



PCP 2012/1: PROFIT FORECASTS, QUANTIFIED FINANCIAL BENEFITS STATEMENTS, MATERIAL CHANGES IN INFORMATION AND OTHER AMENDMENTS TO THE TAKEOVER CODE

The ABI's Response to the Takeover Panel's consultation paper

Introduction

The ABI is grateful for the opportunity to respond to the Takeover Panel's consultation on profit forecasts, quantified financial benefits statements, material changes in information and other amendments to the Takeover Code. The proposals build on those that were consulted on 2010 on which we responded.

We consider that these proposals represent a proportionate response that balances the objective of providing transparency of financial information to allow investors to reach well-informed decisions in the context of an Offer and appropriate assurance as to the veracity of that information. We respond to the detailed consultation questions overleaf.

The ABI

The ABI is the voice of insurance, representing the general insurance, protection, investment and long-term savings industry. It was formed in 1985 to represent the whole of the industry and today has over 300 members, accounting for some 90% of premiums in the UK and manages investments of £1.5 trillion.

The ABI's role is to:

- Be the voice of the UK insurance industry, leading debate and speaking up for insurers.
- Represent the UK insurance industry to government, regulators and policy makers in the UK, EU and internationally, driving effective public policy and regulation.
- Advocate high standards of customer service within the industry and provide useful information to the public about insurance.
- Promote the benefits of insurance to the government, regulators, policy makers and the public.

The UK insurance industry is the third largest in the world and the largest in Europe. It is a vital part of the UK economy, managing investments amounting to 26% of the UK's total net worth and contributing £10.4 billion in taxes to the Government. Employing over 290,000 people in the UK alone, the insurance industry is also one of this country's major exporters, with 28% of its net premium income coming from overseas business.

Questions for Consultation

- Q1 Do you have any comments on the proposed new definitions of “profit forecast”, “profit estimate” and “quantified financial benefits statement” and the proposed amendments of the definitions of “cash offeror” and “offer period”?**

The proposed definitions on profit forecasts, estimates and quantified financial benefits statements, appear sensible.

- Q2 Do you agree that the requirements for assumptions to be stated and for third party reports to be obtained should be retained for profit forecasts and quantified financial benefits statements which are first published during an offer period? Do you have any comments on the proposed new Rule 28.1(a)?**

We agree.

- Q3 Do you agree that the requirements for assumptions to be stated and for third party reports to be obtained should be retained for profit forecasts which have been published following the making of an approach or, in appropriate circumstances, the first active consideration of a possible offer? Do you have any comments on the proposed new Rule 28.1(b) and Note 1 on Rule 28.1?**

We agree.

- Q4 Do you agree with the proposed new requirements with regard to an outstanding profit forecast? Do you have any comments on the proposed new Rule 28.1(c)?**

We agree. In particular, we think the Panel is right for the Code Committee to take the view that the fact that the profit forecast was published for a purpose that was unrelated to the offer would not be acceptable as an explanation for its invalidity.

- Q5 Do you agree with the proposed ability for the Panel to grant a dispensation from the proposed new Rules 28.1(a) and (b) in relation to ordinary course profit forecasts? Do you have any comments on the proposed new Note 2 on Rule 28.1?**

Yes, we think this is reasonable formulation.

- Q6 Do you agree with the proposal for the Panel to be able to grant a dispensation from the proposed new Rules 28.1(a) and (b) in relation to profit forecasts for certain future financial periods? Do you have any comments on the proposed new Note 3 on Rule 28.1?**

We think is reasonable as it will assist offeree companies in their defence and protect shareholder value is protected.

Q7 Do you agree with the proposed requirement to publish corresponding profit forecasts for the current and intervening financial periods where a profit forecast for a future financial period is published? Do you have any comments on the proposed new Rule 28.2?

We agree with what is proposed. It would also be worth considering requiring reports on those corresponding profit forecasts given that the entity has chosen to publish and use these, and to ensure the various building blocks of the financial results profile being thus built up are subject to a consistent approach as regards reporting.

Q8 Do you agree that reports should always be required to be obtained on a profit forecast where the offer is a management buy-out or is made by the existing controller of the offeree company? Do you have any comments on the proposed new Note 4 on Rule 28.1?

Yes, we agree with what is proposed. The interests of shareholders in such circumstances need particular protection given the conflict that exists for incumbent management. The need for external verification of the reasonableness of financial information is accentuated in such circumstances.

Q9 Do you have any comments on the proposed new Note 5 on Rule 28.1 with regard to profit ceilings?

We think that current practice based on the Panel granting a dispensation from the full requirements of Rule 28 is appropriate and it is sensible to ensure that the Code reflects this. We stress, though, that there is need for such discretion given possible risks of gaming such a rule. Publishing an artificially high maximum figure, for example, should not be a route to securing an exemption from the application of the normal requirements from reporting on forecasts.

Q10 Do you agree that the Code should expressly provide the Panel with the ability to grant a dispensation from the requirements of Rule 28 where the offer would not result in a material increase in the equity share capital of the offeror? Do you have any comments on the proposed new Note 6 on Rule 28.1?

We think the combination of materiality with application of Panel discretion over the granting of a dispensation seems appropriate.

Q11 Do you have any comments on the proposed new Note 7 on Rule 28.1 in relation to the compilation of profit forecasts and quantified financial benefits statements?

We agree with what is proposed.

- Q12 Do you have any comments on the proposed new Rule 28.3 with regard to assumptions in relation to profit forecasts and quantified financial benefits statements?**

We agree with what is proposed.

- Q13 Do you agree that the exemption from the requirements of Rule 28 for certain profit estimates should be extended as proposed? Do you have any comments on the proposed new Rule 28.4?**

We note that the proposal is in respect of profit estimates, being defined as in respect of a period which has already ended. We understand this to be the technically correct description of the figure for profit being announced through a preliminary announcement and, accordingly, we are content with the proposal.

- Q14 Do you have any comments on the proposed new Rule 28.5 in relation to quantified financial benefits statements?**

We agree with the Code Committee that there is no obvious basis for Rule 28.1(a) not applying to a quantified financial benefits statement published in the context of a recommended offer. We believe the formulation of Rule 28.5 is appropriate.

- Q15 Do you have any comments on the proposed new Rule 28.6 with regard to a profit forecast for part of a business?**

We agree with the proposed Rule which, we note, does include provision for Panel discretion to waive it.

- Q16 Do you have any comments on the proposed new Rule 28.7(a), the proposed amendments to Note 5 on Rule 19.1, or the proposed Note 1 on Rule 28.7, with regard to references by a party to an offer to third party or average forecasts with respect to its own profits?**

We note that the proposal in this regard reflects a change of view since the 2010 consultation. We are content to agree with the revised approach now proposed by the Code Committee.

- Q17 Do you have any comments on the proposed new Rules 28.7(b) and (c), and the proposed new Notes 2 to 4 on Rule 28.7, with regard to a party to an offer referring to consensus profit forecasts with respect to the profits of another party to the offer?**

We agree with the proposed new Rules. However, we do think it important that the Panel Executive should exercise appropriate oversight to guard against any risk of rigid application of the prescribed calculation formula being used to give misleading impressions. In such circumstances warrant it, it might be reasonable for the Panel Executive to permit alternative calculations provided these are accurately described and fairly presented.

Q18 Do you have any comments on the proposed new Rules 27.1 and 27.2(a)(i) with regard to material changes in information?

No, we have no special comment and we consider that what is proposed here seems appropriate.

Q19 Do you have any comments on the proposed new Rules 27.2(a)(ii), 27.2(b) and 27.2(c) in relation to the requirement to update certain matters in any subsequent document?

We agree on the clarification of the requirement to update information previously published.

Q20 Do you have any further comments on the proposed new Rule 27 and the related Code amendments?

We support the proposed Rule 27 and have no additional comment to make.

Q21 Do you have any comments on the proposed amendments relating to the current Rule 28.4?

We have no special comment on the presentation of the Rule but agree with the continuing relevance of the requirement that if a company's forecast is published first in an announcement, it must be repeated in full, together with the reports, in the next document published in connection with the offer by that company.

Q 22 Do you have any comments on the proposed amendments to Rule 26 in relation to documents on display?

We agree with the proposed amendment to ensure display of material contracts entered into after the publication of, as appropriate, the offer document or offeree board circular.

ABI 27/9/12

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