**DRAFT 21.11.2023**

**SECURITIES (TAKEOVER) (AMENDMENT) RULES 2023**

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**SECURITIES (TAKEOVER) (AMENDMENT) RULES 2023**

**FSC Rules made by the Financial Services Commission under Section 93 of the Financial Services Act 2007 and Section 155 of the Securities Act 2005.**

1 Citation

This Act may be cited as the Securities (Takeover) (Amendment) Rules 2023.

2 Interpretation

In these Rules “principal Rules” means the Securities (Takeover) Rules 2010.

3 Rule 2 of the principal Rules amended

Rule 2 of the principal Rules is amended—

1. by inserting after the definition of the word “Act” the following definition

“associate” means a person (whether or not acting in concert with the offeror, offeree or with one another) who directly or indirectly own, or deal in, the shares of the offeror or offeree in a take-over or merger transaction and who have (in addition to their normal interests as shareholders) an interest or potential interest, whether commercial, financial or personal, in the outcome of the offer.”.

(b) by inserting after the definition “investment adviser” the following definition—

 “ “listed company” has the same meaning as in the Securities Act;”.

4 Rule 3 of the principal Rules amended

Rule 3 of the principal Rules is amended in paragraph (1) by inserting after the words “reporting issuer” the words “or listed company”.

5 Rule 9 of the principal Rules repealed and replaced

Rule 9 of the principal Rules is repealed and replaced by the following Rule—

**“9 Firm intention to the board of the offeree**

(1) The offeror shall communicate its firm intention to make an offer to the board of the offeree to the Commission and to the relevant securities exchange, after careful and responsible consideration by the offeror and if the offeror believes it can implement the offer.

(2) A waiver from the requirements of paragraph (1) may be granted by the Commission in the circumstances set out in guidance issued by the Commission.”.

6 Rule 11 of the principal Rules amended

Rule 11 of the principal Rule is amended by inserting after paragraph (2) the following paragraph—

“(3) If the board of an offeree considers that an obligation to take any of the actions in paragraph (2)(a) to (f) or other special circumstance exists, although a formal contract has not been entered into, it should consult the Takeover Advisory Panel and obtain its consent to proceed without a shareholders' meeting.”.

7 Rule 11A of the principal Rules inserted

The principal Rules are amended by inserting after Rule 11 the following new Rule—

“**11A Secrecy**

1. Prior to a public announcement of an offer or possible offer, all persons privy to confidential information, and particularly price-sensitive information, concerning the offer or possible offer must treat that information as secret and may only pass it on to another person if it is necessary to do so and if the person is made aware of the need for secrecy.
2. All such persons privy to confidential information under paragraph (1) must conduct themselves so as to minimise the chances of any leak of information.
3. An investment adviser must at the very beginning of discussions warn clients of the importance of secrecy and security, and attention should be drawn to this Rule and restrictions in dealings.”.

8 Rule 12 of the principal Rules amended

Rule 12 of the principal Rule is amended by inserting after paragraph (3) the following paragraph—

“(4) In this Rule “undue movement” includes—

1. a movement of 10% or more above the lowest share price after the fee is first actively considered by a potential offeror; or
2. a price rise of 5% in the course of a single day.”.

9 Rule 17 of the principal repealed and replaced

Rule 17 of the principal Rule is repealed and replaced by the following Rule—

“**17 Communication of the offer document to shareholders**

Except where the Commission otherwise directs, the offeror shall, within 14 days of filing a copy of the offer document with the Commission and the relevant securities exchange—

* 1. communicate a copy of the offer document by registered post or by any other expedient means of delivery to the shareholders of the offeree;
	2. publish the offer document on the offeror’s website;
	3. make the offer document available to the shareholders of the offeree at the offerer’s registered,

and notify the board of the offeree in writing.”.

10 Rule 20 of the principal Rule amended

Rule 20 of the principal Rules is amended by repealing paragraph (2) and replacing it with the following—

(2) The Commission may where it deems fit, upon application and payment of the fee specified in Fourth Schedule to these rules, provide for an extension of the offer period beyond the 60 day period referred to in paragraph (1) where—

(a) there is a competing offer; or

(b) the board of the offeree consents to the offer.”.

10 Rule 20A and 20B of the principal Rule inserted

The principal Rules are amended by inserting after Rule20 the following new Rules—

“**Extension of mandatory offer**

20A (1) When mandatory offers are triggered, except with the Commission’s consent, where—

(a) any person acquires whether by a series of transactions over a period of time or not, shares which (taken together with shares held or acquired by persons acting in concert with him) carry 30% or more of the voting rights of a company; or

(b) any person who, together with persons acting in concert with him, holds not less than 30% but not more than 50% of the voting rights and such person, or any person acting in concert with him, acquires in any period of 6 months additional shares carrying more than 1% of the voting rights,

such person must extend offers immediately, on the basis set out in this Rule, to the holders of any class of share capital of the company which carries votes and in which such person, or persons acting in concert with him, hold shares.

1. In addition to the persons referred to in paragraph (2), each of the principal members of the group of persons acting in concert with the principal member may, according to the circumstances of the case, have the obligation to extend an offer.

**20B Prevention of a false market**

1. Subject to paragraph (2), all parties to a takeover transaction shall during the offer period and after the public announcement is made—
2. make full and prompt disclosure of all relevant information and use every endeavour to prevent the creation of a false market in the shares of an offeror or offeree company;
3. take care not to make statements which may mislead shareholders or the market.

(2) During the offer period and after the public announcement is made, where the offeror, the offeror any of their associates deal in relevant security only as brokerage agents for investments clients and not as principal, the transactions only need to be disclosed privately to the Takeover Advisory Panel.”.

11 Rule 21 of the principal Rules amended

Rule 21 of the principal Rules is amended by deleting paragraph (2) and substituting the following—

“(2) Any person, who—

(a) has any interest in or financial connections the offeror or offeree,

(b) is in the same group as the independent adviser to an [offeror](https://code.thetakeoverpanel.org.uk/tp/definitions/d_offeror.html),

shall not act as independent adviser.”.

12 Rule 25 of the principal Rules amended

Rule 25 of the principal Rules is amended by inserting after paragraph (2) the following paragraph—

“(3) No person who is privy to confidential and price-sensitive information concerning the offer may make a recommendation to any other person as to dealing in the relevant securities between the time when there is reason to believe that an offer or revised offer is contemplated and the public announcement of the offer or revised offer, or of the termination of the takeover discussions.”.

13 Rule 30 of the principal Rules amended

Rule 30 of the principal Rule is amended by inserting after paragraph (5) the following paragraph—

“(5A) The board of the offeree shall in accordance with rule 18 provide its reply document to the shareholders to offerer.”.

14 Rule 45 of the principal Rules amended

Rule 45 of the principal Rule is amended by deleting paragraph (1) and replacing it with the following paragraph—

“(1) The Chief Executive shall, establish a panel which shall be known as the Takeover Advisory Panel to make recommendations to the Commission on an application under rule 43 or on any matters relating to the administration of these rules.”.

15 Commencement

These Rules come into force on [ ].

Made by the Financial Services Commission on [\*]