

THE TAKEOVER PANEL

PANEL MEMBERSHIP

CODE COMMITTEE

INTRODUCTION TO THE TAKEOVER CODE

1. Panel membership

Lindsay Tomlinson, Chief Executive, Europe, Barclays Global Investors, Vice Chairman of the Fund Managers' Association, Mark Powell, Group Managing Director, Rathbone Investment Management Limited, Chairman of the Association of Private Client Investment Managers and Stockbrokers and Peter Letley of CIBC World Markets plc, Chairman of the Securities Trading Committee of the London Investment Banking Association, have been appointed members of the Takeover Panel.

These appointments follow a review by the Panel of its membership. The review was prompted by the departure in the past year of Panel members nominated by three organisations: the Securities and Futures Authority and the Investment Management Regulatory Organisation (which are largely integrated with the Financial Services Authority) and the London Stock Exchange (which has become a public company).

2. Code Committee

Donald Brydon has been appointed Chairman of the Code Committee of the Panel. Mr Brydon is Chairman and Chief Executive of Axa Investment Managers SA and was a member of the Panel, nominated by the National Association of Pension Funds, from 1988 to 1990.

The Code Committee has been established by the Panel to keep under review and, where appropriate, amend the substantive provisions (such as the General Principles and Rules) of the Takeover Code and the Rules Governing the Substantial Acquisitions of Shares.

3. Introduction to the Takeover Code

The Panel has amended the Introduction to the Takeover Code to reflect the changes referred to above and to take account of a number of changes which have been made in the procedures of the Panel.

The Introduction makes clear that the Panel operates in accordance with the requirements of the Human Rights Act 1998.

The full text of the amended Introduction to the Takeover Code is attached to this statement. Equivalent amendments have also been made to the Introduction to the Rules Governing the Substantial Acquisitions of Shares; this text is also attached.

Revised versions of the Introduction to the Takeover Code and the Introduction to the Rules Governing the Substantial Acquisitions of Shares, incorporating these amendments, will be published in due course.

15 February 2001

THE CITY CODE ON TAKEOVERS AND MERGERS

Introduction

1. The Code

(a) Nature and purpose of the Code

The City Code on Takeovers and Mergers is issued on behalf of the Panel on Takeovers and Mergers. The Code is kept under review by the Panel's Code Committee.

The Code is designed principally to ensure fair and equal treatment of all shareholders in relation to takeovers. The Code also provides an orderly framework within which takeovers are conducted. The Panel operates in accordance with the requirements of the Human Rights Act 1998.

The Code is not concerned with the financial or commercial advantages or disadvantages of a takeover. These are matters for the company and its shareholders. Nor is the Code concerned with those issues, such as competition policy, which are the responsibility of government.

The Code represents the collective opinion of those professionally involved in the field of takeovers as to business standards and as to how fairness to shareholders can be achieved.

(b) Code responsibilities

The responsibilities described in the Code apply most directly to those who are actively engaged in the securities markets. They are also regarded by the Panel as applying to directors of companies which are subject to the Code and to persons or groups of persons who seek to gain or consolidate effective control of such companies or who otherwise participate in, or are connected with, transactions to which the Code applies. They also apply to all professional advisers, in so far as they advise on the transactions in question. These responsibilities apply irrespective of whether those involved are directly affiliated to any of the bodies who nominate members of the

Panel. The Panel also expects any other persons who issue circulars to shareholders in connection with takeovers to observe the highest standards of care and accuracy.

(c) Enforcement of the Code

The Code has not, and does not seek to have, the force of law. It has, however, been acknowledged by both government and other regulatory authorities that those who seek to take advantage of the facilities of the securities markets in the United Kingdom should conduct themselves in matters relating to takeovers in accordance with high business standards and so according to the Code.

Therefore, those who do not so conduct themselves may find that, by way of sanction, the facilities of those markets are withheld. In particular, the Financial Services Authority ("FSA") together with relevant self-regulating organisations ("SROs") and certain professional bodies recognised under the Financial Services Act 1986 ("RPBs") have requirements which provide either that those subject to their jurisdiction should not act in a takeover or in certain other transactions for any person who does not appear likely to comply with those standards or that those so subject should not act in any such transaction for any person who has been named in a notice published by the Panel for the purpose of the relevant requirements. Moreover, if a person authorised by the FSA, an SRO or an RPB to carry on investment business fails to comply with the Code or a ruling of the Panel, its regulator may, in certain circumstances, take disciplinary or other action against it, including withdrawal of its authorisation.

2. The Panel and the Executive

(a) Membership of the Panel

The Chairman, Deputy Chairmen and certain further members of the Panel are appointed by the Governor of the Bank of England. In addition, its membership comprises individuals nominated by the following bodies, all of which are committed to support its activities:-

The Association of British Insurers

The Association of Investment Trust Companies

The Association of Private Client Investment Managers and Stockbrokers

The Association of Unit Trusts and Investment Funds

The British Bankers' Association

The Confederation of British Industry

Fund Managers' Association

The Institute of Chartered Accountants in England and Wales

The London Investment Banking Association (with separate representation for its Corporate Finance Committee and Securities Trading Committee)

The National Association of Pension Funds

Each of the bodies listed above may also nominate designated alternates.

(b) The Panel Executive

The Panel works on a day-to-day basis through its Executive, headed by the Director General. The Executive is responsible for the general administration of the Code. This includes, either on its own initiative or at the instigation of third parties, the conduct of investigations, and the monitoring of relevant dealings, in connection with the Code. The Executive is available both for consultation and to give rulings on points of interpretation before or during takeover or merger transactions.

(c) Co-operation with other authorities

The Panel co-operates with other regulatory authorities, such as the Department of Trade and Industry, the London Stock Exchange, the FSA, SROs, RPBs, the Bank of England and OFEX. This co-operation extends to the mutual exchange of information and, where appropriate, reporting breaches of the Code to the relevant authority. The Panel works closely with the London Stock Exchange in monitoring dealings. The FSA, relevant SROs and certain RPBs will require investment businesses to co-operate with the Panel in enquiries and investigations and the Panel is designated under the Companies Act 1985, the Financial Services Act 1986 and the

Banking Act 1987 to receive regulatory information, the disclosure of which is restricted by statute.

3. The Code in Practice

(a) General Principles and Rules

The Code is based upon a number of General Principles, which are essentially statements of high standards of commercial behaviour. These General Principles apply to all transactions with which the Code is concerned. They are, however, expressed in broad general terms and the Code does not define the precise extent of, or the limitations on, their application. They are applied by the Panel in accordance with their spirit to achieve their underlying purpose; the Panel may modify or relax the effect of their precise wording accordingly.

In addition to the General Principles, the Code contains a series of Rules, of which some are effectively expansions of the General Principles and examples of their application and others are provisions governing specific aspects of takeover procedure. Although most of the Rules are expressed in more detailed language than the General Principles, they are not framed in technical language and, like the General Principles, are to be interpreted to achieve their underlying purpose. Therefore, their spirit must be observed as well as their letter and the Panel may modify or relax the application of a Rule if it considers that, in the particular circumstances of the case, it would operate unduly harshly or in an unnecessarily restrictive or burdensome, or otherwise inappropriate, manner.

The Panel may delegate the rule-making function concerning amendments to the Code to a Code Committee, whose members would not normally participate in Panel hearings. Normally, the Code Committee consults publicly on proposed Code amendments.

(b) Consulting the Executive

The Executive gives general guidance on the interpretation of the Code. In addition, it gives rulings which are based on the particular facts of the case.

When there is any doubt whatsoever as to whether a proposed course of conduct is in accordance with the General Principles or the Rules, parties or their advisers should consult the Executive in advance. In this way, the parties can obtain a conditional ruling (on an ex parte basis) or an unconditional ruling as to the basis on which they can properly proceed and thus minimise the risk of taking action which might, in the event, be a breach of the Code.

Both principals and their advisers are encouraged to make full use of this service. To take legal, or other professional, advice on the interpretation or application of the Code is not an appropriate alternative to obtaining a ruling (either on a conditional (ex parte) or an unconditional basis) from the Executive.

The nature of the Executive's rulings will depend on whether or not the Executive is able to hear the views of other parties involved. If the Executive is not able to hear the views of other parties involved, it may give a conditional ruling (on an ex parte basis), which may be varied or set aside when any views of the other parties have been heard; if the Executive is able to hear the views of other parties involved, it may give an unconditional ruling.

The Executive may refer a matter to the Panel for decision without itself giving a ruling when it considers that there is a particularly unusual, important or difficult point at issue.

If a complaint is to be made that the Code has been breached, it must be made promptly. Delay may result in the Executive declining to investigate the complaint.

It is the Panel's practice to focus on the specific consequences for shareholders of breaches of the Code with the aim of providing appropriate redress in a timely manner. Furthermore, disciplinary action may be appropriate.

The Panel expects prompt co-operation from those to whom enquiries are directed so that decisions may be both properly informed and given as speedily as possible.

(c) Appeals to the Panel

If a party or his adviser wishes to contest a ruling of the Executive, he is entitled to request that the matter be reconsidered by the Panel, which can be convened at short notice. The Panel may also reconsider a matter at the request of an aggrieved shareholder. The Panel (or its Chairman) retains a discretion to deal summarily with frivolous or vexatious appeals. When the Executive considers that it is necessary to resolve an issue urgently, it may stipulate a reasonable time within which an appeal must be notified; in any other case, the Panel must be notified as soon as possible and, in any event, within one month of the event giving rise to the appeal.

(d) Disciplinary proceedings

The Executive may institute disciplinary proceedings before the Panel when it considers that there has been a breach of the Code. A disciplinary case is one the main purpose of which is to propose that disciplinary action should be taken following an alleged breach of the Code. In any such case, the Executive invites the person concerned to appear before the Panel. He is informed in writing of the alleged breach and of the matters which the Executive will present. If, subsequently, any additional matter of a material nature becomes relevant, he may request an adjournment.

If the Panel finds that there has been a breach of the Code, it may have recourse to one or more of the following:

- (i) private reprimand;
- (ii) public censure;
- (iii) reporting the offender's conduct to another regulatory authority (eg the Department of Trade and Industry, the London Stock Exchange, the FSA or the relevant SRO or RPB);
- (iv) taking action for the purpose of the requirements of the FSA, relevant SROs and certain RPBs which oblige their members not to act for the offender in a takeover or in certain other transactions unless and until such time as the Panel decides otherwise.

The Executive may itself deal with a disciplinary matter where the party which is to be subject to disciplinary action agrees the facts and the action proposed by the Executive.

(e) Procedure before the Panel

At hearings before the Panel, the case is normally presented in person by the parties, which include the Executive, or their advisers. Although not usual, parties may, if they so wish, be represented by legal advisers. Normally, the parties should set out their case briefly in writing beforehand. The parties are permitted to call such witnesses as they may feel necessary.

Proceedings before the Panel are usually in private, unless the Chairman, at his discretion, directs otherwise. Parties may request that the hearing be held in public. Any such request will be considered and ruled upon by the Chairman (or, at the discretion of the Chairman, by the Panel itself). In the event of a public hearing, the Chairman may, at his discretion, direct that the Panel hears part or parts of the hearing in private.

In general, all parties are entitled to be present throughout the hearing and to see all papers submitted to the Panel. Occasionally, however, a party may wish to present evidence to the Panel which is of a confidential commercial nature. In such exceptional cases, the Panel or the Chairman may, if satisfied that such course is justified, direct that the evidence in question be heard in the absence of some, or all, of the other parties involved. Parties are absent during the Panel's consideration of the case. Representations by shareholders may be presented in writing and are usually heard by the Panel in their absence.

The Panel recognises that its authority can only be sustained if its impartiality is beyond doubt. Accordingly, where a matter may create a conflict of interest for any Panel member, he will not attend and one of his designated alternates may be appointed for the purposes of the hearing. The parties will be given the opportunity to raise with the Chairman issues concerning possible conflicts of interest of members of the Panel and any other objections, such issues to be resolved by decision of the Chairman.

The quorum for a Panel hearing is five, including a Chairman.

Proceedings before the Panel are informal. There are no rules of evidence. A tape recording will be taken for the administrative assistance of the Panel, but it will not normally be retained once the proceedings are at an end. In addition, a transcript of the hearing is normally made. A party to the hearing may request a copy of the transcript, which may be provided subject to conditions, including conditions as to its confidentiality and use.

It is the Panel's policy normally to publish its decisions and the reasons for them so that its activities may be explained to the public.

The Panel will provide its reasoned decision to the parties in writing as soon as practicable following a hearing. A public statement will normally be issued as promptly as possible, having regard to all the circumstances of the case, after the reasoned decision has been provided in writing to the parties. In certain circumstances, the Panel may make a separate public statement of its decision (without providing reasons at this stage) in advance of the publication of its reasoned decision in writing.

(f) The Appeal Committee

There is a right of appeal to the Appeal Committee in each of the following cases:-

- (i) where the Panel finds a breach of the Code and proposes to take disciplinary action;
- (ii) where it is alleged that the Panel has acted outside its jurisdiction; or
- (iii) in respect of any refusal by the Panel to recognise, or any decision of the Panel to cease to recognise, a market-maker or fund manager as an exempt market-maker or exempt fund manager as the case may be.

An appeal may in other cases be made to the Appeal Committee, but only with leave of the Panel. Applications for leave to appeal may be made to the Panel by any party within a reasonable time to be stipulated by the Chairman (or, at the discretion of the Chairman, by the Panel itself) or, in the absence of such stipulation, within two

business days of the receipt in writing of the reasoned decision in question. The application will be determined by the Chairman (or, at the discretion of the Chairman, by the Panel itself). The Panel would not normally expect to grant leave to appeal against a finding of fact or against a decision of the Panel on the interpretation of the Code. However, leave to appeal (including the terms, if any, of such leave) may be granted if the Chairman (or the Panel, where it is hearing any such application) considers that the case is one of general importance or one which for some other special reason should be considered by the Appeal Committee.

In all cases, notice of appeal must be given within such time as is stipulated on the grant of leave to appeal or, in the absence of such stipulation, within two business days of the grant of leave (where leave is required) or (in other cases) within two business days of the receipt in writing of the reasoned decision in question. The Panel may suspend publication in full of its findings during this time, although an appropriate interim announcement may be made. If there is an appeal, publication may, at the discretion of the Chairman, be suspended until after the decision of the Appeal Committee.

The Chairman and/or Deputy Chairman of the Appeal Committee (or, if unavailable, their alternates), who will normally have held high judicial office, sit with members of the Panel who have not been involved in the decision of the Panel under appeal. The quorum for the Appeal Committee is three.

The Appeal Committee may, although it does not normally, hear new evidence.

If an appeal is upheld, the appellant is consulted on the form of statement, if any, which is to be published. If an appeal is dismissed, the findings of the Panel are published and any steps decided upon by way of action implemented. In either case, the Appeal Committee may make any further comment it thinks fit.

(g) Procedure before the Appeal Committee

Proceedings before the Appeal Committee are generally conducted in a similar way to those before the Panel.

(h) Procedural directions

On the application of any party, the Chairman or one of the Deputy Chairmen of the Panel (or, in the case of an appeal to the Appeal Committee, the Chairman or the Deputy Chairman of the Appeal Committee) may give such procedural directions as he considers appropriate for the determination of a case. An appeal may be made to the Chairman or the Deputy Chairman of the Appeal Committee against any directions given by the Chairman or one of the Deputy Chairmen of the Panel. For the efficient conduct of a case, the Chairman or one of the Deputy Chairmen of the Panel may direct when any such appeal may be made.

4. Companies and Transactions to which the Code Applies

(a) Companies

In determining whether or not the Code applies, it is the nature of the company which is the offeree or potential offeree company, or in which control (as defined) may change or be consolidated, that is relevant.

The Code applies to offers for all listed and unlisted public companies (and, where appropriate, statutory and chartered companies) considered by the Panel to be resident in the United Kingdom, the Channel Islands or the Isle of Man. The Code does not, however, apply to Open-Ended Investment Companies. It also applies to offers for private companies considered to be so resident but only when:-

- (i) their equity share capital has been listed on the London Stock Exchange at any time during the 10 years prior to the relevant date; or
- (ii) dealings and/or prices at which persons were willing to deal in their equity share capital have been published on a regular basis for a continuous period of at least six months in the 10 years prior to the relevant date, whether via a newspaper, electronic price quotation system or otherwise; or
- (iii) their equity share capital has been subject to a marketing arrangement as described in Section 163(2)(b) of the Companies Act 1985 at any time during the 10 years prior to the relevant date (eg their shares were dealt in on the Unlisted Securities Market); or

- (iv) they have filed a prospectus for the issue of equity share capital with the registrar of companies at any time during the 10 years prior to the relevant date.

In each case, the relevant date is the date on which an announcement is made of a proposed or possible offer for the company or the date on which some other event occurs in relation to the company which has significance under the Code.

The Panel appreciates that the provisions of the Code may not be appropriate to all statutory and chartered companies or to all private companies falling within the categories listed above and will, therefore, apply the Code with a degree of flexibility in suitable cases.

The Panel will normally consider a company to be resident only if it is incorporated in the United Kingdom, the Channel Islands or the Isle of Man and has its place of central management in one of those jurisdictions.

(b) Transactions

The Code is concerned with takeover and merger transactions, however effected, of all relevant companies; these include partial offers, offers by a parent company for shares in its subsidiary and certain other transactions where control of a company (as defined) is to be obtained or consolidated. References in the Code to "takeovers" and "offers" include, where appropriate, all such transactions. The Code does not apply to offers for non-voting, non-equity capital unless they are offers required by Rule 15.

(c) Dual jurisdiction

Code transactions may from time to time be subject to the dual jurisdiction of the Panel and an overseas takeover regulator. In such cases, early consultation with the Executive is required so that guidance can be given on how any conflicts between the relevant regulations may be resolved.

**THE RULES GOVERNING THE SUBSTANTIAL ACQUISITIONS OF
SHARES**

Introduction

1. Constitution

The Rules Governing Substantial Acquisitions of Shares ("the SARs") are issued on behalf of the Panel on Takeovers and Mergers. The Chairman, Deputy Chairmen and certain further members of the Panel are appointed by the Governor of the Bank of England. In addition, its membership comprises individuals nominated by the following bodies, all of which are committed to support its activities:-

The Association of British Insurers

The Association of Investment Trust Companies

The Association of Private Client Investment Managers and Stockbrokers

The Association of Unit Trusts and Investment Funds

The British Bankers' Association

The Confederation of British Industry

Fund Managers' Association

The Institute of Chartered Accountants in England and Wales

The London Investment Banking Association (with separate representation for its Corporate Finance Committee and Securities Trading Committee)

The National Association of Pension Funds

Each of the bodies listed above may also nominate designated alternates.

The SARs are administered on a day-to-day basis by the Panel through its Executive, headed by the Director General. The Executive is available both for consultation and to give rulings on points of interpretation.

The Panel may delegate the rule-making function concerning amendments to the SARs to the Code Committee, whose members would not normally participate in Panel hearings. Normally, the Code Committee consults publicly on proposed SARs amendments.

These Rules are not framed in technical language. Therefore the Panel may modify or relax the application of a Rule if it considers that, in the particular circumstances of the case, it would operate unduly harshly or in an unnecessarily restrictive or burdensome, or otherwise inappropriate, manner.

2. Scope

Subject to certain exceptions, the SARs restrict the speed with which a person may increase his holding of shares and rights over shares to an aggregate of between 15% and 30% of the voting rights of a company. The SARs also require accelerated disclosure of acquisitions of shares or rights over shares relating to such holdings. Generally, the SARs apply in the same way to market-makers as to any other person.

The SARs apply to transactions in the shares of companies considered by the Panel to be resident in the United Kingdom, the Channel Islands or the Isle of Man if their shares are listed on the London Stock Exchange, dealt in on the Alternative Investment Market or traded on OFEX. The SARs do not, however, apply to Open-Ended Investment Companies.

The Panel will normally consider a company to be resident only if it is incorporated in the United Kingdom, the Channel Islands or the Isle of Man and has its place of central management in one of those jurisdictions.

The SARs do not apply to an acquisition by a person:-

- (a) who has announced a firm intention to make an offer for the company, to which the City Code on Takeovers and Mergers ("the Code") applies, the posting of which is not, or has ceased to be, subject to a pre-condition. A person who makes such an announcement is subject to the Code, and not to the SARs, in respect of acquisitions during the course of the offer; or

- (b) which results in his holding shares or rights over shares carrying in the aggregate 30% or more of the voting rights of the company. Such a person will be subject to the provisions of Rule 5 of the Code and will, if appropriate, be obliged to make a mandatory offer under Rule 9.

3. Enforcement, Disciplinary Proceedings and Appeals

The position on enforcement and disciplinary proceedings is the same as that under the Code. If a person wishes to contest a ruling of the Executive, he is entitled to request that the matter be reconsidered by the Panel. Detailed information on these arrangements and on the procedures of the Panel is contained in the Introduction to the Code.

4. Tender Offers

Where a tender offer to which the SARs applies is made through the London Stock Exchange or on OFEX, the SARs take precedence over requirements of the London Stock Exchange and OFEX for the conduct of tender offers. However, the resulting transactions will be subject to the relevant trade and transaction reporting rules and requirements for delivery and settlement.

Where a tender offer is made solely for the purpose of a company buying in its own shares, the SARs do not apply.