

THE TAKEOVER PANEL

Y J LOVELL (HOLDINGS) PLC ("LOVELL") / HIGGS & HILL PLC ("HIGGS & HILL")

Early on Thursday 18 January, two days before the final closing date of the offer, Lazard Brothers & Co., Limited ("Lazards") approached the Panel on behalf of Lovell with a proposal which had arisen as the result of an approach to them by a Higgs & Hill shareholder.

The proposal was that Lazards should act as agent for certain shareholders in receiving and holding completed forms of acceptance. These would be held against instructions for their delivery to the receiving agent prior to the closing date of 1pm on Saturday 20 January only if shares owned by Lovell, together with acceptances received in the normal course, and these further acceptances would enable the offer to be declared unconditional as to acceptances.

No such proposal had been included either in the offer or in the revised offer.

Later that morning the Executive made an ex parte ruling that Lazards could canvass shareholders with this proposal provided that, if the offer did not go unconditional, share certificates were returned to those shareholders no sooner than to all other acceptors of the offer.

That evening this proposal came to the attention of Higgs & Hill whose advisers, J Henry Schroder Wagg & Co Ltd, appealed against the Executive's decision and sought an urgent hearing before the Panel. The Panel met at 2.30pm on Friday 19 January.

The Panel disagreed with the ruling of the Executive. The Panel required Lazards to take steps to restore the position as it had been before the request had been made to the Executive and to tell any shareholders who had been approached that it was no longer able to offer the proposed facility.

The reasons for the Panel's decision were:

- 1 The Panel believes that the acceptance arrangements contained in the Code work satisfactorily in the interests of all parties in takeover offers and that variations should not be authorised which might be capable of being exploited in unpredictable ways in the future. Accordingly, this and similar forms of conditional delivery are not acceptable.
- 2 Furthermore, in this case, the Panel did not believe it would have been proper for the acceptance arrangements to have been varied for a limited number of shareholders at a late stage of the offer period, namely the last two days.

23 January 1990