

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

28 September 2012

Dear Sir/Madam

Consultation issued by the Code Committee of the Panel PCP2012/2 – pension scheme trustee issues

The Pensions Regulator welcomes proposed changes to the Takeover Panel's Code requiring consultation with pension trustees before a merger or acquisition.

The regulator supports the principles behind this consultation and the aims that the proposed changes seek to achieve. Pension schemes increasingly represent a material and financially significant consideration in the plans of employers. Equally corporate transactions will often have a material affect on employer covenant and may be significantly detrimental to the likelihood of members' receiving their benefits. Therefore it is only right that pension schemes and their members are given due consideration at an early stage in preparing corporate transactions. Early engagement and involving trustees in designing solutions may avoid last minute delays whilst impact on or from the pension scheme is considered

We believe that employers should engage with trustees of DB schemes in any decision that is likely to have a material impact on the covenant of the employer, whether in relation to a corporate transaction or otherwise. In the regulator's guidance on monitoring employer support we recommend that trustees have a standing item on their agenda to consider the employer covenant and any events that may have impacted on the covenant. Automatic disclosure from employers would greatly assist trustees in this process. We appreciate that the Code is limited by its scope to specific transactions but, in the regulator's view, the principles that it puts forward regarding early and open disclosure to trustees and allowing them to have a voice in the discussion will be relevant in the context of any event that impacts on the covenant of the employer.

As the Panel has recognised, it is particularly important that pension trustees properly document any agreement reached between themselves and the prospective new owner. In addition to securing agreement with trustees of the pension scheme the Pensions Regulator provides a voluntary clearance process for employers for any corporate transactions that may have a materially detrimental effect upon pension schemes and potentially come within scope of our anti-avoidance powers.

I would like to thank the Panel for the production of this consultation and wish them success in taking forward the proposed changes. We will be happy to engage with you, should you wish to discuss any of these aspects with us.

Yours sincerely

A handwritten signature in black ink, appearing to be 'S. Soper', with a large, sweeping loop at the end.

Stephen Soper

Executive director for defined benefit regulation

The Pensions Regulator