

23. When cash offer required

Except with the consent of the Executive in cases falling under [paragraph \(a\)](#) or (b) [below](#), a cash offer is required where:-

- (a) the shares of any class under offer in the offeree company purchased for cash (but see Note 5 [to this Rule 23](#)) by an offeror, and any person acting in concert with the offeror, during the offer period and within 6 months prior to its commencement carry 10% or more of the voting rights currently exercisable at a class meeting of that class in which case the offer for that class shall be in cash or accompanied by a cash alternative at not less than the highest price paid by the offeror or any person acting in concert with it for shares of that class during the offer period and within 6 months prior to its commencement;~~or~~
- (b) subject to paragraph (a) above, shares of any class under offer in the offeree company are purchased for cash (but see Note 5 [to this Rule 23](#)) by an offeror or any person acting in concert with it during the offer period, in which case the offer for that class shall be in cash or accompanied by a cash alternative at not less than the highest price paid by the offeror or any person acting in concert with it for shares of that class during the offer period; or
- (c) in the view of the Executive there are circumstances which render such a course necessary in order to give effect to General Principle 1.

If the offeror considers that the highest price (for the purposes of this Rule [23](#)) should not apply in a particular case, the offeror should consult the Executive, which has discretion to agree a lower price.

[\(See also Rule 36.\)](#)

Notes to Rule 23:

1. Price

In calculating the price paid, stamp duty and dealing costs should be excluded.

2. Gross purchases

The Executive will normally regard Rule 23(a) as applying to gross purchases of shares over the relevant period and will not allow the deduction of any shares sold over that period. However, in exceptional circumstances and with the consent of the Executive, shares sold some considerable time before the beginning of the offer period may be deducted.

3. When the obligation is satisfied

The obligation to make cash available under this Rule 23 will be considered to have been met if, at the time the purchase was made, a cash offer or cash alternative at a price per share not less than that required by this Rule 23 was open for acceptance, even if that offer or alternative closes for acceptance immediately thereafter. If the cash offer or cash alternative is less than that required under this Rule 23 (or there is no cash offer or alternative or they have closed already), the offeror is under an obligation to revise the offer and Rule 16 shall apply.

4. Equality of treatment

The discretion given to the Executive in Rule 23(c) to require cash to be made available in certain cases where less than 10% has been purchased ~~during in the offer period and within~~ 6 months prior to ~~its~~the commencement of the offer period will not normally be exercised unless the vendors are directors or other persons closely connected with the offeror or the offeree company. In such cases, relatively small purchases could be relevant.

Rule 23(c) may also be relevant when 10% or more has been acquired in the previous 6 months for a mixture of securities and cash.

5. Acquisitions for securities, including placings

Shares acquired in exchange for securities will be deemed to be purchases for cash for the purpose of this Rule 23 if an offeror or its associates arrange, or in any way facilitate, the placing of such consideration securities. Also, even where there is no such placing, if an offeror or any person acting in concert with it acquires in exchange for securities any relevant shares, either during or in the one month preceding any offer period, the shares will normally be deemed to have been purchased for cash on the basis of the value of the securities at the time of the transaction. However, if the vendor of the offeree company shares is required to hold the offeror's securities received in exchange until either the offer has lapsed or the offer consideration has been posted to accepting shareholders, no obligation under this Rule 23 is incurred.

6. No revision during final 14 days of offer period

AnSince an offer must remain open for acceptance for 14 days following the date on which the revised offer document is posted, an offeror will generally not be able to revise its offer, and an offeror should not place itself in a position where it would be required to revise its offer under this Rule 23 in the 14 day period ending on the last day its offer is able to become unconditional as to acceptances. If an obligation under this Rule 23 arises during the course of an offer period and a revision of the offer is necessary an immediate announcement must be made. (See Rule 16.)

7. *Convertible securities, warrants, ~~and~~ options and subscription for new shares*

The conversion or exercise of convertible securities, warrants, options or other subscription rights will be treated as purchases of the underlying shares at a price calculated by reference to the purchase price of the convertible securities, warrants or options and the relevant conversion or exercise terms. Subscription for new shares will be treated as a purchase for the purposes of this Rule 23. In any case of doubt, the Executive should be consulted.

8. *Relevant factors for adjusted price*

Factors which the Executive might take into account when considering an application for an adjusted price include:-

- (a) the size and timing of the relevant purchases;*
- (b) the attitude of the offeree board;*
- (c) whether shares have been purchased at high prices from directors or other persons closely connected with the offeror or the offeree company; and*
- (d) the number of shares purchased in the preceding 6 months.*

9. *Discretionary clients*

Dealings for discretionary clients by fund managers connected with an offeror, unless they are exempt fund managers, may be relevant (see Rule 21.6).

10. *Allotted but unissued shares*

When shares of a company carrying voting rights have been allotted (even if provisionally) but have not yet been issued, for example, under a rights issue when the shares are represented by renounceable letters of allotment, the Executive should be consulted. Such shares are likely to be relevant for the purpose of calculating percentages under this Rule 23.

11. *Cum dividend*

When accepting shareholders are entitled under the offer to retain a dividend declared or forecast by the offeree company but not yet paid, the offeror, in establishing the level of the cash offer, may deduct from the highest price paid the net dividend to which offeree company shareholders are entitled.

12. Offer period

References to the offer period in this Rule 23 are to the time during which the offeree company is in an offer period, irrespective of whether the offeror was contemplating an offer when the offer period commenced.