

THE TAKEOVER PANEL

PANEL EXECUTIVE PRACTICE STATEMENT NO. 25

The Panel Executive has today published Practice Statement No. 25 in relation to debt syndication during offer periods (the “Practice Statement”). The Practice Statement was developed at the request of, and with assistance from, the Loan Market Association and the London Investment Banking Association.

In summary, the Practice Statement is intended to assist offerors and their advisers who are seeking to establish procedures that will enable debt financing to be syndicated during offer periods without breaching the provisions of the Code.

The Practice Statement describes (in outline) certain elements of the syndication process that are relevant for Code purposes, including the provision of information to syndicatees, and refers to the publication by the Loan Market Association of a revised “Recommended Form of Confidentiality and Front Running Letter for Primary Syndication” together with a memorandum explaining the background to the relevant provisions (“Note for LMA Members on discussions with the Takeover Panel and LMA Confidentiality Letter”). A copy of the LMA confidentiality letter and the related explanatory memorandum are available in the “Documents” section of the LMA’s website (www.lma.eu.com).

The Practice Statement describes steps that may be taken to avoid breaching Rule 20.1 (“Equality of information to shareholders and persons with information rights”). These include establishing effective information barriers between the department involved in making decisions in relation to the debt syndication and any department responsible for trading, or making investment decisions in relation to equity investments. Alternatively, in the case of a syndicatee which does not hold shares in the offeree company, an undertaking could be entered into providing that neither the

syndicatee nor any other member of its group will acquire shares in the offeree company other than in certain limited circumstances.

The Practice Statement also describes steps that may be taken to avoid breaching Rule 16 (“Special deals with favourable conditions”). These would include, among other things, putting in place effective information barriers (as referred to above) or providing evidence that the debt that is being syndicated is on ‘market terms’.

The Executive describes the minimum standards without which it would not normally consider an information barrier to be effective. These include considerations relevant to the membership of syndicatees’ equity and debt departments, the technology and systems that syndicatees employ and the way in which information is ring-fenced.

Finally, the Practice Statement describes the respective responsibilities of financial advisers and mandated lead arrangers for ensuring that an offeror complies with the Code in the context of a debt syndication.

Copies of the Practice Statement may be obtained from the Panel’s website at www.thetakeoverpanel.org.uk/statements/practice-statements or by telephoning the Panel on 020 7382 9026.

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