afme/

27 May 2010

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

Dear Sirs

Re: PCP 2010/1 : Profit Forecast, Asset Valuations, Merger Benefits Statements

This is a response to the referenced PCP on behalf of the members of the Association of Financial Markets in Europe (AFME). AFME was formed on November 1st 2009 following the merger of LIBA (the London Investment Banking Association) and the European operation of SIFMA (the Securities Industry and Financial Markets Association). AFME represents a broad array of European and global participants in the wholesale financial markets, and its 179 members comprise all 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 SIFMA in the US, and the Asian Securities Industry and Financial Markets Association through the GFMA (Global Financial Markets Association), and provides members with an effective and influential voice through which to communicate the industry standpoint on issues affecting the international, European, and UK capital markets. For more information please visit the AFME website, www.AFME.eu.

In general we support the proposals proposed in the PCP which will serve to increase confidence in the substance of statements made by offerors and offerees in some cases and which will remove some unnecessary and potentially costly requirements.

Our specific comments are in respect of Q5 regarding profit forecasts, estimates and warranties for a part of a business and specifically relate to paragraphs 5.4 through 5.7. We also offer comment on the proposed definition of a "Quantified Effects Statement" and paragraphs 6.5 to 6.6.

With respect to profit forecasts, paragraph 5.3 indicates the Code Committee's view that they should be reported on unless to do so would be disproportionate. In paragraph 5.4, it is indicated that the Code Committee has considered whether it should propose guidelines as to the materiality of the part of the business in respect of which a profit forecast should require a

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report and has determined that to do so would be difficult in many respects and could have unforeseen consequences.

Paragraph 5.7 indicates that the Panel might grant a dispensation where the relevant part of the business is small in relation to the whole business.

While the Code Committee has decided not to offer guidance as to what would be considered a material part of a business, it would be very helpful if the Code Committee would issue guidance that a report would not normally be required where the relevant part of a business which is the subject of a forecast or estimate constitutes less than 25% of aggregate revenues or profits so long as there would be no evident calculus of a results for the whole business. The forecast could state that the estimate does not constitute a pro rata calculation. Such guidance would offer a reasonable benchmark for corporate advisers to consider. The costs and time required to arrange a report on a forecast are substantial and it would be proportionate to avoid them where that is possible.

With respect to the proposed definition of Quantified Effects Statement and its treatment under the Code, it would be helpful to clarify what might be considered a non-material portion of a business in cases where a dispensation might be sought. For these purposes we suggest that, where a part of the business is less than 25% of the whole in terms of aggregate revenues or profits, it may be considered non-material.

It would also be helpful for the Code to give guidance concerning the correct interpretation of proposed Rule 28.10(c) which would require reports on earnings per share enhancement statements which depend in whole or in part on a material merger benefit. In our view, a general statement regarding the anticipated effect of a merger on earnings should not be considered a "quantified" effects statement, if it could not be the basis for projecting a ceiling or a floor for the merged entity's financial results. Such a statement has usually been footnoted in a way making it clear that it is not a forecast. In our view, such statements should not require reporting in the normal course.

Thank you for your consideration of these comments.

Yours faithfully

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Managing Director

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