



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,

Miscellaneous Code Amendments (PCP 2022/4)

We welcome the opportunity to respond to your consultation on miscellaneous code amendments.

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.

Overall, we consider the changes to be reasonable and well considered and any comments we have to make are very much in the nature of a sense-check rather than objections to the proposals. We do, however, make some observations on the proposed amendment to Rules 25.2 and 15.2 for consideration by the Panel.

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 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?

We support this amendment and the proposed amendment to note 3 of the Notes on Dispensations from Rule 9 referred to in the next question. We would not want the Panel to consider itself constrained by the wording of this important exemption particularly given that the survival of the company will invariably benefit not just shareholders but also other stakeholders in the company and the existing wording (to be retained) clearly contemplates dispensation being given where an “urgent rescue operation” is the only remaining solution on the table.

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?

Please see answer to Q1.

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

We have no comments.

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

We agree that the existing, “fair and reasonable” term is capable of being misconstrued and therefore support this amendment.

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?

We have no comments.

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?

Whilst we are broadly in agreement with these amendments we are concerned that the requirement for offeree directors to make recommendations on alternative offers as opposed to the offer as a whole may expose them to unintended liability. The choice between a cash offer and a securities alternative will be influenced by a broad range of factors ranging from appetite to risk, tax treatment and the overall personal investment objectives of offeree shareholders. By definition, offeree directors will not be in a position to evaluate these on behalf of individual shareholders.

The point may perhaps be addressed by including a broad summary of potentially relevant factors to be considered by offeree shareholders or a list of caveats, but the utility of this is perhaps debatable. An alternative solution might be to impose a requirement for the offeree directors to provide their views/a recommendation of the offer as a whole but to address alternative consideration by way of a *commentary* as opposed to being required to provide a recommendation.

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)?

We have no comments.

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?

We have no comments.

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?

Whilst we do not have strong views on this, we consider that a requirement to bring forward the time for publishing the document itself should not be objectionable and from an offeree perspective greater transparency is clearly preferable.

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