



Your Reference

Our Reference  
JGE/

The Secretary to the Code Committee  
The Panel on Takeovers and Mergers  
10 Paternoster Square  
London  
EC4M 7DY

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28 August 2015

Dear Sirs

### **PCP 2015/2 – Restrictions and Suspensions of Voting Rights Comments in Response**

In relation to **Q1. - Should the proposed new definition of "voting rights" be introduced?** – we would make the following comments:-

#### ***Treasury/Non-Treasury shares***

It is assumed that the definition of 'Treasury shares' in the Definitions section of the City Code on Takeovers and Mergers (the "**City Code**") would be construed by the Takeover Panel in the same way as under Chapter 6 of Part 18 of the Companies Act 2006 (the "**CA 2006**"). Under Chapter 6, shares can only be held by a company as 'treasury shares' when such shares have been purchased by the company from a shareholder out of distributable profits in accordance with Chapter 4 of Part 18 of the CA 2006 (- see section 724(1)).

However, there are other circumstances where a company may hold its own shares – e.g. as a result of a takeover or merger of another company whose subsidiary holds shares in the acquiring company - when they are not as a result held by the acquiring company in treasury under the CA 2006, but whilst so held the voting rights attaching to such shares will be suspended (- see section 662(5) of the CA 2006).

We would like to suggest that the definition of 'Treasury shares' for the purposes of the City Code be extended to include such shares (whether held by the company itself or a subsidiary). Otherwise, there will be an anomalous result depending on the manner in which a company or its group has come to hold its own shares.

#### ***Disclosure Rules and Transparency Rules***

The definition of "shares" for the purpose of DTR 5.1.1 of the Disclosure Rules and Transparency Rules (the "**DTRs**") refers to "shares which are already issued and carry rights to vote which are exercisable in all circumstances at general meetings of the issuer..." i.e. somewhat mirroring the current issue concerning the existing definition of "voting rights" in the City Code itself.

The proposed new definition of "voting rights" for the purpose of the City Code will mean that (pending any corresponding amendment of the DTRs) any announcement by company of e.g. 'total voting rights' for the purposes of the DTRs, may well need to include another statement that the figures should not be treated as being the correct figure(s) for voting rights in the company for the purposes of the City Code - or alternatively, give different figures for both purposes. In our view, this is likely to cause confusion in the market.

We would be please to discuss any queries you may have in relation to the points raised in this letter.

Yours faithfully



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