

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

supportgroup@thetakeoverpanel.org.uk

2 October 2012

Dear Sirs,

**PCP 2012/1: Profit Forecasts, Quantified Financial Benefits Statements, Material Changes in Information and Other Amendments**

***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 Corporate Finance Advisors, Legal and Markets and Regulations Expert Groups has 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 this consultation. Overall, the Quoted Companies Alliance supports the majority of the proposals set out in PCP 2012/1. The various proposals, taken as a whole, should assist small and mid-size quoted companies to provide accurate updates in relation to the expected performance and financial position of such companies to their shareholders and other stakeholders on a regular basis, both before the commencement of an offer period and during the offer period itself.

We have some specific comments on the following section, which are detailed below:

**Question 3**

We agree with the proposed requirement for assumptions to be stated and for third party reports to be obtained for profit forecasts that are first published following an approach or, in appropriate circumstances, the first active consideration of a possible offer by an offeror.

In addition, in order to avoid the potential circumvention of the proposed regime as a result of a narrow interpretation of the term “approach” and the point at which a possible offer is first actively considered, we recommend that these requirements should also apply where a profit forecast is first published in the one month period prior to the commencement of an offer period.

**Question 4**

In relation to an outstanding profit forecast, the proposed new Rule 28.1(c) is likely to provide only a limited degree of comfort to the parties to an offer and other quoted companies.

Where a profit forecast has been made prior to an approach in relation to a possible offer, the dispensation from the obligation to obtain reports from reporting accountants and financial advisers is likely to be available only where the directors of the relevant company continue to believe that the original profit forecast is valid. If not, the relevant company will be likely to feel obliged to publish a new profit forecast for the relevant period and therefore to obtain reports from reporting accountants and financial advisers. It is difficult to envisage a situation in which the directors of a party to an offer will include a statement to the effect that a previously published profit forecast is no longer valid, together with an explanation, without also providing a new profit forecast for the relevant period.

**Question 5**

We support the proposed dispensation.

**Question 7**

At the moment, if a party to an offer publishes a profit forecast in respect of the following financial year, there is no requirement to publish a profit forecast in respect of the current financial year. The proposed new Rule 28.2 therefore constitutes a significant increase in the obligations imposed under the Takeover Code. This seems inconsistent with the aims of the current consultation.

We suggest that there is no requirement for the publication of a profit forecast for the current financial year, particularly where a forecast for the following financial year is to be the subject of reports by the financial adviser and accountants.

**Question 13**

We welcome the inclusion of companies admitted to trading on AIM within the scope of the exemption from the requirements of the new Rule 28.1.

In order to assist with the interpretation of the proposed new Rule 28.1, it would be useful to have a definition of "AIM" inserted into the Takeover Code. It would also be useful to update the definition of "PLUS" since it is no longer operated by PLUS Markets plc.

**Question 15**

Paragraph 14.3 of the consultation paper suggests that the requirement to report on a profit forecast for a part of a business applies on the basis that that forecast "would be likely to be material". However, there is no materiality qualification in the proposed new Rule 28.6. We suggest that such a qualification should be added, even if materiality itself is not defined.

**Question 18**

We agree with the proposed new Rules 27.1 and 27.2(a)(i).

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We also believe that it would be useful to take this opportunity to deal with the impact of material events on the usual Takeover Code timetable, should any material change occur, in particular in later stages of the offer timetable. For example, if a material change occurred to the financial position of the offeror after day 50 in the timetable of a contractual share offer, would day 60 be extended in order to allow shareholders to withdraw existing acceptances or to further deliberate on the merits of the offer?

If you would like to discuss any of these issues further, we would be happy to attend a meeting.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'TW', is positioned above the typed name.

Tim Ward  
Chief Executive

**List of Expert Group Members****Corporate Finance Advisors**

Johanne Arnesen	KPMG LLP
Azhic Basirov	Smith & Williamson Limited
David Bennett/Simon Charles	Marriott Harrison
Daniel Conti	RBC Capital Markets
Richard Crawley	Espirito Santo Investment Bank incorporating Execution Noble
Matthew Doughty	Dorsey & Whitney
Stuart Faulkner/Simon Raggett	Strand Hanson Limited
James Green	K&L Gates LLP
Lesley Gregory	Memery Crystal LLP
Chris Hardie	Arden Partners PLC
Daniel Harris	Peel Hunt plc
Samantha Harrison (Chair)	RFC Ambrian Limited
Dalia Joseph	Oriel Securities Limited
Amerjit Kalarai	Field Fisher Waterhouse
Jonathan King	Osborne Clarke
Jonathan Morris	Bates Wells & Braithwaite LLP
Nicholas Narraway	c/o Moorhead James
Nick Naylor	Allenby Capital Ltd
Claire Noyce/Deepak Reddy	Hybridan LLP
Simon O'Brien	PricewaterhouseCoopers LLP
Tom Price	
Mark Percy/Rick Thompson	Seymour Pierce Limited
Philip Secrett	Grant Thornton
Ray Zimmerman/Marc Cramsie	ZAI Corporate Finance Ltd

**Legal**

Jai Bal/Anthony Turner	Farrer & Co
Chris Barrett	Bird & Bird LLP
Richard Beavan	Boodle Hatfield
Ian Binnie	Nabarro LLP
Ross Bryson	Mishcon De Reya
Madeleine Cordes	Capita Registrars Ltd
Simon Cox	Norton Rose LLP
David Davies	Bates Wells & Braithwaite
Mebs Dossa	McguireWoods
David Fuller	CLS Holdings PLC
Stephen Hamilton	Mills & Reeve LLP
Susan Hollingdale/Hilary Owens	Practical Law Company Limited
Martin Kay	Blake Laphorn
Carol Kilgore	CMS Cameron McKenna LLP
Philip Lamb	Lewis Silkin
Christian Lowis/Tim Stead	Squire, Sanders & Dempsey (UK) LLP
Maegen Morrison	Hogan Lovells International LLP
June Paddock	Fasken Martineau LLP
Tom Shaw (Chair)	Speechly Bircham LLP
Donald Stewart	Faegre Baker Daniels LLP
Mark Taylor	Dorsey & Whitney
Gary Thorpe	Clyde & Co LLP

Markets & Regulations

Umerah Akram  
Stuart Andrews (Chair)  
Andrew Collins  
Richard Everett  
Martin Finnegan  
Alexandra Hockenhull  
Michelle Holt  
Amerjit Kalirai  
William Lynne/Claire Noyce  
Linda Main  
Brian McDonnell  
Richard Metcalfe  
Philip Quigley  
Simon Rafferty/James Stapleton  
Laurence Sacker  
Chris Searle  
Peter Swabey

London Stock Exchange plc  
FinnCap  
Speechly Bircham LLP  
Lawrence Graham LLP  
Causeway Law  
Xchanging plc  
Capita Registrars Ltd  
Field Fisher Waterhouse  
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Olswang  
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Equiniti