

RULE 9. THE MANDATORY OFFER AND ITS TERMS

NOTES ON DISPENSATIONS FROM RULE 9

1. Rule 9 waivers

(See also Appendix 1)

When the issue of new securities as consideration for an acquisition or a cash subscription (or in fulfilment of obligations under an agreement to underwrite the issue of new securities) would otherwise result in an obligation to make an offer under Rule 9, the Panel will normally waive the obligation if there is an independent vote at a shareholders' meeting.

In exceptional circumstances, the Panel may consider granting a Rule 9 waiver where the approval of independent shareholders to the transfer of existing shares from one shareholder to another is obtained.

See also Note 5(c).

2. Enforcement of security for a loan

Where shares or other securities are charged as security for a loan and, as a result of enforcement, the lender would otherwise incur an obligation to make an offer under Rule 9, the Panel will not normally require an offer if sufficient interests in shares are disposed of within a limited period to persons unconnected with the lender, so that the percentage of shares carrying voting rights in which the lender, together with persons acting in concert with it, is interested is reduced to below 30% in a manner satisfactory to the Panel. (See also Rule 9.7.)

In any case where arrangements are to be made involving a transfer of voting rights to the lender, but which do not amount to enforcement of the security, the Panel will wish to be convinced that such arrangements are necessary to preserve the lender's security and that the security was not given at a time when the lender had reason to believe that enforcement was likely.

When, following enforcement, a lender sells all or part of a shareholding, the provisions of this Rule will apply to the purchaser. Although a receiver, liquidator or administrator of a company is not required to make an offer when it acquires an interest in shares carrying 30% or more of the voting rights in another company, the provisions of the Rule apply to a purchaser from such a person.

3. Rescue operations

There are occasions when a company is in such a serious financial position that the only way it can be saved is by an urgent rescue operation which involves the issue of new shares without approval by a vote of independent shareholders or the acquisition of existing shares by the rescuer which would otherwise require an offer under Rule 9. The Panel may, however, waive the requirements of the Rule in such circumstances, subject to such conditions (if any) as the Panel considers appropriate.

The requirements of Rule 9 will not normally be waived in a case where a major shareholder in a company rather than that company itself is in need of rescue. The situation of that shareholder may have little relevance to the position of other shareholders and, therefore, the purchaser from such major shareholder must expect to be obliged to extend an offer under Rule 9 to all other shareholders.

4. Inadvertent mistake

If, due to an inadvertent mistake, a person incurs an obligation to make an offer under this Rule, the Panel will not normally require an offer if sufficient interests in shares are disposed of within a limited period to persons unconnected with it, so that the percentage of shares carrying voting rights in which the person, together with persons acting in concert with that person, is interested is reduced to below 30% in a manner satisfactory to the Panel. (See also Rule 9.7.)

5. Shares carrying 50% or more of the voting rights

The Panel will consider waiving the requirement for an offer under Rule 9 where:

- (a) holders of shares carrying 50% or more of the voting rights state in writing that they would not accept such an offer;*
- (b) shares carrying 50% or more of the voting rights are already held by one other person; or*
- (c) in the case of an issue of new securities, independent shareholders holding shares carrying more than 50% of the voting rights of the company which would be capable of being cast on a Rule 9 waiver resolution (see Note 1) confirm in writing that they approve the proposed waiver and would vote in favour of any resolution to that effect at a general meeting.*

6. Enfranchisement of non-voting shares

There is no requirement to make an offer under Rule 9 if a person interested in non-voting shares becomes upon enfranchisement of those shares interested in shares carrying 30% or more of the voting rights of a company, except where shares or interests in shares have been acquired at a time when the person had reason to believe that enfranchisement would take place.