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

21 April 2011

Our ref: 1153/DC/ama

Dear Sir,

TAKEOVER CODE CONSULTATION RESPONSE – KINGFISHER PENSION TRUSTEE LTD

As a large UK corporate pension Scheme we welcome the proposed amendments to the Takeover Code however, we feel it does not address the risks posed to UK pension schemes and their members through corporate restructuring.

In statement 2010/22 (2.7), it was stated that *'the Code Committee has concluded that a number of changes should be proposed to the Code to improve the offer process and to take more account of the position of persons who are affected by takeovers in addition to offeree company shareholders'.*

We believe that amendments to the takeover code should take into account pension schemes' obligations to meet benefit payments payable to both past and current employees in order to fully meet this objective.

Any change in corporate structure, whether that is via takeover or through other means, has the scope to materially weaken the employer covenant and therefore a scheme's ability to meet its obligations to pay benefits to its members. For example, the Kingfisher Pension Scheme currently holds assets of circa £1.7billlion and liabilities in excess of £2.5billion, any change to the corporate structure would have the potential to negatively impact the strength of the employer covenant.

We recognise that some protection is provided via pensions' legislation and the Pensions Regulator ('tPR') in relation to Covenant Events. However the legislation is reactive rather than proactive and the amended Takeover Code provides the opportunity to introduce this proactive protection. The Code could raise awareness within the corporate sector about pension Scheme obligations and the importance of consulting with Trustees at an appropriate stage of takeover discussions.

In particular we would hope that as a minimum, the obligations created by the Takeover Code in respect of employee interests are replicated for the Trustees of Defined Benefit Pension Scheme in both hostile and recommended situations including:

(1) 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.

(2) A requirement that an Offeror must adhere to the statements made in 1 above for at least 12 months.

(3) A requirement that an Offeree must disclose its views on the effect of the offer on the interests of the pension scheme.

(4) A requirement that all Offeror and Offeree information disclosed be made available to the pension scheme through its Trustees.

(5) 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 sincerely hope that you take these views into account and introduce amendments to the Code that strengthen the position for current employees and additionally any past or present employees where the corporate has created an obligation to make beneficiary payments via its defined benefit pension scheme.

Yours sincerely

Dermot Courtier
Secretary to the Trustee

cc National Association of Pension Funds