

THE TAKEOVER PANEL
REPORT ON THE YEAR ENDED
31 MARCH 1998

THE TAKEOVER PANEL
1997 – 1998 REPORT

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THE TAKEOVER PANEL
1997 – 1998 REPORT

THE PANEL
AS AT 22 JULY 1998

| | | | |
|---|--|--|--|
| <p>SIR DAVID CALCUTT QC FORMER CHAIRMAN OF THE BAR</p> | <p>CHAIRMAN Appointed by the Governor of the Bank of England</p> | <p>ANDREW R F BUXTON CHAIRMAN, BARCLAYS BANK</p> | <p>President, British Bankers' Association</p> |
| <p>JOHN F C HULL FORMER CHAIRMAN, J HENRY SCHRODER & CO</p> | <p>DEPUTY CHAIRMAN Appointed by the Governor of the Bank of England</p> | <p>MARTIN F BROUGHTON GROUP CHIEF EXECUTIVE, BAT INDUSTRIES</p> | <p>Nominated by Confederation of British Industry</p> |
| <p>JOHN L WALKER-HAWORTH FORMER MANAGING DIRECTOR, WARBURG DILLON READ</p> | <p>DEPUTY CHAIRMAN Appointed by the Governor of the Bank of England</p> | <p>CHRISTOPHER SWINSON SENIOR PARTNER, BDO STOY HAYWARD</p> | <p>President, Institute of Chartered Accountants in England and Wales</p> |
| <p>SIR CHRISTOPHER BENSON CHAIRMAN, ALBRIGHT & WILSON</p> | <p>Appointed by the Governor of the Bank of England</p> | <p>DOUGLAS C P MCDUGALL JOINT SENIOR PARTNER, BAILLIE GIFFORD & COMPANY</p> | <p>Chairman, Investment Management Regulatory Organisation</p> |
| <p>SIR DENNIS STEVENSON CHAIRMAN, PEARSON</p> | <p>Appointed by the Governor of the Bank of England</p> | <p>ANTONY R BEEVOR MANAGING DIRECTOR, SG HAMBROS</p> | <p>Nominated by London Investment Banking Association</p> |
| <p>ROBERT B JACK FORMER SENIOR PARTNER, MCGRIGOR DONALD</p> | <p>Appointed by the Governor of the Bank of England</p> | <p>CHARLES L A IRBY DEPUTY CHAIRMAN, BARING BROTHERS INTERNATIONAL</p> | <p>Chairman, London Investment Banking Association Corporate Finance Committee</p> |
| <p>SANDY LEITCH CHIEF EXECUTIVE, BRITISH AMERICAN FINANCIAL SERVICES</p> | <p>Chairman, Association of British Insurers</p> | <p>JOHN KEMP-WELCH FORMER JOINT SENIOR PARTNER, CAZENOVE & CO</p> | <p>Chairman, London Stock Exchange</p> |
| <p>ANDREW C BARKER DIRECTOR & HEAD OF US EQUITIES, FOREIGN & COLONIAL MANAGEMENT</p> | <p>Chairman, Association of Investment Trust Companies</p> | <p>LYNN C RUDDICK DIRECTOR, MERCURY ASSET MANAGEMENT</p> | <p>Nominated by National Association of Pension Funds</p> |
| <p>LEWIS J McNAUGHT DIRECTOR, HEAD OF UK RETAIL, GARTMORE INVESTMENT MANAGEMENT</p> | <p>Chairman, Association of Unit Trusts and Investment Funds</p> | <p>NICHOLAS J DURLACHER DIRECTOR, BARCLAYS CAPITAL</p> | <p>Chairman, Securities and Futures Authority</p> |

THE APPEAL COMMITTEE
AS AT 22 JULY 1998

| | | | |
|--|--|---|---|
| <p>THE Rt HON SIR MICHAEL KERR FORMER LORD JUSTICE OF APPEAL</p> | <p>CHAIRMAN OF THE APPEAL COMMITTEE Appointed by the Governor of the Bank of England</p> | <p>THE Rt HON SIR CHRISTOPHER SLADE FORMER LORD JUSTICE OF APPEAL</p> | <p>DEPUTY CHAIRMAN OF THE APPEAL COMMITTEE Appointed by the Governor of the Bank of England</p> |
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THE TAKEOVER PANEL
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THE PANEL EXECUTIVE
AS AT 22 JULY 1998

| | |
|--|--------------------------------|
| *ALISTAIR N C DEFRIEZ WARBURG DILLON READ | DIRECTOR GENERAL |
| T PETER LEE | DEPUTY DIRECTOR GENERAL |
| NOEL P HINTON | DEPUTY DIRECTOR GENERAL |
| ANTHONY G B PULLINGER | DEPUTY DIRECTOR GENERAL |
| *GUY T D NORMAN CLIFFORD CHANCE | SECRETARY |
| *J NICHOLAS CALLISTER RADCLIFFE CAMERON MCKENNA | SECRETARY |
| *MARK CURTIS SIMMONS & SIMMONS | SECRETARY |
| *DARREN BRYANT PRICEWATERHOUSECOOPERS | ASSISTANT SECRETARY |
| *NICHOLAS R J HELLYER WARBURG DILLON READ | ASSISTANT SECRETARY |
| *ALEXANDRA C KELLOW HSBC INVESTMENT BANK | ASSISTANT SECRETARY |
| *NICOLA M MILLER ERNST & YOUNG | ASSISTANT SECRETARY |
| *CHARLES M CRAWSHAY TRAVERS SMITH BRAITHWAITE | ASSISTANT SECRETARY |
| *CHARLES D R C GROVES WARBURG DILLON READ | ASSISTANT SECRETARY |
| *JOHN A DOVEY DENTON HALL | ASSISTANT SECRETARY |
| *STEPHEN W P CHEUNG DELOITTE & TOUCHE | ASSISTANT SECRETARY |
| JANE M TAYLOR | MANAGER, SUPPORT GROUP |
| LEE M MANN | MANAGER, MONITORING SECTION |
| SUSAN POWELL | MANAGER, EXEMPT SYSTEM |

* SECONDED

INTRODUCTION TO THE TAKEOVER PANEL

The Takeover Panel is the regulatory body which publishes and administers the City Code on Takeovers and Mergers. It is concerned with takeovers of companies the shares of which are held by the public. The Code is designed to ensure good business standards and fairness to shareholders. Maintaining fair and orderly markets is crucial to this.

The commercial merits of takeovers are not the responsibility of the Panel; these are matters for the companies concerned and their shareholders. Wider questions of public interest are the concern of the governmental authorities in the UK and, in some circumstances, the European Community, through the Office of Fair Trading and the Monopolies and Mergers Commission or the EC Commission.

The Panel was set up in 1968 in response to mounting concern about unfair practices. The composition and powers of the Panel have evolved over the years as circumstances have changed, although it remains a non-statutory body.

The essential characteristics of the Panel system are flexibility, certainty and speed, enabling parties to know where they stand under the Code in a timely fashion. It is important that these characteristics should be retained in order to avoid over-rigid rules and the risk of takeovers becoming delayed by litigation of a tactical nature, which may frustrate the ability of shareholders to decide the outcome of an offer.

It is the Panel's practice to focus on the specific consequences for shareholders of rule breaches, rather than simply on disciplinary action, with the aim of providing appropriate redress. If the Panel finds there has been a breach, it may have recourse to private reprimand, to public censure, to reporting the offender's conduct to another regulatory authority (for example, the Department of Trade and Industry, the London Stock Exchange, the Financial Services Authority or the relevant self-regulating organisations or recognised professional bodies) and to requiring further action to be taken, as it thinks fit.

THE PANEL

The Panel draws its membership from major financial and business institutions to ensure a spread of expertise in takeovers, securities markets, industry and commerce. The Panel has the support of the Bank of England, its original sponsor, and the Governor appoints the Chairman, two Deputy Chairmen and three independent members, two of whom are industrialists. To ensure that industry is represented at all meetings, many of which have to be arranged at short notice, in recent years certain senior industrialists have been appointed to act as alternates to the two industrialist members.

The Panel can be convened at short notice to hear an appeal against an Executive ruling. It also hears disciplinary cases.

THE APPEAL COMMITTEE

There is a right of appeal from the Panel to the Appeal Committee in certain circumstances, particularly where the Panel finds a breach of the Code and proposes to take disciplinary action. An appeal may also be made, in other cases, with leave of the Panel. The Chairman of the Appeal Committee will usually have held high judicial office.

THE EXECUTIVE

The day-to-day work of the Panel is carried out by its Executive, headed by the Director General, usually a merchant banker on secondment. Some of the Executive are permanent, providing an essential element of continuity. They are joined by lawyers, accountants, stockbrokers, bankers and others on two-year secondments.

The Executive monitors takeovers, checking that all actions taken, as well as documents and announcements issued, comply with the Code, and keeps a close watch on dealings in relevant securities. The Executive is available for consultation and to give rulings and interpretations before, during and, where appropriate, after takeovers. The Panel encourages and in some cases requires early consultation so that problems can be avoided; a major part of the Executive's role is to provide guidance.

Many enquiries about the possible effects of the Code on prospective transactions need a swift response to allow the potential bidders, once an offer has been announced, to meet the Code's strict timetable.

CHAIRMAN'S STATEMENT

It has been a busy and eventful year. After a brief lull in takeover activity immediately following the change of government last May, the Executive has handled a deluge of takeover and merger proposals. Contested and competing bids have featured prominently in recent months and it is these cases which particularly test the Executive's ability to resolve disputes and to make rulings which are both fair and acceptable. Of the many rulings made by the Executive in the course of the 177 bids made last year, only one resulted in an appeal. Such statistics are, I believe, eloquent testimony to the skill and dedication of the Executive, to which I would wish to pay particular tribute.

The Panel celebrated its 30th anniversary last year. The Code was first published on 27 March 1968 and since then the Panel has regulated the conduct of over 6,000 takeovers. A non-statutory approach was deliberately adopted from the outset, with the aim of ensuring higher standards of conduct than could ever be achieved by legislation. The original version of the Code set out 10 General Principles and 35 Rules, which those involved with takeovers and mergers of UK companies were required to observe. Failure to comply with the Code's requirements is extremely rare and, as a result of its introduction, standards of behaviour, fair dealing and transparency in takeovers have all improved significantly.

Over the years the number of General Principles and Rules has remained fairly constant. However, the Code has grown in size, reflecting the increasing complexity of takeovers and the market in which they take place, as well as rulings and decisions of general application arising from experience in particular cases. Situations frequently arise which could never have been envisaged by the author of any rules or laws. Because the Code is not law, and is not written as if it were a statute, it can be applied flexibly to achieve the result which most fairly reflects its spirit. It requires the observance of best business standards and is drafted in comparatively wide terms, so as to make it difficult for its underlying purpose to be avoided. Through the Executive, the Panel is always available to give guidance and rulings on how the Code will be applied in any particular circumstances. The text itself can be altered quickly and is revised frequently by the Panel to deal with changing circumstances and market developments. Neither the speed of decision-taking, nor the flexibility of interpretation, nor the certainty that rulings can be relied upon, would be obtainable under a legal system.

The Code has always had the support of the market generally and the importance of the contribution of the Members of the Panel and of the Executive in maintaining a strong consensual underpinning should not be underestimated. The authority of the Panel was established by its early Chairmen and Directors General, whose legacy it is our duty to preserve and enhance. The Panel Membership represents the broadest cross-section of those involved in takeovers whether as investors, practitioners, regulators or as representatives of companies themselves. The Executive contains both permanent staff and practitioners on secondment whose collective expertise and experience are at least as great as those it regulates. This is crucial in a professional field of activity where the circumstances are often complex, differ greatly from case to case and are subject to rapid change and innovation. On the rare occasion when the ruling of the Executive is not acceptable to one or other of the parties, the Panel can be convened at very short notice to hear an appeal. Disputes are therefore resolved without any need for time-consuming and costly litigation.

From time to time the Panel has had to overcome the most determined opposition and challenges. It is worth remembering the outcome of the *Datafin* case in 1987. That case established that the Courts would generally accept the Panel's interpretation and application of the Code. The Courts would be unlikely to intervene unless the Panel had acted unfairly, so that the applicant had suffered real injustice, or had interpreted the Code in a way which was in conflict with principles of equity or was so perverse as to be inconsistent with the ordinary meaning of the wording of the Code. The guidelines laid down in *Datafin* recognised the need for the Panel to operate with speed, flexibility and certainty. The significance of *Datafin* is that it substantially reduced the scope for potential litigants to challenge the Panel's interpretation of the Code in the Courts. Litigation in UK takeovers is extremely rare, in no small part because of the special nature of the Panel and the fact that the Code does not derive from any law or statute.

The proposed European 13th Company Law Directive on Takeovers poses a serious risk to the continuing well-being of the Panel and the Code. As a Directive it would, if adopted, require domestic legislative implementation and would create new legal rights for parties to exploit in takeovers in the UK. It would provide new grounds for litigation, including the possibility of claims for compensation against the Panel itself. The experience of the Panel over the last 30 years has shown that non-statutory regulation of takeovers does deliver the high and fair standards of treatment expected by investors.

It is by no means clear that this happy state of affairs could be achieved if there were to be legislation. In the UK, the principal beneficiaries of takeover regulation - the investors - have expressed the strong view that it could not. This is the main reason why the Panel considers that this proposed Directive should be withdrawn and replaced by a Code of Conduct or a Recommendation,

neither of which would require domestic legislative implementation. The efficiency and effectiveness of the leading system of takeover regulation in Europe, if not the world, would be seriously jeopardised by such legislation. This proposed Directive will continue to be vigorously opposed.

SIR DAVID CALCUTT QC

22 July 1998

REPORT BY THE DIRECTOR GENERAL

The Executive has had another very full year. Once again there were more takeover proposals published in the last year than in the previous year – 177 against 171.

PROPOSED TAKEOVER DIRECTIVE

The non-statutory system of takeover regulation in the United Kingdom continues to be threatened by the European Commission's proposal for a 13th Company Law Directive on Takeovers. Despite good arguments to replace it with a Recommendation or a Code of Conduct, which would not require legislative implementation, the Commission published an amended text last November in response to some 20 amendments proposed by the European Parliament on its first reading. As the fundamental problem is the legislative nature of this measure, which would significantly increase the risk of litigation in takeovers, the amendments should be viewed according to whether they would exacerbate or reduce this risk. Few, if any, of them can be regarded as helpful in this respect. Arguably the worst amendment is the express removal of discretion for the supervisory authority, ie the Panel, to grant derogations from the rules.

The Executive agrees with the opinion of the House of Lords Select Committee given on the amended text, supplementary to its Report of July 1996, that the Panel must retain the flexibility it has under the Code and be able to act promptly, and as circumstances may require, without fear or threat of actions for damages being brought against it. The Committee concluded not only that the proposed Directive, as amended, continues to fail to satisfy the requirement of “subsidiarity” but also that the balance of advantage remains clearly against there being any Directive at all.

As to the former conclusion, under the European Treaty, Community action should only be taken if it would provide “clear benefits” over action by Member States and the Committee’s view that this proposal would not do so echoes those of other leading independent experts consulted by the Executive both here and abroad. As regards the Committee’s latter conclusion, similar opposition to the Directive has been expressed by a number of Member States, including Belgium, The Netherlands and Sweden, and nearly every country has some concerns or reservations about it.

OVERSEAS REGULATORS

The Executive continues to be involved in extensive dialogue with numerous countries in Europe and around the world concerning the establishment, revision or application of takeover

regulation. During the last year, the Executive has had substantive discussions with, or given advice to, Australia, Austria, Belgium, the Czech Republic, France, Germany, Hong Kong, Ireland, Italy, Luxembourg, Malaysia, Russia, South Africa, Sweden, Switzerland and the United States of America. These and other contacts help to maintain good working relationships and a mutually beneficial spirit of co-operation between the Executive and its counterparts across the globe. The Executive is grateful for all the support and assistance it has received, whenever required, from its many friends overseas.

CODE REVISION

Amendments and additions to the Code have recently been published. Revision of the Code is a continuous process which is intended to ensure that the Code reflects market practice. Revision items can be generated by the Executive or from external sources, such as shareholders, practitioners or companies. Before an amendment is issued, it is, of course, considered and approved by Panel Members.

In this particular set of amendments and additions, the Panel has extended the application of Rule 11 so that whenever an offeror (or a person acting in concert with the offeror) purchases offeree company shares during an offer period, a cash alternative has to be made available under the offer. Previously, cash alternatives were only required if purchases of offeree company shares totalled more than 10%. Further, a new Rule has placed a prohibition on the ability of certain advisers to an offeree company to buy relevant offeree company securities during the offer period.

The Note on Rule 2.2 has been rewritten to emphasise the need for early consultation in certain circumstances when there is rumour and speculation about an offeree company or a significant rise in its share price. In addition, an amendment to Rule 2.8 states a specific time during which a person cannot announce an offer if a previous statement indicated that there was no intention to make an offer. The Panel felt this would be beneficial to create greater certainty about the consequence of such a statement.

EMPLOYEE CONSULTATION

It has always been a Code principle that the interests of employees should be considered in addition to those of shareholders. However, concerns have recently been raised with the Executive that, contrary to statutory or other obligations, proposed significant redundancies are sometimes announced in relation to a takeover or merger before there has been any process of employee consultation.

Before any bid announcement has been made, the Code requires unpublished price-sensitive information about the bid to be treated with the utmost confidentiality and secrecy in

order to prevent insider dealing and false markets. Companies and their advisers must act so as to minimise the risk of a leak and therefore information on a possible bid must be confined to a very restricted number of people. If a company wishes, or has an obligation, to consult employee representatives prior to a public announcement about a takeover or merger because, for instance, it wishes simultaneously to announce significant restructuring or rationalisation, it will normally be permissible to do so, subject to certain conditions. These include (i) that the information will only be disclosed to specific individuals and on a confidential basis; and (ii) that, if there is a leak, an immediate public announcement will be made.

After a bid announcement has been made, meetings with employees, in their capacity as such, can normally be held without any of the Code restrictions which would apply to meetings with shareholders and analysts. Accordingly, employee consultation can take place following an initial bid announcement but before any final decision on the consequences for employment is taken or published.

In any process of employee consultation, a warning should always be given that anyone responsible for misuse of confidential information may be subject to disciplinary action and, possibly, civil or criminal proceedings.

MBOs AND SIMILAR TRANSACTIONS

During the course of the year, the Executive has noted a significant increase in the number of offers for Code companies by way of management buy-outs, management buy-ins, institutional buy-outs and other similar transactions. As a result, the Executive has reviewed how the Code should be applied to such transactions and some of the main issues are highlighted below.

By definition, such transactions often involve incumbent management of the offeree taking an equity stake in the offeror bidding vehicle. If these individuals are also shareholders of the offeree, the Executive will want to ensure that such arrangements do not offend against the principle that all shareholders be treated similarly. The Executive will normally require the offeree's adviser to state in the offer document that the terms of management's participation in the offeror are fair and reasonable so far as other offeree shareholders are concerned. Independent shareholder approval may also be required in certain circumstances.

The Executive should be consulted at an early stage so that joint offerors (or members of the offeror concert party) are identified to ensure that, inter alia, appropriate disclosure on these parties is made in the offer document (for example, with regard to financial information on the offeror, material contracts, shareholdings and dealings). This is also important as dealings by such persons may have significant Code consequences, for example in relation to the minimum consideration which must be offered. Furthermore, in addition to the directors of the bidding vehicle,

responsibility statements will be required from appropriate individuals from the joint offerors.

Where outside finance is to be raised by the offeror bidding vehicle, the Executive should be consulted if negotiations or discussions are to be extended to include more than a very restricted number of people. The Executive should also be consulted in situations where the finance for the offeror is to be provided, wholly or in part, by an entity within the same group as the proposed financial adviser to the offeree as, inter alia, this may create a conflict of interest for the latter.

Owing to the range of Code issues which may arise on such transactions, early contact with the Executive is strongly advised to ensure that these can be clarified in good time.

COMMENCEMENT OF THE OFFER PERIOD

‘Offer period’ is defined in the Code as the period from the time when an announcement is made of a proposed or possible offer (with or without terms) until the first closing date or, if this is later, the date when the offer becomes or is declared unconditional as to acceptances or lapses.

Potential offerors and their advisers should be aware that references in the Code to an offer period are to the time during which an offeree is in an offer period following an announcement of an offer or possible offer. This is the case even for a competing offeror who may emerge some time after the offeree first went into an offer period. Potential offerors and their advisers should be particularly aware of the consequences of this when determining, in the context of Rules 6.1 and 11.1, the minimum level of consideration that can be offered and whether a cash offer is required.

CODE TRANSACTIONS INVOLVING UNLISTED OFFERORS

The Stock Exchange’s Regulatory News Service (RNS) releases announcements by, or on behalf of, listed or AIM companies. When any other offeror wishes to release an announcement in respect of a Code transaction, RNS will only carry the announcement with the prior consent of the Stock Exchange’s Listing Department. To avoid any potential delays in releasing announcements, and to preserve security, early consultation with the Executive’s Monitoring Section is strongly recommended so that the appropriate arrangements can be made.

DTI INSPECTORS' REPORT ON GUINNESS

In November, the Department of Trade & Industry Inspectors' Report into the Guinness bid for Distillers in 1986 was published. In 1987 the Panel found Guinness in breach of the Code and ordered it to pay up to £85 million additional consideration to disadvantaged Distillers' shareholders by way of redress. At that time, the Panel also took significant steps, inter alia, to enhance its capability to monitor share dealings in takeovers and to increase the disclosure requirements of Rule 8. Having reviewed the Report, the Panel concluded that appropriate measures have already been implemented since 1986 to strengthen its ability to ensure compliance with the high standards of behaviour in bids which have always been demanded by the Code. It does not propose to take further action, whether disciplinary or otherwise, arising out of this matter.

ACCOUNTS

In the year to 31 March 1998 document fees generated £4,747,000 compared with £3,769,000 in 1997; the contract, note levy produced £833,944 against £641,398 for the previous year. Expenditure totalled £5,194,316, compared with £4,498,345 in 1997.

The Panel's income is of a highly volatile nature and is therefore extremely difficult to predict at the commencement of a financial year. The Panel aims to maintain a sufficient, but not excessive, accumulated surplus to cope with a sudden sharp drop in income or an unexpected major expense and in the past it has sought to achieve this by periodic adjustments in the contract note levy.

For the year to 31 March the Panel budgeted for a reduction in the exceptionally high accumulated surplus at 31 March 1997. In the event, the income from both the contract note levy and document fees was higher than expected. Given the impact that there would otherwise have been on the accumulated surplus, the Panel decided to rebate 50% of the amount levied in document fees during the year. The income recorded from this source has therefore been reduced to £2,373,500.

The principal factors responsible for the 15.5% increase in expenditure are that additional staff have been employed as the volume of work has increased and legal and other fees have continued to rise.

Alistair N C Defriez
22 July 1998

**ACCOUNTS FOR THE YEAR ENDED
31 MARCH 1998**

INCOME AND EXPENDITURE ACCOUNT
FOR THE YEAR ENDED 31 MARCH 1998

| | NOTE | 1998 £ | 1997 £ |
|--|------|-------------------------|-------------------------|
| INCOME | | | |
| Contract note levy | | 833,944 | 641,398 |
| Document fees | 2 | 2,373,500 | 3,769,000 |
| City Code sales | | 48,041 | 34,840 |
| Other income | | 5,310 | 6,065 |
| | | <u>3,260,795</u> | <u>4,451,303</u> |
| EXPENDITURE | | | |
| Personnel costs | | 3,514,277 | 2,980,497 |
| Accommodation costs | | 569,977 | 532,452 |
| Other expenditure | | 1,110,062 | 985,396 |
| | | <u>5,194,316</u> | <u>4,498,345</u> |
| (DEFICIT) BEFORE INTEREST AND TAXATION | | (1,933,521) | (47,042) |
| Interest receivable | | 491,645 | 379,152 |
| Taxation | 3 | (127,201) | (123,149) |
| (DEFICIT)/SURPLUS FOR THE YEAR | | <u>(1,569,077)</u> | <u>208,961</u> |
| ACCUMULATED SURPLUS AT BEGINNING OF YEAR | | <u>7,756,453</u> | <u>7,547,492</u> |
| ACCUMULATED SURPLUS AT END OF YEAR | | <u><u>6,187,376</u></u> | <u><u>7,756,453</u></u> |

All activities are regarded as being continuing.

The Panel on Takeovers and Mergers has no recognised gains and losses other than the income and expenditure shown above and therefore no statement of total gains and losses has been presented.

THE TAKEOVER PANEL
1997 – 1998 REPORT

BALANCE SHEET
AT 31 MARCH 1998

| | NOTES | 1998 £ | 1997 £ |
|-------------------------|-------|------------------|------------------|
| CURRENT ASSETS | | | |
| Debtors and prepayments | 4 | 532,536 | 549,097 |
| Bank and cash | | 6,070,172 | 7,485,314 |
| | | <u>6,602,708</u> | <u>8,034,411</u> |
| CURRENT LIABILITIES | | | |
| Creditors and accruals | 5 | 288,131 | 166,838 |
| Corporation tax | | 127,201 | 111,120 |
| | | <u>415,332</u> | <u>277,958</u> |
| Net assets | | <u>6,187,376</u> | <u>7,756,453</u> |
| Representing: | | | |
| ACCUMULATED SURPLUS | | <u>6,187,376</u> | <u>7,756,453</u> |

The accounts on pages 16 to 20 were approved by the Finance Committee on 6 July 1998 and signed on behalf of the Members by:

SIR DAVID CALCUTT QC

The Chairman, Panel on Takeovers and Mergers

JOHN HULL

The Chairman, Finance Committee

CASHFLOW STATEMENT
FOR THE YEAR ENDED 31 MARCH 1998

| | NOTES | 1998 £ | 1997 £ |
|--|-------|-------------|-----------|
| Net cash (outflow) from operating activities | 7 | (1,782,260) | (139,079) |
| Returns on investments and servicing of finance | | | |
| Interest received | | 478,238 | 375,895 |
| Net cash inflow from returns on investments and servicing of finance | | 478,238 | 375,895 |
| Taxation | | | |
| UK corporation tax paid | | (111,120) | (104,318) |
| (Decrease) / Increase in cash | 8 | (1,415,142) | 132,498 |

NOTES TO THE ACCOUNTS

1. BASIS OF PREPARATION OF ACCOUNTS AND ACCOUNTING POLICIES

- a) The accounts have been prepared on the historical cost basis of accounting and in accordance with applicable Accounting Standards in the United Kingdom.
- b) All expenditure of a capital nature is written off in the year in which it is incurred.
- c) Income and expenditure is accounted for on an accruals basis.
- d) Provision is made for deferred taxation, using the liability method, on all material timing differences to the extent that it is probable that a liability or asset will crystallise.

2. DOCUMENT FEES

In the year to 31 March 1998 document fees generated £4,747,000 compared with £3,769,000 in 1997. The Panel decided to rebate 50% of the amount levied in the year to 31 March 1998. The figure shown in the Income and Expenditure Account is net of this rebate.

| | 1998 £ | 1997 £ |
|---|----------------|----------------|
| 3. TAXATION | | |
| UK corporation tax payable on interest income received: | | |
| Current | 127,201 | 111,120 |
| Prior year | – | 14,556 |
| Deferred (see note 6) | – | (2,527) |
| | <u>127,201</u> | <u>123,149</u> |

Corporation tax is payable at a rate of 21% (1997: 24%) for the first £ 300,000 of taxable profit and thereafter at an effective rate of 33.5% (1997: 35%).

THE TAKEOVER PANEL
1997 – 1998 REPORT

NOTES TO THE ACCOUNTS *continued*

| | 1998 | 1997 |
|---|--------------------|------------------|
| | £ | £ |
| 4. DEBTORS AND PREPAYMENTS | | |
| Contract note levy accrued income | 289,433 | 149,767 |
| Document fees | 20,250 | 170,000 |
| Interest receivable | 48,491 | 35,084 |
| Other debtors and prepayments | 174,362 | 194,246 |
| | <u>532,536</u> | <u>549,097</u> |
| | 1998 | 1997 |
| | £ | £ |
| 5. CREDITORS AND ACCRUALS | | |
| Personnel costs | 141,829 | 64,197 |
| Legal and professional fees | 6,500 | 32,099 |
| Other creditors and accruals | 139,802 | 70,542 |
| | <u>288,131</u> | <u>166,838</u> |
| | 1998 | 1997 |
| | £ | £ |
| 6. DEFERRED TAXATION | | |
| In respect of short term timing differences: This is provided at 31% (1997: 35%) | | |
| Provision at 1 April | – | 2,527 |
| Transfer to income and expenditure account | – | (2,527) |
| | <u>–</u> | <u>–</u> |
| Provision at 31 March | – | – |
| | <u>–</u> | <u>–</u> |
| | 1998 | 1997 |
| | £ | £ |
| 7. NET CASH (OUTFLOW) FROM OPERATING ACTIVITIES | | |
| (Deficit) before interest and taxation | (1,933,521) | (47,042) |
| Decrease/ (Increase) in debtors and prepayments | 29,968 | (96,319) |
| Increase in creditors | 121,293 | 4,282 |
| | <u>(1,782,260)</u> | <u>(139,079)</u> |

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NOTES TO THE ACCOUNTS *continued*

| | 1998 | 1997 |
|---------------------------------------|------------------|------------------|
| 8. RECONCILIATION OF NET CASH FLOW TO | £ | £ |
| MOVEMENT IN NET FUNDS | | |
| (Decrease)/Increase in cash in period | (1,415,142) | 132,498 |
| Change in net funds | (1,415,142) | 132,498 |
| Net funds at 1 April 1997 | 7,485,314 | 7,352,816 |
| Net funds at 31 March 1998 | <u>6,070,172</u> | <u>7,485,314</u> |

REPORT OF THE AUDITORS TO THE MEMBERS OF THE PANEL ON TAKEOVERS AND MERGERS

We have audited the accounts on pages 16 to 20, which have been prepared under the historical cost convention and the accounting policies set out on page 18.

RESPECTIVE RESPONSIBILITIES OF PANEL MEMBERS AND AUDITORS

As described on page 21 the Panel Members are responsible for the preparation of accounts. It is our responsibility to form an independent opinion, based on our audit, on those accounts and to report our opinion to you.

BASIS OF OPINION

We conducted our audit in accordance with Auditing Standards issued by the Auditing Practices Board. An audit includes examination, on a test basis, of evidence relevant to the amounts and disclosures in the accounts. It also includes an assessment of the significant estimates and judgements made by the Panel Members in the preparation of the accounts, and of whether the accounting policies are appropriate to the Panel's circumstances, consistently applied and adequately disclosed.

We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the accounts are free from material misstatement, whether caused by fraud or other irregularity or error. In forming our opinion we also evaluated the overall adequacy of the presentation of information in the accounts.

OPINION

In our opinion the accounts present fairly, on the basis set out in Note 1, the state of affairs of The Panel on Takeovers and Mergers at 31 March 1998 and of its deficit and cash flows for the year then ended.

COOPERS & LYBRAND

Chartered Accountants and Registered Auditors, London

6 July 1998

STATEMENT OF PANEL MEMBERS' RESPONSIBILITIES

The Panel Members have determined that accounts should be prepared for each financial year that present fairly the state of affairs of the Panel as at the end of the financial year and of its surplus or deficit for that period.

The Panel Members confirm that suitable accounting policies have been used and applied consistently and reasonable and prudent judgements and estimates have been made in the preparation of the accounts for the year ended 31 March 1998. The Panel Members also confirm that applicable accounting standards have been followed and that the accounts have been prepared on the going concern basis.

The Panel Members are responsible for keeping proper accounting records and for taking reasonable steps to safeguard the assets of the Panel and to prevent and to detect fraud and other irregularities.

STATISTICS

The Panel held one meeting to hear an appeal against a ruling by the Executive. The appeal was not successful.

There were 177 (year ended 31 March 1997–171) published takeover or merger proposals of which 175 (166) reached the stage where formal documents were sent to shareholders. These proposals were in respect of 171 (156) target companies.

24 (37) offers were not recommended at the time the offer document was posted. 20 (30) of these remained unrecommended at the end of the offer period, of which 6 (10) lapsed.

13 (9) offers were, at the time of their announcement, mandatory bids under Rule 9.

A further 30 (18) cases, which were still open at 31 March 1998, are not included in these figures.

The Executive was engaged in detailed consultations in another 288 (223) cases which either did not lead to published proposals, were waivers of the Code's requirements in cases involving very few shareholders or were transactions, subject to approval by shareholders, involving controlling blocks of shares.

| | 1997-1998 | 1996-1997 |
|--|------------------|------------------|
| OUTCOME OF PROPOSALS | | |
| Successful proposals involving control (including schemes of arrangement) | 145 | 137 |
| Unsuccessful proposals involving control (including schemes of arrangement) | 11 | 14 |
| Proposals withdrawn before issue of documents (including offers overtaken by higher offers) | 2 | 5 |
| Proposals involving minorities, etc | 19 | 15 |
| | <u>177</u> | <u>171</u> |

**STATEMENTS ISSUED BY THE PANEL
DURING THE YEAR
ENDED 31 MARCH 1998**

1997

| | | |
|-------------|-----------|--|
| 3 April | 1997 / 5 | MERGER BENEFITS AND EARNINGS ENHANCEMENT STATEMENTS <i>(Amendments to the Code)</i> |
| 11 April | 1997 / 6 | APPOINTMENT OF GUY NORMAN AS SECRETARY <i>(Panel Executive appointment)</i> |
| 27 June | 1997 / 7 | IRISH TAKEOVER PANEL <i>(Irish Takeover Panel assumed responsibility for regulating offers for companies incorporated in the Republic of Ireland)</i> |
| 30 June | 1997 / 8 | DIRECTOR GENERAL <i>(Extension of period of secondment)</i> |
| 1 July | 1997 / 9 | CATER ALLEN HOLDINGS PLC <i>(Person with recent and continuing corporate finance advisory relationship with an offeror could not provide independent advice under Rule 3)</i> |
| 7 August | 1997 / 10 | COVERED WARRANTS <i>(Explanation of treatment under the Code)</i> |
| 16 October | 1997 / 11 | STOCK EXCHANGE ELECTRONIC TRADING SERVICE <i>(Explanation of interpretation and application of the Code and SARs following introduction of SETS)</i> |
| 27 November | 1997 / 12 | GUINNESS PLC – THE DISTILLERS COMPANY PLC <i>(Acknowledgement of publication of DTI Inspectors' final report)</i> |
| 23 December | 1997 / 13 | MORRIS ASHBY PLC <i>(Criticism of offeree company financial adviser for failure to consult following untoward price movement)</i> |

1998

| | | |
|------------|----------|---|
| 2 January | 1998 / 1 | HERCULES INVESTMENTS PLC – ALLIED COLLOIDS PLC <i>(Bid timetable suspended pending receipt of competition authority clearance)</i> |
| 14 January | 1998 / 2 | QUEBECOR PRINTING INC – WATMOUGHS (HOLDINGS) PLC <i>(Bid timetable suspended pending receipt of competition authority clearance)</i> |
| 4 February | 1998 / 3 | APPOINTMENT OF MARK CURTIS AND NICK CALLISTER RADCLIFFE AS JOINT SECRETARIES <i>(Panel Executive appointment)</i> |
| 25 March | 1998 / 4 | THE GREAT UNIVERSAL STORES PLC – ARGOS PLC <i>(Bid timetable suspended pending receipt of competition authority clearance)</i> |

For details of how to obtain copies of the Code, Panel Statements and Annual Reports contact:

The Secretary, Panel on Takeovers and Mergers,
P O Box No 226, The Stock Exchange Building,
London EC2P 2JX. Telephone: 0171 382 9026

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Burrups Ltd, St Ives plc B44450X