THE TAKEOVER PANEL

2001 ANNUAL REPORT

The Panel's 2001 Annual Report was published today. Attached are extracts from the Report by the Director General contained in the Annual Report, in which the following topics are addressed.

- The Executive's general approach to "put up or shut up"
- Rule 2.8 - statements of intention not to make an offer
- Dual listed companies
- Inducement fees
- Note 3 on Rule 20.1
- Drag along rights

The Annual Report can be found on the Panel's website: www.thetakeoverpanel.org.uk

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THE EXECUTIVE'S GENERAL APPROACH TO "PUT UP OR SHUT UP"

An announcement obligation may arise under Rule 2.2 of the Code (for example, as a result of rumour and speculation) at a time when a potential offeror is contemplating making an offer for a company but is not in a position to be committed to making a firm offer. In such circumstances, the potential offeror is normally permitted under Rule 2.4 of the Code to announce merely that he is considering making an offer for the company.

Following such an announcement there is no fixed deadline in the Code by which a potential offeror must clarify his intentions. The timing of any subsequent announcements will depend, inter alia, on the reaction of the offeree board to the potential offeror and the state of preparedness of the potential offeror.

Where the offeree board is prepared to enter into a dialogue with the potential offeror, many months may pass before an offer is finally made. Provided the target company is content for the uncertainty to continue, the Executive would not normally seek to intervene in the process. However, in certain circumstances, usually where the potential offeror is unwelcome, the target company may request the Executive to intervene by imposing a deadline by which the potential offeror must clarify his intentions, i.e. "put up or shut up".

In this regard, "put up" is communicated by way of a Rule 2.5 firm offer announcement and "shut up" by way of a no intention to bid statement.

Requests by the target company for the offeror to be required to "put up or shut up" are generally made at the early stages of an offer period. In such cases, the Executive endeavours to balance the interests of shareholders in not being deprived of the opportunity to consider the possibility of an offer against potential damage to the target company's business arising from the uncertainty surrounding the company and the distraction for management. In this regard, the Executive's normal approach is to seek clarification by the potential offeror within six to eight weeks from the original announcement of the possible offer. If a request is made at a later stage, the Executive will consider the circumstances at that time.

If the potential offeror clarifies his intentions by way of a no intention to bid statement, this statement will be governed by Rule 2.8 and the potential offeror will normally be prevented from making an offer for the company for a period of six months (unless there is a material change of circumstances and subject to any specific reservations set out in the statement). However, if the Executive considers that the offeree company has suffered excessive siege as a result of the potential offeror's actions, it may impose the restrictions contained within Rule 35.1(b) and prevent the potential offeror from making an offer for a period of 12 months.

RULE 2.8 - STATEMENTS OF INTENTION NOT TO MAKE AN OFFER

Rule 2.8 provides that a person who makes a statement that he does not intend to make an offer for a company will normally be bound by that statement for a period of six months (unless there is a material change of circumstances and subject to any specific reservations set out in the statement).

Occasionally, speculation will appear in the press concerning a possible offer by a particular person, when the reputed offeror has in fact not been considering any offer for the company in question and there is no foundation for that speculation.

The reputed offeror must in such circumstances take care, if he chooses to comment on the speculation, not to make a statement of a kind to which Rule 2.8 applies if he does not wish to be bound by the statement for a period of six months. The Executive should be consulted before a statement is made in such circumstances. A public statement simply denying that the speculation has any foundation is likely to be construed by the Executive as a statement that the reputed offeror has no intention to bid for the company concerned.

DUAL LISTED COMPANIES

The establishment of a dual listed company structure when no person, or persons acting in concert with him, obtains or consolidates control of a Code company is not normally considered to be a transaction to which the Code applies. Depending upon the method by which a dual listed company structure is established, therefore, the implementation

of such a structure may well not be considered to be an offer as defined in the Code. Parties or their advisers proposing to implement such a structure in relation to a company to which the Code applies should consult the Executive at the earliest opportunity.

Following the implementation of a dual listed company structure, the Code will continue to apply to companies which fall within the jurisdiction of the Code. Where the parties to the dual listed company structure have effectively consolidated shareholder voting in both companies by way of a combined voting structure, an acquisition of shares in a non-Code company will constitute an acquisition of voting rights in a Code company. This will be relevant for the purposes of, inter alia, Rules 6, 9, 10 and 11.

For the purposes of establishing the mandatory bid threshold for Rule 9, the test the Executive applies in relation to the acquisition of voting rights is by reference to the combined voting structure. The calculation of the acceptance condition threshold for Rule 10 purposes is, therefore, also predicated on a combined voting test.

INDUCEMENT FEES

Rule 21.2 sets out certain safeguards which an offeree company must observe prior to agreeing to pay an inducement fee to an offeror. These include a requirement that the inducement fee must be de minimis, the test for which is that it must normally be no more than 1% of the offer value. The rationale for this limit (and Rule 21.2 generally) is to prevent the possible payment of an inducement fee from frustrating a potential competing bid. Where an offeror holds an existing shareholding in the offeree, the offer value is clearly less than the value of the whole of the offeree company. In the light of the rationale for Rule 21.2, the Executive will normally consider it appropriate to apply a de minimis test in these circumstances of 1% of the value of the offeree company calculated by reference to the offer price.

The Executive has also been considering the application of Rule 21.2 to the payment of an inducement fee in the context of a whitewash transaction. The Executive has concluded that it will generally apply Rule 21.2 in these circumstances. The de minimis

test will normally be taken to be 1% of the value of the offeree company immediately prior to the announcement of the proposed whitewash transaction.

NOTE 3 ON RULE 20.1

Meetings of representatives of the offeror or the offeree company with shareholders may take place, provided no material new information is forthcoming, and an appropriate representative of the financial adviser is present and writes to the Executive to the effect that no material new information was forthcoming at the meeting. Such meetings are sometimes held before an offer period exists. The provisions of Rule 20.1 extend to such circumstances and the Executive would expect to receive a letter from the appropriate financial adviser, by 12 noon on the business day following the date of the meeting, stating that no material new information was forthcoming and no significant new opinions were expressed at such meeting, which will not be included in the announcement of the offer to be made under Rule 2.5, if and when such an announcement is made.

DRAG ALONG RIGHTS

The Executive is aware that the Articles of Association of certain unlisted public companies contain provisions pursuant to which shareholders who together control in excess of a specified percentage of the voting rights of the company and who are proposing to dispose of their shareholdings to the same person, whether pursuant to an offer or otherwise, may, upon that disposal becoming effective, require the remaining shareholders in the company to transfer their shares to that offeror or purchaser on equivalent terms - so called "drag along" rights. The inclusion of drag along rights in the Articles cannot preclude the protections afforded by the Code to shareholders on a potential change of control. Accordingly, the Code will invariably apply to such a transaction, although its precise effect will depend on the facts of the particular case. In the light of this, the Executive should always be consulted prior to the proposed triggering of any drag along rights.