

## **RULE 21. RESTRICTIONS ON FRUSTRATING ACTION**

### **21.3 EQUALITY OF INFORMATION TO COMPETING OFFERORS**

- (a) The board of the offeree company must, on request, equally and promptly provide an offeror or bona fide potential offeror with all information that it has provided, and that it provides in the seven days following the request, to another offeror or potential offeror.
- (b) The requirement in Rule 21.3(a) will normally only apply when:
- (i) there has been an announcement of the existence of the offeror or potential offeror to which information has been provided; or
  - (ii) the offeror or bona fide potential offeror requesting information has been informed authoritatively of the existence of another potential offeror.

#### **NOTES ON RULE 21.3**

##### **1. Conditions attached to the passing of information**

- (a) *The passing of information under Rule 21.3(a) should not be made subject to any conditions other than those relating to:*
- (i) *the confidentiality of the information passed. This may include a condition that the offeror or potential offeror will not share the information with external providers or potential providers of finance (whether equity or debt) without the consent of the offeree company, provided that such consent may not be unreasonably withheld;*
  - (ii) *reasonable restrictions prohibiting the use of the information passed to solicit customers or employees; or*
  - (iii) *the use of the information solely in connection with an offer or possible offer.*

*Any such conditions should be no more onerous than those imposed on any other offeror or potential offeror.*

- (b) *A requirement that the offeror or potential offeror sign a hold harmless letter in favour of a third party will normally be acceptable provided that each other offeror or potential offeror has been required to sign a letter in similar form.*

##### **2. Management buy-outs**

*If the offer or possible offer is a management buy-out or similar transaction, the information which Rule 21.3 requires to be given to another offeror or potential offeror is that information generated by the offeree company (including the management of the offeree company acting in their capacity as such) which is passed to external providers or potential providers of finance (whether equity or debt) to the offeror or potential offeror. The directors who are involved in making the offer must co-operate with the independent*

directors of the offeree company and its advisers in the assembly of this information.

### **3. Reverse takeovers**

Where an offer or possible offer is a reverse takeover, an offeror or potential offeror for either party to the reverse takeover will be entitled to receive information which has been given by that party to the other party to the reverse takeover.

### **4. Information provided to a purchaser of assets**

(a) If, during the relevant period (as defined in Rule 21.1(b)), the board of the offeree company commences discussions with one or more persons in relation to the sale of all or substantially all of the offeree company's assets (excluding cash and cash equivalents), information provided by the board of the offeree company to the potential asset purchaser(s) must be provided on the basis set out in Rule 21.3 to an offeror or bona fide potential offeror.

(b) This requirement will normally only apply when:

- (i) there has been an announcement of the discussions between the offeree company and the potential asset purchaser(s); or,
- (ii) the offeror or bona fide potential offeror requesting information has been informed authoritatively that the board of the offeree company and the potential asset purchaser(s) are having such discussions.

(c) If the board of the offeree company was in discussions with one or more potential purchaser(s) regarding the sale of all or substantially all of the offeree company's assets (excluding cash and cash equivalents) prior to the relevant period, Rule 21.3(a) will apply only in relation to information provided to the potential asset purchaser(s) after the beginning of the relevant period.