

PRACTICE STATEMENT 19

RULE 19.3 – UNACCEPTABLE STATEMENTS

Rule 19.3 of the Takeover Code states as follows:

“(a) Parties to an offer and their advisers must take care not to make statements which, while not factually inaccurate, may be misleading or may create uncertainty.

(b) In particular, an offeror must not make a statement to the effect that it may improve its offer, or that it may make a change to the structure, conditionality or the non-financial terms of its offer, without committing itself to doing so and specifying the improvement or change.

(c) In the case of any doubt as to the application of this Rule to a proposed statement, parties to an offer and their advisers should consult the Panel.”.

Parties to an offer and their advisers should be aware that, during the course of an offer, and especially in a competitive or hostile situation, any suggestion of the possibility of an improvement to an offer or of any change to the structure, conditionality or non-financial terms of an offer (including, for example, a switch from a scheme of arrangement to a contractual offer) will be of particular sensitivity, since it could lead to a false market being created in the securities of the offeree company.

If, however, an offeror wishes to make a holding statement in order to publicise its initial reaction to a particular development, such as an increase in a competing offeror’s offer, it may state, for example, that it is “considering its position” or that it is “considering its options”. It should not, however, use language which implies that it might improve or change the terms, structure or conditionality of its offer.

Practice Statements are issued by the Panel Executive to provide informal guidance to companies involved in takeovers and practitioners as to how the Executive normally interprets and applies relevant provisions of the Takeover Code in certain circumstances. Practice Statements do not form part of the Code. Accordingly, they are not binding on the Executive or the Panel and are not a substitute for consulting the Executive to establish how the Code applies in a particular case.

14 January 2008

Last amended 13 June 2022