



House of Lords

LONDON SW1A 0PW

Michael Crane Esq QC
Chairman
The Takeover Panel
One Angel Court
London EC2R 7HJ

18 January 2021

By post & email – supportgroup@thetakeoverpanel.org.uk
chambers@fountaincourt.co.uk;

Dear Mr Crane

REQUIREMENTS OF PUBLIC COMPANY DIRECTORS REGARDING TAKEOVER APPROACHES

I write as a private investor, columnist, and also as the Patron of ShareSoc, the premier body representing private investors, although I do so in a personal capacity.

For a long time, I have been concerned at the failure of most Boards of Directors to alert shareholders to their engagement in talks with a potential serious bidder. Invariably no announcement is made until a formal bid has actually been tabled, perhaps recommended. While I fully appreciate that this is a very difficult area – no early announcement is surely completely out-of-line with modern day corporate transparency where e.g., any share transactions by a director have to be announced virtually immediately, similarly where profits are likely to be above or below market expectations? Any shareholder who thus sells their holding in total ignorance of a possible bid is potentially seriously disadvantaged – hardly compatible with your website: “Its central objective is to ensure fair treatment for all shareholders in takeover bids”.

I pray-in-aid the situation with Signature Aviation Plc. Apparently Blackstone first approached in February 2020, subsequently making six approaches. Nothing was announced – including that apparently there was also a rejected inferior bid from Global Infrastructure Partners – until mid-December 2020 when it was announced that the Signature Board was minded to accept Blackstone’s 386p offer, delivering an inevitable significant rise in Signature’s share price. Hard luck on any seller during those previous nine months!

Following all this, I tabled a question to Her Majesty’s Government as below:

Question:

To ask Her Majesty's Government what assessment they have made of existing transparency requirements of public company directors regarding takeover approaches; and what plans they have, if any, to require such directors to disclose to shareholders any such approaches at the earliest appropriate time.

(HL11670) Tabled on: 30 December 2020

Answer:

Lord Callanan:

The Takeover Code, which has a statutory basis under the Companies Act 2006, sets out a clear and orderly framework for takeovers, including measures to ensure fairness to stakeholders.

The Code sets out rules regarding disclosure of takeover offers made, including that a public announcement must be made when a firm intention to make an offer is notified to the board of the offeree company by or on behalf of an offeror, irrespective of the attitude of the board to the offer.

The Code is issued and administered by the independent Panel on Takeovers and Mergers. The Panel has enforcement powers for breaches of the Code. Changes to the Code itself are a matter for the Panel.

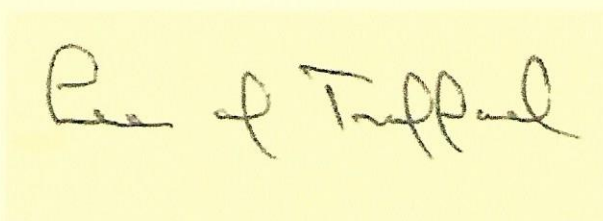
Date and time of answer: 14 Jan 2021 at 16:33.

From the reply, it is clear that responsibility for any changes to the Code rests with your Panel. Now my contention is that "firm intention" to make a bid is tantamount to an actual bid itself. What I am asking for is a somewhat earlier announcement – a Board should be quite capable, perhaps with Panel guidance, of assessing when talks are serious, any announcement by all means with the usual caveats – "talks are at an early stage", "no certainty that a bid will be made" etc. Every private investor, broker, and fund-manager that I have spoken to agrees that the present "Say Nothing" regime is thoroughly unsatisfactory. I would respectfully ask you and your colleagues to review current guidance in this area – change is surely overdue.

Given the likely interest in this area, I am circulating copies of this letter to the three members of your Panel known to me – Lord Deben, Lord Monks and Tim Ward - and to Lord Callanan, the media and others.

I look forward to receiving your comments.

Yours sincerely,

A handwritten signature in black ink on a light yellow background. The signature is written in a cursive style and appears to read "Lee of Trappan".

LORD LEE