



Monday, 5<sup>th</sup> September 2016

## Takeover Code - reminder of changes on chaperoning, communication and distribution of information

Ahead of the changes to the Takeover Code effective on **12 September 2016**, this note is a reminder of the revised 'chaperoning' obligations and key publication requirements to consider when advising bidder or target on a takeover offer.

The changes will apply in relation to ongoing offers, as well as future offers. The current Code provisions will continue to apply until that date and the changes will not have retroactive effect.

Those of you used to advising on "Rule 20.2" issues will need to instead reference "Rule 21.3" : the current Rule 20.2 is substantially unchanged but renumbered.

### **Increased chaperone obligations for investor meetings and telephone calls: new Rule 20.2**

- The safeguards that currently apply to meetings between bidder/target and its investors (i.e. that the meeting must be supervised by an appropriate financial adviser or corporate broker and no material new information or significant new opinion relating to the offer, or a party to the offer, may be provided) will be extended to apply to telephone calls and meetings held by electronic means.
- The supervisor will have to confirm in writing to the Panel, by 12 noon the following business day, the names of those who attended the meeting or call and the fact that there was no material new information or opinion. (This requirement for a written confirmation will not apply where meetings are not attended by a representative of the bidder/target, but rather led by a financial adviser/broker to it).
- If advisers to both bidder and target are present (e.g. to discuss irrevocables with a shareholder), in practice the advisers will need to agree between them who liaises with the Panel.
- The new rule will not apply to: (i) meetings taking place prior to the commencement of an offer period (except meetings which relate to a possible offer or would not be taking place but for the possible offer); (ii) telephone campaigns conducted in accordance with new Rule 20.6 of the Code or to calls regarding only administrative matters; (iii) unscheduled incoming calls to an investor relations officer provided that the calls are limited to basic information and conducted in accordance with a script prepared by a financial adviser or corporate broker and approved by the Panel; or (iv) discussions with holders of public debt (unless convertible), bank syndicate members or holders of private placement securities.

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- Meetings before the commencement of an offer period or prior to the announcement of a firm or revised offer: the supervisor will have to confirm in writing to the Panel the individuals who attended the meeting and that any new information and significant new opinion will be published in, or before, the relevant 2.7 or response announcement.
- Meetings following the announcement of a recommended firm offer where there is no competitive situation: the Panel will normally grant a dispensation from the requirement for the meeting to be attended by a financial adviser or broker. However, the Panel will normally withdraw the dispensation if the offeree board withdraws its recommendation, a competitive situation arises or there is some other material development.
- It remains the case that information passed in confidence only between bidder and target is not caught by these rules.
- A summary table of chaperoning requirements is set out at the end of this note.

## **Video, social media and websites**

- There will be new rules regulating the use of video and social media communications.
- Any videos, webcasts or audio-only communications which include any information or opinions relating to an offer or to the financial performance of a party to an offer must comprise only a director or senior executive reading from a script or participating in a scripted interview. Such a video may only be published with the prior consent of the Panel (and, if published, there must be an RIS announcement at the same time).
- Social media can only be used for dissemination of the full text of an announcement or published document, or the notification of a link to a webpage containing such an announcement or document.

## **Announcements and websites**

- Unless the Panel otherwise consents, all announcements required to be made under the Code will have to be published via an RIS. Outside business hours, the distribution to two newswire services will be sufficient (there will no longer be a requirement to distribute the announcement to two national newspapers).
- Where any material new information or significant new opinion relating to an offer, or a party to an offer, is (i) published by or on behalf of a bidder/target; (ii) provided to any shareholder or holder of a convertible; (iii) provided to any bondholder acting in that capacity or (iv) provided to the media, then that information or opinion will need to be published in an RIS announcement - new Rule 20.1. There will be a new note allowing for information to be provided on a confidential basis for a limited time prior to an offer or prior to the announcement of a revised or firm offer (e.g. in meetings with major shareholders seeking irrevocables), with publication to be delayed until the date of the announcement of a firm or revised offer.
- In addition, any presentation or other document relating to an offer, or a party to an offer, that is provided to a person referenced in (ii) or (iii) in the paragraph above, must be published promptly on a website *irrespective* of whether it contains new information/opinions. Likewise, any written media communications relating to an offer or the financial performance of a party to an offer.
- Rule 26 on websites will be amended to state that documents must be published by no later than 12 noon on the following business day.

## **Analyst Coverage**

- Panel approval is still required, and content restrictions apply, for any research published by a firm associated / in concert with the bidder/target. This has also been extended to include unconnected analysts who are remunerated by the bidder/target.

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- Specific provision (short of chaperoning) is made for briefings given by other advisers (e.g. PR) to sell-side analysts.

## **Other consequential changes**

- As a consequence of the changes, some existing rules will be renumbered (for example, the current Rule 20.2 on the equality of information to competing offerors will become Rule 21.3).
- On 12 September, the Panel will also be amending some of its Practice Statements to reflect these changes – please see the [Panel's website](#) for details of which Statement will be affected.

*The above is necessarily only a summary of the relevant Code provisions and is not a substitute for specific advice.*

**FOR FURTHER INFORMATION, PLEASE CONTACT RICHARD SPEDDING OR YOUR USUAL CONTACT AT TRAVERS SMITH**

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## Rule 20.2 chaperone requirements (effective Sept 2016)

Meeting/call between Bidder/Target Representative and:	Chaperoning required		
	Pre-offer*	Recommended 2.7 and no rival 2.4	Hostile / Competitive
Shareholders	✓ unless unrelated to/not motivated by offer	(X) <sup>†</sup>	✓
Investment Manager/Adviser/Analyst	✓ unless unrelated to/not motivated by offer	(X) <sup>†</sup>	✓
Publicly-traded debt holders	X unless convertible	X <sup>†</sup> unless convertible	X <sup>†</sup> unless convertible
Bank syndicates	X	X	X
Only target/bidder	X	X	X
Credit Rating Agencies	X	X	X
Media	X	X <sup>†</sup>	X <sup>†</sup>
Employee Representatives	(X)	(X)	(X)
Pension Trustees	(X)	(X)	(X)
Rule 20.6 compliant telephone campaigns	n/a	X	X
Callers on administrative matters only	X	X	X
Ad hoc inbound IR calls	X	(X) if script agreed	(X) if script agreed

### Notes:

- \* Remember "Rule of Six" constraints (Rule 2.2(e))
- † Note the Rule 20.1 publication requirements for new information or opinions disclosed. Supervision may be recommended accordingly.
- ( ) Denotes requirement for Panel consultation or dispensation