



GUIDELINE 1/2012

BREAK FEES

1. Introduction

1.1 In terms of section 201(2)(b) of the Companies Act 71 of 2008, (the Act) the Panel may issue, amend or withdraw information on current policy to serve as Guidelines for the benefit of persons concerned with those transactions regulated by the Panel. Regulation 4 of the Companies Regulations 2011 (the Regulations) provides that a senior officer of a regulatory agency (as defined in the Regulations) may issue a Guideline at any time by publishing a notice of the Guideline to the general public in the Gazette, any generally circulated newspaper, on the regulatory agency's website, or by any similar means of providing information to the public generally.

1.2 Section 119 (1) (c) of the Act is of particular relevance for the purpose of this Guideline. Section 119 provides:

"(1)(c) The Panel must regulate any affected transaction or offer in accordance with this Part, Part C and the Takeover Regulations, but without regard to the commercial advantages or disadvantages of any transaction or proposed transaction, in order to—

prevent actions by a regulated company designed to impede, frustrate, or defeat an offer, or the making of fair and informed decisions by the holders of that company's securities."

1.3 The Panel is concerned that an agreement by parties involved in an affected transaction or offer to payment of a large amount of a break fee may impede, defeat or defeat an offer.

2. The Panel hereby issue a Guideline that in interpreting the above provision, the Panel will allow payment of a break fee provided that the aggregate amount of the break fee is no more than 1% of the value of offer.

3. The details of payment of the break must be disclosed in the circular to be sent to shareholders including amount and the circumstances under which the break fee is payable.

DATED 25 JANUARY 2012

N Matlala

Chairperson