

The Secretary to the Code Committee
The Takeover Panel
10 Paternoster Square
London
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supportgroup@thetakeoverpanel.org.uk

15 April 2016

Dear Sirs,

The communication and distribution of information during an offer

Introduction

We are the Quoted Companies Alliance, the independent membership organisation that champions the interests of small to mid-size quoted companies. Their individual market capitalisations tend to be below £500m.

The Quoted Companies Alliance is a founder member of European **Issuers**, which represents over 9,000 quoted companies in fourteen European countries.

The Quoted Companies Alliance Legal and Corporate Finance Expert Groups have examined your proposals and advised on this response. A list of members of the Expert Groups is at Appendix A.

Response

We welcome the opportunity to respond to the Takeover Panel's consultation PCP 2016/1 on the communication and distribution of information during an offer.

We generally support the proposed amendments to the proposals submitted by the Code Committee to the Panel. We believe that the changes apply balance and reflect general market practices.

We have responded below in more detail to the specific questions from the point of view of our members, small and mid-size quoted companies.

Responses to specific questions

Q1 Should the proposed new Rule 20.1(a) apply to information and opinions relating to an offer or a party to an offer?

We agree that the proposed new Rule 20.1(a) should apply to information and opinions relating to an offer and parties to an offer. The new Rule will clarify an area where previously there was scope for uncertainty as to whether information concerning a party to an offer fell within the scope. In addition, the rule change reflects general market practice as to the release of relevant information.

The Quoted Companies Alliance is the independent membership organisation that champions the interests of small to mid-size quoted companies.

Q2 Should material new information or significant new opinions relating to an offer or a party to an offer which an offeror or the offeree company publishes, or which it provides to shareholders, other relevant persons or the media, be required to be published via a RIS at the same time?

We believe that publication by a regulatory information service (RIS) of new information would be useful to the market. However, we note that there is a general concern that this could lead to an overload of information being released into the market via RNS.

Q3 Should documents provided by an offeror or the offeree company to shareholders or other relevant persons, and written communications provided to and published by the media, be required to be published on a website?

As with the answer to Q2, whilst in principle requiring any presentation or other document used in a meeting to be put on the offer website should lead to useful information being available to the market, this could lead to a lot of duplicative information being released, for instance where presentations simply summarise existing information that has already been made available to shareholders or other relevant persons. We are unsure as to whether this will be of any actual use to investors. In addition, there will clearly be a further administrative burden to supervising the application of this rule.

Q4 Do you have any comments on the proposed new Note 7 on Rule 20.1 with regard to employee communications or the proposed new Note 8 on Rule 20.1 with regard to presentations and other documents?

We agree that internal employee communications, which do not contain any material new information, should not be published under new Rule 20.1.

In respect of Note 8 on Rule 20.1, we believe that this presents an issue of the administrative burden on parties to the offer and how to properly supervise the application of this rule. If this approach is to be taken it would be more effective, in terms of transparency, to place all versions of presentations on the website, containing only the information on the date that each one was issued. In this way, shareholders and/or other interested parties would either be able to track any changes if they wished to do so, or simply to refer to the most recent version.

Q5 Do you have any comments on the proposed new Note 6 on Rule 20.1 with regard to the provision of information prior to the commencement of an offer period or prior to the announcement of a firm or revised offer?

We believe that the proposals for Note 6 on Rule 20.1 with regard to the provision of information prior to the commencement of an offer period or prior to the announcement of a firm or revised offer would be acceptable in the market.

Q6 Should all announcements required to be made under the Code be required to be published via a RIS and, if the relevant RIS is not open for business, be distributed to not less than two national newspapers in the UK and two newswire services operating in the UK?

We agree with the proposal that any announcement to be published under the Code should be published via a RIS. However, we note that the proposed Rule 30.1(b), whilst consistent with the similar transparency requirement under the FCA's current rule in DTR 1.3.6R, does not reflect that, from 3 July 2016, this rule is

proposed to be changed to guidance and will state that companies “may” rather than “must” distribute to the multiple sources in addition to an RIS.

Q7 Should the Panel have the ability to require a copy of an announcement (or a document which includes the contents of the announcement) to be sent to the offeree company’s shareholders, employee representatives and pension scheme trustees?

We do not have any objection to the Panel having the ability to require a copy of an announcement (or a document which includes the contents of the announcement) to be sent to the offeree company’s shareholders, employee representatives and pensions scheme trustees in appropriate circumstances.

However, it would be helpful to both companies and their financial advisers if some examples of potential circumstances when this requirement might be invoked by way of guidance to the rule.

Q8 Do you have any other comments on the amendments to the Code proposed in Section 2 of the PCP?

No, we do not have any other comments on the amendments to the Code proposed in Section 2 of the PCP.

Q9 Should a reference in the proposed new Rule 20.2 to a meeting include any telephone call or meeting held by electronic means?

Yes, we believe that a reference in the new proposed new Rule 20.2 to a meeting should include telephone calls and meetings held by electronic means, given the frequency with which “meetings” are now held by way of electronic communications.

Q10 Should the proposed new Rule 20.2 apply to meetings attended by (a) a representative of, or adviser to, an offeror or the offeree company and (b) a shareholder in, or other person interested in relevant securities of, an offeror or the offeree company, or any investment manager, investment adviser or investment analyst?

Yes, we agree that the proposed new Rule 20.2 should apply to meetings attended by (a) a representative of, or adviser to, an offeror or the offeree company and (b) a shareholder in, or other person interested in relevant securities of, an offeror or the offeree company, or any investment manager, investment adviser or investment analyst.

Q11 Should the proposed new Rule 20.2 apply to (a) all meetings which take place during the offer period and (b) meetings which take place prior to the commencement of the offer period, but only if the meeting relates to a possible offer or if it would not be taking place but for the possible offer?

Yes, we agree that the Proposed new Rule 20.2 should apply to (a) all meetings which take place during the offer period and (b) meetings which take place prior to the commencement of the offer period (but only if the meeting relates to a possible offer or if it would not be taking place but for the possible offer).

Q12 Do you have any other comments on the scope of the proposed new Rule 20.2?

No, we do not have any other comments on the scope of the proposed new Rule 20.2.

Q13 Should the proposed new Rule 20.2 provide that (a) any meeting to which the Rule applies must be supervised by an appropriate financial adviser or corporate broker to the offeror or offeree company (as appropriate) and (b) no material new information or significant new opinion relating to the offer or a party to the offer may be provided during the meeting?

Yes, we agree with the proposed new Rule 20.2 that (a) any meeting to which the Rule applies must be supervised by an appropriate financial adviser or corporate broker to the offeror or offeree company (as appropriate) and (b) no material new information or significant new opinion relating to the offer or a party to the offer may be provided during the meeting.

Q14 Should a supervisor of a meeting to which the proposed new Rule 20.2 applies be required to confirm the names and functions of the individuals who attended the meeting in addition to the matters required to be confirmed under the current Note 3 on Rule 20.1?

Yes, we agree with the proposed new Rule 20.2 which states that the supervisor of a meeting should be required to confirm the names and functions of the individuals who attended the meeting in addition to the matters required to be confirmed under the current Note 3 on Rule 20.1.

However, we believe that using the term “position” instead of “functions” would be preferable as this would be less burdensome.

Q15 Do you have any comments on the proposed Note 1 on the new Rule 20.2 in relation to meetings which take place prior to the commencement of an offer period or prior to the announcement of a firm or revised offer?

No, we do not have any comments on the proposed Note 1 on the new Rule 20.2 in relation to meetings which take place prior to the commencement of an offer period or prior to the announcement of a firm or revised offer.

Q16 Do you have any comments on the proposal to give the Panel the ability to grant dispensations from the provisions of the proposed new Rule 20.2 in relation to meetings following the announcement of a recommended firm offer?

No, we do not have any comments on the proposal to give the Panel the ability to grant dispensations from the provisions of the proposed new Rule 20.2 in relation to meetings following the announcement of a recommended firm offer.

Q17 Should the requirement for a confirmation in writing to be provided to the Panel by not later than 12 noon on the business day following a meeting be disapplied in the case of meetings attended only by one or more financial advisers or corporate brokers and one or more relevant third parties?

Yes, we believe that the requirement for a confirmation in writing to be provided to the Panel by not later than 12 noon on the business day following a meeting be disapplied in the case of meetings attended only by one or more financial advisers or corporate brokers and one or more relevant third parties.

Q18 Do you have any comments on the proposed treatment of meetings attended only by one or more advisers to an offeror or the offeree company (other than a financial adviser or corporate broker) and one or more “sell-side” investment analysts (as described in paragraph 3.39(b) of this PCP)?

No, we do not have any comments on the proposed treatment of meetings attended only by one or more advisers to an offeror or the offeree company (other than a financial adviser or corporate broker) and one or more “sell-side” investment analysts.

Q19 Do you have any comments on the proposed new Rule 20.2?

No, we do not have any comments on the proposed new Rule 20.2.

Q20 Should the new Rule 20.3 in relation to the use of videos be introduced as proposed?

Yes, we agree with the new Rule 20.3 in relation to the use of videos be introduced as proposed.

Q21 Should the new Rule 20.4 in relation to the use of social media be introduced as proposed?

Yes, we agree with the new Rule 20.4 in relation to the use of social media be introduced as proposed; social media should not be used in the context of an offer other than to link to released RNS announcements.

Q22 Should the amendments to Rule 26 in relation to the publication of documents on a website be made as proposed?

We believe that 12 noon on the business day following an announcement still stands as a reasonable deadline for putting relevant documents on a website. There may be very good logistical reasons why “promptly” simply does not work, particular when parties outside of the UK in different time zones are involved. In addition, many small and mid-size quoted companies may not maintain their website in-house as it is more economical to use a sub-contractor, who will often only be available to make changes during normal business hours.

We agree with the deletion of note 7 on Rule 26 given the increased use of websites generally.

Q23 Should Rule 19.4 (Advertisements) be amended (and renumbered as Rule 20.5) as proposed?

Yes, we agree that Rule 19.4 (Advertisements) should be amended (and renumbered as Rule 20.5), as proposed.

We do not foresee any difficulties with these amendments (which we agree will not affect the operation of the relevant provisions in a material way) although we would favour the retention of the existing exemption allowing advertisements with the Panel's consent. Although we recognise, as is pointed out, that the Panel can always grant a waiver, having this expressly set out in the Rule underlines this possibility and might be a useful for practitioners.

Q24 Should Rule 19.2 (Responsibility) and Note 1 on Rule 3.2 be amended, and Note 5 on Rule 19.1 (Use of other media) be deleted, as proposed?

Yes, we agree that Rule 19.2 (Responsibility) and Note 1 on Rule 3.2 should be amended, and Note 5 on Rule 19.1 (Use of other media) should be deleted, as proposed. We welcome any amendments which clarify

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the circumstances where an express responsibility statement under Rule 19 is (or is not) required. We believe that excluding the need for such a statement in advertisements is a useful measure.

The language in Rule 19.1 – the general duty of care – refers to "each document, announcement or other information" published during an offer. The need for an express responsibility statement in Rule 19.2 (as amended) simply refers to "each document published in connection with an offer". There is no express reference to an announcement.

We believe that there is some uncertainty, and differences in practice, over whether announcements in the course of an offer require an express responsibility statement. For example, announcements under Rules 2.4 and 2.7 have been known to include responsibility statements. However, we believe that there is some uncertainty surrounding announcements of such matters as acceptance levels, posting of offer documentation, extensions of the offer, revisions of the offer, reminders of closing dates, delisting announcements and compulsory acquisition announcements. The latter two announcements are issued after the close of the offer period, where we understand the Panel's practice is for responsibility statements not to be required, but others are made during the course of a live offer.

We believe that it would be welcomed by practitioners if the Code Committee took this opportunity of further clarifying the circumstances and announcements which require an express responsibility statement to be attached or whether there is no requirement at all as the general duty of care in Rule 19.1 will always apply.

Q25 Should Rule 19.5 (Telephone campaigns) be amended (and renumbered as Rule 20.6) as proposed?

Yes, we agree that Rule 19.5 (Telephone campaigns) should be amended (and renumbered as Rule 20.6), as proposed.

Q26 Do you have any comments on the minor and consequential amendments to the Code proposed in Section 6 of this PCP?

No, we do not have any comments on the minor and consequential amendments to the Code proposed in Section 6 of this PCP.

If you would like to discuss our response in more detail, we would be happy to attend a meeting.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Tim Ward', with a stylized flourish at the end.

Tim Ward
Chief Executive

Quoted Companies Alliance Legal Expert Group

Gary Thorpe (Chairman)	Clyde & Co LLP
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