

**THE TAKEOVER PANEL**  
REPORT ON THE YEAR ENDED  
31 MARCH 2002

THE TAKEOVER PANEL  
2001 – 2002 REPORT

CONTENTS

PANEL MEMBERS AND EXECUTIVE .....	4
INTRODUCTION TO THE TAKEOVER PANEL .....	6
CHAIRMAN'S STATEMENT .....	8
THE CODE COMMITTEE .....	10
REPORT BY THE DIRECTOR GENERAL .....	12
ACCOUNTS FOR THE YEAR ENDED 31 MARCH 2002 .....	16
STATISTICS .....	22
STATEMENTS ISSUED BY THE PANEL .....	23

THE TAKEOVER PANEL  
2001 – 2002 REPORT

**THE PANEL**  
AS AT 18 JULY 2002

PETER SCOTT QC	CHAIRMAN Appointed by the Governor of the Bank of England	SIR GEORGE MATHEWSON CHAIRMAN, THE ROYAL BANK OF SCOTLAND GROUP	President, British Bankers' Association
JOHN L WALKER-HAWORTH FORMER MANAGING DIRECTOR, U B S WARBURG	DEPUTY CHAIRMAN Appointed by the Governor of the Bank of England	JUDITH CHANRATTY COMPANY SECRETARY, BP	Nominated by Confederation of British Industry
ANTONY R BEEVOR SENIOR ADVISOR, INVESTMENT BANKING, SOCIETE GENERALE	DEPUTY CHAIRMAN Appointed by the Governor of the Bank of England	PETER L WYMAN PARTNER, PRICEWATERHOUSECOOPERS	President, Institute of Chartered Accountants in England and Wales
SIR CHRISTOPHER BENSON	Appointed by the Governor of the Bank of England	LINDSAY P TOMLINSON CHIEF EXECUTIVE, EUROPE, BARCLAYS GLOBAL INVESTORS	Chairman, Investment Management Association Asset Management Committee
SIR DAVID LEES CHAIRMAN, GKN	Appointed by the Governor of The Bank of England	DAVID J CHALLEN CO CHAIRMAN, SCHRODER SALOMON SMITH BARNEY	Nominated by London Investment Banking Association
ANTONY P HICHENS CHAIRMAN, D S SMITH	Appointed by the Governor of the Bank of England	SIR MARK WRIGHTSON CHAIRMAN, CLOSE BROTHERS CORPORATE FINANCE	Chairman, London Investment Banking Association Corporate Finance Committee
MICHAEL D ROSS CHIEF EXECUTIVE, SCOTTISH WIDOWS	Chairman, Association of British Insurers	ALAN C D YARROW VICE CHAIRMAN, DRESDNER KLEINWORT WASSERSTEIN	Chairman, London Investment Banking Association Securities Trading Committee
J ANTHONY V TOWNSEND DIRECTOR, FINSBURY GROWTH TRUST	Chairman, Association of Investment Trust Companies	KENNETH E AYERS	Chairman, National Association of Pension Funds Investment Committee

Sir Brian Stewart, Chairman of Scottish & Newcastle and J Martin Taylor, Chairman of W.H. Smith are alternates to Sir Christopher Benson, Sir David Lees and Antony Hichens.

**THE APPEAL COMMITTEE**  
AS AT 18 JULY 2002

THE RT HON SIR ANDREW LEGGATT FORMER LORD JUSTICE OF APPEAL	CHAIRMAN OF THE APPEAL COMMITTEE Appointed by the Governor of the Bank of England	THE RT HON SIR MARTIN NOURSE FORMER LORD JUSTICE OF APPEAL	DEPUTY CHAIRMAN OF THE APPEAL COMMITTEE Appointed by the Governor of the Bank of England
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THE TAKEOVER PANEL  
2001 – 2002 REPORT

**THE PANEL EXECUTIVE**  
AS AT 18 JULY 2002

*PHILIP J REMNANT CREDIT SUISSE FIRST BOSTON	DIRECTOR GENERAL
T PETER LEE	DEPUTY DIRECTOR GENERAL
NOEL P HINTON	DEPUTY DIRECTOR GENERAL
ANTHONY G B PULLINGER	DEPUTY DIRECTOR GENERAL
NICOLA M MILLER	SECRETARY
CHARLES M CRAWSHAY	SECRETARY
*ROBERT E OGILVY WATSON ASHURST MORRIS CRISP	SECRETARY
*STEPHEN A HEWES FRESHFIELDS BRUCKHAUS DERINGER	SECRETARY
*GILES H DISTIN HAMMOND SUDDARDS EDGE	ASSISTANT SECRETARY
*NICOLA L ELMS DELOITTE & TOUCHE	ASSISTANT SECRETARY
*RACHEL KEBRETH DEUTSCHE BANK	ASSISTANT SECRETARY
*LEON N FERERA GOULDENS	ASSISTANT SECRETARY
*BRIAN STOCKBRIDGE GRANT THORNTON	ASSISTANT SECRETARY
*PENELOPE J P BRIDGES DRESDNER KLEINWORT WASSERSTEIN	ASSISTANT SECRETARY
*PIERS JOHANSEN SKADDEN, ARPS, SLATE, MEAGHER & FLOM	ASSISTANT SECRETARY
*RICHARD G PULFORD PRICEWATERHOUSECOOPERS	ASSISTANT SECRETARY
*IAN MOORE KPMG	ASSISTANT SECRETARY
JANE M TAYLOR	MANAGER, SUPPORT GROUP
LEE M MANN	MANAGER, MONITORING SECTION
CRAIG G ANDREWS	DEPUTY MANAGER, MONITORING SECTION
SUSAN POWELL	MANAGER, EXEMPT SYSTEM

\*SECONDED

## **INTRODUCTION TO THE TAKEOVER PANEL**

The Takeover Panel is the regulatory body which administers the City Code on Takeovers and Mergers. It is concerned with takeovers of companies whose shares are held by the public. The Code is designed to ensure good business standards and fairness to shareholders. Maintaining fair and orderly markets is crucial to this.

The commercial merits of takeovers are not the responsibility of the Panel; these are matters for the companies concerned and their shareholders. Wider questions of public interest are the concern of the governmental authorities in the UK and, in some circumstances, the European Community, through the Office of Fair Trading and the Competition Commission or the European Commission.

The Panel was set up in 1968 in response to mounting concern about unfair practices. The composition and powers of the Panel have evolved over the years as circumstances have changed, although it remains a non-statutory body.

The essential characteristics of the Panel system are flexibility, certainty and speed, enabling parties to know where they stand under the Code in a timely fashion. These characteristics are important in order to avoid over-rigid rules and the risk of takeovers becoming delayed by litigation of a tactical nature, which may frustrate the ability of shareholders to decide the outcome of an offer.

It is the Panel's practice to focus on the specific consequences for shareholders of rule breaches, rather than simply on disciplinary action, with the aim of providing appropriate redress. If the Panel finds there has been a breach, it may have recourse to private reprimand, to public censure, to reporting the offender's conduct to another regulatory authority (for example, the Department of Trade and Industry or the Financial Services Authority) and to requiring further action to be taken, as it thinks fit.

#### THE PANEL

The Panel draws its membership from major financial and business institutions to ensure a spread of expertise in takeovers, securities markets, industry and commerce. The Panel has the support of the Bank of England, its original sponsor, and the Governor appoints the Chairman, the Deputy Chairmen and three independent members, who are industrialists. To ensure that industry is represented at all meetings, many of which have to be arranged at short notice, certain other industrialists act as alternates to the industrialist members.

The three independent members appointed by the Governor are appointed for three years with the possibility of re-appointment thereafter for a further term of three years. There is no limit to the number of terms that can be served. Members of the Panel and the Executive are asked to suggest names of suitable candidates. Once a list of candidates has been compiled, it is considered by a Nominations Committee of the Panel which compiles a short-list. The Committee then submits recommendations to the Governor.

The Panel can be convened at short notice to hear an appeal against a ruling of the Executive. It also hears disputed disciplinary cases.

#### THE CODE COMMITTEE

The role of the Code Committee is to keep under review and, where appropriate, put forward, consult upon and make amendments to the substantive provisions (such as the General Principles and Rules) of the Code and the Rules Governing Substantial Acquisitions of Shares.

#### THE APPEAL COMMITTEE

There is a right of appeal from the Panel to the Appeal Committee in certain circumstances, particularly where the Panel finds a breach of the Code and proposes to take disciplinary action. An appeal may also be made, in other cases, with leave of the Panel. The Chairman of the Appeal Committee and his deputy will usually have held high judicial office.

#### THE EXECUTIVE

The Executive is headed by the Director General, usually an investment banker on secondment. Some of the Executive are permanent, providing an essential element of continuity. They are joined by lawyers, accountants, stockbrokers, bankers and others on two-year secondments.

The Executive monitors takeovers, checking that all actions taken, as well as documents and announcements issued, comply with the Code, and keeps a close watch on dealings in relevant securities. The Executive is available for consultation and to give rulings and interpretations before, during and, where appropriate, after takeovers. The Panel encourages and in some cases requires early consultation so that problems can be avoided; a major part of the Executive's role is to provide guidance.

Many enquiries about the possible effects of the Code on prospective transactions need a swift response to allow the potential bidders, once an offer has been announced, to meet the Code's strict timetable.

## CHAIRMAN'S STATEMENT

Last year saw a further decline in bid activity to levels last seen at the beginning of the 1990s. Nonetheless, the workload of the Executive remains a heavy one. Given the Code's emphasis on consultation, the Executive is continuously providing parties or their advisers with guidance on issues, many of which concern potential transactions that may never see the light of day. The frequency of such enquiries did not slacken during the course of the year. In addition, the proportion of the Executive's time spent on non-case work, such as the new market abuse regime, proposed European directives and Code revision work, all of which I touch on below, is greater than it has ever been.

The Panel's finances, however, are very much dependent on levels of actual bid activity and show a substantial deficit for the year. The Panel has taken action to deal with this position. Costs, including staffing requirements, will continue to be carefully controlled: a Deputy Director General is due to retire at the end of this month and will not be replaced, the number of Assistant Secretaries on secondment is in the course of being reduced from 11 to seven and the number of support staff has fallen appropriately.

The Panel has also reviewed its sources of income. Due to its non-taxable status, the Panel's policy has been not to accumulate a large surplus. Indeed, the Panel rebated some £7 million of document fees in the years 1998 to 2000. The Panel must, however, be funded adequately in order to do its job properly. We, therefore, revised the scale of document charges in August 2001, increased the contract levy on stock exchange bargains with effect from 1 April 2002 and will introduce a modest annual fee for exempt status during the course of this year. Despite these changes, document charges compare favourably with other jurisdictions and the contract levy is still half that charged ten years ago.

The Panel's role is as important now as it has ever been. The Panel's unique status and its ability to provide speed, certainty and flexibility in its decision-making remains the envy of other countries. Its perceived value has helped to secure its future whilst so many other regulatory changes are taking place in the UK and the rest of Europe. Much of the Panel's strength derives from the expertise of the Executive which is characterised by a mix of permanent staff and those on secondment from City firms. The permanent members provide essential continuity and knowledge of precedent, whilst the secondees provide the freshness of approach and up-to-date practical experience on which the system thrives. Rulings made by the Executive are from time to time tested by appeal to the broadly based full Panel, and occasionally to the Appeal Committee, but in the great majority of cases the Executive's ruling is accepted by all concerned.

The Code Committee (whose delegated function is to review the Code and amend it as circumstances require) has had a busy first full year. The Committee has issued 11 public consultation papers, all but one of which have resulted in changes to the Code. The process of Code revision is now more open and transparent, which I welcome, but it is also much more time-consuming and I am very grateful for the diligence with which Donald Brydon and his colleagues have approached their new task. A report from Donald Brydon is set out on pages 10 and 11.

The new market abuse regime finally came into force in the UK at the beginning of December. Co-operation between the Panel and the FSA in this area has made an extremely encouraging start. The Panel has long been accustomed to deliver decisions quickly, to weed out tactical complaints with no substance and to defend decisions robustly. One concern was that this might be incompatible with the FSA's way of operation. Our experience to date is that, certainly in its dealings with the Panel, the FSA is operating in a like-minded fashion. We are hopeful that the Market Abuse Directive, currently under discussion in Brussels, will not have a material impact on the UK's regulatory framework.

The seemingly endless saga of the Takeover Directive continues. It is likely that the European Commission will bring back a new proposal shortly. I said last year that there was likely to be little enthusiasm from any of the protagonists for readdressing this topic from first principles and indeed the new proposal is likely to be closely based on the compromise position which failed last year by a single vote. We wait with interest to see how the Commission intends to deal with the level playing field issues which have proved so contentious. As the Director General's report explains, the Executive, working with the UK Government, has continued to monitor progress and to press the particular points of concern to the Panel.

Sir Michael Kerr and Sir Christopher Slade retired as Chairman and Deputy Chairman, respectively, of the Appeal Committee on 31 October. Sadly, Sir Michael died earlier this year. Only rarely is there an appeal from rulings of the Panel, but the existence of the Appeal Committee is an essential part of the Panel's judicial structure and a source of the Panel's strength. I am grateful to them both for their distinguished service and wise counsel. I am delighted that their places have been taken by Sir Andrew Leggatt and Sir Martin Nourse, who were both formerly Lords Justices of Appeal.

At the end of this month Peter Lee will retire after a career with the Panel spanning over 30 years. That the Panel has developed into the widely respected institution which it is today owes much to Peter. He brings to the job an encyclopaedic knowledge of the Code and of precedent. His unfailing courtesy and reliability have attracted the respect of colleagues and City practitioners alike. We will miss him greatly, and wish him a long and thoroughly enjoyable retirement.

PETER SCOTT QC

18 July 2002



**THE CODE COMMITTEE**

AS AT 18 JULY 2002

DONALD BRYDON CHAIRMAN	CHAIRMAN, AXA INVESTMENT MANAGERS
JOHN D COOMBE	CHIEF FINANCIAL OFFICER, GLAXOSMITHKLINE
HEYDAR KAHNAMOUYIPOUR	FORMER MANAGING DIRECTOR, UBS WARBURG
ALAN D PAUL	PARTNER, ALLEN & OVERY
THOMAS M ROSS	DIRECTOR, ROYAL LONDON MUTUAL INSURANCE SOCIETY
IAN G SALTER	DEPUTY CHAIRMAN, LONDON STOCK EXCHANGE
CHRISTOPHER SMITH	MANAGING DIRECTOR, CAZENOVE & CO. CORPORATE FINANCE

CHAIRMAN OF THE CODE COMMITTEE'S STATEMENT

This has been the Code Committee's first full year of operation and it has been a busy one. The Committee has met six times and has issued 11 Public Consultation Papers ("PCP"s), which have led to a number of significant amendments to the Code.

The Committee's role is to keep the Code and the SARs under review and to consider, consult on and make amendments where appropriate. Consideration of a possible amendment might arise from a specific experience, from market developments or from particular concerns of those operating in the markets. Over the year, the Committee has considered a wide range of amendments.

Once it has agreed on the need for a particular issue to be pursued, the Committee delegates to the Executive the preparation of a draft PCP including appropriate amendments to the Code or SARs. Such work may necessitate some informal consultation with parties who have a particular interest in the subject matter of the proposed amendment or relevant professional expertise. When the Committee has approved the PCP, it is published and also made available on the Panel's website. Consultation periods vary between one and two months, depending on the complexity of the subject matter. In reaching its conclusions, the Committee considers all responses to the PCPs with great care. These conclusions are then published, with the final amendments, in a Response Statement ("RS").

A full list of the PCPs and RSs published in the year can be found on pages 23 and 24. Initially, the Committee had to deal with several matters which the Executive already had under consideration. A number of these were technical in nature. Some amendments were proposed to codify existing practice, such as those in PCP3 relating to the provision of information to competing offerors, while others were designed to clarify best practice, as in the proposals in PCP4 to require disclosure of side agreements relating to offer pre-conditions and conditions. Other amendments were needed to give effect to changes in market systems. The adoption by

the FSA of the new regime for the dissemination of regulatory information through Recognised Information Services and the development in CREST, which allowed acceptances to be made electronically, both had to be reflected in changes to the Code (PCP1 and 5).

The Committee then considered some more complex issues. Amendments concerning the nature of the consideration to be offered were put forward in PCP6, requiring, in particular, an offeror who acquires offeree shares in exchange for securities in certain circumstances to make a securities offer to all shareholders. This was a major development of Rule 11 of the Code, which previously laid down only the circumstances in which a cash offer would be required. The Committee also addressed, in the light of the Executive's experience of several high profile cases over the years, the problem of how to manage the orderly resolution of a situation where two offerors are still competing for one offeree in the later stages of an offer period (PCP7). The most significant change to emerge from this exercise provided for the application of an open auction procedure to resolve competitive situations still subsisting on Day 46. This, together with other amendments to prevent the frustration by one offeror of another, now provides a much clearer framework, which can come into play when there is no consensus among the parties as to the way forward.

More recently, the Committee has been looking at two questions concerning persons who should be regarded as acting in concert under the Code. PCP9 concerns the position of the trustees of an Employee Benefit Trust and PCP10 tackles shareholder activism. Both of these initiatives have been prompted again by the development of market practices. They have elicited a great deal of interest and the Committee published its conclusions on both PCPs earlier this month.

The latest subject to come before the Committee has been the application of the Code to Dual Listed Company transactions ("DLC"s). Hitherto, the Code has not applied and this has created some problems, particularly when a Code offer has been made in competition with a DLC. Having received representations from certain institutional shareholder bodies on this matter and in the light of recommendations from the Executive, the Committee took the unusual step of announcing that it had come to a preliminary view that the Code should apply to these transactions. This matter has now been the subject of a full consultation exercise (PCP11) and the Committee will publish its conclusions in due course.

Experience of the past year suggests that the public consultation process is working well. Responses have proved extremely useful and influential on the Committee's deliberations. Many of our proposals have been modified as a result of the comments received and in one case (PCP2 on refresher announcements) the amendments were withdrawn. We are grateful for the effort undertaken by all those who have responded. I would also like to thank the members of the Committee who have given so productively of their time to make the process successful.

DONALD BRYDON  
18 July 2002

## **REPORT BY THE DIRECTOR GENERAL**

The number of takeover proposals published last year, 107, is a large reduction on the level of 198 in the previous year. Bid activity in the current year continues to run at a low level.

### MARKET ABUSE REGIME

The new market abuse regime finally came into force in the UK at the beginning of December. In preparation for this, and to counter potential problems arising from regulatory overlap between the FSA and the Panel, we have agreed with the FSA an effective set of operating arrangements which are a matter of public record. They stress the desirability of avoiding undue duplication of work between the Panel and the FSA, and the need for the Panel and the FSA to maintain a close working relationship to deal with issues of potential market abuse which may arise in the context of takeovers.

Early signs of how this works in practice are extremely encouraging. We share common views as to what activity is abusive and there is a good understanding of how each body implements its policies in practice. The Executive and the FSA keep each other fully informed of relevant issues to ensure that unpleasant surprises are minimised.

No sooner has the City started to come to terms with the effects of the Financial Services and Markets Act than it is likely to be changed by the impact of a Market Abuse Directive. This is currently under discussion in Brussels but it is in advanced form and may be implemented as early as 2004. We have had a number of significant concerns about the Directive but are broadly happy with the current position. It should allow for the current interrelationship between the FSA and the Panel to continue, and for Member States to have in place additional measures to protect shareholders' interests in the context of a takeover without running the risk of falling foul of the Directive. However, from a wider City perspective, there are still several unsatisfactory elements to the Directive: the key definition of market manipulation has, for example, been drafted so widely as potentially to create great uncertainty about what forms of behaviour will be regarded as abusive under the Directive, and it is as yet unclear whether certain defences to insider dealing which are currently available under UK legislation will continue to be so.

### PROPOSED TAKEOVER DIRECTIVE

Some 12 years after discussions began, in July 2001 the European Parliament failed by one vote to adopt the compromise position on the Takeover Directive which had been forged through the conciliation procedure.

It is likely that the European Commission will bring back a new proposal shortly: the Directive, albeit unambitious in the degree of harmonisation it would achieve, is considered to be an important strand of the Financial Services Action Plan designed to bring about a single market in financial services in Europe. The new proposal is likely to be closely based on the compromise position but altered to take account of the concerns which resulted in its failure last year.

In order to assist the development of a revised proposal, the Commission appointed a committee of company law experts to report on three issues: the existence of a level playing field within Europe, the method for determining the equitable price at which mandatory bids must be made and a harmonised procedure for squeezing out minority shareholders. The committee issued its report in January. Whilst its proposals on equitable price and squeeze out may not prove contentious, and are consistent with UK law and takeover regulation, it is understood that there are objections in several Member States to the proposed “break-through” rule.

This rule would allow the bidder to break-through mechanisms and structures which might frustrate a bid after completion of a takeover offer for all the risk-bearing shares of the company. A bidder who has reached a threshold, to be set at a level no higher than 75 per cent. of the risk-bearing capital of the company, would have the right to exercise voting rights in proportion to his holding of such capital and any provisions in the articles of association to the contrary would be overridden. This rule would have a major impact on bids for companies with classes of share capital carrying differential voting rights.

On this issue it is difficult to see what proposal the Commission can make which will satisfy the widely varying views within the European Parliament and the Member States. From the Panel’s perspective, any such provision must be drafted clearly so that a bidder knows at the outset of a bid what constitutes risk-bearing capital and what compensation, if any, is payable. Otherwise, it will have the opposite effect to that intended, in acting as a barrier to takeovers. In addition, there must be no dilution of the provisions in the failed Directive relating to the restrictions on boards taking frustrating action.

#### STOCKBROKING RELATIONSHIPS AND CONFLICTS OF INTEREST FOR OFFEREE ADVISERS

Rule 3.1 requires the board of an offeree company to obtain competent independent advice on any offer and to make the substance of such advice known to offeree shareholders. This is a long-standing and fundamental Code requirement.

Financial advisers within groups which have an advisory relationship with an offeror are not normally regarded as appropriate persons to give advice to the offeree board on an offer. In this context, broking relationships with an offeror are considered in the same light as other types of advisory relationship. Whilst it is accepted that the strength and nature of broking relationships, and the services provided under them, vary widely, such relationships generally create a potential conflict of interest.

In one or two recent cases, groups have assumed that a potential conflict of interest arising from an offeror broking relationship can be addressed satisfactorily by the broker standing down from its role for the duration of the offer. The Executive’s view is that this action will not normally be sufficient to resolve concerns as to independence. Therefore, in cases where an offeree adviser’s group has an offeror broking relationship, the Executive should be consulted at an early stage.

INFORMATION TO INDEPENDENT DIRECTORS IN  
MANAGEMENT BUY-OUTS

Rule 20.3 requires that all information on the offeree company passed by the management team to external providers of finance, which will include the private equity investor itself, must on request be promptly supplied to the independent directors of the offeree company (or their advisers). The purpose of the Rule is to ensure that the independent board and Rule 3 adviser have the same information as the providers of finance for the offer when assessing the merits of the offer relative to the value of the company.

The information passable pursuant to Rule 20.3 includes not only information generated by the offeree company but also information on the offeree company developed by or with the assistance of management for the purpose of the transaction. A business model, for instance, prepared by the private equity house will normally include the management team's opinions, estimates and projections based on the team's knowledge of the offeree company, its business and the markets in which it operates and will accordingly be disclosable in its entirety. Similarly, due diligence reports prepared by professional advisers (e.g. accountants, lawyers and property consultants) are likely to be disclosable under Rule 20.3, since they will be derived from information supplied by the offeree company, reviewed by the management team for accuracy and shown to the financiers. The Executive should be consulted in cases of doubt.

RE-REGISTERING AS A PRIVATE COMPANY

In determining whether or not the Code applies, it is the nature of the company which is the offeree or potential offeree company that is relevant. Sometimes, it is decided to re-register a public company as a private company, with the result that the Code does not then apply to that company provided it does not fall within one of the categories described in section 4(a)(i)-(iv) of the Introduction to the Code.

In order to re-register as a private company, it will be necessary as a matter of company law for the company to pass an appropriate resolution at a general meeting. The Executive would expect that the circular convening such general meeting should explain that one of the consequences of re-registration would be to take the company outside the ambit of the Code. The Executive should be consulted in advance so as to ensure that the circular contains an explanation of the Code and the implications for shareholders of re-registration.

CASH CONFIRMATION

Rule 24.7 requires that, when an offer is for cash or includes an element of cash, the offer document must include confirmation by an appropriate third party that resources are available to the offeror sufficient to satisfy full acceptance of the offer. If the party confirming that resources are available fails to act responsibly and to take all reasonable steps to assure itself that the cash is available, it may be required to produce the cash itself.

In some cases, the Executive has been asked whether the cash confirmation required by this Rule could be given by another member of the same group as the offeror, or by a party which is in the same group as one of the members of a consortium that is making the offer. The Executive will not generally regard such a person as an appropriate third party to give the cash confirmation. However, the Executive may be prepared to grant dispensations in appropriate circumstances and should, accordingly, be consulted in such cases.

ACCOUNTS

In the year to 31 March 2002, contract note levy receipts rose slightly from £1.2 million to £1.4 million but income from document fees decreased significantly from £5.9 million to £3.3 million. Expenditure fell by £1.1 million to £8.2 million. As a result, the deficit for the year increased to £3.2 million, reducing the accumulated surplus to £0.9 million.

The Panel has taken action to improve its financial position. The document charges were increased with effect from 1 August 2001 and the contract note levy was increased to £1 with effect from 1 April 2002.

Further, the Panel will introduce later this year an annual fee of £5,000 for exempt status. This is in recognition of the fact that market-makers and fund managers who qualify for exempt status derive considerable benefit from being permitted broadly to carry on their normal business activities during an offer period, notwithstanding that the corporate finance arm in the same group as the exempt entity is advising on the bid.

Costs have been strictly controlled, falling by some 12 per cent. compared with the previous year. Staffing requirements have been, and will continue to be, reduced: Peter Lee will not be replaced when he retires shortly as a Deputy Director General and the number of Assistant Secretaries is being reduced from 11 to seven. Non-personnel costs have decreased by 27 per cent.

The Panel's income tends to be volatile, dependent as it is upon the level of M&A activity in particular and of stock market activity in general. Nonetheless, the actions taken by the Panel to raise revenues from both existing and new sources, whilst implementing cost cutting measures, should serve to eliminate the annual deficit incurred over the last two years and return the Panel to surplus.

PHILIP REMNANT  
18 July 2002

**ACCOUNTS FOR THE YEAR ENDED  
31 MARCH 2002**

INCOME AND EXPENDITURE ACCOUNT  
FOR THE YEAR ENDED 31 MARCH 2002

	NOTE	2002 £	2001 £
<b>INCOME</b>			
Contract note levy		1,412,184	1,248,883
Document fees		3,290,000	5,915,000
City Code sales		149,271	48,109
Other income		8,368	3,581
		<u>4,859,823</u>	<u>7,215,573</u>
<b>EXPENDITURE</b>			
Personnel costs		5,940,681	6,234,242
Accommodation costs		631,413	449,173
Other expenditure		1,627,266	2,639,301
		<u>8,199,360</u>	<u>9,322,716</u>
DEFICIT BEFORE INTEREST AND TAXATION		(3,339,537)	(2,107,143)
Interest receivable		144,141	330,529
Taxation	2	(25,165)	(73,560)
DEFICIT FOR THE YEAR		<u>(3,220,561)</u>	<u>(1,850,174)</u>
ACCUMULATED SURPLUS AT BEGINNING OF YEAR		<u>4,099,846</u>	<u>5,950,020</u>
ACCUMULATED SURPLUS AT END OF YEAR		<u><u>879,285</u></u>	<u><u>4,099,846</u></u>

All activities are regarded as being continuing.

The Panel on Takeovers and Mergers has no recognised gains and losses other than the income and expenditure shown above and therefore no statement of total gains and losses has been presented.

THE TAKEOVER PANEL  
2001 – 2002 REPORT

BALANCE SHEET  
AT 31 MARCH 2002

	NOTE	2002 £	2001 £
CURRENT ASSETS			
Debtors and prepayments	3	903,918	614,061
Bank and cash		735,840	5,132,464
		<u>1,639,758</u>	<u>5,746,525</u>
CURRENT LIABILITIES			
Creditors and accruals	4	731,645	1,573,119
Corporation tax		28,828	73,560
		<u>760,473</u>	<u>1,646,679</u>
Net assets		<u>879,285</u>	<u>4,099,846</u>
Representing:			
ACCUMULATED SURPLUS		<u>879,285</u>	<u>4,099,846</u>

The accounts on pages 16 to 19 were approved by the Finance Committee on 25 June 2002 and signed on behalf of the Members by:

PETER SCOTT QC

The Chairman, Panel on Takeovers and Mergers

ANTONY BEEVOR

The Chairman, Finance Committee



CASH FLOW STATEMENT  
FOR THE YEAR ENDED 31 MARCH 2002

	NOTE	2002 £	2001 £
Net cash outflow from operating activities	5	<u>(4,489,428)</u>	<u>(901,614)</u>
Returns on investments and servicing of finance			
Interest received		<u>162,701</u>	<u>341,724</u>
Net cash inflow from returns on investments and servicing of finance		<u>162,701</u>	<u>341,724</u>
Taxation			
UK Corporation tax paid		<u>(69,897)</u>	<u>(79,833)</u>
Decrease in cash	6	<u><u>(4,396,624)</u></u>	<u><u>(639,723)</u></u>

NOTES TO THE ACCOUNTS

1. BASIS OF PREPARATION OF ACCOUNTS AND ACCOUNTING POLICIES

- a) The accounts have been prepared on the historical cost basis of accounting and in accordance with applicable Accounting Standards in the United Kingdom.
- b) All expenditure of a capital nature amounting to less than £5,000 is written off in the year in which it is incurred.
- c) Income and expenditure is accounted for on an accruals basis.
- d) Assets and liabilities denominated in foreign currency are translated into sterling at the rate of exchange ruling at the balance sheet date. Foreign currency profits and losses arising from transactions during the year are translated and included in the financial statements at the rate of exchange prevailing on the date the transactions are executed and all foreign exchange differences are taken to the profit and loss account.

	2002 £	2001 £
2. TAXATION		
UK Corporation tax payable on interest income received:		
Current	<u>25,165</u>	<u>73,560</u>
	<u><u>25,165</u></u>	<u><u>73,560</u></u>

Corporation tax is payable at a rate of 20% (2001: 20%) for the first £300,000 of taxable profit and thereafter at an effective rate of 32.5% (2001: 32.5%).

THE TAKEOVER PANEL  
2001 – 2002 REPORT

NOTES TO THE ACCOUNTS *continued*

	2002	2001
	£	£
3. DEBTORS AND PREPAYMENTS		
Contract note levy accrued income	401,786	293,183
Document fees	350,000	168,065
Interest receivable	4,158	22,718
Other debtors and prepayments	147,974	130,095
	<u>903,918</u>	<u>614,061</u>
	2002	2001
4. CREDITORS AND ACCRUALS	£	£
Personnel costs	118,383	910,414
Legal and professional fees	268,318	266,649
Document fees	–	178,002
Contract note levy repayable	325,000	–
Other creditors and accruals	19,944	218,054
	<u>731,645</u>	<u>1,573,119</u>
	2002	2001
5. NET CASH OUTFLOW FROM OPERATING ACTIVITIES	£	£
Deficit before interest and taxation	(3,339,537)	(2,107,143)
(Increase)/decrease in debtors and prepayments	(308,417)	264,661
(Decrease)/Increase in creditors	(841,474)	940,868
Net cash outflow from operating activities	<u>(4,489,428)</u>	<u>(901,614)</u>
	2002	2001
6. RECONCILIATION OF NET CASHFLOW TO MOVEMENT IN NET FUNDS	£	£
Decrease in cash in period	(4,396,624)	(639,723)
Change in net funds	(4,396,624)	(639,723)
Net funds at 1 April 2001	5,132,464	5,772,187
Net funds at 31 March 2002	<u>735,840</u>	<u>5,132,464</u>
7. PENSION SCHEMES		

During the year, the Panel operated two defined contribution pension schemes. Contributions to these schemes are charged to the profit and loss account in the year in which they arise. The cost of these schemes for the year was £138,478 (2001: £137,502).

THE TAKEOVER PANEL  
2001 – 2002 REPORT

INDEPENDENT AUDITORS' REPORT TO THE MEMBERS OF THE PANEL ON TAKEOVERS AND MERGERS

We have audited the accounts which comprise the income and expenditure account, the balance sheet and the related notes which have been prepared in accordance with the accounting policies set out in Note 1.

RESPECTIVE RESPONSIBILITIES OF PANEL MEMBERS AND AUDITORS

The Panel Members' responsibilities for preparing the accounts in accordance with applicable accounting standards are set out in the statement of Panel Members' responsibilities.

Our responsibility is to audit the accounts in accordance with relevant legal and regulatory requirements and United Kingdom Auditing Standards issued by the Auditing Practices Board.

BASIS OF AUDIT OPINION

We conducted our audit in accordance with auditing standards issued by the Auditing Practices Board. An audit includes examination, on a test basis, of evidence relevant to the amounts and disclosures in the accounts. It also includes an assessment of the significant estimates and judgements made by the Panel Members in the preparation of the accounts, and of whether the accounting policies are appropriate to the Panel's circumstances, consistently applied and adequately disclosed.

We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the accounts are free from material misstatement, whether caused by fraud or other irregularity or error. In forming our opinion we also evaluated the overall adequacy of the presentation of information in the accounts.

We read the other information contained in the annual report and consider the implications for our report if we become aware of any apparent misstatements or material inconsistencies with the accounts.

OPINION

In our opinion the accounts present fairly, on the basis set out in Note 1, the state of affairs of The Panel on Takeovers and Mergers at 31 March 2002 and of its deficit and cash flows for the year then ended.

PRICEWATERHOUSECOOPERS

Chartered Accountants and Registered Auditors, London

25 June 2002

THE TAKEOVER PANEL  
2001 – 2002 REPORT

STATEMENT OF PANEL MEMBERS' RESPONSIBILITIES

The Panel Members have determined that accounts should be prepared for each financial year that present fairly the state of affairs of the Panel as at the end of the financial year and of its surplus or deficit for that period.

The Panel Members confirm that suitable accounting policies have been used and applied consistently and reasonable and prudent judgements and estimates have been made in the preparation of the accounts for the year ended 31 March 2002. The Panel Members also confirm that applicable accounting standards have been followed and that the accounts have been prepared on the going concern basis.

The Panel Members are responsible for keeping proper accounting records and for taking reasonable steps to safeguard the assets of the Panel and to prevent and to detect fraud and other irregularities.

## STATISTICS

The Panel held two meetings to hear appeals against rulings by the Executive. Neither of the appeals was successful. No cases were heard by the Appeal Committee.

There were 107 (year ended 31 March 2001-198) published takeover or merger proposals of which 106 (193) reached the stage where formal documents were sent to shareholders. These proposals were in respect of 104 (186) target companies.

10 (22) offers were not recommended at the time the offer document was posted. 4 (15) of these remained unrecommended at the end of the offer period, of which 2 (9) lapsed.

3 (7) offers were, at the time of their announcement, mandatory bids under Rule 9.

A further 7 (13) cases, which were still open at 31 March 2002, are not included in these figures.

The Executive was engaged in detailed consultations in another 190 (208) cases which either did not lead to published proposals, were waivers of the Code's requirements in cases involving very few shareholders or were transactions, subject to approval by shareholders, involving controlling blocks of shares.

	2001-2002	2000-2001
OUTCOME OF PROPOSALS		
Successful proposals involving control (including schemes of arrangement)	96	161
Unsuccessful proposals involving control (including schemes of arrangement)	5	20
Proposals withdrawn before issue of documents (including offers overtaken by higher offers)	1	5
Proposals involving minorities, etc	5	12
	<u>107</u>	<u>198</u>

**STATEMENTS ISSUED BY THE PANEL  
DURING THE YEAR  
ENDED 31 MARCH 2002**

**2001**

2 May	2001 / 6	MR ROBERT BREARE AND BOTTS & COMPANY LIMITED – PUBMASTER GROUP LIMITED – THE WOLVERHAMPTON & DUDLEY BREWERIES PLC <i>(Requirement for potential offerors to make Rule 2.5 announcements or announce no intention to bid by 1 June 2001)</i>
13 July	2001 / 7	DOCUMENT CHARGES <i>(Revisions to the scale of charges payable on offer and whitewash documents)</i>
18 July	2001 / 8	2001 ANNUAL REPORT <i>(Extracts from the Report by the Director General contained in the 2001 Annual Report)</i>
5 September	2001 / 9*	CODE COMMITTEE – PUBLIC CONSULTATION PAPERS <i>(Issue of Public Consultation Papers 1, 2, 3, 4 and 5 by the Code Committee of the Panel)</i> PCP1: <i>The Dissemination of Regulatory Information – the FSA’s Proposals and the Implications for the Takeover Code</i> PCP2: <i>“Refresher” Announcements under Rule 2.4</i> PCP3: <i>Equality of Information to Competing Offerors</i> PCP4: <i>Disclosure of Side Agreements Relating to Offer Pre-Conditions and Conditions</i> PCP5: <i>Electronic Acceptances in CREST</i>
16 October	2001 / 10*	CODE COMMITTEE – RESPONSES TO PUBLIC CONSULTATION PAPERS 1 TO 5 <i>(End of Consultation Period and responses available for public inspection)</i>
16 October	2001 / 11*	CODE COMMITTEE – PUBLIC CONSULTATION PAPERS <i>(Issue of Public Consultation Papers 6 and 7 by the Code Committee of the Panel)</i> PCP6: <i>Purchases by the Offeror of Shares in the Offeree in Exchange for Securities</i> PCP7: <i>Resolution of Competitive Situations</i>
25 October	2001 / 12	WPP GROUP PLC – TEMPUS GROUP PLC <i>(Ruling of the Panel Executive that offeror not permitted to invoke material adverse change condition)</i>
25 October	2001 / 13	WPP GROUP PLC – TEMPUS GROUP PLC <i>(Notification of Appeal)</i>
1 November	2001 / 14	WPP GROUP PLC – TEMPUS GROUP PLC <i>(Result of WPP’s appeal against the ruling of the Panel Executive)</i>
6 November	2001 / 15	WPP GROUP PLC – TEMPUS GROUP PLC <i>(Reasons for the Takeover Panel dismissing WPP’s appeal against the ruling of the Panel Executive)</i>
4 December	2001 / 16*	CODE COMMITTEE – PUBLIC CONSULTATION PAPER 8 AND RESPONSE STATEMENTS 1 TO 5 <i>(Issue of Public Consultation Paper 8 and Response Statements 1 to 5 and Code amendments)</i> PCP8: <i>Aggregation of Dealings requiring Disclosure</i>
10 December	2001 / 17*	CODE COMMITTEE – RESPONSES TO PUBLIC CONSULTATION PAPERS 6 AND 7 <i>(End of Consultation Period and responses available for public inspection)</i>

THE TAKEOVER PANEL  
2001 – 2002 REPORT

**2002**

9 January	2002 / 1	APPOINTMENT OF ROBERT OGILVY WATSON AS JOINT SECRETARY <i>(Panel Executive appointment)</i>
18 January	2002 / 2*	CODE COMMITTEE – PUBLIC CONSULTATION PAPER ISSUED ON 4 DECEMBER 2001 <i>(End of Consultation Period and responses available for public inspection)</i>
21 February	2002 / 3*	CODE COMMITTEE – RESPONSE STATEMENTS 6, 7 AND 8 AND CODE AMENDMENTS <i>(Response Statements 6, 7 and 8 and Code amendments)</i>
8 March	2002 / 4	SHAMI AHMED AND LEGENDARY INVESTMENTS PLC – MOSS BROS GROUP PLC <i>(Requirement for potential offeror to make Rule 2.5 announcement or announce no intention to bid by 5 April 2002)</i>
11 March	2002 / 5*	CODE COMMITTEE – DUAL LISTED COMPANY STRUCTURES <i>(Committee announces intention to review status of dual listed company transactions)</i>
14 March	2002 / 6*	CODE COMMITTEE – PUBLIC CONSULTATION PAPERS <i>(Issue of Public Consultation Papers 9 and 10 by the Code Committee of the Panel)</i> PCP9: <i>Questions as to the Potential Concertedness of an Employee Benefit Trust with the Board and/or a Controlling Shareholder</i> PCP10: <i>Shareholder Activism and Acting in Concert</i>
22 March	2002 / 7	XSTRATA PLC <i>(Reasons for the Takeover Panel dismissing Xstrata's appeal against the ruling of the Panel Executive)</i>
28 March	2002 / 8	APPOINTMENT OF STEPHEN HEWES AS JOINT SECRETARY <i>(Panel Executive appointment)</i>

\*Statements issued by the Code Committee

For details of how to obtain copies of the Code, Panel Statements and Annual Reports contact:  
Panel on Takeovers and Mergers,  
P O Box No 226, The Stock Exchange Building,  
London EC2P 2JX. Telephone: 020 7382 9026  
or visit our website at [www.thetakeoverpanel.org.uk](http://www.thetakeoverpanel.org.uk)

THE TAKEOVER PANEL  
2001 – 2002 REPORT

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