

21. Restrictions on dealings before and during the offer

21.1 Restrictions on dealings before the offer

No dealings of any kind in the securities of the offeree company (including convertible securities, warrants, options and derivatives in respect of such securities) may be transacted by any person, not being the offeror, who has confidential price-sensitive information concerning an actual or contemplated offer or revised offer between the time when there is reason to suppose that an approach or an offer or revised offer is contemplated and the announcement of the approach, the offer, the revised offer, or of the termination of the discussions. Such restriction does not apply to persons acting in concert with an offeror in respect of such dealings where the securities the subject of such dealings are excluded from the offer or where there are no-profit arrangements in place.

No such dealings may take place in the securities of the offeror except where the offer or proposed offer is not price-sensitive in relation to those securities.

No person who is privy to such information may make any recommendation to any other person as to dealing in the relevant securities.

Notes to Rule 21.1:

~~1. Securities (Insider Dealing) Ordinance (Cap. 395)~~

~~Persons concerned with takeovers and mergers and the effects of this Rule must also have regard to the Securities (Insider Dealing) Ordinance (Cap. 395).~~

~~2. No-profit arrangements~~

~~Arrangements made by a potential offeror with a person acting in concert with it whereby offeree securities are purchased (which would include entering into options or derivatives in respect of securities of the offeree company) by the person acting in concert, on the basis that the offeror will bear all the risks and receive all the benefits, are not prohibited by this Rule. Arrangements which contain a benefit or potential benefit to the person acting in concert (beyond normal expenses and carrying costs) are, however, normally prohibited. In cases of doubt, the Executive must be consulted.~~

21.2 Restrictions on dealings during the offer

During an offer period, the offeror and persons acting in concert with the offeror must not sell any securities in the offeree company except with the prior consent of the Executive and following 24 hours public notice that such sales might be made. Save as provided below, the Executive will not give

consent for sales particularly where a mandatory offer under Rule 26 is being made. Sales below the value of the offer will not be permitted. After there has been an announcement that sales may be made, neither the offeror nor persons acting in concert with it may make further purchases and only in exceptional circumstances will the Executive permit the offer to be revised.

The consent of the Executive is not required for placing or underwriting arrangements made during an offer in order to achieve the minimum public shareholding to maintain the listing of the offeree company's shares provided that such arrangements are not effective prior to the date when the offer becomes or is declared unconditional ~~in all respects~~. If an offeror wishes to make such arrangements in order to hold less than 75% (or such percentage as may be relevant in the event that the Stock Exchange has accepted that a percentage other than 25% of the offeree company's shares needs to be in public hands ~~for there to be sufficient to ensure that there is an open market to maintain the listing of the offeree company's shares~~) of the offeree company's shares, the consent of the Executive is required.

Notes to Rules 21.1 and 21.2:

1. No-profit arrangements

Arrangements made by a potential offeror with a person acting in concert with it whereby offeree company securities are purchased (which would include entering into options or derivatives in respect of securities of the offeree company) by the person acting in concert, on the basis that the offeror will bear all the risks and receive all the benefits, are not prohibited by this Rule 21. Arrangements which contain a benefit or potential benefit to the person acting in concert (beyond normal expenses and carrying costs) are, however, normally prohibited. In cases of doubt, the Executive must be consulted.

2. Other circumstances in which dealings may not take place

An offeror or other persons may also be restricted from dealing or procuring others to deal in certain other circumstances, e.g. before the announcement of an offer, if the offeror has been supplied by the offeree company with confidential price-sensitive information in the course of offer discussions.

3. Consortium offers and joint offerors

If an offer is to be made by more than one offeror or by a company formed by a group of persons to make an offer or by any other consortium offer vehicle, the offerors or group involved will normally be considered to be in a consortium for the purpose of this Note.

The Executive must be consulted before any purchases of offeree company securities are made by members or potential members of a

consortium. If there are existing holdings of such securities, it will be necessary to satisfy the Executive that they were acquired before the consortium was formed or contemplated.

It will not normally be acceptable for members of a consortium to purchase such securities unless there are, for example, when a consortium company is to be the offeror, appropriate arrangements to ensure that such purchases are made proportionate to members' interests in the consortium company or under arrangements which give no profit to the purchaser.

4. No dealing contrary to published advice

Directors and financial advisers to a company who own securities in that company must not deal in such securities contrary to any advice they have given to shareholders, or to any advice with which it can reasonably be assumed that they were associated, without giving sufficient public notice of their intentions together with an appropriate explanation. For the purposes of this Note, securities in a company include options and derivatives in respect of or referenced to such securities.

~~4.5.~~ Discretionary clients

Sales of securities of the offeree company for discretionary clients by fund managers connected with an offeror, unless they are exempt fund managers, may be relevant (see Rule 21.6).

~~2.6.~~ Dealings between an offeror and connected exempt principal traders

See Rule 35.2.

21.3 **Restriction on dealings by offeror during non-cash offers**

Where the consideration under an offer includes securities of the offeror or a person acting in concert with it, neither the offeror nor any person acting in concert with it may deal in any such securities during the offer period.

~~During an offer period for an offer consisting of shares of the offeror listed on the Stock Exchange (and for which there is no cash alternative) the offeror, and persons acting in concert with him, may not engage in an on-market share repurchase, as such term is defined in the Share Repurchase Code, until the later of the date the offeror abandons its intention to conduct the offer and the date the related offer period expires.~~

Note to Rule 21.3:

Application of Share Repurchase Code

~~The Share Repurchase Code defines the term “share repurchase” to mean an offer to purchase, redeem or otherwise acquire shares of an offeror made by or on behalf of the offeror to any shareholder of the offeror. As a result any purchase of shares of the offeror by the offeror, or persons acting in concert with him, during a share exchange offer made by the offeror would constitute a share repurchase for purposes of the Share Repurchase Code. Rule 1 of the Share Repurchase Code provides, among other things, that a share repurchase may only be made by the company the shares of which are the subject of the share repurchase, i.e. the offeror.~~

21.4 Dealings after termination of discussions

If discussions are terminated or the offeror decides not to proceed with an offer after an announcement has been made that offer discussions are taking place or that an approach or offer is contemplated, no dealings in securities (including convertible securities, warrants, options and derivatives, in respect of such securities) of the offeree company by the offeror, persons acting in concert with it or any person privy to this information may take place prior to an announcement of the position.

21.5 Dealings in offeree company securities by certain offeree company associates

During the offer period, except for exempt fund managers and exempt principal traders, no financial adviser or stockbroker (or any person controlling, controlled by or under the same control as any such adviser or stockbroker) to an offeree company (or any of its parents, subsidiaries or fellow subsidiaries, or their associated companies or companies of which such companies are associated companies) shall, except with the consent of the Executive:-

- (i) for its own account, or for any of its investment accounts managed on a discretionary basis, purchase offeree company shares or deal in convertible securities, warrants, derivatives ~~or~~ options or derivatives in respect of such shares; ~~or~~
- (ii) make any loan to a person to assist him in making any such purchases or carrying out any such dealings save for lending in the ordinary course of business and on normal commercial terms ~~to persons with which they have an established customer relationship~~; or
- (iii) enter into any indemnity or option arrangement or any arrangement, agreement or understanding, formal or informal, of whatever nature, which may be an inducement for a person to retain, deal or refrain from dealing in relevant securities of the offeree company.

Note to Rule 21.5

Recommended or unconditional mandatory offers

The Executive will normally give its consent under this Rule 21 where the offer is recommended by the board of the offeree company and there is no competing offer, or where the offer is an unconditional mandatory offer pursuant to Rule 26.

21.6 Dealings for discretionary clients during an offer period

- (a) After the identity of an offeror or potential offeror is publicly known, fund managers who manage investment accounts on a discretionary basis and who are connected with the offeror will, subject to paragraph (b) below, be presumed to be acting in concert with the offeror in respect of those investment accounts. Rules 23, 24, 25 and 26 will then be relevant to purchases of offeree company securities and Rule 21.2 to sales of offeree company securities.

Similarly, fund managers who manage investment accounts on a discretionary basis and who are connected with the offeree company will, subject to paragraph (b) below, be presumed to be acting in concert with, for example, directors of the offeree company, who are also shareholders, in respect of those investment accounts. Rule 26 may be relevant.

When obligations under, or infringements of, the above-mentioned Rules could arise, the relevant fund managers should consult the Executive before dealing in securities of an offeror or the offeree company as appropriate.

- (b) The presumptions in paragraph (a) will not apply to an exempt fund manager which is connected to an offeror or the offeree company where the sole reason for that connection is that the fund manager controls[#], is controlled by or is under the same control as a financial or other professional adviser (including a stockbroker) to the offeror or the offeree company. (See Note 2 to the definitions of exempt fund manager and exempt principal trader.)

[#] See Note 1 at the end of the definitions.

Notes to Rule 21.6:

1. Qualifications

- (a) *The presumptions in Rule 21.6(a) may be rebutted in appropriate circumstances and the Executive should be consulted in advance.*
- (b) *If an exempt fund manager is in fact acting in concert with an offeror, the usual concert party consequences will follow.*

- (c) *If an offeror or potential offeror, or any company in its group, has funds managed on a discretionary basis by an exempt fund manager, Rule 21.6 may be relevant. If, for example, any securities of the offeree company are owned by the offeror through such exempt fund manager, the exception in Rule 21.6(b) in relation to exempt fund managers may not apply in respect of those securities. The Executive should be consulted in such cases.*
- (d) *Where a fund manager is connected with an offeror by reason of class (4) of the definitions of connected fund manager and connected principal trader, the Executive may, in appropriate circumstances, waive the acting in concert presumption in Rule 21.6(a), for example where the investment in a consortium is insignificant.*

2. *Dealings before an offeror's identity is publicly known*

Dealings for discretionary clients by fund managers connected with an offeror, before its identity is publicly known, will not normally be relevant for the purpose of Rule 21.6. However, if, once that identity is publicly known, it becomes apparent that the shares in the offeree company held by the offeror and persons acting in concert with it, including shares held on behalf of discretionary clients by fund managers to which the presumption in Rule 21.6(a) applies, carry 30% or more of the voting rights of the offeree company, the Executive should be consulted.