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

supportgroup@thetakeoverpanel.org.uk

Date 27 May 2011
Your ref
Our ref 0934

Dear Sirs,

The Takeover Panel - Review of certain aspects of the regulation of takeover bids: proposed amendments to the Takeover Code

INTRODUCTION

DMH Stallard LLP has a boutique operation in the City of London, with an emphasis on M&A and corporate finance, in addition to being one of the leading law firms in the South East of England.

RESPONSE

We welcome the opportunity to respond to this consultation.

General Comments

1. We understand that, overall, a key goal of the Code Committee was to "level the playing field" in favour of offeree companies by removing some of the advantages for offerors which, in the view of the Code Committee, had given offerors an unfair advantage in the context of takeover bids.

2. As our quoted company clients tend to be small and mid-cap quoted companies, we either support, or are neutral towards, the vast majority of the proposals set out in PCP 2011/1. In our view, the various proposals, taken as a whole, should in general help small and mid-cap companies when they become takeover targets. Whilst, obviously, the same proposals will remove some advantages previously enjoyed by such companies when acting as offerors, their limited resources – both financial and in terms of management time – are such that, in general, a prolonged takeover battle has a disproportionately disruptive effect on small and mid-cap target companies, and steps to redress the balance in their favour are to be welcomed.

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3. We would add that we are pleased that the Code Committee has decided not to take forward the following changes to the Takeover Code previously under consultation:

   (i) imposing a "public interest" test on bids;
   (ii) raising the success threshold from 50% to 60%;
   (iii) disenfranchising shares acquired during an offer period; and
   (iiii) requiring all takeover offers to be subject to an offeror shareholder vote.

Specific Comments

4. As noted above, we understand and appreciate the sentiment behind the changes now proposed, and hope that, if and when brought forward, they will achieve the Code Committee's stated objectives. However, we are aware of certain other views expressed – for example, on behalf of the private equity industry – that some, at least, of the proposed changes to the Takeover Code may in fact result in shareholders being deprived of the opportunity to receive certain potential takeover opportunities. Accordingly – and recognising that such reviews are carried out from time to time in any event – we would like the Code Committee to commit to review any changes brought forward now 12 to 24 months after their introduction to see whether, in fact, there have been any material undesirable consequences.

5. Regarding Q26 and Q27, which relate to section D (Providing Greater Recognition of the Interests of Offeree Company Employees), we note that the proposed changes would require an offeror to make a negative statement where it has no intention to make any changes in relation to the matters described in Rule 24.2(a)(i) to (iii) or where it considers that its strategic plans for the offeree company will have no repercussions on employment or the location of the offeree company's places of business (see proposed Rule 24.2(b)); and that each of the parties to an offer would be required to adhere to any public statement it makes during an offer period in relation to certain proposed courses of action for a period of time specified or, if none is mentioned, twelve months from the date on which the offer becomes or is declared wholly unconditional.

   It is unclear to us how much of a change in approach the Code Committee expects as a result of this proposed change; and in our view it would be helpful for further guidance to be given as to the amount of additional information which is expected to be disclosed in these circumstances or, if no significant change to current practice is intended, to make this clear. We understand that, in the context of a hostile offer, it is accepted that an offeror company is likely to reserve its position, and that this approach would usually be acceptable on the basis that the offeror will have had limited, if any, opportunity to carry out due diligence. However, in the context of a recommended offer, and on the assumption that it is not the intention that offerors should be able to limit any statements to a very short time horizon of just a few weeks or months, we think that it would be helpful to make clearer the Code Committee's expectations in terms of the amount of disclosure, and therefore due diligence, required if these changes are implemented or, alternatively, to make clear that offerors will be able

to reserve their position where appropriate and that no significant change to current practice is expected. We support the Code Committee's aim of improving the quality of disclosure but from the perspective of our clients, we would not want to see a significant increase in the workload of either offeror or offeree companies as a result of this proposed change, and would welcome further clarification that the emphasis is on greater accuracy, as opposed to greater volume, if that is the case.

If you would like to discuss any of these issues further, please contact Jonathan Deverill of these offices on 020 7822 1534.

Yours faithfully

DMH Stallard LLP