

**Takeover Panel consultation on  
post-offer undertakings and  
intention statements: a response  
by the National Association of  
Pension Funds**

**October 2014**

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## Takeover Panel consultation paper – Post-offer undertakings and Intention Statements

### NAPF response

The NAPF is the voice of workplace pensions in the UK. We speak for over 1,300 pension schemes that provide pensions for over 17 million people and have more than £900 billion of assets. We also have 400 members from businesses supporting the pensions sector.

We aim to help everyone get more out of their retirement savings. To do this we promote policies that add value for savers, challenge regulation where it adds more cost than benefit and spread best practice among our members. We welcome the opportunity to comment on these proposals from the Code Committee regarding future undertakings by offerors.

Following events of the last year, we recognise the need for the Takeover Panel to give additional consideration to the issue of post-offer undertakings and intention statements. In an environment of increased political attention on takeovers of UK companies we expect there to be more such indications given by offerors, and more attention paid to how and whether these are in practice delivered on. In the absence of there being an effective approach to undertakings and intentions there is a danger that the UK takeover regime will be brought into disrepute.

A necessary part of such an effective approach will be to have updated and clear definitions around the different sorts of forward-looking statements that offerors make, as well as an associated requirement for offerors to be clear what form of statement they are making. In order for this approach to work, however, and for the UK takeover regime not to be brought into disrepute, the enforcement powers that surround these rules will need to be given close consideration – not least given that, by the nature of these rules the enforcement will generally need to be applied to offerors that are not UK-listed. As the consultation itself notes, the Takeover Panel's powers to seek enforcement under s955 of the Companies Act 2006 are as yet untested.

To answer the specific questions:

#### **Q1 Should the new definitions of “post-offer intention statement” and “post-offer undertaking” be introduced as proposed?**

Yes, we are supportive of the introductions of the new definitions, believing that this clarity will help the market understand what reliance it should place on any statements made. Requiring offerors to make clear what form of statement they are making is also a necessary part of building this market understanding and confidence.

#### **Q2 Should the new Rule 19.7 be introduced as proposed?**

Yes, we are generally supportive of the draft new Rule. We have two specific comments:

- On the whole we support the approach that there need to be limits on the qualifications and conditions placed on undertakings, such that general and unclear conditions are not acceptable. We agree that offerors should be obliged to balance the tension between safeguards that they wish to have in place through qualifications and conditions and the risk that they undermine the substance of the undertaking(s) that they are making. We would assume that any time such undertakings are mentioned by offerors they will need to refer to any specific qualifications and conditions that they have put in place.

- We support the presumption in 19.7(d) that any decision not to complete an undertaking should be disclosed publicly – with scope for the Panel to give permission for this not to occur. We believe that the same presumption in favour of publication should apply to written reports regarding the delivery of undertakings – again, with scope for the Panel to give permission for this not to occur. This seems to us to strike a better balance than that there be scope for the Panel to require publication of written reports in circumstances where it judges this to be appropriate.

**Q3 Should the new Rule 19.8 be introduced as proposed?**

Yes, we support the introduction of Rule 19.8 as proposed. In particular, we support the intended presumption of publication.

**Q4 Should Rule 19.1 be amended, and Note 2 on Rule 19.1 deleted, as proposed?**

Yes, we support the proposed amendments and deletion. We agree that the bulk of Note 2 of Rule 19.1 is in effect duplicative of the Note on Rule 19.3.

**Q5 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, we support these consequential amendments.

**Q6 Do you agree with the proposed minor amendments to Rule 24.2?**

Yes, we support these minor clarifying amendments.

**Further information**

**For further information please contact:**

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