



Australian Government

Takeovers Panel

MEDIA RELEASE

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Thursday, 24 September 2009

Multiplex Prime Property Fund 01 & 02 – Declaration of Unacceptable Circumstances and Orders

The Panel has made a declaration of unacceptable circumstances (Annexure A) and final orders (Annexure B) in relation to applications dated 6 and 10 September 2009 by Brookfield Multiplex Capital Management Limited (in its capacity as responsible entity for Multiplex Prime Property Fund) and Multiplex Colt Investments Pty Limited (as trustee of the Multiplex Colt Investments Trust) in relation to the affairs of Multiplex Prime Property Fund (see [TP 09/63](#) and [TP 09/66](#)).

Background

The applications concerned the on-market takeover bid by Australian Style Investments Pty Ltd for the Fund announced on 3 September 2009. Brookfield Multiplex Capital Management Limited submitted that the Australian Style bidder's statement contained inadequate disclosure, while Multiplex Colt submitted that the Australian Style bid was coercive. ASIC supported these submissions.

Declaration

The Panel considered that the circumstances were unacceptable because:

- the acquisition of control over units in the Fund will not take place in an efficient, competitive and informed market
- unitholders do not have a reasonable time to consider the proposal or a reasonable and equal opportunity to participate in any benefits of the proposal and
- unitholders, and the directors of the responsible entity for the Fund, are not given enough information to enable them to assess the merits of the proposal.

The combination of the Fund's circumstances and the bid created uncertainty for unit holders and did not satisfy the principles in section 602, among other things, because Australian Style may be able to withdraw its bid if its proposed resolution to wind up the Fund succeeds and Australian Style did not have sufficient funds to meet the

second instalment or pay for all units that may be issued as a result of the Fund's announced Entitlement Offer.

The Panel did not consider it against the public interest to make the declaration, and in making it had regard to the matters in s657A(3).

Orders

The Panel has made orders that Australian Style withdraw its bid and inform the market accordingly.

The sitting Panel was Stephen Creese, Sophie Mitchell and Ian Ramsay (sitting President).

The Panel will publish its reasons for the decision in due course on its website www.takeovers.gov.au.

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Australian Government

Takeovers Panel

**CORPORATIONS ACT
SECTION 657A
DECLARATION OF UNACCEPTABLE CIRCUMSTANCES**

MULTIPLEX PRIME PROPERTY FUND 01 AND 02

CIRCUMSTANCES

1. Multiplex is a listed managed investment scheme (ASX Code: MAFCA). Brookfield is the responsible entity for Multiplex. Units in the fund are partly paid with the second instalment due in June 2011.
2. Australian Style announced an on-market takeover offer for all the partly-paid units in Multiplex at \$0.003. The offer period was scheduled to commence on 18 September 2009 (as a result of an interim order by the Panel the offer period did not commence). Australian Style proposed acquiring units on market prior to the offer period commencing.
3. According to the bidder's statement dated 3 September 2009, as proposed to be amended by a replacement bidder's statement, Australian Style:
 - (a) *"is offering to acquire all of your Securities (including any Securities that come into existence during the Offer Period)"*
 - (b) proposes to replace Multiplex's responsible entity, if it acquires less than all the units and cannot proceed to compulsory acquisition, with a responsible entity who would *"pursue a recapitalization or refinancing proposal that is more favorable to Unit Holders than the Entitlement Offer or, if that is not possible, to wind up [Multiplex]"*
 - (c) *"intends to pay the final instalment on the [units] which it holds on the currently scheduled due date in June 2011 unless all Unit Holders are relieved of that obligation"*
 - (d) if earlier payment of the final instalment is necessary, would seek a winding up of Multiplex or replacement of the responsible entity instead of paying the call or
 - (e) if that did not occur, would intend to pay the call but *"there are some conceivable circumstances (depending on the conjunction of timing, values, decisions taken by 3rd parties, market circumstances and the financial fortunes of [Australian Style])"* in which it may be unable to pay the call on all its units.
4. Australian Style has requisitioned a meeting of unit holders to consider:

- (a) replacement of Brookfield as the responsible entity and
 - (b) winding up of Multiplex
5. Australian Style has flagged an intention to rely on a right under section 652C to withdraw unaccepted offers (if its voting power is below 50%) in the event of a resolution to wind up Multiplex. Its ability to rely on the section is not certain. Moreover, Australian Style itself is proposing the resolution; and, if it were to acquire units under the bid, its ability to determine the outcome of that resolution, and hence its ability to withdraw, increases.
 6. Multiplex is in breach of its "loan to value" ratio with its financiers. Brookfield has announced a capital raising by way of a pro-rata Entitlement Offer of 178 units for every unit held at \$0.001 payable on application and a further \$0.002237 payable in June 2011. The offer is underwritten by an entity in the Brookfield Multiplex Group.
 7. The financiers to Multiplex have granted a waiver from their rights until 16 November 2009. Conditions attaching to the waiver mean that the waiver may be withdrawn if Australian Style succeeds in its resolutions concerning replacing the responsible entity or winding up Multiplex. This may result in the call on partly paid units being accelerated.
 8. It appears to the Panel that the acquisition of control over voting units in the listed managed investment scheme will not take place in an efficient, competitive and informed market, that holders of interests do not have a reasonable time to consider the proposal or a reasonable and equal opportunity to participate in any benefits of the proposal, and that holders of interests, and the directors of the responsible entity for the scheme, are not given enough information to enable them to assess the merits of the proposal. In particular, the intention of Australian Style to rely on s652C is at odds with basic principles and policies underlying takeovers regulation as it is likely to result in the bid remaining open for less than one month.
 9. In addition, there was insufficient disclosure in the bidder's statement concerning (among other things):
 - (a) the responsible entity that Australian Style proposed would replace Brookfield, should it succeed in its proposed resolution to replace Brookfield as the responsible entity
 - (b) the reasonable basis on which Australian Style could fund the acquisition of units issued under the Entitlement Offer announced by Brookfield prior to the offer (and Australian Style's statement in its submissions is that it cannot fund it)
 - (c) the reasonable basis on which Australian Style could fund payment of the call on the unpaid units, should the call be accelerated as a result of circumstances surrounding the bid or otherwise (and Australian Style's statement in its submissions is that it cannot fund it)
 - (d) Australian Style's intentions should it not succeed in its objectives

10. In addition, disclosures, particularly in respect of the treatment of units issued during the bid and Australian Style's intentions, appear to be inconsistent and therefore likely to be confusing to unit holders.
11. It appears to the Panel that the circumstances are unacceptable having regard to:
 - (a) the effect that the Panel is satisfied the circumstances have had, are having, will have or are likely to have on:
 - (i) the control, or potential control, of Multiplex or
 - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in Multiplex and
 - (b) the purposes of Chapter 6 set out in section 602 of the Corporations Act 2001 (Cth) (Act).
12. The Panel considers that it is not against the public interest to make a declaration of unacceptable circumstances. It has had regard to the matters in section 657A(3).

DECLARATION

The Panel declares that the circumstances constitute unacceptable circumstances in relation to the affairs of Multiplex.

DEFINITIONS

In this declaration:

"Australian Style" means Australian Style Investments Pty Ltd

"Brookfield" means Brookfield Multiplex Capital Management Ltd as responsible entity for Multiplex

"Entitlement Offer" means the pro rata offer announced by Multiplex on 24 August 2009

"Multiplex" means Multiplex Prime Property Fund

Alan Shaw
Counsel
with authority of Ian Ramsay
President of the sitting Panel
Dated 23 September 2009



Australian Government

Takeovers Panel

**CORPORATIONS ACT
SECTION 657D
ORDERS**

MULTIPLEX PRIME PROPERTY FUND 01 AND 02

The Panel made a declaration of unacceptable circumstances on 23 September 2009.

THE PANEL ORDERS

1. As soon as practicable after the date of this order:
 - (a) Australian Style Investments Pty Ltd withdraw its on-market takeover bid for Multiplex Prime Property Fund and
 - (b) Make an announcement to the market (in a form to which the Panel does not object) of the withdrawal of its bid.

**Alan Shaw
Counsel
with authority of Ian Ramsay
President of the sitting Panel
Dated 23 September 2009**