

# 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 for use with the Code as revised on 19 September 2011).

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”;
- Note 3 on Rule 21.2, which provides that the general prohibition on inducement fees and other offer-related arrangements applies also in the context of a “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 Executive 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 party’s 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 Takeover Code):

REFERENCE IN APPENDIX 1/RULES		PAGE NO & PARA	COMMENTS	OFFICE USE ONLY
If OR is a concert party, describe the nature of the relationship between the members of the concert party:				
<b>Section 2(d)</b>	Resolution to approve proposals and vote on a poll?			
<i>Rule 25.2 Note 4</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):			
<i>Definition of acting in concert (“AIC”) Note 5</i>	Any standstill agreement with EE directors? <i>If agreement includes appropriate carve-outs, it will not create a concert party (see Practice Statement No. 16). If no carve-outs then there must be disenfranchisement of directors or other relevant parties for EGM vote. A standstill agreement with EE directors will not normally exclude them from board recommendation (even if no carve-outs) provided adequate disclosure.</i>			
<b>Section 2(e)</b>	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.			

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<b>Section 3</b>	Any “disqualifying transactions”? <i>NB If any OR connected adviser has a principal trader which deals in EE shares but does not have EPT status, traders should not make any further acquisitions after whitewash announced (or should seek ad hoc EPT status)</i>		
<b>Section 4(a)/ Rule 3</b>	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.		
<b>Section 4(b)</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)?		
<b>Section 4(c)</b>	Where maximum potential shareholding from transaction exceeds 50% of voting rights, specific and prominent reference to acquisitions of further interests in shares?		
	Where potential controllers are a concert party, warning re individual limits?		
<b>Section 4(d)</b>	Where potential controlling position will be held by more than one person, identity, pen portrait and potential interests in shares of <u>each</u> shown?		
<b>Section 4(e)</b>	Statement that Panel has agreed, subject to shareholders’ approval, on a poll, to waive any general offer obligation resulting from the transaction?		
<b>Section 4(f)/ Rule 16.2</b>	Are any management incentivisation arrangements being proposed in connection with the whitewash transaction? If yes, consult the Panel.		

REFERENCE IN APPENDIX 1/RULES		PAGE NO & PARA	COMMENTS	OFFICE USE ONLY
<b>Section 4(g)/ Rule 19.2</b>	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?		
<b>Section 4(h)/ Rule 21.2</b>	Does document contain a summary of any offer-related arrangement permitted under, or excluded from, Rule 21.2?			
<b>Section 4(i)/ Rule 23.1</b>	Full details of asset being injected? ( <i>Rule 23.1 states that “Shareholders must be given sufficient information ... to enable them to reach a properly informed decision” and that “No relevant information should be withheld”.</i> )			
<i>Note on Rule 23.2</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? ( <i>Full details to be provided.</i> )			
<i>Rule 23.3</i>	If document includes recommendation or opinion of a financial adviser, statement of consent?			

REFERENCE IN APPENDIX 1/RULES		PAGE NO & PARA		COMMENTS	OFFICE USE ONLY
<i>Rule 24.2(a) and (b)</i>	Intentions etc. of potential controlling shareholders for EE	Intentions re future business of EE?			
		Long-term commercial justification for proposed transaction?			
		(i) Intentions re continued employment of employees and management of EE and subsidiaries, including any material change in conditions of employment (or negative statement)?			
		(ii) Strategic plans for EE and likely repercussions on employment and locations of EE's places of business (or negative statement)?			
		(iii) Intentions re redeployment of EE's fixed assets (or negative statement)?			
		(iv) Intentions re maintenance of any existing trading facilities for the relevant securities of EE?			
<i>Rule 24.3(c)</i>		Where OR is a company, insofar as affected by transaction, statements of intention by OR re future business and re (a)(i) and (ii) with regard to itself?			
<i>Rule 24.3(a) and (c)</i>	Financial and other information on the OR and the EE:		<b>OR</b>	<b>EE</b>	
	(i) names of directors?				
	(ii) nature of business and financial and trading prospects?				
	(iii) details of website address where audited consolidated accounts for last two financial years published and statement that accounts incorporated into whitewash document by reference to that website?				

REFERENCE IN APPENDIX 1/RULES		PAGE NO & PARA		COMMENTS	OFFICE USE ONLY
<i>(Section 4(m)/Rule 25.7(a))</i>	(iv) details of website address where any interim statement and/or preliminary announcement made since the date of last published audited accounts published and statement that statement or announcement incorporated into whitewash document?				
	(vi) statement of effect on OR of subscribing for maximum number of shares?				
	(vii) summary of material contracts (including of subsidiaries) for 2 years prior to date of document?				
<i>Rule 24.3(b)</i>	If OR not admitted to Official List, AIM or PLUS, information required by Rule 24.3(a) to be included plus:				
	(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)				
	(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 24.3(c)</i>	Summary details of any ratings agency ratings and outlooks prior to date of document?	<b>OR</b>	<b>EE</b>		
<i>Rule 24.3(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)?				
	(iii) The identity of any person acting in concert with OR				
	(viii) Middle Market quotations for EE shares for first business day of each of last 6 months and latest business day before date of document?				
	<i>(Section 4(m)/Rules 25.7(b))</i>	(x) Details of any irrevocable commitment or letter of intent?	<b>OR</b>	<b>EE</b>	

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<i>(Rule 25.7(c))</i>	(xvi) List of documents on display and website address? <i>(see Rule 26 below)</i>			
<i>Rule 24.3(f)</i>	Description of how any cash being injected is to be financed and source(s) of finance, including debt facilities or other instruments and, in particular:			
	(i) amount of each facility or instrument			
	(ii) repayment terms			
	(iii) interest rates, including any "step up" or other variation			
	(iv) any security			
	(v) summary of key covenants			
	(vi) names of principal financing banks			
	(vii) time by which OR will be required to refinance, and consequences of not doing so			
<i>Rule 24.3 Note 1</i>	If OR is a subsidiary company, information required by Rule 24.3(a) and (c) for holding company/group?			
<i>Rule 24.15(d) and Note</i>	If information incorporated into document from other sources:			
	(i) statement of right to receive hard copy and that hard copy will not be sent unless requested?			
	(ii) details of how hard copy may be obtained (including UK address and telephone number)?			
	(iii) consolidated list of all such information including details of where information located, address of website where information published and relevant document, page and paragraph numbers?			
	Information incorporated into document from other sources provided to Panel in hard copy?			

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<i>Rule 24.4(a) and (c)</i>	(i) OR in EE	Interests, rights to subscribe and short positions		
		Dealings		
	(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 25.4 (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				

REFERENCE IN APPENDIX 1/RULES		PAGE NO & PARA		COMMENTS	OFFICE USE ONLY
	(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 <u>or</u> 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				
<i>Rules 25.3</i>	Any known significant change in EE's financial or trading position since last audited financial information or interim financial information, or negative statement?				
<b>Section 4(k)/ Rule 24.6</b>	Arrangements etc having connection with or dependence upon proposed transaction, or negative statement?				
<i>Rule 24.9</i>	Arrangements for transfer of securities acquired under proposed transaction, or negative statement?				
<b>Section 4(l)/ Rule 25.5</b>	(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?				
<b>Section 4(n)/ Rule 26.1</b>	Documents on display:	<b>OR</b>	<b>EE</b>		
	(a) irrevocable commitment or letter of intent				
	(b) documents relating to financing of transaction				
	(c) agreements or arrangements of the kind referred to in Note 11 on definition of AIC				
	(d) any offer-related arrangement or other agreement, arrangement or commitment permitted by, or excluded from, Rule 21.2				

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<i>Rule 26.2</i>	(a) memorandum and articles of association					
	(b) any report etc. referred to					
	(c) written consents ( <i>Rules 23.3</i> )					
	(d) material contracts entered into in connection with the transaction ( <i>Rules 24.3(a) and (b) and 25.7</i> )					
	(e) where profit forecasts, from auditors and financial adviser:	(i) Reports (Rule 28.3)				
		(ii) Consents (Rules 28.4 and 28.5)				
	(f) where asset valuation:	(i) Valuation (Rule 29.5)				
		(ii) Consents (Rule 29.5)				
	(g) full list of dealings where aggregation permitted ( <i>Note 2 on Rule 24.4</i> )					
	(h) derivative contracts ( <i>Rules 24.4(a) and (c) and 25.3(a) and (c)</i> )					
<b>Section 4(o)/ Rule 28</b>	<b>Re EE or assets being acquired by EE:</b> Profit forecasts on record repeated in document?					
	Is there a profit forecast 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?					

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<i>Rule 28.6</i>	Earnings enhancement statement?			
<i>Rule 28.7</i>	Profit forecast includes forecast of taxation, extraordinary, etc, where relevant?			
<i>Rule 28.8</i>	Previously published profit figures and comparatives?			
<i>Rule 29</i>	<b>Re EE or assets being acquired by EE:</b> 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>Rule 30.2(e)</i>	If document to be published in electronic form or by means of "website notification":			
	(i) statement of right to receive document and future documents in hard copy and that hard copy will not be sent unless requested?			
	(ii) details of how hard copy may be obtained (including UK address and telephone number)?			
<i>Rule 30.4(c)</i>	Details of website on which document and other information to be published?			
<i>Definition of "website notification"</i>	If document to be published by means of website publication, does notification comply with Note on definition of "website notification"?			

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<b>Section 5</b>	Any underwriting or placing of EE securities? Details must be provided of all underwriters and places.			
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.				