

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

2.7 THE ANNOUNCEMENT OF A FIRM INTENTION TO MAKE AN OFFER

(a) An offeror should announce a firm intention to make an offer only after the most careful and responsible consideration and when the offeror has every reason to believe that it can and will continue to be able to implement the offer. Responsibility in this connection also rests on the financial adviser to the offeror.

(b) Following an announcement of a firm intention to make an offer, the offeror must proceed to make the offer unless, in accordance with the provisions of Rule 13.5, it is permitted to invoke a pre-condition to the making of the offer or would be permitted to invoke a condition to the offer if the offer were made. However, with the consent of the Panel, an offeror need not make the offer if a competing offeror subsequently announces a firm intention to make a higher offer.

(c) When a firm intention to make an offer is announced, the announcement must include:

- (i) the terms of the offer;
- (ii) the identity of the offeror;
- (iii) all conditions or pre-conditions to which the offer or the making of an offer is subject;
- (iv) language which appropriately reflects that the offeror may only invoke any condition or pre-condition which is subject to Rule 13.5(a) with the consent of the Panel;
- (v) a statement as to which conditions and pre-conditions are not subject to Rule 13.5(a) (see Rule 13.5(c));
- (vi) a statement that any condition or pre-condition that is subject to Rule 13.5(a) may be waived by the offeror (see Rule 13.5(d));
- (vii) details of any agreements or arrangements to which the offeror is party which relate to the circumstances in which it may or may not invoke or seek to invoke a pre-condition or a condition to its offer and the consequences of its doing so, including details of any break fees payable as a result;
- (viii) the intentions of the offeror with regard to the business, employees and pension scheme(s) of the offeree company (see Note 1);
- (ix) details of any relevant securities of the offeree company in which the offeror or any person acting in concert with it has an interest or in respect of which it has a right to subscribe, in each case specifying the nature of the interests or rights concerned (see

Note 5 on Rule 8). Similar details of any short positions (whether conditional or absolute and whether in the money or otherwise), including any short position under a derivative, any agreement to sell, any delivery obligation or right to require another person to purchase or take delivery, must also be stated;

(x) details of any irrevocable commitment or letter of intent procured by the offeror or any person acting in concert with it (see Note 3 on Rule 2.10);

(xi) details of any relevant securities of the offeree company which the offeror or any person acting in concert with it has borrowed or lent, save for any borrowed relevant securities which have been either on-lent or sold and details of any financial collateral arrangements which the offeror or any person acting in concert with it has entered into (see Note 3 on Rule 4.6);

(xii) details of any dealing arrangement of the kind referred to in Note 11 on the definition of acting in concert to which the offeror or any person acting in concert with it is a party;

(xiii) a summary of the provisions of Rule 8 (see the Panel's website at www.thetakeoverpanel.org.uk);

(xiv) a summary of any offer-related arrangement or other agreement, arrangement or commitment permitted under, or excluded from, Rule 21.2;

(xv) a list of the documents published on a website in accordance with Rule 26.2 and the address of the website on which the documents are published; and

(xvi) a statement that the offeror 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 announcement 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.

(d) Where the offer is for cash, or includes an element of cash, the announcement must include confirmation by the financial adviser or by another appropriate third party that resources are available to the offeror sufficient to satisfy full acceptance of the offer. (The party confirming that resources are available will not be expected to produce the cash itself if, in giving the confirmation, it acted responsibly and took all reasonable steps to assure itself that the cash was available.)

NOTES ON RULE 2.7

1. Intentions of the offeror with regard to the business, employees and pension scheme(s)

(a) *For the purpose of Rule 2.7(c)(viii), the offeror must explain the long-term commercial justification for the offer and must state:*

(i) *its intentions with regard to the future business of the offeree company, including its intentions for any research and development functions of the offeree company;*

(ii) *its intentions with regard to the continued employment of the employees and management of the offeree company and of its subsidiaries, including any material change in the conditions of employment or in the balance of the skills and functions of the employees and management;*

(iii) *its strategic plans for the offeree company, and their likely repercussions on employment and on the locations of the offeree company's places of business, including on the location of the offeree company's headquarters and headquarters functions;*

(iv) *its intentions with regard to employer contributions into the offeree company's pension scheme(s) (including with regard to current arrangements for the funding of any scheme deficit), the accrual of benefits for existing members, and the admission of new members;*

(v) *its intentions with regard to any redeployment of the fixed assets of the offeree company; and*

(vi) *its intentions with regard to the maintenance of any existing trading facilities for the relevant securities of the offeree company.*

(b) *If the offeror has no intention to make any changes in relation to the matters described under (a) above, or if it considers that its strategic plans for the offeree company will have no repercussions on employment or the location of the offeree company's places of business, it must make a statement to that effect.*

(c) *Where the offeror is a company, and insofar as it is affected by the offer, the offeror must also state its intentions with regard to its future business and comply with (a)(ii) and (iii) with regard to itself.*

2. Persons acting in concert with the offeror

If an offeror announces a firm intention to make an offer before the deadline for its Opening Position Disclosure (see Note 2(a)(i) on Rule 8), it may not be practicable to have made enquiries of all persons acting in concert with it in order to include all relevant details in respect of such persons in the announcement. In such circumstances, this fact should be stated and all

relevant details included in the Opening Position Disclosure. The Panel should be consulted in all such cases.

3. *Reservations to a previous statement in relation to the terms of a possible offer*

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 a specified dividend (or other distribution) which is subsequently paid by the offeree company to offeree company shareholders will not be affected.