

The Secretary to the Code Committee
The Takeover Panel
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Date: 11 September 2015

Dear Sir or Madam,

RE: Takeover Panel Consultation PCP - 2015/2 – Restrictions and Suspensions of Voting Rights

The Investment Association welcomes the opportunity to respond to the Takeover Panel Consultation on restrictions and suspensions of voting rights. The Investment Association represents UK investment managers. We have over 200 members who manage more than £5.5 trillion for clients around the world, helping them to achieve their financial goals. Our aim is to make investment better for clients, companies and the economy so that everyone prospers.

Our members see the requirement for a mandatory offer under the Takeover Code as a major and important investor protection for independent shareholders. It addresses the issue of creeping control and ensures that significant shareholders cannot gain full control without paying a premium.

We support the changes to the definition of “voting rights” for the purposes of the Takeover Code. We agree that “voting rights” should refer to the underlying right to vote attached to the share itself, rather than as a reference to whether a shareholder can exercise that right. It is clear that restricted or suspended voting rights have been used as a means of circumventing the Code and in particular the Rule 9 whitewash for a mandatory offer. We believe that these types of shares should be classed as voting shares, as fundamentally those shares have the right to vote even if they are restricted or suspended whilst in the ownership of the current shareholder. If they were to be sold, the voting rights would be reinstated for the new shareholder; therefore those shares should be included in the definition and calculation of the voting rights of the company.

In particular we agree that the current definition of “voting rights” can be potentially confusing for the Panel and other shareholders when calculating their share of the voting rights. Additionally, as the Takeover Panel have highlighted, it can lead to a situation where suspended shares are issued to avoid the provisions of Rule 9. This would disadvantage independent shareholders, as it inhibits their purchasing freedom by lowering the number of voting rights they could acquire without giving rise to a mandatory offer requirement.

This change to the definition of “voting rights” will make the terms of the operation of Rule 9 clearer for all market participants.

We agree with the consultation document that the definition should exclude Treasury Shares as the Companies Act 2006 is clear that the Company may not exercise any right in respect of those shares. We also agree that specific classes of shares such as non-voting shares and convertible shares should be excluded from the definition, these classes of shares are well understood and the Panel's approach to the use of these classes of shares is also well documented and understood under the Code.

We agree with the proposed amendments to the Note on Rule 9.7 and Rules 11.1 and 11.2. They seem appropriate to ensure continuity throughout the Code and prevent ambiguity given the change to the definition of voting rights.

We hope that this feedback is helpful. Please do not hesitate to contact me if you have any further information.

Yours faithfully,



Andrew Ninian
Director, Corporate Governance and Engagement