

# 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