THE TAKEOVER PANEL

HEARINGS COMMITTEE

MWB GROUP HOLDINGS PLC (“MWB” or "the Company”)

RULINGS OF THE HEARINGS COMMITTEE

This Panel Statement sets out in its Annexes the Hearings Committee's Rulings of 22 December 2023 and 16 February 2024 (the "**Rulings**") in respect of MWB which were appealed to the Takeover Appeal Board ("**TAB**") and which are the subject of TAB Statement 2024/1 issued on 30 July 2024. The Rulings are now being published in accordance with paragraphs 6.5 and 6.8 of the Hearings Committee's Rules of Procedure.

The contents of the Annexes are as follows:

Annex 1 – Hearings Committee Ruling of 22 December 2023 (the "**Main Ruling**") dealing with the substantive hearing in respect of the Takeover Panel Executive's submissions against the following eleven respondents: (i) Mr Richard Aspland-Robinson; (ii) Mr Richard Balfour-Lynn; (iii) Mr Andrew Blurton; (iv) Mr Jean-Daniel Cohen; (v) Mr Jeffrey Eker; (vi) Mr Camille Froidevaux; (vii) Mr Shaoul Houri; (viii) Mr Patrice Huguenin; (ix) Mr Keval Pankhania; (x) Mr Jagtar Singh; and (xi) Mr Julian Treger (together, the "**Respondents**"); and

Annex 2 – Hearings Committee Ruling of 16 February 2024 supplemental to the Main Ruling, determining an appropriate remedy and/or sanction in respect of each Respondent, in light of the facts found in the Main Ruling.

Date of this Panel Statement: 30 July 2024

Annex 1

THE TAKEOVER PANEL

HEARINGS COMMITTEE

IN THE MATTER OF

MWB GROUP HOLDINGS PLC (“MWB” or "the Company”)

RULING OF THE HEARINGS COMMITTEE (“the Committee”)

Contents

I Introduction

1. On 16 December 2022, after a long and complex investigation, the Executive of the Takeover Panel ("the Executive") initiated disciplinary proceedings against the following eleven Respondents:

   (i) Mr Richard Aspland-Robinson ("Mr Aspland-Robinson"), at the time of the relevant events a senior executive director of MWB Business Exchange Plc ("Business Exchange"), an AIM listed MWB subsidiary;

   (ii) Mr Richard Balfour-Lynn ("Mr Balfour-Lynn"), at the material time the chief executive of MWB;

   (iii) Mr Andrew Blurton ("Mr Blurton"), a joint finance director of MWB at the time of some of the events in question;

   (iv) Mr Jean-Daniel Cohen ("Mr Cohen"), the chairman of Hoche Partners ("Hoche") an advisory firm based in Paris and Luxembourg;

   (v) Mr Jeffrey Eker ("Mr Eker"), an uncle of Mr Balfour-Lynn;

   (vi) Mr Camille Froidevaux ("Mr Froidevaux"), at the material time, the senior partner of Budin Associés ("Budin"), a law firm with offices in Geneva;

   (vii) Mr Shaoul Houri ("Mr Houri"), the principal of EGT Finance Limited ("EGT Finance") and beneficiary of a family trust which owned Dolman Finance Inc. ("Dolman Finance");

   (viii) Mr Patrice Huguenin ("Mr Huguenin"), a senior Swiss lawyer who has practised at Budin since 2003;

   (ix) Mr Keval Pankhania ("Mr Pankhania"), at the material time finance director of Business Exchange;

   (x) Mr Jagtar (or Jag) Singh ("Mr Singh"), at the material time a joint finance director of MWB; and

   (xi) Mr Julian Treger ("Mr Treger"), a founding partner of Audley Capital Advisors LLP ("Audley Capital" or "Audley") which, at the time, was an FSA regulated investment adviser and ultimate parent of a number of funds incorporated in Guernsey.

2. In brief, the Executive alleges that by a series of transactions in 2009 and 2010 Mr Balfour-Lynn and Mr Singh, along with Mr Aspland-Robinson and Mr Eker, acted in concert to acquire shares in MWB which, when added to the shares held by a pre-existing concert party of which Messrs Balfour-Lynn and Singh were principal members and of which Mr Aspland-Robinson and Mr Eker were undisclosed members, amounted to 50.33% of MWB's issued share capital.

3. According to the Executive, the transactions in question were fronted by Mr Treger who collaborated in allowing use of the Audley name for the vehicles incorporated to hold the material shares, a scheme which the Executive alleges was intended to disguise and conceal the interests in the relevant shares of Messrs Balfour-Lynn, Singh, Aspland-Robinson and Eker.

4. The Executive's case is that the effect of the disguise was to mislead shareholders in MWB, other members of the board of MWB, the Executive and the market generally as to the true ownership of the shares in question and thus to enable the four undisclosed members of the concert party to avoid their obligations to extend offers under Rule 9 of the City Code on Takeovers and Mergers ("the Code") to shareholders of MWB.

5. The Executive also alleges that by sham sales of the two corporate vehicles which had been incorporated to hold the relevant shares, the members of the undisclosed concert party contrived to give the impression that they had divested themselves of whatever interests they had previously held in those shares. In truth, according to the Executive, these apparent on-sales were a sham in which the purchase monies were indirectly provided by Mr Balfour-Lynn and by Mr Singh's wife through a series of intermediary vehicles and circulated back to the sellers upon completion of the sales. Accordingly, so the Executive alleges, there was no effective sell-down of the undisclosed concert party's beneficial interests in the relevant shares, and those interests remained vested in the members of the concert party.

6. The Executive's investigation followed a complaint by Pyrrho Investments Limited ("Pyrrho"), a BVI company which carries on business in Hong Kong as a family-owned investment fund. Pyrrho was MWB's single largest shareholder, holding 24.4% of the issued share capital by 15 December 2011, the date of its complaint.

7. By its complaint Pyrrho alleged that it had:

> "*…recently become aware of facts that have given rise to significant concerns of historic, material non-compliance with certain aspects of the Takeover Code (the Code) in relation to MWB.*"

The complaint went on to say that:

> "*In summary, Pyrrho believes that, since 2009, there has been an undisclosed concert party in existence with an aggregate interest of over 48 per cent. of MWB. This grouping has, for all practical purposes, had statutory control over MWB and has obtained this position and level of control in breach of the Code.*"

The stake of 48% of MWB's issued share capital was said to reflect the combined interests of members of a pre-existing concert party and the interests of those who had taken elaborate steps to conceal that they were acting in concert with it.

8. Ordinarily, the Executive would have sought against Messrs Balfour-Lynn, Singh, Aspland-Robinson and Eker as members of the concert party who had acquired interests in shares triggering a Rule 9 obligation, a direction under section 10(b) of the Introduction to the Code ("section 10(b)") requiring them to extend a Rule 9 offer to those shareholders of MWB who were neither disclosed nor undisclosed members of the concert party. However, MWB went into administration during November 2012 and was liquidated and removed from the Register of Companies on 15 April 2018. In the circumstances, the Executive took the view that it was impracticable, if not impossible, to restore MWB to the Register of Companies with a view to reconstituting the Company and requiring Messrs Balfour-Lynn, Singh, Aspland-Robinson and Eker to extend Rule 9 offers to shareholders.

9. Accordingly, the Executive seeks against Messrs Balfour-Lynn, Singh, and Aspland-Robinson, and sought previously against Mr Eker as an alternative to its case against Mr Balfour-Lynn, a direction that they pay compensation to MWB shareholders pursuant to section 954(1) of Chapter 1 of Part 28 of the Companies Act 2006 ("the Act") and section 10(c) of the Introduction to the Code ("section 10(c)"). In the event, for reasons explained below, the Executive withdrew its alternative claim for compensation against Mr Eker.

10. This is the first occasion upon which the Committee has been asked to order the payment of compensation under the powers conferred by section 954(1) of the Act and section 10(c). The issues arising in relation to the compensation claims are dealt with at paragraphs 228 to 278 below.

11. Apart from Mr Blurton, against whom the Executive advances a limited and less serious case, each of the other Respondents is accused of misleading the Executive during its investigation into the material transactions contrary to section 9(a) of the Introduction to the Code ("section 9(a)"). As set out below, section 9(a) sets the standards of conduct which are to be met by anyone dealing with the Takeover Panel.

II The Proceedings

12. The members of the Committee hearing these proceedings are identified in Appendix I to this ruling. The legal teams that represented the parties at the hearing are identified in Appendix II. Those Respondents who represented themselves are also identified in Appendix II.

13. The Executive called no witnesses and advanced its case entirely by reference to the voluminous documents obtained from various sources in the course of its investigation.

14. On 16 December 2022, the Executive served a document entitled Statement of Facts and Recommendations in Respect of Remedial Issues ("the Statement of Facts"). The Statement of Facts ran to 910 pages and was cross-referenced to a substantial volume of underlying contemporaneous documents pertaining to the events under investigation. On 31 January 2023, the Executive served individual disciplinary recommendations on each Respondent ("the Disciplinary Submissions"). The Disciplinary Submissions were cross-referenced to relevant sections of the Statement of Facts and in total amounted to some one thousand further pages.

15. Following a procedural hearing held on 23 February 2023, the Chairman of the Committee issued a procedural programme leading to a hearing of the substantive issues which commenced on 30 October 2023 and lasted for 15 days.

16. At the procedural hearing of 23 February, Mr Eker admitted through counsel that he had lied to the Executive during its investigation and admitted the case against him in its entirety, including, in particular, that the shares of MWB held, as explained below, by a BVI corporate vehicle owned by Mr Eker were in truth beneficially owned by Mr Balfour-Lynn who had indirectly funded their acquisition.

17. For his part, at the same hearing Mr Balfour-Lynn stated through counsel that he would neither admit nor challenge any aspect of the Executive's case against him and would confine himself to contesting the claim for compensation. As the Executive's claim against Mr Eker for compensation was advanced as an alternative case to cover the possibility that the Executive failed to establish Mr Balfour-Lynn's beneficial interest in the shares held by the BVI vehicle owned by Mr Eker, the compensation claim against Mr Eker was withdrawn in light of the concessions made at the procedural hearing.

18. At the Executive's request, Pyrrho had provided assistance and information in the course of the investigation into an undisclosed concert party and had made clear in exchanges with the

Executive that it did not accept the view formed by the Executive that Mr Treger should not be included amongst those liable to pay compensation. Against this background, the Statement of Facts was served by the Executive upon Pyrrho as an interested party affected by a notional[1] ruling pursuant to Rule 1.1(a) of the Committee's Rules of Procedure. Following objections from Mr Treger's legal team to Pyrrho's participation in the proceedings, the Chairman of the Committee issued a ruling on 24 April 2023 requesting and allowing Pyrrho's participation in the proceedings as an interested party solely for the purpose of adducing evidence of its dealings with Mr Treger and for addressing submissions to the Committee in support of its case that, contrary to the Executive's recommendation, Mr Treger should be included amongst those directed to pay compensation (referred to as the "Remedial Subjects").

19. The procedural directions issued on 27 February 2023 provided for exchange of response and reply submissions followed by service of witness statements. It emerged from these exchanges that neither Mr Singh nor Mr Aspland-Robinson would be serving witness statements or giving evidence and, like Mr Balfour-Lynn, they would not be mounting a positive challenge to the facts alleged against them by the Executive[2]. Neither Mr Singh nor Mr Aspland-Robinson were legally represented, and both had been made bankrupt by the time the proceedings began. However, both Mr Singh and Mr Aspland-Robinson supported the submissions of Mr Balfour-Lynn's legal team contesting liability for compensation.

20. The Swiss lawyers, Messrs Froidevaux and Huguenin, are alleged to have misled the Executive in the course of its investigation in breach of section 9(a). The case against Messrs Froidevaux and Huguenin is that they misled the Executive by deliberately concealing their role in orchestrating and implementing what they knew to be sham on-sales in which they acted upon the instructions of Mr Balfour-Lynn. As appears below, it is also alleged that they made certain specific misstatements to the Executive.

1 The ruling was "notional" because the Executive had no jurisdiction to rule on the matters disclosed by its investigation. The device of a notional ruling was intended to give Pyrrho locus to participate in the proceedings before the Committee as an interested party.

2 The very limited respects in which Mr Aspland-Robinson disputed the Statement of Facts are referred to below.

21. On 14 September 2023, the Committee issued a ruling dismissing various preliminary objections advanced by Messrs Froidevaux and Huguenin under Swiss law to the method by which they were notified in Switzerland of the proceedings against them. Although Mr Froidevaux served a witness statement without prejudice to his reservations on the validity of the process, and although both Mr Froidevaux and Mr Huguenin reserved their right to serve submissions, in the event neither of them gave evidence or made submissions at the hearing.

22. Thus by the time the hearing commenced on 30 October 2023, the somewhat curious position had emerged of the four alleged purchasing members of the concert party either indicating that they would mount no positive challenge to the Executive's Statement of Facts or, in the case of Mr Eker, admitting the case in full, while those accused of playing facilitating or ancillary roles in the transactions in question and who were alleged to have misled the Executive contrary to section 9(a) when questioned about their involvement, continued vigorously to resist the case against them.

23. This was the position when the hearing began. However, at intervals during the course of the hearing four of the Respondents, namely Mr Froidevaux, Mr Huguenin, Mr Houri and Mr Pankhania, made formal admissions of breaching the Code in the terms explained below.

III Burden and Standard of Proof

24. Given the seriousness of some of the alleged misconduct there was some debate during the hearing concerning the standard of proof to be applied by the Committee. It is not disputed that the burden of proving the facts alleged rests squarely upon the Executive. The standard is the civil standard of balance of probabilities, but the nature and seriousness of the matters alleged may affect the cogency of the evidence required to find them proved. The standard remains the balance of probabilities, but such an approach recognises that cogent evidence will, as a matter of common-sense, be needed to justify a conclusion that someone of apparent good character has acted fraudulently or otherwise dishonestly.

25. This application of the civil standard of proof was explained by the Committee in Principle Capital Investment Trust Plc and approved by the Takeover Appeal Board in the same case [Takeover Appeal Board Statement 2010/1]. As the Committee in Principle Capital observed:

"[48] It is common ground that the standard of proof which the Executive must meet is the balance of probabilities, but that this civil standard of proof is to be applied flexibly depending upon particular features of the case. To assist the Committee in doing so various authorities were referred to.

[49] As the Court of Appeal put it in R (on the application of A) v. Mental Health Review Tribunal (Northern Region) [2006] 4 All ER 194 at [62]:

"Although there is a single civil standard of proof on the balance of probabilities, it is flexible in its application. In particular, the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the evidence before a court will find the allegation proved on the balance of probabilities. Thus the flexibility of the standard lies not in any adjustment to the degree of probability required for an allegation to be proved (such that a more serious allegation has to be proved to a higher degree of probability), but in the strength or quality of the evidence that will in practice be required for an allegation to be proved on the balance of probabilities." "

26. The long-standing approach to applying the civil standard of proof cited by the Court of Appeal in the Mental Health Review Tribunal case [supra] has been qualified and disapproved in one respect following a comprehensive review of the relevant authorities in the recent Supreme Court case of Jones v Birmingham City Council & Anor. (Rev 1) [2023] UKSC 27. At paragraph 51 of his judgment in that case Lord Lloyd-Jones said this:

"*I pause at this point to take stock of these developments.*
(1) It is now established that there is only one civil standard of proof at common law and that is proof on the balance of probabilities.
(2) Nevertheless, the inherent improbability of an event having occurred will, as a matter of common sense, be a relevant factor when deciding whether it did in fact occur. As a result, proof of an improbable event may require more cogent evidence than might otherwise be required.
(3) However, the seriousness of an allegation, or of the consequences which would follow for a defendant if an allegation is proved, does not necessarily affect the likelihood of its being true. As a result, there cannot be a general rule that the seriousness of an allegation or of the consequences of upholding an allegation justifies a requirement of more cogent evidence where the civil standard is applied. I would therefore respectfully disagree with the contrary statement by Richards LJ in N (cited at para 49 above) and with the statements of Lord Carswell (at para 28) and Lord Brown (at paras 43, 47) in Re D [2008] 1 WLR 1499; [2008] UKHL 33, to the extent that they may be read as supporting that statement of Richards LJ in N."

27. The allegations made by the Executive in the present case include the making of deliberately misleading statements in public documents as well as lying systematically to a regulator. Such allegations have serious consequences for the individual if proved. Accordingly, the Committee has had well in mind that compelling evidence of such misconduct is required before finding it to have occurred.

28. However, this approach to applying the standard of proof does not rule out the drawing of inferences from facts that are found to have been proved. Provided an inference from established fact is not only reasonable but, in the case of serious misconduct, compelling, there

is nothing in the approach outlined above to prevent the Committee from drawing inferences where it is appropriate to do so.

Findings of Fact

IV MWB and the 1997 Concert Party

29. The following narrative is not in dispute.

30. At the beginning of 2009 MWB had equity and debt securities admitted to the Official List and admitted to trading on the Main Market of the London Stock Exchange. Its subsidiaries included Liberty Plc ("Liberty") (in which MWB held a 68.3% interest), Business Exchange (in which MWB held a 68.2% interest) and MWB Malmaison Holdings Limited (in which MWB held an 82.5% interest).

31. In 1982 Mr Balfour-Lynn was one of two founders of Warwick Balfour Properties Plc, a company formed as a commercial and residential property development and investment company which, as its operations expanded, in due course changed its name to Marylebone Warwick Balfour Group Plc.

32. In June 1997 Marylebone Warwick Balfour Group Plc merged with Ex-Lands Properties Plc (“Ex-Lands”) in a reverse takeover. Following the takeover, Ex-Lands assumed the name of Marylebone Warwick Balfour Group Plc. At the time, the Executive was consulted as to whether the former shareholders of Marylebone Warwick Balfour Group Plc were to be treated as acting in concert with the renamed Ex-Lands, a public company, the shares of which were listed on the Official List and admitted to trading on the Main Market of the London Stock Exchange. Applying its usual practice in cases where the shares in a company which are privately held with no public trading facility are sold in consideration for shares in a “Code company”, the Executive ruled that the shareholders in the privately held company, who included, amongst others, Messrs Balfour-Lynn and Singh, were to be treated as acting in concert with each other in relation to their acquisition of shares in the Code company.

33. The concert party thereby identified was known henceforth as the “1997 Concert Party”. On several later occasions the Executive was consulted as to whether additional individuals should properly be included within the 1997 Concert Party. On one such occasion the Executive ruled that Mr Blurton (the former finance director of Ex-Lands and since the merger, a joint finance director of the merged entity along with Mr Singh) should be included as a member. As noted below, the practice of the Panel is to treat as a single entity a group acting in concert albeit the

membership of that group may fluctuate from time to time. Once a concert party is found to exist, the Panel requires clear evidence to establish that it no longer continues. At the time of the transactions relevant to these proceedings, MWB was contemplating seeking a ruling from the Panel that the 1997 Concert Party no longer obtained, but in the event did not do so.

34. In February 2008, Marylebone Warwick Balfour Group Plc underwent a capital reorganisation as a result of which MWB was formed as the new group holding company.

35. By the beginning of 2009, the disclosed members of the 1997 Concert Party held just under 29.68% of the issued share capital. Accordingly, any further acquisition of MWB shares by persons acting in concert with the 1997 Concert Party which increased their aggregate holding to 30% or more of the shares of MWB carrying voting rights, would trigger an obligation under Rule 9.1 of the Code to extend an offer to other shareholders[3].

V Acquisition of the MWB Loan Notes

36. In order to understand the process by which, on the Executive's case, Messrs Balfour-Lynn, Singh, Aspland-Robinson and Eker surreptitiously acquired a controlling interest in MWB while acting in concert with the 1997 Concert Party, it is necessary to explain a prior acquisition of MWB loan notes, some of which were subsequently "converted" into shares of MWB in a placing of new shares which closed on 12 January 2010.

37. The Committee is satisfied that the following narrative is borne out by the documents. Save where otherwise indicated, this narrative is undisputed.

38. At the beginning of 2009 MWB had outstanding £30 million nominal of unsecured loan notes that carried interest of 9.75% and which were to be redeemed during 2012 ("the Loan Notes"). The Loan Notes were admitted to listing on the Official List and admitted to trading on the Main Market of the London Stock Exchange. By the beginning of 2009, 51% of the Loan Notes (£15.3 million nominal) was held by Pendragon Capital Management Inc., a company which, during January or February 2009, was acquired by GLG Partners Inc. ("GLG").

3 The relevant parts of Rule 9 are set out at paragraph 232 below.

39. In common with many such businesses, the MWB group was hard hit by the financial crisis of 2008/2009. Of direct relevance to these proceedings was the problem this created under the Loan Note Trust Deed which capped MWB's maximum permitted gearing by limiting the group's net debt to a multiple of four times the adjusted shareholders' funds. As the value of MWB's property portfolio fell during the financial crisis, its auditors, KPMG, became increasingly concerned about their ability to give an unqualified audit opinion on a going concern basis. In the event, the 2008 Annual Report published in April 2009 did include in the Independent Auditor's Report a paragraph entitled "Emphasis of Matter – Going Concern". This paragraph noted the existence of a material uncertainty casting doubt on MWB's ability to continue as a going concern, namely that:

"…the continued availability of the Group's Unsecured Loan Stock is dependent upon compliance with a gearing covenant which depends in part on property values."

40. MWB's communications with their advisers during spring 2009 make it clear that the group was running out of "headroom" under the covenant. If the group's property values continued to fall, MWB believed that it might be in default by August 2009. In an email to an adviser at Deutsche Bank sent on 27 May 2009 Mr Singh relayed what he described as advice to MWB previously received from a third party:

"The projections for 2009 show a potential loss of £10M, which therefore only leaves a buffer of £25m — which on a £500M plus Property Portfolio means that if the values fell by just 5% over the full year you would be in breach. There is no doubt that the half year figures reviewed by KPMG will reveal this and you will be put on notice as a Board about this by KPMG. The timing for this potential occurrence is August 2009 only 3 months away. Therefore one needs to raise cash to do a deal with the Loan Stock Holders — either through an effective fund raising or the selling of assets."

41. At the time, GLG was putting pressure on MWB. GLG had suggested in correspondence that MWB was already in breach of the gearing covenant in the Loan Note Trust Deed and had called a meeting of Loan Note holders for 17 June 2009 with the object of appointing a committee to enquire into the matter. Breach of the gearing covenant would have triggered accelerated payment of the principal of £30 million of the Loan Notes along with various cross-defaults and would have had disastrous consequences for MWB.

42. This was the context in which Mr Treger agreed with Mr Singh to approach Mr Julian Harvey-Wood of GLG with a view to negotiating an agreement for purchasing at a discount GLG's £15.3 million nominal of Loan Notes. Mr Singh had previously elicited from Mr Harvey-Wood that GLG was in principle keen to sell its Loan Notes and might be amenable to selling at a discount to par value. It is apparent from MWB board minutes that Mr Singh and his colleagues had identified the potential for securing additional "headroom" for MWB if ownership of the

Loan Notes were to be transferred to a friendly party likely to be amenable to a relaxation of the gearing covenant.

43. What follows is hotly disputed between Mr Treger and the Executive. The Executive maintains that Mr Treger agreed with Mr Singh from the outset to "front" the purchase of the Loan Notes from GLG by acting ostensibly in his capacity as a potential investor through Audley's managed funds, but in fact acting on the instructions of Mr Singh with a view to acquiring the Loan Notes for the senior management of MWB and their associates whose identities as purchasers would be concealed.

44. Mr Treger, on the other hand, points to the unchallenged fact that he was already comprehensively involved with MWB in an advisory capacity in attempting to find solutions for the group's financial difficulties and in assisting them to raise capital (a project given the code-name Project Mint). One method of alleviating MWB's difficulties would be to find purchasers of GLG's Loan Notes who would be less hostile, if not friendly, to MWB's interests. Mr Treger maintains that it was against this background and as an extension to his pre-existing advisory role with the group that he undertook to seek investors willing to purchase GLG's Loan Notes.

45. The Committee will revert to this dispute when it addresses the Executive's case against Mr Treger. However, it is convenient to summarise now those aspects of the dealings between Messrs Treger and Harvey-Wood that are evident from contemporary documents.

46. On 15 April 2009, Mr Singh sent an email entitled "Ideal Scenario" to Mr Adam Epstein, a junior analyst employed by Audley Capital who did most of the detailed work involved in advising MWB on its options for raising capital or otherwise alleviating its financial difficulties. The email was copied to Mr Treger and in relevant part said as follows:

"lt was good to meet with you yesterday. Apologies I couldn't get this to you earlier. The Ideal scenario would be to use the least amount of cash to do a deal with the Loan Stock Holders. My current conversations lead me to believe that there is a deal to be done at 65p ish or perhaps a little lower. We would only need a 50% vote[4] on Loan Stock to increase the covenant levels to give us substantial headroom, and if this could be done for an amount of say £ 6-7M that would be better than investing the £ 27M in the current model."

4 In fact Mr Singh was wrong on this – amendment of the gearing covenant would require a 75% vote under the Loan Note Trust Deed.

47. The minutes of MWB's board meeting of 2 June 2009 include the following:

"The Board discussed the possibility of the Company or a potential investor acquiring GLG's (previously know (sic) as Pendragon Capital Management) holding of Loan Stock. They agreed that there was likely to be benefit, particularly if rights were offered subsequently to the remaining Loan Stock holders to convert their investments to equity. Andrew Blurton advised the Board that the offer of conversion would be subject to approval, in respect of at least 75 percent of the Loan Stock that was voted and 75 percent of the ordinary shares that was voted."

48. The previous day Mr Treger had emailed Mr Singh saying:

"Think parts of your idea have merit. Let's see where you get to with pendragon[5] *and where we get to re investors appetite. Will you set up something with shankland and let me know when. Perhaps ramon should come to"*[6]

49. On 2 June 2009 Mr Singh spoke to Mr Harvey-Wood and told him of a potential buyer for GLG's Loan Notes at a price of around 50% of their par value. Mr Harvey-Wood rejected the idea of a sale at a discount from par of 50% but agreed to talk to the potential buyer. This was followed on the same day by an email from Mr Treger to Mr Julian Harvey-Wood in which Mr Treger said:

"Julian
Audley is interested in potentially acquiring a position in the mwb bonds for our income product. Jag singh mentioned you are willing to discuss disposing of your holding. Can we arrange a time to discuss this further? I am in the us this week but perhaps early next week? Look forward to your answer.
Yours sincerely
Julian Treger"

50. Mr Harvey-Wood replied on 4 June 2009 agreeing to a meeting to discuss, whereupon Mr Treger forwarded the exchange to Mr Singh with the comment – "*As predicted. Let's see.*" This set a pattern for the subsequent negotiations between Messrs Treger and Harvey-Wood with Mr Treger routinely reporting back by email to Mr Singh on the course of negotiations. It also appears from calendar entries that Mr Singh arranged to meet Mr Treger on 8 June 2009 and Mr Balfour-Lynn arranged to meet him on 9 June following a meeting earlier that day between Messrs Treger and Mr Harvey-Wood. The Executive invites the Committee to infer from this that Mr Treger was throughout taking his instructions from Mr Singh.

5 By now, GLG.

6 The proposed meeting with Mr Graeme Shanklin of Bank of Scotland concerned MWB's attempts at capital raising. Mr Treger suggested that Ramon Betolaza of Matlin Patterson might come to that meeting because Mr Betolaza was assisting MWB in its approach to the bank for funding. See further on this paragraphs 55 and 300 to 305 below.

51. In an email sent on the morning of 11 June 2009 Mr Harvey-Wood proposed a price of 61 pence. This was agreed an hour later by Mr Treger who said:

"Great news. We will need to go to investment committee and then draw down funds. So we should agree the deal but have a closing in a few weeks – perhaps after the next interest payment."

Mr Harvey-Wood immediately replied by email to Mr Treger saying:

"…I do not have a problem with delayed settlement, but at what point would you be able to unconditionally commit to a trade?"

Mr Treger forwarded this response to Mr Singh simply saying:

"FYI. How to respond?"

52. Later on the same day Mr Treger emailed Mr Singh saying:

"I am tempted to say I can place 6.4m firm and am speaking to coinvestors about the other 2.9m. can we structure the deal to close on the 6.4m on say July 2 and provide an option for the further 30 days on the other 2.9m? what do you think?"

53. Consistently with this suggestion, on the following day, 12 June 2009 Mr Treger emailed Mr Harvey-Wood saying:

"What we would like is an irrevocable commitment to sell valid for four weeks from you. Our present situation is that we have firm appetite for around £6.5m, but the deal is £9.3m (61x15.3) and we have some coinvestors who are interested in the remaining £3m. So we need probably two weeks to commit on the remainder assuming you want to do the whole piece. Is that ok?
Let me know"

It should be explained that Mr Treger's evidence to the Committee was that Mr Harvey-Wood had made it clear that GLG was looking to sell all or none of its Loan Notes. Thus £9.3 million would be needed to complete the purchase of £15.3 million nominal of Loan Notes at a price of 61 pence per £1 nominal.

54. Shortly after receiving Mr Treger's email of 12 June 2009, Mr Harvey-Wood emailed a reply refusing the request for an irrevocable commitment to sell, but inviting Mr Treger to make a firm bid when he was in a position to do so. Consistent with what by now was the established pattern, Mr Treger forwarded the email exchange to Mr. Singh.

55. Mr Treger's evidence to the Committee was that once a price had been agreed with Mr Harvey-Wood on 11 June 2009, he set about sourcing investors. However, when on the next day Mr Harvey-Wood refused his request to close on a purchase of £6.5 million on 2 July 2009 with a further 30-day option for the balance of £2.9 million, Mr Treger is said to have realised that the one firm indication he claimed by then to have received could not be finalised within the

time frame required by GLG. Mr Treger maintains that the £6.5 million referred to in his email to Mr Harvey-Wood of 12 June 2009 referred to a firm indication he had recently received from Matlin Patterson regarding an investment of £6.4 million together with a small investment of £100,000 by Audley.

56. According to Mr Treger, when he reported the position back to Mr Singh, Mr Singh seemed surprisingly relaxed and disclosed that he had Mr Aspland-Robinson and Mr Eker lined-up as potential investors. Mr Treger had met Mr Aspland-Robinson on a few previous occasions and knew that he was a director of Business Exchange. He did not know Mr Eker but told the Committee that Mr Singh explained that he was Mr Balfour-Lynn's uncle. Mr Treger also maintained that he was told by Mr Singh that Banque Privée Edmond de Rothschild ("EDR", a private bank based in Geneva) represented or advised some other interested investors.

57. According to Mr Treger, upon being told this by Mr Singh, he ceased looking for investors and continued at the request of Mr. Singh to deal with Mr Harvey-Wood on behalf of Messrs Aspland-Robinson and Eker and the investors represented by EDR.

58. The Executive accepts none of this. It disputes that Mr Treger ever looked for investors and maintains that he acted throughout on the instructions of Mr Singh, in effect using the Audley name as a front to cover the interests of MWB's senior management and their relatives and associates. The Executive maintains that when Mr Treger said in his email to Mr Singh of 11 June 2009, "*I am tempted to say I can place 6.4m firm and am speaking to coinvestors about the other 2.9m*", the first figure referred to the commitments that Mr Singh already had and the residual £2.9 million to that which Mr Singh still needed to find in order to meet a price of £9.3 million.

59. In support of its case that Mr Singh was at this stage still looking to raise in the region of £2.9 million, the Executive refers to an email sent by Mr Singh to Mr Aspland-Robinson on 14 June 2009 with an attachment entitled "Project Wealth". That email and its attachment were also forwarded to Mr Pankhania, Mr Aspland-Robinson's friend and co-director at Business Exchange. The "Project Wealth" attachment spelt out the profit available for investors in the Loan Notes at a price of 61p irrespective of whether investors decided subsequently to convert their Loan Notes into MWB shares or to retain them for the interest coupon and their par capital value at redemption. The email attachment said this:

"The Company has in issue £30M of Unsecured Loan Stock (LSTK). This LSTK attracts an annual interest coupon of 9.75%, paid half yearly.

A holder of some of the LSTK wishes to sell their stake for 61p per £1 of Loan Stock held.

The Company is currently minded to consider giving all LSTK holders the right to convert their LSTK into ordinary shares of the Company at a conversion price of 46p per share.

The Companys current share price is 46p. This would mean that any LSTK Holder would be buying approx 2.2 shares for each £1 of LSTK. Therefore for the Investor acquiring LSTK at 61 p per £1 of LSTK, they would be effectively getting the converted share at a price of 27.3 p. This would be attractive as it gives an instant theoretical profit of 40% per share on the current Companys share price of 46p.

However even if the Investor who acquired the LSTK at 61p per £1 of LSTK wished to hold on and not convert as would be their right as they wished half yearly income and then a profit at the end of the life of the LSTK, being 30 June 2012, they would receive the following.

An annual interest on their investment of 61p of 16% but being paid half yearly. This interest would be paid until 30 June 2012, when the LTSK would be redeemed at £1 for every £1 held - this would mean that an Investor who had paid 61p to acquire £1 of LSTK would get back £1 for each £1 of LSTK held by them. This would give them a 64% capital profit on redeeming the £1 of LSTK at 30 June 2012 - being a simple capital profit over say 3 years of 21.3% per annum.

Therefore if a LSTK holder who buys at 61p does not convert then they would get an annual income stream of 16% per annum and a capital profit per annum of 21.3%, being a total simple annual return of 37.3%.

The Investor who likes income can obtain a 37.3% annual return. The Investor who likes Equity can on day 1 obtain a 40% discount on current share price and enjoy the benefit of Share price uplift as the Company expands."

60. It is clear from the above that Mr Singh was offering investors in the Loan Notes two profitable options (i) buying at a discount with a view to converting into MWB shares in an exchange based on the par value of the Loan Notes, or (ii) retaining the Loan Notes for their interest coupon and capital value at redemption.

61. The Committee will address the disputed evidence when considering the Executive's case against Mr Treger.

62. It is apparent from the documents that Mr Treger continued to negotiate with Mr Harvey-Wood until an agreement was reached on about 23 June 2009. In the meantime, when on 18 June 2009, Mr Harvey-Wood emailed Mr Treger asking "*any progress on identifying who will be the buyers?*" Mr Treger responded by saying they were waiting for the brokerage details and would revert tomorrow. He then forwarded the exchange to Mr Singh before saying "*Please give me a call when you are up*".

63. On 1 July 2009 Mr Treger was told by Mr Harvey-Wood that the Loan Note Trustee had asked about the identity of the purchasers "*specifically whether it is a company or related party*". In the same email Mr Harvey-Wood suggested that Mr Treger might reply that he did not know the identity of the underlying purchasers or beneficial owners or alternatively that:

"*it has been confirmed to us that the underlying purchasers and beneficial owners have no connection or arrangements with the company or its management*".

Mr Treger forwarded this email to Mr Singh saying "*Can we discuss?*" to which Mr Singh replied "*I will call you shortly*".

64. In the event, Mr Harvey-Wood's enquiry on behalf of the Loan Note Trustee went unanswered and GLG were not informed of the identity of the purchasers or their connection with MWB or its senior management.

VI The Purchasers of GLG's Loan Notes and Those Providing the Funds

65. The purchase of the Loan Notes was not a transaction regulated by the Code. However, the subsequent "conversion" of a proportion of the Loan Notes into shares of MWB issued in a placing, directly engaged the Code and, accordingly, makes relevant the ownership of those Loan Notes that were "converted" into equity.

66. The Loan Notes were not purchased by Audley funds or by any funds managed by Mr Treger or by any Audley entity.

67. The primary documents and contemporary emails obtained by the Executive show that all the funds used to acquire the Loan Notes were provided by Messrs Balfour-Lynn and Singh or by members of their family or associates. The following figures and sources of funds were ascertained by the Executive by analysis of the contemporary documents and are not challenged.

68. Mr Aspland-Robinson acquired £4,950,000 nominal of Loan Notes for the total sum of £3,019,500. Of that, £3,400,000 nominal of Loan Notes were purchased ostensibly for himself for the sum of £2,074,000 and £1,550,000 nominal of Loan Notes for Mr Pankhania for the sum of £945,000 received from Mr Pankhania.

69. Mr Eker acquired £6,250,000 nominal of Loan Notes, ostensibly on behalf of himself and his daughters. The total sum paid was £3,812,500.

70. EDR acquired £4,100,000 nominal of Loan Notes for a total sum of about £2,503,050.

71. Of the total sum of £3,019,000 paid by Mr Aspland-Robinson, Mr Balfour-Lynn provided £470,000, Mr Singh, through accounts held by his wife, Dr Ajit Gill and others on his behalf, provided £1,149,000, Mr Pankhania paid £945,500 and Mr Aspland-Robinson himself funded the balance of £455,000.

72. Of the total sum of £3,812,500 paid by Mr Eker, £2,501,000 was provided by Mr Balfour-Lynn, £488,000 by Mr Eker's daughter, Mrs Annabel Wood, £213,500 by Mrs Charlotte Kerr, Mr Eker's other daughter, and £610,000 by Mr Eker himself.

73. The total sum of just over £2,500,000 paid by EDR was provided by three clients of the bank incorporated variously in Panama or Liechtenstein each of which was beneficially owned by the relatives of Mr Balfour-Lynn identified below.

74. £793,650 was paid by Mr Balfour-Lynn under a sole power of attorney from his mother, Mrs Valerie Balfour-Lynn, over her account with Malibran. Malibran was beneficially owned by Mrs Valerie Balfour-Lynn. £793,650 was the consideration for £1,300,000 nominal of Loan Notes acquired for Malibran.

75. Naberrie, a client of EDR beneficially owned by Mr Eker, provided £1,221,000 for £2,000,000 nominal of Loan Notes.

76. Museum Foundation, which was beneficially owned by Mr Eker's brother, Mr Leonard Eker, provided £488,400 for £800,000 nominal of Loan Notes.

77. On 29 June 2009, Mr Singh emailed Mr Balfour-Lynn attaching an unsigned declaration of trust declaring that Mr Eker was the legal owner of £7,100,000[7] nominal of loan notes of which he held £4,100,000 nominal on trust for Mr Balfour-Lynn[8]. At the price of 61p for £1 nominal, the £4,100,000 million nominal corresponded exactly with the funds of £2,501,000 provided by Mr Balfour-Lynn to Mr Eker. Mr Balfour-Lynn subsequently sent the declaration of trust to Mr Eker who responded "…*seems OK to me*". As noted above, Mr Eker admitted by counsel that he had lied to the Executive in his interviews and that Mr Balfour-Lynn was the beneficial owner of £4,100,000 nominal of the Loan Notes which Mr Eker had purchased from GLG.

78. As also noted above, Mr Aspland-Robinson did not provide a witness statement or give evidence in the proceedings. He did, however, serve submissions in response to the Executive's Disciplinary Submissions, but they did not contest the Executive's case regarding the source of funds for the Loan Notes purchased by him from GLG. In the circumstances the Committee has no doubt that the Loan Notes acquired by Mr Aspland-Robinson with the £470,000 advanced to him by Mr Balfour-Lynn (to the value of £770,492 nominal) were owned by Mr Balfour-Lynn as ultimate beneficiary. Similarly, the Committee has no doubt that those Loan Notes acquired by Mr Aspland-Robinson with the funds of £1,149,000 advanced to him by Mr Singh (equating to £1,883,607 nominal) were acquired for Mr Singh as ultimate beneficiary.

VII Acquisition of the Audley Companies by Messrs Aspland-Robinson and Eker

79. The following is not in dispute.

80. During November or early December 2009, Mr Aspland-Robinson acquired title to the shares of Audley Investments Portfolio Limited ("AIPL") a company incorporated in the BVI. At the same time, Mr Eker acquired the shares of Audley Capital Development Limited ("ACDL"), another company incorporated in the BVI. The companies were acquired as nominees for holding the Loan Notes purchased by Mr Aspland-Robinson and those Loan Notes of Mr Eker which he held on trust for Mr Balfour-Lynn as beneficiary.

7 Mr Eker held £6,250,000 nominal along with the £2,000,000 nominal acquired for the account of Naberrie. From the resulting £8,250,000 one subtracts to reach £7,100,000, the £800,000 nominal bought from funds of Mrs Wood and the £350,000 bought from funds of Mrs Kerr.

8 Bizarrely, the covering email was entitled "Swimming Pool Bill".

81. Arrangements for the acquisition of the BVI companies were made by Mr Singh through MWB's auditors, BDO, and subsequently through STM Fidecs Limited ("STM Fidecs") a professional services firm based in Gibraltar. STM Fidecs provided nominee services in relation to AIPL and ACDL.

82. On 11 November 2009, the name of Saltus Holdings Limited (a company incorporated in the BVI during 2008) was changed to AIPL and on the same day Potter Developments Limited (a company incorporated in the BVI during 2007) changed its name to ACDL. For reasons that become clear from what follows, the Committee has no doubt that the names of the two companies were chosen to give the false impression that they were entities controlled or managed by Mr Treger or by Audley Capital. Messrs Balfour-Lynn and Singh must be taken to have intended this, but whether Mr Treger was complicit in this design will be addressed in connection with the Executive's disciplinary case against him.

83. A loan stock transfer form, dated 12 November 2009, recorded the transfer of all of Mr Aspland-Robinson's £4,950,000 nominal of Loan Notes by STM Fidecs to AIPL. The transfer of £4,100,000 of Mr Eker's Loan Notes to ACDL took longer and appears not to have been effected until early December 2009. The Loan Notes that Mr Eker had purchased for himself and his daughters as beneficiaries were not transferred to ACDL. Mr Eker admits, and Mr Balfour-Lynn does not dispute, that Mr Balfour-Lynn was the ultimate beneficiary of all the Loan Notes transferred to ACDL.

84. Despite having no ostensible interest in the acquisition of AIPL and ACDL and the transfer to those companies of Loan Notes, the contemporary documents show that Mr Singh was engaged throughout in the detailed administrative arrangements. Mr Balfour-Lynn was not engaged in the detail but intervened occasionally (for example to seek KYC information from Mr Eker): there is no doubt that he approved the transactions and was kept aware of what was going on.

85. It is apparent from the matters referred to below that MWB had resolved by no later than the summer or early autumn of 2009 to raise capital in a placing and for a proportion of the Loan Notes acquired from GLG to be purchased for cancellation by MWB at their nominal value so as to enable the Loan Note holders to use the proceeds to acquire shares in the placing. As explained below, this scheme enabled Messrs Balfour-Lynn, Singh and Aspland-Robinson, the ultimate beneficiaries of the Loan Notes that were converted into shares in the placing, to make a considerable undisclosed profit at the expense of MWB.

VIII The Aspland-Robinson Acquisition

86. Before addressing the placing and its implications it is convenient to deal with a discrete purchase of MWB shares made by Mr Aspland-Robinson on 1 June 2009. The Executive only became aware of this transaction by reviewing documents obtained during the course of its investigation.

87. On 1 June 2009 Mr Aspland-Robinson acquired 1,811,385 MWB shares, equating to 2.5% of MWB's then issued share capital, for a consideration of £724,554. Of that consideration, £500,000 was advanced by Mr Balfour-Lynn, according to Mr Aspland-Robinson, by way of a loan.

88. At the time of this acquisition the disclosed members of the 1997 Concert Party held 29.75%[9] of MWB's issued share capital. Accordingly, if Mr Aspland-Robinson had been acting in concert with the 1997 Concert Party in acquiring these shares, the aggregate holding of the 1997 Concert Party would have increased from 29.75% to 32.25% of MWB's issued share capital, thereby triggering an obligation to extend a Rule 9 offer to other shareholders.

89. Before this transaction, Mr Aspland-Robinson owned 50,000 MWB shares but was not a disclosed member of the 1997 Concert Party. In his submission in the proceedings, Mr Aspland-Robinson maintained that he was ignorant both of the concept of acting in concert under the Code and specifically, of Rule 9. He maintained that had he been aware that his acquisition of 2.5% of MWB's share capital might trigger an obligation to make a Rule 9 offer he would never have bought the shares, as he could not afford the financial obligations associated with an offer. As Mr Aspland-Robinson elected not to give evidence these assertions could not be tested. Nevertheless, these claims are manifestly contradicted by the terms of the advice Mr Aspland-Robinson received from Peel Hunt to consult the Panel in connection with his proposed purchase of shares (see below).

9 This includes the 50,000 shares of Mr Aspland-Robinson mentioned below.

90. On 6 April 2009, a special purpose meeting of the board of MWB was convened to consider Mr Aspland-Robinson's proposed purchase of MWB shares. The meeting was chaired by Mr Blurton and attended in addition by Messrs Balfour-Lynn and Singh. The relevant section of the minute which Mr Blurton told the Committee was probably drafted by him, states as follows:

"*The Board considered whether Richard Aspland-Robinson could be considered part of the 1997 Concert Party, which was a presumed concert party by the Panel on Takeovers and Mergers. Andrew Blurton reminded the meeting that typically some of the factors taken into account by the Panel when determining whether someone is part of a concert party, included shared directorships, other business relationships, shared offices, social interaction etc., where these had a bearing on the share buying activities, of the person concerned. Andrew Blurton also reminded the Meeting that the Board did not consider the 1997 Concert Party still existed and this had been discussed with the Panel in 2008.*

A further submission with regard to its continued existence or otherwise, and its continued members or otherwise, was due to be made to the Panel shortly. Andrew Blurton advised that this further submission being made to the Panel was that some or all of the previously presumed Concert Party members were no longer members of the presumed 1997 Concert Party. All those present considered that whatever the outcome of that submission, Richard Aspland-Robinson could not be considered as a member of such Concert Party, as none of the attributes that the Panel considered were relevant in making that presumption were relevant to Richard Aspland-Robinson."

91. There is no suggestion that Mr Blurton knew that Mr Balfour-Lynn was to advance most of the funds for the acquisition of Mr Aspland-Robinson's shares. Nor is it suggested that Mr Blurton subsequently became aware of the identities of the ultimate beneficiaries of the Loan Notes or the shares into which the Loan Notes owned by AIPL and ACDL were converted. He was not part of an inner circle of friends and directors revolving around Mr Balfour-Lynn and, indeed, was asked by Mr Balfour-Lynn to step down as joint finance director in January 2010. In common with other colleagues on the board of MWB he was kept ignorant of the true ownership of AIPL and ACDL.

92. Nevertheless, by 2009 Mr Blurton was an experienced director and his experience included dealing with the Takeover Panel, one such occasion being in connection with the reverse takeover of Ex-Lands and the 1997 Concert Party. In the light of the relationships between the relevant parties and the advice from Peel Hunt referred to below, Mr Blurton must be taken to have been aware of his obligation to consult the Panel consistent with the obligation in section 6(b) of the Introduction to the Code ("section 6(b)") which states that:

"*When a person or its advisers are in any doubt whatsoever as to whether a proposed course of conduct is in accordance with the General Principles or the rules …. that person or its advisers must consult the Executive in advance*."

93. It is evident from the minute of the board meeting that Mr Blurton correctly spelt out considerations which the Executive treats as relevant when considering concert party issues; but given that these factors were relevant to the issue in question, it is clear that there was at the very least real doubt as to whether the Executive would agree with the MWB board that Mr Aspland-Robinson would not be acting in concert with the 1997 Concert Party in connection with his proposed purchase of MWB shares. It is also clear that Mr Blurton, with his experience should have, and in the Committee's assessment must have, appreciated this.

94. It was not necessary to know that Mr Balfour-Lynn would be providing funds for the acquisition in order to conclude that as a prominent figure within the MWB group and as a friend as well as colleague of Mr Balfour-Lynn with an office diagonally opposite Mr Balfour-Lynn's on the same corridor, there was a sufficiently close association to create the real risk of being found to be acting in concert with the 1997 Concert Party. In his submissions to the Hearings Committee Mr Aspland-Robinson disputes that he was a close friend of Mr Balfour-Lynn, but even on his own case Mr Balfour-Lynn had entertained him on holidays and there had been substantial social interaction. Furthermore, although this may not have been known to Mr Blurton without further enquiry, there was also at least one shared business relationship between Mr Balfour-Lynn and Mr Aspland-Robinson existing in connection with Alternative Hotels Group Plc ("AHG").

95. If all the known connections were not reason enough for Mr Blurton to enquire further and to know that his duty was to consult the Panel, that duty was put beyond argument by the advice Messrs Blurton and Aspland-Robinson received from the trading team at Peel Hunt[10] who were approached to act as brokers for the acquisition. On 9 April 2009, Mr Capel Irwin of Peel Hunt emailed Messrs Blurton and Aspland-Robinson saying:

"… *With knowledge of Rick's relationships with members of the concert party there is a possibility that questions could be raised by other parties, and should the panel become involved the concert party may find that they are required to satisfy the panel that he is not in concert. I would suggest that Rick and/or the concert party, If they have any concerns about this, seek appropriate advice*."

10 At the time Peel Hunt were also corporate advisers to MWB.

96. On 9 April Mr Nicholas Marren of Peel Hunt sent the following email to Mr Aspland-Robinson:

"*As you know there's a concert party (1997 Concert Party) who own circa 29.67% and can buy another 225,039 shares before they hit the 30% mark. After that under the code rules, if any more shares are purchase (sic) they have to make an offer for the rest of the company. Anyway, we know you are not part of the 1997 concert party at the moment but we not sure (sic) whether if you were to buy shares in MWB the takeover panel might consider you are in concert with other members of the party. Historically factors to take into consideration include mutual directorships, places of work, business & social arrangements, any mutual agreements with anyone else in the concert party. We think this is worth finding out before trading.*

Fully recognise that you and the 1997 cp might think there is no concert party/no one acting in concert but to be safe our advice would be to check this with the panel. I understand Michael Steinfeld is working with Andrew on a submission regarding getting approval that the panel considers there no longer is a concert party and it might be worth tying it in with that. The panel do tend to take some time before determining whether someone is/is not acting in concert. We also understand that you might decide you want to deal immediately and therefore if you decide to trade through another execution only broker we understand!"

This email was forwarded by Mr Marren to Mr Blurton on the same day who promptly suggested to Mr Aspland-Robinson that they get Coutts (Mr Aspland-Robinson's bankers) to effect the purchase on an execution basis. The reference to Michael Steinfeld is to MWB's lawyer who, at the time, was preparing a submission to the Panel that some or all of the members of the 1997 Concert Party should no longer be regarded as acting in concert.

97. On 14 April 2009, Mr Marren sent another email to Mr Aspland-Robinson (copied to Mr Blurton) which said:

"*Apologies to go on about the acting in concert point (and I know you have told us before that you don't think there is any issue here regarding acting in concert), but the definition of acting in concert includes, inter- alia, "persons who … co-operate to obtain or consolidate control"…. As Michael will let you know the downside of getting this wrong is theoretically being required to make an offer for the remaining shares at the highest price paid by the concert party over the last 12 months. I appreciate we are not acting for either the 199CP (sic) or Rick but we would be happy to run through parts of the code with you if you wish.*

As we mentioned on Friday, we would advise that the 1997 Concert Party /Rick seek further clarification on this point with the Panel to remove any possible Rule 9 issues prior to dealing (since the 1997CP is close to 30% already), which could be done either by Michael now through a submission or perhaps when the submission to the panel regarding the break-up of the existence of the 1997 CP (sic)."

Mr Blurton forwarded this email to Mr Aspland-Robinson saying:

"*This is a pain but OK. Can you give me a call in the office when convenient to discuss.*"

98. Neither Mr Aspland-Robinson nor Mr Blurton (nor any other board member of MWB who, according to Mr Blurton, would have seen the minute of the meeting of 9 April at the next meeting of the full board) referred the issue in question to the Panel. As previously noted, Mr Aspland-Robinson purchased 2.5% of MWB's issued share capital (1,811,385 shares) for a consideration of £724,554 (that is, at 40 pence per share) on 1 June 2009. The shares were acquired from Principle Capital Investment Trust Plc albeit on an "on market" basis through Mr Aspland-Robinson's bankers, Coutts.

99. On 1 June 2009, Mr Aspland-Robinson sent the following email to Mr Balfour-Lynn:

"*Richard, a big thank you for the loan of £500,000 you gave me today.*

As you know, I have been looking to purchase some MWB shares and the opportunity arose last Friday with Principal Capital (sic) wanting to dispose of 1.8 million. I have bought them. To confirm the position, I have £250,000 immediately available and have spoken to my trustees this morning and am organising for them to transfer the balance to me. I will keep you advised on timing."

100. Mr Aspland-Robinson submitted that the alleged loan was repaid in part by a transfer to Mr Balfour-Lynn's account by Mr Singh on Mr Aspland-Robinson's behalf of the sum of about £241,500 on 3 June 2009. This transfer was said to constitute part payment of a number of loans totaling £2,000,000 made by Mr Aspland-Robinson to Mr Singh during 2005/6 when Mr Singh was going through a divorce from his first wife. Messrs Singh and Balfour-Lynn gave variants of this account when interviewed by the Executive, although Mr Balfour-Lynn made no mention of any payment or reimbursement by Mr Singh.

101. The Committee concludes that there was never any genuine expectation that the sum of £500,000 advanced by Mr Balfour-Lynn to enable Mr Aspland-Robinson to acquire the shares, would be repaid. In the Committee's judgment, this conclusion is reinforced by a *pro-forma* declaration of trust received by Mr Aspland-Robinson as an attachment to an email from a friend on 2 June 2009. The document declared an undertaking by the trustee to hold shares on trust for a beneficial owner or owners. Mr Aspland-Robinson then asked his secretary to print out two copies and remove the words in square brackets so he could fill in the details.

102. Although the Committee has not seen a signed version of the *pro forma* declaration of trust, it concludes that the document reflected Mr Aspland-Robinson's intention to record Mr Balfour-

Lynn's beneficial interest in such proportion of the shares acquired as matched Mr Balfour-Lynn's contribution to the purchase price.

103. It is to be noted that the Annual Report for Business Exchange for 2009 (published on 30 March 2010) did not disclose Mr Aspland-Robinson's acquisition of 1,811,385 shares of MWB or any proportion of that number. Instead, the Annual Report incorrectly stated that as of 31 December 2009 Mr Aspland-Robinson held 50,000 shares in MWB (i.e. the number of MWB shares he owned immediately prior to the 1 June 2009 acquisition). This was a material inaccuracy in an important, public document.

104. The Committee concludes that from 9 April 2009 at the latest Mr Aspland-Robinson was fully aware of the implications and effect of Rule 9 of the Code. We also conclude that Mr Aspland-Robinson acted in concert with the 1997 Concert Party in acquiring the 1,811,385 shares of MWB on 1 June 2009. Mr Balfour-Lynn's contribution to the purchase price puts this beyond doubt; but given Mr Aspland-Robinson's professional and personal association with Mr Balfour-Lynn, the conclusion would have been the same had this contribution not been made. Mr Aspland-Robinson's acquisition triggered an obligation to make a mandatory offer under Rule 9.1 of the Code, but the price paid by him of 40p per share will acquire a wider relevance when the Committee addresses the implications under the Code of the later share acquisitions made in the placing by AIPL and ACDL.

IX Events Preceding the Placing

105. Pyrrho acquired an initial 14.38% of MWB's issued share capital during September 2009. Shortly afterwards, on 7 October 2009, Messrs Anson Chan and Paul Cummins, who are co-founders and directors of Pyrrho, met Messrs Balfour-Lynn, Singh and Blurton for dinner at the Gherkin Building in London. Messrs Nicholas Tulloch and Edward Burbidge of Arbuthnot Securities, who were advising Pyrrho at the time, also attended the meeting.

106. At this dinner MWB's proposed placing to raise capital of £27.5 million was discussed. Messrs Chan and Cummins gave evidence to the Committee from which it is clear that on this occasion they registered their objections to the proposed placing price of 30p per share when MWB's shares were then trading at over 40p. Messrs Chan and Cummins were surprised when an offer by them to underwrite a fund-raise at 40p per share was declined by Mr Balfour-Lynn when such an offer appeared to be manifestly in MWB's interest. Mr Balfour-Lynn explained that, at his request, Mr Treger had purchased the Loan Notes from a difficult investor on behalf of Audley Capital's managed accounts and he (Mr Balfour-Lynn) had given his word to Audley

that they would have the opportunity to convert their Loan Notes into equity in the placing at the price of 30p per share.

107. The Committee accepts this evidence and also the evidence given by Messrs Chan and Cummins that they were encouraged by Mr Treger's reputation as an activist investor[11] and by the prospective involvement in MWB of another major independent shareholder in the form, as described to them by Mr Balfour-Lynn, of funds managed by Audley on a discretionary basis. Pyrrho were undoubtedly kept ignorant of the identities of the true purchasers of the Loan Notes.

108. The wider board of MWB was similarly kept in the dark. The minutes of an MWB board meeting of 28 July 2009 record that:

> "*Jag Singh confirmed that discussions had been held with Julian Treger of Audley Capital Management (who had recently acquired GLG's substantial Loan Stock holding) concerning the partial underwriting of a rights issue. He believed that Audley Capital Management would expect any equity shares to be issued at a sizeable discount to the current share price and reported that Panmure Gordon had advised that a discount of up to 40 per cent might be necessary. The issue price was likely to be about 30p per new share*."

109. The fundraising structure in its final form envisaged an equity raise of £27.5 million, an issue price in the placing of 30p per MWB share, the "conversion" of £7.5 million nominal of the Loan Notes held by AIPL and ACDL into 25 million shares of MWB, and the investing of some £5.42 million in the placing by MWB's senior management and their associates with a similar investment by Pyrrho.

110. The proposed acquisition of shares in the placing by MWB management would increase the interest of the 1997 Concert Party from a disclosed position as of October 2009 of 29.81%, to 33.51% of MWB's share capital. Accordingly, MWB operated on the understanding that without a whitewash waiver, such an acquisition by management would trigger an obligation under Rule 9 of the Code to extend an offer to MWB shareholders.

11 Mr Cummins, with his greater familiarity with the market, was aware of Mr Treger's reputation as an activist shareholder.

111. During October 2009, Panmure Gordon, who were appointed by MWB to succeed Peel Hunt as MWB's corporate advisers, including for the purpose of the placing, engaged on MWB's behalf with the Executive on two issues. First, permission was sought to seek the approval of MWB's independent shareholders in general meeting for a whitewash waiver of the obligation to extend a Rule 9 offer following the proposed increase of the 1997 Concert Party's stake from 29.81% to 33.51% of MWB's share capital.

112. The second matter on which Panmure Gordon sought confirmation was that Audley Capital/Mr Treger would not be regarded as acting in concert with the 1997 Concert Party in acquiring 25 million new MWB shares in the placing by conversion into equity of £7.5 million nominal of their Loan Notes. The background against which this confirmation was sought was a substantial stake that had previously been acquired in Marylebone Warwick Balfour Group Plc by Active Value Fund Managers Limited, a company advised by Active Value Advisers Limited of which Mr Bryan Myerson and Mr Treger were co-founders and had been partners. Mr Treger/Audley Capital was not, however, a shareholder of MWB.

113. It is quite clear from Panmure Gordon's submissions to the Executive that, in common with Pyrrho and the wider board of MWB, Panmure Gordon had been led to believe that Mr Treger/Audley Capital managed or controlled the Loan Notes acquired from GLG. Panmure Gordon were evidently ignorant of the fact that the ultimate beneficiaries were two senior directors of MWB, a senior director of Business Exchange and relatives of Mr Balfour-Lynn. On 8 October 2009, Panmure Gordon told the Executive on instructions that:

> "*In June 2009 funds managed by or controlled by Audley Capital ("Audley") which we understand is an entity associated with JT for Code purposes, acquired £15.3 million of the unsecured loan stock 2009/12 of MWB, representing 51 per cent of this security. Other than this interest in MWB, neither Audley nor JT nor any persons associated with them is believed to have any current interests in MWB. The board of MWB believes that Audley is a fund management business that manages funds that are invested in the securities of other companies*".

114. When the Executive asked a number of questions designed to enable it to understand the relationship between Mr Treger/Audley and MWB, the relevant sections of the submission in response were assigned to Mr Singh, he being the director who had dealt with Mr Treger in connection with the purchase of the Loan Notes. The resulting letter dated 4 November 2009, addressed by Mr Singh to Panmure Gordon for onwards transmission to the Executive, systematically misled the Executive, including as to the circumstances in which Mr Treger had come to purchase GLG's Loan Notes, as to Audley's current status as a Loan Note holder and

prospective shareholder of MWB and as to the real identity of the Loan Note purchasers. In fact, the letter was untruthful in virtually every respect. It was addressed to Mr Hugh Morgan at Panmure Gordon and stated in relevant part as follows:

"*I refer to our recent telephone conversation when we discussed further questions that the Panel had raised with you concerning the relationship (if any) between Julian Treger ("JT') and funds managed by Audley Capital ("Audley") and the Company and the 1997 Concert Party. These questions were raised following your letters to the Panel of 8 October 2009 and 21 October 2009 copies of which I have seen and the contents of which I agree. In responding below to these further questions, I am doing so on behalf of the directors of the Company and I have made appropriate enquiries of the other members of the 1997 Concert Party.*

…..

As you mentioned in the second paragraph on page 3 of your letter to the Panel of 21 October 2009, in June 2009 funds managed by Audley acquired £ 15.3 million of MWB loan stock (approximately 5 I% of the total) from GLG Partners. We were informed of this by JT when he phoned me as a courtesy to tell me of the acquisition and raised with me issues relating to the covenants in the loan stock. I was aware that JT was an activist fund manager and assumed that he had bought the loan stock as a strategic investment opportunity, no doubt having read in our then recently published Annual Financial Report of the potential for future breaches of the gearing covenant in the loan stock trust deed and the possible restructuring by the Company partly to cure any such future breach. Over the next few months three telephone conversations and three meetings took place with JT in his capacity as one of the principal stake holders in our Company by virtue of his holding of the majority of the loan stock. These conversations and meetings were mainly with me as Joint Finance Director of the Company; but one meeting was also with Richard Balfour-Lynn (the CEO).

….

Our discussions with JT centred, around our request that he vote in favour of increasing the gearing covenant from 4 times shareholders funds to 5 times shareholders funds, which we believe will prevent a potential breach in June 2010 of the loan stock gearing covenant, and his request that he receive some compensation for being prepared to give an undertaking to vote in favour of such a proposal. During the course of these negotiations it was necessary to make Audley and JT "insiders" by disclosing our capital raising plans. We confirm that since that time neither he nor Audley have acquired any further shares or loan stock in MWB. As part of our negotiations with JT, he suggested to us that, depending on the amount of the discount, he would be interested in recommending to his funds under management a debt for equity swap of up to half of their £15 million loan stock holding. He suggested that, based on a market price of 30p per share and a fund raising discount of about 40 per cent he might be prepared to do such a swap at 30p per share. In return, he would agree that Audley would vote their loan stock in favour of the extraordinary resolution of the loan stock holders required to change the gearing covenant…."

115. Mr Treger told the Committee in evidence that the first time he saw this letter was when it was shown to him during February 2012 by Ms Dipika Shah of the Executive during an early interview. The Executive does not accept this: it points to the fact that both Mr Singh and Mr Balfour-Lynn (who was copied in on one or more drafts of the letter before it was sent) attempted to arrange meetings with Mr Treger during late October 2009 when the letter of 4 November 2009 was in the course of preparation and undergoing various redrafts. In the event, Messrs Balfour-Lynn and Singh met Mr Treger for breakfast at the Marriott Hotel in George

Street, London on 30 October 2009. The Executive submits that given that drafts of the 4 November letter were then under review and given the risk that the Executive might discuss directly with Mr Treger the nature of his/Audley's recent relationship with MWB, it is inconceivable that he was not then shown a draft of the letter or at least told of its contents.

116. For his part, Mr Treger cites the fact that MWB had only recently informed him that Audley Capital would not be involved in MWB's future capital raising efforts and, while he had no specific recollection of the meeting, he suspects that Messrs Balfour-Lynn and Singh likely wished to smooth matters over and apologise for Audley's wasted time and effort.

117. The Committee will address this issue in the course of assessing the Executive's Disciplinary Submission against Mr Treger.

X The Placing

118. The placing was announced on 17 December 2009. The Prospectus and Shareholders Circular posted that day announced the issue of 91,666,667 "New Units" at a price of 30 pence per New Unit to raise £27.5 million in gross proceeds. The RNS announcement of 17 December 2009 stated that:

(i) the Executive Directors and persons connected with them had undertaken to subscribe for a total of 18,066,666 New Units for a total consideration of £5.42 million;

(ii) the board proposed to make amendments to the Loan Stock Trust Deed and over 75% of Loan Stock holders had irrevocably agreed to vote in favour of amending the gearing covenants to increase the permitted level of group borrowing from four to five times adjusted shareholders' funds;

(iii) the Company had entered into the Loan Stock Purchase Agreements with the "Audley Investors", pursuant to which the "Audley Investors" had agreed to subscribe, as part of the Placing, GBP7.5 million in aggregate for a total of 25 million New Units at the Issue Price. MWB had agreed to purchase for cancellation a total of GBP7.5 million of Loan Stock currently held by the "Audley Investors";

(iv) if the members of the 1997 Concert Party were to subscribe for the New Units in performance of their undertakings, the 1997 Concert Party would hold 33.51% of MWB's enlarged issued share capital and accordingly, subject to the Whitewash

Resolution being passed on a poll by independent shareholders, would be obliged to make a general offer under Rule 9 of the Code;

(v) subject to the Whitewash Resolution being passed by independent shareholders, the Takeover Panel had agreed to waive the requirement that the members of the 1997 Concert Party make a general offer to all shareholders;

(vi) the resolutions necessary to carry though the placing on the conditions stipulated were to be proposed at a general meeting of MWB to be held at the offices of Dechert LLP on 11 January 2010;

(vii) the admission of the New Units to the Official List of the London Stock Exchange and dealings in the New Units on the Main Market would commence on 12 January 2010; and

(viii) "Audley Investors" was defined as "Audley Capital Development Limited and Audley Investments Portfolio Limited, both companies incorporated in the British Virgin Islands".

119. The RNS announcement and Prospectus and Shareholders Circular were undoubtedly misleading. Whereas it was stated that the members of the 1997 Concert Party and those associated with them would be increasing their aggregate stake in MWB's enlarged issued share capital to 33.51%, the true position was that by virtue of Mr Balfour-Lynn's beneficial ownership of the New Units to be subscribed by ACDL and by virtue of the respective beneficial interests of Messrs Balfour-Lynn, Singh and Aspland-Robinson in the New Units to be subscribed by AIPL,[12] the undisclosed interests of members of the 1997 Concert Party (along with that of Mr Aspland-Robinson who was acting in concert with them), would be increased by an additional 25 million New Units, or by just over 15% of MWB's enlarged issued share capital. This was a very different picture from that presented by the Prospectus and Shareholders Circular.

12 As explained below, the Loan Notes held by Mr Pankhania in AIPL were not converted into shares.

120. It follows that the passing of the Whitewash Resolution by independent shareholders on 11 January 2010 was induced by misrepresentation and was passed on the false premise that the interests of the 1997 Concert Party would increase to no more than 33.51% of MWB's enlarged issued share capital. It also follows that the Executive's prior agreement to a Rule 9 waiver was similarly induced by the same misrepresentation and agreed on the same false premise.

121. The Loan Stock Purchase Agreements between ACDL and AIPL respectively and MWB pursuant to which the "Audley Investors" subscribed for New Units in MWB, were signed on behalf of ACDL and AIPL by Ms Vanessa Garrod of STM Fidecs. It appears from other correspondence that Decherts LLP, who prepared the documents, were unaware of the identity of the owners of ACDL and AIPL and shared the common assumption that they were under Audley Capital management.

122. It will be seen from the Committee's assessment of the Executive's Disciplinary Submission against Mr Treger, that Mr Treger claims to have acted as adviser to Messrs Eker and Aspland-Robinson since his purchase on their behalf of the GLG Loan Notes in June 2009. Until June 2010, when the terms of Audley Capital's advisory retainer were reduced to writing, Audley Capital's advisory role is said to have been undertaken pursuant to an oral agreement made through Mr Singh as an intermediary.

123. Mr Treger maintains that, via Mr Singh, he advised his clients that the proposed "conversion" in the placing of £7.5 million nominal of their Loan Notes into 25 million New Units of MWB for the price of 30 pence per share, was a very profitable deal – as it undoubtedly was. Having acquired Loan Notes at 61 pence per £1 nominal and exchanged them at par value for shares offered at 30 pence (when they were trading at 40 pence or above) the "look through" price of the investment was about 18 pence per share. Mr Treger's evidence to the Committee was that his practice was to advise Messrs Eker and Mr Aspland-Robinson via Mr Singh as an intermediary on the understanding that Mr Singh would relay the advice to his clients.

124. Mr Treger also maintains that he was alerted by his colleague, Mr Adam Epstein to the references to the Audley Investors in the Prospectus and Shareholders Circular of 17 December 2009, and until then he had had no idea that Messrs Eker and Aspland-Robinson were using the Audley name for the companies holding the Loan Notes. On 17 December, Mr Epstein sent Mr Treger the following email:

"*I have seen in the MWB announcement (attached):-*
"The Company has entered into the Loan Stock Purchase Agreements with the Audley Investors, pursuant to which the Audley Investors have agreed to subscribe, as part of the

Placing, in aggregate £7.5 million for a total of 25 million New Units at the Issue Price. The Company has agreed to purchase for cancellation a total of £7.5 million of Loan Stock currently held by the Audley Investors."
"The Audley Investors" are defined as "Audley Capital Development Limited and Audley Investments Portfolio Limited, both companies incorporated in the British Virgin Islands". The loan stock purchase agreements between MWB and the Audley Investors were agreed today. Who are these investors, and what are these entities?"

Mr Treger replied some 10 minutes later:

"*I don't know. I think they formed these companies in the bvi. Nothing to do with us.*"

Mr Treger said in evidence that he was annoyed by this use of the Audley name and complained by telephone to Mr Balfour-Lynn both at the time and on various other occasions over the following two years while the Audley names remained unchanged.

125. Although Mr Treger said that he had no intellectual property in the Audley name such as would have enabled him to prevent its use, he told the Committee that he regarded the use of the name by the owners of the BVI companies as "identity theft". The Committee addresses this and related issues in assessing the Executive's Disciplinary Submission against Mr Treger, but it is appropriate to observe now that the nonchalant tone of Mr Treger's response to Mr Epstein is surprising for someone who has just been alerted to the theft of his identity. As will be seen, the use of the Audley name led to a widespread assumption that the shares acquired in the placing by the Audley companies were shares managed by Mr Treger or by one of the Audley entities.

126. Mr Treger accepts that he gave an irrevocable undertaking on behalf of Messrs Eker and Aspland-Robinson to vote on behalf of the resolution to amend the covenant in the Loan Note Trust Deed so as to increase MWB's headroom for compliance. He maintains, however, that this undertaking, in common with later undertakings given on behalf of the Audley Investors as shareholders, was given purely as adviser to Messrs Eker and Aspland-Robinson and not as ostensible manager or controller of the relevant shares.

127. The placing closed on 12 January 2010. Leaving aside for the moment the question whether Mr Treger held himself out as manager or controller of the shares acquired by AIPL and ACDL or whether, as he maintained, he made it clear when occasion arose, that he acted purely in an advisory capacity to the owners of AIPL and ACDL, one thing is clear – the market, the financial press, the Panel and the wider board of MWB and its professional advisers, remained

ignorant of the true ownership of the 25 million shares of MWB acquired by AIPL and ACDL in the placing.

128. Had the true ownership and source of funds for the acquisition of the Loan Notes been known, it would have been apparent that the ultimate beneficiaries of the shares held by AIPL and ACDL were members of or persons acting in concert together and with the 1997 Concert Party, the relevant acquisitions having been organised and funded in substantial part by Messrs Balfour-Lynn and Singh who were principal and directing members of the 1997 Concert Party.

129. Calculations appended to the Executive's Statement of Facts show that once one includes the undisclosed shareholdings of those who ought properly to have been regarded as members of the 1997 Concert Party (including in particular the shares acquired by Mr Aspland-Robinson on 1 June 2009 and previously) upon the closing of the placing the disclosed and undisclosed members of the 1997 Concert Party held 50.33% of the enlarged share capital of MWB. Neither the figures, nor the assumptions underlying the Executive's calculations, were challenged and the Committee accepts them as accurate. Those calculations are attached to this ruling as Appendix III. In summary, they show that by 12 January 2010 disclosed and undisclosed members of the 1997 Concert Party had acquired statutory control of MWB.

XI The On-Sales of the Audley Companies

130. By a Share Purchase and Security Agreement dated 15 December 2010, the issued share capital of AIPL (two fully paid up and registered common shares) was sold to Audley Investment Holdings Limited, a Hong Kong incorporated company owned by Mr Giancarlo Cioffi. The agreement recited AIPL's ownership of the MWB shares and Loan Notes and set out the consideration for the sale as:

> "*…the lower of:*
> *(i) The average monthly market value of the MWB Shares computed using the closing mid-price on the last trading day of every calendar month over a period starting on the last trading day of December 2010 and ending on the trading day immediately following May 4th, 2012; AND*
> *(ii) The market value of the MWB Shares computed using the closing on the trading day immediately following May 4th, 2012;*
>
> *Minus a 12% illiquidity discount.*"

131. There was an equivalent additional consideration formula for AIPL's Loan Stock.

132. This formula for determining the purchase consideration was unusually favourable to the purchaser. In addition, although an unusually long period was agreed between the dates of contract for sale and completion (about a year and a half) all voting rights attaching to the shares and to AIPL's Loan Notes transferred to the purchaser immediately upon the delivery of share certificates, which was to take place no later than 31 December 2010.

133. The Share Purchase and Security Agreement was entered into by HP Lux Sàrl ("HP Lux") "*acting for and on behalf of an undisclosed seller"* and was signed by Mr Cohen on behalf of HP Lux. HP Lux is a Luxembourg company in the Hoche Partners group of which Mr Cohen was and is chairman. Mr Cioffi, who was a long-standing client of Mr Froidevaux of Budin, signed the agreement on behalf of the purchaser.

134. On 15 December 2010, a Share Purchase and Security Agreement for the shares of ACDL was agreed on materially the same terms. ACDL was sold to Audley Capital Holdings Limited, another Hong Kong incorporated company which was owned by a Mr Gilles Verduron, another long-standing client of Mr Froidevaux. HP Lux also entered into this agreement as agent for an undisclosed seller and Messrs Cohen and Verduron signed on behalf of seller and purchaser respectively. The Share Purchase and Security Agreements are referred to collectively as "the SPAs".

135. Pursuant to two Escrow Agreements agreed on materially identical terms on 15 December 2010 between HP Lux, the purchaser and Mr Froidevaux, Mr Froidevaux agreed to hold the MWB share certificates as escrow agent pending joint instructions from HP Lux and the purchaser to release them.

136. The Executive's case is that the sales of AIPL and ACDL were a sham orchestrated by Messrs Balfour-Lynn and Singh with the assistance of Messrs Froidevaux and Huguenin who devised and implemented the legal machinery to give effect to the transactions. The on-sales were intended to give the impression that ownership of the shares of MWB held by AIPL and ACDL respectively had been "sold down" and accordingly, that the senior management of MWB and their associates had divested themselves of whatever interest they had previously owned in the shares. However, according to the Executive, the funds to complete the purchase were provided indirectly by Mr Balfour-Lynn and by Mr Singh's wife, Dr Ajit Gill on her husband's behalf and the money circulated by a complicated route back to the sellers. Thus, the ultimate beneficial owners of the shares of MWB held by AIPL and ACDL remained the same.

137. Each of Messrs Cohen, Froidevaux, Huguenin and Houri are accused of deliberately misleading the Executive contrary to section 9(a) of the Code. They are each said to have misled the Executive during interviews in which they were questioned in connection with their respective roles in the transactions.

XII Mr Cohen's Involvement

138. Mr Cohen is a corporate financier based in Paris and Luxembourg with a background in investment banking. He is a founding partner of Hoche, a corporate finance group with offices in Paris and Luxembourg. Hoche provides advisory services to clients in various areas including M&A and asset finance.

139. Mr Cohen's evidence to the Executive and to the Committee was that if the on-sales were a sham, he was unaware of it. He believed they were genuine transactions. He told the Committee (and the Executive beforehand) that in the late summer of 2010 he was contacted by Mr Christophe Sicot, a business partner whom he had known since about 2003/4 and with whom he was frequently in contact regarding business opportunities. Mr Sicot is a colleague of Mr Cohen's through Hoche Achrisia Solutions, a marketing joint venture between Hoche and Mr Sicot's Achrisia & Partners.

140. According to Mr Cohen, Mr Sicot told him that he had recently met Mr Aspland-Robinson at a polo tournament in Sotogrande in the south of Spain. In the course of conversation, Mr Aspland-Robinson had told Mr Sicot that he was a shareholder in MWB which controlled Malmaison and that he was looking to sell his position in MWB. That Mr Sicot should refer this enquiry to Mr Cohen was, as Mr Cohen maintained to the Committee, no particular surprise as Mr Cohen had had recent dealings with Malmaison which he had mentioned, in turn, to Mr Sicot.

141. Mr Cohen's evidence, both to the Executive and the Committee, was that Mr Sicot must have given him Mr Aspland-Robinson's telephone number, because Mr Cohen then telephoned Mr Aspland-Robinson (effectively, a cold call), following which, probably during the second half of September 2010, Mr Cohen went to London to meet him. It transpired that Mr Aspland-Robinson was very keen to sell his shares. During this meeting, Mr Aspland-Robinson agreed to a 2% commission on the transaction and mentioned that there was another prospective seller, Mr Eker. Mr Cohen claims to have met Mr Eker later that day at Mr Eker's London flat. His evidence was that either on the train back to Paris or in the office the following morning, he

made rough manuscript notes of these meetings which he produced to the Executive and the Committee.

142. This commission from Messrs Aspland-Robinson and Eker was a one-off for Mr Cohen; brokering a sale of shares in a UK public company was outside Hoche's usual line of business and not something that he had previously undertaken.

143. Mr Cohen's evidence was that this was small business for Hoche, but he had agreed, nevertheless, to see what he could do to find a buyer for the MWB shares. He claimed to have telephoned first Mr Frank Orenstein, the executive chairman of Hospitality Investors' Group and someone who was well-known to Mr Cohen and with whom he had had recent dealings in connection with Malmaison's involvement in a potential hotel operation in Paris. Mr Orenstein was, apparently, not interested, whereupon Mr Cohen telephoned Mr Froidevaux.

144. Mr Cohen had worked with Mr Froidevaux for a number of years, having been introduced to him by Mr Sicot, who was and is a very close friend of Mr Froidevaux. Whether the search for a purchaser for the MWB shares of Messrs Aspland-Robinson and Eker was the purpose of the call to Mr Froidevaux or whether the subject came up while discussing another matter, Mr Cohen cannot remember, but the outcome was that Mr Froidevaux undertook to make enquiries and to come back to Mr Cohen within a few days.

145. Consistent with what he had told the Executive, Mr Cohen's evidence to the Committee was that Mr Froidevaux telephoned him a few days later and told him that he had potential buyers. The potential buyers turned out to be Mr Froidevaux's long-standing clients, Messrs Cioffi and Verduron.

146. Mr Cohen then claims to have drafted Agency Agreements, dated 1 October 2010 which recorded the terms of his engagement by Messrs Aspland-Robinson and Eker. Mr Cohen's evidence was that he later emailed redacted copies of the Agency Agreements to Mr Froidevaux as an aide memoire or source of reference for Budin's drafting of the SPAs. This, according to Mr Cohen, explains why the Agency Agreements and the SPAs have the same font and typeface and share certain typographical errors and drafting peculiarities.

147. On 10 October 2010, Mr Froidevaux wrote a letter to Mr Cohen setting out the terms of an offer from one of his clients and seeking a response by 18 October 2010. Mr Cohen then claims to have sent separate Notices of Bid to Messrs Eker and Aspland-Robinson signed by HP Lux and notifying Messrs Eker and Aspland-Robinson of the terms negotiated on their behalf. Mr

Cohen's evidence was that the Notices of Bid were signed by Mr Eker and Aspland-Robinson respectively so as to notify their agreement to the proposed terms.

148. As noted above, the SPAs and Escrow Agreements were executed on 15 December 2010.

149. There are no emails evidencing any contemporary communications either between Mr Cohen and Budin or between Mr Cohen/HP Lux on the one hand and Messrs Aspland-Robinson and Eker on the other. Apart from Mr Cohen's handwritten notes[13], the only documents evidencing Mr Cohen's retainer by the sellers and his communications with the prospective purchasers through Budin, are the standalone documents referred to above and a handwritten note of a conversation with Mr Froidevaux which is said to have occurred between 1 and 10 October 2010. In this conversation Mr Froidevaux is said to have proposed basing the purchase contracts on the agency agreements (as recorded in the note, "*draft contract basé sur l'agency*"). There is no evidence that any document was ever signed by Mr Eker.

150. The Executive invites the Committee to reject Mr Cohen's evidence and to find that he lied to the Executive, and subsequently to the Committee, in tendering it. The Executive's case is that Mr Cohen's evidence is a false narrative put forward to disguise the fact that he was brought into the transaction by Mr Froidevaux, who in turn had been engaged by Mr Balfour-Lynn to orchestrate and document the sham sales.

151. The Executive maintains that a calendar entry for Mr Balfour-Lynn indicates that he had arranged to meet Mr Cohen on 19 November 2010 in Paris, the meeting probably having been arranged following or in connection with Malmaison's potential involvement in a hotel development in Paris with Inovalis, a client of Hoche. According to the Executive, the evidence also establishes that Mr Balfour-Lynn had had previous dealings with Mr Froidevaux in connection with several property transactions, and that he and Mr Singh had arranged to travel to meet Mr Huguenin at Budin's offices on 6 December 2010 before the flight arrangements for this meeting were pushed back to 15 December. Messrs Balfour-Lynn and Singh had return flight tickets booked for Geneva on 15 December 2010, the date upon which the SPAs and Escrow Agreements were executed.

13 Mr Cohen's manuscript notes also include notes of his telephone enquiries of Messrs Orenstein and Froidevaux.

152. The Executive does not allege that Mr Cohen was aware of the respective interests of the ultimate beneficiaries in the shares of MWB held by AIPL and ACDL, but it does allege that he was aware that the on-sales were a sham devised by Mr Balfour-Lynn and intended to conceal the interests of owners associated with MWB's management in the shares of MWB.

153. The Committee addresses these and related issues in assessing the Executive's Disciplinary Submission against Mr Cohen.

XIII The Roles of Messrs Froidevaux, Huguenin and Houri

154. Mr Froidevaux and Mr Huguenin worked closely together on the transactions in issue and their roles may fairly be considered together. Mr Froidevaux was a senior partner of Budin at the time. He tended to have the relevant contacts and business relationships while Mr Huguenin, who is fluent in English, took care of the detailed documentation.

155. The route by which the consideration for the purchase of AIPL and ACDL travelled from Mr Balfour-Lynn and Mr Singh to HP Lux as agent for the sellers, was labyrinthine in the extreme. It involved as a conduit two companies controlled by Mr Houri whose family were long-standing clients of Mr Froidevaux.

156. During April 2012, two months or so before the completion monies were due to be paid under the SPAs, Mr Houri was introduced to Mr Balfour-Lynn through Mr Robert Dallal, another long-standing connection of Mr Froidevaux and a cousin of one of MWB's former senior directors. Mr Houri's account to the Executive and his evidence to the Committee was that he met Mr Balfour-Lynn at Mr Dallal's instigation after mentioning to Mr Dallal that he was looking to develop as hotels two properties that he owned in Poland and Israel. Mr Balfour-Lynn had a profile in the hotel industry through Malmaison and AHG and was recommended by Mr Dallal as someone who might help. Mr Houri's evidence was that, having met Mr Balfour-Lynn and through him Mr Singh, the three of them agreed in principle upon a fifty/fifty joint-venture for the sourcing and developing of hotels in Poland and Israel.

157. On 25 April 2012 Mr Balfour-Lynn entered into an agreement to lend EGT Finance Limited ("EGT Finance"), a company incorporated in England and controlled by Mr Houri, £1 million. On the same day, Mr Singh's wife, Dr Ajit Gill, lent EGT Finance £2 million. The loans were interest free and unsecured. According to Mr Houri, the £3 million was Mr Balfour-Lynn's and Mr Singh's down-payment for the proposed joint venture.

158. On about 2 May 2012, Dolman Finance, a company incorporated in St Vincent and the Grenadines and owned by the E&G Trust, subscribed for 3,000 shares of the Baffin Real Estate Investment Fund ("the Baffin Fund") for £3 million. E&G Trust was a Houri family trust in relation to which Budin exercised wide agency powers.

159. The Baffin Fund had been established in the BVI by Budin with Messrs Cioffi and Verduron as directors. A Baffin Fund fact sheet dated 16 September 2010 reveals that it had by then (a few weeks before the date of HP Lux's Agency Agreements with Messrs Aspland-Robinson and Eker), been established as a real estate investment fund with the object of acquiring a 15.2% holding in MWB, described in the document as "*the Target Company*". It was ostensibly managed by Messrs Cioffi and Verduron through Baffin Capital Management Limited, a Cayman Island company owned by Messrs Cioffi and Verduron.

160. When interviewed by the Executive, Messrs Cioffi and Verduron conceded that they had had virtually no involvement in the Baffin Fund or its management. They told the Executive that they were long-standing clients of Mr Froidevaux whom they trusted implicitly. They also told the Executive that Mr Froidevaux had assured them that he was confident of being able to find third party investors in the Baffin Fund so as to enable the purchase consideration for AIPL and ACDL to be met from the fund before the completion monies became due under the SPAs.

161. The subscription of £3 million by Dolman Finance was paid from its account at Union Bancaire Privée ("UBP") and was authorised by Mr Houri after receiving and briefly reviewing a Baffin Fund Information Memorandum sent to him by Mr Huguenin. The Baffin Fund had no previous track record and this was the only subscription it had ever received. Furthermore, the Dolman finance subscription was used to effect the only investment the Baffin Fund ever made, namely a purchase of the MWB shares and Loan Notes which had been sold along with the share capital of AIPL and ACDL to the Hong Kong companies under the SPAs of 15 December 2010. The consideration paid by the Baffin Fund for MWB's shares and Loan Notes was remitted to the Hong Kong purchasing companies to enable them to pay the completion monies due under the sales of AIPL and ACDL.

162. Mr Houri told the Executive and the Committee that his investment through Dolman Finance in the Baffin Fund was made in contemplation of the prospective joint venture and was intended to match the £3 million contributed by Mr Balfour-Lynn and the wife of Mr Singh by way of loan to EGT Finance. Mr Houri said he hoped the Baffin Fund would enable him to

establish some sort of track record in real estate investment pending the formal setting up of the joint venture.

163. Meanwhile, Mr Houri protected his position by obtaining indemnities from Mr Balfour-Lynn and Mr Singh's wife, Dr Gill with a view to covering any loss sustained by Dolman Finance as a result of its subscription in the Baffin Fund. He also obtained promissory notes from Mr Balfour-Lynn and Dr Gill in a further attempt to ensure that Mr Balfour-Lynn and Dr Gill would be solely at risk for any loss sustained as a result of the Dolman Finance subscription.

164. Finally, Mr Houri told both the Executive and the Committee that he had no idea that the Baffin Fund would deploy the Dolman Finance subscription to invest in MWB's shares and Loan Notes.

165. The Executive rejected Mr Houri's explanation. It maintained that Dolman Finance's £3 million subscription in the Baffin Fund had nothing to do with a prospective joint venture, but was effected by Mr Houri against indemnities and promissory notes from Mr Balfour-Lynn and Dr Gill in the knowledge that the subscription was part of a sham intended to produce the funds which would enable a sham sale to complete.

166. Mr Houri's cross examination by counsel for the Executive, Mr Mark Simpson KC was part heard at the conclusion of the sitting on Thursday 9 November 2023. On the following morning, Mr Simpson told the Committee that:

> "*On condition and on the basis that Mr Houri has now accepted and admitted knowing involvement between 2012 and 2015 in a sham transaction involving Messrs Balfour-Lynn, Singh, Froidevaux and Huguenin (the latter of Budin Partners law firm), and that he has admitted knowing involvement in a cover-up concerning the Baffin Fund, the Executive is recommending to the Hearings Committee that Mr Houri should be cold shouldered for a period of one year, rather than the period of three years proposed in its remedial submissions, on the basis of the early admission and that significant time and cost will now be saved on his case.*"

The terms of this admission were duly confirmed by Ms Elizabeth Weaver, counsel for Mr Houri who submitted that the Committee should accept the Executive's recommended sanction. After retiring to consider the matter, the Committee duly accepted the recommended sanction and thereby concluded the proceedings against Mr Houri. Mr Houri's admission confirmed the Executive's case that the on-sales involved the circular flow of monies and, specifically, that the Baffin Fund was a conduit deployed for the purpose of indirectly

channeling funds provided by Mr Balfour-Lynn and on Mr Singh's behalf to complete the purchase of AIPL and ACDL.

167. Mr Houri's admission was followed by, and perhaps prompted, an admission by Mr Froidevaux and Mr Huguenin. On the evening of 14 November 2023, after the twelfth day of the hearing, the Secretary to the Committee received by email an admission in the following terms signed by Messrs Froidevaux and Huguenin:

> "*1. Mr Froidevaux and Mr Huguenin now accept and admit that they were knowingly involved: (1) with Balfour-Lynn, Mr Aspland-Robinson, Mr Jeffrey Eker, Mr Singh in the sham purchases by Audley Capital Holdings Limited and Audley Investment Holdings Limited of the entire share capital of Audley Capital Development Limited and Audley Investments Portfolio Limited, respectively, on 15 December 2010; (2) with Mr Balfour-Lynn, Mr Singh and Mr Houri in the sham transaction by which Dolman Finance invested £3m in the Baffin Fund using money provided by Mr Balfour-Lynn and Mr Singh, and those monies were then used to invest in the MWB securities held by Audley Capital Development Limited and Audley Investments Portfolio Limited; (3) with Mr Treger in covering up Mr Balfour-Lynn's, Mr Singh's and Mr Aspland-Robinson's ownership of the Audley companies. They acknowledge that they knowingly misled the Executive in relation to those transactions and their involvement in them.*
>
> *2. On the basis of those admissions, Mr Froidevaux and Mr Huguenin respectfully request that they be cold-shouldered for a period not to exceed one year and that their conduct not be reported to the Geneva Bar Commission or to any other Swiss authority*."

168. The context for the request by Messrs Froidevaux and Huguenin that having regard to their admission they be "cold-shouldered" for a period of one year and their conduct not be reported to the Geneva Bar Commission or any other Swiss authority, was a disciplinary recommendation by the Executive to the Committee that a Panel Statement under section 11(b)(v) of the Introduction to the Code ("section 11(b)(v)") be published in relation to them and that they each be cold-shouldered accordingly for a period of three years. In addition, the Executive had recommended that pursuant to section 11(b)(iv) of the Introduction to the Code ("section 11(b)(iv)"), their conduct be reported to the Commission du Barreau in Geneva.

169. The proceedings against Mr Froidevaux and Mr Huguenin are brought under section 9(a) for having misled the Executive in the course of its investigation and for having obstructed the conduct of the Executive's investigation. The appropriate sanctions are to be considered at a further hearing to follow the issue of this ruling.

XIV Other Events Following the Placing

170. The events referred to below are principally relevant to three related aspects of the Executive's case against Mr Treger, namely (i) that he encouraged the widely held belief that he or an Audley Capital entity managed or controlled the block of MWB shares acquired by AIPL and ACDL in the placing; (ii) that he assisted Messrs Balfour-Lynn and Singh in concealing the true beneficial ownership of these shares and the fact that they were controlled by MWB's senior management; and (iii) that Mr Treger had no advisory or other relationship with Messrs Aspland-Robinson or Eker but in matters relating to the MWB Loan Notes and subsequently in relation to AIPL and ACDL, acted on the instructions of Messrs Singh and Balfour-Lynn.

171. On 12 February 2010 in the aftermath of the placing, Mr Treger's junior colleague, Mr Epstein sent the following email to Mr Treger under the subject heading "*MWB*":

> "*Julian-*
> *I have had several calls from brokers who are seeing activity in this name and are asking about our shareholding. I have told them that the two entities on the register, Audley Capital Development Limited and Audley Investments Portfolio Limited, have nothing to do with us whatsoever.*
> *The Arbuthnot broker who sent the below email has now asked me several times whether these entities have any relation to Audley Capital or Julian Treger- I have of course told him no. He does not believe me - his response was that it seems impossible and he doesn't see how that would be allowed. They are very keen to speak to whoever is behind these vehicles.*
> *He doesn't know that we did any work on this situation or that we know management.*"

According to Pyrrho's evidence, Arbuthnot acted from time to time as their brokers rather than on any more formal advisory basis. Whatever the scope of Arbuthnot's relationship with Pyrrho, it will become apparent from the documents referred to below that the message that AIPL and ACDL had nothing to do with Audley Capital did not get through to Pyrrho, perhaps because, as Mr Epstein observed to Mr Treger, Arbuthnot did not believe it.

172. During May 2010, Blue Gem Capital Partners LLP ("Blue Gem") announced a possible offer for Liberty. Pyrrho then announced that it had made a proposal to the MWB board regarding a possible offer of its own which the board had rejected. Pyrrho objected to the process by which the Blue Gem possible offer had been considered, maintaining that it had been denied the opportunity to increase its own possible offer for Liberty and that this was to the detriment of Liberty shareholders.

173. On 19 May 2010, Blue Gem announced a firm offer for Liberty. On 28 May it was announced that MWB had "hard" irrevocable undertakings from 51.1% of its shareholders to vote in favour of an ordinary resolution to approve the Blue Gem offer. This was followed on 21 June

2010 by an announcement that 74.6% of the MWB shares voted at a general meeting had voted to accept the Blue Gem offer. The Blue Gem offer was declared unconditional on 23 June 2010.

174. Meanwhile, on 13 May 2010 Ms Dipika Shah of the Executive had spoken to Mr Treger. She had been given to understand that Mr Treger had been approached for an irrevocable undertaking and wanted to know whether he had been made aware of a competing offer before he signed. Her note of the conversation is as follows:

"*At approximately 6.00 pm on 13 May, I spoke to Julian Treger of Audley Capital. I said that I was calling on Liberty and understood he had been approached for an irrevocable. I asked if he had been given details of a competing offeror before he signed the irrevocable. Treger confirmed he had been and Blue Gem's offer was the higher offer at the time. I said that I had heard different versions of the story and hence called him.*
Treger said that he had been called out of the blue by Arbuthnot last week asking why he had signed an irrevocable. He said that, at first, he was unclear why they were asking this and confused, but later transpired they were acting for someone who had been prevented from making a higher offer. He said that, as far as he was concerned, he had given an irrevocable to the higher bidder at the time. I thanked him for his time and the call ended."

175. The Executive relies upon this note as an example of Mr Treger encouraging the belief that he managed or controlled the shares held by AIPL and ACDL and in that capacity had given an irrevocable undertaking to vote in favour of the Blue Gem offer. Mr Treger had no specific recollection of how he described his role to Ms Shah, but he told the Committee that he felt that he would have explained to her that he was an adviser only to AIPL and ACDL and that that was the capacity in which he had advised the companies to give the undertaking. The Committee sees no basis for doubting the accuracy of Ms Shah's note. But irrespective of that, what is clear is that whether Mr Treger managed the shares held by the Audley companies or merely advised the companies in relation to their own management of such shares, nothing was said to rebut the assumption that AIPL and ACDL were independent shareholders exercising the rights attaching to their shares independently of MWB's management.

176. On 20 May 2010 Mr Singh emailed Mr Treger suggesting a meeting with him and Mr Balfour-Lynn. That email was headed "*Meeting with Richard and Myself re Pyrrho visit to UK next week*". Mr Treger agreed to meet on the following day. On the same day, under the same subject heading, Mr Treger emailed Mr Singh saying:

"*Shall I agree to meet them? I haven't responded yet.*"

Later that day Mr Singh emailed Mr Treger saying:

"*FYI – see you tomorrow.*
Both Richard and I think you should not see Pyrrho at all. Will call you later on this p.m. if you are available."

177. The Executive maintains that the fact that Mr Treger consulted Mr Singh on whether he should meet Pyrrho, reveals anxiety on Mr Treger's part as to how he should represent his own position in relation to the MWB shares of AIPL and ACDL in any meeting with Pyrrho. It also suggests, according to the Executive, that Mr Treger was looking for guidance, if not direction, from Mr Singh in this respect.

178. On 2 June 2010, Paul Cummins of Pyrrho emailed Mr Treger saying:

"*I am writing to introduce myself as one of the directors of Pyrrho Investments Ltd. As you know Pyrrho along with Audley is a major shareholder in MWB Group Holdings Plc. I am in London the early part of next week and wondered if I might arrange to come over and introduce myself and Pyrrho to you*."

On the same day, Mr Treger forwarded this email to Mr Singh with the comment "*fyi*". Mr Singh, in turn, forwarded it to Mr Balfour-Lynn with the same comment.

179. Mr Cummins gave evidence that he and Mr Treger met a few times after this initial exchange but at no stage did Mr Treger disabuse his belief that Mr Treger managed or controlled the shares held by the Audley companies. In fact, their dealings proceeded on the explicit premise that they both controlled major stakes in MWB.

180. Pyrrho's assumption that itself and Audley were MWB's two major independent shareholders was evidently shared by, amongst others, Panmure Gordon who were MWB's corporate advisers. On 31 August 2010 Panmure Gordon submitted to its client an analysis of MWB's Share Register. That analysis showed the 1997 Concert Party as holding 33.51% of MWB's issued share capital, Pyrrho as holding 22.42% and the Audley Investors as holding 15.18%. Apart from the 1997 Concert Party, Pyrrho and the Audley Investors were MWB's two largest shareholders.

181. On 27 May 2010, Mr Howard Kagan, Audley Capital's chief financial officer who reported to Mr Treger, emailed Mr Singh attaching "*as requested*" a draft "*Audley – letter of engagement*". The draft agreement was backdated to 1 June 2009 and purported to record the terms on which Audley Capital had advised ACDL and AIPL since that date. The letter stated as follows:

"*We are writing to propose the terms on which Audley Capital Advisors LLP ("Audley Capital") will act as financial advisor to Audley Capital Development Limited and Audley Investments Portfolio Limited ("the Companies") from 1 June 2009. Audley Capital will provide advice relating to corporate strategy, corporate governance, mergers and acquisitions, disposals, joint venture arrangements and minority investments in the property sector.*
During the terms of the engagement Audley Capital will provide strategic and financial advice in connection with any potential transactions, including, as appropriate, advice in defining objectives, sourcing investment opportunities, performing valuation analysis, and structuring, planning and negotiating any potential transaction. Please be advised that Audley Capital does not provide accounting, tax or legal advice.
Audley Capital is a limited liability partnership incorporated under the laws of England and Wales. Audley Capital is authorised and regulated by the UK Financial Services Authority. Audley Capital will treat MWB as a professional client for the purposes of the FSA rules.
Fees for services in connection with this appointment will be payable quarterly in arrears. The fee will be £25,000 per quarter. This will cover the costs of services relating to general advice on corporate strategy and business development."

182. The draft had a signature block for Mr Treger to sign on behalf of Audley Capital Advisors LLP and for signatures to be entered on behalf of ACDL and AIPL. It is to be noted that Audley Capital said that it would "*treat MWB as a professional client for the purposes of the FSA rules*". According to the Executive, this remark reflected the reality, namely that Audley Capital's true "client" was MWB and all its dealings in connection with AIPL and ACDL were exclusively with Messrs Balfour-Lynn and Singh.

183. Mr Treger's evidence to the Committee was that the written agreement was backdated to record an oral advisory agreement made with Messrs Eker and Aspland-Robinson a year earlier on 1 June 2009. As previously noted, Mr Treger said that all his advice was relayed to Mr Singh on the assumption that Mr Singh would pass it on to his clients. It transpired that Mr Treger never met Mr Eker until February or March 2012, by when he had terminated the advisory agreement and the Executive had begun its investigation. He told the Committee that he had met Mr Aspland-Robinson on a few occasions before June 2009, but could not recall meeting him during the currency of the alleged advisory agreement. Invoices for advisory fees were initially sent to STM Fidecs, whose address Mr Kagan obtained from Mr Singh. Chasers regarding unpaid invoices were sent by Audley Capital to Mr Singh until JAM Business Consultancy Limited ("JAM"), a company owned by Mr Pankhania, took over responsibility for payment.

184. The Executive's case is that the advisory agreement was a fiction intended to obscure the fact that in his dealings with regard to Messrs Aspland-Robinson and Eker and their companies Mr Treger acted on the instructions of Mr Singh and Mr Balfour-Lynn whom he correctly regarded as exercising control over the companies and their shares. The Committee's findings on this

conflict of evidence are included below in its assessment of the Disciplinary Submission against Mr Treger.

185. On 26 January 2011 Mr Cummins emailed Mr Treger as follows regarding the composition of the MWB board:

"*I just spoke to Eric Sanderson Chairman at MWB about the recruitment of the Independent Director. He tells me that they are meeting Korn Ferry this afternoon to go through the short list. I reiterated my view that major shareholders, mainly you and we, should have input on the selection. He was very strongly against this. Not sure what your view is but assuming you would like an input as well perhaps you can have a word with him as well*."

The context was Pyrrho's increasing concern about the management of MWB and its attempt to enlist Mr Treger's support as a major shareholder in getting changes to the board.

186. On 14 April 2011, Mr Kagan emailed Mr Singh, copying in Mr Treger. Mr Kagan attached an extract from Bloomberg and said:

"*Jag*
Please see attached extracts from Bloomberg which discloses that Audley Capital Advisors LLP is the second largest shareholder in MWB Group Holdings Plc through Audley Capital Advisors LLP Managed funds.
Recognise that you are not responsible for data disclosed on Bloomberg but feel that this is misleading and would ask that, in the interests of having accurate information being disclosed to the market for your company, you have this updated please."

The context was that Mr Kagan had spotted the entry in Bloomberg and had referred it to Mr Treger who directed him to take up the matter with Mr Singh. When the entry was not corrected or withdrawn, Mr Kagan followed up with Mr Singh, but to no avail. There was no attempt to take the matter up with Bloomberg until much later when Mr Treger's partner and co-founder of Audley Capital intervened in the matter (see below).

187. On 27 April 2011, following a press report that MWB was looking to sell hotel assets, Mr Cummins emailed Mr Treger as follows:

"*When we met in London you described the company as finely balanced in terms of its debt levels and it seems that this has not improved given current operating conditions. The company has a high level of debt and there are a number of ways of dealing with thls including asset sales and capital market solutions. As the two main non management shareholders it may be a good idea if we were to discuss the direction of the business*."

188. On 26 April 2011, the previous day, Mr Balfour-Lynn had emailed Mr Treger advising him against speaking to or meeting with Mr Cummins and saying:

"*Hi Julian*
I tried to speak with you on the telephone. Personally I would avoid telephone conversations or meetings with Paul Cummins and simply state that you would rather retain your independence as you are fearful of being seen by the Stock Exchange as acting in concert with Pyrrho. Both of you are large shareholders and you therefore need to comply with the strictest independence."

189. On 28 April 2011, MWB announced an offer for its subsidiary, Business Exchange thereby triggering Opening Position Disclosure obligations under Rule 8 of the Code. On 6 May 2011, Ms Jessica Bonner of the Takeover Panel's Market Surveillance Unit wrote to Mr Singh explaining the implications of Rule 8. Ms Bonner also drew Mr Singh's attention to Rule 22(c) of the Code which requires the board of an offeror to assist the Panel in identifying persons who are interested in 1% or more of any class of relevant securities of the offeror. By now AIPL had been sold to Audley Investment Holdings Limited and ACDL had been sold to Audley Capital Holdings Limited pursuant to the SPAs of 15 December 2010, albeit completion had yet to take place. Accordingly, AIPL and ACDL, along with Audley Investment Holdings Limited and Audley Capital Holdings Limited, were obliged to make an Opening Position Disclosure under Rule 8.3 of the Code in respect of the Audley companies' holdings in MWB.

190. On 26 May 2011, Mr Singh sent Mr Treger a copy of the Rule 8.3 disclosure issued on behalf of AIPL and Audley Investment Holdings Limited which had been signed by Mr Froidevaux and which disclosed the companies' holding of 11,333,333 shares of MWB. The Rule 8.3 disclosure described AIPL as "*advised by Audley Capital Advisors in the UK*". A similar Rule 8.3 disclosure, dated 26 May 2011 was made on behalf of ACDL with respect to its 13,666,667 shares of MWB.

191. On 1 June 2011, Ms Bonner, who had been referred to Budin by STM Fidecs, emailed Mr Huguenin saying:

"[I] believe when I spoke to an individual at Audley Capital they confirmed that both Audley Capital Holdings Limited and Audley Investments Portfolio Limited were managed by Audley Capital Advisors. If this is correct l believe these two holdings need to be aggregated together on one form. This form will also need to be publicly disclosed to the market via an RIS.
Please could you call me as soon as possible to discuss this further."

192. On 3 June 2011, Ms Bonner spoke to Mr Treger and told him that she had received draft disclosures from Audley Capital's lawyers, Budin and Partners and that the disclosure was now very late. Mr Treger promised to chase it up and revert. On 17 June 2011, Ms Bonner spoke to Mr Treger again and made the following file note of the conversation:

"*I contacted Treger again on 17 June. I stated that the Executive appreciated the fact they had disclosed correctly and swiftly after we had contacted Audley Capital Advisers regarding this obligation. But that we were concerned it took until we contacted Treger for the disclosure to be made. It appears in part that the delay on this disclosure was due to some confusion over who was responsible for management obligations during this transition period. Treger confirmed to me that they had appropriate systems and controls in place to ensure timely disclosure of any positions in their own funds, but that this position was held by an advisory only fund, hence why their controls had not been in effect. he assured me that the lawyers were aware of the disclosure requirements and would monitor the disclosure table for changes*."

Mr Treger relies on this note as evidence of disclosure by him that he was acting in an advisory capacity only to the "fund" in question. The Executive cites Ms Bonner's note as another example of Mr Treger concealing the true ownership or control of the shares in question and his own relationship to the owners.

193. Mr Treger's evidence is that he only got to learn that AIPL and ACDL had been sold as a result of these exchanges regarding the Rule 8 disclosures. He told the Committee that he continued to assume that the clients he was advising through Mr Singh were Mr Aspland-Robinson and Mr Eker, albeit for some reason they had transferred their interests to the Hong Kong holding companies and were now being advised by Budin.

194. Examples of the widespread perception that Audley Capital controlled some 15% of MWB, continued to occur. On 14 June 2011, Mr Treger's colleague, Mr Epstein emailed Mr Kagan, copying in Mr Treger, regarding an article in the Financial Times. The article had stated that:

"Audley Capital – the hedge fund run by Julian Treger, the high-profile South African investor – is MWB's second largest shareholder, with a 15 per cent stake."

This prompted the following exasperated response from Mr Epstein in his email to Mr Kagan:

"*We 're in the news again- the below article appeared in yesterday's FT. This has turned into a case study of management abusing their position to line their own pockets to the detriment of shareholders - not unlike the experiences we had while working closely with them for 10 months, for which we were never commensurately rewarded.*
Management have been using the Audley name to suit their purposes for the past 18 months, and continue to do so, setting up new "Audley" vehicles over the past few weeks without our consent. Our misperceived involvement here makes us look weak as we allow management to trample on shareholder interests. Why do we continue to tolerate this?"

Although Mr Treger was copied into this email, it was apparent from Mr Kagan's evidence to the Committee that Mr Treger did nothing to stop such misleading statements other than to express his annoyance and, so Mr Treger claimed, to continue to complain intermittently to Mr Balfour-Lynn. No one attempted to get the Financial Times to print a correction.

195. On 13 July 2011, the Financial Times published another article about the dispute between Pyrrho and MWB concerning the terms of MWB's bid for the share capital of Business Exchange that it did not already hold. This article again referred to Audley Capital as MWB's second-biggest shareholder. Mr Epstein again noticed the article and alerted Mr Treger to it by email of 14 July. Again, no one contacted the Financial Times with a view to getting it to correct the misunderstanding.

196. On 20 September 2011, Messrs Chan and Cummins met Mr Treger at Audley Capital's offices. At this meeting Messrs Chan and Cummins proposed that Mr Treger support Pyrrho in an attempt to obtain a seat on the MWB board. The evidence of both Mr Chan and Mr Cummins was that Mr Treger rejected that proposal, stating that in the UK the appointment of independent directors rather than the appointment of representatives of major shareholders was the standard corporate governance technique. Mr Treger expressed himself as willing to accept management proposals because he had bought into MWB at a low point and the Audley stake was not sufficiently major to merit too much of his attention.

197. Some aspects of the evidence concerning this meeting were hotly disputed. Mr Treger told the Committee that he had assumed that Pyrrho were aware that he only advised the Audley companies rather than controlled or managed their shares, not least because "Audley Capital Advisors" (the prominent sign displayed in the entrance to Audley Capital's offices) underscored the fact that the company (Audley Capital Advisors LLP) was only authorised by the FSA under Part IV of the Financial Services and Markets Act 2000 to advise on investments. Mr Treger also relied upon Mr Epstein's denial in response to an enquiry from Arbuthnot that Audley Capital had anything to do with the Audley Investors (paragraph 171 above).

198. Pyrrho's evidence, in contrast, was that Mr Treger explained at this meeting that the Audley companies were managed accounts not Audley's usual investments. Furthermore, the inclusion of the word "Advisors" in Audley Capital's title was in Mr Chan's experience entirely consistent with activist investors holding or managing blocks of shares. The Committee addresses this disputed evidence in considering the Disciplinary Submission against Mr Treger.

199. On 25 November 2011, Mr Cummins again emailed Mr Treger in an attempt to enlist his support in Pyrrho's disputes with the board of MWB and its attempt to gain representation on the board. The terms of this mail suggest that Pyrrho continued to believe that the shares of

the Audley companies were held in accounts managed on a discretionary basis by Mr Treger. The material sections of Mr Cummins' email said:

"*During this period we have seen a toxic debt refinancing with high cash interest rates and accruing rates, a sharp drop in the share price and the loss of a key executive. You have always maintained that as the share price was well above your cost that you were not too concerned about the activities of the board, given that the share price is close to your cost I assume you are now more concerned.*
Also although these investments are small I understand that they are held in discretionary accounts so I would assume the ultimate beneficiaries are now keen for a more activist approach, for which you are well known.
This being the case we would like your support in the appointment of a director from Pyrrho as a non executive director of MWB."

200. No such support was forthcoming. On the contrary, Mr Treger wrote to the independent directors a letter, substantially drafted by Mr Singh and Mr Balfour-Lynn, justifying the policies and performance of the board. Thus, on 11 December 2011 Mr Singh emailed to Mr Balfour-Lynn the text of a detailed letter he had drafted for Mr Treger to send out to the non-executive directors of MWB refuting Pyrrho's various recent criticisms of the strategy pursued by the board. The letter was to be sent by Mr Treger before the imminent AGM. On 12 December Mr Balfour-Lynn forwarded a further draft to Mr Treger asking him to email it to the three non-executive directors whose email addresses he supplied. Mr Treger made some amendments to the draft to make the tone, as he put it, "*more temperate*" but then emailed the letter to the non-executive directors without disclosing its provenance. Essentially, the letter represented Mr Balfour-Lynn's and Mr Singh's own justification for their conduct and policies, not Mr Treger's independent assessment.

201. The proceedings at the AGM on 13 December 2011 were recorded. The transcript records Mr Treger as saying this:

"*Mr Chairman, I think as another major shareholder, I think the Company's facing a major issue. There aren't that many shareholders who represent a majority of the shares. I think all of this is best done in a private setting, and also in a cooperative way, because I think fighting amongst shareholders is a distraction that this company doesn't need*."

202. In the following day's Daily Telegraph, Jonathan Russell, the Telegraph's Assistant City Editor reported events at MWB's AGM under the headline "*Accusations fly as investors round on MWB board…*". The article contained the following reference to Mr Treger's intervention:

"*Shortly after this Mr Treger, a 15pc shareholder in MWB, interrupted proceedings warning "fighting amongst shareholders is a distraction this company does not need*""

203. This article finally prompted Mr Treger's colleagues at Audley Capital to demand an explanation of the dangerous use of the Audley name. Mr Kagan noticed the article and on 15 December 2011 emailed Mr Treger and Mr Michael Treichl, the other co-founder of Audley, saying this:

"*Julian*
The below article was in the Telegraph yesterday wrt MWB.
It continues the story that Audley are 15% shareholders in MWB, which we have previously discussed.
The attached Bloomberg extract of shareholders continues to show that Audley is a 15% shareholder, despite my many emails and attempts with the Finance Director of MWB, Jag Singh, to have this corrected (see attached emails) as no Audley entity/money, as far as I am aware, has shares in MWB.
We do know that MWB set up two SPVs called Audley Capital Developments Limited and Audley Investments Portfolio Limited (both BVI based) which originally held the shares. These entities are owned by Audley Capital Holdings Limited, a Hong Kong corporation (information that came to light when we were shown a UK Takeover Panel disclosure document that Jag Singh sent to you as attached).
We discussed at the time why these entities were using the Audley name yet you confirmed that we were not involved, other than as providing advisory services.
We have an advisory agreement with these two BVI SPVs that pays ACA LLP £100k per year in lieu of advisory services provided by ACA LLP.
At present none of us properly understand this situation. Adam has taken numerous broker calls over the years (asking what our involvement is given the Audley name on the Bloomberg share register) and Jolie has just received a request from Whitley who read the below article asking what Audley's involvement is.
I continue to be concerned by the lack of clarity as to what is going on and what the involvement is with Audley. This concern is heightened by the level of press this matter is gathering and the questions that may be asked of Audley by the FSA, should they decide to investigate.
This concern makes me question whether ACA LLP should be cancelling the advisory contract with the two BVI SPVs.
Can we discuss please?"

This email illustrates the gulf in relevant knowledge between Mr Treger and his colleagues, but it also shows that it was common knowledge within Audley Capital that MWB had set up AIPL and ACDL, that is to say, it was known that these companies were MWB's vehicles.

204. It seems that Mr Treichl had not previously been aware of what had been going on. His response of the same day to Mr Kagan's email was emphatic:

"*lt seems to me the obvious thing to do is to terminate the advisory contract with immediate effect (if that's possible under the terms) as I understand no financial advisory services have been rendered since 2009. Julian, any objections?*

I agree that we should have a call as soon as practicable to get the full picture. Can you organise this, Howard?"

205. On 29 December 2011, Mr Treichl emailed Messrs Kagan and Treger saying:

"*Have we now received a satisfactory explanation of who the beneficial owners are behind the mysterious 'Audley' companies? Also, why are they called audley if not to create some sort of deception?*"

Mr Treichl had also been pressing for the regulator to be told that Audley Capital had no interest in the shares held by the Audley companies and for the advisory agreement between Audley Capital and the BVI companies to be terminated. By the end of January 2012, following correspondence between Mr Kagan, Bloomberg and Bloomberg's data provider, the information on Bloomberg's register was corrected. It is apparent that Bloomberg had not previously been asked to correct the relevant entry.

206. By notice of 6 February 2012 sent by Mr Treger to JAM, the advisory agreement ostensibly recorded in the backdated letter of 1 June 2009 was terminated with immediate effect. This notice of termination was given five days after Mr Treger's first telephone interview by the Executive.

XV Mr Treger's Dealings with Budin

207. According to Mr Treger, it was not until December 2011 that Mr Balfour-Lynn told him that Messrs Aspland-Robinson and Eker were not the owners of Audley Investment Holdings Limited and Audley Capital Holdings Limited, and that these companies were owned respectively by Mr Cioffi and Mr Verduron. Mr Treger told the Committee that the news made him angry, as it confounded his assumption that Mr Singh had been passing on his advice to those whom he regarded as his clients, namely Messrs Aspland-Robinson and Eker. Mr Treger was also told by Mr Balfour-Lynn that Messrs Cioffi and Verduron were represented by the Swiss lawyers, Budin.

208. On 11 January 2012, Mr Singh emailed Mr Treger the contact details for Messrs Froidevaux and Huguenin, having advised Messrs Froidevaux and Huguenin that Mr Treger would be contacting them.

209. On 12 January 2012, Mr Treger emailed Mr Huguenin referring to his introductory telephone call of the previous day and setting out a "*copy of the advice I gave to the board on your behalf*

late last year in accordance with your client's views". In fact, the advice then set out for Mr Huguenin's benefit was the letter sent by Mr Treger to the independent directors of MWB on 12 December 2011, justifying the policies and conduct of the board – i.e. the letter the initial drafts of which had been composed by Mr Singh and Mr Balfour-Lynn and which had been sent by Mr Treger to the independent directors at Mr Balfour-Lynn's request.

210. In order to meet know your client requirements, Mr Treger evidently needed some evidence that Messrs Cioffi and Verduron were owners of the Hong Kong companies. Accordingly, on 16 January 2012 Mr Treger emailed Mr Huguenin saying:

"*Patrick*
Please could you provide some evidence that the beneficial owners of the two vehicles are the two individuals. This could be a share certificate or a letter to this effect from yourselves.
Many thanks
Julian"

In response to this request Mr Huguenin asked Mr Treger to send him his full contact details. Letters from Budin confirming Mr Cioffi's and Mr Verduron's ownership of the Hong Kong companies were duly sent to Audley Capital on 20 January 2012. Share certificates and registers of members were produced by Budin on 1 February 2012.

211. On 1 February 2012 Mr Treger emailed Mr Huguenin saying:

"*For your information, I was contacted by the takeover panel today who are investigating a claim that the funds we advise are in concert with the management of mwb. I said I did not believe this to be the case. But they have requested to contact the owners of the funds and accordingly i will give them your details tomorrow as well as the names of the beneficiaries. I believe they will call you in due course*."

Mr Treger also told Mr Huguenin that the Takeover Panel was proposing to disclose to Pyrrho evidence of the ownership of the Hong Kong companies. In response, Mr Huguenin said that Budin were prepared to interact directly with the Takeover Panel but objected to any disclosure to third parties (including Pyrrho) of the identities of the ultimate beneficial owners of the Hong Kong companies.

212. On 6 February 2012 Mr Treger sent the following email to Mr Huguenin:

"*Patrick*
I am writing to you following my meeting with the panel on Friday.
Whilst I have enjoyed working with you and advising your clients, as you are aware we have been very unhappy about the use of the Audley name and the confusion this has caused. I understand Audley is not our name exclusively and I know you have agreed to change the

names of your vehicles. But the confusion that this has caused for us has been extensive and even though we have sought to correct any misapprehensions that these are Audley managed funds whenever we can, the fact is that it remains very unclear. Even the panel on Friday did not understand we did not manage these funds until I clarified this with them.
In the circumstances I believe we now need to sort this out once and for all. The best and quickest way to do this is for us to step down from our advisory relationship with immediate effect. Please can this communication serve as notice of this change and may I ask you to inform MWB of this alteration. Please would you also facilitate the name change as soon as possible and let us know when it has occurred.
I hope we have an opportunity to work in the future on other projects but I want to put an end to this confusion now and believe a clean break is the best way of achieving this so we have no ongoing relationship with MWB or its major shareholders. I do hope you understand.
Many thanks
Julian Treger"

213. On 2 March 2012 Mr Treger again emailed Mr Huguenin informing him that he had not thus far given the Panel any KYC information. He then set out, allegedly at Mr Huguenin's request, particulars of the "*ad hoc advice*" given by Audley Capital on a range of matters between September 2010 and February 2012. Mr Treger's evidence to the Committee was that the advice described in this email was advice he had relayed to Mr Singh during this period on the assumption that Mr Singh would forward it to those whom he had regarded at the time as his clients (Mr Aspland-Robinson and Mr Eker).

214. The Executive's case, which the Committee will address in its assessment of the Disciplinary Submission against Mr Treger, is that this correspondence with Mr Huguenin was a transparent attempt on Mr Treger's part to create *ex post facto* a fictional relationship between Audley Capital as adviser and Messrs Cioffi and Verduron as clients. In fact, according to the Executive, no such relationship ever existed.

XVI The Executive's Investigation

215. Eleven years elapsed between Pyrrho's complaint to the Panel in December 2011 and the initiation of proceedings by the Executive in December 2022. This time frame is unique in the Panel's history, and in the circumstances the Committee was understandably concerned to receive a cogent explanation for the length of the investigation and the time taken to bring proceedings.

216. During the first half of 2012 the Executive interviewed all the principal protagonists connected with the acquisition of the Loan Notes and the later transfer of some of the Loan notes to AIPL and ACDL prior to their "conversion" into equity in the placing. The accounts given by Messrs Balfour-Lynn, Singh, Aspland-Robinson and Eker were in material respects consistent with

each other and were all untrue. In brief, their story was that it was understood that funds available to, or put together by, Mr Treger were going to acquire the Loan Notes, but after agreeing a price with GLG, Mr Treger found that he could not produce the money in the time required by GLG. It was at this point that Mr Balfour-Lynn asked Mr Aspland-Robinson and Mr Eker to invest on the understanding that this would be a temporary commitment pending Mr Treger's purchase of their Loan Notes. It was in the expectation that Mr Treger/Audley Capital would in due course buy them out that some of the Loan Notes were transferred into BVI companies bearing the Audley name. Mr Pankhania claimed to have been introduced into the transaction by Mr Aspland-Robinson who gave him the same account, namely that this would likely be a short-term commitment pending Mr Treger's purchase.

217. Mr Balfour-Lynn claimed that he more or less dropped out of the transaction after securing Messrs Aspland-Robinson and Eker as investors, and thereafter assumed that Mr Treger controlled the Loan Notes despite being uncertain as to whether he had actually purchased them. Both Mr Balfour-Lynn and Mr Singh denied having any financial interest in the Loan Notes. As to the EDR involvement, that was thanks to a connection Mr Eker had with that bank. Messrs Balfour-Lynn, Singh, Aspland-Robinson and Eker all professed ignorance as to the identity of EDR's investors.

218. Mr Treger was interviewed by the Executive three times before the end of March 2012 and five times in all. As the Committee explains below, his account to the Executive was also substantially untrue and misleading, but it differed in important respects from that of Messrs Balfour-Lynn, Singh, Aspland-Robinson and Eker.

219. As regards the on-sales of AIPL and ACDL, Messrs Aspland-Robinson, Sicot and Cohen vouched for the manner in which Hoche was engaged as agents for the sellers following Mr Sicot's chance meeting in Sotogrande with Mr Aspland-Robinson. Mr Cohen and Messrs Froidevaux and Huguenin in turn explained to the Executive how Budin came to act for the buyers following an enquiry from Mr Cohen. For their part, having been recruited by Mr Froidevaux to acquire AIPL and ACDL as owners of the Hong Kong purchasing companies, Messrs Cioffi and Verduron told the Executive how Mr Froidevaux, whom they trusted implicitly, assured them that he could find investors in the Baffin Fund who would provide the consideration required to complete the acquisition of AIPL and ACDL.

220. At that stage the trail went cold. Mr Huguenin explained that an independent asset manager formerly employed by UBP (Mr Bergamin) had sourced the investors in the Baffin Fund; but after protracted exchanges during 2012, Mr Huguenin maintained that he could not assist the

Executive with the Baffin Fund enquiry as it would jeopardise the business interests and goodwill of Budin's clients, Mr Cioffi and Mr Verduron. At this stage and having regard to the fact that Budin was a reputable Swiss law firm, the Executive believed that the investors in the Baffin Fund whose funds had enabled completion of the on-sales were likely to have been bona fide third parties procured by an independent asset manager.

221. In broad terms, two developments, both of which involved considerable time, labour and cost, enabled the Executive to disprove the accounts they had been given. The first was an extensive document gathering and electronic document recovery exercise. The Executive ultimately gathered some 280,000 documents from a variety of sources over a period of several years which were assessed for relevance before being uploaded to an electronic document platform. MWB were asked to produce all emails and other documents sent to or by Messrs Balfour-Lynn, Singh, Aspland-Robinson and Pankhania during the relevant years. It transpired that there were substantial gaps in the documentation. Some emails were missing or deleted and some back-up tapes were damaged or missing. PwC had to be retained to conduct a forensic review of MWB's system which ultimately succeeded in recovering most of the missing or deleted files.

222. Analysis of the documents revealed, amongst other things, the financial interests of Mr Balfour-Lynn and Mr Singh in the Loan Notes that were converted into shares of MWB and their extensive involvement in the arrangements for acquiring and naming AIPL and ACDL and for transferring Loan Notes to those companies with a view to their subsequent conversion into equity.

223. The second development was the vital information produced as a result of litigation in Switzerland and the assistance rendered by the Swiss Financial Market Supervisory Authority, FINMA, in interviewing various key witnesses. Contested proceedings in the Swiss Federal courts took place between 2012 and 2014 in which the jurisdiction of the Takeover Panel was challenged but as a result of which the Panel achieved recognition as a competent foreign regulator to whom international cooperation obligations were owed.

224. Under FINMA's auspices, interviews were conducted between 2016 and 2018 of Mr Cioffi, Mr Verduron, Mr Robert Dallal, Mr Olivier Bernard of EDR and Mr Bergamin, the asset manager and former employee of UBP who had been dishonestly identified by Mr Huguenin as the source of investors in the Baffin Fund. Under FINMA's auspices there were also multiple interviews of Mr Huguenin. These interviews, along with information released to the Executive by FINMA, enabled the Executive to see that EDR's investors in the Loan Notes

were Mr Eker and other relatives of Mr Balfour-Lynn, including his mother whose account he operated under a power of attorney. They also revealed Mr Houri as the source of investment in the Baffin Fund and Mr Dallal as the connecting link between Mr Houri and Mr Balfour-Lynn. It was not until 2017 that the Executive managed to interview Mr Houri, whose admissions in the course of the hearing unlocked the truth surrounding the Baffin Fund transfer and likely influenced the decision of Messrs Froidevaux and Huguenin to make admissions of their own.

225. This was, therefore, a uniquely complex and difficult investigation and much of the time taken may be justified by the obstruction encountered by the Executive and in consequence its uphill task in unpicking the truth behind a series of complex transactions. The transcript files alone record 54 interviews conducted between 2012 and 2018, many comprising repeat interviews as information was gathered and understanding of the subject transactions developed.

226. In the Committee's view, if there is a criticism to be made of the time taken to initiate these proceedings, it must concern the time elapsed between the substantial completion of the interviewing process by January 2018[14] and the initiation of proceedings in December 2022. The Statement of Facts was a formidable and complex document meticulously cross-referenced to an extensive body of underlying documents. Its sheer scale was also unprecedented in Takeover Panel investigations. The Committee does not underestimate the time and labour involved in producing a document of this nature, particularly in circumstances where the Executive's case involves serious allegations of dishonesty that had to be demonstrated by analysis of the documents. Nevertheless, the Committee believes that proceedings ought reasonably to have been launched by the beginning of 2020; and the failure to achieve this meant that there was inevitable delay and disruption caused by the Covid-19 pandemic.

14 There was a fifth interview of Mr Treger held in December 2018 but it need not have delayed preparation of the written case.

227. The Committee is firmly of the view, however, that no unfairness has been suffered by any Respondents as a result of the time taken to initiate these proceedings. In the case of the principal protagonists, the Remedial Subjects, the documentary evidence proved to be so overwhelming that no positive challenge was mounted to the facts alleged against them. As for the other Respondents, Messrs Houri and Pankhania made admissions during the hearing and submitted to certain sanctions which, with the agreement of the Committee and upon the recommendation of their counsel and the Executive, effectively concluded the cases against them. Mr Froidevaux and Mr Huguenin also made late admissions of their complicity in a sham transaction, thereby falsifying the accounts given by them to the Executive in interviews and establishing, accordingly, contraventions of section 9(a) of the Code. Finally, the cases of contravention of section 9(a) brought against Mr Treger and Mr Cohen substantially hinge on what the Executive alleges to have been deliberately misleading information first provided to the Executive during early interviews in 2012.

XVII The Claim for Compensation against the Principal Concert Party Members

228. As explained above, the Executive seeks a ruling that the Remedial Subjects (Mr Balfour-Lynn, Mr Singh and Mr Aspland-Robinson) pay compensation under section 954 of the Act and section 10(c).

229. Section 954 of the Act provides as follows:

> *"(1) Rules may confer power on the Panel to order a person to pay such compensation as it thinks just and reasonable if he is in breach of a rule the effect of which is to require the payment of money.*
>
> *(2) Rules made by virtue of this section may include provision for the payment of interest (including compound interest).*"

230. Section 10(c) of the Code has the title, "Compensation rulings" and is the rule introduced pursuant to section 954 of the Act. Section 10(c) states as follows[15]:

> "*Where a person has breached the requirements of any of Rules 6, 9, 11, 14, 15, 16 or 35.3 of the Code, the Panel may make a ruling requiring the person concerned to pay, within such period as is specified, to the holders, or former holders, of securities of the offeree company such amount as it thinks just and reasonable so as to ensure that such holders receive what they would have been entitled to receive if the relevant Rule had been complied with. In addition, the Panel may make a ruling requiring simple or compound interest to be paid at a rate and for a period (including in respect of any period prior to the date of the ruling and until payment) to be determined*."

15 This is the version of the rule in the 2009 edition of the Code. The current rule is the same in material respects.

231. Chapter 1 of Part 28 of the Act implemented the European Directive on Takeover Bids (2004/25/EC). It established the Takeover Panel on a statutory basis and conferred statutory powers upon it for the first time. The power to order compensation under section 954(1) of the Act has not previously been exercised, although on one occasion before the enactment of the Act the Panel made compensation orders in the case of *Guinness plc/The Distillers Company plc* [Panel Statement 1989/13] under a jurisdiction which the Panel found it had for the purpose of giving effect to the principles of the Code. That case was the subject of some discussion at the hearing and is considered below.

232. In this case the Committee is invited to order compensation against the Remedial Subjects for breach of the requirements of Rule 9. The parts of Rule 9 relevant for present purposes are as follows[16]:

"*9.1 WHEN A MANDATORY OFFER IS REQUIRED AND WHO IS PRIMARILY RESPONSIBLE FOR MAKING IT*

"Except with the consent of the Panel, when:—

(a) any person acquires, whether by a series of transactions over a period of time or not, an interest in shares which (taken together with shares in which persons acting in concert with him are interested) carry 30% or more of the voting rights of a company; or

(b) any person, together with persons acting in concert with him, is interested in shares which in the aggregate carry not less than 30% of the voting rights of a company but does not hold shares carrying more than 50% of such voting rights and such person, or any person acting in concert with him, acquires an interest in any other shares which increases the percentage of shares carrying voting rights in which he is interested,

such person shall extend offers, on the basis set out in Rules 9.3, 9.4 and 9.5, to the holders of any class of equity share capital whether voting or non-voting and also to the holders of any other class of transferable securities carrying voting rights. Offers for different classes of equity share capital must be comparable; the Panel should be consulted in advance in such cases.

……

16 Taken from the 2009 edition of the Code. The current edition is the same in material respects.

9.3 CONDITIONS AND CONSENTS

Except with the consent of the Panel (see Note 3):—
(a) offers made under this Rule must be conditional only upon the offeror having received acceptances in respect of shares which, together with shares acquired or agreed to be acquired before or during the offer, will result in the offeror and any person acting in concert with it holding shares carrying more than 50% of the voting rights; and

(b) …..

…….

9.5 CONSIDERATION TO BE OFFERED

(a) An offer made under Rule 9 must, in respect of each class of share capital involved, be in cash or be accompanied by a cash alternative at not less than the highest price paid by the offeror or any person acting in concert with it for any interest in shares of that class during the 12 months prior to the announcement of that offer. The Panel should be consulted where there is more than one class of share capital involved.

(b) If, after an announcement of an offer made under Rule 9 for a class of share capital and before the offer closes for acceptance, the offeror or any person acting in concert with it acquires any interest in shares of that class at above the offer price, it shall increase its offer for that class to not less than the highest price paid for the interest in shares so acquired. Immediately after the acquisition, an appropriate announcement must be made in accordance with Rule 7.1.

(c) In certain circumstances, the Panel may determine that the highest price calculated under paragraphs (a) and (b) should be adjusted. (See Note 3.)

(d) The cash offer or the cash alternative must remain open after the offer has become or been declared unconditional as to acceptances for not less than 14 days after the date on which it would otherwise have expired (see Rule 31.4)."

233. Three principal questions arise:

(i) whether a breach of Rule 9 involves "*breach of a rule the effect of which is to require the payment of money*" within the meaning of section 954(1) of the Act. This question goes to the Panel's jurisdiction since the rule in section 10(c) of the Code is only valid if and to the extent it falls within the compass of the enabling power in the Act;

(ii) if there is jurisdiction to order compensation for breach of Rule 9, whether it has been established that the Remedial Subjects were in breach of an obligation to make an offer to other shareholders; and

(iii) whether, if the answer to (ii) is yes, compensation should be ordered and if so, against whom and in what sums.

234. Pyrrho's submission that Mr Treger should be included in the Remedial Subjects given his role in the matters in issue, requires separate consideration.

XVIII Jurisdiction

235. It was common ground between Mr Balfour-Lynn and the Executive that the Committee had jurisdiction to order compensation for breach of Rule 9. Nevertheless, because Mr Singh and Mr Aspland-Robinson were unrepresented and because the question was a novel one which did not admit of an obvious answer, the Committee took the view that the issue ought to be fully ventilated and sought assistance on the question in the form of an opinion from an *amicus*.

236. In a written joint opinion of 8 November 2023, Mr Andrew Thornton KC and Mr Ben Shaw KC submitted that the words "*the effect of which*" in section 954(1) significantly extend the scope of the Panel's power to make rules requiring a person to pay compensation. In their opinion, even if a rule of the Code does not impose a direct obligation to pay a sum of money, the Panel has power to order compensation for its breach if "*the effect*" of the rule is to require payment of money. Had section 954 of the Act conferred a power to direct payment of compensation only when a person was in breach of a rule requiring the payment of money, the scope of that section and, in consequence, the scope of the Panel's rule making power, would have been significantly narrower.

237. In the submission of Mr Thornton and Mr Shaw, Rule 9 of the Code is a rule "*the effect of which requires the payment of money*" even though the obligation imposed by Rule 9 is to make an offer in cash or accompanied by a cash alternative at the price stipulated by Rule 9.5. In their opinion, it does not matter that a requirement to pay cash is conditional upon the shareholders accepting the offer.

238. In the present case any Rule 9 offer made by the Remedial Subjects would have been unconditional within the meaning of Rule 9.3, because, as a result of the shares acquired in the placing by the "Audley Investors", those acting in concert obtained interests in 50.33% of the enlarged share capital of MWB. However, Mr Thornton and Mr Shaw submitted that it does not matter for the purposes of section 954(1) of the Act whether the Rule 9 offer was conditional or unconditional, as once an obligation to offer cash is triggered, whether or not the offeror will be required to pay is outside its control. In the opinion of Mr Thornton and Mr

Shaw it is enough that the obligation to make a cash offer under Rule 9 puts beyond the control of the offeror a liability to pay the cash amount. This liability is underscored by Rule 24.8 of the Code which, where the offer is for cash or includes an element of cash, requires confirmation by an appropriate third party that resources are available to the offeror to satisfy full acceptance of the offer.

239. The Committee agrees that the scope of section 954(1) of the Act turns upon the implications of the phrase "*the effect of which*" and specifically, upon the extent to which those words extend the compass of section 954(1) beyond rules which directly require the payment of money. In the Committee's view, once it is recognised, correctly, that section 954(1) applies to rules other than those which directly require the payment of money, it is hard to resist the conclusion that the section encompasses rules which require an irrevocable offer to pay money.

240. This makes sense in the context of the Code. Rule 31.9 is the only Rule of the Code that directly requires the payment of money. In the case of a successful offer Rule 31.9 requires the consideration to be paid to accepting shareholders within 14 days of the latest of three dates. It would be surprising if the only consequence of section 954(1) of the Act were to provide the Panel with a power to order compensation for breach of Rule 31.9, when accepting shareholders would ordinarily have contractual rights to enforce payment of the consideration. One would not expect a statutory power introduced by primary legislation to have been created with such minimal intent.

241. In this context, it is notable that Rule 31.9 is not one of the Rules of the Code cited in section 10(c). All the Rules cited in section 10(c) regulate offers to pay money or restrict in some way the conduct of offerors. One infers that the Code Committee of the Panel omitted Rule 31.9 from section 10(c) because it was considered unnecessary to include it.

242. Finally, the Explanatory Note to section 954 of the Act says this:

> "*This section confers on the Panel the power to make rules providing for financial redress (together with interest (including compound interest)) in consequence of a breach of rules which require monetary payments to be made (for instance, a payment by the bidder to shareholders of any difference between the price actually paid and any higher price for shares that the bidder should have paid under the rules).*"

243. In the Committee's view, the example cited in this Explanatory Note probably relates to the Panel's ruling in the *Guinness/Distillers* case [supra], that being the only previous instance before the passing of the Act in which the Panel had ordered the payment of compensation. In

that case the Panel directed compensation to be paid for breach of Rule 11.1 which, in the edition of the Code current at the time stated:

"*Except with the consent of the Panel in cases falling under (a), where:-*

(a) the shares of any class under offer in the offeree company purchased for cash by the offeror and any person acting in concert with it during the offer period and within 12 months prior to its commencement carry 15% or more of the voting rights currently exercisable at a class meeting of that class; or

(b) in the view of the Panel there are circumstances which render such a course necessary in order to give effect to General Principle 1,

then the offer for that class shall be in cash or accompanied by a cash alternative at not less than the highest price paid by the offeror or any person acting in concert with it for shares of that class during the offer period and within 12 months prior to its commencement."

The Panel found that during its successful bid for Distillers, Guinness had concealed the fact that it had been acting in concert with Pipetec AG, a subsidiary of Bank Leu, which had acquired Distillers shares during the Rule 11 look-back period at a higher price than that offered by Guinness in its successful bid. In breach of Rule 11, Guinness's offer had failed to match the price paid by a party with which it had been acting in concert during the 12 months prior to the commencement of the offer period. Accordingly, the Panel ordered Guinness to pay to those former shareholders who would probably have accepted the higher cash offer, the difference between the consideration offered by Guinness and that which should have been offered pursuant to Rule 11.

244. *Guinness/Distillers* was, therefore, a case in which compensation was ordered to remedy breach of a Rule that required an offer to be made at no less than a certain price. Rule 11 did not directly require the payment of money, albeit its effect (and the remedy directed for its breach) was to require the payment of money. Accordingly, if, as the Committee regards as likely, one purpose of section 954 of the Act was to place on a statutory basis a jurisdiction of the sort exercised in Guinness, it follows that section 954 is intended to apply to breach of rules that require the making or enhancement of an offer to pay money.

245. For these reasons, the Committee concludes that it has jurisdiction to order the Remedial Subjects to pay compensation for breach of Rule 9. The Committee agrees with Mr Thornton and Mr Shaw that for the purpose of establishing jurisdiction under section 954 of the Act, it does not matter whether a Rule 9 offer would have been conditional or unconditional, as the application of section 954 depends upon the intrinsic characteristics of the rule in question and

not upon the effects of its breach in a particular instance. Nevertheless, the consequences of breach may be highly relevant to questions of causation of loss.

XIX Breach of Rule 9 - Notional Offer Price

246. The Code defines acting in concert as follows:

> "*Persons acting in concert comprise persons who, pursuant to an agreement understanding (whether formal or informal), co-operate to obtain or consolidate control (as defined below) of a company or to frustrate the successful outcome of an offer for a company. A person and each of its affiliated persons will be deemed to be acting in concert all with each other*."

247. There can be no doubt that Mr Bafour-Lynn, Mr Singh, Mr Aspland-Robinson and Mr Eker were acting in concert in acquiring in the placing through the vehicles of AIPL and ACDL shares amounting to some 15.2% of MWB's enlarged share capital. Irrespective of the professional and personal relationships that existed between them, the source of funds establishes their concerted action. Mr Balfour-Lynn provided all the funds for the shares acquired by Mr Eker's company, ACDL, with the result that Mr Balfour-Lynn became sole beneficial owner of ACDL's shares[17]. Mr Singh, Mr Balfour-Lynn and Mr Aspland-Robinson together provided the funds for the shares acquired by Mr Aspland-Robinson's company, AIPL with the result that they each acquired beneficial interests in the shares of AIPL in proportion to their respective contributions to their purchase price. Similarly, in acquiring 2.5% of MWB's issued share capital on 1 June 2009 with the assistance of funds advanced by Mr Balfour-Lynn, for the reasons previously stated Mr Aspland-Robinson was undoubtedly acting in concert with both Mr Balfour-Lynn and Singh.

248. These acquisitions were in turn made in concert with the 1997 Concert Party which continued in existence throughout the period in question. Once the Panel declares a concert party to exist it treats the group as a single entity which will be treated as continuing until the Panel accepts otherwise on the basis of evidence presented to the Executive. The "*Notes On Acting In Concert*" include the following:

> "*Where the Panel has ruled that a group of persons is acting in concert, it will be necessary for clear evidence to be presented to the Panel before it can be accepted that the position no longer obtains*."

17 Mr Eker, therefore, was not the ultimate beneficiary of any of the shares acquired in exchange for Loan Notes.

No such evidence was ever presented to the Panel. Accordingly, although its membership fluctuated from time to time, the 1997 Concert Party continued in existence until MWB went into administration. Mr Balfour-Lynn and Mr Singh were disclosed members of the 1997 Concert Party, while Messrs Aspland-Robinson and Eker were also members, albeit undisclosed. Furthermore, the evidence establishes that Mr Balfour-Lynn and Mr Singh were the principal, directing members of the 1997 Concert Party.

249. From the unchallenged figures set out in Appendix III, it is apparent that disclosed and undisclosed members of the 1997 Concert Party held 50.33% of MWB's enlarged share capital at the closing of the placing on 12 January 2010. Having regard to the fact that Mr Aspland-Robinson's acquisition of 1 June 2009 occurred during the Rule 9.5 look-back period and was for a consideration of 40 pence per share, it was incumbent upon the Remedial Subjects to have announced on 12 January 2010 a Rule 9 offer of 40 pence per share to all shareholders of MWB who were neither disclosed nor undisclosed members of the 1997 Concert Party. Such an offer would by operation of the Code have been unconditional as to the required level of acceptances.

XX Compensable Loss?

250. Before the hearing, the Executive made some substantial amendments to its submissions on this issue, as a result of which certain important matters were common ground between the Executive and Mr Balfour-Lynn and also between the Executive and Mr Treger who, having regard to Pyrrho's submissions, had a contingent liability to pay compensation.

251. It is common ground that the Panel's power under section 954(1) of the Act "*to order a person to pay such compensation as it thinks just and reasonable*" is a discretion that must be exercised in accordance with legal principle and specifically, in accordance with established common law principles regarding compensation for loss. Chapter 1 of Part 28 of the Act distinguishes between the Panel's powers to enforce sanctions (section 952) and the Panel's power to order compensation (section 954). Although, subject to taking certain antecedent procedural steps, the Panel has power to introduce sanctions that were not part of the Code before the passing of the Act (including financial penalties – see 952(3)) the Panel has not exercised this power and, specifically, has not assumed a power to impose financial penalties. It is common ground, therefore, that section 954(1) of the Act and section 10(c) of the Code are compensatory rather than penal in nature.

252. It was also common ground between the Executive and Mr Balfour-Lynn that the assessment of compensation under section 954(1) of the Act and section 10(c) involves an approach analogous to that followed in an assessment of compensatory damages. It was not disputed, therefore, that the Committee had to ask itself what the response of shareholders would have been had the Remedial Subjects announced a Rule 9 offer upon the closing of the placing on 12 January 2010 - in other words, it was common ground that the Committee had to posit a counter-factual for the purpose of addressing causation of loss, albeit what the hypothetical set of facts should comprise was in dispute.

253. It is apparent from the previous findings of fact made in this ruling that a false market existed in MWB's shares at the conclusion of the placing. Whereas in truth, disclosed and undisclosed members of the 1997 Concert Party had acquired statutory control of the company, the Prospectus and Shareholders Circular gave the deceitful impression that the 25 million shares acquired by the "Audley Investors" had been acquired by independent shareholders associated with the Audley Capital group. In consequence, the Rule 9 waiver obtained in reliance upon the representation that the 1997 Concert Party was increasing its shareholding from just under 30% of MWB to 33.51% of its enlarged share capital, was dishonestly induced and obtained.

254. The Committee's view was that had these matters been apparent to shareholders, as they would have been had a Rule 9 offer been announced on 12 January 2010 (followed, pursuant to Rule 23.1 of the Code and General Principle 2, by the provision of sufficient information and advice to enable shareholders to reach a properly informed decision as to the merits or demerits of the offer) offeree shareholders would have accepted the offer and transferred their shares to the Remedial Subjects. In fact, it is the Committee's view that offerees would likely have accepted such an offer in exchange for their shares notwithstanding they were trading at or marginally above the notional offer price when the offer was announced and posted. In reality, once senior management obtains statutory control, it is able to control composition of the board and matters such as dividends without fear of interference from shareholders in general meeting. Few, if any, shareholders would have been content with that.

255. It was, nevertheless, common ground between the Executive and Mr Balfour-Lynn that it was not open to the Committee under section 954(1) of the Act to order the Remedial Subjects to pay compensation at the rate of 40 pence per share to shareholders on the register at the time of the notional offer in return for such shareholders making over to the Remedial Subjects whatever rights still attached to their shares. Such a solution, it was objected, would be restitutionary in nature or analogous to a remedy of rescission whereas section 954(1) envisages compensation being assessed on a basis equivalent to that which applies on an

assessment of damages in lieu of rescission, where shareholders retain their shares and are compensated for any loss flowing from their diminution in value. Accordingly, it was common ground that the Committee should approach compensation by following the common law rules which govern compensatory damages.

256. Against this background Mr Alexander Polley KC who appeared for Mr Balfour-Lynn contended that MWB shareholders had suffered no loss. The Committee's objective, he submitted, must be to place the offeree's shareholders as closely as possible in the position they would have been in had the Remedial Subjects performed their obligations under Rule 9 and announced an offer at 40 pence per share upon the closing of the placing:- *Livingstone v Raywards Coal Co* (1880) 5 App Cas 25 at 39. Where a claimant claims damages for breach of contract it must give counter-restitution of all benefits received or credit for the value of performance received. By analogy, in this case a shareholder accepting a notional offer announced on 12 January 2010 and posted in the form of an offer document within 28 days thereafter in accordance with the Code, would have to give benefit for the value of its shares at the time of the notional offer. Mr Polley contended that because MWB's shares traded at or above the notional offer price during at least the three months following 12 January 2010 (apart from a few days during which it would not have been reasonable to expect shareholders to have decided to sell and then to have unloaded their shares) no loss was suffered – as any offeree accepting the notional offer would have had to tender in exchange shares of equivalent value.

257. Mr Polley relied heavily on *Smith New Court Securities Limited v Citibank N.A.* [1997] AC 254 for the general rule that in tort or contract damages are assessed at the date of breach. Where shares are purchased in reliance on a misrepresentation, application of the date of breach rule means that damages are generally assessed at the date of transaction and comprise the difference between the price paid and true value of the shares on that date. Mr Polley submitted that this led to the conclusion that no compensation was payable in the present case because the notional offer price was no higher than the price at which MWB shares were trading during the material period.

258. Mr Polley derived support for this approach from the Panel's ruling in *Guinness/Distillers* [supra] which concluded that no compensation was payable to former Distillers shareholders who retained their new shares during a substantial period in which they were trading at an equivalent price at least equal to that which Guinness ought to have offered under Rule 11 of the Code. The Panel in *Guinness* found that Distillers shareholders who accepted Guinness's actual offer would inevitably have accepted the increased offer which ought to have been made

under Rule 11. In contrast, Distillers shareholders who retained their new shares during a period at which they were trading at prices at least equivalent to the price that should have been offered under Rule 11, would probably not have accepted an enhanced offer had it been made.

259. In response, Mr Simpson on behalf of the Executive submitted that the Remedial Subjects' failure to extend a Rule 9 offer was a continuing breach that has never been remedied. It was undoubtedly unremedied in November 2012 when MWB went into administration and its shares lost all value. During this entire period the Remedial Subjects concealed the various deceits described in paragraphs 119 and 120 above. Had the Panel become aware at any time before MWB went into administration of the extent of the Remedial Subjects' true interests in the shares of MWB, it would have required them to remedy their breach by making a Rule 9 offer. Mr Simpson submitted that because the failure to extend a Rule 9 offer was a breach that occurred from day to day until at least the date of MWB's entry into administration, it was open to the Committee to take that, or any prior, date as the "valuation date" for the purpose of assessing compensation.

260. Accordingly, so Mr Simpson submitted, the Committee should order payment of compensation at the rate of 40 pence per share to those shareholders on the register at 12 January 2010 with credit being given for any proceeds realised by any such shareholders who subsequently sold their shares. He accepted that had the Executive later discovered the truth and had the Panel then exercised its powers to secure compliance under section 10(b) of the Code by directing the making of a Rule 9 offer, the offerees would have been the shareholders on the register at the date of the offer and not (if different) those on the register on 12 January 2010. He submitted, however, that this merely reflected the fact that a compliance order under section 10(b) and compensation under section 10(c) were different remedies.

261. Mr Polley rejected the contention that failure to extend an offer under Rule 9 involved a continuing breach. Although the question is quite finely balanced, the Committee concludes that Mr Polley was correct in submitting that the failure to extend a Rule 9 offer was a failure that occurred once only, on 12 January 2010 when an offer ought to have been announced, thereby initiating an offer process. The fact that that breach went unremedied after 12 January 2010 does not mean that the breach occurred repeatedly thereafter from day to day.

262. Questions of this nature usually occur in the context of limitation issues. Typically, in such cases the action will be barred by limitation unless the breach of duty in question is a continuing breach which gives rise to a fresh cause of action arising each day. If in such cases

the breach in question is a continuing breach, the claimant may claim such losses as occurred within the relevant limitation period.

263. The Executive relied upon *Phonographic Performance Ltd v Department of Trade and Industry* [2004] 1 WLR 2893 in which the Crown was sued by the licensing body that owned copyright in the sound recordings of record companies. The action was for breach of the Crown's duty to give effect to an EC Directive which provided for a single equitable remuneration to be paid by the user to the producer if a phonogram was published for commercial purposes or was broadcast. The UK's domestic copyright legislation was said to be inconsistent with the Directive by permitting the playing of sound recordings in certain circumstances which would otherwise infringe copyright without requiring a single equitable payment to be made. Sir Andrew Morritt V-C (paras 24/25) held that the failure to give effect to the Directive was a continuing breach of statutory duty which gave rise to a fresh cause of action for damages on each occasion a recording or performance occurred without payment of the requisite equitable remuneration. The essential basis for this finding was the accrual of a fresh cause of action for damages on each occasion of a contravening recording, as the resulting financial damage was caused by a breach that occurred there and then and not by the earlier initial failure to implement the Directive.

264. For his part, Mr Polley relied on the passage (albeit *obiter*) in the judgment of Mann J at paragraph 216 in *The Claimants in the Royal Mail Group Litigation v Royal Mail Group Ltd [2020] EWHC 97 (Ch)*. The assumed breach in question was the statutory obligation to render a VAT invoice within 30 days of the relevant supply of goods or services taking place. Mr Justice Mann held that a breach of the duty in question would occur if no invoice had been provided before day 31 after the corresponding supply takes place. The fact that such a breach went unremedied thereafter did not mean that it continued to occur from day to day. What appears to have influenced the judge was the prescribed time for performance and the accrual of a cause of action for breach once that time had expired.

265. In the present case it is significant that the Code imposes a strict time limit for announcing a Rule 9 offer. Rule 2.2 states that:

"*An announcement is required:*
….
(b) immediately upon an acquisition of any interest in shares which gives rise to an obligation to make an offer under Rule 9.1. The announcement that an obligation has been incurred should not be delayed while full information is being obtained; additional information can be the subject of a later supplementary announcement".

Furthermore, where there has been a failure to extend a Rule 9 offer and at a later date the Panel exercises its powers to secure compliance under section 10(b) by directing the making of an offer, the 12 months "look-back" period in Rule 9.5 for determining the offer price is applied from the earlier date when the Rule 9 offer ought to have been announced (in this case 12 January 2010) not from the later date when the offer was actually announced in compliance with the Panel's direction – see Note 5 on Rule 9.5 ("look-back period") introduced to clarify the position after the ***Rangers*** case [Panel Statement 2017/4 and Takeover Appeal Board Statement 2017/1]. This suggests that in cases where there has been a breach of Rule 9.1, a direction to comply under section 10(b) remedies a breach which occurred on the date when the offer ought to have been announced, not a breach which continues to occur from day to day thereafter.

266. Finally, in contrast to the ***Phonographic Performance*** case where a series of loss causing events (the contravening recordings) occurred from time to time after the Crown's initial alleged failure to give effect to the EC Directive, no such feature is present in the case of a failure to announce a Rule 9 offer. Rather like the failure to render a VAT receipt in the ***Royal Mail Group Litigation***, the duty to announce a Rule 9 offer involves an obligation to do something by a given date. The breach occurs immediately when that date has passed.

267. However, it does not follow from the fact that the Remedial Subjects' breach of Rule 9(1) had occurred by the end of the day on 12 January 2010, that compensation for its breach has to be assessed at that date. The "date of breach rule" may be displaced when the circumstances justify assessing damages at some later date, and in the Committee's view, there are compelling reasons why the so-called rule should not be applied in this case.

268. In ***Smith New Court*** [supra] the House of Lords undertook a comprehensive historical survey of the rule and concluded that it was not to be applied inflexibly or mechanistically. Lord Browne-Wilkinson cited the dictum of Bingham LJ at 266 B in ***County Personnel (Employment Agency) Ltd. v Alan Pulver & Co*** [1987] 1 WLR 916, 925-926 as follows:

"*While the general rule undoubtedly is that damages for tort or breach of contract are assessed at the date of the breach... this rule also should not be mechanistically applied in circumstances where assessment at another date may more accurately reflect the overriding compensatory rule*."

Lord Browne-Wilkinson then said this at page 266 C/F:

"*In the light of these authorities the old 19th century cases can no longer be treated as laying down a strict and inflexible rule. In many cases, even in deceit, it will be appropriate to value the asset acquired as at the transaction date if that truly reflects the value of what the plaintiff has obtained. Thus, if the asset acquired is a readily marketable asset and there is no special feature (such as a continuing misrepresentation or the purchaser being locked into a business that he has acquired) the transaction date rule may well produce a fair result. The plaintiff has acquired the asset and what he does with it thereafter is entirely up to him, freed from any continuing adverse impact of the defendant's wrongful act.*

…..

But in cases where property has been acquired in reliance on a fraudulent misrepresentation there are likely to be many cases where the general rule has to be departed from in order to give adequate compensation for the wrong done to the plaintiff, in particular where the fraud continues to influence the conduct of the plaintiff after the transaction is complete or where the result of the transaction induced by fraud is to lock the plaintiff into continuing to hold the asset acquired."

Lord Steyn's judgment at page 284 A/C was to similar effect:

"*It is right that the normal method of calculating the loss caused by the deceit is the price paid less the real value of the subject matter of the sale. To the extent that this method is adopted, the selection*
of a date of valuation is necessary. And generally the date of the transaction would be a practical and just date to adopt. But it is not always so. It is only prima facie the right date. It may be appropriate to
select a later date. That follows from the fact that the valuation method is only a means of trying to give effect to the overriding compensatory rule: Potts v. Miller, 64 C.L.R. 282, 299, per Dixon J. and County Personnel (Employment Agency) Ltd v. Alan R. Pulver & Co. [1987] 1 W.L.R. 916, 925-926, per Bingham L.J. Moreover, and more importantly, the date of transaction rule is simply a second order rule applicable only where the valuation method is employed. If that method is inapposite, the court is entitled simply to assess the loss flowing directly from the transaction without any reference to the date of transaction or indeed any particular date."

269. The present is a classic instance of a case where Remedial Subjects' fraud continued to influence the shareholders of MWB and the value of their shares. For the reasons explained above, a false market in the shares of MWB existed from the closing of the placing until MWB entered into administration as throughout this period the market remained oblivious to the fact that MWB's senior management had surreptitiously acquired statutory control of the company. Pyrrho's misapprehension as to the independent status of the Audley Investors appears to have been shared by the financial press, the independent directors, the Panel and the market generally. It is to be inferred from this that the shareholders of MWB were misled into believing that Audley Investors were independent shareholders whereas in fact their shares were controlled by MWB's senior directors. In summary, the misrepresentations in the

Prospectus and Shareholders Circular (see paragraphs 119 and 120 above) continued unremedied until MWB went into administration.

270. As stated above, had a Rule 9 offer been extended on 12 January 2010 or at any time thereafter, and had that offer been accompanied by the information that the Code requires in order to enable shareholders to make a fully informed decision, then the Committee is confident that shareholders would have accepted the offer irrespective of the contemporary prices at which the shares were trading. For the same reason, the Committee rejects Mr Polley's argument that the MWB shares held outside the 1997 Concert Party had a value equal to their market price throughout the period in which a Rule 9 offer should have been made.

271. Accordingly, the Committee has concluded that in the circumstances of this case an assessment of compensation at 21 November 2012 when MWB went into administration, would best give effect to the compensatory principle. By that date the shares of MWB had lost all value. That being the case, the Committee directs the Remedial Subjects to pay to all shareholders of MWB who were on the register of shareholders on 12 January 2010 (other than those who were disclosed or undisclosed members of the 1997 Concert Party) compensation at the rate of 40 pence per share. Qualifying shareholders who sold their shares after 12 January 2010 must give credit for the proceeds of sale, and shareholders should transfer to Remedial Subjects in exchange for compensation received, whatever rights, if any, still attach to their shares. The practicalities and costs of administering a compensation scheme will be addressed at the hearing scheduled for 31 January 2024, as will questions of interest payable on the principal amounts. The Remedial Subjects will have joint and several liability for payment of compensation.

272. Mr Blurton submitted to the Committee that it would be unfair to exclude from those shareholders entitled to receive compensation, himself and other members of the 1997 Concert Party who were unaware of the true facts concerning ownership of the shares of AIPL and ACDL and who were innocent of the misrepresentations in the Prospectus and Shareholders Circular. There is some force in Mr Blurton's submission, but Rule 9 offers are only ever extended to shareholders who were not in concert with those acquiring control of the company. This is consistent with the Panel's practice of treating a concert party as a single entity although its membership may fluctuate from time to time. It may happen, therefore, that peripheral members of a concert party will miss out on a Rule 9 offer when the principal members acquire or consolidate control of a company by an acquisition made on their own initiative. Rule 9 mandatory offers sometimes effect only rough justice. For example, as noted above, when the Panel directs a Rule 9 offer to be made to remedy an earlier failure to extend such an offer, the

offerees are those shareholders on the register when the offer is made, not those on the register when it ought to have been made. In such cases shareholders who would have received a Rule 9 offer had it been extended in accordance with the Code, will be without a remedy if by the time an offer is announced in compliance with the Panel's direction, they had sold their shares for less than the offer price.

273. The Committee therefore rejects Mr Blurton's submission that he and other members of the 1997 Concert Party who are in a position like his own should receive compensation.

XXI Should Mr Treger Pay Compensation?

274. Pyrrho submitted that, contrary to the Executive's recommendation, Mr Treger should be included amongst those liable to pay compensation. It was submitted that notwithstanding he was not a shareholder of MWB, his role in "fronting" the acquisition by AIPL and ACDL of 15.2% of MWB's enlarged share capital and in subsequently holding out those companies as independent shareholders, was crucial to the success of the Remedial Subjects in securing statutory control of the company. Mr Stephen Auld KC, who appeared for Pyrrho, submitted that this was an exceptional case in which the Committee should recognise the pivotal significance of Mr Treger's role by directing that he be required to pay compensation notwithstanding he was not a shareholder of MWB. Mr Auld relied on Rule 9.2 of the Code and its Note which state where relevant as follows:

"*9.2 OBLIGATIONS OF OTHER PERSONS*

In addition to the person specified in Rule 9.1, each of the principal members of a group of persons acting in concert with him, may, according to the circumstances of the case, have the obligation to extend an offer.

NOTE ON RULE 9.2
Prime responsibility
The prime responsibility for making an offer under this Rule normally attaches to the person who makes the acquisition which imposes the obligation to make an offer. If such person is not a principal member of the group acting in concert, the obligation to make an offer may attach to the principal member or members and, in exceptional circumstances, to other members of the group acting in concert. This could include a member of the group who at the time when the obligation arises does not have any interest
in shares..."

275. Mr Richard Coleman KC, who represented Mr Treger, submitted that Pyrrho's submissions should be rejected for three reasons:

(i) Mr Treger was not a member of the relevant concert party;

(ii) if he was, he was not a principal member; and

(iii) on the proper construction of the Note on Rule 9.2 it was only where the person making the acquisition which imposes the obligation to make the offer is not a principal member of the concert party that recourse may be had to a member of the concert party who does not have any interest in shares.

276. The Committee concludes that Mr Coleman's submissions (ii) and (iii) are well founded. The Committee substantially accepts Pyrrho's description of Mr Treger's conduct[18] and its implications. It follows that his role as a facilitator of the Remedial Subjects' consolidation of control through the vehicles of AIPL and ACDL means that, in material respects, Mr Treger was acting in concert with the Remedial Subjects. However, Mr Treger cannot be described as a principal member of the concert party. The only conclusion consistent with the Committee's above analysis of the facts is that the directing members were Mr Balfour-Lynn and Mr Singh. It was they who devised for their own profit a scheme under which Loan Notes acquired at a substantial discount from their par value were later exchanged at their par value for shares which were offered, in turn, at a substantial discount to their contemporary trading price. Mr Aspland-Robinson, who was the ultimate beneficial owner of some of the shares acquired by AIPL, was also a principal member of the group albeit it was Messrs Balfour-Lynn and Singh who devised and implemented the scheme.

277. On the proper construction of the Note on Rule 9.2, it is only where the person making the acquisition which triggers the obligation to make a Rule 9.1 offer is not a principal member of the concert party, that the obligation to make the offer may attach to other members of the group, including someone who has no interest in shares. In this case, however, the principal members did make the triggering acquisitions, so there was no recourse for a Rule 9.1 offer to

18 See below for the Committee's findings regarding the Executive's Disciplinary Submission against Mr Treger.

other members of the group. As the compensation payable in this case is compensation for breach of Rule 9.1, it follows that compensation should be paid only by those who were liable to make a Rule 9 offer. The Note is more than guidance to the interpretation of Rule 9.2: an unusual feature of the Code is that the Notes on Rules are not merely explanatory notes, they shape the Rules and are included as part of the "rules" of the Code which the Panel has power to make under Chapter 1 of Part 28 of the Act[19].

278. Accordingly, even if it were minded to find otherwise having regard to Mr Treger's conduct, the Committee concludes that a correct construction of Rule 9.2 compels it to reject the submission that Mr Treger be included as a Remedial Subject.

XXII Sanctions

279. None of Messrs Balfour-Lynn, Singh, Aspland-Robinson and Eker contest either the Executive's Recommendation that they be "cold-shouldered" under section 11(b)(v) of the Introduction to the Code ("section 11(b)(v)") or the period for which that sanction should be in place. "Cold-shouldering" involves:

"*the publication of a Panel Statement indicating that the offender is someone who, in the Hearings Committee's opinion, is not likely to comply with the Code. The FCA Handbook (at the time the rules of the FSA) and certain professional bodies oblige their members, in certain circumstances, not to act for the person in question in a transaction subject to the Code, including a dealing in relevant securities requiring disclosure under Rule 8. For example, the FCA Handbook requires a person authorised under the Financial Services and Markets Act 2000 ("FSMA") not to act, or continue to act, for any person in connection with a transaction to which the Code applies if the firm has reasonable grounds for believing that the person in question, or his principal, is not complying or is not likely to comply with the Code*."

19 See the Overview in the Introduction to the Code..

280. Other than in the case of Mr Eker, the Committee is content to accept the Executive's unchallenged recommendations as to the duration of the sanctions imposed under section 11(b)(v) and accordingly:

(i) Mr Balfour-Lynn will be cold-shouldered for five years;

(ii) Mr Singh will be cold-shouldered for five years;

(iii) Mr Aspland-Robinson will be cold-shouldered for four years; and

(iv) Mr Eker, who accepts that he deliberately misled the Executive contrary to section 9(a) but who was not the ultimate beneficiary of any of the shares of MWB acquired by ACDL and who saved costs and expense by admitting the case against him at an early stage of the proceedings, will be cold-shouldered for one year.

281. In the case of each of the other Respondents apart from Mr Blurton, the Executive alleges contravention of section 9(a) which states under the rubric "*Dealings with and assisting the Panel*":

"*The Panel expects any person dealing with it to do so in an open and co- operative way. It also expects prompt co-operation and assistance from persons dealing with it and those to whom enquiries and other requests are directed. In dealing with the Panel, a person must disclose to the Panel any information known to them and relevant to the matter being considered by the Panel (and correct or update that information if it changes). A person dealing with the Panel or to whom enquiries or requests are directed must take all reasonable care not to provide incorrect, incomplete or misleading information to the Panel. A person is entitled to resist providing information or documents on the grounds of legal professional privilege*."

282. The Committee has observed in previous rulings that observance of this rule is vital to the Panel's ability to perform its functions. Accordingly, the Committee treats very seriously any case in which it finds the Panel to have been deliberately misled.

283. It must be borne in mind, however, that section 9(a) regulates a person's dealings with the Panel and imposes duties of candour and honesty in relation to such dealings; it is not a regime for sanctioning the conduct that is under investigation although such conduct may trigger sanctions under other provisions of the Code. What is relevant in a case under section 9(a) is whether the respondent has given an honest and candid account of his/her conduct.

XXIII Mr Blurton

284. In light of the findings at paragraphs 95 to 97 above the Committee concludes that Mr Blurton failed to consult the Panel contrary to section 6(b) of the Code. The appropriate sanction will be considered at the hearing on 31 January 2024.

XXIV Mr Pankhania

285. Mr Pankhania purchased £1,550,000 nominal of Loan Notes for the price of £945,500. He did not "convert" any of his Loan Notes into shares of MWB. On day 11 of the hearing after his evidence had been concluded, Mr Pankhania admitted that he had misled the Executive contrary to section 9(a) of the Code by minimising the nature and extent of his relationships with Mr Balfour-Lynn and Mr Singh and his other similar business and financial dealings with them. Mr Pankhania also admitted that in breach of his obligation under section 9(a), he had failed to provide information and documents when requested to do so by the Executive. In light of these admissions the Committee accepted the joint recommendation of the Executive and Mr Pankhania's counsel, Mr Richard Eschwege KC that Mr Pankhania be cold-shouldered for a period of one year.

XXV Mr Treger

286. Mr Treger was interviewed by the Executive on three occasions during 2012 (on 1 and 3 February and 14 March respectively) and again on 19 June 2015 and 14 December 2018. Mr Coleman helpfully set out a number of broad headline findings which he invited the Committee to make in Mr Treger's favour. These identified the principal issues covered in his interviews. The Committee will address each of these matters in turn in light of the documents referred to and the findings made above in this ruling, but we must note at the outset that there are two issues in relation to which Mr Treger admits having lied to the Executive.

The Admissions

287. In the transcript of his first interview conducted by telephone on 1 February 2012 Mr Treger told the Executive that the ultimate buyers of the bonds (that is to say, the Loan Notes) were two individuals based In Hong Kong (Mr Cioffi and Mr Verduron). He told the Executive that they were the Audley Investors whom Audley Capital advised but did not manage and who subsequently converted their "bonds" into shares. Mr Treger told the Executive that "family members" associated with Mr Balfour-Lynn had introduced him to these investors when,

having sourced the opportunity of buying GLG' s Loan Notes, Audley Capital found it could not invest in them.

288. In his second interview a few days later, Mr Treger expanded upon this by telling the Executive that having negotiated a deal to buy the Loan Notes, he found that he was not in a position to put up the money himself, at which point MWB introduced him to a Swiss firm (Budin) representing some investors, whom Audley Capital subsequently came to advise but did not manage. Mr Treger went on to say that at the time of his introduction he did not know whether there was any connection between the MWB board and the "Swiss investors" but he maintained that he had asked this question on a number of occasions since of Mr Balfour-Lynn who had told him that there was no pre-existing connection and it was "an arm's length introduction". Mr Treger also said that having reflected on it, he no longer believed that the Swiss investors had been introduced by family members of Mr Balfour-Lynn. In this interview Mr Treger also told the Executive that the Swiss lawyers (Budin) set up the BVI companies (AIPL and ACDL). Any advice to give irrevocable undertakings, for example in connection with the Liberty sale, was given by Audley Capital to the Swiss lawyers who represented the clients.

289. It will be apparent from the documents referred to above in this ruling, that this account was untrue. In his third interview of 14 March 2012 Mr Treger told the Executive that the original investors were not the clients of Budin, Messrs Cioffi and Verduron, but were two individuals, Mr Aspland-Robinson and Mr Eker, who had been introduced to him by MWB when Audley Capital found that it could not produce in time the funds required to close the purchase of GLG's Loan Notes. Mr Treger went on to tell the Executive that he advised these individuals directly by telephone and that he had done KYC checks on them in 2009.

290. Mr Treger conceded in cross examination that he had lied to the Executive in telling them that the original investors and the clients whom he advised from 2009 were Budin's clients. He also admits to having lied in telling the Executive that he dealt with Messrs Aspland-Robinson and Eker and advised them directly by telephone, whereas in a later interview he conceded that this was not the case and all his advice had been relayed to them through Mr Singh, who, he claims to have believed, had been passing on his advice to his clients.

291. Mr Treger's evidence to the Committee was that the reason he told the Executive that the original investors were Budin's Swiss clients was that he was worried about the regulatory consequences of not having done KYC checks on Messrs Aspland-Robinson and Eker. The Committee did not believe this explanation. Dishonestly misleading one regulator because of

concerns that he might be in trouble with another regulator for having neglected to do KYC checks is implausible. The likely explanation for Mr Treger claiming that his clients throughout were the "Swiss investors" until that position became untenable when tested against the contemporary documents, was his reluctance to admit that his initial clients were close associates of Mr Balfour-Lynn and Mr Singh.

292. Nor does the Committee believe the explanation given by Mr Treger for lying to the Executive in telling them that he had advised Messrs Aspland-Robinson and Eker directly by telephone. Mr Treger claimed that at a meeting at Mr Balfour-Lynn's home attended also by Messrs Singh, Aspland-Robinson and Eker shortly before his March 2012 interview, Mr Balfour-Lynn effectively blackmailed Mr Treger by informing him that he would not release the KYC information on Messrs Aspland-Robinson and Eker that he had in his possession unless Mr Treger promised to tell the Executive that he had advised his clients directly. Having given this promise in return for the KYC material, Mr Treger claims to have felt honour bound to lie as promised even after he had the KYC information he sought. In the Committee's view, whether or not there was such a meeting, the much more likely explanation for Mr Treger's lie is that the truth, namely that he had never communicated with Mr Aspland-Robinson or Mr Eker as their adviser, was an unpalatable admission which would seriously undermine his claim to have acted as an authorised adviser to the investing entities throughout the relevant period.

293. Mr Treger produced to the Committee a series of character references from an impressive list of referees who all spoke unequivocally of his integrity. The Committee has had due regard to these references, but inevitably, the fact that Mr Treger has admitted lying to the Executive on material matters means that such statements carry less weight than they otherwise would.

Adviser to Messrs Aspland-Robinson and Eker?

294. The Committee concludes that Mr Treger had no genuine advisory relationship with Messrs Aspland-Robinson and Eker. The claim that he rendered his advice to Mr Singh in the belief that Mr Singh passed it on to his clients, is not credible. The documents referred to in this ruling show that Mr Treger frequently looked for advice, if not instruction, from Mr Singh and Mr Balfour-Lynn in connection with his dealings with third parties in which he acted ostensibly on behalf, of the Audley companies. The written advisory agreement drawn up at the beginning of June 2010 but backdated to 1 June 2009 was a sham intended to support the fiction that Mr Treger had acted as adviser to the Audley companies since June 2009 (before these companies were even acquired by Messrs Aspland-Robinson and Eker). Another attempt to record a non-existent advisory relationship occurred between January and early March 2012

when Mr Treger purported to document for Budin the advice he had given to Messrs Cioffi and Verduron at a time when he was unaware that they were his clients (see the section headed "Mr Treger's dealings with Budin"). The Committee also notes the regulatory issues that arise from associated failures to understand the financial requirements of the client and the source of funding for relevant transactions.

295. Consistent with the Committee's conclusions below, such fees as were paid to Audley Capital were paid not for advisory services, but in recognition of Mr Treger's role in supporting the fiction that AIPL and ACDL were independent shareholders associated with the Audley group. The claim that there was ever a genuine advisory relationship either with Messrs Aspland-Robinson and Eker or with the Swiss investors was another contravention of section 9(a).

Purchase of GLG's Loan Notes

296. The principal contemporary documents relating to this purchase are set out at paragraphs 49 to 64 above. The issue under section 9(a) is whether Mr Treger misled the Executive by telling them that his intention was to seek third party investors for the Loan Notes only to find, having negotiated a price of 61 pence per £1 nominal on 11 June 2009 with Mr Harvey-Wood, that he could not raise the requisite funds of £9.3 million within the time required by GLG. Mr Treger maintains that, on reporting this to Mr Singh, he was told that Messrs Aspland-Robinson and Eker were available as purchasers.

297. The Executive maintains that Mr Treger agreed to act as a "front" for the purchase in the knowledge that the real purchasers were to be Messrs Balfour-Lynn and Singh and their associates. This is part of the Executive's case that Mr Treger was privy from the outset to a conspiracy planned by Messrs Balfour-Lynn and Singh to acquire control of MWB through the later "conversion" into equity of a portion of the Loan Notes.

298. Having considered the oral evidence in light of the contemporary documents the Committee is satisfied that Mr Treger acted on the instructions of Mr Singh in negotiating the purchase of the Loan Notes and did so in the knowledge that the intention was for the bulk, if not the entirety, of GLG's Loan Notes to be taken up by close associates of Messrs Balfour-Lynn and Singh. The contemporary emails show that Mr Treger was taking advice or instruction from Mr Singh throughout the course of the transaction, not just keeping him informed as a matter of courtesy having regard to the fact that Mr Singh had introduced him to the opportunity. "*How to respond*", the question put by Mr Treger to Mr Singh on 11 June 2009 after being

asked by Mr Harvey-Wood when he could commit unconditionally to a trade, indicates that Mr Treger was acting on instruction, not merely keeping Mr Singh informed.

299. Contrary to what was said to Mr Harvey-Wood, there was never any intention of an Audley Fund making more than a nominal investment; and Mr Treger's evidence to the Committee was that he did not begin to look for external investors until after he had agreed a price of 61 pence per £1 nominal on 11 June 2009. By later on the same day, Mr Treger was running the following proposition past Mr Singh *"I am tempted to say I can place 6.4m firm and am speaking to co-investors who are interested in the other 2.9m."* The Committee is satisfied that the £6.4 million was funding that Mr Singh already had lined up. The email from Mr Singh to Mr Aspland-Robinson of 14 June 2009 which was forwarded to Mr Pankhania with its "*Project Wealth*" attachment (paragraph 59 above) indicates that Mr Singh at that time was still short of the balance needed to make up the £9.3 million.

300. On 12 June 2009 Mr Treger emailed Mr Harvey-Wood seeking from him an irrevocable commitment to sell valid for four weeks and telling him that they (Audley) had firm appetite for around £6.5 million. Mr Treger's evidence to the Committee was that this £6.5 million comprised an expression of interest from Ramon Betolaza on behalf of Matlin Patterson for £6.4 million and an investment of £0.1 million by Audley. Mr Betolaza had previously been introduced in connection with purchasing the distressed debt of AHG, a company of which Mr Balfour-Lynn and Mr Singh were directors. He had also been involved through Mr Treger's introduction in discussions regarding capital raising for MWB and had written to RBS on MWB's behalf indicating a potential interest in investing up to £200 million in the company.

301. There is no document evidencing any interest from Mr Betolaza in investing in the Loan Notes[20] as distinct from involvement in MWB's refinancing efforts; and it was not until service of Mr Treger's Response Submissions on 2 June 2023 that a claim was made that Mr Betolaza had been approached in connection with the Loan Notes and had expressed an interest in investing $10 million (£6.4 million) – a claim corroborated by Mr Betolaza in a witness statement served on 4 August 2023. It is to be noted that when in his interview of 14 March 2012 by the Executive Mr Treger was asked who these investors were, he said he honestly could not recall whether the £6.5 million was coming from the Audley income fund or from co-investors but, as regards the latter, he thought that he had spoken to the Meinl Group about

20 Mr Betolaza had been identified as one of Mr Treger's witnesses in witness lists served on 19 May 2023.

co-investing. Matlin Patterson was not mentioned.

302. So Matlin Patterson, in the person of Mr Betolaza, was a very late suggestion as a potential investor in the Loan Notes. When he gave evidence, Mr Betolaza told the Committee that Mr Treger had telephoned him earlier in 2023 to ask him if he remembered a discussion regarding investment in MWB Loan Notes. Mr Betolaza said in evidence that he remembered such a discussion but could not remember how much was in issue or at what price. The discussion was very much a preliminary conversation which did not proceed further. It is not surprising that Mr Betolaza's evidence was vague as Mr Treger did not ask for his recollection on the subject until nearly 14 years after the event. Furthermore, Mr Betolaza confirmed in evidence that he trusted Mr Treger and would tend to believe a conversation had occurred if Mr Treger told him that it had.

303. All that said, Mr Coleman submitted that a preliminary conversation, albeit in the most general terms, was all Mr Treger needed to prove that he was telling the truth when he said he had sought investors for the Loan Notes. Mr Simpson's cross examination of Mr Betolaza conveyed considerable scepticism regarding the witness's evidence but, Mr Coleman observed correctly, it was never actually put to Mr Betolaza that he had no recollection of the conversation or that he was making it up.

304. Having been told by Mr Singh on 11 June 2009 that he had funding of £6.4 million lined-up (as the Committee has found) it is possible that Mr Treger asked Mr Betolaza whether he was interested in investing in the Loan Notes in a phone call shortly thereafter. At the time, Mr Singh had a shortfall which he needed to cover against an agreed price of £9.3 million and in that context the Committee does not discount the possibility that Mr Treger asked Mr Betolaza whether he was interested in participating. Any such conversation, however, would have been no more than a late *ad hoc* enquiry. There is no evidence that the £6.4 million represented a sum in which Mr Betolaza had expressed interest – as noted above, in his evidence to the Committee Mr Betolaza said that he could not remember what size of investment was mentioned or at what price.

305. The Committee rejects, therefore, Mr Treger's account to the Executive and his evidence at the hearing that his intention from the start was to find third-party investors to acquire the Loan Notes and it was only after having agreed the price and finding that he could not raise the funds in time that he turned to Mr Singh, who told him that he had Mr Aspland-Robinson and Mr Eker lined up as investors. The truth is that Mr Treger had agreed to "front" the purchase on behalf of investors associated with Messrs Balfour-Lynn and Singh and this explains why he

frequently consulted Mr Singh during the transaction. It also explains why there was no answer to the Loan Note Trustee's enquiry (at least not from Mr Treger) regarding the identity of the purchasers.

306. It does not follow, however, from the fact that Mr Treger fronted the purchase of the Loan Notes on behalf of investors associated with MWB's senior management that he knew that this was the first step in a conspiracy to enable senior management to take control of MWB. The documents cited above show that, with a breach of the gearing covenants threatening, MWB wanted the Loan Notes transferred into friendly hands. It was, however, unlikely that GLG or the Loan Note Trustee would be happy selling 51% of the issued Loan Notes to people closely associated with the issuer. Messrs Singh and Balfour-Lynn therefore had reason to engage Mr Treger to front the purchase of the Loan Notes without making him privy to a conspiracy to use those Loan Notes and the ostensible ownership of an Audley entity in a plan to acquire a controlling stake in MWB.

307. It is apparent from the conclusions that follow that the Committee is satisfied that by his conduct Mr Treger subsequently encouraged the widely held false belief that the "Audley Investors" who had acquired 25 million shares of MWB in the placing were independent shareholders associated with the Audley group. The Committee thinks it likely however, that this was not because Mr Treger was a "conspirator" from the outset but because his involvement with Mr Balfour-Lynn and Singh deepened over time and he was later induced to behave in this way.

308. Mr Coleman submits that the Executive having alleged that Mr Treger was part of a conspiracy from the outset to assist senior management in taking control of the company, its case against Mr Treger must fail in its entirety unless that threshold submission is proved. The Committee has no hesitation in rejecting that submission. The Executive's case against Mr Treger is not for conspiracy; it is for contravening section 9(a) by deliberately misleading the Executive and giving a false account in answer to questions put to him. Provided Mr Treger has due notice of the respects in which his account of his activities is alleged to have been false (which he has had) it is open to the Committee to find some but not all of the Executive's complaints proved. More relevantly, it is open to the Committee to find proved a particular allegation that Mr Treger misled the Executive without accepting in its entirety the Executive's suggested version of what the truth would have been.

Ownership of the Loan Notes and their transfer to BVI companies

309. Mr Coleman submits that Mr Treger was unaware that Mr Singh and Mr Balfour-Lynn and people connected with them owned any of the beneficial interest in the Loan Notes (and subsequently in the shares into which the Loan Notes were effectively "converted").

310. The Committee accepts that there is no evidence to suggest that Mr Treger knew the proportions in which Mr Balfour-Lynn, Mr Singh, Mr Aspland-Robinson, Mr Pankhania and Mr Eker contributed financially to the acquisition of the Loan Notes; and it follows accordingly that Mr Treger was not aware of the size of their respective beneficial interests. It is clear, however, from an Audley Capital Project Mint presentation, prepared in July 2009 in connection with MWB's plans for capital raising, that it was known within Audley Capital that the Loan Notes had been acquired by the MWB management group. The document in question contained this statement:

"*In June, the Management group acquired £15 m of convertible loan stock from distressed sellers at a discount to face value (61p in the £)*"

The Committee accepts that the presentation would have been prepared by Mr Epstein (a junior analyst at Audley Capital) but that would have been done under the supervision of his boss, Mr Treger; and it is inconceivable that Mr Epstein could have known of the management interest when Mr Treger did not. It is true that of the £15 million nominal of Loan Notes acquired from GLG, a portion was bought by EDR on behalf of companies owned by relatives of Mr Balfour-Lynn. It is also true that Mr Eker acquired some of the Loan Notes on his own behalf and on behalf of his daughters and did not subsequently transfer any of those Loan Notes into ACDL. But it is clear from this document that Mr Treger was aware of the interest of MWB's senior management in the Loan Notes. This comes as no surprise, as Mr Treger's negotiation and purchase of the Loan Notes was done in close collaboration with Mr Singh.

311. There is no evidence that Mr Treger was involved in the acquisition of the BVI companies or in the change of their names to incorporate "Audley" in their titles. As described in paragraphs 80 to 85 above the relevant arrangements were supervised by Mr Singh. Nor is there any evidence that Mr Treger was involved in the transfer to ACDL of such of the Loan Notes acquired by Mr Eker as Mr Balfour-Lynn had funded, or in the transfer to AIPL of the Loan Notes funded in various proportions by Mr Singh, Mr Aspland-Robinson, Mr Balfour-Lynn and Mr Pankhania. However, while he was not involved in implementing or supervising these arrangements, the Committee concludes (see below) that he was aware at the time that they were taking place, specifically, that companies bearing Audley titles were acquiring Loan

Notes in which senior management were interested with a view to converting these Loan Notes into shares in a forthcoming placing.

Use by the BVI companies of the Audley name

312. As noted at paragraph 124 above, Mr Treger claims that he was unaware that Messrs Aspland-Robinson and Eker were using the Audley name for the companies holding the Loan Notes until Mr Epstein alerted him to the Prospectus and Shareholders Circular on 17 December 2010, whereupon he angrily complained to Mr Balfour-Lynn. Mr Treger claims to have complained to Mr Balfour-Lynn on a number of occasions in an unsuccessful attempt to get him to procure a change of names.

313. The Committee does not believe this. Mr Treger's dismissive response to Mr Epstein's news was not the response of someone who had just been made aware that his "clients" were creating confusion in the market by operating under a name which suggested that they were Audley Capital controlled entities. And why Mr Treger repeatedly complained to Mr Balfour-Lynn and never to those he claims to have been his clients, is inexplicable. Furthermore, his conduct after the placing (see below) indicates that he condoned and encouraged the belief that the Audley companies were independent shareholders associated with Audley Capital.

314. The Committee infers, therefore, that Mr Treger had been made aware before the Prospectus and Shareholders Circular was published of the use of the Audley name by Mr Aspland-Robinson's and Mr Eker's companies. Mr Balfour-Lynn and Mr Singh met Mr Treger for breakfast on 30 October 2009, shortly before Mr Singh's egregious letter of 4 November 2009 was forwarded by Panmure Gordon to the Executive (see paragraph 114 above). The Committee does not accept that Mr Treger was shown a draft of the letter at this meeting and believes that he probably did not see or read it until it was shown to hm by the Executive in February 2012. Nevertheless, given the account in the letter of MWB's dealings with Mr Treger and in particular the description of the proposed debt for equity swap by the Audley Companies, it is highly probable that Messrs Balfour-Lynn and Singh would have warned Mr Treger that a letter was about to be sent to the Panel and apprised him in general terms of what it would say. Mr Balfour-Lynn and Mr Singh could not risk the Executive contacting Mr Treger without briefing him in general terms on what the Executive had been told. Accordingly, the Committee concludes that if Mr Treger was unaware before this meeting of the proposed use of the Audley companies as vehicles for acquiring shares in the placing, he knew from then on.

Holding out as manager of the Audley Investors

315. The documents relevant to this aspect of the case are cited or summarised in paragraphs 171 to 205 above. It Is clear from those documents that while Mr Treger's subordinate colleagues responded to brokers' enquiries by saying that Audley Capital had only an advisory relationship with the Audley investors, Mr Treger was content for it to be assumed that he managed the shares in question on a discretionary basis. In fact, he encouraged this misconception. The exchanges with Pyrrho are compelling evidence for this, as is Mr Treger's statement at the December 2011 AGM. Furthermore, until Mr Treger's partner, Mr Treichl was apprised of the deceptive use of the Audley name at the end of December 2011, nothing effective had been done to correct the misconceptions evident in the financial press. Mr Treger's only response to being informed that Bloomberg was listing Audley Capital as MWB's second largest shareholder was to tell his colleague, Mr Kagan, to take it up with Mr Singh.

316. The Committee accepts that Mr Balfour-Lynn and Mr Singh frequently misrepresented Mr Treger's role in their communications with third parties and did so without reference to him or without deferring to him. But there is no doubt that Mr Treger condoned and reinforced the popular misconception that was thereby created. The letter substantially drafted by Mr Singh and Mr Balfour-Lynn before the December 2011 AGM and sent to the independent directors under Mr Treger's hand in his capacity as representative of a major shareholder, is a telling example (see paragraph 200). Mr Treger, purportedly on behalf of an independent shareholder, was essentially passing on Mr Balfour-Lynn's and Mr Singh's justification for their own conduct.

317. Mr Treger insists that he believed it was understood that he acted in an advisory capacity only and cites Ms Bonner's note of his conversation with her on 17 June 2011 as evidence of this. This is the sole documented example provided to the Committee of Mr Treger personally mentioning his advisory rather than managerial role. But the distinction between manager and adviser is beside the point. Mr Treger was neither manager of nor adviser to the Audley companies: he had no genuine advisory relationship with those he claims to have been his clients. The essential truth that was concealed by Mr Treger's conduct and by the misconception created by use of the Audley name was that the shares in question were in fact controlled by MWB's senior management.

Motive

318. Mr Coleman contended that Mr Treger had no motive for risking career and reputation by acting in the way the Committee has found him to have acted. Mr Coleman pointed out that Mr Treger is a wealthy individual used to dealing with large sums of money for whom the £100,000 per annum receivable as advisory fees was insufficient to justify the risks he undertook. Furthermore, by October 2009 MWB had terminated Audley's role as adviser to the company in connection with its refinancing and capital raising efforts.

319. The Committee has given careful consideration to these points and to the troubling question of motive generally. In 2009 Mr Treger did have ongoing business interests with Messrs Balfour-Lynn and Singh and others in connection with the potentially lucrative hotel and residential development of the Hanglip Estate in South Africa and in connection also with the formation of a "Leisure Recovery Fund" to invest in distressed hospitality and leisure assets. Business involvements of this sort may have influenced Mr Treger's conduct, but ultimately the Committee does not know enough of the relevant relationships to make findings. Any attribution of motive for Mr Treger's conduct would be speculation. Simply put, the Committee has come to the conclusions it has reached because in its view the evidence has compelled it to do so.

Conclusion

320. The Committee concludes that Mr Treger systematically and deliberately misled the Executive in his dealings with them in contravention of section 9(a). Submissions as to the appropriate sanctions in light of the Committee's findings will be considered at the hearing on 31 January 2024.

XXVI Mr Cohen

321. The Executive's case against Mr Cohen is that in breach of section 9(a) he deliberately misled the Executive in the course of four interviews held on 13 July 2012, 2 July 2015, 7 July 2015 and 31 May 2017 respectively. It is also alleged that he failed to respond to certain demands for documents made of him by the Executive following the 2017 interview.

322. Mr Cohen's account of his role in the on-sales and how he came to be introduced to Mr Aspland-Robinson and Mr Eker as prospective sellers of AIPL and ACDL respectively is summarised in paragraphs 139 to 148 above. In brief, the Executive alleges that this account was untrue in the following material respects:

(i) Mr Cohen was not retained to act on behalf of Messrs Aspland-Robinson and Eker following a chance meeting between Mr Sicot and Mr Aspland-Robinson in Sotogrande but was introduced to the transaction by Mr Froidevaux who in turn was acting on the instructions of Mr Balfour-Lynn.

(ii) Mr Cohen knew that the proposed sales of AIPL and ACDL were not to be *bona fide* transactions under which the companies and their assets would pass to third parties under arm's length sales, but were shams arranged by Budin to give the false impression that those currently interested in the companies and their assets had disposed of their interests.

323. The core question upon which, in the Committee's view, all turns, is whether as the Executive claims, Mr Cohen's account as to how he came to act for the sellers is a lie. If that be the case, it must follow that the only realistic alternative is that Mr Cohen was introduced by Budin and that the purpose of involving him was to convey the misleading impression that this was a bona fide transaction in which sellers and purchasers were independent parties who were separately represented.

324. Mr Andrew Green KC, who represented Mr Cohen, maintained that there was no evidence to justify a finding that Mr Cohen was lying in his account of how he came to be instructed. The Executive's case, so Mr Green submitted, was entirely circumstantial and was founded on the misconception that in order to accept Mr Cohen's account as true, it was necessary to believe a wholly unlikely set of coincidences. Furthermore, Mr Green submitted that the case formulated by the Executive required it to prove that Mr Cohen was aware of the interests of Mr Balfour-Lynn and Singh in the shares of MWB. He cited two passages from the Executive's Disciplinary Submissions against Mr Cohen. The first at paragraph 8.7:

"*In the Executive's submission, Mr Cohen's conduct formed part of a co-ordinated attempt to conceal the nature of the interests held by Messrs Balfour- Lynn and Singh (and other individuals connected with them) in the Ostensible Audley Acquisition, Ostensible On-Sale and the Baffin Fund Transfer, and the breaches of the Code that had occurred as a consequence of those matters, and, in so doing, materially misled the Executive and other relevant regulatory authorities, MWB shareholders, Loan Note holders and the market generally*."

And at paragraph 9.10:

"*In the Executive's submission, the arrangement of the Ostensible On-Sale and the Baffin Fund Transfer were shams designed and implemented by Messrs Balfour-Lynn and Singh with the purpose of concealing the breaches of the Code undertaken in the Ostensible Audley Acquisitions. In the Executive's submission, Mr Cohen assisted Messrs Balfour-Lynn and Singh with the implementation of this sham, with the assistance of Messrs Dallal, Froidevaux,*

Huguenin, Houri and Sicot. If it is accepted that Mr Cohen played an active and willing part in the sham, then it must follow that Mr Cohen's evidence as to the circumstances surrounding his participation in the Baffin Fund Transfer must be false."

325. The Committee rejects Mr Green's second submission. The case against Mr Cohen is for misleading the Executive contrary to section 9(a). Provided the Executive is clear as to the respects in which Mr Cohen's account of events is said to be untrue, the alleged contraventions of section 9(a) may be established on the evidence wholly or in part.

326. The core allegations, which have long been clearly flagged, are that Mr Cohen was brought into this transaction by Mr Froidevaux not, as Mr Cohen claims, as a result of Mr Sicot's referral following a chance encounter with Mr Aspland-Robinson; and if that is proved, the attempt to create a false narrative as to how Mr Cohen came to act for the sellers suggests that he must have been aware that the sellers and purchasers were not independent parties dealing at arm's length in a genuine transaction. The inference that Mr Cohen was aware that these were not bona fide sales is established, according to the Executive, by the way in which Mr Cohen conducted himself as agent for the sellers; conduct which was wholly inconsistent with a belief that he was acting in a bona fide transaction. The Executive also contends that such an inference is supported by the way in which Mr Cohen has withheld or managed the flow of documents.

327. Accordingly, the Committee rejects the submission that in order to make out a case of breach of section 9(a), it is incumbent upon the Executive to prove that Mr Cohen was aware of the beneficial interests of Mr Balfour-Lynn and Singh which existed behind or alongside those of Mr Aspland-Robinson and Eker in the shares of AIPL and ACDL.

The Documents

328. As previously noted, one of the notable features of the case is that there is not a single email evidencing any communication between Mr Cohen and Messrs Aspland-Robinson and Eker or between Mr Cohen and Budin, notwithstanding all such correspondence took place by email. Mr Cohen's evidence was that he has two email addresses, one dot.lu for correspondence concerning Hoche Partners Luxembourg and the other a dot.com address for correspondence to/from the French office. In this instance he was acting on behalf of HP Lux, a Luxembourg entity within the Hoche Partners group, and was therefore using his dot.lu address.

329. Mr Cohen told the Committee that the document management policy in the Luxembourg office involved deleting emails and saving only the attachments if the covering emails added nothing to or did not qualify the attachment. Examples include the covering emails for the few attachments produced in this case, namely the HP Lux agency agreements of 1 October 2010 with Messrs Aspland-Robinson and Eker ("the Agency Agreements"), the offer document from Budin, dated 10 October 2010, HP Lux's notices of bid to Messrs Aspland-Robinson and Eker, dated 22 October 2010 ("the Notices of Bid") and the SPAs of 15 December 2010. Important emails would be saved as PDF copies but there were no such emails in this case. Deleted emails are then automatically deleted from the deleted items files after three or six months.

330. Mr Cohen also told the Committee that the main server in Luxembourg crashed in 2011 around the time they were changing the service provider and although there were back-up tapes, emails pre-dating the 2011 crash were not recovered.

331. So, there are no communications that shed light on the provenance of the very few documents produced. The Executive's case is that the Agency Agreements purportedly prepared by Mr Cohen and based on Hoche templates show striking font, typeface, typographical and linguistic similarities to the SPAs and were in fact prepared by Budin. Mr Cohen refuted this and told the Committee that he emailed copies of the Agency Agreements to Budin so that Messrs Huguenin and Froidevaux could use them as precedents for their drafting of the SPAs. This, according to Mr Cohen, explains the similarities. Mr Cohen conceded that when he emailed the Agency Agreements to Budin the Word versions would be saved to his local server and would still be on his computer or on his local server and could be produced. In Mr Cohen's submissions of 4 August 2023 it was stated that "*Mr Cohen's case is that he provided copies of the HP Lux Agency Agreements to Budin*". However, in his evidence to the Committee Mr Cohen qualified this by saying that the versions he sent to Budin, which would be retained on his local server, were redacted to remove the signature blocks in order to preserve the anonymity of the sellers.

332. As the metadata for the Word versions of the Agency Agreements would show when the documents were created, Mr Cohen was asked by the Committee, and agreed, to produce them. However, he has not done so.

333. Neither Mr Eker's Agency Agreement nor Mr Eker's Notice to Bid were signed by him. As the SPAs were signed by HP Lux on behalf of undisclosed principals, there is no document bearing Mr Eker's signature and accordingly no document that evidences his receipt and

response to the formal documents which are said to have been sent to him by email and signed by him and returned to Mr Cohen by email. Mr Cohen's evidence to the Committee was that he would probably have the signed hard copy attachments on file in the archives. He was asked, and agreed, to ask his PA or support staff member to locate and produce them. There is nothing to suggest that any attempt has been made to locate these documents.

334. During his interview in Paris on 31 May 2017 Mr Cohen undertook to follow up on certain documents. On 10 July 2017 the Executive wrote to Mr Cohen chasing the documents requested, which included checking his credit cards or speaking to his credit card provider to confirm the date in September 2010 when, as he alleged, he travelled to London to meet Mr Aspland-Robinson and Mr Eker. There was no reply to this email and no documents were produced.

335. In contrast to this and the above failures to produce documents when requested or to report on the outcome of searches, Mr Cohen showed at the hearing that he was able swiftly to produce a document when it helped him. When it was suggested that the use of apostrophes as number separators in the Agency Agreements might reflect a practice prevalent in Switzerland, Mr Cohen was able to refute the suggestion by swiftly producing a 2010 French law contract from Hoche which also used apostrophes as number separators, albeit this document was typed in a different font from that which Mr Cohen said was standard in the firm at the time and was the font used for the Agency Agreements.

The Transactions

336. Hoche's business at the time involved structured finance, M&A advisory in the real estate, hospitality, energy and transport industries and acquisitions of distressed debt and sometimes equity. Selling shares or brokering the sales of shares in UK listed companies was outside Hoche's line of business. Notwithstanding that, Mr Cohen was by the time an experienced and very capable financier who must be taken to have been familiar with know your client requirements, the EU rules regarding disclosure of transfers by beneficiaries of large shareholdings in listed companies, the importance of due diligence and anti-money laundering procedures. However, Mr Cohen's dealings as agents for the sellers of AIPL and ACDL showed a total disregard for such matters.

337. The Agency Agreements included the following warranties to HP Lux which in turn were passed on in the SPAs by HP Lux as warranties to the purchasers.

"*The Seller hereby represents and warrants to the Agent that:*
….
ii. The balance sheet at June 30, 2010 attached to this Agreement as Exhibit 1 (the Reference Balance Sheet) is a true, fair and accurate representation of the financial condition of the Company as of the date of such balance sheet and as of the date of this Agreement;
iii. Seller owns the Sale Shares free of any lien and encumbrances;
iv. Seller has the right to sell and transfer the full legal and beneficial interest in the Sale Shares;
….
ix. The Company is not a party to any litigation, arbitration or other dispute, nor is there any threat of any claim against the Company, or cause of action against the Company on account of past or present events;
….
xiii. The Company has met all statutory requirements it is subject to;
xiv. The Company owns the MWB Sale Shares free of any lien or encumbrances.
xv. The Company owns the Loan Stock free of any lien or encumbrances; "

338. In the SPAs these warranties were passed on by HP Lux as agents acting for undisclosed principals to the purchasers, either back-to-back or with minor variations in wording. Notwithstanding that, nothing was done by Mr Cohen to check that the warranties were true and correct. Nor was anything done to check whether if it transpired that the warranties were not true and correct, Mr Aspland-Robinson and Mr Eker could be relied upon to indemnify HP Lux for any possible liability incurred as agents acting for undisclosed principals under Swiss law (the governing law of the SPAs). No indemnities were taken by Mr Cohen from his principals.

339. Furthermore, no KYC checks were done by Mr Cohen on his clients. Nothing was done to check whether the shares of MWB and Loan Notes were owned by AIPL and ACDL free of encumbrances or whether the sale shares were similarly free of any liens or encumbrances. Mr Cohen was happy to pass on the warranty that AIPL and ACDL had met all statutory requirements when in fact the disposal of 15.2% of the issued share capital of a UK listed company by indirect beneficiaries triggered unperformed disclosure requirements under the Disclosure and Transparency Requirements introduced within the EU in 2007[21]. Hoche had an in-house compliance and legal capability but nothing was done to run these agreements past the relevant personnel.

21 The DTRs replaced existing disclosure requirements in the UK. In common with the EU rules they would have required disclosure of the share transfers in this case.

340. Mr Cohen's answer was twofold. He said that because he was selling BVI vehicles which each held a single asset some of these warranties were not a cause for concern. For example, although the balance sheets valued the MWB shares, not at their trading price at either balance sheet or contract dates but at the 30p cost of acquisition in the placing, this was immaterial as the formula for determining the monies due on completion operated by reference to the trading prices of MWB shares in the 18 months period between contract date and completion; and he was told that there were no liabilities. His other answer was to say that he assumed Budin would perform the necessary checks on behalf of the purchasers, notwithstanding the object of requiring warranties from a seller is to place on the seller the risk that the matters warranted will turn out to be untrue and relieve the purchasers from investigating such matters.

341. The Committee concludes that the reason Mr Cohen failed to perform any of the checks that would be standard in acting for sellers in a transaction of this sort is the same as the reason why he was unconcerned by the implications of the warranties HP Lux was giving on behalf of its undisclosed principals, namely that this was not a genuine sale and the liability that would attach to such warranties in a genuine sale was irrelevant in this case. Similarly, HP Lux was asked to sign the SPAs in their own name on behalf of undisclosed principals and to agree to a delay of 18 months between contract date and completion because the object of the transaction was to simulate rather than effect a transfer to third parties of the shares and Loan Notes held by the BVI vehicles. The sellers were indifferent to the implications of being kept out of their money – their principal concern was to hide their identity. A Swiss governing law and Swiss arbitration clause were included in the Agency Agreements not because Mr Aspland-Robinson wanted it (as Mr Cohen suggests) but (as the Committee concludes) because Budin wanted it.

342. In the Committee's view Mr Cohen was unable to produce an Agency Agreement or Notice of Bid signed by Mr Eker because he never met Mr Eker or corresponded with him. The Committee accepts that Mr Cohen may well have met Mr Aspland-Robinson in person to discuss the outline of HP Lux's agency, but it does not believe that Mr Cohen went to meet him in London following Mr Sicot's referral. Whether he went to London to meet Mr Aspland-Robinson at all is open to doubt. It is unfortunate that Mr Cohen was not asked to produce evidence of his travel to London in September 2010 until his 2017 interview, but notwithstanding this delay, it should still have been possible to provide proof of travel from a credit card provider or otherwise if he had been minded to do so.

343. Finally, Mr Cohen's failure to produce the word version of the redacted Agency Agreements emailed to Budin after having confirmed to the Committee that such a document would be

saved in his local server, leads the Committee to find that it was Budin, not Hoche, which drafted the Agency Agreements. Budin's authorship of these documents would be consistent with a pattern in which it arranged or implemented the various steps in the transaction on the instructions of Mr Balfour-Lynn. Mr Cohen, like Mr Houri after him, was merely engaged for reward to execute a discrete element in the transaction.

344. The Executive submitted that accepting Mr Cohen's account of how he was introduced to the transaction involved accepting a highly improbable set of coincidences – Mr Aspland-Robinson happening to meet Mr Sicot, who happened to pass on a casual enquiry to Mr Cohen, who, having taken the trouble to travel to London to meet Mr Aspland-Robinson then happened to contact Mr Froidevaux, who happened to be acting upon the instructions of Mr Balfour-Lynn, who happened to have arranged to meet Mr Cohen in Paris shortly before the SPAs were signed.

345. Mr Green refuted this by contending that a scenario in which Mr Cohen was in effect duped to act in the transaction and participated unwittingly, was perfectly feasible. One such scenario involved Mr Sicot, a very close friend of Mr Froidevaux, being engaged by Mr Froidevaux to contact Mr Cohen having first cleared the plan with Mr Aspland-Robinson who was, on any view, deeply involved in the sham. In the Committee's view there are two problems with such a theory. The first is that it depends upon Mr Cohen by chance contacting Budin to find a purchaser, either as a first port of call or having met with rejections from others such as Mr Orenstein. It is true, as Mr Green submitted, that had Mr Orenstein shown interest[22], he could have been "negotiated out", but the plan postulated by Mr Green still depends upon the chance that Mr Cohen would look to Mr Froidevaux who had no apparent experience in the purchase of vehicles holding UK listed securities. The second objection is that if someone of Mr Cohen's obvious ability and experience had agreed to act for sellers in what he thought was a genuine high value sale he would not have acted with the reckless disregard of standard procedures described above.

22 Unsurprisingly, Mr Orenstein had no recollection of the particular call alleged by Mr Cohen.

346. Mr Green also relied upon the admissions made by Messrs Froidevaux and Huguenin (see paragraph 167 above) which implicated various others in the sham sales but not Mr Cohen. In the Committee's view, however, this omission is readily explained by the close personal friendship which existed and still exists between Mr Froidevaux and Mr Sicot. Mr Froidevaux could not implicate Mr Cohen in the sham sales without drawing attention to the role of Mr Sicot in providing some, albeit limited, support for Mr Cohen's account of his introduction to Mr Aspland-Robinson.

347. Accordingly, the Committee concludes that Mr Cohen did mislead the Executive and obstruct its investigation in the respects particularised above. The Committee is not satisfied that the meeting scheduled between Mr Balfour-Lynn and Mr Cohen for 19 November 2010 went ahead, but that does not affect the Committee's conclusions. In so far as it is material, Mr Froidevaux would inevitably have had to explain to Mr Cohen that the transaction he was involved in was being organised by MWB's CEO, Mr Balfour-Lynn.

348. The appropriate sanction will be considered at the hearing on 31 January 2024.

XXVII Time for Appeal

349. The time for any party to lodge a Notice of Appeal against this ruling with the Takeover Appeal Board is extended until 5pm GMT on the third working day following notification of the Committee's ruling which will follow the further hearing due to commence on 31 January 2024.

Michael Crane KC

Chairman of the Committee

22 December 2023

Appendix I
Hearings Committee members

The members of the Hearings Committee who constituted the Committee for the purpose of the hearing were:

Present:	Michael Crane KC (Chairman)
	Justin Dowley (Deputy Chairman)
	William Brooks
	Michael Hatchard
	Lord Monks
	Elisabeth Scott
	Adam Signy
Secretary to the Hearings Committee	Charles Penney (Addleshaw Goddard LLP) *assisted by:* Louise Pritchard

Appendix II
Legal representatives at the hearing

Party	**Counsel/Advocates**	**Solicitors**
The Takeover Panel Executive	Mark Simpson KC Chris Langley	Gibson Dunn & Crutcher UK LLP
Pyrrho Investments Limited	Stephen Auld KC Kirtan Prasad	Reynolds Porter Chamberlain LLP
Richard Aspland-Robinson	-	-
Richard Balfour-Lynn	Alexander Polley KC	Taylor Wessing LLP
Andrew Blurton	-	-
Jean-Daniel Cohen	Andrew Green KC Dominic Howells	Armstrong Teasdale Limited
Jeffrey Eker	-	-
Camille Froidevaux	-	-
Shaoul Houri	Elizabeth Weaver	Fladgate LLP
Patrice Huguenin	-	-
Keval Pankhania	Richard Eschwege KC Camilla Cockerill	Drake & Case Law
Jagtar Singh	-	-
Julian Treger	Richard Coleman KC Joseph Farmer	Simmons & Simmons LLP

Appendix III
1997 Concert Party calculations
(as appended to the Executive's Statement of Facts)

1997 Concert Party: disclosed shareholdings:

	3 April 2008		31 December 2008		1 June 2009		17 December 2009 (Pre-Placing)		12 January 2010 (Post-Placing)	
	Number of shares (1)	Issued share capital (%)	Number of shares (3)	Issued share capital	Number of shares (3)	Issued share capital (%)	Number of shares (6)	Issued share capital (%)	Number of shares (6)	Issued share capital (%)
Mr Balfour-Lynn	7,533,655	9.36	7,533,655	10.41	7,533,655	10.41	7,533,655	10.41	16,433,655	10.02
Mr Joe Shashou	6,116,402	7.60	6,116,402	8.45	6,116,402	8.45	6,116,402	8.45	14,116,402	8.61
Mr John Harrison	4,366,999	5.42	4,366,999	6.03	4,366,999	6.03	4,366,999	6.03	10,600,331	6.46
Mr Michael Bibring	609,742	0.76	609,742	0.84	609,742	0.84	609,742	0.84	3,943,075	2.40
Mr Singh	1,030,803	1.28	1,030,803	1.42	1,030,803	1.42	1,003,284	1.39	3,503,284	2.14
Mr Bill Broadbent	361,431 (2)	0.45	361,431	0.50	361,431 (4)	0.50	483,739	0.67	1,583,739	0.97
The trustee of the LTIP	766,006	0.95	766,006	1.06	766,006	1.06	766,006	1.06	766,006	0.47
Mr Blurton	681,080	0.85	694,130	0.96	694,130	0.96	694,130	0.96	694,130	0.42
The trustee of the 2009 EBT	0	0.00	0	0.00	0	0.00	0	0.00	3,333,333 (7)	2.03
Total disclosed shareholding	21,466,18	26.66	21,479,168	29.68	21,479,168	29.68	21,573,957	29.81	54,973,955	33.51

1997 Concert Party: shareholdings of persons whom the Executive considers to have been undisclosed members of the 1997 Concert Party:

	3 April 2008		31 December 2008		1 June 2009		17 December 2009 (Pre-Placing)		12 January 2010 (Post-Placing)	
	Number of shares	Issued share capital (%)	Number of shares	Issued share capital (%)	Number of shares	Issued share capital (%)	Number of shares	Issued share capital (%)	Number of shares	Issued share capital (%)
Mr Aspland-Robinson	50,000 (8)	0.06	50,000 (8)	0.07	1,861,385 (13)	2.57	1,861,385 (13)	2.57	2,528,051 (16)	1.54
ACDL	0	0.00	0	0.00	0	0.00	0	0.00	13,566,667 (17)	8.27
AIPL	0	0.00	0	0.00	0	0.00	0	0.00	11,333,333 (18)	6.91
Mr Ian Balfour-Lynn	7,146 (9)	0.01	7,146 (9)	0.01	7,146 (9)	0.01	0	0.00	0	0.00
Mr Graham Balfour-Lynn	0	0.00	85,000 (11)	0.12	85,000 (11)	0.12	0	0.00	0	0.00
Mr Leonard Eker	0	0.00	25,000 (12)	0.03	30,000 (14)	0.04	30,000 (15)	0.04	30,000 (19)	0.02
Mr Jeffrey Eker	50,000 (10)	0.06	50,000 (10)	0.07	50,000 (10)	0.07	0	0.00	30,000 (20)	0.02
Mr Jeffrey Eker through JIM Nominees	0	0.00	0	0.00	0	0.00	0	0.00	100,000 (21)	0.06
Total undisclosed shareholding	107,146	0.13	217,146	0.30	2,033,531	2.81	1,891,385	2.61	27,588,051	16.82
Total disclosed and undisclosed shareholding	21,573,264	26.79	21,696,314	29.98	23,512,699	32.49	23,465,342	32.42	82,562,006	50.33
Total number of shares in issue	80,522,017 (22)	100.00	72,371,482 (23)	100	72,371,482 (24)	100.00	72,371,482 (25)	100.00	164,038,149 (26)	100.00

Annex 2

THE TAKEOVER PANEL

HEARINGS COMMITTEE

IN THE MATTER OF

MWB GROUP HOLDINGS PLC (“MWB” or "the Company”)

SUPPLEMENTARY RULING OF THE HEARINGS COMMITTEE (“the Committee”)

1. This ruling is supplementary to, and should be read in conjunction with, the Committee’s ruling of 22 December 2023 (“the Ruling”). As presaged in the Ruling, the Committee[1] convened on 31 January 2024 to determine the appropriate sanctions in light of the facts found in the Ruling and to address issues arising from the compensation order made against the Remedial Subjects under section 10(c) of the Introduction to the Code (“section 10(c)”). Unless otherwise stated, references to paragraph numbers are to the relevant paragraphs in the Ruling. Where terms are defined in the Ruling, they bear the same meaning in this supplementary ruling.

Sanctions

2. The sanctions against other Respondents must be assessed against the yardstick of those ordered against Messrs Balfour-Lynn and Singh. Neither Mr Balfour-Lynn nor Mr Singh challenged the factual allegations made against them by the Executive, nor did they challenge the Executive’s recommendation to the Committee that they each be subject to cold-shouldering under section 11(b)(v) of the Introduction to the Code (“section 11(b)(v)”) for not less than five years. Accordingly, the Committee directed that Mr Balfour-Lynn and Mr Singh each be cold-shouldered for a period of five years (paragraphs 279 and 280) and for a Panel Statement as described in section 11(b)(v) to be published in relation to them both. That Panel Statement will, of course, have to exempt from its application dealings with the Remedial Subjects in connection with the compensation scheme directed by this ruling.

3. The five-year period of cold-shouldering ordered against Messrs Balfour-Lynn and Singh stands as a yardstick for the assessment of sanctions against other Respondents because the Code contraventions of Messrs Balfour-Lynn and Singh were particularly egregious and undoubtedly more serious than those of other Respondents.

1 Apart from Lord Monks, who was unable to sit for personal reasons.

4. It will be apparent from the Committee's findings in the Ruling that Messrs Balfour-Lynn and Singh took elaborate and sustained steps to deceive their fellow directors and shareholders of MWB, the Panel and the market generally as to the true ownership of the 25 million shares of MWB issued in the placing acquired by the Audley companies – just over 15% of MWB's enlarged issued share capital. Their successful concealment of the true ownership of these shares meant that shareholders of MWB, the Panel and the market generally remained unaware while MWB continued trading, and for long afterwards, that disclosed and undisclosed members of the 1997 Concert Party had achieved statutory control of MWB and that the shares of MWB acquired by the "Audley Investors" in the placing were controlled by Messrs Balfour-Lynn and Singh, who, along with Mr Aspland-Robinson, were their ultimate beneficiaries.

5. More particularly, the letter of 4 November 2009 drafted by Mr Singh with the approval of Mr Balfour-Lynn for onwards transmission to the Executive (paragraphs 111 to 114), deliberately misled the Panel as to the ownership of the Loan Notes purchased from GLG and as to the prospective ownership of the shares of MWB which the Audley companies were to acquire in the upcoming placing in exchange for their Loan Notes. The Prospectus was similarly misleading as regards the ownership of shares of MWB acquired by the "Audley Investors" in the placing, with the consequence that the "whitewash" waiver of the 1997 Concert Party's obligation to make a Rule 9 offer to other shareholders was induced by misrepresentation (paragraphs 119 and 120). That the market was successfully misled as to the ownership of these shares, is evident from reports in the financial press over the next two years or so describing the Audley companies or Mr Treger as a major shareholder of MWB (paragraphs 186, 194, 195 and 202).

6. The scheme disclosed by the evidence was motivated by profit. Having acquired their interests in the Loan Notes at 61 pence per £1 nominal, those held by the Audley companies were "converted" into shares offered in the placing at 30 pence per share. As this was at a time when the shares of MWB were trading at about 40 pence per share, the "look through" price of the shares acquired in the placing by the Audley companies at 30 pence per share for each £1 nominal of Loan Notes held was some 18 pence per share (paragraph 123). The untruthful explanation given by Messrs Balfour-Lynn and Singh for the placing offer price was that it was what had been promised to Mr Treger in return for his investment in the Loan Notes. This was part of the wider misrepresentation made by Messrs Balfour-Lynn and Singh that Mr Treger, through Audley Capital, independently controlled the Loan Notes and shares of MWB held by the Audley companies (paragraphs 114, 176 to 178 and 188).

7. It is also apparent from the evidence that the sham on-sales were organised by Messrs Balfour-Lynn and Singh with the object of obscuring the identities of the ultimate beneficiaries of the shares held by the Audley companies (paragraphs 155 to 167).

8. Mr Aspland-Robinson has been cold-shouldered pursuant to section 11(b)(v) for a period of four years (paragraphs 279 and 280). Although he was less centrally involved than Messrs Balfour-Lynn and Singh, Mr Aspland-Robinson's acquisition of 2.5 per cent of MWB's issued share capital in June 2009 triggered an unperformed obligation under Rule 9 of the Code to make an offer to other shareholders (paragraph 104). As the sole shareholder of one of the Audley companies and the ultimate beneficiary of some of the shares of MWB acquired by his company in the placing, Mr Aspland-Robinson also played an important role in the securing of statutory control of MWB by the disclosed and undisclosed members of the 1997 Concert Party (paragraphs 71, 83, 85, 118 and 119). As the sole shareholder of one of the Audley companies sold in the on-sales, Mr Aspland-Robinson also played an important role in the attempt to disguise by these sham transactions the identities of the ultimate beneficiaries of the shares of MWB held by his company (paragraphs 130 to 135). The cold-shouldering of Mr Aspland-Robinson for a period of four years takes account both of his contravention of Rule 9 of the Code and his contravention of section 9(a) of the Introduction to the Code ("section 9(a)") – see paragraph 9 below.

9. When interviewed by the Executive during the first half of 2012, Messrs Balfour-Lynn and Singh collaborated with Messrs Aspland-Robinson and Eker to give an entirely misleading account of the acquisition and ownership of the Loan Notes and the ownership of the shares of MWB into which a substantial portion of the Loan Notes (nominal value of £7.5 million) was "converted" (paragraphs 216 and 217).

10. Counsel for Mr Treger and counsel for Mr Cohen both submitted that the sanctions imposed by the Committee should reflect the scale of relative seriousness of the Respondents' breaches of the Code, with the sanctions imposed upon Mr Balfour-Lynn and Mr Singh at the upper end of the scale reflecting the substantially more serious nature of their misconduct. It was submitted that the sanctions imposed upon other Respondents should reflect the significantly less serious nature of their misconduct.

11. In principle the Committee accepts that the sanctions imposed upon individual Respondents should take account of the seriousness of their misconduct relative to that of other Respondents subject, however, to credit being allowed to Respondents who, however late in the day, made a frank admission of their contraventions of the Code. Mr Houri, Mr Pankhania and Mr Eker,

each of whom made such admissions, were cold-shouldered for a period of one year pursuant to section 11(b)(v).

12. What credit should be allowed for a Respondent's admission to the Committee, must depend upon a number of circumstances – contrast in this respect the admissions of Mr Houri (paragraph 166) and of Mr Pankhania (paragraph 285) with the partial admissions of Messrs Froidevaux and Huguenin (paragraph 167). In the cases of Mr Houri and Mr Pankhania, the sanctions of one year's cold-shouldering were proposed to the Committee jointly by counsel for the Executive on the one part and counsel for Mr Houri and Mr Pankhania on the other. The one-year periods of cold-shouldering imposed by the Committee in their cases reflect credit for frank admissions and consequent cost savings and, in the case of Mr Pankhania, take into account the comparatively limited respects in which his dealings with the Executive were admitted to have been misleading. Following his admission, the Executive ceased to pursue a much wider case of contravening section 9(a) against Mr Pankhania. Mr Eker in a sense constitutes a special case – at the first procedural hearing on 23 February 2023 he admitted through counsel the entire case against him (paragraph 16) and took no further part in the proceedings. The relatively short duration of the period of cold-shouldering ordered in the case of Mr Eker gives substantial credit for the consequential savings of time and cost.

Mr Treger

13. The Executive's case against Mr Treger is for contravention of section 9(a). Section 9(a) has the status of a Rule of the Code and provides in relevant part as follows:

> *"The Panel expects any person dealing with it to do so in an open and co-operative way. It also expects prompt co-operation and assistance from persons dealing with it and those to whom enquiries and other requests are directed. In dealing with the Panel, a person must disclose to the Panel any information known to them and relevant to the matter being considered by the Panel (and correct or update that information if it changes). A person dealing with the Panel or to whom enquiries or requests are directed must take all reasonable care not to provide incorrect, incomplete or misleading information to the Panel.*
>
> *A person is entitled to resist providing information or documents on the grounds of legal professional privilege."*

The Committee has emphasised the importance of section 9(a) in previous rulings. Unless section 9(a) is strictly observed, the Panel will be unable swiftly and effectively to discharge its duties as regulator - the time, cost and effort taken to uncover the true facts in this case being an example in point. Accordingly, the Committee treats very seriously any deliberate misleading of the Executive in responding to its enquiries. Although each case is assessed against its particular facts, someone who deliberately lies to the Executive on a material matter

risks being treated under section 11(b)(v) as someone who "is not likely to comply with the Code".

14. The Committee's analysis of the case against Mr Treger and its findings in relation to his contraventions of section 9(a) are set out in paragraphs 286 to 320 – there is no need to repeat them in any detail here. Suffice it to say that Mr Treger admitted lying to the Executive on two material matters (paragraphs 287 to 292) and was found to have misled the Executive:

(i) in denying that he acted as a front for the interests of MWB management in negotiating the purchase of the GLG Loan Notes;

(ii) in claiming to have acted as a genuine adviser to Messrs Aspland-Robinson and Eker in connection with their management of the shares held by the Audley companies, whereas the advisory agreement was a sham and there was no such relationship;

(iii) as regards his claimed ignorance of the use of the Audley name by the "Audley Investors" until being alerted to that fact by a junior colleague following publication of the placing Prospectus on 17 December 2009;

(iv) in his denial of having reinforced by his conduct the widespread misconception that the Audley companies were independent shareholders of MWB associated with, or managed by, Audley Capital Advisors LLP and Mr Treger - whereas in fact the shares held by the Audley companies were, as Mr Treger was aware, controlled by Messrs Balfour-Lynn and Singh; and

(v) as regards his dealings with Mr Huguenin on behalf of Budin Associés ("Budin").

On the facts found by the Committee, therefore, Mr Treger deliberately and extensively misled the Executive.

15. Mr Coleman KC correctly points out that the Committee did not accept the Executive's case that Mr Treger was, from the outset (that is to say, from the start of his negotiations with GLG for the purchase of their Loan Notes), part of a conspiracy with Messrs Balfour-Lynn and Singh to enable them to take control of MWB while at the same time concealing that fact so as to evade an obligation to announce a Rule 9 offer to other shareholders. Rather, as Mr Coleman points out, the Committee concluded that it was more likely that Mr Treger, having initially agreed to front the purchase of GLG's Loan Notes to assist MWB's management in securing a relaxation of the gearing covenants in the Loan Notes Trust Deed, found himself increasingly drawn in to assisting Messrs Balfour-Lynn and Singh in concealing the true ownership and control of the shares held by the Audley companies. Mr Treger no doubt bitterly regrets having allowed himself to act in this way and the position in which he now finds himself.

16. It is the case, therefore, that Mr Treger's misconduct was significantly less serious than that of Messrs Balfour-Lynn and Singh. That said, it is also true that without Mr Treger's acquiescence and positive assistance, the true beneficial ownership and control of the MWB shares held by the Audley companies could not have been concealed at all, and certainly not so successfully and for so long.

17. The Committee does not accept, however, that Mr Treger's case merits a less serious sanction than that ordered against Mr Aspland-Robinson. True it is that, unlike Mr Aspland-Robinson, Mr Treger did not qualify under the Code as a principal member of the concert party, but the concert party could not have achieved its end without Mr Treger's crucial assistance. And as for the case against Mr Treger for contravening section 9(a), the Committee has found that his misleading of the Executive was extensive, deliberate and persistent – even now, apart from the respects in which he was constrained to admit that he had lied to the Executive (paragraphs 287 to 290), Mr Treger persists in maintaining a narrative which the Committee finds to be substantially untruthful.

18. Mr Coleman also submits that for a cold-shoulder sanction under section 11(b)(v) to be appropriate the Committee must be satisfied on the material before it that there is a real risk of future contraventions of the Code by the respondent in question. In short, it is submitted that the purpose of cold-shouldering is to maintain market confidence rather than to punish. The Committee accepts that one, and a no doubt important, purpose of a section 11(b)(v) sanction is to protect the integrity of the market and the interests of shareholders; but it is also a disciplinary measure intended to mark particularly serious misconduct. It is appropriate where the behaviour of an "offender" justifies the opinion that the offender's conduct identifies him as "*someone who, in [the Committee's] opinion, is not likely to comply with the Code*". As the Committee observed at paragraph 75 of its ruling in the Rangers/Mr King case [Panel Statement 2019/16]:

> *"Whether someone is unlikely to comply with the Code must involve drawing an inference from proven past behaviour. What the Committee has to do in a case such as the present is determine whether the respondent's proven or admitted misconduct demonstrates a propensity to disregard the Code and if so to weigh that propensity against any undertaking from the respondent to comply in the future. The seriousness and persistence of proven contraventions must, realistically, also be an important factor in forming an opinion as to the likelihood of future compliance."*

Accordingly, in forming the opinion described in section 11(b)(v) the nature of the proven misconduct and the propensity evident from such conduct weighs heavily in determining whether it is legitimate to infer that the offender is someone who is not likely to comply with the Code. In Mr Treger's case, his extensive and deliberate misleading of the Executive and his

persistence in maintaining a substantially false narrative before the Committee, fully justifies that inference.

19. The Committee has had due regard both to the fact that Mr Treger has no previous history of contravening the Code and to the stress that the prolonged investigation into these matters must have caused him. We also bear in mind that while Mr Treger was remunerated at the rate of £100,000 per annum for his services, that was a comparatively small reward given his personal wealth; and his motivation remains unexplained. Nevertheless, at the time in question Mr Treger was a respected professional regulated by the FSA (as it then was), and the evidence is incontrovertible. In the circumstances therefore, the Committee concludes that a statement pursuant to section 11(b)(v) should be issued in relation to Mr Treger and that he should be cold-shouldered for a period of four years.

Mr Cohen

20. At the hearing of 31 January 2024, Mr Cohen was represented by Ms Jane Mulcahy KC, leading Ms Sarah Wilkinson of counsel.

21. The Executive's case against Mr Cohen also alleged contravention of section 9(a). In the case of Mr Cohen, the Committee's assessment of that case and its findings of fact are set out in paragraphs 321 to 348. It will be apparent from those paragraphs that the Committee found that Mr Cohen lied to the Executive, and subsequently to the Committee, in his account of how he came to be involved in acting for the sellers (Messrs Aspland-Robinson and Eker) in the on-sales of the Audley companies. Paragraphs 321 to 348 also set out particular matters in relation to which, having become involved in the transaction, Mr Cohen misled the Executive as regards his subsequent dealings with his clients (the sellers) on the one hand and Budin on the other.

22. On behalf of Mr Cohen, it was submitted that while the Committee has found in the Ruling that Mr Cohen misled the Executive, there is no express finding that he deliberately misled them. In the Committee's opinion that is not a realistic interpretation of the Ruling. Mr Cohen persisted in giving to the Executive a false narrative which he maintained in evidence to the Committee and which the Committee has rejected in the respects stated in the Ruling. In those respects, Mr Cohen has been found to have been lying.

23. It is correct that the Committee did not find that Mr Cohen's failure to produce documents involved the withholding of documents which were in his possession but which he dishonestly claimed no longer to exist. But the failure to produce documents, in particular a Word version of the Agency Agreement which he admitted retaining on his system and which he claimed to have emailed to Budin as an aid to their drafting of the SPA, along with an apparent failure to search for and produce a signed copy of Mr Eker's Agency Agreement, was taken into account

by the Committee in its assessment of the truth of Mr Cohen's evidence. The failure to produce these documents has to be viewed alongside the other factors referred to by the Committee (paragraphs 338 to 341) and the complete absence of emails recording Mr Cohen's communications with his "clients" and Budin.

24. As to how he came to be involved, the Committee concluded that Mr Cohen gave a false narrative of having been introduced to the transaction by Mr Sicot, who was alleged to have reported a chance meeting with Mr Aspland-Robinson, who appeared to be keen to sell his shares in MWB and who in turn referred Mr Cohen to Mr Eker, who, as it turned out, was similarly keen to sell his own shares. The truth, as the Committee found, was that Budin brought Mr Cohen in to act for the sellers in order to create a false impression that this was a bona fide, arm's-length transaction (paragraph 342); and the fact that it was not such a transaction was something of which Mr Cohen was aware (paragraph 341). It is submitted on behalf of Mr Cohen that there is no express finding that Mr Cohen knew that the sales in relation to which he acted for the sellers were not bona fide arm's-length transactions (that is to say, were sham transactions). In the Committee's judgment, however, that Mr Cohen was aware of this is the only realistic interpretation of the Ruling.

25. It is true, as Ms Mulcahy submitted, that Mr Cohen was only involved in a discrete part of a wider transaction. It is also true that while the Committee found that he must have known Budin were acting on the instructions of Mr Balfour-Lynn, there is no evidence to prove that Mr Cohen was aware of the wider structure of the sham transactions or of the identities of the ultimate beneficiaries of the relevant shares of MWB. The Committee found, nevertheless, that Mr Cohen knew that he was being brought in by Budin to act for sellers in sales that were non-genuine and which were being organised by Budin on the instructions of Mr Balfour-Lynn. He knew that these were not arm's-length transactions entered into between genuine sellers and genuine buyers.

26. The Committee accepts, therefore, that in so far as the Executive alleged that Mr Cohen was aware of and complicit in the wider ramifications of what are now admitted to have been complex sham transactions, that case was not made out. However, the case against Mr Cohen is not for misconduct in facilitating a sham transaction or for assisting in an attempt to conceal contraventions of the Code by Mr Balfour-Lynn and others; it is for deliberately misleading the Executive contrary to section 9(a). While it is true that the evidence only discloses Mr Cohen's involvement in a discrete part of a wider transaction, the seriousness of Mr Cohen's contravention of the Code is to be measured by the extent to which he deliberately misled the Executive in the course of his interviews and persisted in that false narrative in his evidence before the Committee, not by the extent of his involvement in the sham transaction.

27. In the Committee's view this is undeniably a serious case of breach of section 9(a). Mr Cohen's interviews by the Executive focused on how he came to be acting for Messrs Aspland-Robinson and Eker and on the course of his involvement thereafter with his clients on the one hand and Budin on the other. In relation to these subjects the Committee has found Mr Cohen's account to have been deliberately and extensively misleading.

28. The Committee repeats its previous comments on the importance it attaches to compliance with section 9(a) and as regards the inference it is inclined to draw from conduct disclosing a propensity to disregard the Code (see paragraph 13 above). Mr Cohen persisted in giving an intentionally false narrative to the Executive and continued to maintain that narrative in evidence to the Committee. In the Committee's judgment such misconduct shows a propensity on Mr Cohen's part to disregard his obligations under the Code and in his case justifies a statement pursuant to section 11(b)(v).

29. It is submitted on behalf of Mr Cohen that if (contrary to his contention) cold-shouldering is appropriate at all, it should not be for more than one year. In support of this submission, Ms Mulcahy pointed to the sanctions of one year ordered in the cases of those who admitted liability in the course of the hearing. In particular, it is said that Mr Houri was more extensively involved in the sham transaction than Mr Cohen and there is no justification for cold-shouldering Mr Cohen for any longer period than the one year ordered against Mr Houri. The Committee rejects this submission. Both Mr Houri and Mr Cohen were disciplined for contraventions of section 9(a), not for the parts they played in the underlying sham transaction. Both Mr Cohen and Mr Houri deliberately misled the Executive in presenting what was essentially a false narrative, the difference being that Mr Houri made a frank admission of having done so in the course of the hearing before the Committee. For that reason, the Committee accepted the sanction jointly recommended by the Executive and Mr Houri's counsel. As for Mr Pankhania, as previously mentioned, the sole respect in which he admitted to having misled the Executive was in understating his relationship and previous business connections with Mr Singh.

30. Mr Cohen is an experienced professional who, on the Committee's findings, deliberately misled both it and the Executive. Having made due allowance for the fact that Mr Cohen has no disciplinary record and having taken into account the references that speak to his ability and professionalism, the Committee concludes that he should be the subject of a statement under section 11(b)(v) of the Code and that he be cold-shouldered accordingly for a period of two years.

Mr Blurton

31. Mr Blurton was a joint finance director of MWB during the material period until January 2010. The Executive's case against him alleges a failure to consult the Panel in contravention of section 6(b) of the Introduction to the Code ("section 6(b)"). Section 6(b) states in relevant part that:

"*When a person or its advisers are in any doubt whatsoever as to whether a proposed course of conduct is in accordance with the General Principles or the rules …. that person or its advisers must consult the Executive in advance*."

32. The case against Mr Blurton is developed in paragraphs 86 to 98. In summary, the Executive alleges that on the basis of the information of which he was aware at the time of a special board meeting convened to consider the implications of Mr Aspland-Robinson's proposed purchase of MWB shares, Mr Blurton must, at the very least, have been in real doubt as to whether Mr Aspland-Robinson would be acting in concert with the 1997 Concert Party were he to go ahead with the acquisition.

33. The Committee's findings on this are set out in paragraphs 93 to 94, from which it is clear that, simply in light of the factors which Mr Blurton evidently took into account in considering the concert party question at the board meeting, he must have been in doubt as to whether Mr Aspland-Robinson would be regarded by the Panel as acting in concert were he to go ahead with an acquisition of MWB shares. But what puts Mr Blurton's duty to have consulted the Panel beyond doubt is the advice he received on three occasions from Peel Hunt, the brokers whom MWB intended to use in the transaction, to consult the Panel. Mr Blurton chose to disregard this advice – see paragraphs 95 to 98.

34. Were it not for the fact that on three occasions Mr Blurton was advised to consult the Panel but did not do so, the Committee might have been prepared to accede to his submission that a private statement of censure was an appropriate sanction in light of Mr Blurton's unblemished record and good character. However, the stark nature of the default having regard to the advice from Peel Hunt (who in the event were not instructed by MWB to act in the purchase), means that a statement of public censure pursuant to section 11(b)(ii) of the Introduction to the Code, is inevitable – and the Committee so directs.

35. In fairness to Mr Blurton, it should be made clear once more that he was ignorant of the true control and ownership of the shares held by the Audley companies and was also unaware that Mr Aspland-Robinson's purchase of shares was to be funded in part by Mr Balfour-Lynn. Furthermore, he was entirely unaware that the whitewash waiver had been obtained by misrepresentation or that disclosed and undisclosed members of the 1997 Concert Party had obtained statutory control of MWB. His is a separate case.

Mr Froidevaux and Mr Huguenin

36. The case against Messrs Froidevaux and Huguenin is for deliberately misleading the Executive and for failing to co-operate with the Executive in contravention of section 9(a).

37. Messrs Froidevaux and Huguenin told the Executive that they had secured Mr Cioffi and Mr Verduron as purchasers of the Audley companies having been telephoned by Mr Cohen on behalf of proposed sellers. When asked in their first interview by the Executive whether they had previously met Mr Balfour-Lynn or members of MWB's management before this occasion, Mr Froidevaux (in Mr Huguenin's presence) falsely denied having done so.

38. Mr Froidevaux was again interviewed under FINMA's auspices in November 2016, when he said that the shares in the Baffin Fund had been subscribed by Union Bancaire Privée ("UPB"). Mr Bergamin, who had been a wealth manager at UPB, had allegedly sourced the investors. By the time Mr Froidevaux was again interviewed under the auspices of FINMA in June 2017, the Executive had discovered Mr Houri's connections with the Baffin Fund and with Messrs Balfour-Lynn and Singh. Mr Froidevaux then accepted that he knew at the time of the subscription by Dolman Finance to the Baffin Fund that it was Mr Houri who had decided to make the investment, but he claimed to have been unaware of the arrangements between Mr Houri and Messrs Balfour-Lynn, Singh and Dallal.

39. All this was shown to have been untrue by the admissions made by Messrs Froidevaux and Huguenin on 14 November 2023 (set out at paragraph 167) when they accepted complicity in the sham transactions and admitted to having "*knowingly misled the Executive in relation to those transactions and their involvement in them*". When making these admissions, Messrs Froidevaux and Huguenin proposed that they be cold-shouldered for a period not to exceed one year and that their conduct not be reported to their professional regulators, the Commission du Barreau of Geneva or to any other regulator.

40. The Committee concludes that in each of the cases of Messrs Froidevaux and Huguenin a statement in accordance with section 11(b)(v) should be issued and they each be cold-shouldered for a period of three years. Although the admissions made by Messrs Froidevaux and Huguenin were extensive, their acceptance that they were knowingly involved in the sham purchases with Messrs Belfour-Lynn, Singh, Aspland-Robinson and Eker, renders incredible their evidence that they were introduced to the transaction as a result of a chance phone call from Mr Cohen. Crucially however, as regards the duration of sanctions, Messrs Froidevaux and Huguenin are lawyers practising in a reputable law firm and as such their word ought to be trusted. Indeed, as appears from paragraph 220, having regard to the fact that Messrs Froidevaux and Huguenin practised in a reputable law firm, the Executive for a time was led to

believe that the investors in the Baffin Fund were likely to be bona fide third parties procured by an independent asset manager. Their misleading of the Executive significantly delayed and obstructed the Executive's investigation.

41. The Committee's Ruling, along with this supplementary ruling, will be brought to the attention of the Geneva Bar Commission without any request for action on its part or any recommendation for action. The Committee accepts that any action in Switzerland is entirely a matter for the Geneva Bar Commission. Accordingly, this cannot be construed as a request for enforcement or for the taking of action in Switzerland on behalf of a foreign authority (see paragraph 45 below).

Notification of Rulings in Switzerland

42. By its ruling of 14 September 2023, the Committee rejected the submissions of Messrs Froidevaux and Huguenin that these proceedings had been invalidly notified to them under Swiss law and were, accordingly, of no effect. The proceedings had been initiated by the Executive's communication of the Statement of Facts to Messrs Froidevaux and Huguenin by email to an address hosted on a server located in Switzerland. The Committee's reasoning and conclusions were principally based on the evidence of relevant Swiss law submitted by the Swiss law firm, Lenz & Staehelin on behalf of the Executive.

43. To a written submission of 26 January 2024, Messrs Froidevaux and Huguenin attached a letter, dated 10 January 2024 from the Embassy of Switzerland in the United Kingdom to the Foreign, Commonwealth and Development Office. In that letter the Swiss Embassy said that it had come to the knowledge of the Swiss Government that the Committee's ruling of 14 September 2023 had been served by email on Messrs Froidevaux and Huguenin. The letter did not say whether or not the Swiss Government had read the Committee's ruling of 14 September 2023 or whether it had considered the evidence of Lenz & Staehelin on which it was in large part based, but it went on to state that:

> *"According to the Swiss legal system, the service of procedural acts qualifies as an act of public authority. The service of a decision by a foreign authority directly on a person or a corporation in Switzerland, if performed without legal basis, violates in principle Switzerland's territorial sovereignty. Switzerland considers the unauthorized service of such acts as incompatible with public international law. Service of procedural acts that do not have any legal effect is however tolerated. If such is not the case, the acts have to be served through mutual legal assistance.*
>
> *In administrative matters and in the absence of an international agreement providing for a different procedure, the request for service must be made through diplomatic channels.*
>
> *The Embassy kindly asks the Foreign, Commonwealth and Development Office to inform the Hearings Committee of the Takeover Panel in the manner it deems appropriate*."

The Foreign, Commonwealth and Development Office has not communicated with the Committee or its Secretary and the Executive also confirmed through counsel at the hearing of 31 January 2024 that it had received no communication from the Foreign, Commonwealth and Development Office on the subject of the Swiss Embassy's letter.

44. It is not suggested that there are any bilateral arrangements in force between the United Kingdom and Switzerland which regulate the notification in Switzerland of a ruling of a United Kingdom administrative authority. Nor is it suggested that there is any international convention to which the United Kingdom and Switzerland are signatories which regulates cross-border service of administrative rulings. Notably, as explained in the Committee's ruling of 14 September 2023, the 1965 Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters ("the Hague Convention"), has no application to cross-border notification of administrative rulings. Accordingly, the option of cross-border service through the United Kingdom consular service available under the Hague Convention in "civil or commercial matters", is not available for cross-border notification of the rulings of administrative tribunals.

45. Furthermore, neither the Committee's ruling of 14 September 2023 nor its ruling of 22 December 2023 nor this supplementary ruling request any action to be taken in Switzerland on behalf of the Hearings Committee or involve any form of enforcement in Switzerland. In such circumstances, and notwithstanding the oral submissions to the contrary made by Mr Huguenin to the Committee during the hearing of 31 January 2024, the Committee accepts the opinion of 30 January 2024 of Lenz & Staehelin that the Committee's rulings are not procedural acts intended to have legal effects in Switzerland and were not notified in breach of any applicable bilateral or international arrangements for the provision of legal assistance. As such, notification of such rulings by email does not contravene Article 271 of the Swiss Criminal Code or otherwise violate Swiss sovereignty.

46. The Committee also accepts the opinion of Lenz & Staehelin that even if service by email is shown to be procedurally defective under Swiss law, it would not render the proceedings or any rulings made in the course of the proceedings a nullity, having regard to the fact that Messrs Froidevaux and Huguenin manifestly suffered no prejudice from any deficiency in formal process.

47. Nevertheless, while this ruling will be notified by email to Messrs Froidevaux and Huguenin and time limited for appeal to the Takeover Appeal Board will run from the date of such notification, the Committee directs the Executive to serve as a matter of courtesy this ruling along with the Committee's rulings of 14 September 2023 and 22 December 2023 upon the Embassy of Switzerland in the United Kingdom. Service of the documents on the Embassy

should be accompanied by a request to the Embassy to transmit those rulings to Messrs Froidevaux and Huguenin in whatever manner it thinks fit while bearing in mind that these proceedings and any findings adverse to Messrs Froidevaux and Huguenin remain private and confidential unless and until the rulings are published in the form of a Panel Statement.

Informing Other Regulatory Authorities or Professional Bodies

48. As regards all other[2] Respondents who are, or were at the time of their contraventions of the Code, regulated by an authority or members of a professional body, the Executive is directed to bring the Ruling, along with this supplementary ruling, to the attention of any such authority or body without any request or recommendation for action on its part.

Compensation

49. By paragraph 271 of the Ruling, the Committee directed the Remedial Subjects to pay to all shareholders of MWB on the register at 12 January 2010 (other than those shareholders who were disclosed or undisclosed members of the 1997 Concert Party) compensation in the sum of 40 pence per share on condition that such shareholders transfer in return to the Remedial Subjects whatever rights still attach to their shares. Shareholders who sold their shares after 12 January 2010 were to give credit for the proceeds of such sale. Similarly, qualifying shareholders who have already received recompense or compensation as shareholders of MWB on account of the matters in issue in these proceedings, are to give credit accordingly[3]. That direction was made pursuant to section 954(1) of the Companies Act 2006 ("the Act") and section 10(c).

50. From its examination of the share register at 12 January 2010 the Executive has calculated that the maximum principal sum potentially payable (before credit is given by qualifying shareholders for the proceeds of sale of shares or compensation already received) is £32,590,457.20. The relevant liability is imposed on the Remedial Subjects jointly and severally.

2 The position regarding Messrs Froidevaux and Huguenin is separately addressed in paragraph 41.

3 At the hearing of 31 January, the Committee was told that Pyrrho has received some such compensation.

51. In preparation for the 31 January 2024 hearing, the Committee directed the Executive to serve its submissions regarding the structure, proposed operation and financing of a compensation scheme. Those submissions were served on 22 January. They provided for a firm of accountants to be appointed as scheme administrator and for the scheme administrator's fees to be paid by the Remedial Subjects. The Executive also submitted that, at intervals following the scheme administrator's appointment, the Remedial Subjects should make two stage payments, each of £10 million, followed by a third payment calculated by the scheme administrator as the balance necessary to cover the principal sum payable to qualifying shareholders along with whatever interest the Committee might award. The thinking underlying this proposal was that by the time of the third payment the scheme administrator would have been in post long enough to form a view on what was needed to constitute in full the compensation fund. Once the compensation fund was in place, payments out to qualifying claimants would begin.

52. The Executive submitted that the Committee had power to order the stage payments as a "Compliance ruling" under section 10(b) of the Introduction to the Code ("section 10(b)"). Where a person has contravened a requirement imposed by or under the rules or there is a reasonable likelihood that a person will contravene such a requirement, section 10(b) enables the Panel to give such directions as appear necessary to secure compliance with the rules. The Executive also contended that such payments were justified by analogy with Rule 2.7(d) of the Code by which, where a person has announced a firm intention to make an offer and that offer is for cash or includes an element of cash, the offer must include confirmation that resources are available to the offeror to satisfy full acceptance of the offer. Given the egregious conduct of the Remedial Subjects as found in the Ruling, it is submitted that a direction for the making of stage payments to constitute a compensation fund was fully justified. Alternatively, in directing the stage payments that go to form the fund from which compensation is payable, the Committee is doing no more than exercising the discretion conferred by section 954 of the Act and section 10(c).

53. Similarly, section 10(b) confers power on the Committee to direct the Remedial Subjects to pay such fees as may reasonably be generated or such costs as may reasonably be incurred by the scheme administrator in formulating and administering a compensation scheme. Such a direction is necessary to secure compliance with the Committee's compensation ruling.

54. Unfortunately, none of the Remedial Subjects was represented at the hearing of 31 January or served submissions in relation to the matters in issue. In the circumstances, the Committee has been careful to satisfy itself that it has jurisdiction to make the orders sought. Having duly considered the matter, we are satisfied that we have power to give the directions in question

under sections 10(b) and 10(c) and that it would be a proper exercise of our discretion to give such directions in this case.

55. The Committee's directions regarding payment of the sums required to constitute the required compensation fund are set out in the minute of directions appended to this supplementary ruling.

56. The Executive's submissions of 22 January included a detailed description of what a compensation scheme would comprise and how it would operate. Before appointment of a scheme administrator such a description could only be indicative, but it included provision for the holding of funds, the setting of scheme commencement and termination dates, the publication of the scheme, the establishing of criteria and claims procedures for qualifying shareholders, the determination of claims and determination of disputes and the supervisory role of the Panel (that is to say, the Executive). Once appointed, all this will be a matter for the scheme administrator, in conjunction with the Executive.

57. Following the hearing of 31 January, at the Committee's request the Executive obtained two fee proposals from professional services firms which were prepared, subject to adequate provision being made for their fees, to plan and formulate a compensation scheme and to operate it as scheme administrator[4]. As it transpired, the proposals took the form of a cap on aggregate fees and third-party costs as distinct from an estimate of likely fees and third party costs. One of the two firms set a fee cap of £1,500,000, made up of specific costs of £855,000, a contingency of £395,000 (more than 46% of specific costs) and VAT. The other firm proposed a cap of £2,198,820, or £1,832,350 net of VAT. Of this latter sum, £1,476,000 was attributed to the "Determination, payment and dispute resolution of claims".

58. In the Committee's view, bearing in mind that there were only 1,040 shareholders on MWB's register of shareholders on 12 January 2010 and given (as the Committee believes should, and will be, the case) that the scheme administrator will deal only with registered shareholders as single claimants and not with the beneficiaries behind nominees[5], these figures are unduly high. Rather than direct the Remedial Subjects to pay all, or a substantial part of, a capped aggregate fee up-front, the fairer course would be to direct payment of an estimate of a scheme administrator's costs along with a provision for the Executive to direct a further payment on account of costs reasonably incurred to cover any actual or likely shortfall. Any unused sum paid on account of costs may be deployed to reduce any shortfall in the compensation fund and any sum remaining after closure of the scheme will be returned to the Remedial Subjects pro rata to their overall individual payments under the scheme.

4 A third firm approached by the Executive declined to quote following conflicts checks.

5 By analogy with the manner in which companies act in connection with dividends.

59. Accordingly, the Committee directs that no later than 14 days after notification to the parties of this supplementary ruling or 7 days after notification to the parties of the appointment of the scheme administrator by the Executive, whichever date is the later, the Remedial Subjects shall pay to a solicitor's client account to be identified by the Executive the sum of £850,000 on account of the fees and costs to be reasonably incurred by the scheme administrator. Further provision in relation to this sum is set out in the minute of directions appended to this supplementary ruling.

60. It will be for the scheme administrator to provide such information as MWB shareholders or the Remedial Subjects may reasonably require regarding the scheme and for the Executive to give such rulings as it considers necessary in relation to the scheme and any disputes arising in connection with it. The relevant provisions are set out in the Committee's minute of directions appended to this supplementary ruling.

Interest

61. Section 954(2) of the Act confers a discretion to provide for payment of interest, including compound interest, on the principal amount payable as compensation. Section 10(c) states in relevant part that:

> "…*the Panel may make a ruling requiring simple or compound interest to be paid at a rate and for a period (including in respect of any period prior to the date of the ruling and until payment) to be determined*."

62. The Committee has concluded that the Remedial Subjects should pay interest on the principal sum payable as compensation at the Bank of England Base Rate plus 1 per cent to accrue from 24 February 2010 until payment and to be compounded annually. Had they performed their obligations under the Code, the Remedial Subjects would have had 28 days to post an offer document after announcement of an offer on 12 January 2010. As the offer would have been unconditional from the outset, payment would have been required within 14 days thereafter, assuming acceptances on the date the offer document was posted. Accordingly, interest is payable from 28+14 (42) days after 12 January 2010.

Time for Appeal

63. Having considered submissions made at the 31 January hearing regarding the time allowed for any appeal to the Takeover Appeal Board against the Ruling and this supplementary ruling, the Committee directs that any Notice of Appeal be lodged by 4pm GMT on Wednesday 28 February 2024.

Michael Crane KC

Chairman of the Committee

16 February 2024

APPENDIX

Directions of the Committee

1. Section 10(b) of the Introduction to the Code – compliance rulings

1.1 The Committee directs that, pursuant to section 10(b):

(a) Identification and appointment of the scheme administrator

1.2 By no later than one calendar month after the date on which these directions are notified to the parties, the Executive shall engage a firm to act as scheme administrator and notify[6] the Remedial Subjects of the firm appointed and the date of appointment.

(b) Payment of the fees and third party expenses of the scheme administrator

1.3 By no later than 1.00 p.m. on the day falling 14 days after notification of these directions to the parties, or 7 days after notification to the Remedial Subjects of the appointment of the scheme administrator (whichever is the later), the Remedial Subjects shall pay, on a joint and several basis, the sum of £850,000 to the client account in the UK of a firm of solicitors notified to the Remedial Subjects by the Executive (the "Scheme Fees Account") for the purpose of paying such fees and third party expenses as are reasonably incurred by the scheme administrator in the performance of its functions and as are approved by the Executive.

1.4 In the event that it appears to the Executive, following notification by the scheme administrator, that the sums remaining in the Scheme Fees Account may be insufficient to pay the fees and third party expenses reasonably incurred or to be incurred by the scheme administrator in the performance of its functions, the Executive may direct the Remedial Subjects to pay into the Scheme Fees Account such further sum as, following consultation with the scheme administrator, appears to the Executive to be necessary to cover such costs and third party expenses as the scheme administrator may reasonably incur. Any such further sums shall be paid into the Scheme Fees Account within 14 days of notification of the Executive's demand for payment.

6 Notification pursuant to these directions may be given by email to the addresses notified by the Remedial Subjects and other parties to the Committee for use in these proceedings or in writing to such address as the Remedial Subjects may notify.

1.5 To the extent if any that the sums deposited in the Scheme Fees Account exceed the aggregate amount of the fees and expenses reasonably incurred or to be incurred by the scheme administrator, such excess sums shall be transferred to the Compensation Deposit Account (as described in paragraph 2.1 below).

(c) Provision of information in respect of the proposed Scheme, consideration of representations made and determination of disputes arising

1.6 The Executive shall instruct the scheme administrator to provide to MWB shareholders, or as the case may be to the Remedial Subjects, such information as the Executive determines to be reasonably requested by MWB shareholders or by the Remedial Subjects in relation to:

(i) the administration of the proposed scheme; and

(ii) the payment of compensation.

1.7 The Executive shall consider representations made by or on behalf of any MWB shareholder or by or on behalf of the Remedial Subjects in relation to the administration and operation of the proposed scheme and may issue such rulings as it considers necessary to determine any disputes arising in connection therewith.

2. Sections 10(b) and 10(c) of the Introduction to the Code – compensation rulings and directions for compliance

2.1 The Committee directs that, pursuant to sections 10(b) and 10(c), the Remedial Subjects shall pay, on a joint and several basis, the following sums into the client account in the UK of such firm of solicitors as is notified to the Remedial Subjects by the Executive for that purpose (the "Compensation Deposit Account") in satisfaction of their liability to pay compensation to eligible MWB shareholders under the proposed scheme:

(a) by 1.00 p.m. on the day falling one calendar month after notification to the parties of these directions, the sum of £10 million;

(b) by 1.00 p.m. on the day falling two calendar months after notification to the parties of these directions, the further sum of £10 million; and

(c) by 1.00 p.m. on the day falling three calendar months after notification to the parties of these directions (the "Third Payment Date"), an amount to be notified to the

Remedial Subjects by the scheme administrator by no later than five days prior to the Third Payment Date, representing:

(i) the balance of the maximum aggregate principal amount of compensation that is assessed at that time by the scheme administrator as being potentially payable to eligible MWB shareholders under the proposed scheme; and

(ii) a sum in respect of the interest calculated by the scheme administrator as payable on the aggregate principal amount of compensation potentially payable to eligible MWB shareholders under the scheme at the rate determined by the Committee,

or, as an alternative to the payment of all or any such amounts, provide a guarantee to the scheme administrator (from a UK authorised bank, on terms acceptable to the Executive) for payment of the same. Without prejudice to the generality of paragraph 1.7 above, the Executive is authorised to determine any dispute howsoever arising in relation to any matters notified to Remedial Subjects pursuant to this paragraph 2.

2.2 Any sums that are deposited in the Compensation Deposit Account that are not ultimately paid to eligible MWB shareholders as compensation shall be returned to the Remedial Subjects as nearly as practicable in the same proportions as they were deposited in accordance with the terms of the scheme.

3. Dates and times

3.1 References in this Order to dates and times shall be to the date and time then subsisting in the UK.

3.2 All dates and times by which an obligation is required to be performed pursuant to these directions shall be read as including such later date as the Executive may agree.