

# UK TAKEOVER CODE UPDATE

## The communication and distribution of information during a bid

On 12 September 2016, the Rules of the UK Takeover Code governing the communication and distribution of information during a bid will change. The areas affected include the chaperoning requirement for meetings and calls with shareholders and analysts, the use of materials during meetings and calls, and the use of social media and videos during bids.

### THE PUBLIC CONSULTATION

On 15 February 2016, the Panel on Takeovers and Mergers (the "Panel") published a public consultation paper ([PCP 2016/1](#)) in which it proposed a number of amendments to the Rules of the City Code on Takeovers and Mergers (the "Code") that relate to the communication and distribution of information and opinions during a bid by or on behalf of a bidder or the target. On 14 July 2016, the Panel published a response statement ([RS 2016/1](#)) setting out its conclusions following the public consultation and the Code amendments that will become effective on 12 September 2016 (including in relation to ongoing bids).

### THE PANEL'S APPROACH

General Principle 2 of the Code requires that target shareholders are given sufficient information to enable them to reach a properly informed decision on the merits of a bid. The PCP and RS focus on the means by which that information is communicated and distributed to target shareholders and to other relevant persons, bearing in mind, in particular, the requirement in General Principle 1 of the Code that all holders of target securities of the same class are treated equally. In the PCP and the RS, the Panel emphasized that the rules governing the communication and distribution of information are an essential part of the orderly framework for the conduct of bids and that it is important that those rules are clear, appropriate and reflect technological changes over time.

If you have any questions concerning this memo, please reach out to your regular firm contacts or:

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PCP 2016/1 can be accessed via this [link](#), and RS 2016/1 via this [link](#).

## WHAT ARE THE KEY CHANGES?

All material new information and significant new opinions about the parties or the bid must be published in an RIS announcement (*new Rule 20.1(b)*)

Where any party to the bid (or another person on its behalf): (i) publishes any material new information or significant new opinions (other than in a document sent to all target shareholders); (ii) provides any material new information or significant new opinions to any person interested in target or bidder securities or any investment manager, adviser or analyst; or (iii) provides any material new information or significant new opinions to the media, that material new information or those significant new opinions must, at the same time, be published in an announcement via RIS and published on a website.

All materials used in meetings with shareholders or analysts, and any communications given to the media, must be published on a website (*new Rule 20.1(c)*)

This new requirement applies to: (i) any materials (e.g. slide decks) relating to the bid or a party to the bid that are provided to, or used in any calls or meetings (hereafter, "meetings") with, any person interested in target or bidder securities (including publicly-traded debt securities) or any investment manager, adviser or analyst; and (ii) any article, letter or other written communication relating to the bid or the financial performance of a party to the bid that is provided to the media, in both cases regardless of whether they contain any material new information or significant new opinions.

If multiple versions of a presentation have been used, only the latest version needs to be published (provided it does not omit any relevant information that was included in previous versions).

Information provided in confidence to certain shareholders before a firm offer announcement need not be published immediately (*new Note 6 on Rule 20.1*)

The Panel is codifying its long-standing practice of allowing material new information and significant new opinions to be provided in confidence to selected target shareholders prior to the commencement of the offer period or the firm offer announcement (e.g. in order to gauge their views on the bid or seek an irrevocable undertaking). Such information or opinions (and any presentations or materials used in the relevant meetings) must be published, at the latest, at the time of the firm offer announcement.

Note: in addition to the requirements of the Code, where the existence of a possible bid is being disclosed to target shareholders, the disclosing entities should be mindful of the market soundings regime in Article 11 of the new EU Market Abuse Regulation ([Regulation 596/2014](#)), which came into force on 3 July 2016. The regime imposes detailed record-keeping requirements on each disclosing entity.

The chaperoning requirements with respect to calls and meetings between target or bidder representatives and shareholders etc. are changing (*new Rule 20.2*)

The Panel's requirements relating to the chaperoning by a financial adviser or corporate broker of meetings between representatives of the bidder or the target, on the one hand, and target or bidder shareholders, investment managers, advisers or analysts, on the other hand, are changing in a number of respects.

The chaperoning requirement continues to apply to meetings during the offer period, but will now only apply to pre-offer period meetings if they relate to the bid or would not be taking place but for the bid. This reduction in the scope of the chaperoning requirement reflects the Panel's long-standing practice of granting dispensations

in respect of meetings before the offer period that do not relate to the bid.

The default position for relevant meetings remains largely unaffected: all relevant meetings must be attended by a representative of at least one of the parties' financial advisers or corporate brokers, who must confirm to the Panel by 12 noon the next business day: (i) the names and organizations of the individuals who attended the relevant meeting; and (ii) that no material new information or significant new opinions about the bid or any party to the bid were provided, or, in the case of relevant meetings that take place before a firm offer has been announced (iii), that any material new information or significant new opinions that *were* provided will be published by the latest on the same date as the firm offer announcement.

For any confirmation falling under (iii) above, the confirmation will also need to include a "brief" description of the material new information and/or significant new opinions provided.

The Panel has also codified its recent practice of relaxing the chaperoning requirement after the announcement of a recommended firm offer in a non-competitive bid situation. In those circumstances the Panel will now (subject to prior consultation) normally permit senior representatives of the parties (e.g. a senior investor relations officer), or other advisers, to chaperone relevant meetings and send the written confirmation to the Panel instead of a financial adviser.

Before granting this dispensation for any given bid, the Panel will seek confirmation that the parties' financial advisers have briefed the relevant representative or other adviser as to the requirements of the relevant Rules of the Code. The dispensation may be withdrawn if the target withdraws its recommendation or a competitive situation arises.

The Panel has also clarified that the chaperoning requirement does not apply to meetings that apply solely to administrative matters and may also be dispensed with (subject to prior consultation) in relation to unscheduled incoming telephone calls to investor relations officers,

provided that the calls are limited to basic information and conducted in accordance with a script that has been prepared by a financial adviser and pre-approved by the Panel.

The table on the following page summarizes the key features of the chaperoning requirements from 12 September 2016.

Note: old Rule 20.2, which requires diligence information that has been provided by the target to one bidder to be provided on request to any bona fide competing bidder, will become new Rule 21.3.

New rules are being introduced to govern the use of videos and social media during a bid (*new Rules 20.3 and 20.4*)

Any video (or webcast or audio-only communication) published by or on behalf of a party to the bid that includes any information or opinions relating to the bid or the financial performance of a party to the bid must comprise only a director or senior executive reading from a script or participating in a scripted interview, and must be cleared by the Panel in advance of publication. If any video is published, an announcement must be made via RIS including a link to the video on a website.

Parties (and persons acting on their behalf) may only use social media to publish: (i) the full text of an announcement that has been published via an RIS; (ii) the full text of a document that has been published on a website; and (iii) basic, non-controversial notifications of links to webpages on which such announcements or documents have been published.

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CLEARY GOTTLIB

Timing of Meeting	Additional details	Call / meeting between: (a) representative of bidder or target (or their advisers*); and (b) shareholders of bidder or target, investment managers, investment advisers or “sell-side” investment analysts**	* No written confirmation is required if the only persons who attend the meeting on behalf of the bidder or target are financial advisers or corporate brokers.  ** Where a meeting takes place between an adviser to the bidder or the target (other than the FA/CB, e.g. a PR adviser) and a “sell-side” analyst, no financial adviser or corporate broker is required to attend. In such cases, a senior adviser (appropriately briefed) who attended the meeting must send the written confirmation.  *** Does not apply to meetings which relate solely to administrative matters.
Pre-offer period	Meeting is <u>not</u> bid-related	✗	
	Meeting is <u>bid-related</u> (or would not have taken place but for the bid)	✓ - FA / CB	
During offer period but pre-2.7 announcement ***		✓ - FA / CB	
Post-2.7 announcement ***	Offer <u>recommended</u> and Panel has granted the dispensation (and not withdrawn it)	✓ - Senior representative or adviser, appropriately briefed	
	Offer <u>not</u> recommended or Competitive situation or Panel has not granted the dispensation (or has withdrawn it)	✓ - FA / CB	