PCP 2012/3 5 July 2012

THE TAKEOVER PANEL

CONSULTATION PAPER ISSUED BY THE CODE COMMITTEE OF THE PANEL

COMPANIES SUBJECT TO THE TAKEOVER CODE

The Code Committee of the Takeover Panel (the "**Panel**") invites comments on this Public Consultation Paper. Comments should reach the Code Committee by 28 September 2012.

Comments may be sent by e-mail to:
supportgroup@thetakeoverpanel.org.uk

Alternatively, please send comments in writing to:

The Secretary to the Code Committee
The Takeover Panel
10 Paternoster Square
London
EC4M 7DY

Telephone: +44 (0) 20 7382 9026
Fax: +44 (0) 20 7236 7005

All responses to formal consultation will be made available for public inspection and published on the Panel's website at www.thetakeoverpanel.org.uk, unless the respondent explicitly requests otherwise. A standard confidentiality statement in an e-mail message will not be regarded as a request for non-disclosure. Personal information, such as telephone numbers or e-mail addresses, will not be edited from responses.

Unless the context otherwise requires, words and expressions defined in the Takeover Code have the same meanings when used in this Public Consultation Paper.

CONTENTS

1. Summary of proposals

1.1 Currently, an offer for a company which has its registered office in the United Kingdom, the Channel Islands or the Isle of Man, and whose securities are not admitted to trading on a regulated market in the United Kingdom, will not necessarily be subject to the Takeover Code (the "**Code**"). This may depend on whether the company is considered by the Panel to have its place of central management and control in the United Kingdom, the Channel Islands or the Isle of Man. This requirement is commonly referred to as the "**residency test**".

1.2 The application of the residency test means that offers for certain companies which have their registered offices in the United Kingdom, the Channel Islands or the Isle of Man, and in whose securities the public may have invested, may not be subject to the Code. These companies include those whose securities are admitted to trading only on AIM, since AIM is not a regulated market for these purposes.

1.3 The Code Committee is aware of concerns in relation to this issue and, having considered the arguments in favour of and against removing the residency test from the Code, proposes to remove it. The Code Committee's detailed proposals for the removal of the residency test, including proposed amendments to the Introduction to the Code, are set out in this Public Consultation Paper ("**PCP**"). This PCP also sets out some additional minor, clarificatory and consequential amendments to the Code.

1.4 The Code Committee is also aware of related concerns that offers for certain companies whose securities are admitted to trading on public markets in the United Kingdom will not be subject to the Code as a function of those companies having re-domiciled to overseas jurisdictions, notably Bermuda.

1.5 Whilst this PCP does not seek to address these concerns, the Code Committee intends to investigate whether it might be feasible and proportionate for some

measure of Code protection to be extended to shareholders in such companies. However, the Code Committee is mindful of a number of potential difficulties in relation to the regulation of offers for companies that have their registered offices overseas, particularly in relation to the compatibility of the Code with local laws and the Panel's ability to enforce the Code. The Code Committee does not believe that the Code's jurisdiction should be extended unless it is clear that the Code would continue to constitute an appropriate and adequate set of rules for the additional companies that would be subject to it, and that the Panel would be able to undertake its increased responsibilities effectively.

2. The residency test

(a) Companies to which the Code currently applies

2.1 The scope of the Code's jurisdiction is set out in Section 3 of the Introduction to the Code. Section 3(a) covers the companies to which the Code applies and is set out in its current form in Appendix A for ease of reference.

2.2 Under section 3(a)(i) of the Introduction to the Code, the Code will apply to an offer for a company which has its registered office in the United Kingdom if any of the company's securities are admitted to trading on a regulated market in the United Kingdom. This is a requirement of the Directive on Takeover Bids (2004/25/EC) (the "**Takeovers Directive**"), which determines the scope of the jurisdiction of the competent authority in any EEA Member State by reference to the location of the registered office of an offeree company and the regulated market on which its securities are traded. For these purposes, the term "regulated market" has the same meaning as set out in in Article 4.1(14) of the Directive on Markets in Financial Instruments (2004/39/EC) ("**MiFID**"). Of the two principal markets operated by London Stock Exchange plc, its Main Market for listed securities (i.e. securities admitted to the Official List) is a regulated market, whereas AIM is not.

2.3 Similarly, the Code will apply to an offer for a company which has its registered office in the United Kingdom if any of the company's securities are admitted to trading on any stock exchange in the Channel Islands or the Isle of Man, and also to an offer for a company which has its registered office in the Channel Islands or the Isle of Man if any of its securities are admitted to trading on a regulated market in the United Kingdom or on any stock exchange in the Channel Islands or the Isle of Man.

2.4 Under section 3(a)(iii) of the Introduction to the Code, the Code will also have "shared jurisdiction" over an offer for a company which has its registered office in the United Kingdom if its securities are admitted to trading on a regulated market in one or more other EEA Member States and not in the United Kingdom, or where the company has its registered office in another EEA Member State and its securities are admitted to trading on a regulated market in the United Kingdom and not in the EEA Member State in which it has its registered office. This is a further requirement of the Takeovers Directive.

2.5 Further, under section 3(a)(ii) of the Introduction to the Code, the Code will apply to an offer for a public company[1] which has its registered office in the United Kingdom, the Channel Islands or the Isle of Man, provided it satisfies the residency test.

2.6 Finally, also under section 3(a)(ii) of the Introduction to the Code, the Code will apply to a private company which has its registered office in the United Kingdom, the Channel Islands or the Isle of Man and which satisfies the residency test, but only if one or more of the criteria listed in sections 3(a)(ii)(A) to (D) of the Introduction are satisfied. Broadly speaking, these criteria require securities of

[1] For these purposes a company having its registered office in the Isle of Man and which is incorporated there under the Companies Act 2006 (an Act of Tynwald), or a company having its registered office in Guernsey, is treated as being a private company which must satisfy the "ten year rule" in order for the Code to apply. The "ten year rule" is described in paragraph 2.6.

the company in question to have been available for subscription or purchase by members of the public at some point during the preceding 10 years. The application of the Code to a private company as a result of one or more of these criteria being satisfied is commonly referred to as the "**ten year rule**".

(b) The practice of the Panel in applying the residency test

2.7 In its 1997 Annual Report, the Panel noted that the application of the residency test "… may on occasion require a judgement to be made by the Panel. When considering the question, the Panel will look at the structure of the board, the functions of the directors and where they are resident"[2].

2.8 The Code Committee understands that in the first instance such a judgement will involve an assessment by the Panel Executive as to whether a majority of the directors of the company in question are resident in the United Kingdom, the Channel Islands, or the Isle of Man. If a majority of the directors are so resident, then the test will normally be satisfied. Where there is an even split between the number of directors who are resident in the United Kingdom, the Channel Islands, or the Isle of Man, and those who are not, the Panel Executive will typically consider where the company's chairman is resident and whether he has the casting vote in relation to board decisions. If he does, and he is resident in the United Kingdom, the Channel Islands or the Isle of Man, the test will normally be satisfied.

2.9 On occasion, the Panel Executive may also take into account other factors such as the functions of the directors and the history of the company in question, including any public statements that it has made regarding the applicability or non-applicability of the Code to any offer for it.

[2] See page 15 of the Panel's 1997 Annual Report, a copy of which can be found at http://www.thetakeoverpanel.org.uk/wp-content/uploads/2008/11/report1997.pdf.

(c) The arguments in favour of removing the residency test

2.10 The Code Committee believes that the principal arguments in favour of removing the residency test from the Introduction to the Code can be summarised as follows:

(a) it is undesirable for an offer for a company which has its registered office in the United Kingdom, the Channel Islands or the Isle of Man, and in whose securities the public may have invested, not to be subject to the Code. In the view of the Code Committee, shareholders in such companies will often have an expectation of Code protection, and this may be a reasonable expectation in the case of shareholders who are not familiar with the jurisdictional requirements of the Code. However, in practice, Code protection will not be available if the securities of the company in question are not admitted to trading on a regulated market and it does not satisfy the residency test;

(b) the application of the residency test means that the status of an offeree company under the Code can be susceptible to change should its directors relocate. This can present a number of practical difficulties should an offer or other transaction to which the Code relates be either in existence or in contemplation at the time that the change occurs; and

(c) it is often impossible for an outside party (be they, for example, a shareholder or a potential offeror) to determine whether the residency test is satisfied and therefore whether the Code will apply to an offer for a given company. Indeed, the Code Committee understands that the Panel Executive will typically have to make enquiries of the company in question in order to verify the residency of its directors and, therefore, the applicability of the Code, and that many offeree companies will themselves be unfamiliar with the manner in which the Panel Executive

applies the residency test as described in paragraph 2.8 above. The Code Committee understands that this can sometimes result in false expectations regarding the applicability of the Code. The Code Committee considers that the jurisdiction of the Code should be capable of being easily verified by reference to public information, without the need either to consult the company in question or for the Panel to make subjective judgements based on considerations such as the residency of the company's directors.

(d) The arguments against removing the residency test

2.11 The Code Committee considers that the principal argument against removing the residency test relates to the Code's enforceability.

2.12 There is arguably a risk that where an offeree company does not have a sufficient nexus with the United Kingdom, the Channel Islands or the Isle of Man, its activities may be harder to monitor, the Panel may not be able to undertake its regulatory responsibilities effectively, and the threat of Panel sanctions may not act as a sufficient deterrent to non-compliance with the Code.

2.13 However, the Code Committee considers that these concerns may, to a certain extent, be allayed by the following considerations:

(a) whilst the Panel has not had to use its statutory powers since they were introduced in 2006, its ability to do so in order to enforce its rulings (or to require the provision of documents and information to the Panel where they are reasonably required in connection with the exercise of its functions)[3] significantly mitigates the risk of non-compliance with the Code in relation to an offer for a company which does not satisfy the residency test;

[3] These powers are described in sections 9, 10, 14, 15 and 16 of the Introduction to the Code.

(b) the Panel has not encountered any significant problems regulating offers for the companies that have been subject to the Code's jurisdiction under section 3(a)(i) of the Introduction to the Code since the removal of the residency test in 2006 (in conjunction with the implementation of the Takeovers Directive), notwithstanding the fact that such companies may not satisfy the residency test; and

(c) historically, the Panel has not encountered significant problems regulating the conduct of offerors and potential offerors which are managed overseas (and which would not satisfy the residency test were it to be applied to them).

2.14 The Code Committee does not, therefore, believe that the risks identified in paragraph 2.12 above should deter the Panel from seeking to extend the Code's jurisdiction to companies which would currently be subject to the Code but for the application of the residency test. The Code Committee therefore proposes to remove the residency test from the Code.

Q1. Do you agree that the residency test should be removed from the Code?

2.15 In making this proposal, the Code Committee has considered whether it might be appropriate to retain the residency test in relation to offers for certain categories of company. For example, the residency test might be retained in relation to offers for public companies whose securities are not admitted to trading on any public market in the United Kingdom, the Channel Islands or the Isle of Man, or to offers for private companies in respect of which the Code applies only by virtue of the ten year rule.

2.16 On balance, and having particular regard to the arguments set out in paragraph 2.10(a) above, the Code Committee considers that the residency test should be removed from the Code in its entirety.

Q2. Do you agree that the residency test should not be retained in relation to offers for certain categories of company?

2.17 In order to give effect to the removal of the residency test from the Code, the Code Committee proposes to amend the wording of sections 3(a)(i) and (ii) of the Introduction to the Code as follows:

> "**3 COMPANIES, TRANSACTIONS AND PERSONS SUBJECT TO THE CODE**
>
> This section (except for sections 3(d) and (e)) sets out the rules as to the companies, transactions and persons to which the Code applies.
>
> **(a) Companies**
>
> (i) UK, Channel Islands and Isle of Man registered ~~and traded~~ companies
>
> The Code applies to all offers (not falling within paragraph (ii~~i~~) below) ~~for companies and Societas Europaea (and, where appropriate, statutory and chartered companies) which have their registered offices* in the United Kingdom, the Channel Islands or the Isle of Man if any of their securities are admitted to trading on a regulated market in the United Kingdom or on any stock exchange in the Channel Islands or the Isle of Man.~~
>
> ~~(ii) Other companies~~
>
> ~~The Code also applies to all offers (not falling within paragraph (i) above or paragraph (iii) below)~~ for public and private companies~~‡~~* and Societas Europaea (and, where appropriate, statutory and chartered companies) which have their registered offices*~~†~~ in the United Kingdom, the Channel Islands or the Isle of Man ~~and which are considered by the Panel to have their place of central management and control in the United Kingdom, the Channel Islands or the Isle of Man~~, but in relation to private companies only when: …".

Q3. Do you have any comments on the proposed amendments to sections 3(a)(i) and (ii) of the Introduction to the Code?

3. Proposed amendments to the ten year rule

(a) Section 3(a)(ii)(A) of the Introduction

3.1 Currently, section 3(a)(ii)(A) of the Introduction to the Code refers only to private companies whose securities have been admitted to the Official List at any time during the 10 years prior to the relevant date. The Code Committee understands that, in most cases, private companies whose securities have been admitted to trading on a public market in the United Kingdom, the Channel Islands or the Isle of Man during this period but not admitted to the Official List will nonetheless be subject to the ten year rule as a result of the criterion in section 3(a)(ii)(B) of the Introduction being satisfied. This states that the Code applies to private companies when:

> "(B) dealings and/or prices at which persons were willing to deal in any of their securities have been published on a regular basis for a continuous period of at least six months in the 10 years prior to the relevant date, whether via a newspaper, electronic price quotation system or otherwise;".

3.2 The Code Committee nonetheless considers that it would be appropriate to amend the wording in section 3(a)(ii)(A) of the Introduction, in order to make it explicit that the ten year rule will apply to an offer for a private company whose securities have been admitted to trading on a regulated market or any multilateral trading facility in the United Kingdom or any stock exchange in the Channel Islands or the Isle of Man at any time during the 10 years prior to the relevant date, without the need for any of the other criteria listed in sections 3(a)(ii)(B) to (D) to be satisfied. Examples of United Kingdom multilateral trading facilities include AIM and the PLUS Quoted Market, as well as certain other trading venues such as BATS Chi-X and Turquoise.

3.3 The Code Committee therefore proposes to amend section 3(a)(ii)(A) of the Introduction as follows:

> "(A) any of their securities have been admitted to ~~the Official List~~ trading on a regulated market or a multilateral trading facility in the United Kingdom or on any stock exchange in the Channel Islands or the Isle of Man at any time during the 10 years prior to the relevant date;".

3.4 In fact, the Code Committee considers that, in all likelihood, if a private company satisfies the criterion in the amended section 3(a)(ii)(A) then at least one of the other criteria listed in sections 3(a)(ii)(B) to (D) is likely to be satisfied in any event. Accordingly, this change is intended merely to clarify the interpretation of the ten year rule, and the Code Committee does not believe it will alter its application or effect in any material way.

3.5 For the purposes of this amendment, the Code Committee also proposes to introduce a new definition of "multilateral trading facility" into the Definitions Section of the Code, giving the term the same meaning as set out in Article 4.1(15) of MiFID, as follows:

> "**Multilateral trading facility**
>
> Multilateral trading facility has the same meaning as in Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments (see Article 4.1(15)).".

(b) Section 3(a)(ii)(D) of the Introduction

3.6 As noted above, the Code Committee understands that the application of the ten year rule will usually be determined by reference to one of the criteria listed in sections 3(a)(ii)(A) or (B) in the Introduction, and considers that the amendment to the criterion in section 3(a)(ii)(A) referred to above will be likely to reinforce this general position.

3.7 However, the Code Committee also understands that from time to time the application of the ten year rule may turn on the applicability of one of the criteria listed in sections 3(a)(ii)(C) or (D) of the Introduction. The latter, in section 3(a)(ii)(D), refers to private companies that were required to file a prospectus for the issue of securities or to have a prospectus approved by the UKLA at any time during the 10 years prior to the relevant date.

3.8 The Code Committee considers that it would be appropriate to amend the wording in section 3(a)(ii)(D) of the Introduction such that it refers instead to private companies that have actually filed a prospectus for the issue of securities or had a prospectus approved by the UKLA at any time during the 10 years prior to the relevant date. This is because a question of whether or not a company has filed a prospectus for the issue of securities or had a prospectus approved by the UKLA is ultimately a question of verifiable fact. By contrast, a question of whether a company was required to file a prospectus for the issue of securities or to have a prospectus approved by the UKLA may be open to interpretation or debate, or determinable only by reference to facts which may no longer be readily apparent. This may result in uncertainty regarding the applicability of the Code to any offer for the company in question. In keeping with the arguments set out in paragraph 2.10(c) above in relation to the removal of the residency test, the Code Committee therefore proposes to amend section 3(a)(ii)(D) of the Introduction as follows, so as to remove this potential uncertainty:

> "(D) they <u>filed</u> ~~were required to file~~ a prospectus for the issue of securities with the registrar of companies or any other relevant authority in the United Kingdom, the Channel Islands or the Isle of Man or <u>had</u> ~~to have~~ a prospectus approved by the UKLA at any time during the 10 years prior to the relevant date.".

3.9 Again, the Code Committee does not believe that this change will alter the application or effect of the ten year rule in any material way.

Q4. Do you have any comments on the proposed amendments to the ten year rule and the introduction of a new definition of "multilateral trading facility"?

4. Consequential Code amendments

4.1 As a consequence of its proposals to amend sections 3(a)(i) and (ii) of the Introduction to the Code, the Code Committee also proposes to amend a number of other sections of the Code which contain cross-references to, or define terms used in, sections 3(a)(i) and (ii) of the Introduction, as set out Appendix B to this PCP.

Q5. Do you have any comments on the proposed consequential amendments to the Code set out in Appendix B?

5. Assessment of the impact of the proposals

5.1 The Code Committee believes that the removal of the residency test from the Code is a proportionate measure for ensuring that companies which have their registered offices in the United Kingdom, the Channel Islands or the Isle of Man, and in whose securities the public may have invested, are subject to a suitable level of independent takeover regulation. The Code Committee expects that the Panel's regulation of transactions involving such companies will bring benefits to shareholders in these companies, as well as more generally to participants in any markets in which these companies' securities are traded.

5.2 If the proposals described in this PCP are adopted, the Code Committee expects that the number of transactions which are regulated by the Code will increase. However, the number of companies in respect of which the Code may apply will not increase in absolute terms. This is because all of the companies in question are already companies in respect of which the Code may apply, depending on whether the residency test is satisfied.

5.3 The Code Committee recognises that in some cases the regulation of offers for companies that do not currently satisfy the residency test may give rise to the risk of non-compliance with the Code, for the reasons explained in paragraph 2.12 above. However, the Code Committee is confident that following the removal of the residency test from the Code the Panel will be able to continue to regulate takeover activity in the United Kingdom, the Channel Islands and the Isle of Man with a flexible approach, offering speed and certainty in decision-making and seeking to ensure compliance with the Code through consensus with the parties involved.

6. Other PCPs and implementation of the proposals

6.1 The Code Committee has today also published PCP 2012/1 ("Profit forecasts, quantified financial benefits statements, material changes in information and other amendments to the Takeover Code") and PCP 2012/2 ("Pension scheme trustee issues"). The amendments to the Code proposed in PCP 2012/1 and PCP 2012/2 do not affect the amendments proposed in this PCP.

6.2 In accordance with its normal procedure, the Code Committee will consider all responses to this PCP and then publish a Response Statement ("**RS**") including the amendments to be made to the Code in final form.

6.3 The Code Committee's current intention is that the amendments to the Code proposed in this PCP should take effect approximately one month after the date on which the Code Committee publishes its RS. The final implementation date in respect of these amendments will be set out in the RS.

6.4 The Code Committee anticipates that the amended Code will be applied to all transactions with effect from the implementation date referred to above, including those on-going transitions which straddle that date, except where to do so would

give the amendments retroactive effect. Where parties have doubts as to the consequences of the amendments, in particular the impact on any transaction which is in existence or in contemplation on the implementation date (including a transaction to which the Code does not currently relate but to which it will relate following the implementation date), they should consult the Panel before the implementation date.

APPENDIX A

Section 3(a) of the Introduction to the Code

3 COMPANIES, TRANSACTIONS AND PERSONS SUBJECT TO THE CODE

This section (except for sections 3(d) and 3(e)) sets out the rules as to the companies, transactions and persons to which the Code applies.

(a) Companies

(i) UK, Channel Islands and Isle of Man registered and traded companies

The Code applies to all offers (not falling within paragraph (iii) below) for companies and Societas Europaea (and, where appropriate, statutory and chartered companies) which have their registered offices* in the United Kingdom, the Channel Islands or the Isle of Man if any of their securities are admitted to trading on a regulated market in the United Kingdom or on any stock exchange in the Channel Islands or the Isle of Man.

(ii) Other companies

The Code also applies to all offers (not falling within paragraph (i) above or paragraph (iii) below) for public and private companies† and Societas Europaea (and, where appropriate, statutory and chartered companies) which have their registered offices* in the United Kingdom, the Channel Islands or the Isle of Man and which are considered by the Panel to have their place of central management and control in the United Kingdom, the Channel Islands or the Isle of Man, but in relation to private companies only when:

(A) any of their securities have been admitted to the Official List at any time during the 10 years prior to the relevant date; or

(B) dealings and/or prices at which persons were willing to deal in any of their securities have been published on a regular basis for a continuous period of at least six months in the 10 years prior to the relevant date, whether via a newspaper, electronic price quotation system or otherwise; or

(C) any of their securities have been subject to a marketing arrangement as described in section 693(3)(b) of the Act at any time during the 10 years prior to the relevant date; or

(D) they were required to file a prospectus for the issue of securities with the registrar of companies or any other relevant authority in the United Kingdom, the Channel Islands or the Isle of Man or to have a prospectus

approved by the UKLA at any time during the 10 years prior to the relevant date.

In each case, the relevant date is the date on which an announcement is made of a proposed or possible offer for the company or the date on which some other event occurs in relation to the company which has significance under the Code.

The Panel appreciates that the provisions of the Code may not be appropriate to all statutory and chartered companies referred to in paragraphs (i) and (ii) above or to all private companies falling within the categories listed in paragraph (ii) above and may accordingly apply the Code with a degree of flexibility in suitable cases.

(iii) Shared jurisdiction — UK and other EEA registered and traded companies

The Code also applies (to the extent described below) to offers for the following companies:

(A) a company which has its registered office* in the United Kingdom whose securities are admitted to trading on a regulated market in one or more member states of the European Economic Area but not on a regulated market in the United Kingdom;

(B) a company which has its registered office in another member state of the European Economic Area whose securities are admitted to trading only on a regulated market in the United Kingdom; and

(C) a company which has its registered office in another member state of the European Economic Area whose securities are admitted to trading on regulated markets in more than one member state of the European Economic Area including the United Kingdom, but not on a regulated market in the member state of the European Economic Area in which it has its registered office, if:

(I) the securities of the company were first admitted to trading only in the United Kingdom; or

(II) the securities of the company are simultaneously admitted to trading on more than one regulated market on or after 20 May 2006, if the company notifies the Panel and the relevant regulatory authorities on the first day of trading that it has chosen the Panel to regulate it; or

(III) the Panel is the supervisory authority pursuant to the second paragraph of Article 4(2)(c) of the Directive.

A company referred to in paragraphs (C)(II) or (III) must notify a Regulatory Information Service of the selection of the Panel to regulate it without delay.

The provisions of the Code which will apply to such offers shall be determined by the Panel on the basis set out in Article 4(2)(e) of the Directive. In summary, this means that:

- in cases falling within paragraph (A) above, the Code will apply in respect of matters relating to the information to be provided to the employees of the offeree company and matters relating to company law (in particular the percentage of voting rights which confers control and any derogation from the obligation to launch an offer, as well as the conditions under which the board of the offeree company may undertake any action which might result in the frustration of an offer) ("employee information and company law matters"); in relation to matters relating to the consideration offered (in particular the price) and matters relating to the offer procedure (in particular the information on the offeror's decision to make an offer, the contents of the offer document and the disclosure of the offer) ("consideration and procedural matters"), the rules of the supervisory authority of the member state determined in accordance with Article 4(2)(b) and (c) of the Directive as the relevant supervisory authority will apply; and

- in cases falling within paragraphs (B) or (C) above, the Code will apply in respect of consideration and procedural matters; in relation to employee information and company law matters, the rules of the supervisory authority in the member state where the offeree company has its registered office will apply.

(iv) Open-ended investment companies

The Code does not apply to offers for open-ended investment companies as defined in Article 1(2) of the Directive.

**In the case of a UK unregistered company, the reference to "registered office" shall be read as a reference to the company's principal office in the UK.*

†*With respect to either a company having its registered office in the Isle of Man and which is incorporated there under the Companies Act 2006 (an Act of Tynwald), or a company having its registered office in Guernsey, the company will be treated as being subject to the Code only when any of the criteria in (A) to (D) of paragraph (ii) apply.*

APPENDIX B

Proposed amendments to the Code

INTRODUCTION

3 COMPANIES, TRANSACTIONS AND PERSONS SUBJECT TO THE CODE

This section (except for sections 3(d) and 3(e)) sets out the rules as to the companies, transactions and persons to which the Code applies.

(a) Companies

(i) UK, Channel Islands and Isle of Man registered ~~and traded~~ companies

The Code applies to all offers (not falling within paragraph (ii~~i~~) below) ~~for companies and Societas Europaea (and, where appropriate, statutory and chartered companies) which have their registered offices* in the United Kingdom, the Channel Islands or the Isle of Man if any of their securities are admitted to trading on a regulated market in the United Kingdom or on any stock exchange in the Channel Islands or the Isle of Man.~~

~~(ii) Other companies~~

~~The Code also applies to all offers (not falling within paragraph (i) above or paragraph (iii) below)~~ for public and private companies~~‡~~* and Societas Europaea (and, where appropriate, statutory and chartered companies) which have their registered offices~~*~~† in the United Kingdom, the Channel Islands or the Isle of Man ~~and which are considered by the Panel to have their place of central management and control in the United Kingdom, the Channel Islands or the Isle of Man~~, but in relation to private companies only when:

(A) any of their securities have been admitted to ~~the Official List~~ trading on a regulated market or a multilateral trading facility in the United Kingdom or on any stock exchange in the Channel Islands or the Isle of Man at any time during the 10 years prior to the relevant date; or

…

(D) they filed ~~were required to file~~ a prospectus for the issue of securities with the registrar of companies or any other relevant authority in the United Kingdom, the Channel Islands or the Isle of Man or had ~~to have~~ a prospectus approved by the UKLA at any time during the 10 years prior to the relevant date.

…

The Panel appreciates that the provisions of the Code may not be appropriate to all statutory and chartered companies referred to ~~in paragraphs (i) and (ii)~~ above or to all private companies falling within the categories listed in paragraphs (A) to (D)~~(ii)~~ above and may accordingly apply the Code with a degree of flexibility in suitable cases.

(ii~~i~~) Shared jurisdiction — UK and other EEA registered and traded companies

The Code also applies (to the extent described below) to offers for the following companies:

(A) a company which has its registered office~~*~~† in the United Kingdom whose securities are admitted to trading on a regulated market in one or more member states of the European Economic Area but not on a regulated market in the United Kingdom;

…

~~*In the case of a UK unregistered company, the reference to "registered office" shall be read as a reference to the company's principal office in the UK.~~

~~†~~**With respect to either a company having its registered office in the Isle of Man and which is incorporated there under the Companies Act 2006 (an Act of Tynwald), or a company having its registered office in Guernsey, the company will be treated as being subject to the Code only when any of the criteria in (A) to (D) of paragraph (ii~~i~~) apply.*

†In the case of a UK unregistered company, the reference to "registered office" shall be read as a reference to the company's principal office in the UK.

…

(b) Transactions

In cases falling within paragraph~~s~~ (a)(i) ~~or (ii)~~ above, the Code is concerned with regulating takeover bids and merger transactions of the relevant companies, however effected …

…

In cases falling within paragraph (a)(ii~~i~~) above, "offers" means only any public offer …

…

(d) Dual jurisdiction

Takeovers and other matters to which the Code applies may from time to time be subject to the dual jurisdiction of the Panel and an overseas takeover regulator, including offers for those companies within paragraph (a)(ii~~i~~) above …

DEFINITIONS

Multilateral trading facility

Multilateral trading facility has the same meaning as in Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments (see Article 4.1(15)).

…

Reverse takeover

…

NOTE ON REVERSE TAKEOVER

The definition is of relevance only in circumstances where the offeror is a company that falls within section 3(a)(i) ~~or (ii)~~ of the Introduction.

…

Shares or securities

(1) …

(2) In paragraph 3(a)(ii~~i~~) and in the second paragraph of section 3(b) of the Introduction, the securities referred to are only transferable securities carrying voting rights.

(3) In paragraph~~s~~ 3(a)(i) ~~and (ii)~~ and in the first paragraph of section 3(b) of the Introduction, the shares/securities referred to are only those shares/securities comprised in the company's equity share capital (whether voting or non-voting) and other transferable securities carrying voting rights.

APPENDIX C

List of questions

Q1. **Do you agree that the residency test should be removed from the Code?**

Q2. **Do you agree that the residency test should not be retained in relation to offers for certain categories of company?**

Q3. **Do you have any comments on the proposed amendments to sections 3(a)(i) and (ii) of the Introduction to the Code?**

Q4. **Do you have any comments on the proposed amendments to the ten year rule and the introduction of a new definition of "multilateral trading facility"?**

Q5. **Do you have any comments on the proposed consequential amendments to the Code set out in Appendix B?**