

THE TAKEOVER PANEL

RELEASE OF PANEL EXECUTIVE PRACTICE STATEMENTS NO. 6 AND 7

The Panel Executive has today released Practice Statements No. 6 (Strategic Review Announcements) and 7 (Possible Improvement Statements), copies of which are attached to this Statement.

21 July 2004

PRACTICE STATEMENT NO. 6

STRATEGIC REVIEW ANNOUNCEMENTS

From time to time, a company may announce that it is conducting a strategic review of its business (a "strategic review announcement"); in some cases, the announcement will go on to identify an offer for the company as one of the possible outcomes of the strategic review. The Executive is aware that, whilst the ultimate conclusion of a strategic review might be an offer for the company, an offer may be only one of a number of options being explored by the company. The Executive is also mindful that such reviews may take place over a protracted period of time.

The Executive's practice in relation to strategic review announcements and Rule 2 is as follows:

- (i) *Strategic review announcement which refers to an offer:*

If the strategic review announcement refers specifically to an offer (or a merger or the search for a buyer for the company) as one of the options to be considered as part of the strategic review, the Executive will normally treat the announcement as starting an offer period in relation to the company. This is in accordance with the definition of "offer period", which states that an offer period will commence on the announcement of "a proposed or possible offer".

If the conclusion of the strategic review is not to pursue an offer, the company will be required to update the position by way of a public announcement. At that point, the offer period will end.

(ii) *Strategic review announcement which does not refer to an offer:*

If the strategic review announcement does not refer to an offer (or a merger or the search for a buyer for the company), the Executive will not treat the announcement as automatically starting an offer period.

In such circumstances, the Executive will make enquiries of the company's advisers as to the options being considered by the board. The Executive will normally require the company to make a further announcement, identifying that an offer is one of the options to be considered as part of the strategic review, where both:

- (a) an offer is being, or will be, actively considered (as opposed to being, as it almost inevitably will be, one of many possibilities); and
- (b) there is rumour and speculation about a possible offer for the company or an untoward movement in its share price.

Any such further announcement will commence an offer period. Where such a further announcement has been made, and if the conclusion of the strategic review is not to pursue an offer, the company will be required to update the position by way of a public announcement. At that point, the offer period will end.

Companies and their advisers are encouraged to consult with the Executive before making a strategic review announcement.

Practice Statements are issued by the Executive to provide informal guidance to companies involved in takeovers and practitioners as to how the Executive normally interprets and applies relevant provisions of the Code and the SARs in certain circumstances. Practice Statements do not form part of the Code or the SARs. Accordingly, they are not binding on the Executive or the Panel and are not a

substitute for consulting the Executive to establish how the Code and the SARs apply in a particular case. All Practice Statements issued by the Executive are available on the Panel's website at www.thetakeoverpanel.org.uk.

21 July 2004

PRACTICE STATEMENT NO. 7

POSSIBLE IMPROVEMENT STATEMENTS

Under Rule 19.3, parties to an offer or potential offer and their advisers are required to take care not to issue statements which, while not factually inaccurate, may mislead shareholders and the market or may create uncertainty. This general provision is supplemented by one specific example of an unacceptable statement, being a statement by an offeror "to the effect that it may improve its offer without committing itself to doing so and specifying the improvement". This Rule is a reflection of General Principle 6 (which requires parties to endeavour to avoid the creation of a false market) and is designed to prevent an offeror indicating that it might increase (or otherwise alter the terms of) its offer before it is able to commit itself to doing so.

The Executive emphasises that Rule 19.3 is not limited to statements about increases in the financial value of an offer. The Rule extends to any statement which may mislead shareholders or the market or which may create uncertainty (whether or not such statement is factually accurate).

In addition, the Executive interprets the example set out in Rule 19.3 of a statement that an offeror "may improve its offer" as also encompassing statements about offer amendments of a non-financial nature, for example possible changes to the structure of an offer, to the conditionality of an offer or to the non-financial terms of an offer.

Parties to an offer and their advisers should be aware that during the course of an offer, and especially in a competitive or hostile situation, any suggestion of the possibility of a revision to an offer will be of particular sensitivity and could lead to a false market in the securities of the offeree company. If an offeror wishes to publicise its reaction to some development, such as an increase in a competing offeror's offer, it may state simply, as permitted by Note 1 on Rule 19.3, that it is "considering its options" or "considering its position", subject to the requirement to clarify the statement subsequently, as required by the Note. It should not, however, use language which implies that it might alter or revise the terms of its offer.

The Executive should be consulted in cases of doubt.

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