**Announcements under the Takeover Code**

This element considers the announcement regime under Rule 2 of the Takeover Code.

**When is an announcement required?**

There are a number of events which trigger the need for an announcement under the Takeover Code.

When considering announcements, you need to think about two issues:

• whether a trigger event has occurred that gives rise to the need to make an announcement; and,

• the type of announcement which needs to be made as a result of that trigger event.

The rules on announcements apply to a potential takeover, regardless of the structure which the bidder is planning to adopt.

**Trigger event: Rule 2.2(a)**

Under Rule 2.2(a), an announcement is required when a firm intention to make an offer is notified by a bidder to the board of the target company.

Prior to a bidder making a firm intention announcement, the bidder and/or the target may be required to make an announcement that takeover talks are or are not taking place under Rules 2.2(c), (d) or (e).

**Trigger event: Rule 2.2(c)**

“An announcement is required…when, following an approach by or on behalf of a potential offeror to the board of the offeree company, the offeree company is the subject of rumour and speculation or there is an untoward movement in its share price.”

**Trigger event: Rule 2.2(d)**

“An announcement is required…when, after a potential offeror first actively considers an offer but before an approach has been made to the board of the offeree company, the offeree company is the subject of rumour and speculation or there is an untoward movement in its share price and there are reasonable grounds for concluding that it is the potential offeror’s actions… which have led to the situation.”

**What is an “untoward movement” in share price?**

The Notes on Rule 2.2 provide that whether or not a movement in the share price is untoward is a matter for the Panel to determine (see Note 1(a)). As such, the Panel must be consulted to discuss any price movements that may be untoward. Consultation will not necessarily lead to an announcement. However, the parties cannot simply decide to withhold an announcement on the basis that, in their view, the share price movement is not untoward without first consulting the Panel. For the purposes of Rule 2.2(c), the Notes provide that the Panel is likely to consider an untoward movement to be a price movement of 10% or more above the offeree’s lowest share price since the time of the approach or an abrupt rise of a smaller percentage e.g. a rise of 5% in a single day (see Note 1(b)). Practice Statement 20 provides additional guidance in this area.

In cases of other types of announcements (e.g. pursuant to Rule 2.2(d)), the Notes on Rule 2.2 do not themselves give any specific guidance as to what movements in the share price may be considered untoward, although Practice Statement 20 provides similar guidance to the Notes on Rule 2.2 (e.g. a movement of 10% or more above the offeree’s lowest share price since the time the offer was first actively considered by the bidder is regarded as a material movement).

**Rumour and speculation during an offer period**

Note 2 on Rule 2.2 states that “where, during an offer period, rumour and speculation specifically identifies a potential offeror which has not been previously identified in any announcement, the Panel will normally require an announcement to be made by the offeree company or the potential offeror (as appropriate), identifying that potential offeror”. So, if the offeree company is already in an offer period (because an announcement has been made of an offer or possible offer), then the identity of any party rumoured to be interested in making an offer may have to be disclosed formally.

**Dispensation from making an announcement**

Under Note 3 on Rule 2.2, the Panel may grant a dispensation from the requirement to make an announcement under Rule 2.2(c) or Rule 2.2(d) where it is satisfied that the potential bidder has ceased actively to consider making an offer for the offeree (the so-called “down tools” or “down pens” dispensation). Where such a dispensation has been granted, the potential bidder and any persons acting in concert will be prevented from doing certain things for six months, including announcing an offer or possible offer for the offeree. The potential bidder and persons acting in concert will also be restricted for three months from the date of the dispensation from actively considering making an offer for the offeree, approaching the target board or acquiring an interest in shares in the offeree company. The Panel will only usually consent to these restrictions being set aside if, for example, a third party makes a competing offer or with the consent of the offeree boardIf, despite the dispensation, rumour or speculation persists in relation to the offeree, or the Panel is concerned that a false market may be created, the Panel may require an announcement to be made.

Interaction with UK MAR and the DTRs: Note that Art 17(1) UK MAR should be considered in conjunction with Rule 2.2(c) and/or (d). For example, if Art. 17(4) UK MAR is being used to justify a delay in the disclosure of inside information but a leak occurs, an announcement would be required under Art. 17(1) UK MAR as well as Rule 2.2(c) and/or (d).

**Other trigger events**

**Rule 2.2(e) trigger**

An announcement is required “…when negotiations or discussions relating to a possible offer are about to be extended to include more than a very restricted number of people (outside of those who need to know in the parties concerned and their immediate advisers)…”

Paragraph 8.2 of Practice Statement No. 20 confirms that the Panel interprets a “very restricted number” to mean six people.

**Rule 2.2(b) trigger**

An announcement will also be required whenever there is an acquisition of any interest in shares which gives rise to an obligation to make a mandatory offer under Rule 9 of the Takeover Code.

**Types of announcement: firm intention**

A firm intention announcement under Rule 2.7 announcement will be made after a trigger event under Rule 2.2(a) or Rule 2.2(b).

It is important to understand that the firm intention announcement commits the bidder to proceed with the transaction except in very limited circumstances.

**Types of announcement: talks**

Rule 2.4(a): “…An announcement by the offeree company which commences an offer period must identify any potential offeror with which the offeree company is in talks or from which an approach has been received (and not unequivocally rejected).”

A Rule 2.4(a) announcement will normally be made after a trigger event under either Rule 2.2(c), (d) or (e). The wording of such announcements is often drafted in advance of when they are needed to facilitate immediate release if required.

**Types of announcement: no intention to make an offer**

Alternatively, the alleged bidder may wish to make an announcement that it is not intending to make a bid for a company which is the subject of rumour and speculation. Under Rule 2.8, if a bidder makes such an announcement, it cannot usually make an offer for six months (unless the Panel gives its consent in certain specified circumstances set out in Note 2 on Rule 2.8). There are also other restrictions on the bidder’s conduct during this six month period, such as being prevented from stakebuilding over 30%.

**“Put up or shut up”**

Under Rule 2.6(a), any publicly named potential bidder must (except with the Panel’s consent) within 28 days of the date on which the potential bidder is publicly named either:

• make a firm intention announcement under Rule 2.7; or

• announce that it will not make an offer under Rule 2.8; or

• ask the target to apply to the Takeover Panel for an extension to the deadline and to give an explanation of the negotiations and the expected timetable (Rule 2.6(c)).

Note that the requirement for the target to make the application under Rule 2.6 means that the extension is dependent on the target board being prepared to cooperate with the bidder in this area. In practice, extensions under Rule 2.6 are regularly obtained.

**Commencement of the offer period**

It is important to recognise that the first of:

• a “talks” announcement (under Rule 2.4(a));   
• a firm intention announcement (under Rule 2.7); or  
• certain other announcements (such as an announcement that a purchaser is being sought for an interest in shares carrying 30% or more of the voting rights of the company or that the board is seeking potential bidders) will commence an offer period in respect of the target company. This is a defined term in the Takeover Code (see Definitions section). It is important to take account of the date of the commencement of the offer period when applying the rules on stakebuilding and Rule 8 disclosure.

The start of the offer period is not the same as the start of the takeover “clock”. The “clock” begins (i.e. Day 0 occurs) when the offer document is published (see the Takeover Timetable element).

**Diagram: Summary of announcements**

Top pink text box reading:

“Triggered under Rule 2.2”. From this text box there are three blue arrows. The first blue arrow points downwards to a text box reading “(a) Firm intention to make offer notified to target board”. There is a blue arrow from this text box pointing downwards to a text box reading “Rule 2.7 (firm intention) announcement”.

The second blue arrow pointing downwards from the top pink text box “Triggered under Rule 2.2” points to a text box reading “(b) Rule 9 mandatory offer triggered”. There is a blue arrow from this text box pointing downwards to a text box reading “Rule 2.7 (firm intention) announcement”.

The third blue arrow pointing downwards from the top pink text box “Triggered under Rule 2.2” points to a text box reading “(c) (d) (e) rumour or movement in share price before or after approach/extension of negotiations”. There are then two blue arrows pointing downwards from this text box. The first blue arrow points to a text box reading “Rule 2.8 (no intention) announcement”. The second blue arrow points downwards to a text box reading “Rule 2.4 (talks/holding) announcement” and from here there is another blue arrow pointing to a text box reading “Rule 2.6 PUSU (within 28 days) either 2.7 or 2.8 announcement”. **End of diagram.**

**Announcements of number of shares in issue**

Rule 2.9 requires offeree companies to disclose details of relevant securities in issue both when an offer period begins (by no later than 7.15am on the next business day) and throughout the offer period if such information changes. This also applies to bidders if they are offering shares as part of the consideration. This information allows shareholders to calculate the proportional size of their shareholdings to determine if they need to make an announcement under Rule 8.

DTR 5.6.1 requires that an issuer of shares must, “at the end of each calendar month during which an increase or decrease in shares has occurred disclose to the public the total number of voting rights and capital in respect of each class of share which it issues.” Note that the obligations under Rule 2.9 are additional to those imposed by DTR 5.6.1.

**Summary**

* Under Rule 2 of the Code, you should consider first whether there has been a trigger and, if there has, you should think what type of announcement is required.
* The key triggers are contained in Rule 2.2.
* The triggers in both 2.2(c) and (d) refer to “an untoward movement in share price”: notes on Rule 2.2 assist with the interpretation of this concept but parties should also seek the Panel’s view.
* Key announcement types: firm intention; talks; no intention to make an offer.
* The “put up or shut up” regime under Rule 2.6 ensures that the target company does not have to remain in an offer period for too long before it gains certainty on whether there will be an offer.
* The offer period begins when the first announcement under Rule 2 in respect of the target is made.
* Once a company has made a 2.7 firm intention announcement, it is committed to proceed with the transaction except in very limited circumstances.