

Takeovers Panel

Rules

for

Proceedings

November 2001

Takeovers Panel – Procedural Rules

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1. Preface

1.1 These Rules have been made by the Panel under section 195 of the ASIC Act to govern procedure in Panel proceedings.

Note: Expressions commencing with a capital letter are defined in Rule 15.

1.2 The object of these Rules is to strike a balance between the following objectives:

- (a) a proceeding before the Panel is completed as quickly and as cost effectively as the nature of the matter, the rules of procedural fairness and the time limits imposed by statute allow;
- (b) the Panel decides any matter before it on sufficient and reliable information;
- (c) Panel proceedings do not unnecessarily delay commercial transactions;
- (d) decisions made by the Panel or by ASIC are set aside on review only if there are cogent reasons for doing so; and
- (e) without losing an opportunity for effective action, the Panel gives any person liable to be affected by a decision, declaration or order a fair opportunity to make submissions on the relevant policy considerations, facts, law and discretionary considerations.

r.13, r16(2)(c), s.195(4)

Note: Marginal references throughout the Rules refer to the ASIC Act (sections 172 to 201A) and ASIC Regulations and to provisions in Chapter 6 of the Corporations Act (sections 602 to 659C).

1.3 To that end, these Rules are designed to ensure that:

- (a) wherever possible, decisions are made on written submissions and evidence;
- (b) proceedings are held in private, with (as far as possible) all parties having access to all information which is put before the Panel, and being obliged to treat that information as confidential;
- (c) the conduct of a proceeding is controlled by the Panel; and
- (d) the time available to make a decision, declaration or order and the time of the Panel is used as efficiently as possible.

These Rules should be read in the light of that policy.

r.13, r16, s.195(4)

1.4 These Rules will be amended from time to time.

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2. Applications

2.1 An application initiating proceedings must:

- (a) set out in sufficient detail to allow a proper consideration of the application:
 - (i) the decision or declaration which the applicant seeks;
 - (ii) any orders which the applicant seeks;
 - (iii) the policy considerations relevant to the application; and
 - (iv) any matters of fact and any submissions on law or the exercise of discretion on which the applicant relies;
- (b) identify any person (or class of persons) known to the applicant who would be materially affected by the grant of the relief;
- (c) identify the directors, legal and financial advisers, auditors and principal financiers of the applicant;
- (d) identify the directors, legal and financial advisers, auditors and principal financiers of each other person (other than ASIC) who is likely to become a party, so far as they are known to the applicant; and
- (e) contain the undertaking and particulars required by the form of notice of appearance in the Schedule.

r.19, s.201A

Note: The reason for requiring the applicant to identify the directors, legal and financial advisers, auditors and principal financiers of itself and of other parties is to assist the members and substantive President to avoid conflicts when choosing a sitting Panel.

2.2 A copy of every application must be given to ASIC and to each company to which, or person to whom, the application relates. An application need not be given to the applicant.

r21(1)

2.3 A copy of an application for a declaration that circumstances in relation to the affairs of a company are unacceptable or for an order under s657D or s657E must be given to that company. If the application relates to the acquisition, or proposed acquisition, by a person of a substantial interest in a company, a copy of the application must also be given to that person.

s656B(3), s657A(4), s657D(1), (3)

2.4 An application for review by the Panel of a decision of the Panel must be given to each party to the proceedings in which the decision was made.

s657EA

2.5 An application must be lodged in accordance with Rule 6.

Notes: Where separate applications have been made to the Panel and it appears to the substantive President that they involve common issues of fact or that it would be convenient for the matters

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to be heard together, the substantive President may direct under section 184 that the Panel be constituted by the same members in relation to each of those matters, and that the proceedings be combined.

r.16(1)(a), s.184

Under the Corporations (Fees) Amendment Regulations 2002, a fee of \$500 (current as at 1 July 2002) is payable on an application to the Panel under Chapter 6. It should be paid by cheque in favour of the Commonwealth of Australia.

Proceedings in the Panel must be commenced by an application under section 658C for a declaration under section 657A or an order under section 657D or 657E, by an application for review under section 656A or 657EA or by a referral by the Court under section 657EB.

Under Corporations Regulation 6.10.01, an application under section 657EA must be made within 2 days after the relevant decision.

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3. Parties

3.1 A person is a party to a proceeding if:

- (a) the person is the applicant; or
- (b) the application initiating the proceeding is given to the person, and the Panel accepts a notice of appearance from the person; or
- (c) the Panel accepts a notice of appearance from the person in response to an invitation under Rule 3.4.

3.2 A notice of appearance must be in the form in the Schedule. It must be lodged in accordance with Rule 6.

3.3 Unless the Panel specifies a different period, a person should lodge a notice of appearance within two days after service on them of the application or invitation.

Note: Under Rule 6.1, parties need not provide copies of submissions to a person who has not lodged a notice of appearance in the time allowed under this Rule.

3.4 The Panel may invite any person to become a party or to make submissions in relation to proceedings if it appears to the Panel that:

- (a) the person's interests are liable to be affected by a decision, declaration or order sought in the proceedings, or by the proceedings themselves;
- (b) the person is able to represent the interests of a class of persons who are liable to be so affected, whether or not the person is a member of that class; or
- (c) the person is likely to be able to assist the Panel, even if neither of paragraphs (a) and (b) applies.

The Panel may also give directions as to whether the application, any submissions or any other documents must (in whole or in part) be given to any such person who does not become a party.

r.16(1)(g), r23, r24

Notes:

A person who makes submissions under regulation 24 in connection with a proceeding is not necessarily a party to the proceeding. Under Rule 8.3, the Panel may make an order that such a person be given access to some or all of the documents lodged in connection with a proceeding.

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4. Contents of Documents

Note: Panel proceedings will be primarily decided on written applications, evidence and submissions. The Panel may give directions as to the issues to be addressed in submissions and evidence. A party who fails to comply with these rules or such a direction may pass up its opportunity to be heard on those matters.

- 4.1 An application, submission or other document in proceedings must:
- (a) be in writing and signed on behalf of the applicant or party;
 - (b) identify the proceedings, the person making the application or submission, and any other person on whose behalf it is made;
 - (c) set out any policy considerations, any matters of fact and any submissions on law or the exercise of discretion on which the party relies, in sufficient detail to allow a proper consideration of them; and
 - (d) be lodged in accordance with Rule 6.

r.19, r25

Application for Review of ASIC or Panel Decision

- 4.2 An application under section 656A or section 657EA for the review of a decision by ASIC or the Panel must specify the decision, who made the decision and the grounds for review.

r.19

Application for Consent to Apply for Review

- 4.3 An application under subsection 657EA(2) for the President's consent to apply for review of a decision of the Panel must:
- (a) be addressed to the sitting President;
 - (b) identify the relevant decision; and
 - (c) contain enough information to allow a proper consideration of the effects of the decision and the case for reviewing it.

r.19

Submissions, other than Applications

- 4.4 A submission in response to an application, a brief, a statement under regulation 38 or another submission must state which, if any, of the policy considerations, matters of fact and submissions on law or the exercise of discretion stated in the relevant application, brief, statement or submission are disputed, and the grounds on which they are disputed. It need not repeat a statement which the party has already made in a document lodged in the proceedings.

r.25(1)(b), r28(3) see also r.25(2)

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5. Additional Documents to be Lodged

- 5.1 In any proceeding, the Panel may direct the parties to lodge a statement of agreed facts. The statement must set out the policy considerations, matters of fact and law which are not in dispute and state whether any party disputes a fact alleged by another party in a document lodged in the proceedings.

Note: The Panel may give directions to parties to lodge specified documents.

r.16(1)(d)

- 5.2 An application under section 656A for review of a decision by ASIC must be accompanied by a copy of each of the following, if the document is available to the applicant:

- (a) the relevant application to ASIC for relief and each submission in support of the application;
- (b) any other submissions received by ASIC in relation to the application;
- (c) any instrument granted by ASIC in relation to the application; and
- (d) any notice of ASIC's decision and any statement of reasons for the decision provided by ASIC.

r.16(1)(d), r19

- 5.3 Within two days of being given an application under s656A, ASIC must lodge copies of documents which explain the findings of fact and decisions as to policy on which the decision under review was made. ASIC need not lodge copies of any documents which accompanied the application under Rule 5.1.

Note: This could include:

- (a) a statement of reasons;
- (b) a paper to the Commission or the Regulatory Policy Group concerning the decision;
- (c) internal papers concerning the decision, such as internal legal and policy advice; and
- (d) submissions received by ASIC in relation to the application.

In general, documents lodged for this purpose will be provided to all parties to the proceedings.

r.16(1)(d), r25

- 5.4 A document lodged under this Rule 5 must be lodged in accordance with Rule 6.

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6. Lodgement and Delivery of Submissions and Evidence

6.1 Any application, submission or other document lodged in a proceeding must be lodged with the Panel executive and a copy must be given to each party to the proceeding as nearly as practicable at the same time as it is lodged with the Panel executive. Until time for lodgement of notices of appearance expires, any persons identified by the applicant pursuant to Rule 2.1(b) should be treated as parties for this purpose.

6.2 All documents that can be sent electronically must be lodged with the Panel executive as attachments to electronic mail, and are taken to be lodged when that mail is received.

r.19, r25

6.3 Unless the Panel agrees to the use of another format, all electronic documents must be provided in Microsoft Word or RTF format. Documents available only as images may be lodged in GIF or TIF format.

r.19, r25

6.4 If a document is not able to be sent electronically it may be posted or sent by facsimile. If a paper original of a document must also be lodged under Rule 7.2, it must be posted or sent by facsimile on the same day as the electronic mail is sent. Unless the Panel directs otherwise, six copies of any paper document must be lodged with the Panel.

6.5 Unless the Panel agrees otherwise, applications and notices of appearance may only be lodged with the Panel and given to parties on a Business Day. It is the responsibility of the party lodging or giving the document to ensure that it reaches the relevant parties and to inform the Panel executive if it appears that a party has not received the document.

6.6 Subject to other directions in specific cases, electronic copy must be received by the Panel executive by 6.00 p.m. Melbourne time. Hard copy must be received by the Panel executive by 4.00 p.m. Melbourne time. Documents which are received after these times will be treated as having been lodged the following Business Day.

Note: Although the Panel executive is permanently located in Melbourne, the Panel members sitting on a matter may reside in any part of Australia. Accordingly, hard copy often needs to be sent to them by air freight.

The requirement to give every document to every party is subject to directions under Rule 8.

7. Evidence

- 7.1 Evidence may be provided to the Panel for the purposes of a proceeding in the form of:
- (a) a statutory declaration in accordance with the law of the place where it is made;
 - (b) oral or written sworn testimony in accordance with section 192; or
 - (c) a statement in writing, signed by the person making the statement, which includes statements to the effect that:
 - (i) the person is aware that section 199 of the ASIC Act makes it an offence, punishable by imprisonment, to give information or evidence that is false or misleading in a material particular in a written submission to the Panel, unless the person giving the information or evidence believes, on reasonable grounds, that it is true and not misleading; and
 - (ii) there are no material omissions from the statement.
- 7.2 A paper original of a declaration, affidavit or statement under Rule 7.1 must be lodged with the Panel, as well as any electronic copy.
- 7.3 The person making a declaration, affidavit or statement under Rule 7.1 must state whether he or she has personal knowledge of all of the information or evidence contained in the relevant document.
- 7.4 Documentary evidence must be:
- (a) tendered by a witness giving oral testimony; or
 - (b) attached to a declaration, affidavit or statement made under Rule 7.1.
- 7.5 If a document is attached to a declaration, affidavit or statement, the person making the declaration, affidavit or statement must set out the origin of the document and must state one or more of the following:
- (a) that specified contents of the document are true, to his or her personal knowledge;
 - (b) that he or she has been informed by a named person that specified contents of the document are true and believes that statement to be true;
 - (c) that the document is a true copy of the original it represents.
- r.25
- 7.6 The Panel may use information published by parties or other persons under the Corporations Act, or the Listing Rules of Australian Stock Exchange Limited or of another stock exchange (e.g. company searches and stock exchange announcements) and, subject to the rules of procedural fairness, representations made to the Panel or the executive in circumstances to which section 199 would apply.

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r.16(2)(a)

7.7 An application to issue a summons to witness must state the matters to be dealt with in the witness's evidence. The Panel may direct the proposed witness to answer specific questions in writing before appearing before the Panel.

s.192, r.16(1)(d)

Note: Any member of the sitting Panel may summons a person to give evidence or to produce specified documents, on application by a party, or without any application.

Under section 199 of the ASIC Act, a person must not give information or evidence in a submission or evidence that is false or misleading in a material particular. The defence requires the person to have believed on reasonable grounds that the information or evidence was true and not misleading.

Given the provisions of section 199, the Panel will normally be willing to rely to some degree on statements made by lawyers and others who do not have personal knowledge of all the information or evidence contained in their statement. However, the Panel expects that a person making such a statement will have made all inquiries that are reasonable in the circumstances and, after doing so, will have had reasonable grounds for believing the statement is true and not misleading.

The probative weight of a statement made by a person who does not have personal knowledge of all the information or evidence contained in the statement may be less than the probative weight of a statement made by a person who does have personal knowledge of that information or evidence, although this may depend on the evidence provided in support of the statement and the particularity with which the information or evidence is attributed to named persons.

The probative weight of a statement made by a person who does not have personal knowledge of its contents will be greatly diminished if the Panel has reason to suspect that the person has made the statement without making all reasonable inquiries or without having reasonable grounds for believing the statement was true and not misleading.

s.192, s199

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8. Disclosures

8.1 Subject to this Rule 8, all information provided to the Panel in connection with a proceeding must be disclosed to the other parties to that proceeding.

s.195(4), r.28(2)

8.2 An application for a direction to withhold information from a party must provide all of the information necessary for the Panel to consider whether:

- (a) the direction would adversely affect the ability of the Panel to afford that party procedural fairness;
- (b) the party is likely to contravene the confidentiality obligations of this Rule 8; and
- (c) the prospect of adverse effects on that party resulting from the direction is clearly outweighed by the prospect of adverse effects on other persons flowing from unauthorized use or disclosure of the information, if it is provided to the party or its legal representatives.

s.190, s195(4), r.19

8.3 The Panel may direct that any information which is provided for the purposes of a proceeding be provided to a person who is not a party to the proceeding, but who may make a submission to the Panel under regulation 24 concerning the proceeding and who undertakes to respect the confidentiality of the information.

8.4 If the Panel is satisfied that a party would be likely to be adversely affected by the disclosure of confidential information to another party, the Panel may direct that certain information be:

- (a) provided to the other party's legal representatives only, and withheld by them from the party itself; or
- (b) withheld from the other party and its legal representatives.

However, the Panel will not make such a direction if the direction would be inconsistent with the rules of procedural fairness.

8.5 A person must not use or disclose information which is:

- (a) confidential in fact; and
- (b) disclosed to the person by the Panel or another party in, or in connection with, a proceeding,

except -

- (c) for the purposes of the proceeding; or
- (d) as authorized by a person with the right in equity to give that authorization, and in accordance with any conditions affecting that authorization.

If any such information is to be disclosed to another person in accordance with this Rule 8.4, the person making the disclosure must inform that other

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person that the information is confidential and must make the disclosure conditional on the information not being used or further disclosed otherwise than in accordance with this Rule.

s127

Notes: The Panel will generally endeavour to prevent unauthorized use and disclosure of information provided to it in connection with a proceeding. However:

- (a) use and disclosure for purposes connected with the Panel's functions (for instance, to staff, legal and other expert advisors, the Ombudsman and the Parliamentary Committee) are authorized use and disclosure; and
- (b) the Panel may disclose, or be required to disclose, information under other legislation (in particular, sections 127 and 186 of the ASIC Act and the Freedom of Information Act).

Parties should assume that any information provided by them to the Panel executive before or during proceedings may be communicated to the Panel.

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9. Conduct of Proceeding

Generally

9.1 The Panel:

- (a) has control over the entire conduct of the proceeding; and
- (b) may give directions from time to time concerning the conduct of the proceeding.

9.2 In relation to any proceedings, the Panel may give directions:

- (a) on any of the matters mentioned in subregulation 16(1), which are not dealt with elsewhere in these Rules;
- (b) abridging or extending a time specified in these Rules; or
- (c) otherwise varying or supplementing these Rules.

Note: In addition to its powers under regulation 16, the sitting Panel has power to give the following directions and orders:

- (a) that a copy of an application or other submission be given to a person; r.24
- (b) that a response or other submission be lodged with the Panel by a certain date; r.28
- (c) as to confidentiality, under these rules and under section 190;
- (d) that a person be invited to become a party to the proceeding, or be allowed or invited to make submissions without being a party; r.21, r24
- (e) about the issues to be addressed in submissions; r.25(b)
- (e) about the timing of a directions hearing or other conference, and as to the persons who are to be present and the matters to be addressed in evidence or submissions to the conference; r.37r 38
- (g) referring a question of law to the Court; s.659A
- (h) to the executive to apply to the Court in the name of the substantive President for an order under section 657G or subsection 658C(5);
- (j) dismissing an application or a submission as frivolous or vexatious; and s.658A, r.26
- (l) that a person pay specified costs of one or more parties to any proceedings. s.657D(2)(d)

9.3 Directions may be given by whatever means are suitable in a particular case. In particular, they may be given at a procedural conference held face to face, by video or audio conference or by any combination of methods of communication determined by the Panel.

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Specific Rules

- 9.4 A brief under regulation 20, a statement under regulation 38, or a notice accompanying the brief or statement may direct a particular party to address particular issues raised by the brief or statement.
r.20, r.25, r38
- 9.5 If a party wishes to apply for a direction, the application and each submission in support of the application must be lodged at least one Business Day before the direction is required.
r.16(1)(e)

Time Periods

- 9.6 When the Panel invites a person to make a submission or requires a person to lodge any document, the Panel will specify a date and time by which the submission or document must be lodged. Unless the Panel determines otherwise, the Panel will give a party:
- (a) three Business Days to respond to an initial application for a declaration or order, other than an interim order;
 - (b) one Business Day to respond to:
 - (i) an application for an interim order or to review a decision of ASIC or the Panel; or
 - (ii) a submission other than an originating application.
- However, shorter or longer times may be allowed, depending on the time at the Panel's disposal, difficulties over obtaining information and other relevant matters.
r.13, r16(1)(e), r30, r34

Note: If documents are lodged after the specified time the Panel may not have sufficient time to consider the documents before making the relevant decision. The expedition required of the Panel does not allow for parties to make repeated rebuttals or additional submissions without the consent of the Panel.
r.28(3), r34

Review on Referral by the Court

- 9.7 If the Court refers a matter to the Panel for review under section 657EB:
- (a) these Rules apply, as if the referral were an application for review;
 - (b) subject to any direction of the Panel, the parties to the review are the persons who were parties to the Court proceedings;
 - (c) each party must lodge a notice of appearance; and
 - (d) the Panel may invite any or all of the parties to lodge submissions in response to the referral.
- s.657EB

Referral of an Issue to the Court

- 9.8 An application for an order referring a question of law to the Court under section 659A:
- (a) must be accompanied by a draft of a case stated, setting out the question of law and the facts to which it relates; and
 - (b) must explain how the decision of the Court would be relevant to the exercise of the Panel’s discretions under Part 6.10 of the Corporations Act.

r.19

Application for Interim Order

- 9.9 An application for an order under section 657E and any supporting submission must be lodged with the Panel at least one Business Day before the application needs to be decided and at the same time copies must be given to:
- (a) if the application relates to proceedings that are already on foot, all parties to those proceedings; and
 - (b) otherwise, to ASIC, each person to whom the proposed order relates and each other person known to the applicant who would be materially affected by the proposed order.

If paragraph (b) applies, the applicant must also apply for directions about the giving of the application to other persons.

r.16(1)(e)

- 9.10 The Panel recognises that in some circumstances an application for an interim order will need to be made on short notice. In those circumstances, the Panel will seek to deal with the application expeditiously. However, if the time available to consider the application is very short, it may be more difficult for the Panel to be satisfied that the order is appropriate. Accordingly, in determining whether to make an interim order under section 657E, the Panel or the substantive President will take into consideration any delay by the applicant in making its application under Rule 9.10 as well as any other relevant considerations.

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10. Conferences

- 10.1 The Panel may direct that a specified part of a proceeding be dealt with at a conference, at which a quorum of the sitting members will be present. The conference may be held face to face, by video or audio conference or by any combination of methods of communication determined by the Panel.
r.37(2)
- 10.2 Subject to any directions made by the Panel, a conference will take place in private.
r.38
- 10.3 The Panel may direct what evidence or submissions are to be provided at a conference, for instance, by specifying the issues to be addressed. Since issues are, as far as possible, to be resolved by written submissions, time at a conference will be used to take evidence and submissions to supplement written submissions.
r.35(1)
- 10.4 In particular, the Panel may allot a period of time to a party and direct the party to address specified issues. The Panel may direct the party to cease addressing the Panel when the party has used up its allotted time, or when the Panel has heard all it requires on the issues the party has been directed to address. Parties should not rely on being given time to make oral submissions on all issues which may concern them.
r.16(1)(e), r38(3), r39
- 10.5 The Panel may allot parties different periods of time to make submissions to the Panel having regard to the issues the Panel wishes each party to address.

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11. Legal Representation

11.1 If proceedings relate to a transaction in which a party was advised by lawyers, the Panel will generally give leave for the party to be legally represented by those lawyers.

s. 194

11.2 If proceedings relate to a transaction in which a party was advised by lawyers and the party seeks leave to be represented in the proceedings by different lawyers, the party must explain why it does not wish to be represented by its previous lawyers.

11.3 Leave to be represented by counsel or lawyers who did not advise the party in relation to the relevant transaction may be limited to a specific purpose, e.g. to argue a point of law or to examine a witness.

11.4 A person may be accompanied and advised at a conference by a lawyer.

Note: Under section 194 of the ASIC Act, 'A party to Panel proceedings may be legally represented in the proceedings only with the leave of the Panel.'

12. Contempt and Publicity

The Panel believes that its ability to resolve disputes as quickly and efficiently as possible is likely to be adversely affected if parties seek publicity in relation to issues which have been or are being considered in Panel proceedings (either directly or by “leaking” information to journalists). The Panel also strongly disapproves of any attempt by a party to use publicity to influence a decision of the Panel or to detract from the authority of the Panel. The Panel will take appropriate action against any party which contravenes a direction restricting the publication of submissions or evidence made or given to the Panel, or of matters contained in documents lodged with the Panel.

Note: Section 200 makes it an offence punishable by imprisonment to contravene a direction given under subsection 190(1) without reasonable excuse.

12.1 A party to proceedings before the Panel may not cause or authorise the publication of any report of an incomplete proceeding without the consent of the Panel, other than a statement that mentions any or all of the following, but no other matters:

- (a) that proceedings have been initiated;
- (b) the parties to the proceedings;
- (c) the matter to which they relate;
- (d) the broad nature of the unacceptable circumstances alleged and the orders being sought, without arguing the merits of the case.

12.2 A party to proceedings in the Panel which have been completed may publish a statement that the proceedings took place, the subject of the proceedings, the outcome of the proceedings and whether the party proposes to seek review of the Panel’s decision.

12.3 A party to proceedings may apply for a direction preventing or restricting the publication of submissions, evidence or matters contained in documents lodged with the Panel in those proceedings. The application should set out all of the matters known to the applicant relevant to the Panel’s consideration of the factors mentioned in subsection 190(2) as relevant to the proceedings.

s. 190(2)

Note: Unless the content of Panel proceedings had ceased to be confidential in fact, ASX Listing Rule 3.1 would not usually require the detail of unfinished proceedings to be announced to the ASX market. A party which believes it may be required to announce details of unfinished proceedings should consult the Panel executive before making any announcement.

When a matter is initiated, the Panel will normally issue a press release dealing with the matters mentioned in rule 12.1. When the matter is complete, it will normally issue a press release dealing with the matters mentioned in rule 12.2. The Panel may also issue a press release when it issues its reasons for decision.

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The Panel may make an order under subsection 190(2), with or without an application from a party.

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13. Undertakings

- 13.1 Where a person offers an undertaking under section 201A to the Panel, copies of the proposed undertaking and of any submissions in support must be lodged. If the Panel is prepared to consider accepting the undertaking, it will direct that copies be served on parties to the proceeding and how those parties may make submissions on the proposed undertaking.
- 13.2 A party may apply for a direction that a proposal to give an undertaking not be disclosed to one or more other parties, or disclosed only to their advisers. The application must be supported by the same information as Rule 8.2 would require.

Note: The Panel is generally willing to accept undertakings under section 201A as part of the agreed resolution of a matter (see the Notes to Rule 14). Where the Panel accepts an undertaking from a party in relation to proceedings or part of proceedings, and the undertaking is performed, the Panel will not normally make a declaration or order against that party in relation to that issue. However, if it does not make a declaration, it cannot make any orders under section 657D. Accordingly, the undertakings accepted by the Panel will need to deal with all issues in the proceedings which might otherwise have been dealt with in orders.

Parties should consult the Panel executive in relation to any proposal to offer undertakings to the Panel or any other proposal to resolve matters which are the subject of Panel proceedings.

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14. Withdrawal of Applications

14.1 An applicant may withdraw its application only with the consent of the Panel. An applicant may apply to the Panel for its consent to withdrawal. If the application for consent to withdraw is made prior to the appointment of a sitting Panel, it must be made to the substantive President.

14.2 An application for consent to withdraw under Rule 14.1 must:

- (a) be in writing addressed to the Panel or, if there is no sitting Panel, the substantive President and signed on behalf of the applicant;
- (b) explain why the applicant wishes to withdraw its application;
- (c) provide sufficient information for the Panel to determine whether any useful purpose will be served if the proceedings are continued; and
- (d) be lodged in accordance with Rule 6.

14.3 If the Panel consents to the applicant withdrawing its application, the applicant must give written notice of the withdrawal to the other parties to the application.

Note: The Panel encourages the parties to a proceeding to reach an agreed resolution to the matter wherever possible. If the parties do reach an agreed resolution, the Panel will generally grant leave to the applicant to withdraw its application. However, the Panel will wish to be satisfied that the agreed resolution is consistent with the purposes set out in section 602 and the other matters referred to in subsection 657A(3). The Panel may refuse leave to withdraw an application if it has reason to suspect that unacceptable circumstances will continue or will occur. There will be no “automatic” withdrawal of an application, even where all parties to an application agree to its withdrawal.

The Panel will ordinarily grant ASIC leave to withdraw an application, on the basis that ASIC’s decision to withdraw should reflect a proper assessment of the public interest in the matter.

15. Definitions and Interpretation

15.1 In these rules, unless the contrary intention appears:

'ASIC Act' means the *Australian Securities and Investments Commission Act 2001*;

'brief' means a brief under regulation 20;

'Business Day' means a day other than a Saturday or Sunday on which banks in Melbourne are open;

'lodge' means lodge with the Panel in writing in accordance with these Rules;

'Panel', in relation to proceedings, means the sitting Panel in relation to those proceedings;

'regulation 15' and similar means the regulation of that number in the ASIC Regulations;

'section 192' and similar - references to legislative provisions numbered from 171 to 201A are to provisions of the ASIC Act; and references to legislative provisions numbered from 602 to 673 are to provisions of the Corporations Act;

'sitting members' has the same meaning as in section 184;

'sitting Panel', in relation to proceedings, means the Panel constituted under section 184 in relation to those proceedings;

'sitting President', for a proceeding, is the President of the sitting Panel; and

'substantive President' is the person appointed as President of the Panel by the Governor-General, under section 173, or the person appointed as Acting President by the Minister, under section 182.

15.2 Time periods specified in days before or after a day or an event are clear Business Days calculated in accordance with section 105 of the Corporations Act. One day after a day ends at midnight ending the first Business Day following that day; one day before an event commences at midnight commencing the last Business Day before the day on which that event happens.

15.3 Otherwise, an expression defined in the Corporations Act or the ASIC Act is used in the sense so defined, and the interpretation provisions in Part 1.2 of the Corporations Act and in the Acts Interpretation Act 1901 apply to these Rules.

APPENDIX

NOTICE OF APPEARANCE

[INSERT THE NAME OF THE MATTER]

[INSERT THE NAME OF THE PARTY] ('the Company') notifies the Takeovers Panel and the parties to this matter that it will be a party to the matter.

[OPTIONAL] The Company will be advised in the matter by [NAME THE COMPANY'S SOLICITORS OR OTHER ADVISORS]

Documents can be served on the Company by sending them to:

Courier:

Postal:

DX:

E-mail

Fax:

Telephone:

Contact:

The Company undertakes to the Panel and the other parties that the Company and its advisors will not:

- (a) use or disclose any confidential information disclosed to it by the Panel or another party otherwise than in accordance with the procedural rules governing Panel proceedings and applicable law; or
- (b) publish any submissions or evidence made or given to, or any matters contained in documents lodged with, the Panel in contravention of any direction given by the Panel.

The Company also undertakes to the Panel and the other parties that, consistent with the intent of the introduction to Rule 12 of the Panel's Rules for Proceedings, the Company and its advisors will not induce or facilitate the canvassing in the media of issues that are, or are likely to be, before a sitting Panel.

Dated:

Signed on behalf of the Company by [GIVE NAME AND AUTHORITY TO BIND THE COMPANY]

Notes: This form should be adapted to the party's circumstances. An e-mail address and the undertaking for confidentiality are essential.

Takeovers Panel – Procedural Rules

ASIC is not required to provide the undertaking for confidentiality. ASIC's confidentiality obligations are codified in s127 of the ASIC Act.

It is an offence punishable by imprisonment for a person to contravene a direction restricting the publication of submissions or evidence made or given to, or of matters contained in documents lodged with, the Panel without reasonable excuse.

Takeovers Panel – Procedural Rules

In accordance with Section 195(1) of the Australian Securities and Investments Commission Act 2001, the Takeovers Panel has determined that the attached Rules for Proceedings be the procedural rules to be followed in Panel proceedings from November 2001.

Dated: November 2001

Signed

Simon McKeon
President
Takeovers Panel