



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

Friday 27 May, 2011

Dear Sir

Review of the UK takeover regime post Kraft/Cadbury – Panel issues details of the changes

Hermes EOS has worked with our ultimate owner, the BT Pension Scheme (the UK's largest corporate pension scheme), to develop this joint response to the Takeover Panel's current consultation. We believe that this is necessary in light of the important issue relating to pension trustees that has been omitted from the Panel's proposed rule changes.

We are broadly supportive of the proposed changes to the Code as suggested by the Panel, in line with Hermes EOS's response to the earlier consultation. We believe that the greater transparency proposed by the revisions is generally welcome.

We believe that it is appropriate that Offerors and Offerees improve the quality of disclosure as to the Offerors' intentions regarding the Offeree company and its employees, including improving the ability of employee representatives to make their views known on the Offer and for their opinion to be published by the Offeree.

We would note that central to employees' views on any Offeror and its Offer will be the effect that the Offer might have on the pension rights enjoyed by the employees of the Offeree company. Clarity and certainty around the impact of Offers on pension rights is therefore necessary to enable the employee representatives to produce a considered opinion on the Offer. We would note that currently there is a crucial stakeholder that is excluded from the proposed rules on being invited to express an opinion on Offers: the former employees of the Offeree company who are either deferred or active pensioners.

Clearly the provision and security of pension provision for former, existing and possibly also future employees is a matter of acute concern to employees and their representatives. It is not practical for the views of individual pension fund beneficiaries to be sought, but their views can be effectively represented through the pension fund trustees who oversee the fund assets on their behalf. We are therefore clear that pension fund trustees should have the same rights under the proposed new rules as employees and their representatives and that these rights should be made explicit in the revised code.

In many cases the relationship between pension scheme and sponsor goes beyond simple financial support. The pension scheme needs to consider the strength of the sponsoring organisation when determining its asset allocation and associated risk budget – a fact made clear by the Pension Regulator’s close attention to so-called ‘material detriment’ situations. The need for cashflow to support any deficit reduction payments means that in some cases the company’s strategy cannot be considered without thinking about the interdependence of the pension scheme, and certainly pension scheme trustees need to consider the implications of any proposed strategy on their confidence in the sponsor covenant.

Given the nature of covenant and the close relationship with the future financial success of the sponsor, and also the attentions of the Pensions Regulator, it is clear that any takeover offer will need to take these issues into account. The Offeror will have a plan in relation to the pension schemes of which the Offeree is sponsor. We therefore believe that the Offeror and Offeree should improve the quality of disclosure regarding pension schemes and that pension trustees should have a formal opportunity to make their views known on the Offer and to have their opinion to be published by the Offeree.

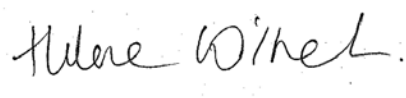
We note that in recent cases, such as Silentnight, acquirers of companies in certain situations have been able to jettison pension obligations. Such disclosure requirements as we describe here will both enable investors to consider the wider implications of any Offer and also encourage Offerors and Offerees similarly to consider them and know that they risk the reputational consequences of subsequently going back on public statements.

Other matters

There has been some market commentary that the revisions to the rules might encourage more hostile bids. Intuitively, we believe that hostile bids are more likely to produce worse outcomes for the investors of the Offeree and therefore for the long-term of UK listed companies. It is also possible that other rule changes might produce unintended consequences. We therefore encourage the Takeover Panel to ensure that it conducts a further review to assess how effective its proposed rule changes have been.

Without reiterating the points we made in the previous consultation, we do believe that the re-implementation of the SARs rules would have a positive impact through greater market transparency and believe that the Panel should certainly consider their reintroduction during its next review.

Yours faithfully



Helene Winch
Director
BT Pension Scheme Management



Tim Goodman
Associate Director
Hermes Equity Ownership Services Limited