

THE TAKEOVER PANEL

INDUCEMENT FEES

An inducement fee is an arrangement which may be entered into between a potential offeror and the offeree company pursuant to which a cash sum will be payable by the offeree company to the offeror if, typically, specified events occur which have the effect of preventing the offer from proceeding, or causing it to fail. An example of such an event might be the recommendation by the offeree board of a higher competing offer.

The Panel considers it essential that the interests of the offeree shareholders are not adversely affected by inducement fee arrangements. The payment of such fees will necessarily reduce offeree shareholders' funds and, in cases where the offeree board has received an approach from another party, there are concerns that a bona fide offer may be frustrated by reason of these arrangements. The Panel has therefore established a series of safeguards which will be required in all cases where an inducement fee is proposed. These include the requirement that any inducement fee be *de minimis*, which will normally mean no more than 1% of the offer value, and confirmation by the offeree board and its financial adviser that, *inter alia*, they believe the fee to be in the best interests of shareholders. All such arrangements must also be fully disclosed and the relevant documentation put on display.

The Panel will take a similar view in relation to any other favourable arrangements with an offeror or prospective offeror which have a similar or comparable financial or economic effect, even if such arrangements do not actually involve any cash payment. The Executive should be consulted at the earliest opportunity in all cases where an inducement fee or any similar arrangement is proposed.

Appropriate amendments to the Code will be published in due course.

16 July 1999