

The Secretary to the Code Committee  
The Takeover Panel  
10 Paternoster Square  
London  
EC4M 7DY

12 May 2011

Our Ref: CAA/dlb

Dear Sir

Please find attached a copy of a letter from the Chairman of the ICI Pension Fund to the Chairman of the Takeover Panel, which we ask you to accept as a formal contribution to your public consultation PCP2011/1.

Yours sincerely

Charles Amos  
Chief Executive  
Pensions Secretariat Services Ltd  
the corporate Secretary of the ICI Pension Fund

Enc.

Sir Gordon Langley QC  
Chairman  
The Takeover Panel  
10 Paternoster Square  
London  
EC4M 7DY

12 May 2011

Our Ref: DJG/dlb

Dear Sir Gordon

**Takeover Code -- Pension Fund members as “other persons affected”**

We see that the Takeover Panel has recently launched a public consultation [PCP 2011/1] on improvements to the Takeover Code designed, amongst other things, to "take more account of the position of persons who are affected by takeovers in addition to offeree company shareholders." Whilst we applaud this general objective, we must register our surprise and disappointment that these proposals, as currently drafted, fail entirely to recognise pension fund members as people affected by takeovers.

The ICI Pension Fund is one of the few large (£7.5 billion) pension schemes whose constitution ensures complete independence of its Board and Secretariat from the sponsoring employer. This gives us an unusual degree of freedom to represent the interests of pension scheme members where they may conflict with those of the employer. For the avoidance of doubt, we do not regard the Panel's long-standing tradition of including senior investment representatives of employer-sponsored pensions industry organisations as fit for the purpose of representing the interests of individual fund members where these diverge from those of employer shareholders.

In our view, there is no logical justification for recognising employees as "persons who are affected by takeovers" whilst failing to recognize pension fund members as such. Indeed, given the financial significance of many pensions obligations to shareholders and the potential for material adverse surprise from volatile deficits, we equally see no reason why the Code should be concerned to inform shareholders about an Offeror's intentions towards the Offeree's employees but not about its intentions affecting pension fund members.

In particular, we would draw your attention to the significance of the scheme specific funding regime introduced by the Pensions Act 2004. Under this regime, pension fund deficits are not a fixed value, but one which varies according to the strength of the supporting employer covenant (i.e. the financial strength of the entities with a legally-binding obligation to support the pension fund). As most takeovers result in the scheme sponsor becoming a subsidiary of a holding group and since subsidiaries have far less control over their financial affairs than ultimate holding companies, most takeovers (in the absence of countermeasures agreed in advance) are likely to involve significant and almost instantaneous covenant deterioration. This, in turn, obliges trustees to reassess deficits and can give rise to substantial additional funding requirements. Shareholders -- and all other persons affected by takeovers -- have a right to be informed of these potential consequences and to have clarity in advance as to how they will be addressed.

Finally, given the mounting costs of an ageing society, we believe it is strongly in the national interest to ensure that takeovers -- particularly by non-EU companies beyond the effective reach of the Pensions Regulator -- do not result in the degradation of pension fund creditors, with all that entails in terms of additional government expenditure on the elderly, lost tax revenues from pensioners and additional Pension Fund Protection levies for responsible UK employers. Indeed, as global wealth moves from West to East, we believe that the wider economic and social consequences of passing control of UK companies to non-EU jurisdictions with poorly-developed legal systems raise fundamental questions. The Panel should not automatically assume that maintaining the UK tradition of openness to takeover with countries who in no way reciprocate is necessarily in the national interest.

Many of these questions raised wider issue of government policy which we shall be raising directly with the Ministers concerned. Nevertheless, the current review of the Takeover Code represents an important opportunity to improve the practical position. We therefore urge the Takeover Panel to:

- a) As a matter of principle, recognise that members of defined benefit pension schemes entitled to financial support from offeree companies represent "persons who are affected by takeovers in addition to offeree company shareholders"
- b) As a matter of principle, recognise that shareholders are entitled to information about the potential consequences of any takeover for pensions financial obligations
- c) Amend the Code so as to accord equal importance between employees and pension fund members and to require equal clarity between pensions funding and other financing -- for example, by including:
  - a requirement for an Offeror to disclose its intentions regarding the pension scheme including the impact of the offer and associated financing on the scheme and a negative statement if it has no intentions and no impact is expected;
  - a requirement that an Offeror must adhere to the statements made in 1 above for at least 12 months;
  - a requirement that an Offeree must disclose its views on the effect of the offer on the interests of the pension scheme;
  - a requirement that all Offeror and Offeree information disclosed be made available to the pension scheme through its trustees;
  - a requirement on the Offeree to inform trustees of their right to express an opinion on the offer and for that opinion to be published by the Offeree company and the costs of forming such an opinion to fall to the Offeree.

We would welcome the opportunity to meet you and your officials in order to discuss these issues further.

Yours sincerely

David Gee  
Chair, ICI Pensions Trustee Limited (the Trustee of the ICI Pension Fund)

cc: John Bloxsome - The Law Debenture Pension Trust Corporation plc,  
Independent Trustee of the ICI Pension Fund  
Charles Amos - Chief Executive, ICI Pension Fund Secretariat