



PCP 2018_1 ASSET VALUATIONS

Issued 7 December 2018

ICAEW welcomes the opportunity to comment on the *Asset Valuations Public Consultation Paper* published by The Takeover Panel on 17 October 2018, a copy of which is available from this [link](#).

Certain proposed amendments appear to go beyond codifying practice requiring a wider range of valuations to be considered in the context of Rule 29.

Guidance will be helpful, including on:

- the factors the Panel will take into account when judging materiality of valuations that are not referred to or given in the context of an offer; and
- the types of liabilities that come within Rule 29.

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports and regulates more than 150,000 chartered accountant members in over 160 countries. ICAEW members work in all types of private and public organisations, including public practice firms, and are trained to provide clarity and rigour and apply the highest professional, technical and ethical standards.

© ICAEW 2018

All rights reserved.

This document may be reproduced without specific permission, in whole or part, free of charge and in any format or medium, subject to the conditions that:

- it is appropriately attributed, replicated accurately and is not used in a misleading context;
- the source of the extract or document is acknowledged and the title and ICAEW reference number are quoted.

Where third-party copyright material has been identified application for permission must be made to the copyright holder.

For more information, please contact: representations@icaew.com

KEY POINTS

1. The proposed amendments to Rule 29 of the Takeover Code are intended to provide a more logical framework for the rule as well as to improve clarity, including the circumstances in which a valuation is subject to Rule 29. We are supportive of these stated objectives.
2. Certain proposed amendments, however, appear to go beyond codifying practice requiring a wider range of valuations to be considered in the context of Rule 29 – not just in the circumstances that merit this. We highlight the breadth of the look-back period in new Rule 29.1(a)(ii) and the catch-all provision in new Rule 29.1(c) that any valuation can be deemed in scope if the Panel considers that it is material to the decision of offeree shareholders. These go beyond ‘in connection with an offer’ and could be qualified.
3. Guidance is needed on both the factors the Panel will take into account when judging the materiality of valuations that are not referred to or given in the context of an offer, and the expectations of the Panel for advisers to review all valuations - including ‘accounting’ valuations - in order to inform the consultation envisaged with the Panel under new Rule 29.1(c).
4. Guidance will also be helpful on the types of liabilities that the Panel believes could fall within Rule 29.1(a) as is referred to in the proposed new Rule 29.1(c).
5. Our responses to the specific questions are underpinned by the over-arching concern in paragraph 2.

ANSWERS TO SPECIFIC QUESTIONS

Q1 Is a period of 12 months prior to the commencement of the offer period an appropriate “look back” period in order for Rule 29 to apply to a valuation under the proposed Rule 29.1(a)(ii)?

Q2 Do you have any comments on the application of Rule 29 to a valuation published in the circumstances described in the proposed Rule 29.1(a)(i), (ii) or (iii)?

Q3 Do you have any comments on the proposed wording “unless the Panel considers that the valuation is not material to offeree company shareholders in making a properly informed decision as to the merits or demerits of the offer”?

Q4 Do you have any other comments on the proposed new NB at the beginning of Rule 29, the proposed Rule 29.1(a) or the proposed new Note on Rule 29.1?

6. The new Rule 29 appears broader than the current rule, without the approach trigger. We suggest the 12 month period is acceptable, provided that the Panel provides appropriate guidance on the types of asset valuations that it considers are material to the investment decision of offeree company shareholders.
7. Advisers will need to identify all valuations – including ‘accounting valuations’ published in the look-back period even if they are not referred to in the merits and demerits of an offer. the PCP states that the Code Committee would not normally expect Rule 29 to be applied to such an ‘accounting’ valuation and the new Note on Rule 29.1 states that new Rule 29.1 is not intended to apply to such valuations. In the absence of a definitive position which would eliminate doubt, advisers will always have a requirement to consult the Panel over such valuations. It would be helpful for the Code Committee to set out its expectations of advisers in identifying ‘accounting’ valuations over the look-back period and consulting the Panel during the course of an offer in order to confirm how Rule 29 would apply.
8. Would the Panel consider sharing its reasoning in the cases in paragraph 2.10(b) of the PCP, where the valuation was ‘otherwise’ considered to be material to offeree shareholders’ assessment of the offer? Were any ‘ordinary course’ valuations involved?
9. We agree with the proposed new NB at the beginning of Rule 29 and the proposed new Note on Rule 29.1.

Q5 Should the specific types of asset valuations to which Rule 29 applies be those referred to in the proposed Rule 29.1(b)?

10. We agree with the types of asset valuations in proposed Rule 29.1(b) but we think that valuations of income streams and annuities are an additional specific type.

Q6 Should the Panel have the ability to apply Rule 29 to a valuation of other assets or liabilities, as referred to in the proposed Rule 29.1(c)?

11. Yes, though guidance from the Panel will be helpful on examples of liabilities (beyond pension deficits) that would fall within Rule 29.1(a) and ones that would not normally be covered (eg, litigation?).

Q7 Do you have any comments on the proposed Rules 29.1(b) and (c)?

12. Our principal comment relates to the need for guidance on the factors that the Panel would take into account when considering whether a valuation is /is not material to offeree shareholders' decisions.

Q8 Do you have any comments on the proposed Rule 29.1(d) in relation to the publication of a net asset value or adjusted net asset value?

13. While we agree with the objective we are unclear as to why the requirements of Rule 19.1 are the appropriate standard for judging accounting adjustments.

Q9 Should the Code require that a valuation published during the offer period must be in the form of, or accompanied by, a valuation report?

14. Yes, this should be required for valuations that fall within proposed Rule 29.1(a).

Q10 Should the Code require that a valuation report in respect of a valuation falling within the proposed Rule 29.1(a)(ii) or (iii) should be included in the offer document or the offeree board circular (as appropriate) or, if earlier, in the first announcement or document published during the offer period by the offeree company or the securities exchange offeror (as the case may be) which refers to that valuation?

15. Yes, this should be a requirement.

Q11 Do you have any other comments on the proposed Rule 29.2, regarding the requirement for a valuation report, or on the proposed new Note on Rule 29.2, in relation to the circumstances where it is not possible to obtain a valuation report within the required timeframe?

16. The test in the new Note on Rule 29.2 of 'exceptional circumstances' is high and, in the PCP commentary, the Panel notes that it may take time to satisfy the requirements on Rule 29.6 on the potential tax liability. Would the Panel exercise discretion to allow for delays of parts of the valuation report (eg, input on tax liability) where omission would not impact the value of the report?

Q12 Do you have any comments on the proposed Rule 29.3 in relation to the requirements applying to valuers?

17. In some circumstances there is likely to be need for flexibility in terms of assessing qualification to provide an opinion. For new technologies and asset types reference may need to be made to track record and experience in a related field.
18. It is not clear what 'relevant legal or regulatory requirements' in new Rule 29.3(a)(iii) are aimed at. The preparation of the report? The qualifications and standing of the valuer?

Q13 Do you have any comments on the proposed Rule 29.4 in relation to a valuation report?

19. In relation to new Rule 29.4(b), can guidance be given on when the Panel might not give consent to a qualification which is (a) permitted under the relevant standards (or is market practice) and (b) is clearly and appropriately disclosed?
20. Might the Panel consider including a note to Rule 29.4 regarding the possibility of redacting valuation reports on the website, subject to prior consultation and with the Panel's consent?

Q14 Do you have any comments on the proposed Rule 29.5 in relation to "no material difference" statements?

21. We highlight the additional costs that a valuer's public confirmation will impose on the offeree.

Q15 Do you have any comments on the proposed Rule 29.6 in relation to the requirement to give an estimate of the amount of the potential tax liability which would arise upon a sale of the assets?

22. Please see our response to Q11.

Q16 Do you have any comments on the proposed Rule 29.7 in relation to information in valuation reports which could constitute a profit forecast?

23. We have no comments.

Q17 Do you have any comments on the proposed Rule 29.8 in relation to the valuation by one party to an offer of another party's assets?

24. We have no comments.

Q18 Do you have any comments on the consequential amendments to the Code proposed in Section 9(d) of the PCP?

25. No.