

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

11 September 2014

Your ref: BDO
Our ref: PCP14/JS/Consultation

Dear Sirs

PCP 2014/1 Consultation - Miscellaneous Amendments to the Takeover Code

BDO LLP (“BDO”) is pleased to respond to your request for comments on the above consultation. We understand and hereby approve that this response to the consultation is made available for public inspection and published on the Panel’s website.

BDO is the UK member firm of the BDO international network, the world’s fifth largest accountancy organisation. BDO has acted as both a financial advisor to clients on transactions to which the Takeover Code (the “Code”) applies and as a reporting accountant on specific aspects of the Code such as reports in connection with profit forecasts.

General comments

In general terms, we support the proposed amendments to the Code, which we believe will improve the consistency and transparency of the Takeover Code.

Responses to questions

Q1 Should the latest date for a potential competing offeror to clarify its position be a firm date as opposed to a flexible date which is set by the Panel on a case-by-case basis?

Yes, we agree that a firm date is preferable.

Q2 Should the deadline by which a potential competing offeror must clarify its position be extended to seven days prior to the final day on which the first offeror’s offer is capable of becoming or being declared unconditional as to acceptances, rather than 10 days prior to that time?

Yes, we agree that a seven day limit is more appropriate.

Q3 Should the latest date by which a potential competing offeror must clarify its position be fixed at 5.00pm on the 53rd day following the publication of the first offeror’s initial offer document?

Yes, we believe this to be a beneficial amendment.

Q4 Where the first offeror is proceeding by way of a scheme of arrangement, should the latest date by which a potential competing offeror must clarify its position normally be 5.00pm on the seventh day prior to the date of the shareholder meetings?

Yes, we believe this amendment will help minimise the potential for confusion by ensuring shareholders have adequate time to prepare for their meeting.

11 September 2014

- Q5** Should the Panel, in appropriate cases, continue to be able to permit a potential competing offeror to clarify its position after the date of the shareholder meetings and, in such cases, should the deadline be set for a date which is no later than 5.00pm on the seventh day prior to the date of the court sanction hearing?

Yes, although whilst we agree that a competing offeror should be able to clarify its position after the shareholder meeting and that this should be provided in manner that provides the court with adequate time to review in advance of their hearing, we would prefer to see the drafting reflect that this will occur only “in exceptional circumstances” as opposed to “in appropriate cases”.

- Q6** Do you have any comments on the proposed amendments to Rules 2.6(d) and (e), Note 3 on Rule 2.6 and Section 4 of Appendix 7?

We believe the wording in Section 4 (b) of Appendix 7 should be strengthened by replacing “Where appropriate” with “In exceptional circumstances”.

- Q7** Do you have any comments on the proposed new Note 5 on Rule 32.1 with regard to extensions to Day 60?

No comments, we agree with the proposed drafting.

- Q8** What are your views on the proposed amendment to Note 2 on Rule 2.8?

We agree with the proposed amendment and the move away from requiring Panel Consent in prescribed situations.

- Q9** Should paragraph (a) of Note 4 on Rule 2.2 be amended as proposed so as to restrict a person who is subject to that Note, together with any person who acted, or subsequently acts, in concert with it, from acquiring interests in shares of the offeree company?

Yes, we agree with the proposed amendment.

- Q10** Should paragraph (a) of Note 4 on Rule 2.2 be amended as proposed so as to restrict a person who is subject to that Note, together with any person who acted, or subsequently acts, in concert with it, from making an approach to the board of the offeree company?

Yes, we agree with the proposed amendment.

- Q11** Should paragraph (b) of Note 4 on Rule 2.2 be amended as proposed so as to require that an announcement which the Panel requires to be made by the offeree company under that paragraph (b) should normally identify the former potential offeror?

We do not agree with this proposed amendment as we believe that the identity of the former potential offeror should not normally be included in the announcement. We believe that this proposed amendment would be detrimental to the process as it might result in rumour which triggers the naming of the former offeror where there was no inclusion of its name in any speculation and where it has already confirmed to the Panel

11 September 2014

that it has ceased to be actively considering making an offer. This could act as a deterrent to a potential offeror.

Q12 Should paragraph (a) of Note 4 on Rule 2.2 be amended as proposed to as to restrict a person who is granted a dispensation, and any person acting in concert with it, from actively considering an offer, from making an approach and from acquiring an interest in shares of the offeree company for a period of three months following the date on which the dispensation was granted and from doing any of the things set out in Rules 2.8(a) to (e) for the following three month period?

Yes, we agree with the proposed amendment.

Q13 Should the default auction procedure be based on the Existing Default Procedure? If not, is there an alternative model which would be more appropriate?

Yes, we agree the default auction procedure should be based on the Existing Default Procedure.

Q14 Should the default auction procedure be incorporated into the Code as a new Appendix 8?

Yes, we agree the default auction procedure should be incorporated into the Code as proposed.

Q15 Should the Proposed Auction Procedure provide for an auction process with a maximum of five rounds over five consecutive business days?

Yes, we agree the proposed maximum of five rounds over five consecutive business days to be sufficient to ensure an effective process.

Q16 Should both of the competing offerors be permitted to announce a revised offer in the first round of the auction?

Yes, we agree both of the competing offerors should be permitted to announce a revised offer in the first round of the auction.

Q17 In the second, third and fourth rounds, should a competing offeror be permitted to announce a revised offer only if the other competing offeror has announced a revised offer in the previous round?

Yes, we agree that in the second, third and fourth rounds, a competing offeror should be permitted to announce a revised offer only if the other competing offeror has announced a revised offer in the previous round.

Q18 Should both of the competing offerors be entitled to announce a revised offer in the fifth and final round?

Yes, we agree that both of the competing offerors should be entitled to announce a revised offer in the fifth and final round.

11 September 2014

Q19 Do you agree that the Proposed Auction Procedure should not require revised offers to incorporate minimum incremental increases to previous offers?

Yes, we agree that the Proposed Auction Procedure should not require revised offers to incorporate minimum incremental increases to previous offers.

Q20 Should the Proposed Auction Procedure prohibit the announcement of a revised offer where the consideration is calculated by reference to a formula that is determinable by reference to the value of a revised offer by the other competing offeror (in the absence of agreement between the parties that such formula offers should be permitted)?

Yes, we agree the Proposed Auction Procedure should prohibit the announcement of a revised offer where the consideration is calculated by reference to a formula that is determinable by reference to the value of a revised offer by the other competing offeror (unless there is agreement between the parties that such formula offers should be permitted).

Q21 Should a competing offeror be permitted to submit a revised offer to the Panel in the fifth and final round subject to the condition that it will be announced only if the other competing offeror also submits a revised offer?

Yes, we agree that a competing offeror should be permitted to submit a revised offer to the Panel in the fifth and final round subject to the condition that it will be announced only if the other competing offeror also submits a revised offer.

Q22 Do you agree that the introduction of new forms of consideration during the auction should not be prohibited?

Yes, we agree that the introduction of new forms of consideration during the auction should not be prohibited.

Q23 Should the terms of the Proposed Auction Procedure prohibit dealings in the relevant securities of the offeree company by the parties to the offer and persons acting in concert with them, and the procuring of irrevocable commitments and letters of intent, during the auction procedure?

Yes, we agree that the terms of the Proposed Auction Procedure prohibit dealings in the relevant securities of the offeree company by the parties to the offer and persons acting in concert with them, and the procuring of irrevocable commitments and letters of intent, during the auction procedure.

Q24 Should the terms of the Proposed Auction Procedure provide that, between the end of the auction procedure and the end of the offer period, a competing offeror and any person acting in concert with it must not acquire any interest in the shares of the offeree company if it would then be required to revise its offer?

Yes, we agree that, between the end of the auction procedure and the end of the offer period, a competing offeror (and any person acting in concert with it) must not acquire

11 September 2014

any interest in the shares of the offeree company and if it does then they should be required to revise their offer.

- Q25** Should the terms of the Proposed Auction Procedure prohibit announcements by the competing offerors or the offeree company (or persons acting in concert with them) which relate to, or could reasonably be expected to affect the orderly operation of, the auction procedure or which relate to the terms of either competing offeror's offer?

Yes, we agree that, the terms of the Proposed Auction Procedure should prohibit announcements by a competing offeror (or persons acting in concert with them) which relate to, or could reasonably be expected to affect the orderly operation of, the auction procedure or which relate to the terms of either competing offeror's offer.

- Q26** Do you have any comments on the proposed amendments to Rule 32.5 or the proposed new Appendix 8?

No, we do not have any comments on the proposed amendments to Rule 32.5 or the proposed new Appendix 8

- Q27** Should the Code be amended so as to require a whitewash transaction circular to state that potential controllers which are granted a Rule 9 waiver are not restricted from making an offer for the company?

Yes, we agree that this amendment would be beneficial to shareholder comprehension of the transaction circular

- Q28** Do you have any comments on the proposed amendments to Note 1 of the Notes on Dispensations from Rule 9, Section 4 of Appendix 1 and Note 5 on the definition of "acting in concert"?

Yes, we agree with the proposed amendments.

- Q29** Should Rule 2.11(b) be amended so as to require irrevocable commitments and letters of intent procured prior to an offer period to be disclosed following the identification of the offeror as such, and Rule 2.11(c) deleted, as proposed?

Yes, we agree that, as proposed, Rule 2.11(b) should be amended so as to require irrevocable commitments and letters of intent procured prior to an offer period to be disclosed following the identification of the offeror and Rule 2.11(c) be deleted.

- Q30** Should Rule 2.7 be amended so as to require details of interests and short positions in relevant securities of the offeree company, and irrevocable commitments and letters of intent, to be included in the announcement of a firm intention to make an offer, and the new Note 3 on Rule 2.7 introduced, as proposed?

Yes, we agree with the proposed amendments.

- Q31** Should Note 2(a)(i) on Rule 8 be amended such that the "10 business days" deadline would apply to an offeror's Opening Position Disclosure, regardless of when it announced its firm intention to make an offer?

11 September 2014

Yes, we agree with the proposed amendment.

- Q32** Should Note 1 on Rule 2.11 be amended so as to make clear that no separate disclosure is required when details of irrevocable commitments and letters of intent are disclosed in a firm or possible offer announcement made by no later than 12 noon on the business day following the date on which they are procured?

Yes, we agree with the proposed amendment.

- Q33** Should paragraph (viii) of Note 5(a) be deleted so as to remove the requirement to disclose details of irrevocable commitments and letters of intent in an Opening Position Disclosure?

Yes, we agree with the proposed amendment.

- Q34** Should Note 3 on Rule 2.11 be amended so as require the disclosure of any outstanding conditions to which an irrevocable commitment is subject?

Yes, we agree with the proposed amendment.

- Q35** Should Note 12 on Rule 8 be amended so as to make clear that it applies to any participant in a formal sale process, and should consequential amendments be made to Note 1 on Rule 2.4, Note 2 on Rule 2.6 and the Note on Rule 7.1, as proposed?

Yes, we agree with the proposed amendments.

- Q36** Should Rule 26.1 be amended so as to make clear that the specified documents are required to be published on a website by no later than 12 noon on the business day following a firm offer announcement (or, if later, the date of the relevant document)?

Yes, we agree with the proposed amendment.

- Q37** Should Rule 2.10 be amended so as to bring forward the latest deadline for announcements of the numbers of relevant securities in issue from 9.00am to 7.15am?

Yes, we agree the proposed amendment will be beneficial in helping to maintain an orderly market for any relevant publically traded securities.

- Q38** Should Note 5(f) on Rule 8 be amended so as to require that, where the owner or controller of an interest or short position is a trust, details of the trustee(s), the settlor and the beneficiaries of the trust must be disclosed?

Yes, we agree with the proposed amendment.

- Q39** Should Note 5(a) on Rule 8 be amended to provide for aggregated disclosure by a connected principal trader where the sole reason for the connection is that the principal trader is controlled by, controls or is under the same control as a connected adviser to an offeror, the offeree company or any person acting in concert with the offeror or the offeree company?

11 September 2014

Yes, we agree with the proposed amendment.

Q40 Should the Code be amended as proposed in respect of matters relating to the redemptions and purchases by offeree companies and offerors of their own securities?

Yes, we agree with the proposed amendments.

Q41 Should Note 4 on Rule 20.1, Note 5 on Rule 19.1 and Section 6 of Appendix 2 be amended as proposed?

Yes, we agree with the proposed amendments.

Q42 Do you have any comments on the proposed amendments to Note 2 on Rule 32.2 and Note 2 on Rule 31.5?

Yes, we agree with the proposed amendments.

Q43 Do you have any comments on the proposed amendments to Note 5 on Rule 32.2 and Note 5 on Rule 31.5?

Yes, we agree with the proposed amendments.

Q44 Should Rule 3.1 and Note 3 on Rule 3.1 be amended as proposed so as to make clearer the roles of the board of the offeree company and the independent adviser?

Yes, we agree with the proposed amendments that clarify the differing responsibilities of the board of the offeree company and the independent adviser

Q45 Should the second paragraph of Note 16 on Rule 9.1 be amended as proposed so as to make clear that it applies only to shares acquired and held by a principal trader in a client-serving capacity?

Yes, we agree with the proposed amendments.

We would be pleased to discuss any queries you may have in relation to the points raised in this letter.

Yours faithfully



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