

**THE TAKEOVER PANEL**  
REPORT ON THE YEAR ENDED  
31 MARCH 2001

THE TAKEOVER PANEL  
2000 – 2001 REPORT

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THE TAKEOVER PANEL  
2000 – 2001 REPORT

**THE PANEL**  
AS AT 18 JULY 2001

PETER SCOTT QC	CHAIRMAN Appointed by the Governor of the Bank of England	ALAN C BURTON MANAGING DIRECTOR, STANDARD LIFE INVESTMENTS	Chairman, Association of Unit Trusts and Investment Funds
JOHN L WALKER-HAWORTH FORMER MANAGING DIRECTOR, UBS WARBURG	DEPUTY CHAIRMAN Appointed by the Governor of the Bank of England	ANDREW R F BUXTON ADVISER, BARCLAYS BANK	President, British Bankers' Association
ANTONY R BEEVOR SENIOR ADVISER, S G HAMBROS	DEPUTY CHAIRMAN Appointed by the Governor of the Bank of England	JUDITH C HANRATTY COMPANY SECRETARY, B P AMOCO	Nominated by, Confederation of British Industry
SIR CHRISTOPHER BENSON	Appointed by the Governor of the Bank of England	LINDSAY P TOMLINSON CHIEF EXECUTIVE, EUROPE, BARCLAYS GLOBAL INVESTORS	Chairman, Fund Managers' Association
SIR DAVID LEES CHAIRMAN, GKN	Appointed by the Governor of the Bank of England	MICHAEL J GROOM NON – EXECUTIVE DIRECTOR AND ONE TIME PARTNER IN BDO STOY HAYWARD	President, Institute of Chartered Accountants in England and Wales
ANTONY P HICHENS CHAIRMAN, DAVID S SMITH	Appointed by the Governor of the Bank of England	DAVID J CHALLEN CO CHAIRMAN, SCHRODER SALOMON SMITH BARNEY	Nominated by London, Investment Banking Association
ROBERT A SCOTT GROUP CHIEF EXECUTIVE, CGNU	Chairman, Association of British Insurers	SIR MARK WRIGHTSON CHAIRMAN, CLOSE BROTHERS CORPORATE FINANCE	Chairman, London Investment Banking Association Corporate Finance Committee
CHRISTOPHER C B DUFFETT MANAGING DIRECTOR, THE LAW DEBENTURE CORPORATION	Chairman, Association of Investment Trust Companies	PETER A LETLEY CHIEF ADMINISTRATIVE OFFICER AND CHIEF FINANCIAL OFFICER, CIBC WORLD MARKETS	Chairman, London Investment Banking Association Securities Trading
G MARK POWELL GROUP MANAGING DIRECTOR, RATHBONE INVESTMENT MANAGEMENT	Chairman, Association of Private Client Investment Managers and Stockbrokers	ALAN M RUBENSTEIN MANAGING DIRECTOR, MORGAN STANLEY & CO INTERNATIONAL	Chairman, National Association of Pension Funds Investment Council

Brian J Stewart, Chairman of Scottish & Newcastle and J Martin Taylor, Chairman of W. H. Smith are alternates to Sir Christopher Benson, Sir David Lees and Antony Hichens.

**THE APPEAL COMMITTEE**  
AS AT 18 JULY 2001

THE RT HON SIR MICHAEL KERR FORMER LORD JUSTICE OF APPEAL	CHAIRMAN OF THE APPEAL COMMITTEE Appointed by the Governor of the Bank of England	THE RT HON SIR CHRISTOPHER SLADE FORMER LORD JUSTICE OF APPEAL	DEPUTY CHAIRMAN OF THE APPEAL COMMITTEE Appointed by the Governor of the Bank of England
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THE TAKEOVER PANEL  
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**THE PANEL EXECUTIVE**

AS AT 18 JULY 2001

*PHILIP J REMNANT CREDIT SUISSE FIRST BOSTON	DIRECTOR GENERAL
T PETER LEE	DEPUTY DIRECTOR GENERAL
NOEL P HINTON	DEPUTY DIRECTOR GENERAL
ANTHONY G B PULLINGER	DEPUTY DIRECTOR GENERAL
*RICHARD I HOUGH ALLEN & OVERY	SECRETARY
*TIM D CARGILL LOVELLS	SECRETARY
NICOLA M MILLER	SECRETARY
CHARLES M CRAWSHAY	SECRETARY
*RICHARD G BREARLEY NABARRO NATHANSON	ASSISTANT SECRETARY
*STEPHEN P NASH EVERSHEDS	ASSISTANT SECRETARY
*F MATTHEW SHALL CLOSE BROTHERS	ASSISTANT SECRETARY
*HELEN BRADLEY BAKER & MCKENZIE	ASSISTANT SECRETARY
*MATTHEW D PUHAR RICHARDS BUTLER	ASSISTANT SECRETARY
* GILES H DISTIN HAMMOND SUDDARDS EDGE	ASSISTANT SECRETARY
*NICOLA L ELMS DELOITTE & TOUCHE	ASSISTANT SECRETARY
*RACHEL KEBRETH DEUTSCHE BANK	ASSISTANT SECRETARY
*LEON N FERERA GOULDENS	ASSISTANT SECRETARY
*RYAN E TAYLOR FINANCIAL SERVICES AUTHORITY	ASSISTANT SECRETARY
*BRIAN STOCKBRIDGE GRANT THORNTON	ASSISTANT SECRETARY
*JANE M TAYLOR	MANAGER, SUPPORT GROUP
*LEE M MANN	MANAGER, MONITORING SECTION
CRAIG G ANDREWS	DEPUTY MANAGER, MONITORING SECTION
SUSAN POWELL	MANAGER, EXEMPT SYSTEM

\* SECONDED

## **INTRODUCTION TO THE TAKEOVER PANEL**

The Takeover Panel is the regulatory body which administers the City Code on Takeovers and Mergers. It is concerned with takeovers of companies whose shares 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 Competition Commission or the European 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. These characteristics are important 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 or the Financial Services Authority) 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, the Deputy Chairmen and three independent members, who are industrialists. To ensure that industry is represented at all meetings, many of which have to be arranged at short notice, certain other industrialists act as alternates to the industrialist members.

The three independent members appointed by the Governor are appointed for three years with the possibility of re-appointment thereafter for a further term of three years. There is no limit to the number of terms that can be served. Members of the Panel and the Executive are asked to suggest names of suitable candidates. Once a list of candidates has been compiled, it is considered by a Nominations Committee of the Panel which compiles a short-list. The Committee then submits recommendations to the Governor.

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

#### THE CODE COMMITTEE

The Code Committee has been established by the Panel to keep under review and, where appropriate, put forward, consult upon and make amendments to the substantive provisions (such as the General Principles and Rules) of the Code and the Rules Governing Substantial Acquisitions of Shares.

#### 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 an investment 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

Sir David Calcutt QC retired as Chairman of the Panel at the end of October 2000. During his eleven year term of office he served the Panel with great distinction. With considerable skill he steered the Panel through a decade of its history which saw many significant changes in the City and in its regulation. The City owes him a considerable debt of gratitude.

In April 2001 with great regret we bade farewell to Patrick Drayton at the end of his two year secondment as Director General. During his term Patrick dealt with a high level of bid activity as well as a number of important policy matters. In everything that he did he demonstrated a mastery of all the relevant issues and we are very grateful to him for his contribution to the continuing success of the Panel. In his place the Panel has welcomed Philip Remnant from Credit Suisse First Boston. He has had considerable experience in takeovers over many years. We wish him every success.

For many years the Panel has greatly valued the contribution made to its deliberation by those members appointed by the Governor of the Bank of England. In the last year Lord Stevenson and Professor Robert Jack retired. Their experience has been of great assistance to the Panel and we are very grateful to them for all their efforts on behalf of the Panel. In their places we welcome Sir David Lees and Antony Hichens.

It is sad to record the death in June of Peter Frazer who was with the Panel for 28 years. His contribution in establishing the Panel and in ensuring its success over so many years was considerable. On page 16 there is a tribute to him written by John Hull, a former Deputy Chairman and Director General of the Panel.

The Human Rights Act 1998 gave effect last October in domestic law to certain rights set out in the European Convention for the Protection of Human Rights. In particular, the Act imports into domestic law the right to a fair trial set out in the Convention. This demands procedural fairness for all private parties in proceedings before courts, tribunals and other bodies exercising judicial or adjudicative functions, e.g. the Panel in relation to both regulatory and disciplinary hearings. The Convention and its supporting case law establish a range of discrete rights which must each be respected in order for any such proceedings to be considered fair, including the right to a trial before an independent and impartial tribunal.

The requirement for the Panel, as an adjudicative body, to be manifestly independent and impartial created the need to separate the rule-making and adjudicative functions of the Panel. To achieve this, the Panel has established the Code Committee to keep under review and, where appropriate, put forward, consult upon and make amendments to the substantive provisions (such as the General

Principles and Rules) of the Code and the Rules Governing Substantial Acquisitions of Shares. The Chairman of the Committee is Donald Brydon and the members (whose names are set out on page 11), drawn from a variety of backgrounds, have a wealth of experience.

On 4 July, some 12 years after discussions began, the European Takeover Directive fell at the final hurdle. The vote in the European Parliament was tied with 273 votes both for and against the Directive (and 22 abstentions), which therefore failed to achieve the simple majority required. The ball is now in the Commission's court as to what happens next, but there is likely to be little enthusiasm in the immediate future from either Member States or from the Parliament for re-addressing this topic from first principles.

The demise of the Directive is a source of some regret, but our feelings are mixed. The Executive, working closely with the DTI, had had considerable success in making the text of the proposed Directive as acceptable as possible. Attempts had been made by the European Parliament, right up until the last moments of the formal conciliation process, to press for major amendments on employee rights and on the ability of boards to take action to frustrate an offer without recourse to shareholders. These would have undermined the principal thrust of the Directive but were successfully resisted.

It is important to appreciate what the Directive would have achieved and what it would not have achieved. It would not have resulted in a uniform set of takeover rules throughout Europe because it was a minimum standards directive, with very little detail, and could have been implemented differently by each Member State. Although the Directive's mandatory bid provisions were weak and the frustrating action clause far from clear, it would have done something for the protection of minority shareholders in the rest of Europe and for the promotion of European integration through the removal of barriers to takeovers within the European Union.

Notwithstanding this, the Panel still had major reservations about the Directive from a UK perspective. It would have done nothing to enhance the benefits of the Panel's non-statutory system of regulation. Indeed, implementation of the Directive in the UK might well have threatened the key advantages of our current system: speed, flexibility and certainty and much would have depended upon the terms of the implementing UK legislation. The proposed regime would assuredly have given rise to an increased risk of tactical litigation during bids, at least in the initial stages.

Since the Financial Services and Markets Bill was enacted in June last year, the Executive has had regular discussions with the FSA on a variety of issues. Both the Panel and the FSA regard it as important that the overlapping jurisdiction created by the introduction of the market abuse regime does not compromise the effectiveness of the Panel's work.

The Code of Market Conduct, issued in substantially final form in April 2001, contains various "safe harbours" for behaviour which, in the FSA's view, do not amount to market abuse. In relation to the Code, the most significant safe harbours are contained in the rules relating to the timing and content of announcements and other disclosures. Compliance with these rules of the Code cannot amount to market abuse.

The FSA was not prepared to provide a comprehensive safe harbour covering the entire Code, on the basis that some rules are not directed at market abuse and also because the FSA is reluctant to become involved in the interpretation of the Code. In fact, a limited safe harbour will serve to reduce the instances in which the FSA interprets the Code. This, in turn, will reduce regulatory uncertainty, which is beneficial.



In May 2001, the FSA issued its Enforcement Manual in substantially final form setting out guidance on the use of the FSA's enforcement powers provided under the new legislation. The FSA makes it clear that it will not exercise its enforcement powers in a takeover situation other than in exceptional circumstances (e.g. at the request of the Panel). In addition, the FSA will not consider a market abuse complaint in the context of a takeover situation unless the party making the complaint has exhausted the Panel appeal process.

The FSA is authorised under the Financial Services and Markets Act 2000 to make rules endorsing the Code. Endorsement provides statutory support (in particular, the FSA's enforcement powers) for the non-statutory Panel system of takeover regulation. The principal effect of endorsement is that if a firm fails to comply with the Code, the Panel can request the FSA to take enforcement action against that firm. In broad terms, the FSA has sought to replicate the endorsement regime which exists under the Financial Services Act 1986. In addition, the proposed cold shoulder and co-operation rules replicate, to a large extent, rules currently in place.

Finally, the Executive has renewed its discussions with the FSA on the implementation of detailed operating arrangements prescribing the relationship between the FSA and the Panel.

In summary, the Human Rights Act, the Financial Services and Markets Act and the proposed European Takeover Directive have each presented the Panel with significant challenges to which it has responded constructively. Much remains to be done, but sustained by a wide consensus, both within and outside the City, that the Panel provides a unique and valuable service, we face the future with cautious confidence.

PETER SCOTT QC  
18 July 2001

**THE CODE COMMITTEE**

AS AT 18 JULY 2001

DONALD H BRYDON CHAIRMAN	CHAIRMAN AND CHIEF EXECUTIVE AXA INVESTMENT MANAGERS
JOHN D COOMBE	CHIEF FINANCIAL OFFICER GLAXO SMITH KLINE
HEYDAR KAHNAMOUYIPOUR	MANAGING DIRECTOR UBS WARBURG
ALAN D PAUL	PARTNER ALLEN & OVERY
THOMAS M ROSS	DIRECTOR ROYAL LONDON MUTUAL INSURANCE SOCIETY
IAN G SALTER	DEPUTY CHAIRMAN LONDON STOCK EXCHANGE
CHRISTOPHER SMITH	MANAGING DIRECTOR CAZENOVE & Co CORPORATE FINANCE

CHAIRMAN OF THE CODE COMMITTEE'S STATEMENT

The Code Committee held its first meeting on 4 May 2001, at which its method of operation was discussed. It will meet as often as is necessary to consider proposals to amend the Code and the Rules Governing Substantial Acquisitions of Shares. Such proposals will normally be submitted by the Panel or the Executive, but may come from any source. The Committee will report on its work from time to time to the Panel.

DONALD BRYDON

18 July 2001

## **REPORT BY THE DIRECTOR GENERAL**

The number of takeover proposals published last year, 198, is a considerable reduction on the exceptional level of 305 in the previous year. Activity in the current year is running at a low level.

### **THE EXECUTIVE'S GENERAL APPROACH TO "PUT UP OR SHUT UP"**

An announcement obligation may arise under Rule 2.2 of the Code (for example, as a result of rumour and speculation) at a time when a potential offeror is contemplating making an offer for a company but is not in a position to be committed to making a firm offer. In such circumstances, the potential offeror is normally permitted under Rule 2.4 of the Code to announce merely that he is considering making an offer for the company.

Following such an announcement there is no fixed deadline in the Code by which a potential offeror must clarify his intentions. The timing of any subsequent announcements will depend, inter alia, on the reaction of the offeree board to the potential offeror and the state of preparedness of the potential offeror.

Where the offeree board is prepared to enter into a dialogue with the potential offeror, many months may pass before an offer is finally made. Provided the target company is content for the uncertainty to continue, the Executive would not normally seek to intervene in the process. However, in certain circumstances, usually where the potential offeror is unwelcome, the target company may request the Executive to intervene by imposing a deadline by which the potential offeror must clarify his intentions, i.e. "put up or shut up".

In this regard, "put up" is communicated by way of a Rule 2.5 firm offer announcement and "shut up" by way of a no intention to bid statement.

Requests by the target company for the offeror to be required to "put up or shut up" are generally made at the early stages of an offer period. In such cases, the Executive endeavours to balance the interests of shareholders in not being deprived of the opportunity to consider the possibility of an offer against potential damage to the target company's business arising from the uncertainty surrounding the company and the distraction for management. In this regard, the Executive's normal approach is to seek clarification by the potential offeror within six to eight weeks from the original announcement of the possible offer. If a request is made at a later stage, the

Executive will consider the circumstances at that time.

If the potential offeror clarifies his intentions by way of a no intention to bid statement, this statement will be governed by Rule 2.8 and the potential offeror will normally be prevented from making an offer for the company for a period of six months (unless there is a material change of circumstances and subject to any specific reservations set out in the statement). However, if the Executive considers that the offeree company has suffered excessive siege as a result of the potential offeror's actions, it may impose the restrictions contained within Rule 35.1(b) and prevent the potential offeror from making an offer for a period of 12 months.

#### RULE 2.8 – STATEMENTS OF INTENTION NOT TO MAKE AN OFFER

Rule 2.8 provides that a person who makes a statement that he does not intend to make an offer for a company will normally be bound by that statement for a period of six months (unless there is a material change of circumstances and subject to any specific reservations set out in the statement).

Occasionally, speculation will appear in the press concerning a possible offer by a particular person, when the reputed offeror has in fact not been considering any offer for the company in question and there is no foundation for that speculation.

The reputed offeror must in such circumstances take care, if he chooses to comment on the speculation, not to make a statement of a kind to which Rule 2.8 applies if he does not wish to be bound by the statement for a period of six months. The Executive should be consulted before a statement is made in such circumstances. A public statement simply denying that the speculation has any foundation is likely to be construed by the Executive as a statement that the reputed offeror has no intention to bid for the company concerned.

#### DUAL LISTED COMPANIES

The establishment of a dual listed company structure when no person, or persons acting in concert with him, obtains or consolidates control of a Code company is not normally considered to be a transaction to which the Code applies. Depending upon the method by which a dual listed company structure is established, therefore, the implementation of such a structure may well not be considered to be an offer as defined in the Code. Parties or their advisers proposing to implement such a structure in relation to a company to which the Code applies should consult the Executive at the earliest opportunity.

Following the implementation of a dual listed company structure, the Code will continue to

apply to companies which fall within the jurisdiction of the Code. Where the parties to the dual listed company structure have effectively consolidated shareholder voting in both companies by way of a combined voting structure, an acquisition of shares in a non-Code company will constitute an acquisition of voting rights in a Code company. This will be relevant for the purposes of, inter alia, Rules 6, 9, 10 and 11.

For the purposes of establishing the mandatory bid threshold for Rule 9, the test the Executive applies in relation to the acquisition of voting rights is by reference to the combined voting structure. The calculation of the acceptance condition threshold for Rule 10 purposes is, therefore, also predicated on a combined voting test.

#### INDUCEMENT FEES

Rule 21.2 sets out certain safeguards which an offeree company must observe prior to agreeing to pay an inducement fee to an offeror. These include a requirement that the inducement fee must be de minimis, the test for which is that it must normally be no more than 1% of the offer value. The rationale for this limit (and Rule 21.2 generally) is to prevent the possible payment of an inducement fee from frustrating a potential competing bid. Where an offeror holds an existing shareholding in the offeree, the offer value is clearly less than the value of the whole of the offeree company. In the light of the rationale for Rule 21.2, the Executive will normally consider it appropriate to apply a de minimis test in these circumstances of 1% of the value of the offeree company calculated by reference to the offer price.

The Executive has also been considering the application of Rule 21.2 to the payment of an inducement fee in the context of a whitewash transaction. The Executive has concluded that it will generally apply Rule 21.2 in these circumstances. The de minimis test will normally be taken to be 1% of the value of the offeree company immediately prior to the announcement of the proposed whitewash transaction.

#### NOTE 3 ON RULE 20.1

Meetings of representatives of the offeror or the offeree company with shareholders may take place, provided no material new information is forthcoming, and an appropriate representative of the financial adviser is present and writes to the Executive to the effect that no material new information was forthcoming at the meeting. Such meetings are sometimes held before an offer period exists. The provisions of Rule 20.1 extend to such circumstances and the Executive would expect to receive a letter from the appropriate financial adviser, by 12 noon on the business day following the date of the meeting, stating that no material new information was forthcoming and no significant new opinions were expressed at such meeting, which will not be included in the announcement of the offer to be made under Rule 2.5, if and when such an announcement is made.

#### DRAG ALONG RIGHTS

The Executive is aware that the Articles of Association of certain unlisted public companies contain provisions pursuant to which shareholders who together control in excess of a specified percentage of the voting rights of the company and who are proposing to dispose of their shareholdings to the same person, whether pursuant to an offer or otherwise, may, upon that disposal becoming effective, require the remaining shareholders in the company to transfer their shares to that offeror or purchaser on equivalent terms - so called “drag along” rights. The inclusion of drag along rights in the Articles cannot preclude the protections afforded by the Code to shareholders on a potential change of control. Accordingly, the Code will invariably apply to such a transaction, although its precise effect will depend on the facts of the particular case. In the light of this, the Executive should always be consulted prior to the proposed triggering of any drag along rights.

#### ACCOUNTS

In the year to 31 March 2001, contract note levy receipts fell slightly from £1,379,124 to £1,248,883; income from document fees decreased more significantly from a gross figure of £7,731,500 in the previous year to £5,915,000. Expenditure rose to £9,322,716 compared with £7,319,089 in the previous year. As a result, a modest surplus last year was turned into a deficit of some £1.85 million in the year ended 31 March 2001.

Compared with previous years, gross income fell sharply as the number of bids was considerably reduced. Accordingly, it was decided that there should be no rebate of document fees this year, particularly given the growth in expenditure. Staff costs rose significantly, partly as the number of personnel continued to increase but also as a reflection of the upward pressure on remuneration in the City during an exceptional year. In addition, a number of issues, e.g. the Human Rights Act, the Financial Services and Markets Act and the European Takeover Directive all necessitated an unexpectedly high level of external advice. Finally, costs associated with the Panel’s computer system continued to rise.

The Panel’s income is always extremely difficult to predict but the intention is nonetheless to maintain a surplus sufficient to deal with an unexpected drop in income. As the relationship between income and expenditure is volatile, the Panel continues to monitor its expenditure and sources of income carefully, and has recently announced revisions to its scale of document charges.

Philip Remnant  
18 July 2001

### **PETER FRAZER**

My first meeting with Peter Frazer was in March 1968 in a small dark cupboard-like room adjoining the Discount Office at the Bank of England. He had been seconded from the Bank to form, with Peter Cooke, the secretariat set up to service the newly established City Panel under the chairmanship of Sir Humphrey Mynors. Little did I know then that this large, cheerful and courteous man struggling with the obscurities and complexities of the recently published “Green Book” (the first edition of the Code) was to become a close associate of mine at the Panel for nearly three decades.

In those early days all Code rulings were made by the full Panel itself, the task of the secretariat being to give preliminary advice as to procedure and, as Peter described it, to “shuffle the paper” in preparation for Panel hearings. I came away from the Discount Office not only much impressed by his grasp of the essentials of the principles and rules underlying the Code but also re-assured that this new system of takeover regulation was in the hands of someone so refreshingly sensible and flexible.

When, in its initial year of operation, the Panel at its formal meetings had to consider as many as 200 specific issues and 80 different bids it was realised that a system which required the full Panel to be in almost continuous session was unworkable and in May 1969 a small full-time Executive was established with Ian Fraser as the first Director General and Peter as one of its members.

The original intention was that all members of the Executive should be recruited on a secondment basis from professional firms and financial institutions in the City. By 1973, however, the importance of continuity in Panel practice and Code interpretation pointed to the need for a permanent element in the Executive's staff in addition to the regular in-flow of short-term secondees and Peter, who was due to return to the Bank of England on the expiry of his secondment period, was asked to become the first permanent Panel employee. Later that year he was appointed Deputy Director General, a position he was to hold until his retirement in 1996. Peter was, therefore, to serve on the Panel staff continuously for over 28 years under five different Chairmen and twelve Directors General.

Peter was dedicated to the success of the Panel and to the system of self-regulation it embodies. He made a massive contribution in the early years to the establishment of the Panel's reputation and authority in the City – particularly among those merchant banks and stockbrokers who came to rely on his advice and his robust common-sense approach to the problems arising in the conduct of takeovers. With the passage of time his comprehensive knowledge and understanding of the

developing Code and of the underlying historical purpose of each of the Rules became unequalled and his recollection of past cases and Panel rulings was encyclopaedic. In his dealings with practitioners and parties to bids he combined a firmness and decisiveness with a lightness of touch calculated to leave even disappointed applicants with a feeling that they had been treated sensibly and fairly.

Apart from his visible public role at the Panel, Peter was for many years responsible for the administration of the organisation and for its systems, staffing and financing. Successive Directors General will recall, as I do, and will be deeply grateful for, the smoothness, efficiency and good humour with which he introduced us to the office systems on our arrival at the Panel and the patience with which he explained them. For the staff as a whole he made the Panel a happy and satisfying place of employment despite the unpredictable work-flows and irregular and often long and late working hours.

All those who worked with Peter on the Executive will recall and remember with gratitude his loyalty and friendship. He will be greatly missed.

John Hull  
Director General 1972 - 1974  
Deputy Chairman 1987 - 1999



**ACCOUNTS FOR THE YEAR ENDED  
31 MARCH 2001**

INCOME AND EXPENDITURE ACCOUNT  
FOR THE YEAR ENDED 31 MARCH 2001

	NOTE	2001 £	2000 £
INCOME			
Contract note levy		1,248,883	1,379,124
Document fees	2	5,915,000	5,885,725
City Code sales		48,109	41,885
Other income		3,581	9,645
		<u>7,215,573</u>	<u>7,316,379</u>
EXPENDITURE			
Personnel costs		6,234,242	4,554,385
Accommodation costs		449,173	800,050
Other expenditure		2,639,301	1,964,654
		<u>9,322,716</u>	<u>7,319,089</u>
(DEFICIT) BEFORE INTEREST AND TAXATION		(2,107,143)	(2,710)
Interest receivable		330,529	350,246
Taxation	3	(73,560)	(79,899)
(DEFICIT) / SURPLUS FOR THE YEAR		<u>(1,850,174)</u>	<u>267,637</u>
ACCUMULATED SURPLUS AT BEGINNING OF YEAR		<u>5,950,020</u>	<u>5,682,383</u>
ACCUMULATED SURPLUS AT END OF YEAR		<u>4,099,846</u>	<u>5,950,020</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  
2000 – 2001 REPORT

BALANCE SHEET  
AT 31 MARCH 2001

	NOTE	2001 £	2000 £
CURRENT ASSETS			
Debtors and prepayments	4	614,061	889,917
Bank and cash		5,132,464	5,772,187
		<u>5,746,525</u>	<u>6,662,104</u>
CURRENT LIABILITIES			
Creditors and accruals	5	1,573,119	632,251
Corporation tax		73,560	79,833
		<u>1,646,679</u>	<u>712,084</u>
Net assets		<u>4,099,846</u>	<u>5,950,020</u>
Representing:			
ACCUMULATED SURPLUS		<u>4,099,846</u>	<u>5,950,020</u>

The accounts on pages 18 to 22 were approved by the Finance Committee on 11 July 2001 and signed on behalf of the Members by:

PETER SCOTT QC

The Chairman, Panel on Takeovers and Mergers

ANTONY BEEVOR

The Chairman, Finance Committee

CASHFLOW STATEMENT  
FOR THE YEAR ENDED 31 MARCH 2001

	NOTE	2001 £	2000 £
Net cash (outflow) from operating activities	6	<u>(901,614)</u>	<u>(209,590)</u>
Returns on investments and servicing of finance			
Interest received		341,724	348,357
Net cash inflow from returns on investments and servicing of finance		<u>341,724</u>	<u>348,357</u>
Taxation			
UK corporation tax paid		(79,833)	(109,113)
(Decrease) / increase in cash	7	<u><u>(639,723)</u></u>	<u><u>(29,654)</u></u>

NOTES TO THE ACCOUNTS

1. BASIS OF PREPARATION OF ACCOUNTS AND ACCOUNTING POLICIES

- The accounts have been prepared on the historical cost basis of accounting and in accordance with applicable Accounting Standards in the United Kingdom.
- All expenditure of a capital nature is written off in the year in which it is incurred.
- Income and expenditure is accounted for on an accruals basis.

2. DOCUMENT FEES

In the year to 31 March 2001 document fees generated £5,915,000 compared with £7,731,500 in 2000. The Panel decided that there should be no rebate of the amount levied in the year to 31 March 2001 (2000: 25% rebate). The figure shown in the Income and Expenditure Account is net of any rebate.

	2001 £	2000 £
3. TAXATION		
UK corporation tax payable on interest income received:		
Current	<u>73,560</u>	<u>79,899</u>
	<u><u>73,560</u></u>	<u><u>79,899</u></u>

Corporation tax is payable at a rate of 20% (2000: 20%) for the first £300,000 of taxable profit and thereafter at an effective rate of 32.5% (2000: 32.5%).

THE TAKEOVER PANEL  
2000 – 2001 REPORT

NOTES TO THE ACCOUNTS *continued*

	<b>2001</b>	<b>2000</b>
4. DEBTORS AND PREPAYMENTS	£	£
Contract note levy accrued income	293,183	454,191
Document fees	168,065	315,500
Interest receivable	22,718	33,913
Other debtors and prepayments	130,095	86,313
	<u>614,061</u>	<u>889,917</u>
	<b>2001</b>	<b>2000</b>
5. CREDITORS AND ACCRUALS	£	£
Personnel costs	910,414	288,884
Legal and professional fees	266,649	78,875
Document fees	178,002	229,096
Other creditors and accruals	218,054	35,396
	<u>1,573,119</u>	<u>632,251</u>
	<b>2001</b>	<b>2000</b>
6. NET CASH (OUTFLOW) FROM OPERATING ACTIVITIES	£	£
(Deficit) before interest and taxation	(2,107,143)	(2,710)
Decrease / (increase) in debtors and prepayments	264,661	(347,930)
Increase in creditors	940,868	141,050
Net cash (outflow) from operating activities	<u>(901,614)</u>	<u>(209,590)</u>

THE TAKEOVER PANEL  
2000 – 2001 REPORT

NOTES TO THE ACCOUNTS *continued*

	<b>2001</b>	<b>2000</b>
7. RECONCILIATION OF NET CASHFLOW TO MOVEMENT IN NET FUNDS	£	£
(Decrease) / increase in cash in period	(639,723)	29,654
Change in net funds	(639,723)	29,654
Net funds at 1 April 2000	5,772,187	5,742,533
Net funds at 31 March 2001	5,132,464	5,772,187

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

We have audited the accounts on pages 18 to 22, which have been prepared under the historical cost convention and the accounting policies set out on page 20.

RESPECTIVE RESPONSIBILITIES OF PANEL MEMBERS AND AUDITORS

As described on page 23 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 United Kingdom 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 2001 and of its deficit and cash flows for the year then ended.

PRICEWATERHOUSECOOPERS

Chartered Accountants and Registered Auditors, London

11 July 2001

THE TAKEOVER PANEL  
2000 – 2001 REPORT

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 2001. 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. In addition, the Panel met to consider one disciplinary case. No cases were heard by the Appeal Committee.

There were 198 (year ended 31 March 2000–2001) published takeover or merger proposals of which 193 (298) reached the stage where formal documents were sent to shareholders. These proposals were in respect of 186 (285) target companies.

22 (35) offers were not recommended at the time the offer document was posted. 15 (24) of these remained unrecommended at the end of the offer period, of which 9 (14) lapsed.

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

A further 13 (29) cases, which were still open at 31 March 2001, are not included in these figures.

The Executive was engaged in detailed consultations in another 208 (178) 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.

	<b>2000-2001</b>	<b>1999-2000</b>
OUTCOME OF PROPOSALS		
Successful proposals involving control (including schemes of arrangement)	161	256
Unsuccessful proposals involving control (including schemes of arrangement)	20	26
Proposals withdrawn before issue of documents (including offers overtaken by higher offers)	5	7
Proposals involving minorities, etc	12	16
	<u>198</u>	<u>305</u>

**STATEMENTS ISSUED BY THE PANEL  
DURING THE YEAR  
ENDED 31 MARCH 2001**

**2000**

12 July	2000 / 8	2000 ANNUAL REPORT AND REVISED CODE <i>(Extracts from the Report by the Director General contained in the 2000 Annual Report)</i>
2 August	2000 / 9	APPOINTMENT OF NICOLA MILLER AS JOINT SECRETARY <i>(Panel Executive appointment)</i>
10 August	2000 / 10	ST DAVID CAPITAL PLC AND WPD LIMITED – HYDER PLC <i>(Announcement of sealed bid process)</i>
11 August	2000 / 11	ST DAVID CAPITAL PLC AND WPD LIMITED – HYDER PLC <i>(Appeal by St David Capital in connection with sealed bid procedure)</i>
16 August	2000 / 12	ST DAVID CAPITAL PLC AND WPD LIMITED – HYDER PLC <i>(Panel discussed appeal by St David Capital about the operation of sealed bid procedure)</i>
18 August	2000 / 13	ST DAVID CAPITAL PLC AND WPD LIMITED – HYDER PLC <i>(Fuller statement about dismissal of appeal announced in 2000 / 12)</i>
18 August	2000 / 14	ST DAVID CAPITAL PLC AND WPD LIMITED – HYDER PLC <i>(Clarification of offer timetable following appeal)</i>

**2001**

17 January	2001 / 1	APPOINTMENT OF PHILIP REMNANT AS DIRECTOR GENERAL <i>(Panel Executive appointment)</i>
7 February	2001 / 2	CORPORATE RESOLVE PLC AND FOCUS DYNAMICS PLC <i>(Panel criticised directors of the offeror and its advisers for breaches of the Code during the offer)</i>
15 February	2001 / 3	PANEL MEMBERSHIP ; CODE COMMITTEE; INTRODUCTION TO THE TAKEOVER CODE <i>(Appointment of Panel members and Chairman of Code Committee; Amendments to the Introduction to the Code and SARs)</i>
12 March	2001 / 4	TAKEOVER PANEL WEBSITE <i>(Launch of Panel Website)</i>
29 March	2001 / 5	APPOINTMENT OF CHARLES CRAWSHAY AS JOINT SECRETARY <i>(Panel Executive appointment)</i>

For details of how to obtain copies of the Code, Panel Statements and Annual Reports contact:  
Panel on Takeovers and Mergers,  
P O Box No 226, The Stock Exchange Building,  
London EC2P 2JX. Telephone: 020 7382 9026  
or available on our website at [www.thetakeoverpanel.org.uk](http://www.thetakeoverpanel.org.uk)



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