



ABI INVESTMENT COMMITTEE POLICY ON CONTINGENT DEALINGS BY COMPANIES IN THEIR OWN SHARES

The Association's Investment Committee has noted recent examples of companies seeking powers to make off-market purchases by way of contingent contracts in the company's shares, including transactions in the nature of options or other derivatives. This development appears largely to be a response to restrictions, under the Model Code as applied through the Listing Rules or the through regulations on Market Abuse, regarding the times during which companies may effect transactions in their own shares.

Institutional investors are supportive of companies' efforts to return surplus funds to shareholders. Dividend payments remain the preferred route for regular distributions to shareholders though, in other circumstances and when returns of value are significant, share repurchases from the market can be a suitable additional means of achieving this overall objective. Constraints rightly exist on companies' ability to deal at certain times, in close periods or when they otherwise have privileged information. However, where a company needs to make significant use of the buy-back approach and "market impact" considerations are such that it concludes that it needs to be free to deal at times other than open periods, there are recognised procedures for achieving this through placing orders outside close periods for execution within them, subject to appropriate regulatory oversight. Efforts to minimise the passing, selectively, of market information to intermediaries in advance of their being asked to execute such repurchases are to be encouraged.

However, entering into contingent or other derivative contracts over the company's shares does raise a number of further questions. From an investment perspective, it is necessary to consider carefully the effectiveness

of the type of dealing being undertaken in achieving the strategic objective i.e. enhanced certainty of completion of share buy-backs at an appropriate price. This is a question both of “suitability” of the dealing in question and of whether any genuine improvements are obtainable as regards adverse market impact which do not, as regards price or volume achieved, inevitably compromise the fulfilment of the buy-back objective.

Scrutiny of the particular forms of contingent or derivative dealing either being employed by companies or being investigated by investment banks has not allayed our Members’ concerns as to their prospective merits. The common trait inherent in these contracts or dealing strategies is an optionality carrying costs which may be hidden and therefore difficult, for shareholders and for companies, to discern. Ex-post analysis of the practical effectiveness of such dealings in creating shareholder value is a complex matter that poses further challenges. These types of dealing may therefore involve significant, unusual or unanticipated risks and this further highlights the importance of proper oversight and accountability, both by boards of the companies concerned and through dialogue with shareholders.

ABI Investment Committee has concluded that it is not apparent that the benefits, if any, of these types of dealing by companies are such as to outweigh their disadvantages or risks. The onus is on boards of companies contemplating unusual forms of dealing in their own shares, or derivatives thereof, to demonstrate clearly the anticipated net benefit to the satisfaction of shareholders, and to report in due course on the effectiveness of its dealing programme through its Operating and Financial Review.

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