

3. Announcements of offers or possible offers

3.1 Announcements to be made by offeror or potential offeror

Before the board of the offeree company is approached, the responsibility for making an announcement will normally rest with the offeror or potential offeror. Although the primary responsibility for making an announcement after the board of the offeree company has been approached lies with the offeree company, as set out in Rule 3.2 below, there may be circumstances where the actions of the offeror or persons acting in concert with it give rise to an obligation on the part of an offeror or potential offeror to make an announcement. The offeror or potential offeror should, therefore, keep a close watch on the offeree company's share price and volume for signs of undue movement. ~~The offeror is also responsible for making an announcement once an obligation has been incurred under Rule 26.~~

The offeror or potential offeror must make an announcement:-

- (a) when, before an approach has been made to the offeree company, the offeree company is the subject of rumour or speculation about a possible offer or there is undue movement in its share price, or ~~a significant increase~~ in the volume of share turnover, and there are reasonable grounds for concluding that it is the ~~potential offeror's~~ actions of the potential offeror or persons acting in concert with it (whether through inadequate security, purchasing of offeree company shares or otherwise) which have led to the situation; ~~or~~
- (b) when negotiations or discussions are about to be extended to include more than a very restricted number of people (outside those who need to know in the companies concerned and their immediate advisers); or
- (c) immediately upon an acquisition of shares-voting rights which gives rise to an obligation to make an offer under Rule 26.

An offeror wishing to approach a wider group, for example, in order to arrange financing for the offer, to seek irrevocable commitments or to organise a consortium to make the offer should consult the Executive. In all cases of doubt, Additionally, the Executive should be consulted in all cases of doubt.

3.2 Announcements to be made by offeree company

Following an approach to the board of the offeree company which may or may not lead to an offer, the primary responsibility for making an announcement will normally rest with the board of the offeree company, ~~which~~ The offeree company must, therefore, keep a close watch on its share price and volume.

The ~~offeree~~ board of the offeree company must make an announcement:-

- (a) when a firm intention to make an offer is notified to the board of the offeree company from a serious source, irrespective of the attitude of the board to the offer;
- (b) when, following an approach to the offeree company, the offeree company is the subject of rumour ~~and~~or speculation about a possible offer or there is undue movement in its share price; or ~~a significant increase~~ in the volume of share turnover, whether or not there is a firm intention to make an offer;
- (c) when negotiations or discussions between the offeror and the offeree company are about to be extended to include more than a very restricted number of people (outside those who need to know in the companies concerned and their immediate advisers); or
- (d) when the board of a company is aware that there are negotiations or discussions between a potential offeror and the holder, or holders, of shares carrying ~~35~~30% or more of the voting rights of a company or when the board of a company is seeking potential offerors, and
 - (i) the company is the subject of rumour ~~and~~or speculation about a possible offer or there is undue movement in its share price; or ~~a significant increase~~ in the volume of share turnover; or
 - (ii) the number of potential purchasers or offerors approached is about to be increased to include more than a very restricted number of people.

In all cases of doubt the Executive should be consulted.

3.3 Announcements to be made by potential vendor

The potential vendor must make an announcement when, ~~before an approach has been made to the board of a company~~, there are negotiations or discussions between a potential offeror and the holder, or holders, of shares carrying ~~35~~30% or more of the voting rights of the company and the company is subject to rumour ~~and~~or speculation about a possible offer or there is undue movement in its share price; or ~~a significant increase~~ in the volume of share turnover, and there are reasonable grounds for concluding that it is the potential vendor's actions (whether through inadequate security or otherwise) which have led to the situation.

In all cases of doubt the Executive should be consulted.

Notes to Rules 3.1, 3.2 and 3.3:

1. ~~Conditional offers~~

~~The Executive should be consulted when a proposed offer is conditional on acceptance or undertakings to accept by one or more shareholders and the proposed announcement does not include a statement by those shareholders.~~

1.2- Agreements and letters of intent

Unless announced publicly, agreements and letters of intent relating to an offer or possible offer to which ~~the~~ offeror or any person acting in concert with it is a party should be disclosed to the Executive.

2. Undue movements in share price and volume

Whether or not a movement in the share price or volume of a potential offeree company is undue for the purposes of Rule 3 is a question that will be considered in the light of all relevant facts and not solely by reference to the absolute percentage movement in the price or volume. Factors which may be considered to be relevant in determining whether a price or volume movement is undue for the purposes of these Rules include general market and sector movements, information relating to the company, trading activity in the company's securities and the time period over which the price or volume movement has occurred. In all cases of doubt the Executive should be consulted.

3. Clear statements

The Executive will not normally require an announcement under Rule 3.1(a) if it is satisfied that the price or volume movement, rumour or speculation results only from a clear and unequivocal formal public announcement, e.g. (a) a disclosure under the Securities (Disclosure of Interests) Ordinance (Cap. 396); or (b) an announcement of an intention to purchase.

4. Gathering of irrevocable commitments

An offeror may approach a very restricted number of sophisticated investors who have a controlling shareholding to obtain an irrevocable commitment. In all other cases the Executive must be consulted before any approach is made to a shareholder to obtain an irrevocable commitment in connection with an offer. In appropriate circumstances, the Executive may permit particular shareholders to be called and informed of details of a proposed offer which has not been publicly announced. The Executive will wish to be satisfied that the proposed arrangements will provide adequate information as to the nature of the commitment sought; and a realistic opportunity to consider whether or not that commitment should be given and to obtain independent advice if required. The financial adviser concerned will be responsible for ensuring compliance with all relevant legislation and regulations. In all cases attention is drawn to General Principles 3 and 5.

3.4 Suspension of trading

When an announcement is required under this Rule 3 the offeror or the offeree company, as the case may be, should notify the Executive and the Stock Exchange immediately that an announcement is imminent and if there is any possibility that an uninformed market for shares of the offeror or the offeree company could develop prior to publication of the announcement, serious consideration should be given to requesting a suspension of trading in such shares pending publication of the announcement. A potential offeror must not attempt to prevent the board of ~~an~~the offeree company from making an announcement or requesting the Stock Exchange to grant a temporary suspension of ~~listing trading~~ at any time the board thinks appropriate.

3.5 Announcement of firm intention to make an offer

The announcement of a firm intention to make an offer should be made only when an offeror has every reason to believe that it can and will continue to be able to implement the offer. Responsibility in this connection also rests on the financial adviser to the offeror.

When a firm intention to make an offer is announced, the announcement must contain:-

- (a) the terms of the offer;
- (b) the identity of the ~~ultimate offeror or the ultimate controlling shareholder~~offeror and, where the offeror is a company, the identity of its ultimate controlling shareholder and the identity of its ultimate parent company or, where there is a listed company in the chain between such company and its ultimate parent company, the identity of such listed company;
- (c) details of any existing holding of voting rights and rights over shares in the offeree company:-
 - (i) which the offeror owns or over which it has control or direction;
 - (ii) which is owned or controlled or directed by any person acting in concert with the offeror;
 - (iii) in respect of which the offeror or any person acting in concert with ~~him-it~~ has received an irrevocable commitment to accept the offer; and
 - (iv) in respect of which the offeror or any person acting in concert with ~~him-it~~ holds convertible securities, warrants or options;

- (d) details of any outstanding derivative in respect of securities in the offeree company entered into by the offeror or any person acting in concert with it;
- (e) all conditions (including normal conditions relating to acceptance, listing and increase of capital) to which the offer ~~or the posting of it~~ is subject; and
- (f) details of any arrangement (whether by way of option, indemnity or otherwise) in relation to shares of the offeror or the offeree company and which might be material to the offer. (See Note 8 to Rule 22.)

The announcement of an offer should include confirmation by the financial adviser or by another appropriate third party that resources are available to the offeror sufficient to satisfy full acceptance of the offer.

Notes to Rule 3.5:

~~1.~~ *Unambiguous language*

~~The language used in announcements should clearly and concisely reflect the position being described. In particular, the word “agreement” should be used with the greatest care. Statements should be avoided which may give the impression that persons have committed themselves to certain courses of action (e.g. accepting in respect of their own shares) when they have not in fact done so. [Moved to Note 2 to Rule 9.1.]~~

~~21.~~ *Holdings by a group of which an adviser is a member*

~~It is accepted that, for reasons of secrecy, it would not be prudent to make enquiries so as to include in an announcement details of any holdings of offeree company shares or options or derivatives in respect of them held by or entered into by other parts of an adviser’s group (see class (5) of definition of “acting in concert” in Definitions section). In such circumstances, details should be obtained as soon as possible after the announcement has been made and the Executive consulted. If the holdings are significant, a further announcement ~~may~~will be required.~~

~~32.~~ *Irrevocable commitments*

~~References to commitments to accept an offer must specify in what circumstances, if any, they will cease to be binding; for example, if a higher offer is made.~~

~~43.~~ *Confirmation of resources*

The Executive may require evidence to support a statement that resources are available to satisfy the offeror's obligations in respect of the offer. The Executive may also require evidence that the offeror has sufficient resources to complete the purchase of shares which gives rise to the offer obligation.

A financial adviser, in discharging its duties under this Rule 3.5 to confirm financial resources, should observe the highest standard of care to satisfy itself of the adequacy of resources, including performance of due diligence. The financial adviser confirming that resources are and will continue to be available will not be expected to produce the cash itself if, in giving the confirmation, it acted responsibly and took all reasonable steps to assure itself that the cash was available.

This confirmation will be required not only when the consideration is in cash, or includes an element of cash, but also when the consideration consists of, or includes, any other assets except new securities to be issued by the offeror ~~company~~.

4. Subjective conditions

Companies and their advisers should consult the Executive prior to the issue of any announcement containing conditions which are not entirely objective (see Rule 30.1).

5. New conditions for increased or improved offers

See Rule 16.2.

6. Pre-conditions

In certain circumstances a potential offeror may make an announcement that it is considering a possible offer at a time when it does not want to be committed to making that offer (a "possible offer announcement"). The Executive must be consulted in advance if it is proposed to make a pre-conditional possible offer announcement.

There may be a case where a potential offeror makes a possible offer announcement which states that it is considering making an offer subject to the satisfaction of certain pre-conditions. Such an announcement may create a misleading or confusing impression about the intentions of the potential offeror, because shareholders may be unable to assess in what circumstances an offer may be forthcoming. Accordingly, it must be clear from the wording of any possible offer announcement referring to pre-conditions whether or not the pre-conditions must be satisfied before an offer can be made, or whether they are effectively waivable.

Although there is no obligation to specify all the pre-conditions to the making of an offer, if a potential offeror does so and states that it will proceed with its offer if they are all satisfied or waived, then any

announcement must be structured as a pre-conditional Rule 3.5 announcement. It must, however, be made clear in such an announcement whether or not the pre-conditions are waivable. Such pre-conditions may, depending on the specific circumstances of the case, be subjective in form, in contrast to conditions to an offer which should, under Rule 30, normally be objective.

7. Conditional offers

The Executive should be consulted when a proposed offer is conditional on acceptance or undertakings to accept by one or more shareholders and the proposed announcement does not include a statement by those shareholders.

3.6 Announcements of certain purchases

Acquisitions of voting rights of ~~an~~ the offeree company by an offeror or by any person acting in concert with the offeror may give rise to an obligation to make a cash offer (Rule 23), to increase an offer (Rule 24) or to make a mandatory offer (Rule 26). Immediately after any acquisition giving rise to any such obligation, an announcement must be made, stating the number of voting rights acquired and the price paid, together with the information required by Rule 3.5 (to the extent that it has not previously been announced).

Note to Rule 3.6:

Potential offerors

The requirement of this Rule 3.6 to make an immediate announcement applies to any publicly announced potential offeror (whether named or not) either where a public indication of the price level of its possible offer has been made and the potential offeror or any person acting in concert with it acquires voting rights at above that level or where there already exists an offer from a third party and the potential offeror or any person acting in concert with it buys at above the price level of that offer. Disclosure will be required in accordance with Rule 22.1.

3.7 Announcement of a possible offer

Until a firm intention to make an offer has been notified a brief announcement by a potential offeror or the offeree company that talks are taking place or that a potential offeror is considering making an offer will normally satisfy the obligations under this Rule 3. If following the announcement of a possible offer no further announcement has been made in respect of that offer or possible offer within one month, an announcement must be made setting out the progress of the talks or the consideration of a possible offer. This obligation continues (and announcements will be required monthly) until announcement of firm intention to make an offer under Rule 3.5 or of a decision not to proceed with an offer. When talks are terminated or a potential

offeror decides not to proceed with an offer an announcement must be made to that effect.

Notes to Rule 3.7:

1. Identity of offeror

In any announcement under *this* Rule 3.7 the Executive may require the potential offeror to be named. This is more likely where the identity of the potential offeror may be price-sensitive.

2. New offeror

In the event that a new offeror or potential offeror emerges, the same obligations will apply to that new offeror or potential offeror.