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By email: supportgroup@thetakeoverpanel.org.uk

The Secretary to the Code Committee
The Takeover Panel
10 Paternoster Square
London
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Dear Sir/Madam

PCP2017/1 - Asset sales in competition with an offer and other matters

Thank you for giving us the opportunity to provide comments on the amendments to the Code proposed in PCP 2017/1, published on 12 July 2017, regarding 'asset sales in competition with an offer and other matters'.

As the Panel Executive is aware, Strand Hanson is a leading, independent, advisory-led, modern merchant banking boutique, and its dedicated and highly experienced M&A team is delighted to offer a comprehensive range of mid-market M&A services and to have advised on a number of the more complex and challenging mid-market UK Code transactions in recent years.

Further to our review and consideration of the consultation paper, please find set out below our responses to the various questions raised:

Q1:	**Should an offeror or potential offeror be restricted from circumventing the provisions of the Code by purchasing the offeree company's assets following the offer or possible offer lapsing or being withdrawn?**
Response: Yes. However, we believe that the Panel should retain the discretion to grant a dispensation, in extenuating circumstances, such that a caveat could be included along the lines of "unless otherwise agreed with the Panel". For example, there could be a situation of imminent financial distress/loss of a key contract(s) for the offeree whereby an asset sale to the offeror or potential offeror is deemed by the offeree board and its advisers to be the only viable/most expeditious means of salvaging maximum value for the offeree's shareholders and other stakeholders.	
Q2:	**Should the proposed new restriction in each of Rules 2.8, 12.2 and 35.1 apply in relation to the purchase of assets which are significant in relation to the offeree company (as determined in accordance with Note 5 on Rule 2.8)?**

Response:

Yes.

Q3:	**Do you have any comments on the proposed amendments to Rule 2.8, Rule 12.2 and Rule 35.1?**

Response:

Generally, we welcome the proposed amendments to Rule 2.8, Rule 12.2 and Rule 35.1. However, in relation to paragraph 1.6(a)(ii), we believe that the board of an offeree company should not, in seeking to quantify the cash sum expected to be paid to shareholders, have to obtain reports prepared by both reporting accountants and financial advisers, but rather just a report prepared by the financial adviser(s). We would also note the potential caveat referred to in our response to question 1 above.

Q4:	**Where shareholder approval is sought in general meeting for a proposed action under Rule 21.1, should a requirement be introduced**: **(a) for the board of an offeree company to obtain competent independent advice as to whether the financial terms of the proposed action are fair and reasonable; and** **(b) for the Panel to be consulted regarding the date on which the general meeting is to be held?**

Responses:

(a) Yes.

(b) Yes.

Q5:	**Do you have any comments on the proposed requirement for the board of an offeree company to publish a circular in the circumstances described in the proposed new Rule 21.1(f) containing the information set out in the proposed new Note 1 on Rule 21.1?**

Response:

No.

Q6:	**Do you have any comments on the proposed amendments to Rule 21.1?**

Response:

No.

Q7:	**Should an offeree company be permitted to pay one or more inducement fees to a counterparty to an agreement to which Rule 21.1 applies provided that the aggregate value of the fees payable does not exceed the 1% limit referred to in Note 8 on Rule 21.1?**

Response:

Yes, we are supportive of the view that an offeree company should be permitted to pay one or more inducement fees to a counterparty to an agreement to which Rule 21.1 applies. However, we would suggest that the currently proposed drafting for the new Note 8 could perhaps make it more explicit that, as we understand it, inducement fees will be permissible to multiple counterparties to a single agreement or, indeed, potentially across several separate agreements, perhaps subject to a cap (e.g. three inducement fee arrangements) and, in aggregate, not exceeding the 1% limit. In our view, permitting multiple inducement fee arrangements should provide greater flexibility and ultimately benefit the offeree company's shareholders.

Ideally, we think that allowing multiple inducement fees up to an individual maximum amount of 1% each and a total aggregate amount of 2.5% would be preferable for providing competitive tension in the relevant situations.

Q8:	**Do you have any comments on the proposed new Note 8 on Rule 21.1?**

Response: No, save for the proposed clarification outlined in our response to question 7 above.	
Q9:	**Where, in competition with an offer or possible offer, an offeree company has announced its intention to sell all or substantially all of the company's assets (excluding cash and cash equivalents) and to return to shareholders all or substantially all of the company's cash balances (including the proceeds of any asset sale), should a statement by the offeree company quantifying the cash sum expected to be paid to shareholders be treated as a quantified financial benefits statement?**
Response: Yes, although as per our response to question 3 above, we do not think it appropriate for the document or announcement containing such a statement to have to include reports from both reporting accountants and financial advisers, per the provisions of Rule 28.1, but rather that a report solely from the relevant party's financial adviser(s) should be sufficient.	
Q10:	**Do you have any comments on the proposed new Note on the definition of "quantified financial benefits statement"?**
Response: No, save for our proposed suggestion in the response to question 9 above that a report should only be required from its financial adviser(s) in such particular circumstances.	
Q11:	**Where, in competition with an offer or possible offer, an offeree company has announced an intention to sell all or substantially all of the company's assets (excluding cash and cash equivalents) and to return to shareholders all or substantially all of the company's cash balances (including the proceeds of any asset sale), should a purchaser of some or all of those assets be restricted from acquiring interests in shares in the offeree company during the offer period unless the board of the offeree company has made a statement quantifying the amount per share that is expected to be paid to shareholders and then only to the extent that the price paid does not exceed that amount?**
Response: Yes.	
Q12:	**Do you have any comments on the proposed new Rule 4.7?**
Response: No.	
Q13:	**Do you have any comments on the proposed new Note 6 on Rule 21.3?**
Response: No, although if may be helpful to clarify that the proposed new Note 6 on Rule 21.3 is intended to be applied so as to prevent any frustrating action with respect to any approaches from *bona fide* third parties only.	
Q14:	**Do you have any comments on the proposed amendment to Rule 2.8 and to the introduction of the proposed new Note 2 on Rule 2.8?**
Response: No.	
Q15:	**Do you have any comments on the consequential and minor amendments referred to in paragraph 5.9?**
Response: No.	

Q16:	**Do you have any comments on the proposed amendments to Note 1 on Rule 19.1, Rule 20.3 and Rule 20.4?**
Response: No.	
Q17:	**Do you have any comments on the proposed amendment to Note 5 of the Notes on Dispensations from Rule 9?**
Response: No.	

As a general observation, with regard to Reporting Accountants and Financial Advisers reporting on the financial impact of various matters, as envisaged in this PCP, we are less concerned with the cost of such reports from the Reporting Accountants (albeit they will likely be fairly expensive, particularly in percentage terms for small-cap transactions), but rather with the time that such reports would take to scope and produce. We also believe that the timing impact would be particularly deleterious in PUOSU / competitive situations, for obvious reasons.

This, in our view, is particularly the case as certain of the reports suggested would involve even greater subjectivity than reports currently required under Rule 28 for profit forecasts etc. and it is this subjectivity and potential exposure, in our experience, that causes Reporting Accountants their biggest issues and longest delays in terms of their risk assessment, internal review and approval processes. A valuation exercise, the results of which would be publicly available, as envisaged in this PCP, would be a multiplier of the issues involved in a profit forecast.

In addition, we believe that public valuation related matters are best addressed by the investment banks as Financial Adviser (provided the investment bank is acceptable to the Panel as a Rule 3 adviser) as that is a core competency for such organisations, in a way that it may not typically be for many (particularly smaller) Reporting Accountants.

For your information, please be advised that as well as replying directly to this PCP, via this email, we are also contributing to the QCA's discussion and its response.

Please do not hesitate to contact me, or any other member of the senior team, should you wish to clarify or discuss any of our above responses.

Kind regards

Stuart Faulkner
Director and Head of Mergers & Acquisitions
for and on behalf of
Strand Hanson Limited