

## **RULE 13. CONDITIONS AND PRE-CONDITIONS TO AN OFFER**

### **13.5 INVOKING CONDITIONS AND PRE-CONDITIONS**

(a) An offeror may only invoke a condition or pre-condition so as to cause the offer not to proceed, to lapse or to be withdrawn with the consent of the Panel. The firm offer announcement and the offer document must each incorporate language which appropriately reflects this requirement. The Panel will normally only give its consent if the circumstances which give rise to the right to invoke the condition or pre-condition are of material significance to the offeror in the context of the offer. This will be judged by reference to the facts of each case at the time that the relevant circumstances arise.

(b) The following will not be subject to Rule 13.5(a):

- (i) the acceptance condition (see Rule 9.3 and Rule 10.1);
- (ii) a condition relating to the approval of a scheme of arrangement by the offeree company's shareholders or to the sanctioning of the scheme by the court;
- (iii) where the offeror proposes to finance cash consideration by an issue of new securities, a condition required under Rule 13.4(b);
- (iv) where securities are offered as consideration, a condition required to give effect to a legal or regulatory requirement relating to the issuance, listing and/or admission to trading of those securities (see the Note on Rule 13.4);
- (v) a condition required to give effect to a legal or regulatory requirement, or a requirement of the offeror's articles of association (or equivalent), for the offeror's shareholders to approve the implementation of the offer;
- (vi) a term relating to the long-stop date of a contractual offer (but see the separate requirements of Rule 12.1 and Rule 12.2);
- (vii) a condition relating to a long-stop date of a scheme of arrangement or a specific date by which the shareholder meetings or the court sanction hearing must be held (see Sections 3(b) and (c) of Appendix 7 and also the separate requirements of Section 3(g) of Appendix 7); and
- (viii) any other condition or pre-condition that the Panel has agreed will not be subject to Rule 13.5(a) in the particular circumstances.

(c) The firm offer announcement and the offer document must state which conditions and, in the case of a firm offer announcement, pre-conditions are not subject to Rule 13.5(a).

(d) The firm offer announcement and the offer document must state that any condition or, in the case of a firm offer announcement, pre-condition that is subject to Rule 13.5(a) may be waived by the offeror.