ICGN
International Corporate Governance Network

The Secretary to the Code Committee
The Takeover Panel
10 Paternoster Square
London
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By email: supportgroup@thetakeoverpanel.org.uk

Re: Consultation Paper Issued By The Code Committee Of The Panel: Statements of Intention and Related Matters

31 October 2017

To the Secretary:

The International Corporate Governance Network (ICGN) is a global investor-led body based in London whose mission is to promote effective standards of corporate governance and investor stewardship to advance efficient markets and sustainable economies world-wide.

ICGN was established in 1995, and today our network of governance professionals spans over 45 countries and includes investors representing assets under management in excess of US$26 trillion. As such, ICGN offers an important investor perspective on corporate governance to help inform public policy development and the encouragement of good practices by capital market participants. For more information on the ICGN, please visit www.icgn.org.

Our policy positions are guided by the ICGN Global Governance Principles and Global Stewardship Principles, both of which have been developed in consultation with ICGN Members and as part of a wider peer review. Our own office, and many of our members are based in the UK, and almost all our institutional investment members have investment holdings in companies listed in the UK capital markets. Consequently, the UK market is of great importance to our membership and is one with which ICGN is very familiar.

We are pleased to respond to your consultation on Statements of Intention and Related Matters with regard to the Takeover Code. As an investor body we appreciate that takeovers can play a positive role in market economies, and that takeover activity can yield economic efficiencies and support sustainable value creation. We are also aware that some takeovers can be value destructive and can sometimes impact negatively investors and stakeholders--and society more generally.

ICGN's first policy priority is to promote long-term investment perspectives, both to allow companies to succeed and for investors to be able to generate fair and stable returns to their beneficiaries—many of whom are individual savers and pensioners with a long-term time horizon. We believe that this priority has relevance in the context of corporate takeovers, as we believe that the long-term impacts of takeovers must be carefully weighed and understood. Consequently we believe the new disclosure you are proposing with regards to statements of intention has relevance, and hopefully will provide a strong discipline to guide responsible takeover activity— and to discourage unwarranted dismemberment of corporate enterprises for a narrow short-term gain.

We have reviewed your consultation and broadly support the conclusions put forward. It rightly focuses on the company's employees, pensions, research and development, management and company headquarters. All are important considerations, and of relevance

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to the UK government's focus on employees and other stakeholders in its recent policy statement on corporate governance reform. There seems to be clear linkage to the renewed attention given in the UK to director duties vis-à-vis stakeholders in Section 172 of the Companies Act, in which directors are obliged to "have regard" for employees, as well as communities and the environment.

We do not offer detailed comments on the technical drafting of the Code. But while we see the positive potential benefits of what is being proposed, we would not want to see unintended consequences of statements of intent creating undue business risks or possibly discouraging otherwise sensible takeovers. We note that that in some takeover cases there may be strong long-term logic in taking decisions that create efficiencies though employment cuts or other measures that may help to promote the sustainable success of the combined entity. You may wish to consider practical guidance so that companies might better appreciate how they may best disclose the logic of their intentions for consideration by shareholders and company stakeholders.

It is also a reality that in many cases—particularly in a hostile takeover situation-- the bidder may not have full understanding of the company being taken over until its management has had a chance to review the company's internal financial and operating statements once the takeover has occurred. This could give rise to reformulations of strategy, in ways that could differ from original statements of intent. Here again, guidance for companies may be useful in helping them to better understand how much flexibility might exist in such situations. Otherwise, this could potentially inhibit responsibly intended takeover bids.

We hope our comments are useful for your deliberations. Should you wish to discuss this matter further, please contact me or George Dallas, ICGN's Policy Director, by email at george.dallas@icgn.org

Yours faithfully,

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