



IMPLEMENTATION OF AMENDMENTS TO THE TAKEOVER CODE AND TRANSITIONAL ARRANGEMENTS

On Thursday, 21 July 2011, the Code Committee of the Takeover Panel published RS 2011/1, including details of various amendments to the Takeover Code (the “**Code**”) which will take effect on Monday, 19 September 2011 (the “**Implementation Date**”). This note provides guidance as to the implementation of those amendments and sets out details of the transitional arrangements for offer periods which straddle the Implementation Date. References in this note to the Rules of the Code are to the revised Rules, as effective from the Implementation Date.

Except as otherwise stated, the provisions of the revised Code will apply to all offers and possible offers from the Implementation Date. The Panel may be prepared to derogate from the application of the transitional arrangements in certain circumstances, for example, where it considers that they would operate unduly harshly or in an unnecessarily restrictive, burdensome or otherwise inappropriate manner.

1. Requirement for a potential offeror to be identified

(a) Implementation

- 1.1 Under Rule 2.4(a), an announcement by an offeree company on or after the Implementation Date which has the effect of commencing an offer period will be required to identify any potential offeror with which the offeree company is in talks or from which an approach has been received (and not unequivocally rejected), except where a dispensation has been granted under Note 2 on Rule 2.6.
- 1.2 Under Rule 2.4(b), any announcement made by the offeree company on or after the Implementation Date, and subsequent to the commencement of the relevant offer period, which refers to the existence of a new potential offeror will be required to identify that potential offeror, except where the announcement is made after an offeror has announced a firm intention to make an offer for the offeree company, or where a dispensation has been granted under Note 2 on Rule 2.6.
- 1.3 Under Note 2 on Rule 2.6, where an offer period commences on or after the Implementation Date with an announcement by the board of the offeree company that it is seeking one or more potential offerors for the offeree company by means of a formal

sale process, the Panel will normally grant a dispensation from the requirements of Rules 2.4(a) and 2.4(b), subject to the further requirements of Note 2 on Rule 2.6.

(b) Transitional arrangements

- 1.4 In order to put all offer periods on a similar footing, where an offeree company is already in an offer period on the Implementation Date, the offeree company will be required, by not later than 5.00 pm on the Implementation Date, to announce the identity of any potential offeror with which it is in talks, or from which it is in receipt of an approach, if, at the commencement of the offer period, it was in talks with, or had received an approach from, that offeror. In addition, the offeree company will be required to identify any potential offeror to whose existence it has referred in any announcement made since the offer period commenced and with which it remains in talks. However, the requirement for the offeree company to identify any potential offeror will not apply where another offeror has announced a firm intention to make an offer for the offeree company prior to the Implementation Date.

2. Requirement for a potential offeror to “put up or shut up” or obtain a deadline extension

(a) Implementation

- 2.1 Under Rule 2.6(a), and subject to Rule 2.6(b), any potential offeror first identified on or after the Implementation Date will be required, by no later than 5.00 pm on the 28th day following the date of the announcement in which it was first identified, or by not later than any extended deadline:

(a) to announce a firm intention to make an offer; or

(b) to announce that it does not intend to make an offer,

unless the Panel has consented to an extension of the deadline.

- 2.2 Under Rule 2.6(b), the requirements of Rule 2.6(a) will not apply, or will cease to apply, if another offeror has already announced, or subsequently announces (prior to the relevant deadline), a firm intention to make an offer for the offeree company. In addition, under Note 2 on Rule 2.6, where an offer period commences on or after the Implementation Date with an announcement by the board of the offeree company that it is seeking one or more potential offerors for the offeree company by means of a formal

sale process, the Panel will normally grant a dispensation from the requirements of Rule 2.6(a), subject to the further requirements of the proposed Note 2 on Rule 2.6.

(b) Transitional arrangements

2.3 In order to put all offer periods on a similar footing, where an offeree company is already in an offer period on the Implementation Date, any potential offeror which has been identified in an announcement on or before the Implementation Date, including any potential offeror identified as a result of the application of the transitional arrangements described in paragraph 1.4 above, will be required, by not later than 5.00 pm on the 28th day following the Implementation Date (i.e. Monday, 17 October 2011):

(a) to announce a firm intention to make an offer; or

(b) to announce that it does not intend to make an offer,

unless the Panel has consented to an extension of the deadline.

2.4 The requirements of paragraph 2.3 above will not apply where, prior to either the Implementation Date or the expiry of the deadline referred to in paragraph 2.3 above, another offeror has announced a firm intention to make an offer for the offeree company.

3. General prohibition on offer-related arrangements

The general prohibition under Rule 21.2 on an offeree company, an offeror and any person acting in concert with either of them entering into an inducement fee or other offer-related arrangement, except with the consent of the Panel, will apply with effect from the Implementation Date. Any inducement fee or other offer-related arrangement entered into prior to the Implementation Date will not be subject to the prohibition.

4. Schemes of arrangement

If, on or after the Implementation Date, an offeror announces a firm intention to make an offer to be implemented by means of a scheme of arrangement, the provisions of Appendix 7, as revised, will apply to that scheme of arrangement. If an offeror has announced a firm intention to make an offer to be implemented by means of a scheme of arrangement prior to the Implementation Date, the provisions of Appendix 7 as in force prior to the Implementation Date will continue to apply.

5. Offer documents and offeree board circulars

Where the initial offer document is published prior to the Implementation Date, the offer document, the offeree board circular and any other documents published in relation to that offer will be required to comply with the provisions of the Code, in particular Rules 24 and 25, as in force prior to the Implementation Date, even if, for example, the offeree board circular or any revised offer document is published after the Implementation Date. Where the initial offer document is published on or after the Implementation Date, the offer document and any subsequent offer documentation will be required to comply with the provisions of the revised Code.

6. Improving the ability of employee representatives to make their views known

- 6.1 Under Rule 25.9, where an employee representatives' opinion is not received in good time in order to be appended to the offeree board circular, the offeree company will be required to publish the employee representatives' opinion on a website and announce via a RIS that it has been published. Under Note 1 on Rule 25.9, the offeree company will be required to pay for the publication of the employee representatives' opinion and for the costs reasonably incurred by the employee representatives in obtaining advice required for the verification of the information contained in that opinion.
- 6.2 Rule 25.9 and Note 1 on Rule 25.9 will apply with effect from the Implementation Date, even if the offer document to which the employee representatives' opinion relates was published prior to the Implementation Date.

21 July 2011