

THE TAKEOVER PANEL

PRACTICE STATEMENT NO. 11

WORKING CAPITAL REQUIREMENTS IN CASH AND SECURITIES EXCHANGE OFFERS

From time to time, the Executive is consulted by potential offerors about the acceptability of offer conditions relating to the working capital requirements of the enlarged offeror group after the completion of the offer. “Working capital” in this context means any third party debt of the enlarged offeror group that is required for reasons other than satisfying the cash consideration due under the offer.

The Executive’s practice in this area is as follows:

- an offeror will not, other than in exceptional circumstances (such as those described in paragraph (b) of the Note on Rules 13.1 and 13.3 of the Code in relation to financing pre-conditions), be permitted to include a specific condition to its offer relating to the offeree company’s, or the enlarged offeror group’s, working capital position or the availability of working capital facilities upon completion of the offer;
- if working capital concerns arise after announcement of the offer, the offeror will be able to allow its offer to lapse only if it is able to invoke one of the conditions to the offer in accordance with the usual application of Rule 13.4(a); and
- in the event that an offer lapses as a result of working capital concerns, the Executive will wish to be satisfied that the offeror and its financial adviser had, at the time of announcement of the offer, complied with Rule 2.5(a) and, following the announcement of the offer, complied with the obligation under Rule 13.4(b) to use all reasonable efforts to ensure the satisfaction of any conditions to which the offer was subject.

An offeror and its financial adviser need not, however, ensure that any working capital financing of the enlarged offeror group is obtained on a “certain funds” basis as contemplated by Rule 24.7.

The Executive should be consulted in cases of doubt.

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.

25 April 2005

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