AT/BPC

The Secretary to the Code Committee
The Takeover Panel
10 Paternoster Square
LONDON
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By email to: supportgroup@thetakeoverpanel.org.uk

31 August 2012

Dear Sir/ Madam

TAKEOVER PANEL CONSULTATION PAPERS (ref 20012/1 and 2012/3)

The Institute of Chartered Accountants of Scotland (ICAS) welcomes the opportunity to comment on these consultation papers. We are a professional body for over 19,000 members who work in the UK and in more than 100 countries around the world. Our members represent different sizes of accountancy practice, financial services, industry, the investment community and the public sector. Almost two thirds of our working membership work in business, many leading some of the UK's and the world's great companies.

Our Charter requires its committees to act primarily in the public interest, and our responses to consultations are therefore intended to place the public interest first. Our Charter also requires us to represent our members' views and to protect their interests, but in the rare cases where these are at odds with the public interest, it is the public interest which must be paramount.

PROFIT FORECASTS: POSSIBLE AMENDMENTS TO RULE 28 OF THE TAKEOVER CODE

1. Profit forecasts, quantified financial benefits statements, material changes in information and other amendments to the Takeover Code (ref PCP2012/1)

Overall, we are pleased to see that the proposed changes to Rule 28 strike a fair balance between ensuring parties are held to high standards of accountability without overly impacting the desire for increased communication to shareholders and transparency. In addition, we are pleased to see that the Panel has taken the opportunity to tidy up parts of the Code, particularly to ensure consistency with other rules and regulations (for example by including for the first time specific definitions of "profit forecast", "profit estimate" and "quantified financial benefits statements", bringing "quantified financial benefits" statements into line with profit forecasts and providing guidance on the compilation of profit forecast reports as well as assumptions).

Specifically, we believe that it is right that the concept of the additional reporting requirement for those making profit forecasts and / or quantified financial benefits statements during an offer period remains and that it is extended in those circumstances prior to an offer period where the party is aware of a possible offer either because it has made / received an approach or is actively considering an offer. In these circumstances the imposition of additional requirements is justifiable given the particular significance of such statements in the context of an offer and the requirement to ensure that they are prepared to an appropriate standard.

On the other hand, where a company is completely unaware of any possible offer it is only right that it is able to publish forward-looking guidance on future expected profits, which shareholders and other market participants find particularly useful, without any concern that they will be subject to overly restrictive scrutiny after the event. The proposed confirmation approach, rather than the current additional reporting requirement, strikes a fair and proportionate balance between reducing the deterrents for companies from making forward-looking statements and providing appropriate assurance for shareholders that statements have been made with due care and attention.

In relation to paragraph 5.5 regarding restriction of dispensation under new Rules 28.1 (a) and (b) "*only if each of the other parties consent*", perhaps the Panel should have discretion whether or not a dispensation should be granted when the target seeks it, irrespective of the views of the offeror.

We remain slightly concerned by the potential for confusion relating to the definition of "ordinary course forecasts" made during an offer period, particularly the concept that they are made "in accordance with an established practice". However, the concept that both sides need to consent to the dis-application of the reporting requirements reduces the potential for any material abuse.

In relation to longer term forecasts we believe that the "confirmation" approach is sensible and the distinction between more and less than a fifteen month period is appropriate as is ensuring the interpolation to current profit forecasts is not abused. We continue to believe that shareholders should be provided with greater protection in management buy-outs or similar situations and that reports rather than confirmations should always be required in these circumstances.

In relation to the codification of third party forecasts, we believe that it appears harsh to require the company to report on statements which are essentially independent third party views. We note the Panel's concern that the quotation of such statements is effectively an endorsement of those views by the company but question whether guidelines as to the fair representation of third party views or the use of consensus numbers only (as per the hostile offer guidelines) might be a more appropriate approach.

Finally, we believe that the codification of the acceleration of the publication of material changes in information by way of announcement is sensible and brings the Code up to date and in line with other regulatory rules and frameworks.

Overall we believe that the proposed changes are broadly in line with our views and provide both helpful clarity and a logical framework for both the rules on profit forecasts and quantified financial benefits statements.

2. Companies subject to the Takeover Code (ref PCP2012/3)

Although the paper is noticeably shorter than the consultation paper on profit forecasts, the changes suggested in relation to the proposed expansion of the Panel's jurisdiction are arguably more significant. The removal of the residency test for companies incorporated in the UK, Channel Islands or the Isle of Man is a material amendment and will be of significance to many companies on AIM as well as unlisted public companies whose management are based overseas. However, we believe that the removal of the residency test is appropriate and provides better clarity to both shareholders and the broader market as to whether the Code applies to certain companies or not, which can only be for the benefit of all. We do not believe there to be significant risk in the Panel being unable to effectively undertake its regulatory responsibilities on those companies with more limited association to the UK, Channel Islands or the Isle of Man.

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We hope this is helpful.

Yours faithfully

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