



24 October 2014

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

Dear Sirs

**Response to Consultation PCP2014/2**

I am writing to provide comments on behalf of PwC to the Code Committee of the Panel (the "Panel") in response to the consultation on post-offer undertakings and intention statements.

We support the objectives of the Panel in proposing a new framework for the regulation of such statements made by parties to an offer and we support the principles behind the amendments to the Takeover Code set out in the consultation. We welcome the clarity on the status of these statements and on how compliance with these statements will be monitored.

However, we do have comments on the detail of the proposed amendments to the Code, as set out in our answers to questions 2 and 3 below.

Question 1:

Yes, we agree.

Question 2:

Yes, we agree, subject to the following comments:

(a) Rule 19.7 (c)

We believe that any post-offer undertaking would need to be consistent with, or at least not inconsistent with, any assumptions made in relation to the assessment of synergy benefits. We question whether any statements which are included in public documents as part of the explanatory notes to a merger benefits statement which relate to an intention or a plan for a particular course of action could be interpreted by the market or the Panel as a post-offer undertaking. We assume this is not the intention of the Panel, but it would be helpful to provide clarity on this point.

(b) Rule 19.7 (f)

We believe it would be helpful to the Panel to include in any such written reports a specific statement that the party reconfirms the undertaking given at the time of the offer. This would be a confirmation in addition to sub-paragraphs (i) and (ii).

*PricewaterhouseCoopers LLP, 7 More London Riverside, London SE1 2RT  
T: +44 (0) 20 7583 5000, F: +44 (0) 20 7212 4652, www.pwc.co.uk*



(c) Rule 19.7 (f) (iv)

If the written reports provided to the Panel are to provide adequate disclosure relating to decisions to take or not take a particular course of action, we expect that the reports may include commercially sensitive information. We believe that it may be inappropriate to publish the full contents of such reports, as envisaged by Rule 19.7 (f) (iv) as currently drafted, and we suggest the Code be amended to allow the Panel to approve a dispensation from publishing commercially sensitive information.

(d) Rule 19.7 (g) and note 2 on Rule 19.7

We support the principles of a supervisor appointment, but suggest there should be further clarity in the Code regarding who engages the supervisor and to whom the supervisor would owe a duty of care in carrying out its work and submitting its reports.

We also suggest that there is additional clarity given in the Code on what factors will be relevant to determine whether the supervisor is independent, for example whether the test will be similar to that in Rule 3.

(e) Other points on Rule 19.7

We believe it would be helpful to provide greater clarity in the Code on what measures the Panel might use to enforce post-offer undertakings or to remediate any breaches of such undertakings. We suggest this should include specific guidance on the role and responsibility of advisors to the party giving the undertaking, both at the time of giving the undertaking and in monitoring ongoing compliance with the undertaking.

We suggest there is also further clarity provided on the implications for a post-offer undertaking given by a target company as part of a hostile offer defence, and in particular whether that undertaking would continue to bind the company following a subsequent takeover.

Question 3:

We believe that point (a) under Question 2 above also applies to Rule 19.8 in relation to post-offer intention statements. We assume it is not the intention of the Panel for assumptions underlying merger benefits statements to be treated as statements of intention under Rule 19.8, but it would be helpful to provide clarity on this point.

Questions 4 to 6:

Yes, we agree.

We would be pleased to discuss any of the points raised in this letter.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'S Boadle', is written over the 'Yours faithfully' text.

Simon Boadle  
Partner, Corporate Finance