



Australian Government
Takeovers Panel

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Email: takeovers@takeovers.gov.au

[insert date]

File: [##]/2017

To:	Legal representative:	Sent via:
ASIC	-	AsicTakeoverMatters@asic.gov.au

Dear All

Process Letter - [Matter Name]

1. We refer to the application dated [insert date].

Important procedural information

2. Please note the following:

- (a) Our website (www.takeovers.gov.au) contains detailed information on the Panel process (including how to become a party and communication protocols).
- (b) Documents are to be sent to this address - takeovers@takeovers.gov.au.
- (c) Submissions sent to the Panel and parties must be in Microsoft **Word** format. Attachments can be sent in PDF format but must be clearly identified and numbered.
- (d) Emails must be no larger than **3MB** for any one attachment and **8MB** in total. Separate emails are acceptable if needed.
- (e) When sending emails to the Panel or to parties, ensure the subject of the email contains the matter name.
- (f) Tell us if you have not received a copy of the application.
- (g) Tell us of anyone else who may be affected who may not have a copy of the application.
- (h) Complete the attached Notice of Appearance, if you have not already provided one, to seek to become a party in the matter. The notice includes the necessary confidentiality and media undertakings – see below. Include contact details for up to 4 people on whom Panel documents can

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be served. The names, grouping of names and contact details on the first page of this letter are based on the best information we have available to date.

- (i) If you do not become a party you will not be kept apprised of the matter's progress and will only be assured of receiving one more document in relation to this matter – the Panel's declaration of interests.
 - (j) Supply the following information (if not already supplied or if incorrect in the application), to help us check for conflicts of interest:
 - (i) the names of your directors, advisers (including legal, financial and accounting/audit), relevant/major shareholders, related bodies corporate (including your ultimate parent company or controller) and
 - (ii) your interests in relevant companies in which you have a substantial holding (as defined in the Corporations Act).
 - (k) When notified of the sitting Panel, advise us if you think any of the sitting Panel members may have interests such that they may not be able to perform their duties properly. If you fail to do this promptly you may be taken to have waived any right to object on the basis of such interests.
 - (l) The reasons for decision will identify the names of legal or financial adviser firms acting for parties in connection with the proceedings.
3. The Panel uses email as its primary mode of communication during proceedings and expects parties to do likewise. Please let us know if this is a problem.
4. All documents in proceedings must be sent to each party at the same time (so far as practicable) as they are sent to the Panel. This should be clear on the face of the email (i.e., no "blind copies").

Preliminary submissions

5. A party other than the applicant may make a preliminary submission (see rule 6.1.1 of the Panel's Procedural Rules 2010). If the Panel conducts proceedings (see ASIC Regulation 20), it will issue a brief inviting submissions (see rule 6.2.1 of the Panel's Procedural Rules 2010). Should something occur that warrants comment outside that process, a party can ask to make a further submission.

Undertakings

6. The Panel encourages parties to resolve matters wherever possible and welcomes any offer by a party to remedy potential unacceptable circumstances. While parties are free to offer an undertaking to resolve the matter at any point in the Panel's process, the Panel is more receptive to resolutions proposed by the parties if they are offered earlier in the process. See Guidance Note 4 –

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Remedies General at [9] and [39] and note 5 to rule 2.2.3 of the Panel's Procedural Rules 2010.

Privacy

7. Personal information is collected in relation to Panel proceedings. We will share it as required or authorised by law or with permission. The Panel may refer to personal information in a decision media release, declaration of unacceptable circumstances, orders or reasons.¹ You may request access to your personal information, and may seek to correct it if it is not accurate or complete. For full details see the [Privacy Policy](#) on our website.

Obligation to inform the Panel

8. Parties are also reminded that a person must not give information to the Panel that is false or misleading in a material particular.² This obligation is reinforced in the Panel's Procedural Rules, which require documents to be accompanied by any relevant material (unless already provided)³ and state:

... the Panel expects a person who does not have personal knowledge of a matter included in a submission to have made appropriate inquiries that the matter is true and not misleading....⁴

Media canvassing

9. Panel proceedings are generally conducted in private. As part of this, parties undertake in the Notice of Appearance not to canvass in the media issues that are before (or likely to be before) the Panel. The Panel takes this commitment seriously and expects parties to do likewise. Any person who may have contact with the media (eg, the CEO or the corporate relations team) should be told very clearly not to canvass the issues with the media, even as backgrounding.
10. The undertaking does not prevent statements that give some information about the process – identifying the parties, the subject matter of the proceeding, the broad nature of the unacceptable circumstances alleged or the orders sought. This information is generally in the media release the Panel made when it received the application.
11. There can be no discussing the merits of the matter. We would caution anyone relying on the exception in paragraph 10 to be very careful not to exceed it.

¹ after receiving submissions from parties and other persons who may be affected by the relevant Panel decision

² Section 199 *Australian Securities and Investments Commission Act 2001* (Cth). It is a defence to a prosecution if the defendant believed on reasonable grounds that the information was true and not misleading

³ Rule 2.1.1(f)

⁴ note 7 to Rule 6.2.1

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12. Compliance with the media canvassing obligation⁵ assists with speedy and smooth resolution of the matter, honours the promise made to both the Panel and the other parties, and is fair to the other parties who comply with the undertaking they have given.

Parties

13. The addressees of this letter are persons who have been identified in the application or who have informed the Panel of their interest. They are not necessarily parties or accepted legal representatives.

Yours faithfully

Allan Bulman
Director
Takeovers Panel
Ph: (03) 9655 3500
Fax: (03) 9655 3511
E-mail: takeovers@takeovers.gov.au

⁵ Compliance includes with the spirit of the undertaking, as made clear in *Just Group Limited* [2008] ATP 22 at [32]: "In some cases other issues are so connected with issues that are before the Panel that it is incumbent on parties not to take too technical an interpretation of the prohibition."

NOTICE OF APPEARANCE

Matter: [*matter name]

Proposed party: [*name of proposed party]

In this proceeding, the proposed party:

1. seeks to be a party and requests that the Panel accept this Notice of Appearance [and]
2. gives the following contact details and undertakings [and]
3. *Optional:* seeks to be legally represented and requests the Panel's consent to be represented by [*name of legal adviser]].

CONTACT DETAILS (for up to 4 individuals)

Name and position:

Office address:

Direct office telephone number:

Office fax number:

Mobile number:

Email address:

UNDERTAKINGS

The proposed party undertakes to the Panel under section 201A of the *Australian Securities and Investments Commissions Act 2001* (Cth) and to each party to the matter from time to time that it and its directors, officers and advisers will not:

- A. use or disclose any confidential information provided to it in the proceeding. This undertaking is not limited by time. However, this undertaking does not apply to inhibit the use of confidential information:
 - in the proceeding itself as permitted under the Panel's rules or
 - disclosed as required by law or the rules of a securities exchange.
- B. directly or indirectly cause, participate in or assist the canvassing in any media of any issue that is before (or likely to be before) the Panel in this proceeding. This undertaking applies:
 - until the Panel publishes its reasons for decision and
 - if an application is made in a proceeding to vary any final order, from the time the proposed party becomes aware of the application until it is determined by the Panel.*

However, this undertaking does not apply to statements that, without discussing merits, identify the parties or the subject matter of the proceeding or the broad nature of the unacceptable circumstances alleged or the orders sought.

The proposed party also undertakes to instruct each of its directors, officers and advisers to comply with the preceding undertakings.

Dated:

Signed on behalf of the proposed party by:

[full name and position of signatory]

A person authorised to bind the proposed party

* This does not extend to review proceedings. If there is a review, new Notices of Appearance are required