

PCP 14 Issued on 30 April 2003

THE PANEL ON TAKEOVERS AND MERGERS

**CONSULTATION PAPER ISSUED BY
THE CODE COMMITTEE OF THE PANEL**

**MINOR AMENDMENTS CONCERNING
DISCLOSURE OF RELEVANT SHARE CAPITAL**

**REVISION PROPOSALS RELATING TO RULES 2
AND 9 AND APPENDIX 1 OF THE TAKEOVER
CODE**

Before it introduces or amends any Rules of the Takeover Code or the Rules Governing the Substantial Acquisitions of Shares, the Code Committee of the Takeover Panel is required under its consultation procedures to publish the proposed Rules and amendments for public consultation and to consider responses arising from the public consultation process.

The Code Committee is therefore inviting comments on this Consultation Paper. Comments should reach the Code Committee by 11 June 2003 .

Comments may be sent by email to:

consultation@disclosure.org.uk

Alternatively, please send comments in writing to:

The Secretary to the Code Committee
The Panel on Takeovers and Mergers
P.O. Box No. 226
The Stock Exchange Building
London
EC2P 2JX

Telephone: 020 7382 9026

Fax: 020 7638 1554

It is the Code Committee's policy to make all responses to formal consultation available for public inspection unless the respondent requests otherwise.

1. Introduction

1.1 This Public Consultation Paper proposes two minor amendments to the Takeover Code on which the Code Committee considers it appropriate to consult.

1.2 The proposals are:

- (i) to require companies to notify the market of the numbers of relevant securities in existence during an offer period; and
- (ii) to alter the method by which companies are required to publish information about the existence of convertible securities, options or rights to subscribe for shares in respect of which a Rule 9 waiver has been granted.

2. Announcement of details of the numbers of relevant securities in issue

2.1 The Code Committee understands that there have been cases in the recent past where a party has failed to comply with the dealing disclosure obligations in Rule 8 because it has been unaware either of the exact number of relevant securities in issue or that holdings or dealings in certain lines of stock were disclosable.

2.2 Generally, there has been no intention to mislead. The Panel is aware that the sources on which many firms often rely for the relevant information are not always fully up to date or accurate. Moreover, a company's issued share capital can alter frequently. The Code Committee, therefore, considers that it would be in the interests of the market generally for every company whose securities are subject to the dealing disclosure regime in Rule 8, to announce the exact number of relevant securities issued by the company at the outset of the offer period and for them to keep the market updated of any subsequent changes during the offer period. The Code Committee notes that there may be some 'relevant securities' covered by Note 2 on Rule 8, which are not issued

by the company and will not, therefore, be included in this proposed announcement (for example, options and derivatives).

- 2.3 The Code Committee therefore proposes creating the following new Rule 2.10:

“2.10 ANNOUNCEMENT OF NUMBERS OF RELEVANT SECURITIES IN ISSUE

When an offer period begins, the offeree company must announce, as soon as possible and in any case by 9.00am on the next business day, details of all classes of relevant securities issued by the company, together with the numbers of such securities in issue. An offeror or potential offeror must also announce the same details relating to its relevant securities by 9.00am on the business day following any announcement identifying it as an offeror or potential offeror, unless it has stated that its offer is likely to be solely in cash.

Any such announcement should include, where relevant, the International Securities Identification Numbering System (“ISIN”) number for each relevant security.

If the information included in an announcement made under this Rule changes, a revised announcement must be made as soon as possible.

NOTE[S] ON RULE 2.10

1. Relevant securities

See Note 2 on Rule 8.

[2. Treasury shares

Only relevant securities which are in issue and held outside treasury should be included in the announcement.]”

- 2.4 The proposed Rule 2.10 includes a note in parenthesis - Note 2 - which refers to treasury shares. Later this year the Government intends to introduce regulations, which will, for the first time, permit companies to hold certain types of shares in treasury. Certain provisions of the Code and the SARs will have to be amended to reflect this change. PCP 13 which has been published at the same time as this PCP, sets out in detail the impact on the Code of the introduction of treasury shares and the consequential amendments to the Code and the SARs that are required. As one of those changes relates to this new Rule it has been included here for information, but the proposed Note 2, if approved, will not be included in the Code until later this year when the other amendments relating to treasury shares are adopted.
- 2.5 If new Rule 2.10 is adopted the Code Committee proposes to delete the last sentence of Rule 37.3(b) as the requirement set out in that part of the Rule will be satisfied by compliance with the provisions of new Rule 2.10 regarding the need to make a revised announcement of any changes to the previously announced information.
- 2.6 Rule 37.3 (b) would then read as follows:

“(b) Public disclosure

For the purpose of Rule 8, dealings in relevant securities include the redemption or purchase of, or taking or exercising an option over, any of its own relevant securities by the offeree company.”

Q1 Do you agree with the adoption of new Rule 2.10 and the consequential amendment to Rule 37.3(b)?

3. Method of publication of information about convertible securities, options or rights to subscribe for shares in respect of which a Rule 9 waiver has been granted

- 3.1 Currently the Code requires a company to publish the details of potential changes in its share capital arising out of the issue of convertible securities, options etc, in respect of which a Rule 9 waiver has been granted, in its Extel card (see Note 1 on the Dispensations from Rule 9 and paragraph 6(c)(iii) of Appendix 1).
- 3.2 The Code Committee believes that, given the evolution of services providing company information in recent years, the references to “Extel cards” are no longer appropriate. It therefore proposes that companies should instead make reference to relevant potential share capital changes in their annual reports and accounts. The Code Committee considers that, in addition to updating the Code, the benefit of such a change would be to place responsibility for the inclusion and accuracy of the information directly with the company concerned (rather than with an information service). Moreover, the information would be included in each set of annual accounts until such time as the issue was no longer relevant.
- 3.3 The following amendments are proposed:

NOTES ON DISPENSATIONS FROM RULE 9

“1....

When a waiver has been granted, as described above, in respect of convertible securities, options or rights to subscribe for shares, details, including the fact of the waiver and the maximum number of securities that may be issued as a result, should be included in the company’s annual report and accounts until the securities in respect of which the waiver has been granted have been issued or it is confirmed that no such issue will be made.”

APPENDIX 1

“6 Announcements following shareholders’ approval

...

(c) Where convertible securities, options or securities with subscription rights are to be issued:-

(i) the announcement of the potential controlling shareholding must be made on the basis of the assumptions described in Section 4(b) above;

(ii) following each issue of new securities a further announcement must be made confirming the number and percentage of shares held by the controlling shareholders at that time; and

(iii) the information in (i) and (ii) should be included in the company's annual report and accounts until all the securities in respect of which the waiver has been granted have been issued or it is confirmed that no such issue will be made.

Q2 Do you agree with the proposed amendments to Note 1 on the dispensations from Rule 9 and to paragraph 6 of Appendix 1?

4. Cost/ Benefit Implications

The Code Committee does not believe that there are any significant cost implications for companies or investors arising out of the proposed amendments in this paper and it is of the view that the amendments, if adopted, will be of considerable practical benefit to the investment community as a whole.

5. The questions asked in this paper are set out in Appendix I and Appendix II sets out the relevant provisions of the Code as they will be if the changes proposed in this PCP are adopted.

APPENDIX I

- Q1 Do you agree with the adoption of new Rule 2.10 and the consequential amendment to Rule 37.3(b)?**
- Q2 Do you agree with the proposed amendments to Note 1 on the dispensations from Rule 9 and to paragraph 6 of Appendix 1?**

APPENDIX II

2.10 ANNOUNCEMENT OF NUMBERS OF RELEVANT SECURITIES IN ISSUE

When an offer period begins, the offeree company must announce, as soon as possible and in any case by 9.00am on the next business day, details of all classes of relevant securities issued by the company, together with the numbers of such securities in issue. An offeror or potential offeror must also announce the same details relating to its relevant securities by 9.00am on the business day following any announcement identifying it as an offeror or potential offeror, unless it has stated that its offer is likely to be solely in cash.

Any such announcement should include, where relevant, the International Securities Identification Numbering System (“ISIN”) number for each relevant security.

If the information included in an announcement made under this Rule changes, a revised announcement must be made as soon as possible.

NOTE[S] ON RULE 2.10

1. *Relevant securities*

See Note 2 on Rule 8.

[2. *Treasury shares*

Only relevant securities which are in issue and held outside treasury should be included in the announcement.]”

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When a waiver has been granted, as described above, in respect of convertible securities, options or rights to subscribe for shares, details, including the fact of the

waiver and the maximum number of securities that may be issued as a result, should be included in the company's annual report and accounts until the securities in respect of which the waiver has been granted have been issued or it is confirmed that no such issue will be made."

37.3 REDEMPTION OR PURCHASE OF SECURITIES BY THE OFFEREE COMPANY

...

(b) Public disclosure

For the purpose of Rule 8, dealings in relevant securities include the redemption or purchase of, or taking or exercising an option over, any of its own relevant securities by the offeree company.

APPENDIX 1

6 Announcements following shareholders approval

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(c) Where convertible securities, options or securities with subscription rights are to be issued:-

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(iii) the information in (i) and (ii) should be included in the company's annual report and accounts until all the securities in respect of which the waiver has been granted have been issued or it is confirmed that no such issue will be made.