



Australian Government

Takeovers Panel

MEDIA RELEASE

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Panel Publishes Revised Guidance Notes 6, 12, 13 and 15

The Takeovers Panel today published revised versions of:

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

On 23 December 2010, the Panel issued a consultation draft of Guidance Notes 6, 13 and 15. It received two submissions and has taken them into account and made further changes. This was part of the Panel's planned process of simplification and included a review of the currency and consistency of the guidance notes.

An amended Guidance Note 12 (Frustrating action) has also been published today. On 10 December 2010, the Panel issued a consultation draft of Guidance Note 12. It received 4 submissions and has taken them into account and made further changes.

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.

Following consultation, the Panel has decided to continue with Guidance Note 6, including a statement that circumstances may be unacceptable if the bid consideration is foreign money and the bidder treats the bid as a cash bid.

Guidance Note 12: Frustrating action

Guidance Note 12 deals with the Panel's approach to actions of a target or potential target company that may lead to an offer lapsing, being withdrawn or not proceeding.

Following consultation, the Panel has:

- clarified that the frustrating action policy does not apply to schemes of arrangement and
- included a statement that a target might be able to proceed with a potential frustrating action, following a private approach, by putting the bidder on notice.

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.

Following consultation, the Panel has decided that the limits on fees set out in Guidance Note 13 should not be changed.

Guidance Note 15: Trust Schemes

Guidance Note 15 deals with the Panel's approach to mergers by listed trusts and managed investment schemes.

Following consultation, the Panel has clarified that:

- disclosure and approval is required for a responsible entity of the target (or a related party) giving up management rights over the target only if it is a related party transaction and
- it is not uncommon for an expert's report to opine on whether a transaction is 'fair and reasonable' and in the 'best interests' of shareholders.

Copies of the revised Guidance Notes are available on the Panel's website (www.takeovers.gov.au). A copy of the response document can be found on the consultation page.

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