

THE TAKEOVER PANEL

CODE COMMITTEE

DISCLOSURE OF TAKEOVER APPROACHES

Introduction

In the light of a number of recent situations, in which takeover approaches were kept confidential for a long period of time without any announcement being made or required, a concern was raised with the Panel about the timing of the disclosure of such approaches. As a result, the Code Committee has reviewed the current rules and consulted with a range of external parties on whether the requirements of the Takeover Code in this area should be expanded. The conclusions of the Code Committee are set out below.

Current position

Rule 2 of the Code sets out the circumstances in which a takeover approach is required to be announced prior to the announcement of a firm offer. In summary, an announcement is required if the offeree company is the subject of rumour and speculation in relation to a possible offer, if there is an untoward movement in its share price or if discussions relating to a possible offer are to be extended to more than a very restricted number of people. If an offeror and the offeree company are able to maintain confidentiality, and if discussions remain limited to a very restricted number of people, no announcement is required.

Rule 2 is framed with the aim of supporting the Code's objective of promoting the integrity of the financial markets. In applying its provisions, the Panel's overriding objective is to prevent false markets by ensuring the timely release of announcements relating to a possible offer in order to achieve equality of information for all market participants (whether institutional or retail) and the Panel is rigorous in upholding this principle. However, Rule 2 has never sought to prevent the board of an offeree company from discussing a takeover approach privately and in confidence with an

offeror where the board believes that it is in the best interests of shareholders to do so, notwithstanding that such negotiations may sometimes be protracted. There is also no restriction under Rule 2 on either an offeror or the offeree company making an announcement at any time that it considers appropriate.

Suggested amendment to the Code

Proponents of a change to the disclosure regime suggested that it should be expanded by requiring the immediate disclosure by an offeree company of any serious takeover approach, irrespective of whether it was the subject of rumour and speculation or there was an untoward movement in its share price. It was suggested that this would be in line with the greater transparency being sought across many aspects of financial regulation and would enable shareholders to play a more active part in a board's decision-making process in relation to a takeover approach. Moreover, the concern was expressed that, following a takeover approach, some shareholders might sell their shares in ignorance of the possibility that an offer might be made.

Consultation

The Code Committee requested the Panel Executive to seek the views of relevant constituents on this subject. The consultation focused on two groups of constituents in particular, comprising a range of different types of investors in and board members of UK public companies.

In summary, the overwhelming majority of those consulted, both from the investor community and the corporate community, were in favour of retaining the existing rules and approach. Whilst recognising that a balance needs to be struck in this complex area, they considered that the existing regime both provides appropriate protection for investors and achieves an appropriate balance between the interests of investors and the relevant offeree companies.

Particular concerns that were raised in connection with the suggested amendment were that it could:

- increase significantly the number of companies in an “offer period”, resulting in a consequential disruption to the stability and performance of those companies, to the detriment of investors;
- increase the risk of more announcements being made of approaches which create significant short term market movements but do not subsequently result in offers; and
- weaken the negotiating position of a board in receipt of an approach, potentially leading to lower offers for shareholders to consider.

Many respondents also noted that the UK regime is already one of the most stringent for the disclosure of takeover approaches out of the major listing venues. Importantly, it was observed that, in line with General Principle 1 of the Code, institutional investors do not have an information advantage in relation to takeover approaches as compared with retail shareholders.

Conclusion

After having considered the responses received to the consultation and the potential advantages and disadvantages of making the suggested amendment, the Code Committee has concluded that it should not make any changes to the existing regime under Rule 2 regarding the disclosure of takeover approaches.

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