

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

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. 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 \$x per share and it will not be raised” (“no increase statements”) are included in documents sent to offeree company shareholders, or are made by or on behalf of an offeror, its directors, officials or advisers, and not withdrawn immediately if incorrect, only in wholly exceptional circumstances will the offeror be allowed subsequently to amend the terms of its offer in any way even if the amendment would not result in an increase of the value of the offer (e.g. the introduction of a lower paper alternative) **except where the right to do so has been specifically reserved.**”* (emphasis added)

Similar provisions also apply to no “extension statements” (see Rule 18.2).

The main rationale for Rule 18.3 is to maintain an orderly

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. ed