

UK Takeover Panel Consultation on Communication and Distribution of Information during an Offer

February 25, 2016

Introduction

On 15 February 2016, the UK Takeover Panel published a consultation paper on its proposed amendments to the Takeover Code relating to the communication and distribution of information during an offer by a bidder or the target company ([PCP 2016/1](#)). The purpose of these proposals is to provide greater clarity on the rules governing equality of information to shareholders, and to update the Code to reflect recent developments in the use of social media and other forms of electronic communication by corporates.

In most cases, the Panel's proposals are a codification of its current practices. One significant departure from the current Code is the proposed relaxation of the rules on the policing of meetings by the financial adviser or corporate broker to the bidder or target.

Responses to the consultation should reach the Panel by 15 April 2016.

Key proposed amendments

Equality of information to shareholders

Rule 20.1 currently states that information about parties to an offer must be made equally available to all target shareholders as nearly as possible at the same time and in the same manner. The Panel is proposing that:

- Rule 20.1 be amended to make clear that it also applies to information and opinions relating to an offer;
- where material new information or significant new opinions relating to an offer or a party to an offer is published by the bidder or target, such information or opinion must be announced via a RIS at the same time. Similarly, this is the case where such information or opinions is provided to any shareholder, or other person interested in securities, of the bidder or the target, any investment manager, adviser or analyst (each a **Relevant Person**) or the media;
- any presentation or other document relating to an offer or a party to an offer provided to, or used in any meeting with, a Relevant Person should be published on a website promptly after it is so provided or used;
- any written communication relating to an offer or a party to an offer provided to the media must be published on a website promptly following its publication by the media; and
- at the same time as the publication of the above documents on a website, an RIS announcement should be made to note that such documents has been published on such website with the relevant webpage links.

The Panel has recognised that there are certain circumstances where it would be appropriate for information or opinions to be provided in confidence by a party to an offer to a Relevant Person. The Panel is proposing to amend the Code to provide that:

- before the start of an offer period, material new information or significant new opinions relating to an offer or a party to an offer may be provided in confidence by the bidder or target to a Relevant Person. However, this is subject to the requirement in Rule 2.2(e) that an announcement is required when discussions relating to a possible offer is extended to include more than a very restricted number of people;
- during the offer period but before the announcement of a firm or revised offer, the Panel may consent to the provision of such information or opinions in confidence to one or more Relevant Person;
- any such information or opinion provided to a Relevant Person in such circumstances must be published in, or by no later than the date of, the announcement of the firm or revised offer. However, where the information or opinion is provided by the target and the target board is not recommending the offer, such information or opinion is to be published in, or by no later than the date of, the first substantive announcement made by the board in response to the announcement of the hostile offer; and
- any presentation or other document provided to a Relevant Person in such circumstances must be published on a website promptly after the announcement of the firm or revised offer. However where such document is provided by the target and the target board is not recommending the offer, such information is to be published on a website promptly after the first substantive announcement made by the board in response to the announcement of the hostile offer.

Advertisements and use of videos and social media

Rule 19.4 currently provides that the publication of advertisements connected with an offer is prohibited unless the advertisement falls within an exception to this rule. Rule 19.2(a) provides that such advertisement (where permitted) must include a statement by the relevant directors accepting responsibility for the information in such advertisement. The Panel is proposing to amend these rules by:

- widening the scope of this prohibition so that it applies to all advertisements published during the course of an offer;
- deleting the following exceptions: (i) advertisements communicating information relevant to holders of bearer securities; (ii) advertisements comprising a tender offer under Appendix 5 of the Code; (iii) advertisements which are notices relating to a scheme of arrangement; and (iv) advertisements published with the specific prior consent of the Panel; and
- removing the requirement for a responsibility statement as it is considered unnecessary.

In addition, the Panel has noted that the Code does not contain any specific provisions on the use of videos or social media by the bidder or target as a means of communicating information or opinions relating to an offer. The Panel is proposing that:

- a video published by the bidder or target which includes such information or opinions must comprise only a director or senior executive reading from a script or participating in a scripted interview. Any such video may be published only with the Panel's consent. In addition, such videos must be published on a website; and

- information or opinions relating to an offer published by a bidder or target via social media should be limited to the information and opinions which have been published via an RNS announcement or on its website. Such information or opinions must be prepared with the highest standards of care and accuracy and must be adequately and fair presented.

Meetings and telephone calls with shareholders and others

Note 3 on Rule 20.1 currently provides that meetings between the bidder or the target, and a Relevant Person, may take place before or during an offer if no material new information is forthcoming and no significant new opinions are expressed. Such meetings must in general be attended by the financial adviser or corporate broker to the bidder or the target (as appropriate) who is responsible for confirming in writing to the Panel that the meeting was in compliance with Note 3 on Rule 20.1.

The Panel is proposing the relaxation of these requirements. A summary of the elements of the new requirements (which will apply to telephone calls as well as meetings) is set out below.

TIME PERIOD	SITUATION A		SITUATION B	SITUATION C	
	FA / CB must attend?	Written confirmation to Panel?	Written confirmation to Panel?	FA/CB must attend?	Written confirmation to Panel?
	Meeting / call between (a) representative of, or adviser to, bidder or target; and (b) shareholder, investment manager, investment adviser or “sell-side” investment analyst (where such meeting/call does not fall within Situation B or C)		Meeting / call between: (a) financial adviser (“FA”) /corporate broker (“CB”) to bidder or target; and (b) shareholder, investment manager, investment adviser or “sell-side” investment analyst	Meeting / call between (a) adviser to bidder or target (other than FA/CB); and (b) “sell-side” investment analyst	
Before start of offer period (but only if meeting/telephone call relates to possible offer)	Yes	Yes – to be provided by FA / CB	No need for written confirmation	No	Yes – to be provided by senior adviser (who must be appropriately briefed by FA)
During offer period but before announcement of firm or revised offer					
After announcement of firm offer which is not recommended or when there is a competitive situation or a material development has occurred					
After announcement of recommended firm offer (and dispensation granted and not withdrawn)	No	Yes - to be provided by senior representative / adviser (who must be appropriately briefed by FA)			

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