

# THE TAKEOVER PANEL

*Peter Scott QC, Chairman*

7 August 2003

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Dear Mr Thomas

## **Orb Estates and Quays Group**

Further to my letter of 29 July, I have now had the opportunity fully to consider your letter of 17 July. I will respond to the specific points you raise using your numbering.

### **Generally and Point 1**

Given that some of the issues you raise here concern the Executive's procedures in handling your case, I have also discussed them with the Executive. As a result, I am satisfied (and have been assured by the Executive) that it is not correct to suggest that the Executive provided help and guidance to one party to the case to the exclusion of any other party involved.

I also do not believe there is any basis for concluding that the Executive devoted its resources and authority to assisting Orb to override the small shareholders' objections. The Executive's response to this suggestion was largely set out in section 4 of Appendix 6 to the Executive's submission to the Panel for the appeal, but, in any event, I am satisfied that the issues you raised were reviewed afresh by the Panel during the appeal. As for your suggestion that a member of the Executive should be assigned to assist one particular party to an appeal, I believe that could only lead to allegations of injustice and bias against the other party or parties involved.

It was open to you, as it was the company, to engage professional advisers to assist in the appeal, but for understandable reasons you chose not to do so. Of course, it is not uncommon, even in more formal tribunals, for litigants in person to conduct their own cases for similar or other reasons. I would obviously be concerned if in any particular case there appeared to be a risk of injustice because of any party's lack of resources, and would wish to discuss with the Panel practical ways in which that might be dealt with. However, in the present case, the issues and arguments were clearly and cogently presented by you and I therefore had no such feeling.

## **Point 2**

It is not correct to suggest that the Panel omitted to consider the non-disclosures and mis-statements in the original Alexanders circular in reaching its decision on whether or not to refuse the Rule 9 waiver. In fact, I believe that paragraphs 97 and 100 of the Panel's statement of 19 August make clear that, having considered the original non-disclosures and mis-statements and their subsequent rectification (among other matters), the Panel considered that it would be wrong to exercise its discretion in a manner which would deprive Alexanders shareholders of an opportunity to consider the transaction on its merits.

The discretion to refuse a Rule 9 waiver is in general and thus wide terms, but obviously a refusal must be based on reasons which reflect the letter and spirit of the Code, and not simply the inclination of the Panel or the Executive.

## **Point 3**

I do not think I can usefully comment on the suppositions you raise here, other than to refer to the Panel's conclusions as set out in its statement of 19 August which were based, and could legitimately be based, only upon the evidence then available and inferences which could reasonably have been drawn from that evidence. I do not believe that there was evidence from which it could legitimately have been concluded that Mr Humm would have received a pay-off as you suggest.

## **Point 4**

I do not believe that the fact that the Executive had approved the initial Alexanders' circular justifies your suggestion that the Panel's procedures are inconsistent with natural justice, as the decision on whether or not to refuse the Rule 9 waiver was reviewed afresh by the Panel during the appeal and in the light of your complaints and what had subsequently emerged.

In any event, from about the time when you first raised concerns about the initial circular with the Executive, a new team of five within the Executive, four of whom (including the Director General and one of the Deputy Director Generals) had not previously dealt with the initial circular, did take over and had the continuing responsibility for the remainder of the process.

## **Point 5**

The question of whether an appeal should be held in private is always considered as a matter of course and, as you are aware, it is open to any party to an appeal in front of the Panel to request, as you did, that the appeal be heard in public, in which case the request will be considered and ruled upon by the Chairman. The reasons for my decision that the hearing in this case should be in private were given at the time so I will not repeat them now.

As mentioned above, I would be concerned if there appeared to be injustice in any Panel appeal as a result of the appeal process itself. Again, I do not feel that a private hearing in this case led to any such injustice. Mr Greenwood and Mr Barton were joined as appellants in part in order to address the concern that otherwise you might be isolated from supporting Alexanders shareholders who would not be able to attend the hearing if it were in private and the Panel's reasoned decision was made available for public and press scrutiny.

## Appeal

I would remind you that you expressly declined the option of seeking to appeal the Panel's decision to the Appeal Committee at the time of the hearing last year. As you frankly recognise, the points you are making in your letter are not new points and I am afraid that if, as I understand it, you wish the Panel to reconsider its earlier decision even though there is no fresh evidence, I do not feel that I can agree to your request.

As I am abroad at present, I have read this letter but have asked my secretary to sign it on my behalf.

Yours sincerely



*P.S.* **Peter Scott QC**  
Chairman