

Present:	Gary Thorpe (in the Chair)	GT
	Tom Shaw	TS
	Paul Arathoon	PA
	Donald Stewart	DS
	Kate Jalbert	KJ
	Tim Ward	TW
	Julie Keefe	JK
	Ian Binnie	IB
	Anthony Turner	AT
	Bernard Wall	BW
	Sarah Hassan	SH
	Sara Bradbury	SB
In attendance:	Jaspal Sekhon (Minutes)	JS
	Andrew Collins	AC
	David Hicks	DH
	Chris Manning	CM
	Tony Pullinger (The Takeover Panel)	TP

ACTIONS

1. Welcome to Tony Pullinger, The Takeover Panel, to give an update on current/future work

GT thanked TP for attending the meeting.

{TB briefed the committee members on the Takeover Panel ("Panel") and covered a number of points contained in the slides that were handed out at the meeting. Please refer to the slides as well as these minutes}

Key points not covered in the slides were as follows:

- There are normally 40 to 150 takeovers per year but it is currently at the lower end of that range.
- The Panel have no interest in judging the commercial merits of a bid or other policy issues (e.g. competition). They have no view on whether or not foreign bidders should be allowed to buy UK companies and they neither encourage nor discourage takeover bids.
- Unlike in some other jurisdictions, the Panel governs all key areas relating to takeovers.
- As regards the point about certainty in slide 1B, people can easily speak to the Panel about issues and they will receive clear guidance.
- As regards slide 1D, the general principles came out of the chaos in the 1960s where a large number of controversial takeovers occurred (e.g. bidders often paid different prices to different groups of shareholders in a target).
- In the Datafin case, the Court declined to intervene in takeover issues and as a result there have been no judicial reviews since the 1990s. In a subsequent judgment, the Court warned that the Courts should not be used to circumvent Code requirements.

- The last cold shoulder from the Panel was in 2010.
- The powers and responsibilities of the Panel overlap with the market abuse regulations. This has been addressed by the FCA agreeing not to use its powers while a takeover is in play.
- TW asked if any appeals are made public. TP said that the Panel will make a statement once it has reached a decision but if it raises a point of interest for the market, the Panel would probably make a more detailed announcement or practice statement. It will often depend on the circumstances of the bid (e.g. whether or not been announced to the market).
- As regards slide 2A, the Panel felt that the Code at the time gave bidders a tactical advantage which is why they proposed the subsequent changes to the Code.
- As regards a bidder's intention towards the target's business, in some cases the Panel will ask bidders to quantify the number of job losses that they propose.
- As regards slide 2D, there is a much lower incidence of share price movements which indicates that greater care is being taken with security and preventing leaks to the media.
- GT asked TP to comment on directors' irrevocable undertakings following the recent statement from the Panel. TP explained that the Code Committee had decided that certain deal protection measures in the Code were causing difficulties for target companies and recognised that there had to be some exclusions. The Panel will allow a director to sign an irrevocable undertaking in respect of his own shares but he cannot ever do so in his capacity as a director. TP noted that many old precedents include such a provision and the Panel has had to ask parties not to use such provisions. TP said this is an obvious breach of the Code and the Panel has been telling advisors informally that it will not look favourably on breaches and could potentially impose quite serious sanctions.
- The Panel is currently very busy dealing with enforcement issues. There are an unprecedented number of investigations and complaints regarding concert parties and undisclosed information. These investigations are very time consuming.
- As regards slide 4, the Panel website includes some helpful slides about how the amended Code applies and TP encouraged committee members to look at them.
- As regards the jurisdiction of the Code, TP thinks the recent changes have been a very positive development. The Panel will be quite pro-active with nomads concerning their obligations. There has been an argument that the recent changes may put off companies from listing in the UK but TP thinks that strong regulations can only be attractive to investors.
- The Panel had been spending considerable time on determining central management and control issues and indeed had been getting increasingly preoccupied about the jurisdiction of the Code.
- TS asked what the issues for 2014 will be. TP said the panel is surprised at the lack of takeover bids currently. He would be surprised if there is not some pick-up in market activity during the course of the year. He also thinks there will be many more investigations. TP also noted that with the general election in 2015 the political parties will start to set out their manifestos. Some politicians have already raised issues about disenfranchising certain shareholders during a takeover bid which could have huge implications and cause problems. The Panel are trying to explain the consequences and down sides to people who have argued in favour of such measures.
- TP noted that there are a very small number of senior staff at the Panel who focus on policy issues.

- IB asked if there were any plans to relax some of the requirements for small company transactions, for example, take privates and whitewash transactions which can sometimes be disproportionate to the size of the deal. TP noted that the whitewash process is exceptional as the Panel looks at a document in draft form but he thinks it is important. The Panel now have people who will check off the documents after they have been published to check for compliance. The Panel also considered publishing checklists and they may well do that.

GT thanked TP once again for attending the meeting and TP left the meeting.

2. Apologies

Apologies were received from June Paddock, Martin Kay, Susan Hollingdale, Stephen Hamilton, Simon Cox, Ross Bryson, Maegan Morrison, David Davies, Chris Barrett, Mebs Dossa, Philip Lamb and Richard Beavan.

3. Approve the minutes of the previous meeting (24 October 2013)

The minutes of the last meeting were approved.

4. Review of actions from the last meeting

Please refer to the list of actions at the end of this document.

5. Current consultations and issues

a) Consultation Paper: BIS - Company filing requirements consultation (Response Date: 22 November 2013)

KJ explained that this had been included for information only. The Corporate Governance Expert Group had raised some issues concerning disclosures of beneficial owners. The QCA did not submit a response to this consultation.

b) Consultation Paper: BIS - Government's Review of the Balance of Competencies Between the United Kingdom and the European Union: Call for Evidence: Single Market: Free Movement of Services Review (Response Date: 13 January 2014)

KJ asked if anyone had any thoughts on this consultation paper. DS said he had been at a meeting of the City of London Committee which had discussed this. He thought the QCA should be able to extract quite a lot of detailed information from previous QCA responses which could be used for this consultation response.

c) Consultation Paper: HM Treasury - Balance of Competencies Review - Call for Evidence: Single Market: Financial Services and the Free Movement of Capital (Response Date: 17 January 2014)

DS volunteered to review this consultation paper and consider whether or not the QCA should respond.

DS

d) Consultation Paper: ESMA - Policy Orientations on possible implementing measures under the Market Abuse Regulation (Response Date: 27 January 2014)

GT volunteered to review this consultation paper and consider whether or not the QCA should respond.

GT

e) Guidance on Relationship Agreements

- Consultation Paper: FCA Feedback on CP12/25: Enhancing the effectiveness of the Listing Regime and further consultations (Response Date: 5 February 2014)

PA volunteered to review this consultation paper and consider whether or not the QCA should respond.

PA

f) ABI Report - Encouraging Equity Investment - Proposal to eliminate pre-launch IPO blackout period?

TS volunteered to review this consultation paper and speak to HM Treasury about the proposals re IPOs.

TS

g) Equity lines of credit - experience good or bad?

TW explained that this had come up at the lunch on Monday and it had also been raised in another expert group. It was felt that these products can be very expensive for issuers and TW thinks it may be worth alerting QCA members to this. He was also considering whether to invite some companies that offer these products, such as Yorkville and Darwin Strategic, to attend a future QCA event.

Everyone was asked to send their comments and observations on these products to TW.

All

6. Communications

a) Guest invitations

No members had any other suggestions for guests other than those that were mentioned at previous meetings.

b) Committee Drinks

GT suggested the Expert Group members should organise drinks and he or KJ will suggest some dates in the New Year.

GT/KJ

c) Expert Group Chairmen's Lunch

TW reported that the lunch had been a success.

d) Trip to European Commission/Brussels

KJ noted that the EU is currently looking at the Shareholder Rights Directive, pay and remuneration (which may go further than the UK position), the Market Abuse Directive, the Transparency Directive and SME growth markets. GT specifically asked for feedback on the prospectus thresholds from members.

ALL

GT queried whether expert group members would be interested in having a trip to Brussels in 2014 to discuss some of these points in more detail, especially regarding the Prospectus Directive. Members agreed this would be useful. KJ and Chris Stapeley will liaise on this.

KJ/Chris Stapeley

e) FCA publishes amendments to filing requirements in PR3.2

This was tabled for information only.

f) ESMA statement on shareholder co-operation and acting in concert - in relation to the Takeover Directive

This was tabled for information only.

g) Policy Update (October 2013)

This was tabled for information only.

7. Any other business

N/A

Information for noting

- Consultation update - responses submitted: None
- Next meeting

8.45am Thursday 23 January 2014 (Venue: Speechly Bircham)

8. Actions

Action	Person	Timing
Review Consultation Paper: HM Treasury - Balance of Competencies Review - Call for Evidence: Single Market: Financial Services and the Free Movement of Capital	DS	17/01/14
Review Consultation Paper: ESMA - Policy Orientations on possible implementing measures under the Market Abuse Regulation	GT	27/01/14
Review Consultation Paper: FCA Feedback on CP12/25: Enhancing the effectiveness of the Listing Regime and further consultations	PA	05/02/14
Review ABI Report - Encouraging Equity Investment - Proposal to eliminate pre-launch IPO blackout period and speak to HM Treasury	TS	ASAP
Send any comments, observations and experiences about equity lines of credit to TW.	All	Next meeting
Suggest dates for Committee drinks	GT/KJ	New Year
Provide any feedback on the thresholds in the prospectus regulations to KJ	All	Next meeting
Organise a trip to Brussels in 2014 to discuss key points, especially the Prospectus Directive	KJ/Chris Stapeley	Ongoing