

Takeovers Panel
Rules
for
Proceedings

[]2004

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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.~~

Note: Rule 15 sets out the definitions and interpretative provisions which apply to these Rules.

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 requirements (including time limits imposed by) of the statute allow;
- (b) the Panel ~~decides any matter before it on sufficient and reliable~~ has a reasonable basis of information before it to decide any matter;
- (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~~ where it is appropriate to do so; and
- ~~(e) without losing an opportunity for~~ (e) subject to the ASIC Act and without affecting its ability to take effective action, the Panel gives any person liable to be affected by a decision, declaration ~~or~~ order a fair or other action the opportunity to make submissions on the relevant policy considerations, facts, law and discretionary considerations that is required by the rules of procedural fairness.

.195(4), r.13, r.16(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 promote that ~~end~~ object, these Rules ~~are designed~~ seek to ensure that, subject to the rules of procedural fairness:

- (a) wherever possible, decisions are made on written submissions and evidence, with conferences generally only being held in limited circumstances to deal with a specific part of a proceeding, where the Panel considers it to be appropriate;
- ~~(b) proceedings are held in private~~ each proceeding is conducted privately, with (as far as possible) all parties having access to all information which is put before the Panel in the proceeding, and each party being obliged to ~~treat~~ that maintain the confidentiality of all of the information as which is prepared by the Panel for the proceeding, or put before the Panel by other persons in the proceeding, and is confidential in fact;
- (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~~ the object in Rule 1.2 and the purposes set out in this Rule.

~~r.13, r.16,~~ s.195(4), r.13, r.16

1.4 ~~1.4~~ These Rules ~~will~~ may be amended by the Panel from time to time.

1.5 These Rules may be supplemented by directions given by a sitting Panel in relation to a particular proceeding under Part 10 Division 3 of the ASIC Act and the Regulations

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(especially section 195 and regulation 16) and Rule 9.2. If there is any conflict between such a direction and these Rules, the direction prevails to the extent of any inconsistency.

s.195, r.16

1.6 The sitting Panel in a proceeding may waive or excuse any failure by a person to comply with these Rules in that proceeding.

2. Applications

- 2.1 An application initiating ~~proceedings~~ a proceeding must comply with the rules set out in Rule 4 relevant to the application and 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) if the application is for the review under section 656A of a decision by ASIC, the decision, who made the decision, and the grounds for review (see also Rules 5.2 and 5.3);
 - (iv) if the application is for a declaration under section 657A, which paragraph of subsection 657C(2) applies to the applicant and, if paragraph 657C(2)(d) is stated to apply, the nature and extent of the interest affected and the nature and extent of the effect claimed;
 - (v) if the application is for a declaration under section 657A, when the circumstances which the applicant contends justify the making of the declaration first occurred and whether they are continuing;
 - (vi) if the application is for the review under section 657EA of a decision by the Panel, the decision, who made the decision, and the grounds for review,
 - (vii) all relevant matters of fact, so far as they are known to the applicant;
 - (viii) ~~(iii)~~ the policy considerations relevant to the application; and
 - (ix) ~~(iv)~~ —any matters of fact and— any submissions on law or the exercise of discretion on which the applicant relies;
 - (b) include any request for a determination by the Panel required for the purposes of paragraph 657C(3)(b) and state why it is desirable to commence proceedings more than two months after the circumstances first occurred (including, without limitation, whether the circumstances were concealed or otherwise unknown to the applicant and what, if any, adverse effect the circumstances have had or would have);
 - (c) ~~(b)~~ identify any person (or class of persons) known to the applicant ~~who~~ whose interests would be materially affected by the ~~grant~~ making of the ~~relief~~ decision or declaration or the granting of the orders;
 - (d) ~~(e)~~ identify the directors, ~~legal~~ principal shareholders, controllers, advisers (legal, corporate and financial ~~advisers),~~ auditors and principal financiers of the applicant and any person with whom, or on whose behalf, the applicant is acting in relation to the application or the matters described in it;
 - (e) ~~(d)~~ identify the directors, advisers (legal, corporate and financial ~~advisers),~~ auditors and principal financiers of each other person (other than ASIC) identified under paragraph (c) or (d) or who is otherwise likely to become a party, so far as they are known to the applicant; ~~and~~
 - (f) ~~(e)~~ contain the ~~undertaking~~ undertakings and particulars required by the form of notice of appearance in the Schedule; ~~and~~
 - (g) have attached to it any documents that these Rules require to accompany the application (see also Rule 5).

~~r.19~~, s.201A, r.19

Notes:

1. ~~Note: —~~ The reason for requiring the applicant to identify the directors, principal shareholders, advisers (legal, corporate 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. An applicant need not file a separate notice of appearance if it complies with Rule 2.1(f).

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- 2.2 ~~A~~The applicant must give a copy of ~~every~~the application ~~must be given~~ to ASIC and to ~~each company to which, or person~~everyone else to whom, the application relates. ~~An~~as identified in paragraph 2.1(c) (except for someone affected only as an officer or member of a body corporate to which the applicant has given a copy of the application ~~need not be given to the applicant).~~

r₂21(1)

Note: Rule 8.5 requires the recipient of an application to treat that application as confidential.

- 2.3 Without limiting Rule 2.2, the applicant must give a copy:

- (a) of an application under section 657C to each body whose affairs are relevant to the circumstances alleged in the application to be unacceptable; and
- (b) ~~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 that relates to the acquisition, or proposed acquisition, by a person of a substantial interest in a ~~company~~body, ~~a copy of the application must also be given~~ to that person.

s₂656B(3), s₂657A(4), s₂657D(1), (3)

- 2.4 ~~2.4~~—An ~~application for~~applicant seeking review by the Panel of a decision of the Panel must ~~be given~~give a copy of the application to each other party to the proceedings in which the decision was made.

s₂657EA

- 2.5 An applicant seeking review by the Panel of a decision of ASIC under section 656A must give a copy of the application to ASIC and each other person who, to the knowledge of the applicant, made submissions to ASIC in relation to that decision and to the body to whose securities any decision related or would have related.

s.656A

- 2.6 Where an application has been received by the Panel (**Original Application**), a party (including the original applicant) may, subject to any applicable limitation set out in the following table, make an application (**Additional Application**), only under the same section as the Original Application which:

- (a) requests the sitting Panel to expand the proceeding (if any) (**Current Proceeding**) conducted as a result of the Original Application (including any previous Additional Application which has become part of the Current Proceeding) to consider the facts, matters and circumstances, law, policy or proposed orders set out in the Additional Application;
- (b) must, subject to Rule 2.6(d), also comply with Rules 2.1 and 2.2 and, if appropriate, Rules 2.3, 2.4 and 2.5;
- (c) must contain an acknowledgment by the party giving it that the sitting Panel may consider that is not convenient or appropriate, in the sitting Panel's opinion, for the matters contained in the Additional Application to be considered by it as part of the Current Proceeding and refer the Additional Application to the substantive President to be dealt with under section 184;
- (d) may satisfy Rule 2.6 (b) by incorporating by reference any of the matters contained in or accompanying the Original Application or any previous Additional Application which has become part of the Current Proceeding, except the material included in those applications under Rule 2.1(a)(iii); and
- (e) by specifying that it is an Additional Application, also constitutes a request under rule 9.5 for the sitting Panel to make a direction in relation to the Original Application and the Additional Application under regulation 16(1)(a).

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<u>For an Original Application under...</u> <u>section 656A</u>	<u>an Additional Application may only...</u> <u>relate to the same decision of ASIC or a decision related to the same decision of ASIC</u>
<u>section 657EA</u>	<u>seek review of a decision of the same sitting Panel on the same application</u>

Notes:

1. [This rule, allows a party to request the sitting Panel to consider additional matters that are either logically connected with, or have the same factual matrix, as the Original Application to become part of the Current Proceeding by making an Additional Application. It is designed to facilitate the convenient and speedy dispatch of all issues affecting parties concerned with a particular set of facts..](#)
2. [A sitting Panel may refuse a request to expand the Current Proceeding to include matters contained in an Additional Application on any ground where it considers that it is not convenient or appropriate for the Current Proceeding to be expanded as requested in the Additional Application. Without being exhaustive, this might include because the Additional Application although being factually linked to the Current Proceedings canvasses significant new factual or other ground, or because the Additional Application is made at a time when the Current Proceeding has progressed to a stage where it would not be appropriate to expand or reformulate the matters being considered in the Current Proceeding.](#)
3. [The facility allows a party to the Current Proceeding to suggest appropriate alternative orders, for example, to suggest that a declaration of unacceptable circumstances be made rather than requiring a reference of a question of law to the Court, or vice versa.](#)
4. [An Additional Application is an application under the relevant section and, accordingly, if the Additional Application is determined by the Panel not to be appropriate for the Current Proceeding, it will be dealt with by the substantive President as a new application, in which case a sitting Panel will be appointed to deal with the Additional Application and to determine whether to conduct a proceeding on it.](#)

2.7 ~~2.5~~ An application must be lodged in accordance with Rule 6.

Notes:

1. 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 to be heard together, the substantive President may direct under section 184 [and r.16\(1\)\(a\)](#) 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
2. Under the Corporations (Fees) Regulations [schedule 1 item 23 \(b\)](#), a fee of \$~~500~~540 (current as at ~~29 October 2001~~1 September 2003) is payable on an application to the Panel under Chapter 6. It should be paid by cheque in favour of the Commonwealth of Australia.
3. Proceedings in the Panel must be commenced by an application under section ~~658~~657C 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.
4. Under Corporations Regulation 6.10.01, an application under section 657EA must be made within 2 days after the relevant decision.

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 person wishing to be a party to a proceeding and who is not the applicant must give the Panel a notice of appearance ~~must be~~ in the form in the Schedule. It must be lodged in accordance with Rule 6.

Note: The applicant's notice of appearance must be included in its application.

- 3.3 ~~Unless the Panel specifies a different period, a~~ person ~~should~~must lodge a notice of appearance within two ~~days~~Business 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~~a proceeding 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~~proceeding, or by the ~~proceedings themselves~~proceeding itself or by a transaction or other matter being considered in the proceeding;
 - (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 in connection with the proceeding, 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 specified in paragraphs (a), (b) or (c) who does not become a party but who wishes to make submissions.

r.16(1)(g), r.23, r.24

~~Notes:~~

Note: 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.

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~~Rules or such a direction may ~~pass up~~lose its opportunity to be heard on those matters.

- 4.1 An application, submission or other document in ~~proceedings must~~ a proceeding must, except where made in a conference in accordance with the Panel's procedures applicable to that conference:
- (a) be in writing ~~and signed on behalf of the applicant or party;~~
 - (b) identify the ~~proceedings~~proceeding, the person making the application or submission, and any other person on whose behalf it is made;
 - (c) set out any relevant policy considerations, ~~any~~all relevant matters of fact (so far as they are known to the person) and any submissions on law or the exercise of discretion on which the party relies, in each case, in sufficient detail to allow a proper consideration of them by the sitting Panel;
 - (d) comply with any form established by the Panel either generally or for a specific proceeding or document; and
 - (~~e~~) be lodged in accordance with Rule 6.

r.19, r.25

4.2 [Rule deleted]

~~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~~Request for Consent to Apply for Review

- 4.3 ~~An application~~A request 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~~grounds for review.
- The request may be included in the same document as the application for review in relation to which the consent is requested.

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~~(or which the Panel has directed under Rule 7.8 may be taken as having been lodged) in the proceeding.

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r.25(1)(b), [r.28\(3\)](#) see also r.25(2)

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~~proceeding.

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), r.19

- 5.3 ~~Within two days of being~~Not later than two Business Days after it has been 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 ~~5.1-5.2~~.

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)~~ (e) 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~~proceeding.

r.16(1)(d), r.25

5.4 A party which is a listed company must:

- (a) if it is the bidder or the target in a bid, as soon as practicable after becoming a party; and
 - (b) otherwise, as soon as practicable after being requested to do so by the Panel executive,
- give to the Panel executive a copy of:
- (c) each document lodged by it with its listing market for public release on or after the date on which the bid was announced to that listing market; and
 - (d) if the Panel executive requests that it do so, its most recent annual report lodged with its listing market under the listing rules of that listing market together with a copy of each document lodged by it with its listing market for public release on or after the date on which it lodged that annual report and before the date on which the bid was announced to that listing market..

This rule also applies to a party which is a subsidiary of a listed company in relation to the annual report and lodged documents of its listed holding company.

r.16(1)(d) (e)

- 5.5 If a party is a bidder or has announced that it proposes to make a bid in relation to securities and that bid or proposed bid is or may be relevant to the subject matter of the proceeding, the

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party must as soon as practicable after becoming a party, give the Panel executive a copy of its first public announcement of an intention to make a bid in relation to those securities and a copy or transcript of all statements and documents given by it to the media, any listing market or ASIC in relation to the target or its securities after the date of the first public announcement.

r.16(1)(d) (e)

5.6 If a party is a target in relation to a bid or proposed bid which is or may be relevant to the subject matter of the proceeding, it must as soon as practicable after becoming a party, give to the Panel executive a copy or transcript of all statements and documents given by it to the media, any listing market or ASIC on and from the date on which it first became aware of the bid or the proposal to make the proposed bid.

r.16(1)(d) (e)

5.7 If a party is a substantial holder of securities of a body whose affairs are or may be relevant to the subject matter of the proceeding, the party must as soon as practicable after becoming a party give to the Panel executive a copy of its latest substantial holding notice and of all statements and documents (whether given or created before or after the date of the notice) given by it since the date of the last annual report of the body to the media, any listing market or ASIC concerning that body or its securities.

r.16(1)(d) (e)

5.8 If a party would otherwise be required by one or more of Rules 5.4 to 5.7 (inclusive) to give the Panel executive:

- (a) more than one copy of a particular document, the party need only give one copy of the document; or
- (b) a copy of a document where it has already given a copy of that document to the Panel executive, the party does not need to give that copy again if the party identifies the document and the circumstances in which the document was given to the Panel executive (this includes where the document was lodged with the Panel executive in a related proceeding).

5.9 A party required to give material under Rules 5.4 to 5.7 (inclusive) must, during the proceeding, give the Panel executive a copy of each statement or document issued or lodged by it after it has fulfilled its obligations under those Rules which would otherwise be within the description contained in whichever of those Rules apply to it at the same time or immediately after it issues or lodges that statement or document.

r.16(1)(d) (e)

Note: Rules 5.4 – 5.9 are designed to ensure that the Panel is provided with all relevant public information concerning issues which may become the subject of a proceeding both at the beginning of a proceeding and in a timely way throughout the proceeding. As the issues that may arise for consideration by the Panel during the course of a takeover often are not restricted to the matters raised in the first application lodged, the Panel will rarely modify or excuse the bidder or the target from compliance with these rules (although it may do so in exceptional cases). The Panel may be more likely to grant such a waiver or excuse in relation to Rule 5.4 (but not Rule 5.7) in the case of a substantial holder, especially if it has other activities not related to the existence of the substantial holding being considered in the Panel proceeding. If the obligations under these rules will be especially onerous to a party, that party is encouraged to approach the Panel executive to explain why that is the case and to discuss alternative arrangements to ensure that the relevant material is provided to the Panel on a timely basis.

5.10 The sitting Panel may at any time direct any or all of the parties to give the Panel executive, within the time (being not less than two Business Days) specified in the direction, a copy of each script used in any telephone information campaign undertaken by it or its advisers in connection with the transactions the subject of the proceeding or connected with those transactions. If the sitting Panel gives a direction under this Rule to a party, and the party

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alters any script used or adopts a new script, the party must immediately give a copy of that altered or new script to the Panel executive.

r.16(1)(d) (e)

5.11 ~~5.4~~—A document lodged under this Rule 5 must be lodged in accordance with Rule 6.

Note: This Rule applies, unless the Panel otherwise directs, to all documents given to the Panel and the Panel executive under this rule (including scripts provided under Rule 5.10) and requires, among other things, that those documents be given to all other parties.

6. Lodgement and Delivery of Submissions ~~and Evidence~~

6.1 Any application, submission or other document lodged in ~~a~~connection with a proceeding or proposed 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~~c) should be treated as parties for this purpose.

Notes:

1. The sitting Panel may decide that, in a particular proceeding or in relation to a particular class of document (eg rebuttal submissions), are to be lodged only with the Panel executive who will circulate them to the other parties only when all parties have responded. This may be desirable where parties and their advisers are located overseas or otherwise in widely differing time zones or to ensure that no person obtains any tactical advantage in relation to the distribution of material.
2. The requirement to give every document to every party is subject to directions under Rule 8.

6.2 ~~All documents~~A document that can be sent electronically must be lodged with the Panel executive as ~~attachments~~an attachment to an electronic mail message, and ~~are~~is taken to be lodged when ~~that mail~~the message to which it is attached is received with the document attached.

r.19, r.25

6.3 ~~Unless the Panel agrees to the use of another format, all~~Any electronic ~~documents~~document must be provided in a format which Microsoft Word 97 can open, or ~~RTF~~in PDF format. Documents available only as images may be lodged in ~~GIF~~PDF format or ~~TIF~~any format which Microsoft Windows (in a version currently supported by Microsoft when it is provided) can open.

r.19, r.25

6.4 ~~6.4~~—If a document is not able to be sent electronically, it may be posted or sent by facsimile to the Panel executive. If a paper original of a document must also be lodged under Rule 7.2, it must be delivered, posted or sent by facsimile so that it is received by the Panel executive on the same day as the electronic mail message is sent or the following Business Day. ~~Unless the Panel directs otherwise, six copies of any paper document must be lodged with the Panel.~~

r.16(1)(e)

6.5 Applications and notices of appearance may only be lodged with the Panel and given to parties on a Business Day.

r.16(1)(e)

6.6 ~~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.

6.7 ~~6.6~~ ~~Subject to other directions in specific cases, electronic~~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

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received after these times ~~will be~~are treated as ~~having been~~ lodged at 9 a.m. the following Business Day.

r.16(1)(e)

Notes:

1. ~~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~~ freightcourier.

2. ~~The requirement to give every document to every party is subject to directions under Rule 8.~~ This rule applies where no specific time by which a document must be received by the Panel executive is specified by the sitting Panel during the proceeding. Usually, times for delivery of submissions and rebuttal submissions are set by the brief issued under Regulation 20. Those times are selected to try to lead to the most efficient conduct of the proceeding and, where parties are located in varying time zones, to ensure that parties have, as far as possible, equivalent amounts of business hours to prepare or collate material for the Panel.

7. Evidence

Although the Panel is not bound by the rules of evidence, the Panel needs to decide its proceedings on the basis of logically probative material, particularly if a factual matter is contested or would be discreditable to any person. The Panel may accept statements in submissions to be such evidence, and will typically do so in relation to matters which are not controversial. However, parties should consider providing statements and documents to support any matter raised in submissions which is not obvious, which may be controversial, or which would require the Panel to make a finding discreditable to a person.

Note Legal professional privilege - the Panel considers this issue as being covered by the decision of Miller J in *Corporations and Securities Panel v Bristile Investments Pty Limited* [1999] WASC 183; 32 ACSR 677, which dealt with the provisions of the legislation directly governing the Panel. The Panel has considered whether the decision of the High Court in *ACCC v Daniels Corporation International Pty Limited* (2002) 192 ALR 561 affects the reasoning in *Bristile*, which was based on the High Court's decision in *CAC v Yuill* (1991) 172 CLR 319. The Panel believes that *Daniels* does not over-rule *Yuill*. Rather it suggests that the question in each case is whether the legislation expressly over-rules the substantive rights conferred by the privilege or does so by necessary implication. The Court in *Daniels* distinguished the legislation considered in *Yuill* from that before it in *Daniels*. As the regime applying to the Panel is almost identical to that considered in *Yuill*, as the judge found in *Bristile*, the Panel considers that correctly understood, *Daniels* supports the continued application of *Bristile* to the Panel.

- 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 sworn testimony or written sworn testimony in the form of an affidavit, in each case 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. Until the original has been received by the Panel, the party by or on behalf of which the document was lodged and the person lodging the document each undertakes under section 201A (and in the case of a lawyer also as a lawyer's undertaking) to lodge the paper original as soon as reasonably practicable with the Panel.

Note: See also Rule 6.4 concerning the means of, and timing for, lodgement of paper originals under this Rule.

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;

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- (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 Subject to the rules of procedural fairness, the Panel may use:

- (a) ~~7.6—The Panel may use~~ information published by parties or other persons under the Corporations Act, ~~or~~ the ASX Listing Rules of Australian Stock Exchange Limited or the rules of another stock listing exchange market (e.g. company searches and stock exchange announcements); and, ~~subject to the rules of procedural fairness, representations made to the Panel or the~~
- (b) representations made to the Panel or the Panel executive in circumstances to which section 199 would apply.

r.16(2)(a)

- 7.7 ~~An application to~~ A request by an applicant or a party that the Panel issue a summons to a 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)

7.8 The Panel may direct that identified documents (including documents in an identified class) be treated as having been lodged in a proceeding. This may include documents to which Rule 7.6 applies or documents lodged in, or created for the purposes of, one or more related Panel proceedings.

s.192, s.199

NoteNotes: 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, s.199~~

8. Disclosures and Confidentiality

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~~ A request from any person for a direction by the Panel allowing that person to withhold information from a party must be made before the information is provided to the Panel or the Panel executive and 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 the person seeking the direction or any other persons/person flowing from ~~unauthorized~~ unauthorised use or disclosure of the information, ~~if it is~~ were the information to be provided to the party or its legal representatives.

s.190, s.195(4), r.19

Note: Documents submitted to the Panel (or the Panel executive) in the course of proceedings may be copied to other parties before being read by the Panel or the Panel executive. It is essential, if a direction is to be sought to withhold information in a document, to advise the Panel executive before lodging the document with the Panel.

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.

8.3A Neither a party wishing to invite the Panel to accept an offer of an undertaking under section 201A an undertaking, nor the Panel, need send correspondence between the party and the Panel that relates solely to that subject to the other parties. This Rule ceases to apply in relation to a particular proposed undertaking in relation to any part of a brief requesting submissions on the proposed undertaking, the submissions in response to that part of the brief, the undertaking itself and all subsequent correspondence concerning it.

Note: The Panel encourages parties to approach it as soon as possible with proposals to resolve issues in a Proceeding by the use of suitable undertakings. However, this exception to Rule 8.1 only applies to an item of correspondence if the undertaking is its sole subject.

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; or
- (c) be subject to other measures specified by the Panel to mitigate those adverse effects.

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 (whether or not a party) must not use or disclose information which ~~is~~:

- (a) is and remains confidential in fact; and

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- (b) was disclosed to the person by the Panel, a party or another ~~party~~ person (whether or not the discloser has a contractual or other relationship with the recipient) in, or in connection with, a proceeding (including, without limitation, information disclosed in an application or a submission to the Panel),

except -

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

If any such information is to be disclosed to another person in accordance with this Rule ~~8.4, 8.5~~, the person making the disclosure must inform that other 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, s186~~ s.127, s.186

- Notes: The Panel will generally endeavour to prevent ~~unauthorized~~ unauthorised 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~~ advisers, the Ombudsman and the Parliamentary Committee) are ~~authorized~~ authorised 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~~ or after a proceeding may be communicated to the Panel members.

The obligations under Rule 8.5 apply to persons who are not parties and are without limit in time. Accordingly, lawyers, financial advisers and other consultants or advisers to a party should be aware that they are bound by this Rule merely by reason of being given the information by the party for as long as the information remains confidential.

Where this Rule applies to a person, that person will be subject to an obligation of confidentiality in equity, as well as under the Rule, which will continue for as long as the information remains confidential.

This Rule only restricts how one person deals with information provided to it by the Panel or another person in the course of, and for the purposes of, a proceeding. It does not affect how a person deals with that person's own information; nor does it affect compliance by any person with continuous disclosure obligations (for example, ASX Listing Rule 3.1, which may exempt from disclosure information in relation to which a party is subject to an obligation of confidentiality). See also Rule 12.

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~~proceeding, 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~~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, r.24
 - (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.37~~f~~ r.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~~The Panel's 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.

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, r.38
- 9.5 If a party wants the Panel to consider:
- (a) giving a direction; or
 - (b) exercising any other power that it has which neither the Corporations Act nor the ASIC Act provides is to be exercised on an application.

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the party must lodge with the Panel a written request:

- (c) as soon as reasonably practicable before the party wants the direction to be given or the power exercised (as the case may be); and
- (d) ~~9.5 If a~~ setting out the direction or exercise of power which the party wishes to apply for a direction, the ~~application~~ Panel to consider and ~~each~~ its submission submissions in support of the ~~application must be lodged at least one Business Day before~~ Panel granting the direction is required request .

r.16(1)(e)

Notes

1. This rule allows for the parties to request the Panel to exercise all powers that it has which do not need an application to be made in order for the power to be exercised. In relation to those matters (ie applications under sections 656A, 657C and 657EA), a party may make an Additional Application under rule 2.6.
2. The usual minimum in which a Panel can deal with a request is one Business Day. If the request is made less than one clear Business Day before the time at which the requester wishes the Panel to act, the request should explain in detail why it could not have been made earlier.

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~~ The Panel will in general give a party:

- (a) ~~three~~ at least two Business Days to respond to ~~an initial application for a declaration or order, other than~~ any brief issued by the Panel under Regulation 20 (except to the extent that it concerns issues relating to an interim order);
- (b) at least one Business Day to respond to:
- (i) ~~an application for~~ any brief issued by the Panel under Regulation 20 to the extent it concerns issues relating to an interim order ~~or to review a decision of ASIC or the Panel;~~ or
 - (ii) a submission (other than in 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, r.16(1)(e), r.30, r.34

Notes: Sub-regulation 28(3) entitles a party to lodge with the Panel only one rebuttal submission. Additional rebuttal submissions will be regarded by the Panel as not being lodged within time and, pursuant to regulation 34, the Panel may continue with the proceeding without regard to the submissions.

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 and the Panel may exercise its discretion under r.34 to ignore a document lodged after the time specified by it.

r.28(3), r.34

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 under section 657EA, but the Court is not the applicant in that proceeding;
- (b) subject to any direction of the Panel, the applicant, appellant or other person initiating the Court proceedings is the applicant in the Panel proceeding and the other parties to the review are the other 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~~ Where a party requests that the Panel consider exercising its power under section 659A to refer a question of law to the Court under section 659A, ~~that request must:~~

- (a) ~~(a) — must~~ be accompanied by a draft of a case stated, setting out the question of law and the facts to which it relates;
- (b) contain or be accompanied by an offer of an undertaking under section 201A for the applicant, if the Panel refers the question of law to the Court, to pay or reimburse on demand all costs of the Panel in the matter on a solicitor and own client basis; 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

Notes:

1. The Panel has power to act of its own motion to refer an issue under section 659A and this rule does not affect its ability to do so. The Panel may decide to accede to a request to refer a matter under this section without accepting the offer of an undertaking under Rule 9.8(b).
2. There is little point in referring hypothetical questions to the Court, and the Court's function under section 659A does not include making findings of fact. The case stated should set out all of the facts which be relevant to the Court's decision on the question of law. Before a referral is made, the facts relevant to it must be agreed between the parties and the Panel, or found by the Panel. The question of law must be precise and necessary to the resolution of the Panel proceeding.
3. The undertaking as to the Panel's costs in the referral should be treated by the person requesting the referral as a cost in the proceeding and, if that person is awarded costs by the Court, it should seek to ensure that the costs awarded by the Court deal with its obligation under the undertaking.

Application for Interim Order

9.9 ~~An application~~ The applicant for an order under section 657E must lodge the application and any supporting submission ~~must be lodged~~ with the Panel ~~at least one Business Day~~ as soon as reasonably practicable 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~~ request directions about the giving of the application to other persons.

r.16(1)(e)

Notes

1. The usual minimum in which a Panel can deal with an application for an interim order is one Business Day. If the application is made less than one clear Business Day before the time at which the applicant wishes the Panel to act, the application should explain in detail why it could not have been made earlier.
2. ~~9.10~~ 9.9 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~~ 9.9 as well as any other relevant considerations.

Preliminary submissions

9.10 Where the Panel is considering whether or not to conduct proceedings in relation to some or all of the matters raised in an application under regulation 20(a), it may invite or require some or all of the parties to make submissions to it concerning whether it should make that decision.

Briefs

9.11 A brief may be in one or more parts. The Panel does not have to issue all parts of the brief at one time. The Panel may wait to prepare some parts of a brief until submissions and rebuttal submissions (and evidence) in relation to one or more other parts of the brief have been received and considered by it. If the Panel expands a proceeding under Rule 2.6, it may issue another part of the brief.

Note: In more complex matters, or where it is desirable for facts to be determined before questions of policy or applicable law are the subject of a brief or submissions, the Panel may issue a part of the brief in order to refine the relevant issues or to determine the relevant facts before considering which legal or policy issues are raised by the application. In addition, if further factual information or additional legal or policy submissions are required by the Panel before it makes its decision in relation to the application, one or more supplementary parts of the brief may be issued.

10. Conferences

Consistently with the object set out in Rule 1.2 and the policy in Rule 1.3, the Panel generally does not conduct proceedings through oral examination or submissions in a conference. However, there are circumstances in which a conference may be appropriate or desirable to deal with all or some specific parts of a proceeding.

10.1 A party may request the sitting Panel to consider holding a conference. The party's request must:

(a) specify the matters or issues proposed to be considered by means of the conference;

and

(b) give reasons as to why those matters or issues would best be dealt with in conference;

and

(c) give an estimate of the time which would be required for the conference; and

(d) indicate who it is proposed would attend the conference.

Note: the matters or issues which might be specified could include discussion of particular legal issues, examination of specified witnesses, and clarification of particular policy issues.

10.2 ~~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~~10.3 Subject to any directions made by the Panel, a conference will take place in private.

r.38

~~10.3~~10.4 The Panel may direct what evidence or submissions is or are to be provided at a conference, for instance, by specifying the issues to be addressed. Since issues are generally, as far as possible, to be ~~resolved~~determined by on written submissions, time at a conference will be used primarily to take evidence and submissions to supplement or explain written submissions.

r.35(1)

~~10.4~~10.5 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), r.38(3), r.39

~~10.5~~10.6 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.

11. Legal Representation

11.1 If proceedings relate to a transaction or circumstances 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 or circumstances 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 particularly if the lawyers did not advise the party in relation to the relevant transaction or circumstances.

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 efforts to resolve proceedings before it as quickly and efficiently as possible are assisted where parties refrain from debating publicly (either directly or by giving “background” information to journalists) the issues before the Panel. It considers that such partial publicity can lead to a misinformed (and hence inefficient) market and make it harder for the Panel to resolve disputes before it efficiently and effectively.

The Panel notes that, since March 2000, most (and increasingly more) parties appear to it to have behaved appropriately with only a small minority seeking to continue to seek to use the media to ventilate issues being considered by the Panel in a current proceeding.

The Panel seeks to encourage this by its prohibition on “media canvassing”. It considers that this prohibition (contained in this Rule):

- assists the Panel to obtain evidence quickly by assuring parties that the information provided will remain confidential;
- encourages parties to be forthcoming to the Panel in providing evidence, in making submissions and in seeking to find suitable resolutions to disputes that will short-circuit the need for formal decisions and orders by the Panel;
- removes from parties the stigma of being publicly seen to have “climbed down”, which in its opinion may otherwise encourage parties to adopt intransigent positions before the Panel; and
- is consistent with the efficient dispatch of business by avoiding the need for the Panel to consider the effect of media discussion of issues before it on the information before shareholders and the efficiency of the market.

Panel proceedings necessarily are different from Court proceedings – they do not involve one party seeking to enforce or vindicate its right against another, but rather the Panel determining (often without attributing any fault) whether the circumstances before it are unacceptable and seeking to remedy any existing or threatened unacceptability. Panel proceedings are conducted privately and respecting confidentiality and frequently do not involve any conferences. Thus, there is no public equivalent of the open Court hearing which can be reported on by the media and against which the parties’ assertions concerning the proceeding may be assessed. The Panel will take appropriate action against any party which contravenes:

• Rules 12.1 or 12.2; or

- ~~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. The Panel regards the following Rules as also being directions made under subsection 190(1).

- 12.1 A party to ~~proceedings~~a proceeding 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:

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

A proceeding will not be regarded as complete until the earlier of:

- (a) the issue by the sitting Panel of a release to the media or ASX setting out its final decision in the proceeding;
- (b) the issue by the sitting Panel of its Reasons for Decision in the proceeding.

- 12.2 A party to ~~proceedings~~ a proceeding in the Panel which ~~have~~ has been completed may ~~make or~~ publish a statement ~~that the proceedings took place~~ commenting on, the subject of the proceedings, the outcome of the proceedings and whether the party proposes to seek review of the Panel's decision, or including material from either or both:
- (a) the Panel's decision (or the Panel's release to the public announcing its decision); and
 - (b) the submissions made by that party in the proceeding (except for factual material which remains subject to Rule 8.5),
- but that statement must:
- (c) accurately represent the Panel's decision and reasons for it; and
 - (d) not falsely or inaccurately state or imply that the Panel has made any assessment of the merits of any proposal or person.
- 12.3 ~~A~~ Before the conclusion of a proceeding, a party to ~~proceedings~~ the proceeding may ~~apply for~~ request a direction preventing or restricting the publication after completion of the proceeding of specified submissions, evidence or matters contained in documents lodged with the Panel in ~~those~~ the ~~proceedings~~ proceeding. The ~~application~~ request should set out all of the matters known to the ~~applicant~~ party making the request relevant to the Panel's consideration of the factors mentioned in subsection 190(2) as relevant to the ~~proceedings~~ proceeding.

s. 190(2)

Notes:

1. ~~Note: — Unless~~ This Rule is designed to be consistent with a Party's obligations under ASX Listing Rule 3.1, to which listed parties continue to be subject throughout Panel Proceedings. In relation to the content of a Panel ~~proceedings had~~ proceeding itself, unless some or all of that content has 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.
2. When a matter is initiated, the Panel will normally issue a press release dealing with the matters mentioned in ~~rule~~ Rule 12.1. When the matter is complete, it will normally issue a further 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.
3. The Panel may make an order under ~~subsection 190(2),~~ section 190, with or without ~~an~~ a ~~application~~ request from a party.
4. See also Rule 8 (and its notes), which sets out (and discusses) each party's obligation to respect the confidentiality of other parties' confidential information obtained in the course of a proceeding.

13. Undertakings

13.1 ~~Where~~Except where the Panel has requested or directed the giving of the undertaking, where a person offers an undertaking under section 201A to the Panel, the person must give 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~~the person to serve copies ~~be served~~ on the other 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~~consider accepting 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~~a proceeding or part of ~~proceedings~~a proceeding, 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~~proceeding 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: see also Rule 8.3A.

13.2 Where a party receives a copy of a proposed undertaking or of an undertaking that has been accepted by the Panel, that party receives it on the basis that the offer of the undertaking by the offeror party does not imply any admission by the offeror party.

14. ~~Withdrawal of Applications~~ as a party

14.1 ~~An applicant~~ A party may only withdraw ~~its application only~~ from a proceeding with the consent of the Panel. ~~An applicant party~~ A party may ~~apply to~~ request the Panel for its consent to withdraw. If the ~~application~~ request 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~~ A request 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~~ person making the request;
- (b) explain why the ~~applicant~~ person wishes to withdraw ~~its application~~ from the proceeding;
- (c) provide sufficient information for the Panel to determine whether any useful purpose will be served if the ~~proceedings are~~ proceeding is continued without that person's participation; and
- (d) be lodged in accordance with Rule 6.

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

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~~ parties 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 give consideration, in making its decision in response to a request for withdrawal from a proceeding, to whether the proceeding should continue (bearing in mind the public interest and the matters set out in sections 602 and 657A(3))

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~~Rules, unless the contrary intention appears:

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

‘ASX’ means Australian Stock Exchange Limited or the financial market conducted by it;

‘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~~a proceeding, means the sitting Panel in relation to ~~those~~the proceedingsproceeding;

‘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~~a proceeding, means the Panel constituted under section 184 in relation to ~~those~~the proceedingsproceeding;

‘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~~a person who is exercising the powers and performing the functions of the substantive President under an appointment 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~~and Rule 6.7. Subject to Rule 6.7, 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. A reference to a time of day is to that time in Melbourne.

15.3 ~~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.

15.4 Rules 15.1 - 15.3 (inclusive) also apply (subject to any contrary intention appearing in the document) to each document issued in connection with an application or a proceeding by:
(a) the Panel; and

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(b) someone other than the Panel (including any application, submission, or other communication or document) where the issuer of the document states or has stated that this rule applies to that document (or documents in a class that includes that document).

APPENDIX

NOTICE OF APPEARANCE

[INSERT THE NAME OF THE MATTER]

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

[OPTIONAL] The CompanyParty will be advised in the matter and seeks the Panel's consent under section 194 of the Australian Securities and Investments Commission Act 2001 (Cth) to be represented by [NAME THE COMPANYPARTY'S SOLICITORS OR OTHER ADVISORSADVISERS] in the proceeding before the Takeovers Panel.

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

Courier:

Postal:

DX:

E-mail

Fax:

Telephone:

Contact:

The CompanyParty undertakes to the Panel under section 201A of the ASIC Act and the other parties to the proceeding from time to time that the CompanyParty and its advisorsadvisers will not at any time from the date of this notice:

- (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 CompanyParty 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 CompanyParty and its advisorsadvisers will not participate in, induce or facilitate the canvassing in the media of issues that are, or are likely to be, before a sitting Panel in the proceeding specified above.

The Party also undertakes to give instructions to its advisers and directions to its officers to enable it to comply with the two preceding undertakings.

Dated:

Signed on behalf of the CompanyParty by [GIVE NAME AND AUTHORITY TO BIND THE COMPANYPARTY]

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

An applicant need not lodge a notice of appearance if the undertakings for confidentiality and in relation to media canvassing and the details required in this notice are included in the application -- Rules 2.1(f) and 3.1.

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

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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.

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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 ~~1 November 2001~~ 1 2004.

Dated: ~~November 2001~~ 1 2004

Signed

Simon McKeon
President
Takeovers Panel

Document comparison done by DeltaView on Monday, April 19, 2004 14:45:50

Input:	
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Document 2	file://C:\BDWork\Panel Docs\040419jk- ProceduralRulesPublicConsultationDraft.doc
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Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
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Moved to	8
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