

~~The shareholder is therefore free to hold on to or sell his remaining 60 or more shares. Alternatively, in anticipation of some shareholders not accepting the offer, the shareholder may tender some or all of his remaining shares as excess applications for the~~

~~tendered shares. However, if for example, the offeror receives a total of 50 million shares tendered for acceptance, 80% (i.e. 40 million ÷ 50 million) of the shares tendered for acceptance by each shareholder must be taken up by the offeror ensuring~~does not hold any shares in the offeree company:

Offeree company's total issued shares

is to ensure that over 50% of the independent shareholders approve the offeror's proposal to acquire 'control' by means of a partial offer (which can be regarded as an exception of the requirement to make a mandatory offer under Rule 26.1 of the Takeover Code). The approval is signified by means of a separate tick box on the acceptance form. The tick box approval requirement may be waived if one independent shareholder who holds over 50% voting rights of the offeree company has indicated his approval of the partial offer.

A shareholder who wishes to approve the offer must tick the separate box on the acceptance form and indicate the number of shares in respect of which the offer is approved. The approval process is viewed as separate from the acceptance process and therefore it is possible to have a shareholder who accepts a partial offer but does not approve it or who does not accept the offer but approves it.~~In general the Executive views both types of offer mechanism as acceptable for Takeovers Code purposes because in both cases shareholders are treated equally and are fully informed of the mechanism and terms of the partial offer. Given the drafting of Rule 28.8 the Executive may, depending on the circumstances of the case, grant a waiver from strict compliance with that Rule in the case of common pool partial offers. As with all transactions under the Codes there is an overriding concern that shareholders are treated equally.~~

~~In all partial offers the Executive should be consulted at the earliest opportunity.~~

Odd lots

One consequence of accepting a partial offer is that shareholders may be left holding odd lots of shares which can be difficult to sell or can only be sold at a lower price than the market price or involve greater transaction costs per share to sell than board lots of shares. In these circumstances, a designated broker may be appointed to match sales and purchases of odd lot holdings. The designated broker may not, however, itself make an offer to buy the odd lots from shareholders. The reason for this is that if odd lot holders were to receive an offer for their shares and this offer was not extended to all other shareholders, this would amount to unequal treatment of shareholders in breach of General Principle 1 and Rule 28.3 (as the designated broker is likely to be acting in concert with the offeror) of

the Takeovers Code. In cases of doubt, the Executive should be consulted.–

~~As a matter of practice the Executive normally grants consent under Rule 28.1 to partial offers which could result in an offeror holding 30% or more of the voting rights attaching to the shares in a company provided that the partial offer is conditional on approval of~~

