



Australian Government

Takeovers Panel

# MEDIA RELEASE

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## PANEL CONSULTS ON REVISED GUIDANCE NOTES

- Guidance Note 6 (Minimum bid price)
- Guidance Note 13 (Broker handling fees)
- Guidance Note 15 (Trust schemes)

The Takeovers Panel today published a consultation paper of revised versions of Guidance Notes 6, 13 and 15. This is part of the Panel's planned process of simplification and includes a review of the currency and consistency of the guidance notes.

The Panel seeks comments from practitioners, market participants and investors who may be affected by the guidance, particularly in respect of market practices that may have changed since the last issue of the guidance notes. There are some additional issues raised in the paper on which we seek comments.

The Panel seeks comments on the draft guidance notes by 4 February 2011. Comments should be emailed to [takeovers@takeovers.gov.au](mailto:takeovers@takeovers.gov.au).

The Consultation Paper is available on the Panel's website ([www.takeovers.gov.au](http://www.takeovers.gov.au)) on the consultation page.

Some of the more important changes are identified below.

### **GUIDANCE NOTE 6 (MINIMUM BID PRICE)**

Guidance Note 6 deals with the Panel's approach to the requirements of section 621(3) of the Corporations Act. That section requires that the consideration offered for securities under a bid must be at least as much as was provided, or agreed, by the bidder or an associate for such securities in the 4 months before the date of the bid.

Guidance note 6 pre-dates ASIC's regulatory guide RG 163, so one option is to withdraw it.

The consultation paper also asks whether GN 6 should address whether foreign cash is 'non-cash consideration' for chapter 6 purposes and whether GN 6 should specifically apply to schemes of arrangement.

### **GUIDANCE NOTE 13 (BROKER HANDLING FEES)**

Guidance Note 13 deals with the Panel's approach to bidders offering handling fees to brokers for soliciting acceptances.

The Panel has clarified that all aspects of a fee will be considered when it is deciding whether unacceptable circumstances exist.

The consultation paper asks whether the limits on fees set out in GN 13 should be changed.

### **GUIDANCE NOTE 15 (TRUST SCHEMES)**

Guidance Note 15 provides guidance on funding arrangements for the cash component of bid consideration.

Merging listed managed investment schemes achieves a financial, structural and business effect similar to a takeover. The Panel introduced GN 15 because of a concern that the mechanism for merging them was not directly regulated by any administrative body or tribunal.

The rewrite reduces areas of duplication and updates the note.

The consultation draft asked for comments on whether:

- (a) a responsible entity of a target (or a related body) giving up management rights over the target only needs to get approval if it is a related party transaction and
- (b) the practice of getting an expert's report on both the 'fair and reasonable' test and the 'best interests' test, which is not uncommon, should continue.

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