

INTRODUCTION

10 ENFORCING THE CODE

Sections 10(a) to 10(c) set out certain rules pursuant to which the Panel enforces the Code. Section 10(e) sets out the “offer document rules” and the “response document rules” for the purposes of section 953 of the Act.

It is the practice of the Panel, in discharging its functions under the Code, to focus on the specific consequences of breaches of the Code with the aim of providing appropriate remedial or compensatory action in a timely manner. Furthermore, in respect of certain breaches of the Code, disciplinary action may be appropriate (see section 11 below). For the purposes of section 956(2) of the Act, no contravention of any requirement imposed by or under rules shall render any transaction void or unenforceable or affect the validity of any other thing.

(a) Requirement of promptness in dealings with the Executive

If a complaint is to be made that the Code has been breached, it must be made promptly, in default of which the Executive may, at its discretion, decide not to consider the complaint. Similarly, where a person who has made a complaint to the Executive fails to comply with a deadline set by the Executive, the Executive may decide to disregard the complaint in question.

(b) Compliance rulings

If the Panel is satisfied that:

- (i) there is a reasonable likelihood that a person will contravene a requirement imposed by or under rules; or
- (ii) a person has contravened a requirement imposed by or under rules,

the Panel may give any direction that appears to it to be necessary in order:

- (A) to restrain a person from acting (or continuing to act) in breach of rules; or
- (B) to restrain a person from doing (or continuing to do) a particular thing, pending determination of whether that or any other conduct of the person is or would be a breach of rules; or
- (C) otherwise to secure compliance with rules.

(c) Compensation rulings

Where a person has breached the requirements of any of Rule 6, Rule 9, Rule 11, Rule 14, Rule 15, Rule 16.1 or Rule 35.3 of the Code, the Panel may make a ruling requiring the person concerned to pay, within such period as is specified, to the holders, or former holders, of securities of the offeree company such amount as it thinks just and reasonable so as to ensure that such holders receive what they would have been entitled to receive if the relevant Rule had been complied with. In addition, the Panel may make a ruling requiring simple or compound interest to be paid at a rate and for a

period (including in respect of any period prior to the date of the ruling and until payment) to be determined.

(d) Enforcement by the Courts

Under section 955 of the Act, the Panel may seek enforcement by the courts. If the court is satisfied that:

- (i) there is a reasonable likelihood that a person will contravene a requirement imposed by or under rules; or
- (ii) a person has contravened a requirement imposed by or under rules or a requirement imposed under section 947 of the Act,

the court may make any order it thinks fit to secure compliance with the requirement. Any failure to comply with a resulting court order may be a contempt of court.

(e) Bid documentation rules

For the purposes of section 953 of the Act, the “offer document rules” and the “response document rules” are those parts of Rule 24 and Rule 25 respectively which are set out in Appendix 6 and, in each case, Rule 27 to the extent that it requires the inclusion of material changes to, or the updating of, the information in those parts of Rule 24 or Rule 25, as the case may be, in relation to offer documents and offeree board circulars and the revised offer documents and subsequent offeree board circulars referred to in Rule 32.1 and Rule 32.6 respectively.