

THE TAKEOVER PANEL

SWISS BANK CORPORATION ("SBC")

TRAFALGAR HOUSE PUBLIC LIMITED COMPANY ("TRAFALGAR HOUSE")

NORTHERN ELECTRIC PLC ("NORTHERN ELECTRIC")

DECISION OF THE PANEL

On 3 March 1995, the Panel met to hear Northern Electric's allegations that the entry into and operation of contracts for differences ("CFDs") caused breaches of Rules 4.1(a), 4.1(b), 4.2 and 38 and General Principle 6 of the Code.

Background

On 19 December 1994, Trafalgar House announced the terms of its offer for Northern Electric which was made on its behalf by its financial adviser, SBC. Northern Electric is being advised by S G Warburg & Co Limited ("Warburgs"). Prior to announcement of the offer, Trafalgar House entered into CFDs with SBC which were linked to the share prices of Northern Electric and certain other regional electricity companies. The CFDs did not involve Trafalgar House acquiring Northern Electric shares nor any rights to them. In November 1994 the Panel Executive gave an ex parte ruling approving the use of CFDs by Trafalgar House and SBC in connection with Trafalgar House's then proposed bid for Northern Electric.

On 6 February 1995, Northern Electric lodged an appeal against the decision of the Panel Executive given in November 1994 and in so doing alleged breaches of Rules 4.1(a), 4.1(b), 4.2 and 38 and General Principle 6 of the Code by SBC and Rules 4.1(a) and 4.2 by Trafalgar House. The alleged breaches of Rules 4.2 and 38 and General Principle 6 flow from the same arguments which form the basis of the alleged breaches of Rule 4.1 (copies of the relevant rules are attached as Appendix 1).

On 9 February, the Panel Executive made a procedural ruling that Northern Electric's appeal could not be heard by the Panel until it was clear that there would be no criminal proceedings. On 14 February Warburgs, on behalf of Northern Electric, appealed this procedural decision to the Panel.

At the hearing before the Panel on 24 February, the issue which the Panel had to determine was whether Northern Electric's appeal, relating to the alleged breaches of the Code, should be heard and determined forthwith or whether the hearing of the appeal should be deferred.

Procedural hearing

The Panel was of the view that the opportunity for a party to appeal forthwith against a ruling of the Panel Executive should only be denied in the most exceptional circumstances. In the view of the Panel, no such exceptional circumstances existed in this case. Accordingly, the Panel upheld Northern Electric's appeal.

The Panel, however, granted leave for an appeal to the Appeal Committee against the Panel's decision on the procedural issue.

The Appeal Committee met on 28 February to hear an appeal by SBC against the Panel decision on 24 February. This appeal was supported by Trafalgar House and resisted by Northern Electric.

The Appeal Committee were unanimous in dismissing the appeal.

Substantive hearing

On the basis of the evidence and the submissions put before it today, the Panel concluded that none of the Rules or the General Principle in respect of which breaches were alleged were in fact breached by either SBC or Trafalgar House. The Panel was satisfied that SBC and Trafalgar House had taken all reasonable steps to ensure compliance with the Code.

The appeal was accordingly dismissed.

The Panel nevertheless took the view that this case raised a number of significant issues and has therefore asked the Panel Executive urgently to review the use of derivative products in takeover situations and the relevant exemptions afforded to market-makers. Meanwhile, parties and practitioners planning to employ derivative products in takeovers must consult the Panel in advance of embarking on any course of action which involves derivative products either during or preparatory to a takeover.

3 March 1995

APPENDIX 1

**SECTION E. DEALINGS AND RESTRICTIONS ON THE
ACQUISITION OF
SHARES AND RIGHTS OVER SHARES**

RULE 4

NB Notwithstanding the provisions of Rule 4, a person may be precluded from dealing or procuring others to deal by virtue of restrictions contained in the Company Securities (Insider Dealing) Act 1985. Where the Panel becomes aware of instances to which such restrictions may be relevant, it will inform the Department of Trade and Industry.

4.1 PROHIBITED DEALINGS BY PERSONS OTHER THAN THE OFFEROR

- (a) No dealings of any kind (including option business) in securities of the offeree company by any person, not being the offeror, who is privy to confidential price-sensitive information concerning an offer or contemplated offer may take place between the time when there is reason to suppose that an approach or an offer is contemplated and the announcement of the approach or offer or of the termination of the discussions.
- (b) No person who is privy to such information may make any recommendation to any other person as to dealing in the relevant securities.
- (c) No such dealings may take place in securities of the offeror except where the proposed offer is not price-sensitive in relation to such securities.

4.2 RESTRICTION ON DEALINGS BY THE OFFEROR AND CONCERT PARTIES

During an offer period, the offeror and persons acting in concert with it must not sell any securities in the offeree company except with the prior consent of the Panel and following 24 hours public notice that such sales might be made. The Panel will not give consent for sales where a mandatory offer under Rule 9 is being made. Sales below the value of the offer will not be permitted. After there has been an announcement that sales may be made, neither the offeror nor persons acting in concert with it may make further purchases and only in exceptional circumstances will the Panel permit the offer to be revised.

RULE 4 CONTINUED*NOTES ON RULES 4.1 and 4.2**1. Other circumstances in which dealings may not take place*

An offeror or other persons may also be restricted from dealing or procuring others to deal in certain other circumstances, eg before the announcement of an offer, if the offeror has been supplied by the offeree company with confidential price-sensitive information in the course of offer discussions.

2. Consortium offers and joint offerors

If an offer is to be made by more than one offeror or by a company formed by a group of persons to make an offer or by any other consortium offer vehicle, the offerors or group involved will normally be considered to be in a consortium for the purpose of this Note.

The Panel must be consulted before any purchases of offeree company securities are made by members or potential members of a consortium. If there are existing holdings of such securities, it will be necessary to satisfy the Panel that they were acquired before the consortium was formed or contemplated.

It will not normally be acceptable for members of a consortium to purchase such securities unless there are, for example, when a consortium company is to be the offeror, appropriate arrangements to ensure that such purchases are made proportionate to members interests in the consortium company or under arrangements which give no profit to the purchaser. The Panel will also be concerned to ensure that the purposes of the Code are not avoided through characterising persons acting in concert as joint offerors.

3. No-profit arrangements

Arrangements made by a potential offeror with a person acting in concert with it, whereby offeree company securities are purchased by the person acting in concert, on the basis that the offeror will bear all the risks and receive all the benefits, are not prohibited by this Rule. Arrangements which contain a benefit or potential benefit to the person acting in concert (beyond normal expenses and carrying costs) are, however, normally prohibited. In cases of doubt, the Panel must be consulted.

RULE 4 CONTINUED*NOTES ON RULES 4.1 and 4.2 continued**4. When an offer will not proceed*

If, after an announcement has been made that offer discussions are taking place or that an approach or offer is contemplated, the discussions are terminated or the offeror decides not to proceed with an offer, no dealings in securities of the offeree company or, where relevant, the offeror, by the offeror or by any person privy to this information may take place prior to an announcement of the position.

5. No dealing contrary to published advice

Directors and financial advisers to a company who own securities in that company must not deal in such securities contrary to any advice they have given to shareholders, or to any advice with which it can reasonably be assumed that they were associated, without giving sufficient public notice of their intentions together with an appropriate explanation.

6. Discretionary clients

Sales of securities of the offeree company for discretionary clients by fund managers connected with the offeror, unless they are exempt fund managers, may be relevant (see Rule 7.2).

7. Dealings between an offeror and connected exempt market -makers

See Rule 38.2.

**SECTION Q. DEALINGS BY CONNECTED EXEMPT
MARKET-MAKERS**

RULE 38

38.1 PROHIBITED DEALINGS

An exempt market-maker connected with an offeror or the offeree company must not carry out any dealings with the purpose of assisting the offeror or the offeree company, as the case may be.

NOTE ON RULE 38.1

Suspension of exempt status

Any dealings by an exempt market-maker connected with an offeror or the offeree company with the purpose of assisting an offeror or the offeree company, as the case may be, will constitute a serious breach of the Code. Accordingly, if the Panel determines that a market-maker has carried out such dealings, it will be prepared to rule that the market-maker should cease to enjoy exempt status for such period of time as the Panel may consider appropriate in the circumstances.

**38.2 DEALINGS BETWEEN OFFERORS AND CONNECTED
EXEMPT MARKET-MAKERS**

An offeror and any person acting in concert with it must not deal as principal with an exempt market-maker connected with the offeror in relevant securities of the offeree company during the offer period. It will generally be for the advisers to the offeror to ensure compliance with this Rule rather than the market-maker.

38.3 ASSENTING SECURITIES

Securities owned by an exempt market-maker connected with the offeror must not be assented to the offer until the offer is unconditional as to acceptances.

38.4 VOTING

Securities owned by an exempt market-maker connected with an offeror or the offeree company must not be voted in the context of an offer.

38.5 DISCLOSURE OF DEALINGS

Dealings in relevant securities (as defined in Rule 8) by an exempt market-maker connected with an offeror or the offeree company, whether in or outside the United

RULE 38 CONTINUED

Kingdom, should be aggregated and disclosed to the Stock Exchange, the Panel and the press not later than 12 noon on the business day following the data of the transactions, stating the following details:—

- (i) total purchases and sales;
- (ii) the highest and lowest prices paid and received;
- (iii) whether the connection is with an offeror or the offeree company; and
- (iv) in respect of dealings which take place outside the United Kingdom, the relevant overseas location.

*NOTES ON RULE 38.5**1. Method of disclosure*

Announcements of dealings by or on behalf of an exempt market-maker under Rule 38.5 which are disclosed in writing (or by telex) to the Stock Exchange (Company Announcements Office) may be inspected there. Disclosure to the press is, therefore, unnecessary; separate disclosure to the Panel is, however, required.

2. Exception

If the offer is not a securities exchange offer, there is no requirement to disclose dealings in securities of the offeror.

3. Rule 8

See Note 9 on Rule 8.

GENERAL PRINCIPLES

6. All parties to an offer must use every endeavour to prevent the creation of a false market in the securities of an offeror or the offeree company. Parties involved in offers must take care that statements are not made which may mislead shareholders or the market.