

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

supportgroup@thetakeoverpanel.org.uk

10 September 2014

Dear Sirs,

PCP 2014/1 – Consultation Paper issued by the Code Committee of the Panel: Miscellaneous Amendments to the Takeover Code

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 **EuropeanIssuers**, which represents over 9,000 quoted companies in fourteen European countries.

The Quoted Companies Alliance Legal and Corporate Finance Expert Groups have 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. We welcome that the proposed amendments reflect the Panel's desire for greater certainty in place (in some cases) of their discretionary powers.

There is an argument that these proposals, taken in the round, increase the degree of regulation involved in a takeover, but since the changes are largely ones of clarification or anti-avoidance, the compensation is that the proposals will result in a greater degree of certainty. Given that the takeover regime is challenging for small and mid-size companies in any event, we would not consider that these proposals result in any significant additional burden either for the small and mid-size company offeree or offeror.

In our responses below to the specific questions we have not sought to comment on every question in the consultation paper. Instead we have focused primarily (although not exclusively) on those areas which we consider of particular relevance to small and mid-size quoted companies.

Responses to specific questions

Q14 Should the default auction procedure be incorporated into the Code as a new Appendix 8? / Q15 Should the Proposed Auction Procedure provide for an auction process with a maximum of five rounds over five consecutive business days? / Q16 Should both of the competing offerors be permitted to announce a revised offer in the first round of the auction? / Q17 In the second, third and fourth rounds,

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should a competing offeror be permitted to announce a revised offer only if the other competing offeror has announced a revised offer in the previous round? / Q18 Should both of the competing offerors be entitled to announce a revised offer in the fifth and final round?

Yes. We would caution, however, that, where one of the competing offerors is a small and mid-size quoted company, it may be potentially at a disadvantage as it may have fewer resources than larger offerors who will be in a position to employ large teams of advisors. This is because the Panel can only give effect to an alternative auction procedure with the agreement of both competing offerors (and the offeree company). In these circumstances, it is possible that such agreement is unlikely to be forthcoming from the larger offeror. However, from the perspective of establishing greater certainty as to conduct and timing of the auction, there is merit in establishing a default procedure which can be imposed by the Panel in the absence of agreement between the parties.

Q19 Do you agree that the Proposed Auction Procedure should not require revised offers to incorporate minimum incremental increases to previous offers?

Yes. We feel it would be extremely difficult for the Panel to make a commercial judgment about what such a minimum level should be in any particular case.

Q20 Should the Proposed Auction Procedure prohibit the announcement of a revised offer where the consideration is calculated by reference to a formula that is determinable by reference to the value of a revised offer by the other competing offeror (in the absence of agreement between the parties that such formula offers should be permitted)?

Yes. The formula offer is not appropriate to, or necessary in, a process involving daily bidding rounds (i.e. where each offeror has the right to announce a revised offer in response to a revised offer from the other) which, subject to our comments to Q14-18 above, we agree is desirable for transparency and would appear more suited to a single round of sealed bids.

It is also not particularly well designed for a situation where consideration other than cash is being offered. If it is permitted, it should be with the proviso that such an offer should set out an example of the calculation so that shareholders of the offeree company can readily determine the difference between the offers in monetary terms.

If you would like to discuss any of our responses in more detail, we would be happy to attend a meeting.

Yours faithfully,



Tim Ward
Chief Executive

Quoted Companies Alliance Legal Expert Group

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Maegen Morrison (Deputy Chairman)	Hogan Lovells International LLP
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Jo Chattle /Simon Cox /Julie Keefe	Norton Rose Fulbright LLP
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Quoted Companies Alliance Corporate Finance Expert Group

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Sean Geraghty	Dechert
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