THE TAKEOVER PANEL

RELEASE OF PANEL EXECUTIVE PRACTICE STATEMENTS NO. 14 AND NO. 15

The Panel Executive has today released Practice Statements No. 14 (Schemes of Arrangement) and No. 15 (Inducement fees – agreements between the offeror and the offeree company etc.), copies of which are attached to this Statement.

9 November 2005

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PRACTICE STATEMENT NO. 14

SCHEMES OF ARRANGEMENT

The Executive has been reviewing the application of the Code to Schemes of Arrangement under Section 425 of the Companies Act 1985 ("Schemes") and wishes to explain how it applies the Code to Schemes in the following areas.

1. Definition of "offer period"

An "offer period" is defined in the Code as follows:

"*Offer period means 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. …*"

In the case of a Scheme, the question arises as to when the offer period ends. There are a number of key events in Schemes. First, resolutions must be passed at the Court convened shareholders' meeting(s) to approve the Scheme proposals (the "Shareholders' Meetings"). Second, in order for a Scheme to become effective, the Scheme proposals must be sanctioned by the Court at a hearing (the "Court Hearing") which is usually convened within 3-4 weeks following the Shareholders' Meetings. Finally, the Court order sanctioning the Scheme is filed with the Registrar of Companies (the "Effective Date") at which point the Scheme will become binding on all shareholders.

Whilst obtaining the shareholder approvals at the Shareholders' Meetings and the sanction of the Court at the Court Hearing are critical to the success of the Scheme, a Scheme will only become legally binding and effective on the

Effective Date. Accordingly, the Executive's approach is normally to regard the offer period as ending on the Effective Date. Provisions in the Code which apply during the "offer period" or "during the course of an offer" (or similar) will normally be interpreted as applying until the Effective Date.

2. Note 1 on Rule 19.3

Note 1 on Rule 19.3 of the Code states:

"*While an offeror may need to consider its position in the light of new developments, and may make a statement to that effect, and while a potential competing offeror may make a statement that it is considering making an offer, it is not acceptable for such statements to remain unclarified for more than a limited time in the later stages of the offer period. Before any statements of this kind are made, the Panel must be consulted as to the period allowable for clarification. This does not detract in any way from the obligation to make timely announcements under Rule 2.*"

In the case of a Scheme, the Executive will normally set the latest date for clarification on or around 10 calendar days prior to the date of the Shareholders' Meetings. In certain cases, however, the Executive may set a date which falls after the date of the Shareholders' Meetings but prior to the Court Hearing. In considering the appropriate latest date for clarification, the Executive will consider each case on its facts and will seek to balance the desirability for shareholders of the offeree company to be given sufficient time to understand the position of any potential competing offeror(s) before they vote on the Scheme proposals against the need for potential competing offeror(s) to have sufficient time to prepare their competing proposals.

The Executive should always be consulted at an early stage as to how the Code applies to Schemes, in particular in relation to timetable issues.

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.

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PRACTICE STATEMENT NO. 15

INDUCEMENT FEES - AGREEMENTS BETWEEN THE OFFEROR AND THE OFFEREE COMPANY ETC.

Rule 21.2 of the Code provides that inducement fees must normally be for no more than 1% of the value of the offeree company, calculated by reference to the offer price. The first two paragraphs of Note 1 on Rule 21.2 state that:

> "*An inducement fee is an arrangement which may be entered into between an offeror or a potential offeror and the offeree company pursuant to which a cash sum will be payable by the offeree company if certain specified events occur which have the effect of preventing the offer from proceeding or causing it to fail … .*
>
> *This Rule will also apply to any other favourable arrangements with an offeror or potential offeror which have a similar or comparable financial or economic effect … .*"

The Executive has been reviewing the operation of the Rule and this Note and wishes to clarify its interpretation as set out below.

Agreements between the offeror and the offeree company

The Executive is consulted about the application of Rule 21.2 to a range of agreements between offerors and offeree companies. These agreements (which are frequently described as "Implementation Agreements" or "Exclusivity Agreements") impose a variety of restrictions on offeree companies. For example, they often seek to restrict the offeree company from soliciting other offers and impose confidentiality obligations on it. Such restrictions may be in addition to the agreement by the offeree company to pay the offeror an inducement fee of up to 1% of the offer value if a

higher offer is recommended by the offeree company board or if certain other specified events occur.

The Executive regards payments for any breach of such an agreement which has the effect of preventing the offer from proceeding or causing it to fail (because, for example, the offeree board successfully solicits a higher bid) as falling within Rule 21.2. Therefore, the maximum total payments to the offeror for such breaches (including any inducement fee) should be 1% of the value of the offeree company, as set out in the Rule. The Executive recognises that payments by the offeree company for breaches which have not prevented the offer from succeeding or caused it to fail will fall outside Rule 21.2.

The Executive is concerned to ensure that agreements entered into by offeree companies properly reflect the provisions of the Code. Therefore, when consulted in cases where an inducement fee or similar arrangement is proposed (as required by Rule 21.2), the Executive will normally require that all relevant agreements include a clause as follows:

> "Nothing in this agreement shall oblige [the offeree company] to pay any amount which the Panel determines would not be permitted by Rule 21.2 of the Takeover Code."

Fully diluted share capital

In Practice Statement No. 4, the Executive stated that the 1% limit in Rule 21.2 can be calculated on the basis of the fully diluted equity share capital of the offeree company. The Executive wishes to clarify that only options and warrants which are "in the money" may be included in the calculation. When determining the value of the fully diluted share capital, the value to be attributed to such warrants and options is their "see-through" value, taking into account the offer price for the relevant shares and any exercise price. The value attributable to convertible securities is the offer price multiplied by the conversion ratio.

Offeree company confirmation

Rule 21.2 requires that the offeree company board and its financial adviser must confirm to the Panel in writing that, inter alia, each believes the inducement fee to be in the best interests of shareholders. The Executive confirms that either each of the board and its financial adviser must separately give the confirmation or a single letter must be signed by both. A letter from the adviser on behalf of the board is not acceptable.

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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