European Investors

To the
Secretary to the Code Committee
The Takeover Panel
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Via email: supportgroup@takeoverpanel.org.uk

Submitted electronically

Brussels: October 31th, 2017
Concerning: Consultation paper issued by the Code Committee of the Takeover Panel

Dear members of the Code Committee,

European Investors' Association (**"European Investors"**) welcomes the opportunity to comment on the consultation paper issued by the Code Committee of the Takeover Panel with regard to statements of intention and related matters. By way of background, European Investors represents the interests of investors throughout Europe. On behalf of our members – a wide range of retail and institutional investors – we contribute to the creation and preservation of sound legislative and regulatory frameworks in the European Union. Our members have significant investments and assets under management in the UK.

General summary

The Code Committee is seeking views on important reforms to the way takeovers operate in the UK. Below, you will find our general remarks with regard to the proposed changes:

1) European Investors does not support the proposed amendments which require the bidder to make specific statements of intention with regard to the offeree company's R&D functions, the future composition of its workforce and the location of its headquarters. These requirements are burdensome and potentially harmful to the bidder and its shareholders.

2) European Investors is not supportive of the proposed amendment to Rule 2.7 so as to bring forward to the firm offer announcement the requirement for an offeror to state

its intention with regard to the business, employees and pension scheme(s) of the offeree company. We disagree with the Committee that these amendments are needed to ensure an informed debate among shareholders and other stakeholders.

3) European Investors is not supportive of the obligation for the offeror to seek consent of the board of the offeree company in order to publish an offer document within 14 days following its firm offer announcement. Current requirements and time frames are sufficient for the board of the offeree company to form its opinion and prepare its defence and for other interested parties to take note of the contents of the offer.

4) European Investors supports the amendment which requires an offeror or offeree company which has made a post-offer undertaking always to publish, in whole or in part, any report submitted to the Panel under Rule 19. Such a requirement provides shareholders and other stakeholders with more information and therewith improves their dialogue with the board.

5) European Investors commends the proposed requirement for companies to publish reports on their compliance with the plans they announced during the course of an offer. However, these statements could be of even more value if they would also specify strategic considerations for the decision to continue with the initial plans or to the change the course of action.

Answers per question (Appendix B)

Below you will find our answers to the specific questions raised in the consultation paper. Given the scope of European Investors, these answers are focused on the role and interests of shareholders and investors.

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 skills and functions of the company's employees and management, and the location of the offeree company's headquarters and headquarters functions?

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

Although the Code Committee 'understands that the quality of disclosures made under Rule 24.2 and 25.2 has improved since the 12 month review of the 2011 Amendments', it also

claims that statements of intention made by offerors under Rule 24.2 (a) sometimes lack the specificity expected by the Code Committee' (page 13, section 2.12). In addition, the Committee understands 'that, on occasion, an offeror may seek to qualify statements made under Rule 24.2(a) by referring to *current* or *present* intentions' (page 13, section 2.13).

Therefore, and in order to address a presumed lack of specificity of certain elements of intention made by offerors under Rule 24.2(a), the Committee considers that Rule 24.2 (a) should be amended so as to require an offeror to make specific statements in relation to its intentions for the offeree company's research and development functions, any material change in the balance of skills and functions of the employees and management (including the mix of skilled and unskilled workers and full time versus part time staff), and its strategic plans for the location of the offeree company's headquarters and its headquarters functions.

Although European Investors generally supports initiatives which improve the information position of shareholders, we are not in favour of the proposed amendments to Rules 24.2 (a) and (b). We feel these additional information requirements are too burdensome and potentially harmful to the bidder and its shareholders. As such, they could have negative side-effects beyond the bidding process in case the takeover fails while the offeror already published documents with strategic information (submitting specified plans with regard to the R&D operations and the future composition of the workforce of a merged entity would possibly reveal competition-sensitive and strategic information from the offeror as well). This is specifically the case when an offer is not recommended by the board of the offeree company. Then, the offeror would have to provide sensitive information to the market in an early stage without having any certainty that a takeover bid would even be considered or eventually succeed.

In addition, European Investors has two practical comments with regard to the proposed amendments:

- European Investors feels the Code Committee should be more specific on how detailed the statements of intention should be in case of an offer which is not recommended by the board of the target company and the total extent of the due diligence is limited to reviewing publicly available information, such as the results of searching public registers and reports of financial analysts. We have similar concerns for a scenario in which an offer is recommended by the board of the target company, but the extent of the due diligence is limited. In these cases, it will be difficult to provide the market with significant and detailed statements of intention regarding the R&D operations or the future employment of the workforce. Therefore it would be uncertain whether the provided information has any added value for the market.

- European Investors would like to have more clarity on the expected specificity of statements of intention with regard to R&D operations. Should they only cover the intended locations and the specific design of these facilities or also cover plans for (and the export of) patents and technologies?

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?

The proposed amendments would require bidders to make statements of intention with regard to the business, employees and pension scheme(s) of the offeree company much earlier in the process (at the time of the Rule 2.7 announcement and not, as is currently required, in the offer document). The Code Committee believes this will enable employee representatives and pension scheme trustees of the offeree company to form a view of the offer and give their opinions in time for these to be appended to the offer documentation and to allow more informed debate to be held between shareholders and other stakeholders as to the merits and demerits of the offer. Moreover, the Code Committee argues that the current practice of requiring the offeree company to publish the opinion of the employee representatives and pension scheme trustees promptly on its website (and to announce that it has been published) is likely to be a less effective means of communicating than including it in the combined document.

European Investors, however, considers the means of communicating in the current Code to be effective and accessible enough for interested shareholders and stakeholders to take note of the opinion. In addition, we disagree with the Code Committee that these amendments are needed to ensure an early and more informed debate between shareholders and other stakeholders. The information document published under Rule 2.7 (the firm offer announcement) is already facilitative and sufficient in this regard as it requires the offeror to include certain key information which shareholders and other stakeholders can use to form their opinions. European Investors considers statements of intention with regard to pension schemes and the employees to be important, but not so early in the process. Including these statements in the offer document should be sufficient.

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 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?

The Code Committee proposes to give the board of the offeree company more time in order to formulate the opinion, reasons and views that it is required to publish under Rule 25.2 (a) or otherwise prepare its initial arguments and defence against the offer.

European Investors sees no need for this amendment. Current requirements and time frames are sufficient for the board of the offeree company to form its opinion and prepare its (potential) defence and for other interested parties to take note of the contents of the offer. Moreover, companies should be in dialogue with their shareholders on a continuous basis. A well-managed and strong company works which scenario-based plans to prevent its board from being caught off-guard. These plans, which should be updated on a regular basis, contain detailed roadmaps to ensure that boards are prepared and move swiftly in case of an unexpected offer. Furthermore, these plans enable boards to scan their markets meticulously so they can execute strategic changes in time and look for takeover and merger opportunities themselves. Failed takeover bids or the sudden emergence of unwanted suitors should not be wake-up calls nor the starting point of sweeping strategic overhauls. In addition, European Investors stresses that a fair stock market price, resulting from a lean, well-executed and cutting edge bussines strategy, is the best way to energize companies. Such a high stock market price, in combination with a transparent dialogue about the business objectives, also provides companies with the best protection against hostile suitors.

Protectionist measures, which unnecessarily burden the process, will not help companies in this regard. Also, such plans are at odds with the claims and promises of the government that the UK remains a global champion of free trade and investment. Besides, the Panel expressly states in the consultation paper that *it has taken into account recent commentary and public discussion in relation to takeovers and mergers as well as suggestions by various parties* (page 1, section 1.2). European Investors urges the Code Committee to refrain from such measures and safeguard the status of the UK as a dependable and transparent place to do business.

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 (h)?

Q8: Do you have any comments on the proposed amendments to Rule 19.5 (h)?

The Code Committee considers that, where an offeror or offeree company has made a post-offer undertaking, the requirement for it to publish, in whole or in part, any report submitted to the Panel should apply in all cases, and not only at the discretion of the Panel, and that, where the post-offer undertaking has a duration of longer than a year, such reports

must be published at least annually. European Investors is supportive of the proposed amendments. We expect shareholders and other stakeholders to receive more valuable information on a consistent basis. This will result in a more constructive and fruitful dialogue between them and the company's board.

Q9: Should an offeror of offeree company which has made a post-intention statement to 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)

The Code Committee believes that, where an offeror or offeree company has made a post-offer intention statement, 'it should be required, at the end of the period of 12 months from the date on which the offer period ends, 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' (page 28, section 2.42). According to the Code Committee, 'this would build on the current practice of the Executive, which the Code Committee understands to seek private confirmation from an offeror or offeree company at the end of the relevant period that it has taken (or not taken) the course of action that it has stated in any post-offer intention statement that it intended to take (or not to take)' (again page 28, section 2.42).

The Code Committee therefore proposes to introduce a new Rule 19.6 (c) which would give such an obligation to any party in an offer which has made an post-offer intention statement and publish that confirmation in accordance with the requirements of Rule 30.1.

European Investors is supportive of the proposed amendment because of the importance of post-offer intention statements to (former) shareholders who have taken an interest in a company. Nonetheless, we would like to point out to the Code Committee that these statements could be of even more value to investors and (former) shareholders if they would be more than just confirmations that a course of action has been taken or not, and would also specify the underlying strategic reasons for the decision. As such, the criteria for these statements would also match the requirement for initial post-intention statements (accurate and made and based on reasonable grounds). Therefore, European Investors proposes to supplement the amendment with a requirement that *parties to an offer which have made post-offer intention statements should also provide the underlying strategic rationale on which the decision was made to take the course of action or not and what has*

been done or will be done instead or not (again as accurate as possible and made and based on reasonable grounds).

Closing remarks

European Investors hopes that its comments are useful and will contribute to the development and further improvement of the Code. If your Committee would like to elaborate on our observations, suggestions and/or objections with regard to the proposed amendments in further detail, please do not hesitate to contact us.

Yours sincerely,

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