

THE TAKEOVER PANEL

SIX CONTINENTS PLC ("SIX CONTINENTS")

CAPITAL MANAGEMENT AND INVESTMENT PLC ("CMI")

Introduction

CMI has today, 3 March, announced a unilateral securities exchange offer for Six Continents. CMI also announced at the same time that, with the consent of the Panel on Takeovers and Mergers (the "Panel"), it would be disposing of the 2,600,000 ordinary shares it currently holds in Six Continents and donating any profits arising from such disposal to charities of its choice approved by the Panel.

The purpose of this Statement is to explain the background to, and reasons for, this action being taken.

Background

Between 8 and 14 February, CMI entered into a number of options to acquire, in aggregate, 2,600,000 Six Continents shares (representing approximately 0.3% of Six Continents' issued share capital). The options were exercised on 14 February and CMI became beneficially entitled to those shares on that date. The highest price paid by CMI in respect of a Six Continents share as a result of the exercise of the options, calculated by reference to the purchase price of the options and the relevant exercise terms, was 542 pence.

Later, on 19 February, CMI announced that it was considering making a take-over offer for Six Continents. As a result of this announcement, an offer period (as defined in the City Code on Takeovers and Mergers (the "Code")) began in relation to Six Continents.

Rule 6 and General Principle 1

As a result of the acquisition by CMI of Six Continents shares, CMI was subject to Rule 6.1 of the Code which provides that, where an offeror has purchased shares in the offeree company during the three month period prior to the commencement of the offer period, its offer to shareholders of the same class must not be on less favourable terms. Rule 6 is essentially a reflection of General Principle 1 of the Code, the shareholder equality principle.

Where an offer is wholly in cash, or includes a full cash alternative, it is a straightforward matter to establish whether the offer is on no less favourable terms than an earlier purchase of offeree company shares for cash (and therefore whether Rule 6 is satisfied), since it will normally simply be a question of comparing the cash offer price with the earlier cash purchase price.

Rule 6 does not require an offer to be made in cash in such circumstances, but where the proposed offer is in shares, or includes shares, Note 3 on Rule 6 specifies how the shares offered should be valued in determining whether the offeror has satisfied its Rule 6 obligation. The Note provides as follows:

"3. No less favourable terms

For the purpose of Rule 6.1, except where Rule 9 (mandatory offer) or Rule 11.1 (requirement for cash offer) applies, it will not be necessary to make a cash offer available even if shares have been purchased for cash. However, any securities offered as consideration must, at the date of the announcement of the firm intention to make the offer, have a value at least equal to the highest relevant purchase price. If, during the period ending when the market closes on the first business day after the announcement, the value is not maintained, the Panel will be concerned to ensure that the offeror acted with all reasonable care in determining the consideration.

If there is a restricted market in the securities of an offeror, or if the amount of securities to be issued of a class already listed is large in relation to the amount already issued, the Panel may require justification of prices used to determine the value of the offer."

The first paragraph of Note 3 therefore provides that, in most cases, the appropriate method of determining whether the offeror's offer value exceeds the Rule 6 price is by reference to the offeror's share price at the time of its announcement of a firm intention to make an offer and during the period from that announcement until the market closes on the following business day. The second paragraph of Note 3 recognises, however, that in certain cases, for example if the amount of listed securities to be issued is large in relation to the amount already issued, the market price of the offeror's securities at the time of announcement of the offer might not be capable of providing an accurate yardstick against which to determine whether the offeror has satisfied its Rule 6 obligation.

In the present case, CMI's offer involves the issue to Six Continents shareholders of some 32,124 million ordinary shares compared with a current issued share capital of only 233 million ordinary shares and, accordingly, Note 3 on Rule 6 is clearly applicable. To solve any potential concerns under Rule 6, CMI proposed to the Executive that it would be prepared to sell the Six Continents shares it had acquired as a result of the exercise of the options described above and to donate any profits accruing to it from such sale to charities of its choice approved by the Panel.

In the circumstances of this particular case, the Executive is satisfied that the acquisition of Six Continents shares by CMI does not now give rise to a requirement for CMI to justify the price used to determine the value of its offer in accordance with Rule 6, and has ruled to this effect.

Rule 4.2

Rule 4.2, which generally prohibits the sale by an offeror during the offer period of offeree company shares, is designed to prevent offerors from misleading or manipulating the market. For example, a false market might be created in the shares of an offeree company if an offeror, who would reasonably be considered to be a purchaser of those shares, in fact disposes of his interest during the offer period. In other words, the market might reasonably consider such a sale to be an indication that the offeror does not intend to proceed with its offer for the offeree company.

In order to address these concerns, Rule 4.2 provides a number of safeguards if any sale by an offeror is to be made during the offer period, namely: that any such sale can only be made with the prior consent of the Panel and following 24 hours public notice that sales might be made; that a sale will not be permitted below the value of the offeror's offer; that no further purchases of offeree company shares may be made by the offeror; and, that the offeror will not normally be permitted to revise its offer following the announcement that sales might be made.

In the present case, given its ruling set out above, the Executive is satisfied that the proposed disposal by CMI of the shares it had acquired in Six Continents is not intended to mislead or manipulate the market, but is rather a pragmatic solution to any potential concerns arising under Rule 6. Accordingly, the Executive has given its consent under Rule 4.2 to the sale by CMI of its shares in Six Continents, and has ruled that the usual consequences of a sale under Rule 4.2 should not apply in this case.

Conclusion

The Executive has accordingly ruled in the terms set out above in this Statement. These rulings have been accepted by both CMI and Six Continents.

3 March 2003