

Asset valuations

AIC's response to the Takeover Panel consultation

The Association of Investment Companies (AIC) is a trade body for the closed-ended investment company sector. We represent over 355 investment companies, managing assets of over £165 billion. The AIC's members are predominantly listed on the Main Market of the London Stock Exchange. Some have shares admitted to trading on the Specialist Fund Segment; others are quoted on AIM.

The AIC's members include investment trusts, Venture Capital Trusts, UK REITs and non-EU companies. Our non-EU members are primarily domiciled in Guernsey and Jersey.

Closed-ended investment companies are collective vehicles which pool their shareholders' capital and hold a portfolio of assets to spread risk and generate an investment return. Investments include listed securities, private equity, debt, property and infrastructure. Investment in property can be direct or take the form of investment in a company owning property.

The AIC broadly welcome the proposals to amend Rule 29 and codify current practice. However, we have some specific comments and recommendations which are set out below.

Short consultation period

The AIC is concerned that the consultation period has been limited to just over seven weeks. It is usual for consultations to be open for three months.

As a matter of policy and best practice, the AIC **recommends** the Takeover Panel adopts a longer consultation period in future, particularly for non-urgent matters.

Consultation responses

Q1 Is a period of 12 months prior to the commencement of the offer period an appropriate "look back" period in order for Rule 29 to apply to a valuation under the proposed Rule 29.1(a)(ii)?

No. This period should be shorter. Valuations that are 12 months old are likely to be considered out of date. The AIC **recommends** that Rule 29 apply to valuations published in the 6 month period prior to commencement of the offer period.

Rule 29.1(a)(ii) and (iii) should be amended as follows:

"(ii) in the ~~12~~ 6 months prior to the commencement of the offer period; or

(iii) more than ~~12~~ 6 months prior to the commencement of the offer period if attention is drawn to the valuation in the context of the offer by the offeree company or a securities exchange offeror (as applicable)."

(Delete text ~~struck through~~ and insert text underlined)

Q2 Do you have any comments on the application of Rule 29 to a valuation published in the circumstances described in the proposed Rule 29.1(a)(i), (ii) or (iii)?

The AIC has no comments on this question.

Q3 Do you have any comments on the proposed wording “unless the Panel considers that the valuation is not material to offeree company shareholders in making a properly informed decision as to the merits or demerits of the offer”?

The AIC has no comments on this question.

Q4 Do you have any other comments on the proposed new NB at the beginning of Rule 29, the proposed Rule 29.1(a) or the proposed new Note on Rule 29.1?

The AIC has no comments on this question.

Q5 Should the specific types of asset valuations to which Rule 29 applies be those referred to in the proposed Rule 29.1(b)?

No. The proposed Rule 29(b)(iii) states it will apply to a valuation of “*unquoted investments representing in aggregate 10% or more of the gross asset value of an investment company.*”

It is not clear why this is being proposed for investment companies but not other similar investments. If it is considered necessary to have a valuation on unquoted investments, all companies should be subject to the same requirements.

The 10% limit set is too low. Valuation reports are expensive to produce. Companies, such as investment companies, that produce net asset valuations are disclosing current and regular valuations to the market. To prevent unnecessary time and costs being incurred by shareholders for no additional benefit, the AIC **recommends** the valuation limit to be increased to 30% for unquoted investments.

To achieve this outcome, the AIC **recommends** that Rule 29(b)(iii) is revised as follows:

“unquoted investments representing in aggregate ~~10~~ 30% or more of the gross asset value of ~~an investment company~~ a company.”

(Delete text ~~struckthrough~~ and insert text underlined)

Q6 Should the Panel have the ability to apply Rule 29 to a valuation of other assets or liabilities, as referred to in the proposed Rule 29.1(c)?

The AIC has no comments on this question.

Q7 Do you have any comments on the proposed Rules 29.1(b) and (c)?

See our response to question 5 above.

Q8 Do you have any comments on the proposed Rule 29.1(d) in relation to the publication of a net asset value or adjusted net asset value?

Where a company falls within the requirements set out in Rule 29.1(b)(iii), the wording in Rule 29.1(d) is ambiguous about whether a valuation is required in relation to all the assets or only in relation to the unquoted investments representing in aggregate 10% or more of the gross asset value.

The AIC **recommends** Rule 29.1(d) be revised as follows:

“If the offeree company or a securities exchange offeror publishes, or has published, a net asset value or an adjusted net asset value in circumstances where Rule 29.1(a) would apply if a valuation had been published in respect of the underlying assets

- (i) *a valuation of the underlying assets falling within scope of Rule 29.1(b) must be published; and...*”

(Delete text ~~struckthrough~~ and insert text underlined)

Q9 Should the Code require that a valuation published during the offer period must be in the form of, or accompanied by, a valuation report?

The AIC has no comments on this question.

Q10 Should the Code require that a valuation report in respect of a valuation falling within the proposed Rule 29.1(a)(ii) or (iii) should be included in the offer document or the offeree board circular (as appropriate) or, if earlier, in the first announcement or document published during the offer period by the offeree company or the securities exchange offeror (as the case may be) which refers to that valuation?

The AIC has no comments on this question.

Q11 Do you have any other comments on the proposed Rule 29.2, regarding the requirement for a valuation report, or on the proposed new Note on Rule 29.2, in relation to the circumstances where it is not possible to obtain a valuation report within the required timeframe?

The Note on Rule 29.2 states that a delay may only be granted by the Panel in “exceptional circumstance”. Valuation reports often take considerable time to prepare. For example, where a company has a portfolio of unquoted investments a number of specialist valuers may be used to value different holdings. The valuers may need to value the assets from first principles as it may be difficult to get a relevant benchmark.

There may be a number of reasons why a valuation may not be prepared in time to be included in the timeframe set out in Rule 29.2(b). The AIC **recommends** the final sentence in the Note be amended as follows:

“... In such cases, the Panel may consent to a delay in the publication of a valuation report but will only consent to a delay beyond the date of the offer document or offeree

board circular (as the case may be) ~~in exceptional circumstances~~ where it is reasonable to do so.

(Delete text ~~struckthrough~~ and insert text underlined)

Q12 Do you have any comments on the proposed Rule 29.3 in relation to the requirements applying to valuers?

The AIC has no comments on this question.

Q13 Do you have any comments on the proposed Rule 29.4 in relation to a valuation report?

The AIC has no comments on this question.

Q14 Do you have any comments on the proposed Rule 29.5 in relation to “no material difference” statements?

The AIC has no comments on this question.

Q15 Do you have any comments on the proposed Rule 29.6 in relation to the requirement to give an estimate of the amount of the potential tax liability which would arise upon a sale of the assets?

The AIC has no comments on this question.

Q16 Do you have any comments on the proposed Rule 29.7 in relation to information in valuation reports which could constitute a profit forecast?

The AIC has no comments on this question.

Q17 Do you have any comments on the proposed Rule 29.8 in relation to the valuation by one party to an offer of another party’s assets?

The AIC has no comments on this question.

Q18 Do you have any comments on the consequential amendments to the Code proposed in Section 9(d) of the PCP?

The AIC has no comments on this question.

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To discuss the issues raised in this paper please contact:

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