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Secretary of State for Trade and Industry

21 October 1985

*NSM*

The Rt Hon Nigel Lawson MP  
Chancellor of the Exchequer  
HM Treasury  
Parliament Street  
LONDON  
SW1P 3AG

*Dear Sir,*

TAKEOVER PANEL

Thank you for your letter of 4 October.

2 We have indeed given some thought to the sort of powers which would be needed if the Takeover Panel ceased to be effective. The Secretary of State would need powers to make and enforce rules about the conduct of takeover bids covering both the content of offer and defence documents, and the behaviour of participants. These powers would have to apply to all participants, offerors and offerees as well as the merchant banks and others advising them. They would therefore go very much wider than any of the powers currently proposed in the Financial Services Bill, which apply only to those carrying on investment business, and would bring in anyone (including foreigners) making a bid and any company which was the target of the bid.

3 The rules would be statutory and would have to be applied and interpreted accordingly. There could be a power to waive the requirements of the rules in particular circumstances. But it is most unlikely that it would be possible to build in the same sort of flexibility as the Panel now enjoys to impose additional requirements, to require compliance in the particular way it does now with the spirit as well as the letter of the rules, and to reinterpret rules and principles on the spot.

4 On the analogy of the Financial Services Bill, the Secretary of State would not himself wish to exercise the powers (indeed he would not have the resources to do so). We would therefore need to provide that he could transfer his powers to a body meeting specific criteria. This could be SIB or some other body. SIB will in any case be concerned in the takeover area as most takeovers

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involve the use of authorised businesses, and it would be sensible not to have two bodies exercising statutory powers over the conduct of authorised businesses during takeovers. The problem is, however, that SIB is a private sector body and for constitutional reasons we have concluded that it should not exercise authority over persons other than authorised businesses. An extension of its role at this stage would be highly controversial and might well also call into question generally the acceptability of our whole policy of using a private sector body to regulate investment business. To propose giving powers to regulate takeovers to a statutory body would similarly undermine our existing policy. On the other hand, to exclude persons other than authorised businesses would significantly weaken the effectiveness of the regulation of takeovers, and in particular would make it impossible to enforce the requirement to make a bid after building up a specified stake in a company.

5 I concluded, therefore, that any powers we might take now even as reserve powers were likely to be less effective than the present arrangements unless the Take Over Panel seriously and regularly failed to impose its authority. There are some worrying signs, but so far in general it is coping effectively. If the voluntary approach does break down, we may be forced to adopt the statutory route. But I would prefer to delay until it is clearly necessary to do so. Our advice is that the system is unlikely to break down before our new regulatory regime for investment businesses is in operation in 1987. Any breakdown after then can be dealt with by deciding whether to build on an established regulatory system or to make some separate arrangements for takeovers.

6 I am not sufficiently convinced that we yet have the right long-term answer for me to want to include reserve powers in the Financial Services Bill. I am also concerned that to do so might undermine the Panel's existing authority. I welcome your view that we should not precipitate a change which we all want to avoid. As you know both the Panel and the Governor have expressed concern on this point.

7 I would expect any weakening of the Takeover Panel's authority to be a gradual not a sudden process. In the meantime we would not be powerless. The powers we are proposing in the Financial Services Bill will in any case give the Secretary of State (or any agency to which he delegates his powers) the power to make wide ranging rules about the conduct of authorised businesses and the content of documents. These powers could be used to give statutory force to rules on the lines of the takeover code and to enforce those rules. The rules would apply only to authorised businesses but it would be possible to prohibit authorised businesses from acting for offerors or offerees who did not behave in specified ways. This would not be an ideal arrangement but it would enable the situation to be held until new legislation could be prepared.



8 I therefore propose to tell the Panel that I am not proposing to include any reserve powers in the Bill but that I shall need to keep the situation under review in the light of developments in the coming months. I would not propose to give any priority to further contingency planning at this stage.

9 I am copying this to the Prime Minister and Sir Robert Armstrong.

*Law,*  
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