

Comments on consultation questions from RPMI Limited

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)?

As a general comment, we observe that the impact of an offer on an offeree company's pension scheme may vary markedly from situation to situation. On the one hand, the pension scheme may be comparatively small and any impact from a takeover not material. On the other hand, the pension scheme may be a very substantial creditor / counterparty of the target company in which case we would anticipate that discussions with the trustees would need to take place at an early opportunity to facilitate a meaningful offer being made at all. Such discussions could be of benefit to the offeree company's shareholders (the constituent which the Code is principally seeking to protect) if they lead to an offer being made which would not otherwise be made absent the discussions (and possibly an agreement) with the trustees.

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)?

Whilst the views of the Board of the offeree company regarding the impact of any offer on the offeree company's pension scheme may be aligned with those of the trustees, they might not be – in which case their views may be of limited value only. It would be helpful, therefore, to state whether the Board of the offeree company have sought the views of the trustees or not in formulating their view; and, if they have, for the Board to state whether or not their views are aligned with those of the trustees and, if appropriate, the Pensions Regulator.

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 pensions scheme(s)?

In principle, the disclosure requirements to the trustees appear reasonable – but we qualify this response by our general comment under our response to Q1 above regarding the materiality of the pension scheme(s) and any need for early engagement with the trustees.

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)?

We believe that it is unreasonable for trustees to have to meet the costs of evaluating and commenting on an offer – which may or may not be successful – from scheme funds.

There are a number of reasons for this: first, there may be conflicts of interest between the employer and the scheme in relation to the evaluation and commentary on the offer. Second, such costs, if paid by an employer, would reduce resources which would otherwise be available to the scheme. And third, in a number of cases schemes are funded both by employers and members (shared cost arrangements).

The work involved may be substantial and complex depending on the nature of the transaction and it is unfair that schemes should be required to pay for associated fees, particularly if the offer is unsuccessful. We believe that the Code should require that these costs should be met by the offeror as part of their overall bid costs.

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?

No comments.

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?

No comments.