



## Statements of intention and related matters

ICAEW welcomes the opportunity to comment on the *Statements of intention and related matters* published by The Takeover Panel on 19 September 2017, a copy of which is available from this [link](#).

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## MAJOR POINTS

1. The Code Committee proposes that without the consent of the offeree's board, an offeror may not publish an offer document within 14 days following its firm offer announcement. This represents a fundamental change to the timetable which will principally benefit target company boards but also gold plate the European directive requirements. We believe that the proposals warrant more scrutiny than is being afforded.
2. Regarding the proposals refining the statements of intention regime, we would like to understand the scope for flexibility as well as the nature of changes that may be disclosed between a firm offer announcement and publication of the offer document.

## RESPONSES TO SPECIFIC QUESTIONS

**Q1 Should Rule 24.2(a) be amended so as to require an offeror to make specific statements of intention with regard to the offeree company's research and development functions, the balance of the skills and functions of the offeree company's employees and management, and the location of the offeree company's headquarters and headquarters functions?**

**Q2 Do you have any comments on the proposed amendments to Rules 24.2(a) and (b)?**

3. We support the general principle of the proposal if it will be possible for the offeror to change such statements of intention, without any Code consequences, once due diligence has been completed. Due diligence may be limited up to, and ongoing after, the Rule 2.7 announcement. A good example of this might be where an announced hostile offer is subsequently recommended. Whether hostile or otherwise, an offeree board will often be sensitive about providing detailed information about its employees in a public offer context and an offeror may simply not have the ability to fully review the balance of skills and functions of the offeree company's employees until post-acquisition. As such, an offeror may (depending on information access) be able to give only high-level views on the matter both in the Rule 2.7 announcement and, subsequently, in the offer document. It would be helpful to understand the Panel's position where genuinely the circumstances do not allow an offeror to make definitive commitments on research and development (R&D) (or the broader Rule 24.2(a) requirements).
4. We would appreciate further guidance on what the Panel considers R&D to cover – for example, does the policy apply only to technology and healthcare companies or across the board? If companies do not have R&D operations, is a negative statement required?
5. We would also like to understand what the Panel means by 'balance of skills' and the type and granularity of information the Panel would like to see in relation to commitments regarding the balance of skills and functions.

**Q3 Should Rule 2.7 be amended so as to bring forward to the firm offer announcement the requirement for an offeror to state its intentions with regard to the business, employees and pension scheme(s) of the offeree company and, where appropriate, the offeror?**

**Q4 Do you have any comments on the proposed amendments to Rule 2.7 and Rule 25.9?**

6. We agree with the principle but believe additional guidance is needed to support balancing between greater disclosure at an earlier stage and meaningful disclosure. We note that the proposed amendments to Rule 2.7 closely mirror the language in Rule 24.2. The timing of a Rule 2.7 announcement significantly affects the practicality of the offeror being in a position to make the specified intention statements. Guidance will be needed to:
  - make clear the nature and extent of work that the offeror is expected to have performed at the point of a firm offer;

- explain the nature of changes that may need to be disclosed between a firm offer announcement and publication of the offer document; and
- clarify if the offeree company will be required to comment on the statements at the Rule 2.7 stage.

**Q5 Should an offeror be obliged to seek the consent of the board of the offeree company in order to publish an offer document within the 14 days following its firm offer announcement?**

**Q6 Do you have any comments on the proposed amendments to Rule 24.1 and Rule 25.1?**

7. This proposal represents a fundamental change (extension) to the Code timetable that should be supported with a comprehensive and balanced analysis of the impact on all parties. The effect would be to give target boards and shareholders more time in assessing a bid. However, the extension would also keep target boards 'under siege' for longer. For a potential bidder, the process becomes more costly and, given the increased time available for a counter bid, even higher risk. We note that the number of hostile bids or bullet offers has declined even under the current timetable. A longer consultation period is needed prior to changes being implemented, with greater analysis of the pros and cons for all parties (logistical, strategic and financial). While the impact assessment mentions financial costs to the offeror, it does not refer to logistical, strategic and other implications for each party. We wonder whether there are alternative structures that have been or could be considered and whether, if implemented, consent should be required in all cases. For example, would the arguments presented by the Code Committee still hold if the offer period had commenced with a Rule 2.4 announcement more than 14 days prior to the release of a Rule 2.7 announcement?

**Q7 Should an offeror or offeree company which has made a post-offer undertaking always be required to publish, in whole or in part, any report submitted to the Panel under Rule 19.5(h)?**

8. Yes, we agree that such reports should be published.

**Q8 Do you have any comments on the proposed amendments to Rule 19.5(h)?**

9. We have no comments on the proposed amendments.

**Q9 Should an offeror or offeree company which has made a post-offer intention statement be required, at the end of the period of 12 months from the date on which the offer period ends, or such other period of time as was specified in the statement, to confirm in writing to the Panel whether it has taken, or not taken, the course of action described in the post-offer intention statement and publish that confirmation via a RIS?**

10. Given the existing obligations under Rule 19.6(b), we understand that the proposed amendments should result, in practice, only in statements being made by offerors (or offerees) confirming that the actions described in any post-offer intention statements were taken, or not taken, as set out in the offer document. It would be helpful to have more clarity on the responsibility of offerors (and, where relevant, offerees) in relation to such confirmations. It would also be helpful if the Panel could confirm that the financial adviser will not be held liable for reviewing such confirmations.

**Q10 Do you have any comments on the proposed new Rule 19.6(c)**

11. Subject to the above, we have no comments.