

THE TAKEOVER PANEL

THE STOCK EXCHANGE

PANEL ON TAKE-OVERS

AND MERGERS

JOINT STATEMENT

ANNOUNCEMENT OF PRICE-SENSITIVE MATTERS

When negotiations are in progress or arrangements are being discussed concerning price-sensitive matters, it has recently all too frequently been the case that the eventual announcement has been preceded by rumours and by an abnormal level of speculative activity in the shares concerned with a corresponding effect on the market price. This has happened most noticeably in the case of merger and take-over announcements. The Stock Exchange and, where appropriate, the Panel have conducted exhaustive investigations into dealings in many cases when a substantial market price movement has been observed in the course of The Stock Exchange's normal monitoring procedures and this movement has assumed a special significance in the light of the subsequent announcement. In almost every instance it has been found that where dealings have taken place they have been carried out by persons who are not insiders but who have acted on what turns out to be a well founded tip or rumour. Only very rarely does it appear that insiders have dealt either directly or indirectly.

The common feature which has emerged from a number of these investigations is that, whereas security in the early stages has been well observed, there being perhaps only the Chairman of the company or companies involved with one or two close colleagues and representatives from the financial advisers, there comes a stage when this is not so, usually when a wider circle of persons is consulted. These may include senior executives, other advisers and selected shareholders: there have also been cases when talks have been held with trading partners, customers, suppliers and creditors.

It appears that on these occasions an error of judgement has been made in delaying an announcement to a point where knowledge of plans is in the hands of a wide circle of people and where it has become impossible to maintain the necessary degree of security.

The Panel and The Stock Exchange are extremely perturbed at this state of affairs, which tends to attract criticism to those concerned and leads to the presumption that transactions have been carried out by insiders.

Attention is drawn to the following points:-

1. Security and Secrecy

The Panel and The Stock Exchange recommend that practitioners and companies should, where this has not already been done, establish security procedures in regard to price-sensitive matters and that such procedures should be drawn regularly to the attention of those concerned.

It should be an invariable routine for practitioners, at the very beginning of discussions, to advise clients of the importance of these matters. In the case of take-overs, attention should be drawn to the relevant parts of the Take-over Code, in particular to Rules 7 and 30.

2. Listing Agreement

Under Section 4(g) of the Listing Agreement, companies are under an obligation to disclose to The Stock Exchange "any. . . information necessary to enable the shareholders and the public to appraise the position of the company and to avoid the establishment of a false market in its securities". Whereas it is impossible to generalise about the timing of an announcement, since each situation in practice is slightly different, the board of a company must, at a time when developments are on hand, which are likely to have a significant effect on the share price, pay strict regard to the position of its shareholders. The lack of a warning announcement in some situations may lead to the establishment of a false market.

3. Timing of Merger and Take-over Announcements

It is not the wish of the Panel or The Stock Exchange to discourage talks on mergers and take-overs taking place between senior members of the management and their advisers and essential regulatory authorities and, wherever possible, being concluded in a confidential atmosphere. Nevertheless the Panel's experience shows that there comes a stage in most take-over negotiations when, with the best security arrangements possible, it is still very difficult to avoid gossip and speculation developing. Because of this, and with the intention of achieving a greater degree of adherence to the provisions of Rule 5 of the Take-over Code, the Panel will, in future, normally expect an announcement to be made in the following circumstances :-

- (a) where negotiations have reached a point at which a company is reasonably confident that an offer will be made for its shares; or
- (b) where negotiations or discussions are about to be extended to embrace more than a small group of people. An obvious example is the case where consultation with more than a very restricted number of shareholders will be involved.

A potential offeror should not take steps to prohibit an offeree company making an announcement under Rule 5 at any time it considers appropriate.

4. Temporary Halt in Dealings

It is appreciated that, even though an announcement may be called for, in some circumstances this can be difficult. Where for special reasons a short delay in making an announcement is necessary, it may be appropriate to request The Stock Exchange to grant a temporary halt in dealings. Temporary halts have become more common in recent years;

they are increasingly considered to be a much better course for a company to adopt than to risk the sometimes very damaging sharp movement in its share price caused by partially informed speculation.

Rule 5 of the Code includes a requirement that during negotiations a close watch should be kept on the market and in the event of any untoward movement in the share price an appropriate announcement should immediately be made. As indicated, The Stock Exchange itself monitors price movements very closely and many announcements by companies have been made following approaches by The Stock Exchange as a result of this surveillance. Where there is a significant price movement and no satisfactory explanation or denial of knowledge is forthcoming from the company, The Stock Exchange will itself consider halting dealings temporarily.

14th April 1977