

City Code

The City Code on Takeovers and Mergers regulates tender offers for public companies with registered offices in the United Kingdom, the Channel Islands or the Isle of Man, including companies that are not listed on any stock exchange but can have an unlimited number of shareholders.¹ The provisions of the City Code differ in many respects from the requirements under the U.S. tender offer rules, and in particular, permit dealer-managers in a tender offer to make purchases of the subject security in connection with market-making activities that are customary in the United Kingdom. For tender offers subject to the City Code, Rule 14e-5 provides a specific exemption for transactions by “connected exempt market makers” and “connected exempt principal traders”, if the following conditions are met:

- The target company is a foreign private issuer.²
- The connected exempt market maker or connected exempt principal trader complies with the applicable provisions of the City Code.
- The tender offer documents disclose the identity of the connected exempt market maker or connected exempt principal trader and disclose or describe how U.S. shareholders can obtain information regarding purchases by such market maker or principal trader, whether for market making purposes or as a principal purchaser, to the extent that this information is required to be made public in the United Kingdom.³

This exemption to Rule 14e-5 is separate from the Tier I and Tier II exemptions. It is not contingent upon the level of U.S. ownership of the securities that are the subject of the tender offer, so long as the conditions are met.

¹ <http://www.thetakeoverpanel.org.uk/wp-content/uploads/2008/11/code.pdf?v=8Jan2018>

² A non-U.S. company will qualify as a foreign private issuer if it meets the following requirements:

- 50% or less of its outstanding voting securities are held by U.S. residents **or**
- More than 50% of its outstanding voting securities are held by U.S. residents, and **none** of the following circumstances apply:
 - The majority of its executive officers or directors are U.S. citizens or residents.
 - More than 50% of its assets are located in the United States.
 - Its business is administered principally in the United States.

³ Rule 14e-5(b)(9).