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The Code Committee
The Takeover Panel
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Dear Takeover Panel colleagues,

Invitation to comment: Dual Class Share Structures, IPOs and Share Buybacks

We welcome the opportunity to respond to your consultation *Dual Class Share Structures, IPOs and Share Buybacks.*

The Quoted Companies Alliance *Legal Expert Group* and *Markets Expert Group* have 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.

As an overarching comment, we would like to mention that, in keeping with other Takeover Code CPs, we found this to be a clearly presented and carefully considered response to the issues addressed by the Code Committee. This is reflected in our response which largely supplement the proposals rather than raise objections to them.

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 new Rule 37.2(a) be introduced to provide that an increase in the voting rights of an Affected Shareholder as a result of the extinguishing or conversion of Class B shares will be treated as an "acquisition" of an interest in shares for the purposes of Rule 9.1?

We agree with this approach which, as you observe elsewhere in the CP, is consistent with the current provisions of the Code which apply to share buy-backs.

Q2 Should the new Rule 37.2(b) be introduced to provide that the Panel will normally grant an "innocent bystander" dispensation from any resulting Rule 9 obligation unless (a) the trigger event is a time sunset or (b) the person acquired an interest in shares at a time when it had reason to believe that a trigger event would occur?

We believe that this is a fair approach when taken together with the "dispensation by disclosure" concept and the ability to seek Rule 9 waivers in appropriate cases.

Q3 Should the proposed new Note 6 on Rule 9.5 be introduced to provide that the Panel should be consulted as to the consideration to be offered where a requirement to make a mandatory offer arises as a result of a "deemed" acquisition of shares?

We agree that, in cases like this, where there is no obvious reference price for the mandatory offer, consultation with the Panel is appropriate. Whilst we acknowledge (and hope) that instances of Rule 9 bids being triggered in consequence of "deemed acquisitions" will be rare, we would suggest that guidance is issued as to the approach of the Panel to pricing in such cases. We envisage that this guidance would essentially comprise an amplification of the factors summarised in paragraph 2.61 of the CP.

Q4 Should (a) the new Note 9 on Rule 10.1 (for a voluntary contractual offer) and (b) the new Note 3 on Rule 9.3 (for a mandatory offer) be introduced in respect of the acceptance condition for an offer for a DCSS 1 company?

Yes - this appears to be a logical approach which recognises both the "hurdle" presented to the bidder by the existence of the B Shares and the broader interests of the general body of shareholders.

Q5 Should Rule 14.2 be amended to provide the Panel with the ability to consent to a single combined offer for more than one class of shares?

On balance we believe that this change will have no practical effect since, where there is more than one class of equity security, offerors will need to structure their bids as separate offers/proposals in any event. In the case of conventional offers this will be necessary to enable the offeror to avail itself of the statutory squeeze out procedure and, in the case of court-

sanctioned schemes of arrangement, it will facilitate the holding of separate court convened meetings for the purposes of obtaining approvals from the holders of each class of shares. Accordingly, whilst we do not object to this proposed amendment to the Takeover Code, we query whether it will serve any purpose in practice.

Q6 Should the proposed new Note 4 on Rule 16.1 be introduced to require the Panel to be consulted where an offer is made for a company with a DCSS?

We are in agreement with the proposed new Note 4 on Rule 16.1 which will result in early scrutiny of the price to be offered for any Class B shares. In order to provide guidance to potential offerors, we suggest that the Note is expanded to include a statement that where the Class B shares convert into ordinary shares, the Panel will not normally regard Rule 16 as having been breached where the price per ordinary share is the same as that offered for the existing ordinary shares of the offeree.

Q7 Should the proposed new Note 3 on Rule 2.9 be introduced to provide that any announcement of the number of securities in issue made under Rule 2.9 by a DCSS 1 company must explain the voting rights carried by each class of shares and that the Panel must be consulted on the form of the announcement?

We agree that this is important information and should be included in any announcement of the number of securities in issue made under Rule 2.9.

Q8 Should the proposed new Note 4 on Rule 17 be introduced to provide that any announcement of acceptance levels made by an offeror under Rule 17.2 in the context of an offer for DCSS 1 company must specify the voting rights carried by the shares and relevant securities in the offeree company and that the Panel must be consulted on the form of the announcement?

We agree that this is information which should be disclosed for the benefit of offeree shareholders and the market as a whole.

Q9 Should the proposed new section 3(e)(i) of the Introduction to the Code be introduced to provide that appropriate disclosure must be made in an IPO admission document, including in relation to the application of Rule 9 and details of any relevant person or concert party, and that the Panel must be consulted for guidance on that disclosure?

This is a useful codification of accepted practice. The pro-forma language in the existing Note to Advisers issued by the Panel Executive provides a good starting point for such disclosure and we recommend that this note is updated to reflect this proposed amendment in due course.

Q10 Should the proposed new Note 6 of the Notes on Dispensations from Rule 9 be introduced to provide that the Panel may grant a "Rule 9 dispensation by disclosure" in the context of an IPO?

We agree with the proposed new Note 6. We have heard the view expressed that greater prominence could be given to disclosures of the rights attaching to B Shares (we use the term generically) and their consequences for other investors. We suggest that the Code Committee therefore considers including language emphasising the need for such disclosures to be clearly and prominently made given their significance to potential investors in any DCSS company.

Additionally, for DCSS companies we suggest that details of the particular rights attached to the DCSS shares, how the Code will apply (in general terms) in the event of the conversion of the DCSS into regular shares and any "dispensation by disclosure" which has been made are maintained on the company's website and that an annual disclosure of such matters is also included in company's report and accounts.

Q11 Should the current Rule 37.1 be deleted and replaced with the proposed new Rule 37.1, including the new Notes 1(a), 1(e), 2(a) and 2(b), so as to draw a more explicit distinction between "innocent bystanders" and "directors or related persons" and to explain more clearly what the mandatory offer consequences and the process for obtaining a waiver or dispensation from Rule 9 would be in each case?

We believe that the new Rule 37.1 and the proposal to bring deemed share acquisitions arising from share buy-backs and from the conversion of B Shares under the same roof with, so far as possible, a common regime applicable to both, are helpful amendments to the Code.

Q12 Should the "disqualifying transactions" regime under the current Note 5 on Rule 37.1 be replaced with the proposed new Notes 1(b), 1(c) and 1(d) on Rule 37.1?

Yes – please see our response to Q11.

Q13 Should the new Note 2(c) on Rule 37.1 be introduced to provide that, where the Panel has granted an innocent bystander dispensation on a share buyback, the company must disclose the maximum percentage of voting rights in which the relevant person, or group of persons acting in concert, might become interested?

Yes – please see our response to Q11.

Q14 Should the current Note 6 on Rule 37.1 in respect of renewals be replaced by the new Note 3 on Rule 37.1 and the reference to Chapter 4 of Part 18 of the Companies Act 2006 be removed?

Yes – please see our response to Q11.

Q15 Should the new Note 4 on Rule 37.1 be introduced to provide that the Panel should be consulted on a share buyback which could result in all or substantially all of the company's shares being held by one person or concert party and that the Panel will normally treat such a transaction as an offer?

Yes - we agree that this is a useful codification of current practice.

Q16 Should the final sentence of the current Note 1 on Rule 37.1, the current Notes 4, 7 and 8 on Rule 37.1 and the current Rule 37.2 be deleted?

Yes - we do not feel particularly strongly about this but agree that the current CP presents a good opportunity to "tidy up" provisions which are adequately dealt with elsewhere in the Code.

Q17 Should the new Rule 37.3 be introduced in place of the current Note 6 of the Notes on Dispensations from Rule 9 in relation to the enfranchisement of non-voting shares?

Yes - we agree with the proposal to conform the wording of the Code here with that used in the context of share buy-backs and conversion of DCSS shares.

Appendix A

A list of the Quoted Companies Alliance *Legal Expert Group* members can be found here: https://www.theqca.com/legal-expert-group/

A list of the Quoted Companies Alliance *Markets Expert Group* members can be found here:

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