

THE TAKEOVER PANEL

CODE COMMITTEE

REVIEW OF CERTAIN ASPECTS OF THE REGULATION OF TAKEOVER BIDS: PROPOSED AMENDMENTS TO THE TAKEOVER CODE

The Code Committee of the Takeover Panel has today published a public consultation paper, [PCP 2011/1](#), setting out proposed amendments to the Takeover Code (the “Code”).

Background

On 21 October 2010, the Code Committee published Statement 2010/22 setting out its response to a public consultation paper, PCP 2010/2, published on 1 June 2010, which had sought views on various suggestions for possible amendments to the Code. In Statement 2010/22, the Code Committee stated that it had concluded that:

- (a) “hostile” offerors (i.e. offerors whose offers are not from the outset recommended by the board of the offeree company) have, in recent times, been able to obtain a tactical advantage over the offeree company to the detriment of the offeree company and its shareholders, and that it intended to bring forward proposals to amend the Code with a view to reducing this tactical advantage and redressing the balance in favour of the offeree company; and
- (b) a number of changes should be proposed to the Code to improve the offer process and to take more account of the position of persons who are affected by takeovers in addition to offeree company shareholders.

The Code Committee concluded that amendments to the Code should be proposed in order to:

- (a) increase the protection for offeree companies against protracted “virtual bid” periods by requiring potential offerors to clarify their position within a short period of time;
- (b) strengthen the position of the offeree company by:
 - (i) prohibiting deal protection measures and inducement fees other than in certain limited cases; and
 - (ii) clarifying that offeree company boards are not limited in the factors that they may take into account in giving their opinion and recommendation on an offer;
- (c) increase transparency and improve the quality of disclosure by:
 - (i) requiring the disclosure of offer-related fees; and
 - (ii) requiring the disclosure of the same financial information in relation to an offeror and the financing of an offer irrespective of the nature of the offer; and
- (d) provide greater recognition of the interests of offeree company employees by:
 - (i) improving the quality of disclosure by offerors and offeree companies in relation to the offeror’s intentions regarding the offeree company and its employees; and
 - (ii) improving the ability of employee representatives to make their views known.

PCP 2011/1 sets out the detailed amendments to the Code that the Code Committee proposes to make in order to implement the conclusions described in Statement 2010/22.

Invitation to comment

The Code Committee invites comments on the amendments to the Code proposed in PCP 2011/1. Comments should reach the Code Committee by Friday, 27 May 2011 and should be sent in the manner set out at the beginning of the PCP.

Copies of PCP 2011/1 may be obtained from the Panel's website at www.thetakeoverpanel.org.uk or may be requested from the Panel Executive by e-mail (supportgroup@thetakeoverpanel.org.uk) or by telephone (+44 (0)20 7382 9026).

Next steps

In accordance with its procedures for amending the Code, once the Code Committee has completed its consideration of the responses to the consultation, it will publish a Response Statement, which will include the final text of the amendments to the Code.

The Code Committee considers that there should be a period time, of not less than one month, between the publication date of the Response Statement and the implementation of any amendments to the Code. However, since the proposed amendments should not require the introduction of major systems changes, the Code Committee does not believe that it will be necessary for there to be a lengthy transitional or implementation period. The Code Committee intends to provide guidance as to the publication date of the Response Statement, the implementation date for any Code amendments and the likely transitional arrangements following its initial consideration of the consultation responses.

21 March 2011