23 September 2025

Response to Takeover Panel Consultation PCP 2025/1

Thank-you for the opportunity to respond to the Consultation on PCP 2025/1, following-on from our meeting in January. By way of background, I am a former law firm partner and currently the Professor of Corporate Law and Governance at the University of Cambridge, where I have written widely on corporate governance, capital markets, private equity and company law generally. In particular, I have researched dual-class shares extensively, authoring the book on the topic "Founders Without Limits". As requested, I have replied to each of the questions set-out in the Consultation. As evidenced by the sparsity of my comments, my overarching view is that the draft amendments have been carefully and admirably thought through.

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.

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. Thought should, though, be given to the treatment of a situation where a firm has listed with DCSS 1, and enhanced-voting shares are held post-IPO by a founder and venture capitalists (**"VCs"**) (or private equity), with transfer-driven sunsets in place as required under the UK Listing Rules (**"UKLRs"**) (i.e. the enhanced-voting shares will convert into one share, one vote ordinary shares upon a transfer of those shares). Upon exit of the VCs, the founder's share of the votes will increase, but that scenario can be dealt with as of the time of IPO through the "dispensation by disclosure" provisions under proposed Note 6 to Rule 9. However, if a *third party* acquires ordinary shares post-IPO and crosses the 30% voting threshold as a result of VCs exiting post-IPO, would that third party be granted a dispensation or would that third party be deemed to have acquired the shares at a time when it has reason to believe that a trigger event would occur? Although the third party may have had no inclination as to when the VCs would sell, arguably the third party knew that the VCs would sell *at some point* (probably within a couple of years post-IPO) since their business model is generally predicated on an exit driven by finite-term underlying fund structures. Indeed, the longer the period of time post-IPO after which the third party acquires shares, the more likely that the VCs will be selling their shares soon. Clarity as to whether or not such a third party would be granted a dispensation would be helpful, since this is a situation that could become common, if DCSS listings were to become widespread. In the US, VCs often hold enhanced-voting shares post-IPO, with the intention of exiting soon after IPO (e.g. Pinterest, Zoom, Okta, RingCentral, Square, and Veeva).

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. The presumptions on consideration listed in the Consultation document are also helpful.

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. There are extreme situations where the proposed two-part-condition requirement may prevent a takeover occurring when it would otherwise be fair for it to proceed (i.e. where part 2 (voting rights held immediately after conversion/extinguishing) is satisfied, but part 1 (voting rights prior to

conversion/extinguishing) is not). An example would be where an existing enhanced-voting shareholder has not agreed to sell shares to a bidder, but has agreed to resign as a director upon the takeover closing in circumstances where the enhanced-voting shares convert into one share, one vote ordinary shares upon resignation. The bidder may not have over 50% of acceptances on the pre-conversion basis, but may do on a post-conversion basis. However, it would be an extreme set of circumstances, and given that the Takeover Code is applied on a principles-basis with the Panel holding wide discretion, it may not be worthwhile drafting for such rare events.

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 – particularly since this is in the discretion of the Panel and does not undermine squeeze-out legislation.

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, consultation should be required. Consider whether the notes to Rule 16.1, and Rule 14.1, should briefly specify, respectively, when a special deal will likely not be held to exist, and what would be considered "comparable" pricing, in the context of DCSS.

However, in relation to Rule 16.1 (and Rule 14.1) consideration should be given conceptually to the notion of "control premia". Currently the consultation suggests that under Rule 16.1 it will not be considered to be a "special deal" if the price offered for enhanced-voting shares is derived from the conversion ratio of those shares into ordinary shares. However, the consultation also envisages that *if* a controller desired a premium, they could, at IPO, specify a voting ratio of enhanced-voting shares into ordinary shares on an otherwise than 1:1 basis. Although such a structure would need to be disclosed in the IPO admission document (and therefore can be potentially priced-in by the market), it does seem to cut across the tenet of treating shareholders equally. If the equality premise was taken literally, then under Rule 16.1, the absence of a "special deal" (and under Rule 14.1, the assumption of "comparable" pricing) should only be where the price offered for enhanced-voting shares is based upon the cash-flow or equity value of those shares – i.e. if the enhanced-voting shares are entitled to the same rights to the profits of the company as the ordinary shares, then those shares should be priced equally, whether or not each enhanced-voting share converts into more than one ordinary share upon a transfer. Also, query whether the structure contemplated (each enhanced-voting share being converted into more than one ordinary share) is permissible under the UKLRs. Under UKLR 5.4.5(3)R, the voting rights attached to specified weighted voting rights (**"SWVR"**) shares cannot be transferred. If those SWVR shares convert on a more than 1:1 basis, it could be deemed a method to circumvent the rule – taken to its natural conclusion, a SWVR share with ten votes could be specified to convert into ten ordinary shares of one vote each upon a transfer. From the Takeover Code perspective, consideration should be given as to whether the Code adheres to a principle of strictly no control premia, or control premia as long as disclosed in the IPO admission document. The Consultation suggests the latter, but it would be a significant departure from the presumed position pre-Consultation (pre-DCSS, a controlling shareholder would not have been able to engender a control premium). Canada's Toronto Stock Exchange (**"TSX"**) is a model where control premia are not permitted with DCSS, with coat-tail provisions ensuring that common stockholders receive the same per share value as enhanced-voting stockholders.

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. It would also be prudent for the announcement to also specify what percentage of the total voting rights in the firm those voting rights represent as of the date of the announcement and as of the conversion/extinguishing of any enhanced-voting shares.

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?
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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.

Other

Although not covered by the Consultation, consideration should be given in the future to how other potential control-seeking arrangements should be dealt with under the Takeover Code. For example, shareholder agreements or other control-enhancing mechanisms, including being able to nominate a majority of the board. With recent changes to the UKLRs, certain arrangements that were broadly or effectively prohibited in the past may now be permissible. For example, a shareholder with less than 30% of the votes holding extensive control rights under a shareholder's agreement with a listed company.

Additionally, if DCSS firms were ever to become as prevalent as they are in the US, bespoke sunset clauses are likely to develop. The Takeover Code likely gives the Panel wide discretion to set-out at IPO how those sunset triggers will be treated from the perspective of the Takeover Code (e.g. Rule 9), and the Panel should clarify in the Takeover Code that it has the scope in relation to DCSS prior to IPO to impose requirements that deviate from the presumptive Rules and Notes of the Takeover Code, since it is not possible to foresee all eventualities in this area.

Please do let me know if you have any further questions.

Bobby Reddy.