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Wednesday, 4 January 2006

**Axiom Properties Limited - Panel Receives Application**

The Takeovers Panel advises that it has received an application from Saramac Nominees Pty Ltd, in relation to the affairs of Axiom Properties Limited.

The Application concerns an agreement between Axiom and Pivot Group Pty Ltd (the **Pivot Agreement**) for a proposal by Pivot to provide funds to Axiom (the **Pivot Proposal**) by way of subscription for new shares and convertible notes. The Pivot Proposal is one of two alternative proposals to provide funds to Axiom. The other proposal has been put forward by Saramac. Axiom requires funds to complete its Port Geographe project.

The application by Saramac alleges that:

- (a) a “no shop and no talk” provision in the Pivot Agreement constitutes unacceptable circumstances because the Pivot Agreement does not contain an appropriate fiduciary exception allowing Axiom’s directors to respond positively to an alternative proposal if the directors consider to do so would be in the best interests of Axiom shareholders. Saramac submits this is contrary to the policy set out in section 602(a) of the Corporations Act 2001 (Cth) and the Panel’s [Guidance Note 7 - Lock-up Devices](#); and
- (b) Pivot’s actions in relation to the Pivot Agreement (ie enforcing or threatening to enforce the “no shop and no talk” provision) constitute unacceptable circumstances.

Saramac has sought a declaration of unacceptable circumstances and final orders that cancel or declare the Pivot Agreement void, or an undertaking from Pivot to vary or cancel the “no shop and no talk” provision of the Pivot Agreement.

The Panel advised of an earlier application by Pivot in relation to Axiom in [TP05-89](#). The Panel has decided to conduct proceedings in relation to both applications.

The President of the Panel has appointed Carol Buys (Sitting President), John Fast and Irene Lee as the sitting Panel to consider the application.

Nigel Morris  
Director, Takeovers Panel  
Level 47, 80 Collins Street  
Melbourne, VIC 3000  
Ph: +61 3 9655 3501 [nigel.morris@takeovers.gov.au](mailto:nigel.morris@takeovers.gov.au)