

Practice Note 12 (PN12) – Gathering of irrevocable commitments

Note 4 to Rules 3.1, 3.2 and 3.3 provides that “[a]n offeror may approach a very restricted number of shareholders to obtain irrevocable commitments in an offer. An offeror does not have to consult the Executive in advance before approaching a shareholder with a material interest in an offeree company. In other cases the Executive must be consulted before any approach is made to a shareholder to obtain an irrevocable commitment in connection with an offer... For the purpose of this note, a shareholder has a material interest in an offeree company if he and his concert parties control(s) directly or indirectly 5% or more of the voting rights of an offeree company.”.

The rationale of Note 4 to Rules 3.1, 3.2 and 3.3 is twofold: first, to preserve secrecy before an announcement of an offer (see Rule 1.4); and secondly, to ensure equal dissemination of information to shareholders either during the course of an offer or when an offer is in contemplation (see General Principle 3 of the Codes). In administering this Note the Executive takes into account an offeror’s need for certainty as well as the risks of possible leakage of information and unequal dissemination of information.

As Note 4 suggests, consultation with the Executive is not required where an offeror wishes to approach a shareholder with a material interest (i.e. a shareholder who together with his concert parties holding 5% or more of the voting rights of a company). In other cases, the Executive must be consulted.

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