

THE TAKEOVER PANEL

CODE COMMITTEE

PUBLIC CONSULTATION PAPER 8

The Code Committee has today issued the following Consultation Paper:

Consultation Paper	Subject
PCP8	Aggregation of dealings requiring disclosure
	Revision proposals relating to Note 4 on Rule 24.3 of the Takeover Code

The Code Committee is inviting comments on this Consultation Paper by 14 January 2002.

Copies of the Consultation Paper may be obtained from the Panel's website, at www.thetakeoverpanel.org.uk, or by telephoning the Panel on 020 7382 9026.

RESPONSE STATEMENTS 1 TO 5 AND CODE AMENDMENTS

On 16 October, the Code Committee announced that it intended to consider the responses received to Public Consultation Papers 1 to 5 and, in due course, to approve the final text of the proposed amendments to the Code and publish a paper setting out the results of the public consultation process. The Code Committee has today issued these papers, Response Statements 1 to 5, and they may be obtained from the Panel's website at www.thetakeoverpanel.org.uk, or by telephoning the Panel on 020 7382 9026.

The proposals in Public Consultation Paper 1 sought to amend the Code to the extent necessary to bring the Code into line with the FSA's proposals set out in CP 92, its

Consultation Paper relating to the dissemination of regulatory information. The FSA has yet to finalise its proposals, but on the assumption that there will be no additional proposals from the FSA which will have an impact on the Code and that all the proposals contained in CP 92 which do have an impact on the Code will be adopted, the Code Committee proposes to introduce the amendments referred to in paragraph 4 of Public Consultation Paper 1 once the FSA confirms its changes to the Listing Rules. An announcement will be made at the relevant time setting out the consequential changes to the Code and indicating the date on which such changes will take effect.

The Code Committee has decided not to amend Rule 2.4 as was proposed in Consultation Paper 2 relating to "refresher" announcements: the Code Committee accepts that the Code already provides, principally through General Principle 6, guidance as to the level of disclosure expected. However, the Code Committee reminds parties to possible bids and their advisers that the onus to comply with existing legal and regulatory disclosure requirements rests with them. The Panel has indicated to the Code Committee that it will continue to exercise its general power to require an announcement to be made as and when, in its view, circumstances so demand.

The proposals in Public Consultation Papers 3 to 5 will be implemented with some modifications. The amendments to the Code set out in Response Statements 3 to 5 are set out in the Appendix to this statement and will take effect immediately. The amended pages of the Code will be published in due course.

4 December 2001

APPENDIX

1. Rule 2.5

In Rule 2.5 (b), add a new subparagraph (vi) as follows:-

"(vi) details of any agreements or arrangements to which the offeror is party which relate to the circumstances in which it may or may not invoke or seek to invoke a pre-condition or a condition to its offer and the consequences of its doing so, including details of any break fees payable as a result;"

Existing subparagraphs (vi) and (vii) become (vii) and (viii) respectively.

2. Rule 10

Note 4

Insert a new NB as follows:-

"NB 2 It is a matter for the offeror and its advisers, in particular the receiving agent, to determine whether, for shareholders within CREST, an offer can be accepted (and the acceptance withdrawn) electronically without the need for an acceptance form. If so, the procedure to be adopted must be made clear in the offer document."

The current NB becomes NB 1.

Insert a new paragraph (a) as follows:-

"(a) if it is to be effected by means of CREST without an acceptance form, the transfer to the relevant member's escrow account has settled in respect of the relevant number of shares on or before the last time for acceptance set out in the offeror's relevant document or announcement; or,"

Existing paragraphs (a) and (b) become (b) and (c) respectively.

Before new (b), insert:-

"if it is to be effected by means of an acceptance form, both:"

In new Note (c)(iii), replace (b) in the last line with (c).

Note 5

(a) Delete existing (a) and replace with the following:-

"the offeror or its nominee (or in the case of a Rule 9 offer, a person acting in concert with the offeror, or its nominee) is the registered holder of the shares; or"

(b) In paragraph (b), replace the reference to *"paragraph b(i) of Note 4"* with *"paragraph c(i) of Note 4"*.

(c) In the final paragraph of the Note add the following to the final sentence:-

"(or, in relation to holdings in CREST in respect of which CREST maintains the register, the record of securities held in uncertificated form)."

Note 6

The existing wording is deleted, to be replaced with the following (the reference to paragraph c(iii) refers to new paragraph c(iii), i.e. existing paragraph b(iii)):

"In determining whether an acceptance condition has been fulfilled before the final closing date, all acceptances and purchases that comply with the requirements of Notes 4 and 5 on Rule 10 may be counted, other than those which fall within paragraph c(iii) of Note 4."

3. Rule 20.2

In the second sentence, after 'potential offeror', insert:-

","whether named or unnamed,"

Add at the end of that sentence:-

"or, if there has been no public announcement, when the offeror or bona fide potential offeror requesting information under this Rule has been informed authoritatively of the existence of another potential offeror."

Add a new Note 2:-

"2. Conditions attached to the passing of information

The passing of information pursuant to this Rule should not be made subject to any conditions other than those relating to: the confidentiality of the information passed; reasonable restrictions forbidding the use of the information passed to solicit customers or employees; and, the use of the information solely in connection with an offer or potential offer. Any such conditions imposed should be no more onerous than those imposed upon any other offeror or potential offeror.

A requirement that a party sign a hold harmless letter in favour of a firm of accountants or other third party will normally be acceptable provided that any other offeror or potential offeror has been required to sign a letter in similar form."

Add a new Note 4:-

"4. Mergers and reverse takeovers

Where an offer or possible offer might result in an offeror needing to increase its existing issued voting equity share capital by 100% or more, an offeror or

potential offeror for either party to such an offer or possible offer will be entitled to receive information which has been given by such party to the other party.”

Existing Notes 2 and 3 become Notes 3 and 5 respectively.

4. **Rule 24.2(d)**

Insert a new paragraph (vii) as follows :-

“(vii) details of any agreements or arrangements to which the offeror is party which relate to the circumstances in which it may or may not invoke or seek to invoke a condition to its offer and the consequences of its doing so, including details of any break fees payable as a result;”

Existing paragraphs (vii) and (viii) become (viii) and (ix) respectively.

5. **Rule 26**

(a) Add a new paragraph (n) as follows:-

“(n) a copy of any agreements or arrangements, or, if not reduced to writing, a memorandum of all the terms of such agreements or arrangements, disclosed in the offer document pursuant to Rule 24.2(d) (vii).”

(b) Delete **“and”** at the end of paragraph (1) and, at the end of paragraph (m), delete the full stop, replace with a semi-colon and insert **“and”**.

6. **Rule 31.6**

In Rule 31.6(b) in lines 3 and 10, insert **“electronic instructions or”** between **“relevant”** and **“documents”**.

Rule 31.6, Note 1

In the last sentence of this Note, insert "*electronic instructions or*" between "*relevant*" and "*documents*".

7. Appendix 4

- (a) The current "**NB**" prior to Section 1 becomes "**NB I**".

The following is added:-

"NB 2 If an offer relates to securities some or all of which are held in uncertificated form in CREST and in respect of which CREST maintains the register, references in this Appendix to the register shall be deemed to be references to:-

- (a) *the register of securities held in certificated form (if any); and*
- (b) *the record of securities held in uncertificated form maintained by the offeree company's registrar."*
- (b) In the first paragraph of Section 3(c), the final sentence can be deleted since the registrar will no longer be notifying the CREST operator of such updates.