

Our ref: spa/Admin/14636814.1

17 July 2012

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

Dear Sirs,

Response to PCP2012/01

I refer to PCP2012/1 published on 5 July 2012.

Whilst I am broadly in agreement with the proposals within the consultation paper, there is one aspect of the proposed changes to the regime governing reporting on profit forecasts that I believe should be given further consideration by the Code Committee. This is in respect of forecasts published prior to an approach regarding a possible offer, as outlined in paragraph 4 of PCP2012/1.

In particular, it is stated:-

“Given that a profit forecast published prior to a potential offeror having approached the offeree company with regard to a possible offer is highly unlikely to have been influenced by the possibility of a future offer, the Code Committee believes that continuing to require reports to be obtained on such a profit forecast would be disproportionate”.

On this basis, the Code Committee proposes to dispense with the requirement for independent reports from an accountant and financial adviser in respect of those profit forecasts which have been prepared prior to an approach being made, in favour of the lesser requirement for certain director confirmations (or the various other alternatives, as outlined in paragraph 4.5 of PCP2012/1).

I can see one scenario, in particular, in which the publication of a profit forecast prior to any approach having been made could well be very heavily influenced by the possibility of a future offer and that is in circumstances where a target board is planning to solicit offers for the company concerned.

In such circumstances, typically an information memorandum might be prepared in connection with the target company which might well include a profit forecast, the sole objective of which could be to maximise the price that a bidder might be prepared to pay. Clearly in these circumstances, any such profit statement will be significantly influenced by the prospect of a possible offer.

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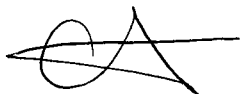
Whilst I recognise that, since the changes to the Code introduced in September 2011, the emphasis of the Code has been very much more concerned with protecting the target rather than the bidder, it seems to me that the provisions of the Code which concern ensuring that the highest standards of care are applied when communicating information in connection with a bid should apply equally for the protection of bidders as well as targets, particularly in the above circumstances where a target board is looking to market its company.

In this context, it seems to me that whenever a profit forecast is published and it is clear that one of the main motivations for publishing it is likely to have been an offer or possible offer (such as in the circumstances referred to above), then the higher burden of reporting (including the existing requirement for an accountant and financial adviser to report on the statement) should apply.

I would therefore invite the Code Committee to consider amending its proposed new rule 28 so as to require full reporting in circumstances where a profit forecast is published by a target board prior to any approach having been made in respect of a possible offer but in circumstances where the target is planning to solicit a bid for the company.

Should the Code Committee wish to discuss this particular point further, please feel free to contact me.

Yours faithfully,



SA **Simon Allport**
For and on behalf of Bird & Bird LLP