

SECURITIES INDISTRY COUNCIL
(“SIC” OR THE “COUNCIL”)
PRACTICE STATEMENT ON
ANNOUNCEMENTS RELATING TO POSSIBLE OFFER

Introduction

Where a company is the subject of rumour or speculation of a possible offer or there is undue movement in its share price or a significant increase in the volume of share turnover, the situation may call for an announcement to be made by a party concerned depending on the circumstances of the case. The requirement for such announcements is specifically dealt with in Rules 3.1, 3.2 and 3.3 of the Code and Note 5 on Rules 3.1, 3.2 and 3.3. The overriding objective is to prevent the creation of a false market through the timely release of announcements relating to a possible offer.

Responsibilities for making announcements under Rules 3.1, 3.2 and 3.3

2 Rules 3.1, 3.2 and 3.3 clearly demarcate the responsibilities of the various parties in making such announcements. Before the board of the offeree company is approached, the responsibility for making an announcement normally lies with the offeror or potential offeror in the circumstances as provided in Rule 3.1. In addition, a holder of 30% or more of the shares of the offeree company may be negotiating with a party to sell his shares without the involvement of the board of the offeree company, and in such circumstances the holder will also have a responsibility for making an announcement in the circumstances as provided in Rule 3.3. Following an

approach, the primary responsibility for making an announcement will normally rest with the board of the offeree company.

How Council interprets “approach”

3 A key issue in determining who has the responsibility for making an announcement is whether an offeror has made an “approach” to the board of the offeree company regarding a possible offer. For this purpose, Council interprets the term “approach” broadly. While each case will turn on its own facts, Council normally considers an approach to have been received when a director or representative of, or an adviser to, an offeree company is informed by, or on behalf of, a potential offeror that it is considering the possibility of making an offer for the company. This may be at a very preliminary stage of the offer in which the approach may be informal or only broadly indicative. It may not be made in writing.

Timing of announcement

4 Where there is rumour or speculation about a possible offer, or an undue movement in share price or significant increase in volume of share turnover, Council expects the responsible party to make an announcement immediately¹. In cases of doubt, the SIC Secretariat should be consulted.

¹ *A possible alternative to an immediate announcement may be to obtain a suspension of trading of the offeree company's shares to be followed shortly by an announcement.*

Content of holding announcements

5 Where an announcement of a firm intention to make an offer is premature or inappropriate, a holding announcement may be made in accordance with Note 5 on Rules 3.1, 3.2 and 3.3.

6 In Council's view, a holding announcement may be brief and straightforward. Take for instance the following examples:

- (a) In the case of a holding announcement made by a potential offeror, the announcement need only state that the potential offeror is considering making an offer for the offeree company. The potential offeror must be named in such an announcement and it will not be sufficient, for example, for its financial adviser to announce that it is acting for an unnamed party which is considering the possibility of making an offer for the offeree company.
- (b) In the case of a holding announcement made by an offeree company, the announcement need only state that the offeree company has received an approach or is in talks with a potential offeror which may or may not lead to an offer being made for the company. Such an announcement need not name the potential offeror unless the potential offeror has been identified in the rumour or speculation in question.

7 Often, parties are reluctant to make a holding announcement on grounds that proposals are still tentative. They contend that an announcement in the absence of firm plans may, of itself, lead to the creation of a false

market in the offeree company's shares. Council does not accept this contention. Council considers that parties cannot allow the uncertainty in the market to continue, and requires an announcement to be made immediately. The fact that the offer is only at a preliminary stage may be made clear in the announcement.

8 Similarly, tactical considerations in the case where the offeree company is in discussions with more than one party must not be allowed to influence the offeree company's decision as to whether an announcement is necessary.

9 Parties are required to give an adequate and accurate representation of the state of affairs relating to the possible offer in any announcement.

Updates following a holding announcement

10 Following a holding announcement, parties must update the market on the discussions or consideration of the offer or possible offer as set out in Note 5 on Rules 3.1, 3.2 and 3.3.

Practice Statements are issued by the SIC to provide informal guidance to companies involved in take-overs and practitioners as to how the SIC normally interprets and applies relevant provisions of the Code in certain circumstances. Practice Statements do not form part of the Code. Accordingly, they are not binding on the SIC or the SIC Secretariat and are not a substitute for consulting the SIC Secretariat to establish how the Code applies in a particular case.