

RULE 11. NATURE OF CONSIDERATION TO BE OFFERED

11.1 WHEN A CASH OFFER IS REQUIRED

Except with the consent of the Panel in cases falling under (a) or (b), a cash offer is required where:

(a) the shares of any class under offer in the offeree company in which interests are acquired for cash (but see Note 5) by an offeror and any person acting in concert with it during the offer period and within 12 months prior to its commencement represent 10% or more of the shares of that class in issue, in which case the offer for that class shall be in cash or accompanied by a cash alternative at not less than the highest price paid by the offeror or any person acting in concert with it for any interest in shares of that class acquired during the offer period and within 12 months prior to its commencement; or

(b) subject to paragraph (a) above, any interest in shares of any class under offer in the offeree company is acquired for cash (but see Note 5) by an offeror or any person acting in concert with it during the offer period, in which case the offer for that class shall be in cash or accompanied by a cash alternative at not less than the highest price paid by the offeror or any person acting in concert with it for any interest in shares of that class acquired during the offer period; or

(c) in the view of the Panel there are circumstances which render such a course necessary in order to give effect to General Principle 1.

NOTES ON RULE 11.1

1. Price

For the purpose of this Rule, the price paid for any acquisition of an interest in shares will be determined as follows:

(a) *in the case of a purchase of shares, the price paid is the price at which the bargain between the purchaser (or, where applicable, the purchaser's broker acting in an agency capacity) and the vendor (or principal trader) is struck;*

(b) *in the case of a call option which remains unexercised, the price paid will normally be treated as the middle market price of the shares which are the subject of the option at the time the option is entered into;*

(c) *in the case of a call option which has been exercised, the price paid will normally be treated as the amount paid on exercise of the option together with any amount paid by the option-holder on entering into the option;*

(d) *in the case of a written put option (whether exercised or not), the price paid will normally be treated as the amount paid or payable on exercise of the option less any amount paid by the option-holder on entering into the option; and*

(e) in the case of a derivative, the price paid will normally be treated as the initial reference price together with any fee paid on entering into the derivative.

In the case of an option or a derivative, however, if the option exercise price or derivative reference price is calculated by reference to the average price of a number of acquisitions by the counterparty of interests in underlying securities, the price paid will normally be determined to be the highest price at which such acquisitions are actually made.

Any stamp duty and broker's commission payable should be excluded.

Where a person acquired an interest in shares more than 12 months prior to the commencement of the offer period as a result of any option, derivative or agreement to purchase and, during the offer period or within 12 months prior to its commencement, the person acquires any of the relevant shares, no obligation under this Rule will normally arise as a result of the acquisition of those shares. However, if the terms of the instrument have been varied in any way, or if the shares are acquired other than on the terms of the original instrument, the Panel should be consulted.

2. Gross acquisitions

The Panel would normally regard Rule 11.1(a) as applying to the gross number of shares in which interests are acquired over the relevant period. Shares sold over that period or which are the subject of any short position should not normally be deducted. However, in exceptional circumstances and with the consent of the Panel, shares sold some considerable time before the beginning of the offer period (or shares which are the subject of any short position entered into some considerable time before the beginning of the offer period) may be deducted.

3. When the obligation is satisfied

The obligation to make cash available under this Rule will be considered to have been met if, at the time the acquisition was made, a cash offer or cash alternative at a price per share not less than that required by this Rule was open for acceptance, even if that offer or alternative closes for acceptance immediately thereafter.

4. Equality of treatment

The discretion given to the Panel in Rule 11.1(c) will not normally be exercised unless the vendors or other parties to the transactions giving rise to the interests are directors of, or other persons closely connected with, the offeror or the offeree company. In such cases, relatively small acquisitions could be relevant.

Rule 11.1(c) may also be relevant when interests in shares representing 10% or more of a class in issue have been acquired in the previous 12 months

for a mixture of securities and cash. The Panel should be consulted in all relevant cases.

5. Acquisitions for securities

For the purpose of this Rule, interests in shares acquired by an offeror and any person acting in concert with it in exchange for securities, either during or in the 12 months preceding the commencement of the offer period, will normally be deemed to be acquisitions for cash on the basis of the value of the securities at the time of the purchase. However, if the vendor of the offeree company shares or other party to the transaction giving rise to the interest is required to hold the securities received or receivable in exchange until either the offer has lapsed or the offer consideration has been sent to accepting shareholders, no obligation under Rule 11.1 will be incurred.

See also Note 6 on Rule 11.2.

6. Revision

If an obligation under this Rule arises during the course of an offer period and a revision of the offer is necessary, an immediate announcement must be made by the offeror in accordance with Rule 7.1. Rule 7.1 may also be relevant to acquisitions by potential offerors.

7. Allotted but unissued shares

When shares of a company have been allotted (even if provisionally) but have not yet been issued, for example, under a rights issue when the shares are represented by renounceable letters of allotment, the Panel should be consulted. Such shares are likely to be relevant for the purpose of calculating percentages under this Rule.

8. Dividends

Note 5 on Rule 6 also applies to acquisitions made during the period to which Rule 11.1 applies.

9. Convertible securities, warrants and options

Acquisitions of securities convertible into, warrants in respect of, or options or other rights to subscribe for, new shares will normally only be relevant to this Rule if they are converted or exercised (as applicable). Such acquisitions will then be treated as if they were acquisitions of the underlying shares at a price calculated by reference to the acquisition price and the relevant conversion or exercise terms. In any case of doubt, the Panel should be consulted.

10. Offer period

References to the offer period in this Rule are to the time during which the offeree company is in an offer period, irrespective of whether the offeror was contemplating an offer when the offer period commenced.

11.2 WHEN A SECURITIES OFFER IS REQUIRED

(a) Where interests in shares of any class of the offeree company representing 10% or more of the shares of that class in issue have been acquired by an offeror and any person acting in concert with it in exchange for securities in the three months prior to the commencement of and during the offer period, such securities will normally be required to be offered to all other holders of shares of that class.

(b) Unless the vendor or other party to the transaction giving rise to the interest is required to hold the securities received or receivable until either the offer has lapsed or the offer consideration has been sent to accepting shareholders, an obligation to make an offer in cash or to provide a cash alternative will also arise under Rule 11.1.

NOTES ON RULE 11.2

1. Basis on which securities are to be offered

Any securities required to be offered pursuant to Rule 11.2 must be offered on the basis of the same number of consideration securities received or receivable by the vendor or other party to the transaction giving rise to the interest for each offeree company share rather than on the basis of securities equivalent to the value of the securities received or receivable by the vendor or such other party at the time of the relevant purchase. Where there has been more than one relevant acquisition, offeror securities must be offered on the basis of the greater or greatest number of consideration securities received or receivable for each offeree company share.

2. Equality of treatment

The Panel may require securities to be offered on the same basis to all other holders of shares of that class even though the amount purchased is less than 10% or the purchase took place more than three months prior to the commencement of the offer period. However, this discretion will not, normally, be exercised unless the vendors of the relevant shares or other parties to the transactions giving rise to the interests are directors of, or other persons closely connected with, the offeror or the offeree company.

3. Vendor placings

Shares acquired in exchange for securities will normally be deemed to be acquisitions for cash for the purposes of this Rule if an offeror or any person acting in concert with it arranges the immediate placing of such consideration securities for cash, in which case no obligation to make a securities offer under this Rule will arise.

4. Management retaining an interest

See Note 2 on Rule 16.2.

5. Acquisitions for a mixture of cash and securities

The Panel should be consulted where interests in shares representing 10% or more of any class of shares in issue have been acquired during the offer period and within 12 months prior to its commencement for a mixture of securities and cash.

6. Acquisitions in exchange for securities to which selling restrictions are attached

Where an offeror and any person acting in concert with it has acquired interests in shares representing 10% or more of any class of shares in issue in the offeree company during the offer period and within 12 months prior to its commencement and the consideration received or receivable by the vendor or other party to the transaction giving rise to the interest includes shares to which selling restrictions of the kind set out in Rule 11.2(b) are attached, the Panel should be consulted.

7. Applicability of the Notes on Rule 11.1 to Rule 11.2

See Note 2, Note 5, Note 6, Note 7, Note 9 and Note 10 on Rule 11.1 which may be relevant.

11.3 DISPENSATION FROM HIGHEST PRICE

If the offeror considers that the highest price (for the purpose of Rule 11.1 and Rule 11.2) should not apply in a particular case, the offeror should consult the Panel, which has discretion to agree an adjusted price.

NOTE ON RULE 11.3

Relevant factors

Factors which the Panel might take into account when considering an application for an adjusted price include:

- (a) the size and timing of the relevant acquisitions;*
- (b) the attitude of the board of the offeree company;*
- (c) whether interests in shares had been acquired at high prices from directors or other persons closely connected with the offeror or the offeree company; and*
- (d) the number of shares in which interests have been acquired in the preceding 12 months.*