

PCP 2005/3: Dealings in Derivatives and options: control issues.
Consultation paper issued by the Code Committee of the Panel on
Takeovers and Mergers

A response by

The National Association of Pension Funds

27 January 2006

- 1 The NAPF is the leading voice of workplace pension provision in the UK. Some 10 million working people are currently in NAPF Member schemes, while around 5 million pensioners are receiving valuable retirement income from such schemes. NAPF Member schemes hold assets of around £750bn, and account for over one sixth of investment in the UK stock market.

Preamble

- 2 The NAPF has welcomed the Panel's review of the rules relating to dealings in derivatives and options during offer periods and supports both the new definition of "interests in securities" and the new definition of "dealings." The NAPF's comments on the latest proposals in this review of these rules are detailed below.

Q.1 Do you agree with the proposed amendments in order to implement the broad approach as described in paragraph 4 above?

- 3 Yes. The NAPF regards the proposed amendments as necessary to give consistency to the rules, as amended. The NAPF agrees that although an irrevocable commitment to accept an offer falls within the definition of "rights over shares", it does not fall within the definition of "interests in securities" introduced by RS 2005/2.
- 4 The NAPF agrees therefore that in the case of Rule 5 only, a person will be treated as having an interest in securities if he has received an irrevocable commitment in respect of them. It is proper that, as stated in paragraph 4.19, if an irrevocable commitment passes general control of the voting rights attached to the securities to the offeror, it will be treated as interested in those securities by virtue of paragraph (2) of the definition of "interest in securities."

Q.2 Do you agree with the Code Committee's conclusions regarding the acceptance condition under Rules 9.3(a) and 10? In particular, do you agree that only shares, and not interests in shares arising by virtue of derivatives and options, should be taken into account under Rule 9.3(a)?

- 5 The NAPF agrees with the Panel's conclusions on these points for the reasons given in paragraph 5.7.

Q.3 Do you agree with the Code Committee's conclusions and proposals regarding the 30% to 50% bands?

- 6 Yes.

Q.4 Do you agree with the proposed amendments in relation to the price at which an offer is required to be made as described in paragraph 6 above?

7 Yes.

Q.5 Do you agree with the proposed amendments in relation to changes in the nature of a person's interest as described in paragraph 7 above?

8 Yes.

Q.6 Do you agree with the proposed amendments in relation to the single shareholder exception?

9 Yes, although the NAPF requests that an explicit reference is made stating that the exception should not apply when an option is exercised.

Q.7 Do you agree that it is not appropriate for investment banks and securities houses to be required to make a mandatory bid in the circumstances described above and, if so, do you agree with the introduction of the concept of recognised intermediary status?

10 Yes.

Q.8 Do you agree with the criteria by reference to which it is proposed that the grant of recognised intermediary status should be determined? Are there any other matters which should be taken into account?

11 Yes.

Q.9 Do you agree that recognised intermediary status should also be used as the basis for determining whether the exception from disclosure in Rule 8.3(d) should be available?

12 Yes.

Q.10 Do you agree that the trading desks which may be eligible for recognised intermediary status should not be limited to trading desks which form part of a principal trader (as defined in the Code)?

13 Yes.

Q.11 Do you agree with the proposed features of recognised intermediary status referred to above?

14 Yes. However the NAPF would welcome further clarity on the proposed sanctions that may apply when recognised intermediary status has been abused. Will withdrawal of such status when abuse is proven ever be permanent, will there be a right to apply for re-recognition after particular time periods have elapsed or will this be purely at the Panel's discretion?

Q.12 Do you agree with the proposed amendments to the Code referred to above to take account of the introduction of recognised intermediary status?

15 Yes, subject to the additional information requested in the answer to question 11.

Q.13 Do you agree with the Code Committee's proposal not to amend Rules 38.1 to 38.4?

16 Yes.

Q.14 Do you agree with the proposed amendments to Rule 38.5?

17 Yes.

Q.15 Do you have any comments on Form 38.5(a), Form 38.5(b) or Supplemental Form 38.5(b)?

18 No.

Q.16 Do you agree with the proposed amendments to Rules 4 and 7.2?

19 Yes.