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The Secretary to the Code Committee
The Takeover Panel
10 Paternoster Square
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Dear Secretary to the Code Committee

Regulation of takeover bids

1. Ernst & Young LLP welcomes the opportunity to comment on *PCP 2011/1: Review of certain aspects of the Regulation of Takeover Bids; Proposed Amendments to the Takeover Code* ("the Consultation"), issued by the Takeover Panel ("The Panel") on 21 March 2011.

2. We understand that this detailed and relatively technical Consultation follows the earlier high-level review of the Takeover Code ("the Code") conducted last year. Accordingly, our response to the earlier review (see our letter dated 27 July 2010) has influenced our approach to this Consultation.

3. For this reason, our comments in the appendix to this letter are limited to points of technical clarification and consistency with existing regulation. In particular, we have suggested a limited number of changes to help ensure the Panel's proposed revisions (if/when they take effect) keep in line with the UK Listing Rules and FSA Disclosure and Transparency Rules, as determined by the EC's Prospectus Directive and Transparency Directive respectively.

4. We recognise the need for a detailed review of the Code, and we are pleased that the Panel has undertaken this publicly. That said, our opinion of the Code has not changed. We believe the Code remains fit-for-purpose in its current form. This is because it provides the right balance and flexibility to meet the needs of the offeree and offeror while providing adequate protection for offeree shareholders. We have concerns that the requirement for potential offerors to be identified, and the 28-day deadline for persuading offeree boards to request an extension, may deter certain bona fide bidders from entering the process. In particular, foreign companies from countries where the disclosure culture is different, and certain private equity organizations who need to carry out significant due diligence and incur considerable expense, may find these provisions much more onerous than other potential bidders such that they exclude themselves from UK public transactions. We do not believe that this would be in the interests of offeree shareholders, because it would reduce competition between potential bidders and therefore limit the choice and value of offers available to offeree shareholders. For this reason, we ask that the Panel keeps its latest round of amendments under close review, and we encourage it to reconsider any changes if unintended consequences arise.

5. We are grateful to the Panel for consulting on these amendments, and we hope you have found our comments helpful. If you would like to discuss any of the points we have raised, please contact me on 020 7980 0575, or my colleague Steve Hextall, Executive Director, on 020 7951 4636. We wish you every success with the rest of the consultation process, and for the avoidance of any doubt this is not a confidential reply.

Yours faithfully

STEVE PARKINSON
Partner

Appendix

Q20 Do you have any comments on the proposed deletion of Rule 24.2 (b) and Note 6 on Rule 24.2 and the related amendments?

We agree with the proposed deletion of Rule 24.2(b) and Note 6 on Rule 24.2 and the proposed related amendments, subject to the points made below. The rationale for our response, and our suggested amendments to the proposed Rule 24.3, follows below.

Rationale for our suggestions

Rule 24.3(a) Deletion of "incorporated under the Companies Act 2006 (or its predecessors)". Replacing "a UK" with "an EEA"

We believe that the new Rule 24.3 should apply to companies (whether incorporated under the Companies Act 2006 or otherwise) with their shares admitted to trading on an EEA regulated market. Companies with their shares admitted to trading on an EEA regulated market are required to disclose periodic financial information in compliance with the Transparency Directive (which in the UK is reflected in the FSA's Disclosure and Transparency Rules). This sets a minimum standard for disclosure for such companies which is similar, and in some cases more extensive, than that required for UK companies which have their shares admitted to trading on a UK regulated market.

Rule 24.3(a)(v) Deletion of "in the case of a securities exchange offer"

Following the principle set out in paragraph 6.1 of the Consultation, that the Code should require the disclosure of the same financial information regarding an offeror, irrespective of whether the offer is a securities exchange offer, we believe that this should logically include the significant change in financial and trading position disclosures. We do not believe that the cost of doing this would necessarily be disproportionate to the benefit of the disclosure. Accordingly, we suggest that the requirement in 24.3(a)(v) should apply to all offers, and not just in the case of a securities exchange offer.

Rule 24.3(a)(v) Deletion of "known"

We suggest that this disclosure should apply to all significant changes, rather than referring to all "known" significant changes. Similarly, it should be disclosed that there are no significant changes, rather than there are no "known" significant changes. This would make these disclosures consistent with the disclosures required by the EU Prospectus Directive Regulation and the UK Listing Rules.

Rule 24.3(a)(v) Replacing "audited accounts" with "audited or interim financial information"

Rule 24.3 (a)(iv) requires any interim statement made since the date of publication of the last published audited accounts to be incorporated by reference in the offer document. Hence, we suggest the significant change statement should be with reference to the last published audited or interim financial information. This approach is consistent with the EU Prospectus Directive Regulation and the UK Listing Rules.

Rule 24.3(e) Replacing (iv) with (v)

Our proposed amendment to 24.3 (e) reflects our view that the Code should require the offeree to disclose any significant changes, or that there are no significant changes in its financial or trading position since its last published financial information. We believe this disclosure on the offeree is as at least as important as the disclosure regarding the offeror.

Responsibility, paragraph 6.1 (a) of the Consultation

The Consultation sets out certain constituencies other than the offeree shareholders, these include: the offeree company directors; employees; customers; creditors; and suppliers of both the offeror and offeree company which have an interest in the financial information regarding the offeror and its group.

Whilst it may be the case that parties other than the shareholders of the offeree have an interest in such information, it would be helpful to make it clear that parties involved in the preparation of a document (subject to the Code) do not owe any duty or responsibility to such parties.

Our suggested amendments

We suggest that the following amendments (shown as track changes below) should be made to the proposed Rule 24.3 as set out in Appendix A to the Consultation:

(a) where the offeror is a company ~~incorporated under the Companies Act 2006 (or its predecessors)~~ and its shares are~~-~~ admitted to trading on an EEA ~~a UK~~ regulated market or on AIM or PLUS, the offer document must contain:.....

.....

(v) ~~in the case of a securities exchange offer~~, all ~~known~~ significant changes in its financial or trading position subsequent to the date of its last published audited or interim ~~published~~ financial information ~~audited accounts~~ or a statement that there are no ~~known~~ significant changes;.....

.....

(e) the offer document must contain information on the offeree company on the same basis as set out in (a)(i) to~~(iv)~~ (v) above