

THE TAKEOVER PANEL

Lord Shawcross, Chairman of the City
Panel on Take-overs and Mergers, has
issued the following statement:-

In view of recent comment in the press, I consider it appropriate as Chairman of the City Panel on Take-overs and Mergers to express my personal view on so called "insider" dealing.

These deals, which involve the use for personal profit of privileged or secret information which the recipient has received or had access to in confidence, are to be wholeheartedly condemned. I do not think that they are by any means widespread, for the City and indeed all reputable opinion is strongly against attempts to gain personal advantage out of confidential information in this way. It is, however, difficult to assess their extent, not only because there is no fully effective machinery for identifying suspicious deals but because the more sophisticated deals of this sort are likely to be conducted through a nominee company or some trusted relative or friend. Whatever their extent they must be stamped out for they involve a gross misuse of a privileged position, they are unfair to ordinary investors and they tend, quite unjustly, to give the City a bad name.

Cases of this kind only come within the jurisdiction of the City Panel, however, when they occur in the context of a take-over or merger situation, and "insider" dealings are by no means limited to such cases. Whenever, in a take-over context, the possibility of such deals is brought to our notice, we investigate the circumstances as fully as we can. Sometimes we are able to trace the guilty party and we then take such action as seems just. I cannot help feeling, however, that we sometimes catch the smaller fry whilst the big fish get away. Sometimes our enquiries come up against a blank wall, either in the shape of a nominee company not willing to disclose for whom they acted or a foreign bank, possibly forbidden under its own law to make such a disclosure, or an individual who knows but will not tell. Such was the story of a lady who attended a cocktail party in London one Sunday evening, made substantial purchases of a particular share on the Monday morning, but refused to divulge who had given the party.

In my own view it is the duty of those who wish to ensure fair dealing and orderly markets to give all possible assistance in enquiries of this kind so as to expose those who have betrayed the elementary ethical principles which forbid such "insider" dealings. It is a responsibility of good neighbourliness not to conceal behaviour of this kind and to help in suppressing it - and in creating a strong public opinion hostile to it. That is the best preventive.

We shall continue diligent enquiries into any of these cases which come to our notice. I am sure that if we request private individuals to help us in such enquiries, they will consider it part of their responsibility so to do. In future, however, it is intended in appropriate cases not only to name those who are shown to have been involved in "insider" dealings but also to publish the names of those, if there are any, who prefer not to help in getting at the truth.

As for "insider" dealings not within our take-over jurisdiction, the matter is, I think, one for consideration in connection with changes in the Company Law to be introduced next year. I would point out, however, that the fact that the City Panel and, for that matter, the Stock Exchange lack legal powers of interrogation or of requiring the production of documents by no means necessitates the establishment of a great structure like the Securities and Exchange Commission in the United States. Investigations into "insider" dealings form only one small facet of the many sided functions of the Panel and the Stock Exchange. It would be a misfortune and it would be totally unnecessary to impose a slow moving statutory control over these numerous activities which are so well discharged at present. The more I see of it, the more I think the voluntary machinery best. All that is required is some limited statutory power of enquiry, possibly vested in the Companies Section of the Department of Trade and Industry, thus slightly extending their already wide powers of investigation. These are matters for further discussion with the authorities. Meanwhile, the Panel will continue to act as strongly as it can when dealing with abuses of this or any other kind within its jurisdiction.

26th October, 1972.