

Advising Trustees in M&A Situations

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Introduction

- Penfida is an independent corporate finance advisory firm focused exclusively on assisting and advising pension fund trustees
- Since Penfida started in January 2006, we have been involved in a large number of the most substantial and complex corporate transactions involving pension schemes that have taken place
- In this presentation, we discuss:
 - How Trustees can prepare themselves in advance of any corporate activity
 - How to participate effectively / manage the M&A process
 - Key lessons to be learnt from recent transactions

Background

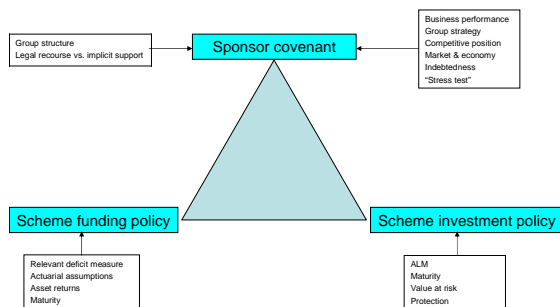
- 2004 Pensions Act and The Pensions Regulator ("TPR")
 - Emphasis on the role of Trustees and their duties
 - Act like a lending bank
- Sponsor Covenant Focus
 - Clear guidance that covenant is a core element in Trustee considerations
 - How robust is the long term funding plan, will it secure members benefits
- M&A and corporate finance boom
 - Trustees forced to take action to protect members interests/meet TPR's requirements
 - Private equity activity/ releveraging / returns of capital

Preparation

- Limited advance warning and pressure to respond quickly
 - Directors duties: shareholders vs. employees / pensioners
 - Bidder's tactic – no notice?
- Trustees can undertake a significant amount of preparatory work to enable them to respond promptly and effectively
 - Covenant evaluation
 - Professionally reached valuation upon which Trustees can rely
 - Governance review
 - Defence plan

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Covenant Evaluation



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Governance Review

- Balance of powers
 - Clear understanding of Trustees' negotiating leverage
- Composition of the Trustee body
 - Potential for conflict in event of corporate action
 - Opportunity for independent Trustee positions
 - Maintaining relationship with sponsor vs. independence of governance
- Information flow
 - Regular briefings from Group management
 - Provision of external research and comment e.g. analyst and ratings agency
 - Regular monitoring of KPIs and financial ratios

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Defence Plan

- Scenario analysis
 - How robust the covenant is in the face of
 - Change of control
 - Restructuring or refinancing
 - What measures are appropriate to compensate in the event of a deterioration of the covenant and how would the Trustees rank these?
 - What is the relevant deficit?
 - Accounting vs ongoing
 - Higher funding targets?
 - Cash/guarantees/acceleration of deficit repayment/security
 - Interaction with investment strategy
 - Impact on sponsor contributions

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Defence Plan (cont)

- Notification of Trustees expectations in event of corporate activity
 - Timely involvement
 - Opportunity to negotiate meaningful outcome for scheme prior to announcement of any transaction
 - Recognition of potential conflicts for Trustees who are also employees of the Group – hold harmless

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Defence Plan (cont)

- Identify and establish Committees
 - Consider need for independent trustee board given potential conflicts of interest
 - Corporate Actions Committee to handle day-to-day negotiations
 - Need to respond quickly to rapidly changing events
 - Regular established means for reporting back to Trustee committee
- Housekeeping
 - Up to date contact details for all trustees, trustee advisers and key group personnel

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Execution

- Situation appraisal
 - Assemble team of senior, experienced advisers
 - Examine status quo and proposals being made
 - Rank Trustees' objectives, drawing on scenario analysis
 - Weigh importance of "hard" issues e.g. funding and "softer" areas e.g. keeping scheme open, future accrual
- Project management
 - Management by Transaction Committee to ensure rapid response
 - Clear communication lines
 - Central co-ordination of processes and logistics

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Execution (cont)

- Negotiation
 - Examine strengths and weaknesses of the Scheme's position
 - Develop negotiation strategy, taking into account Trustees objectives
 - Leverage may be found in
 - Investment policy
 - Scheme deed and rules e.g. contribution powers
 - Regulatory obligations
 - Scheme support for any proposals
 - Scheme funding and accounting impact

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Execution (cont)

- Two approaches to negotiation
 - Friendly/hostile
 - Private/public
 - Maintenance of relations/potential fracture
 - Member confidence/worry
 - Timeliness/delay
- The Pensions Regulator
 - Practice is evolving
 - New clearance guidance
 - Powers in M&A situation

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Conclusion









- Substantial benefits of preparation and thinking through issues and priorities
 - Will improve negotiations
 - Should enhance outcomes
 - Should allow Trustees to demonstrate to members and TPR that they have acted appropriately
- Trustee willingness to use all powers and resources open to them
 - Proactive
 - Wider range of tactics and methods to achieve goals
 - Public stance

Conclusion

- Above all, a Trustee Board that is:
 - Well prepared; and
 - Supported by advisers with relevant experience

Will be best placed to achieve the right outcome for Scheme members

Recent Corporate Transactions

 <p>Adviser to the Trustees of the BOC Pension Scheme and the BOC Senior Executive Scheme in connection with the offer by Linde AG</p>	 <p>Adviser to the Trustees of the Boots Pension Scheme in connection with the offer by KKR</p>	 <p>Adviser to the Trustees of the Tullis Liberty Pension Scheme and the Prison Yarns Scheme in connection with the offer by Collins Stewart Tullis plc</p>	 <p>Adviser to the Trustees of the British Steel Pension Scheme and the Corus Engineering Sheets Scheme in connection with the offer by Tata</p>
 <p>Adviser to the Trustees of the ICI Pension Fund</p>	 <p>Adviser to the Trustees of the J Sainsbury Executive Pension Scheme and the J Sainsbury Pension and Death Benefit Scheme</p>	 <p>Adviser to the Trustees of the Mergel Pension Scheme in connection with a proposed public offer</p>	 <p>Adviser to the Stanhope Pension Trust Ltd</p>