

Takeover Panel Consultation

Date: 28 September 2012
Prepared for: The Code Committee
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Pension Scheme Trustee Issues

Overview

We set out below Aon Hewitt's comments on the proposed amendments to the Takeover Code, set out in consultation paper issued by the Code Committee of the Takeover Panel on 5 July 2012.

Overall, we are supportive of the proposals. Trustees are interested in potential takeovers and the impact on schemes but are not always provided with information in a timely fashion currently. It is also reasonable to assume some shareholders may wish to understand the impact on any schemes. The proposals should improve information flow without creating additional undue burden on offerors.

It should be noted that, in conjunction with existing trustee powers, these proposals could mean that some deals that would otherwise progress are blocked. However, this is not necessarily a reason to object to the proposals. We are also aware that sometimes a offeror's access to trustees is blocked and in circumventing this, the proposals may support offerors, to the benefit of shareholders.

One potential issue is that it is not clear whether all pension schemes are intended to be covered. The requirements could be limited to UK occupational defined benefit schemes or extended to overseas schemes which have an equivalent governance structure.

Q1 Do you have any comments on the proposed amendments to Rules 24.2(a) and (b) relating to the requirement for an offeror to disclose, among other matters, its intentions with regard to the offeree company's pension scheme(s)?

We believe the proposals are reasonable but note that there may be some small additional burden for offerors.

Q2 Do you have any comments on the proposed amendments to Rule 25.2(a) relating to the requirement for the offeree board to include in the offeree board circular its views on, among other matters, the effects of implementation of the offer on the offeree company's pension scheme(s)?

Again, we note a small burden of compliance but the information should be to the benefit of all stakeholders.

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A 12 month period for commitment to a course of action, with flexibility to set another period, seems reasonable. It is relatively common for buyers to agree not to change schemes for 12 months anyway. Although trustees may prefer an extended period, this seems unfair to the offeror.

The trustees likely to have other powers or levers to act outside of the confines of acquisition and if in any particular case they do not then the Takeover Code is not the place to rectify this.

Q3 Do you have any comments on the proposed amendments to Rules 2.12(a), 2.12(b), 24.1, 25.1, 32.1, 32.6(a) and 27.1(b), and to Note 5 on Rule 20.1, in each case relating to the information to be disclosed to the trustees of an offeree company's pension scheme(s)?

The information to be provided seems reasonable.

Q4 Do you have any comments on the proposed amendments to Rule 25.9 (and Note 1 on that Rule) and to Rule 32.6 regarding the rights of the trustees of an offeree company's pension scheme(s) to make known their views on the effects of the offer on the scheme(s)?

The proposed wording is reasonable. In particular, we support the position that trustee costs are not underwritten. Costs could be both open-ended and substantial. Unlike employee representatives, trustees should typically have resources to commission any work they deem in the interests of members.

Q5 Do you have any comments on the proposed amendments to Rule 2.12(d) and to Rule 32.1 regarding the requirement for the trustees of the offeree company's pension scheme(s) to be informed of their rights under the Code to make known the effects of the offer on the scheme(s)? Do you have any comments on the proposed amendment to Rule 19.2 relating to directors' responsibility statements?

This consequential amendment is reasonable.

Q6 Do you have any comments on the proposed new Rule 24.3(d)(xvi) and new Rule 26.2(i) relating to the requirement for the offer document to include a summary of any agreement between the offeror and the offeree company's employee representatives or the trustees of the offeree company's pension scheme(s) in relation to any of the matters described in Rule 24.2 and to the requirement for any such agreement(s) to be put on display?

It is appropriate that agreements are published as they could be material to other stakeholders.

We agree that there should be no requirement in the Code to refer cases to the regulator. Trustees have sufficient powers usually in any case to encourage a buyer to reach agreement. If no agreement is reached trustees can reasonably refer to the Regulator themselves (although requesting 'Clearance' is not, strictly speaking, a trustee action).

Funding decisions would typically take longer than a bid timetable, particularly with a new sponsor where there is no previous relationship and where the management is concentrating on other aspects of the offer. It is therefore unreasonable to expect a detailed funding agreement.