The purpose of this investigation is to firstly determine whether there has been a breach of the take-over by-laws. As investigators appointed to make this determination based on assertions made in the opinion of Mr. Bernard Shepherd, Attorney-at-Law, focus was placed on whether there was a breach of by-law 11 of the take-over by-laws. This by-law outlines the acts which should occur once a take-over bid exists. It is alleged in the said opinion that certain parties breached this by-law by failing to take such acts upon having caused a take-over bid to occur.

To determine whether the facts give rise to such a breach having occurred, it was necessary to examine the elements or ingredients which must be present for a take-over bid to have been present.

The takeover By Laws defines a takeover bid as having automatically occurred when, in its simplest form, the following happens:

1. There is an offer to acquire made to any security holder of the offeree issuer; and
2. The securities subject to the offer to acquire, together with the offeror’s securities constitute a total of 30% or more of the outstanding securities of the offeree issuer.

In this case we are asked to look at the outstanding securities of GHL, therefore, in the above definition, the offeree issuer can be substituted with GHL.

An offer to acquire is defined as an offer to purchase, or a solicitation of an offer to sell securities; or an acceptance of an offer to sell securities whether or not such offer to sell has been solicited. An examination of this definition reveals that an offer to acquire can only be made by a purchaser of securities in all the instances identified in the definition. Therefore, throughout this investigation, the instances where there was a purchase of GHL’s outstanding shares were noted as being “offers to acquire” and therefore, potential starting points for the occurrence of a take-over bid.

Finally, for a take-over bid to have occurred, the offeror’s securities together with the securities he is offering to purchase must add up to at least 30% of the total outstanding shares in GHL at the time he made the offer to acquire.

The offeror’s securities is defined as the securities of an offeree issuer, which, on the date of the offer to acquire, is owned by the offeror or any person acting jointly or in concert with the offeror. In this investigation, wherever an offer to acquire is seen to have occurred, the person making the offer to acquire will be regarded as the offeror and, if evidence exists to provide a reasonable belief that other persons were acting jointly and in concert with the offeror at the time the offer to acquire was made, the shares those persons hold in GHL will also be added to the shares of the offeror for the purposes of proving that a take-over bid had occurred.

The entire scope of transaction which led up to NCBGHL’s acquisition of 29.99% of GHL’s total outstanding shares was examined and three particular transactions were identified as having the potential to have amounted to a take-over bid. These are as follows:

1. The sale and purchase of GHL shares from the IFC and the IFCALAC on the 12th May, 2016;
2. The sale and purchase of GHL shares from RBC and RBCFCL on the 12th day of May, 2016; and
3. The entry into to agreement to sell GHL shares to NCBJ on the 30th November, 2015.

Each of these transactions and their various parts will be examined in turn, and the evidence which exists to support the conclusions made will be outlined.

1. **The sale and purchase of GHL shares from the IFC and the IFCALAC on the 12th May, 2016**

It is worthy to note some background into the sale and purchase of the GHL shares in question on this date.

On the 2nd August, 2010, the IFC and the IFC ALAC entered into an agreement with Lok Jack and the Ahamads which attached certain “tag along” rights to shares in GHL which the IFC and the IFC ALAC sought to purchase through a share subscription agreement of the same date. The contents of this share subscription agreement is unknown as a copy of this document is not currently in the possession of the Commission, however, a Google search revealed that the sale of GHL shares in or around that date may have taken place on the Jamaican Stock Exchange (insert article here). Moving forward with this analysis of the facts, the assumption is made that the GHL shares subsequently sold by the IFC and the IFC ALAC are those which were the subject of the share subscription on the 2nd August, 2010. (do we have evidence to support this assumption?)

On the 27th day of April, 2016, the IFC ALAC transferred its shareholdings in GHL, which totalled 3.17% of the outstanding shares of GHL, to two special purpose vehicles in its control. These were Shell Waves Limited (SW) and Sweet Victory Limited (SV) who obtained 0.4% of the total outstanding shares in GHL each. The remainder of IFC ALAC’s GHL shares, amounting to 2.37%, were transferred to an RBC Nominee Account (insert account number) also on the 27th April, 2016.

On the 6th day of May, 2016, the IFC transferred its GHL shareholdings to three SPVs owned and controlled by it namely Crashing Waves Limited (CW), Whistling Winds limited (WW) and Misty Moon Limited (MM). Each of these SPVs obtained 1.24%, 1.24% and 7.12% of the outstanding shares in GHL respectively.

On the 12th day of May, 2016 CW and WW were either sold or otherwise transferred to ABIL and UIL. This transfer is apparent from the information disclosed on CW’s and WW’s annual report filed in the Companies Registry on the (insert date). With no evidence to the contrary, it is assumed that all the assets and liabilities of the companies were also transferred to ABIL and UIL respectively. The GHL shares held by MM was also transferred to NCBJ, either through a sale or other transfer of the company, however, at this time there is no evidence of the date or method of transfer.

Also on the 12th day of May, 2016 SW and SV also were sold or otherwise transferred to ABIL and UIL respectively. This is also apparent from the information disclosed in the annual reports of SW and SV respectively and filed in the Companies Registry on the (insert date). Without evidence to the contrary, it is also assumed that all the assets and liabilities of these companies were transferred to ABIL and UIL respectively. GHL shares held in the Republic Bank Limited Nominee Account were also transferred to an SPV owned and controlled by IFC ALAC called Flowing Waters Limited (FW). FW, and (it is assumed) all of its assets and liabilities, was subsequently sold or otherwise transferred to NCBJ, however, we are currently not in possession of evidence which substantiate this sale or transfer or the date on which this occurred.

Drawing reference now to the definition of a take-over bid, it would appear that an offer to acquire may have been made on the 12th of May, 2016 when the SPVs, and the GHL shares that they held, were sold or otherwise transferred to ABIL and UIL respectively, thereby making ABIL the offeror in two instances:

1. At the time of the transfer of CW from the IFC to it; and
2. At the time of the transfer of SW from the IFC ALAC to it.

UIL could also be considered the offeror in two instances on the 12th May, 2016:

1. At the time of the transfer of WW from the IFC to it; and
2. At the time of the transfer of SV from the IFC to it.

NCBJ may have also been considered an offeror, however, due to a lack of evidence concerning the date of transfer and method of transfer, we are unable to definitively state the date of this offer to acquire.

Moving now to the second part of the definition of a take-over bid, the amount of shares each potential offeror held in GHL on the 12th May, 2016, at the time the offer was made, were examined.

**ABIL’s offer to acquire**

ABIL’s shareholdings in GHL and controlling interest in its subsidiaries which held GHL shares can be seen in the following diagram:

ABIL owns 50% of Tenetic Ltd

Taking into consideration that ABIL owns 50% of Tenetic Ltd. only 50% of Tenetic’s GHL shareholdings were considered for the purposes of this calculation. All other subsidiaries were wholly owned and controlled by ABIL. ABIL, therefore, owned a total of 9.28% of GHL’s outstanding shares at the time it made the offer to acquire either the shares owned by CW or SW. When added together with the GHL shares which were the subject of the offer to acquire for both offers made on the 12th May, 2016, the following totals were noted:

1. CW offer to acquire = 10.52%;
2. SW offer to acquire = 9.68%.
3. Total if one transaction occurred before the other = 20.20%

There is no evidence in the possession of the Commission to prove which transaction occurred first as both would have occurred on the 12th May, 2016.

Neither of these offers would have resulted in ABIL obtaining 30% or more of GHL’s outstanding shares on its own, therefore, at this stage, the facts do not reflect a need to comply with by-law 11.

The definition of a take-over bid, however, also makes reference to adding the shareholdings of those persons acting jointly or in concert with the offeror. This issue will be discussed in a separate section.

**UIL’s offer to acquire**

UIL’s shareholdings in GHL and controlling interest in its subsidiaries which held GHL shares can be seen in the following diagram:

UIL owns 50% of Tenetic

Taking into consideration that UIL owns 50% of Tenetic Ltd. only 50% of Tenetic’s GHL shareholdings were considered for the purposes of this calculation. All other subsidiaries were wholly owned and controlled by UIL. UIL, therefore, owned a total of 9.21% of GHL’s outstanding shares at the time it made the offer to acquire either the shares owned by WW or SV. When added together with the GHL shares which were the subject of the offer to acquire for both offers made on the 12th May, 2016, the following totals were noted:

1. WW offer to acquire = 10.45%;
2. SW offer to acquire = 13.21%.
3. Total if one transaction occurred before the other = 23.66%

There is no evidence in the possession of the Commission to prove which transaction occurred first as both would have occurred on the 12th May, 2016.

Neither of these offers would have resulted in UIL obtaining 30% or more of GHL’s outstanding shares on its own, therefore, at this stage, the facts do not reflect a need to comply with by-law 11.

The definition of a take-over bid and its reference to adding the shareholdings of those persons acting jointly or in concert with the offeror was also considered while looking at UIL as the offeror, however, this issue will be discussed in a separate section.

**Substantial Shareholders of ABIL and UIL**

It is useful to note that the substantial shareholders of ABIL and UIL are Lok Jack and the Ahamads respectively. Both parties owned shares in GHL in their personal capacities. Although they have controlling interest in both offerors, for the purposes of this stage of the investigation into the transaction, they were not considered to be offerors themselves. This is due to the fact that ABIL and UIL are companies with limited liability. This does not mean, however, that the potential does not exist for Lok Jack and the Ahamads to be considered offerors in this transaction. What may be necessary to establish this direct liability is a legal argument which establishes the ability of these investigators to pierce the corporate veil.

Notwithstanding this, the discussion of “joint actors” will also take into consideration whether the shareholdings of these persons can be included in the calculation of this offer to acquire.

**2. The sale and purchase of GHL shares from RBC and RBCFCL on the 12th day of May, 2016.**

On the 5th day of May, 2016, RBCFCL and RBC Royal Bank both transferred their respective shareholdings in GHL (1.76% and 9.63%) to Lofty Trees Limited (Lofty Trees) which was a company owned and controlled by the RBC group at that time. This is evidenced by the information disclosed in the annual report of Lofty Trees filed at the Companies Registry on the (date). Therefore, as at the 5th May, 2016, Lofty Trees held a total of 11.39% of the total shareholdings of GHL.

On the 12th May, 2016, Tenetic, a company owned by ABIL and UIL in equal parts as described above, purchased or otherwise acquired Lofty Trees and (it is assumed) all of Lofty Trees’ assets and liabilities. On the 12th May, 2016, Tenetic also held GHL shares in its own capacity as well as through its subsidiaries in the following manner:

Tenetic owned Summer Success Limited (SS), as evidenced by share certificate issued by Aegis Ltd and Board resolution of SS, therefore, owned a total of 15.45% of GHL’s outstanding shares at the time it made the offer to acquire either the shares owned by Lofty Trees. When added together with the GHL shares which were the subject of the offer to acquire for this offer made on the 12th May, 2016, the total shareholdings in relation to this offer to acquire

There is no evidence in the possession of the Commission to prove which transaction occurred first as both would have occurred on the 12th May, 2016.

Neither of these offers would have resulted in UIL obtaining 30% or more of GHL’s outstanding shares on its own, therefore, at this stage, the facts do not reflect a need to comply with by-law 11.

The definition of a take-over bid and its reference to adding the shareholdings of those persons acting jointly or in concert with the offeror was also considered while looking at UIL as the offeror, however, this issue will be discussed in a separate section.