The City of London Law Society

The Law Society

PCP 2025/1: Dual class share structures, IPOs and share buybacks

30 July 2025

Introduction

1. The views set out in this response have been prepared by a Joint Working Party of the Company Law Committees of the City of London Law Society (**CLLS**) and the Law Society of England and Wales (the **Law Society**).

2. The CLLS represents approximately 20,000 City lawyers through individual and corporate membership, including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multijurisdictional legal issues. The CLLS responds to a variety of consultations on issues of importance to its members through its 22 specialist committees.

3. The Law Society is the professional body for solicitors in England and Wales, representing over 170,000 registered legal practitioners. It represents the profession to Parliament, Government and regulatory bodies in both the domestic and European arena and has a public interest in the reform of the law.

4. The Joint Working Party is made up of senior and specialist corporate lawyers from both the CLLS and the Law Society who have a particular focus on issues relating to takeovers.

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Response

5. As an overarching point, we agree with the Panel that taking a principles-based approach which provides sufficient flexibility is key, in particular to allow the Panel to take account of different DCSS structures that might evolve over time.

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?

6. We agree with this proposal.

7. Although not the subject of a specific question in the Consultation, we were not fully convinced by the rationale for the issue of a special share under a DCSS 2 or DCSS 3 structure having the potential to trigger a mandatory bid – in particular in circumstances where the special rights are only triggered once there has already been a change in control of the target company.

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?

8. We agree with this proposal in principle. However, we had certain questions in relation to the types of acquisition which the Panel may permit in this context or (as discussed in section 2(e) of the Consultation) without invalidating a Rule 9 dispensation by disclosure – see further our response to Q10 below.

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?

9. We agree with this proposal. We note that the list of factors the Panel may choose to take into account when considering the offer price is not expressed to be exhaustive – we assume that the Panel may also (among other things) choose to take into account any relevant valuation metrics for the particular business/industry in question.

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?

10. We agree with these proposals. We also welcome the confirmation in the Consultation that the Panel would allow a bidder to set different acceptance levels for each of the two elements of the acceptance condition.

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?

11. Yes – we agree with this proposal.

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?

12. Yes – we agree with the proposed requirement to consult the Panel. In the context of some of the related discussion in the Consultation, we note that the Panel frames this on the assumption that the special rights would always be extinguished or the shares converted on a change of control or transfer. Where this is not the case, we assume that a different view may be taken on the Rule 16 analysis and the ability of the bidder to pay a premium for the special share(s) even where not specifically catered for in the share rights, whilst Rule 14 would also be likely to come into play, but it would be helpful to understand how the Panel would approach this type of scenario or golden/special shares. As a minimum, we think that it would be helpful for the Panel to acknowledge in the response statement that the approach and analysis is likely to differ where the special rights would continue to be exercisable following transfer.

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?

13. Yes – we agree with this proposal.

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?

14. Yes – we agree with this proposal.

15. We also agree with the Panel's analysis of the application of the frustrating action rules as discussed in this section of the Consultation.

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?

16. Yes – we agree with this proposal.

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?

17. We agree with the proposal to formalise the Panel's ability to grant a Rule 9 dispensation by disclosure on IPO. However, we had certain questions in relation to the types of acquisitions that would be permitted under paragraph (c) of the note as discussed in paragraph 2.50 of the Consultation, in particular in light of the extended period there may be between IPO and the time of any trigger event.

18. In particular:

- In the context of pro rata subscriptions for new shares the Consultation refers to scrips and dividend reinvestment plans as examples of acquisitions of interests that would not normally invalidate a Rule 9 dispensation by disclosure on the basis that the percentage of shares/voting rights held would remain unchanged. This would not necessarily be the case where, whilst offered pro rata, shareholders have a choice as to whether to take up shares – e.g. a scrip dividend alternative or an "up to" open offer which is not underwritten and where shares not taken up will not be issued. We assume that the focus of the Panel will be on whether the structure is pro rata and that, where that is the case (absent unusual circumstances), the Rule 9 waiver would not usually be invalidated where a shareholder follows their pro-rata entitlement merely because not all other shareholders chose to participate, but it would be helpful if the Panel could confirm this.

- How would the Panel approach acquisitions made as a result of options/awards issued under the company's share incentive schemes? Would these need to be subject to a Rule 9 waiver? Where the options/awards are satisfied by the EBT transferring existing shares (rather than the issue of new shares) would the Panel still take the same approach?

19. Separately, it would be helpful to understand how the Panel would approach a position where, in the case of a shareholder that is not an individual, there is a change of control of that shareholder post-IPO and whether this would impact the Rule 9 dispensation granted to it.

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?

20. Yes – we agree with this proposal and think the clarification is helpful.

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?

21. Yes we agree with this approach – in particular, we think that clarifying the distinction between knowledge of the company seeking a general authority and knowledge of a specific redemption or purchase of own shares is helpful.

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?

22. Yes – we agree with this proposal.

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?

23. Yes – we agree with this proposal.

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?

24. We acknowledge that this reflects formalisation of current Panel practice and as such have no comments on this specific proposal, although as a more general point we would note that in our view a buyback structure does not fit particularly neatly within the Code rules when it is treated as if it were an offer. As such, additional guidance on the Panel's approach/expectations in this area may be helpful to the market.

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?

25. We had no comments on these proposals.

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?

26. Yes – we agree with this proposal and think it is helpful to take a consistent approach.