

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

2.8 STATEMENTS OF INTENTION NOT TO MAKE AN OFFER

A person making a statement that it does not intend to make an offer for a company should make the statement as clear and unambiguous as possible. Except with the consent of the Panel, unless circumstances occur that the person specified in its statement as being circumstances in which the statement may be set aside, neither the person making the statement, nor any person who acted in concert with that person, nor any person who is subsequently acting in concert with either of them, may within six months from the date of the statement:

(a) announce an offer or possible offer for the offeree company (including a partial offer which would result in the offeror and persons acting in concert with it being interested in shares carrying 30% or more of the voting rights of the offeree company);

(b) acquire any interest in shares of the offeree company if any such person would thereby become obliged under Rule 9 to make an offer;

(c) acquire any interest in, or procure an irrevocable commitment in respect of, shares of the offeree company if the shares in which such person, together with any persons acting in concert with it, would be interested and the shares in respect of which it, or they, had acquired irrevocable commitments would in aggregate carry 30% or more of the voting rights of the offeree company;

(d) make any statement which raises or confirms the possibility that an offer might be made for the offeree company;

(e) take any steps in connection with a possible offer for the offeree company where knowledge of the possible offer might be extended outside those who need to know in the potential offeror and its immediate advisers; or

(f) purchase, agree to purchase, or make any statement which raises or confirms the possibility that it is interested in purchasing assets which are significant in relation to the offeree company.

Failure to comply with this Rule may lead to the period of six months referred to above being extended.

NOTES ON RULE 2.8

1. *Prior consultation*

Any person considering making such a statement should consult the Panel in advance.

2. Setting aside a statement to which Rule 2.8 applies

(a) *The circumstances that a person is permitted to specify in a statement to which Rule 2.8 applies as circumstances in which the statement may be set aside are:*

- (i) subject to paragraph (b), the board of the offeree company so agreeing;*
- (ii) a third party (including another publicly identified potential offeror) announcing a firm intention to make an offer;*
- (iii) the offeree company announcing a Rule 9 waiver proposal (see Note 1 of the Notes on Dispensations from Rule 9) or a reverse takeover;*
- (iv) the Panel determining that there has been a material change of circumstances; or*
- (v) where the statement is made outside an offer period, such other circumstances as the person may, with the Panel's prior consent, specify.*

(b) *Where the statement to which Rule 2.8 applies is made after a third party has announced a firm intention to make an offer, the statement may specify the agreement of the board of the offeree company as a circumstance in which the statement may be set aside only to the extent that such agreement is given after that third party offer has been withdrawn or lapsed.*

(c) *Where the statement to which Rule 2.8 applies is made after a third party has announced a firm intention to make an offer and the person who made the statement, or any person acting in concert with it, acquires an interest in any shares in the offeree company in the period following the making of the statement and prior to the third party offer being withdrawn or lapsing, the agreement of the board of the offeree company may not be relied on as a reason to set aside the statement after the third party offer has been withdrawn or lapsed.*

(d) *Where the statement to which Rule 2.8 applies is made by a potential offeror which has made a statement to which Rule 2.5(a)(i) or (ii) applies and which did not reserve the right not to be bound by that statement with the agreement of the board of the offeree company, the board of the offeree company may not, except with the consent of the Panel, agree to the restrictions in Rule 2.8(f) being set aside until the later of:*

- (i) three months following the date on which the statement to which Rule 2.8 applies is made; and*
- (ii) the end of the offer period.*

3. Concert parties

The restrictions imposed by Rule 2.8 will not apply to a person acting in concert with the person making the statement to which the Rule applies provided it is made clear in the statement, or at the time the statement is made, that such person acting in concert is continuing to consider making an offer for the offeree company.

The restrictions imposed by Rule 2.8 will, however, normally apply to any person acting in concert with the person making the statement to which the Rule applies if the statement is made during an offer period.

4. Media reports

When considering the application of Rule 2.8, the Panel will take into account not only the statement itself but the manner of any subsequent public reporting of it.

Advisers must therefore ensure that directors and officials of companies are warned that they must consider carefully the implications of Rule 2.8, particularly when giving interviews to, or taking part in discussions with, the media. It is very difficult after publication to alter an impression given or remark attributed to a particular person. Control of any possible abuse lies largely with the person being interviewed. In appropriate circumstances, the Panel will require a statement of retraction or clarification.

5. Significant asset purchases

(a) In assessing whether assets are significant for the purpose of Rule 2.8(f), the Panel will normally have regard to:

- (i) the aggregate value of the consideration for the assets compared with the aggregate market value of all the equity shares of the offeree company; and, where appropriate,*
- (ii) the value of the assets to be purchased compared with the total assets of the offeree company (excluding in each case cash and cash equivalents); and*
- (iii) the operating profit (i.e. profit before tax and interest and excluding exceptional items) attributable to the assets to be purchased compared with that of the offeree company.*

For these purposes, "equity" will be interpreted by reference to Note 3 on Rule 14.1.

(b) The figures to be used for these calculations must be:

- (i) for market value of the shares of the offeree company, the aggregate market value of all the equity shares of the company at the close of business on the business day immediately preceding the date of the announcement of the proposed purchase or agreement to purchase the*

assets, or the statement which raises or confirms the possibility that the person is interested in purchasing the assets; and

(ii) for assets and profits, the figures stated in the latest published audited consolidated accounts of the offeree company or, where appropriate, a subsequent preliminary statement of annual results or half-yearly financial report.

(c) Relative values of more than 75% will normally be regarded as being significant.