



THE INSTITUTE
OF CHARTERED
ACCOUNTANTS
IN ENGLAND AND WALES

17 October 2008

Our ref: ICAEW Rep 113/08

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

By email supportgroup@thetakeoverpanel.org.uk

Dear Sir

**PUBLIC CONSULTATION PAPER 2008/2
MISCELLANEOUS AMENDMENTS**

The Institute of Chartered Accountants in England and Wales is pleased to respond to your request for comments on PCP 2008/2 Miscellaneous Amendments.

Please contact me should you wish to discuss any of the points raised in the attached response.

Yours faithfully

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ICAEW Representation

ICAEW REP 113/08

PCP 2008/2 MISCELLANEOUS AMENDMENTS

**Memorandum of comment submitted in October 2008 by
The Institute of Chartered Accountants in England and Wales, in
response to The Takeover Panel Code Committee's public
consultation paper 2008/2 Miscellaneous Amendments published
in July 2008**

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INTRODUCTION

1. The Institute of Chartered Accountants in England and Wales (the ICAEW) welcomes the opportunity to comment on the consultation paper *PCP 2008/2 Miscellaneous Amendments* published by The Takeover Panel's Code Committee.

WHO WE ARE

2. The ICAEW operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, the ICAEW provides leadership and practical support to over 130,000 members in more than 140 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. The ICAEW is a founding member of the Global Accounting Alliance with over 700,000 members worldwide.
3. ICAEW members provide financial knowledge and guidance based on the highest technical and ethical standards. They are trained to challenge people and organisations to think and act differently, to provide clarity and rigour, and so help create and sustain prosperity. The ICAEW ensures these skills are constantly developed, recognised and valued.
4. The ICAEW's Corporate Finance Faculty (the Faculty) is a network of some 6,200 corporate finance professionals. This response draws on the experience of Faculty members and other associates with significant experience of working on transactions to which the Takeover Code applies.

MAJOR POINTS

5. We welcome the amendments to the Takeover Code proposed in this public consultation paper which, in the main, either clarify the application of existing provisions within the Code or codify existing practice in relation to matters which are not currently covered by the Code.
6. However we note that the proposed consultation requirement when parties wish to approach a wider group together with the new consultation requirement when more than one potential purchaser or offeror are sought, go much further than provided for in Practice Statement No. 20 and is not codification of current practice. We would be interested to hear the Code Committee's reasons.

RESPONSES TO SPECIFIC QUESTIONS

PART A: Amendments relating to Rule 2

Q1: Do you agree with the proposed amendments to Rule 2.2(e) and Note 1 on Rule 2.2?

7. We are still unclear as to why the Code Committee has felt the need for proposals that go further than Practice Statement No. 20. While, in principle the concept of consultation with the Panel is not objectionable, the concern is that the trigger for a consultation requirement has been set at a very early stage – at the point when just more than one potential purchaser, funder or offeror is sought; thus cutting back substantially on the 'rule of six' practice. This concern is

compounded as consultation with the Panel is to be a 'requirement' (as opposed to parties being encouraged to consult with the Panel at this early stage), breach of which could result in disciplinary action.

Q2: Do you agree with the amendments to Rule 2.4(c) and the amendment to Note 5 on Rule 2.4?

8. We agree.

Q3: Do you agree that Note 6 on Rule 2.4 should apply to “no increase” statements made by potential offerors as referred to above?

9. We agree.

Q4: Do you agree that Note 6 on Rule 2.4 should be amended as proposed?

10. We agree.

PART B: Amendments relating to Rule 9

Q5: Do you agree with the proposed deletion of existing Rule 9.7?

11. We agree.

Q6: Do you agree with the proposed adoption of new Rule 9.7 together with its Note in the form outlined in paragraph 4.15 above and the other amendments to Rule 9 referred to in paragraph 4.16 above?

12. We agree.

Q7: Do you agree that Note 11 on Rule 9.1 should be amended as proposed?

13. We agree.

PART C: Amendments relating to Rules 8, 35 and 38

Q8: Do you agree with the proposed new Note 15 on Rule 8 and the proposed new Note 5 on Rule 38.5?

14. We agree.

Q9: Do you agree that Note (a)(i) on Rules 35.1 and 35.2 should be amended as proposed?

15. We agree.

Q10: Do you agree that Rule 38.2 should be amended as proposed?

16. We agree.

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