

PCP 2026/1: Miscellaneous Code Amendments

24 September 2026



Introduction

1. The views set out in this response have been prepared by a Joint Working Party of the Company Law Committees of the City of London Law Society (**CLLS**) and the Law Society of England and Wales (the **Law Society**).
2. The CLLS represents approximately 21,000 City lawyers through individual and corporate membership, including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multijurisdictional legal issues. The CLLS responds to a variety of consultations on issues of importance to its members through its 22 specialist committees.
3. The Law Society is the professional body for solicitors in England and Wales, representing over 170,000 registered legal practitioners. It represents the profession to Parliament, Government and regulatory bodies in both the domestic and European arena and has a public interest in the reform of the law.
4. The Joint Working Party is made up of senior and specialist corporate lawyers from both the CLLS and the Law Society who have a particular focus on issues relating to takeovers.

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Response

Q1 Should Note 5 on the definition of “acting in concert” be amended so as to apply only to an agreement which restricts a person from reducing the number of shares in a company in which it is interested, and not also to other types of agreement?

5. We support this amendment and we also agree that the Note should be explicit that (in order for parties not to be considered to be acting in concert) the terms of the agreement must not restrict them from accepting/agreeing to accept any offer, as opposed to only those recommended by the target board.
6. We would, however, suggest that paragraph (b)(ii) be reworded to refer to “*agreeing to accept any offer for the company’s shares either before or after ~~its announcement~~ the start of an offer period*”.
7. It would also be helpful to understand the Panel’s approach to the type of standstill provision commonly included in NDAs between target companies and potential bidders. Although these do not restrict the potential bidder (**B**) from reducing any shareholding in the target company per se, it is not unusual for them to include a restriction on B “assisting” a third party with certain activities, including making an offer. Arguably this would prevent B selling shares to/granting an irrevocable undertaking to another potential bidder. Because such restrictions typically only lapse when a firm offer is announced, the giving of an irrevocable prior to announcement would not fall squarely within paragraph (b)(ii) of Note 5. We assume that it is not the Panel’s intention that B and the target company would be treated as acting in concert because of standstill provisions of this nature, but it would be helpful if this could be confirmed. If the Panel’s view is that such a standstill would give rise to a concert party, this would potentially have an impact on the manner in which these provisions are drafted in order to avoid issues around (for example) targets having to include potential bidder holdings in their OPDs.

8. Although Note 5 relates to agreements involving the target company/its directors, it would be helpful to understand how the Panel interprets standstill arrangements between potential bidders and other parties such as target company shareholders or potential joint bidders. In particular, we assume that Note 11 only applies where a potential bidder provides a financial inducement to deal or not deal and, absent such an inducement, the Panel would not consider Note 11 to apply when entering into a standstill with a third party. However, it would be helpful to confirm that is correct in light of, among other things, the requirement to disclose Note 11 arrangements at various points during the offer period (including pursuant to Rule 8).

Q2 Where a person interested in shares in a company has entered into an agreement with the company, and/or its directors, which requires the person to vote the shares in which it is interested (or to procure that the shares are voted) as the board recommends to shareholders on any resolution relating to the appointment and/or removal of directors, should the Panel normally consider the person and the directors to be acting in concert?

9. We do not agree that a person entering into a voting agreement which requires them to vote in line with the board on any resolution regarding the appointment and/or removal of directors should mean that they are automatically presumed to be acting in concert with the directors. In practice, the position may be more nuanced for a number of reasons.
10. Where a settlement or relationship agreement includes voting arrangements, this is typically as a quid pro quo for the company giving the shareholder board appointment rights and therefore a voice in the boardroom – as such, it is usual for the voting agreements to fall away if the shareholding drops below a certain level and the shareholder therefore loses the right to appoint a director. The commercial purpose of such voting agreements is not to preserve control of the board. Instead, it is driven by a desire to ensure the company is not facing opposition on “routine” resolutions in respect of which the shareholder’s appointed director(s) will have participated in deliberations resulting in the board’s recommendation – as such, it is common for such agreements to also extend to other ordinary course resolutions proposed (particularly at annual general meetings) rather than being limited to director appointments. Voting in line with the board’s recommendations does not in itself preserve control, and it should be noted that the shareholder will typically be expressly permitted to accept (or agree to accept) an offer at any stage. As such, a presumption of concertedness is not aligned with the rationale for Note 5 as explained in paragraph 2.3 of the PCP.
11. We would also observe that board appointment resolutions are inherently “routine” in the context of annual general meetings. It is a core requirement of a number of corporate governance codes applicable to listed companies (including the UK Corporate Governance Code), that all (or at least a portion) of the directors must be submitted for re-election at every annual general meeting. This re-election requirement is also often embedded in listed companies’ articles of association.
12. We would also note that the board has a legal obligation to make a recommendation to shareholders on all shareholder resolutions put to a general meeting, including routine director re-election resolutions. In making any such recommendation, each director is bound by their fiduciary duties owed to the company. This includes the duty to act in the way they consider, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole. The directors are not entitled to act in their own individual self-interest in making their recommendation. A shareholder who agrees to vote in line with board recommendations on routine director re-election resolutions is not therefore assisting the directors in preserving control of the board in any meaningful sense; they are simply supporting compliance with ordinary, often non-discretionary governance requirements. The Panel should have regard to this

distinction when assessing whether the proposed amendment is proportionate.

13. The proposals also seem inconsistent with Practice Statement No. 26, which notes that a resolution will not typically be considered as “board control-seeking” unless “*it seeks to replace existing directors with directors who have a significant relationship with the requisitioning shareholders with the result that those shareholders would effectively be in a position to control the board*”. Introducing the proposed amendment to Note 5 would capture (a) individual director appointments or removals which would not result in overall board control being secured and (b) the appointment or removal of directors who do not have a significant relationship with the shareholder concerned.
14. We would also note that, although we understand the Panel views this as a codification of existing practice, we do not believe that this is widely understood by the market. Existing settlement and relationship agreements entered into outside of an offer period will have been entered into on the assumption that a concert party relationship is not created by voting undertakings on ordinary course resolutions (which are part of the standard menu of provisions in agreements of this nature). Some of these agreements may need to be re-negotiated as a result of this proposal, which may be problematic or even impossible from a commercial perspective.
15. We suggest that a more proportionate approach would be for voting agreements to be considered on a case-by-case basis to determine whether the shareholder and the company and/or its directors are as a matter of fact co-operating to obtain or consolidate “control” of the company or to frustrate the successful outcome of an offer. In certain circumstances that may in fact be the case, but it should not be presumed to be so.
16. If the Panel does decide to proceed with the proposal in the PCP:
 - The implications for directors and shareholders should be clarified as it may have the potential unintended consequence of preventing directors from acquiring shares or exercising options in the ordinary course or preventing shareholders from acquiring further shares (so as to avoid triggering a mandatory offer under Rule 9). We do not believe that entering into a voting agreement should restrict directors or shareholders in this way, even where their voting rights (when taken together) are close to or in excess of 30%.
 - Relatedly, the Panel should clarify whether directors and shareholders who are deemed to be acting in concert as a result of the proposed amendment would be expected to consult with one another on trading decisions (for example, in order to avoid one of them triggering a mandatory offer obligation under Rule 9) in circumstances where there would otherwise be no requirement or commercial desire to do so. This would be a significant and potentially onerous consequence of being treated as concert parties, particularly where the sole basis for that characterisation is the existence of a voting agreement relating to director appointment resolutions. It is unclear how such a consultation obligation would operate in practice, and whether it would require the relevant parties to disclose commercially sensitive information about their intentions regarding their shareholdings. The Panel should confirm whether, and to what extent, parties in this position would be subject to the obligations that would ordinarily apply to concert parties in relation to the management of their aggregate shareholding in relation to Rule 9.
 - We suggest that it should be made clear that the presumption of a concert party relationship can be rebutted.
 - From the discussion in the PCP we do not believe the intention is for the approach to extend beyond agreements to vote in accordance with board recommendations to other types of voting provisions in relation to board composition or director

election/re-election (for example, an undertaking in a relationship agreement requiring a shareholder to exercise its votes in such a manner as to ensure that board composition complies with the requirements of the applicable corporate governance code) but it would be helpful if this could be confirmed for the avoidance of doubt.

- It would be helpful to understand how the Panel would approach an undertaking to vote for or against one specific set of director appointment/removal resolutions at a particular general meeting as opposed to an agreement with a more permanent element that relates to such resolutions more generally.
- In the context of voting at board level, we assume that an obligation on directors to vote in favour of the appointment of a nominee director of a major shareholder would not be treated as giving rise to a concert party relationship, but it would be helpful if the Panel could confirm this is the case.

Q3 Should the definition of “reverse takeover” be amended as proposed, and the Note on reverse takeover be deleted as proposed, to clarify that a reverse takeover includes any acquisition where a Code company may issue more than 100% of its voting equity share capital as consideration?

17. We have no objection to the amendment to the definition. However, we consider that it would be helpful if, rather than simply deleting the existing note, the note was amended to provide explicit clarification that, for the purposes of Rule 3.2, Note 8 on Rule 21.1, Rule 21.2(b)(v) and Note 3 on Rule 21.3, this definition is only relevant in circumstances where the offeror is a company that falls within section 3(a) of the introduction.

Q4 Should Note 4 on Rule 21.3 be amended as proposed to extend the application of Rule 21.3 to a reverse takeover in competition with an offer, other than one to which Note 3 on Rule 21.3 or Section 1(c) of Appendix 1 applies?

18. We did not have any comments on this extension.

Q5 Should (i) the definition of “UK multilateral trading facility or UK MTF” and the # note in section 3 of the Introduction to the Code be deleted, and a new definition of “UK primary MTF” be introduced, as proposed and (ii) Rule 24.3(a) in relation to AIM and the AQSE Growth Market, and Rule 28.5(b) in relation to the AIM Rules for Issuers and the AQSE Growth Market Rules for Issuers, be amended as proposed?

19. We agree with these proposals.

20. It may be helpful (for clarity/certainty) for a list of Primary MTFs to be available – in this context, we note the DRSP, MTF, OTF, SI and DR Register on the FCA’s [“other registers” page](#) does not distinguish between primary and other MTFs.

Q6 Should Rule 2.6(c) be amended as proposed to delete the factors to be taken into account by the Panel when deciding whether to consent to the extension of a “put up or shut up” deadline and the requirement for the offeree board to comment on those matters in an announcement of a new deadline?

21. We agree with these amendments and, in particular, that the target board is normally best placed to determine what information should be included in such announcements.

Q7 Should Note 1 on Rule 9.1 (Coming together to act in concert) be simplified and shortened as proposed?

22. Yes – we agree with the simplified form of Note proposed.

Q8 Should Note 2 on Rule 9.1 (Collective shareholder action) be amended as proposed, including (i) removing the duplication of the board control-seeking factors, on the basis that they are guidance as to how the Executive applies Rule 9.1 and are already included in Practice Statement 26 and (ii) moving the investment trust paragraph and the concert party break-up factors into Practice Statement 26?

23. Yes – we agree with the simplified form of Note and the proposed associated revisions to Practice Statement 26.

Q9 Should Note 3 on Rule 9.1 (Directors of a company) be deleted as proposed?

24. We agree with this proposal.

Q10 Should Note 4 on Rule 9.1 (Acquisition of interests in shares by members of a group acting in concert) be deleted and replaced by the proposed new Note 3 on Rule 9.1 (Transfers of interests in shares between members of a concert party), the new Note 4 on Rule 9.1 (Acquisitions from third parties where a concert party holds more than 50% of the voting rights) and, in relation to the consideration to be offered, the new Note 2(d) on Rule 9.5?

25. We agree with these proposed changes but would suggest that paragraph (b)(ii) refers to the acquirer being interested in shares representing not less than 30% but not more than 50% of the voting rights.

Q11 Should Note 5 on Rule 9.1 (Employee benefit trusts) be amended as proposed?

26. We agree with these proposed changes.

Q12 Should Note 6 on Rule 9.1 (Vendor of part only of an interest in shares) be deleted and replaced by the proposed new Note 6 (Sale of part of an interest in shares)?

27. We agree with the simplification of Note 6 in principle but consider that some of the guidance that has been omitted was helpful and could be included in shortened form.

Q13 Should Note 7 on Rule 9.1 (Placings and other arrangements) be amended as proposed?

28. Similar to Note 6, we thought that some of the guidance that has been omitted was helpful. In particular, it was not clear to us why the reference to being able to give (in exceptional circumstances) an undertaking to make a reduction within a very short period is being removed.

Q14 Should Note 10 on Rule 9.1 (Convertible securities, warrants and options) be simplified and shortened as proposed?

29. We agree with these proposed changes.

Q15 Should Note 17 on Rule 9.1 (Changes in the nature of a person's interest) be amended as proposed?

30. We agree with these proposed changes.

Q16 Should Note 2 on Rule 16.1, Rule 16.2(a) and Note 3 on Rule 16.2 be amended as proposed to require the independent adviser to state that the terms of the transaction or the arrangements (as applicable) are fair and reasonable "so far as shareholders are concerned"?

31. We agree with these proposed changes.

Q17 Should Note 7 and Note 9 on Rule 21.1 be amended as proposed so that, in respect of a potential offeror which has not been publicly identified during an offer period, the restrictions in Rule 21.1(a) will apply until 5.00 pm on the seventh day following the date on which the latest approach is unequivocally rejected?

32. We agree with these changes and that the position where the target board unequivocally rejects an approach from an undisclosed potential bidder should be the same irrespective of whether or not an offer period has commenced. It may be helpful to make clear (perhaps in an expanded version of new (b)) that, where the relevant period ends in respect of one potential offeror, the offeree will nevertheless remain subject to the restrictions in Rule 21.1 if and to the extent that there are any other offerors or potential offerors (whose latest approach has not been unequivocally rejected). In cases of doubt, the Panel should be consulted.

Q18 Should the requirement in Rule 28.7(a)(ii) for a party to an offer to remove forecasts by connected investment analysts be deleted as proposed?

33. We agree with these proposed changes.

Q19 Should Rule 28.7(c)(ii) be amended as proposed to include a requirement to state whether an organisation whose forecasts have been included in a consensus forecast is a connected firm?

34. We agree with these proposed changes.

Q20 Should Note 1(a) on Rule 35.1 be amended as proposed to clarify that the Panel will not normally give its consent in relation to the restrictions in Rule 35.1(f) (which relate to significant asset transactions) until three months after an offer has been withdrawn or has lapsed (or, if later, the end of the offer period) where the former offeror made a no increase statement or an acceleration statement without a reservation of the right to set the statement aside with the agreement of the offeree board?

35. We agree with these proposed changes.

Q21 Should the requirement in Rule 30.5(c) to inform advisers to all other parties to the offer of the publication of a document etc. outside normal business hours be deleted as proposed?

36. We agree with this amendment.

Q22 Should a cross-reference to Note 2 on Rule 31.3 be introduced into Rule 32.1(c) to make clear that an offer may be revised after Day 46 in certain circumstances?

37. We agree with this amendment.