



Tuesday, 7 October 2008

Takeovers Panel Publishes Revised Guidance Notes 2, 4 and 5

The Takeovers Panel announced today that it has published revised versions of its Guidance Notes 2 (Reviewing Decisions), 4 (Remedies General), and 5 (Specific remedies – Information deficiencies). Because of consolidation, former Guidance Notes 9 (Costs Order) and 16 (Correction of Takeover Documents) have been withdrawn.

The Panel did not publish drafts of the Guidance Notes for comment because the changes involve no major changes of policy. Rather they are part of the Panel's planned process of reviewing the currency and consistency of its Guidance Notes. The main changes to the Guidance Notes involve simplification of the drafting and correction of inconsistencies and errors that have crept in over time.

Some of the more important changes are identified below.

Guidance Note 2 (Reviewing Decisions)

Guidance Note 2 deals with the Panel reviewing decisions - either on review of an initial Panel decision or of an ASIC decision regarding modification of chapters 6 or 6C.

In relation to reviews of ASIC decisions, the Panel has decided that it will not publicise receipt of an application for review until an appropriate time. This recognises that applications to ASIC may have been made on a confidential basis. ASIC does not publish the fact of an application and, under s 655A(5), an exemption or modification is Gazetted, but not a refusal.

In relation to reviews of Panel decisions, the Panel has clarified that these reviews, which are a rehearing on the merits, must follow the usual rules as to timing and withdrawing.

The Panel has clarified that it considers a decision is made when it is communicated to the parties.

Guidance Note 4 (Remedies General)

Guidance Note 4 provides guidance on remedies available to the Panel and the types of orders and undertakings that might be made. The current Guidance Note includes a cross reference to Guidance Note 9 on costs orders.

The revised version incorporates Guidance Note 9.

Guidance Note 5 (Specific remedies – Information deficiencies)

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Guidance Note 5 provides guidance on circumstances in which the Panel is likely to consider restraining dispatch of a document, such as a bidder's statement or target's statement, claimed to have information deficiencies.

The revised Guidance Note deals with specific remedies for information deficiency, and complements Guidance Note 4 on remedies in general. Revised Guidance Note 5 incorporates Guidance Note 16 on correction of takeover documents, as the topics are related.

The revised guidance no longer suggests that parties should copy the Panel executive into correspondence regarding negotiations, although they may do so if they think it is necessary. This reinforces the Panel's approach that parties should seek to negotiate satisfactory corrections to documents before involving the Panel.

The revised guidance continues to refer to the Panel's practice that, once proceedings have been commenced, a statement should be included in any corrective disclosure that the corrective disclosure was required by the Panel. However, it softens the need to state that it corrects false, misleading, confusing or inadequate information.

The revised Guidance Note also makes it clear that Panel applications should focus on the key issues for shareholders. This means that applications should be succinct and on point, and not make numerous allegations in the hope that some will stick. The Guidance Note suggests a page limit on applications to support this.

While they were not published as drafts, the Panel still welcomes comments on the revised Guidance Notes.

Copies of the revised Guidance Notes are available on the Panel's website: [Guidance](#).

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