

PRACTICE STATEMENT NO 3

RULE 21.3 – CONTROLLED AUCTIONS

Under Rule 21.3 any information given to one offeror or potential offeror must, on request, be given equally and promptly to another offeror or bona fide potential offeror even if that other offeror is less welcome. Note 2 on Rule 21.3 goes on to limit the conditions that an offeree company can attach to the passing of information pursuant to the Rule since the imposition of onerous conditions might dissuade a subsequent offeror from bidding and the shareholders of the offeree company might therefore be deprived of the opportunity to consider another, potentially more favourable, offer.

Note 2 only applies in respect of the passing of information requested by an offeror or potential offeror where that information has already been provided to an earlier offeror or potential offeror. It does not address the position of the first offeror to which information is provided, and the Code does not seek to intervene in relation to the conditions that an offeree company might seek to impose on the first offeror or potential offeror because Rule 21.3 does not apply at that stage.

On occasion, an offeree company might want to approach a number of potential offerors asking them to participate in a controlled auction process to acquire the company. In such a case, each of the potential offerors receiving information as part of the auction process will be considered to be a “first offeror” for the purposes of Note 2 on Rule 21.3, provided that each of them agrees to the conditions on which it will receive the information before that information is passed to any of them. Note 2 does not, therefore, seek to limit the conditions that the offeree company can attach to the passing of information to those potential offerors and the offeree company can agree different conditions with each of the potential offerors concerned.

This will not, however, affect the position of any subsequent offeror who was not approached by the offeree company to participate in the auction or of any potential offeror who was initially approached but who refused to agree to the conditions the offeree company was seeking to impose before information was passed to other potential offerors. Such persons will continue to benefit from the protections in Rule 21.3 and Note 2.

The Executive should be consulted in cases of doubt.

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

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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.

12 February 2004

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