

The Association of Corporate Treasurers

Comments in response to
***Consultation Paper “Extending the Code’s
Disclosure Regime”: PCP 2009/1***
**Issued by the Code Committee of The Takeover
Panel**

8 May 2009

July 2009

The Association of Corporate Treasurers (ACT)

The ACT is a professional body for those working in corporate treasury, risk and corporate finance. Further information is provided at the back of these comments and on our website www.treasurers.org.

Contact details are also at the back of these comments.

We canvas the opinion of our members through topic-specific working groups and our Policy and Technical Committee.

General

The ACT welcomes the opportunity to comment on this matter. The ACT generally is supportive of the proposals being made by the Code Committee. We, like the Code Committee, believe that a high degree of transparency and disclosure is essential for good markets and especially around the time of a takeover.

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Response to questions

Q.1 Do you agree that the “opening position disclosure” requirement and “extended composite disclosure” should be adopted as proposed?

A.1 Yes.

We are supportive of increased transparency in this area.

Q.2 Should the deadlines for “opening position disclosures” and “dealing disclosures” be those described above?

A.2 Yes.

We think that the deadlines are practical for now. However, this should be reviewed after experience with the deadline and probably the 10 business days will be able to be shortened.

Q.3 Do you agree with the proposal as to the time for calculating whether a person has an interest in relevant securities of 1% or more for the purpose of the “opening position disclosure” requirement?

A.3 Yes.

The “opening position” should be just that, so there is no argument for a later time.

Q.4 Do you agree that the positions which should be disclosed in an opening position disclosure are those existing or outstanding at midnight on the day immediately preceding the date on which the disclosure is made?

A.4 Yes.

Subsequent changes should be picked up in trading activity disclosures. An earlier time would be unhelpful.

Q.5 Do you agree with the proposals as to disclosures in relation to more than one party to the offer?

A.5 Yes.

Q.6 Do you agree that the current Rule 8.3(b) should be amended as proposed?

A.6 .Assuming that the practice set out in 2.66(b) continues, yes.

Q.7 Do you agree with the proposed amendments to the Code in relation to the matters described in section 2 of this PCP, as set out in Appendix B to this PCP?

A.7 Yes.

Q.8 Do you agree that the definitions of “associate” and “acting in concert” should be conformed and that the definition of “associate” should be deleted?

A.8 Yes. The additional scope implied by “associate” does not materially improve the information disclosure.

Q.9 Do you agree with the proposed new Note 10 on the definition of “acting in concert”?

A.9 Yes.

Q.10 Do you agree with the proposed amendments in relation to the current Note 6 on Rule 8?

A.10 Yes.

Q.11 Do you agree with the proposed consequential amendments arising out of the proposed deletion of the definition of “associate”?

A.11 Yes.

Q.12 Should securities borrowing and lending positions be disclosed under the Code as described?

A.12 This would be appropriate.

Q.13 Should the Code's disclosure regime apply where a right of use is exercised in respect of relevant securities in which a person is interested or where relevant securities are subject to a title transfer collateral arrangement?

A.13 Yes.

Q.14 Do you have any comments regarding the Code Committee's conclusions in relation to the disclosure of securities borrowing and lending and financial collateral arrangements?

A.14 The ACT has long supported symmetrical disclosure generally in relation to interests in shares, whether long or short. However, we understand the proposal to defer a decision on this at present as we think that the incremental costs of the disclosures will fall if the FSA comes out in its definitive rule making to require more symmetrical disclosure following its recent consultation. The position should be reviewed after the FSA's final position (for the time being) is known and there is experience of its implementation and the improvements in information that has required.

Q.15 Do you agree with the proposed amendments to Rule 4.6 and its Notes and to the introduction of provisions in relation to financial collateral arrangements into the proposed new Note 5(l) on Rule 8?

A.15 Yes.

We are not aware of the thinking behind the original adoption of Rule 4.6 in relation to the offeror. The new permissive proposals and disclosure proposals seem more appropriate.

Q.16 Do you agree that Note 17 on Rule 9.1 and Note 2 on Rule 9.3 should be amended as proposed?

A.16 We are uncomfortable with the current position that borrowed shares on lent are excluded from the threshold calculation – due to the usual right of recall. Accordingly we would see the change implied by the adoption of revised definition of "interests in securities" as a step forward and we do not agree with the change dealt with in 4.56. We have no issue with the changes dealt with in 4.57.

Q.17 Do you agree with the Code Committee's conclusion that the Code should not require persons with a significant gross short position in the relevant securities of a party to an offer to disclose their dealings and positions in relevant securities if they do not have a gross long interest of 1% or more in any class of relevant securities of a party to the offer?

A.17 Again we are in favour of symmetrical disclosures of interests, long or short but we again acknowledge that a decision on this should be deferred until the FSA's final position on short disclosures is known and there has been some experience in such reporting and the systems in place to ensure its timeliness and accuracy.

The Association of Corporate Treasurers

The ACT is the international body for finance professionals working in treasury, risk and corporate finance. Through the ACT we come together as practitioners, technical experts and educators in a range of disciplines that underpin the financial security and prosperity of an organisation.

The ACT defines and promotes best practice in treasury and makes representations to government, regulators and standard setters.

We are also the world's leading examining body for treasury, providing benchmark qualifications and continuing development through training, conferences, publications, including *The Treasurer* magazine and the annual *Treasurer's Handbook*, and online.

Our 3,600 members work widely in companies of all sizes through industry, commerce professional service firms.

Further information is available on our website (below).

Our policy with regards to policy and technical matters is available at <http://www.treasurers.org/technical/resources/manifestoMay2007.pdf>.

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