

The Secretary to the Code Committee  
The Takeover Panel  
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To whom it may concern

## **Dual Class Share Structures, IPOs and Share Buybacks**

The Chartered Governance Institute is the professional body for governance and the qualifying and membership body for governance professionals across all sectors. Its purpose under Royal Charter is to lead effective governance and efficient administration of commerce, industry, and public affairs working with regulators and policymakers to champion high standards of governance and providing qualifications, training, and guidance. As a lifelong learning partner, the Institute helps governance professionals achieve their professional goals, providing recognition, community, and the voice of its membership.

One of nine divisions of the global Chartered Governance Institute, which was established 130 years ago, the Chartered Governance Institute UK & Ireland represents members working and studying in the UK and Ireland and many other countries and regions including the Caribbean, parts of Africa and the Middle East.

As the professional body that qualifies Chartered Secretaries and Chartered Governance Professionals, our members are well placed to understand the issues associated with the treatment of dual class share structures in a takeover situation. However, the views expressed in

this response are not necessarily those of any individual members, nor of the companies they represent.

We are grateful for the opportunity to give feedback on the proposed changes to the Takeover Code and that the Panel Committee has thought through the proposed changes and explained them so clearly.

We agree with the proposals in their entirety.

#### **Specific questions asked in the consultation paper**

**Q1 Should the new Rule 37.2(a) be introduced to provide that an increase in the voting rights of an Affected Shareholder as a result of the extinguishing or conversion of Class B shares will be treated as an “acquisition” of an interest in shares for the purposes of Rule 9.1?**

Yes, subject to the proposed Rule 37.2(b).

**Q2 Should the new Rule 37.2(b) be introduced to provide that the Panel will normally grant an “innocent bystander” dispensation from any resulting Rule 9 obligation unless (a) the trigger event is a time sunset or (b) the person acquired an interest in shares at a time when it had reason to believe that a trigger event would occur?**

Yes.

**Q3 Should the proposed new Note 6 on Rule 9.5 be introduced to provide that the Panel should be consulted as to the consideration to be offered where a requirement to make a mandatory offer arises as a result of a “deemed” acquisition of shares?**

Yes.

**Q4 Should (a) the new Note 9 on Rule 10.1 (for a voluntary contractual offer) and (b) the new Note 3 on Rule 9.3 (for a mandatory offer) be introduced in respect of the acceptance condition for an offer for a DCSS 1 company?**

Yes.



**Q5** Should Rule 14.2 be amended to provide the Panel with the ability to consent to a single combined offer for more than one class of shares?

Yes.

**Q6** Should the proposed new Note 4 on Rule 16.1 be introduced to require the Panel to be consulted where an offer is made for a company with a DCSS?

Yes

**Q7** Should the proposed new Note 3 on Rule 2.9 be introduced to provide that any announcement of the number of securities in issue made under Rule 2.9 by a DCSS 1 company must explain the voting rights carried by each class of shares and that the Panel must be consulted on the form of the announcement?

Yes.

**Q8** Should the proposed new Note 4 on Rule 17 be introduced to provide that any announcement of acceptance levels made by an offeror under Rule 17.2 in the context of an offer for DCSS 1 company must specify the voting rights carried by the shares and relevant securities in the offeree company and that the Panel must be consulted on the form of the announcement?

Yes.

**Q9** Should the proposed new section 3(e)(i) of the Introduction to the Code be introduced to provide that appropriate disclosure must be made in an IPO admission document, including in relation to the application of Rule 9 and details of any relevant person or concert party, and that the Panel must be consulted for guidance on that disclosure?

Yes.

**Q10** Should the proposed new Note 6 of the Notes on Dispensations from Rule 9 be introduced to provide that the Panel may grant a “Rule 9 dispensation by disclosure” in the context of an IPO?

Yes.



**Q11** Should the current Rule 37.1 be deleted and replaced with the proposed new Rule 37.1, including the new Notes 1(a), 1(e), 2(a) and 2(b), so as to draw a more explicit distinction between “innocent bystanders” and “directors or related persons” and to explain more clearly what the mandatory offer consequences and the process for obtaining a waiver or dispensation from Rule 9 would be in each case?

Yes.

**Q12** Should the “disqualifying transactions” regime under the current Note 5 on Rule 37.1 be replaced with the proposed new Notes 1(b), 1(c) and 1(d) on Rule 37.1?

Yes.

**Q13** Should the new Note 2(c) on Rule 37.1 be introduced to provide that, where the Panel has granted an innocent bystander dispensation on a share buyback, the company must disclose the maximum percentage of voting rights in which the relevant person, or group of persons acting in concert, might become interested?

Yes.

**Q14** Should the current Note 6 on Rule 37.1 in respect of renewals be replaced by the new Note 3 on Rule 37.1 and the reference to Chapter 4 of Part 18 of the Companies Act 2006 be removed?

Yes.

**Q15** Should the new Note 4 on Rule 37.1 be introduced to provide that the Panel should be consulted on a share buyback which could result in all or substantially all of the company’s shares being held by one person or concert party and that the Panel will normally treat such a transaction as an offer?

Yes.

**Q16** Should the final sentence of the current Note 1 on Rule 37.1, the current Notes 4, 7 and 8 on Rule 37.1 and the current Rule 37.2 be deleted?

Yes.



**Q17 Should the new Rule 37.3 be introduced in place of the current Note 6 of the Notes on  
Dispensations from Rule 9 in relation to the enfranchisement of non-voting shares?**

Yes.

If you would like to discuss any of the above comments in further detail, please do feel free to contact me.

Yours faithfully,

**Peter Swabey**

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