

## **RULE 9. THE MANDATORY OFFER AND ITS TERMS**

### **9.5 CONSIDERATION TO BE OFFERED**

(a) An offer made under Rule 9 must, in respect of each class of share capital involved, be in cash or be accompanied by a cash alternative at not less than the highest price paid by the offeror or any person acting in concert with it for any interest in shares of that class during the 12 months prior to the announcement of that offer. The Panel should be consulted where there is more than one class of share capital involved.

(b) If, after an announcement of an offer made under Rule 9 for a class of share capital and before the offer closes for acceptance, the offeror or any person acting in concert with it acquires any interest in shares of that class at above the offer price, it shall increase its offer for that class to not less than the highest price paid for the interest in shares so acquired. Immediately after the acquisition, an appropriate announcement must be made in accordance with Rule 7.1.

(c) In certain circumstances, the Panel may determine that the highest price calculated under paragraphs (a) and (b) should be adjusted. (See Note 3.)

(d) The cash offer or the cash alternative must remain open for not less than 14 days after the offer has become unconditional (see Rule 31.2).

#### **NOTES ON RULE 9.5**

##### **1. Nature of consideration**

*When an interest in shares has been acquired for a consideration other than cash, the offer must nevertheless be in cash or be accompanied by a cash alternative of at least equal value, which must be determined by an independent valuation.*

*When there have been significant acquisitions in exchange for securities, General Principle 1 may be relevant and such securities may be required to be offered to all shareholders: a cash offer will also be required. The Panel should be consulted in such cases.*

##### **2. Calculation of the price**

(a) *The price paid for any acquisition of an interest in shares will be determined as follows:*

*(i) 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;*

*(ii) 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;*

*(iii) 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;*

*(iv) 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*

*(v) 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.*

*Where a person acquired an interest in shares more than 12 months prior to the announcement of the offer made under Rule 9 as a result of any option, derivative or agreement to purchase and, either during the 12 months prior to such announcement or after the announcement 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.*

*(b) If any interest in shares has been acquired in exchange for securities which are admitted to trading, the price will normally be established by reference to the middle market price of the securities at the time of the acquisition.*

*(c) If any interest in shares has been acquired by the conversion or exercise (as applicable) of securities convertible into, warrants in respect of, or options or other rights to subscribe for new shares, the price will normally be established by reference to the middle market price of the shares in question at the close of business on the day on which the relevant notice was submitted. If, however, the convertible securities, warrants, options or other subscription rights were acquired either during the 12 months prior to the announcement of the offer made under Rule 9 or after the announcement and before the offer closes for acceptance, they will be treated as if they were purchases of the underlying shares at a price calculated by reference to the acquisition price and the relevant conversion or exercise terms.*

*The Panel should be consulted in advance if it is proposed to acquire the voting rights attaching to shares, or general control of them, and in the circumstances described in (b) and (c) above.*

### **3. Adjustment of highest price**

*Circumstances which the Panel might take into account when considering an adjustment of the highest price include:*

- (a) the size and timing of the relevant acquisitions;*
- (b) the attitude of the board of the offeree company;*
- (c) whether interests in shares had been acquired at high prices from directors or other persons closely connected with the offeror or the offeree company;*
- (d) the number of shares in which interests have been acquired in the preceding 12 months;*
- (e) if an offer is required in order to enable a company in serious financial difficulty to be rescued;*
- (f) if an offer is required in the circumstances set out in Note 12 on Rule 9.1; and*
- (g) if an offer is required in the circumstances set out in Rule 37.1.*

*The price payable in the circumstances set out above will be the price that is appropriate taking into account all the factors that are relevant to the circumstances.*

*Any decision by the Panel to adjust the highest price under Rule 9.5(c) must be made public.*

### **4. Dividends**

*Note 5 on Rule 6 also applies to acquisitions made during the period to which Rule 9.5 applies.*

### **5. “Look-back period”**

*If, notwithstanding Rule 2.2(b), an offer under Rule 9.1 was not announced immediately following the acquisition of the interest in shares which gave rise to the obligation to make the offer, the “look-back period” in Rule 9.5(a) will start on the date which is 12 months prior to the date on which such offer ought to have been announced in accordance with Rule 2.2(b) and will end on the date on which the offer is announced. The same approach will apply to the 12 month periods referred to in Note 2 and Note 3 on Rule 9.5.*