

RS 14 Issued on: 24 July 2003

THE PANEL ON TAKEOVERS AND MERGERS

**MINOR AMENDMENTS CONCERNING
DISCLOSURE OF RELEVANT SHARE CAPITAL**

**STATEMENT BY THE CODE COMMITTEE OF
THE PANEL FOLLOWING THE EXTERNAL
CONSULTATION PROCESS ON PCP 14**

1. Introduction

1.1 In April 2003 the Code Committee of the Takeover Panel published a Public Consultation Paper (PCP 14) proposing two minor amendments which related to the disclosure of relevant share capital.

1.2 The proposals were:

- (i) to require companies to notify the market of the numbers of relevant securities in existence during an offer period; and
- (ii) to alter the method by which companies are required to publish information about the existence of convertible securities, options or rights to subscribe for shares in respect of which a Rule 9 waiver has been granted.

1.3 The purpose of this paper is to provide details of the Code Committee's response to the external consultation process on PCP 14.

2. Number of responses received

A total of 5 responses were received, mainly from major industry bodies.

3. Significant conflicts of views

All the responses were in agreement with the Code Committee's proposals. The Code Committee has, however, decided to make two minor clarifying amendments to the wording proposed in PCP 14 relating to new Rule 2.10,

one of which arises from a suggestion made by one of the respondents.

4. The Code Committee's conclusions

- 4.1 The Code Committee believes that it would be helpful to make the following two small amendments to the drafting of new Rule 2.10. First, in order to avoid any possible confusion, it will be made clear that the requirement to announce details relating to an offeror's relevant securities will apply to offerors and potential named offerors (not to all potential offerors). Secondly, it will be made clear that the obligation to announce changes to any information included in an announcement made under Rule 2.10 will cease once the offer period has ended.
- 4.2 The proposed amendments to the "Notes on Dispensations from Rule 9" and Appendix 1 of the Code have been adopted as outlined in PCP 14.
- 4.3 PCP 14 also set out the wording of proposed Note 2 on new Rule 2.10 which relates to treasury shares. As referred to in PCP 13, the Government intends to introduce regulations at the end of this year which will permit companies to hold certain types of share in treasury. The DTI is considering one aspect of these regulations which relates to takeovers and, once the outcome of these deliberations is known, the Code Committee will decide whether it is still appropriate for Note 2 to be included in the Code. If so, it will be included when the other amendments relating to Treasury Shares are made.

- 4.4 The Appendix to this document sets out in full new Rule 2.10 (as amended by the changes referred to above) and Rule 37.3(b) as revised as a result of the consequential changes made necessary by the introduction of Rule 2.10. The Appendix also sets out the relevant parts of the “Notes on Dispensations from Rule 9” and Appendix 1 of the Code as revised by the proposals outlined in PCP 14.

APPENDIX

2.10 ANNOUNCEMENT OF NUMBERS OF RELEVANT SECURITIES IN ISSUE

When an offer period begins, the offeree company must announce, as soon as possible and in any case by 9.00 a.m. on the next business day, details of all classes of relevant securities issued by the company, together with the numbers of such securities in issue. An offeror or potential named offeror must also announce the same details relating to its relevant securities by 9.00 a.m. on the business day following any announcement identifying it as an offeror or potential offeror, unless it has stated that its offer is likely to be solely in cash.

Any such announcement should include, where relevant, the International Securities Identification Number (“ISIN”) for each relevant security.

If the information included in an announcement made under this Rule changes during the offer period, a revised announcement must be made as soon as possible.

NOTE ON RULE 2.10

Relevant securities

See Note 2 on Rule 8.

NOTES ON DISPENSATIONS FROM RULE 9

“1....

When a waiver has been granted, as described above, in respect of convertible securities, options or rights to subscribe for shares, details, including the fact of the waiver and the maximum number of securities that may be issued as a result, should be included in the company’s annual report and accounts until the securities in respect of which the waiver has been granted have been issued or it is confirmed that no such issue will be made.”

37.3 REDEMPTION OR PURCHASE OF SECURITIES BY THE OFFEREE COMPANY

...

(b) Public disclosure

For the purpose of Rule 8, dealings in relevant securities include the redemption or purchase of, or taking or exercising an option over, any of its own relevant

securities by the offeree company.

APPENDIX 1

6. Announcements following shareholders approval

...

(c) Where convertible securities, options or securities with subscription rights are to be issued:-

- (i) the announcement of the potential controlling shareholding must be made on the basis of the assumptions described in Section 4(b) above;
- (ii) following each issue of new securities a further announcement must be made confirming the number and percentage of shares held by the controlling shareholders at that time; and
- (iii) the information in (i) and (ii) should be included in the company's annual report and accounts until all the securities in respect of which the waiver has been granted have been issued or it is confirmed that no such issue will be made.