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The Secretary to the Code Committee
The Takeover Panel
10 Paternoster Square
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27 May 2011

Dear Sir

Response to Takeover Panel Consultation – PCP 2011/1

Inflexion is an active UK mid-market private equity firm which has launched two take-privates of UK quoted companies in the last two years. As a result we are keenly interested in changes to the Code and wish to take this opportunity to respond to your consultation process.

Background on Inflexion

Inflexion manages c.£700m of funds focused on investing in UK companies in the £10-100m value range. We seek out high margin, niche market leaders where we can accelerate growth through our capital. We have a strong track record of success which was reflected in our ability to raise a twice-oversubscribed £375m fund last year in just four months, against a very difficult market background.

Inflexion's view of take-privates

At Inflexion we look at over 500 deals a year of which 30+ will be take-privates. In total we complete an average of three deals a year. We have had some success with take-privates completing FDM Group plc in February 2010 and we are currently engaged in a process to acquire Ideal Shopping Direct plc. We are therefore one of the more active private equity firms in the UK take-private arena.

For Inflexion to pursue a take-private, the opportunity has to be much more attractive than an equivalent private company, because there are so many obstacles associated with the public offer process, e.g.

- limited certainty of success as we cannot speak to the key shareholders until late in the process;
- the difficulty of communicating problems found in diligence to public shareholders making negotiations highly challenging;
- a risk of being blocked or held to ransom by a shareholder with a small but tactically important stake;
- the significant additional fees due to the complication of a Code process;
- the fact that we have to pick up both the sell-side and buy-side fees as the sell-side fees come out of the cash left in the business;
- exposure to high abort costs as we have to fund all the diligence whilst a market movement might make the whole deal impossible at any time;

- banking is much more complex and expensive to arrange because of the certain funds requirement;
- sometimes limited access to diligence; and
- potential negative publicity associated with a failed bid.

With so many challenges to overcome before it is worthwhile attempting a take-private, it is important that the proposed changes to the Code do not make it even harder. By definition a successful take-private has delivered value to shareholders that they would not have received any other way. The existing Takeover Code and its intelligent application by the Takeover Panel is one of the reasons the London markets are as popular as they are today. We believe there is a significant risk that this popularity could be damaged by some of the changes proposed and we set out below our specific thoughts, which are broadly consistent with those of the British Venture Capital Association ("BVCA").

Naming in the first announcement

- The current rules have worked well for a number of years and allow flexibility for the target company and the Panel. The extended periods of siege that the proposed changes seek to stop are very rare in reality.
- Private equity firms have reputations to manage, particularly with their investors who expect them to make good investments on a consistent basis. Regular association with what might be deemed 'failed bids' but which in reality are just early stage enquiries would be detrimental to the industry and would deter legitimate bids and detract from shareholder value as a result. As an example we probably speak to c.20-30 public companies a year about potential take-privates as do many other private equity firms. Early naming could produce a plethora of meaningless or misleading announcements around public companies.
- There is also the risk of that bidders will withdraw once named or that likelihood is used tactically to deter certain bidders either by the target companies or competing offerors
- A private "put up or shut up" ("PUSU") regime with flexible timing should be considered so that the potential bidder's identity can be protected until it has decided to commit itself to a bid (unless there is speculation about the identity of the particular bidder such that an announcement is required).

28 days PUSU regime

- Firstly, we do not believe there is anything wrong with the current regime, and the vast majority of takeover approaches do not even need to resort to PUSU techniques.
- If the proposed rule changes were made, Inflexion would almost certainly never consider another take-private as it is impossible to arrange a take-private in four weeks. Given all the challenges listed above ours have typically taken around six months. If we knew we were going to get forced to a conclusion within four weeks of starting we would never attempt any in the first place.
- The idea that extensions may be granted (but only if the target requests) is not particularly helpful since they will only be offered towards the end of the 28 day period, creating unnecessary uncertainty at the bid planning stage that will deter legitimate offers.
- We would prefer to maintain the current regime, but if a PUSU is to be triggered automatically we think its length should be decided on a case by case basis. If it is to be pre-determined then it should be longer, say 10 weeks.

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Break fees

- The present regime works well with a 1% cap on inducement fees offering a degree of protection in respect of work done and time spent on due diligence, etc. although this only represents a fraction of the abort costs a bidder would typically incur on a deal.
- Such fees are not demanded to protect an announced offer but rather to recoup costs of failure, as expected by our investors. Furthermore, the results of a BVCA survey state that although banning break fees might prevent an initial offer, where one is already in place in favour of an existing bidder, this does not currently dissuade subsequent bidders.
- Break fees are not generally prohibited, and can be significantly larger, in other jurisdictions.
- If the Panel decides not to preserve the status quo, rather than incorporating a general ban on break fees, a better approach would be for a fee to be only payable when an alternative offer is successful (so target company shareholders don't have to bear the cost).

Disclosure of fees and finance arrangements

- We do not see the value to shareholders of disclosing a detailed breakdown of bid-related fees rather than the aggregate expenditure.
- Existing rules on the disclosure of debt financing provide a satisfactory level of disclosure. Any move beyond this would likely cause problems for private equity houses because of the significant commercial sensitivities in disclosing the terms on which debt has been secured. This could potentially stop deals before they start as banks, which are already reluctant to engage in take-privates, start to avoid them altogether.
- Redactions of commercially sensitive material should be permissible with Panel consent.

Conclusion

We hope the above viewpoints are useful in formulating the next version of the Takeover Code. The current system is an excellent one which needs little fixing in our experience and we hope that nothing is done to damage the well-regulated liquidity that the UK markets are renowned for.

If you wish to discuss any of the matters raised in this letter, please do not hesitate to call me.

Yours faithfully

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