



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP22/56

Thursday, 27 October 2022

CD Private Equity Fund II – Panel Receives Application

The Panel has received an application from Baauer Pty Ltd atf the Baauer Family Trust in relation to the affairs of CD Private Equity Fund II (**CD2**). CD2 is currently the subject of a trust scheme of arrangement.

Details of the application, as submitted by the applicant, are below.

A sitting Panel has not been appointed at this stage and no decision has been made whether to conduct proceedings. The Panel makes no comment on the merits of the application.

Details

E&P Investments Limited (**E&P**), a wholly owned subsidiary of E&P Financial Group Limited (**EP1**), is the responsible entity of CD2, as well as each of CD Private Equity Fund I (**CD1**), CD Private Equity Fund III (**CD3**) and CD Private Equity Fund IV (**CD4**).

CD1, CD2, and CD3 are currently listed on ASX under those tickers. CD4 is unlisted.

In an Explanatory Memorandum dated 7 October 2022, E&P proposed to merge CD1, CD2, CD3, and CD4 by way of a trust scheme of arrangement (**Scheme**) by which CD3 would acquire all the units of CD1, CD2, and CD4, forming a single trust which would be converted from a closed-ended listed trust to an open-ended unlisted unit trust around six months later.

US Select Asset Management Inc., also a wholly owned subsidiary of EP1, will be appointed to manage the Scheme's assets if the Scheme is approved.

E&P has recommended the Scheme to CD2's unitholders, as well as the unitholders of CD1, CD3 and CD4.

Unitholders are scheduled to vote on the Scheme on 7 November 2022.

The applicant submits that a number of changes that would affect existing CD2 unitholders if the Scheme were to be implemented would be detrimental to CD2

unitholders and, in recommending the Scheme to CD2 unitholders, E&P has (among other things) not acted in the best interests of CD2 unitholders and has given priority to its own interests over the interests of CD2 unitholders and that the Explanatory Memorandum is misleading.

The applicant further submits that, for CD2 unitholders, the Explanatory Memorandum details potential benefits of the Scheme that are immaterial or illusory, and have been overstated by E&P, while the Scheme's downsides have been understated.

The applicant submits contraventions of sections 602(a) and (b), in addition to section 601FC, of the *Corporations Act 2001* (Cth).

The applicant seeks an interim order for the vote on the Scheme to be stayed until final determination of the application.

The applicant seeks final orders including the issue of a replacement Explanatory Memorandum in a form approved by the Panel and that any votes cast in favour of the Scheme by CD2 unitholders prior to the date that is seven days after the issue of the replacement Explanatory Memorandum be deemed void and that affected unitholders be notified and entitled to recast their votes in respect of the Scheme.

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