

32. Share repurchases

32.1 Code implications of share repurchases

If as a result of a share repurchase a shareholder's proportionate interest in the voting rights of the repurchasing company increases, such increase will be treated as an acquisition of voting rights for purposes of the Takeovers Code. As a result, a shareholder, or group of shareholders acting in concert, could obtain or consolidate control of a repurchasing company and thereby become obliged to make a mandatory offer in accordance with Rule 26. If so the Executive should be consulted at the earliest opportunity. In the case of a share repurchase by general offer or an off-market share repurchase, as such terms are defined in the ~~Share Repurchase Codes~~, the Executive will treat an application for a waiver from the requirement to make a mandatory offer in accordance with Rule 26 as if it were an application for a whitewash waiver in accordance with Note 1 ~~of the Notes~~ on dispensations from Rule 26. The Executive will normally grant such a waiver if:-

- (a) the Takeovers Code implications of the share repurchase are disclosed in the repurchasing company's offer document;
- (b) the share repurchase is approved in accordance with applicable shareholder approval requirements of the Share Repurchase Code by those shareholders who could not become obliged to make a mandatory offer as a result of the share repurchase; and
- (c) a procedure on the lines of that set out in Note 1 of the Notes on dispensations from Rule 26 of the Takeovers Code and Schedule VI is followed. Reference is made in this regard to Rule 8 of the Share Repurchase Code. (See also paragraph 9 of Schedule VI.)

For the purpose of Rule 22, dealings in relevant securities include share repurchases of the relevant securities of a repurchasing company.

Notes to Rule 32.1:

1. Responsibility for making an offer

If an offer obligation under this Rule 32.1 and Rule 26 is incurred and a dispensation is not granted, the prime responsibility for making the offer will attach to the principal member or members of the group of persons who are acting in concert and who, as a result of a share repurchase, obtain or consolidate control of the repurchasing company. In certain circumstances, the obligation to make such an offer may attach to other members of that group but no such obligation will attach to the company itself. However, the directors of the company and its principal shareholders may, depending on the circumstances, be presumed to be acting in concert unless the contrary is established.

2. *A shareholder not acting in concert with the directors*

~~*A shareholder not acting in concert with the directors will not normally be required to make a mandatory offer if, as a result of a share repurchase, his proportionate interest in the voting rights of the repurchasing company exceeds the mandatory offer thresholds prescribed by Rule 26. This exception will not normally apply when the shareholder has acquired voting rights at a time when he had reason to believe that such a share repurchase would take place.*~~

A shareholder who comes to exceed the limits in Rule 26.1 in consequence of a company's redemption or purchase of its own shares will not normally incur an obligation to make a mandatory offer unless that shareholder is a director, or the relationship of the shareholder with any one or more of the directors is such that the shareholder is, or is presumed to be, acting in concert with any of the directors. A shareholder who has appointed a representative to the board of the company will be treated for these purposes as a director. However, there is no presumption that all the directors (or any two or more directors) are acting in concert solely by reason of a proposed redemption or purchase by the company of its own shares, or the decision to seek shareholders' authority for any such redemption or purchase. The exception will not normally apply, and an obligation to make a mandatory offer may therefore be imposed, if a shareholder (or any relevant member of a group of shareholders acting in concert) has purchased shares at a time when he had reason to believe that such a redemption or purchase of its own shares by the company would take place.

32.2 Redemption or purchase of securities by the offeree company

(a) Shareholders' approval

During the course of an offer, or even before the date of the offer if the board of the offeree company has reason to believe that a bona fide offer might be imminent, no redemption or purchase by the offeree company of its own securities may, except in pursuance of a contract entered into earlier, be effected without the approval of the shareholders at a general meeting. The notice convening the meeting must include information about the offer or anticipated offer. Where an obligation or other special circumstance exists without a formal contract, the Executive must be consulted and its consent to proceed without a shareholders' meeting obtained (Rule 4 may be relevant).

(b) Public disclosure

For the purpose of Rule 22, dealings in relevant securities include the redemption or purchase of, or taking or exercising an option over, any of its own relevant securities by the offeree company. The total amount of securities of the relevant class remaining in issue following the redemption or purchase must also be disclosed.

(c) Disclosure in the offeree board circular

The offeree board circular must state the amount of relevant securities of the offeree company which the offeree company has redeemed or purchased during the period commencing 6 months prior to the offer period and ending with the latest practicable date prior to the posting of the document, and the details of any such redemptions and purchases, including dates and prices.

32.3 Redemption or purchase of securities by the offeror company

The offer document must state (in the case of a securities exchange offer only) the amount of relevant securities of the offeror which the offeror has redeemed or purchased during the period commencing 6 months prior to the offer period and the details of any such redemptions and purchases, including dates and prices.

(See also Rule 21.3.)