

Practice Note 4 (PN4) – Can the offer price be increased after a “no increase” statement?

What is a “no-increase” statement?

1. Under Rule 18.1 parties to an offer or possible offer and their advisers must take care not to issue statements which, while not factually inaccurate, may mislead shareholders and the market or may create uncertainty. In particular, an offeror must not make a statement to the effect that it may improve its offer without committing itself to doing so and specifying the improvement.

2. Rule 18.3 clarifies the position regarding no increase statements as follows:

*“If statements in relation to the value or type of consideration such as
“the offer will not be further increased” or “our offer remains at at ~~£0.00~~(at) ~~£0.00~~”*

10. As already mentioned Rule 18.3 permits revision of a no increase statement in “**wholly exceptional circumstances**” even if the right to set the no increase statement aside has not been specifically reserved. The question of what might amount to **wholly exceptional circumstances** would depend on a detailed analysis of the circumstances of the particular case. If in doubt the Executive should be consulted at the earliest opportunity.

Deduction of dividends

11. There may be situations where the offeror makes a no increase statement, and a regular dividend (or other distribution) that is not linked to the offer is subsequently paid or becomes payable by the offeree company to shareholders. In such situations, the offeror must reduce the offer price by an amount equal to that dividend (or other distribution) such that the overall value receivable by the shareholders remains the same and to give effect to the no increase statement made by the offeror. See Note 11 to Rule 23.1.
12. For the avoidance of doubt, the offeror would not be required to reduce the offer price if it has stated that shareholders will be entitled to receive all or part of a specified dividend (or other distribution) in addition to the offer consideration.

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