

1. Rule 12.1 of the Takeovers Code provides that all “documents” (other than those appearing in the Post-Vet List) must be filed with the Executive for comment and must not be issued until the Executive has confirmed that it has no further comments in respect of them. The main purpose of Rule 12.1 is to facilitate the identification of Code issues before a document is published and to encourage early consultation with the Executive.
2. Parties and their advisers are reminded that the Executive's role in the commenting process is no more than a consulting role where the Executive provides assistance in resolving any Code issues raised by the Executive or identified by the parties and their advisers. It is the sole responsibility of the issuer of the document (and its directors and advisers) to ensure that the Codes are fully complied with (see Note 2 to Rule 12 of the Takeovers Code).
3. Over the years the Executive has noted a marked over-reliance by issuers and their advisers on the commenting process with regards to the disclosure requirements set out in Schedules I, II, III and VI of the Codes (“Schedule disclosure requirements”) in respect of documents that are to be despatched to shareholders pursuant to Rule 8 of the Takeovers Code (“shareholder's documents”). Shareholder's documents include offer documents, offeree board circulars, composite documents, whitewash circulars, share buy-back documents and scheme documents. In some cases, the sub-standard work on the part of advisers results in extensive and sometimes repeated comments by the Executive and an inevitable change of focus away

- Changes to commenting process on Schedule disclosure requirements and revised PN20
- Rule 22 Dealing Disclosure Online Submission system launched and new electronic dealing disclosure forms
- Quarterly update on the activities of the Takeovers Team

4. Given the clear prescriptive nature of the Schedule disclosure requirements the Executive has decided to redirect its comments back to substantive Code issues and away from Schedule disclosure requirements. This should make it clear that the responsibility for compliance with the Schedule disclosure requirements rests squarely with issuers of documents and their advisers and not the Executive. It is believed that this change of approach will help promote self-discipline among parties and market practitioners and assist compliance with the Codes. It should also help reduce the time taken to produce documents and reduce timetable concerns.
5. This new approach will commence on 1 July 2014 until further notice. The new regime will apply to all drafts of shareholder's documents submitted to the Executive for comment on or after 1 July 2014. It will not apply to documents in respect of which the commenting process has already started before 1 July 2014.
6. In going forward the Executive will review a draft shareholder's document and raise comments regarding substantive Code issues such as the requirements regarding profit forecasts and property valuations (see Rules 10 and 11 of the Takeovers Code) and seek clarification of statements where appropriate. The Executive will also continue to comment on the letter of advice from independent financial advisers and be available for consultation about any Code-related issues. The Executive will no longer raise comments about compliance with the Schedule disclosure requirements during the commenting process unless they also relate to substantive Code issues.
7. As ever a draft document should not be submitted to the Executive for comment unless it is in an advanced form. The Executive expects the document to comply fully with the Schedules disclosure requirements and to contain information which is up-to-date, true, accurate and complete. It is accepted that certain information may need to be updated at a later stage during the commenting process. In this case, clear reference to this need should be highlighted in the draft document. The Executive reserves the right to return a non-compliant document to the sender.
8. Notwithstanding the above, where the issuer of a document (or its directors or advisers) foresees any difficulty in meeting a Schedule disclosure requirement or has any doubt whether the disclosure fully meets a Schedule disclosure requirement, the Executive must be consulted at the earliest opportunity and be given a reasonable time to consider the matter before the due date for despatch of the document.

Post-publication review and follow-up action

9. Immediately after a document is posted to shareholders, the Executive must be provided with two hard copies and one electronic version of the published version of the document together with a publication confirmation and translation confirmation (see paragraph 21 of Practice Note 20 (PN 20)). PN 20 also sets out further materials that are also required to be provided to the Executive along with the published version of the document.
10. From 1 July 2014 when providing the Executive with copies of the published version of the shareholder's document, the issuer(s) of the document must provide the Executive with completed checklists of compliance with the relevant Schedule disclosure requirements in addition to the information set out in PN 20. The checklists must clearly mark the page number of the **published version** of the document against the relevant Schedule requirement evidencing compliance.
11. There will be no need to provide the Executive with checklists of compliance with the relevant Schedule disclosure requirements **prior** to publication of a shareholder's document. The responsibility for complying with the Schedule disclosure requirements will rest firmly with issuers of the documents and their advisers.
12. The Executive will review the relevant document primarily for Schedule compliance **after** publication and make appropriate enquiries where necessary. Parties and their advisers are expected to respond promptly to any follow-up enquiries made by the Executive and provide all necessary information (see General Principle 10). A party and/or its advisers should make every effort to resolve an issue once it has been raised which may include the need to publish a clarification announcement or a supplementary document. The Executive also reserves its right to take further action in cases of non-compliance.

13. Notwithstanding the above, the Executive may, where it considers it necessary or appropriate, require a party and/or its advisers to submit checklists of Schedule disclosure compliance prior to publication of the shareholder's document.

14. PN 20 has been revised to reflect the new practice. We have also taken this opportunity to amend paragraph 14 of PN 20

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