THE TAKEOVER PANEL

ISSUE OF PRACTICE STATEMENTS NO. 20 AND NO. 21 AND AMENDMENT OF PRACTICE STATEMENT NO. 12

The Panel Executive has today issued Practice Statement No. 20 (Rule 2 – secrecy, possible offer announcements and pre-announcement responsibilities) and Practice Statement No. 21 (Rule 3 – independent advice). A copy of each Practice Statement is attached to this Statement.

In addition, Practice Statement No. 12 (Rule 9 and the interests in shares of clients whose funds are managed on a discretionary basis) has been amended by the Panel Executive. The amendments are not material and do not alter the substance of the Practice Statement.

7 March 2008

THE TAKEOVER PANEL

PRACTICE STATEMENT NO. 20

RULE 2 - SECRECY, POSSIBLE OFFER ANNOUNCEMENTS AND PRE-ANNOUNCEMENT RESPONSIBILITIES

1. Introduction

1.1 This Practice Statement describes the way in which the Executive normally interprets and applies certain provisions of Rules 2.1 to 2.4(a) of the Takeover Code (the "Code") that relate to the need for secrecy before, and the timing and contents of, possible offer announcements, including the steps which the Executive expects the parties to a possible offer and their advisers to take in order to ensure that their responsibilities in relation to those provisions are complied with. Rules 2.1 to 2.4(a) have particular relevance to the Code's objective of promoting the integrity of the financial markets and, in applying those Rules, the Executive's overriding objective is to prevent false markets by ensuring the timely release of announcements relating to a possible offer for a company.

1.2 Consultation with the Executive is of crucial importance in the application of the Code and the importance of the requirement to consult the Executive in relation to the application of Rules 2.1 to 2.4(a) cannot be over-emphasised. As a practical matter, if the reason for consulting the Executive relates to whether an announcement is required in particular circumstances, the person concerned should explain that the call is urgent so that it can be dealt with by the Executive as a matter of priority.

1.3 It is common for a potential offeror, or a company in receipt of an approach, to notify its financial adviser or corporate broker of the possible offer or approach at an early stage. The Executive encourages this practice since such advisers will normally have better systems and more resources than their

clients to fulfil the task of monitoring compliance with Rules 2.1 to 2.4(a). As explained in paragraph 3(f) of the Introduction to the Code, financial advisers "have a particular responsibility to comply with the Code and to ensure, so far as they are reasonably able, that their client and its directors are aware of their responsibilities under the Code and will comply with them and that the Panel is consulted whenever appropriate". Where a corporate broker alone has been notified of the possible offer or approach, the Executive may regard the corporate broker as fulfilling the role of a financial adviser.

1.4 If a potential offeror, or a company which is in receipt of an approach or seeking purchasers or offerors, chooses not to notify its financial adviser, compliance with Rules 2.1 to 2.4(a) will be its responsibility and it must immediately put in place appropriate procedures to ensure that the requirements of those Rules are observed.

1.5 In addition, the Executive notes that section 3(f) of the Introduction to the Code provides that the Code applies to "all advisers in so far as they advise on takeovers or other matters to which the Code applies". Where no financial adviser has been appointed, the Executive considers that such advisers as have been appointed will have a particular responsibility to emphasise to their client the need for appropriate procedures to be put in place to ensure that the requirements of Rules 2.1 to 2.4(a) are observed.

2. Secrecy

2.1 As set out in Rule 2.1, the starting point under the Code is that absolute secrecy before an announcement of an offer or possible offer is of vital importance. If secrecy is maintained, it should be possible for offer preparations to be conducted in private, without an announcement being required. Accordingly, all persons who are privy to confidential information concerning an offer or possible offer must conduct themselves so as to minimise the chances of a leak of the information. For example, confidential information should only be passed to another person if it is necessary to do so and if that person is made aware of the need for secrecy.

2.2 In this regard, the Executive notes the FSA's thematic review of controls over inside information relating to public takeovers,[1] including the proposal for an industry-led, voluntary Statement of Good Practice to be used to demonstrate high standards and robust controls in respect of inside information. The Executive is supportive of the FSA's objective of minimising leakage of inside information in relation to public takeovers and welcomes the proposal for a Statement of Good Practice.

2.3 If it appears that there may have been a leak of information, the Executive will, in assessing whether an announcement is required under Rule 2.2, amongst other things, wish to learn immediately from the relevant party or its financial adviser what controls have been put in place in order to keep information secure.

3. The approach

3.1 A key issue in applying Rule 2.2(c), Rule 2.2(d) and Rule 2.3 is whether an offeror has made an "approach" to the offeree company regarding a possible offer. This will affect, in particular, whether the responsibility for making an announcement lies with the potential offeror or with the offeree company.

3.2 For these purposes, the Executive interprets the term "approach" broadly. Each case will turn on its own facts, but the Executive normally considers an approach to have been received when a director or representative of, or an adviser to, an offeree company is informed by, or on behalf of, a potential offeror that it is considering the possibility of making an offer for the company. This may be at a very preliminary stage in the offeror's preparations and the manner of the approach may be informal and no more than broadly indicative. For example, there is no requirement for an approach to be made in writing, or for an indicative offer price (or any terms or

[1] Market Watch, Issue No. 21, July 2007

conditions) to be specified, and it could be made as part of a conversation on unrelated matters.

3.3 Rule 2.3 provides that the responsibility for making an announcement before the board of the offeree company has been approached will lie with the offeror, whereas the primary responsibility for making an announcement following an approach will normally rest with the offeree company board. However, if the offeree company board rejects an approach it will not necessarily know whether the offeror intends to pursue its interest in the possible offer. Therefore, following an unequivocal rejection of an approach, the Executive's practice is to treat the responsibility for making an announcement as reverting to the offeror.

3.4 In order to avoid confusion, the parties should agree which of the offeror and the offeree company has responsibility for making an announcement at any particular time following the initial approach. If the parties are unable to reach agreement as to where the responsibility rests, or if there is any doubt as to whether there has been an unequivocal rejection of an approach, the Executive should be consulted.

4. When an announcement is required before an approach

(a) Rule 2.2(d)

4.1 Before an offeror has made an approach to the offeree company, the requirement for the offeror to make an announcement under Rule 2.2(d) will be triggered if:

(a) the offeree company is the subject of rumour and speculation; or

(b) there is an untoward movement in its share price,

and, in either case, there are reasonable grounds for concluding that it is the potential offeror's actions (whether through inadequate security or otherwise) which have led to the situation.

(b) The requirement to consult the Executive

4.2 The Executive must be consulted by a potential offeror, or its financial adviser, at an appropriate stage in order for it to be able to determine whether an announcement is required under Rule 2.2(d). Consultation will not necessarily lead to a requirement to make an announcement; this will depend on all the relevant circumstances.

(i) Rumour and speculation

4.3 Note 1 on Rule 2.2 requires that the Executive should be consulted at the latest when the potential offeree company becomes the subject of any rumour and speculation after the time when an offer is first actively considered. The requirement for consultation is interpreted strictly and the Executive should therefore be consulted by the potential offeror, or its financial adviser, if there is any rumour and speculation relating to a possible offer for the offeree company and regardless of:

(a) whether the rumour and speculation is specific to the possible transaction under consideration – for example, whether or not the potential offeror is named; or

(b) the manner in which, or the medium by which, the rumour and speculation has been disseminated.

4.4 Although the Executive may, on occasion, make enquiries of financial advisers in relation to, for example, rumour and speculation relating to their clients, the Code requires that the Executive should be consulted whenever any such rumour and speculation appears. Therefore, financial advisers

should in no circumstances rely on their being contacted by the Executive about rumour and speculation relating to their clients.

(ii) Share price movements

4.5 Note 1 on Rule 2.2 requires that the Executive should be consulted at the latest whenever there is a material or abrupt movement in the share price of the potential offeree company after the time when an offer is first actively considered by the potential offeror. For these purposes:

(a) a movement of 10% or more above the lowest share price since that time is regarded as a material movement; and

(b) a movement may be abrupt even if there has not been a material movement: for example, a price rise of 5% in the course of a single day is normally regarded as being abrupt. When calculating share price movements in the course of a single day, the opening price should normally be taken to be the previous day's closing price, in order to ensure that overnight movements are taken into account.

The Executive should be consulted in the case of any doubt as to how share price movements should be monitored and calculated.

(iii) When an offer is first actively considered

4.6 In interpreting the phrase "the time when an offer is first actively considered", the Executive recognises that many potential offerors will, as a matter of course, continually assess the performance of potential acquisition targets and may run internal valuation models as part of this assessment. However, the Executive interprets the phrase "first actively considered" as drawing a distinction between, on the one hand, such routine assessment of a company's performance and, on the other, an increase in the intensity of the potential offeror's assessment of the potential acquisition to a level where it is being given more serious consideration.

4.7 The time when an offer is first actively considered will therefore depend on the facts of a particular case. All relevant factors will be taken into account in determining this, including the extent to which, for example:

(a) the possible offer has been considered by the board, investment committee or senior management of the offeror;

(b) work is being undertaken by external advisers; and

(c) external parties, such as potential providers of finance (whether equity or debt), shareholders in the offeror or the offeree company, potential management team candidates or potential purchasers of assets, have been approached.

(c) The requirement for an announcement

4.8 The Executive considers that rumour and speculation relating to the offeree company which refers to the potential offeror in the context of the possible transaction under consideration will normally, of itself, give the Executive reasonable grounds for concluding that it is the potential offeror's actions which have led to the situation, and for determining that the requirement to make an announcement has been triggered. The Executive does not consider that it is required to establish whether the rumour and speculation in question can be definitively linked to the potential offeror – for example, by establishing that conversations were held by a representative of the offeror with the journalist concerned. In addition, the Executive's determination will not normally be affected by some inaccuracy in the rumour and speculation (for example, as to the level of any indicative offer price).

4.9 Furthermore, if the rumour and speculation relates to a company which is often the subject of rumour and speculation, this will be taken into account by the Executive but will not necessarily mean that an announcement is not required.

4.10 Whether or not a movement in the share price of the offeree company is untoward for the purposes of Rule 2.2(d) is a matter for the Executive to determine. This determination will be made in the light of all relevant facts and not solely by reference to the absolute percentage movement in the share price. As referred to in the first paragraph of Note 1 on Rule 2.2, facts which may be considered to be relevant in determining whether a price movement is untoward include general market and sector movements, publicly available information relating to the company, trading activity in the company's securities and the time period over which the price movement has occurred.

(d) No announcement required if no truth

4.11 There is no requirement under Rule 2.2(d) for an announcement to be made confirming that there is no truth to rumour and speculation that an offer might be made for a company. However, if a possible offer for a potential offeree company was being actively considered at the time of the rumour and speculation or the untoward movement in its share price, but such consideration thereafter ceases, the Executive should be consulted. In such circumstances, the Executive may require a clarificatory announcement to be made in order to prevent a false market.

5. When an announcement is required following an approach or where a purchaser or potential offeror is being sought

(a) Rules 2.2(c) and (f)(i)

5.1 Following an approach by an offeror to the offeree company, the requirement for the offeree company to make an announcement under Rule 2.2(c) will be triggered if:

(a) the offeree company is the subject of rumour and speculation; or

(b) there is an untoward movement in its share price.

5.2 Similarly, when a purchaser is being sought for an interest, or interests, in shares carrying in aggregate 30% or more of the voting rights of a company, or when the board of a company is seeking one or more potential offerors, the requirement to make an announcement under Rule 2.2(f)(i) will be triggered if the company is the subject of rumour and speculation or there is an untoward movement in its share price. Where a purchaser is being sought by a seller of such an interest, or interests, without the involvement of the board of the company, the responsibility for consulting the Executive and making an announcement will rest with that seller.

(b) The requirement to consult the Executive

5.3 The Executive must be consulted by the offeree company or seller of the interest, or its financial adviser, at an appropriate stage in order for it to be able to determine whether an announcement is required under Rule 2.2(c) or Rule 2.2(f)(i). Consultation will not necessarily lead to a requirement to make an announcement; this will depend on all the relevant circumstances.

(i) Rumour and speculation

5.4 In the case of Rule 2.2(c), Note 1 on Rule 2.2 requires that, unless an immediate announcement is to be made, the Executive should be consulted at the latest when the potential offeree company becomes the subject of any rumour and speculation after the time when the approach has been received. The requirement for consultation is interpreted strictly and the Executive should therefore be consulted by the potential offeree company, or its financial adviser, if there is any rumour and speculation relating to a possible offer for the offeree company, regardless of:

(a) whether the rumour and speculation is specific to the possible transaction under consideration; or

(b) the manner in which, or the medium by which, the rumour and speculation has been disseminated.

5.5 Similarly, in the case of Rule 2.2(f)(i), the Executive should be consulted at the latest when the potential offeree company becomes the subject of any rumour and speculation after the time that one or more purchasers or offerors are first sought.

5.6 Although the Executive may, on occasion, make enquiries of financial advisers in relation to, for example, rumour and speculation relating to their clients, the Code requires that the Executive should be consulted whenever any such rumour and speculation appears. Therefore, financial advisers should in no circumstances rely on their being contacted by the Executive about rumour and speculation relating to their clients.

(ii) Share price movements

5.7 In the case of Rule 2.2(c), Note 1 on Rule 2.2 requires that, unless an immediate announcement is to be made, the Executive should be consulted at the latest whenever there is a material or abrupt movement in the share price of the potential offeree company after the time of the approach. For these purposes:

(a) a movement of 10% or more above the lowest share price since that time is regarded as a material movement; and

(b) a movement may be abrupt even if there has not been a material movement: for example, a price rise of 5% in the course of a single day is normally regarded as being abrupt. When calculating share price movements in the course of a single day, the opening price should normally be taken to be the previous day's closing price, in order to ensure that overnight movements are taken into account.

The Executive should be consulted in the case of any doubt as to how share price movements should be monitored and calculated.

5.8 Similarly, in the case of Rule 2.2(f)(i), the Executive should be consulted at the latest whenever there is a material or abrupt movement in the share price of the potential offeree company after the time when one or more purchasers or offerors are first sought.

(c) The requirement for an announcement

5.9 There is no equivalent in Rule 2.2(c) or Rule 2.2(f)(i) to the requirement in Rule 2.2(d) for there to be reasonable grounds for concluding that it is the potential offeror's actions (whether through inadequate security or otherwise) which have led to the situation. Therefore, an announcement might be required under Rule 2.2(c) or Rule 2.2(f)(i) in circumstances where an announcement would not have been required under Rule 2.2(d) (had the offeree company not been approached) and even if, for example, the potential offeror is not named. The Executive's determination as to whether the requirement to make an announcement has been triggered will not normally be affected by some inaccuracy in the rumour and speculation (for example, as to the level of any indicative offer price).

5.10 Furthermore, if the rumour and speculation relates to a company which is often the subject of rumour and speculation, this will be taken into account by the Executive but will not necessarily mean that an announcement is not required.

5.11 Whether or not a movement in the share price of the offeree company is untoward for the purposes of Rule 2.2(c) or Rule 2.2(f)(i) is a matter for the Executive to determine. This determination will be made in the light of all relevant facts and not solely by reference to the absolute percentage movement in the share price. As referred to in the first paragraph of Note 1 on Rule 2.2, facts which may be considered to be relevant in determining whether a price movement is untoward include general market and sector movements, publicly

available information relating to the company, trading activity in the company's securities and the time period over which the price movement has occurred.

(d) ***No announcement required if no truth***

5.12 There is no requirement under Rule 2.2(c) for an announcement to be made confirming that there is no truth to rumour and speculation that an offer might be made for a company. However, if the potential offeree company was in receipt of an approach at the time of the rumour and speculation or the untoward movement in its share price, but such approach is thereafter rejected or withdrawn, the Executive should be consulted. In such circumstances, the Executive may require a clarificatory announcement to be made in order to prevent a false market.

(e) ***Strategic review announcements***

5.13 In the case of a "strategic review announcement", Practice Statement No. 6 may also be relevant.

6. Where a potential offeror is identified following the commencement of the offer period

6.1 In applying the provisions of Rule 2.2, the Executive is concerned to ensure that shareholders and other market participants are informed that a potential offeree company may be the subject of a possible offer. Following this, the Executive considers that it will be understood that additional potential offerors for the offeree company may emerge. Therefore, if, after the commencement of an offer period, rumour and speculation correctly identifies a potential offeror other than the potential offeror to whom the original announcement related (or by whom it was made), the Executive will generally be less likely to require an announcement to be made naming that second potential offeror.

6.2 Similarly, if an offer period commences following an announcement made under Rule 2.2(c) or (f)(i) which does not name a potential offeror, and rumour and speculation then correctly identifies the potential offeror, the Executive will generally be less likely to require an announcement naming the potential offeror.

6.3 However, in certain circumstances, the Executive may require an announcement naming a potential offeror to be made after the commencement of an offer period in order to ensure that offeree shareholders and other market participants are properly informed and/or to prevent a false market. Parties and their financial advisers should therefore put appropriate procedures in place to ensure that any announcement that is so required can be released promptly (see paragraphs 9.3 and 9.4 below).

7. Extending negotiations or discussions

7.1 Rule 2.2(e) provides that an announcement is required when negotiations or discussions are about to be extended to include more than a very restricted number of people (outside those who need to know in the companies concerned and their immediate advisers). Similarly, Rule 2.2(f)(ii) provides that an announcement is required when a purchaser is being sought for an interest, or interests, in shares carrying in aggregate 30% or more of the voting rights of a company, or when the board of a company is seeking one or more potential offerors, and, in either case, the number of potential purchasers or offerors approached is about to be increased to include more than a very restricted number of people.

7.2 As regards Rule 2.2(e), the Executive should be consulted prior to more than a total of six parties being approached about an offer or possible offer including, for example: potential providers of finance (whether equity or debt); shareholders in the offeror or the offeree company; the offeree company's pension fund trustees; potential management candidates; significant customers of, or suppliers to, the offeree company; or potential purchasers of assets.

7.3 In considering whether to grant its consent to more than six parties being approached, the Executive will need to be satisfied that secrecy will be maintained. Other than as described in paragraph 7.4 below, the Executive is likely to consent to more than six parties being approached only in limited circumstances.

7.4 Where a party has been approached about the possibility of its providing finance (whether equity or debt) to an offeror and has declined the opportunity to do so, the Executive may be prepared to treat that party as no longer counting towards the six parties approached, provided that the party is not interested in securities of the offeror or the offeree company and does not have any other ongoing interest in the offeree company. A similar approach may be taken in relation to, for example, potential management candidates or potential purchasers of assets. Where, for example, one department of a multi-service financial organisation has declined an opportunity to provide finance and a separate department is interested in securities of the offeror or the offeree company, the Executive will not normally treat the organisation as counting towards the six parties that may be approached by virtue of its having been approached to provide finance, provided that the department which is interested in securities of the offeror or the offeree company is not aware of the approach to the department invited to provide finance.

7.5 Where a consortium bid is in contemplation, the party which makes the first approach to another potential member of the consortium will be treated for these purposes as the potential offeror. That party, as the potential offeror, may therefore approach up to six parties in total, inclusive of other potential consortium members approached (provided that those approached do not themselves contact any third parties).

7.6 As regards Rule 2.2(f)(ii), the Executive is concerned that the risk of leaks may be greater when purchasers for a controlling interest in a company, or potential offerors, are being sought. This is because each party approached may wish to discuss the matter with other parties, thereby quickly increasing the number of parties who would be aware of the possible transaction.

Therefore, in such cases, the Executive considers it best practice for it to be consulted prior to more than one purchaser or potential offeror being sought.

8. Content and timing of announcements

(a) Content

8.1 An announcement made pursuant to Rule 2.4(a) may be brief and straightforward, as follows:

(a) in the case of an announcement made by the offeree company, the announcement need only state that the offeree company has received an approach that may or may not lead to an offer being made for the company. Such an announcement need not name the potential offeror; and

(b) in the case of an announcement made by a potential offeror, the announcement need only state that the potential offeror is considering making an offer for the offeree company. The potential offeror must itself be named in such an announcement and it will not be sufficient, for example, for its financial adviser to announce that it is acting for an unnamed party which is considering the possibility of making an offer for the offeree company.

8.2 In each case, further information may be included in the announcement (such as the indicative offer terms), in which case additional provisions of the Code may be relevant (for example, Rule 2.4(c)).

(b) Timing

8.3 On occasion, it is argued that to require an announcement referring to the possibility of an offer when the offer preparations are at a preliminary stage might, of itself, lead to the creation of a false market in the offeree company's securities. The Executive does not find this argument persuasive. In the

Executive's opinion, if it appears that the possible offer may have leaked, leading to rumour and speculation or an untoward movement in the offeree company's share price, the overriding requirement is that an announcement should be made immediately and the fact that the offer preparations are at a preliminary stage may be made clear in the announcement.

8.4 Once the requirement to make an announcement under Rule 2.2 has been triggered, the Executive expects parties and their financial advisers to do their utmost to ensure that the announcement is made immediately, i.e. within a matter of minutes. In particular, the announcement should not be delayed whilst, for example, minor drafting changes are considered. If there is any doubt as to the precise form of wording to be included in the announcement, a brief announcement containing simply the substantive information required by Rule 2.4(a) should be released forthwith. A further announcement may then be made later, setting out more detailed information on the offer discussions or preparations.

8.5 Furthermore, the announcement should not be delayed in order for the information referred to in Rule 2.10 (details of the offeree company's and, if appropriate, the offeror's relevant securities in issue) to be included as part of the announcement. The information required to be announced under Rule 2.10 can be announced at any time up until 9.00 am on the business day following the date of the announcement.

8.6 Likewise, the Executive's approach is that an announcement should not be delayed in order for the summary of the provisions of Rule 8 (disclosure of dealings) to be included, notwithstanding the requirements of Rule 2.4(a). If, contrary to the guidance in paragraph 9.3 below, the draft announcement does not include this summary, and it cannot be included without delay, it will normally be acceptable for a separate announcement, which includes the summary, to be released as soon as possible thereafter.

9. Pre-announcement responsibilities

(a) Financial advisers have particular responsibility for ensuring compliance with Rule 2

9.1 Where a potential offeror, or a company in receipt of an approach, has notified its financial adviser of the possible offer or approach, the Executive considers that, for the reasons set out in paragraph 1.3 above, the financial adviser has a particular responsibility for:

(a) monitoring for movements in the offeree company's share price and for rumour and speculation; and

(b) consulting the Executive,

even if these tasks have not explicitly been delegated to it. The Executive considers that financial advisers should be mindful of their responsibilities from an early stage. In particular, the Executive would not regard the signing of an engagement letter, of itself, to be determinative of when an advisory relationship between a financial adviser and its client commences.

9.2 It is vital that, at an early stage, a financial adviser clearly explains to its client the requirements of Rule 2 and ensures that the client understands those requirements. In the Executive's opinion, this is unlikely to be satisfactorily achieved through the financial adviser simply providing the client with a standard form memorandum on the provisions of Rule 2 or the Code generally.

(b) Preparation of announcements and release procedure

9.3 In order that an offeror or offeree company may release an announcement immediately, if required, an appropriate draft announcement should be prepared and approved at an early stage. A financial adviser may wish to obtain its client's approval of a variety of draft announcements to be released

depending on the circumstances at the relevant time. All such draft announcements should be complete in all respects (for example, including the information referred to in Rule 2.10 and the summary of Rule 8) and should be kept up to date. However, as indicated in paragraphs 8.5 and 8.6 above, the announcement should not be delayed in order for this information to be included.

9.4 In addition, procedures should be put in place to ensure the prompt release of the announcement when required, including an agreement as to who is to be responsible for making the announcement (for example, the financial adviser or the client) and having appropriate arrangements in place to make the announcement (including access to a Regulatory Information Service). The person responsible should be authorised to release the announcement immediately upon this being required by the Panel. If the approval of a particular person, or group of persons, is required before the announcement is released, the nominated persons must be contactable at all times and an appropriate contingency plan should be put in place in the event that the nominated persons are not contactable. The making of an announcement by the potential offeree company should not be delayed by consultation with the potential offeror.

(c) Monitoring procedures

9.5 With regard to monitoring movements in the offeree company's share price, the Executive believes that a system is unlikely to be effective unless it:

(a) is operative at all times during market hours (including, if the offeree company's securities, or depositary receipts relating to those securities, are traded on an overseas exchange, during that overseas exchange's market hours);

(b) is able to monitor share price movements on a real time basis; and

(c) incorporates a mechanism which rebases the monitoring system so as to ensure that price rises are compared against the lowest share price since the time when the offer was first actively considered, the approach was received or one or more purchasers or offerors were first sought (as appropriate).

The Executive should be consulted in the case of any doubt as to how share price movements should be monitored and calculated.

9.6 With regard to monitoring for rumour and speculation, the principal sources of information relating to offers (including newswires and newspapers) and such other sources of information as are reasonable in the context of the transaction (including overseas publications, trade publications and internet bulletin boards) should be monitored for any rumour and speculation about the possibility of an offer for the offeree company.

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 in certain circumstances. Practice Statements do not form part of the Code. 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 applies in a particular case. All Practice Statements issued by the Executive are available on the Panel's website at www.thetakeoverpanel.org.uk.

7 March 2008

THE TAKEOVER PANEL

PRACTICE STATEMENT NO. 21

RULE 3 – INDEPENDENT ADVICE

Rule 3.1 provides that the board of the offeree company must obtain competent independent advice on any offer. Rule 3.3, together with Note 1 on the Rule, provides that, in certain circumstances, an adviser will not be regarded by the Panel as an appropriate person to give independent advice. The purpose of this Practice Statement is to explain certain modifications which the Executive has made to its approach in determining whether a proposed Rule 3 adviser to an offeree company (an "adviser") is independent of an offeror (or potential offeror) and is therefore in a position to give independent advice to the board of the offeree company.

1. Executive's approach to determining independence

In determining whether an adviser is independent, the Executive examines the strength of the overall relationship between the offeror and the adviser and its group.

In doing so, to date the Executive has investigated all matters in relation to which the adviser has provided the offeror with advice over the 12 to 24 month period preceding the adviser's proposed appointment and any matters currently in contemplation. The Executive has not been concerned solely with the provision of corporate finance advice by the adviser to the offeror since other services provided by the adviser's group (for example, leading a debt syndication) may also involve the provision of advice and therefore be relevant for the purposes of Note 1 on Rule 3.3.

The Executive has also required information in relation to the fee income generated from the overall relationship between the offeror and the adviser and its group including, for example, the total fees generated during the relevant period and their significance to the adviser's group.

In considering this information, the Executive's approach has generally been that, if an adviser is providing advice to an offeror in relation to any matter at the same time as the proposed offer, that adviser would not be considered to be independent, irrespective of the size or location of the matter.

In relation to past advice, the Executive has generally concluded that an adviser may be regarded as being independent if the matters in relation to which the adviser has provided the offeror with advice are not material. The Executive has not considered it appropriate to define materiality in this context, but, in reaching its decision, has been prepared to take into account, for example, the size of past transactions and the location in which they were undertaken.

As provided in Rule 3.3, the Executive has not considered an adviser which is in the same group as a corporate broker to an offeror to be capable of giving independent advice to the board of an offeree company.

In the context of a non-recommended offer, the Executive has, in certain circumstances, accepted that it may be in the best interests of shareholders for an offeree company to be advised by a particular adviser notwithstanding that it would not normally be regarded by the Executive as being independent from the offeror. This is generally in circumstances where it is not practicable for the board of the offeree company to find a suitable alternative adviser in the limited time available to consider its response to the offer.

2. Modifications to the Executive's approach

Given the increasingly global reach of parties to offers and their financial advisers, the possibility that an adviser is currently acting, has in the recent past acted or is seeking to act, in some capacity for an offeror is now significantly greater than was previously the case. The Executive also recognises that it is now common for parties to offers to use multiple financial advisers in a single transaction or different financial advisers in successive transactions.

As a result, the Executive believes that relationships between financial advisers and their clients are, in many cases, now less exclusive than was previously the case and has therefore concluded that it should be more flexible in its approach in determining the independence of an adviser.

First, the Executive will be prepared to accept that some matters, whether current, past or prospective, may not compromise the independence of the adviser. Consequently, the Executive may conclude that an adviser is independent notwithstanding that it is advising, has advised or is seeking to advise, an offeror in relation to a matter provided that such matter is not material. In assessing materiality, the Executive will continue to examine the strength of the overall relationship between the offeror and the adviser and its group as described above.

Secondly, the Executive will be more likely than it has been in the past to conclude that an adviser is independent if it has acted for the offeror only infrequently in the period investigated by the Executive leading up to its proposed appointment and the offeror has instructed a number of other financial advisers in the same period.

The Executive recommends consultation as soon as practicable in cases where there is any doubt about the independence of an adviser.

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 in certain circumstances. Practice Statements do not form part of the Code. 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 applies in a particular case. All Practice Statements issued by the Executive are available on the Panel's website at www.thetakeoverpanel.org.uk.

7 March 2008