

RS 2005/4 Issued on 21 April 2006

THE TAKEOVER PANEL

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

**STATEMENT BY THE CODE COMMITTEE OF
THE PANEL FOLLOWING THE EXTERNAL
CONSULTATION PROCESS ON PCP 2005/4**

1. Introduction

- 1.1 On 2 November 2005, the Code Committee of the Takeover Panel (the “Code Committee”) published a Public Consultation Paper (“PCP 2005/4”) which proposed that The Rules Governing Substantial Acquisitions of Shares (the “SARs”) be abolished.
- 1.2 SAR1 restricts the speed with which a person may increase his holding of shares and rights over shares to an aggregate of between 15% and 29.9% of the voting rights of a company, subject to certain limited exceptions as set out in SAR2. SAR3 requires the disclosure of acquisitions of shares or rights over shares between 15% and 29.9%. Under SAR5, where two or more persons act by agreement or understanding in the acquisition by one or more of them of shares or rights over shares, their holdings and acquisitions must be aggregated.
- 1.3 SAR4 contains the rules relating to the conduct of tender offers. PCP 2005/4 proposed that the tender offer rules contained in SAR4 should be retained and included in a new Appendix to the Takeover Code (the “Code”).
- 1.4 The purpose of this Response Statement is to provide details of the Code Committee’s response to the external consultation process on PCP 2005/4.

2. Code amendments and transitional arrangements

(a) Code amendments

- 2.1 In addition to this Response Statement, the Code Committee is also publishing today three other Response Statements, namely RS 2005/3, RS 2005/5 and RS 2006/1. The amendments adopted by the four Response Statements will come into force on 20 May. Owing to the volume of changes, the Panel intends to publish a new edition of the Code which will be despatched to subscribers shortly before 20 May.

2.2 In some cases, the Code Committee has adopted amendments in different Response Statements which affect the same provision of the Code. In order to assist readers in understanding not only all the amendments, but also their origins, the Code Committee has, for the most part, included in the appropriate Appendix to each Response Statement (which in this case is at Appendix A) only those amendments that arise out of the Code Committee's conclusions in relation to that particular Response Statement. However, in certain cases, where the same part of a provision of the Code has been changed by more than one Response Statement, the provision has been included in the Appendix as marked to show all changes from the current Code - i.e. incorporating the amendments made in the other Response Statement(s). The consolidated amendments, being the adopted amendments marked to show all changes from the current Code (taking account of the amendments made by all the Response Statements), have today been published on the Panel's website (www.thetakeoverpanel.org.uk). Where the numbering of a Rule or Note has been changed by any of the amendments, relevant cross references in other Rules or Notes have been changed in the new edition of the Code. For the most part, changes to cross references have not been included in the consolidated amendments available on the Panel's website.

(b) *Transitional arrangements*

2.3 The Code, as revised, will come into effect on 20 May and will be applied from that date to all companies and transactions to which it then relates, including those on-going transactions which straddle that date, except where to do so would give the amendments retroactive effect. **Where parties have doubts as to the consequences of any of the rule changes, in particular the impact on any transaction which is in existence or contemplation (including a transaction involving a company to which the Code does not currently relate but to which it will relate on or after 20 May), they should consult the Panel prior to 20 May to obtain a ruling or guidance.**

3. Number of responses received

- 3.1 12 responses were received from a range of organisations, including a number of institutional shareholder bodies and also professional bodies representing practitioners. Some of the respondents only answered certain of the questions.
- 3.2 A list of the respondents to PCP 2005/4 is attached at Appendix B.

4. Overview of responses

Seven out of the ten respondents who answered the question agreed that the SARs should be abolished. In addition, seven out of the ten respondents who answered the question supported the proposal that the rules relating to tender offers in SAR4 should be retained and included in a new Appendix 5 to the Code in the form proposed. Those objections which were raised to the proposals set out in the PCP are addressed below.

5. The Code Committee's conclusions

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

(a) SARs 1 and 2: Responses

- 5.1.1 As explained above, seven out of the ten respondents who answered the question agreed that the restrictions in SARs 1 and 2 should be abolished. Those respondents who objected did so principally for the following reasons:
- (i) they did not believe that market raids were necessarily a thing of the past and they believed that restricting the speed with which a person could acquire a significant stake in a company provided a proportionate measure of protection for the company concerned and its shareholders; and

- (ii) in particular, they believed that the fact that the SARs restricted the speed with which a potential offeror could acquire a substantial stake in a company helped to ensure that a person who wished to make a competing offer would have time to intervene (for example, by itself announcing an offer or potential offer) before the first potential offeror, who would be subject to the SARs restrictions, was able to acquire a substantial shareholding, which might effectively block any competing offer.

(b) *Possible return of market raids*

- 5.1.2 The Code Committee has given careful consideration to the fact that, as was referred to in the PCP, the abolition of the SARs would allow market raids to be made for a stake of up to 29.9% in a company to which the SARs currently apply, since this point goes directly to the question of whether the restrictions in SARs 1 and 2 should be abolished.
- 5.1.3 As was explained in the PCP, the Panel's general approach to share dealings is permissive rather than restrictive, focussing on the consequences of particular dealings rather than seeking to prohibit them. As a result, the Code only restricts share dealings in very specific circumstances where it is appropriate to do so on account of some overriding policy concern. An example of this is the restriction placed by Rule 5 on the circumstances in which a person may acquire interests in shares which would take that person's aggregate interests in shares (together with those of persons acting in concert with him) through 30% (thereby acquiring control as defined in the Code).
- 5.1.4 However, in the opinion of the Code Committee, no such overriding policy concern exists in relation to acquisitions below the 30% level - i.e. in circumstances where control (as defined in the Code) is not being acquired or being consolidated. Accordingly, the Code Committee believes that it is no longer appropriate for the Panel to restrict the speed at which a person may acquire shares (or interests in shares), and thereby the ability of shareholders to sell their shares, below the 30% level and remains in favour of abolishing the SARs.

(c) Ability for a potential competing bidder to emerge

5.1.5 Whilst the Code Committee acknowledges that, in certain cases, the SARs' slowing down the speed with which a person could acquire shares in a company might ensure that a potential competing bidder has a greater opportunity to enter the fray, the Code Committee does not believe that this constitutes sufficient reason for retaining the SARs. This is because, as explained in the PCP, the Code Committee believes that the assessment as to whether a potential competing bid might 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.

(d) Derivatives and options disclosure rules

5.1.6 One respondent, who was in favour of abolishing the SARs, nevertheless suggested that the Code Committee should wait until the rules relating to the disclosure of dealings in derivatives and options which came into effect on 7 November 2005 had bedded down before doing so. The Code Committee has announced that, in June 2007, it will review, inter alia, those dealing disclosure rules. However, those rules are not connected with the SARs and therefore the Code Committee does not believe that it would be relevant to await the outcome of that review before deciding whether or not to retain the SARs.

5.1.7 Other respondents, who did not support the proposals, argued that the introduction of the new disclosure rules for derivatives and options was not a good reason for removing the SARs. The Code Committee confirms that it did not propose that the SARs be abolished as a consequence of introducing the new disclosure rules for derivatives and options.

(e) SARs 1 and 2: Conclusion

5.1.8 In view of the overall level of support for the proposed abolition of the SARs and the fact that the Code Committee believes that it is no longer appropriate

for the Panel to restrict the speed at which a person may acquire shares (or interests in shares), and thereby the ability of shareholders to sell their shares, in circumstances where control of a company is not being acquired or being consolidated, the Code Committee has decided that the SARs should be abolished, as proposed.

(f) SAR3

5.1.9 Certain respondents, including three respondents who were in favour of the abolition of the SARs generally, argued that the disclosure requirement in SAR3 should be retained and should be extended to apply not just to acquisitions of shares and rights over shares (including options) in the 15% to 29.9% band but also to dealings in derivatives in that band. They based this argument on the fact that the disclosure requirements of SAR3 are more stringent than those contained in the Companies Act and they believed that the more stringent regime was preferable. In particular, SAR3 requires disclosures to be made on the business day following the dealing (as opposed to within two business days of the dealing, as is required under the Companies Act). Furthermore, if SAR3 were extended as the respondents suggested, it would require the disclosure of dealings in derivatives (not all of which would be required under the Companies Act).

5.1.10 Given that a major reason for the introduction of SAR3 was to underpin compliance with the restriction in SAR1, and given that SAR1 is being abolished, the Code Committee sees no reason for SAR3 to be retained in the Code.

5.2 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?

(a) Introduction

5.2.1 Seven out of the ten respondents who answered this question agreed that the provisions of the Code and the SARs relating to the conduct of tender offers

should be retained and, if the SARs were to be abolished, that they should be included in the Code (in the new Appendix 5). However, other respondents believed that it would be illogical to retain the tender offer rules when the SARs were being deleted. They argued that tender offers were one of the exceptions contained in SAR2 by which a person could acquire a stake of up to 29.9% without being subject to the restrictions in SAR1. Therefore, if SARs 1 and 2 were abolished, the principal rationale for making a tender offer would no longer apply since a person would be able to build a stake of up to 29.9% without restriction.

5.2.2 The Code Committee acknowledges this point. However, as explained below, following the abolition of the SARs, there may still be circumstances in which a person might wish to make a tender offer.

(b) *Circumstances in which tender offers will still be relevant following the abolition of SARs 1 to 3 and 5*

5.2.3 Note 3 on Rule 36.3 (in its current form) provides, inter alia, 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 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.”

5.2.4 Therefore, Note 3 on Rule 36.3 makes clear that, with the consent of the Panel, a person may make a tender offer instead of making a partial offer in certain

circumstances. Under SAR4, a tender offer is made by means of an advertised offer to all shareholders (although a circular in the same form as the advertisement may also be posted) which is open for a minimum period of one week. The person making the tender offer is not permitted to make any arguments in support of it. By contrast, a partial offer is subject to the Code in the normal way (such that the offeror can make arguments in support of his offer), although the additional provisions of Rule 36 also apply. As a result, a partial offer is a more lengthy, cumbersome and costly type of transaction than a tender offer.

- 5.2.5 PCP 2005/4 proposed that the first two sentences of Note 3 should be retained (subject to drafting changes and to the reference to SAR4 being amended to refer to the new Appendix 5). The PCP also proposed that the remaining provisions of Note 3 should be included in Section 1 of Appendix 5 (subject to a minor consequential amendment arising out of PCP 2005/3).
- 5.2.6 On this basis, following the abolition of the SARs, there would be three ways in which a person would be able to acquire interests in up to 29.9% of the existing share capital of a company: (a) through purchases of shares (or acquisitions of other interests in shares), (b) by means of a partial offer (see Rule 36.1), and (c) by means of a tender offer. Similarly, a person who holds shares carrying more than 50% of a company's voting rights will be able to increase his shareholding (but not offer for 100% of the outstanding shares) in each of these three ways.
- 5.2.7 The Code Committee believes that, notwithstanding the abolition of SARs 1 and 2, there remains a justifiable basis for retaining the tender offer rules, namely (i) that, in accordance with Note 3 on Rule 36.3, a tender offer would remain available to be made instead of a partial offer (which, as explained above, is a more lengthy, cumbersome and costly process), and (ii) that this benefit is particularly relevant in the context of companies whose shares are not admitted to trading (where a person is not able to acquire shares in the market).

(c) ***Conclusion***

5.2.8 In the light of the above, the Code Committee has decided to retain the rules relating to tender offers.

5.2.9 The Code Committee recognises that there is an argument that, consistent with SARs 1 to 3 and 5 having been abolished, the Code should cease to regulate in any way acquisitions of interests in shares below the 30% level. Accordingly, the Code Committee intends, in due course, to consider further whether it is appropriate for the Panel to continue to regulate either partial offers or tender offers where a person's resultant interests in shares carrying voting rights (when aggregated with the interests of persons acting in concert with him) would remain below 30%.

(d) ***Partial offers and tender offers – consultation with the Panel***

5.2.10 Following the abolition of SARs 1 and 2, a person will generally not be restricted by the Panel in the speed at which he can acquire shares (or interests in shares) where, following the acquisition, the percentage of the company's shares in which he and persons acting in concert with him would be interested would remain below 30%. However, as is currently the case, the Panel may, in certain circumstances, have to consider whether a particular share purchasing operation should be conducted by way of a partial offer (in accordance with, in particular, Rule 36) or, alternatively, by means of a tender offer (in accordance with Appendix 5). The Code Committee expects this question to be relevant only rarely, for example where a person is contacting directly a large proportion of the company's shareholders with a view to acquiring a significant stake. Further, the Code Committee understands that the Panel will normally allow market purchasing operations conducted through the acquiror's broker to proceed without a partial offer or a tender offer having to be made. In cases of doubt, parties should consult in advance with the Panel.

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

All the respondents who answered this question agreed with the text of the proposed new Appendix 5 and with the other proposed amendments to the Code, save that one respondent suggested that Section 4.4 of Appendix 5 should be amended to require that a copy of any document sent by the board of the offeree company to its shareholders in connection with a tender offer should be lodged with the person making the tender offer as well as with the Panel. The Code Committee does not believe that this amendment is necessary.

5.4 Amendments to the Code

5.4.1 In the light of the above, the Code Committee has deleted the SARs in their entirety and has adopted the following amendments to the Code (which were proposed in PCP 2005/4):

- (i) the introduction of a new Appendix 5 in the form set out in PCP 2005/4 (subject to the amendments referred to in paragraph 5.4.2 below);
- (ii) an amendment to the paragraph of the Introduction to the Code which refers to the transactions to which the Code applies to refer also to tender offers. For the avoidance of doubt, PCP 2005/4 proposed that the relevant amendment should be made to paragraph 4(b) of the Introduction of the Code but, following RS 2005/5, the relevant provisions (as amended following RS 2005/5) are included in paragraph 3(b) of the new Introduction;
- (iii) the deletion of Note 2 on Rule 5.1;
- (iv) the deletion of the reference to the SARs in Note 4 on Rule 5.2;
- (v) amendments to Rule 19.4(vii) and to Section 5 of the Document Charges section to refer to Appendix 5 as opposed to the SARs; and

- (vi) the deletion of Note 3 on Rule 36.3, apart from the first two sentences. (The deleted provisions have been included in Section 1 of Appendix 5).

5.4.2 In addition, the Code Committee is making a number of minor amendments which were not set out in PCP 2005/4, as follows:

- (i) replacing the references to SAR4 in Note 2 on Rule 2.9 with references to Appendix 5;
- (ii) amending the retained provisions of Note 3 on Rule 36.3 from the text set out in the PCP as shown below to make clear that the Rules which apply to tender offers are set out in Appendix 5:

“In certain circumstances, with the consent of the Panel, a tender offer may be used instead of a partial offer in which case the Rules set out in ~~made instead of a partial offer. Such a tender offer must be conducted in accordance with Rule 4 of the SARs Appendix 5 will apply.~~”.

In addition, on the basis that they relate to the whole of Rule 36 and not just to Rule 36.3, the retained provisions of Note 3 on Rule 36.3 (as set out above) will be relocated to become a new Note 3 on Rule 36;

- (iii) in order to conform the language used in Section 1(b) of Appendix 5 with amendments made elsewhere in the Code as a result of PCP 2005/3, amending that provision as follows:

“1 PANEL’S CONSENT REQUIRED

The Panel’s consent is required for any tender offer. The Panel’s consent is normally granted where:

- (a) ...
- (b) **the tender offer is by any person holding shares carrying ~~controlling~~ more than 50% of the voting rights of a company, ...”;**
- (iv) in the light of the amendments made to update the terminology relating to the admission of securities to listing and to trading as set out in paragraphs 2.15 to

2.18 of PCP 2006/1, amending Section 2(a) of Appendix 5 as proposed in PCP 2005/4 as follows:

“2 PROCEDURE AND CLEARANCE

(a) A person publishing a tender offer for the shares of a company which are admitted to listing listed on the Official List Stock Exchange or to trading, 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 Section 3 at least 7 days before the day on which the tender closes. ...”;

- (v) amending the references in Appendix 5 from “buyer” to “offeror” and, where appropriate, referring also to persons acting in concert with the offeror. The Code Committee notes that because the definition of acting in concert applies to persons who co-operate with an offeror to obtain or consolidate control of a company, and because “control” is defined as an interest, or interests, in shares carrying in aggregate 30% or more of the voting rights of a company, the term acting in concert does not apply on a literal basis to partial offers and tender offers below the 30% level. Therefore, the Code Committee wishes to make clear that where a partial offer or tender offer is made which could not result in the offeror and persons acting in concert with it being interested in shares carrying 30% or more of the voting rights of a company, the term “acting in concert with the offeror” should be interpreted to apply to persons who, pursuant to an agreement or understanding (whether formal or informal), co-operate with the offeror in the conduct of the partial offer or tender offer (and the categories of person presumed to be acting in concert would apply in the normal way);
- (vi) on the basis that a tender offeror may circulate a copy of the tender announcement (in addition to publishing it in a newspaper), referring in Appendix 5 to such circular, where appropriate;
- (vii) amending Note 1 on Section 3 of Appendix 5, which explains the consequences for a tender offeror which makes a statement implying that it

does not intend to make an offer for the company, to refer to Rule 2.8 of the Code (where these consequences are set out in detail); and

- (viii) making other minor drafting amendments to Section 1 of Appendix 5 and the Notes thereon, to Section 2(a) of Appendix 5 and to Section 3(a)(viii) of Appendix 5, as set out in Appendix A.

5.4.3 Appendix A to this document sets out the amendments described above in full. Appendix A is divided into two parts: Part 1 sets out the amendments to the Code and the SARs other than the new Appendix 5 to the Code and Part 2 sets out the new Appendix 5 to the Code.

APPENDIX A

PART 1: AMENDMENTS TO THE CODE AND THE SARS (OTHER THAN APPENDIX 5)

INTRODUCTION

3 COMPANIES, TRANSACTIONS AND PERSONS SUBJECT TO THE CODE

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(b) Transactions

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In cases falling within paragraphs (a)(i) or (ii) above, the Code is concerned with regulating takeover bids and merger transactions of the relevant companies, however effected, including by means of statutory merger or Court approved scheme of arrangement. The Code is also concerned with regulating other transactions (including offers by a parent company for shares in its subsidiary, dual holding company transactions, new share issues, share capital reorganisations and offers to minority shareholders) which have as their objective or potential effect (directly or indirectly) obtaining or consolidating control of the relevant companies, as well as partial offers (including tender offers pursuant to Appendix 5) to shareholders for securities in the relevant companies. The Code also applies to unitisation proposals which are in competition with another transaction to which the Code applies.

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Rule 2.9

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NOTES ON RULE 2.9

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2. *Rules 6, 7, 9, 11, 17, ... 31, ... Appendix 1.6 and ~~SAR 4~~Appendix 5*

Announcements made under ... Appendix 1.6 and ~~SAR 4.4~~Appendix 5.5 must also be published in accordance with the requirements of this Rule.

...

Rule 5.1

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NOTES ON RULE 5.1

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~~2. — Applicability of the SARs~~

~~In addition to this Rule, the SARs apply unless there has been an announcement by the person making the acquisition of a firm intention to make an offer for the company the posting of which is not, or has ceased to be, subject to the fulfilment of any condition.~~

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Rule 5.2

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NOTES ON RULE 5.2

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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.~~

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Rule 19.4

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

...

Rule 36.3

...

NOTES ON RULE 36.3

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~~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 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.

NOTES ON RULE 36

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3. Use of tender offers

In certain circumstances, with the consent of the Panel, a tender offer may be used instead of a partial offer in which case the Rules set out in Appendix 5 will apply.

...

DOCUMENT CHARGES

...

5 TENDER OFFERS

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

...

THE SARs

[The SARs have been deleted.]

PART 2: APPENDIX 5 TO THE CODE

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 offeror 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 a person holding shares carrying 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 on the Stock Exchange or on OFEX, this Appendix takes precedence over any 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 1

1. 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 offer the issued share capital will have changed, this must also be taken into account.

2. Tender offers in competition with other types of offer under the Code

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

(a) extension of the offer period in respect of the other offer;

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

(c) disclosure of dealings by the offeror making the tender offer and any associates in the manner set out in Rule 8.

2 PROCEDURE AND CLEARANCE

(a) A person publishing a tender offer for the shares of a company which are admitted to listing on the Official List or to trading on AIM or on OFEX must do so by paid advertisement in two national newspapers and must notify the company concerned of the information specified in Section 3 at least 7 days before the day on which the tender offer closes. The offeror may also circulate copies of the advertisement to shareholders of the company, subject to compliance with the FSMA.

(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.

(c) Subject to (d) below, the offeror must treat all shareholders on equal terms.

(d) 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 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.

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

(f) 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 or circulars at the same time as they are given to the newspapers or are posted to shareholders, as the case may be.

3 DETAILS OF TENDER OFFER ADVERTISEMENTS

(a) The advertisement of a tender offer or circular (as the case may be), which must constitute a firm offer, must include the particulars set out below:-

- (i) the name of the offeror;
 - (ii) the name of the broker or other agent acting for the offeror;
 - (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 offeror 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 number and percentage of shares in which the offeror and persons acting in concert with it are interested, specifying the nature of the interests concerned (see 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 the offeror wishes to make a statement about its future intentions, it must be contained in the advertisement of the tender offer or circular, as the case may be, and should be explicit and unambiguous. The Panel should be consulted in advance with regard to any such statement.
- (d) If the offeror 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 or circular must be restricted to the items above together with any information required under the FSMA, secondary legislation made under that Act or any rule made by the FSA.

NOTES ON SECTION 3

1. Future offers

If the offeror or a person acting in concert with it makes a statement which implies that the offeror does not intend to make an offer for the company, Rule 2.8 will apply.

2. Limit on contents of tender advertisements and circulars

The limit on the amount of information permissible in tender advertisements and circulars is strictly enforced; no form of argument or persuasion is allowed. Consequently the offeror (or any person acting in concert with it) 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 or circular itself.

4 CIRCULARS FROM THE BOARD OF THE OFFEREE COMPANY

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.

5 ANNOUNCEMENT OF THE RESULT OF A TENDER OFFER

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

6 PROHIBITION OF FURTHER TRANSACTIONS DURING A TENDER OFFER

The offeror and any person acting in concert with it may not otherwise acquire or dispose of any interest in shares carrying voting rights in the company between the time of the publication of the tender offer and the time when the result of the tender offer is announced.

APPENDIX B**List of respondents**

Association of British Insurers

Charles Russell LLP

Citigroup

Confederation of British Industry

Hermes Pensions Management Limited

Insight Investment

Institute of Chartered Accountants in England and Wales

Investment Management Association

Joint Working Party on Takeovers of The Law Society of England and Wales'
Standing Committee on Company Law and the City of London Law Society's
Company Law Sub-Committee and the Law Reform Council of the Bar

London Investment Banking Association

The National Association of Pension Funds

Winterflood Investment Trusts