



Acceleration statement wording

28 June 2021



WORDING WHICH MAY BE INCLUDED IN AN ACCELERATION STATEMENT

*Under R31.5 of the City Code on Takeovers and Mergers (**Code**) as amended with effect from 5 July 2021, a bidder is permitted to make an “acceleration statement” bringing forward the latest date by which all of the conditions to its offer must be satisfied or waived. The making of an acceleration statement has a number of consequences as set out in the Code. Under R31.5(e) a bidder will not be allowed to set an acceleration statement aside except (a) where the right to do so in certain circumstances is specifically reserved at the time the acceleration statement is made and those circumstances subsequently arise or (b) in wholly exceptional circumstances. This document has been drafted by a Joint Working Party of the Company Law Committees of the City of London Law Society (**CLLS**) and the Law Society of England and Wales (the **Law Society**) (the **Joint Working Party**).*

This document is intended as an illustrative example of the form that an acceleration statement could potentially take and certain reservations that could potentially be included. This document is not prescriptive or comprehensive and is not, and should not be relied upon as being, legal or regulatory advice. Users of this document will need to consider its contents in light of the specific circumstances of their particular transaction and should consult their own advisers before using, or taking any action based on, this document. No duty of care or liability whatsoever is accepted by the Law Society or the CLLS, by those involved in the preparation or approval of this document, or by the firms or organisations that they represent, to any firm, company or individual who relies on material in it and no representation or warranty is made as to its accuracy, suitability or completeness.

In this document references to “X” are to the bidder and to “Y” are to the target company. This document assumes, for illustrative purposes, a cash offer which is not recommended. Not all of the reservations may be appropriate/available in all cases (including in the context of a recommended offer).

It should be noted that (a) under R31.5(f) of the Code the Panel must be consulted if a bidder wishes to include a reservation to an acceleration statement and (b) under R31.5(h) an acceleration statement must be published in accordance with R30.1.

28 June 2021

[CUSTOMARY HEADING, INCLUDING A STATEMENT THAT THE ANNOUNCEMENT CONTAINS INSIDE INFORMATION]

Acceleration Statement

On [DATE], X announced an offer for the entire issued and to be issued share capital of Y.

On [DATE], X published an offer document (the "**Offer Document**") setting out the full terms and conditions of its offer to acquire the entire issued and to be issued share capital of Y (the "**Offer**"). Defined terms used but not defined in this announcement have the same meanings as set out in the Offer Document.

The terms of the Offer Document provided that the Unconditional Date of the Offer (being the date by which all the Conditions of the Offer must be satisfied or [, to the extent permitted,] waived, failing which the Offer would lapse in accordance with its terms) was [DATE]. X reserved the right to bring forward the Unconditional Date in accordance with the provisions of the Takeover Code.

X now announces that the new Unconditional Date of the Offer is [DATE].¹

This is an acceleration statement to which Rule 31.5 of the Takeover Code applies.

In accordance with Rule 31.5(b) of the Takeover Code, X announces that Conditions (b) and (c) of the Offer (being Conditions relating to official authorisations or regulatory clearances) have now either been satisfied or (where capable of waiver) waived and that Conditions (d), (e) and (f) of the Offer have now either been satisfied or waived to the extent such Conditions (d), (e) and (f) relate to official authorisations or regulatory clearances.² Save to the extent satisfied or waived, the Conditions of the Offer remain outstanding.

In accordance with Rule 31.5(e) of the Takeover Code, X reserves the right to set this acceleration statement aside in the following circumstances:³

- (a) with the agreement or consent of the board of Y;
- (b) if a third party announces a possible offer for Y or there is otherwise an announcement of a possible offer for Y by a third party or an announcement which refers to the existence of a new potential offeror for Y (whether the potential offeror is identified or not);
- (c) if a third party announces a firm intention to make an offer for Y;⁴
- (d) if Y makes an announcement of the kind referred to in Rule 31.8 of the Takeover Code (offeree company announcements of material new information after Day 39 of the timetable to the Offer);⁵
- (e) if Y announces a “whitewash” proposal (see Note 1 of the Notes on Dispensations from Rule 9) or a reverse takeover (as defined in the Takeover Code); and
- (f) in wholly exceptional circumstances as provided for by Rule 31.5(e)(ii) of the Takeover Code.

[INCLUDE THE ADDITIONAL INFORMATION REQUIRED UNDER R17.1(B)(II)]

[CUSTOMARY END NOTES]

1. Under Rule[s] 31.5[(c) and] (d) of the Takeover Code, as a result of this acceleration statement being made (and unless the Panel consents otherwise):
 - Rule 31.8(a) of the Takeover Code is disapplied and there will therefore be no restriction on the date by which the board of Y may announce any material new information; and⁶
 - Rules 2.6(d) and (e) of the Takeover Code are disapplied and there will therefore be no requirement for a potential competing offeror to clarify its position by no later than Day 53 (as defined in the Takeover Code) of the timetable for the Offer.⁷

¹ Date must be not less than 14 days from the date on which the acceleration statement is made and must be at least 21 days after the [initial] offer document was published - **R31.5(a)** and **R31.2(a)**.

² **R31.5(b)**. Conditions (b) and (c) will be specific official authorisations or regulatory clearances identified in the Offer Document. Conditions (d), (e) and (f) will be “sweeper” or general Conditions which are capable of extending to official authorisations or regulatory clearances. See for example the document headed “Conditions and Certain Further Terms of the Offer” drafted by the Joint Working Party.

³ The Panel must be consulted if X wishes to include a reservation to an acceleration statement – **R31.5(f)**. The reservations set out above are illustrative and are not exhaustive of the reservations which may be included.

⁴ If, at the time that the acceleration statement is made, a potential competing offeror (“P”) has been publicly identified, this reservation may state “if a third party, including P, announces a firm intention to make an offer for Y”. If there is an existing firm competing offer consider where any other reservations are appropriate.

⁵ This reservation may only be included if the acceleration statement is made after D39 – **N3 on R31.5**. Check “Day 39” is defined in the offer document.

⁶ The first bullet point (and the reference to Rule 31.5(c)) should be removed where the acceleration statement is made on or after Day 39.

2. [●]

⁷ Whilst this Note is not required by the Code to be included, a bidder may want to include it for clarity as it sets out the implications of the acceleration statement for D39 and D53.