

# THE TAKEOVER PANEL

## OPPORTUNITY INVESTMENT MANAGEMENT PLC (“OIM”)

### Background

Mercurius Beleggingsmaatschappij BV (“**Mercurius**”) holds 5,851,212 shares in OIM, representing a 30.13% interest in OIM.

In November 2011, Mercurius assigned the benefit of a loan that it had made to another shareholder of OIM to Budeste Maastricht BV (“**Budeste**”). The shares in OIM held by the borrower were charged as security for the loan. In late November 2011, the borrower defaulted and Budeste enforced its security. As a result of that enforcement action, Budeste acquired 2,524,791 shares in OIM on 7 December 2011 which, at that time, represented a 14.7% interest in OIM. Mercurius’s interest in OIM exceeded 30% at that time. Budeste disposed of 23,383 OIM shares on 26 April 2013. It currently holds 2,501,408 OIM shares, representing a 12.88% interest in OIM.

### Rule 9 of the Takeover Code (the “Code”)

In summary, Rule 9.1 of the Code provides that, except with the consent of the Panel, when 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 make a general offer for the company in accordance with Rule 9.

However, Note 2 of the Notes on Dispensations from Rule 9 provides, in summary, that where shares are charged as security for a loan and, as a result of enforcement, the lender would otherwise incur an obligation to make a general offer under Rule 9.1, the Panel will not normally require an offer if sufficient interests in shares are disposed of within a limited period to persons unconnected with the lender, so that the percentage of shares carrying voting rights in which the lender, together with any persons acting in concert with it, is interested is reduced to the percentage held by those persons prior to the triggering acquisition being made. In giving its consent, the Panel will require that, in accordance with Rule 9.7, until such time as the interests in shares are disposed of, appropriate restrictions are imposed on the exercise of voting rights attaching to the shares in which the lender or persons acting in concert with the lender are interested.

### **Concert party ruling, voting restrictions and disposal of interests**

At the request of OIM, the Panel Executive has examined whether Mercurius should be regarded as acting in concert with Budeste. Having concluded its review of the relationship between Mercurius and Budeste, the circumstances of the assignment of the loan by Mercurius to Budeste, and the subsequent acquisition by Budeste of the shares in OIM in December 2011 (the “**Transactions**”), the Panel Executive has ruled that Mercurius should be regarded as acting in concert with Budeste, and that these parties should have been regarded as persons acting in concert both at the time of the Transactions and subsequently.

The Panel Executive is not requiring Mercurius or Budeste to make a general offer for OIM under Rule 9.1. However, in line with Note 2 of the Notes on Dispensations from Rule 9, the Panel Executive has ruled that the aggregate percentage of shares in OIM carrying voting rights in which Mercurius and Budeste, and any persons acting in concert with either of them, are interested must be reduced to 30.13% by way of the disposal of shares in OIM. In addition, pending this disposal, and in accordance with Rule 9.7, the Panel Executive has ruled that the aggregate number of votes that may be exercised at any general meeting of OIM by Mercurius and Budeste, and any

persons acting in concert with either of them, must not exceed 30.13% of the votes exercisable at any such meeting.

Each of Mercurius, Budeste and OIM has accepted the Panel Executive's rulings.

5 March 2014