

2 March 2006

ICAEW Rep 10/06

The Secretary to the Code Committee
The Panel on Takeovers and Mergers
10 Paternoster Square
London
EC4M 7DY

Dear Madam/Sir

Re: PCP 2005/5 “The implementation of the Takeovers Directive. Proposals relating to amendments to be made to the Takeover Code”

The Corporate Finance Faculty of the Institute of Chartered Accountants in England and Wales (‘The Institute’) welcomes the opportunity to comment on Takeover Panel PCP 2005/5 – “The implementation of the Takeovers Directive. Proposals relating to amendments to be made to the Takeover Code”, issued by the Code Committee of the Panel (the “PCP”) on 18 November 2005. We have reviewed the proposals and set out below our responses to the questions posed in the consultation paper.

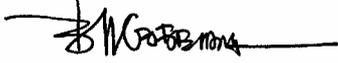
The Institute is the largest professional accountancy body in Europe, with over 127,000 members. Its Corporate Finance Faculty is the largest community of professionals involved in corporate finance with over 5,300 members and more than 50 member firms. Many of our members have wide-ranging experience of public company takeovers and, in preparing our response, we have drawn on their experience and comments.

We recognise that a number of the proposed changes in the PCP are driven by the European Takeovers Directive and, as such, are outside the control of the Panel. Accordingly, we have not commented on such changes.

We do however have some specific concerns in relation to matters that we perceive to be within the Panel’s control. We attach as an Appendix our responses to the specific questions raised and hope that you will find these comments helpful.

Should you wish to discuss any matters contained in this response please do not hesitate to contact me. We would be delighted to meet with you to discuss our views further if required.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Vera Sabeva', with a horizontal line extending to the right.

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APPENDIX

1 Section 3 (f), Code responsibilities and obligations

We consider it unreasonable to require financial advisers to ensure that clients comply with the Code and would propose that the wording is amended to require advisers to “endeavour to encourage” or “take all reasonable steps to encourage” their clients to comply with the Code.

2 Section 4 (b), The Code Committee

We would propose that the Code Committee should always consult with the public in advance of implementing rule changes and we would welcome further clarification as to what is envisaged by the references to “certain exceptional circumstances” in this section.

3 The equitable price – Rule 9.5

We believe that, if the Panel is to provide a dispensation in relation to the equitable price, when publishing its decision in this regard, it should also provide the chosen price and substantiation for its decision. It may be that this is the Panel’s intention but we would suggest that this should be expressly stated in the new rules.

4 Rule 19.7

We assume that the proposed new wording of this rule is not intended to change current market practice. Specifically, will it continue to be acceptable for documents to be despatched under the direction of the financial adviser to the Panel at the same time as documents are being posted to shareholders?

5 Article 9

We assume that the proposed wording for new General Principle 3 would not prevent a target company from taking action to defend against a hostile bid. An express carve out permits the seeking of alternative bids but the straightforward defence of a hostile bid is not expressly permitted. The latter could include appointing an advisory team, lobbying competition authorities or any other such action. We would appreciate if this could be clarified.

6 Rule 25.2, Views of the Board on the Offeror’s Plans for the Company and its Employees

This rule requires the board of the offeree company to provide an opinion on the effect of implementation of the offer on all the company’s interests including specifically employment and the offeror’s strategic plans. We would welcome clarification on certain points in this regard:

- (i) What is envisaged by the requirement to comment on “all the company’s interests”?
- (ii) We assume that the Rule 3 adviser’s opinion (required to be published under Rule 25.1) should be restricted to commenting on the financial implications of the offer, which, in line with current market practice, should be permitted to take account of the offeree directors’ commercial assessments. We do not believe that the Rule 3 adviser should be required to provide an opinion on any of the company’s other interests including employment and the offeror’s strategic plans.

7 Rule 30.2(b), The Offeree Board Circular

We understand that the rule requires the inclusion of an opinion from employment representatives in an offeree circular if received in good time. However we would seek clarification as to when, in practice, the Panel expects employment representatives to be consulted and what would constitute receipt of an opinion “in good time”.

In this regard, will it continue to be acceptable, as a general practice, for there to be no consultation with employee representatives prior to the release of a Rule 2.5 announcement? Assuming that the latter is acceptable, where the parties have decided to post an offer document on the same day as release of the Rule 2.5 announcement, it would then be impractical to seek to include the views of any employment representatives in the offer document. Will this be acceptable and will there be any requirement to circulate any employment representative views on the offer when these may be available?

8 Rule 30.3, Making Documents and Information Available to Shareholders, Employee Representatives and Employees

We welcome the dispensation from posting to certain jurisdictions set out in the note on Rule 30.3 but consider that this dispensation should be more widely drafted. We would request that the dispensation be available in any jurisdiction (including EEA member states) where it would result in a significant risk of civil, regulatory or criminal exposure regardless of the percentage of shareholders or employees located in such jurisdictions.

9 Rule 24.7

We understand that the Panel will no longer be able to permit the inclusion of conditional cash confirmation statements. However, we would welcome confirmation that this is not intended to lead to any change in market practice or detailed approach by financial advisers in discharging their responsibilities associated with the provision of cash confirmation statements. We would welcome the opportunity to discuss this with the Panel in due course.