

# THE TAKEOVER PANEL

## AMENDMENTS TO THE TAKEOVER CODE

### 1 Meetings of selected shareholders or of investment advisers (Note 1 on Rule 19)

Experience has tended to show that the restrictions on meetings contained in the Code often create inconvenience out of proportion to the safeguards provided. The important point is to prevent material new information being disclosed selectively rather than to prevent meetings taking place whether with substantial numbers of people or on a one to one basis.

The restrictions on meetings with selected groups previously contained in Note 1 to Rule 19 are accordingly being lifted and the Note is amended as follows:-

"Meetings held during an offer at which directors of companies or their advisers convey information or express their views may take place provided that no material new information is forthcoming and no significant new opinions are expressed and provided that the provisions set out below (which apply irrespective of whether the meeting is convened by the offeree company or an offeror) are observed:-

- (a) except with the consent of the Panel, a representative of the financial adviser of the party convening the meeting must be present. That representative will be responsible for confirming in writing to the Panel, not later than 12 noon on the business day following the date of the meeting, that no material new information was forthcoming and no significant new opinions were expressed at the meeting;

- (b) if, notwithstanding the above, at the meeting any material new information or significant new opinion does emerge, a circular giving details must be sent to shareholders as soon as possible thereafter: in the final stages of an offer it may be necessary to make use of paid newspaper space as well as a circular. The circular or advertisement should include the directors' responsibility statement. If such new information or opinion is not capable of being substantiated as required by the Code (eg a profit forecast), this should be made clear and it should be formally withdrawn in the circular or advertisement.

Should there be any dispute as to whether the provisions of this Note have been complied with, the relevant financial adviser will be expected to satisfy the Panel that they were. Financial advisers may, therefore, find it useful to record the proceedings of meetings, although this is not a requirement.

The above provisions cover all meetings held during an offer with shareholders, selected shareholders, analysts or stockbrokers or others engaged in investment management or advice. The provisions apply to such meetings wherever they are held and however many people are present, unless the meetings take place by chance. Meetings with employees in their capacity as such (rather than in their capacity as shareholders) are not normally covered by this Note, although the Panel should be consulted if any relevant employee holds a significant number of shares."

## 2 Acceptance conditions in offer documents

Rule 24.6 of the Code provides that offer documents must incorporate language which appropriately reflects Notes 4-7 on Rule 10 and those parts of Rules 17 and 31-34 which impose timing obligations or restrictions on offerors or confer rights on shareholders of the offeree company. Since the Panel has not in the past allowed cross references to the Code in offer documents, Rule 24.6 has effectively required that the relevant parts of the Code be set out in full.

The Panel has decided that the reasons for not allowing cross references to the Code do not apply in the case of Notes 4-6 on Rule 10 as these relate solely to technical matters connected with the validity of acceptances and purchases for purposes of the acceptance condition. Accordingly, cross references to those provisions will in the future be permitted and the inclusion in offer documents of wording along the following lines will constitute fulfilment of Rule 24.6 in so far as it relates to those provisions:-

- "(a) An acceptance of the offer will only be counted towards fulfilling the acceptance condition if the requirements of Note 4 and, if applicable, Note 6 on Rule 10 of The City Code on Take-overs and Mergers are satisfied in respect of it.
- (b) A purchase of [Offeree] shares by [Offeror] or its nominee (or a person acting in concert with [Offeror], or its nominee) will only be counted towards fulfilling the acceptance condition if the requirements of Note 5 and, if applicable, Note 6 on Rule 10 of The City Code on Take-overs and Mergers are satisfied in respect of it."

It should be noted that the reference to "a person acting in concert, or its nominee" in paragraph (b) is applicable only to mandatory offers under Rule 9.

It will continue to be necessary in offer documents to incorporate language which appropriately reflects Note 7 on Rule 10 and the relevant parts of Rules 17 and 31-34 without cross referring to those provisions.

### 3 Effective date

These amendments come into effect immediately: new pages for the Code will be issued shortly.

6 February 1989