



2 October 2012

Our ref: ICAEW Rep 141/12

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

supportgroup@thetakeoverpanel.org.uk

Dear sirs

PCP 2012/3 COMPANIES SUBJECT TO THE TAKEOVER CODE

ICAEW is pleased to respond to your request for comments on PCP 2012/3 Companies Subject to the Takeover Code.

Please contact me should you wish to discuss any of the points raised in the attached response.

Yours faithfully

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ICAEW REPRESENTATION

PCP 2012/3 COMPANIES SUBJECT TO THE TAKEOVER CODE

Memorandum of comment submitted in October 2012 by ICAEW, in response to PCP 2012/3 Companies Subject to the Takeover Code, a consultation by the Code Committee of the Takeover Panel published in July 2012

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INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the consultation paper *PCP 2012/3 Companies Subject to the Takeover Code* published by the Code Committee of the Takeover Panel on 5 July 2012, a copy of which is available from this [link](#).

WHO WE ARE

2. ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter, working in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 138,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.
3. ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.
4. The Corporate Finance Faculty is the voice of corporate finance within ICAEW. The faculty is responsible for submissions to regulators on behalf of ICAEW. It provides a range of services to its members including a monthly magazine *Corporate Financier*.

MAJOR POINTS

Support for the initiative

5. We support the proposal to remove the residency test upon which the application of the Code to certain companies and transactions depends.
6. We also suggest it is an opportune moment for the Code Committee to consider the application of the Code to a private company as per the 'ten year rule' in section 3(a)(ii) of the Introduction to the Code and whether, given the current climate, relaxation of the requirement to, say, five years, would be appropriate.

RESPONSES TO SPECIFIC QUESTIONS

The residency test

Q1. Do you agree that the residency test should be removed from the Code?

7. We agree.

Q2. Do you agree that the residency test should not be retained in relation to offers for certain categories of company?

8. We agree in the context of the examples set out in PCP paragraph 2.15. However we think that the treatment of companies with a registered office in the UK, Channel Islands or Isle of Man but whose securities are not listed in the EEA should also be clarified.
9. Our members understand that in the case of UK registered companies listed on NASDAQ, practice has been for the SEC to be the lead regulator and parties have early discussions with the Panel. Has the Code Committee considered using this opportunity to codify this practice?
10. We are of the view that the Response Statement could usefully set out the grandfathering approach for companies which are outside the Code's jurisdiction at the start of the offer period but which fall within the Code's jurisdiction during the offer period.

11. We also believe it would be helpful if reference is made in the Response Statement to remind companies to review their articles of association if those were drafted on the basis that the company did not fall into the jurisdiction of the Code.
12. Moreover guidance would be useful on whether the companies that would fall within the remit of the Code by virtue of the proposed changes would be required to communicate this to the market through a regulatory communication and, if so, on the proposed wording of such announcements that the companies would be expected to make regarding the change of status.

Q3. Do you have any comments on the proposed amendments to sections 3(a)(i) and (ii) of the Introduction to the Code?

13. We support the proposed amendments.

Proposed amendments to the ten year rule

Q4. Do you have any comments on the proposed amendments to the ten year rule and the introduction of a new definition of “multilateral trading facility”?

14. We have no comments on the proposed amendments save that the Code Committee could further consider reducing the 10 year rule to, say, five years.

Consequential Code amendments

Q5. Do you have any comments on the proposed consequential amendments to the Code set out in Appendix B?

15. We have no comments.

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