Norges Bank Investment Management

Takeover Panel
One Angel Court
London
EC2R 7HJ
United Kingdom

Date: 26.09.25

Takeover Panel consultation on dual class share structures, IPOs and share buybacks

We refer to the invitation to comment on the Takeover Panel's consultation paper PCP 2021/1 on Dual class share structures, IPOs and share buybacks. We appreciate the opportunity to contribute our perspective on the suggested amendments to the Takeover Code, aiming to contribute to the well-functioning of the UK mergers and acquisitions market.

Norges Bank Investment Management (NBIM) is the investment management division of the Norwegian Central Bank and is responsible for investing the Norwegian Government Pension Fund Global (the fund). NBIM is a globally diversified investment manager with 19,754 billion Norwegian Kroner at end 2024, of which 1,137 billion (ca GBP 80 billion) invested in the United Kingdom. As a long-term investor, we support well-functioning markets that facilitate the efficient allocation of capital and promote long-term economic growth.

We welcome the Panel's intention to adapt the Code to the 2024 Listing Rules regarding companies with a dual class share structure (DCSS), IPOs and share buybacks. This will improve clarity on how the Code applies to takeover offers made for companies with dual class share structures, which might become more common in the UK market. We support the introduction of a new framework for the application of the Code to a DCSS 1 company, where Class B shares carry multiple votes per share from issuance and are extinguished or converted to ordinary upon a trigger event or sunset clause. The suggested amendments will clarify the application of the mandatory offer requirements to such companies, particularly to address situations where a shareholder might be affected and fall above the mandatory bid threshold because of a trigger event. We similarly welcome the new provisions to require additional disclosures in respect to the Code and any controlling shareholders at IPO, to enhance transparency for all on existing ownership and voting structures. Finally, we support clarifying the rules on share buybacks and amended provisions relating to "disqualifying transactions".

We thank you for considering our perspective and remain at your disposal should you wish to discuss these matters further.

Yours sincerely

Signed by:
Carine Smith Ihenacho
C28B267008BE42F...
Carine Smith Ihenacho
Chief Governance and Compliance Officer

DocuSigned by:
Elisa Cencig
4A194F1D76A6473...
Elisa Cencig
Head of Policy Engagement

Norges Bank Investment Management
is a part of Norges Bank – the Central Bank of Norway

Postal address
P.O. Box 0179 Sentrum,
NO-0107 Oslo

Visiting address
Bankplassen 2,
Oslo

Tel: +47 24 07 30 00
Fax: +47 24 07 30 01
www.nbim.no

Registration of Business Enterprises
NO 937 884 117 MVA

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Consultation questionnaire

Dual class share structures

Q1 Should the new Rule 37.2(a) be introduced to provide that an increase in the voting rights of an Affected Shareholder as a result of the extinguishing or conversion of Class B shares will be treated as an "acquisition" of an interest in shares for the purposes of Rule 9.1?

Yes, we support the introduction of the new Rule 37.2(a) to clarify that an increase in the voting rights of an Affected Shareholder as a consequence of a trigger event is treated as an "acquisition" of an interest in shares, as meaningful control of the company would be transferred from the original Class B holder(s). This would be consistent with the treatment of an innocent bystander where her voting rights are increased because of a share buyback.

Q2 Should the new Rule 37.2(b) be introduced to provide that the Panel will normally grant an "innocent bystander" dispensation from any resulting Rule 9 obligation unless (a) the trigger event is a time sunset or (b) the person acquired an interest in shares at a time when it had reason to believe that a trigger event would occur?

Yes, we agree that the new Rule 37.2(b) should be introduced to provide for an "innocent bystander" dispensation where the voting rights of the Affected Shareholders are increased a result of an unexpected trigger event. Similarly to the above, this would be consistent with the treatment of innocent bystanders in case of share buybacks. However, we believe that Rule 37.2 (b) (ii) should have practical notes, and possibly a couple of examples, to remove ambiguity as to what 'reason to believe' means. This would help address uncertainty in cases when a trigger event might be merely probable, for instance in regard to a pending vote to remove the Class B holder as a director or the chance that the Class B director holder is disqualified.

Q3 Should the proposed new Note 6 on Rule 9.5 be introduced to provide that the Panel should be consulted as to the consideration to be offered where a requirement to make a mandatory offer arises as a result of a "deemed" acquisition of shares?

We agree that an amendment of the Code is needed to cater for the situation where a requirement to make a mandatory offer arises as a result of a "deemed" acquisition of shares, resulting from the conversion or extinguishing of voting rights of Class B shares. In such a case, the offer might not have made any "actual" acquisition of interests in shares during the look-back period, which can complicate the determination of the consideration to be offered. We therefore agree that there needs to be a methodology for setting a 'fair' price for minorities if a mandatory offer is triggered in this situation, and that the Panel should be consulted on the suggested consideration. We note that the consultation paper considers various options, (2.61 (a) – (e)), which the Panel might take into account in determining the consideration to be offered. To remove the capacity for the Affected Shareholder to potentially offer the lowest possible price to the detriment of minorities and provide further clarity to all stakeholders in the market including the offeror, we suggest that the following text is added the new Note 6 on Rule 9.5: "The consideration to be offered should be the maximum among: (a) price paid in "actual" acquisitions occurred during the look-back period, (b) highest price of share buyback, (c) middle market price at close on the day on which the obligation to make an offer arises, (d) volume weighted average price over the look-back period, etc". In other words, the Code could indicate that the consideration should be linked to the highest price among all the various options, rather than be

Norges Bank Investment Management
is a part of Norges Bank – the Central Bank of Norway

Postal address
P.O. Box 0179 Sentrum,
NO-0107 Oslo

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able to settle for the lowest possible price. It is also unclear what is meant by (e.) "The attitude of the board of the offeree company", so we would suggest either clarifying or removing this provision.

Q4 Should (a) the new Note 9 on Rule 10.1 (for a voluntary contractual offer) and (b) the new Note 3 on Rule 9.3 (for a mandatory offer) be introduced in respect of the acceptance condition for n offer for a DCSS 1 company?

We agree with the need to subject the acceptance condition for both voluntary contractual offers and mandatory offers to two tests for DCSS 1 companies. Given the change in the distribution of voting rights resulting from a conversion or extinguishing event of enhanced voting shares, both the "pre-unconditional" and the "post-unconditional" test are necessary for the offer to be declared unconditional. The alternative of just relying on "pre-unconditional" vote threshold could enable closure without sufficient tender acceptance from minority shareholders, and thus fail to achieve the "clear result" objective of the acceptance condition.

Q5 Should Rule 14.2 be amended to provide the Panel with the ability to consent to a single combined offer for more than one class of shares?

Yes, if both supervote and ordinary share classes are treated equally, as the supervote class converts to ordinary on transfer.

Q6 Should the proposed new Note 4 on Rule 16.1 be introduced to require the Panel to be consulted where an offer is made for a company with a DCSS?

We agree with the introduction of the new Note 4 to avoid any possible breach of Rule 16.1, which prevents any special deals with favourable conditions. Because of the inherent complexity linked to the presence of multiple class shares, we believe that involvement of the Panel through consultation is warranted where an offer is made for a DCSS company. This is particularly important where there is an unlisted equity alternative offer, which may allow the value offered to the DCSS shareholder to be greater than to ordinary shares. This situation is potentially more problematic as the controller shareholder is able to assess the value of the post-merger entity, which can be higher de-facto as not all shareholders can hold unlisted equity, and might therefore be incentivised to agree to a lower price for minority shareholders given their capacity to accept a higher benefit post-merger.

Q7 Should the proposed new Note 3 on Rule 2.9 be introduced to provide that any announcement of the number of securities in issue made under Rule 2.9 by a DCSS 1 company must explain the voting rights carried by each class of shares and that the Panel must be consulted on the form of the announcement?

Yes, we support the introduction of the proposed new Note 3 on Rule 2.9, which will improve transparency given that not all shareholders may be aware of the different share classes and voting rights associated with them.

Q8 Should the proposed new Note 4 on Rule 17 be introduced to provide that any announcement of acceptance levels made by an offeror under Rule 17.2 in the context of an offer for DCSS 1 company must specify the voting rights carried by the shares and relevant securities in the offeree company and that the Panel must be consulted on the form of the announcement?

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Yes, we support the proposed new Note 4, which will enable market participants to calculate the offeror's progress towards the acceptance conditions. This is necessary as not all shareholders may be aware of the different share classes and voting rights associated with them.

Initial public offerings

Q9 Should the proposed new section 3(e)(i) of the Introduction to the Code be introduced to provide that appropriate disclosure must be made in an IPO admission document, including in relation to the application of Rule 9 and details of any relevant person or concert party, and that the Panel must be consulted for guidance on that disclosure?

Yes, we support the proposed new section 3(e)(i) in the Introduction to the Code. Additional disclosure of ownership and voting structure and concert parties will both increase transparency and assist in index providers' calculations of Free Float.

Q10 Should the proposed new Note 6 of the Notes on Dispensations from Rule 9 be introduced to provide that the Panel may grant a "Rule 9 dispensation by disclosure" in the context of an IPO?

*Yes, we agree with the proposal to codify the practice of granting a "Rule 9 dispensation by disclosure" in this circumstance. The enhanced disclosures in IPO documentation would allow share buyers to make a judgement call on any applicable peer comparison to apply in pricing***.**

Share buybacks

Q11 Should the current Rule 37.1 be deleted and replaced with the proposed new Rule 37.1, including the new Notes 1(a), 1(e), 2(a) and 2(b), so as to draw a more explicit distinction between "innocent bystanders" and "directors or related persons" and to explain more clearly what the mandatory offer consequences and the process for obtaining a waiver or dispensation from Rule 9 would be in each case?

Yes, the proposed clarifications are necessary, including the more explicit distinction between "innocent bystanders" and "directors or related persons" and the consequences for mandatory offers and waivers/dispensation in either case

Q12 Should the "disqualifying transactions" regime under the current Note 5 on Rule 37.1 be replaced with the proposed new Notes 1(b), 1(c) and 1(d) on Rule 37.1?

Yes, we believe that the proposed clarifications are necessary and will improve clarity on what counts as a disqualifying transaction.

Q13 Should the new Note 2(c) on Rule 37.1 be introduced to provide that, where the Panel has granted an innocent bystander dispensation on a share buyback, the company must disclose the maximum percentage of voting rights in which the relevant person, or group of persons acting in concert, might become interested?

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Yes, we support the new Note 2(c) on Rule 37.1 to provide for disclosure of the maximum voting rights in which the "innocent bystander" might become interested upon a share buyback. The disclosure should additionally include a breakdown of forms of ownership within the maximum percentage, e.g., equity and other forms of 'interest'. For example, a call option 300% out of the money would carry less concern than equity, given the much lower probability that the holder would become an innocent bystander. The Panel should also allow for shareholder challenge to 'innocent bystander' status.

Q14 Should the current Note 6 on Rule 37.1 in respect of renewals be replaced by the new Note 3 on Rule 37.1 and the reference to Chapter 4 of Part 18 of the Companies Act 2006 be removed?

N/A

Q15 Should the new Note 4 on Rule 37.1 be introduced to provide that the Panel should be consulted on a share buyback which could result in all or substantially all of the company's shares being held by one person or concert party and that the Panel will normally treat such a transaction as an offer?

Yes, we believe that such a situation has the form and function of an offer so should have equal treatment, and therefore agree that the Panel practice should be codified.

Q16 Should the final sentence of the current Note 1 on Rule 37.1, the current Notes 4, 7 and 8 on Rule 37.1 and the current Rule 37.2 be deleted?

Yes, we support the proposed deletions, which become superfluous given the proposed changes.

Q17 Should the new Rule 37.3 be introduced in place of the current Note 6 of the Notes on Dispensations from Rule 9 in relation to the enfranchisement of non-voting shares?

Yes, we agree with the introduction of new Rule 37.3. Similarly to Q13, we believe that the Panel should also allow for shareholder challenge to the 'no knowledge of enfranchisement' status.

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