

The Takeover Panel

Consultation Paper issued by the Code Committee of the Panel

Pension Scheme Trustee Issues

Introduction and background

We are pleased to have the opportunity to respond to this consultation. We are fully supportive of the proposal that the Takeover Code should be extended so as to apply to the trustees of the offeree company's pension scheme.

We recognise that as with most changes there are arguments both in favour and against extending the Code. While the Code was principally designed to protect the shareholders in the offeree company and ensure they are treated fairly, extending rights to trustees will not detract from that aim, or mean shareholders are treated less fairly and indeed, reflect the provisions already in place to protect employees' other legitimate interests. A defined benefit scheme in particular is often a major creditor of a Company and as such a responsibility which in all fairness shareholders would want to see properly dealt with in any takeover.

The cost of extending rights to trustees would be minimal, and introducing the proposed amendments to the Code would remove a lot of uncertainty for Scheme members and Trustees surrounding a takeover. The reduction in the level of mistrust and ill will may indeed simplify the takeover process and in the long run save time and cost.

The Pensions Regulator's powers are often reactionary and the Regulator is sensibly reluctant to get involved except where it has to and as a last resort. Extending the Takeover Code in the manner suggested should mean the Regulator has to get involved less often and that fewer takeovers become stressful in respect of the pension provision. Debating pension issues early on in the process will mean that more often than not they are properly dealt with, and issues which might have arisen avoided.

Specific comments on questions raised

Q1

Our understanding of the proposal is that it will only apply to trust based schemes and not to contract based workplace schemes. We do not see the need to extend the proposals beyond trust based schemes. We can see situations where it would be helpful to extend the proposals to defined contribution arrangements but it is far less important for them to be included. Our major concern is over defined benefit schemes. A defined benefit scheme is often a major creditor of the Company and needs to be fairly dealt with on any takeover. Involving its trustees in informed discussion at an early stage is vitally important.

Q2

We believe the Change to Rule 25.2(a) set out in paragraph 3.5 of the consultation should make it compulsory for the offeree board to share the board circular with the trustees of the pension schemes.

Q3

The requirement as set out in paragraph 3.6 of the consultation is for the offeror board to be committed to the course of action for a period of 12 months from the date on which the offer period ends or for such other period as is specified in the statement. It should be made clear that the 12 months is a minimum and “such other period” may be longer than 12 months but cannot be less. This is to prevent an offeror getting round this requirement by stating the alternative period of 1 day applies.

Q4

The wording of the proposed amendment to the notes on rule 25.9 needs to be tightened up to make it clear that the offeree company must pay for the publication of both the employee representatives’ and trustees’ opinions, where they have the opinions of both. The “and/or” could be misconstrued to mean they have a choice and where faced with two opinions could choose to publish only one.

Q5

We agree with the proposals.

Q6

We have the same comments as for Q4.

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Contact us

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