule 29 but rather as subject to the requirements of Rule 19.1 (*Standards of care*). In such a case, appropriate sources for all elements of the illustration would be required to be included in the relevant announcement or document in accordance with Note 2 on Rule 19.1 (*Sources*). This is consistent with current practice.
- 3.13 The International Valuation Standards (“**IVS**”) published by the International Valuation Standards Council (“**IVSC**”) refer to valuations of liabilities as well as assets. The Code Committee proposes that Rule 29 should be capable of applying to a valuation of liabilities, although it is not currently common practice for valuations of liabilities to be given in the context of an offer.
- 3.14 Advisers to a party to an offer will therefore need to consider whether that party has published or proposes to publish a valuation in respect of an asset or liability which is outside the specific categories referred to in paragraph 3.6. If there is any doubt as to whether Rule 29 applies to a valuation of a particular type of asset or liability, the Panel should be consulted.

(d) Proposal

- 3.15 In the light of the above, the Code Committee proposes to introduce new Rules 29.1(b) and (c), as follows:

“(b) Rule 29 applies to a valuation of:

(i) land, buildings, plant or equipment;

(ii) mineral, oil or gas reserves; and

(iii) unquoted investments representing in aggregate 10% or more of the gross asset value of an investment company.

(c) The Panel may also apply Rule 29 to a valuation of other assets or, if appropriate, liabilities falling within Rule 29.1(a). The Panel should be consulted at the earliest opportunity if such a valuation has been or is proposed to be published.”

- Q5 Should the specific types of asset valuations to which Rule 29 applies be those referred to in the proposed Rule 29.1(b)?**

- Q6** Should the Panel have the ability to apply Rule 29 to a valuation of other assets or liabilities, as referred to in the proposed Rule 29.1(c)?
- Q7** Do you have any comments on the proposed Rules 29.1(b) and (c)?

4. Net asset values and adjusted net asset values

4.1 The current Rule 29.2 sets out the requirements in relation to the basis of a valuation to which Rule 29 applies.

4.2 The Note on Rule 29.2 states as follows:

“Provision of adjusted net asset value information

If it is proposed to include adjusted net asset value information, the Panel must be consulted.”.

This Note was added to the Code in 2002 following various offers for property companies where an adjusted net asset value (“**ANAV**”) was published to enable shareholders to make a comparison between the terms of the offer under consideration and the terms of previous cash offers for property companies, or pre-offer trading prices, by reference to a premium or discount to ANAV.

4.3 The Code Committee considers that an offeree company or a securities exchange offeror should not publish a NAV or ANAV figure unless the underlying valuation of assets which has been used to calculate the NAV or ANAV figure is supported by a valuation report prepared in accordance with Rule 29. Accordingly, the Code Committee proposes that Rule 29 should require that, if an offeree company or a securities exchange offeror publishes, or has published, a NAV or ANAV figure in circumstances where Rule 29.1(a) would apply if a valuation had been published in respect of the underlying assets, a valuation of the underlying assets must be published. This valuation would then be a valuation to which Rule 29.1(a) applied and would be subject to the requirements of Rule 29.

4.4 The Code Committee would expect any document or announcement which contains a NAV or ANAV figure to show the adjustments made to the valuation of the underlying assets in order to calculate the NAV or ANAV figure (such as debt, tax and working capital) so as to enable offeree company shareholders to reconcile the gross asset value as shown in the valuation report with the NAV or ANAV published by the offeree company or the securities exchange offeror. The Code Committee considers that such adjustments should be regarded as a matter of accounting verification which should satisfy the requirements of Rule 19.1 (*Standards of care*), rather than as a matter for a valuation report under Rule 29. The Code Committee considers that any adjustments should be made on a basis which is consistent with past practice and that, if there is no such past practice, the Panel should be consulted.

4.5 For the reasons explained above, the Code Committee proposes to introduce a new Rule 29.1(d), as follows:

“(d) If the offeree company or a securities exchange offeror publishes, or has published, a net asset value or an adjusted net asset value in circumstances where Rule 29.1(a) would apply if a valuation had been published in respect of the underlying assets:

(i) a valuation of the underlying assets must be published; and

(ii) any document or announcement published by the offeree company or the securities exchange offeror which includes that net asset value or adjusted net asset value must clearly set out any adjustments which have been made to the valuation of the underlying assets in order to calculate that net asset value or adjusted net asset value.”.

Q8 Do you have any comments on the proposed Rule 29.1(d) in relation to the publication of a net asset value or adjusted net asset value?

5. Requirement for a valuation report

(a) Summary

5.1 Under the current Rule 29:

- (a) when a valuation of assets is given in connection with an offer, it must be supported by the opinion of an independent valuer (Rule 29.1);
- (b) the opinion of value must be contained in the document containing the asset valuation (Rule 29.5(a)); and
- (c) in exceptional cases, the Panel may waive strict compliance with the requirement to obtain the opinion of an independent valuer before the board's circular has to be published (Rule 29.6).

5.2 The Code Committee proposes to introduce a new Rule 29.2 which would specify:

- (a) that a valuation must be in the form of, or accompanied by, a valuation report;
- (b) when that valuation report must be published; and
- (c) any valuation report must be prepared by a valuer who satisfies the requirements of the proposed new Rule 29.3.

5.3 The proposed Rule 29.2 would apply to valuations which fall within the proposed Rule 29.1(a) and, if a valuation does not fall within Rule 29.1(a), Rule 29.2 will not apply.

5.4 The Code Committee also proposes to introduce a Note on the new Rule 29.2 which would permit the Panel to grant a dispensation where it is not possible for an offeree company or a securities exchange offeror to obtain a valuation report within the required timeframe.

(b) Valuations published during an offer period

5.5 Rule 29.5(a) currently requires an "opinion of value" to be contained in the document containing the asset valuation. The Code Committee considers that this approach continues to be appropriate.

5.6 The Code Committee considers that a valuation should only be published during the offer period if it is in the form of, or accompanied by, a valuation report. If an offeree company or a securities exchange offeror publishes a valuation during an offer period, it should be aware before that valuation is published that the requirements of Rule 29 will apply and be able to ensure that the valuation complies with those requirements.

(c) Valuations published prior to the commencement of the offer period

- 5.7 It is not practicable to require a valuation published in the 12 months prior to the commencement of the offer period, or a historical valuation, to have been in the form of or accompanied by a valuation report which meets the requirements of Rule 29. At the time of publication, the offeree company or the securities exchange offeror will not necessarily be aware that an offer period will commence in the future and that the valuation may subsequently become subject to the requirements of Rule 29.
- 5.8 In such cases, the Code Committee considers that Rule 29 should provide that a valuation report must be included in the first announcement or document published in the offer period which refers to the pre-offer period valuation or which draws attention to the historical valuation. This is consistent with the requirements of the current Rule 29.5(a).
- 5.9 Where a valuation report is required in respect of a valuation which was published in the 12 months prior to the commencement of the offer period, but the offeree company or the securities exchange offeror does not refer to that valuation in any announcement or document published in the offer period, the Code Committee proposes that Rule 29 should provide that the valuation report should be published in the offer document or the offeree board circular (as appropriate).

(d) Where it is not possible to obtain a valuation report within the required timeframe

- 5.10 The current Rule 29.6 (*Waiver in certain circumstances*) contemplates the possibility that it may not be possible for an offeree company to obtain a valuation report within the timeframe required by Rule 29. Rule 29.6 states as follows:

“In exceptional cases, certain companies, in particular property companies, which are the subject of an unexpected offer may find difficulty in obtaining, within the time available, the opinion of an independent valuer to support an asset valuation, as required by this Rule, before the board’s circular has to be published. In such cases, the Panel may be prepared exceptionally to waive strict compliance with this requirement. The Panel will only do this where the interests of shareholders seem on balance to be best served by permitting informal valuations to appear coupled with such substantiation as is available. Advisers to offeree companies who wish to make use of this procedure should consult the Panel at the earliest opportunity.”

- 5.11 The Code Committee considers that the Panel should continue to have an ability to agree to a delay in the publication of the valuation report but that this should only apply in respect of a valuation which has been published prior to the commencement of the offer period. If a valuation is published during the offer period, the Code Committee considers that it should be in the form of, or accompanied by, a valuation report.
- 5.12 As noted in paragraph 5.8, the Code Committee considers that Rule 29 should provide that a valuation report required in respect of a valuation published prior to the

commencement of the offer period must be included in the first announcement or document published in the offer period which refers the pre-offer period valuation or draws attention to the historical valuation. However, this may not always be possible and, in such circumstances, it might be appropriate for the Panel to agree that the valuation report may be published subsequently, such as in the offer document or the offeree board circular. Where this is the case, the Code Committee considers that any earlier offer announcement or documentation which refers to the valuation or historical valuation should contain a clear statement that the valuation or historical valuation (or an updated valuation) will be reported on in accordance with Rule 29 in the offer document or offeree board circular (as applicable).

- 5.13 Whilst it may be appropriate for the Panel to agree that a valuation report may be published in the offer document or offeree board circular (rather than in the first announcement or document which refers to the valuation or historical valuation), a delay in the publication of a valuation report beyond the date of the offer document or offeree board circular should only be permitted in exceptional circumstances.
- 5.14 The Code Committee proposes to introduce a Note on the new Rule 29.2 in place of the current Rule 29.6, as set out below.

(e) Proposal

- 5.15 In the light of the above, the Code Committee proposes to introduce a new Rule 29.2 and a new Note on Rule 29.2, as follows:

“29.2 REQUIREMENT FOR VALUATION REPORT

(a) Except with the consent of the Panel, a valuation falling within Rule 29.1(a)(i) must be in the form of, or accompanied by, a valuation report.

(b) Except with the consent of the Panel, a valuation falling within Rule 29.1(a)(ii) or (iii) must be confirmed in, or updated by, a valuation report. The valuation report must be included in the offer document or the offeree board circular (as appropriate) or, if earlier, in the first announcement or document published during the offer period by the offeree company or the securities exchange offeror (as the case may be) which refers to that valuation.

(c) Any valuation report must be prepared by a valuer who satisfies the requirements of Rule 29.3.

NOTE ON RULE 29.2

Where it is not possible to obtain a valuation report within the required timeframe

An offeree company or a securities exchange offeror which has published a valuation prior to the commencement of the offer period may not be able to obtain a valuation report within the timeframe set out in Rule 29.2(b). In such cases, the Panel may consent to a delay in the publication of a valuation report but will only

consent to a delay beyond the date of the offer document or offeree board circular (as the case may be) in exceptional circumstances.”

- Q9** Should the Code require that a valuation published during the offer period must be in the form of, or accompanied by, a valuation report?
- Q10** Should the Code require that a valuation report in respect of a valuation falling within the proposed Rule 29.1(a)(ii) or (iii) should be included in the offer document or the offeree board circular (as appropriate) or, if earlier, in the first announcement or document published during the offer period by the offeree company or the securities exchange offeror (as the case may be) which refers to that valuation?
- Q11** Do you have any other comments on the proposed Rule 29.2, regarding the requirement for a valuation report, or on the proposed new Note on Rule 29.2, in relation to the circumstances where it is not possible to obtain a valuation report within the required timeframe?

6. The valuer

(a) Summary

6.1 Under the current Rule 29.1, when a valuation of assets is given in connection with an offer, it should be supported by the opinion of a named independent valuer. For these purposes, an “independent valuer” means a valuer who meets the requirements of an “external valuer” as defined in the RICS Valuation Standards (“**The Standards**” or the “**Red Book**”) and, in addition, has no connection with other parties to the offer.

6.2 Where the Red Book glossary includes terms that are defined in the IVS, the IVS wording has been adopted. The IVS defines an “external valuer” as:

“A valuer who, together with any associates, has no material links with the client, an agent acting on behalf of the client or the subject of the assignment.”

6.3 The current Rule 29.1(b) sets out further requirements in relation to the valuer as follows:

- (a) in relation to land, buildings, plant and equipment, a valuer should be a corporate member of RICS, The Institute of Revenues Rating and Valuation or some other person approved by the Panel; and
- (b) in relation to other types of asset, the valuer should be an appropriately qualified person approved by the Panel.

6.4 The current Rule 29.1(b) provides that valuers must be able to demonstrate that they meet any legal or regulatory requirements and that they have sufficient current knowledge of the particular market.

6.5 The Code Committee proposes to introduce a new Rule 29.3 which would set out the requirements in relation to the valuer and remove the current emphasis on property valuations and property valuation practices.

(b) Independence

6.6 The Code Committee proposes to retain the requirement that the valuer must be independent of the parties to the offer.

6.7 In considering whether a valuer is “independent” of the parties to the offer, the Executive applies a lower test of independence when compared to the level of independence required to be an independent financial adviser to the board of an offeree company under Rule 3.1 (*Board of the offeree company*). The Executive will normally consider a valuer to be independent of the parties to the offer if:

- (a) neither the valuer nor any party to the offer has a substantial economic interest in the other; and
- (b) the valuer is considered by its own professional standards to be independent and/or is not in breach of its own professional standards by carrying out the valuation.

The Code Committee agrees with this approach.

(c) Other requirements

6.8 Rule 29.1(b) provides as follows:

“(b) The valuer

In relation to land, buildings, plant and equipment, a valuer should be a corporate member of The Royal Institution of Chartered Surveyors or The Institute of Revenues Rating and Valuation or some other person approved by the Panel. In respect of other types of asset, the valuer should be an appropriately qualified person approved by the Panel. The valuer must be able to demonstrate that he meets any legal or regulatory requirements which apply in the circumstances in which the particular valuation is required and either:

- (i) that he has, in respect of the particular type of property or asset, sufficient current local, national and international (as appropriate) knowledge of the particular market and the skills and understanding necessary to undertake the valuation competently; or**
- (ii) where he satisfies (i) above, except that he has insufficient current knowledge, that he will be or has been assisted by a person(s) who has/have such knowledge and the skills and understanding necessary to provide the assistance required by the valuer. ...”.**

6.9 The Code Committee considers that the proposed new Rule 29 should include requirements for the valuer to:

- (a) be appropriately qualified to give a valuation report on the valuation;
- (b) satisfy any relevant legal or regulatory requirements; and
- (c) have sufficient current knowledge of each relevant market and the necessary skills and understanding to prepare the valuation report.

6.10 The Code Committee considers that membership of a professional body will be an indicator that a valuer is appropriately qualified.

- 6.11 The Code Committee considers that it is unnecessary to stipulate in the Code the existing requirement for the valuer to have the knowledge and skills “to undertake the valuation competently”. A professional valuer would, in any event, be expected to act competently.
- 6.12 As seen above, the current Rule 29.1(b)(ii) provides for the possibility that a valuer may lack current knowledge of a particular market, in which case the valuer may be assisted by a person who does have such knowledge and the skills and understanding necessary to provide the assistance required by the valuer. The Code Committee does not propose to retain this provision in the proposed new Rule 29 on the basis that it is unnecessary. The Code Committee understands that, if a valuer does not have sufficient current knowledge of a particular market, market practice is for a valuation of the relevant assets to be carried out by a different valuer who does have sufficient current knowledge of the market. In such a case, the separate valuations would need to be the subject of separate valuation reports.

(d) Proposal

- 6.13 In the light of the above, the Code Committee proposes to introduce a new Rule 29.3, as follows:

“29.3 THE VALUER

(a) A valuer must:

(i) be considered by the Panel to be independent of the parties to the offer;

(ii) be appropriately qualified to give a valuation report on the valuation;

(iii) satisfy any relevant legal or regulatory requirements; and

(iv) have sufficient current knowledge of each relevant market and the necessary skills and understanding to prepare the valuation report.

(b) The Panel must be consulted in advance if there is any doubt as to whether a valuer satisfies the requirements of Rule 29.3(a).”

- Q12 Do you have any comments on the proposed Rule 29.3 in relation to the requirements applying to valuers?**

7. The valuation report

(a) Summary

7.1 The current Rule 29.2 (*Basis of valuation*) and Rule 29.5 (*Opinion and consent letters*) set out the requirements of Rule 29 in relation to the contents of a valuation report.

7.2 The Code Committee proposes to reorganise these provisions so that all of the requirements relating to the contents of a valuation report would be contained within a new Rule 29.4. In addition, it is proposed to expand the requirements relating to the contents of a valuation report in order to reflect current practice as to what is typically included in a valuation report.

(b) Contents requirements

7.3 The Code Committee considers that the new Rule 29.4(a) should provide that a valuation report should contain the following:

- (a) the name, business address and professional qualifications of the valuer. Information regarding a valuer's professional qualifications is not explicitly required under the current Rule 29 but it is relevant to the competence of the valuer and it is information which shareholders would expect to see in a valuation report;
- (b) the date as at which the assets were valued. This is an existing requirement of Rule 29.4 (*Current valuation*);
- (c) details of the assets or liabilities which are the subject of the valuation report. This is not explicitly required under the current Rule 29 but the Code Committee would expect a valuation report to identify the assets to which the valuation report relates;
- (d) separate valuations of each category of assets, and/or individual significant assets, consistent with any previously published valuations of those assets or liabilities or with normal valuation reporting practice for such assets or liabilities. Again, this is not explicitly required under the current Rule 29 but the Code Committee would expect the categorisation of assets in a valuation report to be consistent with any previously published valuations of the same assets or with normal valuation reporting practice;
- (e) details of the valuation standards to which the valuation report has been prepared (see Section 7(c)); and

(f) the basis of valuation (see Section 7(d)).

(c) Valuation standards

7.4 The current Rule 29.2(b) states as follows:

“(b) In relation to valuations of land, buildings, plant and equipment, attention is drawn to The Standards.”

7.5 The Code Committee proposes that the new Rule 29.4(a)(v) should impose a general requirement to include in a valuation report details of the valuation standards to which it has been prepared.

7.6 The Code Committee also proposes to introduce a new Note 1 on Rule 29.4 (*Valuation standards*) which would provide that a valuation report must be prepared in accordance either with valuation standards published by RICS or the IVSC or with other appropriate professional standards approved by the Panel. The RICS Valuation – Global Standards 2017 (commonly referred to as the “**Global Red Book**”) adopt the IVS. The IVS are designed to be universal technical standards applying to all types of asset.

7.7 The Code Committee also considers that the new Note 1 on Rule 29.4 should require a valuation report to be prepared on a basis which is consistent with past practice.

(d) Basis of valuation and market value

7.8 The current Rule 29.2 sets out the requirements in relation to the basis of a valuation. The Code Committee proposes to restructure these requirements, and to remove the emphasis on property valuations, but it does not propose to make any material changes to the substance of the current Rule 29.2.

7.9 The current Rule 29.2(a) states:

“(a) The basis of valuation must be clearly stated. ...”

7.10 The Code Committee proposes to retain a requirement for the basis of valuation to be included in the valuation report (see the proposed Rule 29.4(a)(vi)).

7.11 The current Rule 29.2(a) then states:

“Only in exceptional circumstances should [the basis of valuation] be qualified and in that event the valuer must explain the meaning of the words used. Similarly, special assumptions (see PS 2.2 of The Standards) should not normally be made in a valuation but, if assumptions are permitted by the Panel, they should be fully explained. (See PS 6 of The Standards.)”

7.12 The Code Committee proposes to retain requirements that a valuation should not be qualified, and that special assumptions should not normally be made, but without reference to The Standards (see the proposed Rule 29.4(b)). The description of special assumptions in the proposed Rule 29.4(b)(ii), i.e. assumptions where assumed facts differ from the facts existing at the date of the valuation, follows the description of special assumptions as set out in the IVS (General Standards – IVS 104 Bases of Value, paragraph 200.4).

7.13 The current Rule 29.2(c) states:

“(c) The basis of valuation will normally be Market Value as defined in The Standards. If the company’s accounts are prepared under UK Generally Accepted Accounting Principles, with the consent of the Panel, the bases of valuation set out in UK PS 1.1 of The Standards may be used.”

7.14 The Code Committee proposes to retain a requirement that the basis of valuation should normally be market value (see the proposed Note 2 on Rule 29.4 (*Basis of valuation*)).

7.15 The current Rule 29.2(d) includes requirements in relation to land currently being developed or with immediate development potential. The Code Committee proposes to retain these requirements with some minor drafting changes (see the proposed Note 3 on Rule 29.4 (*Development land*)).

(e) *Representative sample of a portfolio of assets*

7.16 The current Rule 29.2(e) states:

“(e) In some exceptional cases, it will not be possible for a valuer to complete a full valuation of every property. The Panel may be prepared to regard the requirements of this Rule as met if the valuer carries out a valuation of a representative sample of properties and reports those valuations, with the directors taking sole responsibility for an estimate, based on the sample, to cover the remaining properties. This procedure will be available only where the portfolio as a whole is within the knowledge of the valuer, who must also certify the representative nature of the sample. Where this is done, the document sent to shareholders and persons with information rights should distinguish between properties valued professionally and those where the directors have made estimates on the basis of the sample valuation and should also compare such estimates with book values.”

7.17 The Code Committee proposes to retain the concept of a valuation of a representative sample of properties and to introduce a new Rule 29.4(c) which would provide that:

- (a) when preparing a valuation report in respect of a portfolio of assets, the valuer must normally value all of the assets in the portfolio; and

- (b) in the case of a portfolio with a large number of similar assets, the Panel may consent to the valuer valuing only a representative sample.

7.18 In addition, the Code Committee proposes to introduce a new Note 4 on Rule 29.4 (*Representative sample of a portfolio of assets*) (based on the current Rule 29.2(e)) which would set out the basis on which the Panel may consent to a valuer valuing only a representative sample of a portfolio of assets.

(f) Publication on a website

7.19 The current Rule 29.5(c) states:

“(c) Valuation certificate to be published on a website

Where a valuation of assets is given in any document published in connection with an offer, the valuation report must be published on a website in accordance with Rule 26.3, 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 will allow the report or schedule to appear in a summarised form. In certain cases, the Panel may require any of these documents to be reproduced in full in a document sent to shareholders and persons with information rights.”.

7.20 The Code Committee proposes to retain a requirement to publish a valuation report on a website (see the proposed Rule 29.4(d)). It is not, however, proposed to retain a requirement to publish an associated report or schedule containing details of the aggregate valuation. This is on the basis that the valuation report itself should contain all relevant information.

(g) Proposal

7.21 In the light of the above, the Code Committee proposes to introduce a new Rule 29.4, and Notes on Rule 29.4, as follows:

“29.4 THE VALUATION REPORT

(a) A valuation report must include:

(i) the name, address and professional qualifications of the valuer;

(ii) the date as at which the assets were valued;

(iii) details of the assets which are the subject of the valuation report;

(iv) separate valuations of each category of assets, and/or individual significant assets, consistent with any previously published valuations of those assets or with normal valuation reporting practice for such assets;

(v) details of the valuation standards to which the valuation report has been prepared (see Note 1); and

(vi) the basis of valuation (see Note 2).

(b) A valuation report must not be:

(i) qualified; or

(ii) subject to special assumptions (where assumed facts differ from the facts existing at the date of the valuation),

except with the consent of the Panel, in which case any qualifications or special assumptions must be fully explained.

(c) In preparing a valuation report in respect of a portfolio of assets, the valuer must normally value all of the assets in the portfolio. In the case of a portfolio with a large number of similar assets, the Panel may consent to the valuer valuing only a representative sample of the portfolio (see Note 4).

(d) Any valuation report must be published on a website in accordance with Rule 26.3.

NOTES ON RULE 29.4

1. Valuation standards

A valuation report must be prepared in accordance with:

(a) valuation standards published by the Royal Institution of Chartered Surveyors or the International Valuation Standards Council; or

(b) other appropriate professional standards approved by the Panel.

and on a basis which is consistent with past practice in relation to the assets concerned.

2. Basis of valuation

The basis of valuation should normally be market value. See also Note 3.

3. Development land

In the case of land being developed or with immediate development potential, in addition to the market value of the land at the date of valuation, the valuation report must include:

(a) the value after the development has been completed and, if applicable, let;

(b) the estimated total cost, including carrying charges, of completing the development;

(c) the expected dates of completion and, if applicable, of letting or occupation; and

(d) a statement as to whether planning consent has been obtained and, if so, the date of the planning consent and any conditions attaching to the consent which may affect the value.

4. Representative sample of a portfolio of assets

The Panel will normally only grant its consent under Rule 29.4(c) where the valuer is familiar with the portfolio as a whole. In such cases:

(a) the valuer must report on the representative sample and certify the representative nature of the sample; and

(b) the directors must take sole responsibility for estimates, based on the sample, to cover the remaining properties. The directors' estimates and a comparison of the estimates with book values must be included in any document or announcement in which the valuation report on the representative sample is published."

Q13 Do you have any comments on the proposed Rule 29.4 in relation to a valuation report?

8. No material difference statement

8.1 The current Rule 29.4 provides that, if a valuation is not current, and if the valuer cannot state that a current valuation would not be materially different, the valuation must be updated.

8.2 Rule 29 does not give any guidance as to what amounts to a “current” valuation for these purposes. In the view of the Code Committee, whether a valuation is current is not only a question of the time that has elapsed since the date as at which the assets were valued but will also depend on any changes in market conditions and to the assets.

8.3 The Code Committee proposes to remove the requirement for a valuation to be current, and instead to introduce a requirement that:

(a) if the date as at which the assets were valued is not the same as the date of the document or announcement in which the valuation report is published, that document or announcement must include a statement by the directors that the valuer has confirmed to the directors that an updated valuation would not be materially different; or,

(b) if such a statement cannot be made, that an updated valuation must be published.

8.4 This proposed requirement is similar to the requirement which applies when a property company issues a prospectus. If a property company issues a prospectus it must, under paragraphs 128 to 130 of the ESMA update of the CESR recommendations on the consistent implementation of Commission Regulation (EC) No 809/2004 implementing the Prospectus Directive¹ (the “**ESMA recommendations**”), include a valuation report in the prospectus. Under paragraph 130 of the ESMA recommendations, the valuation report must:

“be dated and state the effective date for the valuation for each property, which must not be more than 1 year prior to the date of publication of the prospectus provided that the issuer affirms in the prospectus that no material changes have occurred since the date of the valuation.”.

8.5 Under the ESMA recommendations, the confirmation of no material changes is required to be given by the issuer rather than the valuer. However, the Code Committee considers that, for the purposes of Rule 29, whilst the directors should be required to make the statement as to no material difference in the document or announcement, that statement should be required to be supported by a confirmation from the valuer to the directors.

¹ <https://www.esma.europa.eu/sites/default/files/library/2015/11/2013-319.pdf>

This is because it is the valuer who published the original valuation report and who is the appropriate person to confirm whether an updated valuation would be materially different.

- 8.6 The Code Committee proposes that the valuer's confirmation to the directors that an updated valuation would not be materially different should be required to be published on a website (see the proposed amendments to Rule 26.3 as set out in Section 9(d) of this PCP).
- 8.7 In the light of the above, the Code Committee proposes to introduce a new Rule 29.5, as follows:

"29.5 NO MATERIAL DIFFERENCE STATEMENT

(a) If the date as at which the assets were valued is not the same as the date of the document or announcement in which the valuation report is published, the document or announcement must include a statement by the directors of the offeree company or the securities exchange offeror that the valuer has confirmed that an updated valuation would not be materially different.

(b) If such a statement cannot be made, the offeree company or the securities exchange offeror (as the case may be) must publish an updated valuation."

- Q14 Do you have any comments on the proposed Rule 29.5 in relation to "no material difference" statements?**

9. **Other proposals and consequential amendments**

(a) **Potential tax liability**

9.1 Rule 29.3 currently states as follows:

“29.3 POTENTIAL TAX LIABILITY

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

9.2 It is not clear on the face of the rule whether an estimate of the amount of the tax liability arising from a sale of the assets should be given or whether a statement as to the tax consequences is sufficient. The Code Committee understands that the Executive would normally expect an estimate to be given, particularly where a sale of the assets which are the subject of the valuation is a real possibility. The Code Committee agrees with this approach.

9.3 The Code Committee therefore proposes to clarify in the proposed Rule 29.6 that, except with the consent of the Panel, an estimate should be given of the amount of the tax liability which would arise from the sale of the asset. If an estimate is not already included in the valuation report, the estimate must be given by the directors of the offeree company or the securities exchange offeror (as applicable).

9.4 The Code Committee also proposes that, where the Panel has given its consent as referred to in paragraph 9.3, the document or announcement must contain an explanation as to why a meaningful estimate cannot be given and as to the tax consequences of a sale of the assets.

9.5 Accordingly, the Code Committee proposes to introduce a new Rule 29.6, as follows:

“29.6 POTENTIAL TAX LIABILITY

(a) Except with the consent of the Panel, any document or announcement in which a valuation report is published must (if it is not already included in the valuation report) include an estimate by the directors of the offeree company or the securities exchange offeror of the amount of any potential tax liability which would arise if the assets were to be sold at the amount of the valuation and a comment as to the likelihood of any such liability crystallizing.

(b) Where the Panel has given its consent under Rule 29.6(a), the document or announcement must contain an explanation as to why a meaningful estimate cannot be given and as to the tax consequences of a sale of the assets.”

Q15 Do you have any comments on the proposed Rule 29.6 in relation to the requirement to give an estimate of the amount of the potential tax liability which would arise upon a sale of the assets?

(b) Profit forecasts

9.6 Rule 29 does not currently provide for circumstances where the publication of information in a valuation report might constitute a profit forecast which could fall to be reported on, or require a directors' confirmation, under Rule 28. This may be the case where, for example, industry practice is to set out detailed projections of the revenue and cost cash flows used to derive the valuation which, when taken together, may constitute a profit forecast for the purposes of Rule 28. This is most relevant to oil and gas companies, where valuation reports have, in the past, included numbers which, taken together, constituted a profit forecast.

9.7 The Code Committee considers that the Panel should be required to be consulted in advance of the publication of a valuation report if the information contained in the valuation report could constitute a profit forecast. The proposed Rule 29.7 imposes such a requirement and is intended to act as a reminder to parties that a valuation report could have implications under Rule 28.

9.8 The Code Committee proposes the introduction of a new Rule 29.7 as follows:

"29.7 PROFIT FORECASTS

If the publication of information contained in a valuation report could constitute a profit forecast, the Panel must be consulted in advance."

Q16 Do you have any comments on the proposed Rule 29.7 in relation to information in valuation reports which could constitute a profit forecast?

(c) Valuation of another party's assets

9.9 The current Rule 29.1(d) relates to valuations by one party to an offer of another party's assets. It states:

"(d) Another party's assets

A party to an offer will not normally be permitted to publish a valuation, appraisal or calculation of worth of the assets owned by another party unless it is supported by the unqualified opinion of a named independent valuer and that valuer has had access to sufficient information to carry out a property valuation, appraisal or calculation of worth either in accordance with The Standards or, in respect of assets other than land, buildings, plant and equipment, to appropriate standards approved by the Panel. Comments by one party about another party's valuation, appraisal or calculation of worth of its own assets may be permitted in exceptional circumstances. In all cases, the Panel must be consulted in advance."

9.10 The Code Committee proposes to move the substance of the provisions of the current Rule 29.1(d) so as to become a new Rule 29.8.

9.11 The Code Committee does not, however, propose to retain the following wording from Rule 29.1(d):

“Comments by one party about another party’s valuation, appraisal or calculation of worth of its own assets may be permitted in exceptional circumstances.”.

9.12 If a party to an offer wishes to comment on another party’s valuation, it must ensure that any comment is prepared with the highest standards of care and accuracy in accordance with Rule 19.1 (*Standards of care*). Subject to that, the Code Committee considers that the Code should not restrict one party’s ability to critique an asset valuation published by another party. In addition, a requirement to consult the Panel might imply that the Panel has pre-vetted the comment, which is unlikely to be the case.

9.13 The Code Committee therefore proposes to replace the current Rule 29.1(d) with a new Rule 29.8, as follows:

“29.8 VALUATION OF ANOTHER PARTY’S ASSETS

A party to an offer will not normally be permitted to publish a valuation of assets of another party to an offer unless the valuation is the subject of an unqualified valuation report prepared in accordance with the requirements of this Rule 29 by a valuer who has had access to sufficient information to prepare such a report.”.

Q17 Do you have any comments on the proposed Rule 29.8 in relation to the valuation by one party to an offer of another party’s assets?

(d) Consequential amendments

(i) Rule 23.2 (Consent to inclusion of advice, opinions and reports)

9.14 Under Rule 23.2(c), if any document or announcement published in connection with an offer includes an opinion on value given by an independent valuer in accordance with Rule 29, that document or announcement must include a statement that the valuer has given and not withdrawn its consent to the inclusion of its opinion in the relevant document in the form and context in which it is included.

9.15 The current Rule 29.5(b) also includes the following requirement:

“(b) Consent

The document must also state that the valuer has given and not withdrawn his consent to the publication of his valuation report.”.

- 9.16 Consistent with amendments made to the Code in relation to profit forecasts (see RS 2012/1 (*Profit forecasts, quantified financial benefits statements and material changes in information*)), and in order to avoid duplication with Rule 23.2, the Code Committee proposes that the requirement for the valuer's consent should not be retained in the proposed new Rule 29.
- 9.17 In order to use terminology which is consistent with the proposed new Rule 29, the Code Committee proposes to amend Rule 23.2 as follows:

"23.2 CONSENT TO INCLUSION OF ADVICE, OPINIONS AND REPORTS

If any document or announcement published in connection with an offer includes:

...

(c) ~~an opinion on value~~ a valuation report given by an independent ~~a valuer~~ in accordance with Rule 29,

the document or announcement must include a statement that each of the financial adviser(s), the reporting accountants and/or the ~~independent~~ valuer (as appropriate) has given and not withdrawn its consent to the inclusion of its advice, ~~or report or opinion~~ (as the case may be) in the relevant document in the form and context in which it is included".

- (ii) *Rule 26.3 (Documents to be published on a website following the making of an offer)*

- 9.18 Rule 26.3 requires certain documents to be published on a website. Rule 26.3(f) is relevant where an asset valuation has been published.
- 9.19 As explained in paragraph 8.6, the Code Committee proposes that the valuer's confirmation to the directors that an updated valuation would not be materially different, as required by the proposed new Rule 29.5(a), should be required to be published on a website.
- 9.20 Accordingly, and in order to use terminology which is consistent with the proposed new Rule 29 and to ensure consistency with the proposed amendments to Rule 23.2(c), the Code Committee proposes to amend Rule 26.3(f) as follows:

"26.3 DOCUMENTS TO BE PUBLISHED ON A WEBSITE FOLLOWING THE MAKING OF AN OFFER

The following documents must be published on a website from the time the offer document or offeree board circular, as appropriate, is published (or, if later, the date of the relevant document):

...

(f) where an asset valuation has been published:

(i) ~~the valuation certificate and associated report or schedule containing details of the aggregate valuation (Rule 29.5(c)) valuation report (Rule 29.4(d)); and~~

(ii) ~~the written consent of the independent valuer to the inclusion of its opinion on value valuation report in the relevant document in the form and context in which it is included (Rule 23.2(c)); and,~~

(iii) if appropriate, the confirmation by the valuer that its report continues to apply an updated valuation would not be materially different (Rules 29.5(a) and 27.2(d));”.

(iii) *Rule 27.2 (Subsequent documents)*

9.21 Under Rule 27.2(d), if a document or announcement published by the offeror or the offeree company included an asset valuation and an opinion on value was obtained on that asset valuation, any document subsequently published by that party in connection with the offer must, unless superseded by information included in the new document, include a statement by the directors of that party confirming that the independent valuer has confirmed that its opinion continues to apply.

9.22 To ensure consistency with the proposed Rule 29, including the proposed requirement for a no material difference statement in the new Rule 29.5, the Code Committee proposes to amend Rule 27.2(d) as follows:

“27.2 SUBSEQUENT DOCUMENTS

...

(d) If any document or announcement published by the offeror or the offeree company included a profit forecast, a quantified financial benefits statement or an asset valuation, any document subsequently published by that party in connection with the offer must, unless superseded by information included in the new document, include a statement by the directors of that party confirming:

...

(iii) where an opinion on value a valuation report was obtained on an asset valuation, that the independent valuer has confirmed that its opinion continues to apply an updated valuation would not be materially different.”.

Q18 Do you have any comments on the consequential amendments to the Code proposed in Section 9(d) of the PCP?

10. Assessment of the impact of the proposals

- 10.1 The requirements of the Code in relation to asset valuations will remain essentially unchanged. Principally, the Code Committee is proposing to amend Rule 29 to ensure that it reflects the way that it is applied in practice. The Code Committee believes that clarifying, codifying and updating the wording of Rule 29 in this way, and removing provisions which are otiose, will be beneficial to all parties to offers, their advisers, shareholders and other market participants and practitioners, and that there should not be any additional costs implications where this is the case.
- 10.2 In relation to the requirement for a “no material difference” statement as proposed in Section 8, the proposed amendment to Rule 29 would have the effect of bringing Rule 29 into line with the ESMA recommendations and would avoid the current uncertainty which may arise in relation to whether a valuation is “current”.

APPENDIX A

Current Rule 29²

NB All references in the Rule to “The Standards” are to the Royal Institution of Chartered Surveyors Valuation Standards.

29.1 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 should be supported by the opinion of a named independent valuer. (For the purposes of this Rule, “an independent valuer” means a valuer who meets the requirements of an “external valuer” as defined in The Standards and, in addition, has no connection with other parties to the offer.)

(a) Type of asset

This Rule applies not only to land, buildings, plant and equipment but also to other assets, eg contracts, stocks, intangible assets and individual parts of a business. Where such other assets are involved, the Panel should be consulted in advance.

(b) The valuer

In relation to land, buildings, plant and equipment, a valuer should be a corporate member of The Royal Institution of Chartered Surveyors or The Institute of Revenues Rating and Valuation or some other person approved by the Panel. In respect of other types of asset, the valuer should be an appropriately qualified person approved by the Panel. The valuer must be able to demonstrate that he meets any legal or regulatory requirements which apply in the circumstances in which the particular valuation is required and either:

- (i) that he has, in respect of the particular type of property or asset, sufficient current local, national and international (as appropriate) knowledge of the particular market and the skills and understanding necessary to undertake the valuation competently; or
- (ii) where he satisfies (i) above, except that he has insufficient current knowledge, that he will be or has been assisted by a person(s) who has/have such knowledge and the skills and understanding necessary to provide the assistance required by the valuer.

(c) In connection with an offer

In certain cases offer documents or defence circulars will include statements of assets reproducing directors’ estimates of asset values published with the company’s accounts in accordance with Schedule 7 Part 1 of the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008. The Panel will not regard such estimates as “given in connection with an offer” unless asset values are a particularly significant factor in assessing the offer and the estimates are, accordingly, given considerably more prominence in the offer documents or circulars than merely being referred to in a note to a statement of assets in an appendix. In these circumstances, such estimates must be supported, subject to Rule 29.2(e), by an independent valuer in accordance with this Rule.

² The current Rule 29, as set out in this Appendix A, will be deleted if the amendments proposed in this PCP are adopted.

(d) Another party's assets

A party to an offer will not normally be permitted to publish a valuation, appraisal or calculation of worth of the assets owned by another party unless it is supported by the unqualified opinion of a named independent valuer and that valuer has had access to sufficient information to carry out a property valuation, appraisal or calculation of worth either in accordance with The Standards or, in respect of assets other than land, buildings, plant and equipment, to appropriate standards approved by the Panel. Comments by one party about another party's valuation, appraisal or calculation of worth of its own assets may be permitted in exceptional circumstances. In all cases, the Panel must be consulted in advance.

29.2 BASIS OF VALUATION

(a) The basis of valuation must be clearly stated. Only in exceptional circumstances should it be qualified and in that event the valuer must explain the meaning of the words used. Similarly, special assumptions (see PS 2.2 of The Standards) should not normally be made in a valuation but, if assumptions are permitted by the Panel, they should be fully explained. (See PS 6 of The Standards.)

(b) In relation to valuations of land, buildings, plant and equipment, attention is drawn to The Standards.

(c) The basis of valuation will normally be Market Value as defined in The Standards. If the company's accounts are prepared under UK Generally Accepted Accounting Principles, with the consent of the Panel, the bases of valuation set out in UK PS 1.1 of The Standards may be used.

(d) In the case of land currently being developed or with immediate development potential, in addition to giving the Market Value in the state existing at the date of valuation, the valuation should include:

- (i) the value after the development has been completed;
- (ii) the value after the development has been completed and let;
- (iii) the estimated total cost, including carrying charges, of completing the development and the anticipated dates of completion and of letting or occupation; and
- (iv) a statement whether planning consent has been obtained and, if so, the date thereof and the nature of any conditions attaching to the consent which affect the value.

(e) In some exceptional cases, it will not be possible for a valuer to complete a full valuation of every property. The Panel may be prepared to regard the requirements of this Rule as met if the valuer carries out a valuation of a representative sample of properties and reports those valuations, with the directors taking sole responsibility for an estimate, based on the sample, to cover the remaining properties. This procedure will be available only where the portfolio as a whole is within the knowledge of the valuer, who must also certify the representative nature of the sample. Where this is done, the document sent to shareholders and persons with information rights should distinguish between properties valued professionally and those where the directors have made estimates on the basis of the sample valuation and should also compare such estimates with book values.

NOTE ON RULE 29.2***Provision of adjusted net asset value information***

If it is proposed to include adjusted net asset value information, the Panel must be consulted.

29.3 POTENTIAL TAX LIABILITY

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

29.4 CURRENT VALUATION

A valuation must 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 must state that a current valuation would not be materially different. If this statement cannot be made, the valuation must be updated.

29.5 OPINION AND CONSENT LETTERS

(a) *Publication of opinion*

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

(b) *Consent*

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

(c) *Valuation certificate to be published on a website*

Where a valuation of assets is given in any document published in connection with an offer, the valuation report must be published on a website in accordance with Rule 26.3, 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 will allow the report or schedule to appear in a summarised form. In certain cases, the Panel may require any of these documents to be reproduced in full in a document sent to shareholders and persons with information rights.

29.6 WAIVER IN CERTAIN CIRCUMSTANCES

In exceptional cases, certain companies, in particular property companies, which are the subject of an unexpected offer may find difficulty in obtaining, within the time available, the opinion of an independent valuer to support an asset valuation, as required by this Rule, before the board's circular has to be published. In such cases, the Panel may be prepared exceptionally to waive strict compliance with this requirement. The Panel will only do this where the interests of shareholders seem on balance to be best served by permitting informal valuations to appear coupled with such substantiation as is available. Advisers to offeree companies who wish to make use of this procedure should consult the Panel at the earliest opportunity.

APPENDIX B

Proposed amendments to the Code

Part 1: Proposed new Rule 29³

RULE 29

NB The requirements of Rule 29 do not apply to a valuation published by a cash offeror in respect of assets of that cash offeror.

29.1 APPLICABLE VALUATIONS

(a) Rule 29 applies to a valuation published by the offeree company or a securities exchange offeror:

- (i) during the offer period;**
- (ii) in the 12 months prior to the commencement of the offer period; or**
- (iii) more than 12 months prior to the commencement of the offer period if attention is drawn to the valuation in the context of the offer by the offeree company or a securities exchange offeror (as applicable),**

unless the Panel considers that the valuation is not material to offeree company shareholders in making a properly informed decision as to the merits or demerits of the offer.

(b) Rule 29 applies to a valuation of:

- (i) land, buildings, plant or equipment;**
- (ii) mineral, oil or gas reserves; and**
- (iii) unquoted investments representing in aggregate 10% or more of the gross asset value of an investment company.**

(c) The Panel may also apply Rule 29 to a valuation of other assets or, if appropriate, liabilities falling within Rule 29.1(a). The Panel should be consulted at the earliest opportunity if such a valuation has been or is proposed to be published.

(d) If the offeree company or a securities exchange offeror publishes, or has published, a net asset value or an adjusted net asset value in circumstances where Rule 29.1(a) would apply if a valuation had been published in respect of the underlying assets:

- (i) a valuation of the underlying assets must be published; and**
- (ii) any document or announcement published by the offeree company or the securities exchange offeror which includes that net asset value or adjusted net asset value must clearly set out any adjustments which have been made to the valuation of the underlying assets in order to calculate that net asset value or adjusted net asset value.**

³ As it is proposed to delete the current Rule 29 in its entirety, and to replace it with a new Rule 29 as set out in Part 1 of this Appendix B, the provisions of the proposed new Rule 29 are not “marked up” against the current Rule 29.

NOTE ON RULE 29.1***Valuations solely in financial statements***

Rule 29.1 is not intended to apply to a valuation which is set out in a company's financial statements only as a result of accounting practice and which is not otherwise referred to by the relevant party in the arguments as to the merits or demerits of the offer.

29.2 REQUIREMENT FOR VALUATION REPORT

(a) Except with the consent of the Panel, a valuation falling within Rule 29.1(a)(i) must be in the form of, or accompanied by, a valuation report.

(b) Except with the consent of the Panel, a valuation falling within Rule 29.1(a)(ii) or (iii) must be confirmed in, or updated by, a valuation report. The valuation report must be included in the offer document or the offeree board circular (as appropriate) or, if earlier, in the first announcement or document published during the offer period by the offeree company or the securities exchange offeror (as the case may be) which refers to that valuation.

(c) Any valuation report must be prepared by a valuer who satisfies the requirements of Rule 29.3.

NOTE ON RULE 29.2***Where it is not possible to obtain a valuation report within the required timeframe***

An offeree company or a securities exchange offeror which has published a valuation prior to the commencement of the offer period may not be able to obtain a valuation report within the timeframe set out in Rule 29.2(b). In such cases, the Panel may consent to a delay in the publication of a valuation report but will only consent to a delay beyond the date of the offer document or offeree board circular (as the case may be) in exceptional circumstances.

29.3 THE VALUER

(a) A valuer must:

- (i) be considered by the Panel to be independent of the parties to the offer;
- (ii) be appropriately qualified to give a valuation report on the valuation;
- (iii) satisfy any relevant legal or regulatory requirements; and
- (iv) have sufficient current knowledge of each relevant market and the necessary skills and understanding to prepare the valuation report.

(b) The Panel must be consulted in advance if there is any doubt as to whether a valuer satisfies the requirements of Rule 29.3(a).

29.4 THE VALUATION REPORT

(a) A valuation report must include:

- (i) the name, address and professional qualifications of the valuer;
- (ii) the date as at which the assets were valued;
- (iii) details of the assets which are the subject of the valuation report;

- (iv) separate valuations of each category of assets, and/or individual significant assets, consistent with any previously published valuations of those assets or with normal valuation reporting practice for such assets;
 - (v) details of the valuation standards to which the valuation report has been prepared (see Note 1); and
 - (vi) the basis of valuation (see Note 2).
- (b) A valuation report must not be:
- (i) qualified; or
 - (ii) subject to special assumptions (where assumed facts differ from the facts existing at the date of the valuation),

except with the consent of the Panel, in which case any qualifications or special assumptions must be fully explained.

(c) In preparing a valuation report in respect of a portfolio of assets, the valuer must normally value all of the assets in the portfolio. In the case of a portfolio with a large number of similar assets, the Panel may consent to the valuer valuing only a representative sample of the portfolio (see Note 4).

(d) Any valuation report must be published on a website in accordance with Rule 26.3.

NOTES ON RULE 29.4

1. Valuation standards

A valuation report must be prepared in accordance with:

(a) *valuation standards published by the Royal Institution of Chartered Surveyors or the International Valuation Standards Council; or*

(b) *other appropriate professional standards approved by the Panel,*

and on a basis which is consistent with past practice in relation to the assets concerned.

2. Basis of valuation

The basis of valuation should normally be market value. See also Note 3.

3. Development land

In the case of land being developed or with immediate development potential, in addition to the market value of the land at the date of valuation, the valuation report must include:

(a) *the value after the development has been completed and, if applicable, let;*

(b) *the estimated total cost, including carrying charges, of completing the development;*

(c) *the expected dates of completion and, if applicable, of letting or occupation; and*

(d) *a statement as to whether planning consent has been obtained and, if so, the date of the planning consent and any conditions attaching to the consent which may affect the value.*

4. Representative sample of a portfolio of assets

The Panel will normally only grant its consent under Rule 29.4(c) where the valuer is familiar with the portfolio as a whole. In such cases:

(a) the valuer must report on the representative sample and certify the representative nature of the sample; and

(b) the directors must take sole responsibility for estimates, based on the sample, to cover the remaining properties. The directors' estimates and a comparison of the estimates with book values must be included in any document or announcement in which the valuation report on the representative sample is published.

29.5 NO MATERIAL DIFFERENCE STATEMENT

(a) If the date as at which the assets were valued is not the same as the date of the document or announcement in which the valuation report is published, the document or announcement must include a statement by the directors of the offeree company or the securities exchange offeror that the valuer has confirmed that an updated valuation would not be materially different.

(b) If such a statement cannot be made, the offeree company or the securities exchange offeror (as the case may be) must publish an updated valuation.

29.6 POTENTIAL TAX LIABILITY

(a) Except with the consent of the Panel, any document or announcement in which a valuation report is published must (if it is not already included in the valuation report) include an estimate by the directors of the offeree company or the securities exchange offeror of the amount of any potential tax liability which would arise if the assets were to be sold at the amount of the valuation and a comment as to the likelihood of any such liability crystallizing.

(b) Where the Panel has given its consent under Rule 29.6(a), the document or announcement must contain an explanation as to why a meaningful estimate cannot be given and as to the tax consequences of a sale of the assets.

29.7 PROFIT FORECASTS

If the publication of information contained in a valuation report could constitute a profit forecast, the Panel must be consulted in advance.

29.8 VALUATION OF ANOTHER PARTY'S ASSETS

A party to an offer will not normally be permitted to publish a valuation of assets of another party to an offer unless the valuation is the subject of an unqualified valuation report prepared in accordance with the requirements of this Rule 29 by a valuer who has had access to sufficient information to prepare such a report.

Part 2: Proposed amendments to provisions of the Code other than Rule 29

Rule 23.2

23.2 CONSENT TO INCLUSION OF ADVICE, OPINIONS AND REPORTS

If any document or announcement published in connection with an offer includes:

...

(c) ~~an opinion on value~~ a valuation report given by ~~an independent~~ a valuer in accordance with Rule 29,

the document or announcement must include a statement that each of the financial adviser(s), the reporting accountants and/or the ~~independent~~ valuer (as appropriate) has given and not withdrawn its consent to the inclusion of its advice, or report or opinion (as the case may be) in the relevant document in the form and context in which it is included.

Rule 26.3

26.3 DOCUMENTS TO BE PUBLISHED ON A WEBSITE FOLLOWING THE MAKING OF AN OFFER

The following documents must be published on a website from the time the offer document or offeree board circular, as appropriate, is published (or, if later, the date of the relevant document):

...

(f) where an asset valuation has been published:

(i) ~~the valuation certificate and associated report or schedule containing details of the aggregate valuation (Rule 29.5(c))~~ valuation report (Rule 29.4(d)); and

(ii) the written consent of the ~~independent~~ valuer to the inclusion of its ~~opinion on value~~ valuation report in the relevant document in the form and context in which it is included (Rule 23.2(c)); and,

(iii) if appropriate, the confirmation by the valuer that its report continues to apply an updated valuation would not be materially different (Rules 29.5(a) and 27.2(d));

Rule 27.2**27.2 SUBSEQUENT DOCUMENTS**

...

(d) If any document or announcement published by the offeror or the offeree company included a profit forecast, a quantified financial benefits statement or an asset valuation, any document subsequently published by that party in connection with the offer must, unless superseded by information included in the new document, include a statement by the directors of that party confirming:

...

(iii) ~~where an opinion on value~~ a valuation report was obtained on an asset valuation, that the ~~independent valuer~~ has confirmed that ~~its opinion continues to apply~~ an updated valuation would not be materially different.

APPENDIX C**List of questions**

- Q1** Is a period of 12 months prior to the commencement of the offer period an appropriate “look back” period in order for Rule 29 to apply to a valuation under the proposed Rule 29.1(a)(ii)?
- Q2** Do you have any comments on the application of Rule 29 to a valuation published in the circumstances described in the proposed Rule 29.1(a)(i), (ii) or (iii)?
- Q3** Do you have any comments on the proposed wording “unless the Panel considers that the valuation is not material to offeree company shareholders in making a properly informed decision as to the merits or demerits of the offer”?
- Q4** Do you have any other comments on the proposed new NB at the beginning of Rule 29, the proposed Rule 29.1(a) or the proposed new Note on Rule 29.1?
- Q5** Should the specific types of asset valuations to which Rule 29 applies be those referred to in the proposed Rule 29.1(b)?
- Q6** Should the Panel have the ability to apply Rule 29 to a valuation of other assets or liabilities, as referred to in the proposed Rule 29.1(c)?
- Q7** Do you have any comments on the proposed Rules 29.1(b) and (c)?
- Q8** Do you have any comments on the proposed Rule 29.1(d) in relation to the publication of a net asset value or adjusted net asset value?
- Q9** Should the Code require that a valuation published during the offer period must be in the form of, or accompanied by, a valuation report?
- Q10** Should the Code require that a valuation report in respect of a valuation falling within the proposed Rule 29.1(a)(ii) or (iii) should be included in the offer document or the offeree board circular (as appropriate) or, if earlier, in the first announcement or document published during the offer period by the offeree company or the securities exchange offeror (as the case may be) which refers to that valuation?
- Q11** Do you have any other comments on the proposed Rule 29.2, regarding the requirement for a valuation report, or on the proposed new Note on Rule 29.2, in relation to the circumstances where it is not possible to obtain a valuation report within the required timeframe?
- Q12** Do you have any comments on the proposed Rule 29.3 in relation to the requirements applying to valuers?
- Q13** Do you have any comments on the proposed Rule 29.4 in relation to a valuation report?
- Q14** Do you have any comments on the proposed Rule 29.5 in relation to “no material difference” statements?
- Q15** Do you have any comments on the proposed Rule 29.6 in relation to the requirement to give an estimate of the amount of the potential tax liability which would arise upon a sale of the assets?
- Q16** Do you have any comments on the proposed Rule 29.7 in relation to information in valuation reports which could constitute a profit forecast?

- Q17 Do you have any comments on the proposed Rule 29.8 in relation to the valuation by one party to an offer of another party's assets?**
- Q18 Do you have any comments on the consequential amendments to the Code proposed in Section 9(d) of the PCP?**