THE TAKEOVER PANEL

PANEL EXECUTIVE PRACTICE STATEMENTS

For a number of years, the Director General's Report in the Panel's Annual Report and Accounts has provided guidance as to how the Executive interprets various provisions in the Code and the SARs. Following discussions with the Panel and the Code Committee, the Executive has decided to alter this practice and instead to publish guidance on relevant issues as appropriate during the year.

These Practice Statements, like the content of the Annual Report, will not form part of the Code or the SARs. They are intended to assist companies involved in bids and practitioners by providing informal guidance as to how the Executive normally interprets and applies relevant provisions of the Code and the SARs in certain circumstances. They are not, however, binding on the Executive or the Panel and are not a substitute for consulting the Executive to establish how the Code and the SARs apply in a particular case. Practice Statements No. 1 to 4 are attached to this Statement.

The Practice Statements will be available on the Panel's website at www.thetakeoverpanel.org.uk or by contacting the Panel on 020 7382 9026. The Executive intends to publish an index to Panel Statements on the website in due course to assist practitioners.

12 February 2004

PRACTICE STATEMENT NO. 1

RULE 20.1 – EQUALITY OF INFORMATION

Rule 20.1 provides that information about companies involved in an offer must be made equally available to all shareholders as nearly as possible at the same time and in the same manner. This Rule is derived from General Principle 2 which is a fundamental principle of the Code in providing protection to shareholders in the offeree company.

Note 3 on Rule 20.1 permits representatives of the offeror or offeree company or their respective advisers to hold meetings with shareholders of either party and with analysts, stockbrokers and fund managers provided that no material new information is forthcoming and no significant new opinions are expressed. In order to ensure that this takes place, an adviser to the relevant party is normally required to attend the meeting and to confirm in writing to the Panel that this obligation has not been breached. This helps the Executive to ensure that all shareholders and market participants have access to the same information in making their acceptance decisions or decisions to trade in the shares of the offeror or offeree company.

It is important to note that Rule 20.1 applies equally to significant new opinions of the offeror or the offeree company on an offer as it does to factual information released by or on behalf of either such party, even if such opinions are based on publicly available information. As a result, it is not acceptable for an offeror or offeree company or their respective advisers to make significant arguments in support of or against an offer to selected shareholders, analysts or stockbrokers unless these

opinions have been disclosed to all shareholders and to the market generally by means of a circular and/or a public announcement.

The Executive should be consulted in cases of doubt.

Practice Statements are issued by the Executive to provide informal guidance to companies involved in takeovers and practitioners as to how the Executive normally interprets and applies relevant provisions of the Code and the SARs in certain circumstances. Practice Statements do not form part of the Code or the SARs. Accordingly, they are not binding on the Executive or the Panel and are not a substitute for consulting the Executive to establish how the Code and the SARs apply in a particular case. All Practice Statements issued by the Executive are available on the Panel's website at www.thetakeoverpanel.org.uk.

12 February 2004

PRACTICE STATEMENT NO. 2

RULE 20.2 - SITE VISITS AND MEETINGS WITH MANAGEMENT

Under Rule 20.2 any information given to one offeror or potential offeror must, on request, be given equally and promptly to another offeror or bona fide potential offeror even if that other offeror is less welcome. In the absence of such a requirement, a competing, and in the eyes of the offeree company board perhaps less welcome, offeror might be dissuaded from bidding and the shareholders of the offeree company might therefore be deprived of the opportunity to consider another, potentially more favourable, offer.

In the view of the Executive, Rule 20.2 extends to site visits and meetings with offeree company management in addition to information disclosed by other means. Accordingly, if one offeror or potential offeror has been afforded a site visit or granted access to management with a view to discussing the offeree company's business, an equivalent site visit or meeting with management must be granted to another offeror or bona fide potential offeror if it so requests.

The Executive recognises that it may not be possible to replicate exactly the same site visit or management access for a subsequent offeror as was given to the first offeror, but considers that the offeree company and its financial adviser are responsible for ensuring, as far as practicable, that the subsequent offeror is afforded equivalent access and equality of treatment. In the case of a meeting, and consistent with Note 1 on Rule 20.2, offeree company management would not be required to provide specific items of information to the subsequent offeror at that meeting unless the specific information requested had previously been provided to another offeror or potential

offeror. Should there be any dispute as to whether the provisions of Rule 20.2 have been complied with, the relevant financial adviser will be expected to satisfy the Panel that they have been.

The Executive should be consulted in cases of doubt.

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12 February 2004

PRACTICE STATEMENT NO. 3

RULE 20.2 – CONTROLLED AUCTIONS

Under Rule 20.2 any information given to one offeror or potential offeror must, on request, be given equally and promptly to another offeror or bona fide potential offeror even if that other offeror is less welcome. Note 2 on Rule 20.2 goes on to limit the conditions that an offeree company can attach to the passing of information pursuant to the Rule since the imposition of onerous conditions might dissuade a subsequent offeror from bidding and the shareholders of the offeree company might therefore be deprived of the opportunity to consider another, potentially more favourable, offer.

Note 2 only applies in respect of the passing of information requested by an offeror or potential offeror where that information has already been provided to an earlier offeror or potential offeror. It does not address the position of the first offeror to which information is provided, and the Code does not seek to intervene in relation to the conditions that an offeree company might seek to impose on the first offeror or potential offeror because Rule 20.2 does not apply at that stage.

On occasion, an offeree company might want to approach a number of potential offerors asking them to participate in a controlled auction process to acquire the company. In such a case, each of the potential offerors receiving information as part of the auction process will be considered to be a "first offeror" for the purposes of Note 2 on Rule 20.2, provided that each of them agrees to the conditions on which it will receive the information before that information is passed to any of them. Note 2

does not, therefore, seek to limit the conditions that the offeree company can attach to the passing of information to those potential offerors and the offeree company can agree different conditions with each of the potential offerors concerned.

This will not, however, affect the position of any subsequent offeror who was not approached by the offeree company to participate in the auction or of any potential offeror who was initially approached but who refused to agree to the conditions the offeree company was seeking to impose before information was passed to other potential offerors. Such persons will continue to benefit from the protections in Rule 20.2 and Note 2.

The Executive should be consulted in cases of doubt.

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12 February 2004

PRACTICE STATEMENT NO. 4

RULE 21.2 – 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 value of the offeree company calculated by reference to the offer price. The rationale for this limit (and Rule 21.2 generally) is to prevent the possible payment of an inducement fee from frustrating a competing bid.

In determining the maximum amount permitted for an inducement fee, the Executive will normally consider that:

- the 1% limit can be calculated on the basis of the fully diluted equity share capital of the offeree company;

- any VAT payable as a result should be taken into account in determining whether the 1% limit would be exceeded (except to the extent that such VAT is recoverable by the offeree company);

- on a securities exchange offer, the value of the offeree company for these purposes will be fixed by reference to the value of the offer at the time of announcement of the transaction (and will not fluctuate as a result of subsequent movements in the price of the consideration securities after announcement); and

- where the inducement fee is agreed prior to the announcement of a firm offer, the value of the offeree company will be determined by reference to the expected value of the offer at the time the fee is agreed.

The Executive also interprets Rule 21.2 as permitting an offeree company to agree inducement fees with two or more offerors or potential offerors, each up to the relevant 1% limit, notwithstanding that in certain circumstances the aggregate amount payable by the offeree company might exceed 1% of the value of the offeree company.

A further safeguard which must be observed prior to agreeing to pay an inducement fee is that the offeree company board and its financial adviser must provide certain written confirmations to the Panel. Such confirmations should normally address the following points:

- confirmation that the inducement fee arrangements were agreed as a result of normal commercial negotiations;

- an explanation of the circumstances in which the fee becomes payable and the basis on which such circumstances were considered appropriate;

- any relevant information concerning possible competing offerors, for example the status of any discussions, the possible offer terms, any pre-conditions to the making of an offer, the timing of any such offer etc.;

- confirmation that there are no other side agreements or understandings in relation to the relevant arrangements that are not fully disclosed; and

- confirmation that, in the opinion of the offeree company board and its financial adviser, the agreement to pay the inducement fee is in the best interests of offeree company shareholders.

The Executive should be consulted at the earliest opportunity in all cases where an inducement fee or any similar arrangement is proposed.

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