

RULE 6. ACQUISITIONS RESULTING IN AN OBLIGATION TO OFFER A MINIMUM LEVEL OF CONSIDERAT

NOTES ON RULE 6

1. Adjusted terms

The Panel's discretion to agree adjusted terms pursuant to Rule 6.1(a) or (b) will only be exercised in exceptional circumstances. Factors which the Panel might take into account when considering an application for adjusted terms include:

- (a) whether the relevant acquisition was made on terms then prevailing in the market;*
- (b) changes in the market price of the shares since the relevant acquisition;*
- (c) the size and timing of the relevant acquisition;*
- (d) the attitude of the offeree board;*
- (e) whether interests in shares have been acquired at high prices from directors or other persons closely connected with the offeror or the offeree company; and*
- (f) whether a competing offer has been announced for the offeree company.*

2. Acquisitions prior to the three month period

The discretion given to the Panel in Rule 6.1(a)(iii) will not normally be exercised unless the vendors, or other parties to the transactions giving rise to the interests, are directors of, or other persons closely connected with, the offeror or the offeree company.

3. No less favourable terms

For the purpose of Rule 6.1, except where Rule 9 (mandatory offer) or Rule 11.1 (requirement for cash offer) applies, it will not be necessary to make a cash offer available even if interests in shares have been acquired for cash. However, any securities offered as consideration must, at the date of the announcement of the firm intention to make the offer, have a value at least equal to the highest relevant price paid. If, during the period ending when the market closes on the first business day after the announcement, 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 of an offeror, 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.

4. Highest price paid

For the purpose of this Rule, the price paid for any acquisition of an interest in shares will be determined as follows:

(a) in the case of a purchase of shares, the price paid is the price at which the bargain between the purchaser (or, where applicable, the purchaser's broker acting in an agency capacity) and the vendor (or principal trader) is struck;

(b) in the case of a call option which remains unexercised, the price paid will normally be treated as the middle market price of the shares which are the subject of the option at the time the option is entered into;

(c) in the case of a call option which has been exercised, the price paid will normally be treated as the amount paid on exercise of the option together with any amount paid by the option-holder on entering into the option;

(d) in the case of a written put option (whether exercised or not), the price paid will normally be treated as the amount paid or payable on exercise of the option less any amount paid by the option-holder on entering into the option; and

(e) in the case of a derivative, the price paid will normally be treated as the initial reference price together with any fee paid on entering into the derivative.

In the case of an option or a derivative, however, if the option exercise price or derivative reference price is calculated by reference to the average price of a number of acquisitions by the counterparty of interests in underlying securities, the price paid will normally be determined to be the highest price at which such acquisitions are actually made.

Any stamp duty and broker's commission payable should be excluded.

The Panel should be consulted in advance if it is proposed to acquire the voting rights attaching to shares, or general control of them.

Where a person acquired an interest in shares more than three months prior to the commencement of the offer period as a result of any option, derivative or agreement to purchase and, within the three month period prior to the commencement of the offer period or after the announcement made in accordance with Rule 2.7 and before the offer closes for acceptance, the person acquires any of the relevant shares, no obligation under this Rule will normally arise as a result of the acquisition of those shares. However, if the terms of the instrument have been varied in any way, or if the shares are acquired other than on the terms of the original instrument, the Panel should be consulted.

5. Dividends

(a) Dividends which accepting shareholders are entitled to receive and retain

When accepting shareholders are entitled under the offer to receive and retain, in addition to the offer consideration, a dividend which has been announced by the offeree company but the “ex dividend” date has not yet occurred:

(i) the offeror, in establishing the minimum level of the offer, may deduct from the highest price paid by it (or any person acting in concert with it) during the period to which the Rule applies the amount of the dividend to which offeree company shareholders are entitled; and

(ii) once an offer value has been announced, purchases in the market or otherwise during the “cum dividend” period by the offeror (or any person acting in concert with it) may be made at prices up to the aggregate of the offer value and the amount of the dividend without necessitating any revision of the offer.

However, purchases in the market or otherwise after the “ex dividend” date by an offeror (or any person acting in concert with it) may only be made at prices up to the amount of the offer value without necessitating any revision of the offer.

(b) Dividends which accepting shareholders are not entitled to receive and retain

When accepting shareholders are not entitled under the offer to receive and retain, in addition to the offer consideration, a dividend which has been announced by the offeree company:

(i) the offeror, in establishing the minimum level of the offer, may not deduct from the highest price paid by it (or any person acting in concert with it) during the period to which the Rule applies the amount of the dividend; and

(ii) once an offer value has been announced, purchases in the market or otherwise during the “cum dividend” period by the offeror (or any person acting in concert with it) may be made at prices up to the offer value without necessitating any revision of the offer.

However, purchases in the market or otherwise after the “ex dividend” date by an offeror (or any person acting in concert with it) may only be made at prices up to the offer value less the amount of the dividend without necessitating any revision of the offer.

6. Convertible securities, warrants and options

Acquisitions of securities convertible into, warrants in respect of, or options or other rights to subscribe for, new shares will normally only be relevant to this Rule if they are converted or exercised (as applicable). Such acquisitions will then be treated as if they were acquisitions of the underlying shares at a price calculated by reference to the acquisition price and the relevant conversion or exercise terms. In any case of doubt, the Panel should be consulted.

7. Unlisted securities

An offer where the consideration consists of securities for which immediate admission to trading on a UK regulated market is not to be sought will not normally be regarded as satisfying any obligation incurred under this Rule. In such cases the Panel should be consulted.

8. Offer period

References to the offer period in this Rule are to the time during which the offeree company is in an offer period, irrespective of whether the offeror was contemplating an offer when the offer period commenced.