



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP12/22

Wednesday, 28 March 2012

Real Estate Capital Partners USA Property Trust - 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 an application dated 9 March 2012 by Intelligent Investor Funds Pty Ltd in relation to the affairs of Real Estate Capital Partners USA Property Trust (see [TP12/17](#)). The orders include the making of a further offer to unit holders.

Background

The application concerned a 0.98 for 1 renounceable rights issue by Real Estate to raise approximately \$20 million at 40 cents per unit.

The rights issue is fully underwritten by Frost Holdings Pty Ltd and has the potential to increase Frost's voting power in Real Estate from 19.82% up to 59.51% (assuming no other unitholders take up any of their entitlement).

Intelligent Investor has voting power of 8% in Real Estate.

Declaration

The Panel considered that all reasonable steps to minimise the potential control effects of the rights issue were not taken.

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, including orders to the effect that:

1. Frost not rely on any right it may have to terminate the underwriting arrangement, as a consequence of the application to the Panel, the declaration or the orders

2. Frost divest units it receives as underwriter of the Real Estate rights issue so that unitholders who were originally entitled to participate in the rights issue are offered:
 - (a) as many units as is necessary for them to take up what was their full original entitlement in the rights issue (if applicable) and
 - (b) units in excess of their entitlement
3. applications to participate in the excess units may be scaled back by Real Estate and
4. Real Estate must extend the rights issue by at least 2 business days.

The sitting Panel was James Dickson, Alastair Lucas (sitting President) and John Story.

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

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Takeovers Panel

Annexure A

CORPORATIONS ACT

SECTION 657A

DECLARATION OF UNACCEPTABLE CIRCUMSTANCES

REAL ESTATE CAPITAL PARTNERS USA PROPERTY TRUST

CIRCUMSTANCES

1. Real Estate Capital Partners USA Property Trust (**RCU**) has a 0.98 for 1 rights issue underway, announced by the responsible entity of RCU (Real Estate Capital Partners Managed Investments Limited – **RE**) on 1 March 2012.
2. The rights issue is renounceable and rights trading ended on 21 March 2012.
3. The rights issue is fully underwritten by Frost Holdings Pty Ltd (**Frost**), which has voting power of 19.82% in RCU.
4. If no unit holders (other than Frost) take up their entitlement under the rights issue, Frost would obtain voting power of 59.51% in RCU.
5. Frost discouraged RCU or RE from implementing a dispersion strategy in relation to the rights issue, other than allowing the rights issue to be renounceable.
6. All reasonable steps to minimise the potential control impact of the rights issue on RCU were not taken.
7. 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 RCU or
 - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in RCU and/or
 - (b) the purposes of Chapter 6 set out in section 602 of the Corporations Act 2001 (Cth) (Act).

8. 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 RCU.

Alan Shaw
Counsel
with authority of Alastair Lucas
President of the sitting Panel
Dated 28 March 2012



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Annexure B

**CORPORATIONS ACT
SECTION 657D
ORDERS**

REAL ESTATE CAPITAL PARTNERS USA PROPERTY TRUST

The Panel made a declaration of unacceptable circumstances on 28 March 2012.

THE PANEL ORDERS

1. Frost must not:
 - (a) rely on any right it may have to terminate the underwriting arrangement as a consequence of the application to the Panel in this matter, the declaration of unacceptable circumstances and these orders or
 - (b) rely on clauses 10.3 or 12.1 of the underwriting agreement with RCU in relation to any 'losses' (as defined in the underwriting agreement) that it incurs as a consequence of the application to the Panel in this matter, the declaration of unacceptable circumstances and these orders other than the reasonable costs and expenses incurred by Frost in considering and responding to the application to the Panel.
2. Frost must:
 - (a) divest shortfall units as set out in these orders and
 - (b) until completion of these orders, not otherwise deal with or vote any shortfall units.
3. Within 10 business days of these orders RCU must, on behalf of Frost, offer eligible unit holders any shortfall units obtained by Frost under the rights issue on terms to the following effect:
 - (a) the price is the rights issue price
 - (b) the offer is open for 2 weeks from the date the last of the offers is dispatched
 - (c) eligible unit holders who did not take up their full entitlement in the rights issue are offered as many units as is necessary for them to take up what were their full original entitlements

- (d) eligible unit holders who accept for units under order 3(c) are treated as if they had subscribed for those units pursuant to the rights issue
- (e) eligible unit holders (including Frost) are invited to apply for any units remaining after the acceptances in order 3(c) have been satisfied in full. Applications must be filled as follows:
 - (i) each unit holder who has applied for additional units will be allocated their pro rata share of the shortfall having regard to their unit holdings at the record date. If a unit holder has made a shortfall application for an amount less than the amount of units that the unit holder would otherwise be allocated under this process, the unit holder will be allocated the amount applied for and
 - (ii) if, following allocation of the shortfall in the first round, there remains any shortfall, the above allocation process will be repeated in rounds until either all the shortfall has been allocated or all shortfall applications have been satisfied in full

For avoidance of doubt the Corporations Act limits apply to the acquisition of shortfall units (other than by Frost)

- (f) the money (in cheque or other form acceptable to RCU) for the units accepted under order 3(c) is to be sent to RCU with the acceptance. The money is to be banked in a special purpose trust account no later than the end of the day of receipt and
 - (g) the money (in cheque or other form acceptable to RCU) for the units applied for under order 3(e) must be paid within 2 business days of notification to the applicant of the proposed allocation. If not, the units may be re-allocated. Frost is not obliged to pay for any proposed allocation of units under order 3(e).
4. The offer must be made in a letter of offer dispatched to eligible unit holders.
 5. Within 5 business days of the close of the offer, RCU must:
 - (a) scale back the applications if necessary
 - (b) disclose in a market announcement the scale back and its detailed calculation methodology
 - (c) register the transfers of the units and
 - (d) pay over the money, and account, to Frost for the units sold (other than in relation to those units allocated to Frost).
 6. Frost must provide proper transfers for the sale of the units.
 7. Frost must pay to RCU the reasonable costs of dispatching the offers and processing the acceptances, applications and refunds (if any).
 8. RCU must issue any refund due to an applicant within 5 business days of transfers being completed.

9. RCU must extend the closing date of the rights issue by no less than 2 business days and promptly make an ASX announcement after it has done so.

Interpretation

10. In these orders the following terms apply.

eligible unit holders	Unit holders of RCU who were eligible to participate in the rights issue
Frost	Frost Holdings Pty Ltd
RCU	<ul style="list-style-type: none">• Real Estate Capital Partners USA Property Trust or• Real Estate Capital Partners Managed Investments Limited as responsible entity for the Trust, as the case may be
record date	The record date for the rights issue, being 13 March 2012 at 7pm
rights issue	The rights issue announced by RCU by ASX release dated 1 March 2012 and released on ASX by RCU on 2 March 2012
shortfall units	Units not subscribed for under the rights issue by eligible unit holders
underwriting arrangement	The underwriting of the rights issue by Frost

Alan Shaw
Counsel
with authority of Alastair Lucas
President of the sitting Panel
Dated 28 March 2012