NOTES ON AMALGAMATIONS OF BRITISH BUSINESSES

The enclosed Notes have been prepared, at the suggestion of the Governor of the Bank of England, by the Executive Committee of the Issuing Houses Association in co-operation with the Accepting Houses Committee, the Association of Investment Trusts, the British Insurance Association, the Committee of London Clearing Bankers and The Stock Exchange, London.

NOTES

ON

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Amalgamations and acquisitions have been a feature of commerce since its earliest beginnings and in fact most large British companies have grown to their present size in this way. Amalgamations commonly arise out of natural business associations and some of the reasons which have led to them are :—

(*a*) The desire to achieve the economies of optimum size or to put to better use the physical assets and personnel available ;

(*b*) The need to rationalise, particularly in times of depression or of acute competition ;

(*c*) The desire of owners of private businesses to provide in their lifetime for funds to meet the estate duties payable on their death.

The form which amalgamations and acquisitions have taken has depended on circumstances, but it has commonly involved the acquisition of shares in a company in exchange for cash or for shares in another existing company or in a newly-formed holding company.

Since the 1939-45 war the process of amalgamation has been stimulated by a combination of abnormal circumstances, particularly the rapid fall in the value of money, the high level of taxation and distortion of normal economic factors through Government action. These have tended to make amalgamation and acquisition more than usually attractive since share prices in a number of instances (particularly where property values have been involved) have failed to reflect the current value of a company's underlying assets.

The process is a natural one and, since it is generally based on the best utilisation of physical capacity, managerial experience and available labour, it has almost always proved to be in the national interest. Indeed, no industrial community could thrive without such a process and it is therefore important that it should continue and should not be artificially impeded.

Most frequently amalgamations take place with little public comment, since, before the event is announced, the Boards of the companies concerned have had discussions and, often with the help of professional advisers, have drawn up and agreed their proposals, so that the terms of the amalgamation are received by the shareholders of each company simultaneously in the form of recommendations from their Boards, and the shareholders accept them as being in their best interests.

Cases have occurred, however, in which the Board of a company making an offer has not sought the agreement of the Board of the company which it wished to acquire, or, having sought it, has failed to obtain it. An offer made in these circumstances is made in the face of opposition from the Board of the company in question. Cases have also occurred in which competing offers for the same company have been made simultaneously by two or more offerors. These cases are often attended by undue publicity.

The organisations which have prepared these Notes feel that it is useful to draw up a general guide to the principles and practices to be followed in such operations. It is realised that circumstances can differ so greatly that no completely comprehensive code applicable to all cases is possible, but the following is set out in the belief that it will be of use to those concerned in the majority of cases that emerge :—

PRINCIPLES

(i) There should be no interference with the free market in shares and securities of companies.

(ii) It is for a shareholder to decide for himself whether to sell or retain his shares.

(iii) To enable him to come to a considered decision, the shareholder should have in suitable form and at the right time all relevant information, and it is the duty of the Board of his company to make every effort to ensure that such information is provided and to give him their advice.

(iv) Every effort should be made to avoid disturbance in the normal price level of shares until the relevant information has been made available.

PROCEDURE

(i) When an offer is to be made by or on behalf of one company for the shares of another, it is generally advisable that the offer be made to the Board of Directors of the company in question and at the same time the Board should be informed of the identity of the principal on behalf of which the offer is to be made. Although the offeror is seeking to make a bargain with the shareholders, their Board is normally the best channel of approach and also the best source of advice for the shareholders.

(ii) When approached, the Board of a company receiving an offer is entitled to require evidence that the offeror has or can obtain the resources necessary to satisfy full acceptance of the offer. It should inform its shareholders of the offer as soon as reasonably possible. The Board should be given sufficient time in which to assess the merits of the offer, and should then give its views to its own shareholders.

(iii) Whether or not it recommends the acceptance of an offer, the Board should make every effort to ensure that its shareholders are given all the requisite information upon which they can decide for themselves whether or not to accept it. This should include information with regard to the resources available to back the offer and a statement of the general intentions of the offeror as to the future conduct of the company and its effect upon employees. The Board should inform its shareholders if it is unable to obtain the required information from the offeror.

If an offeror is already a shareholder in the company for the shares of which an offer is made it is desirable that this be disclosed in the offer to shareholders with particulars of the shareholding.

(iv) Offers for cash and offers by way of exchange of shares require somewhat different consideration. With the former shareholders give up for cash all interest in the business in which they have invested, while with the latter they continue their interest in a different and presumably strengthened form. A cash offer is a matter of absolute, and a share offer one of relative, values in assessing the merits of the offer.

In the case of an offer in shares, or partly in shares and partly in cash, the shareholders receiving the offer should be given the fullest possible information on the future commercial prospects of the combined companies.

(v) If a Board decides to recommend that an offer made to its shareholders should not be accepted, the offeror is still free to communicate direct with the shareholders without the recommendation of their Board, and in such a case the Board should be ready to facilitate this direct approach (at the expense of the offeror) whilst at the same time explaining to its shareholders why it does not recommend the offer.

(vi) When talks are proceeding which may lead to an offer being made, it is important to do everything possible to maintain secrecy. It is not easy for a Board to decide when to make a public announcement. Whilst the ideal should be that the first announcement should include the terms of the offer, it may nevertheless be necessary, if there are signs of a speculative market arising in the shares concerned, for a preliminary announcement to be made. It is normally unwise, however, to make any announcement until it seems certain that an offer will in fact be forthcoming.

When the detailed terms of an offer have been agreed there will be at least a few days before the offer can be printed and sent to shareholders. It is normally desirable that the Board of the company for which the offer is to be

made should inform its shareholders, by Press announcement, of the terms of the offer immediately they are decided.

(vii) As a general rule, it is desirable that an offer should be for the whole of the share capital of a company or of the class of shares concerned. If, in some very exceptional case, a partial offer is justified, this should be on a *pro rata* basis, and if acceptances exceed the amount required, they should be proportionately scaled down.

(viii) When an offer is made shareholders should be given adequate time (say, three weeks) for accepting it. After an offer has been declared unconditional, a further period should normally be allowed for acceptances from latecomers. This is particularly so when Section 209 of the Companies Act, 1948, is not applicable. (This Section contains provisions under which, in certain circumstances, non-assenting shareholders can call upon the offering company to purchase their shares and the offering company can, if it wishes, acquire the shares of dissentient shareholders).

(ix) A Board should be wary of refusing to put to its shareholders any serious and responsible offer. The well-being of the shareholders as a whole must prevail over that of the particular shareholders who may be Directors. However, in the common case in which a Stock Exchange quotation has been obtained for a company's shares and only a minority of the shares has been sold to the general public, the investors who have acquired these shares must appreciate that their attitude towards any future offer may differ from that of the original proprietors.

(x) The device of dividing the equities of companies into voting and non-voting shares has had relevance in some offers made in recent years. While it may be justified in some conditions, it is not generally desirable.

(xi) The question of compensation for redundant employees, including Directors, always needs careful consideration. In the case of Directors shareholders should be given the fullest information as to the manner in which any proposed compensation payments have been worked out. In this connection the existence of service agreements may or may not be relevant. If re-employment in a different capacity is proposed this should be disclosed.

(xii) Documents concerning offers for shares are, of course, subject to various statutory provisions, including Section 14 of the Prevention of Fraud (Investments) Act, 1958.

It is desirable that documents concerning offers for securities which are quoted on a Stock Exchange be cleared with the Stock Exchange authorities before their issue. This should not normally involve any delay.

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Copies of these Notes may be obtained from The Secretary, Issuing Houses Association, 19, *Fenchurch Street, London, E.C.*3, *on payment of* 6*d. per copy.*