

TAKEOVERS AND MERGERS PANEL DECISION

Proposed Acquisition of Statutory Control of The National Mutual Life Association of Australasia ("NMLA"), holder of 69% of the share capital of National Mutual Asia Limited ("NMAL")

Application of the Chain Principle under

Note 8 to Rule 26.1 and related matters.

Introduction

1. On 4 April 1995 the Panel considered a referral by the Takeovers and Mergers Executive of an application for confirmation that the chain principle would not apply to the acquisition of statutory control of NMLA by AXA S.A. ("AXA"), and therefore would not trigger a mandatory offer for the shares of NMAL. The application further requested confirmation that transfers of in excess of 35% of the shares of NMAL held indirectly by NMLA to a new holding company of the National Mutual Group, whereby the attributable interest of the new holding company in NMAL would remain unchanged, would be regarded as part of an intra-group reorganisation, and not as a transaction which would trigger the requirement for a mandatory offer under Rule 26.1.

Background

2. NMLA is a public company incorporated in Australia and limited by shares and guarantee. NMLA's principal business comprises the provision of life assurance and related financial products. It is one of the two largest life assurance groups in Australia. Its principal business activities are carried out in Australia and New Zealand. Although NMLA is a company limited by shares and by guarantee, there are currently no shares in issue. The members of NMLA are members limited by guarantee, whose membership rights arise as a consequence of their holding of insurance policies issued by NMLA or as a result of their being the beneficiaries of policies issued to certain subsidiaries of NMLA. NMLA currently has approximately 1 million guarantee members. It is not listed on the Australian Stock Exchange or any other stock exchange.

3. NMAL is a company incorporated in Bermuda whose shares are listed on the Stock Exchange of Hong Kong. The principal business of NMAL is the provision of life assurance and related services in Hong Kong and Macau.

4. NMLA is the ultimate holding company of NMAL. NMLA's interest in NMAL is held through NMLA's wholly-owned subsidiary, National Mutual (Bermuda) Limited ("NMB"). NMB currently owns (directly or indirectly) approximately 69% of the issued share capital of NMAL.

5. The financial year-ends of NMLA and NMAL are both 30 September. NMLA's audited consolidated accounts as at 30 September 1994 showed gross assets of A\$16.1 billion. NMLA's interest in NMAL was valued in the accounts of NMLA as at that date at A\$1.27 billion, being the market value of its shareholding at that date. Thus, as at 30 September 1994 NMLA's attributable interest in NMAL represented approximately 7.89% of NMLA's gross assets.

6. It is proposed that AXA acquire its interest in the NMLA Group by means of the establishment of a new holding company ("NMH"). It is intended that AXA should subscribe for fully-paid and partly-paid shares in NMH, representing initially approximately 40% of the voting rights in NMH. The partly-paid shares would permit AXA, over time and on payment in full of their subscription price, to increase its voting rights in NMH to approximately 51%. The partly-paid shares will be paid up 24 months after the demutualisation of NMLA, and may be paid up earlier by AXA upon the listing of NMH. The remaining shares in NMH would be owned by the policyholders/beneficiaries who are the current guarantee members of NMLA. It is proposed that the shares of NMH should be listed on the Australian and New Zealand Stock Exchanges, and it is anticipated that listing will take place within 24 months after the demutualisation of NMLA.

7. Following the introduction of AXA, it is proposed to carry out a reorganisation of the NMLA Group. NMH will purchase from NMLA 74% of NMLA's 69% interest in NMAL and 100% of NMLA's interests in its other main operating subsidiaries, namely National Mutual Funds Management, National Mutual Health Insurance and Australian Casualty & Life. This step results from a decision taken by the Board of NMLA to improve the solvency (for Australian regulatory purposes) of NMLA by replacing illiquid assets, which must be discounted for solvency purposes, with liquid assets. The purchase of the interest in NMAL may be done either by NMH acquiring all or a majority of the direct shareholding in NMAL held by NMB, or by NMH acquiring from NMLA all or a majority of its shareholding in NMB (carrying with it the direct shareholding in NMAL). NMH will remain the owner of 100% of NMLA and will retain an attributable investment of 69% in

NMAL.

Code Issues

8. Under the chain principle set out in Note 8 to Rule 26.1 of the Code, if AXA acquires statutory control (*i.e.*, more than 50%) of NMLA thereby acquiring control of a second company (*e.g.*, NMAL), then because NMLA holds a controlling interest (*i.e.*, 35% or more) in such second company a mandatory offer may be required for NMAL. However, Note 8 states that the Executive will not normally require AXA to make any offer for such second company under Rule 26.1 unless either:

a) the holding of NMLA in the second company constitutes a substantial part of the assets of NMLA (the "substantiality test"); or

(b) AXA has as one of its main purposes in acquiring control of NMLA the securing of control of the second company (the "purpose test").

9. The Executive has determined that AXA's initial acquisition of 40% of NMLA would not trigger the mandatory offer provisions of Rule 26.

10. The Executive, in attempting to apply the substantiality test to NMAL as the second company, recognised that there was no direct precedent in Hong Kong involving insurance companies and that no specific percentage guideline had been established by the Panel or its predecessor, the Committee on Takeovers and Mergers.

11. In its decision in connection with the proposed offers by Mr C S Hwang and parties acting in concert with him for the Evergo group of companies in August 1990, the Takeovers Committee took cognizance of a 70% guideline for the substantiality test used by the London Panel in finding that the chain principle did not apply to a company representing only 24% of the gross assets of its parent. The Committee further stated that the Panel on Takeovers and Mergers in London interpretation was not regarded as necessarily appropriate in a Hong Kong context.

Decision

12. On 4 April, 1995 the Panel decided that if AXA proceeded to acquire an interest of 51% in the share capital of NMLA, or NMH as a holding company for NMLA and its various business assets (including subsidiaries and shareholdings), then, under the purpose test, neither AXA, NMLA nor NMH would be required to make a mandatory offer for NMAL. On the basis of the particular facts of this case and after carefully considering

oral representations made by management executives of NMLA and AXA to the Panel and their answers to questions at the hearing regarding the facts and circumstances surrounding AXA's proposed acquisition of control of NMLA, including the rationale of the proposed transaction and corresponding negotiations and the due diligence process carried out by AXA, and their future plans for the businesses, the Panel determined that acquisition of control of NMAL was not one of the main purposes of AXA in its proposed acquisition of control of NMLA or NMH.

13. The Panel also determined that NMAL did not constitute a substantial portion of the assets of NMLA under the substantiality test. Accordingly, having determined that neither the purpose test nor the substantiality test were met, the Panel concluded that the chain principle under Rule 26.1 did not apply and no mandatory offer would be required.

14. The Panel affirmed that an acquisition by NMH of all or a majority of NMLA's 69% interest in the share capital of NMAL in accordance with the facts presented (either by way of a direct acquisition of those shares, or by way of the acquisition of all or part of the share capital of NMB) will not result in NMH or NMB being required to make a mandatory offer for NMAL pursuant to Rule 26.

15. The Panel stressed that its decision was made on the particular facts of this case.

13 April 1995