

THE TAKEOVER PANEL

RELEASE OF PANEL EXECUTIVE PRACTICE STATEMENTS NO. 12 AND 13

The Panel Executive has today released Practice Statements No. 12 (Rule 9 and the shareholdings of clients whose funds are managed on a discretionary basis) and No. 13 (Timetable extensions – alterations to a predicted date), copies of which are attached to this Statement.

4 August 2005

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PRACTICE STATEMENT NO. 12

RULE 9 AND THE SHAREHOLDINGS OF CLIENTS WHOSE FUNDS ARE MANAGED ON A DISCRETIONARY BASIS

The definition of “acting in concert” in the Code provides, inter alia, that:

“... the following persons will be presumed to be persons acting in concert with other persons in the same category unless the contrary is established:-

...

- (4) a fund manager (including an exempt fund manager) with any investment company, unit trust or other person whose investments such fund manager manages on a discretionary basis, in respect of the relevant investment accounts;”.

The Executive wishes to make clear that it interprets presumption (4), set out above, to mean that funds managed on a discretionary basis by a fund management organisation will be treated for the purposes of the Code as controlled by the organisation concerned and not by the person(s) on whose behalf the funds are managed. Therefore, holdings of shares managed by a fund management organisation on a discretionary basis will be treated as controlled by the organisation in question and not by its underlying clients. As a result, the Executive will aggregate those shares held by the fund management organisation for its own account and those it manages for its discretionary clients in assessing whether, for example, the fund management organisation has triggered an obligation to make a mandatory offer under Rule 9.1 of the Code.

In the light of the above, and in view also of Note 17 on Rule 9.1, where a fund management organisation launches an investment trust or investment company and wishes to subscribe for shares in the company as principal or on behalf of its discretionary clients, or if it may subscribe for shares pursuant to underwriting arrangements, it should have regard to the Code and, in particular, to the following points:

- (a) Rule 9.1 will be relevant if the aggregate holdings of shares of all persons under the same control as the fund management organisation, and including holdings managed by the fund management organisation on a discretionary basis, carry 30% or more of the company's voting rights. The Executive considers that it would be good practice for the aggregate percentage holding to be disclosed prominently in the offer documentation making clear:
 - (i) if the aggregate percentage holding is or may be between 30% and 50%, that any acquisitions of additional shares carrying voting rights by the fund management organisation or any person under the same control as it which increases the aggregate percentage holding of shares carrying voting rights will trigger an obligation to make a mandatory offer under Rule 9.1; and
 - (ii) if the aggregate percentage holding is more than 50%, that the fund management organisation and persons under the same control as it will normally be able to increase their aggregate percentage holding of shares carrying voting rights without incurring an obligation to make a mandatory offer under Rule 9.1;
- (b) if the number of shares to be issued to the fund management organisation may vary depending on, for example, investor demand, the maximum aggregate percentage holding should be disclosed;
- (c) if the group includes a principal trader and the group's aggregate holding is between 30% and 50% (or is just under 30%), the principal trader may, with

the Panel's prior consent, continue to acquire shares in the company without consequence under Rule 9.1 provided that the company is not in an offer period and the holding of the principal trader does not at any relevant time exceed 3% of the voting rights of the company (see Note 17 on Rule 9.1); and

- (d) if the fund management organisation or any person acting in concert with it holds options, warrants or other rights to subscribe for shares carrying voting rights in the company, or securities convertible into such shares, which on exercise or conversion (as appropriate) would result in Rule 9.1 being triggered, normally no obligation to make a mandatory offer will arise following the exercise or conversion (as appropriate) of such securities provided that the terms are fully disclosed in the public documentation. The text of the proposed disclosure must be cleared with the Executive before publication.

The Executive should be consulted in cases of doubt.

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.

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PRACTICE STATEMENT NO. 13

TIMETABLE EXTENSIONS – ALTERATIONS TO A PREDICTED DATE

Rule 31.7 of the Code states:

“Except with the consent of the Panel, all conditions must be fulfilled or the offer must lapse within 21 days of the first closing date or of the date the offer becomes or is declared unconditional as to acceptances, whichever is the later.”

Similarly, the Panel’s consent is required if the timetable for a scheme of arrangement is to be extended, for example to allow extra time for the satisfaction of a condition.

Where the documentation made available to shareholders has included a predicted date for one or more of (i) the satisfaction of all conditions, (ii) the completion of a scheme of arrangement, or (iii) the posting of the offer consideration to shareholders, any consent by the Executive to a timetable extension will normally be subject to a requirement that notice of the extension be posted to shareholders. An announcement of the extension will not suffice. Posting will normally be required by the Executive even where the offer or scheme documentation has included a warning that the predicted timetable is only indicative and may change.

The Executive should be consulted in cases of doubt.

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