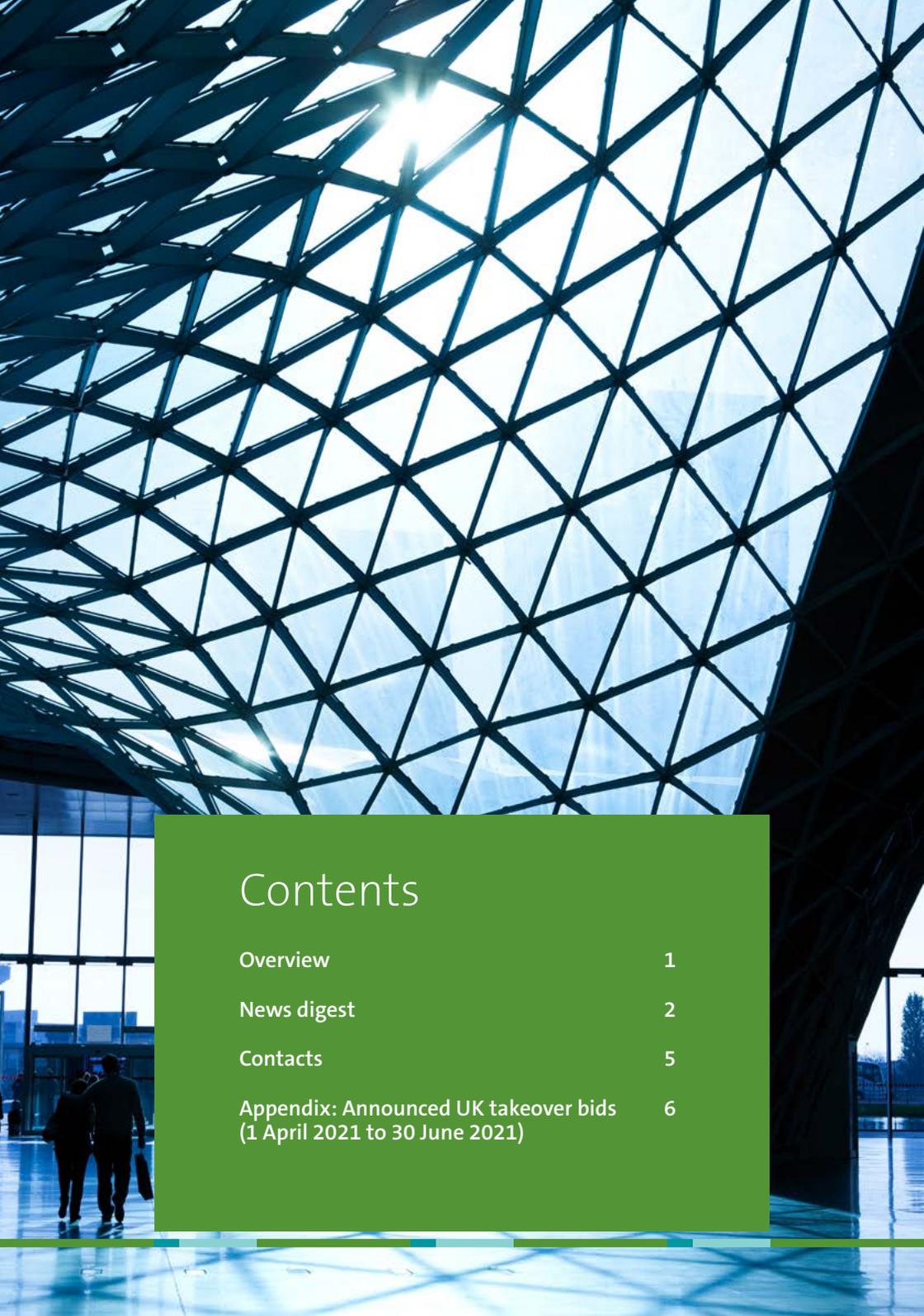


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UK Public M&A Update

Q2 2021





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Overview

14 firm offers were announced in Q2 2021 (compared to 13 in Q1 2021 and 17 in Q4 2020), with a combined offer value of approximately £10.16 billion (representing a decrease from £12.67 billion in Q1 2021). Of those 14 offers, 10 were all cash.

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

- Ramsay Health Care on the final and increased £1.04 billion recommended cash offer for Spire Healthcare Group plc;
- Equitix and Goldman Sachs on the \$2 billion recommended cash offer for John Laing Group plc by KKR;
- Rothschild & Co on the final and increased £1.27 billion recommended cash offer for St. Modwen Properties plc;
- Rothschild & Co on the £70.4 million recommended cash offer for Wey Education plc;
- Oxford Instruments plc on the €42 million offer for WITec Wissenschaftliche Instrumente und Technologie GmbH;
- Barclays and Citigroup on the €1.57 billion hostile cash offer from CPI Property Group S.A. and Aroundtown SA for Globalworth Real Estate Investments Limited ; and
- Galaxy Resources on the proposed A\$4 billion merger with Orocobre Limited.

A summary of the key features of each announced offer is set out in the Appendix.

Announced bids	14
Recommended on announcement	12
Schemes of arrangement	12
Average of bid premia (% unweighted)	36.61%
Average of bid premia (% weighted)	26.12%

Q2 was relatively quiet from a regulatory and legal perspective with news items covering amendments to the Takeover Code to replace gender specific terms with gender neutral terms, the appointment of the next Director General of the Panel (Ian Hart from UBS), and a couple of legal updates in relation to takeovers implemented by way of scheme of arrangement.

Further details of these developments are set out in the News digest on page 2 of this publication.

In addition, as noted in our [2020 Annual Update](#) and the [Q1 2021 Update](#), the proposed amendments to the Code regarding conditions to offers and the offer timetable as set out in PCP 2020/1 and RS 2020/1 came into force on 5 July 2021, and will apply to all firm offers which are announced under Rule 2.7 of the Code on or after that date. Firm offers announced prior to that date (or which are in competition with a firm offer announced prior to that date) remain subject to the rules that were previously in force prior to that date.

On 28 June 2021, the City of London Law Society and the Law Society of England and Wales published specimen documents to reflect the changes to the Takeover Code.

News digest

Appointments to the Panel

On 15 April 2021, the Panel announced that Ian Hart had been appointed to become the next Director General of the Panel. He will take up his appointment on 1 July 2021. He will be on a two-year secondment from UBS.

On 29 June 2021, the Panel announced that Tony Pullinger will retire as Deputy Director General on 31 December 2021. He will be succeeded by James Arculus, currently Head of UK M&A at Deutsche Bank.

On 30 June 2021, the Panel announced that Tamara Young had been appointed as a Secretary of the Panel. She will take up her appointment on 27 September 2021. She will be on a two-year secondment from Freshfields Bruckhaus Deringer.

Other Panel News

On 15 April 2021, the Panel published a revised version of the Takeover Code, reflecting amendments made by Instrument 2021/2 to replace gender specific terms with gender neutral terms.

The amendments to the Code set out in Instrument 2021/2 do not materially alter the effect of the provisions in question and accordingly the amendments have been made without formal consultation.

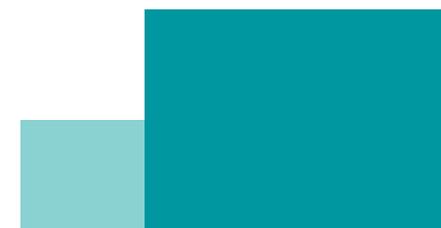
The amendments took effect on Monday, 5 July 2021, the same day as the amendments to the Code made by Instrument 2021/1 (please see our [Q1 2021 Update](#) for details of these amendments). The 13th Edition of the Code was published on 29 June 2021 to reflect the various changes to the Takeover Code, and took effect on 5 July 2021. On 29 June 2021 the Panel Executive also published revised checklists for those offers which are subject to the 13th Edition of the Code.

Re GW Pharmaceuticals PLC - votes for a proposed scheme of arrangement for the purposes of the 'headcount' test

GW Pharmaceuticals plc (GW) made an application for an order to convene its members (the Court Meeting) for the purposes of considering and approving a scheme of arrangement. GW raised a particular question as to how a single member of the Company should be counted at the Court Meeting for the purposes of the headcount requirement in s 899(1) of the Companies Act 2006 in a situation where such member might split its vote or appoint multiple proxies.

Issues arose as to how votes at the meeting should be counted because 97.4% of the existing issued share capital of GW was held in the name of a depository. In such an arrangement, only the depository is a registered 'member' who can be counted as part of the majority in number for the purposes of s 899(1), with the effect that underlying investors are disenfranchised if their different interests are not represented by the nominee holding.

Snowden J concluded that the appropriate approach in this situation was: (i) to treat a holder of scheme shares that casts a vote both for and against the scheme as voting in favour of the scheme if that holder casts more votes for the scheme than against the scheme; and (ii) that otherwise the holder should be treated as voting against the scheme. This would apply whether such votes were cast directly by the member splitting its vote or by multiple proxies on its behalf. If this approach created any issues that affected the result or went to the fairness of the voting on a dissenting member, the court would be able to deal with these issues at the sanction hearing.



Re William Hill plc – information provided in the explanatory statement and non-shareholder opposition to a scheme of arrangement

William Hill plc (William Hill) made a successful application for an order to convene its members for the purposes of considering and approving a scheme of arrangement in relation to an offer for its entire share capital by its US joint venture partner, Caesars Entertainment Inc (Caesars). The joint venture agreement included a right given to Caesars to maintain a list of names (and add to or to substitute names) of potential acquirers of the Company and which gave Caesars the right to terminate the joint venture in the event of an acquisition by a party on the restricted list.

The High Court rejected the opposition of HBK Investments LP (HBK) and six other entities holding derivative interests in the scheme shares to the scheme on the basis that the Explanatory Statement (accompanying the notice of the scheme meeting given to shareholders under s 897 of the Companies Act 2006) provided materially inaccurate and inadequate disclosure of the joint venture termination rights. HBK argued that telling scheme shareholders and those affected by the scheme that Caesars could “periodically add to or substitute names to a restricted list” is significantly different from telling them that Caesars had the right to update its designated list of no more than six names every six months, because the former might (depending on the length of the period) amount to a commercial veto and an effective bar upon a competing bid whereas the latter might represent only a high but surmountable hurdle to the emergence of a competing bid.

The High Court noted that whilst it may be material to disclose to the ordinary class member the existence of a termination right in relation to a key business relationship, the relevance of the precise terms will vary according to the class member: the ordinary shareholder would view the offer very differently to the holder of a derivative interest hoping to elicit an increased offer. No shareholder (except one) as at the scheme meeting aligned themselves with the objections raised or said that they cast their vote under a material misapprehension notwithstanding HBK’s open letter of invitation to do so, and William Hill’s RNS announcement of HBK’s opposition.

It was held that (i) the Explanatory Statement contained sufficient information for an ordinary class member to make an informed decision upon the question presented by the scheme; (ii) if there was a deficiency it was not one of sufficient materiality to cause an ordinary class member to change his or her vote; (iii) there is no evidence that any class member was actually misled; (iv) the court should in any event be reticent about overturning the vote of class members because of objections taken by those who were not class members (but simply persons or entities affected by the scheme); and (v) any new meeting could not invite class members to consider the scheme on any basis other than that upon which it is alleged they considered it at the original meeting.

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Appendix: Announced* UK takeover bids (1 April 2021 to 30 June 2021)

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 irrevocable	Matching / Topping rights****	Shareholder vote	Profit forecast/QIBS
Wey Education plc (AIM)	Inspired Education Holdings Limited	£70.4m	46.2%	●			●						●				● ¹		
Walls & Futures REIT plc (AQSE Growth Market)	Virgata Holdings SA	£1.9m	42.8%		●		●				●							●T	
Gamesys Group plc (Main Market)	Bally's Corporation	£2.026bn ²	14.4% ³	●					● ⁴				●	●C ⁵			● ⁶	●B ⁷	
Globalworth Real Estate Investments Limited (AIM)	CPI Property Group S.A. Aroundtown SA	EUR1.57bn (approx £1.36bn)	19.5%		●		●				●			● ⁸				●T	
Immunodiagnostic Systems Holdings PLC (AIM)	PerkinElmer, Inc.	£110m	49.8%	●			●						●	●C					
John Laing Group plc (Main Market)	Kohlberg Kravis Roberts & Co. L.P.	£2bn	27%	●			●						●	●C ⁹					
St. Modwen Properties PLC (Main Market)	The Blackstone Group Inc.	£1.27bn ¹⁰	25.1%	●			●						●	●C					
Telit Communications PLC (AIM)	DBAY Advisors Limited	£306.9m	58.5%	●					● ¹¹				●	●C ¹²			● ¹³		
Vectura Group plc (Main Market)	The Carlyle Group	£958m	32% ¹⁴	●			●						●	●C ¹⁵					
Spire Healthcare Group plc (Main Market)	Ramsay Health Care Limited	£1.04bn ¹⁶	30%	●			●						●	●C ¹⁷			● ¹⁸		
Equiniti Group plc (Main Market)	Siris Capital Group, LLC	£673m	31%	●			●						●	●C					
Cambria Automobiles plc (AIM)	Mark Lavery	£80m	21.2%	●					● ¹⁹				●	● ²⁰					
Proactis Holdings Plc (AIM)	Pollen Street Capital Limited DBAY Advisors Limited	£74.9m	79.4%	●					● ²¹				●	●C ²²			● ²³		
Sigma Capital Group plc (AIM)	PineBridge Benson Elliot LLP	£188.4m	35.6%	●			●						●				● ²⁴		

Key

* This table includes details of takeovers, set out in chronological order, in respect of which a firm intention to make an offer has been announced under Rule 2.7 of the Code during the period under review. It excludes offers by existing majority shareholders for minority positions

** Premium of the offer price over the target's share price immediately prior to the commencement of the relevant offer period

*** Standard 90% (waivable) acceptance condition, unless otherwise stated

**** In shareholders' irrevocables (unless indicated otherwise)

□ Permitted agreements under Rule 21.2 of the Code

A AIM traded shares

C Co-operation agreement / bid conduct agreement

F Break fee given under formal sale process or white knight dispensation

L Listed / traded shares

NP No premium given in offer documentation or nil premium

R Reverse break fee

S Standstill agreement

U Untraded shares

B Bidder shareholder approval

T Target shareholder approval

1. In the event of a higher competing offer being announced which represents an increase of at least 20% on the value of Bidco's offer in the case of the Estate of David Laurence Massie and at least 10% more on the value of Bidco's offer in the case of Gresham House, the irrevocable undertakings given by the Estate of David Laurence Massie and Gresham House will not lapse unless Bidco fails to announce, within ten business days of the announcement of such higher competing offer, a revised offer for Wey Education which is at least as favourable as the value of the competing offer.
2. In addition, the Gamesys board proposed a final dividend in respect of the year ended 31 December 2020 of £30.7m in aggregate, which, based on Gamesys' issued share capital as at 12 April 2021, would equate to 28 pence per Gamesys share (Final Dividend) for approval by Gamesys shareholders at Gamesys' 2021 annual general meeting (currently expected to be held in June 2021).
3. Including the Gamesys Final Dividend
4. Bally's will also make available a share alternative of 0.343 new Bally's shares for each Gamesys share, under which scheme shareholders (other than scheme shareholders resident or located in restricted jurisdictions) may elect to receive new Bally's shares in lieu of part or all of the cash consideration to which they would otherwise be entitled under the terms of the combination. Based on the closing price of US\$60.80 per Bally's share at close of business on 12 April 2021 and applying the USD:GBP exchange rate quoted by Bloomberg at 5.00 p.m. Eastern Standard Time on the same date, the share alternative values each Gamesys share at 1,518 pence. Fractional entitlements to new Bally's shares will not be allotted or issued to Gamesys shareholders electing for the share alternative. Instead, all fractional shares which a Gamesys shareholder would otherwise be entitled to receive will be aggregated and sold in the market with the net cash proceeds paid (converted to pounds sterling and rounded down to the nearest penny) in lieu of such fractional entitlements to the scheme shareholders entitled thereto, save that if the entitlement of any Gamesys shareholder in respect of the proceeds of sale of fractional entitlements amounts to less than £5, such proceeds will be retained for the benefit of the combined group.
5. In addition to a Co-operation Agreement, there is a confidentiality and joint defence agreement between each of Bally's, Gamesys and their respective external legal counsels the purpose of which is to ensure that the exchange and/or disclosure of certain materials relating to the parties only takes place between their respective external legal counsels and external experts, and does not diminish in any way the confidentiality of such materials and does not result in a waiver of privilege, right or immunity that might otherwise be available. There is also a lock-up agreement entered into by Lee Fenton (CEO of Gamesys) under which for six months after the effective date, he may not sell new Bally's shares received by him as consideration under the combination. The lock-up agreement is subject to customary exceptions and Lee Fenton would be entitled to sell up to 10% of his holding of new Bally's shares, subject to normal US insider restrictions.
6. In the event of a higher competing offer being announced which represents an increase of at least 5% on the value of Bally's offer, the irrevocable undertakings given by Andrew Dixon and HG Vora will not lapse unless Bally's fails to announce, within five business days of the announcement of such higher competing offer, an improvement to the terms of the combination.
7. The Gamesys board has proposed the Gamesys Final Dividend for approval by Gamesys shareholders at the Gamesys AGM. If the effective date occurs before the date of the Gamesys AGM, the Gamesys board reserves the right instead to declare the Gamesys Final Dividend as the first Gamesys interim dividend (First Gamesys Interim Dividend). In addition, if the combination has not completed before the ex-dividend date of 9 September 2021 the Gamesys board reserves the right to declare an interim dividend for the six months ended 30 June 2021 of, in aggregate, up to £16.45m (Second Gamesys Interim Dividend). The First Gamesys Interim Dividend, if declared, would be declared and paid in place of the Gamesys Final Dividend.
8. On 14 April 2021, Bidco, CPI, Arountown and Tevat entered into a consortium bid agreement. It also includes customary standstill, exclusivity and other confirmations given by the parties in relation to the offer. The consortium bid agreement will terminate upon the earlier of: (1) The agreement of the Consortium; (2) the offer consideration having been paid in full to the holders of Globalworth shares who have accepted the offer (or who are subject to a scheme if the offer is implemented by way of a scheme); or (3) The offer lapsing or being withdrawn or any condition to the offer having been invoked with the consent of the Panel or any competing offer in relation to Globalworth having become effective or unconditional in all respects.
9. In addition to a Co-operation Agreement and a Confidentiality Agreement between Kohlberg Kravis Roberts & Co. Partners LLP, an affiliate of KKR, and John Laing, there is a letter provided by KKR to John Laing under which, KKR has agreed to reimburse John Laing for certain legal fees up to an agreed amount that are incurred for a due diligence exercise undertaken by Freshfields Bruckhaus Deringer LLP at John Laing's instruction and at KKR's request. The reimbursement agreed in the letter shall become due and payable only in the event that the acquisition does not proceed for any reason. There is also a restructuring agreement entered into between Bidco and Equitix Holdco, among others, under which the parties have agreed certain restructuring steps to occur as soon as reasonably practicable following the effective date, to effect the acquisition by Equitix Holdco of 50% of the ordinary shares with nominal value of £1 each of John Laing Investments Limited (AssetCo Issuance Shares). On 19 May 2021, in connection with the Equitix acquisition, the KKR Investor and Equitix Holdco entered into a shareholders' agreement, which will take effect from completion of the Equitix acquisition. The shareholders' agreement governs the terms of the KKR Investor and Equitix Holdco's shareholding in John Laing Investments Limited and the rights and obligations of each shareholder in respect of the governance of John Laing Investments Limited and the AssetCo Group. Furthermore, Bidco and the trustee of the John Laing Pension Fund (Fund) and Bidco and the trustee of the John Laing Pension Plan (Plan) each entered into an agreement containing a mitigation package which is designed to mitigate the effect on the financial covenant supporting the Fund/the Plan following the effective date.
10. The initial offer announced on 20 May 2021 was valued at £1.24 billion, however this was subsequently increased to £1.27 billion (on the basis of 560 pence per share) in an increased and final offer announced on 24 June 2021.
11. As an alternative to the cash offer, Telit shareholders (other than Telit shareholders resident or located in a restricted jurisdiction) may elect to receive one loan note from Bidco (Consideration Loan Note) for each scheme share held. The Consideration Loan Notes will be issued by Bidco, credited as fully paid, in amounts and integral multiples equal to the cash offer. A Telit shareholder may elect to take up the alternative offer in respect of all (but not part) of his, her or its holding of scheme shares.
12. In addition to a Co-operation Agreement and a Confidentiality letter entered into between DBAY and Telit, DBAY, Telit, Hogan Lovells International LLP and CMS Cameron McKenna Nabarro Olswang LLP entered into a confidentiality and joint defence agreement which governs the relationship between the parties in the provision of information for the purposes of competition and regulatory clearances without triggering Rule 20.2 of the Code.
13. In the event of a higher competing offer being announced which represents an increase of more than 10% on the value of the DBAY offer, the irrevocable undertakings given by Richard Griffiths, Davide Serra and Run Liang Tai Management Limited will not lapse unless DBAY fails to announce, within five days of the announcement of such higher competing offer, a revised offer for Telit which is at least as favourable as the value of the competing offer.
14. In relation to the Ex-Dividend Closing Price per Vectura Share
15. In addition to a Co-operation Agreement and a Confidentiality letter entered into between CECP Advisors LLP and Vectura, CECP Advisors LLP, Vectura and their respective counsel entered into a clean team and joint defence agreement, the purpose of which is to ensure that the exchange and/or disclosure of certain materials relating to the parties and in relation to, in particular, the regulatory workstreams (including foreign investment and antitrust) only takes place between their respective legal counsel and external experts, and does not diminish in any way the confidentiality of such materials and does not result in a waiver of any privilege, right or immunity that might otherwise be available.
16. The initial offer announced on 26 May 2021 was valued at £999.6 million, however this was subsequently increased to £1.04 billion (on the basis of 250 pence per share) in an increased and final offer announced on 5 July 2021.
17. In addition to a Co-operation Agreement and a Confidentiality letter entered into between Ramsay and Spire, Ramsay Spire and their respective legal advisers entered into a confidentiality and joint defence agreement, the purpose of which is to ensure that the exchange and/or disclosure of certain materials relating to the parties in relation to the anti-trust workstream relating to the transaction only takes place between their respective external legal counsels and external experts. Further, Ramsay and Spire entered into a clean team agreement, which sets out how any confidential information that is commercially sensitive can be disclosed, used or shared for the purposes of due diligence, costs benefits evaluation, integration planning and regulatory clearance.
18. In the event of a higher competing offer being announced which represents an increase of 10% or more on the value of the Ramsay offer, the irrevocable undertaking given by Mediclinic will not lapse unless Ramsay fails to announce, within three business days of the announcement of such higher competing offer, a revised offer for Spire which is at least as favourable as the value of the competing offer.
19. As an alternative to the cash offer, accepting scheme shareholders (other than scheme shareholders resident or located in a restricted jurisdiction) may elect to receive one new Bidco share for each scheme share held. Each new Bidco share will be immediately exchanged for two B Ordinary shares of £0.10 each in the capital of Cambria Investments to be issued to scheme shareholders under the offer (Consideration Shares) by way of a call option exercised by Cambria Investments. The Consideration Shares will be issued within 14 days of the effective date. The Consideration Shares are non-transferable and do not carry any voting rights. The availability of the Consideration Shares under the alternative offer is limited to such number as would constitute no more than 20% of the entire issued share capital of Cambria Investments.
20. On 9 June 2021, Mark Lavery, Nicola Lavery and Cambria Investments entered into a share purchase agreement in respect of the transfer of Mark and Nicola Lavery's 40,000,000 Cambria shares to Cambria Investments, representing approximately 40% of Cambria's issued share capital (Lavery SPA). On 9 June 2021, Cambria Investments and Bidco entered into a share purchase agreement in respect of the transfer of Cambria Investments' 40,000,000 Cambria shares to Bidco (Roll Down SPA).
21. As an alternative to the cash offer, eligible Proactis shareholders may elect to receive 0.75 alternative offer securities in the capital of Bidco in exchange for each Proactis share, subject to the terms and conditions of the alternative offer. An eligible Proactis shareholder may elect to take up the alternative offer in respect of all or part of their holding of Proactis shares. The availability of the alternative offer is conditional upon valid elections being made for such number of alternative offer securities as represent at least 3% of the issued ordinary share capital of Bidco at completion of the acquisition, failing which it will lapse. The maximum number of alternative offer securities available to eligible Proactis shareholders under the alternative offer will be limited to a number which represents 9.9% of the issued ordinary share capital of Bidco at completion of the acquisition.
22. In addition to a Co-operation Agreement and a Confidentiality Agreement between Pollen Street and Proactis, Pollen Street, in its capacity as investment manager for and on behalf of funds managed or advised by it, and DBAY, in its capacity as investment manager for and on behalf of funds managed or advised by it, and Bidco entered into a bid conduct agreement, under which each party has agreed certain principles in accordance with which they intend to co-operate in respect of the acquisition.
23. In the event of a higher competing offer being announced which represents an increase of at least 10% on the value of Bidco's offer, the irrevocable undertakings given by Gresham House Asset Management Limited and Sean McDonough will not lapse unless Bidco fails to announce, within ten days of the announcement of such higher competing offer, an improved offer which is at least as favourable as the higher competing offer. In the event of a higher competing offer being announced which represents an increase of at least 20% on the value of Bidco's offer, the irrevocable undertakings given by T.A.P Schaeffers, G.J. Schaeffers, R. Vermeulen and N. Tijssen will not lapse unless Bidco fails to announce, within ten days of the announcement of such higher competing offer, an improved offer which is at least as favourable as the higher competing offer.
24. In the event of a higher competing offer being announced which represents an increase of 10% or more on the value of Bidco's offer, the irrevocable undertakings given by AXA and JOH will not lapse unless Bidco fails to announce, within five business days of the announcement of such higher competing offer, a revised offer for Sigma which is at least as favourable as the value of the competing offer.

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