

THE TAKEOVER PANEL

CODE COMMITTEE

RESPONSE STATEMENTS 2004/1 AND 2004/2, AND CODE AMENDMENTS

On 25 February 2004, the Code Committee published Public Consultation Papers (“PCPs”) 2004/1 and 2004/2. The consultation period in respect of these PCPs ended on 23 April 2004 and the Code Committee has today issued Response Statements 2004/1 and 2004/2 which set out the results of the public consultation process in respect of these PCPs and the final text of the proposed amendments to the Code as approved by the Code Committee in respect of the PCPs. Copies of Response Statements 2004/1 and 2004/2 may be obtained from the Panel’s website at www.thetakeoverpanel.org.uk or by telephoning the Panel on 020 7382 9026.

The changes to the Code set out in Response Statements 2004/1 and 2004/2 are contained in the Appendix to this statement and will take effect immediately. Amended pages of the Code have also been published today.

6 August 2004

APPENDIX

2.4 THE ANNOUNCEMENT OF A POSSIBLE OFFER

(a) Except in the case of a mandatory offer under Rule 9, until a firm intention to make an offer has been notified, a brief announcement that talks are taking place (there is no requirement to name the potential offeror in such an announcement) or that a potential offeror is considering making an offer will normally satisfy the obligations under this Rule. In most cases where such an announcement is made to a stock exchange outside the United Kingdom on which any relevant securities are listed or traded, a summary of the provisions of Rule 8.3 should be given.

(b) At any time following the announcement of a possible offer (provided the potential offeror has been publicly named), the offeree company may request that the Panel impose a time limit for the potential offeror to clarify its intentions with regard to the offeree company. If a time limit for clarification is imposed by the Panel, the potential offeror must, before the expiry of the time limit, announce either a firm intention to make an offer for the offeree company in accordance with Rule 2.5 or that it does not intend to make an offer for the offeree company, in which case the announcement will be treated as a statement to which Rule 2.8 applies.

(c) (i) Until a firm intention to make an offer has been notified, the Panel must be consulted in advance if any person making an announcement under Rule 2.4(a) proposes to make a statement in relation to the terms on which an offer might be made for the offeree company.

(ii) Except with the consent of the Panel, if any such statement is included in an announcement by a potential offeror or is made by or on behalf of a potential offeror, its directors, officials or advisers and not immediately withdrawn if incorrect, the potential offeror will be bound by the statement if an offer for the offeree company is subsequently made, unless it reserved the right not to be so bound at the time the statement was made.

(iii) Where the statement concerned relates to the price of a possible offer (or a particular exchange ratio in the case of a proposed securities exchange offer), except with the consent of the Panel, the potential offeror will not be allowed subsequently to make an offer for the offeree company at a lower value (taking the value of any securities concerned at the date of announcement of the firm intention to make the offer), unless there has occurred an event which the potential offeror specified in the statement as an event which would enable it to be set aside.

(d) Except with the consent of the Panel, the consequences of a statement to which Rule 2.4(c) applies will normally apply also to any person acting in concert with the potential offeror and to any person who is subsequently acting in concert with the potential offeror or such person.

NOTES ON RULE 2.4

1. *Pre-conditions*

The Panel must be consulted in advance if a person proposes to include in an announcement any pre-condition to the making of an offer.

2. *Announcement of a potential competing offer*

The provisions of Rule 2.4(b) will not apply where an offer has already been announced by a third party and the potential offeror makes a statement that it is considering making a competing offer.

See Note 1 on Rule 19.3.

3. *Period for clarification*

The precise time limit imposed in any particular case under Rule 2.4(b) will be determined by reference to all the circumstances of the case and the Panel will endeavour to balance the potential damage to the business of the offeree company arising from the uncertainty caused by the potential offeror's interest against the disadvantage to its shareholders of losing the prospect of an offer.

4. *Extension of time limit*

A time limit for a potential offeror to clarify its intentions imposed under Rule 2.4(b) may be extended only with the consent of the Panel. The Panel's consent will normally be granted if the board of the offeree company consents to the extension.

5. *Reservation of right to set statements aside*

The first announcement in which a statement subject to Rule 2.4(c) is made must also contain prominent reference to any reservation (precise details of which must also be included in the announcement). Any subsequent mention by the offeror of the statement must be accompanied by a reference to the reservation.

6. *Duration of restriction*

The restrictions imposed by Rule 2.4(c) will normally apply throughout the period during which the offeree company is in an offer period and for a further three months thereafter.

7. *Statements by the offeree company*

Any statement made by the offeree company in relation to the terms on which an offer might be made must also make clear whether or not it is being made with the agreement or approval of the potential offeror. Where the statement is made with the agreement or approval of the potential offeror, the statement will be treated as one to which Rule 2.4(c) applies in the same way as if it had been made by the potential offeror itself. Where it is not so made, the statement must also include a prominent warning to the effect that there can be no certainty that an offer will be made nor as to the terms on which any offer might be made.

...

Rule 2.8

2.8 STATEMENTS OF INTENTION NOT TO MAKE AN OFFER

A person making a statement that he does not intend to make an offer for a company should make the statement as clear and unambiguous as possible. Except with the consent of the Panel, unless there is a material change of circumstances or there has occurred an event which the person specified in his statement as an event which would enable it to be set aside, neither the person making the statement, nor any person who acted in concert with him, nor any person who is subsequently acting in concert with either of them, may within six months from the date of the statement:

- (a) announce an offer or possible offer for the offeree company (including a partial offer which would result in the offeror holding shares carrying 30% or more of the voting rights of the offeree company);**
- (b) acquire any shares of the offeree company if any such person would thereby become obliged under Rule 9 to make an offer;**
- (c) acquire any shares of the offeree company or any rights over such shares if the shares and rights over shares held by any such person, together with any persons acting in concert with him, would in aggregate carry 30% or more of the voting rights of the offeree company;**
- (d) make any statement which raises or confirms the possibility that an offer might be made for the offeree company; or**

(e) take any steps in connection with a possible offer for the offeree company where knowledge of the possible offer might be extended outside those who need to know in the potential offeror and its immediate advisers.

Failure to comply with this Rule may lead to the period of six months referred to above being extended.

NOTES ON RULE 2.8

1. *Prior consultation*

Any person considering issuing such a statement should consult the Panel in advance, particularly if it is intended to include specific reservations to set aside the statement.

2. *Rule 2.4(b)*

Where a statement to which Rule 2.8 applies is made following a time limit being imposed under Rule 2.4(b), the only matters that a person will normally be permitted to specify in the statement as matters which would enable it to be set aside are:

(a) *the agreement or recommendation of the board of the offeree company;*

(b) *the announcement of an offer by a third party for the offeree company; and*

(c) *the announcement by the offeree company of a “whitewash” proposal (see Note 1 of the Notes on Dispensations from Rule 9) or of a reverse takeover (see Note 2 on Rule 3.2).*

3. *Concert parties*

Where a statement to which Rule 2.8 applies is made otherwise than following a time limit being imposed under Rule 2.4(b), the restrictions imposed by Rule 2.8 will normally apply also to any person acting in concert with the person making the statement unless it is made clear in the statement, or at the time the statement is made, that any such person acting in concert is continuing to consider making an offer for the offeree company.

4. *Media reports*

When considering the application of this Rule, the Panel will take into account not only the statement itself but the manner of any subsequent public reporting of it.

Advisers must therefore ensure that directors and officials of companies are warned that they must consider carefully the implications of Rule 2.8, particularly when giving interviews to, or taking part in discussions with, the media. It is very difficult after publication to alter an impression given or remark attributed to a particular person. Control of any possible abuse lies largely with the person being interviewed. In appropriate circumstances, the Panel will require a statement of retraction or clarification.

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Rule 35.1

35.1 DELAY OF 12 MONTHS

Except with the consent of the Panel, where an offer has been announced or posted but has not become or been declared wholly unconditional and has been withdrawn or has lapsed, neither the offeror, nor any person who acted in concert with the offeror in the course of the original offer, nor any person who is subsequently acting in concert with any of them, may within 12 months from the date on which such offer is withdrawn or lapses either:—

- (a) announce an offer or possible offer for the offeree company (including a partial offer which could result in the offeror holding shares carrying 30% or more of the voting rights of the offeree company);**
- (b) acquire any shares of the offeree company if the offeror or any such person would thereby become obliged under Rule 9 to make an offer;**
- (c) acquire any shares of the offeree company or any rights over such shares if the shares and rights over shares held by any such person, together with persons acting in concert with him, would in aggregate carry 30% or more of the voting rights of the offeree company;**
- (d) make any statement which raises or confirms the possibility that an offer might be made for the offeree company; or**
- (e) take any steps in connection with a possible offer for the offeree company where knowledge of the possible offer might be extended outside those who need to know in the offeror and its immediate advisers.**

NOTE ON RULES 35.1 and 35.2

(a) ...

(b) ...

(c) *The restrictions in Rules 35.1(d) and (e) will not normally apply to the extent that the offer lapsed as a result of being referred to the Competition Commission or the European Commission initiating proceedings, or as a result of the offeror failing to obtain another material regulatory clearance relating to the offer within the usual Code timetable, but the offeror is continuing to seek clearance or a decision from the relevant regulatory authorities with a view subsequently to making a new offer with the consent of the Panel in accordance with Note (a)(iii) or Note (b) on Rule 35.1.*

NB Rule 2.2(e) will continue to apply in these circumstances.