

# **IRISH TAKEOVER PANEL**

**Report for the year ended 30 June 2014**

This annual report of the Irish Takeover Panel is made to  
Richard Bruton, T.D., Minister for Jobs, Enterprise and Innovation as required  
by section 19 of the Irish Takeover Panel Act, 1997

**ANNUAL REPORT 2014**

**IRISH TAKEOVER PANEL**

**Report for the year ended 30 June 2014**

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## **Members of the Panel**

Irish Association of Investment Managers

Irish Clearing House Limited - Nominated by the Banking & Payments  
Federation Ireland

Irish Stock Exchange plc

Law Society of Ireland

Pat Costello - Nominated by the Consultative Committee  
of Accountancy Bodies - Ireland

## **Directors of the Panel**

Chairperson	Denis McDonald, S.C.	Appointed by the Governor of the Central Bank of Ireland
Deputy Chairperson	Ann Fitzgerald	Appointed by the Governor of the Central Bank of Ireland
	Thomas Byrne (Alternate: Maurice Crowley)	Appointed by the Banking & Payments Federation Ireland
	Paul D’Alton	Appointed by the Consultative Committee of Accountancy Bodies – Ireland
	Daniel Kitchen (Alternate: Hugh McCutcheon)	Appointed by the Irish Stock Exchange
	Frank O’Dwyer	Appointed by the Irish Association of Investment Managers
	Mark Ryan (Alternate: Paul Egan)	Appointed by the Law Society of Ireland

## **Director General (and Secretary of the Panel)**

Miceal Ryan

## **Introduction**

The Irish Takeover Panel (the “Panel”) is the statutory body responsible for monitoring and supervising takeovers and other relevant transactions in Ireland. The Panel was established by the Irish Takeover Panel Act, 1997 (the “Act”) and is incorporated as a company limited by guarantee. The Panel is designated as the competent authority under the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006 (the “Regulations”) for the purpose of Article 4(1) of the Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids.

The Panel is responsible for making rules to ensure that takeovers (including takeover bids as defined in the Regulations) and other relevant transactions comply with the General Principles set out in the Schedule to the Act. These General Principles are designed to ensure fair and equal treatment of all shareholders in relation to takeovers. The rules also serve to provide an orderly framework within which takeovers can be conducted.

The Panel has extensive powers under the Act to make rulings and give directions, to hold hearings, to summon witnesses and to require production of documents and other information, where these are appropriate in the discharge of its statutory functions.

## Chairperson's Statement

Takeover activity during the year was at a lower level than the previous year. The Panel was nonetheless required to meet on thirty-seven occasions to consider regulatory issues. The takeovers supervised by the Panel during the year are set out in Appendix 2.

In November 2013, the European Securities and Markets Authority ("ESMA") published a statement on shareholder cooperation and acting in concert under the Takeover Bids Directive ("Directive"). The statement was prepared by the Takeover Bids Network ("TBN") (of which the Panel is a member), a permanent working group under the auspices of ESMA that promotes the exchange of information on practices and application of the Directive. The statement was prepared following the review and report by the European Commission on the application of the Directive and was based on information collected from the members of the TBN about national practices and the application of the Directive. It contains a "White List" of activities in which shareholders may wish to engage in order to exercise good corporate governance and states that cooperation by shareholders in any of the activities in the White List will not, in and of itself, lead to those shareholders being regarded as acting in concert and potentially having to make a mandatory bid. The statement emphasises that any case of cooperation between shareholders and the consequences of that cooperation must be judged on the basis of the facts and while the national competent authorities for takeovers will have regard to the White List when considering such cases, they will also take into account all other relevant factors in making their decisions. As a consequence of the different approaches adopted in the Member States in relation to shareholder cooperation in relation to board appointments, the White List does not include any activity relating to such cooperation. However, the statement recognizes that shareholders may wish to cooperate in order to secure board members' appointment in a company in which they have invested. The statement also brings together information from all the Member States on the way in which the relevant provisions of the Directive have been implemented in national laws and rules.

In last year's report I referred to the intention to publish a revised set of Takeover Rules before the end of the 2013 calendar year. In November 2013, the Panel published the Irish Takeover Panel Act 1997, Takeover Rules, 2013 which came into effect on 6 January, 2014. The new rules reflect a number of amendments proposed in three consultation papers published by the Panel during the course of 2011 and 2012. The Panel is considering a number of other issues which may lead to further amendments to the rules. As such, the Panel anticipates that there will be further consultation papers published in due course.

In last year's report, I referred to the High Court judicial review proceedings which had been taken by Aer Lingus Group plc in relation to a Panel ruling. The High Court decided in that case to refuse Aer Lingus leave to apply for judicial review on the basis that it had not established substantial grounds. I referred to the intention by Aer Lingus to seek leave to appeal the matter to the Supreme Court. For

the sake of completeness, I should now record that Aer Lingus subsequently withdrew its application to seek leave to appeal the matter to the Supreme Court.

**Denis McDonald**

Chairperson

2 October, 2014

## **Director General's Report**

While activity levels were not as high as in the previous year, the Panel nonetheless had a busy year supervising the takeovers of Warner Chilcott plc by Actavis Inc. and Elan Corporation plc by Perrigo Company. At 30 June last, Fyffes plc, Covidien plc and Kenmare Resources plc were each in an offer period with firm intention announcements having been issued by that date in the case of Fyffes and Covidien. As such, there has been a busy start to the current year.

On 6 January 2014 the Irish Takeover Panel Act 1997, Takeover Rules, 2013 came into effect. The revised rules contain a number of quite significant changes all of which were considered in consultation papers published by the Panel. Significant changes were made to Rule 2.4 (the announcement of a possible offer) with the introduction of inter alia a specific “put-up or shut-up” rule and also amendments setting out the consequences for an offeror who has become bound by a statement in relation to the terms on which it might make an offer. Rule 2.8 was amended to inter alia apply essentially the same restrictions as are in Rule 35.1 (restrictions following offers- delay of 12 months) to a person who makes a statement that they do not intend to make an offer for a relevant company. A new Rule 11.2 was introduced setting out the circumstances in which a securities exchange offer is required. Rule 12(b) (Competition Act and the European Commission) has been amended to clarify the obligations of an offeror under the Rules when its offer has lapsed as a result of the European Commission having decided to initiate proceedings in respect of the transaction and to set out the consequences under the Rules for an offeror should the European Commission prohibit the transaction. A new Rule 13.3 has been introduced setting out inter alia the circumstances in which an offeror may invoke a condition or a pre-condition to an offer. The condition or pre-condition must in the first instance be of material significance to the offeror in the context of the offer and the Panel having been consulted by the offeror must be satisfied that in the circumstances it would be reasonable for the offeror to invoke the relevant condition or pre-condition. A new Rule 16.2 has been introduced in an attempt to provide greater certainty as to how management incentivisation arrangements will be treated under the Rules. Finally an area which has given rise to issues in the past, Rule 20.2 (equality of information to offerors) has been amended to clarify the conditions which an offeree may impose on a competing offeror when providing it with information on the offeree. The latter amendments essentially reflect Panel practice in this area prior to the new Rules coming into effect.

In addition, the new rules removed the concept of a market-maker and introduced the concept of a principal trader. A principal trader is a person who is registered as a market-maker with the Irish Stock Exchange or the London Stock Exchange, or is accepted by the Panel as a market-maker, or is a member firm of either such stock exchanges dealing as principal in order book securities. While all principal traders seeking exempt status under the rules are required to submit an application to the

Panel, the Panel will usually grant such status to a principal trader where it has been granted the corresponding status by the UK Takeover Panel for the purposes of the UK Code. Full exempt principal trader status will normally be granted only to entities based in Ireland and the UK. As regards the granting of ad hoc exempt status, the Panel will not normally grant such status to principal traders based in Ireland or the UK which are frequently involved in transactions regulated by the Panel.

#### *Financial Statements*

Operating income in the 12 months ended 30 June 2014 decreased by 6.2% to €1,052,593. The decrease was due to a combination of a reduction in income from document charges due to lower bid activity during the year and a reduction in income from relevant company annual charges due to a special reduction of approximately 18% having been applied to such charges for the year commencing 1 July, 2013. Income from contract note levies continued its upward trend of recent years increasing by nearly 38%. Expenditure for the year amounted to €717,496, a decrease of 28.4% on the previous year. While staff salaries and directors' remuneration each decreased, the primary contributor to the decrease in expenditure was a significant reduction in legal fees. The Panel's cash balances as at 30 June, 2104 amounted to €2.34 million.

**Miceal Ryan**

Director General

2 October, 2014

## **Directors' Report**

The directors present their annual report and audited financial statements for the year ended 30 June 2014.

### **Principal activities, review of operations and future developments**

The Irish Takeover Panel (the "Panel") is a public company limited by guarantee formed and registered under the Companies Acts, 1963 to 2013. The company was incorporated on 29 April 1997.

The Panel is the statutory body responsible for monitoring and supervising takeovers and other relevant transactions in Ireland. The Panel is designated as the competent authority under the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006 for the purpose of Article 4(1) of the Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids.

The Panel is responsible for making rules to ensure that takeovers and other relevant transactions comply with the General Principles set out in the Schedule to the Act.

A review of operations and future developments is contained in the Chairperson's Statement and the Director General's Report.

### **Principal risks and uncertainties**

Under Irish Company Law, the Panel is required to give a description of the principal risks and uncertainties which it faces. The principal risks are:

- a significant reduction in the income from relevant company charges and/or contract note levies; and
- a substantial increase in expenditure.

These risks are monitored by the Panel through its financial reporting procedures. The Panel's objective is to maintain adequate resources to meet any unforeseen substantial reduction in income and any substantial increase in expenditure.

## **Results for the year**

The results for the year are set out in the Income and Expenditure Account on page 15. An amount of €350,000 (2013: Nil) was transferred from the Income and Expenditure Account to the Contingency Reserve.

## **Accounting records**

The directors believe that they have complied with the requirements of section 202 of the Companies Act, 1990 with regard to books of account by employing accounting personnel with appropriate expertise and by providing adequate resources to the financial function. The books of account of the company are maintained at 76 Merrion Square, Dublin 2.

## **Post balance sheet events**

No material events effecting the financial statements have occurred since the end of the financial year.

## **Auditor**

In accordance with section 160 (2) of the Companies Act, 1963, KPMG, Chartered Accountants, will continue in office.

On behalf of the Board

D. McDonald  
*Chairperson*

A. Fitzgerald  
*Deputy Chairperson*

2 October, 2014

## **Statement of Directors' Responsibilities**

The directors are responsible for preparing the Directors' Report and financial statements in accordance with applicable law and regulations.

Company law requires the directors to prepare financial statements for each financial period. Under that law, the directors have elected to prepare the company financial statements in accordance with Generally Accepted Accounting Practice in Ireland, comprising applicable law and the accounting standards issued by the Financial Reporting Council and promulgated by the Institute of Chartered Accountants in Ireland.

The Company's financial statements are required by law to give a true and fair view of the state of affairs of the Company and of its profit or loss for that period.

In preparing these financial statements, the directors are required to:

- select suitable accounting policies and then apply them consistently;
- make judgements and estimates that are reasonable and prudent;
- prepare the financial statements on the going concern basis unless it is inappropriate to presume that the Company will continue in business.

The directors are responsible for keeping proper books of account that disclose with reasonable accuracy at any time the financial position of the Company and enable them to ensure that its financial statements comply with the Companies Acts, 1963 to 2013. They are also responsible for taking such steps as are reasonably open to them to safeguard the assets of the Company and to prevent and detect fraud and other irregularities.

The directors are also responsible for preparing a directors' report that complies with the requirements of the Companies Acts, 1963 to 2013.

On behalf of the Board

D. McDonald  
*Chairperson*

A. Fitzgerald  
*Deputy Chairperson*

2 October, 2014

## **Independent Auditor's Report to the members of the Irish Takeover Panel**

We have audited the financial statements of Irish Takeover Panel for the year ended 30 June 2014 which comprise the Income and Expenditure Account, Balance Sheet and the related notes. The financial reporting framework that has been applied in their preparation is Irish law and accounting standards issued by the Financial Reporting Council and promulgated by the Institute of Chartered Accountants in Ireland (Generally Accepted Accounting Practice in Ireland).

This report is made solely to the company's members, as a body, in accordance with section 193 of the Companies Act 1990. Our audit work has been undertaken so that we might state to the company's members those matters we are required to state to them in an auditor's report and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the company and the company's members as a body, for our audit work, for this report, or for the opinions we have formed.

### **Respective responsibilities of directors and auditor**

As explained more fully in the Directors' Responsibilities Statement set out on page 11, the directors are responsible for the preparation of the financial statements giving a true and fair view. Our responsibility is to audit and express an opinion on the financial statements in accordance with Irish law and International Standards on Auditing (UK and Ireland). Those standards require us to comply with the Ethical Standards for Auditors issued by the Financial Reporting Council.

### **Scope of the audit of the financial statements**

An audit involves obtaining evidence about the amounts and disclosures in the financial statements sufficient to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or error. This includes an assessment of: whether the accounting policies are appropriate to the company circumstances and have been consistently applied and adequately disclosed; the reasonableness of significant accounting estimates made by the directors; and the overall presentation of the financial statements. In addition, we read all the financial and non-financial information in the annual report to identify material inconsistencies with the audited financial statements. If we become aware of any apparent material misstatements or inconsistencies we consider the implications for our report.

## **Opinion on financial statements**

In our opinion:

- the financial statements give a true and fair view, in accordance with Generally Accepted Accounting Practice in Ireland, of the state of the company's affairs as at 30 June 2014 and of its surplus for the year then ended; and
- the financial statements have been properly prepared in accordance with the Companies Acts 1963 to 2013.

## **Matters on which we are required to report by the Companies Acts 1963 to 2013**

We have obtained all the information and explanations which we consider necessary for the purposes of our audit.

The financial statements are in agreement with the books of account and, in our opinion, proper books of account have been kept by the company.

In our opinion the information given in the directors' report is consistent with the financial statements.

## **Matters on which we are required to report by exception**

We have nothing to report in respect of the provisions in the Companies Acts 1963 to 2013 which require us to report to you if, in our opinion the disclosures of directors' remuneration and transactions specified by law are not made.

*Colin O'Brien*

**for and on behalf of**

***KPMG***

**Chartered Accountants, Statutory Audit Firm**

*1 Stokes Place*

*St. Stephen's Green*

*Dublin 2*

2 October, 2014

# Financial Statements

## Statement of accounting policies

The following accounting policies have been applied consistently in dealing with items which are considered material in relation to the Company's financial statements.

### **Basis of preparation**

The financial statements are prepared in accordance with generally accepted accounting principles under the historical cost convention, and comply with the financial reporting standards of the Financial Reporting Council, as promulgated by the Institute of Chartered Accountants in Ireland.

### **Operating income**

This represents primarily the invoiced value of annual and document charges that the Company is entitled to levy and contract note levies on dealings in quoted securities of relevant companies collected through brokers on an accruals basis.

### **Tangible fixed assets and depreciation**

Tangible fixed assets are stated at cost less accumulated depreciation.

Depreciation is calculated to write off the original cost of tangible fixed assets over their expected useful lives. A full year's depreciation is charged in the year of acquisition.

Depreciation is applied at the following annual rates:

Fixtures and fittings	20%
Computers	33%
Motor Vehicle	25%

### **Cash flow statement**

The company is exempted from the preparation of a cash flow statement as it qualifies as a small company under the Companies (Amendment) Act, 1986.

### **Pensions**

The company operates a defined contribution pension scheme. The assets of the scheme are held separately from those of the Company in an independently administered fund. The annual charge is calculated as a percentage of pensionable payroll and is charged to the Income and Expenditure Account on an accruals basis.

## Financial Statements

### Income and Expenditure Account

*For the year to 30 June 2014*

	<i>Notes</i>	<b>30 June 2014</b>	30 June 2013
		€	€
<b>Operating income</b>	<i>1</i>	<b>1,052,593</b>	1,122,193
<b>Operating expenditure</b>	<i>2</i>	<b>(717,496)</b>	(1,002,482)
 <b>Operating surplus</b>		 <b>335,097</b>	 119,711
Interest income		<b>18,531</b>	33,843
 <b>Surplus for the financial year</b>	 <i>10</i>	 <b>353,628</b>	 153,554
		=====	=====

The results derive from continuing operations.

There were no recognised gains or losses in the financial year or preceding financial year other than those included above in the Income and Expenditure Account.

On behalf of the Board

D. McDonald  
*Chairperson*

A. Fitzgerald  
*Deputy Chairperson*

## Financial Statements

### Balance Sheet

as at 30 June 2014

		30 June 2014	30 June 2013
	Notes	€	€
<b>Fixed assets</b>			
Tangible assets	6	1,003	13,004
		_____	_____
<b>Current assets</b>			
Debtors and prepayments	7	159,142	105,469
Cash at bank		2,342,392	2,185,472
		_____	_____
<b>Creditors:</b> amount falling due within one year	8	(57,930)	(212,966)
		_____	_____
<b>Net current assets</b>		2,443,604	2,077,975
		_____	_____
<b>Total assets less current liabilities</b>		2,444,607	2,090,979
		=====	=====
<b>Accumulated surplus and reserve</b>			
Contingency reserve	9	2,150,000	1,800,000
Income and Expenditure account	10	294,607	290,979
		_____	_____
		2,444,607	2,090,979
		=====	=====
On behalf of the Board			
D. McDonald	A. Fitzgerald		
<i>Chairperson</i>	<i>Deputy Chairperson</i>		

## Financial Statements

### Notes forming part of the financial statements

<b>1</b>	<b>Operating Income</b>	<b>30 June 2014</b>	<b>30 June 2013</b>
		€	€
	Relevant company annual charges	613,897	647,106
	Document charges	162,465	283,500
	Contract note levies	263,406	191,074
	Other	12,825	513
		1,052,593	1,122,193
		1,052,593	1,122,193

<b>2</b>	<b>Operating expenditure</b>	<b>30 June 2014</b>	<b>30 June 2013</b>
		€	€
	Operating expenditure includes:		
	Depreciation	13,254	13,677
	Auditor's remuneration	6,150	6,150
		19,404	20,827
		19,404	20,827

### **3 Employees**

The average number of persons employed by the company and the employee costs during the year were as follows:

	<b>30 June 2014</b>	<b>30 June 2013</b>
<b>Number:</b>	<b>Number</b>	<b>Number</b>
Administration	4	4
Directors	7	7
	11	11
	11	11

## Financial Statements

### Notes (continued)

#### 3 Employees (continued)

Costs:	30 June 2014	30 June 2013
	€	€
Salaries	279,200	301,849
Directors' remuneration	238,917	278,455
PRSI costs	31,392	33,459
Pension costs (note 4)	68,435	65,698
	617,944	679,461
	=====	=====

4 Pension costs	30 June 2014	30 June 2013
	€	€
Pension charge	68,435	65,698
	=====	=====

The company makes contributions to a defined contribution scheme for certain employees, the assets of which are vested in independent trustees for the benefit of members and their dependants. The contributions for the year totalling €68,435 (2013: €65,698) are included within operating expenditure. At 30 June 2014 €11,379 (2013: €10,950) was prepaid within debtors in relation to this scheme.

#### 5 Taxation

Under the provisions of the Taxes Consolidation Act, 1997 the company is exempt from Corporation Tax on its income.

## Financial Statements

### Notes (continued)

#### 6 Tangible assets

	Motor vehicle €	Fixtures and fittings €	Computers €	Total €
<i>Cost:</i>				
At 1 July 2013	44,440	69,128	21,600	135,168
Additions	-	1,253	-	1,253
<b>At 30 June 2014</b>	<b>44,440</b>	<b>70,381</b>	<b>21,600</b>	<b>136,421</b>
<i>Depreciation:</i>				
At 1 July 2013	33,330	68,793	20,041	122,164
Charge for year	11,110	585	1,559	13,254
<b>At 30 June 2014</b>	<b>44,440</b>	<b>69,378</b>	<b>21,600</b>	<b>135,418</b>
<i>Net book value:</i>				
<b>At 30 June 2014</b>	<b>-</b>	<b>1,003</b>	<b>-</b>	<b>1,003</b>
At 30 June 2013	11,110	335	1,559	13,004

#### 7 Debtors and prepayments

	30 June 2014	30 June 2013
	€	€
Debtors	798	625
Prepayments and accrued income	158,344	104,844
	<b>159,142</b>	105,469

## Financial Statements

### Notes (continued)

<b>8</b>	<b>Creditors:</b> amounts falling due within one year	<b>30 June 2014</b>	30 June 2013
		€	€
	Accrued expenses	10,691	105,982
	PAYE and Social Welfare insurance	46,443	83,544
	Public Service Withholding Tax	796	3,455
	Bank overdraft	-	19,985
		-----	-----
		<b>57,930</b>	212,966
		=====	=====
<b>9</b>	<b>Contingency reserve</b>	<b>30 June 2014</b>	30 June 2013
		€	€
	At beginning of year	1,800,000	1,800,000
	Transfer from Income and Expenditure Account at end of year	350,000	-
		-----	-----
		<b>2,150,000</b>	1,800,00
		=====	=====
<b>10</b>	<b>Income and Expenditure account</b>	<b>30 June 2014</b>	30 June 2013
		€	€
	At beginning of year	290,979	137,425
	Surplus for financial year	353,628	153,554
	Transfer to Contingency Reserve	(350,000)	-
		-----	-----
	At end of year	<b>294,607</b>	290,979
		=====	=====

### **11 Approval of financial statements**

The Board of Directors approved these financial statements on 2 October, 2014.

*The following appendices do not form part of the audited financial statements*

## **Appendix 1**

### **Administrative Appendix**

#### *Relevant Companies*

The Irish Takeover Panel, established pursuant to the Irish Takeover Panel Act, 1997 (the “Act”), is the body responsible for monitoring and supervising takeovers and other relevant transactions in relation to securities in relevant companies in Ireland. For the purposes of the Act a relevant company includes public limited companies or other bodies corporate incorporated in Ireland whose securities are currently being traded, or (if the subject of a takeover or other relevant proposal) were traded within the previous five years, on the Irish Stock Exchange, the London Stock Exchange, the New York Stock Exchange and Nasdaq but excluding those companies whose only securities authorised to be traded on one or more of those markets during the relevant period are debentures or bonds or other securities in the nature of debentures or bonds that do not confer voting rights in the company.

On 20 May 2006 the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006 (the “Regulations”), which transposed the Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids into Irish Law, came into effect. Under the Regulations those companies a bid in respect of which the Panel has jurisdiction by virtue of Regulation 6 to supervise, are deemed to be relevant companies under the Act.

#### *The Rules*

In addition to its supervisory function, the Panel is also entrusted under the Act with a rulemaking function. The Irish Takeover Panel Act, 1997, Takeover Rules, 2013 came into effect on 6 January 2014. In addition, the Irish Takeover Panel Act, 1997, Substantial Acquisition Rules, 2007 came into effect on 19 December 2007. These Rules have been made principally to ensure that takeovers (including takeover bids) and other relevant transactions comply with the General Principles set out in the Schedule to the Act. The Rules also provide an orderly framework within which takeovers are conducted. They are not concerned with the financial or commercial advantages or disadvantages of a takeover, which are matters for the companies concerned and their shareholders. Neither are the Rules concerned with issues such as competition and merger policies, which are regulated under different legislation.

### *Members of the Panel and Board of Directors*

The Members of the Panel are representative of bodies professionally involved in the securities markets and in the field of takeovers. They comprise the following five bodies, or in certain cases, their corporate or personal nominee:

Consultative Committee of Accountancy Bodies – Ireland

Law Society of Ireland

Irish Association of Investment Managers

Banking & Payments Federation Ireland

Irish Stock Exchange plc

If deemed necessary, the Minister may alter this list by introducing appropriate regulations. Each of the aforementioned bodies has appointed a director to the Board of the Panel. In addition, the Governor of the Central Bank of Ireland has appointed the Chairperson and Deputy Chairperson to the Board.

The Act also provides for the Governor of the Central Bank and the five nominating bodies to designate one or more alternates for each director appointed by them, and three of the nominating bodies have done so. This facilitates the functioning of the Panel when directors are unavailable or are faced with a potential conflict of interest in relation to a case under consideration. Finally, there is also a provision for up to three additional directors to be co-opted by the existing directors. The Board is often required to meet at short notice in order to consider issues requiring urgent decisions.

### *The Executive*

The day-to-day work of the Panel is carried out by the Executive through the office of the Director General. The Executive deals with the general administration of the Panel and the Rules, including consideration of queries and submissions which do not require reference to the Board. The Executive is available for consultation and to give guidance before and during takeover transactions. The Executive is also responsible for monitoring dealings in the shares of relevant companies to ensure compliance with the Rules.

### *Enforcement of the Rules*

The Act gives the Panel statutory authority to make rulings as to whether any activity or proposed activity complies with the General Principles and the Rules. The Panel is also empowered to give directions to any party to a takeover to do or refrain from doing anything specified by the Panel. The

Panel may also investigate a person's conduct where it reasonably believes that a contravention of the General Principles or Rules has occurred or may occur. Where appropriate, the Panel may advise, admonish or censure such a person in relation to his or her conduct. In order to carry out its functions, the Panel may conduct a hearing in relation to the matter concerned. For the purposes of such a hearing, the Panel has the same powers, rights and privileges as are vested in the High Court in relation to compelling attendance, examining on oath and compelling the production of documents. The Act also affords witnesses before the Panel the same immunities and privileges as witnesses before the High Court.

#### *Access to Reports*

Where it deems it necessary, the Panel (under section 21 of the Act) may require a Court-appointed inspector to furnish it with a copy of a report provided to the Court or the Minister under the Companies Act, 1990. Similarly, the Panel may require a recognised Stock Exchange to furnish it with a copy of any report given to the Director of Public Prosecutions in respect of an insider dealing offence. To date, no such requests have been made.

#### *Charges*

In order to defray the expenses incurred in the performance of its functions under the Act, the Panel is authorised to impose charges on relevant companies, on offerors who are not relevant companies, on dealings in the securities of relevant companies and on documentation submitted to the Panel in accordance with the Rules or in relation to Panel proceedings. The consent of the Minister to the current level of charges, which are set out on pages 25 and 26, has been obtained.

## Panel Charges

made under section 16 of the Act and effective from 1 July 2014.

### 1. *Annual charge payable by relevant companies*

Relevant companies pay an annual charge to the Panel based on Market Capitalisation as at 30 June in each year. This scale is as follows:

Market Capitalisation € Million	Annual Charge €
Over 1,250	18,750
625 - 1,250	12,500
125 - 625	6,250
62 - 125	5,000
31 - 62	3,750
12 - 31	2,500
Under 12	1,250

### 2. *Charge on transactions in securities of relevant companies*

Charges are made on contracts in respect of dealings in securities of relevant companies. This charge amounts to €1.25 on each contract note in respect of transactions valued at more than €12,500.

3. *Document charges - takeovers and other relevant transactions*

A document charge is made in respect of documents furnished to the Panel under the rules in connection with takeovers and other relevant transactions. The scale for these charges is:

Value of the Offer € Million	Charge €
Under 5	2,500
5 - 15	10,000
15 - 35	17,500
35 - 65	35,000
65 - 125	50,000
Over 125	62,500

The charge in respect of “whitewash” waiver applications is €2,500.

4. *Charge on offerors which are not relevant companies*

Where an offeror is not a relevant company or a subsidiary of a relevant company, a charge is made additional to the document charge as set out above. This charge is made for an amount equal to the annual charge payable by a relevant company having a market capitalisation equal to that of the offeree at the offer price.

5. *Document charge – proceedings of the Panel*

The Panel is empowered to charge up to €900 per document in respect of documents furnished to the Panel by a person in relation to proceedings to the Panel.

## Appendix 2

### Takeovers supervised by Irish Takeover Panel

1 July 2013 to 30 June 2014

- |      |                      |  |
|------|----------------------|--|
| (i)  | Warner Chilcott plc  | Recommended acquisition for securities by Actavis, Inc. by means of a scheme of arrangement            |
| (ii) | Elan Corporation plc | Recommended acquisition for cash and securities by Perrigo Company by means of a scheme of arrangement |

The following companies were in an offer period at 30 June 2014:

Fyffes plc

Covidien plc

Kenmare Resources plc

## Appendix 3

During the course of the year the Panel exercised certain of its powers under the Act as set out below:

### *Rulings*

The Panel issued fifty six rulings in respect of the following rules:

Rule	Number of Rulings
2 (confidential information; timing/contents of announcements)	9
3 (independent advice)	2
4 (restrictions on dealings in securities)	2
11 (nature of consideration to be offered – voluntary offers)	1
13 (pre-conditions in firm offer announcements and offer conditions)	3
16 (special arrangements with favourable terms)	5
19 (communications)	13
20 (equality of information)	3
21 (frustrating action)	11
28 (profit forecasts)	1
29 (asset valuations)	1
35 (restrictions following offers)	1
Other	4

### *Waivers*

Fourteen waivers were granted in respect of the following rules:

Rule	Number of Waivers
5 (restrictions on acquisitions)	1
9 (the mandatory offer and its terms)	3

28	(profit forecasts)	6
35	(restrictions following offers)	1
37	(redemption/purchase by a company of its own securities)	1
	Other	2

### ***Derogations***

Fifteen derogations were granted during the year. Four derogations were in respect of Rule 24 (offeror documents); three in respect of each of Rules 20 (equality of information) and 30 (despatching and making available the offer document and first response document); two in respect of Rule 28 (profit forecasts) and one in respect of each of Rules 2 (confidential information; timing/contents of announcements), 12 (the Competition Act and the European Commission) and 19 (communications).

### ***Directions***

No directions were issued by the Panel during the year.

### ***Censures***

The Panel administered one private censure under section 10(2) of the Act.