



Australian Government

Takeovers Panel

MEDIA RELEASE

No: 84/2009

Wednesday, 28 October 2009

Multiplex Prime Property Fund 03 – Panel Accepts Undertaking

The Panel has accepted supplementary disclosure and an undertaking from Brookfield Multiplex Capital Management Limited (BMCM), the responsible entity of the Fund, (see annexure) and declined to make a declaration of unacceptable circumstances in respect of an application dated 9 October 2009 from Australian Style Investments Pty Ltd in relation to the affairs of the Multiplex Prime Property Fund (see [TP09/78](#)).

The Panel was however minded to make a declaration, but for the further disclosure and undertaking. The application concerned the non-renounceable 178:1 entitlement offer announced by the Fund on 24 August 2009 and approved by unit holders on 7 October 2009.

The Panel considered that, as submitted by BMCM, the Fund is in breach of its loan to valuation covenants in its debt facility and has obtained a temporary waiver from lenders until midnight on 16 November 2009 and had a clear and pressing need for funding. This was a very significant factor for accepting the undertaking.

On 20 October 2009, the Panel decided to conduct proceedings and issued a brief to the parties seeking submissions on why the entitlement offer should not include an uncapped shortfall facility and bookbuild. These dispersion strategies, mentioned in Guidance Note 17, are designed to mitigate the potential control effects of a rights issue.

The Panel also had raised concerns about disclosure of the options available to unit holders including the payments required and potential call under each option.

On 22 and 23 October 2009, BMCM disclosed to ASX supplementary information on the entitlement offer and cash out facility. This information included:

- enhanced disclosure
- the provision of a shortfall facility to eligible unit holders and
- a bookbuild to institutional investors who are wholesale clients (within the meaning of the Corporations Act).

As a result of further discussions with the Panel, BMCM has undertaken to the Panel to further amend the terms of the entitlement offer by doing the following.

In relation to the shortfall facility:

- agreeing to announce to ASX instances and reasons why it had used its discretion to reject shortfall applications. The Panel considered that this will make the process more transparent and
- waiving the condition not to allocate any shortfall units if it causes a person's voting power to exceed 20%. The Panel considered that this was sufficiently covered by the condition that no allocation take place if it would breach a relevant law and allows participation according to any exception available.

In relation to the bookbuild:

- as explained above, waiving the 20% condition and
- waiving the credit worthiness condition. The Panel considered that the requirements imposed on bookbuild applicants under this condition were too onerous and likely to discourage participation.

Further, BMCM undertook to the Panel that it will promptly seek a modification of section 606 to enable the underwriter to acquire a relevant interest in units under the cash out facility and accept any reasonable conditions imposed by ASIC in response to such an application. This will help remove the conditionality of the cash out facility so unit holders can consider whether they wish to participate.

Also, BMCM will write to unit holders who accepted the entitlement offer before receipt of the supplementary disclosure inviting them to withdraw if they wish.

The Panel considers that the disclosure and undertaking sufficiently addresses the circumstances and that it is not against the public interest to decline to make a declaration of unacceptable circumstances.

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.

Allan Bulman
Director, Takeovers Panel
Level 10, 63 Exhibition Street
Melbourne, VIC 3000
Ph: +61 3 9655 3597
allan.bulman@takeovers.gov.au



Australian Government

Takeovers Panel

Annexure

Section 201A Australian Securities and Investments Commission Act (Cth) Undertaking

Multiplex Prime Property Fund 03

Pursuant to section 201A of the Australian Securities & Investments Commission Act 2001 (Cwlth) BMCM makes the following undertakings

1. BMCM undertakes to the Panel that it will:
 - (a) promptly seek a modification of section 606 of the Corporations Act 2001 (Cwlth) to enable the Underwriter to acquire a relevant interest in units under the "Cash-out Facility Offer" (as contemplated in the Offer Booklet), notwithstanding that, at the time of acquisition, the Underwriter's voting power in MAFCA may be above 20% but less than 90%; and
 - (b) accept any reasonable conditions imposed by ASIC in response to such an application.
2. BMCM undertakes to the Panel that it will:
 - (a) promptly, and in any event, no later than the date that notifications of under-subscriptions are due to take place under the timetable for the Entitlement Offer, announce to ASX:
 - (i) the instances in which it exercised its discretion to reject applications under Condition (iv); and
 - (ii) the reasons for exercising any such discretion.
 - (b) waive the 20% Conditions; and
 - (c) waive the Credit Condition.
3. BMCM undertakes to the Panel that it will send a letter to all unitholders of MAFCA who:
 - (a) accepted the Entitlement Offer via BPay on or prior to 28 October 2009;

- (b) accepted the Entitlement Offer by sending an acceptance form to BMCM on or prior to 28 October 2009; or
- (c) accepted the Cash-out Facility Offer by sending an acceptance form to BMCM on or prior to 28 October 2009,

informing those unitholders that they have the right to withdraw their acceptance and resubmit a new application.

- 4. BMCM undertakes to the Panel that it will promptly announce to ASX the effect of the undertakings in 1,2 and 3 following announcement by the Panel of the outcome of the proceedings.
- 5. BMCM undertakes to the Panel that it will immediately confirm in writing to the Panel once it has fulfilled its obligations under 1,2 3 and 4.

In this undertaking:

20% Conditions means the conditions to allocation under the Shortfall Facility and the Bookbuild in the circumstances set out:

- (a) at page 3 of the Supplementary Offer Booklet at sub-paragraph (vi)(A); and
- (b) at page 4 of the Supplementary Offer Booklet at sub-paragraph (d)(i).

ASIC means the Australian Securities and Investments Commission.

BCMC means Brookfield Multiplex Capital Management Limited, as responsible entity of MAFCA.

Bookbuild means the “*Bookbuild*” described in the Supplementary Offer Booklet.

Condition (iv) means BMCM’s discretion to reject applications in the circumstances set out on page 3 of the Supplementary Offer Booklet at sub-paragraph (iv).

Credit Condition means the condition to allocation of “*New Units*” (as that term is defined in the Supplementary Offer Booklet) under the Bookbuild described on page 5 of the Supplementary Offer Booklet at subparagraph (f).

Entitlement Offer has the meaning it is given in the Offer Booklet.

MAFCA means the Multiplex Prime Property Fund.

Offer Booklet means the entitlement offer booklet dated 7 October 2009 and released on the ASX platform on 8 October 2009.

Shortfall Facility means the “*Shortfall Facility*” described in the Supplementary Offer Booklet.

Supplementary Offer Booklet means the document entitled “Supplementary Information including an offer to eligible unitholders to apply for additional units” announced to the ASX by BMCM on 22 October 2009.

Underwriter means Brookfield Multiplex Capital Securities Limited in its capacity as trustee for Brookfield Multiplex PPF Investment No 2 Trust.

Dated 27 October 2009

SIGNED by **NEIL OLOFFSON**)
as authorised representative for)
BROOKFIELD MULTIPLEX)
CAPITAL MANAGEMENT)
LIMITED in the presence of:)

)
)
)
.....)

Signature of witness)

)
)
)
.....)

Name of witness (block letters))

.....

By executing this agreement the signatory warrants that the signatory is duly authorised to execute this agreement on behalf of **BROOKFIELD MULTIPLEX CAPITAL MANAGEMENT LIMITED**