

PRACTICE STATEMENT NO 20

RULE 2 – SECRECY, POSSIBLE OFFER ANNOUNCEMENTS AND PRE-ANNOUNCEMENT RESPONSIBILITIES

Extract showing changes made to Practice Statement No 20 with effect from
13 April 2017

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8. Extending negotiations or discussions

- 8.1 Rule 2.2(e) provides that an announcement is required when negotiations or discussions relating to a possible offer 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). Similarly, Rule 2.2(f)(ii) provides that an announcement is required when a purchaser is being sought for an interest, or interests, in shares carrying in aggregate 30% or more of the voting rights of a company, or when the board of a company is seeking one or more potential offerors, and, in either case, the number of potential purchasers or offerors approached is about to be increased to include more than a very restricted number of people.
- 8.2 As regards Rule 2.2(e), the Executive should be consulted prior to more than a total of six parties being approached about an offer or possible offer including, for example: potential providers of finance (whether equity or debt); shareholders in the offeror or the offeree company; pension fund trustees; potential management team candidates; significant customers of, or suppliers to, the offeree company; or potential purchasers of assets. When so consulted, the Executive will not normally count employee representatives of the offeree company or the offeror towards the six parties approached. The requirement to consult the Executive continues to apply during an offer period in relation to a possible offer by any potential offeror which has not been publicly identified.
- 8.3 In considering whether to grant its consent to more than six parties being approached, the Executive will need to be satisfied that secrecy will be maintained. Other than as described in paragraph 8.4 below, the Executive is likely to consent to more than six parties being approached only in limited circumstances.
- 8.4 Where a party has been approached about the possibility of its providing finance (whether equity or debt) to an offeror and has declined the opportunity to do so, the Executive may be prepared to treat that party as no longer counting towards the six parties approached, provided that the party is not interested in securities of the offeror or the offeree company and does not have any other ongoing interest in the offeree company. A similar approach may be taken in relation to, for example, potential management team candidates or potential purchasers of assets. Where, for example, one department of a multi-service financial organisation has declined an opportunity to provide finance and a separate department is interested in securities of the offeror or the

offeree company, the Executive will not normally treat the organisation as counting towards the six parties that may be approached by virtue of its having been approached to provide finance, provided that the department which is interested in securities of the offeror or the offeree company is not aware of the approach to the department invited to provide finance.

8.5 Where a consortium bid is in contemplation, the party which makes the first approach to another potential member of the consortium will be treated for these purposes as the potential offeror. That party, as the potential offeror, may therefore approach up to six parties in total, inclusive of other potential consortium members approached (provided that those approached do not themselves contact any third parties).

8.6 In the case of a meeting (including a telephone call or meeting held by electronic means) with a shareholder in the offeree company or the offeror (or any other person referred to in Rule 20.2(a)(ii)) prior to the commencement of any offer period which relates to a possible offer or would not be taking place but for the possible offer, the meeting must be attended by an appropriate financial adviser or corporate broker to the offeror or offeree company in accordance with Rule 20.2(b)(i). The financial adviser or corporate broker who attends the meeting must, by not later than 12 noon on the following business day, provide a written confirmation to the Panel as specified in Rule 20.2(c) or Note 1 on Rule 20.2 (as applicable) unless:

(a) no representative of, or adviser to, the offeror or offeree company was present other than the financial adviser or corporate broker; and

(b) no material new information or significant new opinions relating to the possible offer were provided during the meeting.

If the conditions in (a) and (b) are satisfied, then the derogation from the requirement to provide a written confirmation when a meeting is attended by advisers only, as set out in Note 3 on Rule 20.2, will apply.

8.67 As regards Rule 2.2(f)(ii), the Executive should be consulted prior to more than one purchaser or potential offeror being sought, as referred to in Note 1(e) on Rule 2.2. This requirement reflects a concern that the risk of leaks may be greater when purchasers for a controlling interest in a company, or potential offerors, are being sought. This is because each party approached may wish to discuss the matter with other parties, thereby quickly increasing the number of parties who would be aware of the possible transaction.