

## **GUIDANCE NOTE 3: MAKING RULES - (SUPERSEDED)**

### **Overview**

The Panel can make rules under Corporations Act s658C which clarify or supplement Chapter 6 (**Substantive Rules**) and under ASIC Act s195 in relation to the procedures to be followed in Panel proceedings (**Procedural Rules**).

In the case of Substantive Rules, s658C empowers the President of the Panel to make such rules after consultation with the members of the Panel. No procedure is specified in relation to Procedural Rules, although the Panel will use the same process as for Substantive Rules.

If a proposed rule involves an issue of regulation of policy development, which will usually be the case with Substantive Rules, the Panel will seek comments from the public, ASIC and Treasury before making the rule.

The Panel welcomes submissions on issues of uncertainty which may benefit from the making of a Substantive Rule.

## What This Policy is About

- 3.1 This is the policy which will govern the making of rules by the Panel pursuant to s658C of the Corporations Act 2001 (the *Act*) and s195 of the Australian Securities and Investments Commission Act 2001 (the *ASIC Act*). In particular it describes the procedure and consultation process that the Panel will follow.
- 3.2 The purpose of the rule-making power is to reduce uncertainty in relation to the application of the Act, and to assist the promotion of the objectives of Chapter 6 of the Act which are set out in s602. It is intended that the Panel's rule-making will enable it to respond to new market conditions and developments.
- 3.3 In general, the Panel intends that its rules will encapsulate policy which the Panel has already applied in particular cases. Accordingly, the rules are likely to be well understood before they are introduced, and participants in takeovers should not be disadvantaged by the continued application of the policy of the rules.

## Consultation and Procedure

- 3.4 Pursuant to s658C of the Act, the President of the Panel, after consultation with the members of the Panel, has the power to make rules to clarify or supplement the operation of the provisions of Chapter 6 of the Act.
- 3.5 Under s195 of the ASIC Act, the Panel may determine the procedural rules to be followed in Panel proceedings. In making rules under s195 of the ASIC Act the Panel will use the same processes as under s658C (ie the substantive President of the Panel will consult with Panel members on the advice of the Panel executive).
- 3.6 The rules must be consistent with the Act and the Regulations. Rules made pursuant to s195 must also be consistent with the principles of natural justice.
- 3.7 The Commonwealth Government's Guide to Regulation issued by the Office of Regulation Review sets out best practice processes for regulation and policy development.
- 3.8 In addition to consulting with the members of the Panel, before making a rule, the President of the Panel will seek comments from the public, ASIC and Treasury. In general, the public will be invited to comment first on the policy of the proposed rule, and then on the text. However, if a rule is needed urgently, consultation may be cut short, or an interim rule may be made pending completion of consultation.
- 3.9 Consultation is an opportunity for takeovers professionals to point out to the Panel any policy and drafting weaknesses in rules the Panel proposes to

make, and to ensure that Panel rules are already well understood when they commence operation.

- 3.10 The Panel also welcomes submissions on issues of uncertainty which may benefit from a rule made pursuant to s658C. The Panel would expect any submission to:
- (a) relate the proposal to the policy in s602 of the Act;
  - (b) provide any actual or hypothetical examples where the existing law is unsatisfactory or uncertain;
  - (c) advise of any discussions that have taken place with either ASIC or the Treasury;
  - (d) canvass possible options for resolution; and
  - (e) explain how the options would supplement or clarify the existing law, overcoming the relevant shortfall or uncertainty.

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**Publication History**

First Issue	19 July 2000
Reformatted	17 September 2003