



The Secretary to the Code Committee
The Takeover Panel
One Angel Court
London EC2R 7HJ

15 January 2021

Dear Sirs,

PCP2020/1

We are writing in response to the Takeover Panel's consultation "Conditions to offers and the offer timetable".

The balance of changes to the Takeover Code in recent years, most notably the 2011 reforms, has favoured the offeree company board. It is of course entirely appropriate for the Takeover Panel to be rigorous in its defence of offeree company shareholders but further changes in that direction, even marginal ones, could significantly affect the willingness of offerors to proceed with non-recommended offers.

Non-recommended offers are few in number but they provide a crucial market discipline (and in some cases help to bring about recommended deals). The threat of a non-recommended offer helps to ensure fair play with regard to entrenched management.

In our view, the path to a successful non-recommended offer is an increasingly narrow one given increasing political intervention. Furthermore our recent experience has shown that many investors do not have clear and consistent mandates from beneficial owners allowing them to assent stock and the growth in passive/index funds means that, partly for technical reasons, an increasing proportion of the register is unable or unwilling to accept a non-recommended offer regardless of its merits. Given that the addressable register is well below 100%, the threshold for success is therefore often significantly higher than 50%.

Against this background, we are cautious about further changes which are intended to simplify the Takeover Code, but have the perhaps unintended consequence of further eroding the prospects for the offeror. In particular:

- Combining Day 60 with Day 81 would lengthen the acceptance period where there is a longer regulatory approval, increasing transaction risk for the offeror (previously an offeror could apply for a Day 81 extension but keep Day 60 as the deadline for acceptances);
- Combining Day 60 with Day 81 means in practice regulatory clearances must be obtained before the acceptances deadline. It may be harder to obtain regulatory clearance in a timely manner if the position of shareholders is not yet known. The proposals are also inconsistent with the Scheme of Arrangement timetable; and
- Removing the ability to have earlier closing dates before Day 60, and the threat of lapsing an offer before then, removes one of the few levers available to an offeror to incentivise acceptance.

Additionally:

- If the offeree is able to release new information at any stage, in our view an offeror should be able to reserve the right to withdraw its acceleration statement, so that the offeror has an opportunity to react; and
- The larger window for withdrawal rights, combined with the weekly disclosure of acceptance levels between Day 21 and Day 60, increases the scope for disclosed acceptances to fluctuate (for example either side of key thresholds such as 50%).

We would be pleased to discuss these comments with you.

Yours faithfully,



Alexander Thomas
Managing Director, M&A



James Agnew
Chairman of Corporate Broking