

THE TAKEOVER PANEL

CODE COMMITTEE

RESPONSE STATEMENT 2008/1 (COMPETITION REFERENCE PERIODS) AND OTHER MINOR AND CONSEQUENTIAL AMENDMENTS TO THE TAKEOVER CODE

Response Statement 2008/1 – Competition reference periods

On 4 March 2008, the Code Committee published a Public Consultation Paper (“PCP 2008/1”) in relation to the rules applying to competition reference periods. The consultation period in respect of PCP 2008/1 ended on 6 May 2008. Having considered the response to PCP 2008/1, the Code Committee has today published Response Statement 2008/1 (“RS 2008/1”), which includes the final text of the amendments to the Code in relation to competition reference periods, on the Panel’s website at www.thetakeoverpanel.org.uk.

Copies of RS 2008/1, either in electronic or hard copy form, may be requested from the Panel Executive by telephone (020 7382 9026) or by email (supportgroup@thetakeoverpanel.org.uk).

The Code Committee has today published on the Panel’s website Instrument 2008/2 including the text of the amendments to the Code adopted in RS 2008/1.

Instrument 2008/3 - Minor and consequential amendments to the Code

The Code Committee has also made a number of other amendments to the Code. Since, in the opinion of the Code Committee, these amendments either do not materially alter the effect of the provision in question or are as a consequence of changes to relevant legislation, the text of these amendments is being published

without any formal consultation process, in accordance with section 4(b) of the Introduction to the Code. A summary of the amendments is set out below.

The Code Committee has today published on the Panel's website Instrument 2008/3 including the text of the amendments summarised above.

(a) Note 3 on Rule 2.8

Note 3 on Rule 2.8 describes the application of the restrictions in Rule 2.8 to persons acting in concert with a person making a "no intention to bid" statement under the Rule. The Code Committee considers that the Note as currently drafted is difficult to understand and believes that it would be helpful to amend it to improve clarity.

The related amendments are set out in Appendix A of Instrument 2008/3.

(b) Rule 7.1 and cross references thereto

Rule 7.1 provides that if an acquisition of an interest in offeree company shares by an offeror or any person acting in concert with it gives rise to an obligation under Rules 6, 9 or 11, an appropriate announcement must be made immediately by the offeror. Both Rule 6.2(b) and Note 6 on Rule 11.1 set out an announcement obligation to reflect this requirement but neither refers specifically to Rule 7.1. Similarly, neither Note 9 on Rule 9.1 nor Rule 9.5 specifically refers to Rule 7.1.

The Note on Rule 7.1 also makes it clear that in certain circumstances acquisitions by a potential offeror can also trigger an immediate announcement obligation. The requirements of this Note relating to potential offerors are not referred to in Rules 6, 9 or 11.

The Code Committee understands that, on occasion, the requirements of Rule 7.1 have been overlooked by offerors and potential offerors and their advisers. Although the Rule and the Note on the Rule are both clear, the Code Committee considers that it would be helpful to:

- (i) introduce a new Note 8 on Rule 2.4 referring to the obligation under Rule 7.1; and
- (ii) make a number of minor amendments to Rules 6.1, 6.2 and 9.5, and to Note 9 on Rule 9.1 and Note 6 on Rule 11.1, to refer to or reiterate the requirements of Rule 7.1.

A minor amendment is also being made to Rule 7.1 to increase clarity.

The related amendments are set out in Appendix B of Instrument 2008/3.

(c) *Note 1(c) on Rule 7.2 and Note 16 on Rule 9.1*

Note 1(c) on Rule 7.2 and Note 16 on Rule 9.1 refer to the relevance of Rule 9 if the aggregate number of shares in which all persons under the same control are interested carry 30% or more of the voting rights of a company. The Code Committee has amended the references to “all persons under the same control” so as to refer to “any person and all persons controlling, controlled by or under the same control as that person”.

The related amendments are set out in Appendix C of Instrument 2008/3.

(d) *Note 5(a) on Rule 8*

Note 5(a) on Rule 8 relates to public dealing disclosures made pursuant to Rules 8.1(a), 8.1(b)(i) and 8.3 and sets out various matters relating to the details which are required to be included in such disclosures. For ease of reference, the Code Committee has introduced a number of sub-headings to certain of the paragraphs of Note 5(a).

The related amendments are set out in Appendix D of Instrument 2008/3.

(e) **Rule 29.1(c)**

Rule 29.1(c) notes that in certain cases offer documents or defence circulars will include statements of assets reproducing directors' estimates of asset values published with the company's accounts in accordance with Schedule 7 Part I of the Companies Act 1985. The Code Committee has amended Rule 29.1(c) in order to reflect the fact that this provision of the Companies Act 1985 has been repealed and replaced by Schedule 7 Part 1 of the Large and Medium-Sized Companies and Groups (Accounts and Reports) Regulations 2008.

The related amendments are set out in Appendix E of Instrument 2008/3.

Implementation

The amendments to the Code included in Instruments 2008/2 and 2008/3 will take effect on Tuesday, 29 July 2008. Amended pages of the Code will be published prior to that date.

15 July 2008