



Wednesday, 16 July 2008

GoldLink IncomePlus Limited 02 – Panel Declines to Conduct Proceedings and Publishes Reasons

The Panel has declined to conduct proceedings on an application dated 9 July 2008 from GoldLink IncomePlus Limited regarding its affairs (see [TP08/71](#)). GoldLink is the subject of a proportional off-market takeover bid by Emerald Capital Limited to acquire 45% of each GoldLink shareholder's shares at \$0.23 per share.

The application related to a share sale agreement between Emerald and Challenger Managed Investments Limited, under which Emerald acquired a relevant interest in 16,127,843 GoldLink shares at \$0.21 per share. Clause 3.2 of the agreement provided for an increase in the purchase price to \$0.26 or \$0.235 per share, where certain conditions were satisfied on or before 15 October 2008 or 15 December 2008 respectively. However, if Emerald made a takeover offer, clause 3.3 capped any increase in the purchase price to the bid consideration.

Emerald later amended the terms of the share sale agreement so that the purchase price could only be increased by \$0.02 per share to \$0.23 (being the same price offered under Emerald's takeover bid), in the event that either:

- (a) Emerald obtained board control of GoldLink on or before 15 December 2008 or
- (b) the board of directors of GoldLink approved the proposal that had been put forward by Emerald for GoldLink to remain as an alternative investment company.

GoldLink submitted that the conduct of Emerald constituted unacceptable circumstances because:

- (a) as the original share sale agreement provided for a conditional increase in the purchase price to \$0.26 or \$0.235 per share, s621(3) of the Corporations Act operated so that Emerald should have offered the same consideration under its takeover bid and
- (b) Emerald failed to disclose in the bidder's statement full details of the share sale agreement, the changes to that agreement and the circumstances leading to those changes.

The Panel declined to conduct proceedings on the basis that the amendments made to the share sale agreement had the effect that Challenger would not receive consideration additional to that offered to GoldLink shareholders under the takeover bid. The Panel was also satisfied that supplementary disclosure prepared by

Emerald provided sufficient details of the original share sale agreement and the amendments to it.

The Panel concluded there was no reasonable prospect that it would make a declaration of unacceptable circumstances. Accordingly, the Panel declined to conduct proceedings.

The President of the Panel appointed Elizabeth Alexander (sitting President), Robert Johanson and Andrew Lumsden as the Panel to consider the application.

The Panel's reasons can be found on the Panel's website at www.takeovers.gov.au.

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