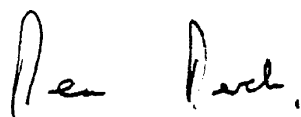


THE TAKEOVER PANEL

23 August 2002

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NON-EXECUTIVE DIRECTORS REVIEW

I am writing to set out the response of the Takeover Panel Executive to your Consultation Paper on the role and effectiveness of non-executive directors.

While I do not consider that it is for the Executive to comment in detail on the specific questions and issues raised in the Consultation Paper, under the Code all directors, and especially non-executive directors in certain situations, have a crucial role to play in safeguarding the interests of shareholders. Therefore, the conclusions of your review may well have an impact on the way in which takeovers are conducted and on the regulatory role which the Panel performs.

Monitoring role of non-executive directors

The Takeover Code imposes certain obligations on the boards of offeror and offeree companies during the course of a takeover offer. For example, a key task for the offeree company's directors under the Code is to consider the terms of the offer and to communicate their views to shareholders. The offeree company board must also obtain competent independent advice on the offer and make the substance of that advice known to offeree shareholders.

In addition, the Code requires that any document or advertisement published by an offeror or offeree during the course of an offer must state that the relevant company's directors accept responsibility for the information contained in it and that, to the best of their knowledge and belief (having taken all reasonable care to ensure that such is

THE PANEL ON TAKEOVERS AND MERGERS

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the case), the information is in accordance with the facts and does not omit anything likely to affect the import of such information.

In imposing such obligations on offeror and offeree company directors, it is an important principle of the Code that (except where a conflict of interest exists – see further below) there should be no distinction between the positions of executive and non-executive directors. As stated in the Introduction to the Code's General Principles:

"Each director of an offeror and of the offeree company has a responsibility to ensure, so far as he is reasonably able, that the Code is complied with in the conduct of an offer."

Although the Code recognises that a board may delegate day-to-day conduct of an offer, or detailed supervision of particular documents, to a committee of the board or to individual directors, the Code requires that the remaining directors must reasonably believe that the persons to whom their functions are delegated are competent to carry those functions out and the board as a whole must ensure that proper arrangements are in place to enable it to monitor matters in order that each director may fulfil his responsibilities under the Code (for example, by ensuring that all board members are kept up to date with events and actions taken during the course of the offer).

The Executive therefore considers it most important in the context of takeover bids and other transactions subject to the Code that non-executive directors are subject to the same responsibilities and obligations as any other director. It is through this accountability that the best protection for offeree company shareholders, and the market as a whole, can be achieved, since the non-executive directors have an important role to perform in monitoring the conduct of the offer (and of the executive team), thereby ensuring that all information and advice released during the offer is prepared with the highest standards of care and accuracy and that the offer is otherwise conducted in accordance with the applicable rules.

Managing conflicts of interest

The role of non-executive directors becomes particularly important in circumstances when the executive directors (or, indeed, any director or directors) have a conflict of interest in connection with a takeover offer or when there is a divergence of views within the board.

For example, the Code recognises that a director with a conflict of interest should not be included within an offeree company board's recommendation to shareholders, although that director may often still be required to accept responsibility for factual information on the company and the offer contained in any document or advertisement.

The Code also provides for the situation where an offeree board may be split in its views on the merits of an offer and provides that in these cases both views should be circulated to the company's shareholders.

The most common takeover situations where directors have conflicts of interest are management buy-outs and offers by controlling shareholders (who are often represented on the offeree company board) for the minority. In these situations, the Panel attaches great importance to the role of the non-conflicted, non-executive directors in ensuring that the Code is complied with and that accurate information and advice as to the merits of the offer are provided to shareholders and the market.

Conclusion

The Code imposes a number of important obligations on the directors of a company involved in a takeover offer and in doing so does not distinguish between the responsibilities borne by executive and non-executive directors, but rather expects all directors to ensure that the Code is complied with. The responsibilities of non-executive directors are greatest, however, in situations where the executive directors have conflicts of interest, and in those cases primary responsibility for ensuring that the Code is complied with falls on the remaining, non-executive directors.

It is therefore most important from the Executive's perspective that non-executive directors are able properly to perform the role expected of them, especially in circumstances where conflicts of interest, or a divergence of views, may exist.

The Executive would therefore welcome any proposals that have the effect of strengthening the quality and effectiveness of non-executive directors, whilst at the same time maintaining their accountability to shareholders (and the market more generally) and ensuring appropriate independence from the rest of the board and any major shareholders. In this regard, the Executive does not consider that there should be any difference between the positions of large and small companies.

Y am.



The Hon P J Remnant
Director General