

THE TAKEOVER PANEL

HSBC HOLDINGS plc ("HSBC") / LLOYDS BANK Plc ("LLOYDS") /MIDLAND BANK plc ("Midland")

The Panel met today to hear an appeal by Midland, advised by S. G Warburg & Co. Ltd ("Warburgs") and Samuel Montagu & Co. Limited ("Samuel Montagu"), against a ruling by the Executive that Midland should give to Lloyds information in accordance with Rule 20.2 of the City Code.

Background

On 17 March 1992, an announcement was made that HSBC and Midland were in discussions about an offer by HSBC for Midland.

On 14 April, HSBC, advised by J Henry Schroder Wagg & Co. Limited ("Schroders"), announced a recommended offer of one new HSBC share and 100p nominal of new HSBC Holdings bonds for each Midland share. The offer was recommended by Midland and its financial advisers, Warburgs. The offer document was posted on 8 May.

On 28 April, Lloyds announced that it was considering making an offer (the "Proposed Offer") for Midland. The Proposed Offer was subject to the fulfilment of two pre-conditions, although Lloyds reserved the right to waive either of those pre-conditions. The two pre-conditions to the making of the Proposed Offer were stated in the announcement as follows:

"(a) that either (i) Lloyds Bank becomes satisfied that the Proposed Offer, if made, would not be referred to the Monopolies and Mergers Commission, or (ii) if the Proposed Offer is so referred, then the HSBC offer for

Midland Bank (or any revision thereof) is also referred to the Monopolies and Mergers Commission; and

- (b) that Lloyds Bank receives all information on Midland Bank which HSBC has received since 1 January 1992 and that this information is satisfactory to Lloyds Bank."

In the announcement, Lloyds stated that its proposed offer was one new Lloyds share plus 30p in cash for each Midland share.

On 1 May, Midland posted a circular to its shareholders explaining the background to the announcements listed above. This circular explained that Midland, together with its advisers, had considered approaches from both Lloyds and HSBC, on an even-handed basis, before the decision was made to recommend the HSBC offer.

Following this decision, certain information had been passed to HSBC to enable it to complete the due diligence process.

Immediately after its announcement on 28 April, Lloyds, through its advisers Baring Brothers & Co Limited ("Barings") submitted to Warburgs a request for specific information in accordance with the requirements of Rule 20.2.

On 7 May, Midland put out an announcement which stated that the board had concluded that it should not pass unpublished information to Lloyds.

Following discussions with all parties the Panel Executive ruled on 11 May that Lloyds was entitled to receive information in accordance with Rule 20.2.

On 12 May, Midland appealed against that decision.

Code Issues

Rule 20.2 provides:

"Equality of Information to Competing Offerors

Any information, including particulars of shareholders, given to one offeror or potential offeror must, on request, be given equally and promptly to another offeror or bona fide potential offeror even if that offeror is less welcome

Notes on Rule 20.2

1 General enquiries

The less welcome offeror or potential offeror should specify the questions to which it requires answers. It is not entitled, by asking in general terms, to receive all the information supplied to its competitor."

Paragraph 3 of the Introduction to the Code provides that:

". . . . 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."

Decision

It was not disputed that Lloyds was anything other than a "bona fide potential offeror". Accordingly there was an obligation on Midland under Rule 20.2 promptly to give to Lloyds the information which it had given to HSBC and which had been requested by Lloyds. The issue which had to be determined by the Panel was whether, in the particular circumstances of the case, the application of the Rule should be modified or relaxed.

It was common ground that the underlying purpose of Rule 20.2 was the protection of Midland shareholders. It was, however, in dispute how, in the particular circumstances, that protection should best be achieved.

It was submitted, on behalf of Midland, that Midland shareholders were likely to be damaged if the relevant information were now to be given to Lloyds. As against that, it was submitted, on behalf of Lloyds, that the withholding of the information now might deprive Midland shareholders of an actual offer (as opposed to the present Proposed Offer) being made by Lloyds, or an offer on terms more favourable than those contained in the Proposed Offer.

In the view of the Panel the likelihood of damage being done to Midland shareholders was greater if the relevant information were now to be withheld than if it were now to be given to Lloyds. Further, in passing the information which it had to HSBC, Midland had been aware that other less welcome potential offerors would become entitled to request that that information be given to them in accordance with the provisions of Rule 20.2.

The Panel decided it was inappropriate in the particular circumstances of the case to modify or relax the application of Rule 20.2 in the way suggested on behalf of Midland, and the appeal was accordingly dismissed. The Panel refused leave to appeal to the Appeal Committee.

15 May 1992