

Public Consultation Response Statement dated 4 March 2004

1. Introduction

- 1.1. On 30 October 2003, the Takeovers Panel released for public comment a draft Guidance Note on Funding Arrangements in Takeovers (GN). Comments were due by 11 December 2003.
- 1.2. This paper sets out the Panel's response to the public consultation process.
- 1.3. The Panel received four submissions in response to the GN. The Panel thanks the authors of these helpful submissions for their interest and valuable feedback.

2. Material Comments Received from Respondents and the Sub-Committee's Conclusions

- 2.1. The Panel considers that several of the responses suggested that the Panel had not made sufficiently clear in the GN that the GN's focus was not primarily disclosure issues relating to funding (although that is relevant and important) but the circumstances relating to the actual arrangements that might be considered by the Panel to be unacceptable. Accordingly, the GN has been redrafted to make this distinction clear (see para 14.1 and 14.3) and to indicate that a declaration of unacceptable circumstances may lead to serious remedial orders. In addition, the GN has been fundamentally restructured to distinguish between the substantive elements relating to the acceptability or unacceptability of particular financing arrangements and the disclosure aspects flowing from the substantive elements.
- 2.2. Further, several submissions pointed out that the draft GN had used differing forms of words to refer to apparently similar matters and this might cause confusion. We agree and have accordingly amended the GN to conform the language where possible.
- 2.3. In particular, we have introduced a definition in paragraph 14.2 of the key concept of a reasonable basis for the bidder to expect that it will have sufficient funding arrangements in place to satisfy full acceptance of its offers when the bid becomes unconditional. This is used throughout the GN as the touchstone for the requirement for acceptability, noting that its content will vary from case to case and may in fact change during a particular bid.

The Funding Arrangements Sub-Committee was Rod Halstead, Braddon Jolley, Tro Kortian, Jason Lee, Kevin McCann and Trevor Rowe.

The Panel's website sets out in full the Guidance Note on Frustrating Action as amended by the Panel following the public consultation process.