



Quoted Companies Alliance

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The Secretary to the Code Committee
The Takeover Panel
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Friday 13 January 2023

Dear Code Committee members,

The Offer Timetable in a competitive situation (PCP 2022/3)

We welcome the opportunity to respond to your consultation on the Offer Timetable in a competitive situation.

The Quoted Companies Alliance *Legal Expert Group* has examined the proposals and is responding from the viewpoint of small and mid-sized quoted companies. A list of Expert Group members can be found in Appendix A.

We recognise that recent cases have raised questions as regards the operation of the Code timetable in a competitive situation, in particular where an offer is competing with a scheme. We consider that the changes proposed in this paper represent a reasonable and well considered clarification of the position.

We also particularly appreciated the inclusion of Appendix B in the consultation materials. That Appendix provided a reader-friendly summary of the existing provisions of the Code as they relate to competing offers.

If you would like to discuss our response in more detail, please do not hesitate to contact us.

Yours sincerely,

A handwritten signature in blue ink that reads "James Ashton".

James Ashton
Chief Executive

Q1 Should Note 2 on Rule 32.5 be amended as proposed?

Yes – we agree with the proposed amendment to Note 2 on Rule 32.5. The clarification of the Panel’s approach in Note 2(c) is particularly helpful given the lack of flexibility inherent in a Scheme timetable and the desirability of offeree shareholders knowing the outcome of the Scheme vote before making a decision on any competing offer.

The consultation paper itself makes reference to the potential Rule 21 issue which may arise where the “faster offeror” is proceeding by way of a scheme of arrangement. Given that this issue is specific to schemes of arrangement, we wonder whether the Panel might consider the inclusion of a further note on Rule 32.5 (Rule 2(d)). This could highlight that in situations where a competing offer is made between the shareholder vote on a Scheme but prior to Court sanction, a competing offer is made, regard should be had to the provisions of Rule 21 which, in certain circumstances, may require a shareholder vote to be held prior to the directors of the offeree making application for Court approval of the Scheme.

Q2 Should: (a) Note 1 on Rule 31.3; (b) the Note on Rule 31.4; and (c) the definition of “Day 46” in Appendix 8, be amended as proposed and the new Note on Section 7 of Appendix 7 be introduced as proposed?

Yes – these amendments will assist parties in understanding how the offer timetable for a contested offer will operate where there has been a suspension under Rule 31.4. The cross references to relevant provisions elsewhere in the Code are also a welcome addition.

Appendix A

The Quoted Companies Alliance *Legal Expert Group*

Mark Taylor (Chair)	Dorsey & Whitney (Europe) LLP
Stephen Hamilton (Deputy Chair)	Mills & Reeve LLP
Danette Antao	Hogan Lovells International LLP
Paul Arathoon	Charles Russell Speechlys LLP
Kate Badr	CMS
Naomi Bellingham	Practical Law Company Limited
Ross Bryson	Mishcon De Reya
Philippa Chatterton	CMS
Paul Cliff	Gateley
Jonathan Deverill	DAC Beachcroft LLP
Sarah Dick	Stifel
Tunji Emanuel	LexisNexis
Kate Francis	Dorsey & Whitney (Europe) LLP
Claudia Gizejewski	LexisNexis
Sarah Hassan	Practical Law Company Limited
David Hicks	Charles Russell Speechlys LLP
Kate Higgins	Mishcon De Reya
Nichols Jennings	Locke Lord LLP
Martin Kay	Blake Morgan
Jonathan King	Osborne Clarke
Jennifer Lovesy	KPMG
Nicholas McVeigh	Mishcon De Reya
Catherine Moss	Shakespeare Martineau LLP
Hilary Owens Gray	Practical Law Company Limited
Kieran Rayani	Stifel
Jaspal Sekhon	Hill Dickinson LLP
Patrick Sarch	Hogan Lovells LLP
Donald Stewart	Kepstorn
Gary Thorpe	QCA Director
Robert Wieder	Faegre Drinker LLP
Sarah Wild	Practical Law Company Limited
John Young	Kingsley Napley LLP