

**ALERTS**

# Mind Who You Are Talking To: The UK Takeover Code & Limits on Shareholder Conversations

**October 6, 2022**

The UK Takeover Code (the “Code”) places some limits on shareholder conversations and can in some instances (and earlier than you might expect) require an announcement of a possible offer. This is not new, but the Panel on Takeovers and Mergers (the “Panel”) has issued guidance that is pertinent to activists and other investors who may have engaged in early stage discussions with UK issuers<sup>[1]</sup> which have touched upon a possible offer being made.

Two issues are relevant here:

## **When might an announcement be made, and when might an activist be required to make it?**

First, the Code does not generally require an announcement prior to the point at which a “firm intention” to make an offer is received by the UK issuer. However, if the UK issuer becomes subject to “rumour or speculation”, or if there is “an untoward movement in its share price”, the Code does require an announcement to be made<sup>[2]</sup>. That usually applies only following some form of approach from a potential offeror, but it need not be if there are reasonable grounds to link the rumour, speculation or price movement to the actions of the potential offeror.

An “approach” here is interpreted broadly, and may be at a very preliminary stage in the offeror’s preparations. Further, the manner of the

approach may be informal and no more than broadly indicative[3]. So a discussion as regards capital solutions which touches upon a take-private solution may sometimes be enough to qualify as an “approach”.

If there has been an approach, the responsibility for making any announcement lies with the UK issuer. Otherwise (and if there are reasonable grounds to link the rumour, speculation or price movement to the actions of the potential offeror) the responsibility lies with the potential offeror[4].

Once an obligation to make an announcement arises, the Panel expects it to be done immediately, i.e. within a matter of minutes[5], and whilst the Panel does show lenience to non-UK parties in some circumstances (such as in connection with Rule 8 filings), its expectations here are clear.

## **Holding meetings with other investors**

When an announcement has been made, meetings (which for this purpose includes telephone calls and electronic meetings such as those held via Zoom, Teams or similar services) between an activist or its advisers on the one hand and any other shareholder in the UK issuer or any of such other shareholders’ investment advisers, investment managers or analysts on the other must have a chaperone[6] in attendance, and no material new information or significant new opinion may be provided[7]. The chaperone must report to the Panel, in writing, by 12 noon the following business day to such effect.

Even where *no* announcement has been made, meetings which either relate to the possible offer, or which would not be taking place but for the possible offer, must still comply with the requirements set out above.

These rules all stem from the principle of ensuring equality of information to offeree company shareholders during the course of an offer.

Accordingly, activists seeking to gauge support for, say, a variety of capital solutions which may include a take private scenario or some other potential offer should exercise extreme caution when doing so and should consider carefully whether a chaperone ought to be present at relevant meetings.

*Authored by Jim McNally.*

If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or the author.

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[1] The Code can also apply to Channel Islands and Isle of Man companies, as well as other companies if they have their registered office and place of central management and control in the UK, the Channel Islands or the Isle of Man. If you have any doubt on whether the Code applies to a given issuer, please contact us.

[2] The Takeover Code, Rule 2.2.

[3] Practice Statement 20, paragraph 3.2.

[4] If the UK issuer rejects an approach, the announcement obligation can revert to the activist. Coordination on announcements here is encouraged by the Panel: Practice Statement 20, paragraph 3.4.

[5] Panel Bulletin 5.

[6] An appropriate financial adviser or corporate broker to the UK issuer or to the activist.

[7] The Takeover Code, Rule 20.2. See also Panel Bulletin 1.

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