



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP20/87

Thursday, 17 December 2020

The Agency Group Australia Limited 02 – Panel Receives Application

The Panel has received an application from Magnolia Equities III Pty Limited (**Magnolia**) in relation to the affairs of The Agency Group Australia Limited (**AU1**).

Details of the application, as submitted by the applicant, are below. Further background details are set out in the Panel's media release relating to AU1's application in *The Agency Group Australia Limited* (see [TP20/85](#)).

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 29 October 2020, AU1 made an ASX announcement regarding AU1 and its subsidiaries securing an \$11 million funding package which is made up of: (i) \$5 million of convertible notes to be issued to Peters Investments Pty Ltd (**Peters Investments**); (ii) \$1 million of convertible notes previously issued to Peters Investments in May 2020; and (iii) a \$5 million Macquarie Bank primary secured debt facility (reduced from \$12 million and subject to shareholder approval of the Convertible Notes) (**October Announcement**).

On 18 November 2020, Magnolia sent a letter to AU1 referring to the October Announcement stating, among other things, that Magnolia considered any notice of meeting to approve the Convertible Notes should include a voting exclusion statement, in accordance with ASX Listing Rule 7.3.9, prohibiting any shareholder who had provided a personal guarantee to the Macquarie Bank debt facility from voting at the meeting.

On 24 November 2020, AU1 dispatched a notice of Annual General Meeting to be held on 23 December 2020 (**AGM**). The notice of AGM attached an Independent Expert Report (**IER**) prepared by Nexia Australia (**Nexia**) in relation to the potential issue of fully paid ordinary shares in AU1 to Peters Investments if the Convertible Notes were converted and/or if the 12 million options to be issued to Peters Investments and the 2 million existing options on issue to Peters Investments were exercised.

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**) and on 8 December 2020, AU1 made an announcement on the ASX with respect to the Bid (**Bid Announcement**).

On 11 December 2020, AU1 dispatched an addendum to the notice of AGM and a Supplementary IER which had been updated by Nexia following announcement of the Bid.

Magnolia submits (among other things) that:

- the IER and Supplementary IER (the **Reports**) are deficient
- the Bid Announcement is incorrect and misleading in respect of a number of the reasons that AU1 list for not considering the Bid to be “*a credible “Proposal” or constitute a legitimate alternative to the proposed issue of the [Convertible Notes]*” and
- certain shareholders will receive a material benefit from the issue of the Convertible Notes, different from the benefits which shareholders in general will receive and it is unclear whether AU1 proposes that these persons will vote on the resolution to approve the issue of the Convertible Notes at the AGM (**Resolution 6**).

Magnolia seeks an interim order that the AGM be adjourned to a date not less than 14 days after the conclusion of the Panel proceedings.

Magnolia seeks final orders including orders that:

- Nexia address in a replacement IER any defects identified by the Panel in the Reports
- AU1 send the replacement IER to AU1 shareholders together with a statement identifying the shareholder/s who will be excluded from voting on Resolution 6
- AU1 adjourn all parts of the AGM relating to the issue of the Convertible Notes to a date not less than 14 days after the dispatch of the replacement IER
- AU1 make an ASX announcement retracting and correcting the defects in the Bid Announcement and
- if Resolution 6 is voted on at the AGM on 23 December 2020, AU1 publish a voting exclusion statement excluding shareholders and their associates who will obtain a material benefit as a result of the issue of the Convertible Notes from voting on the resolution.

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