

THE TAKEOVER PANEL

NOTE TO ADVISERS IN RELATION TO “WHITEWASH” DOCUMENTS

Please find attached the Panel Executive’s standard form checklist for “whitewash” documents. This checklist is provided in order to assist advisers in ensuring that each draft/proof which is submitted to the Executive complies with all relevant content requirements in the Takeover Code. The Executive requires a duly completed checklist to accompany each draft/proof submitted to the Executive for review and the Executive will not accept a draft/proof for review without a completed checklist which demonstrates the draft/proof to have been prepared to the appropriate standard expected.

Please note that, as stated in Note 1 on Section 2 of Appendix 1 of the Code, consultation with the Executive at an early stage is essential in relation to “whitewash” transactions. **Late consultation may well result in delays to planned timetables.**

The applicability of the relevant provisions of the Code to the proposed transaction, and the question of whether or not the transaction and the contents of the “whitewash” document comply with the Code, will depend on the circumstances of each particular case. Although the Executive must approve the issue of a “whitewash” document, the document remains the exclusive responsibility of the company concerned and its advisers. It is therefore the responsibility of the parties to the transaction and their respective advisers to ensure that all issues that might be relevant to the Executive’s grant of a waiver of an obligation under Rule 9 are expressly brought to the attention of the Executive for its consideration, rather than merely incorporated into the “whitewash” document.

Similarly, although it is the Executive’s practice to provide this checklist for the use and assistance of companies proposing “whitewash” transactions, the checklist does not form part of the Code and advisers will see that it follows a shorthand informal style, principally to highlight the various provisions of the Code which govern the contents of “whitewash” documents. Accordingly, completion of the checklist does not in any way imply that the contents of the “whitewash” document will be regarded by the Executive as complete or sufficient for the purposes of a particular transaction.

Where any item on the checklist is “not applicable” to the transaction in question, an explanation of the reason must be included in the “Comments” column or on an attached sheet. For example, if the “whitewash” document does not include a profit forecast for the offeree company, the “Comments” column should include a statement to the effect that the company has not made any relevant profit forecasts that are required to be included in the “whitewash” document.

In addition, where the checklist requires an explanation of certain relationships, the information should be included in the “Comments” column or on an attached sheet. This applies whether or not the information is also set out in the “whitewash” document.

Please note the importance of using the attached latest version of the “whitewash” checklist (which is the version last revised on 19 April 2010).

In particular, the attention of advisers is drawn to the following:

- Section 3 of Appendix 1 of the Code and the fact that a waiver of an obligation under Rule 9 of the Code will not normally be granted, or may be invalidated, in the event of “disqualifying transactions”;
- Section 4(h) of Appendix 1 of the Code and Note 3 on Rule 21.2 which state that Rule 21.2 generally applies to the payment of an inducement fee in the context of a “whitewash” transaction. In this context, the 1% de minimis test will normally be calculated by reference to the value of the offeree company immediately prior to the announcement of the proposed “whitewash” transaction;
- Section 6 of Appendix 1 of the Code and the fact that an appropriate announcement will need to be made following the “whitewash” meeting; and
- Section 7 of Appendix 1 of the Code, in situations where shareholders approve the issue of convertible securities, or the issue of warrants or the grant of options to subscribe for new shares, where no immediate voting rights are obtained and the controllers wish to acquire further interests in voting shares following the relevant meeting. The Panel should be consulted in all such situations to establish the number of shares to which the waiver will be deemed to apply.

THE TAKEOVER PANEL

WHITEWASH DOCUMENT CHECKLIST

OFFEREE COMPANY (“EE”) (i.e. issuing company):

EE advisers (firm, contact and tel. no.):

OFFEROR (“OR”) (i.e. prospective controller(s)/concert party):

OR’s and concert parties’ maximum interests in EE shares (%):

Proposed date of final document:

Value of mandatory offer that would be necessary but for the whitewash:

Document charge payable (see page Doc 2 of the Code):

REFERENCE IN APPENDIX 1/RULES		PAGE NO & PARA	COMMENTS
If OR is a concert party, describe the nature of the relationship between the members of the concert party.			
Section 2(d)	Resolution to approve proposals and vote on a poll?		
<i>Rule 25.1 Note 3</i>	Directors with conflict of interest excluded from board recommendation?		
	Provide details of all relationships (personal, financial and commercial), arrangements and understandings between the controller(s) and any of the directors of EE (or their close relatives and related trusts).		
Section 2(e)	Potential controller(s) and other non-independent parties disenfranchised for EGM vote?		
	Provide details of all relationships (personal, financial and commercial), arrangements and understandings between the controller(s) and any of the shareholders of EE or any person who is, or is presumed to be, acting in concert with any such shareholder.		
<i>Definition of acting in concert (“AIC”) Note 5</i>	Standstill agreement? <i>If the agreement includes appropriate carve-outs, it will not create a concert party. If no carve-outs then there must be disenfranchisement of directors or other relevant parties for EGM vote.</i>		

REFERENCE IN APPENDIX 1/RULES		PAGE NO & PARA	COMMENTS
Section 4(a)/ Rule 3	Competent independent advice to shareholders?		
	Provide details of all relationships (personal, financial and commercial), arrangements and understandings between the controller(s) and the Rule 3 adviser or any person who is, or is presumed to be, acting in concert with the Rule 3 adviser.		
Section 4(b)	Maximum potential controlling position given?		
	(i) Where dependent on the outcome of underwriting, assumed that full underwriting participation taken up?		
	(ii) Where convertible securities, options or subscription rights to be issued, maximum controlling position shown on assumption that only controllers will convert/exercise (earliest possible date stated)?		
Section 4(c)	Where maximum potential shareholding from transaction exceeds 50% of voting rights, specific and prominent reference to acquisitions of further interests in shares?		
Section 4(d)	Where potential controlling position will be held by more than one person, identity, pen portrait and potential interests in shares of each shown?		
Section 4(e)	Statement that Panel has agreed, subject to shareholders' approval, on a poll, to waive any general offer obligation resulting from the transaction?		
Section 4(f)/ Rule 16.2	Are any management incentivisation arrangements being proposed in connection with the whitewash transaction? If yes, consult the Panel.		
Section 4(g)/ Rule 19.2	Re: EE	(a) Responsibility statement?	
		(b) Panel consent and disclosure of reasons if any director excluded?	
	Re: OR	(a) Responsibility statement?	
		(b) Panel consent and disclosure of reasons if any person/director excluded?	

REFERENCE IN APPENDIX 1/RULES		PAGE NO & PARA		COMMENTS
Section 4(h)/ Rule 21.2	Full details of any inducement fee?			
	Is the amount of the inducement fee less than 1% of the value of EE immediately prior to announcement of the transaction?			
	Has Rule 3 adviser sent "comfort letter" to the Panel?			
Section 4(i)/ Rule 23	Full details of asset being injected? (<i>Rule 23 states that "no relevant information should be withheld".</i>)			
<i>Rule 24.1</i>	Information on intentions of potential controlling shareholders for EE	(a) Intentions re future business of EE?		
		(b) Strategic plans for EE and likely repercussions on employment and locations of EE's places of business?		
		(c) Intentions re redeployment of EE's fixed assets?		
		(d) Long-term commercial justification for proposed transaction?		
		(e) Intentions re continued employment of employees and management of EE and subsidiaries, including any material change in conditions of employment?		
<i>Rule 24.2(a) and (c)</i>	Note: If OR falls within Rule 24.2(b), only the information required by that Rule needs to be included		OR	EE
	(i) Financial information for last 3 years	Turnover		
		Net profit/loss before tax		
		Tax Charge		
		Net profit/loss after tax		
		Extraordinary items		

REFERENCE IN APPENDIX 1/RULES		PAGE NO & PARA		COMMENTS
<i>(Rule 25.2)</i>	Minority interests			
	Amount absorbed by dividends			
	Earnings per share			
	Dividends per share			
	(ii) Statement of assets and liabilities in last published audited accounts?			
	(iii) Cash flow statement from last published audited accounts?			
	(iv) Known material changes in financial or trading position since last published audited accounts, or negative statement?			
	(v) Details of (i) above if interim statement or preliminary announcement since last published audited accounts?			
	(vi) Inflation-adjusted information, where published?			
	(vii) Significant accounting policies and major notes to accounts?			
	(viii) If change in accounting policy, material variations stated?			
	(ix) Names of directors?			
(x) Nature of business and financial and trading prospects?				
(xi) Summary of material contracts (including of subsidiaries) for 2 years prior to posting?				
<i>Rule 24.2(c)</i>	OR admitted to the Official List or to trading on AIM? IF NOT:			
	(i) Further information required in particular circumstances? (see Note 2)			
	(ii) For any person who has made, or will make, an investment in OR to give equity interest in EE, identity, interest in OR, and further information required in particular circumstances? (see Note 2)			

REFERENCE IN APPENDIX 1/RULES		PAGE NO & PARA	COMMENTS
	(iii) For any person not in (ii) above, where direct or indirect interest in EE will be 5% or more, identity, interest in OR and further information required in particular circumstances? (see Note 2)		
<i>Rule 24.2(d)</i>	(i) Heading “If you are in doubt about what action to take, you should consult...”?		
	(ii) Date of document, and name and address of party being whitewashed (including, where a company, type of company and address of registered office)?		
	(viii)MMQs for first business day of each of last 6 months and latest business day before posting?		
	(x) Details of any irrevocable commitment or letter of intent procured by OR or its associates?		
<i>Rule 24.2(f)</i>	Description and source of finance for injection; identity of lenders or arrangers?		
	Description of financing arrangements where repayment or security dependent on EE or negative statement?		
<i>Rule 24.2(h)</i>	If recommendation of a financial adviser who has not issued document, consent?		
<i>Rule 24.2 Note 1</i>	If OR is a subsidiary company, has information required in Rule 24.2(a) and (c) been included for holding company/group?		
Section 4(i)	Notes: 1) If in any category (other than Rule 24.3(a)(ii)(c) and Rule 25.3(a)(ii)(c)) there are no interests etc, a negative statement is required. 2) Where dealing disclosures are required they should be for the period beginning 12 months prior to the publication of the circular. Dealings in respect of Rule 25.3 need not be disclosed as there is no offer period. 3) Dealings in respect of Rule 24.3 should be disclosed whether or not there are existing interests etc.		
<i>Rule 24.3(a) and (c)</i>	(i) OR in EE	Interests, rights to subscribe and short positions	
		Dealings	

REFERENCE IN APPENDIX 1/RULES		PAGE NO & PARA	COMMENTS
	(ii)(a) OR directors in EE	Interests, rights to subscribe and short positions	
		Dealings	
	(ii)(b) OR concert parties in EE	Interests, rights to subscribe and short positions	
		Dealings	
	(ii)(c) Persons with whom OR/OR concert parties have Note 11 on the definition of AIC arrangements in EE. <i>No negative statement required if no such arrangements</i>	Interests, rights to subscribe and short positions	
		Dealings	
(iv) Shares in EE borrowed or lent by OR/OR concert parties			
<i>Rule 25.3(a) and (c)</i>	(i) Interests, rights to subscribe and short positions in OR of EE		
	(i) Interests, rights to subscribe and short positions in OR of EE directors		
	(ii)(a) Interests, rights to subscribe and short positions in EE by EE directors		
	(ii)(b) Interests, rights to subscribe and short positions in EE by any other person AIC with EE		
	(ii)(c) Interests, rights to subscribe and short positions in EE by persons with arrangements of the kind referred to in Note 11 on the definition of AIC with EE or with any person AIC with EE. <i>No negative statement required if no such arrangements.</i>		
	(iv) Shares in EE borrowed or lent by EE concert parties		
	(v) EE directors' voting intentions		

REFERENCE IN APPENDIX 1/RULES		PAGE NO & PARA		COMMENTS
Section 3	NB Any disqualifying transactions?			
Section 4(k)/ Rule 24.5	Arrangements etc having connection with or dependence upon proposed transaction, or negative statement?			
Rule 24.8	Arrangements for transfer of securities acquired under proposed transaction, or negative statement?			
Section 4(l)/ Rule 25.4	(a) Particulars of all service contracts of any director or proposed directors of the EE with the EE or any subsidiary, or negative statement?			
	(b) Where service contract entered into or amended in last 6 months, particulars in respect of earlier contracts, or negative statement?			
Section 4(m)/ Rule 25.6	(a) Summary of EE material contracts (including of subsidiaries) for 2 years prior to posting? <i>See Rule 24.2(a)(xi) above re OR.</i>			
	(b) Details of any irrevocable commitments or letters of intent procured by EE or its associates? <i>See Rule 24.2(d)(x) above re OR.</i>			
Section 4(n)/ Rule 26	Documents on display:	OR	EE	
	(a) Memorandum and articles of association			
	(b) 2 years published audited consolidated accounts			
	(c) Any report etc. referred to			
	(d) Written consents (Rules 24.2(h) and 25.1(c))			
	(e) Material contracts entered into in connection with the transaction (Rules 24.2(a) and (c) and 25.6)			
	(f) Where profit forecasts, from auditors and financial adviser:			
	(i) Reports (Rule 28.3)			
	(ii) Consents (Rules 28.4 and 28.5)			

REFERENCE IN APPENDIX 1/RULES		PAGE NO & PARA	COMMENTS
	(g) Where asset valuation:	(i) Valuation (Rule 29.5)	
		(ii) Consents (Rule 29.5)	
	(h) Irrevocable commitments and letters of intent		
	(i) Full list of dealings where aggregation permitted (Note 2 on Rule 24.3)		
	(j) Documents relating to financing (3 rd sentence of Rule 24.2(f))		
	(k) Derivative contracts (Rules 24.3(a) and (c) and 25.3(a) and (c))		
	(l) Documents relating to the payment of an inducement fee (Rule 21.2)		
	(o) Whitewash circular		
	Website address on which display documents published?		
Section 4(o)/ Rule 28	Re EE or assets being acquired by EE: Profit forecasts (<i>pf</i>) on record repeated in document?		
	Is there a <i>pf</i> or profit warranty in document? IF YES:		
<i>Rule 28.2</i>	Assumptions given?		
<i>Rule 28.3(b)</i>	Report by auditors/accountants?		
	Report by financial advisers?		
<i>Rule 28.3(c)</i>	Report by independent valuer where income from land and building is material?		
<i>Rule 28.4</i>	Consents given and not withdrawn?		
<i>Rule 28.6</i>	Earnings enhancement statement?		
<i>Rule 28.7</i>	<i>pf</i> includes forecast of taxation, extraordinaries, etc, where relevant?		

REFERENCE IN APPENDIX 1/RULES		PAGE NO & PARA	COMMENTS
<i>Rule 28.8</i>	Previously published profit figures and comparatives?		
<i>Rule 29</i>	Re EE or assets being acquired by EE: Asset valuation in document? IF YES:		
<i>Rule 29.1</i>	Valuer's name?		
<i>Rule 29.2</i>	Basis of valuation?		
<i>Rule 29.3</i>	Potential tax liability?		
<i>Rule 29.4</i>	Current valuation?		
<i>Rule 29.5</i>	(a) Valuation appears in document?		
	(b) Valuer's consent?		
	(c) Valuation on display?		
	Appropriate format, reports, etc?		
<i>Note on Rule 30.3</i>	Details of any particular jurisdiction(s) into which document proposed not to be sent?		
	Each such jurisdiction outside EEA?		
	Significant risk of civil, regulatory or criminal exposure in each such jurisdiction?		
	Less than 3% of the EE's shares held by registered shareholders located in each such jurisdiction?		
	Other factors being invoked? (Full details to be provided.)		
Provide details (whether or not already included in the document) of any other fact or matter that could be relevant to the Panel's grant of a waiver of the obligation under Rule 9.			

REFERENCE IN APPENDIX 1/RULES	PAGE NO & PARA	COMMENTS
Section 1(c)/ Rule 19.9(e)	Is document to be published in electronic form or by means of website publication? If yes, does document include:	
	(i) Statement setting out recipient's right to receive a copy of document and future documents in hard copy form and that they will not receive a hard copy unless requested?	
	(ii) Details of how a hard copy may be obtained (including an address in UK and telephone number)?	
Section 1(c)/ Rule 19.11(c)	Details of website on which all relevant documents, announcements and other information will be published? (see also Note 5 on Rule 19.11)	
Section 1(c)/ Rule 24.14(d) and Note	Is information to be incorporated into document from other sources? If yes, does document include:	
	(i) Statement setting out recipient's right to receive a copy of that information in hard copy form and that they will not receive a hard copy unless requested?	
	(ii) Details of how a hard copy may be obtained (including an address in UK and telephone number)?	
	(iii) Consolidated list of all such information including, in each case, details of where information may be located, address of website where information is published and relevant document, page and paragraph numbers?	
	Has information to be incorporated into document from other sources been provided to Executive in hard copy form?	
Section 1(c)/ Definition of "website notification"	Is document to be published by means of website publication? If yes, does website notification include:	
	(i) Details of website on which document is to be published?	

(ii) Statement setting out recipient's right to receive a copy of document (and information incorporated into it by reference to other sources) in hard copy form and that they will not receive a hard copy unless requested?		
(iii) Details of how a hard copy may be obtained (including an address in UK and telephone number)?		
(iv) Statement that website notification is not a summary of document and is not a substitute for reading document?		
Website notification must not include:		
(i) Controversial information, argument or invective		
(ii) Recommendation to take or not to take any action in relation to transaction		
(iii) Views on merits of transaction		
(iv) Supporting documents other than proxy form and other forms		