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Peter Scott QC
The Takeover Panel
PO Box 226
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Dear Mr Scott,

Orb Estates & Quays Group – application for leave to appeal

The events which have transpired in recent months surrounding Orb, its takeover and delisting of Quays Group, and the apparent theft of £33m from Izodia, constitute one of the most remarkable City scandals of recent years. In view of these very exceptional circumstances, I now wish to ask for the Appeal Panel to look again at my appeal, and consider whether lessons can be learned.

As you will no doubt know, following the Panel's dismissal of my appeal, Orb completed its scheme by extracting all the cash from Quays Group, and then delisting the company. Quays' subsidiaries are now in administration and it appears extremely unlikely that any value will ever be returned to the 1600 private shareholders. I believe that the Panel's role in facilitating Orb's scheme reflects badly on the Panel's approach and procedures.

I am particularly concerned that Orb's scheme was *not* facilitated by some clever exploitation by Orb of a flaw or loophole in the Takeover Code. Rule 9 and appendix 1 of the Code, together with the fact of a disqualifying transaction, provided straightforward grounds for the Panel to withhold the Rule 9 waiver. The outcome instead appears to be attributable to the Panel's efforts to circumvent the 'disqualifying transaction' provisions of the Code in order to assist Orb. This appears to be further attributable to the general approach taken by the Executive (and subsequently endorsed by the Panel) to a case involving on the one hand an unadvised small shareholder, and on the other hand a sophisticated party associated with a pattern of non-disclosure and mis-statement.

It is this general approach which I now wish the Appeal Panel to consider. In particular I wish it to consider the following points. These are *not* new points made with the benefit of hindsight – as I indicate below, they were all in my original appeal – but the passage of time and events may now enable them to be more fully appreciated.

1. (*Appendices A.4 and A.5 of original appeal*) The Executive's general approach to this case had the effect of creating unfairness and bias, insofar as the Executive devoted its resources and authority to assisting Orb to override the small shareholders' objections, whilst providing no help whatsoever to the small shareholders. Whilst the small shareholders were able to appeal the Executive's conclusions to the full Panel, this does not ameliorate the point that all the resources, authority and ingenuity of the Executive were devoted to assisting Orb to find a means of overriding the small shareholders' objections.

In future I suggest the Executive should consider how it can deal in a more even-handed manner with dissident minority shareholders on the one hand, and companies and their advisers on the other hand. This might be done, for example, by assigning certain senior members of the Executive to the role of "minority shareholder advocate" for the duration of the Executive's investigations and deliberations on a case. These members of the Executive might also provide help and guidance to the minority shareholders, as a counterbalance to the help and guidance provided to the company and its advisers.

2. (*Paragraphs 4.9, 5.5, 5.6, 6.6 and 6.8 of original appeal*) In exercising its discretion to waive Rule 9, the Panel omitted to consider a material factor, insofar as it took no account of the pattern of non-disclosure and mis-statement by the Orb-related parties, which had been uncovered at the time of the appeal. This pattern should have been a factor in the Panel's exercise of its discretion, but in fact it was disregarded (as indicated at paragraphs 97 and 100 of the Panel's statement dismissing my appeal).

The general point here is that when dealing with a party who is known to have materially misled the Panel and/or shareholders in relation to a transaction, the Panel should thereafter be less inclined to give that party the benefit of any doubt. I put this point in very simple terms at pages 44-45 of the appeal transcript, where I repeated several times, giving several examples –

“everything about the transaction smells in one way or another”

– and I submit that the Panel should have taken this into account when exercising its discretion as to whether to waive Rule 9.

3. (*Paragraphs 4.10–4.11 of original appeal*) The Panel's key device to facilitate the transaction, namely the retrospective “cancellation” of the Humm/ Gateside payoff, was a sham. Anyone could foresee that Mr Humm would receive his payoff from an Orb-related offshore company anyway, irrespective of whether he sold or kept his shares; and anyone could foresee that Panel would never hear about this, or would not have any effective sanction if it did. The Panel's response to this point (at paragraph 77 of its statement) was insincere, because the sanctions referred to are non-existent in relation to Mr Humm.

4. (*Appendix A.3 of original appeal*) The Panel's procedures appear inconsistent with natural justice in circumstances (such as those of my appeal) where the Executive has already approved a document, and then a shareholder objects to that approval. Natural justice requires that a fresh team should investigate the objections.

5. (*My faxes dated 13 and 14 August to the Panel Secretary, Mr Hough; pages 2-5 of appeal transcript*) There should be a presumption that appeals against decisions of the Executive are normally heard in public, in the same way that court proceedings are normally public. The refusal to hear my appeal in public favoured Orb and disadvantaged the small shareholders. It had two unfair effects (i) it exacerbated the imbalance of resources between Orb and myself, by isolating me from other small shareholders (ii) it prevented public and particularly press scrutiny of the Panel's treatment of the small shareholders.

I hope that the Appeal Panel will be prepared to consider these points. If it is not, I shall investigate whether there are any other avenues I might pursue, eg with the Financial Services Authority or through judicial review.

I have copied this letter to the other members of the Panel who dismissed my appeal.

Yours sincerely

Guy Thomas