THE TAKEOVER PANEL

STATUTORY WATER COMPANIES

In recent months the Panel executive has received a number of enquiries concerning the treatment of Statutory Water Companies under the City Code on Take-overs and Mergers ("the Code") and the Rules Governing Substantial Acquisitions of Shares ("the SARs").

The Introduction to the Code states that the Code applies, where appropriate, to offers for statutory and chartered companies. The Introduction to the SARs states that the SARs apply, inter alia, to transactions in the shares of listed companies.

The Panel has ruled that Statutory Water Companies, whose shares are publicly held, are subject to both the Code and the SARs. The directors of water companies, together with investors in their voting shares or stock, should be aware of their obligations under the Code and the SARs, particularly with regard to disclosures of dealings.

A number of Statutory Water Companies have weighted voting structures, whereby either there is an overall limit on the number of votes that may be exercised by a shareholder or stockholder, or there are fewer votes per share or stock unit the larger a holding becomes. This causes problems of interpretation in measuring percentages of voting rights held, both under the SARs and in respect of Rules 5, 8, 9 and 11 of the Code. A simple calculation of the proportion of currently exercisable votes, even if it were practical, would not deal effectively with a situation where an investor has a non-disclosable holding but is able to break it down swiftly into a number of different names to increase his overall votes.

Nor would an involuntary increase in the percentage of votes held, caused by changes in other holdings, be satisfactorily dealt with.

With regard to the SARs and the Code, the Panel has decided that, for the time being, the percentage measurements on substantial acquisitions and for disclosure purposes under the SARs and for the purposes of Rules 5, 8, 9 and 11 under the Code, should be calculated on the maximum possible voting capital of the company. Thus the investor should calculate his own theoretical voting power were his holding, together with the holdings of any person acting in concert, to be broken down to the maximum extent and then take that number of votes as a percentage of the total number of votes arising if all other holders did the same. It should be noted that it would thus be possible, in some circumstances, for a shareholder or stockholder to exercise 30% or more of the actual voting rights in respect of such a Statutory Water Company without incurring an offer obligation. A Rule 9 obligation would, however, be incurred if a person, together with those acting in concert with him, acquired shares or stock through a relevant threshold percentage, measured on the basis described above.

Generally, any potential offeror or substantial investor in such water companies should consult the Panel at an early stage. This would include circumstances where an investor was considering tendering for voting shares or stock in a new issue such that, if accepted in full, the investor might, on the basis described above, hold 30% or more. It is accepted that the Rules of the Code have to be interpreted flexibly in the light of the unusual capital structures of Statutory Water Companies, and the Panel would intend to deal with many of the specific problems, including comparability between offers for different classes of capital, as they arise.

Investors, financial advisers and stockbrokers are urged to be aware of both their own and their clients' disclosure obligations as regards dealings in voting shares or stocks of Statutory Water Companies, whether under the SARs or under Rule 8 of the Code, and to consult the Panel where necessary.

The Panel may, following experience in operating the above, review this procedure to ensure an equitable and practical application of the Code and SARs to Statutory Water Companies.

6 June 1988