APPENDIX A - The Panel's Policy on the Approval of Independent Advisers

1 General information

1.1 Under the Takeovers Code, reports from independent advisers are required in various circumstances:

(a) Rules 15 and 16 require such a report where a person seeks to acquire or have allotted to it voting securities in a Code company (or in some circumstances in another body corporate) with shareholder approval.

(b) Rule 21 requires the directors of a Code company to obtain a report from an independent adviser on the merits of an offer.

(c) Rule 22 requires the offeror to obtain a report from an independent adviser where an offer is made for different classes of securities.

(d) Rule 57(1) requires an independent adviser to certify in some circumstances that the cash sum proposed as consideration for a compulsory acquisition of equity securities under the Code is fair and reasonable.

(e) Some exemptions granted by the Panel include a condition that a report from an independent adviser be prepared in relation to the transaction the subject of the exemptions.

1.2 In addition, as contemplated by the Panel's *Guidance Note on Schemes of Arrangement*, in most cases the Panel will provide a no-objection statement for a scheme of arrangement in respect of a Code company only where shareholders will receive an independent adviser's report.

1.3 An "independent adviser" means "an adviser whom the Panel considers is independent and who is approved by the Panel for the purposes of the Takeovers Code".

1.4 The independent adviser's role is to advise shareholders about a transaction or other Code-related circumstance.

1.5 Independent advisers' reports play an important role in the context of the Code and, in most cases, the context of schemes of arrangement in respect of Code companies. The Panel takes its responsibilities for approving the appointment of independent advisers very seriously. The paragraphs below set out the Panel's criteria for approval of an adviser.

2 The Panel's criteria for approval

2.1 The current policy of the Panel is to consider each application for approval on a case-by-case basis so that the Panel can be satisfied, on each occasion, that the adviser is:

(a) appropriately qualified and experienced; and

(b) independent.

2.2 In considering an application, the Panel may also take into account any other factors that it considers relevant in relation to the appointment for which the adviser seeks approval.

2.3 The Panel is open to approving the appointment of an independent adviser in advance of a proposed transaction provided that:[18]

(a) the identities of all the parties to the proposed transaction are ascertainable and the Panel is satisfied that the proposed adviser does not have any conflicts of interest with those parties which could compromise its independence; and

[18] Also, please see paragraphs 3.4 to 3.12 regarding maintaining independence.

(b) there is a reasonable possibility that the proposed transaction will proceed.

2.4 If the proposed transaction is delayed for a significant period of time from the date that the Panel approved the appointment of the adviser, the Panel will need to be satisfied that the adviser is still independent.

2.5 The Panel will keep this policy under review and is not bound by prior decisions.

3 Conflicts of interest

Relationships that can give rise to a conflict of interest

3.1 Every prior or existing relationship between the adviser (including any principals or employees of the adviser who are responsible for preparing the report) and any relevant entity must be disclosed to the Panel but it will not automatically disqualify the adviser from being approved. The Panel will consider the nature and extent of any prior or existing relationships before an approval can be given.

3.2 The following types of relationship may lead the Panel to conclude that the proposed adviser is **not** independent:

(a) if the proposed adviser has been involved in giving strategic advice on the relevant transaction to any relevant party;

(b) if the proposed adviser is likely to financially benefit from the success or failure of the relevant transaction;

(c) if the proposed adviser has an ongoing corporate advisory role for any party to the relevant transaction; and

(d) if the proposed adviser has an interest in any party to the relevant transaction.

3.3 A proposed adviser that has some form of relationship with a party to the transaction will not automatically be precluded from being approved. The Panel will look at the facts and circumstances of each case.

Acting in a manner that preserves independence

3.4 The requirement for independence is ongoing. It is the adviser's responsibility to ensure that it remains independent during the course of a transaction. Accordingly, advisers should:

(a) exercise their professional judgment in determining what information to include in the IAR (and whether any information should be withheld);[19]

(b) not commence relationships during the course of a transaction which could compromise their independence; and

(c) prepare and give advice in a manner such that they avoid becoming advisers to the Code company's board (as opposed to its shareholders).

3.5 This is reflected in the standard conditions of the Panel's approval of an adviser, which include:

(a) that the adviser remains independent until completion of the transaction; and

(b) that the adviser restates its declaration of independence to the Panel on the day on which the final version of the adviser's report is delivered to the Code company.

3.6 If the adviser fails to meet the Panel's conditions of approval, a new adviser (which meets the Panel's appointment criteria) may need to be appointed.

[19] The Panel does not consider it problematic for advisers to receive communications from the Code company about what information should be withheld (for commercial confidentiality or otherwise), but the decision as to what is included in the report is a matter for the adviser.

No rule against early appointment

3.7 The Panel understands that advisers may be appointed before the terms of a transaction are set or agreed (as applicable). It is acknowledged that this may have the benefit of giving the adviser additional time to prepare their report. However, advisers should take care to avoid taking actions or accepting instructions which may, in effect, result in them ceasing to be independent. The key issue in this regard is how the engagement between the adviser and the Code company is managed and, in particular, what information is provided by the adviser to the Code company and when it is provided. These issues can arise in any context, but, as a general rule, the earlier an adviser is appointed, the greater the risk of independence issues arising. The Panel is unlikely to approve an appointment which is proposed before sufficiently clear transaction parameters are agreed.

4 Repeated engagements of an independent adviser

4.1 If an applicant for approval has previously provided a report (or other services) for the Code company in question (whether or not related to a Code-regulated transaction or scheme of arrangement), the Panel will need to be satisfied that the adviser's independence will not be compromised by its previous work. Accordingly, the Panel will need to be satisfied that:

(a) the adviser would not be constrained by any methodology or views expressed in its earlier report or other work;

(b) there is not a degree of familiarity between personnel at the adviser firm and personnel at the Code company which would compromise the adviser's independence; and

(c) the amount of work being provided to the adviser firm does not compromise the adviser's independence. Factors to consider in this regard will include:

(i) the proximity in time of the earlier report(s) or other work;

(ii) the nature and significance of the reports or other work, including their relevance to the proposed transaction;

(iii) the promise of future work; and

(iv) the fees received in respect of the reports or other engagements.

4.2 In some cases, a Code company that is subject to successive Code-regulated transactions (for example, follow-on takeover offers) or proposed schemes of arrangement may wish to appoint the same adviser from an earlier transaction to prepare the new report. The Panel will consider whether the shareholders are likely to benefit from having an independent adviser's report prepared by a different advisory firm from that which prepared the earlier report(s), and may consider the following factors (in addition to the matters set out in paragraph 4.1):

(a) whether the currently required report is likely to be the last independent adviser's report to be provided to shareholders before compulsory acquisition is initiated;

(b) whether the business, circumstances or prospects of the Code company have changed since the earlier report(s); and

(c) the relationship between the value given in the adviser's earlier report(s) and the offer price(s) under the successive offer(s).

5 Use of sub-contractors

5.1 In some cases, the firm putting itself forward for approval as an independent adviser for a particular Code transaction or scheme of arrangement will not have the necessary expertise to deal with all aspects of the assignment. In these cases, the firm may engage the specialist services of a subcontractor to assist with the report.

5.2 The Panel expects to consider the appointment of the proposed subcontractor at the same time as it considers the application by the primary adviser. The Panel must be satisfied that:

(a) the subcontractor has the necessary expertise and independence (and will continue to retain such independence) to undertake the assignment;

(b) the subcontractor has been chosen by the primary adviser and not, for example, by the Code company or offeror; and

(c) the work of the subcontractor will be managed by the primary adviser.

6 Advice in advance of making an application

6.1 If a proposed adviser (or appointor) has any reservations about making an application to the Panel for approval, whether due to a relationship with a party to the relevant transaction or some other concern, the Panel encourages the adviser (or appointer) to contact the Panel executive for guidance. The Panel executive welcomes any queries and can be contacted at the numbers listed on the website or on (04) 815 8420.

7 Conditions of approval

7.1 When the Panel approves an independent adviser, it will typically give its approval subject to conditions.

7.2 The conditions which the Panel attaches to its approval will be set on a case-by-case basis. However, the conditions will typically include the following:

(a) [name of independent adviser firm] must:

(i) remain independent until completion of the transaction; and

(ii) restate their declaration of independence to the Panel on the day on which the final version of [name of independent adviser firm's] Report is delivered to [Code company];

(b) [name(s) of individuals] prepare the Report [with [name of reviewer] providing a peer review];

(c) [name of independent adviser firm] provides the Panel with:

(i) a draft version of the Report in sufficient time for the Panel to review and, if relevant, comment on the Report as well as any substantive changes to the draft Report;

(ii) such marked-up versions of the Report as the Panel requests in order to show any changes made to the Report (or any sections of it) after it was (or they were) first provided to [Code company]; and

(iii) copies of any correspondence, and/or other records of discussions, between [name of independent adviser firm] and [Code company] or any third party that are relevant to any changes to the Report (or any sections of it) that the Panel requests; and

(d) a statement of independence is displayed on the cover page of the Report.