

BEAUFORT TRUST CORPORATION LTD

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Secretary to the Code Committee
The Takeover Panel
10 Paternoster Square
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Our ref: KW/loc/735811/00090

Dear Secretary

PCP 201/1 – Proposed Amendments...Consultation

Fuller consideration of the needs of Pension Schemes

We would like to contribute to the consultation here.

Our Position

Beaufort Trust is a professional Trustee and, with a subsidiary, is an independent Trustee of about 40 pension schemes of a size up to £500 million. We are owned by the international law firm of **Reed Smith LLP** and operate closely with that firm's pensions law advisory practice which advises the Trustees of about 80 household names' pension schemes, of sizes up to £6 billion.

The case for consideration of pension schemes in the Code

1. The (pensionable) workforce has by its past efforts – partly “bought” through the motivation of the promised pension – contributed over many years to the rise in market value of the enterprise and the dividends already disbursed to the proprietors.
2. Unlike shareholders, employees and most creditors, a pension scheme cannot exit instantly or over time from its relationship with the enterprise.
3. Indeed, unlike other major credit providers, it does not start out with negotiated bilateral credit terms, breaches of which result in enforceable sanctions – and rarely can obtain these.

4. Accordingly, as an (albeit involuntary) long-term contingent creditor, the pension scheme is a substantial financial stakeholder in the enterprise.
5. Fair dealing by the proprietors of an enterprise in a bid situation require that – in exchange for the pensioned workforce’s contribution, and in recognition of the scheme’s “un-exitable” long-term creditor status – robust mechanisms should be secured to honour the promises that have contributed to the proprietors’ wealth.

Implications for the Code

We consider the arguments – above – for the consideration of pension schemes by the Code to be cogent – all the more so perhaps, because they may not have been articulated sufficiently in the past.

As to the details by which the Code might address these needs, we are happy to acknowledge the thoughtful initiative of Penfida Partners who have made the undernoted suggestions with which we are happy to associate ourselves.

- “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 Offerree 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”

Point 2 above suggests a Code-imposed requirement of adherence to a publicised statement for a suggested period of at least **12** months.

However, we need to point out in this regard that the statutory machinery permitting pension scheme trustees to respond to changed circumstances where the proprietor changes are both detailed and long drawn out, what with timetabling of the processes of actuarial valuations, their computation, their later agreement and the subsequent need to agree a restorative financing process. The entire pattern may take **three or four years** and a requirement to adhere to the Offeror’s statements for merely 12 months would in our own view be insufficient.

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Statements of Aspiration and Intention – Giving the Code “Teeth”

It is clearly unsatisfactory that Offerors are continuing to buy off opposition – or win support – by statements of intent that are not later adhered to. It frankly erodes the investor “case” and is for that reason also extremely unwelcome to pension schemes in their capacity of investors.

Yours sincerely

K Wallace
Chairman