

TAKEOVERS AND MERGERS PANEL

Panel Decision in relation to a Proposed Privatization of Asean Resources Holdings Limited ("Asean") by Huey Tai International Limited ("Huey Tai")

Application of Rule 13 of the Code in relation to a proposed offer for warrants

Introduction

1. The Panel met on 3 May 1996 to review a ruling made by the Executive in relation to a proposed privatization of Asean by Huey Tai. The ruling related to the inclusion of a warrant-for-warrant alternative in the proposed offer structure. Peregrine Capital Limited ("Peregrine"), financial adviser to Huey Tai, appealed against the Executive's decision that under Rule 13 of the Code the basis for determining the consideration for the warrants was not appropriate.

Background

2. Huey Tai owns 68.1% of the issued share capital of Asean and is proposing to privatize it by way of scheme of arrangement. Asean has outstanding 93,690,678 warrants expiring on 31 March 1997, each carrying the right to subscribe for one Asean share at \$3.00. The current market price of Asean shares is approximately \$2.25, so the warrants are out of the money. The market price of the Asean warrants is approximately \$0.30. Asean also has outstanding a convertible redeemable note in the nominal amount of \$168,675,000 which entitles the holder to convert into 86,500,000 new Asean shares (representing 7.6% of the fully diluted share capital of Asean) at any time up to and including 31 August 1997 at a price of \$1.95 per share. The Note is currently held by one noteholder.

3. The proposed structure of the offer is :

(i) for each Asean share	up to \$3.00 in cash
(ii) for each Asean warrant	1 cent in cash OR one new Huey Tai warrant
(iii) for each outstanding \$487,500 nominal of Asean Note	\$750,000 nominal of new Huey Tai convertible note

4. Peregrine has used its option pricing model to calculate the theoretical value of an Asean warrant and then designed a new Huey Tai warrant that has the same theoretical value.

5. The inclusion of a warrant-for-warrant and note-for-note alternative in the proposed offer structure is novel. By a letter dated 26 April, received by the Executive on 27 April, Peregrine consulted the Executive under the Note to Rule 13 of the Code on whether this basis for determining the consideration for the warrants and convertible note was "appropriate" within the meaning of Rule 13 of the Code.

6. The Executive ruled on 1 May that this basis was not appropriate in relation to the warrants and expressed doubts in relation to the convertible note. It confirmed this ruling by a letter dated 2 May. The Executive took the view that Rule 13 has been taken to require that an offer for warrants should be made at the "see through" price, calculated by subtracting the exercise price of the warrants from the offer price for the shares in the offeree company. Where this results in a value for the warrant offer which is less than or equal to zero, a nominal price of 1 cent per warrant is offered. The approach that has been taken to date in relation to convertible notes is to require the note-holder to convert the note into shares and accept the offer if he wishes to obtain its benefits or to receive an equivalent amount of cash.

7. Peregrine, on behalf of Huey Tai, appealed against the Executive's ruling to the Panel.

Code Issue

8. Rule 13, so far as is relevant, provides :

"13.1 *Offeree companies with convertible securities*

Where an offer is made for equity share capital and the offeree company has convertible

securities outstanding, the offeror must make an appropriate offer or proposal to the holders of the convertible securities to ensure that their interests are safe-guarded. Equality of treatment is required.?

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"13.3 Warrants, options and subscription rights

If an offeree company has warrants, options or subscription rights outstanding in respect of any class of equity share capital, the provisions of this Rule apply as appropriate.

Note:

Consideration for appropriate offers.

Normally the consideration under any such offer or proposal in relation to convertible securities, warrants, options or subscription rights will be considered appropriate if it is based on the offer price for the relevant equity share capital. However, there may be cases where another basis is more appropriate, and if the offeror is of the view that the consideration should be determined on some other basis, the Executive should be consulted in advance.?

9. The issue in this case is whether the proposed warrant-for-warrant offer, which carries a value higher than the "see-through" price, can satisfy the requirement of "equality of treatment" and other provisions under Rule 13 of the Code.

Panel's Decision

10. The Panel is of the view that the Panel decision is on points of principle rather than only on specifics of the case in question. The decision is that the "see-through" price formula only provides a base of protection for holders of warrants and convertible securities. Under the Note to Rule 13 of the Code, the "see-through" price formula normally represents the appropriate consideration for any offer or proposal in relation to warrants or other convertible securities. However, the Panel believes that it would not be appropriate to rule that under no circumstances could such a basis be exceeded and the Panel considers the emphasis should be based on the word "appropriate". Accordingly the Panel believes that there may be circumstances where an offeror considers that an appropriate offer should be higher than the "see through" price. Provided the Executive or the Panel is of the view that in the circumstances such an offer is appropriate then such

higher offer is permitted under the Code.

11. The Panel would, however, note that a higher offer would not be considered appropriate if it were to be considered to be part of a special deal to provide an incentive to persons who also hold shares or other securities of the offeree company to accept the offer.

12. Regarding the interpretation of "equality of treatment" under Rule 13.1, the Panel takes the view that this should be taken to mean equality of treatment within a class of security holders as opposed to equality of treatment between different classes of securities.

13. The Panel accepted the appeal and the parties should proceed with the proposed transaction.

14. In the matter of the terms to be offered to the convertible noteholder, the Panel is of the view that the convertible note in this particular transaction should be looked at carefully to ensure that it is an appropriate offer to the noteholder, given that there is an increase in principal value in the proposed Huey Tai note and a substantial increase in the amount of interest income. Accordingly, the Panel decision is subject to the qualification that there is no special deal between the offeror and the convertible noteholder and Peregrine and other parties concerned are under a duty to report to the Executive or the Panel should they be aware of any special deal.

14 May 1996