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

24th May, 2011

THE TAKEOVER PANEL REVIEW OF CERTAIN ASPECTS OF THE REGULATION OF TAKEOVER BIDS

Dear Sirs,

We are writing to you further to the publication of a consultation document on 21st March, 2011 in connection with proposed amendments to the Takeover Code and in line with your request for responses to the Code Committee by 27th May, 2011.

Penfida is an independent corporate financial adviser to over 80 UK pension funds and our partners have lengthy experience of providing financial advice in the context of corporate events governed by the UK Takeover Code, both at Penfida and in their prior careers in Investment Banking.

The current consultation document has been developed from the initial consultation published on 1st June, 2010, which arose principally as a result of various public comments as to the need to update the Takeover Code in the wake of the Kraft Foods bid for Cadbury, which completed in early 2010.

It is notable that, further to the initial areas on which the Code Committee considered it appropriate to focus, one of the key proposals introduced in the current draft is the requirement for Offerors and Offerees to provide greater recognition of the interests of Offeree company employees through:

1. Improving the quality of disclosure by Offerors and Offerees as to the Offeror's intentions regarding the Offeree company and its employees; and
2. Improving the ability of employee representatives to make their views known, including the provision of the right of employee representatives to give an opinion on the Offer and for publication of such opinion by the Offeree.

This development is a constructive response to the issues that arose during the Cadbury's takeover but it also highlights the fact that the interests of pension fund members (represented by trustees) are excluded from the ambit of the proposed amendments to the Code. This therefore prompts some significant questions for UK defined benefit pension funds:

1. Why are these provisions only being developed for current employee representatives? Should not the same rights apply to trustees looking after the

continuing interests of current and past employees in the company pension fund, particularly where there is a deficit in the scheme?

2. Why have no code amendments been proposed to deal with the particular circumstances of defined benefit pension funds in takeover bids?

We believe that, alongside the new focus on employee interests proposed, there should also be a new focus on pension fund interests such that, at the very least, the obligations created by the Takeover Code in respect of employee interests are replicated for the Trustees of defined benefit pension schemes in both hostile and recommended situations.

These might therefore include;

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 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
5. A requirement that all Offeror and Offeree information disclosed be made available to the pension scheme through its trustees

We would also suggest further to point 4 above that, if such an opinion considers that material detriment might arise as a result of the Offer and no satisfactory mitigation has been agreed with the Offeror by Day 46 of the Offer period, the Takeover Code should require that the terms of the Offer as relating to the pension scheme/s should be referred to the Pensions Regulator for clearance or the determination of appropriate mitigation.

It is disappointing that, so far, UK pension schemes have not been included in the proposals put forward by the Code Committee.

Their interests are closely aligned to those of employees and we believe that the proposed amendments to the Code could practically be extended to Defined Benefit Pension Schemes without significant reworking.

We hope that you will be able to accommodate the issues we raise and are available to discuss the points above further should that be required.

Yours faithfully,



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Paul Jameson
for and on behalf of Penfida Partners LLP

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