

NOT

The City Code

on

Takeovers and Mergers

DISCLAIMER

THIS IS **NOT** THE CITY CODE

THE CITY CODE ON TAKEOVERS AND MERGERS IS OVER 250 PAGES.

ACCORDINGLY PERSONS INVOLVED IN OFFERS SHOULD BE AWARE THAT THE CODE ITSELF SHOULD BE CONSULTED.

THE CITY CODE ON TAKEOVERS AND MERGERS

"THE CODE"

SECTION A INTRODUCTION

The key to the Code is that persons engaged in offers should be aware of the spirit as well as the working of the general principles of the Code.

The Code is designed principally to ensure fair and equal treatment of all shareholders.

Each director and adviser has a responsibility to comply with the Code and consult with the Panel on Takeovers and Mergers ("the Panel").

ENFORCEMENT

The Code does not have the force of law.

OFFEREE COMPANIES TO WHICH THE CODE APPLIES

1. All listed and **unlisted** public companies considered resident.
2. Private companies whose shares have been listed or marketed elsewhere in the previous 10 years.
3. Private companies who have filed a prospectus for the issue of shares in the previous 10 years.

TRANSACTIONS TO WHICH THE CODE APPLIES

Covers takeover and merger transactions and will include:

- partial offers;
- offers by a parent company for shares in a subsidiary;
- other transactions where control of a company is obtained or consolidated.

SECTION B GENERAL PRINCIPLES

GENERAL PRINCIPLES

1. All shareholders of the same class must be treated the same by the offeror.
2. Shareholders must receive the same information.
3. An offeror should only announce when there is reason to believe it will complete.
4. Shareholders must be given sufficient information and time to make an informed decision.
5. Information supplied should be prepared to the highest standards of care.
6. All parties must avoid creating a false market.
7. The offeree board should not take any action in relation to the company's affairs which would frustrate the offer without shareholder approval.
8. The oppression of a minority is wholly unacceptable.
9. Directors must consider the interests of the shareholders as a whole, together with those of employees and creditors.
10. If control is secured by persons acting in concert a general offer to other shareholders is required.

SECTION C DEFINITIONS

Refer to The Code.

SECTION D THE APPROACH, ANNOUNCEMENTS AND INDEPENDENT ADVICE

RULES

1. The Approach

- (a) To the board or its advisers;
- (b) The identity of the offeror must be disclosed;
- (c) The offeree board is entitled to be satisfied that the offeror can implement the offer.

2. Announcements

- 2.1. Absolute secrecy is required and all persons must minimise the chances of a leak.
- 2.2. Announcements are required once the board has been notified of a firm intention to make an offer; or a mandatory Rule 9 offer is required; or if the share price moves following an approach.
- 2.3. Normally by the offeree.
- 2.4. Until a firm offer has been notified an announcement that "talks are taking place" will be sufficient.
- 2.5. An announcement of a firm intention to make an offer must be reasonably certain.
- 2.6. The offeree is obliged to circulate announcements.
- 2.7. A firm announcement to offer must be followed by an offer, unless a pre-condition has not been met.
- 2.8. An announcement of an intention not to make an offer – will bar the offeror out for 6 months.
- 2.9. An offer must be published immediately.
- 2.10. An offeree must announce the number of shares in issue at the start of an offer period.

3. Independent advice

- 3.1. The offeree board must obtain competent independent advice;
- 3.2. The offeror board must obtain competent independent advice on reverse takeovers or where it has a conflict of interest by way of common directors or shareholdings.
- 3.3. The adviser must be independent of the offeror.

SECTION E DEALINGS AND RESTRICTIONS ON SHARE ACQUISITIONS

- 4. Prohibited dealings (in addition to insider dealing/market abuse legislation)**
 - 4.1. No one privy to price sensitive information can deal or recommend to deal.
 - 4.2. The offeror cannot sell any shares without Panel consent.
 - 4.3. Irrevocables from private individuals must be cleared with the Panel

- 5. Timing restrictions**
 - 5.1. Prohibition on acquiring more than 30% without an offer to others, or increasing between 30% and 50%.
 - 5.2. Deals with exemptions on acquiring an existing block holding.

- 6. Offer price**
 - 6.1. Must be no less than the price paid in previous 3 months.
 - 6.2. If shares are purchased at a higher price during the offer period, then the offer price must be revised upwards.

- 7. Consequences of certain dealings**
 - 7.1. Immediate announcement required if the offer is to be amended.
 - 7.2. Dealings for discretionary clients of those associated with the offeror will be presumed to be in concert.

- 8. Disclosure of dealings during the offer period**
 - 8.1. Any dealings by the offeror and offeree.

 - 8.2. Dealings for non-discretionary clients.

 - 8.3. Dealings by 1 % shareholders.

SECTION F THE MANDATORY OFFER AND ITS TERMS

9. Mandatory offers

9.1. When it's required:

- when the offeror ends up with more than 30% of the shares;
- when the offeror who holds between 30% and 50%, acquires more ;

9.2. The obligation is on the person triggering the obligation.

9.3. Conditions can only include a 50% shareholding acceptance level.

9.4. Conditions must contain references to the Competition Commission or European Commission if appropriate.

9.5. The consideration must be in cash or have a cash alternative; and the price must not be less than the highest price paid within the preceding 12 months.

Notes

These run for several pages. The majority of questions focus on "acting in concert". The following are deemed not to be acting in concert and therefore a general offer will not normally be required:

Shareholders subsequently come together

Shareholders acting collectively on a particular resolution or action, unless "board control" is being sought

Directors, unless the company is in ban offer period, or one is imminent

The vendor is part of a larger shareholding, unless there is control over the shares retained by the vendor and the intention is therefore just to avoid Rule 9.

Notes on dispensation from Rule 9

1. *Vote of independent shareholders on the issue of new securities ("whitewash"- Appendix 1). If the acquisition would lead to a new 30% shareholder (including an underwriter), Panel will normally consent subject to a vote of independent shareholders.*
2. *Enforcement of security for a loan provided the lender's purpose was not to avoid the requirement to make an offer.*
3. *Rescue share issue*
4. *Inadvertent mistake – which must be corrected*

SECTION G THE VOLUNTARY OFFER AND ITS TERMS

10. The Acceptance condition

The offeror must agree to acquire over 50% of the shares before the offer becomes unconditional.

11. Nature of Consideration to be offered

- 11.1. A cash alternative must be included when the offeror has acquired shares for cash in the offer period or acquired 10% in the prior 12 months for cash. The price is the highest price paid.
- 11.2. A securities offer is required if purchases of more than 10% have involved an issue of shares. There are exemptions for MBO's.

12. The Competition Commission and the European Commission

- 12.1. It must be a term of the offer that it will lapse if there is a reference.
- 12.2. The offer period ceases during a competition reference period.

13. Subjective Conditions

- 13.1 An offer must not be subject to conditions which depend solely on subjective judgements of the offeror directors.

SECTION H PROVISIONS APPLICABLE TO ALL OFFERS

14. More than one class of share

14.1 A comparable offer must be made to each class, whether it has voting rights or not.

14.2 Separate offers must be made for each class.

15. Appropriate offers for convertibles

15.1. An appropriate offer must be made at the same time.

16. Special deals with favourable conditions

16.1. An offeror cannot make any arrangements with shareholders if there are favourable conditions attached which are not extended to all shareholders.

Management can secure an interest in the Offeror

17. Timing and contents

17.1. When the offer expires an offeror must make an appropriate announcement on shares held before the offer and acceptances received.

18. Use of proxies

18.1. An offeror may not require a shareholder as a term of his acceptance of an offer to appoint a proxy.

SECTION I CONDUCT DURING AN OFFER

19. Standards of Care

- 19.1. Each document issued must satisfy the highest standards of accuracy and fairness.
- 19.2. Responsibility lies with the directors of the offeror.
- 19.3. Parties must take care not to make statements which may create uncertainty.
- 19.4. Advertisements connected with an offer are prohibited.
- 19.5. Telephone campaigns can only be conducted by trained personnel of the adviser.
- 19.6. Interviews and debates should be avoided.
- 19.7. No party should be put to a disadvantage by delaying the release of documents.
- 19.8. Care must be taken regarding comments made in a “competition” referral period

20. Equality of information to shareholders

- 20.1. Information must be made equally available to all shareholders at the same time and in the same manner; but this does not prevent providing offerors with information in confidence.
- 20.2. Equal information must be given to competing offers. *Note 3 MBO terms must furnish the independent directors with the same information that is furnished to providers or potential providers of finance.*
- 20.3. If the offer is an MBO or similar transaction the offeror must on request furnish the independent directors of the offeree all information furnished to potential providers of finance.

21. Restrictions on frustrating actions

- 21.1 In the period where the board thinks an offer might be imminent, and during the course of an offer, the board cannot without the approval of shareholders:
 - issue previously un-issued shares;
 - grant options on un-issued shares;
 - create securities capable of conversion into shares;
 - deal in assets of a material amount; or
 - enter into contracts otherwise than in the ordinary course of business.
- 21.2 Inducement fees must be less than 1% of the share offer value and subject to safeguards.

22. Responsibilities of the offeree regarding registration procedures

The board must take action to keep its register up to date.

SECTION J DOCUMENTS FROM THE OFFEROR AND THE OFFEREE

23. General obligation as to information

23.1 Shareholders must be given sufficient information to reach a properly informed decision as to the merits of an offer.

24. Offeror documents

24.1. Intentions regarding the offeree company. An offeror should normally cover its following intentions:

- a) continuation of the offeree's business;
- b) major changes to the offeree's business;
- c) long term commercial justification; and
- d) employment of employees.

24.2. Dependant on the legal entity of the offeror, and whether the consideration is cash or shares, but essentially:

- summarised profit and loss accounts for 3 years;
- balance sheet and cash flow statement from last accounts;
- material changes since the last accounts, including details from any interim statement;
- significant accounting policies and the effect of any changes in the policies;
- names of the directors;
- summaries of the principal contents of material contracts.
- description of how the offer is to be financed and the source of the finance.

24.3. Shareholdings and dealings:

- a) Shareholdings in the offeree held by offeror;
- b) Shareholdings of directors; and
- c) Shareholdings controlled by irrevocables.

24.4. The impact of the offer on directors emoluments must be disclosed.

24.5. A statement is required as to whether any special arrangements exist.

24.6. Obligations and rights must be clear

24.7. Confirmation from a third party that cash resources are available to satisfy the offer.

24.8. The ultimate owner of the offeror must be disclosed

24.9. Any listing conditions should be reasonable.

24.10. The value of any unlisted paper consideration should be valued by an appropriate adviser.

25. Offeree Board Circulars

- 25.1 The offeree board must circulate its views and the substance of the advice given to it by the independent advisers and an offeror's intentions.
- 25.2 The first major circular from the offeree board advising shareholders an offer must contain particulars of all shareholdings.
- 25.3 The first major circular from the offeree board advising shareholders an offer must contain particulars of all service contracts of any director of the offeree company and any changes made in prior six months.

26. Documents to be on display

The offer document or offeree board circular must state which documents are available and where inspection can be made. The Rule lists those required.

27. Documents subsequently sent to shareholders

27.1 Material changes in the following:

- material contracts;
- shareholdings and dealings;
- directors' emoluments;
- changes to directors' service contracts;

27.2 The continuing validity of previously made profit forecasts

SECTION K PROFIT FORECASTS

28. Profit forecasts

- 28.1 Standards of care - forecasts must be compiled with scrupulous care and the advisers must satisfy themselves that the forecast has been prepared in this manner by the directors.
- 28.2 Assumptions including commercial assumptions must be stated in the document and in any announcement. A forecast must be examined and reported on by accountants.
- 28.3 When income from property is a material element and is not reasonably certain then that part of the forecast should be independently valued.
- 28.4 Reports on a forecast must be included in the offer document, together with the statement that those reporting have consented to publication.
- 28.5 In subsequent reports the directors must confirm that the forecasts remain valid and those reporting confirm the continuing validity of their reports.
- 28.6 Statements which will be treated as a profit forecast:
- form of words implies a number ie "somewhat higher";
 - forecasts before the offer period;
 - estimates of profit for a completed period;
 - a profit forecast for a limited period;
 - any unaudited figures published in the offer period must be reported on, except for:
 - (a) unaudited statements of annual or interim results; and
 - (b) Preliminary annual profit results.
- 28.7 Statements should include forecasts of taxation, extraordinary items and material minority interests.
- 28.8 Any previously published profit figures covering the same period must be stated.

SECTION L ASSET VALUATIONS

29. Asset valuations

- 29.1 When a valuation of assets is given in connection with an offer, it should be supported by the opinion of a normal independent valuer.
- 29.2 The valuer should follow RICS guidance notes and the basis of valuation must be clearly stated.
- 29.3 There should normally be a statement regarding any potential tax liability.

SECTION M TIMING AND REVISION

30. Posting the offer document

- 30.1 The offer document should normally be posted within 28 days of the announcement to make an offer.
- 30.2 The offeree board views should be published within 14 days of the offer document.

31. Timing of the offer

- 31.1 **First closing date** - An offer must initially be open for at least 21 days following the date on which the offer document is posted.
- 31.2 **Further closing dates** – These must be specified. Shareholders must be given 14 days notice if a previously open offer is to be closed.
- 31.3 There is no obligation to extend an offer.
- 31.4 When an offer becomes unconditional as to acceptances it must remain open for a further 14 days. If an offer is unconditional as to acceptances at the start, the extension is not required.
- 31.5 No extension statements are binding.
- 31.6 **Final day rule** – The offer cannot remain conditional as to acceptances beyond day 60 without Panel consent.
- 31.7 **Time for fulfilment of all other conditions** – all conditions must be fulfilled within 21 days of first closing or of the acceptance condition being satisfied.
- 31.8 The consideration must be posted within 14 days of the later of the closing date or the offer being declared unconditional.
- 31.9 The offeree board should not make any material announcements beyond day 39 following the posting. Otherwise day 46 and 60 are liable to be extended.

32. Revisions

- 32.1 If revised, an offer must be kept open for at least 14 days after the revised offer document is posted. Therefore no revised offer can be posted after day 46.
- 32.2 If “no increase” price statements are made the offeror will not be allowed to subsequently amend the terms of the offer.
- 32.3 If an offer is revised, the shareholders who accepted the original offer are entitled to the revised consideration.
- 32.4 New conditions can only be inserted with the Panel’s consent on the back of an improved offer.
- 32.5 If a competitive situation exists in the later stages the Panel will normally determine an auction procedure.

33. Alternative offers

Rules 31 and 32 apply to alternative offers.

34. Right of withdrawal

An acceptor must be entitled to withdraw his acceptance within 21 days after the first closing date, if the offer has not been declared unconditional as to acceptances.

SECTION N RESTRICTIONS FOLLOWING OFFERS AND POSSIBLE OFFERS

35. Restrictions following offers

- 35.1 The offeror cannot make another offer within the next 12 months.
- 35.2 The same restrictions apply to partial offers.
- 35.3 The offeror cannot acquire further shares within the next 6 months on any better terms.

SECTION O PARTIAL OFFERS

36. Partial Offers

- 36.1 The Panel must consent to any partial offer and will normally consent to an offer for less than 30%, but not above.
- 36.2 Consent above 30% will not normally be granted if shares have been acquired in the previous 12 months.
- 36.3 The offeror may not acquire shares in the offer period, and if the offer is successful the offeror cannot acquire shares for a further 12 months.
- 36.4 Offers between 30% and 50% must be for a specified number of shares and cannot be declared unconditional until the specified number is reached.
- 36.5 Any offer for more than 30% also requires a separate 50% approval from shareholders.
- 36.6 An offer that would result in the offeror holding more than 50% would require a control warning to be included, which then relieves the offeror from any obligations under Rule 9 for further acquisitions.
- 36.7 Partial offers must be made to all shareholders for their entire holdings and scaling down arrangements will apply.
- 36.8 For partial offers in excess of 30%, comparable offers have to be made for other share classes.

SECTION P REDEMPTION OR PURCHASE BY A COMPANY OF ITS OWN SHARES

37. Possible requirement to make a mandatory offer

- 37.1 When a company redeems shares which results in the voting rights of any shareholder exceeding 30%, it will be trigger a Rule 9 obligation. The panel will normally waive the requirement to make a general offer if there is a vote of independent shareholders and Appendix 1 procedures are followed.

SECTION Q DEALINGS BY CONNECTED EXEMPT MARKET MAKERS

38. Prohibited dealings

- 38.1 A market-maker connected with an offeror or the offeree must not carry out any dealings with the purpose of assisting either.

Appendices:

1. Whitewash Guidance Note

This note sets out the procedures to be followed if the Panel is asked to waive the obligation to make a general offer under rule 9, which would otherwise arise from the issue of new shares as consideration for an acquisition.

2. Formula Offers Guidance Note

When offers are made for the shares in investment trust it is common for the consideration to be calculated by reference to a formula related to the net assets of the company. In these circumstances special procedures must be followed.

3. Directors Responsibilities and Conflicts of Interest Guidance Note

4. Receiving Agents code of practice

Document charges

Document charges are payable to the panel by the financial adviser. The charge is added to the offer value and ranges between £2,000 and £175,000.

Charges are payable for whitewashes and mergers

Substantial Acquisitions of shares

There are separate rules governing substantial acquisition of shares where a person increases his holdings between 15% and 30%.

The End