The Representation of Cazenove Capital Holdings Ltd; and Article 125 of the Companies (Jersey) Law 1991

Jurisdiction:	Jersey
Judge:	J. A. Clyde-Smith, Jurats Le Cornu, Crill
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Text

[2013] JRC 127

ROYAL COURT

(Samedi)

Before:

J. A. Clyde-Smith, **Esq., Commissioner, and** Jurats Le Cornu **and** Crill.

In the Matter of the Representation of Cazenove Capital Holdings Limited
And in the Matter of Article 125 of the Companies (Jersey) Law 1991

Advocate O. Passmore **for the Representor**.

Advocate M. H. Temple **in attendance and representing Schroders Plc**.

Authorities

Companies (Jersey) Law 1991.

Re George Topco Limited [2012] JRC 059.

Re CI Traders [2007] JRC 149A.

Re Rambler Limited [2010] JRC 034.

The City Code on Takeovers and Mergers.

Re Vallar Plc [2011] JLR Note 25.

In Re FRM Holdings Limited [2012] JRC 120.

Schemes of Arrangement Law and Practice.

Butterworth's Takeovers: Law and Practice, First edition (ed: Gary Eaborn).

Telewest Communications plc [2004] EWHC 924.

Companies Act 1985.

Re Equitable Life Assurance [2002] All ER (D) 109.

Companies — application for approval of scheme of arrangement.

THE COMMISSIONER:

1 On 16 th April 2013 the Court convened a meeting of the holders of the ordinary shares in Cazenove Capital Holdings Limited ("Cazenove") pursuant to Article 125(1) of the Companies (Jersey) Law 1991 ("the Companies Law") for the purpose of considering and if thought fit approving (with or without modification) a scheme of arrangement. We now give our reasons.

2 Cazenove provides investment management services to a wide range of clients. The business is divided into two principal areas, wealth management and investment funds. Cazenove's wealth management business manages £12.1 billion on behalf of a wide range of clients, including entrepreneurs, corporate directors, professionals and other wealthy individuals, as well as their trusts, charitable foundations and personal pensions. The investment funds business has £5.1 billion of assets under management. There are four areas of specialisation: Pan-European Equities, UK Equities, European Credit and Multi-Manager. Clients include professional advisers, private banks, multi-managers, pension funds and insurance companies, both in the UK and overseas.

3 Schroders Plc (“Schroders”) is the UK's largest listed asset management company, listed on the main market of the London Stock Exchange and a constituent of the FTSE 100 Index. Schroders had £212 billion of assets under management as at 31 st December 2012, on behalf of institutional and retail investors, financial institutions and high net worth clients from around the world, invested in a broad range of asset classes across equities, fixed income, multi-asset, alternatives and property.

4 Cazenove is a public company which has its registered office in Jersey and is considered to have its place of central management and control in the UK. Its ordinary shares are not listed or admitted to trading on any regulated market but it operates an internal dealing facility in the ordinary shares on a secure shareholder website and on a dedicated share dealing line pursuant to which the existing shareholders and certain other eligible persons, including current employees can buy or sell shares at an auction process. The ordinary shares of Cazenove are held by approximately 1,200 individual holders (including past and present employees) with no individual owning more than 2.7% of the ordinary shares.

5 Under the terms of the scheme, Schroders will take over Cazenove by acquiring the ordinary shares of Cazenove for a consideration of 135p in cash per share or (other than for certain shareholders outside the United Kingdom and Jersey) certain loan notes (of equivalent value) instead of some or all of the cash consideration. The Court has previously approved a takeover by a scheme of arrangement — see *In Re George Topco Limited* [2012] JRC 059, *In Re CI Traders* [2007] JRC 149A and *In Re Rambler Limited* [2010] JRC 034.

6 The acquisition of the ordinary shares in Cazenove by Schroders is governed by The City Code on Takeovers and Mergers. Accordingly, the scheme is being implemented in accordance with the rules and principles of that Code and under the supervision of the UK Panel on Takeovers and Mergers.

7 At a board meeting on 22 nd March 2013, Cazenove's board unanimously voted in favour of putting the scheme proposal to the shareholders and, having been advised by Evercore Partners that the terms of the acquisition are fair and reasonable, recommended that shareholders vote in favour of the scheme. We had no doubt that it was appropriate for the scheme to be put to the shareholders for their consideration.

8 It is now well established following in *Re Vallar Plc* [2011] JLR Note 25 that there are three stages in the process by which a scheme of arrangement under the Companies Law becomes binding and we were concerned with that part of the first stage, where the Court considers whether or not to summon separate class meetings and if so, who should be summoned to each meeting. The Court does not consider the merits or fairness of the scheme at this stage.

9 The test for identification of classes was discussed at length in *In Re FRM Holdings Limited*

[2012] JRC 120. Cazenove proposed to treat the ordinary shareholders as a single class for the purpose of the scheme on the basis that the rights of all the holders of the ordinary shares were sufficiently similar that they can consult together with a view to their common interest. There were three matters, however, which Cazenove felt it right to draw to the attention of the Court.

Irrevocable Undertakings

10 Schroders has received irrevocable undertakings to vote in favour of the acquisition at the court meeting (and at the general meeting of Cazenove to be called in connection with the scheme) from each of the directors of Cazenove in respect of such ordinary shares as the directors hold at the date of the relevant meeting, which currently represented in aggregate approximately 5.9% of the existing issued share capital of Cazenove. These irrevocable undertakings are known as *"hard"* irrevocable undertakings because they remain binding in the event of a competing offer being made.

11 According to the authors of Schemes of Arrangement Law and Practice at paragraph 10.92:–

> ***"Historically, there has been some concern around whether shareholders giving irrevocable undertakings should be treated as a separate class of shareholders … More recently this has become less of a concern and shares subject to irrevocable (whether soft, semi-hard or hard) are generally no longer thought to give rise to a separate class of shareholders."***

12 The authors of Butterworth's Takeovers: Law and Practice, First edition (ed: Gary Eaborn) state that:–

> ***"In the light of the decisions in Re BTR and Re Hawk, it became clear that the shares that are subject of such irrevocable undertakings can in general form part of the relevant class.*** Only if different terms are offered to those providing irrevocable undertakings would their shares potentially fall outside the class."

The authors go on to state that the existence of such undertakings may, however, in certain circumstances, be relevant to the exercise of discretion at the sanction hearing. In *Telewest Communications plc* [2004] EWHC 924 Richards J stated, in relation to a creditors' scheme of arrangement, that (at paragraph 53):–

> ***"The objection to voting agreements is that at the time of the meeting the bondholder's votes, which could determine the outcome of the meeting, have in effect become Telewest's votes so that the result of the meeting cannot be said to reflect the views of the class.*** This is not in my judgment a substantial objection, provided at any rate that the bondholder would not

reasonably have voted differently in the absence of the agreement. In this case the events entitling the relevant bondholders to terminate the voting agreements ensure that if reasonable grounds exist for a change of mind they can withdraw. Even in the absence of such agreed termination events, voting agreements of this sort would not in my view create a separate class, although they would be relevant to the exercise of the direction to sanction the scheme."

13 At paragraph 55, Richards J goes on to draw a parallel with sections 428ff of the Companies Act 1985:–

> ***"The right of a successful bidder under those sections to acquire compulsorily minority shareholdings is dependent on acceptance of the offer by the holders of 90 percent of the shares for which the offer is made.*** Shares which the bidder has acquired or agreed to acquire before the offer is made cannot be counted for this purpose. Section 318(5) provides an exception where the shareholder has undertaken to accept the bid and the only consideration for the undertaking is an agreement by the bidder to make the offer. If acceptance of an offer in those circumstances can be counted in an otherwise independent majority whose acceptance will bind the minority, I see no reason why votes cast pursuant to analogous arrangements cannot be counted in determining the statutory majority of a scheme meeting. The minority retains the protection given by the need to obtain the sanction of the court to the scheme."

14 Mr Passmore submitted and the Court agreed that the existence of these irrevocable undertakings did not result in the creation of a separate class of holders of ordinary shares for the purposes of the court meeting. This is because the rights of each holder of scheme shares are affected under the scheme in the same way and all holders of scheme shares receive the same form of consideration. The directors who have given the irrevocable undertakings will not receive any benefit or other form of consideration for giving those undertakings other than the 135p per share, which will be paid under the scheme.

Restricted and Growth Share Plan

15 Pursuant to the Rules of the Restricted and Growth Share Plan awards of restricted ordinary shares (held through a nominee) will be mandatorily rolled over to awards under the Schroders' voting shares. The nominee permits award holders to exercise their voting rights attached to those restricted ordinary shares and it was submitted and we agreed that the rights of the holders of the restricted ordinary shares were not so dissimilar to those of the ordinary shareholders as to make it impossible for them to consult together with a view to their common interests.

16 Growth Shares which in specified circumstances become convertible into ordinary shares and which carry very limited rights, in particular no voting rights, are not subject to the

scheme. They will instead be rolled over into awards over the Schroders' non-voting shares and will therefore not convert into ordinary shares. The Panel has confirmed that the proposed treatment of the Growth Shares is acceptable to the Panel and does not require Schroders or Cazenove to comply with the provisions of Rule 16 of the Takeover Code (special deals having favourable conditions) in respect of such proposals.

Overseas jurisdictions

17 In the light of applicable securities law restrictions, the loan note alternative will not be made available to shareholders of Cazenove who are resident in Australia, the United States or Hong Kong. Paragraph 10.91 of Schemes of Arrangement: Law and Practice provides, citing *Re Equitable Life Assurance* [2002] All ER (D) 109 as authority:–

> ***"Where all or part of the consideration offered to shareholders on a takeover consists of shares or other securities in the bidder, it is common for a bidder to make some variations to the terms offered to the overseas shareholders in order to avoid breaching overseas securities law.*** In such cases, provided that only a small group of overseas shareholders is affected and the variations to the terms of the scheme are limited to what is necessary to deal with the relevant securities laws and do not significantly alter the rights of such shareholders, the courts will not usually require that the overseas shareholders form a separate class or otherwise allow a small minority to disrupt the scheme."

18 As at 9th April 2013, only a small percentage of the holders of scheme shares were resident in Australia, the United States or Hong Kong, namely 0.01%, 0.45% and 1.92% respectively and those shareholders would not be expected to benefit materially from being in receipt of the loan note alternative from their local and differing tax perspectives. We agreed that this did not give rise to class issues.

19 These matters having been drawn to our attention, we determined that we should treat the ordinary shareholders as a single class for the purposes of the scheme.