

THE TAKEOVER PANEL

TRAFALGAR HOUSE PLC ("TRAFALGAR HOUSE") /

DAVY CORPORATION PLC ("DAVY")

On 11 March 1992, the Executive issued a Statement (1992/8) in which it said that it had investigated whether statements made in the Trafalgar House/Davy offer document of 28 June 1991 relating to the circumstances in which the second tranche of consideration was to be paid to Davy shareholders were inadequate and, therefore, misleading. The Executive concluded that the offer document was not misleading as to those circumstances and, therefore, that there had been no breach of the Code.

On 10 April, the Executive was notified by Spie Batignolles SA, a former shareholder in Davy, that it wished to appeal to the Panel against the Executive's decision contained in the Statement of 11 March. The Panel met yesterday to consider this appeal.

Background

On 25 June 1991, Trafalgar House announced a recommended cash offer (the "Offer") for the whole of the issued share capital of Davy. Trafalgar House was advised by Kleinwort Benson Limited ("Kleinwort Benson") and Davy by J Henry Schroder Wagg & Co. Limited. The offer document contained letters dated 28 June 1991 from the then chairman of Davy, Sir Alistair Frame, and from Kleinwort Benson.

The consideration for the Davy shares was an immediate payment of 50p and a second payment of 45p (the "Second Payment") contingent on Davy offshore Limited ("DOL") becoming entitled to draw down a specified sum under a letter of credit relating to the Emerald Field contract. The Emerald Field contract is an agreement under which, inter alia, DOL, now a wholly-owned subsidiary of Trafalgar House, is converting a semi-

submersible drilling rig for North Sea service as a floating production platform.

The Offer was declared wholly unconditional on 23 July 1991.

Code Issues

General Principle 4 and Rule 23 require that shareholders are given sufficient information and advice to enable them to reach a properly informed decision, and that no relevant information is withheld from them.

General Principle 5 and Rule 19 require that any document or advertisement addressed to shareholders containing information or advice from an offeror or the board of the offeree company or their respective advisers is prepared with the highest standards of care and accuracy, and that the information given is adequately and fairly presented.

The issue which the Panel had to determine was whether or not the offer document failed to satisfy the relevant provisions of the Code. In particular, the Panel had to consider whether the failure to draw specific attention to the fact that DOL might not be entitled to draw down monies under the letter of credit for reasons outside its control, despite the physical completion of the floating production platform by DOL, gave rise to a breach of the relevant provisions of the Code.

Decision

The Panel considered that the offer document must be judged against the knowledge and expectations of those responsible for it at the time when it was published. At that time there was, in the Panel's view, no reason to believe that it would not be possible to draw down the monies under the letter of credit for reasons outside DOL's control.

Further, the offer document, which had to be considered as a whole, contained references in Sir Alistair Frame's letter to the disastrous impact of the Emerald Field contract, to delays in payment on the contract and to the continuing risks associated with the completion of the contract. So far as the Offer was concerned, it was made plain that the Second Payment was a contingent payment (and not merely a deferred payment).

The Panel found that there had been no breach of the Code. Accordingly, the appeal was dismissed.

21 May 1992