

THE TAKEOVER PANEL

THE INVOLVEMENT OF THE FULL BOARD OF A COMPANY IN AN OFFER

The Panel has been considering the implications of situations in which responsibility for the day-to-day conduct of offers is left by the boards of the offeror company or the offeree company in the hands of a small number of executive directors and where the knowledge of obligations and courses of action, undertaken or to be undertaken in connection with an offer, is limited to those individuals.

Many companies already observe best practice in such situations in that the full board of directors maintains an active involvement in monitoring the conduct of the offer, notwithstanding the delegation of day-to-day responsibility to some of its number. However the Panel wishes to affirm its view of that best practice in order that all directors of a company involved in an offer know what this is and that it may be evident in every offer.

The Panel regards each director of the offeror and of the offeree company as having a responsibility under the Code to ensure, so far as he is reasonably able, that the Code is complied with in the conduct of an offer. While boards of directors may delegate the day to day conduct of an offer to individual directors or committees of directors, the board as a whole must ensure that proper arrangements are in place to enable it to monitor that conduct in order that each director may fulfil that responsibility.

In the Panel's view those arrangements would necessarily involve the relevant directors or committee in providing the board promptly with copies of all documents and announcements issued by their company, or on its behalf, which bear on the offer; reporting promptly to the board details of all dealings in

relevant securities made by the relevant company or its associates and, other than relating to routine administrative matters, details of any agreements, understandings, guarantees, expenditure (such as fees) or other obligations entered into or incurred in the context of the offer; and being in a position to justify to the board all courses of action, and proposed courses of action, as required. This process, including board meetings, should occur as and when necessary throughout the offer in order to ensure that all directors are kept up to date with events and actions taken. When relevant, the opinions of professional advisers should be available to the full board. Reporting to, and the provision of information to, the board should take place within one or two days of the relevant event. In reviewing the information provided to the board, any director who may have a question concerning the propriety of any action as regards the Code should ensure that the Panel is consulted.

Financial advisers are regarded as having a special responsibility to ensure that all directors are aware of their responsibilities under the Code.

The Panel expects directors to cooperate with the Panel in connection with its enquiries, including by providing, promptly on request, copies of minutes of board meetings and other information in their possession, or in the possession of the offeror or the offeree company as appropriate, which may be relevant to the Code question involved.

The Panel considers that the approach described above should go a considerable way towards ensuring an awareness on the part of all directors of actions taken in pursuance of an offer or in defence against an offer. That awareness will, in turn, focus a greater degree of accountability to their fellow directors on those who have the day to day responsibility for the conduct of the offer.

The principles and guidelines set out above, which, in the opinion of the Panel, reflect current best practice, should be adopted immediately by boards of companies engaged in offers; they will be formally included in the Code in due course.

30 July 1987