

PANEL ON TAKEOVERS AND MERGERS

Dynamic Business Group Limited ("Offeror") Offer for Unisouth Holdings Limited ("Unisouth")

Placing of Shares of Unisouth Under Rule 21.2

Introduction

1. The Panel met on 20 May 1994 on a referral by the Takeovers and Mergers Executive in relation to the offer for Unisouth. The referral related to an application for consent under Rule 21.2 in respect of a placing of Unisouth shares.

Background

2. Shortly after the announcement of the offer for shares of Unisouth, The New China Hong Kong Corporation Finance Ltd. ("New China") entered into an underwriting agreement with the Offeror to place all the shares tendered for acceptance under the offer in excess of 75% of Unisouth's issued share capital. New China in turn had entered into a subunderwriting agreement in respect of those shares with Wardley securities Ltd. ("Wardley").

3. On 12 May 1994, which was the closing date of the offer, New China and Standard Chartered Asia Ltd., the adviser to the minority shareholders, were advised of a claim for breach of contract against Mr. Edward Kwok in respect of an agreement concerning shares of a company which owns property injected by Mr. Kwok into Unisouth.

4. After discussion with the Executive, New China agreed to extend the offer to those shareholders who had not accepted the offer by 4:00 a.m. on 12 May 1994, the original expiry time of the offer, so that they could consider accepting the offer in light of the change in facts. However, since New China did not take action in accordance with the terms of the offer to extend the offer prior to its expiry, it instead published an announcement on 16 May 1994 stating that the offer was reopened. The Executive cleared the announcement on the understanding that the reopening would achieve the same result in substance as an extension of the offer.

5. New China requested the consent of the Executive under Rule 21.2 to allow sales during the offer period. The Executive referred the matter to the Panel. Concern had been expressed that the granting of consent was necessary to enable the performance of the underwriting and subunderwriting agreements. Concern also had been expressed that performance of the underwriting and subunderwriting agreements whilst the offer was open for acceptance might lead to market confusion because only some of the Unisouth shares trading in the market would be eligible for acceptance of the offer.

Code Issues

6. Rule 21.2 states that "during an offer period, the offeror and persons acting in concert with the offeror must not sell any securities in the offeree company except with the prior consent of the Executive and following 24 hours public notice that such sales might be made."

7. Rule 21.2 originated from a provision of the City Code which was designed to prevent an offeror from getting out of its obligation and from reducing its exposure in a contested bid. It did not contemplate sales made under underwriting arrangements for the purpose of maintaining the 25% public float required by the Listing Rules of The Stock Exchange of Hong Kong.

Ruling

8. The Panel does not consider it necessary to determine whether there is a reopened offer, an extended offer or a new offer, nor is it making any determination as to the status of the underwriting arrangements. The Panel grants its consent under Rule 21.2 to the placing of shares of Unisouth pursuant to the underwriting and subunderwriting arrangements among the Offeror, New China and Wardley while the other shares remained eligible for acceptance of the offer. The Panel leaves it to the Stock Exchange to deal with the technical aspects of distinguishing between shares placed back into the market, which would not be eligible for acceptance of the offer, and shares for which there had not previously been acceptances. The Panel determines that the requirement of Rule 21.2 to give 24 hour public notice that sales into the market might be made was satisfied by the announcement on 16 May 1994 or is considered to have been waived.

1 July 1994