

Take-overs and mergers

Letter of the 15th August 1968 from the Governor of the Bank of England to the Chairman of the Issuing Houses Association

As you are aware, I have been in close touch with you, with the Chairman of the Stock Exchange and with Sir Humphrey Mynors, the Chairman of the Panel on Take-overs and Mergers, throughout recent events. I think it may be timely for me to review the general position as I now see it. I confess I find it a disappointing one.

A great deal of work was put into the preparation of the new Code on Take-overs and Mergers and, when it was published, it was widely accepted as providing a well-thought-out set of rules to guide the conduct of those concerned with such matters. It could not, of course, have been expected to be an infallible guide. In recent months the Code has been severely tested in practice and some deficiencies have been revealed. I know that revisions of the relevant sections of the Code are under urgent consideration and no doubt they will be published as soon as possible. Further revisions in the light of experience may be expected to follow at reasonable intervals. I am sure that constant attention will be given to removing uncertainty and ambiguity in the wording of the Code. But it is not and cannot be a legal document. It is a memorandum of guidance and its usefulness depends on those who use it understanding and subscribing to the objectives which inspired its preparation.

The purpose of the Panel is to give authoritative rulings on the interpretation of the Code and, so far as possible, to secure that these rulings are respected. I have kept closely in touch with the work of the Panel since its inception in March last. Throughout this period it has been extremely active in giving advice on the interpretation of the Code to many issuing houses, firms and others concerned with take-overs and mergers. Most of this work has received no publicity, but I believe it has nevertheless been most useful and helpful. In a few instances, after due deliberation, the Panel has felt obliged to state publicly that a breach of the Code has in its opinion occurred. In my view, these rulings were in each case entirely justified and I do not see that the Panel had any option but to make them public and to do so with the minimum of delay. The result, however, has been less than satisfactory. Much resentment has been aroused. The Panel's rulings have been questioned and even their general authority has not always been acknowledged. It is in no one's interest that this state of affairs should continue.

I know that the Panel are considering their methods and procedures. I shall be grateful if your Committee will consider how the Panel might be strengthened and made more effective for the future. Both Sir Humphrey Mynors and I will welcome any suggestions which you may have. I hope these will not exclude proposals for effective sanctions against wilful infringements of the Code.

I realise that a take-over battle will from time to time be only too well described as such. In these circumstances the urge to take quick and successful action is great. But action

in breach of the Code is not justifiable in any circumstances. It harms the reputation of those who are guilty of it and is prejudicial to the good name of the City in general. I ask that you remind your members that the Code and the Panel are a voluntarily established mechanism which can only work if those who have adopted it to regulate their own conduct give it their full and consistent support. They should be guided by the spirit of the Code's intentions as much as by legalistic interpretations of its wording. They should consult the Panel whenever in doubt and abide by its rulings.

Despite recent difficulties, I do not accept that it is time, as some suggest, to write off the Code and the Panel as a failure; indeed, in my view, they have for the most part been a success so far. This experiment is still in its infancy. Longer experience of it is needed before any firm conclusions can sensibly be reached. If all are willing to learn the lessons to be drawn from the initial difficulties its future should be assured. If, however, the present arrangements prove inadequate, no doubt some form of statutory control will be considered. There is no certainty that such a control would be more effective, but there can be no doubt that it would be more onerous and time-wasting for all concerned.

I am writing a similar letter to the Chairman of the Stock Exchange and I am sending a copy to Sir Humphrey Mynors. Also, in view of the wide-spread interest in this subject, I am making this letter available to the Press.