12 December, 1985

COMMENT BY THE SECURITIES COMMISSION

To the Members of Aurora Group Limited.

Section 10 of the Securities Act 1978 enables the Securities Commission to "keep under review practices relating to securities and to comment thereon to any appropriate body". The Commission has decided to comment upon the proposals for the removal of certain directors of Aurora and the appointment of others in their places that are set out in the Notice of Extraordinary General Meeting dated 27 November 1985. The Commission has decided to comment because, in the opinion of the Commission, the matter raises important issues regarding the control of companies in which members of the public hold substantial, but in aggregate minority, shareholdings. The Commission does not have any other power of intervention in the matter.

If the proposals are carried, and the persons proposed as new directors of Aurora accept office, the Board of Directors of Aurora will consist of five gentlemen who also hold office in one or the other of two groups of companies that are known respectively as "Feltex" and "Chase". Feltex and Chase hold voting shares in Aurora that amount in aggregate to more than a majority of the voting shares issued by Aurora.

On 15 October 1985, Feltex and Chase issued a media release in which they announced that they had reached agreement on certain matters affecting Aurora. The announcement included statements to the effect that, subject to the approval of Aurora, Feltex and Chase each intend to sell properties to Aurora for considerations amounting in aggregate to about $97.5 million. A separate announcement by Feltex said that the proposed sale of its "development properties" to Aurora, and other sales, would "generate substantial profits" for Feltex.

The announced agreement between Feltex and Chase has not been put before the Directors of Aurora. If proposals to enter

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into the property transactions are put to the Board of Aurora after the present Directors have been replaced as proposed in the Notice of Extraordinary General Meeting, the Directors will find themselves in a position similar to the "impossible position" described by Lord Denning in Scottish Co-operative Wholesale Society Ltd. v. Meyer 1959 A.C. 324 at 366. As officers of Aurora, they will decide whether Aurora should purchase, and they should secure for Aurora the most advantageous terms of purchase. As officers of the vending companies (or companies that control them), they should secure for the vendors the most advantageous terms of sale. The conflict is obvious and unacceptable.

The conflict is not removed by the announced intention that the price is intended to be the current market value of the properties as determined by an independent registered valuer. Valuations by such experts differ. The Commission considers that valuations, especially in the present market, are not a substitute for prices negotiated at arm's length by buyers and sellers acting independently. Moreover, an important question for the Aurora Board will be whether Aurora should purchase any of the properties on the terms proposed by the vending companies or on other terms.

The means of paying the price must also be a matter for consideration. The announcements suggest that the vendors will receive the price in cash. It amounts to more than the total assets of Aurora as shown in the balance sheet as at 30 June 1985. It amounts to more than one and one-half times the amount of the shareholders' funds of Aurora shown in that document. Such substantial transactions should not be entered into on the authority of directors with conflicting interests.

The Articles of Association of Aurora contain, in Article 89, provisions about directors' interests. A Director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the Company, is required to declare the nature of his interest at a meeting of the Directors in accordance with section 199 of the Act (Article

89(1)). The Article then proceeds, "A Director shall not vote in respect of any contract or arrangement in which he is interested, and if he does so his vote shall not be counted, nor shall he be counted in the quorum present at the meeting, but neither [sic] of those prohibitions shall apply to ... any contract or arrangement with any other Company in which he is interested only as an officer of the Company or as a holder of shares or other securities ..." (Article 89(2)).

We think this Article means that a Director of Aurora is not disqualified from voting on a proposal to enter into a contract with another company merely because he is an officer of that other company.

In the opinion of the Commission, those provisions of the Articles strengthen the need for independence in the composition of the Aurora Board. They certainly do not abrogate the fiduciary duties and responsibilities of the Aurora Board and its members.

The Commission, having regard to the circumstances of this case, has therefore suggested to the Chairman of Directors of Aurora (who is also the Chairman of Directors of Feltex) that:-

(a) all proposals for transactions between Aurora on the one part, and Feltex and Chase and either of them on the other part, should be put to the Board of Aurora constituted as it is at present, or reconstituted to include some directors who are not associated with Feltex or Chase. In the event of disagreement, the decision of the independent Directors should be conclusive on any contract with any company in those groups, and

(b) the proposals for resolutions notified in the Notice of Extraordinary General Meeting dated 27 November 1985 should be withdrawn.

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The Commission has requested the Chairman of Directors of Aurora to read this comment to the Extraordinary General Meeting before any proposed resolution is put to the vote.

Copies of this comment are available at the offices of the Commission.

For SECURITIES COMMISSION

Signed: C.I. Patterson

Chairman