

## SCHEDULE VI

### WHITEWASH GUIDANCE NOTE

(See Note 1 of Notes on dispensations from Rule 26.)

#### Introduction

1. This note sets out the procedures to be followed if the Executive is to be asked to waive the obligation to make a general offer under Rule 26 which would otherwise arise where, as a result of the issue of new securities as consideration for an acquisition or cash injection or in fulfilment of obligations under an agreement to underwrite the issue of new securities, a person or group of persons acting in concert acquires voting rights to an extent which would normally give rise to an obligation to make a general offer.
2. Where the word "offeror" is used in a particular Rule, it should be taken in the context of a whitewash as a reference to the potential controlling shareholders. Similarly, the phrase "offeree company" should be taken as a reference to the company which is to issue the new securities and in which the actual or potential controlling position will arise.
3. The General Principles of the Code apply equally to a transaction which is the subject of the whitewash procedures.

#### Specific grant of waiver required

In each case, specific grant of a waiver from the Rule 26 obligation is required. Such grant will be subject to:-

1. there having been no disqualifying transactions (as set out in Section 3 below) by the person or group seeking the waiver in the 6 months prior to the posting to shareholders of the circular relating to the proposals or between such posting and the shareholders' meeting;



2. prior consultation with the Executive by the parties concerned or their advisers;
3. approval in advance by the Executive of the circular to shareholders setting out the details of the proposals and containing the information required in Section 4 below;
4. compliance by the person or group seeking the waiver with the following Rules of the Code, where relevant:
  - (i) Rule 3 (when an announcement is required and contents of an announcement);
  - (ii) Rules 7.1 and 26.4 (timing of resignation of offeree company directors and appointment of offeror nominees to the board of the offeree company);
  - (iii) Rule 8 (timing and content of documents);
  - (iv) Rule 9 (standard of care and responsibility);
  - (v) Rule 12 (clearance of documents and publication of announcements);
  - (vi) Rule 18 (statements during course of offer);
  - (vii) Rule 25 (special deals);
  - (viii) Rule 30.1 (subjective conditions);
  - (ix) Rule 34 (shareholder solicitations).
5. approval of the proposals by an independent vote, on a poll, at a meeting of the holders of any relevant class of securities, whether or not any such meeting needs to be convened to approve the issue of the securities in question; and
6. disenfranchisement of the person or group seeking the waiver and of any other non-independent party at any such meeting.

*Notes to Section 2:*



### *1. Early consultation*

*Consultation with the Executive at an early stage is essential. Late consultation may well result in delays to planned timetables. Experience suggests that the documents sent to shareholders in connection with the whitewash procedure may have to pass through several proofs before they meet the Executive's requirements and no waiver of the Rule 26 obligation will be granted until such time as the documentation has been approved by the Executive.*

### *2. Listing Division*

*It must be noted that, in the case of listed companies, clearance of the circular by the Listing Division of the Stock Exchange does not constitute approval of the circular by the Executive.*

## **Disqualifying transactions**

Notwithstanding the fact that the issue of new securities is made conditional upon the prior approval of a majority of the shareholders independent of the transaction at a general meeting of the company:-

1. the Executive will not normally waive an obligation under Rule 26 if the person to whom the new securities are to be issued or any person acting in concert with him has acquired voting rights in the company in the 6 months prior to the announcement of the proposals but subsequent to negotiations, discussions or the reaching of understandings or agreements with the directors of the company in relation to the proposed issue of new securities;
2. a waiver will be invalidated if, without the prior consent of the Executive, any acquisitions or disposals of voting rights are made by such persons in the period between the announcement of the proposals and the shareholders' meeting.

## **Circular to shareholders**

The circular must contain the following information and statements or, where relevant, comply appropriately with the Rules of the Code as set out below:-

1. competent independent advice contemplated by Rule 2 to the



offeree company regarding the transaction, the controlling position which it will create and the effect which this will have on shareholders generally;

2. full details of the maximum potential controlling holding of voting rights:

(i) where this is dependent upon the outcome of underwriting arrangements, it should be assumed that the potential controlling shareholders will, in addition to any other entitlement, take up their full underwriting participation; and

(ii) where convertible securities, warrants, options or other subscription rights are to be issued, the potential controlling holding of voting rights must be indicated on the assumption that only the controlling shareholders will convert or exercise the subscription rights, and will do so in full and at the earliest opportunity (the date of which must also be given);

3. where the maximum potential holding of voting rights resulting from the proposed transaction will exceed 55% of the voting rights of the company, specific and prominent reference to this possibility and to the fact that, subject to Section 7 below, the potential controlling shareholders may increase their holding without incurring any further obligation under Rule 26 to make a general offer;
4. in cases where the potential controlling shareholding will be held by more than one person, the identity of the potential controlling shareholders and their individual potential holding of voting rights in addition to the information required under (k) below;
5. a statement that the Executive has agreed, subject to approval by independent shareholders, to waive any obligations to make a general offer which might result from the transaction;
6. Note to Rule 8 (documents to be on display);
7. Rule 9.2, paragraphs (1), (2), (3), (6) and (10) of Schedule I and paragraphs (6), (7) and (8) of Schedule II (information to shareholders which must include full details of the assets, if any, being injected including, without limitation, an independent valuation of such assets);
8. Rules 9.3 and 9.4 (responsibility statements, etc.);



9. Rules 10 and 11 (profit forecasts and asset valuations relating to the offeree company or relating to assets being acquired by the offeree company);
10. paragraphs (1) and (14) of Schedule I and paragraph (11) of Schedule II (arrangements in connection with the proposal);
11. paragraph (4) of Schedule I and paragraph (2) of Schedule II (disclosure of shareholdings and dealings). Dealings should be covered for the 6 months prior to the posting of the circular but this does not apply in respect of paragraphs (2) (iii), (iv) or (v) of Schedule II as there is no offer period;
12. paragraph (9) of Schedule II (material contracts); and
13. paragraph (13) of Schedule II (service contracts of directors and proposed directors).

### **Underwriting and placing**

1. In cases involving the underwriting or placing of offeree company securities, the Executive must be given details of all the proposed underwriters or placees, including any relevant information to establish whether or not there is a group acting in concert, and the maximum percentage which they could come to hold as a result of implementation of the proposals.

### **Announcements following shareholders' approval**

1. Following the meeting at which the proposals are considered by shareholders, an announcement must be made by the offeree company giving the result of the meeting and the number and percentage of voting rights attaching to the shares to which the potential controlling shareholders have become entitled as a result.
2. Where the final controlling holding of voting rights is dependent on the results of underwriting, the offeree company must make an announcement following the issue of the new securities stating the number and percentage of voting rights held by the controlling shareholders at that time.
3. Where convertible securities, warrants, options or other subscription rights are to be issued:-



(i) the announcement of the potential controlling holding of voting rights must be made on the basis of the assumptions described in Section 4(b) above; and

(ii) following each issue of new securities a further announcement must be made confirming the number and percentage of voting rights held by the controlling shareholders at that time.

*Note to Section 6:*

*Copies of announcements*

4. *Copies of announcements made under this Section should be sent to the Executive.*

#### **Subsequent acquisitions by controlling shareholders**

Immediately following approval of the proposals at the meeting of independent shareholders, the controlling shareholders will be precluded from acquiring additional voting rights in the offeree company for the 12 month period immediately following the acquisition, unless such further acquisition is authorised by way of a separate vote of independent shareholders. If such authorisation is not obtained, such person or group of persons shall be deemed to have a lowest percentage holding equal to the greater of (i) 35% and (ii) the percentage holding that is 5% less than the percentage holding of such person, or group of persons, immediately following the "whitewashed" transaction. (See Note 15 to Rule 26.1.)

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, the Executive will view the approval as sanctioning maximum conversion or subscription at the earliest possible moment without the necessity for the making of an offer under Rule 26. If the potential controlling shareholders acquire further voting rights after the date of the resolution, the waiver will only apply to conversion into, or subscription for, such number of voting rights as, when added to the purchases, does not exceed the number originally approved by shareholders.

(See also Note 6 to Rule 26.1.)



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