

24. **Purchases ~~at above offer price~~ resulting in an obligation to offer a minimum level of consideration**

24.1 (a) Highest price paid Purchases before a Rule 3.5 announcement

Except with the consent of the Executive in cases falling under paragraph (i) or (ii) below, when an offeror or any person acting in concert with it has purchased shares in the offeree company:-

(i) within the 3 month period prior to the commencement of the offer period;

(ii) during the period, if any, between the commencement of the offer period and an announcement made by the purchaser in accordance with Rule 3.5; or

(iii) prior to the 3 month period referred to in (i), if in the view of the Executive there are circumstances which render such a course necessary in order to give effect to General Principle 1,

the offer to the shareholders of the same class shall not be on less favourable terms.

(b) Purchases after a Rule 3.5 announcement

If, after an announcement made in accordance with Rule 3.5 and during the offer period, the offeror or any person acting in concert with it purchases ~~securities~~ shares in the offeree company ~~in the market or otherwise~~ during the offer period at above the offer price (being the then current value of the offer), then the offeror must increase the offer to not less than the highest price (excluding stamp duty and dealing costs) paid for any ~~securities~~ shares so acquired.

Purchases of shares in the offeree company may also give rise to an obligation under Rule 23. Where an obligation is incurred under Rule 23 by reason of any such purchases, compliance with Rule 23 will normally be regarded as satisfying any obligations under this Rule 24 in respect of those purchases.

(See also Rule 36.)

Note to Rule 24.1:

Subscription for new securities

Subscription for new securities at a price above the offer price will be treated as a purchase for the purposes of this Rule.

24.2 Offers involving a further issue of listed securities

For the purposes of this Rule 24, if the offer involves a further issue of securities of a class already listed on the Stock Exchange, the current value of the offer on a given day should normally be established by reference to the weighted average traded price of board lots (excluding special bargains and odd lots) of such securities traded during the immediately preceding trading day. If the offer involves a combination of cash and securities and further purchases of the offeree company's shares oblige the offeror to increase the value of the offer, the offeror must endeavour, as far as practicable, to effect such increase while maintaining the same ratio of cash to securities as is represented by the offer.

24.3 Shareholder notification

Immediately after the purchase of ~~securities~~ shares at above the offer price, it must be announced that a revised offer will be made in accordance with this Rule 24 (see also Rule 16). The announcement should also state the number and class of ~~securities~~ shares purchased and the price paid.

Notes to Rule 24:

1. *No increase during final 14 days of offer period*

An Since 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 increase its offer under this Rule 24 in the 14 day period ending on the last day its offer is capable of becoming unconditional as to acceptances (see also Rule 16).

2. *Convertible securities, warrants, ~~and~~ options and subscription for new securities 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 24. In any case of doubt, the Executive should be consulted.

3. *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, purchases in the market or otherwise by an offeror or any person acting in concert with it may be made at prices up to the net cum dividend equivalent of the offer value without necessitating any revision of the offer.

4. Adjusted terms

The Executive's discretion to agree adjusted terms pursuant to Rule 24.1(a)(i) or (ii) will only be exercised in exceptional circumstances.

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

(a) whether the relevant purchase was made on terms then prevailing in the market;

(b) changes in the market price of the shares since the relevant purchase;

(c) the size and timing of the relevant purchase;

(d) the attitude of the offeree company's board;

(e) whether shares have been purchased at high prices from directors or other persons closely connected with the offeror or the offeree company; and

(f) whether a competing offer has been announced for the offeree company.

5. Purchases prior to the 3 month period

The discretion given to the Executive in Rule 24.1(a)(iii) will not normally be exercised unless the vendors are directors or other persons closely connected with the offeror or the offeree company.

6. No less favourable terms

For the purpose of Rule 24.1(a), except where Rule 26 (mandatory offer) or Rule 23 (requirement for cash offer) applies, it will not be necessary to make a cash offer available even if shares have been purchased for cash. However, any securities offered as consideration must, at the date of the announcement of the firm intention to make the offer, have a value at least equal to the highest relevant purchase price. The proposed consideration should be discussed with the Executive, which will be concerned to see that the price at which the securities are valued in the calculation of the consideration is not affected by undue movements in price or volume of trading in the securities. If there has been any such undue movement in the period leading to such an announcement, the Executive may require the consideration to be adjusted or re-calculated so as to exclude, so far as practicable, the effects of the undue movement.

If there is a restricted market in the securities of an offeror, or if the amount of securities to be issued of a class already listed is large in relation to the amount already issued, the Executive may require justification of prices used to determine the value of the offer.

7. Unlisted securities

An offer where the consideration consists of securities for which an immediate listing is not to be sought will not be regarded as satisfying any obligation incurred under this Rule 24.

48. 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).

9. Offer period

References to the offer period in this Rule 24 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.