



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

14 October 2014

Consultation paper: post-offer undertakings and intention statements (PCP 2014/2)

Dear Sir or Madam,

Thank you for giving the Institute of Directors (IoD) the opportunity to comment on your consultation paper, *Post-offer undertakings and intention statements*, published in July of this year. Issues surrounding risk and remuneration are of considerable interest to the IoD and its membership. We are therefore pleased to present our views in respect of your proposals.

About the IoD

Founded in 1903, and granted a Royal Charter in 1906, the IoD is an independent, non-party political organisation of around 35,000 individual members. Its aim is to serve, support, represent and set standards for directors to enable them to fulfil their leadership responsibilities in creating wealth for the benefit of business and society as a whole. The membership is drawn from right across the business spectrum. 92% of FTSE 100 companies have IoD members on their boards, but the majority of members, some 70%, comprise directors of small and medium-sized enterprises, ranging from long-established businesses to start-up companies.

The following are our responses to specific questions from the discussion paper.

1. Should the new definitions of “post-offer intention statement” and “post-offer undertaking” be introduced as proposed?

Yes. We are supportive of the revised definitions. The panel’s attempt at distinguishing between undertakings and statements will be welcomed by many, especially the need for undertakings to be more specific. It is important that the acquiring company needs to present a vision and strategy for the company that works in the interests of long-term value creation and believe, therefore, that the definitions here will ensure that in all mergers and acquisition transactions, companies looking to acquire another firm will have to spell out a compelling and sufficiently long-term vision which will, crucially, work in the interests of all committed shareholders as well as other key stakeholders, such as employees. It is critical that boards, who have been mandated by the UK Corporate Governance Code to take a longer-term view of stakeholder interests, do not just sell the business to the highest bidder regardless of whether statement or undertaking is given.

2. Should the new Rule 19.7 be introduced as proposed?

Broadly speaking we are supportive of the introduction of this rule and welcome the proposal that the Panel may, “require a document to be sent to the offeree company’s shareholders and persons with information rights.”

3. Should the new Rule 19.8 be introduced as proposed?

We are satisfied with this addition.

4. Should Rule 19.1 be amended, and Note 2 on Rule 19.1 deleted, as proposed?

This seems reasonable and the amendment to Rule 19.1 should ensure that the language used in each document, statement, announcement or other information published is both clear and concise.

5. Should the new Rules 24.2(d), 24.3(d)(xv), 25.2(c) and 25.7(c) be introduced, and Rules 27.2(b) and (c) amended, as proposed?

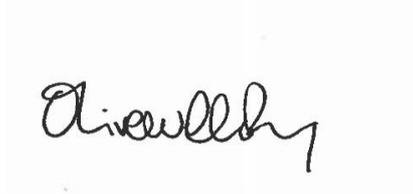
Yes.

6. Do you agree with the proposed minor amendments to Rule 24.2?

We are pleased with this amendment. The decision to place an obligation on the offeror to explain “the long-term commercial justification for the offer” is to be welcomed. However, for the offeree board, no reference is made to the phrase “long-term” in the existing code. I believe this is far too ambiguous and that, in the existing code, an amendment to Rule 25.2 (d)(i) should be undertaken to ensure that the board considers “the *long-term* effects of implementation of the offer on all the company’s interests, including, specifically, employment.” This will ensure that boards are reminded of their obligations, as stated in other parts of the Code and by the UK Corporate Governance Code, to take a longer-term view of stakeholder interests.

Thank you once again for inviting the Institute of Directors to participate in this consultation. We hope you find our comments useful.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Oliver Parry", is centered within a light gray rectangular box.

Oliver Parry

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