

THE TAKEOVER PANEL

NOTE TO ADVISERS IN RELATION TO RULE 2.8 STATEMENTS

Rule 2.8 of the Takeover Code (the “Code”) imposes various restrictions on a person who has made a statement that it does not intend to make an offer for a company that is subject to the Code (a “Rule 2.8 statement”). Except with the consent of the Takeover Panel (the “Panel”), these restrictions will apply to that person, and persons who acted in concert with it, for a period of six months from the date of the Rule 2.8 statement unless circumstances occur that the person specified in its Rule 2.8 statement as being circumstances in which the statement may be set aside.

Note 2 on Rule 2.8 sets out the circumstances that a person is permitted to specify as being circumstances in which a Rule 2.8 statement may be set aside. The permitted circumstances differ depending on whether a third party has announced a firm intention to make an offer before the Rule 2.8 statement is made.

To assist advisers, the Panel Executive (the “Executive”) has prepared two examples of Rule 2.8 statements in relation to situations where, at the time the Rule 2.8 statement is made:

- (a) no third party has announced a firm intention to make an offer; and
- (b) a third party has announced a firm intention to make an offer.

These examples were originally published in Appendix D to RS 2017/1 (Asset sales and other matters).

Under Note 2(a)(v) on Rule 2.8, a person making a Rule 2.8 statement outside an offer period may, with the Panel’s prior consent, specify other circumstances in which the statement may be set aside.

Advisers are reminded that any person considering making a Rule 2.8 statement should consult the Executive in advance.

Advisers are further reminded that any Rule 2.8 statement must be published via a Regulatory Information Service in accordance with Rule 30.1 and should be linked to the Code company to which the Rule 2.8 statement relates.

EXAMPLES OF RULE 2.8 STATEMENTS

A. Rule 2.8 statement for use by a potential offeror (“X”) where no third party has announced a firm intention to make an offer for the offeree company (“Y”) at the time that the Rule 2.8 statement is made

“No intention to bid statement

X confirms that it is not intending to make an offer for Y.

This is a statement to which Rule 2.8 of the Takeover Code (the “Code”) applies.

Under Note 2 on Rule 2.8 of the Code, X reserves the right to set the restrictions in Rule 2.8 aside in the following circumstances¹:

- (a) with the agreement of the board of Y;
- (b) if a third party announces a firm intention to make an offer for Y²;
- (c) if Y announces a Rule 9 waiver proposal (see Note 1 of the Notes on Dispensations from Rule 9) or a reverse takeover (as defined in the Code); and
- (d) if there has been a material change of circumstances (as determined by the Takeover Panel).”

¹ If the Rule 2.8 statement is made outside an offer period, X may specify other circumstances if these have been agreed with the Panel.

² If, at the time that the Rule 2.8 statement is made, a potential competing offeror (“P”) has been publicly identified, this reservation may state “if a third party, including P, announces a firm intention to make an offer for Y”.

B. Rule 2.8 statement for use by a potential offeror (“X”) where a third party (“Z”) has announced a firm intention to make an offer for the offeree company (“Y”) at the time that the Rule 2.8 statement is made

“No intention to bid statement

X confirms that it is not intending to make an offer for Y.

This is a statement to which Rule 2.8 of the Takeover Code (the “Code”) applies.

Under Note 2 on Rule 2.8 of the Code, X reserves the right to set the restrictions in Rule 2.8 aside in the following circumstances:

- (a) in the event that the offer by Z is withdrawn or lapses, with the agreement of the board of Y;
- (b) if a third party announces a firm intention to make an offer for Y³;
- (c) if Y announces a Rule 9 waiver proposal (see Note 1 of the Notes on Dispensations from Rule 9) or a reverse takeover (as defined in the Code); and
- (d) if there has been a material change of circumstances (as determined by the Takeover Panel).”

³ If, at the time that the Rule 2.8 statement is made, a potential competing offeror (“P”) has been publicly identified, this reservation may state “if a third party, including P, announces a firm intention to make an offer for Y”.