Practice Note 1 (PN1) – Partial offers

The Executive would like to clarify the application of the Takeovers Code to certain areas of partial offers.

What is a partial offer?

A partial offer is an offer to shareholders to buy a specified number (or a specified range) of (but not all) shares which carry voting rights of a company not already held by the offeror and its concert parties. In addition to the General Principles and Rules of the Takeovers Code, a partial offer is specifically governed by Rule 28 of the Takeovers Code.

A share buy-back offer by an offeree company also has many of the same characteristics of a partial offer.

As with all transactions under the Codes on Takeovers and Mergers and Share Buy-backs, there is an overriding concern that shareholders are treated equally. In all partial offers, the Executive should be consulted at the earliest opportunity.

Executive consent required

Under Rule 28.1, the Executive's consent is required for any partial offer.

Consent will normally be granted when: (a) a partial offer will not result in the offeror and persons acting in concert with it holding 30% or more of the voting rights of the offeree company; or (b) the offeror and persons acting in concert with it already hold more than 50% of the voting rights of a company and the offer will not result in the offeror holding more than 75% of the voting rights of the offeree (or a higher percentage as the Listing Rules may permit to maintain public float).

More stringent requirements apply to a partial offer which could result in an offeror and parties acting in concert with it holding 30% or more of the voting rights of an offeree company and the Executive's consent will only be granted if these requirements are met, such as the tick box approval requirement under Rule 28.5.

Common pool method

A partial offer should be made by the common pool method, under which the number of shares to be taken up by the offeror from each shareholder is determined by the total number of shares tendered for acceptance (the pool).

The following example illustrates how the method would work in a partial offer for 40% of the offeree company's shares. It assumes the offeror does not hold any shares in the offeree company:

Offeree company's total issued shares	100 million shares
Number of shares under the partial offer	100 million shares x 40% = 40 million shares
If all shareholders tender 100% of their shares for acceptance (i.e. 100 million shares are tendered for acceptance), the percentage of shares held by an accepting shareholder to be taken up by the offeror:	$\frac{40 \text{ million}}{100 \text{ million}} \times 100\%$ = 40% i.e. 40% of the shares tendered for acceptance by an accepting shareholder will be taken up
If a total of 50 million shares are tendered for acceptance, the percentage of shares held by an accepting shareholder to be taken up by the offeror:	$\frac{40 \text{ million}}{50 \text{ million}} \times 100\%$ = 80% i.e. 80% of the shares tendered for acceptance by an accepting shareholder will be taken up

The above approach ensures that all accepting shareholders share the offer on an equal basis. Provision for excess applications is not required.

Tick box approval

Rule 28.5 of the Takeovers Code provides that any partial offer which could result in the offeror holding 30% or more of the voting rights of a company must normally be conditional on majority approval from independent shareholders. The reason for this is to ensure independent shareholders approve the offeror's proposal to acquire 'control' by means of a partial offer (which can be regarded as an exception of the requirement to make a mandatory offer under Rule 26.1 of the Takeover Code). The approval is signified by means of a separate tick box on the acceptance form. The tick box approval requirement may be waived if one independent shareholder who holds over 50% voting rights of the offeree company has indicated its approval of the partial offer and it does not apply where an offeror and its concert parties are already holding more than 50% voting rights of the offeree company.

A shareholder who wishes to approve the offer must tick the separate box on the acceptance form and indicate the number of shares in respect of which the offer is approved. The approval process is viewed as separate from the acceptance process and therefore it is possible to have a shareholder who accepts a partial offer but does not approve it or who does not accept the offer but approves it.

Odd lots

One consequence of accepting a partial offer is that shareholders may be left holding odd lots of shares which can be difficult to sell or can only be sold at a lower price than the market price or involve greater transaction costs per share to sell than board lots of shares. In these circumstances, a designated broker may be appointed to match sales and purchases of odd lot holdings. The designated broker may not, however, itself make an offer to buy the odd lots from shareholders. The reason for this is that if odd lot holders were to receive an offer for their shares and this offer was not extended to all other shareholders, this would amount to unequal treatment of shareholders in breach of General Principle 1 and Rule 28.3 (as the designated broker is likely to be acting in concert with the offeror) of the Takeovers Code. In cases of doubt, the Executive should be consulted.

No extension of final closing date for partial offers

Under Rule 20.1(b), accepting shareholders in a partial offer must be paid as soon as possible but in any event within seven business days following the close of the partial offer. Any delay in closing an offer would be unfair to accepting shareholders as it would: (i) delay the payment of offer consideration which could only be settled after the close of offer; and (ii) dilute the number of shares accepted from a shareholder that has already tendered its acceptance.

To avoid a prolonged offer period, Rule 28.4 contains restrictions on extension of offer periods which are applicable only to partial offers and are intentionally more onerous than Rule 15.7. An offeror and its advisers should note the restrictions under the rule when determining the offer timetable.

Comparable offers

Rules 28.9 and 28.10 require an offeror to make comparable offers for other classes of equities, convertible securities, warrants, options or subscription rights outstanding at the same time when a partial offer is made and at the same percentage as the primary offer for the shares.

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