

PRACTICE STATEMENT 20

RULE 2 – SECRECY, POSSIBLE OFFER ANNOUNCEMENTS AND PRE-ANNOUNCEMENT RESPONSIBILITIES

1. Introduction

- 1.1 This Practice Statement describes the way in which the Panel Executive normally interprets and applies certain provisions of Rule 2 that relate to the need for secrecy before, and the timing and contents of, possible offer announcements, including the steps which the Executive expects the parties to a possible offer and their advisers to take in order to ensure that their responsibilities in relation to those provisions are complied with. Those provisions of Rule 2 have particular relevance to the Code's objective of promoting the integrity of the financial markets and, in applying those provisions, the Executive's overriding objective is to prevent false markets by ensuring the timely release of announcements relating to a possible offer for a company.
- 1.2 Consultation with the Executive is of crucial importance in the application of the Code and the importance of the requirement to consult the Executive in relation to the application of Rule 2 cannot be over-emphasised. As a practical matter, if the reason for consulting the Executive relates to whether an announcement is required in particular circumstances, the person concerned should explain that the call is urgent so that it can be dealt with by the Executive as a matter of priority.
- 1.3 It is common for a potential offeror, or a company in receipt of an approach, to notify its financial adviser or corporate broker of the possible offer or approach at an early stage. The Executive encourages this practice since such advisers will normally have better systems and more resources than their clients to fulfil the task of monitoring compliance with Rule 2. As explained in section 3(f) of the Introduction to the Code, financial advisers "have a particular responsibility to comply with the Code and to ensure, so far as they are reasonably able, that their client and its directors are aware of their responsibilities under the Code and will comply with them and that the Panel is consulted whenever appropriate". Where a corporate broker alone has been notified of the possible offer or approach, the Executive may regard the corporate broker as fulfilling the role of a financial adviser.
- 1.4 If a potential offeror, or a company which is in receipt of an approach or seeking potential offerors, chooses not to notify its financial adviser, compliance with the provisions of Rule 2 will be its responsibility and it must immediately put in place appropriate procedures to ensure that the requirements of those provisions are observed.

- 1.5 In addition, the Executive notes that section 3(f) of the Introduction to the Code provides that the Code applies to “all advisers in so far as they advise on takeovers or other matters to which the Code applies”. Where no financial adviser has been appointed, the Executive considers that such advisers as have been appointed will have a particular responsibility to emphasise to their client the need for appropriate procedures to be put in place to ensure that the requirements of Rule 2 are observed.

2. Secrecy

- 2.1 Absolute secrecy before an announcement of an offer or possible offer is of vital importance. If secrecy is maintained, it should be possible for offer preparations to be conducted in private, without an announcement of a possible offer being required. Accordingly, all persons who are privy to confidential information concerning an offer or possible offer must conduct themselves so as to minimise the chances of any leak of that information. For example, confidential information should only be passed to another person if it is necessary to do so and if that person is made aware of the need for secrecy.
- 2.2 If it appears that there may have been a leak of information, the Executive will, in assessing whether an announcement is required under Rule 2.2, amongst other things, wish to learn immediately from the relevant party or its financial adviser what controls have been put in place in order to keep information secure.

3. The approach

- 3.1 A key issue in applying Rule 2.2(c), Rule 2.2(d) and Rule 2.3 is whether an offeror has made an “approach” to the offeree company regarding a possible offer. This will affect, in particular, whether the responsibility for making an announcement lies with the potential offeror or with the offeree company.
- 3.2 For these purposes, the Executive interprets the term “approach” broadly. Each case will turn on its own facts, but the Executive normally considers an approach to have been received when a director or representative of, or an adviser to, an offeree company is informed by, or on behalf of, a potential offeror that it is considering the possibility of making an offer for the company. This may be at a very preliminary stage in the offeror’s preparations and the manner of the approach may be informal and no more than broadly indicative. For example, there is no requirement for an approach to be made in writing, or for an indicative offer price (or any terms or conditions) to be specified, and it could be made as part of a conversation on unrelated matters.

- 3.3 Rule 2.3(a) provides that the responsibility for making an announcement before the board of the offeree company has been approached will lie with the potential offeror, whereas Rule 2.3(c) provides that the responsibility for making an announcement following an approach will normally rest with the offeree company board. However, if the offeree company board rejects an approach it will not necessarily know whether the potential offeror intends to pursue its interest in the possible offer. Therefore, following an unequivocal rejection of an approach, the Executive's practice is to treat the responsibility for making an announcement as reverting to the potential offeror. Nevertheless, since the potential offeror will have made an initial approach to the board of the offeree company (albeit that the approach was unequivocally rejected), the Executive will apply the criteria in Rule 2.2(c), and not the criteria in Rule 2.2(d), when determining whether an announcement is required following rumour and speculation or an untoward movement in the offeree company's share price.
- 3.4 In order to avoid confusion, the parties should agree which of the potential offeror and the offeree company has responsibility for making an announcement at any particular time following the initial approach. If the parties are unable to reach agreement as to where the responsibility rests, or if there is any doubt as to whether there has been an unequivocal rejection of an approach, the Executive should be consulted.
- 3.5 Rule 2.3(d) provides that a potential offeror must not attempt to prevent the board of an offeree company from making an announcement relating to a possible offer, or publicly identifying the potential offeror, at any time the board considers appropriate. The Executive would consider as being in breach of this provision any attempt by a potential offeror to specify the circumstances in which an offeree company may not publicly identify the potential offeror – for example, a provision to the effect that an approach will be withdrawn automatically in the event that:
- (a) the offeree company does not engage with the potential offeror within a specified period of time;
 - (b) a requirement to make an announcement under Rule 2.2 is triggered; or
 - (c) the offeree company receives an approach from a third party.

If an offeree company receives a letter or other document from a potential offeror which includes such a provision, it should notify the Executive.

4. When an announcement is required before an approach

(a) *Rule 2.2(d)*

4.1 Before a potential offeror which is actively considering an offer has made an approach to the board of the offeree company, the requirement for the potential offeror to make an announcement under Rule 2.2(d) will be triggered if:

- (a) the offeree company is the subject of rumour and speculation; or
- (b) there is an untoward movement in its share price,

and, in either case, there are reasonable grounds for concluding that it is the potential offeror's actions (whether through inadequate security or otherwise) which have led to the situation.

(b) *The requirement to consult the Executive*

4.2 The Executive must be consulted by a potential offeror, or its financial adviser, at an appropriate stage in order for it to be able to determine whether an announcement is required under Rule 2.2(d). Consultation will not necessarily lead to a requirement to make an announcement; this will depend on all the relevant circumstances.

(i) *Rumour and speculation*

4.3 Note 1(c) on Rule 2.2 requires that the Executive should be consulted at the latest when the potential offeree company becomes the subject of any rumour and speculation after the time when an offer is first actively considered by a potential offeror. The requirement for consultation is interpreted strictly and the Executive should therefore be consulted by the potential offeror, or its financial adviser, if there is any rumour and speculation relating to a possible offer for the offeree company and regardless of:

- (a) whether the rumour and speculation is specific to the possible transaction under consideration – for example, whether or not the potential offeror is named; or
- (b) the manner in which, or the medium by which, the rumour and speculation has been disseminated.

4.4 Although the Executive may, on occasion, make enquiries of financial advisers in relation to, for example, rumour and speculation relating to their clients, the Code requires that the Executive should be consulted whenever any such rumour and speculation appears. Therefore, financial

advisers should in no circumstances rely on their being contacted by the Executive about rumour and speculation relating to their clients.

(ii) Share price movements

4.5 Note 1(c) on Rule 2.2 also requires that the Executive should be consulted at the latest whenever there is a material or abrupt movement in the share price of the potential offeree company after the time when an offer is first actively considered by a potential offeror. For these purposes:

(a) a movement of 10% or more above the lowest share price since that time is regarded as a material movement; and

(b) a movement may be abrupt even if there has not been a material movement: for example, a price rise of 5% in the course of a single day is normally regarded as being abrupt.

4.6 The Executive's policy is to treat the 10% share price movement referred to in paragraph 4.5(a) above as being relevant for determining the latest time by which it should first be notified by a potential offeror, or its financial adviser, of a possible offer. If, prior to there having been such a 10% share price movement, the potential offeror, or its financial adviser, has previously notified the Executive of the possible offer, the Executive will not expect to be consulted solely because of such a 10% share price movement. Accordingly, once the Executive has been notified by the potential offeror of the possible offer, it will be necessary for the offeror to consult the Executive under Note 1(c) on Rule 2.2 only if there is an abrupt share price movement as described in paragraph 4.5(b) above.

4.7 When calculating share price movements over the period of time relevant for the purpose of paragraph 4.5(a) above, the reference price should normally be taken to be the lowest closing price during that period. However, the use of the lowest intra-day price during that period would also be acceptable.

4.8 When calculating share price movements in the course of a single day for the purpose of paragraph 4.5(b) above, the reference price should normally be taken to be the previous day's closing price, in order to ensure that overnight movements are included in the calculation.

4.9 The Executive should be consulted in the case of any doubt as to how share price movements should be monitored and calculated.

(iii) When an offer is first actively considered

4.10 In interpreting the phrase "the time when ... an offer is first actively considered", the Executive recognises that many potential offerors will,

as a matter of course, continually assess the performance of potential acquisition targets and may run internal valuation models as part of this assessment. However, the Executive interprets the phrase “first actively considered” as drawing a distinction between, on the one hand, such routine assessment of a company’s performance and, on the other, an increase in the intensity of the potential offeror’s assessment of the potential acquisition to a level where it is being given more serious consideration.

4.11 The time when an offer is first actively considered will therefore depend on the facts of a particular case. All relevant factors will be taken into account in determining this, including whether, and the extent to which, for example:

- (a) the possible offer has been considered by the board, investment committee or senior management of the offeror;
- (b) work is being undertaken by external advisers; and
- (c) external parties, such as potential providers of finance (whether equity or debt), shareholders in the offeror or the offeree company, pension fund trustees, potential management team candidates, significant customers of, or suppliers to, the offeree company or potential purchasers of assets, have been approached.

(c) *The requirement for an announcement*

4.12 The Executive considers that rumour and speculation relating to the offeree company which refers to the potential offeror in the context of the possible transaction under consideration will normally, of itself, give the Executive reasonable grounds for concluding that it is the potential offeror’s actions which have led to the situation, and for determining that the requirement to make an announcement has been triggered. The Executive does not consider that it is required to establish whether the rumour and speculation in question can be definitively linked to the potential offeror – for example, by establishing that conversations were held by a representative of the offeror with the journalist concerned. In addition, the Executive’s determination will not normally be affected by some inaccuracy in the rumour and speculation (for example, as to the level of any indicative offer price).

4.13 Furthermore, if the rumour and speculation relates to a company which is often the subject of rumour and speculation, this will be taken into account by the Executive but will not necessarily mean that an announcement is not required.

4.14 Whether a movement in the share price of the offeree company is untoward for the purposes of Rule 2.2(d) is a matter for the Executive to determine. This determination will be made in the light of all relevant facts and not solely by reference to the absolute percentage movement in the share price. As referred to in Note 1(a) on Rule 2.2, facts which may be considered to be relevant in determining whether a price movement is untoward include general market and sector movements, publicly available information relating to the company, trading activity in the company's securities and the time period over which the price movement has occurred.

5. When an announcement is required following an approach or where a purchaser or potential offeror is being sought

(a) Rules 2.2(c) and (f)(i)

5.1 Following an approach by an offeror to the board of the offeree company, the requirement for the offeree company to make an announcement under Rule 2.2(c) will be triggered if:

- (a) the offeree company is the subject of rumour and speculation; or
- (b) there is an untoward movement in its share price.

5.2 Similarly, when a purchaser is being sought for an interest, or interests, in shares carrying in aggregate 30% or more of the voting rights of a company, or when the board of a company is seeking one or more potential offerors, the requirement to make an announcement under Rule 2.2(f)(i) will be triggered if the company is the subject of rumour and speculation or there is an untoward movement in its share price. Where a purchaser is being sought by a potential seller of such an interest, or interests, without the involvement of the board of the company, the responsibility for making an announcement will rest with that seller, in accordance with Rule 2.3(c).

(b) The requirement to consult the Executive

5.3 The Executive must be consulted by the offeree company or potential seller of the interest, or its financial adviser, at an appropriate stage in order for it to be able to determine whether an announcement is required under Rule 2.2(c) or Rule 2.2(f)(i). Consultation will not necessarily lead to a requirement to make an announcement; this will depend on all the relevant circumstances.

(i) *Rumour and speculation*

5.4 In the case of Rule 2.2(c), Note 1(b) on Rule 2.2 requires that, unless an immediate announcement is to be made, the Executive should be consulted at the latest when the potential offeree company becomes the subject of any rumour and speculation after the time when the approach has been received. The requirement for consultation is interpreted strictly and the Executive should therefore be consulted by the potential offeree company, or its financial adviser, if there is any rumour and speculation relating to a possible offer for the offeree company, regardless of:

- (a) whether the rumour and speculation is specific to the possible transaction under consideration; or
- (b) the manner in which, or the medium by which, the rumour and speculation has been disseminated.

5.5 Similarly, in the case of Rule 2.2(f)(i), the Executive should be consulted at the latest when the potential offeree company becomes the subject of any rumour and speculation after the time that one or more purchasers or offerors are first sought.

5.6 Although the Executive may, on occasion, make enquiries of financial advisers in relation to, for example, rumour and speculation relating to their clients, the Code requires that the Executive should be consulted whenever any such rumour and speculation appears. Therefore, financial advisers should in no circumstances rely on their being contacted by the Executive about rumour and speculation relating to their clients.

(ii) *Share price movements*

5.7 In the case of Rule 2.2(c), Note 1(b) on Rule 2.2 also requires that, unless an immediate announcement is to be made, the Executive should be consulted at the latest whenever there is a material or abrupt movement in the share price of the potential offeree company after the time of the approach. For these purposes:

- (a) a movement of 10% or more above the lowest share price since that time is regarded as a material movement; and
- (b) a movement may be abrupt even if there has not been a material movement: for example, a price rise of 5% in the course of a single day is normally regarded as being abrupt.

5.8 The Executive's policy is to treat the 10% share price movement referred to in paragraph 5.7(a) above as being relevant for determining the latest time by which it should first be notified by an offeree company, or its financial adviser, of a possible offer. If, prior to there having been such

a 10% share price movement, the offeree company, or its financial adviser, has previously notified the Executive of the possible offer, the Executive will not expect to be consulted solely because of such a 10% share price movement. Accordingly, once the Executive has been notified by the offeree company of the possible offer, it will be necessary for the offeree company to consult the Executive under Note 1(b) on Rule 2.2 only if there is an abrupt share price movement as described in paragraph 5.7(b) above.

- 5.9 When calculating share price movements over the period of time relevant for the purpose of paragraph 5.7(a) above, the reference price should normally be taken to be the lowest closing price during that period. However, the use of the lowest intra-day price during that period would also be acceptable.
- 5.10 When calculating share price movements in the course of a single day for the purpose of paragraph 5.7(b) above, the reference price should normally be taken to be the previous day's closing price, in order to ensure that overnight movements are included in the calculation.
- 5.11 Paragraphs 5.8 to 5.10 above apply similarly, in the case of Rule 2.2(f)(i), whenever there is a material or abrupt movement in the share price of the potential offeree company after the time when one or more purchasers or offerors are first sought.
- 5.12 The Executive should be consulted in the case of any doubt as to how share price movements should be monitored and calculated.

(c) The requirement for an announcement

- 5.13 There is no equivalent in Rule 2.2(c) or Rule 2.2(f)(i) to the requirement in Rule 2.2(d) for there to be reasonable grounds for concluding that it is the potential offeror's actions (whether through inadequate security or otherwise) which have led to the situation. Therefore, an announcement might be required under Rule 2.2(c) or Rule 2.2(f)(i) in circumstances where an announcement would not have been required under Rule 2.2(d) (had the offeree company not been approached). The Executive's determination as to whether the requirement to make an announcement has been triggered will not normally be affected by some inaccuracy in the rumour and speculation (for example, as to the level of any indicative offer price).
- 5.14 Furthermore, if the rumour and speculation relates to a company which is often the subject of rumour and speculation, this will be taken into account by the Executive but will not necessarily mean that an announcement is not required.

- 5.15 Whether a movement in the share price of the offeree company is untoward for the purposes of Rule 2.2(c) or Rule 2.2(f)(i) is a matter for the Executive to determine. This determination will be made in the light of all relevant facts and not solely by reference to the absolute percentage movement in the share price. As referred to in Note 1(a) on Rule 2.2, facts which may be considered to be relevant in determining whether a price movement is untoward include general market and sector movements, publicly available information relating to the company, trading activity in the company's securities and the time period over which the price movement has occurred.
- 5.16 Under Rule 2.4(a), an announcement by an offeree company which commences an offer period must identify any potential offeror with which the offeree company is in talks or from which an approach has been received (and not unequivocally rejected). Where it is proposed that an announcement should not identify a potential offeror on the basis that its approach has been unequivocally rejected, the Executive should be consulted.

(d) Strategic review announcements

- 5.17 In the case of a "strategic review announcement", Practice Statement 31 may also be relevant.

6. No announcement required if no truth

- 6.1 There is no requirement under Rule 2.2(c) or Rule 2.2(d) for an announcement to be made confirming that there is no truth to rumour and speculation that an offer might be made for a company. However, circumstances may occur where:
- (a) the board of a potential offeree company has received an approach from a potential offeror, or where a potential offeror has yet to approach the potential offeree company but is actively considering a possible offer;
 - (b) there is rumour and speculation to this effect and/or an untoward movement in the potential offeree company's share price, such that an announcement would normally be required to be made under Rule 2.2(c) or Rule 2.2(d); and
 - (c) as a result of the rumour and speculation and/or the untoward movement in the share price of the potential offeree company, the potential offeror decides to withdraw its approach and/or to cease considering the possibility of making an offer.

- 6.2 In such circumstances, the Executive should be consulted to enable it to determine whether an announcement should be made in order to prevent the creation of a false market, clarifying that, although at the time of the rumour and speculation the potential offeree company was in receipt of an approach, and/or that the potential offeror was actively considering a possible offer for the company, this is no longer the case.
- 6.3 However, in appropriate circumstances, the Executive may, as described in paragraph (a) of Note 3 on Rule 2.2, grant a dispensation from the requirement for an announcement to be made where it is satisfied that the potential offeror has ceased actively to consider making an offer for the offeree company. If such a dispensation is granted, neither the potential offeror, nor any person who acted in concert with it, nor any person who is subsequently acting in concert with either of them, may:
- (a) within six months of the dispensation having been granted, do any of the things set out in Rules 2.8(a) to (f); or
 - (b) within three months of the dispensation having been granted, actively consider making an offer for the offeree company, make an approach to the board of the offeree company or acquire an interest in shares in the offeree company.

After the end of the period referred to in paragraph (b) above the Executive will normally consent to the restrictions in paragraph (a) above being set aside in the circumstances set out in paragraphs (a)(i) to (iv) of Note 2 on Rule 2.8, but during the period referred to in paragraph (b) above the Executive will normally consent to the restrictions in paragraphs (a) and (b) above being set aside only in the circumstances set out in paragraphs (a)(ii) to (iv) of Note 2 on Rule 2.8.

- 6.4 Where a potential offeror to which a dispensation has been granted under paragraph (a) of Note 3 on Rule 2.2 has ceased actively to consider making an offer, the Executive may nonetheless require an announcement to be made under paragraph (c) of Note 3 on Rule 2.2 where:
- (a) any rumour and speculation continues or is repeated; and/or
 - (b) it considers that this is otherwise necessary in order to prevent the creation of a false market.

Any such announcement made by the offeree company will not normally be required to identify the former potential offeror, unless it has been specifically identified in rumour and speculation.

- 6.5 Where an announcement is made under paragraph (c) of Note 3 on Rule 2.2 and in that announcement the former potential offeror makes a “no intention to bid” statement, the restrictions in Rule 2.8 will apply for a period of six months from the date of that announcement (and the restrictions in paragraph (a) of Note 3 on Rule 2.2 will then cease to apply). However, if, in the announcement made under paragraph (c) of Note 3 on Rule 2.2, the former potential offeror or the offeree company confirms only that it was granted a dispensation under paragraph (a) of Note 3 on Rule 2.2 on the date specified in the announcement, the restrictions set out in paragraph (a) of Note 3 will continue to apply from that date.

7. Identification of potential offerors following the commencement of the offer period

- 7.1 Once an offer period has commenced, there is no automatic requirement for:
- (a) the offeree company to announce the existence of a new potential offeror from which it subsequently receives an approach, or with which it engages in talks; or
 - (b) a new potential offeror which is actively considering making an offer to announce that fact.
- 7.2 However, in accordance with Note 2 on Rule 2.2, where rumour and speculation specifically identifies a potential offeror which has not previously been identified in any announcement, the Executive will normally require an announcement to be made by the offeree company or the potential offeror (as appropriate), identifying that potential offeror. Parties and their financial advisers should therefore put appropriate procedures in place to ensure that any announcement that is so required can be released promptly (see paragraphs 10.3 and 10.4 below).
- 7.3 In addition, under Rule 2.4(b), any announcement by the offeree company during an offer period which refers to the existence of a new potential offeror must identify that potential offeror, except where the announcement is made after an offeror has announced a firm intention to make an offer for the offeree company.
- 7.4 Under Rule 2.6(d), a potential offeror which has announced that it might make an offer in competition with a firm offeror’s offer must, by 5.00 pm on the 53rd day following the publication of the first offeror’s initial offer document, announce either a firm intention to make an offer or that it does not intend to make an offer (in which case the announcement will be treated as a statement to which Rule 2.8 applies). Where the first offeror is proceeding by means of a scheme of arrangement, the

Executive will determine the deadline by which the potential offeror must clarify its position in accordance with Section 4 of Appendix 7.

8. Extending negotiations or discussions

- 8.1 Rule 2.2(e) provides that an announcement is required when negotiations or discussions relating to a possible offer are about to be extended to include more than a very restricted number of people (outside those who need to know in the companies concerned and their immediate advisers). Similarly, Rule 2.2(f)(ii) provides that an announcement is required when a purchaser is being sought for an interest, or interests, in shares carrying in aggregate 30% or more of the voting rights of a company, or when the board of a company is seeking one or more potential offerors, and, in either case, the number of potential purchasers or offerors approached is about to be increased to include more than a very restricted number of people.
- 8.2 As regards Rule 2.2(e), the Executive should be consulted prior to more than a total of six parties being approached about an offer or possible offer including, for example: potential providers of finance (whether equity or debt); shareholders in the offeror or the offeree company; pension fund trustees; potential management team candidates; significant customers of, or suppliers to, the offeree company; or potential purchasers of assets. When so consulted, the Executive will not normally count employee representatives of the offeree company or the offeror towards the six parties approached. The requirement to consult the Executive continues to apply during an offer period in relation to a possible offer by any potential offeror which has not been publicly identified.
- 8.3 In considering whether to grant its consent to more than six parties being approached, the Executive will need to be satisfied that secrecy will be maintained. Other than as described in paragraph 8.4 below, the Executive is likely to consent to more than six parties being approached only in limited circumstances.
- 8.4 Where a party has been approached about the possibility of its providing finance (whether equity or debt) to an offeror and has declined the opportunity to do so, the Executive may be prepared to treat that party as no longer counting towards the six parties approached, provided that the party is not interested in securities of the offeror or the offeree company and does not have any other ongoing interest in the offeree company. A similar approach may be taken in relation to, for example, potential management team candidates or potential purchasers of assets. Where, for example, one department of a multi-service financial organisation has declined an opportunity to provide finance and a

separate department is interested in securities of the offeror or the offeree company, the Executive will not normally treat the organisation as counting towards the six parties that may be approached by virtue of its having been approached to provide finance, provided that the department which is interested in securities of the offeror or the offeree company is not aware of the approach to the department invited to provide finance.

- 8.5 Where a consortium bid is in contemplation, the party which makes the first approach to another potential member of the consortium will be treated for these purposes as the potential offeror. That party, as the potential offeror, may therefore approach up to six parties in total, inclusive of other potential consortium members approached (provided that those approached do not themselves contact any third parties).
- 8.6 In the case of a meeting (including a telephone call or meeting held by electronic means) with a shareholder in the offeree company or the offeror (or any other person referred to in Rule 20.2(a)(ii)) prior to the commencement of any offer period which relates to a possible offer or would not be taking place but for the possible offer, the meeting must be attended by an appropriate financial adviser or corporate broker to the offeror or offeree company in accordance with Rule 20.2(b)(i). The financial adviser or corporate broker who attends the meeting must, by not later than 12 noon on the following business day, provide a written confirmation to the Panel as specified in Rule 20.2(c) or Note 1 on Rule 20.2 (as applicable) unless:
- (a) no representative of, or adviser to, the offeror or offeree company was present other than the financial adviser or corporate broker; and
 - (b) no material new information or significant new opinions relating to the possible offer were provided during the meeting.

If the conditions in (a) and (b) are satisfied, then the derogation from the requirement to provide a written confirmation when a meeting is attended by advisers only, as set out in Note 3 on Rule 20.2, will apply.

- 8.7 As regards Rule 2.2(f)(ii), the Executive should be consulted prior to more than one purchaser or potential offeror being sought, as referred to in Note 1(e) on Rule 2.2. This requirement reflects a concern that the risk of leaks may be greater when purchasers for a controlling interest in a company, or potential offerors, are being sought. This is because each party approached may wish to discuss the matter with other parties, thereby quickly increasing the number of parties who would be aware of the possible transaction.

9. Timing of announcements

- 9.1 On occasion, it is argued that to require an announcement referring to the possibility of an offer when the offer preparations are at a preliminary stage might, of itself, lead to the creation of a false market in the offeree company's securities. The Executive does not find this argument persuasive. In the Executive's opinion, if it appears that details of the possible offer may have leaked, leading to rumour and speculation or an untoward movement in the offeree company's share price, the overriding requirement is that an announcement should be made immediately and the fact that the offer preparations are at a preliminary stage may be made clear in the announcement.
- 9.2 Once the requirement to make an announcement under Rule 2.2 has been triggered, the Executive expects parties and their financial advisers to do their utmost to ensure that the announcement is made immediately, i.e. within a matter of minutes. In particular, the announcement should not be delayed whilst, for example, minor drafting changes are considered. If there is any doubt as to the precise form of wording to be included in the announcement, a brief announcement should be released forthwith. A further announcement may then be made later, setting out more detailed information on the offer discussions or preparations.
- 9.3 Furthermore, an announcement should not be delayed in order for other information to be included, for example:
- (a) the summary of the provisions of Rule 8 (as required under Rule 2.4(c)(ii));
 - (b) details of any minimum level, or particular form, of consideration required to be disclosed under Rule 2.4(c)(iii);
 - (c) details of any dealing arrangements required to be disclosed under Rule 2.4(c)(iv);
 - (d) details of the offeree company's and, if appropriate, the offeror's relevant securities in issue (as required under Rule 2.9); or
 - (e) a confirmation that any offer will be, or is likely to be, solely in cash (see Note 1 on Rule 8 and the definition of a "cash offeror").

If, contrary to the guidance in paragraph 10.3 below, the draft announcement does not include this information, and it cannot be included without delay, a separate announcement which includes this information should be released as soon as possible thereafter.

- 9.4 The information required to be announced under Rule 2.9 includes details of each class of relevant security, and not only details in relation to

ordinary shares. The Executive should be consulted if there is any doubt as to whether a security is a class of relevant security that should be included in an announcement made under Rule 2.9.

10. Pre-announcement responsibilities

(a) Particular responsibility of financial advisers for ensuring compliance with Rule 2

10.1 Where a potential offeror, or a company in receipt of an approach, has notified its financial adviser of the possible offer or approach, the Executive considers that, for the reasons set out in paragraph 1.3 above, the financial adviser has a particular responsibility for:

- (a) monitoring for movements in the offeree company's share price and for rumour and speculation; and
- (b) consulting the Executive,

even if these tasks have not explicitly been delegated to it. The Executive considers that financial advisers should be mindful of their responsibilities from an early stage. In particular, the Executive would not regard the signing of an engagement letter, of itself, to be determinative of when an advisory relationship between a financial adviser and its client commences.

10.2 It is vital that, at an early stage, a financial adviser clearly explains to its client the requirements of Rule 2 and ensures that the client understands those requirements. In the Executive's opinion, this is unlikely to be achieved satisfactorily through the financial adviser simply providing the client with a standard form memorandum on the provisions of Rule 2 or the Code generally.

(b) Preparation of announcements and release procedure

10.3 In order that an offeror or offeree company may release an announcement immediately, if required, an appropriate draft announcement should be prepared and approved at an early stage. A financial adviser may wish to obtain its client's approval of a variety of draft announcements to be released depending on the circumstances at the relevant time. All such draft announcements should be complete in all respects, including, for example:

- (a) the identity of any potential offeror(s) (Rule 2.4(a));
- (b) the date by which any deadline set in accordance with Rule 2.6(a) will expire;

- (c) a summary of Rule 8; and
- (d) the information referred to in Rule 2.9.

Financial advisers may also wish to consider the inclusion in the draft announcement, if appropriate, of a confirmation that any offer will be, or is likely to be, solely in cash (see Note 1 on Rule 8 and the definition of a “cash offeror”).

10.4 In addition, procedures should be put in place to ensure the prompt release of the announcement when required, including an agreement as to who is to be responsible for making the announcement (for example, the financial adviser or the client) and having appropriate arrangements in place to make the announcement (including access to a Regulatory Information Service). The person responsible should be authorised to release the announcement immediately upon this being required by the Panel. If the approval of a particular person, or group of persons, is required before the announcement is released, the nominated persons must be contactable at all times and an appropriate contingency plan should be put in place in the event that the nominated persons are not contactable. The making of an announcement by the potential offeree company should not be delayed by consultation with the potential offeror.

(c) Monitoring procedures

10.5 With regard to monitoring movements in the offeree company’s share price, the Executive believes that a system is unlikely to be effective unless it:

- (a) is operative at all times during market hours (including, if the offeree company’s securities, or depositary receipts relating to those securities, are traded on an overseas exchange, during that overseas exchange’s market hours);
- (b) is able to monitor share price movements on a real time basis; and
- (c) incorporates a mechanism which rebases the monitoring system so as to ensure that price rises are compared against the lowest share price since the time when the offer was first actively considered, the approach was received or one or more purchasers or offerors were first sought (as appropriate).

The Executive should be consulted in the case of any doubt as to how share price movements should be monitored and calculated.

10.6 With regard to monitoring for rumour and speculation, the principal sources of information relating to offers (including newswires and newspapers) and such other sources of information as are reasonable in the context of the transaction (including social media, overseas publications, trade publications and internet bulletin boards) should be monitored for any rumour and speculation about the possibility of an offer for the offeree company.

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.

7 March 2008

Last amended 11 December 2023