

THE TAKEOVER PANEL

CODE COMMITTEE

REVIEW OF CERTAIN ASPECTS OF THE REGULATION OF TAKEOVER BIDS

GUIDANCE REGARDING THE PUBLICATION AND IMPLEMENTATION OF CODE AMENDMENTS

1. Introduction

- 1.1 On 21 March 2011, the Code Committee of the Takeover Panel published a public consultation paper, PCP 2011/1, setting out proposed amendments to the Takeover Code (the “Code”). The consultation period in respect of PCP 2011/1 ended on 27 May 2011, with 57 responses having been received from a broad range of respondents.
- 1.2 In PCP 2011/1, the Code Committee stated that, following its initial consideration of the responses to the consultation, it would provide guidance as to the likely publication date of the Response Statement, the proposed implementation date for the amendments to the Code and the potential transitional arrangements. The Code Committee is now providing that guidance in this Statement.
- 1.3 The guidance, in particular the guidance as to the potential transitional arrangements, is intended to explain the likely sequence of events if the proposed amendments to the Code set out in PCP 2011/1 are adopted. For the purposes of that guidance, this Statement is drafted on the basis that the proposals set out in PCP 2011/1 will be implemented as proposed. However, the Code Committee emphasises that it has not yet completed its detailed consideration of the responses to the consultation and that it has not therefore

made any decisions with regard to the final text of the amendments to the Code.

- 1.4 Any party who wishes to make representations concerning the potential transitional arrangements described in this Statement should send comments in writing to the Secretary to the Code Committee as soon as possible. In addition, the Panel might be prepared to derogate from the application of the transitional arrangements in certain circumstances, for example, where it considers that they would operate unduly harshly or in an unnecessarily restrictive, burdensome or otherwise inappropriate manner.

2. Publication of the Response Statement

- 2.1 The Code Committee currently expects to publish the Response Statement to PCP 2011/1, which will set out the final text of the amendments to the Code, by the end of July 2011.

3. Implementation of Code amendments and transitional arrangements

(a) Implementation date

- 3.1 In PCP 2011/1, the Code Committee stated that it considered that there should be a period time, of not less than one month, between the publication date of the Response Statement and the implementation of the amendments to the Code. If the Response Statement is published by the end of July, as expected, the Code Committee currently anticipates that the revised Code would come into effect on or around Monday, 19 September 2011 (the “**Implementation Date**”).
- 3.2 Except as otherwise described in this Statement, the provisions of the revised Code would apply to all offers and possible offers from the Implementation Date.

(b) ***Requirement for a potential offeror to be identified***

(i) *Implementation*

3.3 An announcement by an offeree company on or after the Implementation Date which has the effect of commencing an offer period would be required to identify any potential offeror with which the offeree company is in talks or from which an approach has been received (and not unequivocally rejected), except where a dispensation has been granted as described in paragraph 3.5 below (see the proposed new Rule 2.4(a)).

3.4 Any announcement made by the offeree company on or after the Implementation Date, and subsequent to the commencement of the relevant offer period, which referred to the existence of a new potential offeror would be required to identify that potential offeror, except where the announcement was made after an offeror had announced a firm intention to make an offer for the offeree company, or where a dispensation had been granted as described in paragraph 3.5 below (see the proposed new Rule 2.4(b)).

3.5 Where an offer period commenced on or after the Implementation Date with an announcement by the board of the offeree company that it was seeking one or more potential offerors for the offeree company by means of a formal sale process, the Panel would normally grant a dispensation from the requirements of the proposed new Rules 2.4(a) and 2.4(b), subject to the further requirements of the proposed new Note 2 on Rule 2.6.

(ii) *Potential transitional arrangements*

3.6 Subject to paragraph 3.7 below, in order to put all offer periods on a similar footing, where an offeree company is already in an offer period on the Implementation Date, the offeree company would be required, by not later than 5.00 pm on the Implementation Date, to announce the identity of any potential offeror with which it is in talks, or from which it is in receipt of an

approach, if, at the commencement of the offer period, it was in talks with, or had received an approach from, that offeror. In addition, the offeree company would be required to identify any potential offeror to whose existence it had referred in any announcement made since the offer period commenced and with which it remained in talks.

3.7 The requirement for the offeree company to identify any potential offeror under paragraph 3.6 above would not apply where another offeror had announced a firm intention to make an offer for the offeree company prior to the Implementation Date.

(c) ***Requirement for a potential offeror to “put up or shut up” or obtain a deadline extension***

(i) *Implementation*

3.8 Subject to paragraph 3.9 below, under the proposed new Rule 2.6(a), any potential offeror first identified on or after the Implementation Date would be required, by no later than 5.00 pm on the 28th day following the date of the announcement in which it was first identified, or by not later than any extended deadline:

- (a) to announce a firm intention to make an offer;
- (b) to announce that it does not intend to make an offer; or
- (c) together with the offeree company, obtain the Panel’s consent to an extension of the deadline.

3.9 Under the proposed new Rule 2.6(b), the requirements described in paragraph 3.8 above would not apply, or would cease to apply, if another offeror had already announced, or subsequently announced (prior to the relevant deadline), a firm intention to make an offer for the offeree company. In

addition, under the proposed new Note 2 on Rule 2.6, where an offer period commenced on or after the Implementation Date with an announcement by the board of the offeree company that it was seeking one or more potential offerors for the offeree company by means of a formal sale process, the Panel would normally grant a dispensation from the requirements of the proposed new Rule 2.6(a), subject to the further requirements of the proposed new Note 2 on Rule 2.6.

(ii) *Potential transitional arrangements*

3.10 Subject to paragraph 3.11 below, in order to put all offer periods on a similar footing, where an offeree company is already in an offer period as at the Implementation Date, any potential offeror which has been identified in an announcement on or before the Implementation Date, including any potential offeror identified as a result of the application of paragraph 3.6 above, would be required, by not later than 5.00 pm on the 28th day following the Implementation Date:

- (a) to announce a firm intention to make an offer;
- (b) to announce that it does not intend to make an offer; or
- (c) together with the offeree company, obtain the Panel's consent to an extension of the deadline.

3.11 The requirements of paragraph 3.10 above would not apply where, prior to either the Implementation Date or the expiry of the deadline referred to in paragraph 3.10 above, another offeror had announced a firm intention to make an offer for the offeree company.

(d) *General prohibition on offer-related arrangements*

3.12 The general prohibition under the proposed new Rule 21.2 on an offeree

company, an offeror and any person acting in concert with either of them entering into an inducement fee or other offer-related arrangement, except with the consent of the Panel, would apply with effect from the Implementation Date. Any inducement fee or other offer-related arrangement entered into prior to the Implementation Date would not be subject to the prohibition.

(e) Schemes of arrangement

3.13 If, on or after the Implementation Date, an offeror announced a firm intention to make an offer to be implemented by means of a scheme of arrangement, the provisions of the proposed new Appendix 7 would apply to that scheme of arrangement. If an offeror had announced a firm intention to make an offer to be implemented by means of a scheme of arrangement prior to the Implementation Date, the provisions of the current Appendix 7 would apply.

(f) Offer documents and offeree board circulars

3.14 In PCP 2011/1, the Code Committee proposed various amendments to the provisions of the Code which relate to the contents of offer documentation and, in particular, to Rule 24, which relates to the offer document published by the offeror, and Rule 25, which relates to the circular published by the board of the offeree company.

3.15 Where the initial offer document is published prior to the Implementation Date, the offer document, the offeree board circular and any other documents published in relation to that offer would be required to comply with the current provisions of the Code as it was prior to the Implementation Date, even if, for example, the offeree board circular or any revised offer document was published after the Implementation Date. Where the initial offer document is published on or after the Implementation Date, the offer document and any subsequent offer documentation would be required to comply with the provisions of the revised Code.

(g) ***Improving the ability of employee representatives to make their views known***

3.16 Under the proposed new Rule 25.9, where an employee representatives' opinion is not received in good time in order to be appended to the offeree board circular, the offeree company would be required to publish the employee representatives' opinion on a website and announce via a RIS that it had been published. Under the proposed new Note 1 on Rule 25.9, the offeree company would be required to pay for the publication of the employee representatives' opinion and for the costs reasonably incurred by the employee representatives in obtaining any advice required for the verification of the information contained in that opinion.

3.17 The proposed new Rule 25.9 and Note 1 on Rule 25.9 would apply with effect from the Implementation Date. This would be the case even if the offer document to which the employee representatives' opinion related was published prior to the Implementation Date.

1 July 2011