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Dear Sir/Madam

PCP 2011/1 Consultation on review of certain aspects of the regulation of takeover bids

We are writing to you in respect of PCP 2011/1. We set out below our specific responses to the questions raised in the PCP.

Responses to specific questions

Q1 Do you have any comments on the proposed new Rule 2.4 and the proposed new Note 3 on Rule 2.2?

We believe that the requirement to name potential offerors when an offer period commences is highly likely to deter many offerors from considering bids, in particular, foreign offerors. Offerors normally do not want to be named publicly at an early stage of a transaction for various reasons including reputational as well as commercial considerations. Given the current economic climate, the proposed changes are likely to be detrimental to future transaction volumes. We believe that there are going to be many instances where offeree companies will be unaware of the existence of potential offerors as many such offerors are unlikely to make an approach in the first place to avoid the risk of being publicly named. As such, the number of approaches is likely to reduce if the proposed changes to the Code are to be introduced.

The Panel has stated that the identity of a potential offeror may be important information for offeree company shareholders. In our view, the identity of the offeror really only becomes important and relevant once a firm offer has been made (and more so for a paper offer) as shareholders then need to make an investment decision at that point. Prior to this point, the requirment for the disclosure of a potential offeror(s), arguably, is only likely to result in mere market speculation about whether or not a deal is likely to be implemented on the basis of the identity of the potential offeror in the public domain. This, in our view, runs the risk of creating false markets in the absence of full and complete information at that stage of a potential transaction.

Q2 Do you have any comments on the proposed new Rule 2.6(a)?

The 28 day automatic put up or shut up regime is likely to put off many bidders, in particular, where there are differences of opinions between the offeror and offeree boards and there is an unwillingness from the offeree board to apply for a deadline extension. As such, possible offers are either likely to be withdrawn or there may be an increase in pre-conditional offers, which actually increases uncertainty for offeree shareholders and therefore cannot be in their best interests.

In addition, given the additional disclosure requirements that are being proposed (eg additional financial information, the disclosure of credit ratings, the detailed breakdown of advisers' fees etc.), the 28 day deadline imposes a further burden on offerors and its advisers (in particular where there is a lack of cooperation from the offeree board) which is likely to actually increase the transactional costs overall, ultimately having a detrimental effect on the target company shareholders.

Q3 Do you have any comments on the possible alternative approach to the identification of potential offerors?

The alternative approach of allowing the offeree board to have the discretion to identify a potential offeror should seriously be considered as this would encourage offerors to consider bids without necessarily being exposed to the risk of automatically being named if an offer period commences.

We are of the view that the potentially contentious decision to identify a potential offeror should be left to the offeree board itself who should consider such matters in light of their fiduciary duties to the shareholders.

Q4 Do you have any comments on the proposed new Rules 2.6(b), (d) and (e) and Rule 2.3(d)?

The approach being proposed whereby once a firm offer has been announced then there will not be a requirement to publicly identify another potential offeror until the later stages of an offer seems to be contradictory to the Panel's own views that the identity of a potential offeror may be important to offeree company shareholders.

Q5 Do you have any comments on the proposed new Note 2 on Rule 2.6?

No comments.

Q6 Do you have any comments on the proposed new Rule 2.6(c) and Note 1 on Rule 2.6?

It seems that the proposals will lead to too much power being shifted to the offeree board. Although this may be consistent with the Panel's general desire to do so, this may be at the expense of offeree company shareholders. This is because there may be situations where an offeror may not be able to convince the target board to apply for an extension of the 28 day period but had it been given a chance to do so then an offer may have been forthcoming at a value that may have been attractive to shareholders. The Panel should therefore retain the discretion to allow offerors to apply for an

extension to the 28 day period without offeree board's consent in certain circumstances rather than allowing the offeree board complete discretion over this matter.

In addition, giving decisions regarding whether an extension is to be granted shortly prior to the expiry of the deadline is likely to further deter potential offerors from considering acquisition opportunities in the first place due to the lack of certainty as to whether an extension will be granted in good time. We would suggest that 'shortly' should be deemed to be around a couple of weeks for these purposes if the proposed change is to be implemented.

Q7 Do you have any comments on the proposed amendments to Rule 2.8 and to the Note on Rules 35.1 and 35.2?

No comments.

Q8 Do you have any comments on the proposed framework to be applied in circumstances where, following a requirement to make an offer being triggered under Rule 2.2(c) or (d), a potential offeror ceases actively to consider making an offer, or on the proposed new Note 4 on Rule 2.2?

We agree with the proposal.

Q9 Do you have any comments on the proposed new Rule 21.2?

In our view, it is detrimental for deal making to prohibit offeror protection measures. Specifically, the break fee arrangements gives some comfort to offerors, particularly foreign offerors, that a portion of the preliminary deal costs would be covered if the relevant events are triggered where such fee may become payable. Keeping in view that offeree boards are not obliged to enter into such arrangements if they do not consider it to be in the shareholder's best interests, it seems that the proposed Code changes will actually be taking away certain 'powers' that the offeree board currently has and is potentially extending the remit of the Code into commercial matters that the target board should consider and be responsible for.

Q10 Do you have any comments on the proposed new Note 1 on Rule 21.2?

We do not agree with the discrimination that the proposals are seeking to introduce whereby a white knight would be allowed to enter into an inducement fee arrangement whereas other competing offerors would not be allowed to enter into such arrangements.

Q11 Do you have any comments on the proposed new Note 2 on Rule 21.2?

We are of the view that the current regime with regards to Rule 21.2 should continue to apply.

Q12 Do you have any comments on the proposed new Note 3 on Rule 21.2?

Please see response to Q9 above. We are not in favour of prohibiting offeror protection measures.

Q13 Do you have any comments on the proposed new Note 4 on Rule 21.2?

No comments.

Q14 Do you have any comments on the proposed amendments to Appendix 7?

No comments.

Q15 Do you have any comments on the proposed new Note 1 on Rule 25.2 or the related amendments?

No comments.

Q16 Do you have any comments on the proposed new Rules 24.16(a) and 25.8?

Given that adviser fees are dependant on the scope of work to be carried out, we are of the view that disclosing the fees without the scope of work carried out by the advisers would be misleading. We are of the view that the dislosure requirements similar to that under the Prospectus Rules would be a better way of dealing with this.

Q17 Do you have any comments on the proposed new Note 1 on Rule 24.16?

The disclosure of financing arrangements may not necessarily be perceived well by private equity houses due to commercial sensitivities.

Q18 Do you have any comments on the proposed new Rule 24.16(b) and Note 2 on Rule 24.16?

Please see response to Q16 above.

Q19 Do you have any comments on the proposed new Rules 24.16(c) and (d)?

Please see response to Q16 above.

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 observe that certain of the information that is being required is unlikely to add value in the context of a cash offer and believe that the current regime in this regard should continue to apply.

Q21 Do you have any comments on the proposed new Rule 24.3(a) and the related amendments?

No comments.

Q22 Do you have any comments on the decision not to require *pro forma* balance sheets to be included in offer documents?

No comments.

Q23 Do you have any comments on the proposed new Rule 24.3(c) regarding the disclosure of ratings and outlooks?

Although we appreciate the value of providing as much useful financial information as possible and details of ratings and outlooks could be of value in this regard, it is unclear why the Panel is of the view that equity research reports should not also be considered to be useful information for inclusion in the offer document.

We are of the view that selecting certain published information with the exclusion of other relevant information has the potential to be misleading. Furthermore, it would be useful to understand whether companies are expected to summarise the details of ratings published or whether the whole original publication is to be included in the offer document ie it would be useful to obtain guidance on the form of disclosure that is expected in this regard if such Code changes are implemented.

Q24 Do you have any comments on the proposed new Rule 24.3(f)?

We are of the view that it is important to ensure that any commercially sensitive information is allowed to be redacted prior to putting it on public display.

Q25 Do you have any comments on the proposed new Rules 26.1 and 26.2 or the related amendments?

No comments.

Q26 Do you have any comments on the proposed new Rule 24.2?

No comments.

Q27 Do you have any comments on the proposed new Note 3 on Rule 19.1?

No comments.

Q28 Do you have any comments on the proposed new structure for the obligations in relation to the publication, content and display of documents?

No comments.

Q29 Do you have any comments on the proposed new definition of "employee representative"?

No comments.

Q30 Do you have any comments on the proposed new Note 6 on Rule 20.1?

We would recommend that the Panel requires appropriate measures to be followed prior to passing information in confidence to employee representatives eg appropriate confidentiality agreements to be signed.

Q31 Do you have any comments on the proposed new Rules 2.12(a) and (d) and second sentence of Rule 32.1(b)?

No comments.

Q32 Do you have any comments on the proposed new Rule 25.9 and amendments to Rule 32.6?

The requirement of the employee representative's opinion to be published on a website within 14 days of the offer becoming or being declared wholly unconditional seems somewhat of a box-ticking exercise as there is going to be limited, if any, value of such opinions being published after the offer has become unconditional. Therefore, it would be our view that the opinion should be made available in good time during the offer period for publication and if it is not provided then it should not be required to be published at all.

Q33 Do you have any comments on the proposed new Rule 19.2(a)(iii)?

No comments.

Q34 Do you agree that the suggested amendments to section 2(a) of the Introduction to the Code would be consistent with the amendments to the Code proposed in this PCP?

Agree.

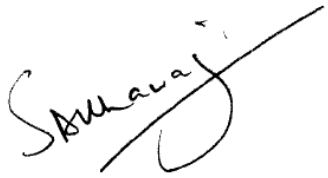
Q35 Do you have any comments on the proposed new definition of "offer period"?

No comments.

Q36 Do you have any comments on the proposed new Rule 13.4?

It may be helpful if further guidance can be issued on this subject matter with regards to examples of situations where the Panel would expect to be consulted. As the Panel would appreciate, there are situations where the satisfaction of such pre-conditions is normally dependant on various factors and until the relevant pre-conditions have been fully satisfied there will inevitably remain a degree of risk that such pre-conditions may not be satisfied. Therefore, to avoid situations where advisers and offerors feel the need to consult the Panel on any change in situation (no matter how immaterial) which may impact the satisfaction of the pre-conditions, some guidance on the matter would be welcomed.

Yours sincerely



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