

THE TAKEOVER PANEL

PRACTICE STATEMENT NO. 24

APPROPRIATE OFFERS AND PROPOSALS UNDER RULE 15

1. Introduction

1.1 Rule 15 of the Takeover Code requires that, when an offer is made for voting equity share capital or for other transferable securities carrying voting rights (a “voting equity offer”) and the offeree company has any outstanding securities which are convertible into, or which comprise options or other rights to subscribe for, securities to which the voting equity offer relates (“Rule 15 securities”), the offeror must make an appropriate offer or proposal to the holders of those Rule 15 securities. The purpose of Rule 15 is to safeguard the interests of holders of Rule 15 securities in their capacity as potential holders of the securities to which the voting equity offer relates. An offer or proposal is therefore required for Rule 15 securities whether or not they are currently convertible or exercisable.

1.2 The Panel Executive’s interpretation and application of certain of the provisions of Rule 15 are set out below.

2. “Appropriate” offer or proposal

(a) “*See through*” value

2.1 In order to be “appropriate” in the terms of Rule 15(a), the Executive considers that an offer or proposal will normally need to be for no less than “see through” value, i.e. the value of the Rule 15 securities by reference to the value of the voting equity offer.

- 2.2 The see through value of options, warrants and other rights to subscribe should be calculated net of any exercise price. This is illustrated by the following Example 1:

Example 1

Offeror A offers 100p for each ordinary share in offeree company B. Each offeree company B warrant entitles the holder to subscribe for one ordinary share in offeree company B at an exercise price of 10p. The see through value of each offeree company B warrant by reference to the value of the offer for the ordinary shares is therefore 90p.

- 2.3 Where the see through value of Rule 15 securities is positive, as in Example 1 above, an offer or proposal at no less than that value will normally be regarded by the Executive to be appropriate.
- 2.4 Where the see through value of Rule 15 securities is zero or negative, no Rule 15 offer or proposal will normally be required. This is illustrated by the following Example 2:

Example 2

Offeror C offers 10p for each ordinary share in offeree company D. Each offeree company D option entitles the holder to subscribe for one ordinary share in offeree company D at an exercise price of 30p. The see through value of each offeree company D option by reference to the value of the offer for the ordinary shares is therefore minus 20p. No Rule 15 offer or proposal in respect of such options would normally be required.

- (b) *Convertible securities and other Rule 15 securities which are admitted to trading***
- 2.5 Since convertible securities do not have an exercise price, their see through value will always be positive and an offer or proposal at no less than see through value will be required, even if that offer or proposal would be below the market price of the convertible securities.
- 2.6 Where the market price (if any) of any Rule 15 securities is higher than their see through value, for example where a convertible security is trading as a

fixed income security, the Executive does not require a Rule 15 offer or proposal to be at market price or above. This is because, as indicated above, the purpose of Rule 15 is to safeguard the interests of holders of Rule 15 securities in their capacity as potential holders of the securities to which the voting equity offer relates. These points are illustrated by the following Example 3:

Example 3

Offeror E offers 200p for each ordinary share in offeree company F. Each offeree company F convertible bond entitles the holder to convert that bond into one ordinary share in offeree company F. The current market price of offeree company F convertible bonds is 220p. The see-through value of each offeree company F convertible bond by reference to the value of the offer for the ordinary shares is therefore 200p and a Rule 15 offer or proposal at no less than this value will normally be required. However, there is no requirement for the Rule 15 offer or proposal in respect of the convertible bonds to be at no less than the current market price of 220p.

(c) *No requirement to offer same specie as voting equity offer*

2.7 The Executive will regard a Rule 15 offer or proposal to be appropriate if made at no less than see through value. However, the Executive does not require any particular form of consideration to be offered to holders of Rule 15 securities. In particular, there is no requirement for holders of Rule 15 securities to be offered the same form of consideration as offered under the voting equity offer.

(d) *Securities exchange offers*

2.8 Where the voting equity offer is a securities exchange offer but offeror securities are not being offered to the holders of Rule 15 securities, the see through value of the Rule 15 securities should normally be calculated by reference to the value of the voting equity offer on the latest practicable date prior to the publication of the Rule 15 offer or proposal.

- 2.9 Where the voting equity offer is a securities exchange offer and offeror securities are also being offered to the holders of Rule 15 securities, the Executive will require the exchange ratio offered to holders of Rule 15 securities to be no less favourable than that offered under the voting equity offer. This is illustrated in the following Example 4:

Example 4

Offeror G offers two new offeror G shares for each ordinary share in offeree company H. Each offeree company H convertible preference share entitles the holder to convert that share into one ordinary share in offeree company H. If offeror G wishes to offer new offeror G shares to holders of offeree company H convertible preference shares, the Executive will require the exchange ratio of the Rule 15 offer or proposal to be no worse than the “two for one” ratio offered to holders of offeree company H ordinary shares.

(e) “Time value” and adjustment mechanisms

- 2.10 Rule 15 does not require an “appropriate” offer or proposal to reflect the ability of holders of Rule 15 securities to exercise a conversion, option or subscription right over a period time.
- 2.11 However, where the rights attached to Rule 15 securities include an adjustment mechanism which affects the exercise terms of the securities in the event of an offer for the offeree company, an “appropriate” offer or proposal should normally take the adjusted exercise terms into account. If the adjusted exercise terms are not capable of immediate determination, the Executive should be consulted.

(f) Alternative offers

- 2.12 Where alternative voting equity offers are made, the see through value of any Rule 15 securities should normally be calculated by reference to the voting equity offer with the highest value as at the latest practicable date prior to the publication of the Rule 15 offer or proposal, even if that offer has ceased to be open for acceptance by existing offeree company shareholders by that time.

(g) *Equality of treatment*

- 2.13 The final sentence of Rule 15(a) states that “Equality of treatment is required.” The equality of treatment required is as between holders of the same class of Rule 15 security and not as between (i) holders of different classes of Rule 15 securities, or (ii) holders of Rule 15 securities and shareholders in the offeree company.

3. Independent advice and views of the offeree company board

- 3.1 Under Rule 15(b), the board of the offeree company must obtain competent independent advice on a Rule 15 offer or proposal and the substance of such advice must be made known to the holders of Rule 15 securities, together with the board’s views on the offer or proposal. In certain circumstances, however, as indicated in Section 4 below, it may not be practicable for a Rule 15 offer or proposal to be published until after the voting equity offer becomes or is declared wholly unconditional, by which time the board of the offeree company will be under the control of the offeror.
- 3.2 The Executive expects the board of the offeree company to take appropriate steps at the outset of the voting equity offer to ensure that Rule 15(b) will be complied with at the time when any Rule 15 offer or proposal is made, for example, by ensuring that the mandate of the adviser retained pursuant to Rule 3 will extend to advising on any Rule 15 offer or proposal. In the event that there are no independent directors on the board of the offeree company at the time when the Rule 15 offer or proposal is made, the board of the offeree company must nevertheless obtain independent advice on the offer or proposal and make the substance of such advice known to the holders of Rule 15 securities.

4. Publication of a Rule 15 offer or proposal

- 4.1 Under Rule 15(c), whenever practicable, the offer or proposal should be sent to holders of Rule 15 securities at the same time as the offer document is

published. If this is impracticable, the Executive should be consulted and the Rule 15 offer or proposal sent as soon as possible thereafter.

- 4.2 The Executive will take all relevant factors into account in considering when it is practicable for a Rule 15 offer or proposal to be sent to holders of Rule 15 securities. If the Rule 15 offer or proposal is not sent to holders of Rule 15 securities at the same time as the offer document in relation to the voting equity offer, the Executive will normally expect it to be sent, at the latest, as soon as possible after the voting equity offer becomes or is declared wholly unconditional.

5. “Exercise and accept” proposals

- 5.1 Note 1 on Rule 15 provides that:

- (i) all relevant documents, announcements and other information sent to offeree shareholders and persons with information rights in connection with the voting equity offer must also, where practicable, be sent simultaneously to holders of Rule 15 securities; and
- (ii) if holders of Rule 15 securities are able to exercise their rights during the course of the voting equity offer, and to accept the voting equity offer in respect of the resulting shares, their attention should be drawn to this in the relevant documents.

- 5.2 Where holders of Rule 15 securities are able to exercise their conversion, option or subscription rights prior to or upon the voting equity offer becoming or being declared wholly unconditional, the Executive will normally regard a proposal that such holders exercise their rights and accept the voting equity offer (an “exercise and accept” proposal) as being appropriate for the purposes of Rule 15(a).

- 5.3 However, where alternative voting equity offers are made, an exercise and accept proposal may not satisfy an offeror’s obligations under Rule 15 if the

alternative offer with the highest value (see paragraph 2.12 above) ceases to be open for acceptance at any time earlier than the end of the 21 day period referred to in paragraph 6.2 below, even if the holders of the Rule 15 securities in question had been able to exercise their conversion, option or subscription rights when that higher alternative offer was open for acceptance. This is because such holders should not be required to exercise their conversion, option or subscription rights in advance of knowing whether or not the offer for the voting equity will be successful. The Executive should be consulted in such circumstances.

- 5.4 Where an offeror's obligations under Rule 15 are to be satisfied by way of an "exercise and accept" proposal, this fact should be stated clearly in the relevant documents issued to holders of the Rule 15 securities pursuant to Note 1 on Rule 15. In addition, the Executive regards Rule 15(b) as requiring the board of the offeree company to obtain separate independent advice on the "exercise and accept" proposal and to make such advice known to the holders of Rule 15 securities, together with the board's views on the proposal.

6. Rule 15 offer or proposal to be open for at least 21 days

- 6.1 The Executive's practice is normally to require a Rule 15 offer or proposal to be open for at least 21 days following the date on which the relevant documentation is sent to holders of Rule 15 securities.

- 6.2 The Executive notes that Rule 31.4 provides, broadly, that after the voting equity offer has become or is declared unconditional as to acceptances, it must remain open for acceptance for not less than 14 days after the date on which it would otherwise have expired. Notwithstanding this, if the only "appropriate" Rule 15 offer or proposal made by an offeror is an "exercise and accept" proposal, the Executive's practice is normally to require the voting equity offer to remain open for not less than 21 days after the later of:

- (i) the date on which the documentation setting out the "exercise and accept" proposal is sent to the holders of the Rule 15 securities; and

- (ii) the date on which the voting equity offer becomes or is declared wholly unconditional.

7. Rule 16

7.1 See through value is the minimum value at which a Rule 15 offer or proposal must be made in order for it to be appropriate and it is therefore normally permissible for a Rule 15 offer or proposal to be made at above that minimum value.

7.2 Rule 16.1 provides that, except with the consent of the Panel, an offeror may not make arrangements with offeree company shareholders if there are favourable conditions attached which are not being extended to all shareholders. Therefore, where:

- (i) certain persons are both holders of Rule 15 securities and also offeree company shareholders; and
- (ii) a Rule 15 offer or proposal is made at a value which is higher than see through value,

the Executive will be concerned to ensure that the Rule 15 offer or proposal does not have the effect of affording such persons favourable treatment (when compared to other shareholders) as prohibited by Rule 16.1.

The Executive should be consulted in the case of any doubt in relation to any of the above points.

Practice Statements are issued by the Panel 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 Takeover 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.

10 July 2008

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