

THE TAKEOVER PANEL

CODE COMMITTEE

REVIEW OF CERTAIN ASPECTS OF THE REGULATION OF TAKEOVER BIDS

The Code Committee of the Takeover Panel has today published a public consultation paper, [PCP 2010/2](#), as part of its review of certain aspects of the regulation of takeover bids.

The Code Committee has initiated the current review in the light of recent widespread commentary on, and discussion of, takeover bids and following the receipt of suggestions for possible amendments to the Takeover Code and other aspects of takeover regulation.

The Code Committee has not reached any conclusions on the suggestions for changes to the regulation of takeover bids discussed in PCP 2010/2 and continues to maintain an open mind on the issues raised. Given the significance and nature of the issues that have been raised, the Code Committee has chosen to break with its usual practice of setting out specific proposals and proposing drafting amendments to the Takeover Code. Instead, on this occasion, the Code Committee is seeking to provide a forum in which suggestions for possible change may be debated.

Accordingly, in respect of each issue discussed, the Code Committee has aimed to set out the background to the issue, the arguments in favour of and against the possible change, and the potential consequences that would need to be considered if the change were to be introduced. In each case, the Code Committee has then gone on to consider whether or not the possible change would be a matter solely for the Code Committee or whether, for example, a change in company law might be considered appropriate, either instead or in addition.

The issues covered in PCP 2010/2 include:

- whether the “50% plus one” minimum acceptance condition threshold for a takeover offer should be raised;
- whether voting rights should be withheld from shares in an offeree company acquired during the course of an offer period;
- whether the 1% trigger threshold for the disclosure of dealings and positions in relevant securities under the Takeover Code’s disclosure regime should be reduced;
- whether offerors should be required to provide more information in relation to the financing of takeover bids and their implications and effects and, as a separate matter, whether the boards of offeree companies should be required to set out their views on an offeror’s intentions for the offeree company in greater detail;
- whether shareholders in an offeree company should be given independent advice on an offer, whether “success fees” should be restricted, and whether details of the fees payable to advisers, and costs generally, in relation to a takeover bid should be disclosed publicly;
- whether some protections similar to those afforded to offeree company shareholders should be afforded to shareholders in an offeror company;
- whether the “put up or shut up” regime should be re-examined and whether the 28 day period between the announcement of a firm intention to make an offer and the publication of the offer document should be reduced;
- the extent to which inducement fee arrangements and other deal protection measures should be restricted; and

- whether safeguards should be reintroduced in relation to substantial acquisitions of shares.

The Code Committee would welcome comments on the issues described in PCP 2010/2. Comments should reach the Code Committee by 27 July 2010 and should be sent in the manner set out at the beginning of the PCP.

If, following this consultation, it is concluded that there is a case for change in a particular area by means of amendments to the Code, the Code Committee anticipates issuing one or more further consultation papers in due course, setting out the detail of the proposed amendments.

If it is concluded that any change in a particular area would be a matter for the Government or another regulatory authority, the Code Committee will pass on the views of respondents in that area to the Government and/or the relevant regulatory authority.

Copies of PCP 2010/2 may be obtained from the Panel's website at www.thetakeoverpanel.org.uk or may be requested from the Panel Executive by telephone (020 7382 9026) or by e-mail (supportgroup@thetakeoverpanel.org.uk).

1 June 2010

Note to Editors

The Takeover Panel is an independent body whose main functions are to issue and administer the Code and to supervise and regulate takeovers and other matters to which the Code applies in accordance with the rules set out in the Code. The Panel was set up as a non-statutory body in 1968, since when its composition and powers have evolved as circumstances have changed. On 20 May 2006, the Panel was designated by the Secretary of State for Trade and Industry as the supervisory authority to carry out certain regulatory functions in relation to takeovers under the European Directive on Takeover Bids (2004/25/EC). Its statutory functions under UK law are set out in and under Chapter 1 of Part 28 of the Companies Act 2006. The rules set out in the Code also have statutory effect in the Isle of Man, Jersey and Guernsey, by virtue of legislation applying in those jurisdictions.

The Code is designed principally to ensure that shareholders in an offeree company (i.e. the “target”) are treated fairly, and are not denied an opportunity to decide on the merits of a takeover bid, and that shareholders in an offeree company of the same class are afforded equivalent treatment by an offeror (i.e. the “bidder”). The Code also provides an orderly framework within which takeover bids may be conducted. In addition, it is designed to promote, in conjunction with other regulatory regimes, most significantly that of the Financial Services Authority, the integrity of the financial markets.

The financial and commercial merits of takeovers are not the responsibility of the Panel. These are matters for the companies concerned and their shareholders. Nor is the Panel responsible for competition policy or wider questions of public interest, which are the responsibility of Government and other bodies, for example, the Competition Commission, the Office of Fair Trading or the European Commission.