



RS2 Issued on 4 December 2001

THE PANEL ON TAKEOVERS AND MERGERS

REFRESHER ANNOUNCEMENTS UNDER RULE

2.4 OF THE TAKEOVER CODE

STATEMENT BY

THE CODE COMMITTEE OF THE PANEL

FOLLOWING THE EXTERNAL CONSULTATION

PROCESS ON PCP 2

1. Introduction

- 1.1 In September 2001 The Code Committee of the Takeover Panel published a Public Consultation Paper (PCP 2) on "refresher" announcements under Rule 2.4.
- 1.2 The proposals in PCP 2 sought to amend the Code so as to require parties who had made an announcement of a possible offer pursuant to Rule 2.4 of the Code to keep the market informed of the position by means of "refresher" announcements to be made, normally, every 6 weeks.
- 1.3 The purpose of this paper is to provide details of the Code Committee's response to the external consultation process on PCP 2.

2. Number of Responses Received

A total of fifteen responses were received from a range of persons including major industry bodies.

3. Significant Conflicts of View

- 3.1 Whilst none of the respondents disagreed with the concept of the market being kept informed, a significant number of them queried either whether the proposals would, in fact, achieve this objective or whether there were not already sufficient legal and regulatory requirements in existence to make the Code Committee's proposals superfluous.
- 3.2 *Concerns that the fixed timing and suggested wording of such announcements might result in the market being misled*

Concerns were expressed that requiring "refresher" announcements to be made every six weeks could mean either that parties to an offer would be tempted to defer the announcement of matters which should be announced immediately (pursuant to other legal and regulatory obligations) or that, at the time the announcement was expected, the underlying status of the bid discussions might not be accurately reflected by the type of announcement being suggested. Several respondents felt that the proposed wording added nothing in that, in the absence of a statement to the contrary, the market would assume that talks were continuing.

- 3.3 *Sufficient legal and regulatory requirements already exist*

A number of respondents said that sufficient legal and regulatory requirements already exist to require the announcement of any change in the status of the bid discussions, namely, the Code's own General Principles 4 and 6, the United Kingdom Listing Authority's continuing obligation rules and Section 47 of the Financial Services Act 1986, which has been replaced by Section 397 of the Financial Services and Markets Act 2000. Furthermore, some respondents felt that the wording of the proposed new Rule could, unintentionally, undermine the obligation on the parties to a possible bid to comply with these existing requirements.

3.4 *Other concerns*

Some respondents felt that six weeks was too long a period between announcements. Some expressed concern that, despite the intention to the contrary, the effect of the proposed Rule would be to transfer to the Panel (away from the parties to the possible bid) some of the responsibility for keeping the market properly informed. Some respondents suggested that the obligation should be to keep the Panel regularly updated privately.

4. The Code Committee's Conclusions

- 4.1 The Code Committee has considered the above points and has had particular regard to the point raised regarding the sufficiency of other legal and regulatory requirements and to the concern that the effect of the amendment might be to reduce the extent to which the market was kept properly informed. The Code Committee accepts that the Code does provide, principally through General Principle 6, guidance as to the level of disclosure expected. This provision and the other legal and regulatory requirements referred to lay the onus of compliance with these measures on the parties to any possible offer. All practitioners are, or should be, aware of the general duty to consult the Panel in any case of doubt.
- 4.2 In the light of the above, the Code Committee has decided not to amend Rule 2.4. However, the Code Committee reminds parties to possible bids and their advisers that the onus to comply with existing legal and regulatory disclosure requirements rests with them. The Panel has indicated to the Code Committee that it will continue to exercise its general power to require an announcement to be made as and when, in its view, circumstances so demand.