PRACTICE STATEMENT ~~NO~~ 2

RULE 21.3 – SITE VISITS AND MEETINGS WITH MANAGEMENT

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~~ the offeree board must, on request, equally and promptly provide an offeror or bona fide potential offeror with all information that it has provided, and that it provides in the seven days following the request, to another offeror or potential offeror. In the absence of such a requirement, a competing, and in the ~~eyes~~ view of the offeree ~~company~~ board ~~perhaps~~ less welcome, offeror might be dissuaded from bidding and the shareholders of the offeree company might therefore be deprived of the opportunity to consider another, potentially more favourable, offer.

In the view of the Executive, Rule 21.3 extends to site visits and meetings with offeree company management in addition to information disclosed by other means. Accordingly, if one offeror or potential offeror has been afforded a site visit or granted access to management with a view to discussing the offeree company's business, an equivalent site visit or meeting with management must be granted to another offeror or bona fide potential offeror ~~if it so requests.~~ that requests information under Rule 21.3.

The Executive considers that Rule 21.3 requires information to be provided to the requesting offeror or bona fide potential offeror in the same way that it was provided to the other offeror or potential offeror. In other words, information that was provided to the other offeror through a discussion with management (and has not been provided to that offeror in writing) should be provided to the requesting offeror through an equivalent meeting with management.

The Executive recognises that it may not be possible to replicate exactly the same site visit or management access for a subsequent offeror as was given to the first offeror, but considers that the offeree company and its financial adviser are responsible for ensuring, as far as practicable, that the subsequent offeror is afforded equivalent access and equality of treatment. ~~In the case of a meeting, and consistent with Note 1 on Rule 21.3, offeree company management would not be required to provide specific items of information to the subsequent offeror at that meeting unless the specific information requested had previously been provided to another offeror or potential offeror.~~ Should there be any dispute as to whether the provisions of Rule 21.3 have been complied with, the relevant financial adviser will be expected to satisfy the Panel that they have been.

The Executive should be consulted in cases of doubt.

12 February 2004
~~Amended 12 September 2016~~Last amended 11 December 2023

PRACTICE STATEMENT ~~NO~~ 20

RULE 2 – SECRECY, POSSIBLE OFFER ANNOUNCEMENTS AND PRE-ANNOUNCEMENT RESPONSIBILITIES1

1. Introduction

1.1 This Practice Statement describes the way in which the Panel Executive normally interprets and applies certain provisions of Rule 2 ~~of the Takeover Code~~ that relate to the need for secrecy before, and the timing and contents of, possible offer announcements, including the steps which the Executive expects the parties to a possible offer and their advisers to take in order to ensure that their responsibilities in relation to those provisions are complied with. Those provisions of Rule 2 have particular relevance to the Code's objective of promoting the integrity of the financial markets and, in applying those provisions, the Executive's overriding objective is to prevent false markets by ensuring the timely release of announcements relating to a possible offer for a company.

…

5. When an announcement is required following an approach or where a purchaser or potential offeror is being sought

…

(d) Strategic review announcements

5.17 In the case of a "strategic review announcement", Practice Statement ~~No~~ 31 may also be relevant.

…

7. Identification of potential offerors following the commencement of the offer period

…

7.4 Under Rule 2.6(d), a potential offeror which has announced that it might make an offer in competition with a firm offeror's offer must, by 5.00 pm on the 53rd day following the publication of the first offeror's initial offer document, announce either a firm intention to make an offer or that it does not intend to make an offer (in which case the announcement will be treated as a statement to which Rule 2.8 applies). Where the first offeror is proceeding by means of a scheme of arrangement, the Executive will determine the deadline by which the ~~first~~ potential offeror must clarify its position in accordance with Section 4 of Appendix 7.

…

17 June 2009
Last amended ~~22 May 2023~~ 11 December 2023

PRACTICE STATEMENT ~~NO~~ 25

DEBT SYNDICATION DURING OFFER PERIODS

1. Introduction

…

~~1.2 This Practice Statement was developed at the request of, and with assistance from, the Loan Market Association (the "LMA") and the Association for Financial Markets in Europe. As a result of this exercise, the LMA published a revised "Recommended Form of Confidentiality and Front Running Letter for Primary Syndication" (the "LMA confidentiality letter"), together with a memorandum explaining the background to the relevant provisions ("Note for LMA Members on discussions with the Takeover Panel and LMA Confidentiality Letter"). A copy of the LMA confidentiality letter and the related explanatory memorandum are available in the "Documents" section of the LMA's website (www.lma.eu.com).~~

1.~~3~~2 References in the remainder of this Practice Statement to the following expressions have the following meanings:

(a) "debt syndication" refers to the primary syndication of debt financing in the context of transactions that are subject to the provisions of the Code; and

(b) "syndicatees" includes potential debt finance providers approached to take part in a proposed debt syndication in addition to those debt finance providers who are allocated a debt participation following the completion of the syndication process.

2. Debt syndication

…

2.4 The Executive understands that, when MLAs seek further lenders to participate in the facilities and take a share of the MLAs' financing commitment, a confidentiality agreement would be entered into between an MLA and each syndicatee pursuant to which the syndicatee would undertake, among other things, to keep the information confidential and not to use it for unlawful purposes. The Executive understands that the form of confidentiality agreement entered into between MLAs and syndicatees ~~has~~ is generally ~~been~~ the ~~LMA confidentiality letter~~ Loan Market Association ("LMA") confidentiality and front running letter for primary syndication (the "LMA confidentiality letter"). The LMA confidentiality letter, and related guidance, is available on the LMA's website (www.lma.eu.com).

3. Application of the Code to debt syndication

3.1 General Principle 1 of the Code provides that all holders of the securities of an offeree company of the same class must be afforded equivalent treatment. This principle underpins the following provisions of the Code that are potentially relevant to the debt syndication process:

(a) Rule 20.1 ~~("Equality of information to shareholders and persons with information rights")~~, which provides that, except with the consent of the Panel or as provided in the Notes on Rule 20.1, information and opinions relating to an offer or a party to an offer must be made equally available to all offeree company shareholders and persons with information rights as nearly as possible at the same time and in the same manner; and

(b) Rule 16.1 ~~("Special deals with favourable conditions")~~, which provides that, except with the consent of the Panel, an offeror or persons acting in concert with it may not make any arrangements with shareholders, and may not deal or enter into arrangements to deal in shares of the offeree company, or enter into arrangements which involve acceptance of an offer, either during an offer or when one is reasonably in

contemplation, if there are favourable conditions attached which are not being extended to all shareholders.

…

4. ~~Rule 20.1 ("~~Equality of information to shareholders and persons with information rights~~")~~

(a) Introduction

4.1 …

~~(a)~~(b) Syndicatees which hold (or may hold) shares in the offeree company

4.2 …

4.3 ~~Paragraph~~ Section 6 below sets out the minimum standards which the Executive considers information barriers would normally need to satisfy in order to be considered effective. The LMA confidentiality letter includes a suggested confirmation to be provided to MLAs by syndicatees that effective information barriers have been established that comply with the minimum standards referred to above.

4.4 …

~~(b)~~(c) Syndicatees which do not hold shares in the offeree company

4.5 …

4.6 The undertaking referred to in paragraph 4.5(b) above would not prevent the acquisition of shares in the offeree company:

~~(i)~~(a) carried out in a client-serving capacity by any part of the trading operations of a syndicatee that has recognised intermediary status; or

~~(ii)~~(b) with the consent of the Panel, by a syndicatee as security for a loan in the normal course of business.

4.7 Suggested wording for the confirmation and undertaking that would be considered by the Executive to be appropriate in these circumstances is set out in the LMA confidentiality letter.

5. ~~Rule 16.1 ("~~Special deals with favourable conditions~~")~~

(a) Introduction

5.1 …

~~(a)~~(b) Information barriers between a syndicatee's equity and debt departments

5.2 …

5.3 In view of this, the Executive normally takes the view that, in relation to a syndicatee which holds shares in the offeree company or which acquires shares during the offer period, no problems would arise under Rule 16.1 provided effective information barriers are in place between its equity and debt departments. Further details in relation to the nature of the information barriers that would be considered by the Executive to be effective in preventing issues arising under Rule 16.1 in this context are set out in ~~paragraph~~ section 6 below.

…

5.4 …

~~(b)~~(c) Debt being syndicated is on 'market terms'

5.5 …

…

6. Information barriers

6.1 …

6.2 The Executive does not believe that it is appropriate for it to specify detailed requirements for effective information barriers. However, the Executive has identified the following minimum standards without which it would not normally consider an information barrier to be effective:

~~(a) Personnel~~

~~(i)~~(a) ~~A~~ a syndicatee's equity and debt departments should comprise separate personnel. The Executive will normally be prepared to disregard members of senior management and compliance staff for these purposes provided they do not participate in investment decisions relating to the proposed transaction and do not share non-public information about the transaction with persons who are involved in making those investment decisions~~.~~;

~~(ii)~~(b) ~~Members~~ members of a syndicatee's equity and debt departments must be made aware that an information barrier exists between the two departments~~.~~;

~~(iii)~~(c) ~~Members~~ members of a syndicatee's equity and debt departments should not share offices. If possible, each department should be physically separated from, and should not be capable of being accessed by, the other department~~.~~;

~~(b) Technology and systems~~

~~(i)~~(d) ~~Members~~ members of a syndicatee's equity and debt departments must not be able to access non-public documents created, edited or received by the other department~~.~~;

~~(i)~~(e) ~~Computers~~ computers and other electronic equipment used by a syndicatee's equity and debt departments must not be used by, or accessible to, the other department~~.~~; and

~~(c) Ring-fencing of information~~

(f) ~~Internal~~ internal files, records and other non-public deal information prepared by a syndicatee's equity or debt department should not be shared with, or be capable of being accessed by, the other department.

…

7. Relationship between financial advisers and MLAs

7.1 ~~Paragraph~~ Section 3(f) of the Introduction to the Code provides that:

…

17 June 2009
Last amended ~~12 September 2016~~ 11 December 2023

PRACTICE STATEMENT ~~NO~~ 26

SHAREHOLDER ACTIVISM

1. Introduction and summary

1.1 The Panel Executive understands that, from time to time, concerns ~~have recently been~~ are expressed that certain provisions of the Takeover Code ~~(the "Code")~~ act as a barrier to co-operative action by fund managers and institutional shareholders. Specifically, on occasion, concerns ~~have been~~ are expressed that collective shareholder action (for example, shareholders jointly seeking to bring influence to bear on the board of a company) could be constrained by the Executive's application of the Code's "acting in concert" provisions and mandatory offer requirements.

…

2. Relevant provisions of the Code

2.1 Rule 9.1(a) ~~of the Code~~ provides that a mandatory offer must be made to all holders of any class of a company's equity share capital, and to holders of any other class of transferable securities carrying voting rights, when a person acquires an interest in shares which, taken together with shares in which persons acting in concert with that person are interested, carry 30% or more of the voting rights of a company. Rule 9.1(b) provides that a mandatory offer must be made if a person, together with persons acting in concert with that person, is interested in shares which carry 30% or more of the voting rights of a company (but does not hold shares carrying more than 50% of such voting rights) and the person, or any person acting in concert with that person, acquires further interests in shares which increases the percentage of shares carrying voting rights in which they are interested.

2.2 Note 1 on Rule 9.1 ~~("Coming together to act in concert")~~ provides that, when a person has acquired an interest in shares without the knowledge of other persons with whom that person subsequently comes together to co-operate as a group to obtain or consolidate control of a company, and the shares in which they are interested at the time of coming together carry 30% or more of the voting rights in that company, the Panel will not normally require a mandatory offer to be made under Rule 9.1.

…

9 September 2009
~~Amended 5 July 2021~~Last amended 11 December 2023

PRACTICE STATEMENT ~~NO~~ 29

RULE 21.2 – OFFER-RELATED ARRANGEMENTS

1. Introduction

1.1 Rule 21.2(a) ~~of the Takeover Code~~ provides that, except with the consent of the Panel, neither the offeree company nor any person acting in concert with it may enter into an offer-related arrangement with either the offeror or any person acting in concert with it during an offer period or when an offer is reasonably in contemplation. Rule 21.2(b) defines an "offer-related arrangement" as being any agreement, arrangement or commitment in connection with an offer, including any inducement fee arrangement or other arrangement having a similar or comparable financial or economic effect. However, certain agreements and commitments, which are listed in paragraphs (i) to (vii) of Rule 21.2(b), are excluded from this prohibition.

…

6. Agreements relating to any existing employee incentive arrangement

…

6.3 The Executive is aware that, occasionally, the parties to an offer may wish to enter into an agreement regarding the extent to which an offeror consents to the offeree company granting new awards under the offeree company's incentive arrangements. The Executive understands that such a provision is normally intended to ensure that, to the extent that the grant of such incentive awards would ~~constitute "frustrating action" under Rule 21.1~~be restricted by Rule 21.1(a), the offeror's consent is forthcoming so that the Panel will normally ~~waive the restrictions that would otherwise apply under Rule 21.1 in respect of~~ give its consent to the proposed awards in accordance with Rule ~~21.1(c)(ii)~~21.1(e)(ii). The Executive considers that such a provision is permitted under Rule 21.2, provided that it only constitutes an agreement by the offeror to consent to the grant of the awards referred to in the provision and that it does not restrict the offeree company's ability to grant awards or to adopt any other incentive arrangements (although the Executive notes that the offeree ~~company~~ board may nevertheless be subject to the restrictions imposed by Rule 21.1).

…

8. Inducement fees payable by the offeree company to an offeror

8.1 Notwithstanding the general prohibition of offer-related arrangements, Note 1 ~~("*Competing offerors*")~~ and Note 2 ~~("*Formal sale process*")~~ on Rule 21.2 explain that, in certain limited circumstances, the Panel may permit an offeree company to enter into one or more inducement fee arrangements with an offeror (or offerors) provided that:

…

9. Rule 9 waivers

9.1 Note 3 ~~("Rule 9 waivers")~~ on Rule 21.2 explains that the prohibition on offer-related arrangements also applies in the context of a Rule 9 waiver, i.e. a transaction involving the issue of new securities as consideration for an acquisition or a cash subscription, as referred to in Note 1 of the Notes on Dispensations from Rule 9.

…

8 October 2015
Last amended ~~13 June 2022~~ 11 December 2023

PRACTICE STATEMENT ~~NO~~ 30

RULE 21.3 – INFORMATION REQUIRED FOR THE PURPOSE OF OBTAINING REGULATORY CONSENTS

1. Introduction

1.1 Under Rule 21.3~~, of the Takeover Code, any information given to one offeror or potential offeror (the "first offeror"), whether publicly identified or not, must, on request, be given equally and promptly to another offeror or bona fide potential offeror (a "competing offeror") even if the competing offeror is less welcome~~ the offeree board must, on request, equally and promptly provide an offeror or bona fide potential offeror (a "competing offeror") with all information that it has provided, and that it provides in the seven days following the request, to another offeror or potential offeror (the "first offeror").

1.2 The Panel Executive understands that, in certain circumstances, an offeree ~~company~~ board may consider it necessary to provide a limited amount of commercially sensitive information ("Restricted Information") to certain lawyers or economists advising the first offeror on an "outside counsel only" basis for the purposes of enabling them to consider the need for and, where necessary, obtain an official authorisation or regulatory clearance, but may not wish to provide (or may be constrained by applicable law or regulation from providing) the Restricted Information directly to the first offeror or any competing offeror.

1.3 This Practice Statement explains how the Executive considers that the requirements of Rule 21.3 may be complied with in such circumstances.

2. Application of Rule 21.3 to Restricted Information

2.1 Where it is proposed that Restricted Information is to be provided by the offeree ~~company~~ board only to the first offeror's competition or regulatory lawyers or economists on an outside counsel only basis for the purposes described in paragraph 1.2 above, the Executive's practice is normally to agree that the requirements of Rule 21.3 will be satisfied if, upon ~~the Restricted Information~~ information being requested by a competing offeror under Rule 21.3, ~~it~~ the Restricted Information is provided to the competition or regulatory lawyers or economists advising the competing offeror on the same restricted, outside counsel only, basis. If this is done, the Executive will not require the Restricted Information to be provided directly to the competing offeror. In order for the Executive to agree to apply Rule 21.3 in this manner, the Executive will wish to be satisfied that appropriate measures have been implemented in order to ensure that the Restricted Information will not be obtained by the first offeror or its other advisers, as explained in this Practice Statement.

2.2 If an offeree company wishes the Executive to agree to apply Rule 21.3 in the manner set out in this Practice Statement, the consent of the Executive must be obtained before any Restricted Information is provided to any adviser to the first offeror.

3. Relevant factors considered by the Executive

(a) Introduction

3.1 In considering whether to agree to apply Rule 21.3 in the manner set out in paragraph 2.1 in any specific case, the Executive will consider all relevant factors including, without limitation, the ~~following:~~ factors set out in sections 3(b) and 3(c) below.

~~(a)~~(b) Recipients of the Restricted Information

3.2 The Executive considers that the Restricted Information should only be provided to a small number of identified lawyers and/or economists who are specifically engaged to provide advice to the relevant offeror in relation to the competition or other regulatory aspects only of the offer (the "Clean Team"). The Clean Team must not include any director or employee of the offeror or any other adviser to the offeror (including the individuals advising on the offer itself).

3.3 The Executive acknowledges that it may be necessary for the Clean Team to include lawyers or economists from firms in the jurisdictions where official authorisations or regulatory clearances are or may be required. However, the Executive expects the number of individuals included in the Clean Team to be kept to an absolute minimum.

~~(b)~~(c) Arrangements to protect the confidentiality of the Restricted Information

…

5. Equality of treatment of other offerors

5.1 As explained in paragraph 2.1 above, if the Executive agrees to apply Rule 21.3 in the manner set out in this Practice Statement, the offeree ~~company~~ board will be required, on request, promptly to provide the Restricted Information to the competing offeror's regulatory lawyers and/or economists on the same restricted basis (and subject to the competing offeror satisfying the requirements set out in this Practice Statement).

5.2 Rule 21.3 only requires the same information as provided to the first offeror to be provided to any competing offeror on request. Accordingly, the offeree company is not required to provide information to the Clean Team advising a competing offeror which was not provided to the Clean Team advising the first offeror (for example, any specific information which may be relevant to the particular competition issues relating to the competing offeror's offer, but which is not relevant to the first offeror's offer)~~, nor is the offeree company required to provide information which was provided to the Clean Team advising the first offeror but not requested by the competing offeror~~.

…

8 October 2015
Last amended ~~5 July 2021~~ 11 December 2023

PRACTICE STATEMENT ~~NO~~ 31

STRATEGIC REVIEWS, FORMAL SALE PROCESSES AND OTHER CIRCUMSTANCES IN WHICH A COMPANY IS SEEKING POTENTIAL OFFERORS

1. Introduction

…

1.5 Rule 21.3 provides that~~ any information given to one offeror or potential offeror, whether publicly identified or not, must, on request, be given equally and promptly to another offeror or bona fide potential offeror even if that other offeror is less welcome~~ the offeree board must, on request, equally and promptly provide an offeror or bona fide potential offeror with all information that it has provided, and that it provides in the seven days following the request, to another offeror or potential offeror.

…

3. Formal sale processes

…

(b) Converting private discussions to a formal sale process

3.10 The Executive notes that a company may decide to have private discussions with one or more potential offerors and choose not to make any announcement of its intention to have those discussions. Section 5 of Practice Statement ~~No~~ 20 sets out the Executive's approach to the application of certain aspects of Rule 2 in those circumstances, including the circumstances in which an announcement will be required.

…

4. Equality of information

4.1 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~~ the offeree board must, on request, equally and promptly provide an offeror or bona fide potential offeror with all information that it has provided, and that it provides in the seven days following the request, to another offeror or potential offeror. Note ~~2~~ 1 on Rule 21.3 limits the conditions that an offeree company may attach to the passing of information pursuant to the Rule, on the basis that the imposition of onerous conditions might deter a subsequent offeror and the shareholders of the offeree company might therefore be deprived of the opportunity to consider another, potentially more favourable, offer.

4.2 Note ~~2~~ 1 applies only 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 or potential offeror to which information is provided, and Rule 21.3 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 it does not apply at that stage.

4.3 On occasion, an offeree company might wish to approach a number of potential offerors to ask them to participate in an auction process (whether by means of a formal sale process, private discussions or otherwise) to acquire the company. In such a case, each of the potential offerors receiving information as part of the auction will normally be considered to be a "first offeror" for the purposes of Note ~~2~~ 1 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~~ 1 does not, therefore, seek to limit the conditions that the offeree company may seek to attach to

the passing of information to those potential offerors and the offeree company may agree different conditions with each such potential offeror.

4.4 Any subsequent offeror or potential offeror who was not approached by the offeree company to participate in the auction, or any potential offeror who was initially approached but who refused to agree to the conditions sought to be imposed before information was passed (or to the conditions sought to be imposed to its participation in the formal sale process), will continue to benefit from the protections in Rule 21.3 and Note ~~2~~ 1 thereon if it chooses not to participate in the auction.

…

7 July 2017
~~Amended 5 July 2021~~ Last amended 11 December 2023

PRACTICE STATEMENT ~~NO~~ 33

PURCHASES OF SHARES IN THE OFFEREE COMPANY BY AN OFFEROR DURING AN OFFER PERIOD

1. Introduction

...

1.2 If an offeror intends to purchase shares in the offeree company, the application of a number of Rules, including Rule~~s~~ 4, Rule 5, Rule 6, Rule 7, Rule 8, Rule 9 and Rule 11, will also need to be considered in addition to the matters outlined in this Practice Statement.

…

13 June 2022
~~Amended 22 May 2023~~ Last amended 11 December 2023