



# STUB EQUITY IN UK TAKE-PRIVATES

## PRACTICE STATEMENT 36 ON UNLISTED SHARE ALTERNATIVES



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On 3 July 2025, the Panel issued **Practice Statement 36 - Unlisted Share Alternatives (“PS 36”)**, which provides guidance on how it interprets and applies the Takeover Code to an unlisted share alternative to a cash offer (commonly referred to as “stub equity”). Largely an explanation of existing market practice, PS 36 sets out the Panel’s guidelines on various points for bidders to consider when structuring a stub equity offer (including permitted terms), as well as its expectations on the related disclosures.

### STUB EQUITY AND ITS SIGNIFICANCE FOR PE BIDDERS

The use of stub equity has proved to be a useful tool for PE bidders in a number of recent take-private transactions. Most commonly, these structures involve unlisted equity in the bid vehicle (“**BidCo**”) being offered to target shareholders as an alternative to a cash offer, allowing them to rollover into BidCo in lieu of (or in tandem with a reduced) cash payout. These structures have become increasingly prevalent in take-private transactions over the last few years: six of the 23 take-privates announced in 2024 (26%) and, so far, two of the 18 take-privates announced in 2025 (11%) have included a stub equity alternative.

Stub equity offers have been used by sponsors to:

- **incentivise support from key shareholders (often founder or management shareholders)** by providing them with an opportunity to remain invested and share in the economic upside of the target business;
- **provide a meaningful alternative to a straightforward price increase** in case of a discrepancy between the expected valuation and the premium offered;
- **reduce the bidder’s overall amount of funding** required for the acquisition of the target; and
- **put them on a more even footing with listed bidders** who (unlike PE bidders) have the option of being able to offer their shares as consideration.

### THE PANEL’S APPROACH

The Panel will review stub equity structures through the lens of General Principle 1 (all target shareholders of the same class must be afforded equivalent treatment) as well as Rule 16.1 (no “special deals” with selected shareholders, unless they are offered to all shareholders). It will also want to ensure that target company shareholders receive sufficient information to make a properly informed decision on the offer. The Panel expects early consultation on the terms of the stub equity offer as well as the proposed disclosures. Relying on precedent or what might have been permitted on previous deals is unlikely to be sufficient.

## STRUCTURE OF THE STUB EQUITY OFFER

PS 36 is broadly reflective of evolving market practice on stub equity structures. The key takeaways are set out below.

Flexible structuring options	A stub equity offer can be made available in respect of either part or all of a target shareholder's shares, include multiple share classes and involve more than one alternative. PS 36 does not reduce or restrict the scope of options available here.
Individual minimum thresholds	<p>Making the stub equity offer available only to target shareholders who accept above a certain minimum <u>numerical</u> threshold (for example 100 shares or £1,000) will <b>not be permitted</b>.</p> <p>However, stating that a target shareholder must give an election in respect of a minimum <u>percentage</u> of its target shareholding (for example, 50% of its shares in the target) is <b>permitted</b>.</p>
Aggregate acceptance thresholds	<p>A maximum aggregate acceptance cap (which, if exceeded, would require elections in excess of the threshold to be scaled back on a <i>pro rata</i> basis) is <b>permitted</b>.</p> <p>A <u>minimum aggregate acceptance threshold</u> (which, if not satisfied, would mean that the stub equity alternative is not available and all target shareholders would receive cash consideration) is <b>permitted</b>.</p>
Nominee arrangements	Nominee arrangements (for target shareholders who will hold below a certain percentage or number of shares in BidCo) <b>are not permitted</b> , unless they apply to all electing shareholders or are made available on an optional basis.
Restricting participation	The Panel needs to be consulted if the availability of the stub equity offer will be limited for legal or regulatory reasons (such as overseas securities laws restrictions).

Sponsors have often chosen to include a cap on and/or a minimum overall acceptance threshold for stub equity offers, while accepting that locking out shareholders with small stakes (on an individual basis) would not result in equivalent treatment. The Panel has now helpfully clarified that bidders can also include individual minimum acceptance percentage thresholds: while bidders still face the risk that (subject to certain limited exceptions) any target shareholder can elect to take-up the stub equity alternative, this feature can at least ensure that target shareholders are unable to make “token” elections for the stub equity.

## TERMS OF THE UNLISTED SECURITIES

Flexible terms	Bidders will continue to have flexibility to determine the rights and restrictions which attach to stub equity securities, subject to the parameters set out in PS 36 as described below.
Percentage threshold rights	<p>A typical shareholders' agreement will often afford shareholders who have larger stakes with greater controls and protections. The Panel has clarified that percentage threshold rights are acceptable in some circumstances, but they will need to be considered carefully to ensure compliance with General Principle 1 and Rule 16.1.</p> <p><b>Governance:</b> proportionate governance rights which are linked to percentage thresholds (subject to Panel consultation) <b>are permissible</b>. These include board appointment or board observer rights, consent rights in respect of reserved matters and/or information rights.</p> <p><b>Economic and other rights:</b> percentage threshold rights at (or above) which monetary benefits or preferential exit opportunities are provided <b>are likely to be prohibited by the Panel</b>.</p>
Rollover shareholder representatives	Arrangements which provide a specific shareholder (whether named or by virtue of percentage threshold rights) with the ability to make decisions on behalf of minority shareholders in BidCo, such as a “rollover shareholder representative” role <b>are unlikely to be regarded as acceptable</b> .

Stub equity offers will often be structured with a view to one or more key target shareholders (e.g. a founder or a key management member) accepting the offer and qualifying for the relevant percentage threshold rights. Bidders should be aware that the Panel is, however, likely to pay particular attention to these types of arrangements (particularly where they extend beyond proportionate governance arrangements) to determine if they truly comply with the spirit of the rules regarding equivalent treatment as described above.

## DISCLOSURE REQUIREMENTS

Finally, PS 36 also set outs the nature and level of disclosures the Panel expects to see in relation to a stub equity offer. The key ones are set out below.

General disclosures	Bidders are required to disclose (in particular) the detailed terms (i.e. rights and restrictions) applying to the relevant stub equity securities, the investment risk factors applying to the stub equity offer and information about the BidCo group. Bidders should note that the shareholders' agreement will also need to be published on a website.
Estimated value of the unlisted securities	<p>An appropriate adviser (usually, the bidder's financial adviser) is required to determine the estimated value of the stub equity securities; this may be expressed as a range (provided it is sufficiently narrow to result in meaningful disclosure). Bidders must disclose this estimate in the offer document.</p> <p>The relevant valuation methodologies, factors taken into account when preparing the valuation, as well as the total estimated enterprise value and implied equity value of BidCo (after adjusting for any acquisition debt and debt-like items), are also expected to be disclosed.</p>
Views of the board and financial adviser	<p>In line with existing rules, a view on the stub equity element of the offer should be included within the required opinions of both the target board (on the offer) and the Rule 3 financial adviser (as to whether the financial terms of the offer are fair and reasonable).</p> <p>In addition, a statement as to whether the target directors intend (in respect of their own shareholdings) to elect for the stub equity alternative is required (and, if required by the Panel, the reasons for such elections).</p>

## CONCLUDING REMARKS

PS 36 provides a helpful overview of how the Panel will treat stub equity offers. We expect to see that PE bidders will continue to make use of this technology in take-private transactions where there is a need to incentivise support from key target shareholders (by providing them with an ongoing opportunity to share in value upside in the target group) or bridge valuation gaps.

## CONTACT US TO FIND OUT MORE

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