



PCP1 Issued on 5 September 2001

THE PANEL ON TAKEOVERS AND MERGERS

CONSULTATION PAPER ISSUED BY

THE CODE COMMITTEE OF THE PANEL

THE DISSEMINATION OF REGULATORY

INFORMATION – THE FSA’S PROPOSALS AND

IMPLICATIONS FOR THE TAKEOVER CODE

REVISION PROPOSALS RELATING TO RULES 2.5,

5.4, 8 AND 38.5 OF THE TAKEOVER CODE

AND SARs 3 AND 5

Before it introduces or amends any Rules of the Takeover Code or the Rules Governing the Substantial Acquisitions of Shares, the Code Committee of the Takeover Panel is required under its consultation procedures to publish the proposed Rules and amendments for public consultation and to consider responses arising from the public consultation process.

The Code Committee is therefore inviting comments on this Consultation Paper. Comments should reach the Code Committee by **5 October 2001**.

Comments may be sent by email to:

consultation@disclosure.org.uk

Alternatively, please send comments in writing to:

The Secretary to the Code Committee
The Panel on Takeovers and Mergers
P.O. Box No. 226
The Stock Exchange Building
London
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Telephone: 020 7382 9026

Fax: 020 7638 1554

It is the Code Committee's policy to make all responses to formal consultation available for public inspection unless the respondent requests otherwise.

1. Introduction

1.1 In May this year, the Financial Services Authority (FSA) published a consultation paper (CP 92), entitled 'Review of the UK mechanism for disseminating regulatory information by listed companies'. This sets out the results of a review, requested by HM Treasury, of the current arrangements under which all announcements made by listed companies are submitted to the Company Announcements Office (CAO) of the London Stock Exchange (LSE), which then publishes them through the Regulatory News Service (RNS). CP 92 goes on to

make proposals for a new competitive system, which will enable listed companies to publish regulatory announcements via a choice of FSA approved services. The providers of these new services are referred to as ‘primary information providers’ (PIPs); they will disseminate full-text regulatory announcements on to news vendors (‘secondary information providers’ or SIPs), as RNS does now. The SIPs will also have to provide the information to subscribers in full-text, unedited form. In order to obtain FSA approval, the PIPs will have to satisfy certain service criteria, which are set out in an Annex to CP 92. Following approval, their performance will be monitored by the FSA. The FSA proposes amending the Listing Rules by eliminating all references to the CAO and RNS and replacing them with ‘Regulatory Information Service’ (RIS), a term which will be defined to mean any of the approved PIP services.

- 1.2 One of the main objectives of this new system is to ensure that all regulatory information will be made available to investors in a timely manner via any of the new services. The Executive held a number of discussions with the FSA while CP 92 was being prepared in order to ensure that all Code announcements and disclosures would be regarded as ‘regulatory information’ (defined in CP 92) and thus that the PIPs would be obliged to carry them. This was important because it meant that the PIPs would have to carry some announcements from companies and individuals who are not listed companies. The Executive was also concerned to ensure that the cost of the new service to users other than listed companies would not be such as to risk inhibiting disclosures.
- 1.3 Having been satisfied on these matters, the Executive agreed with the FSA that, in the event that the FSA changes its Listing Rules as proposed in CP 92, the Panel will recommend that changes be made to the Code to reflect the FSA changes (see paragraph 1.8 of CP 92). The FSA is seeking comments on its proposals by 1 August with a view to implementing them in the fourth quarter of this year. The

Panel clearly needs to prepare itself for these changes and the purpose of this paper is to explain the implications of the new system for companies and persons engaged in takeovers and to seek views on the proposed amendments to the Code on the assumption that the new FSA system will provide adequately for Code disclosures and announcements, as proposed. The Code Committee's objective is to implement Code changes simultaneously with amendments to the Listing Rules.

2. Announcement and disclosure requirements under the Code

2.1 Code announcement and disclosure requirements can be broken down into the following categories:

- (a) all announcements specified under Rule 2.9;
- (b) other Code related announcements (e.g. Note 1 on Rule 19.1, correction of press comment);
- (c) dealing disclosures under Rule 8 and Rule 5.4;
- (d) Rule 38.5 exempt market maker (EMM) disclosures;
- (e) SAR disclosures; and
- (f) Panel announcements – i.e. Panel Statements, disclosure tables.

- 2.2 Category (a) announcements are those which are required by specific Rules, for example, offer announcements under Rule 2, announcements of revised offers under Rule 6 and announcements of acceptance levels under Rule 17. They may be made by listed or unlisted companies and Rule 2.9 spells out the current requirements for the method of their publication. These vary depending on the status of the offeree company: if it is a listed company, or traded on AIM, announcements are published via the CAO through RNS; if it is an OFEX company, via Newstrack; and if it is some other entity, for example a foreign company or even an individual, via the press and newswire services. If the offeree is unlisted but the offeror is a listed company, then the announcements will usually be published through RNS.
- 2.3 Category (b) announcements are those not specifically required by a Rule but which may be required by the Executive in order to ensure satisfaction of a General Principle or Rule. An example would be clarification of a press report under Rule 19.1. These too may be made by listed or unlisted companies or by their advisers and are published through RNS.
- 2.4 Announcements falling under categories (c), (d) and (e) are different. They are not necessarily made by parties involved in an offer but frequently by individual shareholders who may be institutions and listed companies in their own right but may equally be private individuals. These are currently published through RNS.
- 2.5 Category (f) announcements are those published by the Panel itself, in the course of its regulatory activities. These are also currently published through RNS.

2.6 Under the new FSA proposals, the PIPs may disseminate non-regulatory as well as regulatory information. In order to distinguish between the two, regulatory information will be flagged. All those making announcements and the PIPs will therefore have to ensure that regulatory announcements are headlined with one of the mandated headlines proposed in Annex B to CP 92. These headlines provide for all the Panel announcements described above.

3. Who pays for the service?

3.1 The FSA states in CP 92 that ‘it is equitable for users of the system to pay in proportion to the number and length of the announcements they actually make’. At present, listed companies pay through the listing fees but certain disclosures required by the Code are made free of charge through RNS. These include, in particular, Rule 8 dealing disclosures and some announcements made by unlisted companies. The Code Committee agrees with the underlying premise of the FSA’s proposals for charging for the new service and is satisfied that they will not impinge severely on those required to make disclosures under the Code. Those mainly affected will be unlisted companies and individual shareholders. CP 92 sets out the proposed scale of charges under the new proposals. The new costs to unlisted companies will be mitigated by the benefit of knowing that their announcements will now be carried in full by the news vendors. At present, they are often severely edited.

3.2 Individual shareholders will be most affected by charges for making disclosures of share dealings under Rule 8 and SARs 3 and 5. It is proposed that these should be classified as ‘Short Form Announcements’, which, according to CP 92, will cost, on average, £5 each. The Code Committee believes that this is not an unreasonable charge for someone who owns 1% (Rule 8) or 15% (SARs) of a relevant company

and has dealt in its shares.

- 3.3 The PIPs will be obliged to carry Panel Statements and other announcements made by the Panel free of charge.
- 3.4 Overall, the Code Committee believes that the proposed new system of dissemination of information will be of benefit to all market users. It will provide comprehensive information to all and it seems only fair that users, both those publishing information through the PIPs and those subscribing to the SIPs, should pay accordingly.

4. Proposals to amend the Code

On the assumption that, as outlined in CP 92, all disclosures and announcements published by, or required by the Panel will be regarded as 'regulatory information' and thus will have to be carried by the PIPs, the Code Committee proposes that Rules 2.9, 5.4, 8 and 38.5 and SARs 3 and 5 should all be amended to reflect changes to be made to the Listing Rules. This will mean that all announcements and disclosures required under those Rules and the Rules referred to in Note 2 on Rule 2.9 will have to be made through a 'Regulatory Information Service'. In addition, a new definition of 'Regulatory Information Service' will be included to mean any of the services approved by the FSA.

Question: Given that the FSA is proposing to make changes to the Listing Rules as envisaged in CP 92, do you agree that it is logical to bring the Code into line?