

TAKEOVER APPEAL BOARD

PRINCIPLE CAPITAL INVESTMENT TRUST PLC (“PCIT”)

DECISION OF THE TAKEOVER APPEAL BOARD

THE APPEAL

1. The Takeover Appeal Board (consisting of Lord Steyn (the Chairman), Sir Martin Nourse (the Deputy Chairman), Mr Kenneth Ayers, Mr John Gieves and Mr Simon Robey) met to hear an appeal against a decision of the Hearings Committee of the Takeover Panel dated 30 April 2010. The decision appealed against was made under the chairmanship of Mr Peter D.J. Scott QC, who sat with eleven other members of the Hearings Committee.

2. The Hearings Committee concluded that :-
 - (i) on 27 March 2009, 6,700,000 shares in PCIT were acquired by a concert party comprising Mr Daniel Posen (“Mr Posen”) and parties acting on the direction of Mr Brian Myerson (“Mr Myerson”) and Mr Brian Padgett (“Mr Padgett”) in a deliberate attempt to circumvent the requirement under Rule 9 of The City Code on Takeovers and Mergers (the “Code”) to make an offer to shareholders of PCIT generally;

 - (ii) in breach of their obligations to assist the Panel, Mr Myerson, Mr Padgett and Mr Posen subsequently attempted in their dealings with the Executive to conceal from the Executive the circumstances relating to the acquisition of these shares, to present a false picture of what

happened, to conceal the breaches of the Code involved and, in Mr Posen's case, not to disclose to the Executive the source of the funds used to purchase the shares;

- (iii) it should publish a formal Panel Statement in accordance with paragraph 11(b)(v) of the Introduction to the Code indicating that Mr Myerson, Mr Padgett and Mr Posen are persons who in the Hearing Committee's opinion are not likely to comply with the Code;
- (iv) the statement in paragraph (iii) above should remain effective for a period of three years from the date of publication of the decision; and
- (v) a mandatory offer to be made to all remaining shareholders of PCIT to give effect to Rule 9 of the Code need not be required.

3. The decision of the Hearings Committee runs to 56 pages and annexures. At this stage the Board observes that it is a detailed analysis of the issues which arise. The decision has not so far been made public. The Board now attaches the decision of the Hearings Committee to its decision on the appeal. It reveals the contextual scene and enables the Board to deal with the appeal economically.

4. On 5 May 2010, a Notice of Appeal by Mr Myerson and Mr Padgett against the decision of the Hearings Committee was filed. The grounds and basis set out in that Notice of Appeal were as follows:

- (i) that the Hearings Committee is insufficiently independent and impartial for the purposes of Article 6 of the European Convention on Human Rights; and
- (ii) that the Hearings Committee erred in its approach to the underlying evidence in that it failed properly or at all to assess, consider or weigh the evidence that it heard. The findings that it reached were contrary to the weight of the evidence and/or perverse.

The remedy requested by Mr Myerson and Mr Padgett in the Notice of Appeal was as follows:

- (i) a complete rehearing of the case against them and for the dismissal of the charges against them;
- (ii) alternatively, for the Board to substitute a private or public censure for the sanction of cold-shouldering;
- (iii) further in the alternative, for the Board to reduce the period of cold-shouldering to 6 months.

5. On 5 May 2010, on the condition that any of Mr Myerson, Mr Padgett or Mr Posen were to file a Notice of Appeal, the Executive filed a Notice of Appeal against the decision of the Hearings Committee as follows:

- (i) the formal Panel Statement to be made in accordance with paragraph 11(b)(v) of the Introduction to the Code being effective for a period of only three years from the date of its publication as opposed to a period

of five years as submitted at the hearing of the Hearings Committee on behalf of the Executive; and

- (ii) the Hearings Committee's conclusion that, in the exceptional circumstances of the case, it would not be appropriate for Pointer (as defined in the decision) to make an offer, pursuant to Rule 9 of the Code, to the continuing shareholders of PCIT.

The Executive later confirmed that the Executive would not pursue an appeal on point (ii).

6. On 5 May 2010, Mr Posen sent an email for the attention of the Board pursuant to Rule 1.2 of the Rules of the Takeover Appeal Board submitting his Notice of Appeal which stated that:

- (i) the Notice of Appeal of Mr Posen was to adopt the content of any Notice of Appeal lodged by Mr Myerson and/or Mr Padgett in so far as any matters related to Mr Posen;
- (ii) Mr Posen would rely upon his written submission, the evidence that was filed on his behalf and all correspondence filed by Mr Posen and his representatives in the proceedings of the Hearings Committee;
- (iii) Mr Posen also appealed any other part of the decision that was not appealed by Mr Myerson and Mr Padgett, as it related solely to Mr Posen on the same grounds and basis.

On 17 May 2010, Mr Posen's solicitors, clarified his position with regards to his involvement in the appeal process, which was as follows:

- (i) Mr Posen stated that he had been drawn into the appeal process by reason of the Executive's appeal against the penalty imposed on him, and that Mr Posen responded to that appeal by way of cross-appeal adopting the submissions of Mr Myerson and Mr Padgett;
 - (ii) Mr Posen did not intend to participate actively in the appeal process, and had instructed his legal advisers not to attend a directions hearing to be held on 21 May 2010;
 - (iii) Mr Posen requested to be copied on all communications in relation to the appeal.

- 7. On 21 May 2010, a directions hearing before the Chairman of the Takeover Appeal Board was held to determine the procedure in relation to the appeal hearing. Pursuant to Rule 2.6 of the Rules the Chairman may give such procedural directions as he considers appropriate for the conduct and determination of the case. At the directions hearing the Chairman gave the following rulings:
 - (i) it was confirmed that the appeal hearing would be held in private;
 - (ii) relying on the public interest in an early hearing, and despite contrary submissions on behalf of Mr Myerson, the Chairman ruled that the hearing would be scheduled for 1, 2 and 3 July 2010.

- 8. Pursuant to the directions the Executive served a Skeleton Argument on 18 June 2010.

9. On 24 June 2010, the Written Submissions of Mr Myerson and Mr Padgett were filed. The Written Submissions stated that Mr Myerson and Mr Padgett would not be appearing nor would they be represented at the appeal hearing. The Written Submissions requested the Board to determine the appeal on the basis of those submissions and the written evidence submitted.

10. The Board met on 1-2 July 2010 to consider the appeal.

THE DUE PROCESS ISSUE RAISED BY THE APPELLANTS

11. Given the due process issue raised by the Appellants at pages 7-8 of their Written Submissions regarding their attendance at the appeal hearing, the Chairman invited counsel appearing for the Executive to address this issue separately and in advance of a debate of the merits of the appeal. That is the course that was adopted at the hearing on 1 July 2010.

12. Before considering that issue directly the Board notes that Mr Myerson and Mr Padgett say that Article 6 of the European Convention on Human Rights requires a “complete rehearing”. It is unnecessary to consider whether the Hearings Committee is an Article 6 compliant tribunal. It is sufficient to observe that the Takeover Appeal Board is constitutionally an independent public body. Moreover, the Hearings Committee adopted lawful and fair procedures in all respects. It follows that the Takeover Appeal Board is entitled to take into account the findings of the Hearings Committee.

13. It is also necessary to refer briefly to the Rules of the Takeover Appeal Board. At stake is an appeal. It requires a notice of appeal setting out the grounds and basis of the appeal and remedy requested (Rule 1.2). Under Rule 1.6 the decision was treated as “standing” pending the determination of the appeal. Proceedings shall be conducted on an informal basis and in particular, no formal rules of evidence shall apply (Rule 2.9). The written submissions of Mr Myerson and Mr Padgett place great emphasis on the provision that “appeals shall be way of a complete rehearing of those matters contested” (Rule 2.8). Their argument treats in effect Rule 2.8 as

providing for a *de novo* hearing. The Board rejects this construction. Instead it relies on the guidance provided in *Coghlan v Cumberland* [1898] 1 Ch 704, pages 704-705, CA by Lindley MR:

“Even where, as in this case, the appeal turns on a question of fact, the Court of Appeal has to bear in mind that its duty is to rehear the case, and the Court must reconsider the materials before the judge with such other materials as it may have decided to admit. The Court must then make up its own mind, not disregarding the judgment appealed from, but carefully weighing and considering it; and not shrinking from overruling it if on full consideration the Court comes to the conclusion that the judgment is wrong.”

Here too the appeal turns on questions of fact. Here too the Board has before it further materials in the shape of new statements of Mr Padgett (who is not prepared for that evidence to be tested by cross examination) and Mr Ansell (who was called to give evidence before the Board). Here too the members of the Board are entitled to weigh and consider the decision of the Hearings Committee in order to make up their own minds. That is how the Board will approach the matter.

14. Mr Myerson and Mr Padgett base their case of breach of due process on the alleged unavailability of Mr Myerson in the period 1-2 July 2010 because of his commercial commitments in South Africa during the period when the World Cup took place. The Board has carefully analyzed the cumulative effect of the evidence on this procedural aspect. At issue is a matter affecting the public interest in having the appeal determined as soon as possible. It tends to outweigh Mr Myerson's commercial interests. Moreover, Mr Myerson's evidence would not have been required for more

than, say, two hours. The genuineness of the complaint is also somewhat eroded by Mr Padgett's refusal to attend and testify. Given the detailed Written Submissions of Mr Myerson and Mr Padgett, it is also to be noted that they instructed Mr Flint QC not to assist the Board at the hearing despite the fact that special arrangements were made to sit (if necessary) on Saturday, 3 July 2010, in order to enable Mr Flint to appear. It is also relevant that on behalf of the Board the Secretary to the Board invited Mr Myerson by letter dated 1 June 2010 to indicate whether he would wish to give evidence by video link or telephone conference. Video link evidence is, of course, regularly used in international commercial arbitration. There was no response.

15. The Board adjourned briefly to consider the procedural issues raised. Having considered the countervailing arguments the Board decided unanimously to proceed with the hearing. It announced that decision immediately. The Board unanimously took the view that the case of alleged breach of due process was unmeritorious and had to be rejected. The Board now turns to merits of the appeal.

THE COMMERCIAL MATRIX

16. The commercial matrix of the case was set out by the Hearings Committee in paragraphs 4 to 38 of their decision (pages 2-12). The Board adopts this analysis.

THE CODE

17. The relevant provisions of the Code are set out in paragraphs 39-46 of the decision of the Hearings Committee (pages 12-18). The importance of those provisions in the Code system are self evident.

BURDEN AND STANDARD OF PROOF

18. The decision of the Hearings Committee emphasizes that the burden rests squarely on the Executive to prove its case, both on the merits of alleged breaches and the appropriateness of the remedy. It recites that it was common ground that the standard of proof which the Executive must meet is the balance of probabilities, applied flexibly to the circumstances of the case. The elaboration of these principles are to be found in paragraphs 47-56 of the decision of the Hearings Committee (pages 18-21).

THE FORENSIC STORY

19. The forensic story, and in particular Mr Posen's withdrawal from the case are set out in paragraphs 57-63 of the decision of the Hearings Committee (pages 21-23). Throughout the Hearings Committee kept in mind the seminal issue presented by the evidence before it. Paragraph 64 (page 23) poses the issues in broad terms as follows:

“Did Mr Posen appear fortuitously on the scene when PCIT was in the middle of a battle about its future and, unaware of this, decide on the basis of his own commercial judgment to buy 6,700,000 shares in PCIT, and subsequently to support the Initial Concert Party at the Second EGM? Or was Mr Posen's involvement initiated by Mr. Myerson, and the arrangements for Mr Posen's purchase of PCIT shares orchestrated by Mr Myerson and Mr Padgett on the basis of an understanding or agreement with Mr Posen that he would, as he subsequently did, vote the shares in support of the Initial Concert's Party position at the Second EGM; and did Messrs Myerson, Padgett and Posen together seek to conceal from the

Executive these facts and, in the case of Mr Posen, also to conceal the source of the funds used to settle the transaction?”

DISCUSSION OF WRITTEN SUBMISSION OF MR MYERSON AND MR PADGETT

Introduction

20. Mr Flint QC, Mr Weisselberg and their instructing solicitors have put before the Board detailed Written Submissions on behalf of Mr Myerson and Mr Padgett, which are deployed over some 56 closely-typed pages. They appear under two main headings: “Burden and Standard of Proof” and “The Underlying Facts”. The Board proposes to discuss the submissions in the order in which they appear, though the Board wishes to make it clear at the outset that it cannot deal with every detailed point. By his Notice of Appeal Mr Posen has effectively adopted the submissions of Mr Myerson and Mr Padgett so far as matters relate to him; his position is more fully stated in paragraph 6 above.

Burden and Standard of Proof

21. It is submitted, correctly, that since the effect of the sanction of cold-shouldering is to jeopardise the right of Mr Myerson and Mr Padgett to continue to conduct dealings in the City of London, the allegations made are of a serious kind, both in terms of breaches of the Code and moral culpability. It is further submitted that the burden of proof lies on the Executive to prove the allegations; that given their serious nature, and the sanction sought, the case is required to be proved by clear and compelling evidence; and that, while the standard of proof is in law on the balance of probabilities, the unlikelihood of persons in the position of Mr Myerson and

Mr Padgett conspiring to breach the Code and to mislead the Panel must be borne in mind. These submissions are accepted by the Executive, and will be followed by the Board.

22. The first main submission made under this head is that the Hearings Committee gave too much emphasis to the Panel's Statement in Guinness plc/The Distillers Company plc (1989/13) and too little emphasis to the fact that the more serious the consequences, if the allegation is proved, the stronger must be the evidence before the allegation will be proved on the balance of probabilities. Complaint is made that the Hearings Committee repeatedly drew inferences, and inferences based on inferences, without having due regard to the appropriate standard of proof.
23. The Panel Statement 1989/13 is dealt with in paragraphs 52 to 55 of the decision of the Hearings Committee (pages 19 to 21); the material part is quoted in paragraph 53. The Board agrees with the Hearings Committee that the test laid down in the statement is applicable equally to the proof of a concert party in disciplinary or regulatory proceedings as it was in Guinness/Distillers (an enforcement case). True, the evidence must be clear and compelling. But it does not cease to be such because it depends on inferences drawn from primary facts, even on inferences based on inferences. The Board emphasises the following passage, in particular:

“In a typical concert party case, both the offeror and the person alleged to be acting in concert with it are declaring that, notwithstanding the circumstances, they have no understanding or agreement. The Panel has to be prepared realistically to recognise that business men may not require much by way of formal expression to create such an

understanding. It is unnecessary for the Panel to know everything that actually passed between the parties in a take-over.”

24. As will appear, in the present case there are many material facts of which there is direct evidence and many others which are matters of inference. At this stage the Board merely emphasises that inferences drawn from primary facts are just as much findings of fact as the facts themselves, though the Board recognises that an appellate tribunal may more readily interfere with the latter than the former.
25. The second main submission made by Mr Myerson and Mr Padgett in relation to the burden and standard of proof is that the Hearings Committee failed to apply Lord Hoffmann’s “binary” test in *Re B (Children) Care Proceedings: Standard of Proof* [2009] 1AC11, at p12:

“If a legal rule requires a fact to be proved (a “fact in issue”), a judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are zero and one. The fact either happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of zero is returned and the fact is treated as not having happened. If he does discharge it, a value of one is returned and the fact is treated as having happened.”

26. It is submitted that this passage requires a tribunal of fact to determine each fact on its own, by reference to the relevant standard of proof, before moving on to the next fact, which must be determined in a similar manner. The Board does not think that Lord Hoffmann had any such process in mind. The Board agrees with Mr Sumption QC, for the Executive, that Lord Hoffmann cannot have been suggesting that each fact must be dealt with on

its own. In the present case “the fact in issue” is whether there was a concert party or not. That question can only be decided on a consideration of the whole of the evidence, both of primary fact and the inferences to be drawn therefrom.

The Underlying Facts

27. It is submitted that the Hearings Committee erred in its approach to the underlying evidence, in that it failed properly or at all to assess, consider or weigh the evidence that it heard. It is said that the findings that it reached were contrary to the weight of the evidence and/or perverse. This part of the Written Submissions is sub-divided under eleven headings, of which the first five are directed to events up to and including 31 March 2009. The Board will deal with these matters first.
28. **Strategy.** It is submitted that the Hearings Committee failed properly to consider the strategy being pursued by Mr Myerson and Mr Padgett before they had any contact with Mr Posen (effectively, paragraphs 13-38 of the decision of the Hearings Committee). It is said that the strategy did not require the purchase or control of all of EIM’s stake in PCIT, as the Hearings Committee appears to have concluded; rather it required the breakup of the QVT concert party by the purchase of only half of EIM’s shares in PCIT; the commercial logic of PCIT’s approach at the second EGM would be compelling to whoever owned (or claimed to own) the remaining half of EIM’s stake.

29. Consideration of this submission requires an initial statement of the relevant dates and facts. The first EGM was requisitioned by QVT on 5 February 2009. At that time Principle Capital Group interests held approximately 13 per cent of the issued ordinary shares in PCIT. During February they acquired further shares in the market and at 26 March 2009 they held 22.94 per cent. It is common ground that that holding would in practice have been sufficient to block a special resolution for the return of capital, because the Principle Capital Group interests would, in practice, have controlled more than 25 per cent of the votes at any general meeting. Moreover, they could have acquired half of EIM's holding (6.86 per cent, making a total of 29.8 per cent) without coming under an obligation to make a Rule 9 offer. However, on 12 March 2009 the second EGM was requisitioned, at which the resolutions proposed could only be passed with 50 per cent of the votes.
30. Early in Mr Myerson's cross-examination before the Hearings Committee there was the following exchange between him and Mr Sumption:
- “Q Now, I take it that you regarded the resolutions proposed for the second EGM as being very important for the protection of Principle Capital's interests?
- A For the protection of all of the shareholders in Principle Capital Investment Trust.
- Q Now, to achieve those resolutions you needed the support of more than 50 per cent of the votes at that meeting, obviously.
- A Correct
- Q Now, would you agree that one of your main objectives from the moment that you decided to requisition the second EGM was to obtain that support?
- A Correct”

31. While it may be right to say that the strategy being pursued by Mr Myerson and Mr Padgett did not require the purchase or control of more than half of EIM's stake in PCIT, the Board cannot ignore Mr Myerson's oral evidence to the effect that it was one of his main objectives, at any rate from 12 March onwards, that he and those aligned with him should acquire more than 50 per cent of the votes before the second EGM. The essential objection of Mr Myerson and Mr Padgett to the Hearings Committee's view that it was necessary for the whole of EIM's stake to be purchased or controlled is that that was the basis of the Hearings Committee's conclusion that Mr Myerson had every reason to raise a question of investment in PCIT with Felix Posen. The Board's view, on the evidence as a whole, is that Mr Myerson wanted to obtain as many votes as he could. The real question is not how many votes he needed, but how many he wanted. The Board does not think that the evidence of Mr Andrews of Evolution and Principle Capital's General Counsel, Mr Peggie, and the other material upon which Mr Myerson and Mr Padgett rely is of any real assistance in answering this question.

32. **The first contact with Mr Posen.** In regard to paragraph 70 of their decision, Mr Myerson and Mr Padgett submit that the Hearings Committee wrongly concluded that there was no reason for Mr Myerson to contact Mr Posen without any prior discussion of PCIT with Felix Posen. They rely on the fact that the Posen Foundation was an existing investor in Principle Capital Funds and that the Hearings Committee heard evidence from Mr

Myerson that he considered customer relations to be very important; he had been asked to contact a customer and he rightly made a number of attempts to do so.

33. **Mr Posen's interest in PCIT.** Mr Myerson and Mr Padgett submit that the Hearings Committee wrongly rejected Mr Posen's evidence as to his pre-existing interest in PCIT shares and his commercial rationale for investing in the shares (paragraphs 73 to 80 of the decision of the Hearings Committee). It was Mr Posen's evidence that he had been following the share price of PCIT and had asked his banker, Reichmuth, to provide him with information about PCIT prior to its purchase. Given that there was no evidence that Mr Posen accepted any incentive from Mr Myerson or Mr Padgett to purchase the PCIT shares and that the Posen Foundation was an investor in other Principle Capital Funds, it was submitted that the Hearings Committee was wrong to reject Mr Posen's evidence.

34. It is convenient to deal with these two submissions together. With regard to the first of them, and despite the detailed submissions to the contrary, the Board agrees with the conclusion of the Hearings Committee and with their reasoning as set out in paragraphs 70 and following of their decision. In particular, the Board agrees with the first sentence of paragraph 74:

“The Committee considers in the light of the evidence as a whole that there must have been mention of an investment in PCIT, but that this came not from Felix Posen but from Mr Myerson, and that the reaction of Felix Posen was to suggest that Mr Myerson should discuss it with his son.”

35. The second submission must be dealt with at greater length. It is the Executive's case that, having come to the conclusion that EIM was likely to put its whole stake on the market, Mr Myerson and Mr Padgett turned to Mr Posen as the friendly buyer who would acquire those of EIM's shares that they could not acquire themselves because of Rule 9. Mr Myerson and Mr Padgett criticise the Hearings Committee's belief (paragraph 77) that the call between Mr Posen and Mr Myerson at 07.59 on Wednesday 25 March was much more significant than Mr Myerson and Mr Padgett suggest. The Board agrees with the Hearings Committee. Equally significant is Mr Posen's manuscript note dated 26 March, the first part of which Mr Posen himself suggested was the consequence of his two long telephone calls to his father from New York earlier that morning. The first part of the note reads

“FDP + DLP agree PCIT @ 36 MAX if poss.
So 7-8 mill MAX if poss.”

36. The Board agrees with the conclusion of the Hearings Committee stated in paragraph 80 of their decision:

“In short, by the time of the brief call to Mr Myerson early on 25 March, Daniel and Felix Posen had decided to try to acquire a large number of PCIT shares at up to a specified price The Committee infers that the quantity and price arose from and were consistent with the earlier discussions between Mr Myerson and Daniel Posen on 24 and 25 March.”

37. **Events of 26 March 2009.** Mr Myerson and Mr Padgett submit that the Hearings Committee failed properly or at all to assess, consider or weigh the evidence in relation to the events of 26 March 2009. It is said that the

Hearings Committee wrongly concluded that the telephone call between Mr Myerson and Ms Nahal at 16.41 was evidence of the existence of a concert party (paragraphs 83 to 87 of their decision). It is said that, in fact, the call was consistent with Mr Myerson wanting simply to purchase half of EIM's stake and to leave the holder of the remaining half to follow the commercial logic of Principle Capital's strategy.

38. The material parts of the 16.41 telephone call are set out in paragraph 82 of the decision of the Hearings Committee. One of the submissions of Mr Myerson and Mr Padgett is that Mr Myerson had not "won" nor was it "over" in a literal sense. Reliance is placed on Mr Myerson's explanation in cross-examination of what he meant:

"Well I was exuberant. We had broken – effectively by EIM deciding that they were going to sell their shares, they had obviously decided that they wanted out of the situation. We had won by breaking initially the concert party which existed between QVT and EIM and the other shareholders QVT had circled and we had, in my view, a good chance of winning the second EGM at this stage on the basis that EIM were now in place."

Earlier, it was put to Mr Myerson that he was going to decide what was going to happen about the other half of EIM's shares, to which he replied that he was either going to offer them to Mr Posen or not; he agreed that he was going to decide.

39. If the 16.41 telephone call had been the only evidence of a concert party, the Board would not have thought that the case had been made out. Nor indeed

would the Hearings Committee. On the other hand, it is consistent with the case that there was a concert party and the Hearings Committee were entitled so to treat it.

40. Under this head, Mr Myerson and Mr Padgett also submit that it is implausible that in the course of the evening at Boodle's on 26 March, Mr Ansell did not discuss with Mr Padgett what he and Mr Myerson proposed to do in relation to PCIT. They further submit that it is simply incredible that Mr Padgett did not discuss with Mr Ansell the question of purchase of shares from EIM and Mr Posen's interest. This is part of the attack on Mr Ansell's evidence (see below), but the Board sees no reason to disagree with the views of the Hearings Committee as expressed in paragraph 89 of their decision. The Board does, however, think it right to state that in regard to what is said in Mr Padgett's second witness statement regarding the evening at Boodle's, the Board accepts Mr Ansell's evidence in paragraphs 4 and 5 of his second witness statement that he is certain that he did not drink a substantial amount during the course of that evening. That evidence was confirmed in Mr Ansell's oral evidence before us.

41. **Events of 27 March 2009.** The Board has now reached the heart of the case. Mr Myerson and Mr Padgett submit that the Hearings Committee failed properly or at all to assess, consider or weigh the evidence in relation to the events of 27 March. They then make seven separate submissions in relation to the telephone calls made on the afternoon of 27 March, starting

with what the Hearings Committee described as the “crucial” call made by Mr Padgett to Mr Ansell at 13.06. However, that and the other calls must be considered in the light of what had happened earlier that day. Those happenings are described in paragraphs 90 and 91 and the first three sentences of paragraph 92 of the decision of the Hearings Committee, a description with which, as the Board understands it, Mr Myerson and Mr Padgett have no serious quarrel.

42. The Board takes the matter up at 13.01 when Mr Padgett called the Principle Capital office in London on his mobile from Geneva Airport. He spoke again to the London office at 13.04. He believes that the two calls covered a single conversation, interrupted by a loss of signal on his mobile. Neither of them was recorded, but the Board knows that the first lasted for two and a half minutes and the second for one and a half minutes. In paragraph 92 of their decision the Hearings Committee inferred that these calls were made between Mr Padgett and Mr Myerson; they clearly regarded that inference as being an important link in the chain of events.

43. In paragraphs 41 and 42 of his second witness statement, Mr Padgett states his belief that when he called Principle Capital’s London office he spoke not to Mr Myerson but to David Cooley, who was looking after the PCIT trade. This is supported by Mr Padgett’s evidence in cross-examination when he said that he thought he spoke to Mr Cooley because he usually dealt with share trades when he, Mr Padgett, was not in the office. So it appears that

the inference drawn by the Hearings Committee in paragraph 92 of their decision may not have been correct. However, the Board is satisfied that Mr Cooley would not have given the instructions to Mr Padgett without the active approval of Mr Myerson. Mr Padgett agrees that he then telephoned Mr Ansell on his mobile at 13.06, but he says that the only purpose of that call was to instruct Mr Ansell to switch PCIT's own order for seven million shares from WH Ireland to Liberum, as had been required by Mr Peggie.

44. The Hearings Committee dealt at length with the 13.06 call, mainly in paragraphs 93 to 97 of their decision. In paragraph 96 they said:

“Having seen and heard Mr Padgett and Mr Ansell give evidence, the Committee is satisfied that Mr Ansell's account of this call is correct. While some aspects of Mr Ansell's account were not wholly satisfactory, his evidence on this issue was clear and compelling; in contrast, Mr Padgett's explanations of facts pointing against the conclusion which the Committee has now reached were not at all clear or convincing. The Committee is further satisfied that Mr Padgett gave the order to Mr Ansell on the instructions of Mr Myerson. He would not otherwise have acted as he did.”

45. Subject to the unimportant qualification that the 13.01 and 13.04 calls were probably made by Mr Padgett to Mr Cooley, not to Mr Myerson, the Board agrees with the conclusion of the Hearings Committee. In his oral evidence before the Board, Mr Ansell confirmed that he was given a firm instruction by Mr Padgett to purchase the shares, and that he was given the specific number of shares (even though he got it wrong first time) to buy at a particular price. The Board accepts that evidence. It is confirmed by the incontrovertible facts listed by the Hearings Committee in paragraph 97 of

their decision. Notwithstanding the detailed submissions to the contrary, the Board is also in broad agreement with what is said in paragraphs 98 to 109 of the Hearings Committee's decision which takes the story down to the warehousing of Mr Posen's shares over the weekend of 27 to 29 March.

46. Before proceeding further the Board must return to Mr Ansell's evidence. It is clear and now accepted by Mr Ansell that until July 2009 he gave seriously misleading information to the Executive about the 13.06 call. However, the Hearings Committee, having seen and heard both him and Mr Padgett give evidence, were satisfied that the account of it given to them by Mr Ansell was correct. That evidence having been confirmed before the Board, which has heard none from Mr Padgett, it would be impossible for the Board to differ from the view of the Hearings Committee, and the Board does not do so. The Board should add that the reason given for Mr Padgett's decision not to attend or be represented before the Board, namely that in the absence of Mr Myerson it would be futile to require an oral hearing solely for the Board to consider evidence from Mr Padgett, is plainly specious.

47. Under this head Mr Myerson and Mr Padgett also make submissions as to the warehousing of the shares, the settlement difficulties and the balance of 53,413 shares. The Board is not impressed by those submissions, in particular those relating to the settlement difficulties. In the Board's view the close involvement of Mr Myerson and Mr Padgett in the resolution of

those difficulties is powerful evidence that a concert party existed. In general, the Board agrees with the views expressed by the Hearings Committee in paragraphs 110 to 115 of their decision.

48. **Unlikelihood of existence of a concert party.** Mr Myerson and Mr Padgett submit that the Hearings Committee did not consider properly or at all the inherent unlikelihood of Mr Myerson and Mr Padgett wanting to construct a concert party, given the strategy that they were pursuing, and then to mislead and conceal that concert party from the Executive. They say that there was no evidence of any inducement being offered by them to Mr Posen; and that there was even less incentive for a wealthy individual such as he to involve himself in a covert concert party, no motive having been suggested.
49. Again, the Board is not impressed by these submissions. If any inducement was offered, it would have been of the highest importance to both offeror and offeree that it should be concealed. As to the lack of an apparent motive, first, similar considerations apply; secondly, the absence of an apparent motive cannot be decisive in a covert concert party case.
50. **File Notes and the conclusion that the Executive was misled.** Mr Myerson and Mr Padgett submit that the Hearings Committee wrongly concluded (paragraph 126) that the Executive's typed file notes are a wholly accurate and fair reflection of the discussions that took place with Mr

Myerson, Mr Posen and Mr Padgett between 1 and 9 April 2009. They further submit that the Committee wrongly concluded, by reference to those notes, that Mr Myerson and Mr Padgett knowingly and deliberately persisted in misleading the Executive throughout the investigation.

51. These matters are dealt with in paragraphs 122 to 134 of the decision of the Hearings Committee. In paragraph 134 they said:

“Further and importantly, since the Committee has concluded that the Executive has established that there was a concert party as it alleges, it follows that all three Respondents have knowingly and deliberately persisted in misleading the Executive throughout the investigation”.

52. The Board has given the most careful consideration both to the reasoning and conclusion of the Hearings Committee and to the detailed submissions of Mr Myerson and Mr Padgett in relation to them. While the Board recognises the gravity and potential consequences of the conclusion to Mr Myerson, Mr Padgett and Mr Posen, its own conclusion, on the material evidence as a whole and given the existence of a concert party, is to the like effect.

53. **Pressure on witnesses.** Mr Myerson and Mr Padgett submit that the Hearings Committee ought to have treated with particular caution the evidence of those witnesses (Mr Lamb and Mr Ansell) whose stories altered following interviews during which members of the Executive warned those witnesses of the possibility of serious potential sanctions being taken against

them. It is said that Mr Ansell and Mr Lamb were subject to considerable pressure from the Executive on a number of occasions when they were told that the Executive disbelieved their evidence and that they might face serious disciplinary sanctions.

54. The Hearings Committee heard evidence on this matter from Mr Hingley and Mr Crawshay, then Director General and Deputy Director General respectively of the Panel. In paragraph 135 of their decision the Hearings Committee, having referred to suggestions that unfair pressure had been posed upon those being interviewed and that the Executive had otherwise behaved inappropriately towards Mr Myerson, Mr Padgett and Mr Posen, the Hearings Committee said:

“It should be recorded that the Committee is quite satisfied, having heard the evidence of Mr Hingley and Mr Crawshay, that it was right to give warnings of the consequences of any lack of openness and there is no justifiable basis for any such complaint.”

55. Since no application has been made for Mr Hingley and Mr Crawshay to be cross-examined before the Board, again it would be difficult for the Board to differ from the view of the Hearings Committee on this matter, and the Board does not do so. There is no ground at all for believing that either Mr Hingley or Mr Crawshay acted inappropriately in any way.

56. **The profound unreliability of Mr Ansell’s evidence.** Mr Myerson and Mr Padgett submit that the Hearings Committee did not consider properly or at

all the various changes in the evidence given by Mr Ansell and wrongly concluded that Mr Ansell was a reliable witness. It is said that his evidence was fundamentally unreliable.

57. This point can be dealt with briefly. It was not the Hearings Committee's view that Mr Ansell was a reliable witness in every respect. They were, however, satisfied (paragraph 96 of their decision) that Mr Ansell's account of the call at 13.06 on 27 March was correct. It is an everyday occurrence for tribunals of fact to reject a witness's evidence on some points and to accept it on others. There was certainly evidence on which the Hearings Committee could make this finding, and it was not against the weight of the evidence as a whole. So far as the Board is concerned, it is only necessary to repeat what the Board has said in paragraph 46 above.

58. **Findings of dishonesty.** Mr Myerson and Mr Padgett submit that, when considering sanction (see below), the Hearings Committee wrongly concluded (paragraph 160 of their decision) that they had been dishonest, despite making no clear findings to that effect when considering the underlying facts and despite no such allegation appearing in the Executive's submission or skeleton argument. They add that, despite being asked to remove the finding of dishonesty before the decision was finalised, the Hearings Committee declined to do so.

59. The short answer to these submissions is that in paragraph 134 of their decision (see paragraph 51 above) the Hearings Committee (by concluding that Mr Myerson, Mr Padgett and Mr Posen had knowingly and deliberately persisted in misleading the Executive throughout the investigation) did make a clear finding of dishonesty against them. The Hearings Committee were perfectly entitled to refuse to remove the finding in paragraph 160 from their decision.

CONCLUSION OF THE BOARD ON THE MERITS

60. It is now necessary for the Board to take stock of the conclusions of the Hearings Committee on the merits set out in paragraphs 65 to 155 (pages 24 to 51) of the decision of the Hearings Committee. The members of the Board read the relevant documentation in advance of the hearing on 1 and 2 July 2010. In particular the members of the Board studied the decision of the Hearings Committee and all written submissions with care. During the oral hearing, which lasted a day and a half, the Board was taken by Mr Jonathan Sumption, QC, on behalf of the Executive, in great detail through the evidence. As the evidence piled up the case against Mr Posen, Mr Myerson and Mr Padgett became irresistible. The Board was not impressed by Mr Padgett's new statement and accepts the oral evidence broadly of Mr Ansell who testified.

Above all the members of the Board were greatly assisted by the detailed and comprehensive reasoning of the Hearings Committee. The members of the Board wish to pay tribute to the care with which the decision of the

Hearings Committee was prepared. Having carefully reconsidered the matter by way of a complete rehearing the Board is fully satisfied that the Hearings Committee came to correct conclusions. The Board hereby dismisses the appeals on the merits by Mr Posen, Mr Myerson and Mr Padgett. The decision of the Hearings Committee is affirmed.

THE DISCIPLINARY SANCTION

61. In paragraphs 156 to 170 (pages 51 to 56) the Hearings Committee deal with the matter of the disciplinary sanction in the following terms:

“156. The disciplinary powers available to the Committee are set in paragraph 11(b) of the Introduction to the Code. So far as material to the present issues, those powers are to:

- “(i) issue a private statement of censure; or
- (ii) issue a public statement of censure; or

.....

- (v) publish a Panel Statement indicating that the offender is someone who, in the Hearings Committee’s opinion, is not likely to comply with the Code. The rules of the FSA and certain professional bodies oblige their members, in certain circumstances, not to act for the person in question in a transaction subject to the Code, including a dealing in relevant securities requiring disclosure under Rule 8 (so called “cold-shouldering”). For example, the FSA’s rules require a person authorised under the Financial Services and Markets Act 2000 (“FSMA”) not to act, or continue to act, for any person in connection with a transaction to which the Code applies if the firm has reasonable grounds for believing that the person in question, or his principal, is not complying or is not likely to comply with the Code.”.

157. Paragraph 9 of the Introduction to the Code provides:

“This section sets out the rules according to which persons dealing with the Panel must provide information and assistance to the Panel.

- (a) Dealings with and assisting the Panel

The Panel expects any person dealing with it to do so in an open and co-operative way. It also expects prompt co-operation and assistance from persons dealing with it and those to whom enquiries and other requests are directed. In dealing with the Panel, a person must disclose to the Panel any information known to them and relevant to the matter being considered by the Panel (and correct or update that information if it changes). A person dealing with the Panel or to whom enquiries or requests are directed must take all reasonable care not to provide incorrect, incomplete or misleading information to the Panel....”.

158. The obligation on those dealing with the Panel to assist it and to disclose information which is not incorrect, incomplete or misleading is of the very first importance to the operation and efficacy of the Code. It is of particular significance in the context where the Executive is concerned about the possible existence and non-disclosure of a concert party which, almost by definition, is a matter which will be difficult to expose in the absence of frank responses to requests for information. It is also a matter in which it can be expected that those who participate in an undisclosed concert party do so for financial and commercial advantage which they perceive to be sufficient to outweigh the risks of discovery.
159. In this context it is of course necessary to consider the conduct and roles of each of Mr Myerson, Mr Padgett and Mr Posen separately. But on the findings of the Committee each has been party to a deliberate attempt to circumvent Rule 9 and each has sought to cover up the breaches involved and deliberately sought to mislead and persisted in misleading the Executive and the Committee about what happened. The Executive, rightly in the view of the Committee, takes a very serious view of such conduct which undermines a fundamental Rule of and the obligations under the Code.
160. Although Mr Flint submitted on behalf of Messrs Myerson and Padgett that such conduct did not merit any sanction more severe than a public statement of censure, the Committee considers that such a sanction for conduct of this gravity would be wholly inappropriate. Faced with a conflict between their commercial interests and observing the Code, Messrs Myerson and Padgett gave preference to the former and Mr Posen was a willing participant in their conduct. Faced with an investigation by the Executive of developing intensity, all three were ready to offer an apparently innocent explanation of

events which, for the reasons expressed, the Committee is satisfied was co-ordinated, disingenuous and dishonest. It is the opinion of the Committee that such conduct by each of the three fully justifies the conclusion that he is a person who has not complied and is not likely to comply with the Code. The Committee has had well in mind that both Mr Myerson and Mr Padgett have been concerned in matters subject to the Code for many years and have not been the subject of any criticism before, but that cannot ameliorate their serious and dishonest conduct in the events under consideration. On the contrary, it suggests that they would have fully understood the consequences of what they were doing.

161. The Committee is of course very conscious of the fact that “cold-shouldering” is indeed a severe sanction. It is also conscious of the fact that it would impinge on Mr Myerson and Mr Padgett to an extent which does not apply to Mr Posen. Indeed, in their 17 March 2010 letter in which Mishcons wrote to the Secretary to the Committee to inform him that Mr Posen would not participate further in the proceedings, it was expressly stated that because of Mr Posen’s lack of involvement in the corporate finance arena “cold-shouldering” had “little relevance” for him “in practical terms” save as a matter of reputation in which he felt secure.
162. The Committee has carefully considered whether or not it would be right to distinguish in terms of sanction between Messrs Myerson, Padgett and Posen. It has concluded that it is not right to do so. The Committee has no doubt that Mr Myerson was responsible for the original involvement of Mr Posen and for demanding of Mr Padgett that all the EIM shares be secured on Friday 27 March and thereafter. Mr Myerson is a sophisticated and experienced investor and knew well that his conduct had to be hidden from investigation. Mr Padgett was much more than a mere administrator; he also pursued the Posen purchase and the cover-up in the knowledge of the consequences should the truth be discovered. Moreover, it was Mr Padgett who used his relationship with Mr Ansell to secure the purchase of the 6.7 million shares at lunchtime on the Friday which both he and Mr Myerson knew was essential to their purpose both because of EIM’s “fill or kill” requirement and because it was vital to achieving a majority at the Second EGM.
163. Mr Posen’s involvement is, in a sense, of a different nature. It might perhaps have been said on his behalf that he was simply duped into his part in the purchase or that

he relied upon Messrs Myerson and Padgett to assure him of its legitimacy, but that is not his case. It is his evidence and case that it was a pure, if most fortuitous, coincidence that he decided, at the very moment Messrs Myerson and Padgett were inevitably about to be voted off the Board of PCIT but were hoping to reverse that outcome, to invest some £2.4 million in that company and to do so in ignorance of the two EGMs, with no relevant research or advice, and on a personal basis because the Posen Foundation had determined that the Foundation would not itself be making any further investments at that time. That case has been rejected. Mr Posen was also party to the cover-up and to seeking to tailor his evidence to the Panel to coincide with the evidence of Messrs Myerson and Padgett. It was also Mr Posen who gave a false account about the source of the funds which he used to purchase the shares and subsequently refused to provide the information about who had in fact financed the purchase.

164. Paragraph 11(b)(v) of the Introduction to the Code contains no limitation of time on a “cold-shouldering” Statement. Mr Sumption submitted on behalf of the Executive that nonetheless, and partly because of the growing importance of proportionality as part of the test of lawfulness in the exercise of discretionary powers, and the legal status which the Code has, the Committee has the power to limit the time for which such a Statement should apply and that, in a case of the present gravity, an appropriate order would be to the effect that, after a stated period, the Statement should be open to review by the Executive on application by those the subject of it in the light of the circumstances then pertaining. He suggested that an appropriate period should be not less than five years.
165. It is to be noted that in the more than 40 years in which the Code has existed in substantially its current form, there has only been one other case in which a cold-shouldering order has been made. That is some indication of the extreme nature of the sanction; it is also an indication of the standards that are generally observed in the conduct of takeovers and mergers and the acceptance of those concerned in them of the need to comply with the Code and the principles which it enshrines.
166. In his closing submissions Mr Flint, whilst he submitted first that the sanction of public censure would be sufficient even if the Executive were found to be right in

the entirety of its case, also, and helpfully, accepted that the general power to “cold-shoulder” included a power to limit such a Statement to a definite period of (say) one, two or five years but questioned whether it was appropriate to make a Statement providing only that it could be reviewed after such a defined period. He did so on the basis that a punitive sanction of such a kind should be fixed once and for all at the time of the Committee’s decision, in accordance with its assessment of the gravity of the offence and in the knowledge acquired at that time and not be exposed to review by (inevitably) others after a set period had expired.

167. If the Committee were to conclude, as it has, that cold-shouldering was appropriate, Mr Flint submitted that, given the damaging effect of such an order on those concerned and third parties with which they were associated, there was no need for the period to be greater than six months or one year.
168. The Committee has carefully considered these submissions and the need to ensure that the relevant Statement should be proportionate to the gravity of the conduct which it has found to have existed. It is persuaded by Mr Flint’s submissions that it is right that a fixed period should be stated rather than a period after which an application could be made to “cancel” the Statement.
169. The remaining and obviously important question is what period is appropriate. The Committee is entirely satisfied that for conduct of this gravity a short period would be quite insufficient; equally, it has determined that in the event there was insufficient prejudice to shareholders to justify a requirement to make a mandatory offer and acknowledges that the reputational consequences of such an order can extend beyond the specified time period.
170. The Committee has concluded that the formal Panel Statement to be made in accordance with paragraph 11(b)(v) of the Introduction to the Code should be made to be effective for a period of three years from the date of its publication. That period, in the judgment of the Committee, is the minimum which is appropriate.”

Leaving aside the issue about the appropriate period mentioned in paragraphs 169 to 170 the Board fully endorses the observations of the Hearings

Committee. In agreement with the Hearings Committee the Board considers that it was appropriate to adopt a fixed period.

62. In respect of the appropriate period the Board has considered the cross-appeal of the Executive requesting the period to be increased to five years. The Hearings Committee clearly regarded three years to be a substantial period. If the Board had had to consider the matter entirely afresh, it may very well have been minded to impose a period of five years. Given the unanimous view of the Hearings Committee fixing a three year period, which cannot be described as wholly disproportionate in lack of appropriate severity, the Board proposes to uphold the decision on the period of the Hearings Committee on this appeal. The cross appeal of the Executive is therefore dismissed.
63. It follows that the formal Panel Statement to be made in accordance with paragraph 11 (b)(v) of the Introduction to the Code should be made to be effective for a period of three years from the date of its publication.

PUBLIC STATEMENT UNDER THE RULES OF THE BOARD

64. The decision of the Board and its reasons has been provided to the parties.
65. The Board hereby publishes its decision and reasons as a public statement.

Dated 13 July 2010

[signed by Lord Steyn]

Lord Steyn

[signed by Sir Martin Nourse]

Sir Martin Nourse

[signed by Kenneth Ayers]

Kenneth Ayers

[signed by John Gieves]

John Gieves

[signed by Simon Robey]

Simon Robey

ANNEX

DECISION OF THE HEARINGS COMMITTEE

THE TAKEOVER PANEL HEARINGS COMMITTEE

PRINCIPLE CAPITAL INVESTMENT TRUST PLC (“PCIT”)

DECISION OF THE HEARINGS COMMITTEE

A. SUMMARY OF RULING

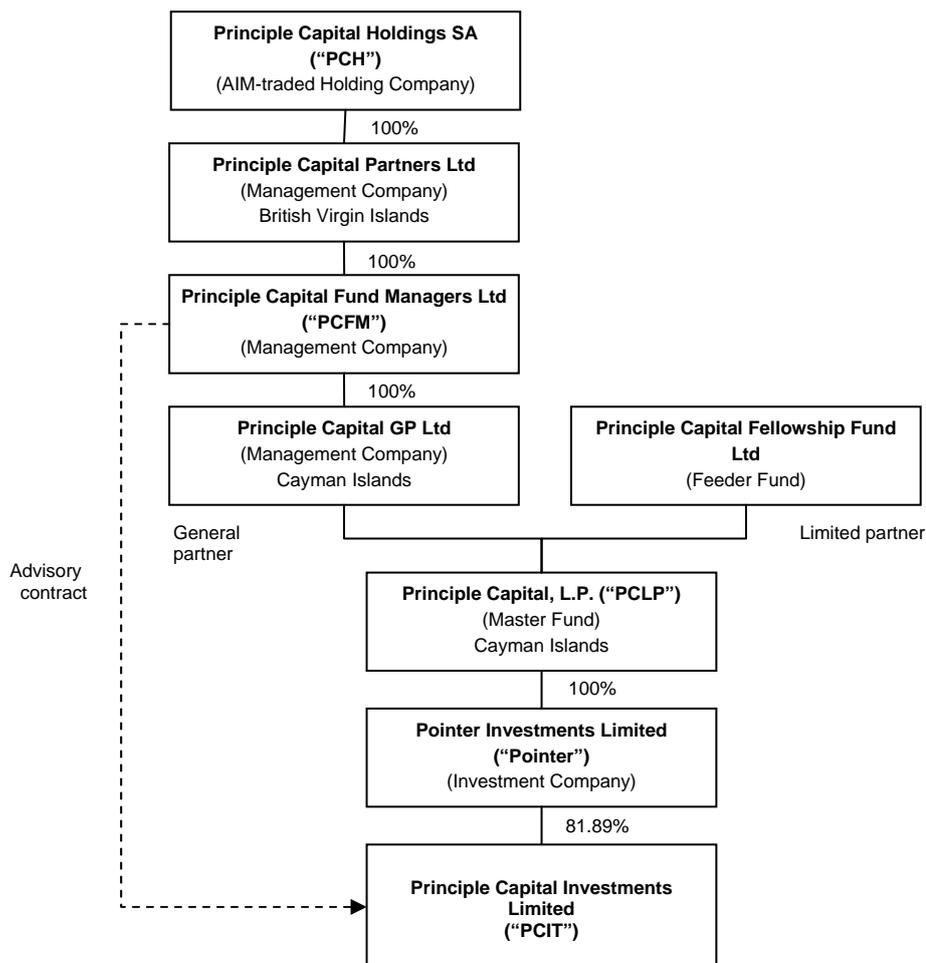
1. The Hearings Committee of the Takeover Panel (the “Committee”) has concluded that:
 - i. on 27 March 2009, 6,700,000 shares in PCIT were acquired by a concert party comprising Mr Daniel Posen (“Mr Posen”) and parties acting on the direction of Mr Brian Myerson (“Mr Myerson”) and Mr Brian Padgett (“Mr Padgett”) in a deliberate attempt to circumvent the requirement under Rule 9 of The City Code on Takeovers and Mergers (the “Code”) to make an offer to shareholders of PCIT generally;
 - ii. in breach of their obligations to assist the Panel, Mr Myerson, Mr Padgett and Mr Posen subsequently attempted in their dealings with the Executive to conceal from the Executive the circumstances relating to the acquisition of these shares, to present a false picture of what happened, to conceal the breaches of the Code involved and, in Mr Posen’s case, not to disclose to the Executive the source of the funds used to purchase the shares; and
 - iii. it should publish a Panel Statement indicating that Mr Myerson, Mr Padgett and Mr Posen are persons who in the Committee’s opinion are not likely to comply with the Code.

2. The Committee has determined that the statement in paragraph 1.iii. above should remain effective for a period of three years from the date of publication of this Decision.
3. The Committee was also invited by the Executive to require a mandatory offer to be made to all remaining shareholders of PCIT to give effect, albeit belatedly, to Rule 9. For the reasons explained below, the Committee concluded that in the very exceptional circumstances of the case such an offer need not be required.

REASONS

B. BACKGROUND

4. PCIT was at the relevant time a closed ended investment trust admitted to listing on the Official List and to trading on the main market for listed securities on the London Stock Exchange.
5. A simplified corporate structure at the outset of these proceedings before the Committee was as follows:



6. At the relevant time, Principle Capital Holdings SA ("PCH") derived its income from the fees which members of its group earned from advisory, management and other services provided to six investment funds and other fund and trust administration business. The six funds were:
- i. PCIT, Principle Capital group's only current activist investment fund. Its investment adviser was Principle Capital Fund Managers Ltd. ("PCFM"), wholly-owned by PCH. In turn, PCFM was advised by Principle Capital Advisors Limited ("PCAL"), also wholly-owned by PCH.
 - ii. South African Property Opportunities Plc ("SAPRO") whose investment manager was Proteus Property Partners Limited ("PPPL"), owned as to 52% by PCH.

- iii. PME African Infrastructure Opportunities plc (“PMEAIO”) whose investment manager was PME Infrastructure Managers Limited, owned as to 31.7% by PCH.
 - iv. Principle Energy Limited (“Principle Energy”) which was provided with management services by Principle Energy Management Services Limited, a subsidiary of PCH.
 - v. Sirius Real Estate Limited (“Sirius”) whose investment manager was Principle Capital Sirius Real Estate Asset Management Limited (“PCSREAML”), owned as to approximately 48% by PCH.
 - vi. PCLP.
7. The founding partners of PCH were and remained at the relevant time:
- i. Brian Myerson
 - ii. Brian Padgett
 - iii. David Cooley
 - iv. George May
 - v. James Peggie
 - vi. Leonard O’Brien.
8. As at 26 November 2009 PCH had a market capitalisation of £6.25 million. Its principal shareholders were:
- i. the Myerson family (holding approximately 30% of the issued share capital indirectly as potential beneficiaries of the Nicholas Trust);
 - ii. the remaining members of the Principle Capital group management (holding approximately 31% of the issued share capital, including approximately 5% held by an entity owned by Mr Padgett); and

- iii. institutional and other investors (holding approximately 39% of the issued share capital, including approximately 5% held by PCIT).
9. Mr Myerson was at the relevant time the executive chairman as well as one of the co-founders of the Principle Capital group. Mr Padgett, also a co-founder of the group, was joint head of fund management and administration.
10. Both Mr Myerson and Mr Padgett were, prior to 26 March 2009, executive directors of PCIT. Mr Myerson was chief executive officer and Mr Padgett joint head of fund management and administration of the Principle Capital group. There were three independent non-executive directors of PCIT:
- i. Alan Clifton (also Chairman)
 - ii. James Roe
 - iii. Wilfred Caldwell.

Other members of management in the Principle Capital group were:

- i. James Peggie (“Mr Peggie”) – investment director and general counsel
 - ii. David Cooley – chief operating officer
 - iii. George May – chief investment officer
 - iv. Leonard O’Brien – joint head of fund management and administration.
11. On 31 December 2008 PCIT reported a net asset value of 44.5 pence per share (2007 86.8 pence). Its portfolio consisted of:

<i>Security</i>	<i>Class of share/security</i>	<i>Value £,000</i>	<i>% of net assets</i>
Quoted investments:			
Photo-Me International plc	Ordinary share	5,146	11.6
Treasury 4.75% 2010	Treasury stock	4,738	10.6
Treasury 4.25% 2011	Treasury stock	4,735	10.6
Liberty plc	Ordinary share	3,525	7.9
Luminar Group Holdings plc	Ordinary share	3,321	7.5
Sirius Real Estate Limited*	Ordinary share	3,235	7.3
D1 Oils plc	Ordinary share	2,462	5.5
MWB Group Holdings plc	Ordinary share	2,060	4.6
Blacks Leisure Group plc	Ordinary share	1,976	4.4
South African Property Opportunities plc*	Ordinary share	1,560	3.5
AGA Rangemaster Group plc	Ordinary share	1,497	3.4
Principle Capital Holdings S.A.	Ordinary share	1,180	2.6
Syndicate Asset Management plc	Ordinary share	59	0.1
		<u>35,494</u>	<u>79.6</u>
Unquoted investments:			
Principle Energy Ltd*	Ordinary share	6,955	15.6
Earthchild Clothing (Waterfront)(Proprietary) Ltd	Ordinary share	1,464	3.3
		<u>8,419</u>	<u>18.9</u>

* these companies' funds are managed by members of the Principle Capital group or associated companies.

12. PCIT had 100,212,572 issued ordinary shares. By 26 March 2009, some 88% of its shares were held by five substantial shareholders as follows:

The Initial Concert Party (as defined below)	22.94%
Invesco Asset Management Limited ("Invesco")	21.12%
QVT Financial L.P. ("QVT")	21.10%
EIM S.A. ("EIM")	13.72%
West Midlands Metropolitan Authorities Pension Fund ("West Midlands")	9%

the Initial Concert Party for this purpose being a concert party consisting of PCH, PCLP, Silex Trust Company Limited ("Silex") and the Daniel Howard Trust (the "Initial Concert Party").

13. Prior to 2009, the Board of PCIT including the three independent directors had supported the employment of Principle Capital group companies as investment advisers of PCIT and the existing strategy of dealing with its assets (and this support of these independent directors substantially continued during the events of March and April 2009).
14. At the outset of 2009, Mr Myerson and Mr Padgett could in these circumstances continue to exert significant influence over the affairs of PCIT as senior officers of PCIT and the providers of investment advice to that company.
15. In January 2009, however, change was threatened. On 27 January, three PCIT shareholders, namely QVT, Invesco and EIM (the “QVT concert party”), entered into a representation agreement (the “Representation Agreement”) in relation to PCIT. The number of shares held by these shareholders was as follows:

<i>Shareholder</i>	<i>No. of shares</i>	<i>% of PCIT</i>
QVT	21,145,759	21.10
Invesco	21,163,218	21.12
EIM	13,753,413	13.72
Total	56,062,390	55.94

16. Under the terms of the Representation Agreement, the three shareholders agreed, among other things, as follows:
- i. to requisition a general meeting of PCIT to consider resolutions to:
- (a) remove Mr Myerson, Mr Padgett, Alan Clifton and James Roe as directors (it was not proposed to remove Wilfred Caldwell as a director);
- (b) appoint John Chapman and Patrick McCann as directors;

- (c) terminate the investment advisory agreement between PCIT and PCFM;
 - (d) instruct the directors to enter into a new investment management agreement with Crystal Amber Advisers (UK) LLP (“Crystal Amber”) for a term of two years under which PCIT would pay Crystal Amber a fee equal to 3% of all cash distributions made by PCIT to its members; and
 - (e) instruct the directors to change the investment policy of PCIT to effect a realisation of the portfolio of assets and a progressive return of cash to shareholders at or near the prevailing net asset value per PCIT share;
- ii. to vote in favour of the resolutions described in paragraph i. above;
- iii. that they were acting in concert for the purposes of the Code;
- iv. not to acquire or dispose of, or offer to acquire or dispose of, any interest in PCIT shares until the termination date of the Representation Agreement, being the earlier of:
 - (a) the date of the PCIT general meeting to consider the resolutions referred to in paragraph i. above; and
 - (b) the date on which the changes contemplated in such resolutions were effected; and
- v. following the termination date of the Representation Agreement, not to acquire or offer to acquire any interest in PCIT shares until such time as the Panel confirmed that the parties were no longer acting in concert.

17. An Extraordinary General Meeting was requisitioned by the QVT concert party to consider its proposed resolutions and on 26 February PCIT announced that this EGM (the “First EGM”) would be held on 26 March 2009. The existence of the QVT concert party was duly disclosed.
18. Mr Myerson had on 19 February 2009 approached EIM to see if EIM would sell its entire holding in PCIT. At this stage, the Initial Concert Party held only 12.21% of PCIT’s voting rights, so such a purchase would have given the Initial Concert Party a total of just under 30% and so would have been without consequences under Rule 9 of the Code, but this approach was rebuffed by EIM until after the First EGM because of the Representation Agreement.
19. Though at this stage its approach to EIM did not succeed, the Initial Concert Party did in the weeks that followed acquire further PCIT shares in the market at a price of 35.14 pence per share, thus increasing its holding to approximately 23% of PCIT’s share capital. Two consequences of this were that it could no longer (i) acquire the whole of EIM’s shareholding without triggering a requirement to make a mandatory bid under Rule 9.1 or (ii) acquire only part of EIM’s holding (leaving the remainder with EIM) without risk of triggering a mandatory bid due to Note 6 on Rule 9.1.
20. Since the QVT concert party held over 50% of PCIT’s issued share capital, it was obvious that the QVT concert party resolutions were very likely to be passed at the First EGM, though the existing PCIT Board not only announced its opposition to most of these resolutions, but stated that a return of more than a limited amount of cash to shareholders of PCIT would require a special resolution with a 75% majority voting in favour. It was also stated on behalf of Principle Capital that holders of 23% of PCIT shares would vote against any resolution to return cash to shareholders. Mr Myerson was confident that in practice that level of holding would defeat such a resolution.
21. On 12 March 2009, i.e. before the First EGM, PCLP requisitioned a second EGM of PCIT (the “Second EGM”). The resolutions (set out in detail in paragraph 29 below) proposed for the Second EGM to try to reverse the

effects of the QVT concert party resolutions anticipated that the QVT resolutions would be passed at the First EGM, but proposed in summary removing PCIT directors appointed at that First EGM, re-appointing the executive directors (Mr Myerson and Mr Padgett) removed at the First EGM, cancelling the appointment of Crystal Amber as PCIT's investment manager/adviser and changing PCIT's investment policy, so that its assets would be realised at lower cost over a two year period and the proceeds distributed to PCIT shareholders.

22. On 13 March, PCLP offered in writing to purchase immediately following the First EGM on 26 March 7,050,000 of EIM's shares in PCIT at 35 pence per share. At that time the Initial Concert Party held 22.94% of PCIT's shares. So, if the offer had been accepted by EIM, that grouping would have held 29.97% of PCIT's issued share capital and EIM would have been left with 6.69%. This could well have raised questions about any arrangement which might have been made about EIM's remaining stake, and it was necessary to consider what would be the position taken by the Executive in relation to Note 6 on Rule 9.1.
23. Accordingly, Evolution, on behalf of the Principle Capital group, sought the Executive's view on whether, if PCLP purchased only part of the EIM holding, the vendor (EIM) and the Initial Concert Party might be treated as being in concert and thus, with EIM's remaining holding of 6.6% taking the total over 30%, be said to be obliged to make a Rule 9 bid. The Executive noted that the proposed purchase price was 11% above the market price and it was not prepared to rule on this without at the very least discussing it first with EIM; but EIM, inhibited by the Representation Agreement, did not wish to be involved at this stage and would not discuss the matter. The Executive also pointed out that any decision which it made would be ex parte and might be challenged later.
24. EIM did not respond to the PCLP offer of 13 March before the First EGM or indeed later. It was overtaken by events. What had occurred indicated, however, that any attempt by the Initial Concert Party to acquire any part of

EIM's holding leaving EIM with the rest would raise significant concerns about the risk of a mandatory bid, especially if the price was above the market price at the relevant time. As Evolution (through Mr Stuart Andrews ("Mr Andrews")) advised the Principle Capital group, certainty in this area was needed, and Mr Myerson was, it seems, someone who heeded professional advice of this sort.

25. As the First EGM approached, some things were clear and they are relevant to what happened in connection with the transactions which took place in the days following that EGM.
26. At the First EGM, both Mr Myerson and Mr Padgett were to be faced with dismissal by shareholders from the PCIT board, and important connections with and sources of income from PCIT were to be terminated. The strategy of PCIT, which was considered to be of benefit to the Principle Capital group's own shareholding in PCIT, was to be replaced by one which focused on the interests of other shareholders, such as the QVT concert party with an urgent need for liquidity in the midst of a global financial crisis.
27. As already indicated, with over 55% of the PCIT shares held by the QVT concert party, the QVT concert party resolutions were almost bound to be passed.
28. Mr Myerson was, however, determined to reverse this position and demonstrated his resolve to do so. Even before the First EGM was held and as already indicated (paragraph 21 above), he caused the Second EGM to be requisitioned to consider resolutions to reverse the looming and inevitable effect of some of the resolutions which were to be voted upon at the First EGM.
29. The resolutions to be proposed at the Second EGM, which were put forward prior to the holding of the First EGM, were to:

- i. remove the directors proposed to be appointed at the general meeting to be convened for Thursday 26 March or any other director appointed subsequent to that general meeting;
- ii. re-appoint the current executive directors (Mr Myerson and Mr Padgett) as directors;
- iii. terminate any investment management or advisory management agreement entered into with Crystal Amber;
- iv. conditional upon the passing of the above resolutions regarding changes to the board, change PCIT's investment policy to the effect that PCIT's existing portfolio of investments should be realised in an orderly fashion over a period of two years and that the proceeds of such realisation should be distributed to PCIT shareholders; and
- v. conditional on the passing of the above resolutions regarding changes to the board, direct the PCIT directors to circulate proposals by no later than 30 June 2009 for the return of not less than £15 million in cash to PCIT shareholders.

Before these resolutions were put before the Second EGM, the question which occupied Messrs Myerson and Padgett was whether sufficient votes could be relied upon to support these resolutions.

30. Mr Myerson's determination to win the battle can only have been increased by critical comments from the QVT concert party about the conduct of the management of PCIT.
31. It was crucial to ensure that the holders of at least 50% of PCIT's issued share capital would support these resolutions. By the time of the First EGM, the Initial Concert Party had (as stated above) about 23% of PCIT's issued share capital. With continuing support (which, no doubt, had to be fostered) of

West Midlands (9%), Ziff Brothers (“Ziff”) (about 3%) and others, there would be a total of about 37%, still well short of 50%.

32. Mr Myerson thought he could see a way to achieve a winning position. He thought that, once free of its obligations under the Representation Agreement and with a pressing need for liquidity, EIM would, after the First EGM, be willing to sell PCIT shares. In Mr Myerson’s perception, EIM’s shares after the First EGM would be the “swing vote”. As he put it to the Executive on 3 September 2009:

“...if you looked at the numbers from the First EGM, which we lost, and you take EIM's stake as the swing vote, so the minute that EIM either sold us half their stake and voted for us or voted all their shares with us, we would have won.”.

In other words, to win by this route, the Principle Capital group needed the support not merely of some seven million shares (which they had already offered without result to buy), but of the whole of EIM's stake.

33. Mr Myerson considered EIM would realise that, with its existing stake at the time of the First EGM, the Principle Capital group could block any significant distribution of cash and so would be looking for an exit from PCIT in a way which would sufficiently meet EIM’s need for liquidity. Thus he expected EIM would after the First EGM want to sell PCIT shares.
34. In that, Mr Myerson was at least in effect right as became evident immediately after the First EGM (see paragraph 82 below). Mr Myerson suggested to the Committee that he further thought that it would not be necessary to buy all of EIM’s stake. He could table the Principle Capital group’s own plans for realisation of £15 million of PCIT’s assets by the end of June 2009 coupled with a purchase of part of EIM’s holding which could give EIM a return of about 80% of the total value of its PCIT investment in the short term, whilst still leaving it with half its holding.

35. He said that he believed that in these circumstances “shareholders would support our plans”. He added “we were buyers up to just under 30%” and “We had it in mind to buy around half of EIM’s stake. We designed the distribution proposals in such a way as would “force” [EIM] to vote the balance of their shares with us.”. He felt that there was a good chance of prevailing due to the fact that “we stood a better chance of delivering cash to shareholders than QVT, doing it in a more sensible fashion and at a cheaper cost.”.
36. The First EGM was duly held on 26 March. The QVT concert party resolutions were all passed with the exception of a special resolution to change the name of PCIT.
37. In the course of the following days, PCLP acquired from EIM 7,000,000 PCIT shares at a price of 35.07 pence per share, and WH Ireland purchased 6,753,413 PCIT shares at a price of 35.07 pence per share, of which 6.7 million PCIT shares were on-sold to Mr Posen.
38. The circumstances of the Posen transaction give rise to the crucial issue in the present proceedings. If Mr Posen was acting in concert with the Initial Concert Party in acquiring 6,700,000 shares representing about 6.7% of PCIT’s share capital, there arose, unless the Panel agreed otherwise, an obligation to make a bid for the shares of the other shareholders under Rule 9.1 because the total holding of such a concert party consequently exceeded 30%.

C. RELEVANT PROVISIONS OF THE CODE

39. The following provisions of the Code are relevant to the subject matter of the Hearing.

(a) *Definition of “acting in concert”*

The definition of “acting in concert” is set out in the Definitions section of the Code.

(i) *The basic definition*

40. The first sentence of the definition of “acting in concert” explains the meaning of the concept and provides as follows:

“Persons acting in concert comprise persons who, pursuant to an agreement or understanding (whether formal or informal), co-operate to obtain or consolidate control (as defined below) of a company or to frustrate the successful outcome of an offer for a company....”.

41. The definition goes on to provide that certain persons will be presumed to be persons acting in concert with other persons in the same category, unless the contrary is established. However, none of these presumptions is relevant to the subject matter of the Hearing.

(b) *The requirement to make a mandatory offer*

(i) *Triggering a mandatory offer – Rule 9.1*

42. The Code requires that, where a person acquires shares which, when taken together with the shares held by persons acting in concert with him, give that person control of a company, that person should be required to make an offer in cash at the highest price paid by him, or by any person acting in concert with him, during the preceding 12 months. Control for the purposes of the Code means an interest, or interests, in shares carrying in aggregate 30% or more of the voting rights of a company.

43. The purpose of the mandatory bid requirement is two-fold:

- (i) to provide that, where a person obtains control of a company, he must provide the opportunity of an exit to all other shareholders in the

company, since they may not wish to remain in the company now that control of the company effectively rests in the hands of a single (or different) person or a group of persons acting in concert; and

- (ii) on the basis that the new controller may have paid a premium price to obtain control of the company, to ensure that all shareholders in the company are granted the opportunity of an exit at the same premium price as that which may have been paid to acquire control.

44. Rule 9.1 provides as follows:

“9.1 WHEN A MANDATORY OFFER IS REQUIRED AND WHO IS PRIMARILY RESPONSIBLE FOR MAKING IT

Except with the consent of the Panel, when:—

(a) any person acquires, whether by a series of transactions over a period of time or not, an interest in shares which (taken together with shares in which persons acting in concert with him are interested) carry 30% or more of the voting rights of a company; or

(b) any person, together with persons acting in concert with him, is interested in shares which in the aggregate carry not less than 30% of the voting rights of a company but does not hold shares carrying more than 50% of such voting rights and such person, or any person acting in concert with him, acquires an interest in any other shares which increases the percentage of shares carrying voting rights in which he is interested,

such person shall extend offers, on the basis set out in Rules 9.3, 9.4 and 9.5, to the holders of any class of equity share capital whether voting or non-voting and also to the holders of any other class of transferable securities carrying voting rights. Offers for different classes of equity share capital must be comparable; the Panel should be consulted in advance in such cases.

An offer will not be required under this Rule where control of the offeree company is acquired as a result of a voluntary offer made in accordance with the Code to all the holders of voting equity share capital and other transferable securities carrying voting rights.”.

(ii) *Acquiring a part only of a person’s interest in shares*

45. Where a person increases his shareholding to, say, 29.9% of a company’s shares carrying voting rights and does so by acquiring only part of the vendor’s stake, the Panel will be concerned to examine whether the vendor and the purchaser should be treated as acting in concert and/or whether the purchaser should be treated as interested in the shares retained by the vendor. The Panel’s approach in this area is set out in Note 6 on Rule 9.1 which provided at the relevant time as follows:

“6. *Vendor of part only of an interest in shares*

Shareholders sometimes wish to sell part only of their shareholdings or a purchaser may be prepared to purchase part only of a shareholding. This arises particularly where a purchaser wishes to acquire shares carrying just under 30% of the voting rights in a company, thereby avoiding an obligation under this Rule to make a general offer. The Panel will be concerned to see whether in such circumstances the vendor is acting in concert with the purchaser in such a way as effectively to allow the purchaser to exercise a significant degree of control over the retained shares, in which case a general offer would normally be required. A judgement on whether such significant degree of control exists will obviously depend on the circumstances of each individual case. In reaching its decision, the Panel will have regard, inter alia, to the points set out below.

(a) There might be less likelihood of a significant degree of control over the retained shares if the vendor was not an “insider”.

(b) The payment of a very high price for the shares would tend to suggest that control over the entire holding was being secured.

(c) Where the retained shares are in themselves a significant part of the company's capital (or even in certain circumstances represent a significant sum of money in absolute terms), a greater element of independence may be presumed.

(d) It would be natural for a vendor of part of a controlling holding to select a purchaser whose ideas as regards the way the company is to be directed are reasonably compatible with his own. It is also natural that a purchaser of a substantial holding in a company should press for board representation and perhaps make the vendor's support for this a condition of purchase. Accordingly, these factors, divorced from any other evidence of a significant degree of control over the retained shares, would not lead the Panel to conclude that a general offer should be made.

Similar considerations will arise where the vendor remains interested in shares but without itself owning any of such shares, or where the acquisition is not of the shares themselves but of another type of interest in shares."

(c) Dealings with and assisting the Panel

46. Paragraph 9(a) of the Introduction to the Code provides that:

“The Panel expects any person dealing with it to do so in an open and co-operative way. It also expects prompt co-operation and assistance from persons dealing with it and those to whom enquiries and other requests are directed. In dealing with the Panel, a person must disclose to the Panel any information known to them and relevant to the matter being considered by the Panel (and correct or update that information if it changes). A person dealing with the Panel or to whom enquiries or requests are directed must

take all reasonable care not to provide incorrect, incomplete or misleading information to the Panel....”.

(d) *The Hearings Committee*

Paragraph 7(a) of the Introduction to the Code provides that:

“The Hearings Committee can be convened in the following circumstances:

.....

(iii) the Executive may institute disciplinary proceedings before the Hearings Committee when it considers that there has been a breach of the Code.....; or

(iv) in other circumstances where the Executive.... considers it appropriate to do so.....”.

(e) *Disciplinary powers*

Paragraph 11 of the Introduction to the Code provides that:

“.....

(a) Disciplinary action

The Executive may itself deal with a disciplinary matter where the person who is to be subject to the disciplinary action agrees the facts and the action proposed by the Executive. In any other case, where it considers that there has been a breach of the Code, the Executive may commence disciplinary proceedings before the Hearings Committee. The person concerned is informed in writing of the alleged breach and of the matters which the Executive will present to the Hearings Committee. Disciplinary actions are conducted in accordance with the Rules of Procedure of the Hearings Committee, which are available on the Panel’s website.

(b) Sanctions or other remedies for breach of the Code

If the Hearings Committee finds a breach of the Code or of a ruling of the Panel, it may:

- (i) issue a private statement of censure; or
- (ii) issue a public statement of censure; or
- (iii) suspend or withdraw any exemption, approval or other special status which the Panel has granted to a person, or impose conditions on the continuing enjoyment of such exemption, approval or special status, in respect of all or part of the activities to which such exemption, approval or special status relates; or
- (iv) report the offender's conduct to a United Kingdom or overseas regulatory authority or professional body (most notably the Financial Services Authority ("FSA")) so that that authority or body can consider whether to take disciplinary or enforcement action (for example, the FSA has power to take certain actions against an authorised person or an approved person who fails to observe proper standards of market conduct, including the power to fine); or
- (v) publish a Panel Statement indicating that the offender is someone who, in the Hearings Committee's opinion, is not likely to comply with the Code. The rules of the FSA and certain professional bodies oblige their members, in certain circumstances, not to act for the person in question in a transaction subject to the Code, including a dealing in relevant securities requiring disclosure under Rule 8 (so called "cold-shouldering"). For example, the FSA's rules require a person authorised under the Financial Services and Markets Act 2000 ("FSMA") not to act, or continue to act, for any person in connection with a transaction to which the Code applies if the firm has reasonable grounds for believing that the person in question, or his principal, is not complying or is not likely to comply with the Code."

D. BURDEN AND STANDARD OF PROOF

47. It is for the Executive to prove its case. That applies both to the allegations which the Executive makes against the Respondents and to the appropriateness of the order which it recommends the Committee to make if its allegations are established.
48. It is common ground that the standard of proof which the Executive must meet is the balance of probabilities, but that this civil standard of proof is to be applied flexibly depending upon particular features of the case. To assist the Committee in doing so various authorities were referred to.
49. As the Court of Appeal put it in R (on the application of N) v. Mental Health Review Tribunal (Northern Region) [2006] 4 All ER 194 at [62]: “Although there is a single civil *standard* of proof on the balance of probabilities, it is flexible in its *application*. In particular, the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the evidence before a court will find the allegation proved on the balance of probabilities. Thus the flexibility of the standard lies not in any adjustment to the degree of probability required for an allegation to be proved (such that a more serious allegation has to be proved to a higher degree of probability), but in the strength or quality of the evidence that will in practice be required for an allegation to be proved on the balance of probabilities.”.
50. In the present case there is no doubt as to the seriousness of the allegations made by the Executive and the consequences which may follow if the allegations are proved. The allegations affect the civil rights and obligations of the Respondents and potential consequences are not limited to being detrimental only to their reputation.
51. The Committee was referred to passages from three cases in the House of Lords in Re B (Children) (Care Proceedings: Standard of Proof) [2009] 1 AC 11 at [2] and [15], In Re H and Others (Minors) (Sexual Abuse: Standard of

Proof) [1996] AC 563 at [586] and *R (on the application of D) v. Life Sentence Review Commissioners* [2008] 1 WLR 1499 at [22]–[28] which stress amongst other things that there is no room for a finding that what is alleged might have happened. Either the allegation is established on a balance of probabilities or it must be dismissed. In deciding issues of fact, regard should be had to whatever extent is appropriate to inherent probabilities.

52. The Executive suggested that the Committee would also be helpfully guided by the well-known observations of the Panel in the *Guinness plc/The Distillers Company plc* case (Panel Statement 1989/13) with particular reference to the evidence which may justify an inference that a concert party came into existence.
53. The Panel Statement (1989/13) said:

"The nature of acting in concert requires that the definition be drawn in deliberately wide terms. It covers an understanding as well as an agreement, and an informal as well as a formal arrangement, which leads to co-operation to purchase shares to acquire control of a company. This is necessary, as such arrangements are often informal, and the understanding may arise from a hint. The understanding may be tacit, and the definition covers situations where the parties act on the basis of a "nod or a wink". Unless persons declare this agreement or understanding, there is rarely direct evidence of action in concert, and the Panel must draw on its experience and commonsense to determine whether those involved in any dealings have some form of understanding and are acting in co-operation with each other. In a typical concert party case, both the offeror and the person alleged to be acting in concert with it are declaring that, notwithstanding the circumstances, they have no understanding or agreement. The Panel has to be prepared realistically to recognise that business men may not require much by way of formal expression to create such an understanding. It is unnecessary for the Panel to know everything that actually passed between the parties in a take-over. In addition, the

judgment required in an acting in concert issue must usually be made in the context of the assertions and arguments of persons whose interests will not be served by a finding of acting in concert – this is because such a finding inevitably entails consequences under the Code, often to the benefit of offeree company shareholders, which is the object of the concept, with a cost to the offeror."

54. Counsel for the Respondents did not suggest in the end that these observations should be ignored but rather that they should be treated with some care. It was stressed that, unlike the present case, the Guinness/Distillers case was not aimed at named individuals, but rather at a corporation for the purposes of protecting shareholders in another corporation. It was therefore agreed that the case did not engage Article 6(1) of the European Convention on Human Rights ("ECHR"). It was not ultimately suggested that in the present case the Committee should adopt a stricter or narrower definition of "concert party" than that suggested by the observations quoted above, but rather that the evidence required to find that, on the balance of probabilities, a concert party existed would have to be stronger where the consequences of such finding was "cold-shouldering", as opposed to enforcing a mandatory bid.

55. Although the facts of the present case are different to those of the Guinness/Distillers case, the issue of whether or not a concert party exists is not. That is to be determined by what facts are established and what reasonable inferences can, on a balance of probabilities and guided by the considerations mentioned above, be drawn from those facts. The outcome is not to be determined by applying different definitions of "concert party" depending on the nature of the case and relief sought. The purposes for which concert parties may be created or exist and the identity of the members or creators may vary, but the elemental nature of the underlying consensus which must be established if a concert party is to be held to exist must be constant. Whilst the Guinness/Distillers case did not engage Article 6(1) of ECHR, the Committee does not consider that that provision limits in cases like the present the value of what was said in that case.

56. Whilst dealing with the essence of a concert party, it is convenient to mention one other point for completeness. The Committee was referred to the EU Directive on Takeover Bids [2004/25/EEC] which defines persons acting in concert for the purposes of a bid as those who cooperate with the offeror or offeree company on the basis of an agreement either express or tacit either oral or written aimed at acquiring control of the offeree company or of frustrating the successful outcome of a bid. The Directive does not use the word “understanding” but the reference to a tacit agreement seems plainly to indicate there is no inconsistency with the definition of “concert party” in the Code. The Committee does not understand the Respondents to contend otherwise or to suggest that the Directive adds anything to their arguments about the standard of proof or what must be proved by the Executive to make out its case.

E. THE PROCEEDINGS

57. The Executive referred the matter to the Committee by way of a written Submission on 1 December 2009. The Committee initiated a process in accordance with its Rules of Procedure. This process resulted in a series of Submissions, Witness Statements and Skeleton Arguments being delivered by and exchanged between the parties following a timetable laid down by the Committee. The principal events in that process and the dates on which they happened are set out in Appendix 2. This process resulted in a Hearing lasting for 3 full days (from 12 to 14 April 2010). The names of those who constituted the Committee are set out in Appendix 3.
58. The parties each had legal representation. Mr Myerson and Mr Padgett were represented by K&L Gates LLP, Mr Posen was represented (up until the time of notification on 17 March 2010 that he would not be attending the Hearing) by Mishcon de Reya Solicitors (“Mishcons”) and Javan Herberg of Counsel and the Executive was represented by Freshfields Bruckhaus Deringer LLP.

59. On 17 March 2010, through his solicitors Mr Posen announced that he did not intend to attend the Hearing. The reasons given included Mr Posen's absence of existing or future plans for involvement in the corporate finance area in the UK or elsewhere, the fact that "cold-shouldering" has "little relevance for him in practical terms", that in terms of his reputation those who have experience of dealing with him would continue to understand his integrity and honesty and that further expense could not be justified, given that he would not recover costs if successful. Mr Posen wished to focus upon the activities of the Posen Foundation. Mr Posen also made allegations about the conduct of the case by the Executive which "has been out to get him from day one". The Committee addresses the reasons for Mr Posen's decision at paragraph 136ff. below.
60. Counsel appeared at the Hearing on behalf of Mr Myerson and Mr Padgett and on behalf of the Executive. Charles Flint QC ("Mr Flint") and Mr Tom Weisselberg ("Mr Weisselberg") appeared for both Mr Myerson and Mr Padgett; Jonathan Sumption QC ("Mr Sumption") appeared for the Executive. Mr Posen neither appeared nor was represented at the Hearing (although, in common with the other parties to the Hearing, did request and receive the transcripts of the proceedings on a daily basis). Where reference is made in this Statement to "Counsel for the Respondents", it is a reference to Mr Flint and Mr Weisselberg.
61. Witness Statements were produced in advance of the Hearing for the following witnesses:
- (a) on behalf of Mr Myerson and Mr Padgett: Mr Myerson, Mr Padgett, Mr Peggie and Mr David Cooley (both of Principle Capital group) and Mr Andrews (of Evolution);
 - (b) on behalf of Mr Posen: Mr Posen and Mr Christof Reichmuth (of Reichmuth); and

- (c) on behalf of the Executive: Mr Robert Hingley (former Director General of the Panel), Mr Charles Crawshay and Mr Jeremy Evans (both of the Executive), Mr Ansell and Mr Lamb (of WH Ireland) and Ms Nahal (of Evolution).

At the Hearing, the following witnesses were called and then cross-examined by Counsel (in the order listed): Mr Ansell, Mr Lamb, Ms Nahal, Mr Hingley, Mr Crawshay, Mr Myerson, Mr Padgett and Mr Andrews.

62. The Witness Statements of those witnesses who were not required for cross-examination (Messrs Peggie, Cooley and Evans) were admitted in evidence on the basis that they were not challenged.
63. Before the Hearing the parties agreed a summary of relevant telephone calls (the “Call Summary”) which proved extremely helpful in seeking to establish the course of events. Many of these calls were to or from landlines in the various broking firms involved, which were recorded and could be transcribed. But many others were made between mobile telephones or otherwise were not recorded, a fact which inevitably makes it more difficult to establish the truth in a case such as this.

F. THE ESSENTIAL ISSUES

64. Before turning to consider in detail the facts of this case on the basis of the guidance summarised above, the Committee reminds itself of the essential issues as they were presented to it. Did Mr Posen appear fortuitously on the scene when PCIT was in the middle of a battle about its future and, unaware of this, decide on the basis of his own commercial judgment to buy 6,700,000 shares in PCIT, and subsequently to support the Initial Concert Party at the Second EGM? Or was Mr Posen’s involvement initiated by Mr Myerson, and the arrangements for Mr Posen’s purchase of PCIT shares orchestrated by Mr Myerson and Mr Padgett on the basis of an understanding or agreement with Mr Posen that he would, as he subsequently did, vote the shares in support of the Initial Concert Party’s position at the Second EGM; and did Messrs

Myerson, Padgett and Posen together seek to conceal from the Executive these facts and, in the case of Mr Posen, also to conceal the source of the funds used to settle the transaction?

G. THE FACTS

i. The circumstances of Mr Posen's acquisition of PCIT shares

65. The story of Mr Posen's acquisition begins on Tuesday 24 March 2009, two days before the First EGM.
66. At 11.53 on 24 March, Felix Posen, Daniel Posen's father, telephoned Mr Myerson. They knew each other and spoke occasionally, but were not close friends. Felix Posen, a successful businessman, had some knowledge of Principle Capital's operations and had invested through the Posen Foundation in companies in which Principle Capital was involved. He had attempted to persuade Mr Myerson to contribute to charitable causes.
67. The Committee notes that in 2002 the Executive was asked whether the Posen Foundation should be treated as part of a concert party consisting of Mr Myerson, his then business partner and certain others. The concert party was suggested to exist in relation to a proposed issue of new shares by BNB Resources plc ("BNB").
68. In enquiring into this in 2002, the Executive was told:
- "Brian Myerson knows Felix Posen, a beneficiary of the Posen Foundation, through charity work and probably sees him once or twice a year for that purpose. There are no other business, social or family relationships with the Posen Foundation, other than through its current investment in UKAVCF nor are any expected in the future."
69. The Executive concluded that the Posen Foundation (and others) was part of the concert party including Mr Myerson (and others). This ruling was accepted by Mr Myerson and the Posen Foundation and the other members of

the concert party, as well as BNB itself. It should be added that, in considering a further fundraising in respect of BNB in late 2002, the Executive was persuaded that the Posen Foundation should no longer be treated as part of this concert party.

70. The original purpose of Felix Posen's telephone call on 24 March, which is identified in Felix Posen's telephone bill as having lasted for 6 minutes 12 seconds, is obscure. It seems clear, however, that Felix Posen would have had no personal reason to raise the subject of PCIT. He is over 80 years old and has ceased to play an active part in the affairs of the Foundation. His son Daniel has become chief executive officer of the Foundation and Daniel Posen has said that, although he intended to acquire the shares himself in the first instance, he intended to flip them to the Foundation later. According to Mr Myerson, there was no discussion about PCIT during Felix Posen's call but Felix Posen, without explaining for what purpose he was to do so, simply asked Mr Myerson to telephone Daniel Posen. In short, according to Mr Myerson, without mention of PCIT or of an investment in the Principle Capital group, for some unexplained reason he was being asked to telephone Daniel Posen whom he hardly knew.
71. Reaching conclusions about this conversation is complicated by the facts that, during the Executive's investigation, Felix Posen denied that there had been any such call and, until the Submission of Daniel Posen to the Committee in February 2010, this denial was supported both by his son and by Mr Myerson, both of whom insisted that the contact between Mr Myerson and Daniel Posen was instigated by Daniel Posen. The telephone records for Felix Posen's home were produced as an appendix to Daniel Posen's Witness Statement on 8 March 2010 and established that, as the Executive now accepts, the call was indeed placed by Felix Posen.
72. The Committee notes the suggestions in Mr Posen's Witness Statement about the origin of Felix Posen's call. They are vague ("I cannot remember exactly what happened. I have tried to piece together what I believe to be the most likely explanation from the ancillary evidence..."). They are unsupported by

Felix Posen, and there is in fact no evidence other than Daniel Posen's reconstruction to support the suggestion that Daniel Posen had raised the subject of an investment in PCIT with Felix Posen before the call and that it was this discussion which led to Felix Posen's request to Mr Myerson to call Daniel Posen. Given that it seems that Daniel Posen knew little of substance about PCIT (see below) and that Felix Posen knew even less, it seems unlikely that the subject had been discussed with Felix Posen before he called Mr Myerson or that Felix Posen indicated the reason why Mr Myerson should call Mr Posen. Indeed, Mr Myerson denies that there was any mention whatsoever of PCIT by Felix Posen.

73. Mr Posen's account is that he had a longstanding interest in buying PCIT shares. His account of enquiries which he made on this subject prior to Felix Posen's call to Mr Myerson and his discussions with his father on the subject have not been tested and are unsupported by any evidence, including the evidence of the three Principle Capital group individuals (Messrs Myerson, Padgett and Cooley) to whom he claims to have enquired about the availability of PCIT shares. Mr Posen attempts to paint a picture which the Committee cannot accept. Not only is it unsupported by evidence from others, but it raises more questions. What was the result of these calls, and why for instance, if Mr Posen had made the calls as he claims to, was there no response, even when millions of shares were traded and many were acquired by the Principle Capital group with the First EGM looming? Mr Posen's assertions clearly called for explanations from him as a witness and without those it is in the Committee's view inappropriate to accept them in the context of the hard evidence of the case as a whole.
74. The Committee considers in the light of the evidence as a whole that there must have been mention of an investment in PCIT, but that this came not from Felix Posen but from Mr Myerson, and that the reaction of Felix Posen was to suggest that Mr Myerson should discuss it with his son. The Committee notes in reaching this conclusion that Felix Posen had no personal reason to mention PCIT or an investment in the Principle Capital group (and neither he nor Mr Myerson suggests that he did mention it), that it is unlikely that Felix Posen

would have suggested that he should ask Mr Myerson to call Daniel Posen without giving any reason for doing so, that Mr Myerson would not be likely to do so without seeking to know his purpose for the call and that Mr Myerson had every reason to raise a question of investment in PCIT with an individual whom he knew had favoured investment in companies with which Mr Myerson had connections and given that PCIT's affairs and the forthcoming Second EGM were likely to be at the forefront of Mr Myerson's mind at this time. In reaching this conclusion, the Committee also notes what happened after Felix Posen had spoken to Mr Myerson. After Felix Posen's call, and although he was travelling to Berlin, Mr Myerson promptly responded by making two attempts (at 14.18 and 16.10 on Tuesday 24 March) to reach Daniel Posen. An attempt by Daniel Posen to respond at 17.07 did not succeed, and Mr Myerson tried again unsuccessfully at 18.01 to reach Daniel Posen. Eventually Mr Myerson succeeded on his fourth attempt at 18.08 and he and Daniel Posen spoke for 6 minutes 34 seconds. Mr Myerson gave evidence about his discussion with Daniel Posen at 18.08 on Tuesday (24 March). He said in his Witness Statement:

"As far as I can remember, we talked briefly about life in general, Madoff, the financial crisis and the Posen Foundation's exposure to Madoff, with which I believe his father had been very preoccupied. I think it was during this call that he may have mentioned that he was travelling to New York later in the week for various meetings relating to the Madoff situation.

We spoke only very briefly about PCIT. He informed me that he was interested in investing in PCIT. My response was that I could not discuss the situation. I was fully aware that we must have no agreement or understanding if he was going to buy shares, or else rule 9 might be engaged. I said that we could not discuss the then-current corporate situation because of its sensitivity. Despite that, given his expressed interest in PCIT shares, I said we would let him know if we became aware of any PCIT shares available in the market and I may have mentioned that we could recommend the London broker who had been buying PCIT shares for us."

75. In other words, nothing was said by either of them about the corporate turmoil at PCIT (and indeed Mr Posen says he was unaware of this until more than a week later, after he had made his purchase of the PCIT shares) and any discussion of PCIT was of the briefest kind. Given that Mr Posen now suggests that investment in PCIT was the specific reason for the call and that the call lasted over six and a half minutes, this seems surprising, notwithstanding what Mr Myerson says about avoiding possible difficulties under Rule 9.
76. It is also significant that at 07.59 on Wednesday 25 March Daniel Posen called Mr Myerson. Mr Myerson had apparently forgotten about this when questioned by the Executive a few days later since he suggested that there had only been one call with Daniel Posen. He now says that he has very little specific recollection of the call:
- “I think he may have been asking for or providing contact details given his travel plans. I may have left such details to Brian Padgett to deal with.”.
- Mr Padgett himself suggests that the phone was passed to him by Mr Myerson and Mr Posen asked him “to call a guy in Switzerland with the contact details and he gave me this guy’s name and telephone details. I thought he was somebody who worked for the Posen Foundation. It was a very short call.”.
77. The Committee believes that this call was much more significant than the Respondents suggest. It was preceded by two substantial calls between Daniel and Felix Posen, one at 06.42 lasting 24 minutes and the other at 07.15 lasting 11 minutes. It is clear from Daniel Posen’s own evidence and a note which he produced that at about this time (and specifically after the initial call between him and Mr Myerson at 18.08 on 24 March but before he was told that any PCIT stock was available in the market) he discussed with his father how much PCIT stock should be acquired and at what price.

78. Mr Posen himself suggests that, though the note is dated “26/03”, he had in fact discussed these matters with his father during these two calls early on 25 March and that this accounts in part for what the note records. This seems correct.

79. The note records (in part):

“FDP + DLP agree Pcit @ 36 max if poss
say 7-8 mio if poss.”.

80. In short, by the time of the brief call to Mr Myerson early on 25 March, Daniel and Felix Posen had decided to try to acquire a large number of PCIT shares at up to a specified price. No real attempt is made in Daniel Posen’s evidence to explain on what commercial basis these figures were arrived at. He says “I do not remember how we decided on those figures”, but he has some recollection of seeing or hearing of a price of 30p and, since the price of PCIT shares fluctuated between 28p and 35.5p per share during February and March 2009, “an upper limit of 36 pence per share would make sense to me”. The Committee infers that the quantity and price arose from and were consistent with the earlier discussions between Mr Myerson and Daniel Posen on 24 and 25 March.

ii. Thursday 26 March 2009

81. Mr Padgett suggests that it was during the early morning call on 25 March from Mr Posen that he had recommended Harry Ansell at WH Ireland (“Mr Ansell”) as a broker if Mr Posen was interested in PCIT shares and that, at 11.41 on 26 March, Mr Padgett called Reichmuth. Reichmuth is a private bank in Switzerland with whom the Posens had longstanding connections. Reichmuth’s contact details had been supplied by Mr Posen to Mr Padgett and, as requested by Mr Posen, Mr Padgett passed to Reichmuth details of Mr Ansell’s name and contact details. Mr Padgett thought at the time that he was speaking to the Posen Foundation.

82. As Mr Myerson had anticipated, all the essential QVT concert party resolutions were passed at the First EGM on the afternoon of 26 March. As he also anticipated, but perhaps even earlier than expected, EIM then approached their brokers (Evolution). Within an hour or so of the conclusion of the EGM, Joel Pastre of EIM (“Mr Pastre”) informed Ms Nahal of Evolution that EIM was willing to sell its holding in one block; the price would depend on the buyer. At 16.41, Ms Nahal called Mr Myerson and informed him that EIM wished to sell its whole stake. After asking Ms Nahal to hold, Mr Myerson returned to the call and said:

“We will buy half now and then we will be back to them”.

Mr Myerson said “and there’s somebody else out there who wants [tape cuts out] ...”. He added:

“Let me just decide where it is going to go and what’s going to happen”.

Having obtained from Ms Nahal confirmation of EIM’s call, and that they were “up for it”, Mr Myerson remarked:

“Well, we’ve won.... It’s over. Okay, it’s over. Fantastic.”.

83. Mr Myerson’s reaction during this call to the news of EIM’s approach is, in the Committee’s view, eloquent support for concluding that at the least Mr Myerson was prepared for EIM to sell its entire holding and was confident that a price would be agreed which EIM would accept, that he could arrange where the balance of the EIM holding would go and that this balance would then be in friendly hands by the time of the Second EGM. The Committee infers that Mr Myerson’s confidence was based on knowledge of the result of the discussions of Felix and Daniel Posen as reflected in Daniel Posen’s note dated 26/03 (but made earlier) and on the discussions which he had held with Daniel Posen.
84. Mr Padgett suggests that Mr Myerson’s reaction to Ms Nahal’s call was because he felt that, if EIM sold to Principle Capital group interests half of the

EIM stake, they “were not going to vote against us” at the Second EGM and the QVT concert party would thereby be defeated. Mr Myerson’s evidence is to the same effect, focusing on the facts that, with 23% (or more) of PCIT, a special resolution to distribute cash could be defeated, that by realising half its stake and including the 15 pence a share distribution proposed by Mr Myerson on the balance EIM would realise about 80% of the value of its investment and thus relieve its liquidity problems which were driving EIM’s actions. EIM would realise that they could only otherwise obtain cash distributions if the Principle Capital group gave its support. Thus, say Mr Myerson and Mr Padgett, it was not necessary to buy all of EIM’s stake to secure success and this explains Mr Myerson’s reaction to Ms Nahal’s call. The Committee does not accept this.

85. First, the acquisition of only part of EIM’s stake would raise, as Mr Myerson and Mr Padgett knew, problems under Note 6 (see paragraphs 19 to 23 above). There were no grounds for claiming victory until the position about this was resolved and the Committee does not accept Mr Myerson’s attempt to downplay this consideration in the face of earlier advice from Evolution that certainty was needed on the point.
86. Secondly, it is plain from what Mr Myerson said that, even if he did not know at this stage that EIM would only sell its entire holding and not merely part of it, he was proposing to ensure that the arrangements which he would make before he went back to Evolution would cover the entire holding.
87. Mr Padgett was in the car when Mr Myerson received Ms Nahal’s call at 16.41 and, knowing that “PC Fund Interests” only proposed to buy about half of EIM’s 13.7% holding, told Mr Myerson that the cash necessary for this could be raised, though some work would be needed to arrange it.
88. Did Mr Padgett speak to Mr Posen after Ms Nahal’s call? He says that he tried to do so and may have succeeded, but there is no record of it. It seems very likely that he did succeed; in view of what happened before and after,

common sense suggests that Mr Posen was then told by Mr Padgett that PCIT shares were now available.

89. That evening at Boodles, a club to which Mr Ansell belonged, there assembled Mr Padgett, Mr Ansell, Mr Lamb and others from WH Ireland. Considerable evidence was directed at describing the occasion. At one extreme it was said that too much was drunk, that more than 90% of the time was spent discussing business and everyone stayed until the small hours of the morning. At the other, that it was a social evening, snooker was played and little or no business was discussed. The truth is probably somewhere in between. The Committee does accept that some business matters were probably mentioned, not least because both Mr Ansell and Mr Lamb had gone to the First EGM of PCIT that afternoon, but the Committee does not accept that anything definitive was said about the purchase of PCIT shares. It is quite likely, in view of what had happened up to this point, that Mr Ansell was told by Mr Padgett that he could expect a call the next day about PCIT shares, and perhaps that a call would come from Mr Posen. Mr Ansell does not accept this and, although on the whole the Committee prefers his evidence to that of Mr Padgett where they conflict, he may be wrong on this point. In the end, however, nothing much turns on it.

iii. Friday 27 March 2009

90. In fact, Mr Posen did not call WH Ireland on 27 March. To begin with, after Evolution had clarified with EIM the number of shares being sold (13,753,413) and Evolution had agreed to seek a bid, Ms Nahal called Mr Myerson. A few moments later Mr Padgett instructed Mr Lamb to call Ms Nahal at Evolution to buy 7 million PCIT shares at 32 pence. Shortly after this, Ms Nahal again called Mr Myerson and, as a result of that call, her colleague (Ms Ayton) having told EIM that they had an order to buy 7 million shares at 31.94 pence, also suggested to EIM that, whilst someone else was lined up for the balance of EIM's holding, she should meanwhile protect EIM for the 7 million shares. Mr Pastre of EIM said, however, that he would prefer to sell all in one block and would like 36 pence or 37 pence. To-ing and fro-

ing continued about this until 11.01 when Evolution told EIM that they had a bid for 7 million shares at 35 pence and also a buyer for 6.7 million shares, but that the buyer was a Swiss company and they needed to set up an account. So EIM were told that this buyer was probably not going to be able to buy the rest until the following Wednesday (1 April).

91. Mr Pastre wanted time to consider this and made it clear that he wanted to be taken out of the whole EIM position (“fill or kill”) as he was concerned about the difficulty of selling only 5% instead of more than 10%. The Committee finds, and it is not in issue, that this was communicated to Mr Myerson by Ms Nahal at 11.07. At 11.10 Ms Ayton told Mr Pastre that the position remained that there was a bid of 35 pence for 7 million shares now and 35 pence for 6.7 million shares on Wednesday. Again, Mr Pastre said that he wanted to think about it.

92. It is not entirely clear what happened next. Certainly Mr Pastre did not accept the proposal which involved uncertainty until Wednesday (1 April), and he had explained why he was not inclined to do so. It seems very likely, in view of what happened immediately thereafter, that the impasse had been recognised by Ms Nahal and Mr Myerson and was discussed between them in the two conversations between them at 12.44 and 13.01. Mr Padgett (who had been on an aeroplane to Geneva) then called the Principle Capital office and is likely to have spoken to Mr Myerson. Two more calls then followed between Ms Nahal and Mr Myerson. After another call between Mr Padgett and the Principle Capital office, Mr Padgett then made the crucial call to Mr Ansell at 13.06. The Committee infers from what had happened during the morning, the involvement of Mr Myerson in the discussions with Evolution and, through Evolution, with EIM, the immediate and central importance of the matter and the respective roles of Mr Myerson and Mr Padgett in relation to the whole affair that the calls in the Call Summary between Mr Padgett and the Principle Capital office were in fact between Mr Padgett and Mr Myerson, the one at 13.04 lasting one minute and 28 seconds being immediately before Mr Padgett’s call to Mr Ansell at 13.06.

93. Mr Ansell's account of the call at 13.06 from Mr Padgett is as follows. He was at lunch at a restaurant when Mr Padgett called him on his mobile. He was instructed to buy PCIT shares at 35 pence from Evolution. The call came out of the blue. It was a definite order, not a mere expression of interest or warning of a call which he might receive from Mr Posen. While this was clear to Mr Ansell, there was however some confusion as to the number of shares that he was instructed to buy. Mr Ansell thought rightly or wrongly that Mr Padgett wanted 6.3 million, but he accepts that he may have misheard him and that Mr Padgett may have said 6.7 million. According to Mr Ansell:

“Padgett also told me that the shares were being purchased for, or on behalf of, Posen, and that the transaction would be executed through Posen's account with Reichmuth in Switzerland. I do not recall whether Padgett told me that it was Posen, or alternatively the Posen Foundation, who wanted to purchase the shares, I just recall the words 'Posen' and 'Reichmuth'. This was the first time I heard the name 'Posen' mentioned.”.

94. Before addressing Mr Padgett's version of this call, it should be mentioned that, as referred to above, early in the morning Mr Padgett had instructed WH Ireland to purchase 7 million PCIT shares at 32 pence. This transaction had been offered to EIM through Evolution but had not been accepted or rejected. During the morning, on advice from Mr Peggie, it was decided to alter this arrangement. Mr Peggie was concerned that PCLP was buying 7 million shares of PCIT through the same broker (WH Ireland) as had been recommended to the Posen Foundation and that this might cause confusion and risk allegations of concertedness. Accordingly, PCLP's order for 7 million shares was switched to Liberum (who thereafter dealt with Evolution about this transaction), though the extent to which this was made clear to WH Ireland individuals until later is unclear.
95. Turning to Mr Padgett's account of the conversation with Mr Ansell at 13.06, he says:

“Although I cannot remember the exact words used, I believe I asked him if he had done our PCIT trade yet. He said he had not. I told him

that I had to switch our PCIT order to another broker, as I had recommended that Daniel Posen used him to buy PCIT shares and our General Counsel had said that we should not use the same broker.

I have a recollection that he asked whether it was okay for him to do the trade for the “other guy”. I told him words to the effect that I did not have a problem with that. From his question, I assumed that Harry Ansell had spoken to Daniel Posen already. I got the impression that Harry Ansell, having lost our trade, was very keen not to let the other one get away.”.

Mr Padgett denies that he placed an order on behalf of Mr Posen or anyone else. He says that he had no authority to do so and he had no cash to settle such an order. If he had given such an order, he would have done so when he placed the one for 7 million shares earlier in the day and would have given Mr Ansell the precise number of shares involved (6,753,413).

96. Having seen and heard Mr Padgett and Mr Ansell give evidence, the Committee is satisfied that Mr Ansell’s account of this call is correct. Whilst some aspects of Mr Ansell’s account were not wholly satisfactory, his evidence on this issue was clear and compelling; in contrast, Mr Padgett’s explanations of facts pointing against the conclusion which the Committee has now reached were not at all clear or convincing. The Committee is further satisfied that Mr Padgett gave the order to Mr Ansell on the instructions of Mr Myerson. He would not otherwise have acted as he did.
97. The Committee notes certain incontrovertible facts. First, Mr Ansell is a highly experienced broker who is unlikely to have confused a conversation about whether it was okay to do a trade for the ‘other guy’ with a firm order to proceed. Second, by purchasing millions of shares in an illiquid company without an order and without having any prior contact whatsoever with the person whom he had never met, but upon whom he would be dependent for settlement, he and his business partner would be personally liable for any loss on a parcel of shares worth over £2 million: this is to be compared with the £5,000 commission which WH Ireland might earn if such a risk were taken. Third, Mr Ansell’s immediate reaction was to ring his office and instruct Charlie Campbell (“Mr Campbell”) to place an order with Evolution for 6.3

million shares at 35 pence, rather than then seek to make any contact with Mr Posen or even to ask for his contact details. Even after the order had been given, no attempt was made to contact Mr Posen. Yet on Mr Padgett's account and that of Mr Posen himself, Mr Ansell must have decided for himself how many shares to bid for and at what price; and then later for no particular reason to amend his own decision to change 6.3 million to 6.7 million. Fourth, the events of the next few days, including Messrs Padgett and Myerson's involvement in the problems of this "Posen" transaction are more consistent with Mr Ansell's account than that of Mr Padgett. Lastly, as to the respective roles of Mr Myerson and Mr Padgett, both of whom gave evidence to the Committee, the Committee was left in no doubt that, for important matters such as this, Mr Padgett needed and felt he needed Mr Myerson's authority. It is the overwhelming probability that this authority was given to Mr Padgett at 13.04 immediately before Mr Padgett's call to Mr Ansell. It was seen by both Mr Myerson and Mr Padgett to be essential to complete both orders on that afternoon in order to meet EIM's insistence that it would only sell 100% of its holding.

98. The confusion over the number of shares was rapidly addressed and in a significant way. The order for 6.3 million shares had been placed with Evolution at 13.10 by Mr Gill on Mr Campbell's instructions. At 13.16 Mr Padgett called or, as he suggests, tried to call Mr Ansell. Mr Ansell says that Mr Padgett did indeed call him at this time and instructed him that the purchase order for 6.3 million PCIT shares to Evolution was to be amended to 6.7 million shares (and, as the transcripts confirm, this was done a minute or so later by Mr Gill speaking to Mr Sparke of Evolution). Did Mr Padgett make the call and instruct Mr Ansell as Mr Ansell says and, if so, how did he come to do so? Mr Padgett says that he does not remember the call and, as it only lasted 10 seconds, he doubts if he got through. Between 13.10 and 13.16 the Committee finds the following revealing sequence occurred:
- i. when the order was placed by Mr Gill at 13.10, the Evolution dealer (Mr Sparke) questioned whether it was for 6.7 million or 6.3 million shares and, on being told 6.3 million, said "leave it with me

- ii. at 13.14 Ms Nahal called Mr Myerson in a call lasting 13 seconds;
- iii. Mr Padgett called Mr Myerson (15 seconds);
- iv. Mr Padgett called Mr Ansell (10 seconds);
- v. Mr Ansell called Ms Tsisatrana to tell Mr Gill to amend the order to 6.7 million, not 6.3 million, shares; and
- vi. Mr Gill did amend the order as stated above.

99. Although Counsel for the Respondents placed importance on the fact that iii. above was a call by Mr Padgett and not to him from Mr Myerson, the Committee does not accept that this is as significant as suggested. What matters is not how or why the call by Mr Padgett was triggered, but rather what is likely at this point to have been said. The Committee considers that by far the most probable explanation is that Mr Myerson, having heard of the confusion from Ms Nahal, passed this information to Mr Padgett who, acting on Mr Myerson's instructions, called WH Ireland to amend the order to 6.7 million shares. There is no serious likelihood that Mr Padgett's call to Mr Ansell was triggered in any other way, and the Committee does not accept Mr Padgett's claim that he does not know how Mr Ansell came to "correct himself". The effect of Mr Padgett's position on this is that Mr Ansell for some unexplained reason decided to amend the order immediately after an abortive 10 second call from Mr Padgett (who, if he did not get through, seems to have made no further effort to speak with WH Ireland until Mr Lamb called him at 14.07 and, indeed, to have no obvious reason to attempt to speak to Mr Ansell at this time except the one described by Mr Ansell).

100. During Friday 27 March there was considerable confusion at WH Ireland caused in part by there being three transactions involving members of the Initial Concert Party. The first, the order subsequently passed to Liberum to buy 7 million PCIT shares, the second, an order to sell Photo-Me shares and the third, the order (the "Posen purchase") given, as the Committee finds, by Mr Padgett on Mr Myerson's instructions to Mr Ansell at 13.06. The

confusion was in part caused by poor communications within WH Ireland and the lack of confirmatory details from or on behalf of Mr Posen.

101. In the midst of this confusion, WH Ireland tried to set up arrangements with Reichmuth to settle the Posen purchase. The underlying problem was that Reichmuth had no instructions and were not in funds to settle the Posen purchase and so could not or would not proceed to give instructions to a London broker to effect the transaction.
102. Meanwhile, Liberum's order for 7 million shares had been priced at 35 pence, and at 14.02, having obtained confirmation that the order from WH Ireland was for 6.7 million and not 6.3 million PCIT shares, Evolution (Ms Ayton) was able to tell EIM (Mr Pastre) that:

“I have got the order.... to buy the lot at 35”.

Mr Pastre accepted this and instructed Evolution to do the transaction.

103. It is not clear exactly when, but probably just after 14.00, Evolution (Mr Sparke) called WH Ireland (Mr Lamb) and raised the question of the precise number of shares which were being sold to WH Ireland. He suggested that WH Ireland should be buying “an extra 53 odd thousand as well”, specifically 6,753,413, and Mr Lamb said he was sure that would be alright and he would come back to Mr Sparke.
104. At 14.07, Mr Lamb sought instructions from Mr Padgett. He stated that “you”, i.e. Mr Padgett, would be buying 6,753,413 shares in PCIT and that the proposed price would be 35.07 pence. Mr Padgett's response was simply that the trade was “not for us obviously, it is for the Posen Foundation”. This conversation is consistent with Mr Ansell's account of the transaction. Mr Padgett says:

“I assumed that someone from the Posen Foundation had been in touch with Harry Ansell by this time and had placed an order for the balance

of the EIM stake. I also made an assumption that he had placed the order for the Posen Foundation, because that was the entity that I had heard of the Posens using for their investments.”.

Mr Padgett further says that, when in the course of the call Mr Lamb (being then under a misapprehension) said that the Posen Foundation had telephoned, this confirmed his assumption. However, the recording of the call shows that Mr Padgett concluded the 14.07 call by saying “I mean I am sure they’ll call you. I’ve never met them so they’ll call you at some point”. Saying that indicates that Mr Padgett could hardly have made an assumption that Mr Posen or the Foundation had placed an order or had up to that point made any substantive contact. Mr Padgett was somewhat vague about the calls later that afternoon, but there is in the Committee’s view no doubt that WH Ireland then told him of the need for Mr Padgett to speak to Mr Posen to establish the necessary contact to enable WH Ireland to deal with the arrangements for the purchase which Mr Padgett had instructed Mr Ansell to make at 13.06 that afternoon.

105. At 14.17 Mr Worthington (of Liberum) called Mr Padgett. During the call, Mr Worthington told Mr Padgett he knew there was “another resolution to get you all back” and asked how that would work out. In response, Mr Padgett said that the shares they had just bought (i.e. 7 million) were part of the block that had voted them out. When Mr Worthington asked, in an obvious reference to the corporate battle, if Mr Padgett had to get 75%, Mr Padgett responded that they needed 50% and added that they would be alright. This conversation (the significance of which Mr Padgett attempted in evidence to downplay) confirms the Committee’s view that the Initial Concert Party’s objective was not merely to bring EIM to heel by blocking, or threatening to block, a cash distribution and/or buying half the EIM stake in PCIT, but to acquire sufficient shares to ensure that they could outvote QVT and Invesco at the Second EGM. The figure needed was, as Mr Padgett rightly said, 50%. It was implicit in Mr Padgett’s expressed confidence in the outcome that the Initial Concert Party expected West Midlands to continue to give its support with their 9% of PCIT (as did happen at the Second EGM), and that they

would have the support of the whole of EIM's shareholding including that eventually acquired by Mr Posen.

106. As various calls during the afternoon between Mr Lamb, Mr Ansell and Mr Padgett show, it was clear that:

- i. the Posen purchase had not been settled and, in the absence of instructions from or even contact with Mr Posen, the necessary arrangements to do so would not be made that day; and
- ii. the shares acquired on Mr Padgett's instructions would have to be warehoused by WH Ireland over the weekend.

107. In the absence of confirmation and details from Mr Posen to enable the transaction to be concluded, Mr Padgett was asked to speak to Mr Posen, who was in New York. Mr Padgett agreed but left it until Monday 30 March to do so.

108. Arrangements were made within WH Ireland for the warehousing because (as Mr Lamb put it):

“Brian [Padgett] needs to speak to some bloke in America [i.e. Mr Posen] and that's not going to happen today..., so we are going to have to warehouse... this position”. “And he was sort of, well yeah, we need to sort it out on Monday or Tuesday at the latest.”.

109. Making arrangements for warehousing the Posen purchase over the weekend, Mr Lamb put it to his management as:

“a pure warehousing exercise for a very well known client for us, it's Brian Padgett who's of Principle Capital Investment Trust.... Silex.”.

iv. Monday 30 March to Wednesday 1 April 2009

110. On the morning of Monday 30 March there began a series of telephone calls between Mr Myerson and Mr Padgett on the one hand and Mr Posen on the other. None of these calls were recorded, but, to the extent that they are

shown in detailed accounts of telephone companies obtained by the Executive, the fact of the calls, who made them and their duration is known. During this period, WH Ireland was pressing Mr Padgett and Mr Myerson to procure the necessary arrangements to settle the Posen purchase. According to Mr Padgett and Mr Myerson, their attempts to do this were motivated by a moral obligation to brokers with whom they did business and were on friendly terms. This obligation arose, so it was said, from the fact that Mr Padgett had introduced Mr Posen to WH Ireland. Mr Padgett and Mr Myerson thus apparently considered that, although WH Ireland had (according to their evidence) most unwisely bought 6.7 million PCIT shares without instructions from anyone, Mr Padgett and Mr Myerson should do what they could to encourage Mr Posen to take the shares off WH Ireland.

111. The Executive contends that the truth is otherwise. It points to the large number of calls during the next two or three days, starting with a call from Mr Myerson to Mr Posen at 10.39 on Monday morning lasting seven minutes 13 seconds and a call back from Mr Posen at 10.57 lasting two minutes 10 seconds. At 11.00 Mr Padgett called Mr Posen and spoke for two minutes 23 seconds. There were then three further calls between Mr Myerson and Mr Posen, one at 11.55 (41 seconds), another at 13.01 (45 seconds) and another at 13.11 (14 seconds).
112. Mr Myerson explained that these calls were much longer than one might expect if he were merely urging Mr Posen to settle the transaction because Mr Posen tended to take the discussions into other areas, including wider financial problems and scandals. The Committee rejects Mr Myerson's evidence about these calls, including his suggestion that WH Ireland's foolishness and their increasingly frantic expressions of concern were what drove him to make those calls. That account is inconsistent with the way in which the Posen purchase originated and with the incontrovertible evidence of the number and extent of the calls being made to a man whom Mr Myerson barely knew at the outset. Mr Myerson says that he did not know at this stage what was the problem holding up settlement, and did not get involved in the details. If so, the evidence of the call summary is really inexplicable except on the basis that

the calls were made for a different and more complex purpose. The only purpose, as it seems to the Committee, which realistically could explain the evidence as a whole is that Mr Myerson was monitoring and orchestrating Mr Posen's arrangements, including the transmission of the necessary funds to enable his purchase to be settled. Mr Posen suggested that he did not really understand such matters, but that the problem was a technical one because his bank (Reichmuth) had to establish an account in London before completing the transaction. This suggestion was an attempt to treat a comparatively unimportant detail as an underlying problem. The real problem was that Reichmuth wanted funds before giving or confirming an order. Reichmuth's lack of a trading account in London might have explained part of the story, though not the numerous telephone calls between Mr Posen, Mr Myerson and Mr Padgett during this period. However, Mr Posen claimed originally that he had used his own funds to complete the transaction. But when this claim proved to be false, and it emerged that the funds only reached his account at Reichmuth in two tranches on Tuesday 30 March and Wednesday 1 April, at this point the principal reason for the problem was apparent. To complete the picture of Monday 30 March, there were during the day at least 4 other substantive calls (14.23, 14.28, 15.00 and 16.15) between Mr Posen on the one hand and Messrs Padgett and Myerson on the other.

113. During Tuesday 31 March, WH Ireland being by then in contact with Reichmuth (but not yet with Mr Posen) were still unable to get instructions as to how to arrange the purchase for Mr Posen. Mr Myerson told Mr Ansell (at 08.41) in response to Mr Ansell's enquiry as to the position that Mr Padgett "got a call from Danny last night... to say that he will place the order first thing this morning so I need to get hold of Danny." When Mr Ansell and Mr Myerson agreed that Mr Myerson needed to speak to Mr Posen, and Mr Ansell said that the uncertainty must be resolved by mid-day, Mr Myerson must have realised that there was a risk that the shares would find their way onto the market and said that he would "make sure it happens" and would call Posen. He duly did make this call at 08.43 and then told Mr Ansell that "Yves" at Reichmuth would call Mr Ansell to confirm everything and gave Mr Ansell for the first time Mr Posen's mobile telephone number.

114. In conversations which followed, Mr Ansell, having made contact with Mr Posen, tried to finalise the details of Mr Posen's purchase. He proposed a price of 35.14 pence and asked if this was okay, to which Mr Posen replied "well, I don't know" and suggested the deal should be settled and this point sorted out later. At 09.52 Mr Ansell, having at last heard from Reichmuth (Mr Bachmann) that the order could now go through, rang Mr Posen to confirm that the trade was booked and said that he wanted 35.14 pence which would be 20 basis points for WH Ireland. He also raised the question of the remaining 53,413 PCIT shares which had not been covered by the original order for 6.7 million shares given on Mr Padgett's instructions. Mr Posen said he wanted to "figure out something" and would call back. At 09.58 Mr Posen promptly called Mr Myerson, who then called Mr Padgett. WH Ireland did not hear from Mr Posen. At 16.02 Mr Ansell called Mr Posen but was still unable to obtain a final decision about price and quantity, the questions which Mr Posen had been asked to deal with.
115. In the meantime, Mr Ansell had told Mr Myerson at 10.08 that Mr Posen had bought 6.7 million shares at 35.07 pence and Myerson said that "without going into too much detail, it will all get done". The deal had in fact by this time been directed by Reichmuth through Winterflood Securities. In the absence of confirmation then or later from Mr Posen on the points raised at 09.52, WH Ireland clearly were sufficiently relieved that the warehousing arrangement was to be replaced by Mr Posen's arrangements to the extent of 6.7 million PCIT shares, and so decided not to press further in respect of the balance of 53,413 shares. They took those shares onto their own books and eventually disposed of them in the market. It is in the Committee's view significant that, on being asked questions about price and quantity, Mr Posen's reaction was not to resolve such matters himself, as an independent buyer would normally do, but to telephone Mr Myerson who then equally promptly telephoned Mr Padgett. Calls between Mr Posen and Mr Myerson continued during the day on Tuesday 31 March.

116. To complete this part of the facts, the initial enquiries of the Executive into the circumstances of Mr Posen's acquisition began on Wednesday 1 April 2009 (see Section H below) and ran alongside numerous telephone calls between Mr Myerson and the Principle Capital group on the one hand and Mr Posen on the other. These calls continued for most of the rest of April. The Committee has seen no details of such communications and does not know the content of the April calls which have been identified, except that, on numerous occasions and conscious of the Executive's enquiries, it was thought necessary for Mr Posen to remain in close touch with Mr Myerson.

v. *The Second EGM*

117. On 6 April the newly-appointed PCIT board gave its detailed reasons for opposing the Principle Capital group's resolutions at the forthcoming Second EGM; and, after the Principle Capital group's response which sought to refute statements in the board's announcement of the existence of an undisclosed concert party which had breached Rule 9, the Second EGM was held on 24 April.
118. The resolutions proposed by the Principle Capital group were supported by West Midlands and the Posen shareholding (Mr Posen's registration as shareholder having been assisted by the Principle Capital office) and were duly passed at the Second EGM. The effect of these was in part to re-appoint Messrs Myerson and Padgett as directors of PCIT, to remove certain other directors and to re-appoint additional independent non-executive directors. The PCIT board announced on 3 June proposals to realise assets and distribute not less than £10 million to shareholders (9.98 pence per share) once shareholder and court approval was given, and £5 million as soon as practicable thereafter.

vi. *The Pointer offer*

119. On 26 June Pointer announced a firm intention to offer 28.02 pence per share in cash for PCIT shares, excluding the 9.98 pence expected to be returned to

shareholders. The offer valued PCIT at approximately £38.1 million and each PCIT share at 38 pence, almost 3 pence above the price paid for EIM's PCIT shares. The offer was subject to a 50% acceptance condition and its announcement noted that the Panel was continuing to examine a possible breach of Rule 9, but pointed out that, allowing for the cash distribution of 9.98 pence per share, the Pointer offer exceeded the highest price paid by Pointer or any member of the alleged concert party for PCIT shares in the previous 12 months.

120. In making its offer, Pointer explained that it had received commitments from holders representing 19.17% of PCIT not to accept the offer. This percentage included Mr Posen (6.69%). The cash distribution of 9.98 pence went through, Pointer's offer was declared unconditional on 12 August, and on 25 August PCIT's independent directors, having previously suggested that PCIT shareholders should not accept the bid as it undervalued PCIT, felt obliged to publish a circular explaining that, notwithstanding their view about value, shareholders should consider whether they wanted to remain as minority shareholders in a private unlisted company. On 15 September, Pointer announced that it held 81.89% of PCIT's issued share capital and intended to procure the cancellation of its listing on the Official List of the London Stock Exchange. This cancellation was effective on 16 October 2009.
121. The Committee notes that the Pointer offer did (at least in its effect) exceed the highest price paid by any relevant party for PCIT shares in the previous 12 months and was expressed in terms and accompanied by information and advice from independent directors which warned as to the possibility that a concert party existed and may have breached Rule 9 and pointed out the potential disadvantages to shareholders who retained their shares. The effect of the Pointer offer on the Committee's conclusions is dealt with below.

H. INVESTIGATIONS BY THE EXECUTIVE

122. Almost immediately after the sale of EIM's holding, the Executive spoke on the telephone to the three Respondents in response to suggestions emanating

from the QVT camp that the Principle Capital group was acting in concert with Mr Posen and that, in consequence, a requirement for a general offer under Rule 9 of the Code had been triggered. This was a conclusion that the Respondents would be understandably at pains to avoid.

123. The Executive spoke to Mr Myerson on 1 April, to Mr Posen on 2 and 9 April and to Mr Padgett on 3 and 8 April. In accordance with the Executive's normal practice in concert party investigations and confirmed by its file note of the conversation, Mr Myerson was asked to relay all conversations he had had with Mr Posen before and after the latter acquired his stake. Mr Myerson's response was that the only such conversation was a call which he received from Daniel Posen on Wednesday 25 March saying he wanted to invest in PCIT. According to the file note, Mr Myerson said that when on the next day he heard that EIM's stake was for sale he had asked Mr Padgett to report this to Mr Posen and specifically confirmed that he had not himself spoken to Mr Posen after 25 March.

124. The Executive's file note records that on 2 April Mr Posen was asked to describe the background to his interest in PCIT shares; he explained that his family's charitable Foundation had previously invested in other Myerson related entities and he felt conditions were right to rebuild its equity portfolio. However the trustees were not investing at the time because of the Foundation's own liquidity problems which is why he had taken the shares into his own name for the time being. He confirmed that he had called Mr Myerson to enquire about PCIT shares in the middle of the previous week and that Mr Myerson had said that he should speak to Mr Padgett. The latter had suggested that Mr Posen speak to Mr Ansell of WH Ireland as Mr Posen did not have a UK broker. Mr Posen said he had not spoken to Mr Padgett again and had only had one call with each of Mr Myerson and Mr Padgett. He had not discussed the imminent EGM with Mr Myerson nor was he aware of the current corporate action. In the 9 April conversation Mr Posen was vague about when he had first spoken to Mr Ansell (who had by now told the Executive that his recollection was that it had been Mr Padgett who had asked him to buy the PCIT shares) although he was clear that he had spoken to Mr

Ansell the following week on either 30 or 31 March. He made no mention of any calls on those days with either Mr Myerson or Mr Padgett.

125. On 3 April Mr Padgett was asked to amplify what the other Respondents had said. He said he had spoken at Mr Myerson's request to Mr Posen on 26 March to tell him some PCIT shares are available. On that day he said he had not supplied the name of a broker, but on 8 April he corrected this after prompting by the Executive by saying that he had given Mr Posen the contact details of Mr Ansell. This is confirmed by Mr Posen's note of 26/03 which added that Mr Padgett had not only supplied WH Ireland's details but suggested that he call Mr Padgett if there was a problem. In this second call Mr Padgett also responded to being told that Mr Ansell recollected that he (Mr Padgett) had placed the order on behalf of Mr Posen by saying that he had spoken to Mr Ansell a number of times that day but thought he had done no more than ask Mr Ansell to expect Mr Posen's call.
126. The above facts are derived from the Executive's file notes of the relevant conversations. The Respondents argued that such notes were not the best evidence of what was said and unreliable at least as the basis for a finding so serious as one of deliberately misleading the Executive. Their Counsel urged the Committee to be cautious in this regard. The Committee is entirely satisfied that the notes are a fair reflection of the discussions that took place. These were obvious questions to ask and contrary to their assertions all three Respondents, in the Committee's view, knew their obvious relevance to the enquiry of the Executive of the events of 30 and 31 March.
127. These initial conversations gave the Executive little cause to feel that the Principle Capital group and Mr Posen were acting in concert for the purposes of the Code. However in the following weeks the Executive obtained and analysed telephone records from the various broking firms involved which led it to become much more concerned. As stated above, Pointer's offer was dispatched on 26 June and became unconditional on 12 August.

128. The Executive held formal meetings with Mr Myerson and Mr Padgett (separately) on 3 September and Mr Posen on 8 September. These meetings were attended by solicitors both to the Executive and the parties and were recorded and subsequently transcribed. By the time of those meetings the Executive had obtained telephone records not only from the brokers but also from the three Respondents.
129. On 3 September Mr Myerson gave as the reason why he had failed on 1 April to mention any calls with Mr Posen other than one on Wednesday 25 March (whereas telephone records showed two calls on 24 March and nine on 30 and 31 March) was that the conversations on 30 and 31 March were chasing Mr Posen to settle the transaction and not, he claimed to have thought, relevant to the purchase discussions the previous week.
130. On the same day Mr Padgett gave as his reason for not having on 3 or 8 April disclosed to the Executive the calls which he later made to Mr Posen the fact that he assumed he was being asked whether he had spoken to Mr Posen “prior to the Friday, not after the act”. He too claimed that he had not thought the later calls were relevant to the Executive’s enquiries.
131. On 8 September Mr Posen maintained to the Executive that the calls regarding settlement were separate to what he thought the Executive was asking about in April, and that he did not regard them as important and must have forgotten about them.
132. In summary, despite having been clearly asked in April about all calls they had made to each other, all three Respondents failed to mention the numerous and sometimes extensive calls made only a week or two previously on 30 and 31 March and all three justified this failure by claiming not to have regarded the later calls as relevant.
133. It is in the view of the Committee significant that all three gave the same reason for the same omission. It is of course possible that a person may misunderstand what he is being asked but improbable that two, let alone three,

people will suffer from the same misunderstanding. Moreover, the distinction each sought to draw between the events and the discussion of the week ending 27 March and the events and discussions in the following week is in the view of the Committee unsustainable. Not only would it be obvious to experienced people such as Messrs Myerson and Padgett that the discussions in the following week would be a matter of relevance to the enquiry which the Executive was making, but, as is apparent from their own evidence of the discussions which did take place, they related not just to the mechanics of settling a trade which had been concluded the previous Friday but to the very existence of an order from Mr Posen for the 6.7 million shares. It must have been appreciated by each of them that the persistent and increasingly urgent exchanges on 30 and 31 March would be matters of interest and concern to the Executive; yet each gave, once the true facts had been exposed by production of the telephone records, the same unsustainable explanation for their failure to mention them.

134. Further and importantly, since the Committee has concluded that the Executive has established that there was a concert party as it alleges, it follows that all three Respondents have knowingly and deliberately persisted in misleading the Executive throughout the investigation.
135. There were in the course of the Hearing and in the correspondence with Mishcons on behalf of Mr Posen some suggestions that in the course of the interviews carried out by the Panel, in particular with the brokers and Mr Posen, unfair pressure had been placed upon those being interviewed and that the Executive had otherwise behaved inappropriately towards the Respondents. It should be recorded that the Committee is quite satisfied, having heard the evidence of Mr Hingley and Mr Crawshay, that it was right to give warnings of the consequences of any lack of openness and there is no justifiable basis for any such complaint.
136. The Committee has already referred to Mr Posen's decision not to appear at the Hearing and the reasons given for this decision. The Executive suggests that there was one true reason only, that was to avoid having to justify his

actions and behaviour in cross-examination by dealing with searching questions.

137. Mr Posen is apparently a wealthy man. He has business interests and investments on a global basis, including a hotel in Peru and investments in shares and securities, he is responsible not only for his own investments but for those of the Posen Foundation, and travels widely. Not surprisingly, he employed both solicitors and Counsel in London to deal with what were serious allegations against him, and together they produced a submission stating Mr Posen's case and witness statements in support from Mr Posen and Mr Christof Reichmuth (the CEO of Reichmuth). Even when it was pointed out that he need not incur further expense of lawyers since he could simply attend the Hearing in person and that more than his reputation was at stake, this did not impress him. Having made allegations that the Executive had not behaved appropriately towards him, he preferred not to try to substantiate them in person. The Committee is entirely satisfied that these allegations are unfounded and should never have been made by or on behalf of Mr Posen. His evidence was in part incredible, e.g. his claim a few days after the events leading up to his transaction that he could not remember whether he had given instructions (if he did) to WH Ireland on Thursday 26 or Friday 27 March or even, as he said to the Executive, the following week. His Witness Statement said:

“In the call that I had with Mr Ansell on 27 March (or late on 26 March), I believe that I would have said to him that I was interested in acquiring a parcel of shares in PCIT. I do not believe that at this stage I would have identified a specific number of shares or the price of the shares. Given the note that I made on 26 March, it is possible that I told Mr Ansell that I wanted to buy up to 7-8 million shares at not more than 36 pence per share. In other words, I would have given him a general indication of what I wanted up to a limit corresponding with how much I wanted to invest. I may have also informed Mr Ansell that settlement would be made through Reichmuth Bank, but I should make it plain that I do not recall exactly what I said to him.”

138. The Committee rejects this account. The impression created by Mr Posen's statement as a whole and, indeed, by what he said to the Executive is that he would not commit to facts unless he had to in case they undermined the case which he was presenting and/or were inconsistent with the position taken by Messrs Myerson and Padgett and that he would support Messrs Myerson and Padgett even on matters which he know were untrue (e.g. the number and extent of telephone calls). It is beyond doubt that Mr Posen could, if he chose to do so, reveal from whom he obtained the funds for the purchase (and indeed how, when and by whom that was arranged), but he chose for reasons which suited him (but which are not suggested to include any kind of legal prohibition or inhibition) to put aside his obligations under the Code to cooperate with the Executive. Instead, he attempted to mislead the Executive about the funding, obtaining a statement from his banker (no doubt true in itself) to add colour to the picture which he sought to paint. This was a clear breach of his obligations to assist the Panel.
139. The Committee concludes that Mr Posen's evidence is in central respects seriously unreliable and the growing realisation that this would be bound to emerge if he gave evidence in person was the real reason for his absence.
140. Having resolved not to attend the Hearing, however, Mr Posen continued to require that he be kept informed of the progress of the proceedings. He made detailed written submissions to the Committee, including comments on the skeleton arguments of the Executive. This activity continued up to and including the days of the Hearing itself. The Committee has considered all the relevant points made by Mr Posen in this way, but sees no reason to conclude that the material supplied in this manner answers numerous questions raised by Mr Posen's statements to the Executive, his own actions and his own Witness Statement, still less that it helps to alter in Mr Posen's favour the inferences to be drawn from the indisputable facts and other evidence.

I OTHER MATTERS

141. In what has already been said in the Reasons above, the Committee has had in mind and sought to address the substance of the arguments of Counsel to the Respondents and those of Mr Posen, but without dwelling on every detail of fact or argument. There are, on this basis, one or two additional points which may be worth mentioning under this heading.
142. Mr Flint emphasised correctly that the Executive had produced no evidence of any inducement or reason for Mr Posen's purchase other than the reasons given by Mr Posen himself. Mr Posen had, it was said, demonstrated that he was a passive long-term investor. He had paid no more than a negotiated price for a strategic size stake in an illiquid stock and not, as the Executive suggested, a premium over a market price. The figures for prices paid in the market were not comparable to such a transaction.
143. The Committee accepts that there is scope for debate as to the market price of such a stock, but cannot accept that in any significant way Mr Posen negotiated the price paid. The evidence indicates that, at the most, having discussed the matter with Mr Myerson and then with Felix Posen, he agreed to a maximum figure and that this was the basis upon which Mr Padgett gave instructions to Mr Ansell within this limit.
144. Mr Flint also pointed out that there was no basis for concluding that Felix and Daniel Posen acted as they did because of a favour owed to Mr Myerson. The Committee accepts this, but does not accept that instead Mr Posen was simply acting on the basis of his own very limited understanding of PCIT's value, experience of previous investments and belief in Mr Myerson's investing abilities.
145. Mr Peggie suggested that, when Mr Myerson told him before the First EGM of Mr Posen's call "expressing an interest in PCIT shares", Mr Myerson "sounded genuinely surprised". The Committee considers that any such surprise, however it seemed to Mr Peggie, was not in fact informative.

146. In relation to the crucial call from Mr Padgett to Mr Ansell (i.e. the one at 13.06 on 27 March), Mr Flint urged that, as Mr Padgett said, the purpose was to inform Mr Ansell of the switch of the order of 7 million shares to Liberum. As already indicated, the Committee does not accept this. The main purpose was to place the order for the rest of the EIM holding.

J. CONSEQUENCES AND SANCTIONS

147. To quote the Skeleton Argument of Mr Sumption on behalf of the Executive:

“The Executive recommends that the Hearings Committee should publish a Panel Statement under Introduction, para. 11(b)(v) that Myerson, Padgett and Posen are persons who in the Committee’s opinion are not likely to comply with the Code. In addition, the Executive believes that, if the Hearings Committee concludes that there was an undisclosed concert party, Pointer and the other members of the concert party should be required to make an offer to all PCIT shareholders who are not members of the concert party to acquire their shares at not less than 28.02 pence per share in cash.”.

148. The rationale for the figure of 28.02 pence per share in cash is that the Pointer offer was made at that price (excluding 9.98 pence per share which was returned to shareholders by way of the return of capital) and so, in effect, valued each share in PCIT at 38 pence. That was a value greater than the highest price paid by members of the concert party in the previous 12 months which was 35.14 pence. There are therefore two distinct aspects of the submission made in the Skeleton Agreement:

- i. whether or not it is appropriate to require Pointer and the other members of the concert party, as the Committee has found them to be, to make such an offer (the “Mandatory Offer Order”); and
- ii. whether or not any, and if so which, of the sanctions set out in paragraph 11(b)(v) of the Introduction to the Code should be imposed on one or

more of Messrs Myerson, Padgett and Posen (the “Disciplinary Sanction”).

The Mandatory Offer Order

149. The Committee believes, as the Executive submits and which is not in issue, that Rule 9 is a fundamental Rule the observance of which is essential to the fair treatment of shareholders and so to the efficacy of the Code itself. Deliberate failure to make an offer mandated by Rule 9 is therefore of the utmost gravity. It would require an exceptional case in which the Rule had been infringed for the consequence of a mandatory offer not to follow.
150. It is the submission of Mr Flint that this is such an exceptional case. The feature at the forefront of this submission is the fact that by causing the Pointer offer to be made at a price in excess of the price at which, had the concert party been disclosed, the participants would have been obliged to make a mandatory offer, in effect, the purpose of Rule 9 has already been met.
151. It is right to record that it was accepted by Mr Flint (on express instructions from Mr Myerson) that the Executive and the Committee had power to order that such an offer be made by Pointer (and indeed by Messrs Myerson and Padgett) and that Mr Sumption on express instructions from the Executive acknowledged that, should the Committee consider an offer should be mandated, it would be sufficient and effective if it were required to be made by Pointer alone.
152. The Committee was provided with details of those who would be entitled to receive such an offer should it be required. In summary, the only substantial shareholder who would be in that position would be West Midlands which still holds some 9% of the shares. In addition, the offer would be made to some small shareholders whose holdings in total are about a further 3%. The Committee also has evidence before it that the Net Asset Value per share of PCIT was at 31 March 2010 of the order of 46 pence whereas it was some 32

pence at the time (now over 9 months ago) of the Pointer offer. Both figures exclude the return of capital which had by then been made.

153. Notwithstanding the apparent fact that a mandatory offer at 28.02 pence would appear (as Mr Flint submitted) to be of little benefit to the shareholders to whom it would be made, it is material that there is now no recognised market in PCIT shares and, in view of the sanctions which the Committee thinks fit to impose on Messrs Myerson and Padgett, their roles in PCIT (if any) will be constrained as a result of their serious mis-conduct.
154. The Committee has anxiously considered the submission of the Executive, which has considerable force. It does, however, consider that the fact of the Pointer offer and the price at which it was made together with the fact that the offer document explicitly stated that the Panel was continuing to investigate a possible breach of Rule 9 do make this an exceptional case. The relevant shareholders were given the opportunity to accept but chose to decline an offer at a higher price than would have been required by Rule 9 and did so in the knowledge that the Panel had concerns about Rule 9 which it was yet to resolve. In those circumstances, the submission of Mr Flint that the shareholders have not in the event been prejudiced is compelling.
155. For these reasons, the Committee has concluded that in these exceptional circumstances it would not be appropriate to require Pointer to make an offer to the continuing shareholders of PCIT.

The Disciplinary Sanction

156. The disciplinary powers available to the Committee are set out in paragraph 11(b) of the Introduction to the Code. So far as material to the present issues, those powers are to:

“(i) issue a private statement of censure; or

(ii) issue a public statement of censure; or

.....

- (v) publish a Panel Statement indicating that the offender is someone who, in the Hearings Committee’s opinion, is not likely to comply with the Code. The rules of the FSA and certain professional bodies oblige their members, in certain circumstances, not to act for the person in question in a transaction subject to the Code, including a dealing in relevant securities requiring disclosure under Rule 8 (so called “cold-shouldering”). For example, the FSA’s rules require a person authorised under the Financial Services and Markets Act 2000 (“FSMA”) not to act, or continue to act, for any person in connection with a transaction to which the Code applies if the firm has reasonable grounds for believing that the person in question, or his principal, is not complying or is not likely to comply with the Code.”.

157. Paragraph 9 of the Introduction to the Code provides:

“This section sets out the rules according to which persons dealing with the Panel must provide information and assistance to the Panel.

(a) Dealings with and assisting the Panel

The Panel expects any person dealing with it to do so in an open and co-operative way. It also expects prompt co-operation and assistance from persons dealing with it and those to whom enquiries and other requests are directed. In dealing with the Panel, a person must disclose to the Panel any information known to them and relevant to the matter being considered by the Panel (and correct or update that information if it changes). A person dealing with the Panel or to whom enquiries or requests are directed must take all reasonable care not to provide incorrect, incomplete or misleading information to the Panel....”.

158. The obligation on those dealing with the Panel to assist it and to disclose information which is not incorrect, incomplete or misleading is of the very first importance to the operation and efficacy of the Code. It is of particular significance in the context where the Executive is concerned about the possible existence and non-disclosure of a concert party which, almost by definition, is a matter which will be difficult to expose in the absence of frank responses to requests for information. It is also a matter in which it can be expected that those who participate in an undisclosed concert party do so for financial and commercial advantage which they perceive to be sufficient to outweigh the risks of discovery.
159. In this context it is of course necessary to consider the conduct and roles of each of Mr Myerson, Mr Padgett and Mr Posen separately. But on the findings of the Committee each has been party to a deliberate attempt to circumvent Rule 9 and each has sought to cover up the breaches involved and deliberately sought to mislead and persisted in misleading the Executive and the Committee about what happened. The Executive, rightly in the view of the Committee, takes a very serious view of such conduct which undermines a fundamental Rule of and the obligations under the Code.
160. Although Mr Flint submitted on behalf of Messrs Myerson and Padgett that such conduct did not merit any sanction more severe than a public statement of censure, the Committee considers that such a sanction for conduct of this gravity would be wholly inappropriate. Faced with a conflict between their commercial interests and observing the Code, Messrs Myerson and Padgett gave preference to the former and Mr Posen was a willing participant in their conduct. Faced with an investigation by the Executive of developing intensity, all three were ready to offer an apparently innocent explanation of events which, for the reasons expressed, the Committee is satisfied was coordinated, disingenuous and dishonest. It is the opinion of the Committee that such conduct by each of the three fully justifies the conclusion that he is a person who has not complied and is not likely to comply with the Code. The Committee has had well in mind that both Mr Myerson and Mr Padgett have been concerned in matters subject to the Code for many years and have not

been the subject of any criticism before, but that cannot ameliorate their serious and dishonest conduct in the events under consideration. On the contrary, it suggests that they would have fully understood the consequences of what they were doing.

161. The Committee is of course very conscious of the fact that "cold-shouldering" is indeed a severe sanction. It is also conscious of the fact that it would impinge on Mr Myerson and Mr Padgett to an extent which does not apply to Mr Posen. Indeed, in their 17 March 2010 letter in which Mishcons wrote to the Secretary to the Committee to inform him that Mr Posen would not participate further in the proceedings, it was expressly stated that because of Mr Posen's lack of involvement in the corporate finance arena "cold-shouldering" had "little relevance" for him "in practical terms" save as a matter of reputation in which he felt secure.
162. The Committee has carefully considered whether or not it would be right to distinguish in terms of sanction between Messrs Myerson, Padgett and Posen. It has concluded that it is not right to do so. The Committee has no doubt that Mr Myerson was responsible for the original involvement of Mr Posen and for demanding of Mr Padgett that all the EIM shares be secured on Friday 27 March and thereafter. Mr Myerson is a sophisticated and experienced investor and knew well that his conduct had to be hidden from investigation. Mr Padgett was much more than a mere administrator; he also pursued the Posen purchase and the cover-up in the knowledge of the consequences should the truth be discovered. Moreover, it was Mr Padgett who used his relationship with Mr Ansell to secure the purchase of the 6.7 million shares at lunchtime on the Friday which both he and Mr Myerson knew was essential to their purpose both because of EIM's "fill or kill" requirement and because it was vital to achieving a majority at the Second EGM.
163. Mr Posen's involvement is, in a sense, of a different nature. It might perhaps have been said on his behalf that he was simply duped into his part in the purchase or that he relied upon Messrs Myerson and Padgett to assure him of its legitimacy, but that is not his case. It is his evidence and case that it was a

pure, if most fortuitous, coincidence that he decided, at the very moment Messrs Myerson and Padgett were inevitably about to be voted off the Board of PCIT but were hoping to reverse that outcome, to invest some £2.4 million in that company and to do so in ignorance of the two EGMs, with no relevant research or advice, and on a personal basis because the Posen Foundation had determined that the Foundation would not itself be making any further investments at that time. That case has been rejected. Mr Posen was also party to the cover-up and to seeking to tailor his evidence to the Panel to coincide with the evidence of Messrs Myerson and Padgett. It was also Mr Posen who gave a false account about the source of the funds which he used to purchase the shares and subsequently refused to provide the information about who had in fact financed the purchase.

164. Paragraph 11(b)(v) of the Introduction to the Code contains no limitation of time on a “cold-shouldering” Statement. Mr Sumption submitted on behalf of the Executive that nonetheless, and partly because of the growing importance of proportionality as part of the test of lawfulness in the exercise of discretionary powers, and the legal status which the Code has, the Committee has the power to limit the time for which such a Statement should apply and that, in a case of the present gravity, an appropriate order would be to the effect that, after a stated period, the Statement should be open to review by the Executive on application by those the subject of it in the light of the circumstances then pertaining. He suggested that an appropriate period should be not less than five years.
165. It is to be noted that in the more than 40 years in which the Code has existed in substantially its current form, there has only been one other case in which a cold-shouldering order has been made. That is some indication of the extreme nature of the sanction; it is also an indication of the standards that are generally observed in the conduct of takeovers and mergers and the acceptance of those concerned in them of the need to comply with the Code and the principles which it enshrines.

166. In his closing submissions Mr Flint, whilst he submitted first that the sanction of public censure would be sufficient even if the Executive were found to be right in the entirety of its case, also, and helpfully, accepted that the general power to “cold-shoulder” included a power to limit such a Statement to a definite period of (say) one, two or five years but questioned whether it was appropriate to make a Statement providing only that it could be reviewed after such a defined period. He did so on the basis that a punitive sanction of such a kind should be fixed once and for all at the time of the Committee’s decision, in accordance with its assessment of the gravity of the offence and in the knowledge acquired at that time and not be exposed to review by (inevitably) others after a set period had expired.
167. If the Committee were to conclude, as it has, that cold-shouldering was appropriate, Mr Flint submitted that, given the damaging effect of such an order on those concerned and third parties with which they were associated, there was no need for the period to be greater than six months or one year.
168. The Committee has carefully considered these submissions and the need to ensure that the relevant Statement should be proportionate to the gravity of the conduct which it has found to have existed. It is persuaded by Mr Flint’s submissions that it is right that a fixed period should be stated rather than a period after which an application could be made to “cancel” the Statement.
169. The remaining and obviously important question is what period is appropriate. The Committee is entirely satisfied that for conduct of this gravity a short period would be quite insufficient; equally, it has determined that in the event there was insufficient prejudice to shareholders to justify a requirement to make a mandatory offer and acknowledges that the reputational consequences of such an order can extend beyond the specified time period.
170. The Committee has concluded that the formal Panel Statement to be made in accordance with paragraph 11(b)(v) of the Introduction to the Code should be made to be effective for a period of three years from the date of its

publication. That period, in the judgment of the Committee, is the minimum which is appropriate.

Signed: [signed by Peter Scott QC]

Peter Scott QC

Chairman of the Hearings Committee

30 April 2010

APPENDICES

APPENDIX 1

DEFINITIONS AND DRAMATIS PERSONAE

The following terms and abbreviations are used in the Decision:

“AIM”	means AIM, a market operated by The London Stock Exchange plc;
“Andrews (Mr)”	means Stuart Andrews of Evolution;
“Ansell (Mr)”	means Harry Ansell of WH Ireland;
“Ayton (Ms)”	means Emma Ayton of Evolution;
“Bachmann (Mr)”	means Yves Bachmann of Reichmuth;
“BNB”	means BNB Resources plc;
“Call Summary”	means the detailed chronological summary of the telephone calls and other information (including the time and duration of each call) agreed between the parties;
“Campbell (Mr)”	means Charlie Campbell of WH Ireland;
“Code”	means The City Code on Takeovers and Mergers;
“Committee”	means the Hearings Committee of the Panel;
“Counsel to the Respondents”	means Mr Flint and Mr Tom Weisselberg;
“Crystal Amber”	means Crystal Amber Advisers (UK) LLP;
“ECHR”	means the European Convention on Human Rights;
“EIM”	means EIM S.A.;
“Evolution”	means Evolution Securities Limited;

“Executive”	means the Takeover Panel Executive, a party to the Hearing;
“file note”	means a written file note made by the Executive of a meeting or telephone conversation (as the case may be);
“First EGM”	means the extraordinary general meeting of PCIT held on 26 March 2009;
“Flint (Mr)”	means Charles Flint QC;
“Gill (Mr)”	means John Gill of WH Ireland;
“Hearing”	means the Hearing held by the Committee on 12 to 14 April 2010;
“Initial Concert Party”	means the concert party consisting of PCH, PCLP, Silex and the Daniel Howard Trust;
“Invesco”	means Invesco Asset Management Limited;
“Lamb (Mr)”	means Nick Lamb of WH Ireland;
“Liberum”	means Liberum Capital Limited;
“Mishcons”	means Mishcon de Reya Solicitors;
“Myerson (Mr)”	means Brian Myerson of the Principle Capital group, a party to the Hearing;
“Nahal (Ms)”	means Amrit Nahal of Evolution;
“Official List”	means the Official List of the UK Listing Authority;
“Padgett (Mr)”	means Brian Padgett of the Principle Capital group, a party to the Hearing;
“Panel”	means the Takeover Panel;
“Pastre (Mr)”	means Joel Pastre, a fund manager at EIM;
“PCAL”	means Principle Capital Advisors Limited, adviser to PCFM;

“PCFM ”	means Principle Capital Fund Managers Limited, the investment manager to PCIT;
“PCH”	means Principle Capital Holdings S.A.;
“PCIT”	means Principle Capital Investment Trust plc (which has been re-registered as a private company with the name “Principle Capital Limited”);
“PCLP”	means Principle Capital L.P., an investment fund managed by Principle Capital GP Limited;
“PCSREAML”	means Principle Capital Sirius Real Estate Asset Management Limited;
“Peggie (Mr)”	means James Peggie of Principle Capital group;
“Photo-Me”	means Photo-Me International plc;
“PMEAIO”	means PME African Infrastructure Opportunities plc;
“Pointer”	means Pointer Investments Limited;
“Posen (Mr)”	means Daniel Posen, a party to the Hearing;
“Posen purchase” or “Posen transaction”	means the order given to buy PCIT shares described in paragraph 97 above;
“PPPL”	means Proteus Property Partners Limited;
“Principle Capital group”	means PCH and its subsidiary companies;
“Principle Energy”	means Principle Energy Limited;
“QVT”	means QVT Financial L.P.;
“QVT concert party”	means QVT, Invesco and EIM;
“Reichmuth”	means Reichmuth & Co. Privatbankiers;
“Representation Agreement”	means the representation agreement between QVT, Invesco and EIM in relation to PCIT, and entered into on 27 January 2009;

“Respondents”	means Mr Myerson, Mr Padgett and Mr Posen;
“SAPRO”	means South African Property Opportunities plc;
“Second EGM”	means the extraordinary general meeting of PCIT held on 24 April 2009;
“Silex”	means Silex Trust Company Limited;
“Sirius”	means Sirius Real Estate Limited;
“Sparke (Mr)”	means Damien Sparke of Evolution;
“Sumption (Mr)”	means Jonathan Sumption QC;
“Tsisatrana (Ms)”	means Soagny Tsisatrana of WH Ireland;
“UKAVCF”	means UKAV Continuation Fund, Inc.;
“West Midlands”	means the West Midlands Metropolitan Authorities Pension Fund;
“WH Ireland”	means WH Ireland plc;
“Worthington (Mr)”	means Nick Worthington of Liberum; and
“Ziff”	means Ziff Brothers.

All references to time in this Decision are to English time.

APPENDIX 2

HEARINGS COMMITTEE TIMELINE

The principal events during the Committee's proceedings in this matter were as follows:

Date	Event
1 December 2009	Executive's Submission delivered
18 December 2009	Timetable agreed
21 December 2009	Process letters issued
4 February 2010	Ruling made that Hearing to be held in private
5 February 2010	Respondents' Submissions delivered
19 February 2010	Executive's second Submission and Executive's Witness Statements delivered
5 and 8 March 2010	Respondents' Witness Statements delivered
22 March 2010	Skeleton Argument from Counsel for the Executive delivered
23 March 2010	Hearing for Directions held
26 March 2010	Skeleton Argument from Counsel for Mr Myerson and Mr Padgett delivered
12 to 14 April 2010	Hearing held
30 April 2010	Committee's Decision delivered

APPENDIX 3

HEARINGS COMMITTEE MEMBERS

The members of the Hearings Committee who constituted the Committee for the purpose of this Hearing were:

Body Represented	Individual's Name	Position or Firm
	Peter Scott QC	Chairman, Hearings Committee
	Sir Gordon Langley	Deputy Chairman, Hearings Committee
	Antony Beevor	Deputy Chairman, Hearings Committee
	Lord Morris of Handsworth	Independent Member, Hearings Committee
	Sir Brian Stewart	Independent Member, Hearings Committee
Association for Financial Markets in Europe	Simon Robertson	Simon Robertson Associates
Association for Financial Markets in Europe, Corporate Finance Committee	Charles Wilkinson	Deutsche Bank
Association for Financial Markets in Europe, Securities Trading Committee	Jim Hamilton	Investec Bank
Association of British Insurers	Jim Stride	Axa Investment Managers
Association of Investment Companies	Jeremy Tighe	F&C Asset Management
British Bankers' Association	Judith Shepherd	Barclays Capital
Confederation of British Industry	Steve Cowden	Reed Elsevier

Secretary to the Committee	Charles Penney	Addleshaw Goddard LLP