TAKEOVER PANEL CONSULTATION PCP 2011/1
REVIEW OF CERTAIN ASPECTS OF THE REGULATION OF TAKEOVER BIDS

RESPONSE OF THE TAKEOVER WORKING GROUP OF THE BVCA LEGAL & TECHNICAL COMMITTEE

About the BVCA: The British Private Equity & Venture Capital Association (BVCA) is the industry body and public policy advocate for the private equity and venture capital industry in the UK.

The BVCA Membership comprises over 230 private equity, midmarket and venture capital firms with an accumulated total of approximately £32 billion of funds under management; as well as over 220 professional advisory firms, including legal, accounting, regulatory and tax advisers, corporate financiers, due diligence professionals, environmental advisers, transaction services providers, and placement agents. Additional members include international investors and funds-of-funds, secondary purchasers, university teams and academics and fellow national private equity and venture capital associations globally.

A significant amount of our members' activity will be affected by this consultation. We have a strong track record in investing in listed companies. In 2010, 21% of all private equity transactions by value were public to private totalling £4bn of total activity (in recent years it has been as high as 41.8%)[1]. It is vitally important that this investment activity continues with a level playing field maintained between financial and corporate bidders. This is the only effective way to drive up shareholder value

1 Introduction

We welcome the Code Committee's review of the Takeover Code in the context of modern takeover practices, and support its objectives of providing protection for offeree companies against protracted "virtual bid" periods and of improving the offer process generally. However, we believe that a number of the proposed changes, particularly those relating to the PUSU regime, the naming of potential bidders and the prohibition of offer-related agreements, will make the Code significantly less flexible, to its detriment. We believe this rigid approach will have the unintended consequence of deterring a range of potentially welcome bidders, and preventing offeree directors from being able to consider an offer when they would otherwise have wished to do so (or, potentially, offeree shareholders being deprived of a bid, which would have been in their, and the offeree company's, best interests). We therefore believe it would be appropriate either to amend a number of the proposed changes or to build a greater degree of Panel discretion into some of the proposed amendments, enabling them to be tailored to the particular circumstances of transactions, in line with the approach adopted by many of the existing Code rules.

A hallmark of the Takeover Code is its flexibility and ability to accommodate a wide variety of transactions and structures. We believe that, as proposed, some of the intended changes will dilute that key feature of UK takeover regulation. In particular, we have concerns that, if the proposed changes and an accompanying lack of flexibility make it more difficult to implement takeovers in the UK, this may impact on shareholder value. If this occurs the UK may become less attractive to investors than other jurisdictions where there is a less rigid approach to the naming of potential bidders, PUSU, inducement fees and other key aspects of takeover regulation.

In preparing this response we have limited our remarks to matters which we consider will impact specifically on private equity firms and the transactions they are involved in. Accordingly, where we state below that we have no comment on various proposed changes, we have not canvassed the views of our members on these matters and have not formed a considered view either way on their merits.

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[1] CMBOR UK Buy-outs report: Fourth Quarter 2010

The BVCA has conducted a survey (the "BVCA Survey") of its members to ascertain views on the proposals contained within Statement 2010/22, now formalised in PCP 2011/1. Where appropriate, we have referred to the views of respondents to the BVCA Survey in the responses below.

A: INCREASING THE PROTECTION FOR OFFEREE COMPANIES AGAINST PROTRACTED "VIRTUAL BID" PERIODS

2 Requiring potential offerors to clarify their position within a short period of time

(b) Requirement for potential offeror to be identified

Q1 Do you have any comments on the proposed new Rule 2.4 and the proposed new Note 3 on Rule 2.2?

We are supportive of the general proposition that UK public companies should be protected from prolonged and unwelcome attention from potential bidders. However, we believe that the current regime has worked well for a number of years in the vast majority of cases, that offeree boards take their duties extremely seriously and that major change is not required. In our view, the current rules and practice strike the right balance between protecting companies from extended periods of siege and ensuring that shareholders are not denied the opportunity to consider a bona fide offer.

We understand that the primary reason for naming a bidder is to discourage leaks and indicates a presumption that leaks come from the bidder. However, we believe the proposal that all offerors be named could lead to extensive abuse. A potential offeror that formally announces its own interest will not force disclosure of other potential offerors. But, under the proposed changes, a leak by a potential offeror shortly before it is ready to announce, but which knows it is very nearly ready, will force the disclosure of all potential offerors and provide valuable information about the level of competition or interest. This in turn is, in our view, likely to force many potential offerors to withdraw precisely at the time when offeree shareholders may prefer them to be actively involved. Accordingly, a potential offeror may use the compulsory naming rules to its own advantage.

We believe that an offeree company should be entitled to request that a potential offeror is not named if the likely consequence of naming will be withdrawal. We think it is reasonable to assume that if an offeree company is able to decide whether or not to apply for an extension to the four week PUSU regime, it should also be able to determine whether the naming of a potential offeror is contrary to its interests.

Accordingly, as currently drafted, we believe the requirement that all potential bidders be named is likely to be abused by some bidders for tactical purposes, it may deprive offeree companies from receiving approaches and be difficult to apply in practice. At the same time, the combination of the new naming regime and the accompanying changes to the PUSU regime may incentivise disaffected board members within offeree companies to leak the fact that an approach has been made in order to derail a potential offer that they regard as unwelcome, even where the majority of the board are in favour of the bid.

We also consider that the premature naming of bidders is likely to have particular consequences for certain acquirers, such as (but by no means limited to) private equity houses. The business model of private equity firms relies on the ability to invest funds successfully and to raise new capital on the back of successful investments on a consistent basis. As serial acquirers, whose long-term relationships with banks and other investors are extremely important to them, our members are understandably concerned with being associated with what may be perceived as "failed" bids (but which are, in fact, simply very early stage investigations into the possibility of a bid). In addition, the likelihood of successfully implementing a transaction is clearly greater if it can be kept confidential for as long as possible.

Accordingly, and somewhat contrary to popular belief, private equity offerors are exceptionally keen for neither transactions nor their involvement to leak in the vast majority of cases.

Although under the current regime there is always a risk of being publicly named, in practice it is a relatively rare occurrence for a potential private equity bidder's identity to be disclosed. A consequence of a rule requiring an early announcement of a firm's involvement (before it has had an opportunity properly to assess the prospects for making a successful bid) may well therefore be that it seeks to withdraw from the bid process in order to prevent its name being released – a firm's reputation being more important than any single transaction. We believe many firms will be concerned about the level of publicity generated if they are named at an early stage, such that they may prefer to withdraw rather than continue their discussions with the offeree company board while in the media spotlight.

This is especially likely in circumstances where a particular firm considers, rightly or wrongly, that it is significantly less advanced in its consideration of a possible bid than other potential bidders (or where it knows it needs more than 28 days to reach a Rule 2.5 announcement).

In those circumstances, a potential recommended offer may be denied to shareholders. Just as significantly, such a withdrawing potential bidder could easily have been one which the offeree board itself would ideally have wished to keep in the offer process. We therefore consider that it is undesirable for the Code to require disclosure at the time of a leak announcement of potential offerors which have approached the offeree.

We also believe that the new naming regime may lead to numerous situations when it is unclear whether an "approach" has been made. We can easily envisage circumstances where an offeree company believes it has been approached, yet a private equity house (or indeed, any other category of bidder) considers it is merely building business relationships or investigating the industry in which the offeree company operates. In these circumstances, it is possible that an offeree company which announces a private equity house as a potential offeror will then be publicly contradicted by it, to the potential detriment of both.

If the Committee is nevertheless minded to require such disclosure to any extent, we are of the view that the proposed alternative regime, as discussed in our response to Question 3, which would permit a private PUSU regime (with a suitable initial timeframe), would allow the Code Committee to achieve its goal without the risk of offeree directors being denied the opportunity to consider whether to recommend a potential offer.

(c) Requirement for a potential offeror to "put up or shut up" or obtain a deadline extension

Q2 Do you have any comments on the proposed new Rule 2.6(a)?

Under the current Rules, notwithstanding the views expressed in Statement 2010/22, we believe that obtaining a PUSU is very much within the control of the board of the offeree company, as it may request a PUSU at any time – as indeed it does in many cases. In our experience, the Panel's current approach to PUSUs works well in practice. We therefore believe that maintaining the current approach would be preferable to an automatic PUSU period being triggered following a leak announcement.

If, however, the Committee were nevertheless to conclude that a leak announcement should trigger an automatic PUSU period, we believe that in general the 6-8 week deadline commonly granted by the Panel under the current rules is often an appropriate length of time, given that offerors may have financing and other arrangements to finalise and/or regulatory filings to make. However, we believe the Panel needs (and should use when appropriate) discretion to select a different deadline depending on the circumstances.

The experience of our members indicates that, if a private equity bidder is identified prematurely and required to commit itself within a 28 day timescale, this would rarely be achievable. We understand that the Code Committee's intention behind this proposal is to encourage bidders to undertake a greater degree of pre-approach due diligence, and we are supportive of this objective. However, finalising a private equity bid is a complex process. In particular, debt financing is typically provided exclusively on the basis of the offeree company's revenue and balance sheet and, accordingly, the lending bank(s) require

significant due diligence to be undertaken. A great deal of the required information is highly detailed and not publicly available.

The following is a typical process for a private equity bid. Unless the offeree company already has the information readily available in a form which can be given to potential bidders, it typically takes some time following an approach before the information can be provided to a potential bidder (two to three weeks is common). The information must then be reviewed, analysed and reported on by the bidder and its commercial, accounting, tax and other professional advisers. The initial information invariably requires follow-up questions to be asked of the offeree company, and the responses to those questions similarly need to be analysed and reported upon. This process typically takes two to three weeks (and longer if the offeree company's business and/or assets are complex).

Once the due diligence process is reasonably complete, the reports will be provided to the lending banks, who often have further questions necessitating further enquiries of the offeree company and revisions of the reports. Once the deal teams at the banks are satisfied with the due diligence materials, the proposals can be submitted for final credit committee approval. Even at that stage, the process is not complete - negotiation of financing documentation will continue in parallel, along with negotiations on the terms of the offer and the certain funds confirmation process (which itself is often complex given the nature of private equity funds).

Respondents to the BVCA Survey indicated that the proposed Code changes, and in particular the 28 day PUSU period, would dissuade them from bidding in many cases. This might prevent the offeree directors from being able to consider bids which they would otherwise wish to have considered. In addition, reducing the number of potential bids may not be in shareholders' interests, and could entrench under-performing boards.

We therefore consider that a different approach would be strongly preferable.

The Panel is highly respected for its ability to adapt to new situations and to apply the Code in the context of the precise facts of a potentially fast-moving takeover situation. Here, the timing of a leak could vary dramatically between the time of an offeror's first preliminary approach at one extreme and the night before a Rule 2.5 announcement at the other. In particular, under the proposed new rules, there is a risk that if a leak occurs at a very early stage, when neither the potential offeror or the offeree company has had adequate opportunity to determine whether a bid may be sufficiently viable such that they can agree a basis on which to move forward within four weeks, the offeree company may be denied the opportunity to consider a potentially recommendable bid.

Accordingly, as mentioned above, we are in favour of preserving the present position such that a PUSU period would only be triggered on an offeree request, to maintain the flexibility of the current rules. However, even if the Code Committee concludes that a PUSU period should arise automatically on a leak announcement, we do not understand why it is appropriate for there to be a fixed time set out in the Code, or why the Committee considers it necessary to abandon the tried and tested benefits of the Panel's ability to give the right ruling in the context of the precise facts of the case.

We would have thought that, in this event, the Code Committee's overall concern to limit the time during which an offeree is under siege to a finite period could be wholly and easily achieved, whilst preserving the Panel's traditional and desirable ability to act flexibly. For example, the Code could provide that the Panel Executive could prescribe the length of the PUSU period at the time of the leak announcement, taking into account all of the facts and circumstances of the case, including in particular whether the transaction has leaked at an early or late stage in the process, but with the relevant time period being normally expected to be somewhere between 2-8 weeks.

Alternatively, if the Committee concludes that a fixed period does need to be included in the Code, we consider that a longer period, closer to the current 6-8 weeks, would provide a more realistic timetable for

many private equity firms where an early announcement is forced upon them. To preserve flexibility, this could be coupled with provisions enabling the period to be reduced where appropriate in the circumstances of particular bids.

(d) Alternative approach to the identification of potential offerors

Q3 Do you have any comments on the possible alternative approach to the identification of potential offerors?

As we noted in our response to Question 1 above, we consider that the premature identification of potential bidders, particularly financial bidders, runs the risk of either deterring some bidders from making an approach in the first place or of them electing to withdraw at the time of a leak. This view is supported by the responses we have received to the BVCA Survey. As mentioned above, this could easily preclude offeree boards from being able to consider various offers which they would otherwise have wished to consider, and might also result in shareholders being deprived of an offer.

For these reasons, if the disclosure of potential bidders is to be required to any extent at all (as to which see our reply to Question 1 above), we are in favour of the proposed alternative approach which would allow the offeree company to choose not to identify a proposed bidder in the first announcement of a possible bid in certain circumstances. We believe this would provide greater opportunity for a potential offeror and the offeree company to continue their confidential discussions which, if unsuccessful, would enable the potential offeror to withdraw without being publicly identified.

We do not consider that such a regime would be likely to put undue pressure on offeree company boards. Nor do we consider that it would be unworkable in practice. Indeed many offeree company boards may appreciate the additional flexibility this alternative would provide them in a situation where a potential offeror would otherwise withdraw rather than be identified prematurely. In addition, this would soften the position proposed by the Consultation Paper under which a potential bidder approaching an offeree the day before a leak would need to be named, whereas if that approach were one hour after the leak announcement it would not, which seems to us to be a somewhat strange distinction for the Code to make.

(e) Where another offeror has announced a firm intention to make an offer

Q4 Do you have any comments on the proposed new Rules 2.6(b), (d) and (e) and Rule 2.3(d)?

We have no further comments on the proposed amendments.

(f) Formal sale process

Q5 Do you have any comments on the proposed new Note 2 on Rule 2.6?

We have no comments on the proposed exception to the new offeror identification and PUSU rules in relation to a formal sale process commenced by an offeree company. However, we note that such processes have been very unusual in the past, so it is unclear at this stage how relevant the exception will prove to be. We consider that the exception should at least be extended to include circumstances where an offeree company decides to commence a formal auction process after the start of an offer period.

(g) Extending the 28 day deadline

Q6 Do you have any comments on the proposed new Rule 2.6(c) and Note 1 on Rule 2.6

We are supportive of the proposals to allow the PUSU period to be extended with Panel consent. In addition, we welcome the suggestion that Panel consent will normally be given if the offeree company supports such a request.

However, we consider that a situation where the Panel will only give its decision shortly before the PUSU deadline is due to expire will lead to considerable uncertainty for the offeree company and its

shareholders, as well as the potential offeror. This will invariably be the case in a situation where the 28 day period is known at its outset to be insufficient.

We anticipate that with private equity and other financial bidders this will be the norm rather than the exception in the event of an early leak, with the offeree company and the potential offeror then being required to choose between committing time and resources to the potential bid without any certainty as to whether it will be permitted to proceed, ceasing work on the potential bid for four weeks until a practical timetable can be agreed, or simply withdrawing from the process. None of these choices are likely to be in the interests of the parties or the market, and a situation where any discussions will have to be pursued in the public eye is likely to add to the parties' difficulties, encouraging many private equity firms to choose the least risky option and withdraw at this stage. Many private equity firms (and other prospective offerors) will be reluctant to embark publicly on a costly and time-consuming process on the basis of a timetable which, from the outset, is not practicable, and where an extension to that timetable is uncertain. In particular, private equity bidders may be more likely to withdraw where a potential offer's ability to proceed is subject to this level of uncertainty because of concerns over abortive deal costs, as only limited sums can be drawn from their investors in order to cover the costs of an unsuccessful bid. This would clearly not be in the interests of an offeree company board which would like a bidder to consider an offer but may find it reluctant to do so.

We therefore consider it would be strongly preferable for all parties, and the market in general, if an achievable timetable could be agreed with the Panel at the outset.

As an aside, given the way most sale processes are run, we suspect that different deadlines will rarely be asked for, and also suspect that it will only very rarely be the case that a potential bidder which has earlier been excluded from the process would seek to re-enter after a Rule 2.5 announcement has been released.

(h) Statements of intention not to make an offer

Q7 Do you have any comments on the proposed amendments to Rule 2.8 and to the Note on Rules 35.1 and 35.2?

We have no comments on the proposed amendments.

(i) Position under Rule 2.2 where a potential offeror ceases considering the possibility of making an offer

Q8 Do you have any comments on the proposed framework to be applied in circumstances where, following a requirement to make an offer being triggered under Rule 2.2(c) or (d), a potential offeror ceases actively to consider making an offer, or on the proposed new Note 4 on Rule 2.2?

We welcome the Code Committee’s proposal to codify the Panel's practice of allowing potential offerors to withdraw without being named. However, as indicated in our response to Question 1, we are concerned that the new rules may lead to numerous situations where it is unclear whether an "approach" has in fact been made and a potential offeror has reached the point that a three to six months lock-out is warranted if it does not proceed with a bid. These concerns would equally apply where a potential offeror ceased to be actively interested in pursuing a bid for an offeree company some time previously but there is subsequently rumour or speculation about the possibility of a bid.

B: STRENGTHENING THE POSITION OF THE OFFEREE COMPANY

3 Prohibiting deal protection measures and inducement fees, other than in certain limited cases

(b) General prohibition on offer-related arrangements

Q9 Do you have any comments on the proposed new Rule 21.1?

We consider the current regime, which only permits inducement fees up to a de minimis level of 1%, works well and provides an offeror with a degree of protection in respect of the considerable amount of time and resources it expends in investigating and conducting due diligence on an offeree company. Inducement fees are not prohibited in many other jurisdictions that host sophisticated capital markets, and indeed in some jurisdictions are permitted at significantly higher levels. In our experience, the availability of inducement fees in other jurisdictions does not deter other bidders, or lead to them making an offer on less favourable terms than they would otherwise have done or otherwise have an adverse impact on takeover activity.

Our members view inducement fees in practice as a way of partially covering their costs once an offer has been announced, and not as a tool to protect an announced offer, given their de minimis level. Upon announcement of an offer, fees (including advisory fees and, most significantly, bank commitment fees) will often exceed 1% of the offer value. Private equity fund managers largely rely on drawing cash from their funds' investors to cover costs incurred in relation to an unsuccessful offer. Although a certain level of abortive deal costs is to be expected, particularly in relation to offers which are not announced, investors expect fund managers to obtain the maximum allowed protection in relation to agreed transactions in order to (at least partially) cover the fund's costs. We believe that in some circumstances private equity firms will be less willing to make recommended bids if this level of costs protection is not available, potentially leading to fewer offers and fewer competitive situations, to the detriment of offeree company shareholders.

The results of the BVCA Survey suggest that, while a prohibition on inducement fees could dissuade potential bidders from making an initial offer, the existence of an inducement fee does not have a major impact on the decision of subsequent bidders to make a rival offer.

Assuming that the Committee decides not to preserve the status quo, however, we suggest that, rather than the Code incorporating a general prohibition on inducement fees, a better approach would be for inducement fees to be permitted only in limited circumstances, for example where they are only payable if an alternative offer is successful (so that offeree company shareholders would not bear the cost of the inducement fee), or where a specific application is made by the offeree company to the Panel for permission to enter into an inducement fee arrangement. We would expect the current protections in Rule 21.2 to be retained. This would retain some of the flexibility of the current rules, while at the same time enabling the offeree company board to have a greater degree of control over the process. Retaining this degree of flexibility could prevent offeree company shareholders being deprived of the opportunity to consider a potential recommended bid due to the potential offeror's concerns over abortive deal costs.

If the Code Committee proceeds with the proposed new Rule 21.2 as drafted, as the restrictions extend to persons acting in concert with the offeree company, the prohibition would, on its face, seem to extend to agreements of the kind typically entered into between a private equity bidder/bid vehicle and offeree company directors in relation to their ongoing role in the bid vehicle/offeree company, including arrangements covered by Rule 16.2. We therefore consider that there should be an exception for arrangements entered into between the offeror and its concert parties on the one hand and members of management on the other where they are acting as part of the offeror team.

(c) Dispensations from the general prohibition on offer-related agreements

Q10 Do you have any comments on the proposed new Note 1 on Rule 21.2?

(i) Competing offeror which is a white knight

We have no further comments on the proposed amendments.

(ii) Formal sale process initiated by offeree company

Q11 Do you have any comments on the proposed new Note 2 on Rule 21.2?

We have no comments on the proposed exception for inducement fees in the context of a formal sale process commenced by an offeree company. However, as noted above, we consider that the exception should at least be extended to include circumstances where an offeree company decides to commence a formal auction process after the start of an offer period.

(d) "Whitewash" transactions

Q12 Do you have any comments on the proposed new Note 3 on Rule 21.2?

We have no comments on the proposed change other than those we have already made on this subject.

(e) Disclosure and display of permitted offer-related arrangements

Q13 Do you have any comments on the proposed new Note 4 on Rule 21.2?

We have no comments on the proposed change, though we wonder whether there is any real benefit in requiring standard agreements like confidentiality undertakings to be disclosed and put on display.

(f) Schemes of arrangement

Q14 Do you have any comments on the proposed amendments to Appendix 7?

In our experience, schemes of arrangement have become significantly more popular in recent years due in part to more accommodating practices by the courts. However, another major contributing factor has been a lessening of offerors' previous concerns about the lack of control over the scheme process as a result of the modern use of detailed implementation agreements. We consider that the proposed prohibition on implementation agreements alters the balance between the offeree company and offeror, potentially reigniting those previous concerns.

We believe this is an unfortunate development, as in many cases it is possible to make considerable cost savings by using a scheme. It is also possible for more sophisticated structures to be implemented by the use of a scheme, but offerors may be reluctant to commit time and resources in this way where they have no control over the process. We believe it would be helpful for the Panel to retain the discretion to permit an implementation agreement where requested by the offeree company, at least in circumstances where the transaction is of sufficient complexity to merit such an agreement. In addition, we consider that the offeree company should at least be allowed to agree mechanical provisions which are important to ensure that the offeror acquires 100% of the offeree company or to ensure that offers to participants in share schemes may properly be implemented (for example, having separate court hearings for sanctioning the scheme and approving the reduction of capital).

If the Code Committee decides to proceed with the proposed changes impacting on scheme of arrangement processes, we recommend that sufficient flexibility is built into the rules to allow schemes to accommodate long duration regulatory antitrust clearances which cannot currently be accommodated within the bid timetable.

4 Clarifying that offeree company boards are not limited in the factors that they may take into account in giving their opinion on an offer

Q15 Do you have any comments on the proposed new Note 1 on Rule 25.2 or the related amendments?

We have no comments on the proposed changes.

C: INCREASING TRANSPARENCY AND IMPROVING THE QUALITY OF DISCLOSURE

5 Requiring the disclosure of offer-related fees and expenses

Q16, Q17, Q18, Q19

In relation to Q16 to Q19, while we note the arguments for disclosure of certain fees payable to the offeree company's advisers, we do not see the value to any relevant constituency of detailed disclosure of the fees payable by the offeror beyond, perhaps, the disclosure of the maximum expected aggregate amount of fees payable. We do not see there is a case for a greater level of disclosure by the offeror than would be required by the Prospectus Rules in the case of an IPO or other equity capital raising.

6 Requiring the disclosure of the same financial information in relation to an offeror and the financing of an offer irrespective of the nature of the offer

(b) Disclosure of financial and other information

Q20 Do you have any comments on the proposed deletion of Rule 24.2(b) and Note 6 on Rule 24.2 and the related amendments?

As private equity offerors invariably use a new company as the bidding vehicle, others will be better placed to comment on the proposed amendments that will require historic financial information to be disclosed on cash bidders. We understand that (as is currently the case) private equity bidders will not be required to disclose financial information on the fund manager or fund investors above those entities specifically incorporated for the purposes of the offer, but in light of the proposed amendments consider that this should be expressly stated in a new Note on Rule 24.2.

Q21 Do you have any comments on the proposed new Rule 24.3(a) and the related amendments?

Please see our response to Q20.

(c) Pro forma balance sheets and ratings agency ratings

Q22 Do you have any comments on the decision not to require pro forma balance sheets to be included in offer documents

We are supportive of this decision and agree it would be unduly onerous to require the production of a pro forma balance sheet for inclusion in the offer document.

Q23 Do you have any comments on the proposed new Rule 24.3(c) regarding the disclosure of ratings and outlooks?

We have no comments on the proposed new Rule 24.3(c).

(d) Offer financing

Q24 Do you have any comments on the proposed new Rule 24.3(f)?

We welcome the continued ability for private equity firms to provide summary information on the equity financing arrangements for a bid. However, while we are supportive of the desire for transparency in

respect of the offeror's bid financing, we consider that the existing rules on the disclosure of debt financing provide a satisfactory level of disclosure and we do not see the need for significant change.

In particular, our members are concerned that the level of detail required to be disclosed will cause particular problems for them. These concerns arise as a result of the significant commercial sensitivities for a private equity firm in being required to disclose the exact details of the terms on which it has secured its debt finance for the offer. We believe that these concerns significantly outweigh a general desire for more transparency – especially where, as is in the case of a private equity bid, it is extremely unlikely that any minority offeree shareholders will remain after the transaction has completed.

(e) Documents on display

Q25 Do you have any comments on the proposed new Rules 26.1 and 26.2 or the related amendments?

Please see our response to Q24. We consider that the Panel should expressly have the discretion to allow redaction of commercially sensitive material, particularly given the proposal that the display documents be made widely available on a website.

We also consider that the requirement to publish the documents on a website "from the time of the announcement of a firm intention to make an offer" is too onerous and impractical.

Offer announcements and the related offer documentation are frequently agreed after close of business hours, with the announcement being made at 7am the following morning. We believe it is impractical for the display documents to be provided to the relevant website provider (who, for reasons of secrecy, may not be aware of the proposed offer) in that timeframe and for them then to be published immediately. We suggest that the deadline be the end of the business day following the date on which the offer is announced.

D: PROVIDING GREATER RECOGNITION OF THE INTERESTS OF OFFEREE COMPANY EMPLOYEES

7 Improving the quality of disclosure by offerors and offeree companies in relation to the offeror's intentions regarding the offeree company and its employees

Q26, Q27, Q28

We have no comments on the proposed changes.

8 Improving the ability of employee representatives to make their views known

Q29, Q30, Q31, Q32, Q33

We have no comments on the proposed changes.

E: MISCELLANEOUS AMENDMENTS

Q34, Q35, Q36

We have no comments on the proposed changes.

9 Other comments

In light of the concerns expressed in this response, and any other unintended consequences that may not currently be apparent, but may subsequently come to light, if the Code Committee is minded to implement some or all of the changes proposed in the consultation paper, we consider that it is important that the Committee reviews these changes within a suitable timeframe (e.g. within 18 months of implementation) in order to establish whether or not their impact has been detrimental to takeover practices and the

operation of the market such that further amendment is required (or that some or all of the rules should revert to their current status).

We remain available to discuss this response and our views on the consultation more generally at any time.

27 May 2011