

THE TAKEOVER PANEL

The City Code on Take-overs and Mergers

1. The Council attach great importance to the observance of the City Code on Take-overs and Mergers, of which a new edition has been issued and two copies are now being issued to every Member Firm, together with a copy of the Panel's Policy Statement.
2. The Council require Members to abide by its provisions, both in letter and in spirit.
3. The requirements of the City Code under Rule 29 are:-
 - (a) All parties and their associates to a take-over or merger transaction to make daily disclosure to the Stock Exchange, the Panel and the Press (not later than 12 noon on the dealing day following the date of the relative transaction) of the total of all shares of any offeror company or the offeree company acquired or sold by them, or their respective associates, for their own account on any day during the offer period in the market or otherwise, and at what average price.
 - (b) In addition, all purchases and sales of shares of any offeror or the offeree company made by associates for account of investment clients, who are not themselves associates, must be similarly reported to the Stock Exchange and to the Panel, but need not be disclosed to the Press.
4. To implement these requirements of the City Code, the Council require Broker Firms to report such dealings to the Quotations Department of the Stock Exchange, unless the party or associate concerned, has already done so. The Quotations Department will report the dealings to the Panel. It will also post the dealings in the market and disclose them to the Press, where required under Rule 29. When reporting to the Quotations Department, Brokers must clearly distinguish dealings done under 3 (a) above from dealings done under 3 (b) above.
5. Copies of the Code are also being despatched to their constituents by other bodies concerned in the preparation of the Code. Further copies of the Code may be obtained from the Issuing Houses Association, 5th Floor, 20 Fenchurch Street, E.C.3., price 2/-d. including postage.

Notices 23/68 and 45/68 are cancelled.

By Order of the Council,
G.W.R. BRIND
Secretary

PANEL ON TAKE-OVERS AND MERGERS

28th April, 1969

Policy Statement

The Panel on Take-overs and Mergers has reached understandings with various City bodies, with the Bank of England and with the Board of Trade, as a consequence of which it is now able to give an indication of its future policy with regard to the administration of the City Code on Take-overs and Mergers.

It remains the belief of the City bodies who have framed the Code (and who are represented on the Panel) that the conduct of the City in take-over matters can best be governed by voluntary principles rather than regulated by statute. They have nevertheless recognised the need to place beyond doubt their determination that the voluntary system should both function effectively and command the respect of all those concerned with it. They have, therefore, authorised the Panel to draw attention to the means which are available to it to enforce this respect.

The Director-General or his Deputy are available at all times to give rulings on points of interpretation of the Code. They will endeavour to give these rulings as promptly as is necessary to the free functioning of the take-over and merger business. Companies and advisers are invited to make full use of this service.

In the event of disagreement, applicants may appeal to the Panel, whose decision will be final. If there is a breach of the Code, the Panel will have recourse to private or to public censure or, in a more flagrant case, to further action designed to deprive the offender temporarily or permanently of his ability to practice in the field of take-overs and mergers. No finding of a breach of the Code nor any censure or further action will take place without the alleged offender having had the opportunity of a hearing and the right of an appeal to a special Appeal Committee of the Panel.

In order the better to implement the Code the Council of the Stock Exchange will propose such amendments of their Rules and Regulations as are necessary to provide that the findings of the Panel or the Appeal Committee, as the case may be, will be accepted by the Council of The Stock Exchange as proof that the Code has been broken. It will be for the Council then to consider the appropriate measures to be taken in accordance with its disciplinary Rules which include the power to censure, suspend or expel a member. Similar arrangements have been agreed with the Federated Stock Exchanges. An expelled member of a Federated Stock Exchange is, as such, precluded from carrying on his business.

Similarly the Executive Committee of the Issuing Houses Association will propose amendments to the Association's Rules agreeing on behalf of their members to accept the jurisdiction of the Panel and empowering them to suspend or expel a member. Whilst the suspension and still more the expulsion of a member of the Issuing Houses Association would involve public reprobation of a grave kind it would not, however, in law prevent the Issuing House involved from continuing in business.

In any case where it appeared that a breach involving an Exempted or a Licensed Dealer was of such a nature that public reprobation might not be an adequate sanction, the Panel would report the matter to the Board of Trade inviting them to take the report into consideration with a view to the possibility of action under the Prevention of Fraud (Investments) Act 1958. Under this Act, the Board may revoke the exemption of an Exempted Dealer or the licence of a Licensed Dealer, in the latter case subject to an appeal procedure. Such revocation would have the effect that the person concerned would no longer be permitted (subject to the exceptions stated in the Act) to carry on the business of a dealer in securities or to circulate any offer to buy or sell securities. The Panel has been assured by the Board of Trade that they will take into prompt consideration the facts relevant to the exercise of their powers and disclosed in any such report by the Panel.

During the currency of a take-over bid the Panel may request the Council of The Stock Exchange to suspend quotation of any security. It is the Panel's policy to make such a request primarily where it is in the Panel's view necessary to prevent dealings in securities during a bid situation in the absence of adequate information or clarification of some position or state of affairs. The Panel may, however, also request the Council to refuse quotation for new securities to be issued in connection with an acquisition, where a breach of the Code has been committed or where other circumstances exist which make it necessary, in the Panel's opinion, that an offer should not become unconditional.

In the event of a take-over involving Exchange Control consent the Panel will keep in close consultation with the Bank of England during the currency of such offer in order that the Bank of England may satisfy itself that the conditions under which such consent is granted are properly observed.

The Panel has had discussions with the chairmen of the Association of Stock and Share Dealers, the Association of Canadian Investment Dealers and Members of the Toronto and Montreal Stock Exchanges in Great Britain and the Association of New York Stock Exchange Member Firms having Representation in the United Kingdom, all Recognised Associations of Dealers in Securities in the terms of the Prevention of Fraud (Investments) Act 1953. The chairmen have agreed to propose amendments to their statutes corresponding to those being proposed by the Council of The Stock Exchange.

As regards persons who propose to carry out take-over transactions under S. 14 of Prevention of Fraud (Investments) Act 1958 (sub-section (2) of which empowers the Board of Trade to permit the distribution of offer documents to shareholders) the Board of Trade have agreed to consult the Panel in future about the exercise of their powers under the sub-section in any case where it appears that the interests of the Panel might be involved.

The Board of Trade have informed the Panel that they are considering amendment of the Licensed Dealers (Conduct of Business) Rules in the light of the new arrangements established by the Panel and the revised Code.

The Panel has further had discussions with the Accepting Houses Committee, the Association of Investment Trust Companies, the British Insurance Association, the Committee of London Clearing Bankers and the National Association of Pension Funds, all of which bodies are sponsors of the Code and are represented on the Panel, and also with the Chairman of the Association of Unit Trust Managers. The chairmen or other representatives of these bodies with whom discussions took place all expressed their support for the Code and the Panel and agreed to take appropriate steps to engage the support of their membership.

In the event of the Panel taking or requesting disciplinary action as outlined above, the firm or person concerned will have the alternative of accepting the finding of the Panel or of appealing to a new Appeal Committee. This Appeal Committee will be presided over by the Rt. Hon. Lord Pearce who has agreed to accept the appointment, and will have three further members of the Panel (but not persons who will have sat at the first hearing) one of them representing the City Body (if any) to which the alleged offender belongs. In the event of an appeal being made, publication of the Panel's findings will be delayed until after appeal proceedings have been concluded.