

RULE 2. SECRECY BEFORE ANNOUNCEMENTS; THE TIMING AND CONTENTS OF ANNOUNCEMENTS

2.5 TERMS AND PRE-CONDITIONS IN POSSIBLE OFFER ANNOUNCEMENTS

(a) The Panel must be consulted in advance if, prior to the announcement of a firm intention to make an offer, any person proposes to make a statement in relation to the terms on which an offer might be made for the offeree company. If a potential offeror (or its directors, officials or advisers) makes such a statement and it is not withdrawn immediately if incorrect, the potential offeror will be bound by the statement if an offer for the offeree company is subsequently made, except where it specifically reserved the right not to be so bound in certain circumstances at the time the statement was made and those circumstances subsequently arise or in wholly exceptional circumstances. In particular:

(i) where the statement concerned relates to the price of a possible offer (or a particular exchange ratio in the case of a possible securities exchange offer), any offer made by the potential offeror for the offeree company will be required to be made on the same or better terms. Where all or part of the consideration is expressed in terms of a monetary value, the offer or that element of the offer must be made at the same or a higher monetary value. Where all or part of the consideration has been expressed in terms of a securities exchange ratio, the offer or that element of the offer must be made on the same (or an improved) securities exchange ratio; and

(ii) where the statement concerned includes reference to the fact that the terms of the possible offer “will not be increased” or are “final” or uses a similar expression, the potential offeror will not be allowed subsequently to make an offer on better terms.

(b) The consequences of a statement to which Rule 2.5(a) applies will normally apply also to any person acting in concert with the potential offeror and to any person who is subsequently acting in concert with the potential offeror or such person.

(c) The Panel must be consulted in advance if a potential offeror proposes to include in a possible offer announcement any pre-conditions to the announcement of a firm intention to make an offer. Any such pre-conditional possible offer announcement must:

(i) clearly state whether or not the pre-conditions must be satisfied before a firm intention to make an offer can be announced or whether they are waivable; and

(ii) include a prominent warning to the effect that the announcement does not amount to a firm intention to make an offer

and that, accordingly, there can be no certainty that any offer will be made even if the pre-conditions are satisfied or waived.

NOTES ON RULE 2.5

1. Reservation of the right to set a statement aside or to vary the form and/or mix of consideration

(a) The first announcement in which a statement subject to Rule 2.5(a) is made must contain prominent reference to any reservation to set it aside (precise details of which must be included). Any subsequent mention by the potential offeror of the statement must be accompanied by a reference to the reservation.

(b) Where a potential offeror has reserved the right to vary the form and/or mix of the consideration referred to in a statement to which Rule 2.5(a)(i) applies (but remains bound to a specified minimum level of consideration) and exercises that right, the value of any offer that is made subsequently must be the same as or better than the value of the consideration referred to in that statement, calculated as at the time of the announcement of the firm intention to make an offer. If, during the period ending when the market closes on the first business day after the announcement of the firm intention to make an offer, the value is not maintained, the Panel will be concerned to ensure that the offeror acted with all reasonable care in determining the consideration. If there is a restricted market in the securities offered, or if the amount of securities to be issued of a class already admitted to trading is large in relation to the amount already issued, the Panel may require justification of prices used to determine the value of the offer.

(c) Once it has announced a firm intention to make an offer, an offeror will not be permitted to exercise any right it had previously reserved either to reduce the level of consideration that it might offer or to vary the form and/or mix of the consideration. However, the offeror's ability to reduce the offer consideration by the amount of a specified dividend (or other distribution) will not be affected.

2. Duration of restriction

The restrictions imposed by Rule 2.5(a) will normally apply until the later of:

(a) three months from the date on which the potential offeror makes a statement to which Rule 2.8 applies; and

(b) the end of the offer period.

See also Rule 2.8(f).

3. Statements by the offeree company

Any statement made by the offeree company in relation to the terms on which an offer might be made must make clear whether or not it is being made with the agreement or approval of the potential offeror. Where the statement is made with the agreement or approval of the potential offeror, the statement will be treated as one to which Rule 2.5(a) applies in the same way as if it had been made by the potential offeror itself. Where it is not so made, the statement must also include a prominent warning to the effect that there can be no certainty that an offer will be made nor as to the terms on which any offer might be made.

4. Dividends

(a) When an offeror makes a statement to which Rule 2.5(a)(i) applies, the offeror must state that it will have the right to reduce the offer consideration by the amount of any dividend (or other distribution) which is paid or becomes payable by the offeree company to offeree company shareholders, unless, and to the extent that, the statement provides that offeree company shareholders will be entitled to receive and retain all or part of a specified dividend (or other distribution) in addition to the offer consideration.

(b) Where an offeror has made a statement to which Rule 2.5(a)(ii) applies and a dividend (or other distribution) is subsequently paid or becomes payable by the offeree company to offeree company shareholders, the offeror will normally be required to reduce the offer consideration by an amount equal to the dividend (or other distribution) so that the overall value receivable by the offeree company shareholders remains the same, unless, and to the extent that, the offeror has stated that offeree company shareholders will be entitled to receive all or part of a specified dividend (or other distribution) in addition to the offer consideration.