

# THE TAKEOVER PANEL

## AMENDMENTS TO THE TAKEOVER CODE

### MANAGEMENT BUY-OUTS

In conjunction with the Institutional Shareholders Committee, the Panel has recently been giving consideration to problems which arise in management buy-out offers. It has been decided that there are a number of changes to the Code which can usefully be made to increase the protection for shareholders in such cases. These concern the importance of independent advice from financial advisers and directors independent of the buy-out group and the kind of information to be given to the independent directors or to competitive bidders. The Code changes are set out below.

Substitute the following for existing Note 1 on Rule 3.1:-

"1. Management buy-outs and offers by controlling shareholders

The requirement for competent independent advice is of particular importance in cases where the offer is a management buy-out or similar transaction or is being made by the existing controlling shareholder or group of shareholders. In such cases, it is particularly important that the independence of the adviser is beyond question. Furthermore, the responsibility borne by the adviser is considerable and, for this reason, the board of the offeree company or potential offeree company should appoint an independent adviser as soon as possible after it becomes aware of the possibility that an offer may be made."

Add a new Note 8 on Rules 19.1 to 19.4:-

"8. Management buy-outs

If the preferred offer or potential offer is a management buy-out or similar transaction, the information which Rule 19.4 requires to be furnished to competing offerors or potential offerors is that information generated by the offeree company (including the management of the offeree company acting in their capacity as such) which is passed to external providers or potential providers of finance (whether equity or debt) to the offeror or potential offeror. The Panel expects the directors of the offeree company who are involved in making the offer to co-operate with the independent directors of the offeree company and its advisers in the assembly of this information."

Add a new Rule 19.6:-

"19.6 MANAGEMENT BUY-OUTS

If the offer or potential offer is a management buy-out or similar transaction, the offeror or potential offeror must, on request, promptly furnish the independent directors of the offeree company or its advisers with all information which has been furnished by the offeror or potential offeror to external providers or potential providers of finance (whether equity or debt) for the buy-out."

Add a new Note 4 on Rule 25.1:-

"4. Management buy-outs

If the offer is a management buy-out or similar transaction, a director will normally be regarded as having a conflict of interest where it is intended that he should

have any continuing role (whether in an executive or non-executive capacity) in either the offeror or offeree company in the event of the offer being successful."

#### Effective date

Where practicable, these changes should come into effect immediately; where, however, this would produce major difficulties, the Panel will endeavour to agree a solution fair to all parties.

New pages for the Code will be issued early in the New Year.

20 December 1989