



## MISCELLANEOUS CODE AMENDMENTS

Issued 22 December 2022

ICAEW welcomes the opportunity to comment on the consultation, *Miscellaneous Code amendments*, published by the Takeover Panel on 19 October 2022, a copy of which is available from this [link](#).

For questions on this response please contact the Corporate Finance Faculty team at [CFF@icaew.com](mailto:CFF@icaew.com) quoting REP 97/22.

This response of 22 December 2022 has been prepared by the ICAEW Corporate Finance Faculty. The faculty is ICAEW's centre of professional expertise in corporate finance. It contributes to policy development and responds to consultations by international organisations, governments, regulators and other professional bodies. It provides a wide range of services, information, guidance, events and media to its members, including its highly regarded magazine *Corporate Financier* and its popular series of best-practice guidelines. The faculty's international network includes member organisations and individuals from major professional services groups, specialist advisory firms, companies, banks and alternative lenders, private equity, venture capital, law firms, brokers, consultants, policymakers and academic experts. More than 40 per cent of the faculty's membership are from beyond ICAEW.

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports and regulates more than 165,000 chartered accountant members in over 147 countries. ICAEW members work in all types of private and public organisations, including public practice firms, and are trained to provide clarity and rigour and apply the highest professional, technical and ethical standards.

© ICAEW 2022

All rights reserved.

This document may be reproduced without specific permission, in whole or part, free of charge and in any format or medium, subject to the conditions that:

- it is appropriately attributed, replicated accurately and is not used in a misleading context;
- the source of the extract or document is acknowledged and the title and ICAEW reference number are quoted.

Where third-party copyright material has been identified application for permission must be made to the copyright holder.

---

### ICAEW

Chartered Accountants' Hall Moorgate Place London EC2R 6EA UK  
[icaew.com](http://icaew.com)

The Institute of Chartered Accountants in England and Wales (ICAEW) incorporated by Royal Charter (RC000246)  
Registered office: Chartered Accountants' Hall Moorgate Place London EC2R 6EA UK

## ANSWERS TO SPECIFIC QUESTIONS

**Q1 Should section 2(c) of the Introduction to the Code be amended to provide greater flexibility for the Panel to grant a dispensation from a requirement of the Code in order to facilitate the rescue of a company which is in serious financial difficulty and in other exceptional circumstances?**

1. We agree that section 2(c) of the Introduction to the Code be amended as proposed.

**Q2 Should Note 3 of the Notes on Dispensations from Rule 9 be amended as proposed to remove the limitations on the Panel's flexibility to waive the requirement for a mandatory offer where an urgent rescue operation is the only way to save a company in serious financial difficulty?**

2. We agree that Note 3 of the Notes on Dispensations from Rule 9 be amended as proposed.

**Q3 Should Note 2 on Rule 2.2 be deleted as proposed?**

3. We agree with the proposed deletion of Note 2 on Rule 2.2.

4. Can the Code Committee confirm whether the Panel's discretion as to whether to require an announcement, depending on the specific circumstances (paragraph 3.10 in the PCP), will apply where there is a price movement?

**Q4 Should Note 3 on Rule 9.5 be amended as proposed so as to require an adjusted mandatory offer price to be "appropriate"?**

**Q5 Should Note 3 on Rule 9.5 be amended as proposed in relation to the publication of a decision to adjust the mandatory offer price?**

5. We agree that Note 3 on Rule 9.5 be amended as proposed in Q4 and Q5.

**Q6 Should there be a requirement for the board of the offeree company to make a recommendation to shareholders and to holders of Rule 15 securities as to the action that they should take in respect of an offer (including any alternative offers) or a Rule 15 offer or proposal? Do you have any comments on the proposed amendments to Rule 25.2 and Rule 15.2 and the related provisions of the Code?**

6. In our view, together with the introduction of the express requirement for a recommendation to shareholders and to holders of Rule 15 securities as to the action that they should take in respect of an offer (including any alternative offers) or a Rule 15 offer or proposal, there should be more explicit recognition that it may not be possible to recommend a course of action regarding each alternative offer. Note 2 on Rule 25.2, with the proposed amendments, could be interpreted to mean that a course of action must be recommended in respect of each alternative.

**Q7 Should the offeree board circular be required to state details of the directors' intentions in relation to any alternative offers and, where required by the Panel, the reasons for a director's decision to elect for a particular alternative? Do you have any comments on the proposed amendments to Rule 25.4(a)?**

7. While we accept the principle that the offeree board circular should be required to disclose the details of directors' intentions in relation to any alternative offers, we would like to understand how such disclosure should be managed where a director

- has not yet reached a decision; or
- subsequently changes their mind.

8. Please can the Code Committee clarify the extent to which directors are bound by the intentions that are in the circular, and any consequential disclosure requirements?

***Q8 Should Note 2 on Rule 3.1, Note 2 on Rule 3.3 and Note 3 on Rule 25.2 be deleted as proposed?***

9. We agree that Note 2 on Rule 3.1, Note 2 on Rule 3.3 and Note 3 on Rule 25.2 should be deleted as proposed.

***Q9 Should the Code be amended so that, if details of an irrevocable commitment or letter of intent are announced under Rule 2.10, the underlying irrevocable commitment or letter of intent must be published on a website by the same deadline?***

10. We agree that the Code should be amended as proposed.