

RS 2022/1 5 May 2022

THE TAKEOVER PANEL

REMOVAL OF RESTRICTION ON ANONYMOUS ORDER BOOK DEALINGS

RESPONSE STATEMENT BY THE CODE COMMITTEE



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1. Introduction and summary

(a) Introduction

1.1 On 7 February 2022, the Code Committee of the Takeover Panel (the “**Code Committee**”) published a [Public Consultation Paper](#) (“**PCP 2022/1**” or the “**PCP**”) which proposed the removal of the restriction on an offeror purchasing shares in the offeree company through an anonymous order book, as set out in **Rule 4.2(b)** (*Restriction on dealings by the offeror and concert parties*) of the [Takeover Code](#) (the “**Code**”).

(b) Summary of proposals

1.2 **Rule 4.2(b)** provides that, during an offer period, an offeror and persons acting in concert with it must not acquire an interest in any securities of the offeree company through any anonymous order book system, or through any other means, unless, in either case, it can be established that the seller, or other party to the transaction in question, is not an exempt principal trader connected with the offeror.

1.3 **Section 2** of the PCP proposed that **Rule 4.2(b)** should be deleted on the basis that it is no longer proportionate for the Code to restrict purchases of offeree company shares by an offeror on an anonymous order book.

1.4 In addition, it was proposed to make consequential amendments to **Rule 38.2** (*Dealings between offerors and connected exempt principal traders*) and minor and clarificatory amendments to **Rule 4.2(a)**.

(c) Responses to consultation

1.5 The consultation period in relation to PCP 2022/1 ended on 18 March 2022. The three respondents are listed in **Appendix A** and their responses have been published on the Panel’s [website](#). The Code Committee thanks the respondents for their comments.

1.6 The respondents supported the proposals.

(d) The Code Committee’s conclusions

1.7 Having considered the responses to the consultation, the Code Committee has adopted the amendments proposed in the PCP.

(e) Code amendments

1.8 The amendments to the Code which the Code Committee has adopted as a result of the consultation are set out in **Appendix B**. In Appendix B, underlining indicates new text

and striking-through indicates deleted text, as compared with the current provisions of the Code.

(f) Implementation

- 1.9 The amendments to the Code set out in this Response Statement will take effect on Monday, 13 June, 2022 (the “**implementation date**”).
- 1.10 The Code, as amended, will be applied from the implementation date to all companies and transactions to which it relates, including those on-going transactions which straddle that date, except where to do so would give the amendments retroactive effect.
- 1.11 Where parties have doubts as to the consequences of the amendments to the Code set out in this Response Statement, in particular the impact on any transaction which is in existence or contemplation, they should consult the Panel prior to the implementation date to obtain a ruling or guidance.

(g) Practice Statement

- 1.12 The Code Committee understands that, when the amendments to the Code set out in this Response Statement come into effect, the Panel Executive intends to publish a Practice Statement in relation to purchases of shares in the offeree company by an offeror during an offer period.

2. Removal of restriction on anonymous order book dealings

(a) Summary of proposals

2.1 Section 2 of the PCP proposed:

- (a) the deletion of **Rule 4.2(b)**, so as to remove the restriction on an offeror purchasing shares in the offeree company through an anonymous order book;
- (b) amendments to **Rule 38.2**, so as to make clear that a dealing through an anonymous order book system would not be in breach of the prohibition on an offeror dealing with a connected exempt principal trader in offeree company shares, provided that neither the offeror nor the principal trader is aware of the identity of its counterparty; and
- (c) minor and clarificatory amendments to **Rule 4.2(a)**, which would become new **Rules 4.2(a) to (d)**.

(b) Respondents' comments

Q Do you have any comments on the proposed deletion of Rule 4.2(b) and the proposed amendments to Rule 38.2 and Rule 4.2(a) ?

2.2 The respondents supported the proposals and did not have any additional comments or suggestions.

(c) Code amendments

2.3 In the light of the above, the Code Committee has:

- (a) deleted **Rule 4.2(b)**, as proposed in paragraph 2.23 of the PCP;
- (b) amended **Rule 38.2**, as proposed in paragraph 2.27 of the PCP; and
- (c) made certain minor and clarificatory amendments to **Rule 4.2(a)**, which has become new **Rules 4.2(a) to (d)**, as proposed in paragraph 2.28 of the PCP.

APPENDIX A**Respondents to PCP 2022/1**

1. Institute of Chartered Accountants in England and Wales
2. Joint Working Party of the Company Law Committees of the City of London Law Society and the Law Society of England and Wales
3. UK Finance

APPENDIX B

Amendments to the Code

Rule 4.2

4.2 RESTRICTION ON DEALINGS BY ~~THE AN~~ OFFEROR AND PERSONS ACTING IN CONCERT PARTIES

(a) During an offer period, ~~the neither an offeror and nor any persons~~ acting in concert with it ~~must not may~~ sell any securities in the offeree company except with the prior consent of the Panel and following 24 hours public notice that such sales might be made.

(b) The Panel will not give consent for sales of securities pursuant to Rule 4.2(a):

(i) where the offeror is making a mandatory offer under Rule 9 is being made; or

(ii) Sales at below the value of the a voluntary offer will not be permitted.

(c) After there has been Following an announcement that sales may be made, pursuant to Rule 4.2(a):

(i) neither the offeror nor any persons acting in concert with it may acquire an interest in any securities of the offeree company; and

(ii) the offer may not be revised other than only in exceptional circumstances and only with the prior consent of will the Panel permit the offer to be revised.

(d) The Panel should must be consulted whenever the if an offeror or any person acting in concert with it proposes to enter into or close out any type of transaction which may result in securities in the offeree company being sold during the offer period either by that party person or by the counterparty to the transaction.

~~(b) During an offer period, the offeror and persons acting in concert with it must not acquire an interest in any securities of the offeree company through any anonymous order book system, or through any other means, unless, in either case, it can be established that the seller, or other party to the transaction in question, is not an exempt principal trader connected with the offeror.~~

~~In the case of dealings through an inter-dealer broker or other similar intermediary, "seller" includes the person who has transferred the securities to the intermediary as well as the intermediary itself. (See also Rule 38.2.)~~

Rule 38.2

38.2 DEALINGS BETWEEN OFFERORS AND CONNECTED EXEMPT PRINCIPAL TRADERS

(a) An offeror and any person acting in concert with it must not deal as principal with an exempt principal trader connected with the offeror in relevant securities of

the offeree company during the offer period. Dealings through an anonymous order book system are, however, permitted provided that neither party to the transaction is aware of the identity of the other party.

(b) It will generally be for the advisers to the offeror (including a corporate broker) to ensure compliance with ~~this~~ Rule 38.2(a) rather than the principal trader. ~~(See also Rule 4.2(b).)~~