



**The Quoted
Companies Alliance**

The Secretary to the Code Committee
The Takeover Panel
10 Paternoster Square
London EC4M 7DY

supportgroup@thetakeoverpanel.org.uk

27 May 2011

Dear Sirs,

The Takeover Panel - Review of certain aspects of the regulation of takeover bids: proposed amendments to the Takeover Code

INTRODUCTION

The Quoted Companies Alliance is a not-for-profit membership organisation working for small and mid-cap quoted companies. Their individual market capitalisations tend to be below £500m.

The Quoted Companies Alliance is a founder member of European**Issuers**, which represents over 9,000 quoted companies in fourteen European countries.

The Quoted Companies Alliance's Legal, Markets and Regulations, and Corporate Finance Advisors Committees have examined your proposals and advised on this response. A list of committee members is at Appendix A.

RESPONSE

We welcome the opportunity to respond to this consultation.

General Comments

1. We understand that, overall, a key goal of the Code Committee was to "level the playing field" in favour of offeree companies by removing some of the advantages for offerors which, in the view of the Code Committee, had given offerors an unfair advantage in the context of takeover bids.
2. Given that the Quoted Companies Alliance represents small and mid-cap quoted companies, as noted above, the QCA either supports, or is neutral towards, the vast majority of the proposals set out in PCP 2011/1. In our view, the various proposals, taken as a whole, should in general help small and mid-cap companies when they become takeover targets. Whilst, obviously, the same proposals will remove some advantages previously enjoyed by such companies when acting as offerors, the limited resources – both financial and in terms of management time – of our constituents are such that, in general, a prolonged takeover battle has a disproportionately disruptive effect on small and mid-cap target companies, and steps to redress the balance in their favour are to be welcomed.
3. We would add that we are pleased that the Code Committee has decided not to take forward the following changes to the Takeover Code previously under consultation:

- (i) imposing a "public interest" test on bids;
- (ii) raising the success threshold from 50% to 60%;

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- (iii) disenfranchising shares acquired during an offer period; and
- (iiii) requiring all takeover offers to be subject to an offeror shareholder vote.

Specific Comments

4. As noted above, we understand and appreciate the sentiment behind the changes now proposed, and hope that, if and when brought forward, they will achieve the Code Committee's stated objectives. However, we are aware of certain other views expressed – for example, on behalf of the private equity industry – that some, at least, of the proposed changes to the Takeover Code may in fact result in shareholders being deprived of the opportunity to receive certain potential takeover opportunities. Accordingly – and recognising that such reviews are carried out from time to time in any event – we would like the Code Committee to commit to review any changes brought forward now 12 to 24 months after their introduction to see whether, in fact, there have been any material undesirable consequences.
5. Regarding Q26 and Q27, which relate to section D (Providing Greater Recognition of the Interests of Offeree Company Employees), we note that the proposed changes would require an offeror to make a negative statement where it has no intention to make any changes in relation to the matters described in Rule 24.2(a)(i) to (iii) or where it considers that its strategic plans for the offeree company will have no repercussions on employment or the location of the offeree company's places of business (see proposed Rule 24.2(b)); and that each of the parties to an offer would be required to adhere to any public statement it makes during an offer period in relation to certain proposed courses of action for a period of time specified or, if none is mentioned, twelve months from the date on which the offer becomes or is declared wholly unconditional.

It is unclear to us how much of a change in approach the Code Committee expects as a result of this proposed change; and, in our view, it would be helpful for further guidance to be given as to the amount of additional information which is expected to be disclosed in these circumstances or, if no significant change to current practice is intended, to make this clear. We understand that, in the context of a hostile offer, it is accepted that an offeror company is likely to reserve its position, and that this approach would usually be acceptable on the basis that the offeror will have had limited, if any, opportunity to carry out due diligence. However, in the context of a recommended offer, and on the assumption that it is not the intention that offerors should be able to limit any statements to a very short time horizon of just a few weeks or months, we think that it would be helpful to make clearer the Code Committee's expectations in terms of the amount of disclosure, and therefore due diligence, required if these changes are implemented or, alternatively, to make clear that offerors will be able to reserve their position where appropriate and that no significant change to current practice is expected. We support the Code Committee's aim of improving the quality of disclosure but from the perspective of the Quoted Companies Alliance's constituents, we would not want to see a significant increase in the workload of either offeror or offeree companies as a result of this proposed change, and would welcome further clarification that the emphasis is on greater accuracy, as opposed to greater volume, if that is the case.

If you would like to discuss any of these issues further, we would be happy to attend a meeting.

Yours faithfully,



Tim Ward
Chief Executive

APPENDIX A

QUOTED COMPANIES ALLIANCE CORPORATE FINANCE ADVISORS COMMITTEE

Tom Price (Chair)*	-	Westhouse Securities LLP
Azhic Basirov	-	Smith & Williamson Ltd
Simon Clements/David Worlidge	-	Merchant Securities Limited
Daniel Conti	-	RBBC
John Cowie/Mark Percy	-	Speechly Bircham LLP
Richard Crawley	-	Espirito Santo Investment Bank (incorporating Execution Noble)
Lesley Gregory	-	Memery Crystal LLP
Tom Griffiths	-	Arbuthnot Securities Limited
Daniel Harris	-	Peel Hunt plc
Samantha Harrison	-	Ambrian Partners Ltd
Dalia Joseph	-	Oriel Securities Limited
Steve Mack	-	CMS Cameron McKenna LLP
Nicholas Narraway	-	c/o Moorhead James LLP
Simon O'Brien	-	PricewaterhouseCoopers LLP
Simon Raggett/Stuart Faulker	-	Strand Hanson Limited
Philip Secrett	-	Grant Thornton UK LLP
Susan Walker	-	KPMG LLP

QUOTED COMPANIES ALLIANCE LEGAL COMMITTEE

Tom Shaw (Chair)	-	Speechly Bircham LLP
Jai Bal	-	Farrer & Co LLP
Chris Barrett	-	Bird & Bird LLP
Richard Beavan	-	Boodle Hatfield LLP
Ross Bryson*	-	Mishcon de Reya
Madeleine Cordes	-	Capita Registrars
Jonathan Deverill*	-	DMH Stallard

Jeanette Gregson	-	Davenport Lyons
Stephen Hamilton	-	Mills & Reeve
Susan Hollingdale	-	Practical Law Company Ltd
Martin Kay	-	Blake Laphorn LLP
Julie Keefe	-	Norton Rose
Carol Kilgore	-	Curtis, Mallet-Prevost, Colt & Mosle LLP
Philip Lamb	-	Lewis Silkin LLP
Maegan Morrison	-	Hogan Lovells International LLP
Chris Owen	-	Manches LLP
June Paddock	-	Fasken Martineau LLP
Donald Stewart	-	Faegre & Benson LLP
Gary Thorpe	-	Clyde & Co LLP
Tim Ward	-	The Quoted Companies Alliance
Kate Jalbert	-	The Quoted Companies Alliance

QUOTED COMPANIES ALLIANCE MARKETS AND REGULATIONS COMMITTEE

Stuart Andrews (Chair)	-	Evolution Securities Ltd
Umerah Akram	-	London Stock Exchange plc
Peter Allen	-	DWF LLP
Mark Cleland	-	Capita Registrars Ltd
Andrew Collins	-	Speechly Bircham LLP
Richard Everett	-	Lawrence Graham LLP
Martin Finnegan	-	Nabarro LLP
Alexandra Hockenhull	-	Xchanging plc
Farook Khan	-	Pinsent Masons LLP
Linda Main	-	KPMG LLP
Brian McDonnell	-	Olswang LLP
Richard Metcalfe	-	Mazars LLP
Katie Morris	-	Brewin Dolphin Ltd

Philip Quigley	-	Smith & Williamson Limited
Simon Rafferty	-	Winterflood Securities Ltd
Chris Searle	-	BDO LLP
Peter Swabey	-	Equiniti LLP
Tim Ward	-	The Quoted Companies Alliance
Kate Jalbert	-	The Quoted Companies Alliance

*Main Authors

THE QUOTED COMPANIES ALLIANCE

A not-for-profit organisation funded by its membership, the Quoted Companies Alliance represents the interests of small and mid-cap quoted companies, their advisors and investors. It was founded in 1992, originally known as CISCO.

The Quoted Companies Alliance is governed by an elected Executive Committee, and undertakes its work through a number of highly focussed, multi-disciplinary committees and working groups of members who concentrate on specific areas of concern, in particular:

- taxation
- legislation affecting small and mid-cap quoted companies
- corporate governance
- employee share schemes
- trading, settlement and custody of shares
- structure and regulation of stock markets for small and mid-cap quoted companies; Financial Services Authority (FSA) consultations
- political liaison – briefing and influencing Westminster and Whitehall, the City and Brussels
- accounting standards proposals from various standard-setters

The Quoted Companies Alliance is a founder member of **EuropeanIssuers**, which represents quoted companies in fourteen European countries.

The Quoted Companies Alliance's Aims and Objectives

The Quoted Companies Alliance works for small and mid-cap quoted companies in the United Kingdom and Europe to promote and maintain vibrant, healthy and liquid capital markets. Its principal objectives are:

Lobbying the Government, Brussels and other regulators to reduce the costing and time consuming burden of regulation, which falls disproportionately on smaller quoted companies

Promoting the smaller quoted company sector and taking steps to increase investor interest and improve shareholder liquidity for companies in it.

Educating companies in the sector about best practice in areas such as corporate governance and investor relations.

Providing a forum for small and mid-cap quoted company directors to network and discuss solutions to topical issues with their peer group, sector professionals and influential City figures.

Small and mid-cap quoted companies' contribute considerably to the UK economy:

- There are approximately 2,000 small and mid-cap quoted companies
- They represent around 85% of all quoted companies in the UK
- They employ approximately 1 million people, representing around 4% of total private sector employment
- Every 5% growth in the small and mid-cap quoted company sector could reduce UK unemployment by a further 50,000
- They generate:
 - corporation tax payable of £560 million per annum
 - income tax paid of £3 billion per annum
 - social security paid (employers' NIC) of £3 billion per annum
 - employees' national insurance contribution paid of £2 billion per annum

The tax figures exclude business rates, VAT and other indirect taxes.

For more information contact:

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