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

Our ref mb/kh

1 October 2012

Dear Sir

PCP 2012/2 – Pension Scheme Trustee Issues

We welcome the opportunity to comment on the Consultation Paper issued by the Code Committee of the Panel PCP 2012/2.

Overall, we consider that the proposals do bring some consistency with the current requirement to inform employee representatives (and allow them to respond) on these matters. Given pension schemes are often a key stakeholder of offeree companies, in general we are supportive of the intention of the proposals to generate debate around pension issues in public bids.

We note that current pensions legislation, including the Pensions Regulator's moral hazard powers and the associated clearance process, already potentially gives trustees of offeree company pension schemes significant leverage to influence the outcome of public bids by negotiating for additional financial support in situations where their scheme's security position is put under threat by a takeover. Whilst we do not consider that these new proposals would significantly change the existing requirements of companies and trustees to negotiate if a transaction impacts a pension scheme, we feel that they strike a reasonable balance between raising the profile of pensions in bid situations, whilst not disproportionately adding to trustees' powers.

Our detailed comments in respect of the consultation questions are set out in the appendix to this letter.

If you have any queries in relation to the comments contained in this letter, please contact Ian Elphick (ian.elphick@kpmg.co.uk).

Yours faithfully

Maggie Brereton
Partner

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 do not have any strong views on this. We note that the proposed change does not cover in detail what possible "repercussions" it might be relevant to disclose (for example, does this cover the future funding of a scheme, the benefits provided by a scheme, changes to the "employer covenant" provided to a scheme). We expect this may lead to relatively "bland" and non-specific statements which may not be particularly instructive.

Further (and this comment is also relevant to the other questions), the amendments do not cover which "schemes" are covered by this. For example, does this also apply to trustees or similar bodies which operate non-UK pension schemes in overseas subsidiaries of offeree companies? This could prove very onerous for large companies with multiple pension schemes in many locations (many of which may cover only a few employees).

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 the implementation of the offer on the offeree company's pension scheme(s)?

We do not have any comments.

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 6 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)?

Again, we do not have any comments.

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 trustees of an offeree company's pension scheme(s) to make know their views on the effects of the offer on the scheme(s).

Whilst we are generally supportive, we consider that trustee boards may be reluctant to put out public statements until they have carried out their own due diligence on bidder proposals and agreed actions with the bidder. On that basis we suggest that the proposals to allow trustees' responses in the board circular may not add much – in that trustees may be limited in the responses they can produce in the short timeframes.

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 effect 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?

The proposal to require trustees to be informed of their rights appears 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 the 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 matters described in Rule 24.2 and to the requirement for any such agreement(s) to be put on display?

We agree with the proposals.