

33. Inducement fees, break fees and standstill agreements

33.1 Inducement fees or break fees

In all cases where an inducement fee or break fee is proposed, certain safeguards must be observed. In particular, an inducement fee or break fee must be de minimis (normally no more than 1% of the offer value) and the offeree company board and its financial adviser must confirm to the Executive in writing that each of them believes that the fee is in the best interests of shareholders. Any inducement or break fee arrangement must be fully disclosed in the announcement made under Rule 3.5 and in the offer document. Relevant documents must be put on display in accordance with Rule 8.

The Executive should be consulted at the earliest opportunity in all cases where an inducement fee, break fee or any similar arrangement is proposed.

Note to Rule 33.1:

Arrangements to which the Rule applies

An inducement fee or break fee is an arrangement which may be entered into between an offeror or a potential offeror and the offeree company pursuant to which a cash sum will be payable by the offeree company if certain specified events occur which have the effect of preventing the offer from proceeding or causing it to fail (e.g. the recommendation by the offeree company board of a higher competing offer).

This Rule 33.1 will also apply to any other favourable arrangements with an offeror or potential offeror which have a similar or comparable financial or economic effect, even if such arrangements do not actually involve any cash payment.

33.2 Standstill agreements

Any agreement between the offeree company and its shareholders or other parties which restricts the ability of, or restrains, any person from making a general offer for the offeree company must be fully disclosed to its shareholders on a timely basis by the board of the offeree company. Failure to do so will normally result in the Executive requiring independent shareholders' approval of the legal action proposed to be taken by the board of the offeree company to enforce such agreements which could effectively frustrate an offer. A standstill agreement may be relevant for the purpose of considering whether the parties to such agreement are acting in concert. (See Note 6 to the definition of acting in concert.)