



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP20/85

Wednesday, 9 December 2020

The Agency Group Australia Limited – Panel Receives Application

The Panel has received an application from The Agency Group Australia Limited in relation to its affairs (ASX: AU1).

Details of the application, as submitted by the applicant, are below.

A sitting Panel has not been appointed at this stage and no decision has been made whether to conduct proceedings. The Panel makes no comment on the merits of the application.

Details

On 24 November 2020, AU1 dispatched to its shareholders a notice of Annual General Meeting to be held on 23 December 2020 (**AGM**). One of the resolutions to be put to shareholders at the AGM relates to the approval of convertible notes that AU1 proposes to issue to Peters Investments Pty Ltd (**Peters**) to support an investment of \$5 million by Peters in AU1 (**Peters Proposal**).

On 2 December 2020, Magnolia Equities III Pty Ltd (**Magnolia**) wrote to AU1 indicating that it was considering making a takeover bid for AU1. Magnolia is a company associated with Mr Mitchell Atkins. Mr Atkins was a director of AU1 from 1 October 2019 to 8 May 2020. As at 16 September 2020, Mr Atkins, Magnolia and entities associated with Magnolia held voting power of 16.65% in AU1.

On 4 December 2020, Magnolia stated (by way of a letter to the ASX and AU1) that it intended to make an off-market takeover bid for AU1 (**Bid**). The letter stated, among other things, that “*The Bid provides AU1 shareholders with a competing proposal to the Peters Proposal discussed in AU1’s Notice of AGM dated 23 November 2020...*” and “*Given that the Macquarie Bank facility has already expired and is subject to forbearance conditions expiring on 31 December 2020.. Magnolia proposes that it will arrange for the repayment in full of the current Macquarie Bank facility with a replacement facility on the same or terms more favourable to AU1 than the current Macquarie Bank facility including without the need for individual guarantees from directors or AU1 shareholders*”. The schedule to the letter contained the proposed defeating conditions for the Bid, including a condition that none of the proposed resolutions relating to the Peters Proposal be moved or passed at the AGM (**Peters Proposal Condition**). The letter also included an indicative

timetable which stated that Magnolia's bidder's statement would be lodged with ASIC, ASX and AU1 in "Late December 2020".

On 4 December 2020, AU1 responded to the Bid and requested Magnolia provide ".. as a matter of urgency, cogent information as to financial resources available to Magnolia, and the financial arrangements made by Magnolia, with respect to the proposed bid".

On 6 December 2020, Magnolia responded to AU1's letter stating, among other things, that "*the disclosure of the funding arrangements in relation to a takeover bid.. is a matter for the bidder's statement*" and "*Magnolia confirms that it made the [announcement of 4 December 2020].. having satisfied itself on reasonable grounds that it was complying with its obligations in relation to the [announcement of 4 December 2020] itself and would be able to comply with its future obligations*".

On 6 December 2020, an article appeared in The Australian newspaper to the effect that Magnolia intended to make a takeover bid for AU1. AU1 sought (and was granted) a trading halt before the open of market on 7 December 2020. Subsequently on 8 December 2020, AU1 made an announcement on the ASX with respect to the Bid.

AU1 submits (among other things) that:

- Magnolia has provided insufficient evidence of having funding, or a reasonable basis to support its assertion that it will be able to perform its obligations relating to the Bid if a substantial proportion of the offers under the Bid are accepted
- by virtue of the Peters Proposal Condition, shareholders are, in effect being asked to choose between the Peters Proposal and the Bid and it is therefore important that Magnolia provide AU1 shareholders with sufficient information about the Bid, including in particular the source and availability of funding to effect the Bid and
- as ultimate controller of Magnolia's stake in AU1, Ms Camilla Overgaard ought to have filed a substantial shareholder notice in May 2020 at the time she acquired all the issued shares in the ultimate controller of Magnolia (MC Investments (Aus) Pty Ltd) and has not done so.

AU1 seeks final orders that:

- by no later than 13 December 2020, Magnolia provide the Panel and AU1 with evidence of Magnolia's ability to pay the consideration under the Bid and repay in full AU1's existing Macquarie Bank facility (**Funding Evidence**)
- AU1 be permitted to provide the Funding Evidence to its shareholders in advance of the AGM
- Magnolia be prohibited from proceeding with its Bid until it has provided Funding Evidence

- if Magnolia is permitted to proceed with the Bid, Magnolia be required to include in its bidder's statement sufficient evidence regarding the ultimate source of the funds, the amount to be given by any lender and the security (if any) given for the funds and
- Ms Overgaard immediately lodge a substantial shareholder notice.

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