

The Secretary to the Code Committee  
The Takeover Panel  
One Angel Court  
London  
EC2R 7HJ

By email to [supportgroup@thetakeoverpanel.org.uk](mailto:supportgroup@thetakeoverpanel.org.uk)

15 January 2021

Dear Sirs

We welcome the opportunity to comment on the proposed changes to the offer timetable and conditions to offers in the Takeover Code.

The Chartered Governance Institute is the professional body for governance. We have members in all sectors and our Royal Charter purpose is to lead 'effective governance and efficient administration of commerce, industry and public affairs'. With more than 125 years' experience, we work with regulators and policy makers to champion high standards of governance and provide qualifications, training and guidance. The Institute is the professional body that qualifies Chartered Secretaries and Chartered Governance Professionals, which includes company secretaries. Company secretaries have a key role in companies' governance arrangements including corporate actions and our members are therefore well placed to understand the proposed changes to the Takeover Code.

Our responses to the questions set out in the Public Consultation Paper are set out below.

**Q1 Do you have any comments on the amendments to the Code in relation to the offer timetable proposed in Section 2 of the PCP?**

No. We support the proposed offer timetable set out in the consultation paper.

**Q2 Should the Panel have the ability to suspend an offer timetable if a condition relating to an official authorisation or regulatory clearance has not been satisfied or waived by the second day prior to Day 39, as proposed?**

Yes. We support the Panel having the ability to suspend an offer timetable in the circumstances discussed.



**Q3 Should an offer timetable which has been suspended under the proposed new Rule 31.4(a) normally resume on the 28th day prior to Day 60 when the last relevant condition is satisfied or waived?**

Yes. We support the proposal that a timetable which has been suspended should normally resume in the circumstances set out in new Rule 31.4(b).

**Q4 Do you have any comments on the proposals in relation to a suspended offer timetable resuming with the consent of the offeree company?**

No. We have no comments and support the proposals reflected in new Rule 31.4(c).

**Q5 Do you have any comments on the proposals in relation to offer timetable suspensions in competitive situations?**

No. We support the proposals in relation to competing offer situations.

**Q6 Should an offeror continue to be able to announce an offer subject to pre-conditions in accordance with Rules 13.3 and 13.4?**

Yes. We agree that an offeror should continue to be able to announce an offer in accordance with Rules 13.3 and 13.4, subject to the proposed amendments set out in the PCP.

**Q7 Should an offeror be required to set a “long-stop date” for a contractual offer, as proposed?**

Yes. We support this proposal as set out in the PCP.

**Q8 Should there be a requirement for an offeror to take the procedural steps necessary for a scheme of arrangement to become effective, as proposed?**

Yes. We agree with this proposal and support the associated amendments to the Code.

**Q9 Should the requirement for an offer to include a “mandatory lapsing term” if a Phase 2 CMA reference is made or Phase 2 European Commission proceedings are initiated be removed from the Code?**

Yes. We agree that it is appropriate to remove this requirement from the Code.

**Q10 Should the exemption from the “material significance” requirement in Rule 13.5(a) for CMA and European Commission clearance conditions and pre-conditions be removed?**

Yes. We agree this exemption should be removed and the relevant wording of the Code be deleted.

**Q11 Should a pre-condition relating to a clearance from the CMA or the European Commission be treated in the same way as a pre-condition relating to any other official authorisation or regulatory clearance?**

Yes. We support this proposal and the associated amendments to Rule 13.3.

**Q12 Should an offeror be required to serve an “acceptance condition invocation notice” in the form proposed if it wishes to lapse its offer on the acceptance condition prior to the unconditional date?**

Yes. We agree with this proposal and the introduction of new Rule 31.6.

**Q13 Do you have any comments on the proposals relating to the removal from the Code of references to “closing dates”?**

No. We agree that the references to “closing dates” should be replaced by the amendments set out in the PCP.

**Q14 Should an offeror be required to make announcements as to acceptance levels as proposed in the amended Rule 17.1?**

Yes. We believe it is appropriate for an offeror to be required to make announcements as set out in the amended Rule 17.1.

**Q15 Should there be a single latest date (i.e. Day 60) for the satisfaction of (a) the acceptance condition and (b) the other conditions to an offer?**

Yes. We agree with the proposal that there be a single latest date for the satisfaction of all conditions of an offer.

**Q16 Should the Code provide that the acceptance condition must not be capable of being satisfied until all of the other conditions have been satisfied or waived, subject to the ability of the Panel to grant dispensation where this is not possible?**

Yes. We also agree that, if the Code is amended to provide for a single date for satisfaction of all conditions, the acceptance condition must not be capable of being satisfied in advance of all other conditions being satisfied or waived (subject to the Panel granting any dispensation).

**Q17 Do you have any comments on the proposals in relation to the period for which an offer must remain open for acceptance and the closing of the offer?**

No. We agree with the proposals for the period an offer must remain open for acceptance and closing the offer.

**Q18 Should Rule 13.6 in relation to invoking offeree protection conditions be deleted as proposed?**

Yes. We agree that Rule 13.6 should be deleted and support the consequential amendments to other sections of the Code.

**Q19 Do you have any comments on the proposed amendments to the Code in relation to withdrawal rights?**

No. We support the proposed amendments in relation to withdrawal rights.

**Q20 Do you have any comments on the proposed amendments to Rule 13.5(a) with regard to the invocation of conditions and pre-conditions?**

No. We support the proposed amendments to Rule 13.5(a) as set out in the PCP.

**Q21 Do you have any comments on the proposed new Rule 13.5(b), with regard to the conditions and pre-conditions to which Rule 13.5(a) does not apply, or on the proposed new Rules 13.5(c) and (d), with regard to the disclosures to be made in the firm offer announcement and the offer document?**

No. We have no comments with regard to these proposals.

**Q22 Should the Panel be able to grant a dispensation from the restriction on a person triggering a conditional mandatory offer where the triggering share purchase would itself be subject to a condition relating to a material official authorisation or regulatory clearance, as proposed in the new Note on Rule 9.4?**

Yes. We support this proposal and the new Note on Rule 9.4.

**Q23 Do you have any comments on the miscellaneous amendments proposed in Section 11 of the PCP?**

We have no comments on the miscellaneous amendments proposed in Section 11.

If you would like to discuss any of the above comments in further detail, please contact me.

Yours faithfully

**Peter Swabey**  
Policy & Research Director