

# THE TAKEOVER PANEL

## **PEACHEY PROPERTY CORPORATION plc ("PEACHEY") / ESTATES PROPERTY INVESTMENT COMPANY plc ("EPIC")**

On 28 January, Peachey announced a cash offer for EPIC. Between 28 January and 3 March 1988, Phillips & Drew, brokers to Peachey, purchased on behalf of Peachey 200,000 ordinary shares in EPIC, amounting to 0.8% of its issued share capital. Those purchases were made from Warburg Securities, the exempt market making subsidiary of S G Warburg Group. S G Warburg & Co. Ltd., a fellow subsidiary, is financial adviser to Peachey.

Rule 38.2 of the Code states that an offeror and persons acting in concert with it must not deal as principals with an exempt market-maker connected with the offeror in relevant securities of the offeree company during the offer period. This is to ensure that an exempt market-maker connected with an offeror does not use its exempt status, under which only limited disclosure of dealings is required, to acquire covertly offeree shares thus benefiting or assisting the offeror. Warburg Securities is an exempt market-maker connected with Peachey for the purposes of the Code. The purchases of 200,000 shares were therefore made in contravention of Rule 38.2.

The Panel's investigations have established that these breaches arose from ineffective communication within Phillips & Drew and Warburg Securities as to the relationship the two organisations had with Peachey. In addition, those individuals within Phillips & Drew and Warburg Securities who transacted the bargains were not sufficiently aware of the specific provisions of Rule 38.2.

At the request of the Panel, in order to restore the status quo ante, the shares purchased in contravention of Rule 38.2 have been sold to investment institutions unconnected with Peachey. The Panel has agreed notwithstanding Rule 4.2 that the sale will not prevent Peachey making any further purchases of EPIC Shares and/or revising the offer.

Whilst the Panel is satisfied that the breaches of the Code were inadvertent, Rule 38.2 states that it is generally for the advisers to the offeror to ensure compliance with the Rule rather than the market-maker. As the adviser to Peachey which directly initiated the series of share purchases which breached the Rule, the Panel considers that Phillips & Drew has primary responsibility in this case and is to be criticised. However, since in this particular case Warburg Securities were specifically notified by Phillips & Drew of the relevant relationships at the time the first bargain was transacted, Warburg Securities must also accept a degree of criticism.

17 March 1988