THE TAKEOVER PANEL

OFFER ANNOUNCEMENTS

The Panel wishes, in this statement, to stress the importance of the Code's Rules for announcing possible offers and in particular to explain certain requirements which seem to be causing difficulty.

Where a company is the subject of rumours of a potential offer or there is an abnormal level of speculative activity in its shares, usually with a corresponding effect on their market price, the situation may be explicable by publicly known facts. Often, however, it is not. In such cases, and where there has been no approach to the offeree, it is likely that it is the acts of a potential offeror either through inadequate security or through the purchase of shares, which have led to the situation.

In these circumstances, the absence of an announcement of an offer or possible offer can create or fuel market uncertainties and result in a false market. Now that there is a wider spread of share ownership, with an increased number of private investors who have an interest in the market, it is even more important for shareholders in the offeree company to have the fullest available information. Professionals may be able to evaluate to some extent the speculation and movement in share prices with the aid of market information and their own expertise, but smaller investors are particularly dependent on receiving the fullest available information in considering whether to deal in their shares.

The Code sets out in Rule 2.2, the circumstances in which an announcement is required. The text of Rule 2.2 is attached.

Before the board of the offeree company is approached, the responsibility for making an announcement can lie only with the offeror. In particular Rule 2.2(d) provides that an announcement is required:-

> "when, before an approach has been made, the offeree company is the subject of rumour and speculation or an untoward price movement and there are reasonable grounds for concluding that it is the potential offeror's actions (whether through inadequate security, purchasing of offeree company shares or otherwise) which have led to the situation. The offeror should, therefore, keep a close watch on the potential offeree company's share price for signs of any untoward movement;"

As a general guide, the Code states that a movement of approximately 10%, not explicable by general movements in the market or by publicly known facts, should be regarded as untoward. But it should be noted that the absence of a price rise, when other factors merit an announcement, does not justify failing to announce.

In practice, speculation or untoward price movements can occur at a very early stage of a contemplated offer. It may be that the potential offeror has progressed no further than a general evaluation of the target company. The structure of the offer may be far from settled. The potential offeror may believe that he has observed proper security precautions, or that his share purchases are insignificant in relation to market activity. Nevertheless, where there is such speculation or price movement, and irrespective of whether the potential offeror is named, the Panel should be consulted by the potential offeror immediately and its guidance sought as to whether there are indeed reasonable grounds for concluding that it is the potential offeror's actions which have led to the situation. Where the potential offeror has been named in rumours it should normally be presumed that there has been inadequate security on its part.

Offerors are sometimes reluctant to make an announcement, on the grounds that proposals are still tentative. It is said that, though there may already be rumour and speculative activity, an announcement, in the absence of firm plans, may itself mislead the market. This can be avoided by a proper explanation, and is not a justification for allowing existing uncertainty to continue. In particular, advisers should not delay an announcement simply because financing arrangements are not yet in place. Shareholders can then assess the probability of a bid emerging on the basis of the best information available, rather than on speculation.

There is another reason why compliance with Rule 2.2 is important. Share stakes are frequently acquired in companies, which are the subject of take-over speculation, by investors who are not intending to make an offer. Such investors sometimes state specifically that they do not intend to make an offer, which is clearly most helpful in keeping the market informed, but they are in no way obliged to do so. The effect of Rule 2.2 is, however, that in the absence of a statement that the investor is a possible offeror, the market is entitled to infer that there is no such intention. This inference can only safely be drawn if all potential offerors comply promptly with their Code obligations.

When negotiations or discussions are about to be extended to include more than a very restricted number of people, it is likely to be impossible to maintain the necessary degree of secrecy. In these cases Rule 2.2(e) requires an announcement to forestall any breach of security.

Once an approach to the board of the offeree company has been made, the primary responsibility for making an announcement normally rests with the board of the offeree company. In general, the considerations outlined above will equally apply; in particular, the board of the offeree company must keep a close watch on its share price, to determine whether an announcement is required under Rule 2.2(c).

In all cases the fact that tactical considerations may make an announcement undesirable must not be allowed to influence the decision as to whether an announcement is necessary.

Companies and their advisers must be in no doubt of their obligations under the Code when a potential offeror is considering making an offer or negotiations are in progress. The Panel recognises that the timing of an announcement can pose difficult questions. However, the Panel executive is always available to be consulted and, indeed, expects early consultation in these circumstances. For companies to form their own view or to take professional advice is not an appropriate alternative to seeking guidance from the Panel.

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RULE 2 *CONTINUED*

2.2 WHEN AN ANNOUNCEMENT IS REQUIRED

An announcement is required:—

(a) when a firm intention to make an offer (the making of which is not, or has ceased to be, subject to any pre-condition) is notified to the board of the offeree company from a serious source, irrespective of the attitude of the board to the offer;

(b) immediately upon an acquisition of shares which gives rise to an obligation to make an offer under Rule 9. The announcement that an obligation has been incurred should not be delayed while full information is being obtained; additional information can be the subject of a later supplementary announcement;

(c) when, following an approach to the offeree company, there is an untoward movement in its share price. As a general guide, a movement of approximately 10%, not explicable by general movements in the market or by publicly known facts, should be regarded as untoward;

(d) when, before an approach has been made, the offeree company is the subject of rumour and speculation or an untoward price movement and there are reasonable grounds for concluding that it is the potential offeror's actions (whether through inadequate security, purchasing of offeree company shares or otherwise) which have led to the situation. The offeror should, therefore, keep a close watch on the potential offeree company's share price for signs of any untoward movement; or

(e) when negotiations or discussions are about to be extended to include more than a very restricted number of people (outside those who need to know in the companies concerned and their immediate advisers). An offeror wishing to approach a wider group, for example where a consortium to make an offer is being organised or where irrevocable commitments are being sought, should consult the Panel.