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The Secretary to the Code Committee
The Takeover Panel
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Monday 29 July 2024

Dear Takeover Panel colleagues,

Companies to which the Takeover Code applies

We welcome the opportunity to respond to your consultation, *Companies to which the Takeover Code applies*.

The Quoted Companies Alliance *Legal Expert Group* has examined the proposals and advised on this response from the viewpoint of small and mid-sized quoted companies. A list of Expert Group members can be found in Appendix A.

We strongly welcome the Takeover Panel's amendments to the scope of companies to which the Takeover Code applies as a logical and straightforward proposal. Our responses to the questions below reflect this.

As part of our response, we offer the suggestion that the Panel consider expanding the scope of the Code to cover overseas companies whose securities are traded on a UK RM or UK MTF. This change would be the logical outcome of the principle underpinning the current proposals and it could be realised by making compliance with the Code a requirement applicable to the relevant market if London is the primary listing venue.

Finally, we share the Panel's position that a three-year transition is an appropriate period for companies to prepare themselves for the proposed changes.

If you would like to discuss our response in more detail, please do not hesitate to contact us.

Yours sincerely,

James Ashton

James Ashton

Chief Executive

Q1 Should the scope of the Code be narrowed to apply only to a company which is "UK-listed" or which was "UK-listed" at any time during the three years prior to the relevant date?

Yes, we strongly agree with this outcome for all the reasons which are presented in the Consultation Paper. The linkage between the Takeover Code and companies whose shares are publicly traded (as opposed to shares which are traded within a "closed loop" private market) is a logical and readily comprehensible one and one which is likely to reflect the expectations of most quoted companies and their investors.

However, we would invite the Panel to consider further whether there is an argument for bringing overseas companies whose securities are traded on a UK RM or UK MTF within the ambit of the Code. This is the logical outcome of the principle described above and it could be achieved by making submission to the Code a requirement of the rules applicable to the relevant market where London is the venue for the primary listing. As such, the change would likely require a broader based amendment to the Listing Rules and the rules of the relevant UK MTF.

Nevertheless, we are mindful that, were this approach to be adopted, it would require broader discussion with the local regulators and that its effect on the attractiveness of the UK public equity markets to overseas companies would also need to be considered. Currently, listed companies which are not UK resident are outside the ambit of the Code and sometimes this "weakness" is addressed by incorporating Rule 9 type provisions in the articles of association of such companies. We would be interested to see how the investor community views this point and the extent to which the non-applicability of the Code affects the prices at which shares in overseas companies are traded.

In addition, we would like to raise that investors in the UK's capital markets can be unaware that the Code does not apply to a company due to the company being overseas incorporated. This is despite this information being set out in publicly available documents. Ensuring that there is easily accessible information for, and engagement with, market participants on any subsequent changes to the scope of the Code is important to ensure there is sufficient awareness of its reach.

Q2 Do you agree that the "run-off" period for a company which ceases to be UK-listed should be three years?

We strongly support the elimination of the existing tests which apply a 10 year "look-back". We consider that the removal of the application of the Code after three years is unlikely to have much if any practical impact. There may even be an argument for the period to be further reduced to, say, two years once the impact of the immediate changes has been absorbed by the market.

Q3 Should the Panel have the ability, where appropriate, to grant a waiver from the application of some or all of the provisions of the Code in respect of a company which has ceased to be "UK-listed"?

Yes - we believe that the broader waiver regime now proposed would be a positive development and, in particular, could be used to alleviate the burden of ongoing application of the Code during the proposed three-year transition period.

Q4 Do you have any comments on the proposed new section 3(a) of the Introduction?

The drafting of the new section is clear and readily understandable. We would suggest that a note is provided which clarifies the expression "some other event occurs in relation to the company which has

significance under the Code". This clearly captures events such as trades which set a floor price on any potential bid and/or which create an obligation to offer a cash alternative. Even a non-exhaustive list would be of assistance here.

Q5 Should the new section 3(e) of the Introduction with regard to the cancellation of admission to trading be introduced as proposed?

We strongly agree with the proposed "warning notice" to be given to shareholders in the context of any delisting proposal. This is consistent with current good practice for delisting circulars in any event.

Q6 Do you have any comments on the minor and consequential amendments?

No – we have no comments.

Q7 Should the transitional arrangements be introduced as proposed?

The proposed three-year transition period should be more than adequate to enable companies currently subject to the Code to communicate with their shareholders and put in place alternative arrangements to ensure "fair play" in bid situations.

In the case of companies which are only subject to the Code by reason of one of the 10 year "look-back" tests or because they are public companies it may well be the case that no such arrangements are required or, they are minimal. This is because those companies will, in many cases, have introduced pre-emption and drag/tag rights when the relevant trading facility ceased need to be in place. In the case of public companies whose shares have never been traded, appropriate provisions are likely to have been in place from the time of establishment of the company in any event.

Q8 Do you agree that the length of the transitional period should be three years?

Yes - we agree with the proposed length of the transitional period. Please also see our response to question 7.

Q9 Do you have any comments on the proposed new section 3(a)(iii) of the Introduction or the new Transitional Appendix?

We have no comments to add in this area.

Appendix A

The Quoted Companies Alliance *Legal Expert Group*

Mark Taylor (Chair)	**Dorsey & Whitney (Europe) LLP**
Stephen Hamilton (Deputy Chair)	**Mills & Reeve LLP**
Paul Airley	Fladgate LLP
Danette Antao	Hogan Lovells International LLP
Paul Arathoon	Charles Russell Speechlys LLP
Kate Badr	CMS
Naomi Bellingham	Practical Law Company Limited
Ross Bryson	Mishcon De Reya
Caroline Chambers	Simmons & Simmons LLP
Philippa Chatterton	CMS
Paul Cliff	Gateley
Matt Cohen	Stifel
Jonathan Deverill	DAC Beachcroft LLP
Sarah Dick	Stifel
Tunji Emanual	Lexis Nexis
Kate Francis	Dorsey & Whitney (Europe) LLP
Claudia Gizejewski	LexisNexis
Sarah Hassan	Practical Law Company
David Hicks	Simmons & Simmons LLP
Kate Higgins	Mishcon De Reya
Nicholas Jennings	Locke Lord LLP
Martin Kay	Blake Morgan
Jonathan King	Osborne Clarke
Jennifer Lovesey	KPMG
Nicholas McVeigh	Mishcon De Reya
Catherine Moss	Shakespeare Martineau LLP
Hilary Owens Gray	Practical Law Company Limited
Kieran Rayani	Stifel
Jaspal Sekhon	Hill Dickinson LLP
Patrick Sarch	Hogan Lovells LLP
Gary Thorpe	QCA Director
Robert Wieder	Faegre Drinker LLP
Sarah Wild	Practical Law Company Limited
John Young	Kingsley Napley LLP