

Practice Note 18 (PN18) - Rule 31.3 applies to general offers that are unconditional at the outset

Rule 31.3 of the Takeovers Code provides that *“[e]xcept with the consent of the Executive, if a person, together with any person acting in concert with him, holds more than 50% of the voting rights of a company, neither that person nor any person acting in concert with him may, within 6 months after the end of the offer period of any previous offer made by him to the shareholders of that company which **became or was declared unconditional**, make a second offer to, or acquire any shares from, any shareholder in that company at a higher price than that made available under the previous offer. For this purpose the value of a securities exchange offer shall be calculated as at the day the offer became, or was declared, unconditional.”* (emphasis added)

Rule 31.3 prohibits an offeror and its concert parties from making a second offer or acquiring offeree company shares at a higher price than the previous offer price in the six-month period after the close of a successful offer.

The Executive believes that one of the main purposes of Rule 31.3 is to ensure equality of treatment of shareholders by preventing a successful offeror from acquiring shares from the remaining minority shareholders or making a further offer to acquire shares from them at a higher price than the previous offer.

This Rule is also an extension of one of the important disciplines imposed on an offeror under Rule 31.1 which, among other things, aims to encourage an offeror to put its best offer forward within a limited and specified time period after which, if the offer fails, the offeror is prohibited from making a new offer for the same company for a restricted period.

Rule 31.3 therefore provides assurance to an offeree shareholder in reaching a decision of whether or not to accept an offer that the offeror will not be offering a higher price shortly after the offer closes.

The Executive has been consulted on a number of occasions on whether Rule 31.3 applies only to offers that have become or been

declared unconditional after the posting of the offer document and not to those which are unconditional at the time they are made.

The Executive wishes to clarify that it interprets Rule 31.3 to apply equally to offers that are unconditional at the outset. Given the primary purpose of the Codes is to afford fair treatment for shareholders who are affected by takeovers, mergers and share buy-backs, the Executive believes that no distinction should be made between offers that commence as unconditional offers and those that become or are declared unconditional subsequently.

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