

**Project University**

**Forward purchase contracts**

**1. BACKGROUND**

- 1.1 A potential offeror (the "**Offeror**") intends to enter into one or more forward sales contracts (the "**Forward**") with one or more unaffiliated investment banks (the "**Independent Banks**") in relation to the voting shares of an unaffiliated overseas company (the "**Issuer**").
- 1.2 The Offeror is currently considering making an offer for the entire share capital of the Issuer.

**2. STRUCTURE**

- 2.1 The Forward would be structured such that the Offeror would bear the economic risk of any change in price of the shares of the Issuer over the term of the Forward.
  - 2.1.1 The price specified in the Forward will equal the price of the shares of the Issuer at the commencement of the Forward as increased by commissions charged by the Independent Bank and the cost of financing the holding of hedge shares by the Independent Bank over the term of the Forward (if any). It is likely that the Offeror will provide cash collateral to the Independent Banks in respect of the Forward and that could be anything between 30% and 100% of the value of the underlying shares – to the extent the Offeror posts cash collateral, it will not have to pay financing costs.
  - 2.1.2 It is proposed that a master forward contract ("**Master Forward**") be entered into with each Independent Bank, setting out the maximum number of shares of the Issuer that bank could be asked to enter into Forwards in respect of, but without requiring or obliging either the Independent Bank or the Offeror to enter into a Forward. By way of example, the Master Forward might specify a 15% upper limit and pursuant to that Master Forward, Forwards in respect of 3% of Issuer shares might be entered into in sequence over a number of days.
  - 2.1.3 At commencement of the Forward, the value of the shares of the Issuer conditionally subject to delivery pursuant to the Forward will exceed \$63.1 million, but the number of shares held by any one Independent Bank as a hedge will not exceed 15% of the outstanding shares of the Issuer (although the number of shares held by two or more Independent Banks, in aggregate, may exceed 15%).
  - 2.1.4 The Forward will allow the Offeror to elect either to physically settle the Forward (i.e. to take physical delivery) or to cash settle the transaction (i.e. to receive or to pay the change in value of the shares) on a specified date or at an earlier date elected by the Offeror.
  - 2.1.5 If physical settlement is elected, the Independent Bank will be obliged to deliver the specified number of shares of the Issuer against payment by the Offeror of the price per share specified in the Forward. Any such physical settlement will be conditional upon the Offeror having made all filings required under the Hart-

Scot-Rodino Antitrust Improvements Act of 1976 as amended (the "HSR Act") and the waiting period under the HSR Act having expired or been terminated.

- 2.1.6 If cash settlement is elected by the Offeror or the waiting period under the HSR Act has not expired or been terminated by a date (or time period) specified in the Forward, the Forward will be cash settled. If the price of the shares of the Issuer has increased, the Independent Bank will repay any collateral provided by the Offeror and will pay the Offeror the amount of the increase. If the price has decreased, the Independent Bank will repay any collateral provided by the Offeror, less the amount of the decrease.
- 2.1.7 In order to hedge the risk of movement in the price of the shares in the Issuer, it is understood that the Independent Bank intends to acquire some or all of the shares of the Issuer required to satisfy its obligations were physical delivery required pursuant to the Forward.
- 2.1.8 The Offeror will have no rights (other than a pure economic interest) in any shares of the Issuer acquired pursuant to the Forward until such shares are delivered to the Offeror. The Offeror will have no right to direct the voting or disposition of such shares prior to any such delivery and the Independent Bank will not accept any such instruction from the Offeror.
- 2.1.9 The financial adviser to the Offeror will act as broker to the Independent Banks in connection with any purchase of shares in the Issuer to ensure compliance with the strict disclosure rules applicable to the Offeror's proposed offer for the issuer.

### 3. TIMING

- 3.1 The Offeror is currently in the process of conducting due diligence on the Issuer.
- 3.2 The Offeror is not in a position to announce a formal offer for the Issuer at this time and as due diligence is ongoing and does not propose to file under the HSR Act until such time as a formal offer is made.

AGREE THIS IS OK.  
K. WALSH CONCURS

BW  
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