

8 October 2012

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

Re: PCP 2012/2

Dear Sir

This is a response to PCP 2012/2 on Pension Scheme Trustee Issues by The Association for Financial Markets in Europe (AFME).

We are grateful of this opportunity to respond to this consultation, and we thank the Panel Executive for allowing AFME a short extension of the deadline to respond.

Our members are in agreement with the proposals that offerors be required to provide timely specified information to pension trustees and that offerees be required to allow pension trustees to append to the offeree's circular their opinion concerning the effects of any offer on the relevant pension schemes. We agree that these proposals will frame an appropriate opportunity for pension stakeholders to consider and discuss any issues affecting a relevant pension scheme arising in the context of the offer. We agree that any agreement reached between the pension trustees and the offeror be attached to the formal offer and distributed inter alia to the shareholders.

The PCP recognises that the Pensions Regulator is the ultimate decision-maker in the event of any unresolved conflict of opinion among pension stakeholders. It also recognises the duty of trustees to protect the interests of existing and future pensioners.

The PCP indicates that the Code Committee does not intend that the Code should operate to ensure that a given proposed takeover is approved by or meets the requirements of the Pension Regulator or the pension trustees. The proposals would leave it to affected parties to engage the Pensions Regulator in the event of disagreement. The principal enforcement of pension rights would lie outside the Code under the PCP's proposals.

We fully agree with these limitations of scope, but we are concerned with the proposals that an offeree board must include its views on the effects of the implementation of the offer on its pension plan and regarding the likely repercussions of the offeror's strategic plans on the offeree's pension scheme in its statement of position on the offer. It is unclear what additional benefits will be gained by these requirements, given that—as the PCP makes clear-- it is common practice that pension fund trustees appoint their own financial

advisors. The PCP already requires that the offeree would have to disseminate to its shareholders the full opinion of the pension trustees who will have sought their own professional advice, as required by their duties. It is not clear what further analysis offeree companies' boards would require in order to support any comments regarding the effect of the implementation of the offeror's strategic plans upon the offeree's pension schemes, but this could be extensive and would be duplicative of what the pension fund's trustees' advisors would be doing. It is, therefore, unclear what purpose would be served by this, and there is the potential for significant additional costs for the offeree company.

We propose that the proposed references to the offeree's company's pension scheme(s) in Rule 25.2(a)(i) and (ii) be deleted. The offeree shareholders will be able to refer to the views of the pension trustees and to any agreement which may have been reached between the offeror and the pension trustees. As the PCP notes, it will be a matter for the parties and stakeholders to refer any residual issues to the Pension Regulator, if deemed necessary.

We thank you for your consideration of our views. If a meeting or further discussion would be helpful, we would be available for that purpose.

Yours sincerely



William J Ferrari
Secretary, AFME Corporate Finance Committee

AFME (Association for Financial Markets in Europe) promotes fair, orderly, and efficient European wholesale capital markets and provides leadership in advancing the interests of all market participants. AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. AFME participates in a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association through the GFMA (Global Financial Markets Association).

AFME is listed on the EU Register of Interest Representatives, registration number 65110063986-76.

For more information please visit the AFME website, www.AFME.eu.