

## **Panel on Take-overs and Mergers**

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Report on the Year ended 31st March 1970

## MEMBERSHIP OF THE PANEL

Lord Shawcross (Chairman)	Nominated by the Governor of the Bank of England
Sir Humphrey Mynors, Bart.* (Deputy Chairman)	Nominated by the Governor of the Bank of England
Mr. K. C. P. Barrington	Chairman, Issuing Houses Association
The Earl of Cromer	Chairman, Accepting Houses Committee
Mr. G. H. Fletcher	Chairman, Association of Unit Trust Managers
Mr. G. F. B. Grant	Chairman, Association of Investment Trust Companies
Mr. R. H. Hensman	Nominated by the National Association of Pension Funds
Mr. P. T. Menzies	Nominated by the Confederation of British Industry
Mr. B. Robarts	Chairman, British Insurance Association
Mr. D. J. Robarts†	Chairman, Committee of London Clearing Bankers
Sir Martin Wilkinson	Chairman of the Council of The Stock Exchange, London

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Lord Pearce	Chairman of the Appeal Committee of the Panel
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Sir Humphrey Mynors retired from office on 31st March 1970.

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Mr. Robarts was succeeded by Sir Archibald Forbes on 6th April 1970.

## FOREWORD

My predecessor, Sir Humphrey Mynors, presented the first Report of the Panel last April on the eve of his retirement as Chairman after a year in that office and shortly before the publication of the first revision of The City Code on Take-overs and Mergers. The new Code, the so-called "Blue Book", and the new arrangements for its administration have been in effect since 1st May 1969. I succeeded to the Chair on the same day and the Panel was further enlarged by the appointment of the Chairman of the Association of Unit Trust Managers. Sir Humphrey was good enough to continue as Deputy Chairman, but he retired from the position on 31st March 1970. He has been a tower of strength to us all on the Panel and I take this opportunity of expressing the warmest appreciation of the great services which he has rendered to the Panel and, over a far wider field, to the City.

While the year has undoubtedly seen a marked reduction in merger activity the reduction has been rather in the size of the companies merging than in their number. Since the problems are the same whether the companies are large or small there has, in fact, been no diminution of the Panel's activity.

As the Code is constantly improved by amendment and clarification so is the Panel steadily acquiring more experience in its administration. At the same time, I hope and believe, companies and their advisers are able to place ever greater confidence in the system of self-regulation represented by the Code and the Panel, and are taking increasing advantage of the possibility of the earliest consultation (to facilitate which the officers of the Panel and myself try to be available in the most informal way, even on our home telephones!). To justify this confidence the Panel has to apply the rules of the Code in a manner which is easily intelligible, is manifestly fair and is, as far as ever-changing circumstances permit, consistent. I am firmly of the opinion that we are moving towards this ideal and that in a few years' time self-regulation in the take-over bid field will be taken for granted even by those who today are its sternest critics.

Chairman

*May 1970*

## REPORT ON THE YEAR ENDED 31st MARCH 1970

### General

The new edition of The City Code on Take-overs and Mergers (the "Blue Book") came into effect on 1st May 1969 and at the same time the day-to-day administration of the Panel's business was taken over, on a full time basis, by the newly appointed Director-General and Deputy Director-General reporting directly to the Chairman. With this change the full Panel, which till then had itself administered the Code, became a supervisory body similar to the board of directors of a company. The role of the full Panel today is to hear progress reports and consider questions of policy at routine quarterly meetings and to consider, usually at *ad hoc* meetings, appeals against rulings of the Director-General, disciplinary cases and cases of exceptional importance of which the Chairman is of the opinion that the full Panel should be kept informed.

There is frequent informal communication, when the occasion requires, between the officers of the Panel and individual members.

During the year the full Panel held five routine meetings and three *ad hoc* meetings. The latter were taken up with—

- (i) the affairs of Pergamon Press Limited and Leasco Data Processing Corporation,
- (ii) an appeal on behalf of holders of "C" shares of Swears & Wells Limited, and
- (iii) an appeal in the matter of The Cementation Company Limited and Trafalgar House Investments Limited.

On all these matters the Panel issued public statements. At one routine meeting it also considered but dismissed a written appeal on which, with the concurrence of the parties, no public statement was made, since no point of general interest was involved. The hearings which dealt with appeals by companies or individuals against rulings of the Director-General on specific matters under the Code are distinct from hearings of the Appeal Committee of the Panel on disciplinary matters or questions of natural justice. During the year the Appeal Committee was convened once under the Chairmanship of Lord Pearce to hear an appeal from Mr. I. R. Maxwell, Chairman of Pergamon Press Limited. The appeal was dismissed and a public statement was issued.

At the conclusion of its investigation of the Leasco/Pergamon matter the Panel instituted an enquiry in general terms into the question of conflicts of interest that may confront merchant banks who carry on both corporate finance business and investment advisory business. The enquiry was conducted by the Panel executive over a three-month period and gave rise to a twenty page report which was submitted to the full Panel. The Panel has considered this report in detail and now publishes its conclusions on the matter in Appendix I.

### Statistics

The Panel executive was concerned with take-over or merger proposals made in respect of 355 companies, of which 302 were companies whose securities were quoted on a Stock Exchange. In 31 cases there were one or more rival bids and in all there were 392 proposals, including those made by foreign offerors. The over-whelming majority (363) of the proposals made reached the stages where formal

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documents were circulated to shareholders. Of the 363 merger documents, 277 were circulated by Exempted Dealers, 21 by Licensed Dealers, 37 by others exempted under the Prevention of Frauds (Investments) Act, 1958 and 27 on the basis of specific authority from the Board of Trade. One offer document was circulated from a foreign address without any authorisation under the Prevention of Frauds Act; it was not successful.

Rather more than half of the proposals gave rise to consultations with the Panel, the initiative for which came from the companies concerned or their advisers. In addition the executive raised points on numerous occasions with the result that altogether some 80 per cent. of the total were the subject of consultations or Panel enquiries. Very often the points raised were clarified on the telephone; the rest in meetings at the Panel offices.

The nature and outcome of the 392 merger proposals can be seen from the following tables:-

*Proposals involving change of control*

Take-over bids recommended or unopposed from outset .. ..	195
Take-over bids opposed and later recommended .. ..	17
Take-over bids opposed throughout (including 4 where no documents were issued) .. ..	41
Take-over bids withdrawn before issue of documents .. ..	25
Mergers by Scheme of Arrangement .. ..	27
<i>Offers and Schemes of Arrangement involving minorities, preference issues, etc.</i> .. ..	<u>87</u>
	<u>392</u>
Successful proposals involving control .. ..	239
Unsuccessful take-over bids involving control .. ..	37
Proposals withdrawn before issue of documents .. ..	29
Minorities, preference issues, etc. .. ..	<u>87</u>
	<u>392</u>

Only 3 agreed bids failed and only 3 in the category “opposed throughout” succeeded. The data given above refer to transactions where there was at least a public announcement of a firm intention to bid. The executive was consulted on some 100 further cases where the names were disclosed but no published proposals materialised, and on a similar number where no names were mentioned. Another 61 cases still open at the 31st March are not included in the above figures.

**Consultation**

It will be seen that a high level of consultation has prevailed throughout the year. This is in strict accordance with the request of the Chairman, made at his press conference in April last year and often repeated since then: “When in doubt, ask”. Panel officers are available early and late to give guidance on all matters affecting the Code and advisers and companies should not feel discouraged from making use of this service at short notice at any time. Rulings given by the executive were accepted during the year in all but four cases; in one case the matter was resolved on further discussion, while the remaining three were the subject of the appeals already mentioned.

## **Flexibility**

One of the most important tasks confronting any regulatory body such as the Panel is to administer the rules consistently. Consistency presents fewer problems where succeeding cases are recognizably similar. This is, however, seldom the case in the context of take-over bids owing to the wide diversity of company structures, patterns of share ownership and control, bid tactics, consideration offered and so forth, to say nothing of the emotional and political factors that often come into play. Moreover the Panel is occasionally unable to justify apparently inconsistent decisions without disclosing information given to it in confidence. The Panel's consent is frequently sought to a concessionary interpretation of the Code or even to dispensation from individual rules on special grounds. While the Panel sees great advantages in a flexible attitude towards problems that cannot be rigidly legislated for, it is most loath to change the rules in the middle of the game. Accordingly where any major dispensation is sought, it is only granted on the condition that the opposing party (if any) is immediately informed, and it appears clearly to be in the best interests of all the shareholders concerned.

## **Profit Forecasts**

The position of profit forecasts in the context of take-over bids, mentioned in the first Report, continued to exercise the Panel executive and featured prominently in discussions with companies (both offeree and offeror) and their advisers. The difficulty most frequently encountered is that of reconciling the three elements common to most bid situations—the need for haste in preparing attack or defence, the requirement for full disclosure to shareholders of the affairs of their company (or of the company which is offering them its securities) and the rules of the Code which are designed to ensure that where forecasts are used they are prepared in a responsible fashion. Nothing in the Code requires an offeror or offeree company to make a forecast: it merely stipulates (in general terms) that when a forecast is made it shall be prepared with the same standard of care as a prospectus under the Companies Act, and that the company's auditors and financial advisers shall be publicly associated with the forecast. There are occasions where directors would be withholding essential information from their shareholders if they were to abstain from giving a forecast of the immediate future results, especially when this has already been published in another context; on the other hand there are many types of industrial and commercial activities in which the future is by the nature of things so obscure as to render all forms of prognostication unwise. The decision is one which must be made by the directors. In past years there have been cases, perhaps too many cases, where forecasts made in a bid context have not been met in the result. The most important revision contained in the "Blue Book" was that which made it mandatory for auditors and financial advisers to be publicly associated with bid forecasts. It is too early yet to say with any certainty whether the new rule has had the desired effect; nevertheless the impression exists that the incidence of over-forecasting is less than it was. The executive is keeping records of forecasts and related results and expects to be in a position later this year to draw some conclusions. In pertinent cases the executive will invite detailed explanation of forecasts that have been missed.

The Panel would consider it a retrograde step if, as a consequence of abuse by a few, the profit forecast in the take-over context had to be prohibited to all as indeed it is in the United States. Forecasts of profit have been given for many years in connection with capital issues on the London Market; the system works well and there have been remarkably few instances of forecasts not met. The Panel believes that directors' opinions on the immediate future profitability of a company are the most important

single element in the formation of the decision to invest or to disinvest in that company and that if official forecasting were to be forbidden the inevitable consequence would be that unofficial forecasting would grow up in its place. Thus, as happens now on some overseas markets, uncorroborated statements for which no one is answerable would pass by word of mouth to selected shareholders in direct contravention of the general principles of the Code. The Panel therefore re-affirms its expectation that the highest possible standards of care and responsibility are maintained in the matter of profit forecasts and that companies and their advisers seek to be meticulous in their observance of the spirit as well as the letter of the Code.

### **Practice Notes and Publication of Rulings**

In order to record in a general manner its views on the best interpretation of the more difficult parts of the Code, the Panel has published Practice Notes as foreshadowed by Sir Humphrey Mynors in his Report last year. At the date of this Report three Practice Notes have been issued dealing with the following matters:-

- No. 1 Private Companies and Unquoted Public Companies
- No. 2 Directors' Emoluments and Particulars of Service Contracts
- No. 3 Publication of Information.

A further three Practice Notes can be expected shortly dealing with profit forecasts, reporting of transactions in shares, and frustration of bids. These Practice Notes are intended to serve as a guide to the Panel's current interpretation of the relevant sections of the Code. They are prepared by the Panel executive in consultation with the members of the full Panel, but they do not in any way override the Code nor do they purport to carry the same degree of authority as the Code itself. Copies of Practice Notes may be obtained from the Panel offices.

Apart from significant rulings which may be published from time to time, for instance as the result of an appeal to the full Panel, it will henceforth also be the policy to publish with the Annual Report a synopsis of executive rulings which may be of general interest. Attention is drawn to Appendix II to this Report.

### **Revision of the Code**

There are occasions when experience in the administration of the Code indicates that certain passages are due for amendment or amplification. This is inevitable in an active and efficient capital market where new techniques are constantly being evolved and where changes in legislation or other exterior factors bring with them a modification of earlier concepts of what is best practice. The Panel has accordingly invited the Issuing Houses Association, which is primarily responsible for drafting the Code, to take into consideration a number of points at its next revision. It can be said already, however, that none of the suggested amendments, if adopted, would lead to any radical change in the rules as they exist at present. This can be taken as an expression of confidence by the Panel, based on practical experience, that the Code in its present form is both workmanlike and workable.

### **Procedure and Appeals**

The Panel recognises that its authority in take-over matters can only be sustained if its impartiality is placed beyond doubt. Where a matter arising for discussion would be

likely to create a conflict of interest for any Panel member, the member arranges for his alternate to be empanelled. It is the Panel's policy in the case of important controversial matters to publish its conclusions and the reasons for them. In this manner its own activities are subject to public scrutiny. If a company or adviser wishes to contest a ruling given by the executive he may appeal to the full Panel; the same right is also given to aggrieved shareholders—subject to certain safeguards designed to ward off frivolous cases. Any such appeal, to qualify, must be notified to the Secretariat at the latest within one month of the event giving rise to it. Appeals by companies and individuals (or their advisers) who are principals, are presented in person and are answered in person by the Director-General or his Deputy; both sides are absent during the Panel's discussion of its conclusions. Appeals by shareholders are presented in writing and are heard by the Panel in the absence of both sides. When an appeal against an executive ruling is notified to the Panel the other parties concerned are given notice and have the opportunity to make representations. This notice serves also as a warning that the Panel may overturn an executive ruling and enjoin a different course of action on one or more of the parties.

When an appeal is made against a disciplinary decision of the Panel, the appeal, as already indicated, is to the Appeal Committee under the Chairmanship of Lord Pearce. In such cases, the Panel will, having found that there has been a breach of the Code and decided on the requisite penalty, inform the party concerned that he may serve notice of appeal within the next 48 hours. The Panel will, if requested, suspend publication of its findings during this time. If the right to appeal is waived, publication follows immediately. If there is an appeal, publication is further suspended until the decision of the Appeal Committee. If the appeal is upheld the appellant's views will be consulted on the question whether or not there shall be any publication; if it is dismissed the Panel will proceed to publish its original finding and initiate any steps decided upon by way of penalty.

A right of appeal to the Appeal Committee may also lie, with leave of the Panel, against decisions which although not strictly of a disciplinary nature, inflict serious hardship on an individual or firm, or when it is alleged that the Panel has acted *ultra vires*. No right of appeal, however, lies against a finding of fact.

Proceedings before the Panel and the Appeal Committee are informal; there are no rules of evidence; a tape-recording will be taken for ease of reference in case of need during the case but no permanent record will be maintained; no legal representation is permitted although legal and other advisers who have been concerned may be present if desired.

### **Move of Offices**

By arrangement with The Stock Exchange and the Bank of England the Panel will shortly transfer its offices to The Stock Exchange building, 20th Floor. The move, which is expected during the late summer of 1970, will enable the executive to co-operate even more closely with the Quotations Department of The Stock Exchange than it does already. It will also give the Panel offices the advantage of a more central site in the City. The Panel would like to record its appreciation of the actions of the Governor of the Bank of England in placing the present offices at its disposal and the Chairman of the Finance Corporation for Industry Ltd. in allowing it the use of its Board Room.



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**Staff**

The Panel executive at the end of the year consisted of:–

I. J. Fraser, Director-General (seconded from S. G. Warburg & Co. Ltd.)

W. S. Wareham, Deputy Director-General (Head of the Quotations Department,  
The Stock Exchange, London)

A. R. Beevor, Secretary (seconded from Ashurst, Morris, Crisp & Co.)

P. R. Frazer, Assistant Secretary (Bank of England)

P. B. Mitford-Slade, Assistant Secretary (seconded from Cazenove & Co.)

During the year Mr. W. P. Cooke (Secretary) and Mr. C. E. Condren (Assistant Secretary) left to return to their duties at the Bank of England. Both made important contributions to the establishment of a new and difficult enterprise on a solid foundation, and the Panel wishes them every success in their resumed careers.

**APPENDIX I**

**THE USE OF CONFIDENTIAL PRICE-SENSITIVE  
INFORMATION**

In the course of the Pergamon/Leasco enquiry some newspaper comment was made on the fact that a Merchant Bank acting for one of the parties had, during the currency of the transaction, sold a substantial number of the shares in that party. Any criticism which this comment may have implied would have been misconceived in the particular case, since the sales took place in circumstances which had been fully reported to the Panel. The Panel indicated none the less that in view of the apparent conflict of interest which might arise in such cases it would conduct a study of the whole matter in some depth.

This study was duly undertaken. It involved full discussion, on the basis of a detailed questionnaire, with no less than thirteen Merchant Banks, selected to represent a fair cross section of the whole, and it was conducted with the co-operation of one of the Clearing Banks, and of two firms of London Stockbrokers active in the new issue market and was assisted by conversations which had taken place in a different context with two Finance Companies not members of the Issuing Houses Association but actively engaged in the field of take-overs and investment advising. Whilst those who assisted in the Panel's enquiries were assured that their anonymity would be preserved, the Panel was in fact given the very greatest co-operation in a spirit of completely frank discussion.

It is convenient to take the opportunity of this Annual Report to set out the Panel's general conclusions on the whole matter. Some thoughts on the question of security and prevention of "leaks" have also been included.

All the Merchant Banks and others concerned were involved in the possibility of some conflict of interest or of professional propriety in that they were all, to a greater or lesser extent, in possession of confidential information about the position of particular companies to which they acted as corporate advisers, or on whose Boards some member of the firm might sit, whilst they were also engaged as investment advisers to pension or other funds or to individual clients whose investment portfolios they managed. In all cases, therefore, the theoretical or indeed actual possibility existed that information gained in the one capacity, as for instance about an impending take-over transaction or about some alteration in a company's affairs or profitability, could be used with advantage in the other capacity in advising a sale or purchase of securities.

In no case was it suggested that the use of inside information of this kind in such a manner would be other than wholly improper: in every case measures of one kind or another had been taken to guard against the possibility.

In view of the wide diversity in size, in tradition, in organisation, in methods of business and in personnel, the practices adopted by different firms necessarily varied. It would be quite inappropriate and indeed impossible to lay down any single organisational blue-print to which all firms were obliged to conform. Except in the case of a few smaller Houses it is the fact, however, that all firms have created a certain physical segregation of the activities of corporate and of investment advising in that these matters are dealt with by separate individuals, in a distinct department, often on a different floor, sometimes in a different building and occasionally even through a distinct subsidiary company, although in these more

drastic examples of segregation there have been other factors in addition to that of avoiding conflict which have led to the arrangements adopted.

The Panel considers it right that the greatest practicable degree of physical segregation should be achieved in each particular House. The greater it is the smaller will be the risk of unauthorised use of information, of accidental leaks or of successful espionage, attempts at which cannot be regarded as wholly science fiction.

Even where complete physical segregation is impracticable the general practice of all the larger Houses is that those persons below Board level who are concerned with the corporate advice activity and who may be aware of "inside" or "price-sensitive" information have no connection with or responsibility for the investment advice functions of that House.

It remains the fact, however, that both in the smaller Houses and the larger ones individuals at the higher level of management and certainly at Board level must possess some degree of information and of responsibility in both departments. There is some variety of practice at Board level. In the case of some of the larger Houses, with Boards of Directors numbering perhaps twenty or thirty, there is usually a division of responsibility between the executive members of the Board, some of whom are concerned with corporate advising and others with the Investment Department. This division is sometimes expressly taken to the length that there must be no exchange of price-sensitive information. In other cases, whilst senior members of the Board may have full access to and responsibility for the information and activities of both departments, this is not the case with junior members and, more often, outside directors are excluded from information available to executive directors. It must be appreciated, however, that as a matter of strict law members of a Board are in general equally entitled to information coming to their company and equally responsible for its activities. And whilst it may often be convenient to assign particular matters as the primary concern of a committee of Board members, the creation of anything which might be regarded as a Board within a Board may lead to legal and also personal difficulties. Whatever practice is followed as to this there must inevitably remain at the top level of management some individuals involved in and responsible for all the company's activities.

In these circumstances suggestions have been made that some segregation should be imposed by law, so that those engaged in corporate advisory functions or in possession of inside information are prohibited from participating in investment activities. The Panel has considered this possibility.

Where precise legal rules are imposed, experience often shows that there is a tendency to regard anything not expressly prohibited as permitted. Nor is it in practice legally possible to prevent the casual or even in some cases the inadvertent passing of information. More importantly, if complete segregation were imposed, each side of the business would suffer from its compulsory dissociation from the other, with the result that financial advisers would lose touch with the market and investment advisers would be cut off from the high level international contacts of the rest of the House. The Panel is convinced that any form of legal segregation of this kind would be quite impracticable and that an attempt to secure it would gravely endanger the legitimate exercise of commercial and financial services which are of great economic value to the country.

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It is sometimes supposed that there is in fact in the United States a legal division in this field. This is not the case. It is true that commercial banks as banks of deposit are precluded by law from holding or underwriting corporate securities whilst, on the other hand, investment banks whose principal function is underwriting and advising may not act as banks of deposit. But as in this country both investment and commercial banks may, and normally do, act both as financial advisers to corporations and investment advisers to general clients. It is, however, the fact that very strict and legally enforceable regulations are laid down by the Securities and Exchange Commission to prevent the improper use of "inside" information.

It cannot, however, be said that the United States with these legal regulations has been more successful in avoiding "leaks" or the deliberate misuse of price-sensitive information obtained in a confidential relationship than has been the case in this country without them. In both countries the financial communities have long been faced with occasional incidents of this kind and here they have properly been the subject of grave concern by the investing public, The Stock Exchange and latterly, the City Panel. A number of attempts have been made by The Stock Exchange and, more recently, the Panel to trace the origin of suspicious transactions. These have seldom led to conclusive results and have often come up against the barrier created by the use of overseas banks as nominees. The Panel has, however, had conversations with the Board of Trade about the problem. The Board of Trade have wide powers under Section 172 of the Companies Act 1948 and Section 32 of the Companies Act 1967 to investigate transactions in shares in certain circumstances. The Board of Trade's inspectors may look behind nominees' names which may be used to cloak undesirable transactions. The Panel has been assured by the Board of Trade that they will take into prompt consideration matters relevant to these powers disclosed to them by the Panel. Certainly the Panel, in close co-operation with The Stock Exchange, intends to watch the problem of any apparent use of advance or inside information with the utmost zeal and it will take or recommend whatever action may seem appropriate.

In the meantime the Panel believes that the disciplines which exist in this country, of professional discredit or even expulsion and of public reprobation, are at once more flexible and more effective. Their gravity should not be under-estimated, nor should anyone suppose that the Panel and the City and other institutions involved will be pusillanimous in imposing them.

It is true that the existing practice in this country, as in the United States, does involve those concerned in the higher management of our Merchant Banks having dual capacities in which information received in the one is not to be used in the other. It may be claimed that this imposes an intellectual discipline on the individuals concerned which, however theoretically possible, it is quite impracticable to expect them to observe in every detail. And human fallibility and cupidity being what they are it is obviously impossible to guarantee that in every case this duality will not be abused. Yet the "wearing of two hats" is something which is accepted by all economically advanced societies and which in England is very far from limited to the merchant banking community. Wherever, whether in business, the professions or in public life, an individual stands in a confidential or sometimes even a judicial relationship to two or more interests, conflicts of interest of the kind canvassed here are bound to arise. In the vast majority of cases they are satisfactorily resolved. The risk of occasional abuse is far outweighed by the manifold advantages which would be lost if duality of this sort were prohibited.

It is right to add that in the whole course of the enquiry only one case came to notice in which any merchant banker at the level of partner or director appeared to be under

suspicion of having misused inside information. In that case indeed the agent through which the suspicious transactions had been made had itself taken steps which were effective to put an end to them. The fact is of course that in the context of take-overs those who are in possession of inside information will include directors of the companies involved, some at least of the financial, legal and secretarial departments of those companies, often outside accountants and solicitors and stockbrokers and officials of Government Departments concerned, and in later stages printers, the Panel executives and the Quotations Department of The Stock Exchange. These far outnumber those involved in the Merchant Banks and if "leaks" occur, it by no means follows that they originate from the Merchant Banks.

It remains to add how all this works out in practice. Subject to the matter which is mentioned later, it was axiomatic in the case of every firm and individual who assisted in our enquiry that "inside" or confidential information obtained in the corporate advising capacity was not to be used in the capacity of investment advising, still less in the personal investments of the firm or individuals concerned. This rule is generally recognised and accepted by the clients of either department. In order to avoid the risks of mistake or abuse, the two functions are as far as practicable physically segregated in different departments and are the concern of separate executives. It is only those at director or partner level, or at the least senior executives of long experience and proven responsibility, who can or may have to operate in a dual capacity. There is some difference of practice in the case where knowledge of an imminent take-over transaction exists. Some Houses put the securities affected on a stop list so that all transactions in these by the Investment Department other than those ordered apparently in good faith by outside clients are precluded. This practice may lead to the suspicion that "something is afoot" and may be unfair to investment clients who have left the management of their portfolios at discretion to be exercised by reference to ordinary investment criteria. Other Houses permit transactions to proceed normally but insist with special strictness that no information not available with normal diligence to the ordinary investment analyst or stockbroker should be taken into account and that each transaction must be capable of clear and public justification by reference to ordinary investment criteria. On one point, however, some difference of opinion did emerge. Was a director with knowledge of an impending bid or other significant "inside" information, who became aware that his firm's investment department was about to embark on sales or purchases which in the circumstances might prove to be disastrous, entitled to intervene or, if asked for his opinion, permitted without giving his reasons to give advice against the transaction? The Panel has no doubt that the better, if Draconian, opinion is that in such cases the individual concerned must be completely excused from advising either way. The transaction should proceed in exactly the way it would have done if no one had, in fact, been in possession of any inside information not available to others exercising due diligence.

The Panel's enquiry has, naturally, been in much greater detail and depth than is covered by this summary. In this, as in other matters, the Panel will welcome enquiries in any case of difficulty or doubt and will endeavour to advise whether in advance or otherwise on the proper course of action. In the meantime for the information of the public it may be useful to state the following principles as ones which are generally observed in the City and are enjoined upon all who may in future engage in corresponding activities.

1. Clients of Corporate Advisory and of Investment Advisory Departments should be made aware of the existence of the other Department and understand that in order to avoid conflict of interest these activities are confidential and segregated and they cannot expect to receive any advantage nor need fear any disadvantage from the fact that the House conducts both.

2. Privileged price-sensitive information which a House may hold about a company which is a client or on whose Board some member of the House may sit may not in any case be taken into account for the purpose of forming an investment decision.
3. Special knowledge available to a House about a client company or one upon whose Board some member of the House may sit is only to be used for the purpose of forming investment decisions if it is or would be equally available to an independent investment analyst or stockbroker upon reasonable enquiry from the company or other sources.
4. Whilst (subject to the rules of the Code) Houses are not precluded during the public transaction of a take-over from purchasing for their own account securities of a company for which they are acting, they must not purchase such securities for their discretionary investment clients except by reference to ordinary investment criteria and in no case simply to support the market in their client company's shares. Nor may they in advance of the public announcement of a take-over advise investment clients to accumulate shares in the offeree company in order to secure acceptance of the offer.
5. Equally, however, investment clients need not necessarily be deprived of the advantage of transactions based on ordinary market criteria simply because the House is acting for a party to the take-over transaction, although it is realised that some Houses prefer to operate a stop list system.
6. The number of persons in the House made privy to an impending take-over transaction or other confidential or price-sensitive information should be as restricted as practicable.
7. Houses should periodically review their security arrangements.
8. Houses should prohibit members of their staffs from dealing in any securities on their own account except through the House itself.
9. The standard by which the propriety and therefore permissibility of any proposed line of action in relation to deals in securities (the subject of price-sensitive information or of a take-over transaction) is to be judged is whether the House is prepared subsequently to justify at a public enquiry the action taken.

## APPENDIX II

### RULINGS OF GENERAL INTEREST

There follows a synopsis of rulings given by the Panel executive during the past year selected on the grounds that they may be of some general interest. A number of rulings have already been treated as the subject of Practice Notes. The rulings mentioned below are given without reference to the cases to which they apply, as is appropriate to the confidential nature of the Panel's dealings, and are grouped according to the General Principles or Rules from which they are derived. Where a ruling has been confirmed on appeal to the full Panel, this is indicated.

*General Principle 8* Where an offeror who has a "paper" offer outstanding or his associates purchase selectively for cash a holding or holdings of offeree shares whose transfer is critical to the outcome of the offer a similar opportunity to sell for cash should be made available to all other holders. (Confirmed on appeal.)

*Rule 4* Where an offer is made for fixed-income securities without exceptional features, the interests of holders may be adequately secured even in cases where the only recommendation of the offer is that given to them by competent advisers to the offeror.

*Rule 7* Where a cash alternative to an offer is to be provided which involves underwriting, underwriters may be informed of the impending offer immediately before the general announcement provided they are expressly warned of the confidential nature of their advance information.

*Rule 10* (i) Where the transfer of effective control has taken place, the sub-sequent general offer should not be made conditional on any particular level of acceptances. (Where there is doubt as to what constitutes effective control reference should be made to the Panel.)

(ii) Where the transfer of voting shares carrying control entails an obligation to secure a comparable offer for non-voting equity shares, the comparable offer need not be an identical offer but the difference has to be capable of being justified in market terms. (Confirmed on appeal.) Such an offer should not be made conditional on any particular level of acceptances.

*Rule 11* The less welcome offeror should specify the questions to which he requires answers. He is not entitled to receive the benefit of his competitor's industry or special knowledge by asking in general terms for all the information supplied to his competitor.

*Rule 12* An announced offeror need not proceed with his formal offer if a competitor has already circulated a higher offer.

*Rule 13* Paid newspaper advertisements should include the Board responsibility statement unless the information published is all contained in a circular to share-holders which includes such a statement.

*Rule 20* (i) See Rule 10 above.

(ii) Various difficulties have arisen over the application of this Rule to offeree companies with more than one class of voting capital. In such a case the Panel executive should be consulted.

*Rule 21* There is no obligation to extend an offer whose conditions are not met by the first optional expiry date.

*Rule 24* Acceptances of a cash offer provided by underwriters do not come within this Rule.

*Rule 25* Where an offer is not conditional on any level of acceptances, references to Rules 20 and 22 in the offer document are inappropriate and references to Rules 21 and 24 should be appropriately amended.

*Rule 30* The reference to “any person” includes a company and the offeror.

*Rule 31* (i) For the purpose of this Rule the price at which shares are purchased is the price at which the bargain between the purchaser (or his broker) and the vendor (or jobber) is struck and no adjustment is to be made for commission, stamp duty, or the “jobbers’ turn”.

(ii) In order to value a “paper” offer for the purpose of calculating the price which can be paid for offeree shares without coming within this Rule, the middle market quote of the offeror’s “paper” at the time of the purchase should be taken.

(iii) Where an offer is made for a security on terms that the acceptor may retain an accruing dividend or interest payment, purchases in the market or otherwise of that security by the offeror and his associates may be made at prices up to the “*cum div.*” equivalent of the offer value without necessitating any revision of the offer.

*Rule 32* An arrangement to deal with special conditions attached includes an arrangement whereunder the purchaser promises to make good to the vendor any difference between the purchase price and the price of any successful offer or increased offer.

*Practice Note No. 2* The requirement in Practice Note No. 2 for a negative statement in “subsidiary” documents that no changes in service agreements, etc., have taken place since details were first published, is satisfied by the directors stating in general terms (as required by Rule 13) that no material factors or considerations have been omitted. The latter statement is of course considered to extend to any material changes in any information previously published by or on behalf of the relevant company during the bid (including in particular details of shareholdings under Rule 16).

Copies of this Report may be obtained from the Offices of the Panel on Take-overs and Mergers, Bank of England Building, New Change, **E.C.4.**