

THE TAKEOVER PANEL

GREENWOOD & BATLEY, LIMITED ("GREENWOOD & BATLEY")

The Panel has had under consideration whether the directors of Greenwood & Batley were in breach of Rules 14 and 15 of the Code in allowing an offer document, dated 8th January, 1976, to be published for the acquisition of the share capital of Greenwood & Batley by York Trust Limited ("York Trust") which did not indicate certain significant changes which had taken place in the disposition of the assets of Greenwood & Batley from cash to quoted investments since the last balance sheet.

Greenwood & Batley was a holding company, with associated companies primarily engaged in engineering. It sold a substantial subsidiary, Joshua Bigwood & Son Limited ("Bigwood"), in the second quarter of 1975, for cash and about the same time made alterations in its shareholdings in Maurice James Holdings Limited ("Maurice James"). The Greenwood & Batley board then entered into negotiations with the York Trust board with a view to agreeing a merger. The terms eventually agreed were on the basis of the issue of two York Trust shares of 20p for each Greenwood & Batley share of 50p. The offer document of 8th January, 1976 was issued by York Trust with the permission of the Department of Trade, under the provisions of the Prevention of Fraud (Investments) Act 1958. York Trust was advised by Panmure Gordon & Co and Greenwood & Batley by Rowe Rudd & Co. Limited.

By the date of the offer document for Greenwood & Batley, the chairman of the company (Mr. M.A.C. Buckley, FCA) had invested some of the company's liquid funds in the following quoted companies: -

- (1) On 31st October, 1975, 175,000 shares in Lamont Holdings Limited (2.35 per cent of the share capital), a conglomerate, at a cost of £77,000.

- (2) Between 3rd October and 8th December, 1975, 227,500 shares in Mann and Overton Limited (8.4 per cent of the share capital), a taxi cab supplier, at a cost of £130,000.
- (3) On 8th January, 1976, by Filtzroform Limited, a subsidiary of Greenwood & Batley, 150,000 shares in Lampa Securities Limited (9.4 per cent of the share capital), dealers in antiques and fine arts, at a cost of £200,000.

There was a subsequent purchase of 60,000 new shares in Insurance General & Mortgage Investment Trust Limited (6 per cent of the share capital), an unlisted investment dealing company, on 26th January, 1976, a few days before the first closing date of the offer at a cost of £60,000.

Appendix III of the offer document contained financial information concerning Greenwood & Batley. This included the net tangible assets, based on the audited accounts to 5th April, 1975 and those figures adjusted to take account of the sale of Bigwood and the adjustments in the shareholding in Maurice James. The adjusted figure of cash and short term deposits was £630,029. There was also a figure for quoted investments. These figures did not purport to take into account the three sets of share transactions listed above. Nowhere in the offer document was it indicated that a substantial part of the cash resources had already been reinvested - an omission compounded by specific reference to the substantial cash resources of Greenwood & Batley in the main part of the offer document.

Appendix V of the offer document stated that "save as disclosed in this document, there have been no material changes in the financial or trading positions of York or Greenwood & Batley, or in the financial prospects of Greenwood & Batley, since the respective dates of the last balance sheets laid before those companies in general meeting, otherwise than those resulting from the sale by Greenwood & Batley of the share capital of Joshua Bigwood". In the letter of recommendation from Greenwood & Batley, included in the offer document, reference was made to "the increased funds which will be available for the development and acquisition of other businesses with the same and related activities", i.e. engineering.

York Trust was and remains a listed company. Greenwood & Batley had been listed but its listing was temporarily suspended, at its own request, while the consequences of the disposal of Bigwood were worked out. The Quotations Department of The Stock Exchange had been concerned whether the cash resources of the combined companies would be so great that listing could not be granted. At meetings in November, 1975, the Quotations Department asked the companies that the purpose for which the cash would be used should be spelt out in the offer document.

The offer went unconditional on 29th January, 1976, and Greenwood & Batley is now a wholly owned subsidiary of York Trust.

At a board meeting of York Trust in September, 1976, the group auditors, Turquands Barton Mayhew & Co listed a number of items on which they required the approval or comments of the directors. Mr. L.M. James, a non-executive director of Greenwood & Batley and now chairman of York Trust, said he knew nothing of the share purchases and this led to the present enquiry.

Mr. Buckley, the then chairman of Greenwood & Batley, accepted responsibility for making the purchases of shares. He claimed that Greenwood & Batley was a trading and investment company with a long history of purchasing quoted investments and that the offer document accurately set out the position on 5th April, 1975, as modified in certain respects. He believed that stock exchange investments could properly be described as falling within the general definition of cash resources. Given that the shares stood at a value not materially less than cost on 8th January, 1976 he did not believe that the shareholders would have attached any importance to a lower figure of cash and a higher figure of quoted investments. The company's accountants and the accountants of York Trust had raised no queries.

Mr. J.A. Shepard, FCA, the other executive director of Greenwood & Batley, also relied on the disclosure to the company's accountants. He admitted that he had not perhaps given the matter sufficient consideration at the time but argued that the demonstration that the company had liquid funds was not nullified by the conversion of cash into quoted securities which were realisable at short notice.

The part played by the other director of Greenwood & Batley - Mr. James - has already been described.

In our view, Mr. Buckley's conduct is open to criticism in that he failed to set out in the offer document the fact that a significant part of the cash resources which existed earlier in the financial year had been invested in shares. That the document in various respects cannot be faulted as technically inaccurate, does not meet the criticism that a shareholder was entitled to know how much the company had at that date in cash and separately in quoted securities. It was for the shareholder to judge whether he regarded the quoted securities as equivalent to cash.

Mr. Shepard's conduct is also open to criticism, though his responsibility was obviously less.

In the course of considering the overall accuracy of the picture of Greenwood & Batley conveyed by the offer document, the Panel have had to consider the role of the Birmingham office of Peat Marwick Mitchell who were the auditors of Greenwood & Batley. They were not involved in the negotiations with York Trust nor were they aware of the discussions with the Quotations Department of The Stock Exchange. They did not know of all the share purchases, but they were aware of the Lamont Holdings purchase and most of the Mann & Overton purchases. They saw proofs of the offer document, but were not invited to any drafting meetings and were primarily concerned with Appendix III. They ascertained that the shares, of whose purchase they were aware, had retained their monetary value at the date of the offer document. They are entitled to say that Appendix III, as drafted, was not inaccurate because of the limited respects in which it purported to modify the position as at April, 1975. However, we think it was unfortunate, and possibly an error of judgment that, notwithstanding the limited role that Peat Marwick Mitchell were instructed to perform, they did not raise with Greenwood & Batley, and those concerned with the compilation of the document, the question of how that part of the changed disposition of the assets of Greenwood & Batley, of which they were aware, should be reflected in the offer document.

21st June 1977