

PRACTICE STATEMENT NO 32

RULE 21.1 – APPLICATION FOLLOWING THE UNEQUIVOCAL REJECTION OF AN APPROACH

Rule 21.1(a) provides that, during the course of an offer, or even before the date of the offer if the board of the offeree company has reason to believe that a bona fide offer might be imminent, the board must not, without the approval of shareholders in general meeting:

- (a) take any action which may result in any offer or bona fide possible offer being frustrated or in shareholders being denied the opportunity to decide on its merits; or
- (b) take certain specific actions described in the Rule.

The Panel Executive normally considers that the board of an offeree company will have reason to believe that a bona fide offer might be imminent, and that Rule 21.1(a) will therefore apply, following the board having received an approach regarding a possible offer by or on behalf of a potential offeror. In determining whether an “approach” has been received by the board of the offeree company, the Executive will normally apply the considerations described in paragraph 3.2 of Practice Statement No 20.

From time to time, the Executive is consulted in relation to the application of Rule 21.1(a) where the board of an offeree company has received, and subsequently unequivocally rejected, an approach and does not know whether the potential offeror continues to be interested in making an offer. This raises the question of whether, and if so for how long, the board should then be considered to have reason to believe that a bona fide offer might be imminent.

The Executive normally considers that Rule 21.1(a) will continue to apply until 5.00pm on the second business day following the date on which the approach was unequivocally rejected unless before that time the rejected potential offeror has given the board of the offeree company reason to believe that it continues to be interested in making an offer.

The Executive should be consulted if the board of an offeree company intends to take any action described in Rule 21.1(a) following the unequivocal rejection of an approach.

PRACTICE STATEMENT NO 32 CONTINUED

Practice Statements are issued by the 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 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.

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