

RULE 16. SPECIAL DEALS AND MANAGEMENT INCENTIVISATION

16.1 SPECIAL DEALS WITH FAVOURABLE CONDITIONS

(a) Except with the consent of the Panel, an offeror or persons acting in concert with it may not make any arrangements with shareholders and may not deal or enter into arrangements to deal in shares of the offeree company, or enter into arrangements which involve acceptance of an offer, either during an offer or when one is reasonably in contemplation, if there are favourable conditions attached which are not being extended to all shareholders. (See also Rule 35.3.)

(b) An arrangement made with a person who, while not a shareholder, is interested in shares carrying voting rights in the offeree company will also be prohibited by Rule 16.1(a) if favourable conditions are attached which are not being extended to the shareholders. For the avoidance of doubt, there is no requirement to extend an offer or any arrangement which would otherwise be prohibited by this Rule to any person who is interested in shares, but is not a shareholder.

NOTES ON RULE 16.1

1. Top-ups and other arrangements

An arrangement to deal with favourable conditions attached includes any arrangement where there is a promise to make good to a vendor of shares any difference between the sale price and the price of any subsequent successful offer. An irrevocable commitment to accept an offer combined with an option to put the shares should the offer fail will also be regarded as such an arrangement.

Arrangements made by an offeror with a person acting in concert with it, whereby an interest in offeree company shares is acquired by the person acting in concert on the basis that the offeror will bear all the risks and receive all the benefits, are not prohibited by this Rule. Arrangements which contain a benefit or potential benefit to the person acting in concert (beyond normal expenses and carrying costs) are, however, normally prohibited. In cases of doubt, the Panel must be consulted.

2. Offeree company shareholders' approval of certain transactions — eg disposal of offeree company assets

In some cases, certain assets of the offeree company may be of no interest to the offeror. There is a possibility if a person interested in shares in the offeree company seeks to acquire the assets in question that the terms of the transaction will be such as to confer a special benefit on the person; in any event, the arrangement is not capable of being extended to all shareholders. The Panel will normally consent to such a transaction, provided that the independent adviser to the offeree company publicly states that in its opinion the terms of the transaction are fair and reasonable and the transaction is

approved at a general meeting of the offeree company's shareholders. At this meeting the vote must be a separate vote of independent shareholders and must be taken on a poll. Where a sale of assets takes place after the offer has become unconditional, the Panel will be concerned to see that there was no element of pre-arrangement in the transaction.

The Panel will consider allowing such a procedure in respect of other transactions where the issues are similar, eg a transaction with an offeree company shareholder involving offeror assets.

3. Finders' fees

This Rule also covers cases where a person interested in shares in an offeree company is to be remunerated for the part that the person has played in promoting the offer. The Panel will normally consent to such remuneration, provided that the interest in shares is not substantial and it can be demonstrated that a person who had performed the same services, but had not at the same time been interested in offeree company shares, would have been entitled to receive no less remuneration.

16.2 MANAGEMENT INCENTIVISATION

(a) Except with the consent of the Panel, where an offeror has:

- (i) entered into; or**
- (ii) reached an advanced stage of discussions on proposals to enter into**

any form of incentivisation arrangements with members of the offeree company's management who are interested in shares in the offeree company, relevant details of the arrangements or proposals must be disclosed and the independent adviser to the offeree company must state publicly that in its opinion the arrangements are fair and reasonable. If it is intended to put incentivisation arrangements in place following completion of the offer, but either no discussions or only limited discussions have taken place, this fact must be stated publicly and relevant details of the discussions disclosed. Where no incentivisation arrangements are proposed, this must be stated publicly.

(b) Where the value of arrangements entered into or proposed to be entered into is significant and/or the nature of the arrangements is unusual either in the context of the relevant industry or good practice, the Panel must be consulted and its consent to the arrangements obtained. The Panel may also require, as a condition of its consent, that the arrangements be approved at a general meeting of the offeree company's shareholders.

(c) Where the members of the management are shareholders in the offeree company and, as a result of the incentivisation arrangements, they will become shareholders in the offeror on a basis that is not being made available to all other offeree company shareholders, such arrangements must be approved at a general meeting of the offeree company's shareholders.

(d) Any approval as required by paragraph (b) or (c) above must be by a separate vote of independent shareholders, taken on a poll.

NOTES ON RULE 16.2

1. Rule 15

Where members of the management of the offeree company are to receive offeror securities pursuant to an appropriate offer or proposal made in accordance with Rule 15, Rule 16.2(a) and (b) will apply, but shareholder approval will not normally be required under this Rule in respect of such offer or proposal.

2. Management retaining an interest

If the only shareholders in the offeree company who receive offeror securities are members of the management of the offeree company, the Panel will not, so long as the requirements of this Rule are complied with, require all offeree shareholders to be offered offeror securities pursuant to Rule 11.2, even though such members of the management of the offeree company propose to sell, in exchange for offeror securities, more than 10% of the offeree company's shares.

3. Where incentivisation arrangements are put in place following the offer being made or the proposed arrangements are amended

Where, following the offer document being published, there is a change in the terms of any agreed or proposed management incentivisation arrangements or the offeror enters into, or reaches an advanced stage of discussion on proposals to enter into any form of management incentivisation arrangements, the Panel must be consulted. The Panel may require details of the changes to the arrangements or status of the discussions to be disclosed, the independent adviser to state publicly that in its opinion the arrangements are fair and reasonable and, if appropriate, a separate vote of independent shareholders to be held to approve the arrangements.

4. Incentivisation of members of management who are not interested in shares in the offeree company

Where members of management who are not interested in shares in the offeree company are to be offered significant and/or unusual incentivisation arrangements by the offeror, the Panel must be consulted.