

MACFARLANES

SPONSORS WORKING WITH THE NEW TAKEOVER CODE RULES

PRIVATE EQUITY

TAKEOVER PANEL CONSENT FOR CARLYLE "PUT UP OR SHUT UP" EXTENSION

On Friday the 28 day "put up or shut up" period for The Carlyle Group's potential bid for Chemring was extended in the latest example of a private equity sponsor dealing with the recent Takeover Code changes.

In the aftermath of the Kraft takeover of Cadbury, well publicised changes were made to the Takeover Code in September last year to make it more "target friendly". Those changes were thought to have a particularly adverse impact on private equity sponsors wanting to pursue public to private transactions.

The changes included an accelerated "put up or shut up" regime under which a bidder must either announce a firm intention to make an offer or withdraw from bidding within 28 days of being named as a potential bidder. Commentators expected that private equity houses would find it difficult to arrange fully committed certain funds compliant financing and complete due diligence within this 28 day "bid window".

What we are now seeing is that the changes to the "put up or shut up" regime present little real impediment to the successful execution of a public to private transaction.

The announcement on Friday by Chemring that the Takeover Panel had consented to its request to extend the expiry of the "put up or shut up" period from 14 September to 12 October is the third example of the Takeover Panel consenting to an extended period in a public to private since the Takeover Code changes were implemented. We are not aware that any such requests have been rejected.

Provided the target is engaged with the private equity sponsor, and that is typically a reasonable assumption as a public to private transaction will not usually be pursued on a hostile basis, the Takeover Panel is behaving as expected in granting extensions to the "put up or shut up" period to give the sponsor the time it needs to complete diligence and arrange its financing.

The low volume of public M&A transactions in the 12 months since the changes to the Takeover Code makes it difficult to determine trends. There are clearly obstacles to public to privates which did not exist prior to the rule changes, not least that cost coverage is difficult for a sponsor to achieve because a break or inducement fee from the target is not permitted except in very limited circumstances, but the impact of the "put up or shut up" regime can be placed low on a list of bidder concerns.

CONTACT DETAILS

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