

THE TAKEOVER PANEL

PRACTICE STATEMENT NO. 9

NOTE 3 ON RULE 20.1 – EQUALITY OF INFORMATION TO SHAREHOLDERS AND THE POLICING OF MEETINGS

In 1989, a new provision (now Note 3 on Rule 20.1) was added to the Code which allowed meetings of representatives of the offeror or the offeree company (or their advisers) with shareholders of the offeror and offeree company and others to be held both prior to and during the offer period, provided that no material new information was released, no significant new opinions were expressed and the financial adviser or corporate broker to the offeror or offeree company attended the meeting and confirmed in writing to the Executive that these requirements had been met.

Note 3 on Rule 20.1 (the “Note”) provides as follows:

“... If ... any material new information or significant new opinion does emerge at the meeting, a circular giving details must be sent to shareholders as soon as possible thereafter. ...

In the case of any meeting held prior to the offer period, the representative should confirm that no material new information was forthcoming and no significant new opinions were expressed at the meeting which will not be included in the announcement of the offer to be made under Rule 2.5, if and when such announcement is made. ...”.

The concept of equality of information to shareholders, as embodied in General Principle 1 of the Code, is of fundamental importance and it is for this reason that Rule 20.1 places restrictions on the conduct of meetings with shareholders and others both prior to and during an offer period.

Since the introduction of these provisions, the Panel has made a number of public statements regarding their application. Most recently, the Executive issued Practice Statement No. 1 on the application of Note 3 on Rule 20.1 which sets out the Executive's practice in applying the provisions of this Note to significant arguments made to selected shareholders, analysts and brokers in support of or against an offer.

Following Practice Statement No. 1, a number of further questions have been put to the Executive regarding the application of the Note. In the light of this, the Executive wishes to make the following points regarding the application of Note 3 on Rule 20.1.

1. The requirements set out in the Note apply to all types of meetings, both formal and informal, other than meetings by chance.
2. Financial advisers and corporate brokers policing meetings are reminded that they are required to provide the Panel with the written confirmation referred to in the Note by no later than 12 noon on the business day following the meeting. Timely provision of the written confirmation is essential in order for the Panel to be satisfied that shareholders have had access to the same information in making decisions as to offer acceptance, voting and dealing in relevant securities during the offer period.
3. The letter of confirmation should be signed personally by an appropriate representative of the financial adviser or corporate broker who attended the meeting. Signature by a colleague on behalf of the financial adviser or corporate broker who attended the meeting is not acceptable.
4. Note 3 on Rule 20.1 draws a distinction between meetings held prior to the offer period and meetings held during the offer period. In the event that material new information has been forthcoming or significant new opinions have been expressed in meetings held prior to the offer period, the financial adviser or corporate broker will be required to confirm to the Panel that the information and/or opinions will be included in the announcement to be made under Rule 2.5. If and when such announcement is made, advisers should take care to

ensure that the relevant information and/or opinions are incorporated in the announcement.

5. In the case of meetings held during the offer period, in the event that material new information has been forthcoming or significant new opinions have been expressed, a circular giving details of such information or opinions will be required to be sent to shareholders as soon as possible thereafter. If, however, the meeting conducted during the offer period is held shortly before the announcement proposed to be made under Rule 2.5, the Panel may agree that, instead of a circular being despatched to shareholders, written confirmation is given to the Panel that the information and/or opinions will be included in the announcement to be made under Rule 2.5.
6. It is common practice for meetings to be held prior to the commencement of an offer period or prior to the publication of an announcement under Rule 2.5, for example, to gather irrevocable commitments, to ascertain the views of selected major shareholders or to procure financing commitments. In such cases, it is also common practice for the persons present at such meetings to be provided with written presentations. Advisers should take care to ensure that any material information or significant opinions contained in such presentations (or otherwise disclosed at such meetings) are confined to information and opinions which have already been made public. Where information or opinions are included in presentations the Panel is likely to regard the information as “material” or the opinions as “significant”. Accordingly, any such new information and/or opinions would need to be published in a shareholder circular or included in the announcement to be made under Rule 2.5.
7. The tests as to whether any information or opinion is “new” and whether or not the information is “material” or the opinion “significant” have to be applied in the context of the circumstances of each case. The application of the tests of materiality and significance, in particular, are not always straightforward and in cases of doubt, companies or their advisers are advised to consult the Executive.

8. The fact that information given during such meetings is based upon information which has previously been made publicly available does not preclude it from being regarded as “new” and therefore falling within Note 3 on Rule 20.1. For example, the provision of financial data or statistics which have been calculated from publicly available data or statistics may fall within the Note, even where the data or statistics have been arrived at following a simple arithmetic process. It is also relevant to consider whether the information which is given is new in the manner in which it has been presented.
9. Similarly, as stated in Practice Statement No. 1, opinions which are based on publicly available information will fall within Note 3 on Rule 20.1 if they are “significant” and “new”.

Practice Statements are issued by the Executive to provide informal guidance to companies involved in takeovers and practitioners as to how the Executive normally interprets and applies relevant provisions of the Code in certain circumstances. Practice Statements do not form part of the Code. Accordingly, they are not binding on the Executive or the Panel and are not a substitute for consulting the Executive to establish how the Code applies in a particular case. All Practice Statements issued by the Executive are available on the Panel's website at www.thetakeoverpanel.org.uk.

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