

THE TAKEOVER PANEL

THE BRITISH LAND COMPANY PLC ("BRITISH LAND") / STANHOPE PROPERTIES PLC ("STANHOPE")

DECISION OF THE PANEL

On 7 March 1995, the Panel met to hear an appeal by KPMG Corporate Finance ("KPMG"), acting for the Receivers to Rosehaugh Plc ("Rosehaugh"), against the Panel Executive's ruling that the offer made by British Land for Stanhope should not trigger an offer for Rosehaugh's 50% share in Broadgate Properties Plc ("Broadgate") by application of Note 7 on Rule 9.1 of the Code, known as the "chain principle".

Background

On 19 January 1995 British Land announced the terms of its offer for Stanhope which was made on its behalf by its financial adviser, S G Warburg & Co Ltd ("Warburgs"). The joint financial advisers to Stanhope are J Henry Schroder Wagg & Co Ltd ("Schroders") and Lazard Brothers & Co Limited. Broadgate is a joint venture deadlock company owned in equal shares by Stanhope and Rosehaugh and was formed in 1983 as a vehicle through which Stanhope and Rosehaugh would jointly develop a large area of land to the east of Finsbury Avenue in the City of London.

On 16 January, the Executive was approached by Warburgs and Schroders who requested a ruling whether the chain principle would be applied to force an offer for Broadgate as a result of British Land's proposed offer for Stanhope. The Panel Executive ruled that, in all the circumstances of the case, the chain principle should not be applied. At the request of

Warburgs and Schroders the ruling was given on an ex-parte basis.

The offer was announced and KPMG were informed of the ex-parte ruling on 19 January. KPMG made representations to challenge the ruling. The Panel Executive considered these representations but confirmed its earlier ruling. KPMG appealed that ruling.

Decision

The Code applies to public companies incorporated and resident in the UK. Waivers of the Code's mandatory offer rule in respect of such companies are only granted in exceptional circumstances.

In this particular case, the Panel took the view that since Broadgate was a joint venture between two partners the Code should not be applied to it. Further, the deadlock arrangements between Stanhope and Rosehaugh were such that the Panel did not consider that British Land's offer for Stanhope would lead, in terms of the Code, to a change of control of Broadgate. Finally, in view of the exceptional circumstances of this case the Panel was satisfied that it was, in any event, right to use its discretion not to apply the Code's mandatory offer rule.

The Panel therefore agreed with the Panel Executive's conclusion and the appeal was accordingly dismissed.

7 March 1995