

RULE 32. REVISION

32.2 NO INCREASE STATEMENTS

(a) A “no increase statement” is a statement as to the finality of an offer, including a statement that the offer will not be “increased”, “raised”, “amended”, “revised”, “improved” or “changed” and any similar expression.

(b) If an offeror (or its directors, officials or advisers) makes a no increase statement, and that statement is not withdrawn immediately if incorrect, the offeror will not be allowed subsequently to amend the terms of its offer in any way, even if the amendment would not result in an increase of the value of the offer (eg the introduction of a lower securities exchange alternative), except:

- (i) where it specifically reserved the right to do so in certain circumstances at the time the no increase statement was made and those circumstances subsequently arise; or
- (ii) in wholly exceptional circumstances.

(c) If an offeror wishes to include a reservation to a no increase statement, the Panel must be consulted. See also Rule 35.1(f) and Note 1 on Rule 35.1.

(d) A no increase statement must be published in accordance with Rule 30.1.

NOTES ON RULE 32.2

1. Reservation of the right to set a no increase statement aside

(a) *A no increase statement must not be subject to a reservation to set the statement aside which depends solely on subjective judgements by the offeror or its directors or the fulfilment of which is in their hands.*

(b) *The first document published in connection with an offer in which mention is made of the no increase statement must contain prominent reference to any reservation to set it aside (precise details of which must also be included in the document). Any subsequent mention by the offeror of the no increase statement must be accompanied by a reference to the reservation or, at the least, to the relevant sections in the document containing the details.*

(c) *Note 2 and Note 3 on Rule 32.2 describe examples of specific types of reservation to set a no increase statement aside. However, other types of reservation may also be made (for example, a reservation relating to the recommendation of an increased or improved offer by the board of the offeree company), provided that they comply with the requirements of this Note 1.*

2. Competitive situations

If the circumstances specified in a reservation made in accordance with Rule 32.2(b)(i) relate to a competitive situation arising and such a situation arises, an offeror which wishes to set aside its no increase statement must make an announcement to this effect as soon as possible (and in any event within 4 business days after the date of the firm announcement of the competing offer).

(For the purpose of this Note, a competitive situation will normally arise following a public announcement of the existence of a new offeror or potential offeror whether publicly identified or not. Other circumstances, however, may also constitute a competitive situation.)

3. Rule 31.8 announcements

An offeror may reserve the right to set aside a no increase statement in the event of the offeree company making an announcement of the kind referred to in Rule 31.8 after Day 39 only if the no increase statement is made after that day. If such an announcement is subsequently made by the offeree company and the offeror wishes to set aside its no increase statement, the offeror must make an announcement to this effect as soon as possible (and in any event within 4 business days after the date of the offeree company announcement).

4. Schemes of arrangement

A switch to or from a scheme of arrangement will not normally, of itself, be regarded as an amendment which would be precluded by an earlier no increase statement in relation to the value or type of consideration offered. Therefore, it is not necessary for an offeror making such a statement specifically to reserve the right to switch its offer structure.

5. Dividends

Where an offeror has made a no increase statement 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 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 and retain all or part of a specified dividend (or other distribution) in addition to the offer consideration.