

PCP 2005/4 Issued on 2 November 2005

THE PANEL ON TAKEOVERS AND MERGERS

**CONSULTATION PAPER ISSUED BY
THE CODE COMMITTEE OF THE PANEL**

**PROPOSED ABOLITION OF
THE RULES GOVERNING SUBSTANTIAL
ACQUISITIONS OF SHARES**

Before it introduces or amends any Rules of the Takeover Code (the “Code”) or the Rules Governing Substantial Acquisitions of Shares (the “SARs”), the Code Committee of the Takeover Panel (“the Code Committee”) is normally required under its consultation procedures to publish the proposed Rules and amendments for public consultation and to consider the responses arising from the public consultation process.

The Code Committee is therefore inviting comments on this Public Consultation Paper (“PCP”) by 27 January 2006. Comments may be given by any of the means set out below.

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It is the Code Committee’s policy to make all responses to formal consultation available for public inspection unless the respondent requests otherwise.

1. Introduction

In this PCP, the Code Committee is proposing that the SARs be abolished. This is principally because the Code Committee believes that it is no longer appropriate for the Panel to restrict a person from acquiring shares, or existing shareholders from selling their shares, in circumstances where control of a company is not passing or being consolidated. However, the Code Committee proposes to retain those provisions of the Code and the SARs which relate to tender offers (principally SAR4) and to include them in a new Appendix to the Code. These proposed amendments are set out in detail in the Appendix to this PCP.

2. Background

2.1 The SARs were introduced in December 1980 following a series of market raids on the shares of listed companies. The purpose of these raids was to enable a person, outside of an offer, to acquire a significant stake in the company through purchasing shares in the market.

2.2 These market raids caused concern on two fronts:

(a) the premium paid by the potential acquirer in the market raid was made available only to a limited group of shareholders who were normally institutional investors; and

(b) the fact that the stake was acquired over a very short period of time meant that the board of the target company had no opportunity to respond to the development and to advise the company's shareholders on how to proceed. In addition, with no prior warning, the company found itself with a new significant shareholder on its register.

2.3 In the light of these concerns, the purpose of the SARs was to slow down the speed with which a person could acquire a significant stake in order that (a) other shareholders might have the opportunity to sell their shares to the

potential acquirer, and (b) target company boards might have time to react and to advise their shareholders on how to proceed.

3. When do the SARs apply?

- 3.1 The SARs only apply in respect of the shares of UK resident companies which are listed on the Official List of the Stock Exchange, dealt in on AIM or traded on OFEX.
- 3.2 As explained in paragraph 2 of the Introduction to the SARs, the SARs restrict the speed with which a person may increase his holding of shares and rights over shares to an aggregate of between 15% and 30% of the voting rights of a company. SAR3 also requires accelerated disclosure of acquisitions of shares or rights over shares relating to such holdings by comparison with the disclosure required under the Companies Act 1985. The SARs do not, however, apply to a person who has announced a firm intention to make an offer for the company. This is because such a person is subject to the Code.
- 3.3 For the purposes of both the SARs and the Code (see below), “rights over shares” are defined as including any rights acquired by a person by virtue of (a) an agreement to purchase shares, (b) an option to acquire shares, (c) an irrevocable commitment to accept an offer to be made by him, or (d) an agreement to acquire voting rights or general control of them.
- 3.4 The reason why the SARs focus on the band below 30% is that control is defined in the Code as a holding of shares carrying 30% or more of a company’s voting rights, irrespective of whether the holding gives de facto control. Where a person acquires shares which take his holding of voting rights (when aggregated with that of persons acting in concert with him) to or beyond that level, he is required under Rule 9 of the Code to make a mandatory offer for the shares not held by him and the members of his concert party. In addition, Rule 5 restricts the circumstances in which a person, together with persons acting in concert with him, may increase his aggregate

holding of shares carrying voting rights and rights over such shares to or beyond 30%.

4. How do the SARs operate?

4.1 The SARs operate as follows:

(a) under SAR1, a person may not, in any period of seven days, acquire shares carrying voting rights in a company or rights over such shares representing 10% or more of the voting rights if that would take his aggregate holding of shares and rights over shares to between 15% and 30%, unless he falls within one of the exceptions in SAR2. The effect of this restriction is to slow down a person's ability to acquire a 29.9% stake as follows (assuming that none of the exceptions in SAR2 is available):

- (i) Day 1: a person can acquire 14.9%;
- (ii) Day 8: the person can acquire a further 9.9% increasing his aggregate holding to 24.9%; and
- (iii) Day 15: the person can acquire a further 4.9% increasing his aggregate holding to 29.9%.

In view of the rationale for their introduction referred to in paragraph 2.3 above, the SARs apply only to acquisitions of existing shares (and rights over such shares) and not to acquisitions of new shares (or rights to subscribe for new shares);

(b) under SAR2, the restriction in SAR1 does not apply in the following circumstances:

- (i) where the vendor of the shares is a single shareholder. A similar exception is available in respect of the 30% to 50% band under Rule 5.2(a) of the Code;

- (ii) where the acquisition is pursuant to a tender offer made in accordance with SAR4; or
 - (iii) where the acquisition is made immediately before the announcement of a firm intention to make an offer, provided that either the offer will be recommended by, or the acquisition is otherwise made with the agreement of, the board of the target company;
- (c) under SAR3, a person is required to disclose any acquisition of shares carrying voting rights or rights over such shares if either (i) that would take his aggregate holding of shares and rights over shares through 15%, or (ii) he already holds an aggregate of between 15% and 30% and that would increase his aggregate holding to or beyond any whole percentage figure. The purpose of this disclosure requirement is to support the premium sharing objective of the SARs and to underpin compliance with SAR1;
- (d) SAR4 sets out the requirements to be complied with in the conduct of a tender offer, including the information to be included in the public documentation. These requirements apply in respect of all tender offers (apart from tender offers by companies to buy in their own shares) and not just to tender offers which are conducted in order to fall within the exception in SAR2(b) (see paragraph 4.1(b)(ii) above); and
- (e) SAR5 makes clear that where two or more persons are acting together by agreement or understanding, they should be viewed as a single person for the purposes of the SARs.

5. Recent analysis

- 5.1 On 7 January, the Code Committee published PCP 2005/1 entitled “Dealings in Derivatives and Options – outline proposals relating to amendments to be made to the Takeover Code and the SARs”. In summary, PCP 2005/1 proposed that:

- (a) persons with a 1% long position in derivatives referenced to or options in respect of shares of an offeree company or, if appropriate, an offeror should be required to disclose all dealings in relevant securities of the company concerned (including dealings in derivatives and options) regardless of whether they held any underlying shares; and
 - (b) dealings in derivatives and options by parties to an offer and persons whose interests fall into the 30% to 50% band (taking account of any derivative or option positions) should be treated under the Code in the same way as dealings in the underlying shares.
- 5.2 To be consistent, PCP 2005/1 proposed that the scope of the SARs should be broadened as follows:
- (a) that SAR1 should be amended to apply also to dealings in derivatives referenced to, and options in respect of, shares carrying voting rights; and
 - (b) similarly, that SAR3 should capture the disclosure of dealings in such derivatives and options.
- 5.3 Following the publication of PCP 2005/1, the Code Committee considered the detailed Rule changes which would be necessary to implement the proposals set out in that PCP. This resulted in the publication of (a) PCP 2005/2 on 13 May entitled “Dealings in Derivatives and Options – detailed proposals relating to amendments proposed to be made to the Takeover Code. Part 1: Disclosure Issues”, (b) RS 2005/2 on 5 August, and (c) PCP 2005/3 on the same day as this PCP entitled “Dealings in Derivatives and Options – detailed proposals relating to amendments proposed to be made to the Takeover Code. Part 2: Control Issues”.
- 5.4 As part of the exercise in relation to dealings in derivatives and options, the Code Committee has reviewed the application of the SARs generally and, in particular, has reviewed whether the SARs continue to fulfil a useful function.

Following this review, the Code Committee has concluded, for the reasons set out in paragraph 6 below, that the SARs no longer serve a useful purpose and, accordingly, believes that they should be abolished. However, as is explained further in paragraph 7 below, the Code Committee believes that the provisions of the Code and the SARs which relate to tender offers, being principally SAR4, should be retained and the Code Committee proposes that these provisions should be set out in a new Appendix to the Code.

- 5.5 Pending the resolution of the status of the SARs, neither PCP 2005/2 nor PCP 2005/3 has proposed that any amendments be made to the SARs. In the event that, following the consultation exercise in respect of this PCP, the Code Committee decides that the SARs should be retained, it will then publish a further PCP on the changes proposed for the SARs to make them apply to dealings in derivatives referenced to, and options in respect of, shares carrying voting rights.

6. Arguments in favour of and against abolishing the SARs

- 6.1 The principal arguments in favour of abolishing the SARs are as follows:

- (a) in general, the Panel's approach to share dealings is permissive rather than restrictive, focussing on the consequences which should flow from particular dealings rather than seeking to prohibit them altogether. So, for example, the Code requires material share dealings to be publicly disclosed and also provides that share purchases by an offeror or a person acting in concert with it will normally set a floor on the price at which any offer must be made. As a result, the Code only prohibits share dealings in very specific circumstances where it is appropriate to do so on account of some overriding policy concern;
- (b) one of these circumstances is Rule 5 which, subject to certain exceptions, restricts the ability of a person to acquire shares or rights over shares in a company which takes his and his concert party's aggregate holding of shares and rights over such shares to 30% or more. This is in order to ensure that the board of the company has a sufficient opportunity to make the company's

shareholders aware of all relevant matters before control of the company passes;

- (c) by contrast, and in the light of the Panel's general permissive approach to share dealings referred to above, it is arguable that a person should not be restricted from acquiring shares, and existing shareholders should not be restricted from selling their shares, in circumstances where control of a company is not passing or is not being consolidated;
 - (d) moreover, shareholders may in fact benefit by not selling their shares into a market raid. This would be because, following the raid, the market price of the shares might rise to the price being paid by the acquirer. In such circumstances, shareholders might be able to sell their shares at this price in the market, albeit not necessarily to the acquirer who launched the raid. In addition, in some cases, the acquirer might go on to make a full offer which would be at a higher price than that paid in the raid and in such circumstances it is the shareholders who sold into the raid who would have lost out; and
 - (e) when SAR3 was introduced, the period within which significant shareholdings in listed companies had to be disclosed to the market under the Companies Act was 5 days. That period has since been reduced to 2 business days and so the incremental benefit of the accelerated disclosure requirements of SAR3 has been reduced accordingly. Removing this additional regulatory burden would assist practitioners and compliance organisations. In addition, this must be viewed in the light of the new provisions of the Code introduced by the Code Committee to require increased disclosure of dealings in derivatives and options during an offer period. The Code Committee considers that its role should not simply be to add to the regulatory burden but also to keep under review all rules in the Panel's rulebook to see if they continue to fulfil a useful function.
- 6.2 The principal arguments in favour of retaining the SARs (and arguments in rebuttal) are as follows:

- (a) those parties who believe that market raids should be discouraged will no doubt have concerns that the abolition of the SARs might lead to their return. However, this is by no means certain, at least outside of an offer, as investors are arguably now less willing to sell their shares into a raid than they once were. This is largely due to the fact that in selling their shares into a raid, investors risk losing out on any subsequent offer premium which may be forthcoming from the purchaser;
 - (b) there is an argument that, in addition to the two rationales for the SARs' introduction as set out in paragraph 2.3 above, there is an additional benefit which flows from SAR1, namely that it creates an opportunity for a third party to enter into the fray, either by announcing an offer or by itself purchasing a sizeable shareholding. Whilst this may be an ancillary benefit in some cases, the Code Committee believes that the assessment as to whether a potential competing bidder may emerge is a matter for shareholders to evaluate in deciding whether to sell their shares and is not a matter for regulation by the Panel; and
 - (c) the fact that disclosures under SAR3 must be published by 12 noon on the business day following the date of the dealing still provides accelerated disclosure of dealings in the 15% to 30% band when compared with the Companies Act. In addition, by virtue of SAR5, persons who act by agreement or understanding are treated as a single person under the SARs, which is wider than the relevant provisions of the Companies Act 1985 (i.e. section 204).
- 6.3 Having considered the matter, the Code Committee believes that, for the reasons explained in paragraph 6.1 above, the SARs (other than those provisions relating to tender offers) should be abolished.

Q.1 Do you agree that the SARs should be abolished?

7. Should the provisions of the SARs (and the Code) relating to tender offers be retained?

7.1 As explained in paragraph 4.1 above, SAR4 sets out the requirements to be complied with in the conduct of a tender offer. At present, the SARs and the Code (see Note 3 on Rule 36.3) make provision for tender offers to be conducted in the following circumstances:

- (a) where, following completion of the tender offer, the maximum aggregate percentage holding of shares carrying voting rights and rights over such shares of the person making the tender offer would be less than 30% of the voting rights of the company (see Note 1 on SAR4.2). At present, one of the main reasons for a person making a tender offer in these circumstances would be to take advantage of the exception from the restriction on stake-building contained in SAR2(c); and
- (b) where (i) the tender offer is by a person who controls over 50% of the company's voting rights, (ii) the tender offer is for less than all the shares carrying voting rights held by the minority, and (iii) the Panel believes that the circumstances justify the use of a tender offer (see Note 3 on Rule 36.3). As a result, a person who holds, say, 55% of a company's voting rights and wishes to increase his holding to 70% (and also intends to maintain the shares' listing) would normally be permitted to do so by means of a tender offer.

7.2 The Code Committee has been considering whether, in the event that (as proposed above) the SARs are abolished, the provisions of the Code and the SARs which relate to tender offers should be retained in some form. The principal arguments in favour of and against doing so are set out below.

7.3 The principal arguments in favour of retaining the provisions of the Code and the SARs relating to tender offers are as follows:

- (a) tender offers are a well-established means by which a person can increase his holding of voting rights either (i) up to 29.9% or (ii) from more than 50% but for less than all the outstanding shares carrying voting rights. Accordingly, even if the restriction in SAR1 is abolished, persons wishing to increase their shareholdings within these parameters may wish to do so by means of a tender offer. This is particularly so where the person concerned wishes to offer all shareholders in the company the opportunity to sell their shares to him. Where this is the case, it is appropriate that the tender offer should continue to be regulated by the Panel. This is because a number of principles which apply in the context of general offers, such as the core principle that all shareholders in the company whose shares are being offered for should be treated similarly, are equally applicable in the context of tender offers;
- (b) similarly, from time to time a tender offer is launched in competition with a general offer with a view either to frustrating an unwelcome offer for a company or to persuading the offeror to revise its existing offer. In such circumstances, it is important that the Panel has the jurisdiction to regulate not only the general offer but also the competing tender offer; and
- (c) although the Rules of the London Stock Exchange contain provisions which relate to the conduct of tender offers, those rules apply only in respect of the shares of companies which are listed on the Official List. Therefore, those rules would not apply in the context of tender offers for shares in companies admitted to trading on either AIM or OFEX or for which no public quotation had been obtained (where in each case SAR4 would apply).

7.4 The arguments against retaining the relevant provisions of the Code and the SARs relating to tender offers are as follows:

- (a) tender offers are a specific exemption to the general restriction in SAR1 and, if this restriction is abolished, the exception is no longer relevant with the result that it will no longer be necessary for persons to make tender offers to acquire substantial stakes; and

- (b) generally speaking, the Code is concerned with the acquisition or consolidation of control of a company and with offers for all the outstanding shares in a company. Neither of these features is relevant in the context of a tender offer.

7.5 The Code Committee believes that, on balance, it would be preferable to retain the provisions of the Code and the SARs relating to tender offers.

Q.2 Do you agree that, if the SARs are abolished, the provisions of the Code and the SARs relating to tender offers should be retained?

7.6 If the SARs are abolished, the Code Committee believes that the tender offer provisions should be included in a new Appendix to the Code, namely Appendix 5, as set out in the Appendix to this PCP. For the most part, the proposed Appendix 5 replicates the existing provisions of SAR4 and Note 3 on Rule 36.3 of the Code, save that the following amendments have been proposed:

- (a) a new provision has been introduced to require that the Panel's consent must be obtained before any person can carry out a tender offer (Section 1 of Appendix 5). This provision makes clear that the Panel's consent will normally be granted in the same circumstances as those in which tender offers are currently permitted as set out in paragraph 7.1 above (and as provided in the second paragraph of Note 3 on Rule 36.3);
- (b) in order to take account of the changes proposed to be made to the Code as contemplated by PCP 2005/3, which was also published today:
 - (i) Section 1(a) of Appendix 5 refers to the buyer not "being interested in shares carrying 30% or more of the company's voting rights". In addition, it is proposed that the interests in shares of persons acting in concert with the buyer should also be taken into account since these will be relevant in determining whether an obligation to make a mandatory offer under Rule 9.1 has been triggered;

- (ii) SAR4.5 has been amended to restrict the buyer in a tender offer from disposing of “an interest in shares” during the relevant period (see Section 6 of Appendix 5); and
 - (iii) SAR4.2(a)(viii) has been amended to provide that the buyer must disclose in the advertisement of the tender offer the number and percentage of shares in which it is interested, distinguishing between the different categories of interests in shares and in each case providing the details set out in Note 5(a) on Rule 8 (see Section 3(a)(viii) of Appendix 5);
- (c) SAR4.1 has been amended to make clear that where a tender offer is for the shares of a company for which a public quotation has been obtained on the Stock Exchange, AIM or OFEX, it must be made by means of an advertisement. However, in such circumstances, the buyer may also send a copy of the announcement to shareholders of the company concerned. In all other cases, the tender offer must be made by means of a circular (a copy of which must be provided to the company concerned at the same time as it is posted to shareholders) and must be open for acceptance for at least 21 days – see the proposed new Sections 2(a) and (b) of Appendix 5 and the consequential amendments which have been made to SAR4.1(d) and (e) (now Sections 2(e) and (f) of Appendix 5) and to SAR4.3 (now Section 4 of Appendix 5); and
- (d) the Note on SAR4.1 and Note 1 on SAR4.2 have been re-ordered and included as Notes on Section 1 of Appendix 5. In addition, the confirmations in paragraph 4 of the Introduction to the SARs that (i) where a tender offer to which the SARs applies is made through the Stock Exchange or on OFEX, the SARs take precedence over requirements of the Stock Exchange and OFEX for the conduct of tender offers, and (ii) the requirements of SAR4 do not apply where a tender offer is made solely for the purpose of a company buying in its own shares, have been included as part of the new Section 1 of Appendix 5.

The full text of the proposed new Appendix 5, marked up to show those changes made from the existing SAR4, is set out in the Appendix to this PCP.

7.7 In the light of the introduction of the new Appendix 5, the following amendments to the Code are also proposed:

(a) amend paragraph 4(b) of the Introduction to the Code as follows:

“(b) Transactions

The Code is concerned with takeover and merger transactions, however effected, of all relevant companies; these include partial offers, tender offers pursuant to Appendix 5, offers by a parent company for shares in its subsidiary and certain other transactions where control of a company (as defined) is to be obtained or consolidated. References in the Code to “takeovers” and “offers” include, where appropriate, all such transactions. The Code does not apply to offers for non-voting, non-equity capital unless they are offers required by Rule 15.”;

(b) delete Note 2 on Rule 5.1 and re-number the remaining Notes on Rule 5.1 accordingly;

(c) amend Note 5 on Rule 5.2 as follows:

“4. *After an offer lapses*

After an offer has lapsed, the restrictions in Rule 5.1 ~~and the SARs~~, will once again apply to the former offeror.”;

(d) amend Rule 19.4(vii) as follows:

“(vii) advertisements comprising a tender offer under Appendix 5the SARs;”;

- (e) amend Note 3 on Rule 36.3 as follows:

“3. Use of tender offers

In certain circumstances, with the consent of the Panel, a tender offer may be made instead of a partial offer. Such a tender offer must be conducted in accordance with Appendix 5. Rule 4 of the SARs (whether or not the company which is the subject of the tender offer falls within the jurisdiction of the SARs) and may, in addition, be subject to such further terms and conditions as the Panel may deem appropriate.

The consent of the Panel will normally be granted where:

(a) — the tender offer could not result in the offeror holding shares carrying 30% or more of the voting rights of a company; or

(b) — the tender offer is by a person controlling the majority of the voting rights of a company, is for less than all of the shares carrying voting rights held by the minority and the Panel believes the circumstances justify the use of a tender offer.

In the case of offers for the shares of companies not within the jurisdiction of the SARs (as defined in the Introduction to the SARs) publication of the tender offer must normally be made by means of a circular to shareholders at least 21 days before the day on which the tender offer closes.”; and

- (f) amend Section 5 of the Document Charges section as follows:

“5 TENDER OFFERS

The document charge does not apply to tender offers under Appendix 5 the SARs.”.

- Q.3 Do you agree with the text of the proposed new Appendix 5 and with the other proposed amendments to the Code?**

APPENDIX

APPENDIX 5

TENDER OFFERS

1 PANEL'S CONSENT REQUIRED

The Panel's consent is required for any tender offer. The Panel's consent will normally be granted where:

(a) the tender offer could not result in the buyer and persons acting in concert with it being interested in shares carrying 30% or more of the voting rights of the company on the closing date of the tender; or

(b) the tender offer is by any person controlling more than 50% of the voting rights of a company, is for less than all the shares carrying voting rights held by the minority and the Panel believes the circumstances justify the use of a tender offer.

Where a tender offer to which this Appendix applies is made through the Stock Exchange or on OFEX, this Appendix takes precedence over requirements of the Stock Exchange and OFEX for the conduct of tender offers. However, the resulting transactions will be subject to the relevant trade and transaction reporting rules and requests for delivery and settlement.

This Appendix does not apply where a tender offer is made solely for the purpose of a company buying in its own shares.

NOTES ON SECTION 11. Calculation of percentage of shares in which a person is interested

The percentage of shares in which a person is interested should be calculated by reference to the issued share capital at the time of the announcement of the tender offer after taking into account the latest published information; if, however, it is known at the time of the announcement that by the closing date of the tender the issued share capital will have changed, this must also be taken into account.

2. Tender offers in competition with offers under the Code

Where a tender offer is proposed for shares in a company subject to an offer under the Code, the following matters will have to be considered:

(a) extension of the offer period in respect of the offer under the Code;

(b) circulation of the tender advertisement to all shareholders; and

(c) disclosure of dealings by the buyer and any associates in the manner set out in Rule 8.

4.12 PROCEDURE AND CLEARANCE

(a) A person publishing a tender offer ~~(whether it is made on the Stock Exchange or elsewhere)~~ for the shares of a company which are listed on the Stock Exchange, dealt in on AIM or traded on OFEX must do so by paid advertisement in two national newspapers and must notify the company concerned of the information specified in Rule 4.2 Section 3 at least 7 days before the day on which the tender offer closes. The buyer, or any person acting for him, may also circulate copies of the tender announcement to shareholders of the company whose shares are sought, subject to compliance with the Financial Services and Markets Act 2000.

(b) In all other cases, the tender offer must be made by means of a circular to shareholders (containing the same information as for a tender offer advertisement as specified in Section 3) and must be open for acceptance for at least 21 days. A copy of the circular must be provided to the company concerned at the same time as it is posted to shareholders.

(bc) Subject to (ed) below, the buyer must treat all shareholders on equal terms.

(ed) A tender offer must be for cash only but may be at a fixed price or a maximum price; top-up arrangements are not permitted.

- (i) Fixed price: if the tenders exceed the number of shares sought, they will be scaled down down pro rata.
- (ii) Maximum price: if the tender offer is over-subscribed, the striking price will be the lowest price at which the number of shares sought is met and all who tender at or below the striking price will receive that price. If necessary, tenders made at the striking price will be scaled down pro rata or balloted.

If the tender offer is under-subscribed, all who tender will receive the maximum or fixed price, except where fewer shares are tendered than the percentage below which the tender is void.

(de) The text of the advertisement or circular must be cleared by the Panel.

(ef) In every case the UKLA, the Stock Exchange or OFEX, as appropriate, and the Panel must be supplied with copies of the final text of the advertisements and circulars at the same time as they are given to the newspapers and are posted to shareholders respectively.

NOTE ON RULE 4.1

Tender offers in competition with offers under the Code

The Panel must be consulted if a tender offer is proposed for shares in a company subject to an offer under the Code. The following matters will have to be considered:

- (a) — extension of the offer period in respect of the offer under the Code;*
- (b) — circulation of the tender advertisement to all shareholders; and*
- (c) — disclosure of dealings by the buyer and any associates in the manner set out in Rule 8 of the Code.*

4.23 DETAILS OF TENDER OFFER ADVERTISEMENTS

(a) The advertisement of a tender offer, which must constitute a firm offer, must include the particulars set out below:-

- (i) the name of the buyer;**
- (ii) the name of the broker or other agent acting for the buyer;**
- (iii) the name of the company whose shares are sought;**
- (iv) the maximum number of shares or proportion of voting capital offered for;**
- (v) a statement that, if tenders totalling less than 1% of the voting rights of the company are received, the tender offer will be void. Alternatively, the buyer may indicate a higher percentage below which the tender offer will be void but any figure higher than 5% is not permitted unless approved by the Panel in advance of the announcement of the tender offer;**
- (vi) a statement that, subject to (v), a shareholder's tender will be irrevocable;**
- (vii) the fixed or maximum price offered;**
- (viii) the present holding of number and percentage of shares in which the buyer is interested, distinguishing between shares and rights over shares and specifying the nature of any rights concerned and giving the relevant number of shares in each case the different categories of interests in shares and in each case providing the details set out in Note 5(a) on Rule 8;**
- (ix) the closing day and time for the tender; and**
- (x) the arrangements for delivery and settlement (on a basis approved in advance by the Panel).**

(b) A tender offer may not be subject to any condition other than (a)(v) above.

(c) If a buyer wishes to make a statement about his future intentions, it must be contained in the advertisement of the tender offer and should be explicit and unambiguous. The Panel should be consulted in advance with regard to any such statement.

(d) If a buyer wishes, a statement may be made comparing the value of the tender offer with the market value of the shares being offered for.

(e) The advertisement must be restricted to the items above together with any information required under the Financial Services and Markets Act 2000, secondary legislation made under that Act or any rule made by the Financial Services Authority.

NOTES ON ~~RULE 4.2~~ SECTION 3

1. ~~Maximum number of shares~~

The maximum number of shares offered for in the tender offer should not be such as would result in the buyer holding shares or rights over shares carrying in the aggregate 30% or more of the voting rights of the company on the closing date of the tender. Calculations should normally be made by reference to the issued share capital at the time of the announcement of the tender offer after taking into account the latest published information; if, however, it is known at the time of the announcement that by the closing date of the tender the issued share capital will have changed, this must also be taken into account (see also Note 5 on Rule 1).

2. ~~Future offers~~

If a buyer makes a statement which implies that he does not intend to make an offer for the company, he will not normally be permitted to announce an offer or possible offer within six months of the date of the statement, unless an offer for that company is announced by a third party within that period.

3. ~~Limit on contents of tender advertisements~~

The limit on the amount of information permissible in tender advertisements is strictly enforced; no form of argument or persuasion is allowed. Consequently the buyer (or his advisers) may not make any statement or otherwise make public any information in connection with the tender offer which is not already contained in the tender offer advertisement itself.

**4.34 CIRCULATION OF TENDER OFFER AND OTHER DOCUMENTS
CIRCULARS FROM THE BOARD OF THE OFFEREE COMPANY**

(a) ~~A buyer, or any person acting for him, may circulate copies of the tender announcement to shareholders of the company whose shares are sought, subject to compliance with the Financial Services and Markets Act 2000. A copy of any such circular must be lodged with the UKLA, the Stock Exchange or OFEX, as appropriate, and the Panel at the same time as it is posted to shareholders.~~

~~(b)~~—A copy of any document sent by the board of the offeree company to its shareholders in connection with the tender offer must be lodged with the Panel at the same time as it is posted.

4.45 ANNOUNCEMENT OF THE RESULT OF A TENDER OFFER

The result of a tender offer must be announced by 8.00 am on the business day following the close of the tender. The announcement must be published in accordance with the requirements of Rule 2.9 of the Code.

4.56 PROHIBITION OF FURTHER TRANSACTIONS DURING A TENDER OFFER

The buyer in a tender offer may not otherwise acquire or dispose of any interest in shares carrying voting rights in the company ~~or any rights over such shares~~ between the time of the publication of the tender offer and the time when the result of the tender offer is announced.