



The Quoted  
Companies Alliance

## Minutes of the Markets and Regulations Committee Meeting

held on Wednesday 27 April 2011 at 5.00pm  
at Speechly Bircham, 6 New Street Square, London EC4A 3LX  
(with Tony Pullinger, The Takeover Panel, in attendance)

<b>Present:</b>	Stuart Andrews (Chair)	Evolution Securities	SA	
	Andrew Collins	Speechly Bircham	AC	
	Martin Finnegan	Nabarro	MF	
	Brian McDonnell	Olswang	BM	
	Laurence Sacker	UHY Hacker Young	LS	
	James Stapleton	Winterflood Securities	JS	
	Tim Ward	QCA	TW	
	Kate Jalbert (Minutes)	QCA	KJ	
<b>In Attendance:</b>	Tony Pullinger	Takeover Panel	TP	
	Tom Shaw	Speechly Bircham	TS	(QCA Legal Committee)
	Ross Bryson	Mischon de Reya	RB	(QCA Legal Committee)
	Jonathan Deverill	DMH Stallard	JD	(QCA Legal Committee)
	Donald Stewart	Faegre & Benson	DS	(QCA Legal Committee)
	Gary Thorpe	Clyde & Co	GT	(QCA Legal Committee)
	David Hicks	Speechly Bircham	DH	(QCA Legal Committee)
	Samantha Harrison	Ambrian	SH	(Corporate Finance Advisors)
	Nicholas Narraway	Moorhead James	NN	(Corporate Finance Advisors)

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## ACTIONS

### 1. Welcome to Tony Pullinger, Deputy Director General of the Takeover Panel to discuss proposed amendments to the Takeover Code

TW welcomed TP to the committee. TP noted that he is going to give a brief presentation, focusing on the rule review, and then to have a discussion with questions and answers.

TP described the basic features, function and composition of the Panel, highlighting its flexibility to adapt to situations and the benefit of a principles-based rule approach.

TP then went on to discuss the background reasons for the rule review, citing the fact that target companies were too easily 'put into play', virtual bid periods were lasting too long, and that offer outcomes were being unduly influenced by short-term investor.

It was noted that initial suggestions for the review were that a public interest test should be put on bids. The Panel was against this because it felt it was not its place to be deciding whether a takeover was positive or negative. Three other suggestions were regulatory in nature, including raising the success threshold from 50-60%, disenfranchise shares acquired during an offer period and require offers to be subject to an offeror shareholder vote. It was decided after last summer's consultation period that the Panel would not seek to bring in any of the initial suggested changes.

TP noted that the Panel believes that there is pro-bidder slant in takeovers and so this formed the basis for the Takeover Panel's proposed amendments to the Code.

TP then went through the amendments to shorten the virtual bid period, including naming bidders and the 4 week put up or shut up regime. TP noted that the 4 week put up or shut up regime will not apply if a third party announces intention to make an offer and if the target company makes an announcement that it is putting itself up for sale.

TP noted the amendments aimed at strengthening the position of the target company position, such as prohibiting inducement fees and deal protection measures and a prohibition on offer-related arrangements.

TP noted that the Panel is taking steps to improve transparency, including disclosure of financial information on offerors in all offers, details of credit ratings and disclosure of offer related fees (broken down by category).

TP explained that the Panel has also recommended amendments to take account of greater recognition of offeree employee interests, including requiring offerors to make negative statements if it has no plans to make changes, ensure that statements of intention hold true for one year, and improve the ability for target company employees to make their views known.

TP noted that the Panel is now consulting on implementing these proposals in the Code, which completes at the end of May. He expects that the new changes will come into effect from October 2011.

TP also explained that there a few additional areas the Panel is looking at including profit forecasts and asset valuations (which is a consultation paper outstanding from the previous year) and extending the Code application to a number of areas, potentially including all UK-incorporated AIM companies (irrespective of place of central management and control).

TP noted that the key objective of the current rules changes is to level the playing field; however, the main criticism is that the proposed measures have gone too far and may restrict bid activity. TP noted that he is very interested in the committees' views on the paper in light of these aspects.

Committee members then discussed:

- the new requirements to make a negative statement and to what extent will more work need to be carried out in this area;
- whether there was quantitative evidence for inducement fees detracting from offers and how this change may affect offers in terms of smaller companies for which an inducement fee would be cost-covering exercise;
- the issue of maybe giving the target company too much power in terms of naming of bidder provisions;
- the Government's reaction to the rule review;
- board proxy votes being covered by the Code in terms of concerns of acting in concert – TP noted that this was suggested to be provocative and is interested in views on this point.
- institutions rarely know whether a company is subject to the Code.
- how many of the 8,000 recent bids were FTSE 350 and how many were not – TP noted that he was not sure about this breakdown. The height of activity was in the mid-70s, 450 bids in a year, most active year in recent years was 2000 or 2001. TP noted that a significant percentage of those bids were smaller companies. DS queried that in terms of the Panel make up who is representing smaller companies. TP noted that no one body is particularly representing smaller companies (and also no one particularly representing bigger companies), however there are investors that invest in both large and small companies;
- what objections have there been - TP noted that the push back from the statement in October has been less than expected. Most of the concerns have been expressed from private equity firms, who like deal protection measures.

SA thanked TP for attending and TP left.

## **2. Apologies**

Apologies were received from Peter Allen, Richard Everett, Alexandra Hockenhull, Farook Khan, Linda Main, Richard Metcalfe, Katie Morris, Chris Searle, Peter Swabey, Mark Cleland, and Philip Quigley.

## **3. Approve the minutes of the previous meeting (30 March 2011)**

The minutes of the last meeting were approved.

#### **4. Discussion Items**

- **Takeover Panel: Review of Certain Aspects of the Regulation of Takeover Bids – Proposed Amendments to the Takeover Code (RD: 27 May 2011):**

This was not discussed.

#### **5. Future Meetings**

- **Guest invitations to future meetings**

**6. AOB:** Nothing to report.

#### **7. Next Meeting:**

17:00 Wednesday 13 July 2011 (at Speechly Bircham LLP, 6 New Street Square, London EC4A 3LX)  
(with HM Treasury in attendance)

**8. Action Points - NONE**