

ashurst

UK Public M&A Review

2020



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Introduction

Welcome to Ashurst's Annual UK Public M&A Review - 2020.

As with our previous annual reviews, the 2020 Review covers developments specific to Q4 as well as a round-up on public M&A activity seen throughout the year.

The *Overview* section provides an analysis of trends in the UK public M&A market during the course of 2020 in comparison with previous years. A summary of the key features of the firm offer announcements we have reviewed in 2020 that formed the basis of this analysis can be found at the *Appendix*.

The *News digest* section summarises recent news and developments from the UK Takeover Panel (the “**Panel**”) and any noteworthy court cases and regulatory updates from Q4 2020. We also take a brief look back at some key points from the rest of the year. Further details of Panel updates in 2020 are set out in the *Practice & Panel Statements* section.

In the last quarter of 2020, Ashurst's UK public M&A mandates included advising:

- (i) Cardtronics plc on the \$2.3 billion offer from funds managed by affiliates of Apollo Global Management, Inc and Hudson Executive Capital LP;
- (ii) Barclays Bank PLC in connection with the £7.2 billion recommended cash offer for RSA Insurance Group plc by Intact Financial Corporation and Tryg A/S;
- (iii) Goldman Sachs International and Numis Securities Limited in connection with the £594 million recommended cash and share offer for GoCo Group plc by Future plc;
- (iv) Goldman Sachs International in connection with the €480 million takeover of Applegreen plc by Causeway Consortium Limited;
- (v) UBS AG in connection with the £506.8 million recommended cash offer for Urban&Civic plc by The Wellcome Trust; and
- (vi) Goldman Sachs International in connection with the £774 million cash and share offer for Codemasters Group Holdings plc by Take-Two Interactive Software, Inc.

We hope you enjoy reading this year's review and, as always, we would welcome any feedback you may have.

With our very best wishes for 2021,

The Ashurst Public M&A Team

Overview

	2020	2019	2018
Announced bids ¹	41	74	45
Recommended	38	63	38
Schemes of arrangement	30	50	33
Average of bid premia (% unweighted)	59.7%	54.6%	57.0%

Deal volume

Of the deals we review (which excludes minority offers by existing majority shareholders), 2020 saw UK public M&A deal volume fall sharply against what was a very busy year in 2019. This decrease is not entirely surprising in light of the significant disruption and uncertainty caused by the COVID-19 pandemic, which had a particularly noticeable impact on deal activity during Q2 2020. However, momentum increased towards the end of the year with 17 firm offers announced in Q4 2020 alone, accounting for approximately 41% of the total.

41 firm offers were announced in 2020. This is more closely aligned with deal volumes in 2018 and 2017, which saw 45 and 46 firm offers announced respectively. In 2020, there were 23 firm offers for Main Market targets (a 34% decrease on the 35 Main Market bids in 2019) and 17 firm offers for AIM targets (a 45% decrease compared to 31 in 2019). Outside of the Main Market and AIM, there was just one offer for an AQSE Growth Market target (StillCanna Inc.'s offer for Sativa Group Plc).



A summary of the key features of these announced offers in 2019 is set out in the table in the *Appendix*.

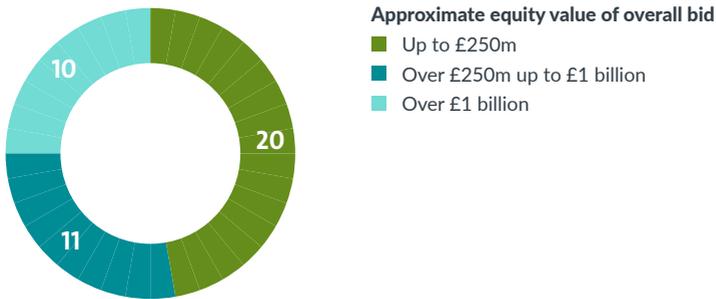
¹ This includes takeovers in respect of which a firm intention to make an offer has been announced under Rule 2.7 of the Code. It excludes offers by existing majority shareholders for minority positions.

Deal values

Unsurprisingly, given the drop in deal volume, the aggregate value of deals in 2020 also fell to approximately £35.2 billion. This represents a decrease of around 35% from the £54.2 billion seen in 2019 and approximately 71% from the £120.4 billion in 2018. However, it is worth noting that 2018 and 2019 were both exceptional years, albeit for different reasons: 2018 for the number of 'mega deals' and offers in excess of £1 billion, and 2019 for the sheer volume of announced bids.

20 firm offers were made with an equity value of up to £250 million (inclusive) in 2020, accounting for almost half of the total number of bids. At the other end of the spectrum, there were 10 offers in excess of £1 billion (compared to 13 in 2019). Q4 2020 in particular saw a rise in 'big-ticket' activity; five of the 17 offers in that quarter were in excess of £1 billion, including the £7.2 billion offer from Intact Financial Corporation and Tryg A/S for RSA Insurance Group plc, which was the highest value deal announced during the year.

The remaining 11 offers had bid values in excess of £250 million up to £1 billion.



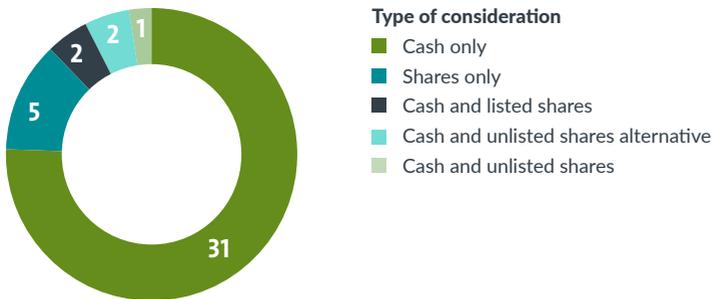
Bid consideration

Cash continued to be the consideration in the vast majority of bids in 2020, with 31 of the 41 firm offers (approximately 76%) being solely in cash. Alongside this, there were:

- two cash and listed shares offers (Take-Two Interactive Software, Inc's offer for Codemasters Group Holdings Plc and Future plc's offer for GoCo Group plc);
- two cash and unlisted shares alternative offers (TowerBrook Capital Partners (U.K) LLP's and Warburg Pincus LLC's offer for AA plc and Toscafund Asset Management LLP's and Penta Capital LLP's offer for TalkTalk Telecom Group PLC); and
- one cash and unlisted shares offer (Interactive Investor Group's offer for Share plc).

The consideration for the remaining five bids comprised solely bidder shares. In contrast to 2019, there were no offers with a mix and match facility in 2020.

The diagram below sets out the composition of bid consideration in 2020.



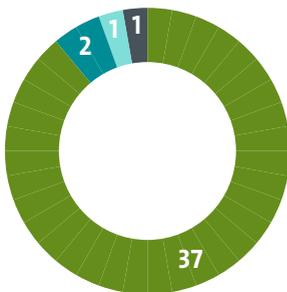
Board recommendation

38 of the 41 firm offers were recommended by the target board at the time of the initial Rule 2.7 announcement (approximately 93%). The Take-Two Interactive Software, Inc offer for Codemasters Group Holdings Plc was initially recommended but subsequently lost its recommendation in favour of a competing offer by Electronic Arts Inc.

The reverse was the case with the offer by Connells Limited for Countrywide plc. At the time of the initial Rule 2.7 announcement, the Countrywide plc board did not recommend the offer and urged shareholders to take no action in relation to it at that stage. However, the terms of an increased recommended cash offer were later announced by the boards of both companies.

The Garda World Security Corporation offer for G4S plc was neither recommended by the target board at the time of the initial Rule 2.7 announcement nor thereafter, notwithstanding an increased and final offer being made. The G4S plc board instead recommended an offer made by Allied Universal Topco LLC.

No recommendation was made by the Volga Gas plc board in relation to the offer by GEM Capital Holdings (CY) Ltd.



Recommendation status

- Recommended
- No recommendation
- Recommended (initially no recommendation)
- No recommendation (initially recommended)

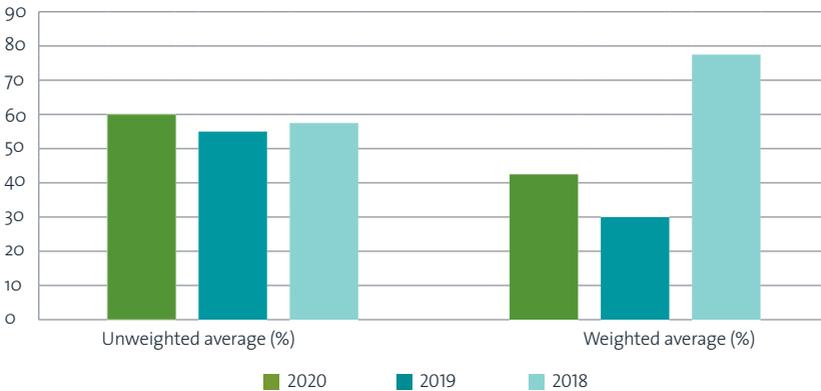
Bid premia

Average bid premia (unweighted) across all firm offers increased slightly from 54.6% in 2019 to 59.7% in 2020. 59.7%, in fact, represents the highest figure in the last four years: in 2018, the unweighted average was 57% and in 2017, it was significantly lower at 33.3%. For offers above £250 million, the unweighted average for 2020 was 40.4%.

On a weighted basis, the average of the bid premia on announced bids in 2020 was 43.7%, up from 30.5% in 2019. For offers above £250 million in 2020, the weighted average was 42%.

In our view, this increase in bid premia reflects the view of many public company boards that, as a result of the impact of the COVID-19 pandemic, the market value of UK equities during 2020 was not representative of the long-term underlying value of many listed company businesses.

Average of bid premia across all firm offers



Bid structure

Consistent with recent years, and the high percentage of firm offers that were recommended by the target board, schemes of arrangement continued as the structure of choice in 2020. 30 bids were structured as schemes of arrangement (approximately 73%), with the remaining 11 being contractual takeover offers (approximately 27%).

These figures take into account the following switches in the bid structure, with Panel consent, after the applicable Rule 2.7 announcements were made:

- from a scheme of arrangement to a contractual takeover offer in the offer by Nova Resources B.V. for KAZ Minerals PLC; and
- from a contractual takeover offer to a scheme of arrangement in the offer by Connells Limited for Countrywide plc.

The full breakdown of bid structures in 2020 is shown in the diagram below.



Competing bids

There were two competing bids in 2020, compared to three in 2019. The target companies subject to these competing bids were G4S plc (first by Garda World Security Corporation and then by Allied Universal Topco LLC) and Codemasters Group Holdings Plc (first by Take-Two Interactive Software, Inc and then by Electronic Arts Inc., both announced in Q4 2020).

As noted above, the board of G4S plc unanimously rejected both the initial offer, and the increased and final offer by Garda World Security Corporation, instead recommending the offer by Allied Universal Topco LLC announced on 8 December 2020 with a bid value of approximately £3.8 billion. It is worth noting that the increased and final offer by Garda World Security Corporation reduced the acceptance condition from 90% to 50% plus one G4S plc share.

Given that Garda World Security Corporation's offer for G4S plc was unsolicited, the Panel granted a dispensation to allow G4S plc to enter into a break fee arrangement in connection with the Allied Universal Topco LLC offer, further details of which are below.

Codemasters Group Holdings Plc recommended the offer by Take-Two Interactive Software, Inc at the time of its Rule 2.7 announcement, but later withdrew this recommendation in favour of the subsequent bid by Electronic Arts Inc.

Private-equity backed bids

Proportionally, private equity-backed bids made up around half of all announced bids in 2020 (51%), although there was a small decrease in the total number of such bids from 29 in 2019 to 21. This decrease is not altogether unexpected given the higher deal volume in 2019 and the fact that it was a particularly notable year for P2Ps in comparison with recent years.

Break fees

Break fees

As noted above, an interesting feature of the Allied Universal Topco LLC offer for G4S plc in Q4 2020 was that the Panel granted a so-called 'white knight' dispensation under Note 1 on Rule 21.2 of the Takeover Code (the "**Code**") and permitted G4S plc to enter into a £38 million break fee arrangement with Allied Universal Topco LLC in light of the unsolicited bid from Garda World Security Corporation. The break fee is payable by G4S plc if the offer by Garda World Security Corporation (or any other competing offer made prior to the Allied Universal Topco LLC offer lapsing or being withdrawn in accordance with its terms) becomes effective or is declared or becomes unconditional in all respects.

Reverse break fees

As with 2019, there were two bids with reverse break fees in 2020. First, the StillCanna Inc. offer for Sativa Group Plc included a reverse break fee payable to Sativa Group plc equal to the greater of £1 million or, in the event that StillCanna Inc. entered into an alternative transaction, 25% of the value of such transaction.

Secondly, the offer by Caesars Entertainment, Inc. for William Hill PLC saw a reverse break fee of £270 million, payable to William Hill PLC in certain specified circumstances.

Other break fees

The GEM Capital Holdings (CY) Ltd offer for Volga Gas plc included a break fee up to a maximum amount of US\$200,000 payable by certain Volga Gas plc shareholders to GEM Capital Holdings (CY) Ltd if the offer did not complete, provided that certain other conditions were satisfied. In the event, one of the conditions - that the offer would be announced prior to 13 November 2020 – was not satisfied, and so the break fee did not become payable.

Irrevocable undertakings

Irrevocable undertakings were given on 38 bids. Of those 38 bids, 27 included irrevocable undertakings from non-director shareholders.

Matching or topping rights: non-director shareholders

There were matching and/or topping rights in five bids for which non-director shareholder irrevocable undertakings were obtained in 2020. This only represents around 12% of all firm offers announced, which is almost half of the equivalent proportion in 2019 (approximately 22%).

Non-solicitation and notification undertakings: non-director shareholders

Only one firm offer in 2020 included a non-solicitation and/or notification undertaking in non-director shareholder irrevocables, being the offer by The Wellcome Trust for Urban&Civic plc. In that bid, J O Hambro Capital Management UK Dynamic Fund agreed: (i) not to directly or indirectly solicit or encourage any third party to make any offer for any shares or other securities of Urban&Civic plc (or otherwise take any action that might prejudice the successful outcome of the acquisition); and (ii) to notify The Wellcome Trust promptly of any approach by a third party which may lead to a competing offer being made.

Formal sale processes

Of the 13 formal sale processes announced in 2020 by Main Market or AIM companies, three went on to result in the announcement of a firm offer. The first was the offer by Infopro Digital Group B.V for Haynes Publishing Group PLC announced in Q1 2020, with the firm offer coming around three months after the formal sale process had been launched.

This was followed by Rosen's Diversified, Inc.'s offer for Collagen Solutions plc in Q3 2020, whereby the firm offer was announced just over four months after the formal sale process had been launched. Finally, the GEM Capital Holdings (CY) Ltd offer for Volga Gas plc was announced some seven months after the formal sale process had been launched in early April 2020.

News digest

Q4 2020 saw the publication by the Panel of a consultation paper (PCP 2020/1) setting out proposed amendments to the Code which, if implemented, would represent the most significant changes to the rules in recent years. Certain of the proposed changes set out in PCP 2020/1 relate to the materiality requirements regarding the invocation of offer conditions, which Ashurst has particular expertise in, having successfully advised the board of Moss Bros Group plc (“**Moss Bros**”) on the failed attempt by Brigadier Acquisition Company Limited (“**Brigadier**”) to lapse its offer for Moss Bros in May 2020.

The key proposed changes are summarised below and include: (1) simplifying the offer timetable; (2) removing the special status given to conditions relating to CMA and EC competition clearances; and (3) setting out in more detail how the Panel Executive applies the “material significance” test regarding the invocation of offer conditions.

The Panel expects to publish its response to this consultation, which will set out the final amendments to the Code, in Spring 2021.

In addition to the consultation paper referred to above, a number of more minor amendments have also been made to the Code without consultation, including changes to document charges, which took effect from 31 December 2020. Finally, the amendments to the Code resulting from the UK’s withdrawal from the European Union (as documented in Instrument 2019/3) also came into effect on 31 December 2020, a summary of which is included below.

The Panel proposes changes to offer timetable, treatment of regulatory conditions and other aspects of the Code

Background

On 27 October 2020, the Panel published [Public Consultation Paper 2020/1](#) (the “**PCP**”), which sets out a number of significant changes proposed to the Code. Appendix A of the PCP sets out the proposed amendments to the Code, and Appendix D includes a helpful diagram highlighting the key differences between the current and proposed contractual offer timetables.

The proposed changes to the Code centre around simplifying the operation of the offer timetable on a contractual offer. There are also proposals to address the different way in which the rules in the Code currently apply to conditions dealing with official authorisations and regulatory clearances, and to accommodate the potentially lengthy timeframes involved in satisfying such conditions. Additionally, there are certain changes that have been proposed which specifically relate to schemes of arrangement and mandatory offers respectively, as well as miscellaneous changes resulting from the other proposals.

The Panel invited comments by 15 January 2021 and will now consider any responses and publish a response statement, although given the extensive pre-consultation, it is not expected that many changes to these proposals will be made. There will be a three month grace period before any new rules come into effect and it is expected that the proposed changes are likely take effect in Q2 2021.

A summary of the key changes to the Code that have been proposed by the Panel in the PCP are set out in further detail below.

1. Offer timetable

The offer timetable rules in the Code provide an orderly framework for the conduct of takeovers. The key proposals in the PCP aim to simplify the offer timetable whilst maintaining that orderly framework objective, which remains of particular relevance to a hostile or competitive offer situation. There are also proposals to remove concepts that are of little or no practical application.

(a) Single date for the satisfaction of all offer conditions

There will no longer be a distinction between the date by which the acceptance condition to an offer must be satisfied and the date by which all other conditions to the offer must be satisfied or waived. As a result, the concept of an offer becoming, or being declared, “unconditional as to acceptances” will be removed.

Instead, the offeror will need to specify an “unconditional date”, which will be the date by which all of the conditions to its offer must be satisfied or waived. This will be “Day 60” (the 60th day following the publication of the initial offer document) unless: (i) the Panel sets a later date pursuant to an extension of the offer timetable; or (ii) the offeror sets a shorter timetable by making an “acceleration statement” specifying the latest date by which all of the conditions to the offer must be either satisfied or waived. Subject to certain exceptions, the acceptance condition will only be capable of being satisfied once all of the other conditions to the offer have been satisfied or waived.

(b) Notice to lapse an offer

The existing contractual offer timetable permits offerors to have a series of “closing dates” on which the offeror can choose to lapse the offer if, at that time, it has received insufficient acceptances or otherwise extend the offer for a further period until the next closing date. Under the proposals being consulted on, there will no longer be any closing dates. Instead, a simpler procedure would be introduced enabling an offeror to lapse the offer if the acceptance condition is not satisfied. This would be achieved by the offeror serving an “acceptance condition invocation notice”, to be served at least 14 days before the proposed date of lapsing, which would give offeree company shareholders notice of its intention to lapse the offer prior to the unconditional date if insufficient acceptances are received by a specified date. There will be new rules concerning the timing and consequences of serving such a notice. This proposal appears in part to be designed to remove the possibility that an offeror may lapse its offer as a result of an adverse change by invoking an acceptance condition in circumstances where it is unable to meet the “material significance” test required to invoke a MAC or similar condition.

(c) Long-stop date to satisfy all offer conditions

Under the proposals, an offeror will need to include a “long-stop date” in a contractual offer (similar to that typically specified on an offer implemented by a scheme of arrangement) by which all offer conditions must be satisfied. This is to help avoid the difficulties and risk of an offer becoming open-ended if the timetable is suspended pending the satisfaction or waiver of a condition relating to an official authorisation or regulatory clearance. For recommended offers, the offeror and offeree would agree the long-stop date between themselves; whereas for a hostile offer, the offeror will be required to consult the Panel to determine an appropriate date based on the clearance that the offeror reasonably expects may take the longest to obtain.

(d) Withdrawal rights for offeree company shareholders

Offeree company shareholders are currently only able to withdraw their acceptances from a date falling 21 days after the first closing date until the time that the offer becomes or is declared unconditional as to acceptances. This can result in offeree company shareholders being “locked-in”, so there is a proposal to allow them to withdraw their acceptance of an offer at any time prior to the acceptance condition being satisfied (and if the changes referred to above are implemented in the way the Panel has proposed, the acceptance condition will likely be the last condition to be satisfied). This proposal is consistent with US tender offer rules and may result in greater fluctuation in acceptance levels during the course of an offer.

2. Approach to regulatory and other conditions

The rules in the Code dealing with regulatory conditions and clearances currently treat the Competition and Markets Authority (the “CMA”) and the European Commission differently to other regulatory authorities from which authorisation or clearance may be required, a position which is considered no longer to be justifiable, particularly following the UK’s withdrawal from the European Union. Therefore, under the proposals, there will be consistent treatment for all official authorisations and regulatory clearances.

(a) Suspending the offer timetable

The Panel can currently suspend the offer timetable if, by Day 39, the CMA or European Commission have not initiated a phase 2 investigation. Under the proposals, an offeror or the offeree company will be able to make a request to the Panel to suspend the timetable if any condition relating to an official authorisation or regulatory clearance remains outstanding on Day 39. However, it would do so only if both the offeror and the offeree agree or, if only one of the parties wishes to suspend the timetable, the condition relates to a “material” authorisation or clearance. The PCP sets out an approach to assessing materiality.

(b) The CMA and the European Commission

The Code prevents an offeror from invoking a condition to lapse an offer unless the circumstances giving rise to the right to invoke are of “material significance” to it in the context of the offer. However, conditions specifically relating to CMA and European Commission competition clearances (as well as the acceptance condition and the scheme approval conditions) are not currently subject to this materiality threshold.

Under the proposals, this special status enjoyed by the CMA and European Commission will be removed so that all conditions relating to any official authorisation or regulatory clearance will be treated in the same way and be subject to the material significance test. In addition, the current requirement in the Code that an offer must include a term that it will lapse in the event of a phase 2 reference to the CMA or the European Commission is also proposed to be removed.

(c) Invoking a condition to lapse an offer and material significance

The proposals also include amending the Code to clarify how the Panel applies the “material significance” test with more detail on the factors that it will take into account, both for conditions relating to official authorisations and regulatory clearances and for other conditions. The amended Code will set out clearly the conditions to which the material significance test will *not* apply, including the acceptance condition, and it is further intended that the offer announcement and offer document will state which conditions are subject to the material significance test and, in respect of those conditions which are subject to that test, whether or not they may be waived by the offeror.

3. Other proposals

As noted above, there are also more standalone changes proposed to schemes of arrangement and mandatory offers respectively.

(a) Schemes of arrangement

Although an offeror cannot currently unilaterally cause a scheme of arrangement to become effective, it does, in practice, have the ability to prevent a scheme from becoming effective by refusing to take certain actions in connection with the court sanction hearing. Therefore, there is a proposal to amend the Code expressly to require the offeror to confirm that all the conditions have been satisfied (or waived) and to undertake to be bound by the scheme. However, in most cases, this is unlikely to result in any practical change to deals as it has become customary for offerors to be required to do this under the co-operation agreement with the offeree.

(b) Mandatory offers

There is a proposal to permit the Panel to grant a dispensation from the existing restriction in the Code on a person triggering a mandatory offer if the making or implementation of that offer is subject to any condition or consent. Such a dispensation will be limited to where:

- (i) the condition or consent relates to a material official authorisation or regulatory clearance;
- (ii) the triggering share purchase is itself subject to a condition relating to a material official authorisation or regulatory clearance in identical terms to the condition or pre-condition to the offer; and
- (iii) the invocation of the condition to the share purchase agreement (and the condition or pre-condition to the offer) is subject to the consent of the Panel, applying the “material significance” test.

This means that the obligation to make the mandatory offer will be triggered at the time that the share purchase agreement is entered into but the making of the mandatory offer would be subject to a pre-condition that the relevant authorisation or clearance is obtained. In practice, this would ensure that either: (a) the authorisation or clearance is obtained and the mandatory offer is made; or (b) the authorisation or clearance is not obtained and no mandatory is required to be made (as control is not acquired).

Other changes to the Code and the impact of the Brexit transition period ending

In addition to the proposals in the PCP described above, on 12 November 2020 the Panel and the Code Committees respectively published [Instrument 2020/1](#) and [Instrument 2020/2](#), both of which make certain amendments to the Code.

Instrument 2020/1 amends the *Document Charges* section of the Code in relation to “whitewash” documents such that a fixed charge of £2,500 is payable where a waiver previously obtained under Rule 37 is renewed at the same time as a company renews an authority for the purchase of its own shares. This amendment to the Code reflects long-standing practice in this area.

The most noteworthy change from Instrument 2020/2 is that the Note on the definition of “reverse takeover” in the *Definitions* section of the Code has been deleted on the basis it is no longer relevant following the UK’s withdrawal from the European Union and resultant changes elsewhere in the Code. The other changes made are minor updates to specific references in the Code.

As we have previously noted, the most significant Brexit-related changes to the Code that took effect from 11:00 p.m. on 31 December 2020 alongside the above amendments are as follows:

- (a) *Shared Jurisdiction*: the Code no longer applies to an offer for:
 - a company with its registered office in the UK and whose securities are admitted to trading on a regulated market in an EEA Member State (but not in the UK) and which does not satisfy the “residency test” (although the Code continues to apply in full where such company satisfies the “residency test”); or
 - a company with its registered office in an EEA Member State and whose securities are admitted to trading on a regulated market in the UK but not in that EEA Member State;
- (b) *Introduction to the Code*: various consequential amendments, including to certain definitions, have been made as a result of the Takeovers Directive ceasing to apply in the UK; and
- (c) *Rule 30.4 (Making Documents, Announcements and Information Available to Shareholders, Persons with Information Rights and Employee Representatives (or Employees))*: this has been amended to refer to the UK, Channel Islands and Isle of Man only. Accordingly, it is now possible to seek dispensation from the requirements of Rule 30.4 in respect of shareholders located in the EEA.

On a related note, from 1 January 2021, UK companies are no longer able to participate in the EU cross-border merger regime following the revocation of The Companies (Cross-Border Mergers) Regulations 2007 (which previously transposed the Cross Border Mergers Directive into domestic law). Practice Statement No. 18 (Cross-Border Mergers) has accordingly been withdrawn.

If you would like to discuss or need further information about any of the changes or proposed changes to the Code referred to in this review, please speak with your usual Ashurst contact or any of the contacts detailed below.

CLLS and Law Society submit written evidence on National Security and Investment Bill

On 2 December 2020, a Joint Working Party of the Company Law Committees of the City of London Law Society and the Law Society of England and Wales (the “JWP”) submitted a [Joint Response](#) to the UK government’s National Security and Investment Bill (the “NSI Bill”). In general, the JWP is supportive of the objectives behind the NSI Bill, but is concerned that the regime as currently proposed may have a detrimental impact on the UK as a destination for inbound investment.

The JWP has highlighted a range of potential issues with the NSI Bill in its current form and offered recommendations as to how these could be addressed. In the context of public M&A transactions, particular concern was expressed about the proposal that notifiable acquisitions are “void” if not approved before completion. The JWP has argued that this is potentially unworkable in practice, and that it would be exceptionally difficult and unfair to unwind public M&A transactions involving public market (including retail) investors. It has therefore recommended that the government includes an appropriate exemption from these remedies for transactions subject to the Code, as well as for certain capital markets transactions involving listed companies (such as underwriting arrangements for placings and rights issues).

The report stage and third reading of the NSI Bill were due to take place on 20 January 2021. We will continue to follow closely the progress of the NSI Bill through Parliament and report on any material issues arising from it that relate to UK public M&A transactions.

The year in review: looking back at Q1-Q3 2020

Panel Director General secondment extension

In late January, the Panel announced that Simon Lindsay's secondment from Citigroup had been extended beyond its initial two year term. He will continue as Director General of the Panel until 30 June 2021.

Moss Bros ruling

As noted above, Q2 2020 saw an important ruling by the Panel Executive concerning the issue of lapsing a takeover offer on account of material adverse change conditions. Brigadier had sought to lapse its £22.6 million offer to purchase Moss Bros due to the impact of COVID-19 and related government measures on the Moss Bros business. The Panel Executive ruled that Brigadier should not be permitted to invoke any of the relevant conditions to its offer as it had not established that the circumstances which would have given rise to such rights were of "material significance" to Brigadier in the context of the offer, and so the requirements of Rule 13.5(a) of the Code had not been satisfied. Following this ruling and the subsequent withdrawal of Brigadier's request for a review of the decision, the scheme of arrangement to implement the offer duly became effective on 11 June 2020.

Ashurst advised the board of Moss Bros on the ruling in its favour.

New merger control protections for public health and national security

A fourth public interest ground on which the government can intervene in UK merger control came into effect on 23 June 2020 in order to maintain the UK's capability to combat, and mitigate the effects of, public health emergencies. In short, the UK government can now block a transaction or (more likely) impose remedies if it has concerns that an acquisition of a relevant UK entity may make it more difficult to combat public health emergencies, such as the COVID-19 pandemic.

The Panel's 2020 Annual Report and Accounts

In late September 2020, the Panel published its Annual Report and Accounts for the year ended 31 March 2020 – later than usual due to COVID-19 disruption. Some of the highlights from the Annual Report and Accounts that are not covered elsewhere in this review are set out below:

- 2019-2020 was one of the most active years on record in terms of public takeovers, particularly at the mid-market level, with a total of 73 announced offers (representing an almost 40% increase on the running average from the previous five years);
- 11 Educational and Warning letters were issued by the Panel during the course of the year, although no private censures were issued;
- Claudia Arney and Jessica Ground both joined the Panel, taking up roles on the Hearings Committee and Code Committee respectively; and
- in September 2019, the Hearings Committee cold-shouldered David King for a period of four years following his breach of Rule 9 of the Code by failing to make a mandatory offer to the remaining shareholders of Rangers International Football Club PLC when required to do so.

Practice & Panel Statements

The following Practice and Panel Statements were issued by the Panel during 2020 – in reverse chronological order:

Practice Statements

There were no Practice Statements issued during 2020.

Panel Statements

Number	Date	Subject	Summary
2020/11	12/11/20	Minor amendments to the Takeover Code	Minor Code amendments
2020/10	27/10/20	Code Committee – Public Consultation Paper: Conditions to offers and the offer timetable	Publication of Public Consultation Paper 2020/1
2020/9	26/10/20	William Hill plc	Apollo Management International plc – deadline for clarification under section 4 of Appendix 7 of the Code
2020/8	25/09/20	2020 Annual Report	Publication of the Panel's Annual Report and Accounts
2020/7	17/07/20	Annual Report	Delay to the publication of the Panel's Annual Report and Accounts for 2020
2020/6	26/05/20	Moss Bros Group plc	Withdrawal of request for Hearings Committee review
2020/5	21/05/20	Moss Bros Group plc	Notification of request for Hearings Committee review
2020/4	19/05/20	Moss Bros Group plc	Ruling of the Panel Executive
2020/3	15/04/20	New Panel Members	Panel Appointments
2020/2	17/03/20	Panel Executive	COVID-19
2020/1	22/01/20	Director General	Secondment of the Director General extended

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Appendix: Announced UK takeover bids (1 January to 31 December 2020)*

Target (Market)	Bidder	Bid value	Bid premium**	Recommended	Hostile/ No Recommendation	Rule 9 offer	Cash	Shares (L/U/A)	Other consideration	Mix and match	Offer***	Partial Offer	Scheme	Offer-related arrangements [□]	Formal sale process	Non-solicit undertaking of bid in shareholder irrevocables	Matching/ Topping rights****	Shareholder vote	Profit forecast/Q/FBS
Q4 2020																			
McCarthy & Stone plc (Main Market)	Lone Star Real Estate Fund VI, LP	£647 million ²	44.6%	•			•						•	•C					
KAZ Minerals PLC (Main Market)	Nova Resources BV. ³	£3 billion	12.1%	•			•				• ⁴			•C ⁵					
Horizon Discovery Group plc (AIM)	PerkinElmer, Inc.	£296 million	108.3%	•			•						•	•C					
LiDCO Group Plc (AIM)	Masimo Corporation	£31.1 million	77.8%	•			•				•						• ⁶		
Alternative Credit Investments plc (Main Market)	Waterfall Asset Management, LLC	£639.2 million	5.1%	•			•						•						
Urban&Civic plc (Main Market)	The Wellcome Trust	£506.8 million	63.5%	•			•						•	•C		• ⁷			
Codemasters Group Holdings Plc (AIM)	Take-Two Interactive Software, Inc	£774 million ⁸	13.7%		• ⁹		•	•L					•	•C ¹⁰					•
Volga Gas plc (AIM)	GEM Capital Holdings (CY) Ltd	£19.16 million	10.28%		•		•				•			• ¹¹	•				
RSA Insurance Group plc (Main Market)	Intact Financial Corporation Tryg A/S	£7.2 billion	51%	•			•						•	•C ¹²				•B ¹³	•
AA plc (Main Market)	TowerBrook Capital Partners (U.K.) LLP Warburg Pincus LLC	£219 million	40%	•					•U ¹⁴				•	•C ¹⁵					•
GoCo Group plc (Main Market)	Future plc	£594 million	23.6%	•			•	•L					•	•C				•B ¹⁶	•
Countrywide plc (Main Market)	Connells Limited	£134.4 million ¹⁷	172%	• ¹⁸			•						• ¹⁹	• ²⁰					
IMImobile PLC (AIM)	Cisco Systems, Inc.	£543 million	47.8%	•			•						•	•C					•
G4S plc (Main Market)	Allied Universal Topco LLC	£3.8 billion	68%	•			•				•			•C, F ²¹					
Calisen plc (Main Market)	BlackRock, Inc. Goldman Sachs International Mubadala Investment Company PJSC	£1.43 billion	26.3%	•			•						•	•C					
Codemasters Group Holdings Plc (AIM)	Electronic Arts Inc.	£945 million	38.9%	•			•						•	•C					•
TalkTalk Telecom Group PLC (Main Market)	Toscafund Asset Management LLP Penta Capital LLP	£1.11 billion	16.4%	•					•U ²²				•	•C					

- 2 The aggregate value of the original offer for McCarthy & Stone plc in the Rule 2.7 announcement was approximately £630 million. The bid premium under the original offer was 38.6%. On 7 December 2020, the boards of directors of Bidco and McCarthy & Stone plc announced that they had reached agreement on the terms of an increased and final recommended cash offer of approximately £647 million (the "Final Offer"). The financial terms of the Final Offer were expressed to be final and would not be increased, except that Bidco reserves the right to increase the amount of the offer price in the event of an announcement of an offer or a possible offer for McCarthy & Stone plc by a third party offeror or potential offeror.
- 3 Nova Resources BV is a wholly-owned subsidiary of Vostok Cooper BV, and is itself indirectly owned by a consortium comprising Oleg Novachuk (current chairman of KAZ Minerals PLC) and Vladimir Kim (a non-executive director of KAZ Minerals PLC) (the "Consortium"), both of whom are joint offerors in relation to the acquisition.
- 4 It was originally intended that the takeover would be implemented by way of a scheme of arrangement. However, on 7 December 2020 it was announced that, with the consent of the Panel, Nova Resources BV had elected to switch the acquisition structure to a recommended takeover offer (with a 75% acceptance condition) in order to increase certainty of execution.
- 5 In addition to the Co-Operation Agreement between Nova Resources BV and KAZ Minerals PLC, there is a separate Bid Conduct Agreement between (1) Oleg Novachuk, (2) Vladimir Kim, (3) Vostok Cooper BV and (4) Nova Resources BV. The terms of the Bid Conduct Agreement include an agreement not to pursue a competing proposal with respect to KAZ Minerals PLC or take any action to frustrate the acquisition or solicit or induce another person to make a competing proposal unless certain circumstances arise (e.g. the offer completes, is withdrawn or lapses or the parties agree to no longer pursue the acquisition). There is also a Shareholders' Agreement between Vostok Cooper BV, and the Consortium which governs, inter alia, the terms of investment into the former.
- 6 Matching rights in certain irrevocables in the event of a competing offer from a third party that is 10%+ higher than the offer price. Shareholder irrevocable undertakings from (1) Eiffel Investment Group, (2) Herald Investment Management and (3) Vermeer Partners will cease to be binding if Bidco fails to announce, within five business days of the date of such a higher competing offer being made, a revised offer which is at least as favourable as the value of the competing offer.
- 7 There is a non-solicitation undertaking given by J O Hambro Capital Management UK Dynamic Fund which also includes an obligation to promptly inform The Wellcome Trust Limited (as trustee of the Wellcome Trust) of any approach by a third party which may lead to an offer for Urban&Civic plc.
- 8 Bid value based on Take-Two Interactive Software, Inc's closing share price of US\$176.41 and the exchange rate of US\$1.33:£1 on 27 November 2020, being the last practicable date prior to the publication of the scheme document. The bid value given in the Rule 2.7 announcement was £726 million and the bid premium 11.5%.
- 9 The Take-Two Interactive Software, Inc offer was initially recommended by the board of Codemasters Group Holdings Plc in the Rule 2.7 announcement dated 10 November 2020, but this recommendation was subsequently withdrawn on 14 December 2020 when it was announced that a competing offer had been made by an indirect subsidiary of Electronic Arts Inc. which the board unanimously intended to recommend instead.
- 10 The terms of the Co-Operation Agreement provided for its termination at either party's election in the event that a competing proposal is recommended by the Codemasters Group Holdings Plc board.
- 11 Break Fee Agreement entered into between Dehus Dolmen Nominees Limited (which holds Volga Gas plc shares for the benefit of certain Baring Vostok Funds) and Baring Vostok Investment Managers Limited (on behalf of Baring Vostok Investments PCC Limited) (two of Volga Gas plc's major shareholders and together, the "Baring Parties") and GEM Capital Holdings (CY) Ltd. Under this agreement, the Baring Parties agreed to pay to GEM Capital Holdings (CY) Ltd up to a maximum amount of US\$200,000 on account of the bidder's professional advisers' due diligence costs if (a) the offer did not complete and (b) certain other conditions were satisfied. However, the break fee ultimately did not become payable as one of the conditions – that the offer would be announced prior to 13 November 2020 – was not met.
- 12 In addition to a Co-Operation Agreement and a Confidentiality Agreement, there is a Clean Team Agreement between Intact Financial Corporation, Tryg A/S and RSA Insurance Group plc in order to ensure that the exchange of information between the parties that is indispensable for the purpose of evaluating and negotiating the transaction complies with applicable competition laws. Further, a number of pension-related agreements have been entered into including Memoranda of Understanding, Guarantees, Subscription Deeds and Payment Direction Agreements.
- 13 Tryg A/S requires shareholder approval for such resolutions as are required by Danish law to authorise its board of directors to increase the share capital of the company in order to effect and implement a rights issue in connection with the financing of the acquisition.
- 14 Consideration structure comprises cash and unlisted shares alternative. Eligible AA plc shareholders may elect for the alternative offer under which they would receive 1 Topco unit (comprising 2.8636363636 Topco B preference shares and 0.3181818182 Bidco B ordinary shares) for each AA plc share. Eligible AA plc shareholders are only able to elect for the alternative offer in relation to their entire holding of AA plc shares and not part only. The maximum number of Topco units available to eligible AA plc shareholders under the alternative offer is limited to 16% of the Topco offer shares.
- 15 In addition to a Co-Operation Agreement and a Confidentiality Agreement, there is a Memorandum of Understanding between Topco and the trustee of the AA plc UK pension scheme in relation to certain pensions arrangements. There is also a Refinancing Costs Side Letter between AA plc, TowerBrook Capital Partners (UK) LLP and Warburg Pincus LLC pursuant to which Bidco has agreed to reimburse the AA plc group's costs in relation to the proposed issue of new Class B3 Notes up to amounts to be agreed between the parties from time to time. Bidco will not be required to reimburse the AA plc group's costs if the acquisition ceases to be recommended by the AA plc board.
- 16 Acquisition is subject to approval by Future plc shareholders as it constitutes a Class 1 transaction under the Listing Rules.
- 17 The aggregate value of the original offer for Countrywide plc was approximately £112.1 million and the bid premium 124%. On 31 December 2020, the boards of Connells Limited and Countrywide plc announced that they had reached agreement on the terms of an increased recommended cash offer by Connells Limited following the consideration of potential alternative options by Countrywide plc.
- 18 The initial offer by Connells Limited announced in its Rule 2.7 announcement on 7 December 2020 was not recommended by the board of Countrywide plc. However, on 31 December 2020 the boards of Connells Limited and Countrywide plc announced the terms of an increased recommended cash offer.
- 19 On 31 December 2020, Connells Limited announced that its increased offer was to be implemented by way of a scheme of arrangement rather than a takeover offer (having obtained Panel consent for the switch).
- 20 There is a Clean Team Agreement between Connells Limited, Countrywide plc and their respective legal advisers. The purpose of the agreement is to ensure that the exchange and/or disclosure of certain materials relating to the parties for the purposes of assessing competition or other regulatory issues and seeking relevant clearances is undertaken on a confidential basis and that certain commercially and competitively-sensitive information is ring-fenced and only exchanged or disclosed between the parties' respective legal advisers.
- 21 In addition to a Co-Operation Agreement and various Confidentiality Agreements, there is a Takeover Panel Protocol between Allied Universal Topco LLC and G4S plc, which sets out the terms on which a consultant engaged by G4S plc has conducted a synergy analysis and assessment in relation to the offer. There is also a Memorandum of Understanding between Allied Universal Topco LLC, Bidco and the G4S UK Pension Trustee setting out the parties' intentions with respect to the future funding of the G4S group's UK defined benefit pension scheme, and an Escrow Agreement between G4S plc, Bidco and Citibank, N.A. London Branch as required under the Co-Operation Agreement. Following a white knight dispensation from the Panel, the Co-Operation Agreement itself includes a break fee of £38 million payable by G4S plc to Bidco if the offer by Garda World Security Corporation or any other competing offer becomes effective or is declared or becomes unconditional in all respects.
- 22 Consideration structure comprises cash and unlisted shares alternative whereby, as an alternative to the cash offer, scheme shareholders (other than those resident or located in a restricted jurisdiction) may elect to receive one unlisted ordinary share in the capital of Bidco for each scheme share held. A scheme shareholder may elect to take up the alternative offer in respect of all or part of their holding of scheme shares.

Key

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- **** In shareholders' irrevocables (unless indicated otherwise)
- Permitted acquisitions under Rule 21.2 of the Code
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- NP No reverse given in offer documentation or nil premium
- R Premium break fee
- S Standstill agreement
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- B Bidder shareholder approval
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Appendix: Announced UK takeover bids (1 January to 31 December 2020)*

Target (Market)	Bidder	Bid value	Bid premium**	Recommended	Hostile / No Recommendation	Rule 9 offer	Cash	Shares (L/U/A)	Other consideration	Mix and match	Offer***	Partial Offer	Scheme	Offer-related arrangements [□]	Formal sale process	Non-solicit undertaking of bid in shareholder irrevocables	Matching/ Topping rights****	Shareholder vote	Profit forecast/Q/FBS
Q3 2020																			
Cello Health plc (AIM)	Value Demonstration UK Holdings Limited	£178.8 million	43.8%	•			•						•	• ²³			• ²⁴		
RockRose Energy plc (Main Market)	Viaro Investment Ltd	£247.6 million	64%	•			•						•						
HWSI Realisation Fund Ltd (Main Market)	Cubitt Trade Holdings LLC	£79.64 million	91.38%	•			•						•						
HML Holdings plc (AIM)	Harwood Capital LLP	£18.85 million	27.12%	•			•				• ²⁵								
Highland Gold Mining Ltd (AIM)	Fortiana Holdings Ltd	£1.09 billion	4%	•		•	•				• ²⁶			• ^{C27}					
Hastings Group Holdings plc (Main Market)	Sampo plc Rand Merchant Investment Holdings Ltd		47.1%	•			•						•	• ^C					
SDL plc (Main Market)	RWS Holdings plc	£854 million	52%	•				• ^A					•	• ^{C28}				• ^{B29}	
Collagen Solutions plc (AIM)	Rosen's Diversified, Inc.	£30.41 million	441.67% ³⁰	•			•				•				•				
Modern Water plc (AIM)	DeepVerge plc (formerly Integumen plc)	£16 million ³¹	8.9%	•				• ^A			•							• ^{B32}	
G4S plc (Main Market)	Garda World Security Corporation	£3.68 billion ³³	61%		•		•				• ³⁴								
William Hill PLC (Main Market)	Caesars Entertainment, Inc.	£2.9 billion	25%	•			•						•	• ^C R ³⁵					

- 23 There is a Personal Data Sharing Agreement, under which Cello Health plc and Value Demonstration UK Holdings Limited agreed to comply with all obligations imposed on a controller under UK data protection legislation. In particular, Value Demonstration UK Holdings Limited agreed to process any shared personal data only for the purposes of the acquisition, and to ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
- 24 Matching rights.
- 25 75% acceptance condition.
- 26 In addition to a 50%+ acceptance condition, dispensation has been received to allow for the posting of the mandatory offer document to be pre-conditional on the receipt of clearance from the Russian Federal Antimonopoly Service.
- 27 There is a Sale and Purchase Agreement ("**SPA**"), under which Fortiana Holdings Ltd has agreed to purchase a 40% stake in Highland Gold Mining Ltd, thereby triggering the Rule 9 mandatory bid announcement. The 40% stake will be acquired in two stages under the SPA. First, Fortiana Holdings Ltd will acquire 23.95% of the share capital of Highland Gold Mining Ltd pro rata from each of the selling shareholders, conditional only upon Fortiana Holdings Ltd making the mandatory bid announcement. The acquisition of the remaining shares is conditional upon Fortiana Holdings Ltd obtaining Russian Federal Antimonopoly Service clearance. This clearance is a pre-condition to the offer.
- 28 There is a Clean Team Agreement under which SDL plc and RWS Holdings plc agreed to certain rules for restrictions on the sharing of certain commercially-sensitive information. There is also a Confidentiality and Joint Defence Agreement which is supplemental to the Clean Team Agreement, under which SDL plc and RWS Holdings plc agreed that information and other materials containing highly commercially-sensitive information may be shared with only the other party's specified outside legal counsel or other retained experts, and not with the other party directly.
- 29 RWS Holdings plc requires shareholder approval for the allotment of new shares.
- 30 This represents the bid premium from the price per share of Collagen Solutions plc as at 15 April 2020 (being the last business day prior to the commencement of the formal sale process and resultant offer period). Note that the bid premium from the price per share as at 26 August 2020 (being the last business day prior to the Rule 2.7 announcement) is approximately 160%.
- 31 The bid value given in the Rule 2.7 announcement was £21.25 million. However, this was subsequently revised in the offer document dated 13 October 2020. The bid premium in the Rule 2.7 announcement was 44.6%, which was also revised in the offer document.
- 32 DeepVerge plc requires shareholder approval for the allotment of new shares and for the proposed consolidation of every 10 existing DeepVerge plc shares into 1 new DeepVerge plc share.
- 33 The aggregate value of Garda World Security Corporation's original offer for G4S plc was approximately £2.97 billion. However, on 2 December 2020 Garda World Security Corporation announced the terms of an increased cash offer which was again rejected by the board of G4S plc. The bid premium under the original offer was 30%.
- 34 The increased offer for G4S plc reduced the acceptance condition from 90% to 50% plus one G4S plc share.
- 35 The Co-Operation Agreement includes a reverse break fee of £270 million payable to William Hill PLC in certain specified circumstances. In addition, there is a Side Letter between William Hill PLC and Caesars Entertainment, Inc. pursuant to which the latter has agreed, on behalf of itself and Bidco, that certain actions taken by William Hill PLC or any relevant subsidiary in connection with its interest in, and the proposed IPO of, NeoGames would not justify seeking the permission of the Panel to invoke any condition to the offer so as to cause the acquisition not to proceed, to lapse or to be withdrawn.

Key

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Q2 2020																			
Castleton Technology plc (AIM)	MRI Software LLC	£83 million ³⁶	42.9%	•			•						•	•C			• ³⁷		
Georgia Healthcare Group PLC (Main Market)	Georgia Capital PLC	£31 million	-0.3%	•				•L			• ³⁸							•B ³⁹	
Sativa Group Plc (AQSE Growth Market)	StillCanna Inc.	£10.7 million	-28.6%	•				•L					•	•C, R ⁴⁰				•B ⁴¹	
Columbus Energy Resources plc (AIM)	Bahamas Petroleum Company plc	£25.1 million	11%	•				•L					•	•C					
Be Heard Group plc (AIM)	MSQ Partners Limited	£6.2 million	92.3%	•			• ⁴²						•					•T ⁴³	

36 The aggregate bid value given in the Rule 2.7 announcement was £82.8 million, but this figure was subsequently revised to £83 million in the scheme document.

37 Matching rights. Shareholder irrevocable undertakings cease to be binding if a competing offer is made that is at least 10% higher than that offered by the Bidder, and the Bidder does not match that competing offer within seven days.

38 50%+ acceptance condition.

39 Acquisition subject to approval by Georgia Capital PLC shareholders as it constitutes a Class 1 transaction under the Listing Rules.

40 Reverse break fee whereby if StillCanna Inc. does not complete the proposed transaction, it will be required to pay Sativa Group Plc a fee equal to the greater of £1 million or, if StillCanna Inc. enters into an alternative transaction, 25% of the value paid by StillCanna Inc. or for StillCanna Inc.'s securities or assets (as the case may be) in such alternative transaction. There is also a Resulting Issuer Escrow Agreement between certain locked-in parties, StillCanna Inc. and Computershare Canada (as the escrow agent) in respect of the new StillCanna Inc. shares to be issued pursuant to the acquisition. Under the Resulting Issuer Escrow Agreement and in accordance with the rules of the Canadian Securities Exchange, on the scheme becoming effective the shares will be held in escrow and released at certain intervals set out in the agreement. The locked-in parties are expected to hold 26.7% of the combined group's share capital on completion of the offer.

41 Completion of the acquisition subject to StillCanna Inc. obtaining the approval of a majority in number of its shareholders representing over 50% in value at shareholder meeting.

42 Certain employees and managers of Be Heard Group plc have agreed, under the Rollover Manager arrangements, to exchange their Be Heard Group plc shares for shares to be issued by Topco (EnSCO 1314 Limited).

43 Scheme conditional on Rule 16 shareholder approval in respect of (i) the Rollover Manager arrangements and (ii) the variation to the earn out arrangements and the disposal of The Corner Communications (London) Ltd.

Key

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Q1 2020																			
Sirius Minerals Plc (Main Market)	Anglo American plc	£404.9 million	34.1%	•			•						•	•C					
Haynes Publishing Group PLC (Main Market)	Infopro Digital Group BV	£114.5 million	62.4%	•			•						•		•		• ⁴⁴	• ^{T45}	
Share plc (AIM)	Interactive Investor Group	£61.9 million	41%	•			•	•U					•						
Daejan Holdings PLC (Main Market)	Freshwater Group	£1.31 billion	56%	•			•						•						
Huntsworth plc (Main Market)	Clayton, Dubilier & Rice, LLC	£400 million	50%	•			•						•	•C			•		
Moss Bros Group plc (Main Market)	Menoshi Shina and others	£22.6 million	60.6%	•			•						•						•
Redx Pharma plc (AIM)	Redmile Group, LLC	£29.45 million	210%	•			•				• ⁴⁶								
IndigoVision Group plc (AIM)	Motorola Solutions, Inc.	£30.4 million	129%	•			•						•						

44 Matching rights.

45 Certain directors and senior management of Haynes Publishing Group PLC agreed to the cancellation of outstanding awards under their existing incentive plans, subject to the scheme being sanctioned. In lieu of this, Haynes Publishing Group PLC proposed to award these individuals the proceeds arising from the sale of 1,229,054 ordinary shares (approximately £8.6m). This proposal required approval by Haynes Publishing Group PLC's shareholders by way of special resolution.

46 50%+ acceptance condition.

Key

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