



Australian Government

Takeovers Panel

Reasons for Decision Elanor Commercial Property Fund [2025] ATP 31

Catchwords:

Decline to conduct proceedings – bidder's statement – replacement bidder's statement – disclosure – information deficiencies – media canvassing – breach of confidentiality undertaking

Guidance Note 5: Specific Remedies – Information Deficiencies

Takeovers Panel Procedural Rules 2020, rule 18, 19

Nitro Software Limited [2023] ATP 2, InterMet Resources Limited [2008] ATP 17

Interim order	IO undertaking	Conduct	Declaration	Final order	Undertaking
NO	NO	NO	NO	NO	NO

INTRODUCTION

1. The Panel, Susan Forrester, Neil Pathak (sitting President) and Georgina Varley declined to conduct proceedings on an application by Elanor Funds Management Limited, as responsible entity of the Elanor Commercial Property Fund, in relation to the fund's affairs. ECF was the subject of an off-market takeover bid by Lederer. The application concerned disclosure deficiencies in the Bidder's Statement. Following discussions between ECF's RE and Lederer, Lederer lodged a replacement bidder's statement that reflected agreed amendments which substantially addressed all of the disclosure concerns raised in the application. Given that, the Panel considered that there was no reasonable prospect that it would declare the circumstances unacceptable.

2. In these reasons, the following definitions apply.

ABL Letter dated 2 September	has the meaning given in paragraph 12
ABL Letter dated 29 August	has the meaning given in paragraph 10
Bidder's Statement	has the meaning given in paragraph 8
ECF	Elanor Commercial Property Fund
EFM	Elanor Funds Management Limited, the responsible entity of ECF
ENN	Elanor Investors Group
LDR Capital	has the meaning given in paragraph 9
Lederer	LDR Assets Pty Ltd as trustee for the LDR Assets Trust
Lederer Family Office	has the meaning given in paragraph 6

Takeovers Panel

Reasons – Elanor Commercial Property Fund [2025] ATP 31

MR Letter dated 1 September	has the meaning given in paragraph 11
Replacement Bidder's Statement	has the meaning given in paragraph 25

FACTS

3. ECF is a listed externally managed real estate investment trust (an A-REIT, ASX: ECF).
4. Elanor Asset Services Pty Ltd is the manager of ECF, appointed by EFM under an investment management agreement, and is responsible for the day-to-day management of ECF.
5. EFM and Elanor Asset Services Pty Ltd are members of the Elanor Investors Group (ASX: ENN).
6. The family office of Paul Lederer and Eva Lederer and their Controlled Entities (as defined in the *Corporations Act 2001* (Cth)) (the **Lederer Family Office**) control Lederer.
7. On 4 August 2025, Lederer released an announcement on ASX outlining its intention to make an unsolicited off-market takeover offer to acquire all the stapled securities of ECF for \$0.70 per ECF security¹.
8. On 20 August 2025, Lederer lodged a bidder's statement in relation to the offer (**Bidder's Statement**). As at the date of the Bidder's Statement, Lederer had voting power of 27.54% of ECF.²
9. The Bidder's Statement included statements that if Lederer acquired a relevant interest in more than 50% of the ECF securities, it will seek to replace the responsible entity of ECF and request the new responsible entity appoint LDR Capital Pty Ltd³ (**LDR Capital**) or another controlled entity of the Lederer Family Office as the new investment manager of ECF.
10. On 29 August 2025, Arnold Bloch Leibler (ECF's legal advisers) sent a letter to McCullough Robertson (Lederer's legal advisers) setting out (among other things), ECF's material concerns regarding disclosure deficiencies in the Bidder's Statement (**ABL Letter dated 29 August**).
11. On 1 September 2025, McCullough Robertson sent a letter to Arnold Bloch Leibler in response to the ABL Letter dated 29 August (**MR Letter dated 1 September**) setting out proposed amendments to the Bidder's Statement and stated Lederer's intention to dispatch the Bidder's Statement on 3 September 2025.

¹ A stapled security in ECF comprises one unit in the Elanor Commercial Property Fund I stapled to one unit in the Elanor Commercial Property Fund II

² The Lederer Family Office held ECF securities through PEJR Investments Pty Ltd as trustee for the Lederer Investment Trust (which held 22.39% of the ECF securities on issue) and Paul Lederer Pty Ltd as trustee for the Lederer Superannuation Fund (which held 5.15% of the ECF securities on issue)

³ LDR Capital is a new real estate funds management platform established for the purpose of managing the real estate assets of the Lederer Family Office and other investors

Takeovers Panel

Reasons – Elanor Commercial Property Fund [2025] ATP 31

12. On 2 September 2025, Arnold Bloch Leibler sent another letter to McCullough Robertson setting out ECF's remaining concerns with the disclosure in the Bidder's Statement following the proposed amendments contemplated in the MR Letter dated 1 September 2025 (**ABL Letter dated 2 September 2025**).

APPLICATION

Declaration sought

13. By application dated 2 September 2025, EFM sought a declaration of unacceptable circumstances and submitted that the Bidder's Statement contained material information deficiencies relating to (among other things):
- (a) the failure to provide sufficient disclosures about Lederer and the Lederer Family Office, along with the omission of any meaningful information about the ownership, personnel, expertise or track record of LDR Capital
 - (b) the inclusion of multiple references to a speculative change in ECF's strategy or investments, unsupported by any reasonable basis, which EFM submitted was intended to "*coerce acceptances of the Lederer Offer*"
 - (c) a misleading comparison of ECF's management expense ratios (**MER**) with the MERs of various other externally managed REITs included in the ASX300 A-REIT index, "*given the size difference of those entities and ECF*" and
 - (d) the threat of delisting ECF from the ASX and the omission of safeguards in respect of a proposed ASX delisting.
14. EFM further submitted that there were other errors and misstatements in the Bidder's Statement.

Interim orders sought

15. EFM sought an interim order that Lederer be restrained from despatch of the Bidder's Statement until the disclosure deficiencies were rectified or until further order.
16. The President considered the interim orders request on an urgent basis given that the application was made the day before the scheduled despatch of the Bidder's Statement (3 September 2025). The President decided not to make any orders after McCullough Robertson confirmed that Lederer did not intend to despatch the Bidder's Statement (in its original form).⁴

Final orders sought

17. EFM sought final orders, including to the effect that Lederer be required to:
- (a) advise the market, in a form approved by the Panel:
 - (i) that the Bidder's Statement contained disclosure deficiencies
 - (ii) of the nature of the disclosure deficiencies and

⁴ Confirmation via an email to the Panel executive at 5:34pm on 2 September 2025

Takeovers Panel

Reasons – Elanor Commercial Property Fund [2025] ATP 31

- (iii) that it would lodge a replacement bidder's statement addressing the disclosure deficiencies and
- (b) prepare a replacement bidder's statement, in a form approved by the Panel, which addressed the disclosure deficiencies.

DISCUSSION

18. We have considered all the material presented to us in coming to our decision, but only specifically address those things that we consider necessary to explain our reasoning.

Preliminary submissions

19. We received preliminary submissions from Lederer and ENN.
20. Lederer submitted that the Panel should decline to conduct proceedings on the basis that (among other things):
- (a) the parties had verbally agreed at 1:12pm on 2 September 2025 to a round table discussion of advisers to *"agree a replacement bidder's statement in an expedited [manner] on the evening of 2 September 2025"*
 - (b) it had confirmed to EFM at 3:12pm on 2 September 2025 that it *"would not dispatch the original Bidder's Statement and instead would issue a replacement Bidder's Statement as sought by the Applicant in the Application"* and
 - (c) EFM's decision to lodge the application on 2 September 2025 after multiple verbal confirmations regarding a replacement bidder's statement was *"disingenuous and motivated solely by a desire to cause a delay in the orderly lodgement of the replacement bidder's statement with ASIC, ASX and ECF"*.
21. The annexures to Lederer's preliminary submission also outlined proposed amendments to the Bidder's Statement to address and rectify the disclosure deficiencies identified in the ABL Letter dated 2 September 2025.
22. ENN submitted that the Panel should conduct proceedings on the basis that (among other things):
- (a) the Bidder's Statement contained *"insufficient information in relation to Lederer, the Lederer Family Office and LDR Capital"* and more specifically, did not contain any information in relation to *"the identity, experience and track record of the management team of the proposed responsible entity and investment manager or how the proposed replacement responsible entity and investment manager will satisfy the licensing requirements in order to act in such capacities"* and
 - (b) ENN had *"no intention to vary the current ECF investment strategy"* and agreed with EFM's submission that Lederer had *"no reasonable basis for raising concerns in the Bidder's Statement in relation to the potential acquisition of assets from Firmus Capital and the adoption of a "pan Asian" strategy"*.

Takeovers Panel

Reasons – Elanor Commercial Property Fund [2025] ATP 31

Resolution of outstanding disclosure issues

23. We encourage parties to resolve disclosure deficiencies in a bidder's statement through negotiation and direct communication, rather than immediate recourse to Panel proceedings.⁵
24. We do not consider that the likelihood of a successful application is enhanced by the volume of claims or submissions.⁶ Rather, parties should focus on the remaining substantive matters and avoid raising excessive or tactical claims.⁷
25. Following the lodgement of the application, EFM and Lederer engaged in extensive correspondence and negotiation, through their legal representatives, with a view to resolving the disclosure deficiencies identified in the Bidder's Statement expeditiously by agreeing the content of a replacement bidder's statement (**Replacement Bidder's Statement**).
26. This process was largely conducted outside of the formal Panel process and involved the exchange of detailed letters and draft documents between the parties. The progress of these discussions was documented in a table circulated between the parties, which set out each issue, the parties' respective positions and the amendments agreed to be made in the Replacement Bidder's Statement.
27. As a result of these discussions, the parties were able to reach agreement on the majority of issues raised in the application.
28. We convened our first meeting against this background of substantial agreement between the parties and considered that only one substantive issue remained unresolved – whether the Replacement Bidder's Statement needed to include disclosure of the current occupancy / vacancy levels for properties managed by LDR Capital.
29. Prior to deciding on whether to conduct proceedings, we invited parties to make further submissions on the question of occupancy / vacancy level disclosure.
30. EFM submitted that disclosure of occupancy / vacancy rates was material to ECF securityholders' assessment of LDR Capital's capability to manage the ECF portfolio, particularly given LDR Capital's lack of experience managing listed REITs. Furthermore, it also submitted the level of information requested would "*customarily be available to target shareholders*" in a similar transaction and was necessary for an informed decision.
31. Lederer submitted that the level of disclosure sought was unreasonable and not material in the context of an all-cash bid, where Lederer (as the bidder) "*does not have prospectus [or] PDS level disclosure obligations*". Lederer also noted that it had already expanded other disclosures in good faith, and that requiring additional information on occupancy / vacancy levels would be inconsistent with market practice and

⁵ See Guidance Note 5: Specific Remedies – Information Deficiencies at [9] and [23]

⁶ The Panel in *InterMet Resources Limited* [2008] ATP 17 made a similar observation, stating (at [34]) that in that matter the raising of several minor disclosure issues detracted from the other issues (and from the overall credibility of the application) and made it difficult for the Panel to determine the substantive issues

⁷ See Guidance Note 5: Specific Remedies – Information Deficiencies at [24]

Takeovers Panel

Reasons – Elanor Commercial Property Fund [2025] ATP 31

potentially misleading. Lederer also provided examples of comparable transactions where such disclosure was not included.

32. After considering the parties' submissions, we formed the view that the non-disclosure of the occupancy / vacancy levels for properties currently managed by LDR Capital was not sufficiently material in the circumstances to restrain the lodgement and subsequent despatch of the Replacement Bidder's Statement. We also noted that ECF had, immediately prior to us meeting, released a presentation disclosing its concerns regarding LDR Capital's experience in managing listed REITS.
33. Furthermore, in light of the parties' good faith negotiations over the contents of the Replacement Bidder's Statement, we encouraged ECF to consider providing consent to waive the 14-day waiting period before despatch upon Lederer's lodgement of the Replacement Bidder's Statement with ASIC.⁸
34. The process illustrated how parties could, through direct and constructive efforts, resolve disclosure issues without (or at least minimise) the need for our intervention. Throughout the matter, both EFM and Lederer demonstrated a willingness to engage in meaningful dialogue, share substantive written communications, and make genuine attempts to address the concerns raised. The collaborative efforts undertaken resulted in substantial progress and as a consequence, we were only required to determine the materiality of a single outstanding disclosure point.
35. We consider this outcome to be consistent with our guidance⁹ and practice, which favour resolution of issues by the parties where possible. By supporting and facilitating such collaborative approaches, we aim to ensure that formal intervention is reserved for circumstances where genuine resolution cannot be achieved.

Media Canvassing

36. After the proceedings concluded, it was brought to our attention that an article was published in *The Australian* at 7:05pm on Tuesday, 9 September 2025, prior to the release of our decision media release on the ASX at 9:32am on Wednesday, 10 September 2025.
37. The article appeared to contain details which had only appeared in confidential communications between the parties and us during the course of the proceedings, including references to our decision not to conduct proceedings. These disclosures appeared to breach the Panel's rules on confidentiality and media canvassing in Rules 18 and 19, respectively, of the Panel's Procedural Rules.
38. As noted by the Panel in *Nitro Software Limited* [2023] ATP 2 at [128], the media canvassing prohibition is important for several reasons and must be taken seriously by all parties to Panel proceedings, who undertake to comply with Rules 18 and 19 in their Notice to Become a Party.

⁸ ECF provided consent of early despatch and the Replacement Bidder's Statement was despatched to ECF securityholders on 11 September 2025

⁹ See generally Guidance Note 5: Specific Remedies – Information Deficiencies

Takeovers Panel

Reasons – Eleanor Commercial Property Fund [2025] ATP 31

39. We were concerned that the publication of the article in *The Australian* may have resulted from a party, or someone acting on their behalf, communicating confidential information to a journalist during the course of these proceedings. We accordingly made enquiries of the parties, reminding them of the prohibition on media canvassing and requesting confirmation that neither they nor any person acting on their behalf had communicated with the author of the article regarding the matters before us.
40. Arnold Bloch Leibler, through enquiries made by the Eleanor Commercial Property Fund Independent Board Committee of its members and allocated executives (among others), submitted that “no person representing the ECF IBC has had any discussions with *The Australian* in relation to the article”.
41. McCullough Robertson submitted that while they can “speculate how the journalist became aware of the Panel’s decision to not conduct proceedings in relation to the matter, [they] have no reason to believe it was at [their] client or any of its representative’s request”.
42. After considering McCullough Robertson’s response, we sought further information and asked Lederer to provide us with a statement from Lederer’s media adviser detailing its communications with *The Australian*.
43. Lederer’s media adviser provided a statement confirming that “during [their] conversations with *The Australian* regarding the Lederer Group bid for ECF, [they] did not discuss the Takeovers Panel findings”.
44. Despite our enquiries and the statement provided by Lederer’s media adviser, our concerns regarding the content of the article and the manner in which the journalist obtained such information have not been alleviated. The timing and detail of the article suggest that confidential information from the proceedings may have been leaked to the media prior to the public release of our decision.
45. While we do not consider that it is necessary to take any further action here and that further inquiry may be of limited utility given that we declined to conduct proceedings, we emphasise that breaches of the confidentiality and media canvassing restrictions undermine the integrity of our processes. Such conduct may have broader implications for the parties involved and for the operation of our regime more generally.
46. We expect full and ongoing compliance from all parties in any future proceedings before us.

DECISION

47. For the reasons above, we do not consider that there is any reasonable prospect that we would make a declaration of unacceptable circumstances. Accordingly, we have decided not to conduct proceedings in relation to the application under regulation 20 of the *Australian Securities and Investments Commission Regulations 2001* (Cth).

Neil Pathak
President of the sitting Panel

Takeovers Panel

**Reasons – Elanor Commercial Property Fund
[2025] ATP 31**

Decision dated 9 September 2025

Reasons given to parties 5 November 2025

Reasons published 7 November 2025

Takeovers Panel

Reasons – Elanor Commercial Property Fund
[2025] ATP 31

Advisers

Party	Advisers
EFM	Arnold Bloch Leibler
Lederer	McCullough Robertson
ENN	King & Wood Mallesons