THE ROLE OF THE CITY PANEL ON TAKE-OVERS AND MERGERS IN THE REGULATION OF INSIDER TRADING IN BRITAIN

Recently, there has been growing dissatisfaction in Britain about the structure of regulation in the securities industry. Traditionally it has been a law unto itself with legal regulation rarely intervening.[1] The reasons for this are largely historic and are of little relevance with the exception of one vital factor. This is the 'village atmosphere of the City of London.' Bred not only through proximity but also through a common heritage and class system, this facet of the City cast the various sections of the industry into the form of 'gentlemen's clubs'. Admittedly, although the ethics of the City might have been higher in theory than in practice, this did have the result that transgressions from the accepted norms of the group were visited with severe professional and social sanctions.[2] With the changed economic situation and the possible break up of such clearly defined social groupings in British Society[3] this capacity of the City to keep its own house in order has probably weakened.

It is true that certain aspects of the securities industry are regulated by law particularly with regard to the licensing of securities dealers and in the field of insurance. However, even in areas such as these, considerable emphasis is still placed on self-regulation; for example,

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[1] See generally A. Jenkins, *The Stock Exchange Story,* (Heinemann 1973), E. Morgan and W. Thomas, *The Stock Exchange: Its History and Functions,* (Elek Books 1952), C. Dugid, *A History of the Stock Exchange,* (Grant Richards 1902). There have been attempts in the past to impose a degree of regulation on brokers and dealers, see *Report of the Commissions Appointed to Look After The Trade of England,* House of Commons Journals, November 25, 1696, Vol. 11 at 593, and also 'An Act to Restrain the Number and Ill-practices of Brokers and Stockjobbers' 8 & 9 Wm. 111c. 32 1697 and 'An Act to prevent the Infamous Art of Stockjobbing' 7 Geo. 11c. 1733. Reference should also be made to D. Defoe, *The Villainy of Stock Jobbers Detected and the Causes of the Late Run upon Banks and Bankers Discovered and Considered,* (London, 1701).

[2] In close homogeneous societies social pressure is likely to be effective against deviations from socially accepted norms and patterns of behaviour. See R. Schwartz, "Social Factors in the Development of Legal Control: A Case Study of Two Israeli Settlements" 63 Yale L.J. 471, and see also G. Hughes and F. Bennion, Professional Ethics, Appendix, *Towards A Code of Business Ethics, Consultative Document,* Christian Association of Business Executives, 1972.

[3] But see *The United Kingdom in 1980: the Hudson Report,* The Hudson Institute Europe, 1974 at 64-66. A very important factor has been the vast increase in foreign banking and financial houses in the City and of course in recent years the 'oil-money'.

it is not necessary for a securities dealer to obtain a licence if he is, *inter alia,* a member of certain recognised self-regulatory bodies.

It is not possible, in an article of this nature, to describe in any detail the present regulatory structure in operation in Britain. It is a subject of great complexity.[4] It is a curious amalgam of official and semi-official regulatory bodies such as the Department of Trade, Bank of England, Metropolitan and City of London Company Fraud Department, the Council of the Stock Exchange and a host of associations and professional bodies. It is perhaps of greater interest to fasten upon just one of these agencies which, perhaps more than any other, typifies the role and nature of self-regulation in Britain. This is, of course, the City Panel on Take-overs and Mergers.

The City Panel on Take-overs and Mergers and the City Code on Take-overs and Mergers

The mid-1950s saw a boom in take-over and merger activity that revealed the extreme inability of the existing structure of regulation, if such it could be called, to restrain the excesses perpetrated in the frenzied climate of contested take-overs.[5] Self regulation was seen to fail miserably in that

> The network of gentility and politeness broke down completely, far from keeping in touch with each other, the opposing merchant banks indulged in personal animosity ... the worst aspect of the matter ... was that the public had a ring side seat to observe that when it came down to ethics and propriety the top figures of the City... were at each other's throats.[6]

This state of affairs led to the setting up of the City Working Party by a number of City institutions headed by the Bank of England. The result was the drawing up of 'The Notes on Amalgamations of British Businesses'[7] which was considered to be 'an early shot in the campaign to get rid of the unethical, and to prevent operations which at best might be viewed with distaste.'[8] In effect, the Notes were merely a code of good practice though they incorporated the germ of subsequent, more substantial measures which were the emphasis on the need for equality of treatment among shareholders, essential to which was the need for reasonable and equal corporate disclosures,

[4] But see B. Rider and E. Hew, "The Structure of Regulation and Supervision in the Field of Corporation and Securities Laws in Britain" 2 *Revue de la Banque* (1977) 83, and B. Rider and E. Hew, "The Regulation of Corporation and Securities Laws in Britain — The Beginning of the Real Debate" (1977) 19 Mal. L.R. 144.

[5] See generally E. Stamp and C. Marley, *Accounting Principles and the City Code, The Case for Reform,* (Butterworths, 1970); R. Spiegelberg, *The City Power Without Accountability,* (Bland & Briggs, 1973); G. Newbould, *Management and Merger Activity,* (Guthstead Ltd.); H. McRae and F. Cairncross, *Capital City, London as a Financial Centre,* (Methuen, 1973); M. Blanden, *The City Regulations on Mergers and Take-overs, Readings on Mergers and Take-overs,* J.M. Samuels, *Action Trust Society,* (Elek Books, 1970); Penrose, "Some Aspects of the Development Criticism and Control of Take-over Bids Since 1945" (1964) Juridicial Review 128.

[6] E. Stamp and C. Marley, *Accounting Principles and the City Code, The Case for Reform,* at 8.

[7] October 1959.

[8] Stock Exchange Journal, Autumn 1959 at 28.

and the need to avoid the undue disruption of the securities market. Despite this, and perhaps predictably, the abuses were still rife. Stronger measures were obviously required and the City Working Party reconvened to consider this. In 1963, the Revised Notes on Company Amalgamations and Mergers was published;[10] this time there was a specific attempt to deal with the problem of insider trading although this was not expressly forbidden. Also, the need for timely and equal information on all relevant matters and to all shareholders on the basis of equality was underlined. Although the Notes did not expressly forbid insider trading this was probably the fair implication of the various principles. Despite the fact that the Board of Trade had issued its Licensed Dealers (Conduct of Business) Rules[11] in 1960 which imposed a degree of regulation on take-overs and circulars in which licensed dealers were involved, within a year or so of the promulgation of the Revised Notes a number of take-over battles occurred which substantially wrecked the City's attempt at self-regulation.[12]

There was widespread disquiet and loud calls for the establishment of a Securities & Exchange type of regulatory authority. The City Working Party was reconvened 'as a matter of urgency'.[13] Within a month, the Governor of the Bank of England announced that agreement had been reached among the City institutions to set up a Panel to administer a new code on corporate amalgamations under the Chairmanship of a former Deputy Governor of the Bank of England.

The Panel consisted of nine persons nominated from the various constituent City institutions, with a relatively small secretariat provided by the Bank of England. From the outset, the Panel made it clear that apart from acting as a supervisory body it was available for consultation and advice.[14] Whilst acknowledging the dangers of being accused of bias, the Panel also made it clear that it would adopt an interventionist approach. Almost immediately, the Panel was faced with a series of dramatic and extremely difficult cases where its authority was openly challenged and denied by certain City institutions. One of the most important sanctions available to the Panel was to refer a case to one of the constituent bodies which supported it with the hope that the relevant body would take appropriate disciplinary proceedings against the individuals involved. This obviously was dependent upon the relevant institution cooperating which in some

[9] See Penrose, "Some aspects of the Development, Criticism and Control of Take-over Bids Since 1945" (1964) Juridical Review 126; De Montmorency, "Take-over Bids" (1963) J.B.L. 246 at 249.

[10] See *The Techniques of Making and Repelling a Take-over Bid,* Chartered Institute of Secretaries, London November 24, 1965 and 109 Sol. J. 946.

[11] Statutory Instrument 1960 No. 216

[12] Among other abuses there was significant evidence of insider trading, see for example, "Too much of a Good Thing" Economist May 13, 1967 at 701, and note the evidence of Charles Clore to the *Jenkins Committee, Minutes of Evidence* at 522, 523 and 533.

[13] Stock Exchange Council, New Release July 19, 1967.

[14] Annual Report 1969 at 4.

cases it did not or did not do so with any alacrity.[15] This prompted the Governor of the Bank of England to issue several press releases in an attempt to cajole the City into more positive support for the Panel. In an open letter to the City, the Governor stated,

> the result... 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.

There was, in Parliament, growing dissatisfaction with the evident failure of the self-regulatory system,[16] it being evident that if the City cannot deal with its own affairs adequately, stronger measures may have to be taken.[17]

The Panel was reorganised and reconstituted under Lord Shawcross and an Appeals Committee was set up under Lord Pearce[18]— representing a determined effort to render it more effective from the enforcement point of view. This was reiterated by the institution of a full-time Executive under a Director General. This has since been strengthened by the addition of a Deputy and two Assistant Director Generals.

The members of the Executive are drawn essentially from practitioners in the securities industry and ancillary areas, primarily appointed on the basis of secondment from the various City institutions, thus ensuring a degree of expertise and practical ability not normally a feature of a regulatory agency of this type.

The success of the Panel's efforts at regulation will inevitably depend on the extent to which the institutions concerned forge together to cooperate with it and in the last resort on the sanctions available to it to coax potential offenders into adherence with its principles or impose appropriate penalties for their infringement. To this end, perhaps the most important development has been the Panel's promulgation of a Statement of Policy drawn up with the support of the various constituent institutions and which was subsequently endorsed by the Board of Trade. Whilst affirming adherence to the principles of self-regulation the Statement stressed the need to

> place beyond doubt the Panel's determination that the voluntary system should both function effectively and command the respect of all those concerned with it.

[15] See E. Stamp and C. Marley, *supra,* at 31-34; R. Spiegelbert, *supra,* at 183-186. On the controversial Pergamon Press Affair, see J. Davies, "An Affair of the City — A Case Study in the Regulation of Take-overs and Mergers" (1973) 36 M.L.R. 457; R. Briston, "The Unacceptable Face" Accountancy, (1973) at 97 and R. Pennington, "Investigations Under the Companies Acts and the Pergamon Affair" 118 Sol. J. 507. It should be noted that the Department of Trade and Industry appointed Inspectors largely on the request of the Panel. See also, J. Latham, *Take-over, The Facts and the Myths of the G.H.G.-A.E.I. Battle,* (Illiffe 1969).

[16] See for example, the President of the Board of Trade, H. Com. Deb. Vol. 772 at 89 and Vol. 773 and 332 and S. Newens M.P., Vol. 779 at 852.

[17] See E. Stamp and C. Marley, *supra* at 40.

[18] On the appellate procedure, see 1970 Annual Report, at 7 and 8, The Statement of Policy, April 1969, at 7 and 8 of the 1976 Code on Take-overs and Mergers.

To achieve this the Panel would, if there were a breach of the Code,

> have recourse to private or to public censure,[19] or in more flagrant cases to further action designed to deprive the offender temporarily or permanently of his ability to practise in the field of takeovers and mergers.

It was also pointed out that the Council of the Stock Exchange had altered their rules to provide that a determination of the Panel in respect of the Code would be automatically accepted as binding by the Council although the disciplinary sanction would be reserved.[20] The Statement continued in its collaborative vein by indicating that in the event of licensed dealers being involved in a violation of the 'letter and spirit of the Code', this infraction could be reported to the Board of Trade with an invitation to the Board to consider an action under the Prevention of Frauds (Investment) Act 1958. The end result could mean the revocation of a licence or exemption — a sanction which would obviously be more effective in situations where mere public reprobation might prove inadequate as in cases of serious breaches of the Code. The Board of Trade had given the Panel an assurance that 'they will take into prompt consideration the facts relevant to the exercise of their powers disclosed in any such report by the Panel.'

Other possible pseudo-sanctions which the Panel could apply were referred to in the Statement. These were the possibility of requesting the Stock Exchange to suspend trading in a particular security or actually delist such or, in transactions requiring Exchange Control permission, the Panel would keep in close contact with the relevant officials in the Bank of England in order to ensure that 'the conditions under which consent is granted are properly observed.'

The underlying philosophy on which the Code is based is that 'to be effective the system cannot be static and inflexible and from time to time its revision will be necessary in the light of experience.'[21] Since the creation of the Panel, there have been to date five editions of the Code.[22] It is not proposed to discuss the Code and its operation in detail[23] but to examine its impact in a particular area of its corn-

[19] 'Professional reputation and goodwill are usually the most valuable assets of those who draw their livelihood from the securities markets'. *Supervision of the Securities Markets,* Capital Markets Committee, Dec. 1974 para. 35. The importance of this sanction and "moral blackmail' was emphasised by a former Director General of the Panel's Executive at the London Conference on Insider Trading at the Portland Hotel, April 3, 1975 and see also Mr. Rodgers, H. Com. Deb. Vol. 867 at 1003.

[20] The recognised associations of securities dealers such as the Association of Stock and Share Dealers have similarly altered their rules to give effect to Panel Decisions. Letter from Mr. H. Londesborough, Secretary, August 19, 1974.

[21] 1969 Annual Report at 11.

[22] The Code currently in effect is the City Code on Take-overs and Mergers 1976.

[23] See M. Weinberg, *Take-overs and Mergers,* (Sweet & Maxwell, 3rd Ed. 1971); P. Davies, *The Regulation of Take-overs and Mergers,* (Sweet & Maxwell, 1976); R. Moon, *Business Mergers and Take-over Bids,* Gee & Sons (4th Ed.); P. Anisman, *Take-over Bid Legislation in Canada — A Comparative Analysis,* (CCH Canadian Ltd., 1974); *Gore-Browne on Companies,* (43rd Ed., Jordans), Chapter 29; R. Pennington, "Take-over Bids in the United Kingdom" 17 Am. J. of Comp. L. 1959; D. Prentice, "Take-over Bids — The City Code on Take-overs and Mergers" 18 McGill L.J. 385.

petence, that of insider trading, which is perhaps a suitable barometer for testing the effect of the Code and the Panel.

The Take-over Panel and the Regulation of Insider Trading

Insider trading is not unlawful in the United Kingdom. The common law does not appear to cast a duty upon corporate fiduciaries to make adequate disclosure of price-sensitive information which they possess when dealing in securities of their company. There is no legislation to fill this void apart from those provisions requiring disclosure of certain insiders' transactions. It is therefore fair to say that the regulation of this abuse is almost solely dependent upon the City Code which is obviously confined to dealing with the problem when it arises within its sphere of competence — in the climate of take-overs and mergers.

To some extent, all the provisions of the Code, to the degree that they aim at achieving a workable level of equality of information, have a bearing on insider trading. However, attention will be focussed on those provisions which relate directly to the problem. The Code makes it clear, in the Introduction, that it 'has not and does not seek to have the force of Law,' but merely represents 'the collective opinion of those professionally concerned in the field of take-overs and mergers on a range of business standards'. Adherence to the Code is the *quid pro quo* for the facility of the securities market. The Code is, therefore, primarily applicable to those who actively engage in the securities industry but

> it will also apply to directors of public companies or persons or groups of persons who seek to gain control... of public companies, and professional advisers ... even where they are not directly affiliated to the bodies who are responsible for the document.[24]

It would at first sight appear that the Panel's jurisdiction encompasses only publicly listed companies. In practical terms, however, it is not so limited as all commercial enterprises at some time or other will have to look to the City institutions for finance. Furthermore, ARIEL[25] has already agreed to require its subscribers and listed companies to strictly observe the Code in its automated over-the-counter market.[26] The City Code itself states that it is

> drafted with listed public companies particularly in mind. Nevertheless, the spirit of the City Code and where appropriate the letter will also apply to take-overs of unlisted public companies. The City Code will not, however, apply to cases where the offeree company is a private company, nor will it normally apply to take-overs of companies which are not resident for exchange control purposes in the United Kingdom.[27]

This has been further elucidated in a Practice Note on Private Companies and Unquoted Public Companies, issued by the Panel,[28] which provides that all public companies, whether listed or not, are required

[24] 1976 Code, at 4.

[25] See J. Leach, "ARIEL — Its Purpose and Future" 34 Investment Analyst 23; and "Interview with J.H.C. Leach" Banker 1974 at 1522.

[26] 1974 Annual Report, Panel on Take-overs and Mergers, at 10 where the Panel stated, 'in particular satisfactory arrangements have been made regarding disclosure of dealings and if necessary investigations into dealings where it would appear that there has been a leakage of information', with ARIEL.

[27] 1976 Code, p. 5.

[28] Practice Note No 1.

to observe the Code and similarly, where the takeover is by a private company of a public company. The Panel, in all cases, has shown itself more concerned with substance than form, the crucial factor being the nature of the offeree company. If a public company is proposing a takeover of a private company the Panel would not expect to be involved unless as a result of the transaction any person or persons acting in concert would come to hold more than 30% of the shares of the public company. Take-overs involving private companies only are outside the operation of the Code. Also, and this was due to a subsequent modification of the Practice Note, where the take-over relates to a foreign company, the code would not usually apply even if such a company may be listed in Britain.

Consistent with the pervading philosophy that equality of treatment should be accorded to all shareholders,[29] General Principle 10 provides that during the course of a takeover or merger, or when such is in contemplation, neither the offeror or offeree, nor their respective advisers are to provide information to some shareholders which is not made available to all shareholders.[30] This does not, however, apply to the furnishing of information, in confidence, to *bona fide* potential offerors by the offeree company or *vice versa.* Nor does it apply to the issue of circulars by members of the Stock Exchange, who are brokers to a participant in the transaction, to their investment clients provided the latter have obtained advance clearing from the Panel.

The Panel is evidently concerned, as far as possible, to prevent situations where the underlying philosophy of equality of treatment is betrayed, for instance in cases where price-sensitive information is disseminated to only a privileged few. To clarify and strengthen General Principle 10 the Panel has issued a Practice Note on the Publication of Information.[31] The Panel indicated in this Note that, provided certain safeguards are observed, it would not preclude corporate managements from holding special briefings for selected shareholders or interest groups. However, such a meeting should not take place until the offer document has been published along with the views of the offeree company and unless all shareholders are sent invitations to the meeting, although in exceptional circumstances the Panel may be prepared to accept a general invitation to shareholders in the press. The press should also be invited to attend such meetings. If at such meetings any material information, previously undisclosed, is made available, this should be immediately circularised to all shareholders though, as an expedience in certain circumstances, such as in the closing stages of the take-over bid, the Panel may require disclosure *via* newspaper advertisements. This mode of communication is, however, not usually to be desired particularly where complex financial

[29] See General Principles *3,* 8 and 9.

[30] This has been reaffirmed in the Joint Statement of the Stock Exchange and the City Panel on Take-overs and Mergers, Announcements of Price-Sensitive Matters, April 14, 1977 and see also the Panel Statement on Johnson & Firth Brown Ltd./Dunford & Elliot Ltd., December 23, 1976, and the unreported decision of the Court of Appeal, *Dunford & Elliot Ltd.* v. *Johnson Firth Brown Ltd.,* (1976 D. No. 2013) (425-429 December 1976) Bar Library (C.A. Civil Div.) December 3, 1976, and B. Rider "Abuse of Insider Information" New L.J. (1977) 830.

[31] See Practice Note 2.

issues are involved, circularisation being far more condusive to such matters. It is not the wish of the Panel to prevent brokers who are associated with participants in a take-over from advising their own clients on the companies involved, but the Practice Note makes it clear that fresh information must not be restricted to a privileged few and, in particular, that information should not include any statements or opinions based upon otherwise unavailable information. In the final analysis, clearance of circulars by the Panel is usually required.

One of the cornerstones of the Code, which to some extent also underlines the Rules and Regulations of the Stock Exchange, is embodied in General Principle 5:

> it must be the object of all the parties to a takeover or merger transaction to use every endeavour to prevent the creation of a false market in the shares of the offeror or offeree company.[32]

Turning to those provisions in the Code which are directly applicable to insider Trading, Rule 7 emphasises 'the vital importance of absolute secrecy before an announcement.' However, under Rule 5, immediately a firm intention to make an offer is communicated to the board,[33] it is necessary to make a disclosure to the shareholders of this fact. Where approaches have been made which might or might not lead to a firm intention to make an offer, as soon as the parties are confident as to the successful outcome of the negotiations a release should be made. Rule 5 further provides that,

> in any situation which might lead to an offer being made... a close watch should be kept on the share market; in the event of an untoward movement in share prices an immediate announcement accompanied by such comment as may be appropriate, should be made.

In April 1977, the Panel and the Stock Exchange sought to reinforce these provisions by publishing a 'Joint Statement on the Announcement of Price-Sensitive Matters.'[34] In this Statement the Panel and the Stock Exchange observed that in their experience, where trading had taken place upon the basis of inside information, it had been by tippees and persons dealing upon the basis of rumours, and not by insiders. Thus, the problem was essentially one of security and confidentiality. Where the number of persons involved was such as to render confidentiality difficult to maintain, the company concerned should make a public announcement. The Joint Statement went further to underline the importance of companies developing internal guidelines and procedures for its employees and executives with regard to the handling of confidential information. Reference was also made to Section 4(g) of the Stock Exchange's Listing Agreement under which listed issuers are obliged to disclose to the Stock Exchange 'any ... information necessary to enable the shareholders and the public to appraise the position of the company and to avoid the establishment of a false market in its securities.' The Stock Exchange also indicated that it would be far more prepared to halt trading temporarily where it was evident that material undisclosed information was in the market.

[32] See Rule 73, Rules and Regulations of the Stock Exchange.

[33] Under Rule 1, 'the offer should be put forward in the first place to the board of the offeree company or to its advisers.'

[34] April 14, 1977.

On the announcement of an offer Rule 8 requires the identity of the offeror, its existing holdings in the offeree or those that it controls, or those owned or controlled by any person in concert with the offeror to be disclosed. Much controversy has centred around the definition of 'acting in concert.'[35] In the 1972 Code, it was simply provided that 'persons acting in concert comprise individuals or companies who actively cooperate to attain a common objective in relation to a take-over or merger transaction.' In the Panel's Statement on Greencoat Properties,[36] it was observed that,

> a subsequently formed, and unsolicited intention to support would not itself be regarded as acting in concert ... although if active and agreed steps were taken to further the proposed attempt to secure control this would evince acting in concert.

In the 1974 Revision the Panel felt that further clarification was desirable and sought to define certain categories of companies and persons who because of their relationship with one another could properly be deemed to have been acting in concert unless the contrary is established.[37] The 1976 Revision provides that

> persons acting in concert comprise persons who, pursuant to an agreement or understanding, whether formal or informal, actively co-operate through the acquisition by any of them of shares in a company, to obtain or consolidate control [38] of that company.

Without prejudice to the generality of the above certain persons would be presumed to be acting in concert unless the opposite is proved. A company, its parent, subsidiaries, sister subsidiaries and associated companies,[39] will be regarded as acting in concert with each other. A company and its directors, the latter including 'persons in accordance with whose instructions the directors or a director are or is accustomed to act, as well as the close relatives and family trusts of such, will be regarded as acting in concert. So also will a financial adviser be considered as acting in concert with his client in relation to the shareholdings of the former and all the funds which the financial adviser manages on a discretionary basis, where the shareholdings of the financial adviser and any of those funds in the client total ten per cent or more of the client's equity share capital.

Rule 12 is similar to General Principle 10 in that it provides that any information, including particulars of shareholding, which is given to a preferred suitor should on request be furnished equally and as promptly to a less welcome but *bona fide* potential offeror. Under Rule 13 in every offer document there should be

> a statement as to whether or not any agreement, arrangement or understanding exists between the offeror or any person acting in concert with it and any of the directors, or recent directors, shareholders, or recent shareholders of the offeree company having anv connection with or dependence upon the offer, and full particulars of any such agreement, arrangement or understanding.[40]

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35 See generally Practice note 8.

36 July 1973.

37 Revised Edition 1974 June, Explanatory Notes, 1.

38 'Control shall be deemed to mean a holding or aggregate holdings of shares carrying 30% or more of the voting rights of a company irrespective of whether the holding or holdings give de facto control'.

39 Ownership or control of 20% of the equity will render companies 'associated'.

40 See also Rule 19 and Practice Note 6.

Furthermore, Rule 17 requires that in the offer document the shareholdings of the offeror in the offeree, and in the case of a share exchange offer, the shareholdings of the directors in the offeror as well as in the offeree be disclosed. Similarly the shareholdings in the offeror where there is an exchange offer and in the offeree company of those persons acting in concert with the offeror, and also the shareholdings in the offeror and offeree of persons who prior to the posting of the offer document have irrevocably committed themselves to accept the offer, and in both instances the names of such persons must be disclosed. In addition, in the offeree company's reply which is compulsory, there must be disclosure of its holdings in the offeror, the shareholdings in the offeree and offeror in which its directors are interested and whether its directors intend to accept or reject the bid. It is also provided that if any of these persons

> has dealt for value in the shares in question during the period commencing 12 months prior to the beginning of the offer period and ending with the latest practicable date prior to the posting of the offer documents, the details including the dates and prices must be stated. If no such deals have been made this fact should be stated.

In Practice Note 9, containing the Panel's Rulings and Interpretations of General Interest, the word 'director' in Rule 17 is interpreted to encompass the director's spouse and infant children. It is also provided that in certain cases where no useful purpose would be served by listing a very large number of transactions, the Panel might in the exercise of its discretion be willing to accept 'some measure of aggregation of dealings... provided that no significant deals are thereby concealed.'[41] The normal practice is to require that all transactions during the last three months be set out individually. In particular, it is also provided that purchases and sales should not be netted and the highest and lowest prices should be stated. In any event, the Panel requires a full list of transactions during the relevant period to be sent to it and another list be made available by the company for public inspection.

Rule 15 of the Code requires that 'shareholders must be put in possession of all the facts necessary for the formation of an informed judgment as to the merits or demerits of an offer.' The Code naturally follows this up by requiring that such information be presented 'to the shareholder early enough to enable him to make a decision in good time.' With regard to the provisions dealing directly with insider trading it is worth noting that the 1976 Code represents a substantial tightening up of the earlier attempts to combat the problem. Rule 30 provides,

> all persons concerned with the consideration and discussion of any proposed offer must treat the information related to the potential offer as secret and must not pass it on to any other person unless it is necessary to do so. Furthermore, such persons must conduct themselves so as to minimise the chances of an accidental leak of information.

Although there was some hint of a rule against insider trading and tipping in the 1974 Code this was not made explicit until the 1976 Revision, in particular the present Rule provides that,

[41] This disclosure device can be useful for detecting unusual trading patterns. For example, in the offer document from Lonrho for London Australian and General Exploration, it appeared that Prince Nasser Sebah Al Ahmed had dealt 57 times in the preceding six months, see Guardian, August 19, 1975.

> no dealings of any kind, including option business in the securities of the offeree company by any person, not being the offeror who is privy to the preliminary take-over or merger discussions or to an intention to make an offer may take place between the time when there is reason to suppose that an approach or an offer is contemplated and the announcement of the approach or offer or the termination of the discussions.[42]

It continues to ban such dealings in securities of the offeror 'except where the proposed offer is not deemed price-sensitive in relation to such securities.'

Without prejudice to the generality of the above, the Code in Rule 30 provides that certain persons shall be regarded as being privy to the inside information, 'assuming he has received the relevant information.' These are, directors and employees of the companies privy to the transaction, a professional adviser, or a director and employee of such, to one of the companies, and those persons who receive the information 'in the context of a confidential relationship and it was necessary that they received such information.' Furthermore, the close relatives and related trusts of such persons would be deemed to be in the same position as these persons.

It should be noted that the offeror is not precluded from acquiring securities in the offeree company during this period of time. It would appear that the Panel considers that where the potential offeror is not in possession of inside information other than its own intentions it should not necessarily be barred from trading.[43] However, in Practice Note 9, the Panel specifically state that this exemption 'does not apply to cases where the offeror would be precluded from dealing under ordinarily accepted standards of business behaviours, for example where the offeror had been supplied by the offeree company with confidential price-sensitive information, during the course of negotiations.' It would seem that many potential offeree companies and their professional advisers will only furnish confidential information to potential offerors on the understanding that it is treated as secret and confidential and this is commonly a contractual obligation.

Where an announcement has been made that the companies are negotiating for a take-over or merger, or that an approach is likely, and the discussions have been terminated or no firm offer made, no

[42] This is the same as Rule 30 of the 1974 Code which was substantially the same as the 1972 Code. The 1969 Code, however, was slightly different, providing in Rule 30,

> 'no dealings of any kind, including option business in the shares of the offeror and offeree companies by any person who is privy to the preliminary take-over or merger discussions or to the intention to make an offer may take place between the time (a) when the initial approach is made or intimated or (b) when there is reason to suppose that an approach or an offer will be made and the announcement of the approach or offer, or of the termination of the discussions as the case may be.'

The word 'person' extends to a company, see 1970 Annual Report at 16.

[43] See D. Prentice, "Take-over Bids—The City Code on Take-overs and Mergers" supra, at 410. This is a matter which has caused the Panel some concern, see for example, the Panel's Statement, 'The Accumulation of Shares Prior to the Making of an Offer' September 18, 1970. The better view in Britain is that mere knowledge of one's own intentions and plans with regard to a particular security cannot be considered inside information although it could when possessed or utilised by another person.

dealings in the securities of the offeree company by the offeror or by any persons or companies privy to the intention to terminate the discussions or the decision not to proceed with the offer may take place prior to the public announcement to that effect, under the terms of Practice Note 9. It is evident that it is not the desire of the Code to unduly fetter the working of the securities market and Rule 31 therefore provides that

> all parties to a takeover or merger transaction, other than to a partial offer, and associates are free to deal subject to daily disclosure to the Stock Exchange and the Panel and the press, not later than twelve noon on the dealing day following that of the relevant transaction, of the total of all shares of any offeror or the offeree company purchased or sold by them or their respective associates for their own account on any day during the offer period in the market or otherwise and at what price.

Furthermore,

> … all purchases and sales of shares of any offeror or the offeree company made by associates for the account of investment clients who are not themselves associates must be similarly reported to the Stock Exchange and to the Panel, but need not be disclosed to the press.[44]

It is not considered practicable to define the term 'associate' precisely in an attempt to cover the different relationships which may exist but the Code does describe the relationship in general terms as including,

> all persons, whether or not acting in concert, who directly or indirectly own or deal in shares of the offeror or offeree company in a takeover or merger transaction and who have, in addition to their normal interests as shareholders, an interest potential or real, whether commercial, financial or personal, in the outcome of the offer.

However, without prejudice to the above, certain persons are normally considered to fall within the definition of associates. They include the offeror or offeree's parent, subsidiaries and sister subsidiaries, and their associated companies, bankers who perform a function other than that of the provision of normal commercial banking services, stock-brokers, financial and other professional advisers to the participants or any associated company, the directors, and their close relatives and family trusts, of such companies, as well as pension funds of the participants and associated companies. An investment company, unit trust or other fund accustomed to act on the instructions of an associate, a company having a material trading arrangement with the participants, and a person holding, or a syndicate formed to acquire, ten per cent of the equity capital will also be considered associates.

As a consequence of the number of enquiries made of the Panel by persons engaged in the securities industry on the question of disclosure of dealings, guidance was given in the form of a Practice Note.[45]

[44] The 1977 Annual Report added a further paragraph to Rule 31 to bring it into line with the amendments introduced in Section 26 of the Companies Act 1976, which lowers the disclosure threshold for substantial shareholders under Section 33 of the Companies Act 1967. The relevant amendment provides,

> '... dealings by any person who is not an associate, in the shares of an offeror or the offeree company during an offer period which would have to be notified to the company by reason of Section 26 of the Companies Act 1976 and Section 33 of the Companies Act 1967 must be disclosed to the Stock Exchange, the Panel and the Press not later than 12 noon on the dealing day following the date of the relevant transaction. The disclosure must name the person dealing and the resultant holding.'

[45] Practice Note 7, formerly Practice Note 5, as amended 1974.

This provides that, in respect of announcements by or on behalf of an associate which are in writing or by telex to the Stock Exchange and which are published on the floor of the Exchange, arrangements have been made for the Stock Exchange to send copies of such announcements to the Panel and the press and it was therefore unnecessary to disclose them individually. Announcements of dealings by an associate on behalf of his investment clients, which are not generally disclosed on the floor of the Stock Exchange would not receive press coverage but a copy of such would be sent to the Panel. Dealings by the participants and also associates may be announced by the person concerned or by an agent. Where there are several agents such as brokers and merchant banks involved, the Practice Note emphasises the need to ensure that clear arrangements have been made as to who bears the responsibility for disclosure.

When the relevant dealings are those of the principals or a person acting in concert with the offeror, the party must be named. Included in this obligation are transactions where the participants or person acting in concert with the offeror directly or indirectly bear the investment risk of the transaction, such as where the person acquiring the shares has the right of a 'put option.' When the dealings are by or on behalf of an associate, other than a person acting in concert with the offeror, it is not generally necessary to name the principal with whom he is associated, unless the associate is one who holds or is a member of a syndicate which holds ten per cent of the equity share capital of the offeree.

The duty of disclosure extends to all 'securities which could have a bearing on the offer',[46] and comprehends the taking or granting of options. It is also made clear that the requirements of Rule 31 extend to dealings in the shares of unlisted public companies. Where there is a contested offer the reference in Rule 31 to 'any offeror' means that dealings by one offeror or his associates in the shares of a rival should be disclosed whether the deals are for associates or investment clients.

It is worth noting that although transactions by associates' investment clients are not disclosed publicly, where the dealings are by associates on behalf of discretionary investment clients, they must be reported as the associates' own transactions and will thus be made available to the press. Continuing on this theme, and of interest from the standpoint of anti-insider trading regulation, Paragraph 5 of the Practice Note provides,

> Stockbrokers, bankers and others who deal in the securities of companies involved in a takeover or merger on behalf of clients have a general duty to ensure, so far as they are able, that the client is aware of the disclosure obligations attaching to associates. However, such persons are not required to establish whether their client is an associate, when the total value of the dealings in any relevant transaction undertaken for that client during the same stock exchange account period is less than £5000.[47]

Of course this does not detract from the duty incumbent upon principals and associates to initiate proper disclosure under Rule 31.

[46] Practice Note 7, paragraph 2(c).
[47] Including stamp duty and commission.

Insider Trading: The Panel's Experience

Having sketched, in outline only, the provisions of the Code and the various Practice Notes, it is proposed to give a clearer picture of the working of the Panel by mentioning, albeit briefly, some of the more important cases where the Panel has actually published Statements after investigating allegations of insider trading. One hastens to point out, however, that the Panel's Statements are not necessarily authoritative as to future cases and there has been a conscious attempt to avoid the creation of a precedent system. It should also be borne in mind that the Panel and its Executive have consistently maintained that the incidence of insider trading is exaggerated, particularly by the media, and in any case the Panel's jurisdiction in respect of insider trading extends only to when it arises in the context of a take-over or merger.

One of the first case that the Panel had to deal with in relation to insider trading was that of Norbury Insulation.[48] This company which was controlled by Woods made a bid for Hayeshaw Lad. Prior to the public announcement, Wiltshire Investments which held the investments of a number of overseas family trusts of which Woods was the settlor and principal beneficiary, made a series of significant purchases through the Earl of Norbury, a stockbroker. When challenged by the Stock Exchange Council the Earl contended, unsuccessfully, that the acquisitions had been made in his own discretion for the investment funds that he managed. Consequently, Lord Norbury was banned from dealing on the Stock Exchange for six months and four of his partners were censured by the Council. Norbury Insulations, on realising that Hayeshaw's earnings were not up to their expectations, sought to withdraw the bid and Woods, through Lord Norbury, managed to 'off load' a considerable amount of stock. However, the Panel refused permission to withdraw the bid and Lord Norbury started purchasing again on behalf of Woods.

In their Statement the Panel observed that 'the profits made by Wilshire were... paid over to Norbury Insulation in March, after our enquiry began'. The directors of Norbury and the broker concerned claimed they had been unaware of the requirements of the Code and had violated Rules 30 and 31 in ignorance. This was rejected out of hand by the Panel which further observed that despite the precise rules in the Code, the transactions were of such a nature that 'according to the ordinary canons of propriety, they ought never to have been undertaken.' It was the view of the Panel that Woods deserved the 'severest censure' for his conduct and subsequent lack of frankness with the Panel. In particular, the Panel doubted whether he was a fit person to be a director of a public company. Consequently, Woods resigned but was re-appointed to the board shortly afterwards.

Another case of some interest was that of D.F. Lyons & Co. Ltd.,[49] a private company conducting business as an investment banker. The company and its associates had been, over a period of time, acquiring the securities of Rowan & Boden Ltd. to such an extent that they had reached the threshold set by the Code so that a general offer to all the shareholders was forthcoming. This offer was persistently put

[48] Statement April 2, 1971; Times, April 3, 1971 and (1971) J.B.L. 142.
[49] Statement October 2, 1972.

off. The Chairman of D.F. Lyons approached Simon & Coates, stock-brokers, and apparently (there was some disagreement as to what actually transpired) D.F. Lyons instructed the brokers to find a purchaser for the securities who would be willing to make a general offer. The Panel accepted that while the offeror is generally entitled to indulge in market transactions unhampered by Rule 30 the position is different if he is privy to 'preliminary' take-over discussions and the intention of a third party to make an offer. The Panel went on to state that,

> so for as his offer was concerned there was no ban on market dealings. The offer, to the preliminary discussion or intentions of which he was privy, was an offer by a third party, which offer, although at the same figure as his own, might in the event be preferred by the market — as indeed it was.

So it was that when Lyons went into the market to acquire securities after this date, they were in violation of Rule 30 which contains an 'absolute prohibition' directed against insider dealings. It was not a pre-requisite for the operation of Rule 30 to show that the disclosure of the plans to the market would have had a substantial impact on the market price or indeed whether anyone was damnified by the conduct of D.F. Lyons. A severe censure was applied to Mr. Lyons, the controller of D.F. Lyons, for his conduct in the present case, the Panel stating that it was their considered opinion that 'it would be contrary to the public interest for Mr. Lyons or his company to be given a licence to deal in securities'[50] and, as if to re-inforce this, the Panel sent a copy of the Statement to the Department of Trade and Industry.[51]

Further violations of Rule 30 were exposed in the case of P.R. Grimshawe & Co. Some 20 per cent of the shares of Grimshawe-Windsor was held by Grimshawe & Co. when it was decided that the two companies should merge. This was to be achieved by Grimshawe-Windsor making an offer for the outstanding securities of P.R. Grimshawe & Co. To avoid contravening the rule against acquiring its own shares, the offeree company decided to allow its 20 per cent holding in the offeror to be the object of a private placement. However, about an eighth of these securities were taken up by insiders of P.R. Grimshawe & Co., who were aware of the impending merger and its effect, when announced, on the price of the company's shares. The Panel 'ordered' the insiders concerned to disgorge their profits to the company, the amount of such being the difference between the placement price and the average market price during the first four days of dealing subsequent to the end of the Stock Exchange's suspension, less the cost which would have been incurred in selling the shares. The sum involved was £47,000. The deterrent effect of the Statement was, however, somewhat negated by the fact that Slater Walker Securities, the merchant bank which had advised the parties involved, felt that it might have been inadvertent and paid the profit bank thus leaving the insiders unscathed in financial terms.

[50] Statement October 2, 1972 at *5.*

[51] See Report of the Department of Trade Inspectors, D. Clarkson Q.C. and K. McKinlay on *Edward Wood & Co. Ltd., Skibben Winton Contruction Ltd.* H.M.S.O. 1977 at 75.

The Panel's Statement on the controversial bid by Eastminster for Grendon Trust, although not directly concerned with insider trading, has occasionally been discussed in this contest. The Panel was criticised by the press for being too soft on certain individuals of some significance in the financial world.[52] It is questionable whether this criticism was justified in view of the fact that the Panel stated that the conduct of at least two Grendon directors was 'open to serious objection' and constituted a 'serious error of judgment'. The conduct in question had, however, nothing to do with insider trading. The Panel did refer to the stock market activities of certain unnamed individuals but declined to comment further partly because of lack of evidence. The press thought that there might have been violations of Rule 30 but this question was left unresolved. The Panel also attracted criticism for not acting more promptly in this affair.[53]

There was an increasing dissatisfaction regarding insider trading and the Panel's ability to deal with the problem. Lord Shawcross had issued a statement in October 1972 indicating his personal view on the matter.[54] He condemned insider trading and emphasised its intrinsically unethical aspect. Referring to the lack of co-operation that the Panel had received in some of its investigations, Lord Shawcross stated,

> in my own view it is the duty of those who wish to ensure fair dealing and orderly markets to give all possible assistance in enquiries of this kind so as to expose those that have betrayed the elementary ethical principles which forbid such 'insider trading'. It is a responsibility of good neighbourliness not to conceal behaviour of this kind and to help in suppressing it — and in creating a strong public opinion hostile to it. That is the best preventive.

The Chairman emphasised that the greatest problem hindering effective regulation of insider trading by the Panel was the 'blank wall' of nominees. He added,

> in future... it is intended in appropriate cases not only to name those who are shown to have been involved in insider dealing but also to publish the names of those, if there are any, who prefer not to help in getting at the truth.

Whilst Lord Shawcross was resolutely against anything resembling a Securities & Exchange Commission, he did express the view that the investigatory powers of the Department of Trade and Industry should be increased. Within a few months of the Chairman's Statement, the Panel in conjunction with the Council of the Stock Exchange published a Statement calling for legislation outlawing insider trading. A stricter approach was evinced by the Panel, and also the Appeal Committee, to insider trading in the case of Mount Charlottee Investment Ltd., and Gale Lister & Co, Ltd.[55] The first stage of intervention by the Panel occurred on the 26th November 1973 when the boards of the two companies had earlier that month announced agreed terms for

[52] Financial Times, October 25, 1973; Times, Telegraph and Financial Times, December 21, 1973 and see Mr. Rodgers M.P. who described the affairs as a 'hideous charade', H. Com. Deb. Vol. 867 at 1003.

[53] See the Statement December 20, 1973. The Financial Times stated 'its report only serves to underline its own lack of teeth'; December 21, 1973.

[54] October 26, 1972, see the Director, December 1972 at 329 endorsing this.

[55] Statements of January 16, 1974 and January 30, 1974; Times, Financial Times and Guardian, January 31, 1974.

a merger and issued a joint statement that P.R. Grimshawe had sold 200,000 Gale Lister securities without the prior knowledge of the board of the latter company. The problem was that P.R. Grimshawe was Gale Lister's financial adviser and had publicly promised support for the merger. The Panel, referring to General Principles 1 and 3, expressed the view that a financial adviser should not deal with his securities in a way different to that which he had advised the shareholders to do. The question arose as to whether P.R. Grimshawe, and in particular Peter Grimshawe the managing director, had behaved improperly. The Panel Executive made considerable efforts to interview Mr. Grimshawe and eventually Grimshawe made a written reply in which he argued that the only rule that he could possibly be accused of violating was Rule 31. This was not accepted by the Panel which thought there had been a violation of General Principle 3. Grimshawe argued that there was a distinction between committing its clients' funds to a particular course as a merchant bank, and the committal of its own funds and referred to the 'Chinese Wall' concept. The Panel rejected this, although endorsing the principle of segregation, and went on to state that both Grimshawe and his bank were deserving of 'grave censure'. This was concurred in by the Appeal Committee where representatives of the merchant bank were anxious to point out that Peter Grimshawe had been removed from all executive functions and attempts were being made to unseat him from his directorships. In view of this, and the fact that the bank had been unaware of the transactions, the Appeal Committee thought that the question of the Bank's licence should not be specifically referred to the Department of Trade. The question of Peter Grimshawe's licence and those of his companies was, however, referred to the Department of Trade.[56]

Within a month of Grimshawe being dismissed as Chairman,[57] he issued a public statement asserting that there had been 'damaging and misleading statements made about him' which he strongly objected to. He argued that 'his personal position' had not been considered by the Appeal Committee, and he had 'suffered the Panel's censure for an offence against the general principles of the Code'. He felt that there had been undue severity in the 'personal nature of the sentence' and was attempting to clear his name by whatever means were available to him.[58]

The Department of Trade intimated to Grimshawe that they were seriously considering refusing to renew his licence as a dealer in securities but on appeal to a Special Tribunal set up by the Department to hear such cases, he was exonerated and it was recommended that his licence be renewed, which in fact it was.[59]

[56] Statement January 30, 1974, 1 and see the Times, Guardian and Financial Times, January 31, 1974 and Investors Chronicle, February 1, 1974 at 365.
[57] Times, Guardian, Financial Times, January 29, 1974, Mr. Grimshawe also 'resigned' under pressure from a number of other companies, see Times February 12, 1974.
[58] Financial Times and Times February 1, 1974, and for the company's statement denying Mr. Grimshawe's authority and emphasising the bad position of the company, see Times and Guardian February 16, 1974.
[59] Times, Guardian, Financial Times, November 23, 1974.

At the same time, Mr. Stephen Watling, who had been a director of Gale Lister, made a public statement that he had suggested to Mr. Grimshawe that the shares should be sold. This was followed by a statement by Grimshawe to the effect that he had been unsuccessful in persuading the Appeal Committee to reopen the case but added that the Department of Trade's Special Tribunal 'had agreed that the Appeal Committee hearing was not an effective appeal'. Mr. Watling also stated that as the Panel had refused to hear him their decision was 'unjustified and unfair'.[60] The end result left Mr. Grimshawe satisfied that he had cleared his name and could now 'get on with... new businesses ...'[61] — hardly an attestation of the Panel's effectiveness. Within 13 months Dr. Grimshawe was, *inter alia,* Chairman of the Pennine Motor Group.

Of particular interest is the Panel's confrontation with insider trading in the Boots and House of Fraser take-over.[62] On the 13th November, 1973 the Panel requested the Stock Exchange to carry out an investigation into dealings in the shares of the House of Fraser, prior to a public announcement of an offer by Boots for the shares of the House of Fraser.[63] The investigations revealed 'a number of transactions which appeared to be significant.' Amongst them were purchases by Mr. A.I. Loffat, a director of the House of Fraser; Sir Robert Hobert, the personal assistant of Sir Hugh Fraser; and 'in addition a past employee of the House of Fraser Group was seen to have dealt very heavily, together with a number of other persons connected in various ways with the company'.[64] Both Mr. Moffat and Sir Robert denied having advance knowledge of the impending bid. Among other transactions examined were those of Sir Hugh Fraser and his family trusts. As these were sale transactions, and thus presumably against the current of the proposed take-over, the Panel took the view that 'although constituting a technical breach of Rule 30' they were 'not significant in the context of the enquiry.' This approach has been criticised on the ground that it appears over-generous to and understanding of the 'big names' in the City.

The Panel concluded that from its 'enquiries it is clear that Boots had maintained complete security throughout the negotiations' but. in view of the close connection between the company and many of the purchasers, the same could not be said of the House of Fraser. Whilst it was not possible to positively identify the source of the leak, it appeared certain that there had in fact been a leak of an impending bid though the potential offeror had not been ascertained,[65] The Panel emphasised that,

> there is not sufficient evidence to suggest that anyone was guilty of insider trading as defined in the Code, but there are strong grounds for concluding that the House of Fraser did not adequately observe the

[60] Times, Guardian and Financial Times. November 23, 1974.
[81] Financial Times, November 23, 1974.
[62] Statement July 23, 1974.
[63] Financial Times and Times, November 14, 1973, Mr. Milne M.P. asked the Minister for Trade to institute an inquiry but Sir Geoffrey Howe stated that the matter was already being dealt with adequately by the City, H. Com. Deb. November 7, 1973 at 993.
[64] Statement July 23, 1974.
[65] Statement July 23, 1974, at 3 and see the Daily Mail, Times and Financial Times July 24, 1974.

> strict requirements of Rule 7 of the Code which stresses the need for complete secrecy during bid negotiations.[66]

Furthermore, the Panel considered that,

> the propriety of dealings by directors or close associates of directors of a company in the shares of the company at a time when it is known that the Chairman is seeking a purchaser for his holdings and that negotiations affecting the future of the company may take place, is open to question.[67]

In the case of Dexion-Comino International Ltd.[68] the Panel were able to establish insider trading in the securities of that company. The Stock Exchange conducted an investigation into dealings immediately preceding the announcement of an agreed bid between Dexion and Interlake Inc., and notified its findings to the Panel. It was found that three days prior to the announcement, Mr. J.S. McKerchar, a Magistrate and of some standing in the City, visited Kleinwort Benson Ltd. (Dexion's advisers) to discuss a possible directorship on the board of Dexion. He was informed that the position had changed as Dexion had received an offer. He was given no other details and the communication was made in such circumstances that, as Mr. McKerchar admitted, there was a clear duty of confidentiality. Later on that day, on seeking information from his brokers as to the market in Dexion's securities, McKerchar was told that there were fluctuations due to rumours that a public offer was in the offing. Without imparting any information to the brokers, McKerchar instructed them to buy, for his own account, 20,000 ordinary shares in Dexion to be held for a week before resale. This was done and in fact the shares were sold three days after the public announcement, a substantial profit being made.

On discovering that the Panel and the Stock Exchange were investigating share activity surrounding Dexion, Mr. McKerchar wrote to Kleinwort Benson Ltd,, explaining the circumstances of his dealing and claimed that in view of the sharp rise in the price of the securities he had thought that the likelihood of an offer was common knowledge. In view of his mistake he made assurances that he would give the profit made to charity.[69] The Panel regarded that there had been a clear violation of Rule 30 as 'even if there were rumours that a bid was to be made, Mr. McKerchar knew that the rumours were in fact true' as he was an insider and 'in a better position than other investors who had at most heard rumours.' The Panel reprimanded him and endorsed his donation of £2000 to a charity approved by the Panel acknowledging that he had entered into the transaction 'without giving serious thought... to the grave implications under the City Code' and had come forward on hearing about the investigation.

Another instance of a specific finding of insider trading by ascertained individuals was the public offer by Hewden-Stuart Plant Ltd. for A. Gunn (Holdings) Ltd.[70] Both the Panel and the Stock

[66] Statement July 23, 1974. Sir Hugh Fraser declined to make any comment on the Panel's Statement at the annual general meeting of the House of Fraser, Financial Times July 26, 1974.
[67] Statement July 23, at 3.
[68] Statement April 25, 1975.
[69] Statement April 25, 1975, at 2.
[70] Statement February 11, 1976, Times, Guardian and Financial Times February 12, 1976.

Exchange initiated investigations following dramatic price movements prior to the announcement of an offer. On Sunday 8th June, 1976, certain directors of A. Gunn (Holdings) Ltd. were meeting to discuss the proposed merger. Mr. Gunn, the joint managing director, was due at a wedding later on in the afternoon and when it became apparent that he would have to forego the ceremony he telephoned his host, Mr. S.S. Ordman, to inform him of this profferring the explanation that he was involved in merger discussions. That evening, Ordman instructed his stockbroker to acquire 5000 of Gunn shares on his account. The Panel was of the opinion that Mr. Gunn had behaved 'indiscreetly' and reprimanded him for failing to observe Rule 7. Regarding Mr. Ordman, the Panel indicated its disapproval of his actions in that although he was not in any way connected with Gunn or the proposed offer for Gunn and so could not fall within Rule 30, he 'knew or ought to have known that he received the information in confidence and that it was not to be acted on.'

Perhaps one of the most disturbing and controversial cases that the Panel has had to deal with has been that of alleged insider trading in the securities of Seafield Amalgamated Rubber Company Ltd., by certain executives of Sime Darby Holdings Ltd.[71] The Panel found itself confronted by a matter that it had first examined five years previously due to new evidence provided by the Singapore Authorities. In the autumn of 1971, the Panel had investigated dealings in Seafield, immediately prior to a public offer by Sime Darby and discovered that Mr. A.W. Scott, a director of Sime Darby and Chairman of R.G. Shaw & Company Ltd. had been involved in an acquisition of 10,000 Seafield shares in the name of his secretary. He admitted that he had been aware of the impending offer but the purchases had been made in error and he had ordered the transaction to be recorded in his secretary's name in an attempt to avoid embarrassment. R.G. Shaw & Company had paid for the shares and had debited Sime Darby. When the Panel Executive wrote to Scott alleging that he had dealt as an insider in contravention of Rule 30, he claimed that the Panel had misunderstood his position and that as soon as the purchase had been made he consulted Mr. Pinder, the Chairman of Sime Darby, who had found an independent buyer for the securities in Singapore with the result that Sime Darby had not been the beneficial owner of the shares and thus there had been no violation of Rules 17 and 31. This assertion of Mr. Scott that the relevant shares had been immediately sold to someone unconnected with Sime Darby was subsequently corroborated by Mr. Pinder but the Panel nevertheless had doubts about the conduct of Scott in first acquiring the shares.

Mr. Pinder was arrested and subsequently convicted of criminal breach of trust in Singapore, and sentenced to 18 months' imprisonment. At the time of his arrest, documents and tapes seized by the police established that Pinder had not been consulted, nor had he arranged for the sale to an uninterested party as was alleged by Scott and himself, and indeed their statements and the evidence which they produced for the Panel had been wilfully fabricated.

[71] Statement July 27, 1976.

In view of the passage of time and with it the 'succession of subsidiaries and associated companies' which occurred, it was almost impossible to unravel the details of the deception though it was certain that the shares remained in the name of Scott's secretary for several months. The Panel requested both Scott and Mr. Edwards, an executive director of Sime Darby, privy to the fabrications to a certain extent, to appear before it to explain the violations of Rules 17, 30 and 31. The former refused but Mr. Edwards was able to appear although he found it difficult to recollect exactly what had transpired.

The Panel concluded that Scott had clearly violated Rule 30 in that details of the transaction should have been included in the offer documents, and that Scott, Pinder and Edwards had deliberately fabricated evidence with the intention of misleading the Panel. The Panel went on to state that Scott 'deserves censure in the severest terms and has shown himself to be unfit to be a director of public companies.' Although Edwards appeared to have been dominated by Pinder, the Panel felt that his conduct was also deserving of criticism.

There was also criticism levelled at Mr. James Joll, a director of N.M. Rothschild & Sons, for his part in the drama. Rothschild had acted for Sime Darby during the relevant period, Mr. Joll being the adviser of the participants in the public offer by Sime Darby. The Panel had doubts about the truthfulness of the replies to their enquiries regarding the share transaction and emphasised that it,

> has always expected the utmost candour and full disclosure from those who are involved in its work and appear before it. This general obligation applies with special force to those who actively engage in the securities market in the United Kingdom.

It followed that,

> ... Mr. Joll showed, not simply a serious error of judgement, but a failure to observe the standard of conduct we have set out... in not drawing the attention of the Panel to the unsatisfactory position as he know it... he failed to observe the standards of frankness and complete disclosure to the Panel and its executive which is required from all, and particularly from organisations, such as the house of which he is a director which sponsor and support the Panel.

It was the Panel's opinion that Mr. Joll's conduct was deserving of censure although it was made clear that no blame attached to Rothschild generally. In reply to this N.M. Rothschild immediately issued a general statement which emphasised that they wished to 'affirm their complete confidence in the integrity and professional competence of Mr. Joll and Panel's findings have not caused them to change their view.'[72] They also referred to a report which they had received from an independent internal committee of inquiry that they had commissioned, consisting of Lord Goodman. Sir Ronald Leach, Leonard Hoffman and three directors of Rothschild, which had stated that 'notwithstanding an error of judgement five years ago, which he acknowledged, Mr. Joll was deserving of the bank's full support and confidence.' The Statement added,

> Rothschild also consider that a merchant bank's duty as now formulated by the Panel, to reveal to the Panel any doubts or disquiet he may have

[72] Financial Times, Times and Guardian July 31, 1976.

> about his client and to acknowledge this duty over-rides any duty to the client, is capable of giving rise to practical difficulties. These deserve consideration and discussion among those responsible for the working of the City Panel.

Lord Shawcross was reported in the press as asserting that it had never been questioned that those appearing before the Panel 'should show complete frankness and candour' and he opposed the questioning of the Panel's total authority by Rothschild. Indeed, Lord Shawcross felt it to be fundamental that professional persons who recognised the jurisdiction of a tribunal should not indulge in inaction whilst their clients deliberately misled the tribunal. The Panel also regarded, with disquiet, the action of Rothschild in initiating such a high powered internal investigation as attempting to 'overshadow' and possibly 'outrank' the Panel's own investigation.

Another recent case which has stirred up a considerable degree of controversey in the City is that involving Dunford & Elliot Ltd., (D&E) and Johnston & Firth Brown Ltd., (JFB). The latter company had been considering making a public offer for D&E knowing that it was in financial difficulties. The Chairman of JFB wrote to his opposite number in D&E expressing concern that D&E were holding talks with the National Enterprise Board and intimating that it would be preferable for D&E to deal with JFB. The board of JFB decided that the best course of action was to make a public offer for D&E although certain of its shareholders were worried about the implications that a financial collapse of the target would have on the group.

D & E's board met with the company's institutional investors which were led by Prudential Assurance Company which represents a 43% holding in D&E. At the meeting the directors furnished the institutions with two documents containing highly priced sensitive earnings estimates on the understanding that they were to be accorded strict confidentiality and to be used by the institutions solely in their capacity as underwriters of a potential rights issue by D & E. However, Mr. D. Sirkett, the deputy investment manager of the Prudential approached the board of JFB with a view to their participating in the underwriting — a step which the Bank of England apparently encouraged — and in so doing disclosed the contents of the two confidential documents to the General Manager of JFB, Mr. Ling. There was no doubt that Prudential Assurance were aware that JFB were interested in acquiring D&E. The board of D & E, on being informed that JFB would be participating in the underwriting, became worried as to whether Prudential had 'leaked' the information contained in the confidential documents and commenced enquiries. It appeared that Prudential was less than helpful although it did admit that access had been accorded to the potential offeror. D&E insisted that JFB should not be allowed to participate as underwriters and so, with this option closed, the board of JFB decided to make a public offer for D&E. Morgan Grenfell, the advisers to D&E, approached the Panel to request that Lazards be prohibited from dealing on behalf of JFB on the grounds that JFB were in possession of price-sensitive information in violation of Rule 30. Before the Panel came to a decision, however,

[73] For a fuller discussion of this case see B. Rider, "The Abuse of Inside Information" New L.J. (1977) 830.

D & E issued a writ seeking an injunction to restrain JFB from proceeding with its bid due to the fact that it had possession of material confidential information. Mocatta J., hearing the case in Chambers, granted a temporary order.[74] On appeal to the Court of Appeal, the temporary restraining order was discharged primarily on the ground that the information, having been disclosed to some 43% of the shareholders and seemingly used by D & E's directors for their personal trading could not be said to be confidential. The Court also expressed concern, *obiter,* about the widespread practice of disclosing inside information to potential underwriters and subunderwriters who were also at the same time substantial shareholders in the corporate issuer. This was left open with the indication that this would be a legitimate matter for the City to examine.

From the Court hearing it became apparent that the Panel had written to Lazards the day after D&E had issued their writ to the effect that, but for the writ and 'subject to any significant new arguments' that Morgan Grenfell might present, they would allow the bid to proceed.[75] After the Court of Appeal's decision the Panel issued a Statement lifting its ban and affirming that there would be 'no detriment' to the shareholders of D&E if the bid continued.[76] As the Panel had previously indicated, it later published a reasoned Statement on the question of confidential information.[77] Although the Stock Exchange's listing requirements and also the Code prohibit the provision of privileged information to outsiders the Panel thought that in the circumstances Morgan Grenfell and D&E were justified in giving the institutional investors the information in question on a confidential basis. The Panel acknowledge that this was an area fraught with difficulties and ought to be examined by the Stock Exchange and the City institutions.

The conduct of the Prudential in passing on the information to JFB without consulting or seeking the permission of D & E or Morgan Grenfell was heavily criticised by the Panel although it considered that this was an 'error of judgment' that the Prudential is 'not... likely to repeat'. However, the Panel took the view that the conduct of the Prudential was not *mala fide* but the Prudential were probably acting in what they considered was in the interest of the shareholders of D&E and, to some extent, the public. No mention was made of the Bank of England's involvement although there was an acknowledgement that the institutional shareholders were acting 'under severe pressure of time' anxious to find a private sector solution to D & E's financial problems.

In the last resort the Panel found it 'difficult to accept that the possession of this information might not have assisted JFB in reaching its decision to make a bid.' There was, however, no real criticism of JFB's action and it was noted that the company only went ahead with the offer once D&E had refused to allow it to participate in the underwriting. There was some indication that the Panel had

[74] November 30, 1976.
[76] Financial Times December 6, 1976.
[76] Statement December 6, 1976.
[77] Statement December 23, 1976.

certain reservations about the case which it emphasised was one involving special circumstances.[78]

It is possible, from the brief review of some of the cases which the Panel has had to deal with, to evaluate the effectiveness of the sanctions available to it.[79] By far the most important is that of publicity and the disgrace and loss of reputation which must ensue such disclosure. However, as a sanction, disclosure may be a blunt instrument and it is not possible to gauge the extent to which it is effective. Indeed, it could be counter-productive in that there is a risk, particularly in instances where the person who is the object of the criticism is in a position to launch a self-vindication campaign as has been done recently, that public opinion may be turned against the regulatory authority making the initial disclosure.

The threat of public censure has been used by the Panel to persuade certain offenders to pay profits made through share transactions charities. Whilst commendable, there are certain objections to it in practice. Firstly, there is the tax advantage enjoyed by those making charitable gifts. Secondly, there is the degree of public esteem which is accorded those who make such gifts and finally, this in no way helps those investors who may have suffered financially from the violation of the Code.

In many cases the Panel has been willing to refer cases to its constituent self-regulatory authorities for action. Certainly today the Panel can legitimately expect close co-operation from these and other associated bodies although this has not always been the case. The sanctions applied by these bodies are of a professional disciplinary nature and are thus confined to those persons owing professional allegiance to them. Occasionally the Panel refer cases to the Department of Trade usually in connection with the suitability of a person for a licence to deal in securities under the Prevention of Fraud (Investments) Act 1958. In some cases the Department has appointed inspectors, *inter alia,* on the recommendation of the Panel.

Listed companies have had their quotation suspended by the Stock Exchange on a number of occasions and recently the Panel and

[78] This is obviously an area which requires further attention and one where firmer guidelines would be of considerable benefit.

[79] For a very interesting example of the Panel's attempt to deal with some of the problems it encounters see ultra Electronic Holdings Ltd., September 22, 1977 where the Panel named and condemned a fund manager for dealing personally using inside information acquired in his position of substantial shareholder through the fund in a company and also the Appeal Committee's Statement October 7, 1977. Less successful attempts to detect insider trading by identifiable individuals exist in the Panel's Statements on George Kent Ltd., February 7, 1975; Miles Druce, January 9, 1974; Contractors Services Grays Ltd., Gallaher Ltd., John M. Henderson Ltd., Midland Aluminium Ltd., Penreula Investment Ltd., Statement August 11, 1975; British Steel Corporation and Lye Trading Co. Ltd., Statement September 18, 1974; F.M.C. Ltd. and Henry Foster Building Products Ltd., Statement September 30, 1975; Coley-Rotolin Group Ltd., Statement February 14, 1975; The Dickinson Robinson Group Ltd., and Royal Sovereign Group Ltd. Statement June 20, 1977. The Panel has received requests to examine dealings by companies, for example, that of M.Y.H. Ltd. with regard to the bid by Croda, Financial Times June 3, 1975 and for the Panel's refusal see Financial Times June 6, 1975 and Statements June 8 and 18, 1975.

the Stock Exchange have asserted that this expedient will be used more commonly in the context of take-over operations and announcements of price-sensitive information. It would be inaccurate to describe this as a sanction as more often than not as suspension will be imposed at the request of the company itself. However, suspension or the threat thereof can be used in certain circumstances as a sanction although it has the inevitable consequence of punishing the innocent as well as the guilty. Delisting is also a possible sanction although it is difficult to envisage the circumstances which would justify such a drastic action.

Market Surveillance and Investigation

The City Panel on Take-overs and Mergers does not operate a market surveillance programme specifically for the detection of insider trading. When a take-over bid is imminent the Panel instructs the participants and their advisers to keep a watchful eye on the stock market[80] and naturally the press can be relied on to alert the public to any suspicious dealings.[81] If there is an allegation of improper trading or if the Panel becomes suspicious the Executive might review any recent price movements. The market surveillance which the Stock Exchange operates is rudimentary. Indeed, prior to 1974 scant, if any, attention was given to market surveillance for the purposes of anti-insider trading regulation.[82] In 1975, the Stock Exchange stated that

> the people who carry out the equivalent of the stock watch system here in London work wholly either from our market display system, which shows price movements in 700 leading securities,[83] or from material gathered by our Official List Department which compiles the official record which is published daily.[84]

In view of the traditional jobbing system which obtains in Britain there exists no consolidated transaction tape on par with most developed securities markets throughout the world, and indeed, no real possibility of such being introduced.[85] In fact, marking of bargains which is the basis of the Official Record is still voluntary. However, in the climate of the current debate on the adequacy of self-regulation there is an increasing awareness in the City that the existing scheme of market surveillance is inadequate and considerable thought and research is currently being given to the problem of improving the present procedures and introducing a more efficient scheme.

[80] See, for example, the Guardian June 17, 1976.

[81] See Manchester Liners, Investors Chronicle August 30, 1974; Bovis, Investors Chronicle, December 28, 1973 at 1370; Deyer Peacock, Investors Chronicle, June 14, 1974 at 1317; Newman Industries, Investors Chronicle, August 16, 1974 at 527.

[82] The Stock Exchange has, of course, always been concerned to maintain an orderly market but this is somewhat different from the operation of a stock watch programme on the lines of most North American stock exchanges.

[83] This information is based upon periodic reports of jobbers bid and ask prices.

[84] Letter to B. Rider from the Head of the Public Relations Department, March 14, 1975.

[85] Jobbers, with some justification, consider that it would be impossible to operate in a market where transaction prices were instantaneously made publicly available as their positions would be undermined.

Where there appears to have been improper trading the normal procedure is for the Stock Exchange to appoint an ad hoc investigation committee. This practice has a considerable history, for instance one was appointed in 1810 to investigate 'the treachery of John Hemming, late Secretary … to the London Stock Exchange.' A similar committee was appointed to investigate dealings in the de Berenger affair.[86] The Stock Exchange may be made aware of improper trading by a variety of individuals and organisations such as company managements, the Panel, the financial institutions and, in particular, jobbers and brokers. Where a complaint is forthcoming from an outsider, there will be a preliminary investigation involving consultation with the relevant jobbers. The decision to appoint an investigation committee is totally discretionary. It must be emphasised that the Stock Exchange is an entirely private institution, owing very limited public duties recognised by law. The Investigation Committee are ad hoc and its members, usually numbering two to four, are drawn from members of the Stock Exchange or occasionally the officers of that institution. A senior staff member of the Membership Department will normally act as secretary to the Committee. The Committees are operative on a part-time basis, service thereon being unpaid. Until recently, members of the general public were never interviewed and although cooperation and assistance was expected from those practising in the securities industry direct evidence was usually only obtained from members of the Stock Exchange, Lists of transactions would be obtained from the jobbers from which it would be possible to identify the relevant brokers. The brokers would then be approached for details as to their clients and their transactions. Under Rule 15 of the Stock Exchange Rules and Regulations, all members of the Stock Exchange are under an obligation to attend upon the Council and its committees and give such information as may be in their possession relative to any matter under investigation.'[87] Of course, where nominees are involved both the broker and the Stock Exchange are likely to face considerable problems.[88] Next the Committee consult the jobbers and the brokers to ascertain the exact timing of such transactions and how they were initiated. It is obvious that much will depend upon the recollection of the particular individual. The Committee's report will then be submitted to the Council of the Stock Exchange which, in appropriate cases, will pass a copy to the City Panel on Take-overs and Mergers. If there are suspicious dealings by persons who the Stock Exchange cannot relate to the company, details of such transactions may be sent to the Chairman of the company in question.

In view of the possibility of libel actions, the exposition of brokers to actions by their clients for breach of confidence has not been made generally available. Since 1974, however, the Stock Exchange, in an attempt to take a stronger line in cases of insider trading, has made it clear that its investigations and their results would attract a greater degree of publicity in future. Certainly, in the ensuing period the Stock Exchange has been far more open in announcing the initiation

[86] A. Jenkins, *The Stock Exchange Story,* Heinemann at 57.

[87] The Stock Exchange suspended R. Clarke for two years and publicly censured him in April 1974 for failure to disclose the identity of a client when requested to do so by the Council of the Stock Exchange and the Panel.

[88] This has been somewhat alleviated by the Companies Act 1976.

of investigations but few reports have actually been published,[89] and the majority of investigations would appear to be either inconclusive or in fact show no identifiable insider activity.

The Panel and its Executive are to a large extent dependent upon the ability of the Stock Exchange and its investigation committees to provide them with a detailed reconstruction of the market and the identity of those trading therein. On the basis of the Stock Exchange's report the Executive may invite the relevant stockbroker to bring their client before them or the Panel. This is only done in a minority of cases. The Panel's own inquiries have been frustrated by nominees and in some cases by lack of cooperation and it has had to contend with situations almost devoid of rational assessment.[90] The presence of legal advisers in interviews before the Panel and Executive is discouraged although permission will usually be granted for a person to be accompanied, as opposed to be represented, by his lawyer. The Panel, unlike the Stock Exchange, has been far less concerned with the problem of libel although it does maintain a hefty indemnity insurance cover and has been much more prepared to publicise its finding.

The Adequacy of Self-Regulation

It is questionable whether it would be fair to judge the present structure of self-regulation in the British Securities industry by the performance of the City Panel on Take-overs and Mergers. Certainly the Panel has proved to be the best example of self-regulation at work in an admittedly difficult area of regulation. In tackling the problem of insider trading the Panel has exemplified the strength and weakness of the regulatory scheme. There is the virtue of flexibility, which is often advanced as one of the best features of the self-regulatory approach, but this is to some extent offset by evidential problems and the absence of any direct calculable sanction. In fact, both the City Panel and the Stock Exchange have acknowledged the deficiencies of self regulation in this respect and in a joint statement published in February 1973 called for insider trading to be outlawed by legislation and for investigatory and enforcement powers to be vested in the police.[91]

There is increasingly the feeling that the Panel and the Stock Exchange's performance in respect of insider trading is not an adequate substitute for legal regulation but something more is required. On the other hand, the climate of opinion does not appear to favour the instigation of a fully fledged Government organ on the lines of the American Securities Exchange Commission. It has been argued that what is required, and possibly what would be more acceptable to the British palate, is the creation of a statutory Securities Industry Corn-

[89] See Statement by the Special Committee of the Stock Exchange on Scottish and Universal Investments Ltd., November 30, 1976 and that on the offer by F.H. Lloyd Ltd., for Colely-Rotolin Group Ltd., Notice, November 4, 1974.
[90] In one case, the Panel appeared to be dealing with a 'clairvoyant chartist'. The Executive decided to 'gloss over the whole thing' as the true story seemed so improbable that no one would believe it. I. Fraser, (Director General), "The Cases for the Voluntary System" 2 Journal of Business Finance 14, at 19.
[91] See Statement on Insider Dealing, February 2, 1973.

mission combining legal powers of investigation and regulation with the present self-regulatory scheme — the latter maintaining its current role but operating as delegates of the Commission which would act in a general supervisory capacity.[92]

In October 1976 the Government set up a Committee of Inquiry under the chairmanship of Sir Harold Wilson to examine the functioning and supervision of the British capital market. The Secretary of State for Trade has established a joint review committee of officers from the Department of Trade and Bank of England whose brief is to keep a constant watch over the present system of regulation applying to the securities industry.[93] Specific legislation on insider trading has also been promised in the very near future. The City itself, in what could be considered a last attempt to stave off a full-blooded Securities & Exchange Commission, has also made considerable efforts to tighten up its self-regulatory control. Some mention has already been made of these efforts in respect of insider trading and the Stock Exchange is currently drawing up rules of conduct in relation to price-sensitive information for directors of listed companies and its own members. The Accountancy profession, after a considerable degree of public criticism, is also attempting to re-constitute its self-regulatory authority and improve its own surveillance and disciplinary procedures.[94] Undoubtedly the most dramatic move has been the adoption by the City institutions of the main recommendations of the Director-General of the Take-over Panel's Executive and the Deputy Chief Executive of the Stock Exchange,[95] in their confidential report on the regulation of the securities industry. Basically, this would involve the establishment of a new authority — a Council for the Securities Industry to oversee and assume general responsibility for the present scheme of self-regulation. This body would be entirely non-statutory and possess no legal powers. The City Panel on Take-overs and Mergers would continue to function as part of this authority as would the regulatory aspects of the Stock Exchange. How much further its jurisdiction should extend is a matter of some controversy. Some sectors of the City would probably prefer to see a very wide ranging authority encompassing even the commodity markets. On the other hand it makes sense not to be over ambitious at the outset but to adopt a more pragmatic approach. It would appear that the Council will be constituted in much the same way as the City Panel on Take-overs and Mergers, except that it is likely that there will be representation of interests outside the City.

Although any opportunity which the City has to attempt to vindicate the many unfounded attacks that have been made upon it is welcome, there is little doubt that in practice the new authority will

[92] B. Rider and E. Hew "The Regulation of Corporation and Securities Laws — The Beginning of the Real Debate" (1977) 19 Mal. L.R. 144 and see also 'A *Companies Commission'* Justice, October 1974. Also B. Rider and E. Hew, "The Structure of Regulation and Supervision in the Field of Corporation and Securities Laws in Britain" 2 (1977) Revue de la Banque 83.

[93] See on this B. Rider and E. Hew, 2 (1977) Revue de la Banque 83 at 104 *et seq.*

[94] At present a Committee is sitting under Lord Cross charged with the making of recommendations on 'Professional Discipline for Public Accountants'.

[95] Mr. D. MacDonald and Mr. G. Knight, see Margaret Reid, 'The City plans its own Police', Financial Times, July 5, 1977.

be reduced to nothing more than a glorified liaison office between the Panel and the Quotations Department of the Stock Exchange. It has been suggested that the Council will possess a small Executive who could 'keep an eye open' for insider trading but surely something more than this is required. Certainly proper attention must be given to the development of a meaningful system of market surveillance. The amount of respect which the new body engenders will depend largely upon the calibre of persons that it is able to attract to its small Executive and the guidance it is capable of giving to the industry on a number of problem areas. The probable involvement of the Bank of England and, in particular, the possible appointment of a former Governor of the Bank to the Chairmanship of the Council will no doubt be a considerable advantage.

In the long term, however, it is likely that necessity will breed an authority which has legal backing and thus more effective sanctions. Even with the proposed Council for the Securities Industry, regulation and authority is far too fragmented with the inevitable result that there is duplication of effort on the one hand and, due to the lack of co-ordination and delineation of responsibility, there are areas which do not receive sufficient attention.[96] It is worth noting that no country that has looked seriously at the problem of regulation of its securities markets has yet been able to reject, in the final analysis, some form of centralised authority possessed of legal powers. Granted the experience and learning of the United States of America, Canada and Australia are to a large extent inapplicable to the British situation largely due to geographical and jurisdictional considerations but the experience of France, Belgium, Italy, Singapore and Hong Kong should not go unheeded.[97] Having said this the mere creation of such an authority is no panacea and it would be misguided to turn away from the substantial advantages of the present system without a determined effort to improve its working, ideally by supporting it in certain areas, such as insider trading, by specific legislation.

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[96] See B. Rider and E. Hew *supra* at note 92.

[97] See generally, B. Rider, "The Regulation of Insider Trading in Hong Kong" (1975) 17 Mal. L.R. 310 and (1976) 18 Mal. L.R. 157; B. Rider, "The Regulation of Insider Trading in the Republic of South Africa" 94 (1977) S.A.L.J. 437; B. Rider and H. Leigh French "The Regulation of Insider Trading in France" 26 I.C.L.Q. 619.

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