

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.

3. The proposed structure of the offer is :

(i) for each Asean share

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 5A, H(1) shall apply.

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