THE TAKEOVER PANEL

MORRIS ASHBY PLC ("MORRIS ASHBY")

In the early afternoon of Monday, 1 December Morris Ashby announced that it was in talks which might lead to an offer being made for the company. This announcement followed a rise in the Morris Ashby share price earlier in the day. Subsequently, on 3 December, Automotive Components Investments plc ("ACI") announced a recommended cash offer for Morris Ashby of 400p per share. Morris Ashby shareholders are also entitled to receive and retain a special dividend of 6.5p net per share and the interim dividend of 3.5p net per share.

The Panel Executive became aware of ACI's intended offer on Friday, 28 November, as a result of consultation on certain issues by ACI's advisers. Following an examination of the background by the Executive it has become clear that Morris Ashby was in talks about the possibility of an offer for a considerable period prior to 1 December. During this period there was a substantial rise in Morris Ashby's share price. The Executive was not consulted about this by Williams de Broë, the financial advisers to Morris Ashby, as it should have been. This was a breach of the Code.

Rule 2.2 states that an announcement is required, inter alia:

> "(c) when, following an approach to the offeree company, the offeree company is the subject of rumour and speculation or there is an untoward movement in its share price."

The Note on Rule 2.2 states:

> "Panel to be consulted
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> A movement of approximately 10% should be regarded as untoward for the purposes of Rule 2.2(c), (d) and (f). When there is such a movement or the offeree company is the subject of rumour and speculation, the Panel should be consulted if it is not proposed to make an immediate announcement."

Rule 2.3 allocates the responsibility for making an announcement and states that:

> "Following an approach to the board of the offeree company which may or may not lead to an offer, the primary responsibility for making an announcement will normally rest with the board of the offeree company which must, therefore, keep a close watch on its share price."

The Panel regards financial advisers as being responsible for ensuring compliance with Rule 2, and accordingly the responsibility rested in this case with Williams de Broë.

ACI is a company recently formed for the purpose of acquiring Morris Ashby, with financing arranged by Windward Capital Partners ("Windward"), a US investment manager of equity and mezzanine funds. Discussions with Windward about the potential acquisition of Morris Ashby commenced in August, following preliminary contacts made earlier in the year. These discussions, which continued at varying levels of intensity, led ultimately to the recommended offer announced on 3 December.

Between mid-August and 28 November, the date of the initial named contact with the Executive, the Morris Ashby share price rose from 280p to 345p (having reached a high of 356p in early October), an increase of approximately 23%. The share price low point

for the year, 233p, was in late-June. Whilst this was after preliminary contact had been made with Windward, the Executive understands that the focus of discussions moved from commercial co-operation with a subsidiary of Windward to a possible offer for Morris Ashby only in mid-August.

Williams de Broë kept a close watch on the market throughout this period but took the view that the share price rise was attributable to Morris Ashby's preliminary results announcement on 8 July, which Williams de Broë considered to be ahead of market expectations, a positive statement made at the company's Annual General Meeting on 11 September, improving market sentiment towards the company and various other market factors, noting that there was no bid speculation in the media. When the firm contacted the Stock Exchange on 17 September to discuss the share price, the talks with Windward were not mentioned. On the same day the firm raised a separate Code issue with the Executive on a "no names" basis but did not inform the Executive that the share price of its corporate client had been rising.

The Executive is naturally concerned about confidentiality in relation to bid approaches and the development of false markets. It acknowledges that the factors which led Williams de Broë to its view that the share price movement was not untoward might constitute a plausible explanation for the rise.

If, following an approach, it is not proposed to make an immediate announcement when there is a movement of approximately 10% in the offeree company's share price, the Panel must be consulted on a named basis and be informed of all relevant facts. The Panel considers this obligation to be of the utmost importance, as it has emphasised in its last two Annual Reports. It is not acceptable for advisers to rely upon their own assessments of market prices and activity.

In this case, the Executive accepts that Williams de Broë's failure to raise the matter was not as a result of a deliberate intent to prevent the Executive from making its own judgement and discussing the need for an announcement. Nevertheless it had that effect and was therefore a breach of an essential Code requirement.

23 December 1997