

# THE TAKEOVER PANEL

## CODE COMMITTEE

### RESPONSE STATEMENT 11 AND CODE AMENDMENTS

On 1 July, the Code Committee announced that it intended to consider the responses received to Public Consultation Paper 11 and, in due course, to approve the final text of the proposed amendments to the Code and publish a paper setting out the results of the public consultation process. The Code Committee has today issued this paper, Response Statement 11, and it may be obtained from the Panel's website at [www.thetakeoverpanel.org.uk](http://www.thetakeoverpanel.org.uk), or by telephoning the Panel on 020 7382 9026.

The proposals in PCP 11 sought to amend the Code to bring the establishment of dual listed company ("DLC") structures within the Code. They also sought to amend Rule 21.2 to clarify the nature of the arrangements to which the Rule applies and to extend the scope of the Rule to cover DLC transactions.

The Code Committee has decided to bring the establishment of DLC structures within the Code and to adopt the approach referred to as Option Two in PCP 11, i.e. to bring such transactions within the Code from the start. The consequential Code changes recommended in PCP 11 will, therefore, be made, subject to minor changes to the proposed definition of "offer". The proposals relating to Rule 21.2 will be implemented without amendment.

The amendments to the Code set out in Response Statement 11 are set out in the Appendix to this statement and will take effect immediately. The amended pages of the Code will be published shortly.

27 August 2002

## APPENDIX

### DEFINITIONS

#### Offer

Offer includes, wherever appropriate, takeover and merger transactions however effected, including reverse takeovers, partial offers, Court schemes, offers by a parent company for shares in its subsidiary and dual holding company transactions. In some circumstances, the Code may have relevance to unitisation proposals which are in competition with an offer to which the Code applies; the Panel should, therefore, be consulted when such proposals are under consideration.

#### Rule 21.2 INDUCEMENT FEES

##### *NOTES ON RULE 21.2*

1. *Arrangements to which the Rule applies*

An inducement fee is an arrangement which may be entered into between an offeror or a potential offeror and the offeree company pursuant to which a cash sum will be payable by the offeree company if certain specified events occur which have the effect of preventing the offer from proceeding or causing it to fail (e.g. the recommendation by the offeree company board of a higher competing offer).

*This Rule will also apply to any other favourable arrangements with an offeror or potential offeror which have a similar or comparable financial or economic effect, even if such arrangements do not actually involve any cash payment.*

Such arrangements will include, for example, break fees, penalties, put or call options or other provisions having similar effects, regardless of whether such arrangements are considered to be in the ordinary course of business. In cases of doubt the Panel should be consulted.