



MISCELLANEOUS CODE AMENDMENTS

Issued 17 February 2022

ICAEW welcomes the opportunity to comment on the consultation, Miscellaneous Code Amendments, published by the Code Committee of the Takeover Panel on 2 December 2021, a copy of which is available from this [link](#).

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ANSWERS TO SPECIFIC QUESTIONS

Q1 Should the Code be amended as proposed so as to require a publicly identified potential offeror to announce any minimum level, or particular form, of consideration it is obliged to offer to offeree company shareholders?

1. We support the proposal to require a publicly identified potential offeror to announce any minimum level, or particular form, of consideration it is obliged to offer to offeree company shareholders.
2. We consider, however, that transparency can be achieved - with greater certainty - if the announcement is made by the Opening Position Disclosure (OPD) deadline. There will be some cases where it may be difficult to make an announcement at the start of the offer period, without it being qualified. Would the Panel be minded to agree to a qualified announcement being made or, if not, would it consider providing additional flexibility by changing the proposed deadline to coincide with that for the OPD?

Q2 Should a mandatory offeror, and any person acting in concert with it, be restricted from acquiring additional interests in shares in the offeree company in the 14 days up to and including: (a) the unconditional date; and (b) the expiry of an acceptance condition invocation notice?

3. We accept that a target shareholders' acceptance decisions may be facilitated by the freezing of a mandatory offeror's control position as proposed in the PCP. However, we are aware of little evidence to suggest that this benefit will in fact crystallise. We are concerned that the negative consequence for liquidity of removing a willing buyer will outweigh the theoretical benefit to shareholders, and thus question the proposed rule changes. Can the Panel provide further explanation for its decision to initiate these changes?

Q3 Should the new Note 5 on Rule 9.5 be introduced as proposed in order to clarify the application of the "look-back period" for determining the minimum price of a mandatory offer?

4. Yes, the new Note on Rule 9.5 should be introduced as proposed.

Q4 Should the test in limb (b) of Note 8 on Rule 9.1 be deleted such that the test in limb (a) would become the sole test for determining whether a chain principle offer is required, other than in exceptional circumstances?

5. Yes, we agree with the removal of the subjective test in limb (b).

Q5 Should the threshold at which relative values would be considered to be "significant" for the purposes of the test currently set out in limb (a) of Note 8 on Rule 9.1 be reduced from 50% to 30%?

6. Yes, the threshold should be reduced as proposed.

Q6 Should Note 1 on Rules 35.1 and 35.2, Note 2 on Rule 2.5 and Note 2 on Rule 2.8 be amended as proposed in relation to the restrictions following the lapsing of an offer or a statement of no intention to bid?

7. Yes, the amendments should be made as proposed.

Q7 Should the minor amendments to the Code set out in Section 7 of the PCP be adopted as proposed?

8. We are broadly in agreement with the amendments although we think that the proposal regarding the term 'whitewash' could be further improved. There would be merit, for example, if the replacement term better signalled that the dispensation from Rule 9 is dependent on shareholder approval. This would differentiate such a dispensation from a waiver that is granted by the Panel (and not subject to the approval of shareholders).