

3. NMAL is a company incorporated in Bermuda whose shares are listed on the Stock Exchange of Hong Kong. The principal business of NMAL is the provision of life assurance and related services in Hong Kong and Macau.

4. NMLA is the ultimate holding company of NMAL. NMLA's interest in NMAL is held through NMLA's wholly-owned subsidiary, National Mutual (Bermuda) Limited ("NMB"). NMB currently owns (directly or indirectly) approximately 69% of the issued share capital of NMAL.

5. The financial year-ends of NMLA and NMAL are both 30 September. NMLA's audited consolidated accounts as at 30 September 1994 showed gross assets of A\$16.1 billion. NMLA's interest in NMAL was valued in the accounts of NMLA as at that date at A\$1.27 billion, being the market value of its shareholding at that date. Thus, as at 30 September 1994 NMLA's attributable interest in NMAL represented approximately 7.89% of NMLA's gross assets.

6. It is proposed that AXA acquire its interest in the NMLA Group by means of the establishment of a new holding company ("NMH"). It is intended that AXA should subscribe for fully-paid and partly-paid shares in NMH, representing initially approximately 40% of the voting rights in NMH. The partly-paid shares would permit AXA, over time and on payment in full of their subscription price, to increase its voting rights in NMH to approximately 51%. The partly-paid shares will be paid up 24 months after the demutualisation of NMLA, and may be paid up earlier by AXA upon the listing of NMH. The remaining shares in NMH would be owned by the policyholders/beneficiaries who are the current guarantee members of NMLA. It is proposed that the shares of NMH should be listed on the Australian and New Zealand Stock Exchanges, and it is anticipated that listing will take place within 24 months after the demutualisation of NMLA.

7. Following the introduction of AXA, it is proposed to carry out a reorganisation of the NMLA Group. NMH will purchase from NMLA 74% of NMLA's 69% interest in NMAL and 100% of NMLA's interests in its other main operating subsidiaries, namely National Mutual Funds Management, National Mutual Health Insurance and Australian Casualty & Life. This step results from a decision taken by the Board of NMLA to improve the solvency (for Australian regulatory purposes) of NMLA by replacing illiquid assets, which must be discounted for solvency purposes, with liquid assets. The purchase of the interest in NMAL may be done either by NMH acquiring all or a majority of the direct shareholding in NMAL held by NMB, or by NMH acquiring from NMLA all or a majority of its shareholding in NMB (carrying with it the direct shareholding in NMAL). NMH will remain the owner of 100% of NMLA and will retain an attributable investment of 69% in

NMAL.

Code Issues

8. Under the chain principle set out in Note 8 to Rule 26.1 of the Code, if AXA acquires statutory control (*i.e.*, more than 50%) of NMLA thereby acquiring control of a second company (*e.g.*, NMAL), then because NMLA holds a controlling interest (*i.e.*, 35% or more) in such second company a mandatory offer may be required for NMAL. However, Note 8 states that the Executive will not normally require AXA to make any offer for such second company under Rule 26.1 unless either:

a) the holding of NMLA in the second company constitutes a substantial part of the assets of NMLA (the "substantiality test"); or

(b) AXA has as one of its main purposes in acquiring control of NMLA the securing of control of the second company (the "purpose test").

9. The Executive has determined that AXA's initial acquisition of 40% of NMLA would not trigger the mandatory offer provisions of Rule 26.

10. The Executive, in attempting to apply the substantiality test to NMAL as the second company, recognised that there was no direct precedent in Hong Kong involving insurance companies and that no specific percentage guideline had been established by the Panel or its predecessor, the Committee on Takeovers and Mergers.

11. In its decision in connection with the proposed offers by Mr C S Hwang and parties acting in concert with him for the Evergo group of companies in August 1990, the Takeovers Committee took cognizance of a 70% guideline for the substantiality test used by the London Panel in finding that the chain principle did not apply to a company representing only 24% of the gross assets of its parent. The Committee further stated that the Panel on Takeovers and Mergers in London interpretation was not regarded as necessarily appropriate in a Hong Kong context.

Decision

12. On 4 April, 1995 the Panel decided that if AXA proceeded to acquire an interest of 51% in the share capital of NMLA, or NMH as a holding company for NMLA and its various business assets (including subsidiaries and shareholdings), then, under the purpose test, neither AXA, NMLA nor NMH would be required to make a mandatory offer for NMAL. On the basis of the particular facts of this case and after carefully considering

