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

Your ref

Our ref

Contact Maggie Brereton
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31 October 2017

Dear Sir

PCP 2017/2: Statements of intention and related matters

We welcome the opportunity to comment on the Consultation Paper issued by the Code Committee of the Panel PCP 2017/2.

We set out our comments on the questions in the attachment to this letter.

If you have any questions on this letter or wish to discuss any of the matters raised, please contact Maggie Brereton by email at maggie.brereton@kpmg.co.uk or by phone on 020 7311 8658.

Yours faithfully

KPMG LLP

Q1 Should Rule 24.2(a) be amended so as to require an offeror to make specific statements of intention with regard to the offeree company's research and development functions, the balance of the skills and functions of the offeree company's employees and management, and the location of the offeree company's headquarters and headquarters functions?

Q2 Do you have any comments on the proposed amendments to Rules 24.2(a) and (b)?

We recognise that Rule 24.2(a) has a long history, and has been influential in the drafting of European legislation, and that the disclosures have been revisited a number of times, particularly in recent years. It is an interesting rule, predicated on the concept, as articulated in 1973 (as the PCP reminds us) that the information disclosed 'may be a significant factor for shareholders in deciding whether or not to accept an offer'.

It is implicit in this, and in the current proposal for further detail to be provided, that there is some reason to believe that there will be cases where shareholder behaviour will in fact be different because of what is disclosed. In the context of a Code transaction, as there is no mechanism for shareholders to negotiate on Rule 24.2(a) matters, this would mean, in effect, that there is an expectation that shareholders would reject an offer, which they would otherwise have been willing to accept, solely on the basis of a Rule 24.2(a) disclosure. However well-intentioned the rule, and whatever the nature of the disclosure, it is difficult to envisage a situation where a shareholder with normal investment objectives would be feel able to reject an offer based solely on such a disclosure.

In consequence, we feel that there is little evidence to support further fine-tuning of Rule 24.2(a).

Q3 Should Rule 2.7 be amended so as to bring forward to the firm offer announcement the requirement for an offeror to state its intentions with regard to the business, employees and pension scheme(s) of the offeree company and, where appropriate, the offeror?
Q4 Do you have any comments on the proposed amendments to Rule 2.7 and Rule 25.9?

We have some sympathy with the needs of employee representatives and pension scheme trustees to be given adequate time to formulate and express their views. Equally it has to be recognised that offerors are already under intense time pressure, and often lack access to detailed offeree company information at the earliest stage. There is potentially a trade off in terms of the quality and detail of the disclosures that can be made by the offeror and the timing of such disclosures. This would be a

concern even with the existing level of disclosure required under Rule 24.2(a). The additional fine tuning proposed in the PCP would have an even bigger impact.

Q5 Should an offeror be obliged to seek the consent of the board of the offeree company in order to publish an offer document within the 14 days following its firm offer announcement?

Q6 Do you have any comments on the proposed amendments to Rule 24.1 and Rule 25.1?

We support the proposals.

Q7 Should an offeror or offeree company which has made a post-offer undertaking always be required to publish, in whole or in part, any report submitted to the Panel under Rule 19.5(h)?
Q8 Do you have any comments on the proposed amendments to Rule 19.5(h)?
We have previously expressed our reservations about the reporting regime. As noted above, we believe that the underlying logic for disclosure of undertakings and intentions is open to question, but recognise that there is a belief that offeree shareholders may take a different decision in relation to an offer on the basis of such disclosures from that which they would otherwise have taken. Requiring such disclosures is however a very different matter from extending the Code so as to make the Panel enforcers of matters to which the disclosures relate. We do not see a similar regime operating in relation to statements made by listed companies, for example, or in relation to statements made on M&A transactions outside the Code regime. We make no comment on what our views on this might be if it were to be part of a national strategy. However, we are concerned when, however good the intentions might be, a regulator becomes involved in unilateral actions that may distort the market.

In that context, we see the proposal as a further unwarranted development.

Q9 Should an offeror or offeree company which has made a post-offer intention statement be required, at the end of the period of 12 months from the date on which the offer period ends, or such other period of time as was specified in the statement, to confirm in writing to the Panel whether it has taken, or not taken, the course of action described in the post-offer intention statement and publish that confirmation via a RIS?

Q10 Do you have any comments on the proposed new Rule 19.6(c)?

Our comments on questions 7 and 8 apply equally to these proposals.