

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.