TAKEOVERS AND MERGERS PANEL

Panel Decision

In relation to a referral to the Takeovers Panel by the Executive for a ruling as to whether share repurchases constitute disqualifying tr

dispensations from Rule 26 of the Code and the approval of the independent shareholders of Regent.

3. On 17 March 2000, Regent purchased 3,559,000 of its own shares, representing 0.38% of its

8. By way of guidance to the Executive, the Panel ruled that acquisitions or disposals of voting rights between the date of the announcement and the date of the application for a waiver would clearly be germane to the Executive's consideration of a waiver application but would not of themselves absolutely rule out the possibility of the grant of a waiver.

Reasons

9. The principal question for the Panel to address was whether share repurchases constituted acquisitions of voting rights for the purposes of paragraph 3 of Schedule VI to the Code.

   Rule 32 of the Code provides that:

   "If as a result of a share repurchase a shareholder's proportionate interest in the voting rights of the repurchasing company increases, such increase will be treated as an acquisition of voting rights for purposes of the Code. As a result, a shareholder, or group of shareholders acting in concert, could obtain or consolidate control of a repurchasing company and thereby become obliged to make a mandatory offer in accordance with Rule 26. If so the Executive should be consulted at the earliest opportunity. In the case of a general offer or an off-market share repurchase, as such terms are defined in the Share Repurchase Code, the Executive will normally grant a waiver from the requirement to make a mandatory offer in accordance with Rule 26 if the Code implications of the share repurchase are disclosed in the repurchasing company's offer document and the share repurchase is approved in accordance with applicable shareholder approval requirements of the Share Repurchase Code by those shareholders who ca s Tdoj-0.0022e.0T-1M0 v Tw 1nto rn.6 -0.0022e.0T-1at the mh1 Tc

Rule 8 of the Share Repurchase Code provides that:

"If as a result of a share repurchase a shareholder's proportionate interest in the voting rights of an offeror increase, such increase will be treated as an acquisition for purposes of the Takeovers Code. As a result a shareholder, or group of shareholders acting in concert, could obtain or consolidate control of the offeror and become obliged to make a mandatory offer in accordance with Rule 26 of the Takeovers Code. In such cases the Executive should be consulted. In the case of a general offer or an off-market share repurchase, the Takeovers Committee will normally grant a waiver from the requirement to make a mandatory offer in accordance with Rule 26 of the Takeovers Code if the implications of the share repurchase are disclosed in the offer document and the share repurchase is approved in accordance with applicable share repurchase approval requirements of the Code by those shareholders who could not become obliged to make a mandatory offer as a result of the share repurchase."

In both Rule 32 of the Code and Rule 8 of the Share Repurchase Code, there is an unambiguous statement that a proportionate increase in a shareholder's voting rights arising as a result of a share repurchase will be treated as an acquisition of voting rights for the purposes of the Code.

10. The Panel held that Rule 32 of the Code and Rule 8 of the Share Repurchase Code clearly stated that share repurchases will be treated as acquisitions of voting rights for the purposes of the Code.

11. The Panel was not persuaded that any distinction should be made between the body of the Code and the Schedules to it, in particular Schedule VI, in applying these provisions.

12. The Panel was of the view that in the absence of any express exclusion of Schedule VI from provisions that are stated to have general applicability throughout the Code, the arguments put that Schedule VI should be construed separately were not sustainable against a plain reading of Rule 32 of the Code and Rule 8 of the Share Repurchase Code. It follows that

share repurchases fall within the category of potentially disqualifying transactions comprehended within paragraph 3 of Schedule VI to the Code.

13. As to whether there should be any dispensation granted from the provisions of paragraph 3 of Schedule VI to the Code on “de minimis” grounds, the Panel agreed with the view of the Executive that there were no provisions in the Code or Schedule VI to the Code which would admit of such a dispensation.

14. The Panel also heard arguments on London practice deemed relevant and also considered the Takeover Panel statement 1999/17 headed “Redemption or purchase by a company of its

application subsequent to the announcement of proposals is entirely in accord with current practice, it does not rest easily with the strict application of the provisions of paragraph 3 of Schedule VI to the Code. Paragraph 3(a) deals with the period of six months prior to the announcement of proposals. Paragraph 3(b), deals with the period after both the announcement of the proposals and the grant of a waiver, since only after a waiver has been granted can it be invalidated.

17. In the circumstances of the current referral, the proposal has been announced (15 March), the share repurchases have taken place (17 March) but the application for a waiver has yet to be made. The Panel, therefore, concluded that a decision as to the grant or otherwise of a waiver still rests with the Executive who in considering whether or not to exercise discretion in this matter, would necessarily have regard to all relevant circumstances.

18. By way of guidance to the Executive, the Panel concluded that as it had ruled that share repurchases constituted acquisitions of voting rights for the purposes of Schedule VI to the Code, the share repurchases in question were clearly germane to the Executive's consideration of Regent's waiver application but did not of themselves absolutely fetter the Executive's ability to exercise its normal discretion in the matter of a waiver.

General

19. The Panel believes that the wording of paragraph 3 of Schedule VI to the Code and also the wording of paragraphs (i) and (ii) of Note 1 of the Notes on dispensations from Rule 26 should be re-examined in any revision of the Code and the lacuna identified in the current application to the Panel rectified.

20. In the interim, this Panel decision should serve as a guidance to practitioners. In addition, a press release should be issued by the Executive clarifying current practice.

21. The Panel also believes that it is appropriate to take this opportunity to remind practitioners and parties seeking a whitewash of the very clear injunctions in the Code for prior

consultation with the Executive and the need for absolute disclosure in circumstances that might bear upon a proper consideration of a whitewash application. In this regard, practitioners and applicants are reminded that a whitewash is a dispensation from one of the most basic obligations under the Code and as such the onus of full disclosure and prior consultation on any points of uncertainty rests very clearly on those making the application. The Panel does, however, wish to stress that this is a general reminder to practitioners and their clients and in no way reflects upon the discharge of professional duties by either Somerley Limited or Stephenson Harwood & Lo as advisors to Regent, neither of whom were advised in advance of Regent's intention to undertake the share repurchases in question.