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20 January 2011

Adam Gray
Long-term Focus Consultation
Corporate Law and Governance
Department for Business, Innovation and Skills
1 Victoria Street
London
SW1H 0ET

Dear Sirs

AFME welcomes the opportunity to respond to your call for evidence regarding a Long-Term Focus for Corporate Britain. We thank Mr Gray for granting an extension for filing our response.

The Association for Financial Markets in Europe (AFME) 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.

Our response is focused on Questions 15 and 16 concerning UK takeover bids.

15. Do boards understand the long-term implications of takeovers, and communicate the long-term implications of bids effectively?

In our members' experience, the boards of both offeror and offeree companies do understand and effectively communicate the long term implications of a bid and already have to satisfy existing regulatory obligations to ensure this occurs:

- The UK's City Code on Takeovers and Mergers (the Code) requires that offeror companies state the long-term commercial justification for a proposed offer in the offer document sent to all target shareholders (Rule 24.1(d). The offeror's document must be available on its website not only to any shareholder of the target but also to its own shareholders and any member of the public during the takeover period.

- The offeree board is required to give its views on the proposed offer in its circular sent to its shareholders within three weeks of the posting of the offer document from the offeror referred to above. The target board must state the reasons for forming its opinion on the proposed offer (Rule 25.1). This circular must be available on its website.

Under the UKLA's Listing Rules, the approval of a UK listed offeror's shareholders will also be required should the Class 1 requirements be breached. A detailed circular to the shareholders of the offeror has to be sent out.

The shareholders of the offeree can form their own view of the difference between (i) the possible financial effect of the offeree company not being acquired and (ii) what potential investment returns may be generated with the proceeds of any acquisition. They can choose to do this with or without the assistance of a professional personal financial adviser. The offeree board, assisted by their financial adviser, will form their opinion on the bid price and will state their view in the target's circular to its shareholders.

The quantity and depth of disclosure required during a UK takeover process is to be expanded. The Code Committee of the Takeover Panel has issued its Panel Statement 2011 wherein it confirms that its intention is to amend the Takeover Code to:

1. require the disclosure of the same financial information regarding an offeror and the financing of an offer irrespective of the nature of the offer (cash or securities);
2. improve the quality of disclosure by offerors and offeree companies in relation to the offeror's intentions regarding the offeree company and its employees; and
3. Providing greater recognition of the interests of offeree company employees
4. the Code Committee proposes that the Code should be amended to require further disclosures to be made in offer documentation in relation to:

   (i) the financial position of the offeror and its group and the financing of its offer; and

   (ii) the offeror's future intentions as regards the offeree company and its employees.

The Code Committee believes that this information will be of interest to the offeror company's shareholders as well as other interested parties, notably the offeree company board, shareholders and employees

16. Should the shareholders of an acquiring company in all cases be invited to vote on takeover bids, and what would be the benefits and costs of this?

In our view there is no need to require UK offeror shareholders to vote on every proposed acquisition including those which would fall below the current listing rules' trigger value. Shareholders have followed the recommendation of the offeror board in a vast majority of cases where votes

have been required under the UK listing rules. If shareholders do not approve of the actions of directors, they have existing routes to seek to remove those directors.

This issue was also raised in a recent Takeover Panel consultation. According to the Code Committee, the principal arguments raised by respondents against amending the Code to protect offeror shareholders generally were that this could be regarded as:

> (i) unnecessary given the protections afforded to offeror company shareholders by company law, the fiduciary duties of the offeror directors and the rules of other regulatory authorities (most obviously those of the UK Listing Authority);
> (ii) involving an inappropriate (and possibly unlawful) extraterritorial application of the Code in the case of offerors incorporated in other jurisdictions;
> (iii) creating an 'uneven playing field' between competing offerors unless applied equally to all offerors (some of which may not even have shareholders);
> (iv) raising issues of proportionality unless those protections were to be applied only to offers involving offeree companies of a particular size (relative or absolute); and
> (v) in the case of a requirement for an offeror company shareholder vote, reducing the certainty of delivery of an offer since it would give offerors in all cases (and not only in cases where a shareholder vote is required for other regulatory reasons) a means of lapsing an offer without having to satisfy the materiality test that applies under Rule 13.4(a) to the invocation of offer conditions. We agree with these views.

We would expect that the time and costs involved in preparing the required documentation to send out to the shareholders of the offeror and then holding a shareholders' ballot would be material and would not be justified by any perceived 'benefit'.

Thank you very much for your consideration of this response. We would be very willing to meet with your team to discuss it, if that would be helpful.

Very truly yours

William J. Ferrari
Managing Director