

9. Standard of care and responsibility

9.1 Prospectus standard

~~Any document must be prepared with the same standard of care as if it were a prospectus. This applies whether the document is issued by the company, or by an adviser on its behalf, or by any other person in relation to an offer. Each document issued or statement made in relation to an offer or possible offer or during an offer period must, as is the case with a prospectus, satisfy the highest standards of accuracy and the information given must be adequately and fairly presented. This applies whether it is issued or made by the company direct, or by an adviser on its behalf, or by any other relevant person. Those who issue or make any such document or statement must ensure that it remains accurate and up to date throughout the offer period, and must notify shareholders of any material changes as soon as possible.~~

Notes to Rule 9.1:

1. Financial advisers' responsibility for release of information

The Executive regards financial advisers as being responsible to the Executive for guiding their clients and any relevant public relations advisers with regard to any information released in relation to an offer or possible offer or during an offer period.

Advisers must ensure at an early stage that directors and officials of companies are warned that they must consider carefully the Takeovers Code implications of what they say, particularly when giving interviews to, or taking part in discussions with, the media. It is very difficult after publication to alter an impression given or a view or remark attributed to a particular person. Control of any possible abuse lies largely with the person being interviewed. In appropriate circumstances, the Executive will require a statement of retraction. Particular areas of sensitivity on which comment must be avoided include future profits and prospects, asset values and the likelihood of the revision of an offer (see also the Notes to Rule 8.1).

2. Unambiguous language

The language used in documents, releases or advertisements must clearly and concisely reflect the position being described. In particular, the word "agreement" must be used with great care. Statements must be avoided which may give the impression that any persons have committed themselves to certain courses of action (e.g. accepting in respect of their own *shares*) when they have not in fact done so.

3. Sources

The source for any fact which is material to an argument must be clearly stated, including sufficient detail to enable the significance of the fact to be assessed; however, if the information has been included in a document recently sent to shareholders, an appropriate cross reference may instead be made.

4. Quotations

A quotation (e.g. from a newspaper or a stockbroker's circular) must not be used out of context and details of the origin must be included.

Since quotations will necessarily carry the implication that the comments quoted are endorsed by the board, such comments must not be quoted unless the board is prepared, where appropriate, to corroborate or substantiate them to the standard required under the Takeovers Code and the directors' responsibility statement pursuant to Rule 9.3 is included.

5. Diagrams etc.

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

6. Use of television, videos, audio tapes etc.

If any of these are to be used, even when they do not constitute advertisements (see Rule 12.3), the Executive must be consulted in advance.

9.2 Sufficient information

Shareholders must be given sufficient information and advice to enable them to reach a properly informed decision as to the merits or demerits of an offer. Such information must be available to shareholders early enough to enable them to make a decision in good time. The obligation of an offeror in these respects towards the shareholders of the offeree company is no less than the offeror's obligation towards its own shareholders.

9.3 Directors' joint and several responsibility

All documents should state that all directors of the company issuing the document of the offeror, or, as appropriate, the offeree company, jointly and severally accept full responsibility for the accuracy of information contained in the document and confirm, having made all reasonable inquiries, that to the best of their knowledge, opinions expressed in the document have been arrived at after due and careful consideration and there are no other facts not

contained in the document, the omission of which would make any statement in the document misleading.

9.4 Executive's consent for exclusion of directors

If it is proposed that any director should be excluded from such a statement, the Executive's consent is required. In such cases, the exclusion and reasons for it should be stated in the document.

Notes to Rules [9.3](#) and [9.4](#):

1. *Delegation of responsibility*

If detailed supervision of any document has been delegated to a committee of the board, each of the remaining directors of the company must reasonably believe that the persons to whom supervision has been delegated are competent to carry it out and must have disclosed to the committee all relevant facts directly relating to himself (including his close relatives and related trusts) and all other relevant facts known to him and relevant opinions held by him which, to the best of his knowledge and belief, either are not known to any member of the committee or, in the absence of his specifically drawing attention thereto, are unlikely to be considered by the committee during the preparation of the document. This does not, however, override the requirements of the Listing Rules relating to the acceptance of responsibility for listing documents where applicable.

The board as a whole must ensure that proper arrangements are in place to enable it to monitor the conduct of an offer so that each director may fulfil his responsibilities under the [Takeovers Code](#). These arrangements should ensure that:-

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

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

Any director who has any doubt concerning the propriety of any action as far as the Takeovers Code is concerned should ensure that the Executive is consulted.

The above procedures shall not affect the directors' joint and several responsibility under Rule 9.3.

The Executive requires directors to co-operate with it in connection with its enquiries; this will include the provision, promptly on request, of copies of minutes of board meetings and other information available to them which may be relevant to the enquiry.

2. Joint announcement and composite document

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

3. Conflicts of interest

Where a director has a conflict of interest, depending on the circumstances, such a director may amend the responsibility statement required by Rule 9.3 to make it clear that he does not accept responsibility for the views of the board on the offer. See also Note 3 to paragraph ~~(1)~~ of Schedule II.

4. When an offeror is controlled

If ~~the~~ offeror is controlled, directly or indirectly, by another person or company, the Executive must be consulted. The Executive will normally require that, in addition to the directors of the offeror, such other person or the directors of an ultimate parent company or, if there is a listed company in the chain between the ultimate parent company and the offeror, the directors of the listed company take responsibility for documents issued by or on behalf of the offeror. In the case of professional trustee companies, the Executive would look to the person in accordance with whose directions or wishes the trustees are accustomed to act and such person would be required to take responsibility.

5. Quoting information about another company

Where a company issues a document or advertisement containing information about another company which makes it clear that such information has been compiled from published sources, the directors of the company issuing the document or advertisement need, as regards the information so compiled, only take responsibility for the correctness and fairness of its reproduction or presentation. The responsibility statement may be amended accordingly. Where statements of opinion or conclusions concerning another company or unpublished information originating from another company are included, these must normally be covered by a responsibility statement by the directors of the company issuing the document or advertisement or by the directors of the other company. The qualified form of responsibility statement provided for in this Note is not acceptable in such instances.