



PCP2 Issued on 5 September 2001

THE PANEL ON TAKEOVERS AND MERGERS

CONSULTATION PAPER ISSUED BY

THE CODE COMMITTEE OF THE PANEL

"REFRESHER" ANNOUNCEMENTS UNDER RULE 2.4

REVISION PROPOSALS RELATING TO RULE 2.4

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 **5 October 2001**.

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
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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 Rule 2.4 , 'The announcement of a possible offer', provides as follows:

"Except in the case of a mandatory offer under Rule 9, until a firm intention to make an offer has been notified a brief announcement that talks are taking place (there is no requirement to name the potential offeror in such an announcement) or that a potential offeror is considering making an offer will normally satisfy the obligations under this Rule."

1.2 It often happens that such announcements, once made, remain unclarified for some considerable time and there is, at present, no specific obligation in the Code for the parties to keep the market informed in the meantime. The Executive has, therefore, adopted a practice of requesting 'refresher' statements updating the market at appropriate intervals following the original 'talks' announcement, until either an offer is announced or the offer period comes to an end.

2. Proposal

2.1 The Code Committee believes that:

2.1.1 the present situation, whereby the onus is on the Executive to chase the parties concerned for 'refresher' announcements, is unsatisfactory;

2.1.2 the obligations to keep the market informed should rest squarely with the parties concerned and thus should be made explicitly clear in the Code; and

2.1.3 the time period within which such 'refresher' announcements should be made should be standardised at 6 weeks.

2.2 The following new Rule is therefore proposed.

New Rule 2.4(b)

"Once an announcement has been made under Rule 2.4(a), in order to keep the market informed of the situation, further announcements must normally be made every six weeks until the publication of an announcement under Rule 2.5 or the end of the offer period, whichever is earlier. The Panel may require more frequent announcements if the circumstances so demand. The obligation to keep the market informed will normally be satisfied by a brief announcement that talks are continuing."

- 2.3 The obligation to issue 'refresher' announcements under this new Rule will not, of course, relieve the relevant parties of their responsibility, in accordance with General Principle 6, to keep the market informed in a timely fashion of any material new information, such as the termination of talks.
- 2.4 Rule 35.1(a) provides in essence that a party whose offer has been unsuccessful will not be permitted to make another offer within the next 12 months. Rule 35.1(b) states that those restrictions may also apply to any person who makes an announcement of a possible offer and 'does not announce a firm intention either to make, or not to make, an offer within a reasonable time thereafter'.
- 2.5 The Code Committee wishes to make it clear that publication of 'refresher' announcements under new Rule 2.4(b) by a potential offeror will not prevent the Panel from applying the restrictions in Rule 35.1(b) in appropriate circumstances. Therefore, it proposes the addition of a Note to the new Rule as follows:

Note on Rule 2.4(b)

Publication of an announcement under this Rule will not, of itself, prevent the Panel from imposing the restrictions set out in Rule 35.1(b) in appropriate circumstances.

2.6 Since the purpose of these proposals is to codify existing best practice, there should be no cost implications for practitioners and their clients. Offeree shareholders and the market will benefit from regular information on the possible offer.

3. Consequential amendments

3.1 Existing Rule 2.4 will become Rule 2.4(a).

3.2 It will be necessary to change the introduction of Rule 2.9 to read:

“(a) When an announcement is made under Rule 2.4 or 2.5,”.

Question: Do you agree that the Code should be amended as proposed?