



The Secretary to the Code Committee
The Takeover Panel
10 Paternoster Square
London
EC4M 7DY

20 September 2017

Dear Sir

Response to the Code Committee of the Takeover Panel consultation paper regarding asset sales in competition with an offer and other amendments to the Takeover Code.

We are pleased to have the opportunity to respond to your request for comments on the above consultation paper dated 12 July 2017.

Our comments focus primarily on the approach to be followed when a company proposes to sell the majority of its assets in order to return cash to shareholders in response to a contested offer. In summary, we agree that target company shareholders should receive an independent report on the likely value of the assets proposed to be realised, however we believe that this comfort should be provided via a valuation report under Rule 29 rather than being treated and reported on as a quantified financial benefit statement.

Our detailed responses to questions are set out in the attached appendix.

Should you wish to discuss our response, please contact Ursula Newton at ursula.newton@pwc.com or Kevin Desmond at kevin.desmond@pwc.com.

Yours faithfully

A handwritten signature in blue ink that reads 'PricewaterhouseCoopers LLP'.

PricewaterhouseCoopers LLP

*PricewaterhouseCoopers LLP, 1 Embankment Place, London WC2N 6RH
T: +44 (0) 20 7583 5000, F: +44 (0) 20 7822 4652, www.pwc.co.uk*

PricewaterhouseCoopers LLP is a limited liability partnership registered in England with registered number OC303525. The registered office of PricewaterhouseCoopers LLP is 1 Embankment Place, London WC2N 6RH. PricewaterhouseCoopers LLP is authorised and regulated by the Financial Conduct Authority for designated investment business.



APPENDIX

Asset sales in competition with an offer

Q1: Should an offeror or potential offeror be restricted from circumventing the provisions of the Code by purchasing the offeree company's assets following the offer or possible offer lapsing or being withdrawn?

We have no comments

Q2: Should the proposed new restriction in each of Rules 2.8, 12.2 and 35.1 apply in relation to the purchase of assets which are significant in relation to the offeree company (as determined in accordance with Note 5 on Rule 2.8)?

We have no comments

Q3: Do you have any comments on the proposed amendments to Rule 2.8, Rule 12.2 and Rule 35.1?

We have no comments

Q4: Where shareholder approval is sought in general meeting for a proposed action under Rule 21.1, should a requirement be introduced:

(a) for the board of an offeree company to obtain competent independent advice as to whether the financial terms of the proposed action are fair and reasonable; and

(b) for the Panel to be consulted regarding the date on which the general meeting is to be held?

We have no comments

Q5: Do you have any comments on the proposed requirement for the board of an offeree company to publish a circular in the circumstances described in the proposed new Rule 21.1(f) containing the information set out in the proposed new Note 1 on Rule 21.1?

We have no comments

Q6: Do you have any comments on the proposed amendments to Rule 21.1?

We have no comments

Q7: Should an offeree company be permitted to pay one or more inducement fees to a counterparty to an agreement to which Rule 21.1 applies provided that the aggregate value of the fees payable does not exceed the 1% limit referred to in Note 8 on Rule 21.1?

We have no comments



Q8: Do you have any comments on the proposed new Note 8 on Rule 21.1?

We have no comments

Q9: Where, in competition with an offer or possible offer, an offeree company has announced its intention to sell all or substantially all of the company's assets (excluding cash and cash equivalents) and to return to shareholders all or substantially all of the company's cash balances (including the proceeds of any asset sale), should a statement by the offeree company quantifying the cash sum expected to be paid to shareholders be treated as a quantified financial benefits statement?

We agree with the principle that in such situations it is reasonable for investors to expect that such statements are reported on by a third party.

However, it is our view in the scenario envisaged, that the nature of the comfort to be provided relates to the value being ascribed to the assets proposed to be sold. Therefore we believe that comfort should be provided via a valuation report under Rule 29 rather than being treated and reported on as a quantified financial benefit statement.

In an asset sale scenario the amount that shareholders will receive is dependent upon the value that can be realised for either the business or relevant assets to be disposed of, divided by the number of shares, providing a cash per share payment to shareholders.

Rule 29.1(a) already envisages the provision of a valuation opinion on assets other than tangible assets:

"This Rule applies not only to land, buildings, plant and equipment but also to other assets, eg contracts, stocks, intangible assets and individual parts of a business."

On the other hand, quantified financial benefits statements are based on operational changes arising from a transaction that indirectly, typically, result in benefits accruing to investors. This is typically through changes to an entity's cost base such as through synergies in a merger or cost savings by an offeree as a defence.

As such we believe that an assurance opinion such as the "properly compiled" opinion that is required on a quantified financial benefits statement is not appropriate in these circumstances and is less relevant than providing a report which directly addresses the value of the assets.

We also note that the term "substantially all" is not currently defined within Code. There exists a test of significance in Rule 21 which is defined as 50% of various specified size criteria. However, we would expect that the term "substantially all" would apply in situations where closer to 100% was being considered perhaps apply to transactions with a threshold of c.90% and recommend that you include guidance in the Code to this effect.

Q10: Do you have any comments on the proposed new Note on the definition of "quantified financial benefits statement"?

With reference to our response in Q.9 we believe this note should be moved to Rule 29 and be framed as a note on asset valuations and the relevant statement referred to as being treated as such.



Q11: Where, in competition with an offer or possible offer, an offeree company has announced an intention to sell all or substantially all of the company's assets (excluding cash and cash equivalents) and to return to shareholders all or substantially all of the company's cash balances (including the proceeds of any asset sale), should a purchaser of some or all of those assets be restricted from acquiring interests in shares in the offeree company during the offer period unless the board of the offeree company has made a statement quantifying the amount per share that is expected to be paid to shareholders and then only to the extent that the price paid does not exceed that amount?

We have no comments

Q12: Do you have any comments on the proposed new Rule 4.7?

We have no comments

Q13: Do you have any comments on the proposed new Note 6 on Rule 21.3?

We have no comments



Other amendments to the Code

Q14: Do you have any comments on the proposed amendment to Rule 2.8 and to the introduction of the proposed new Note 2 on Rule 2.8?

We have no comments

Q15: Do you have any comments on the consequential and minor amendments referred to in paragraph 5.9?

We have no comments

Q16: Do you have any comments on the proposed amendments to Note 1 on Rule 19.1, Rule 20.3 and Rule 20.4?

We have no comments

Q17: Do you have any comments on the proposed amendment to Note 5 of the Notes on Dispensations from Rule 9?

We have no comments