



Australian Government

Takeovers Panel

MEDIA RELEASE

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Tuesday, 22 December 2020

The Agency Group Australia Limited 01 & 02 – Panel Makes Interim Orders

The Panel has made interim orders in relation to applications dated 8 December 2020 by The Agency Group Australia Limited (**Agency**) and 16 December 2020 by Magnolia Equities III Pty Ltd (**Magnolia**), both in relation to the affairs of Agency.

In order to maintain the status quo, the Panel has ordered that Agency defer consideration of resolutions 3-7 in the Agency's Notice of Annual General Meeting (**Peters Proposal Resolutions**), which were to be voted on tomorrow, 23 December 2020. Independent Expert Reports prepared by Nexia Perth Corporate Finance Pty Ltd (**Nexia**) relating to the Peters Proposal Resolutions have been reviewed by a third party appointed by Magnolia (**Third Party**). The orders (among other things) permit a vote on the Peters Proposal Resolutions to proceed on or after 30 December 2020 provided Agency makes available to Agency shareholders a response by Nexia to the comments of the Third Party.

The interim orders have effect until the earliest of further order of the Panel, determination of the proceedings or 2 months from the date of the interim orders.

A copy of the interim orders is attached.

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ANNEXURE A

CORPORATIONS ACT SECTION 657E INTERIM ORDERS

THE AGENCY GROUP AUSTRALIA LIMITED 01 & 02

The Agency Group Australia Limited (**Agency**) made an application to the Panel dated 8 December 2020 and Magnolia Equities III Pty Ltd (**Magnolia**) made an application to the Panel dated 16 December 2020, both in relation to the affairs of Agency.¹

The Panel ORDERS:

1. Subject to paragraph 2, Agency must defer consideration of the Peters Proposal Resolutions until a date after the Panel has made a determination in respect of *The Agency Group Australia 01 & 02*.
2. The Peters Proposal Resolutions may be considered at a resumption of the AGM on a date no earlier than Wednesday, 30 December 2020, provided that Agency:
 - (a) in an announcement to ASX no less than 3 days (including at least 1 business day) before the Resumption, makes available to Agency shareholders a response by Nexia to the Third Party Comments (submitted by Magnolia in connection with its application) that responds specifically to each comment, and
 - (b) keeps for 3 months a record of any votes cast on the Peters Proposal Resolutions by each Guarantee Shareholder, or associate of a Guarantee Shareholder, and how those votes were cast, and provides the same to the Panel on request.
3. Agency must make an announcement to ASX as soon as reasonably practicable explaining the effect of these orders. If consideration of the Peters Proposal Resolutions is deferred under paragraph 2, the announcement must:

¹ The matters are being heard together under a direction of the Panel

- (a) specify the date to which it is deferred and
 - (b) clearly and prominently inform Agency shareholders of their right to submit a new proxy form not later than 48 hours before commencement of the Resumption of the AGM.
4. These interim orders have effect until the earliest of:
- (i) further order of the Panel
 - (ii) the determination of the proceedings and
 - (iii) 2 months from the date of these interim orders.
5. In these orders the following terms apply:

AGM	the Annual General Meeting of Agency convened by the Notice of AGM
Guarantee Shareholder	has the meaning given in paragraph 8.3(a) of the Notice of AGM
Independent Expert Report	the Independent Expert's Report and Financial Services Guide produced by Nexia dated 23 November 2020
Nexia	Nexia Perth Corporate Finance Pty Ltd
Notice of AGM	Agency's Notice of Annual General Meeting dated 23 November 2020
Peters	Peters Investments Pty Ltd
Peters Proposal	potential issue of fully paid ordinary shares in Agency to Peters and its associates if \$5 million in new convertible notes are converted and/or if the options issued to Peters in May 2020 and October 2020 are exercised
Peters Proposal Resolutions	resolutions 3-7 in the Notice of AGM

Reports	Independent Expert Report and Supplementary Independent Expert Report
Resumption	resumption of the AGM in accordance with paragraph 2
Supplementary Independent Expert Report	the Supplementary Independent Expert's Report and Financial Services Guide produced by Nexia dated 10 December 2020
Third Party Comments	the attached summary (Annexure A) of comments in a review dated 16 December 2020 of the Reports by a third party appointed by Magnolia and provided to the parties in the proceedings

Tania Mattei
Counsel
with authority of John O'Sullivan
President of the sitting Panel
Dated 22 December 2020

ANNEXURE A: SUMMARY OF REVIEW OF NEXIA REPORTS BY A THIRD PARTY ENGAGED BY MAGNOLIA

NOTE: The comments below summarise a review dated 16 December 2020 of the Reports by a third party appointed by Magnolia. The comments below do not represent or reflect any finding or conclusion by the Panel.

1. Nexia do not clearly identify the valuation date², do not rely on “...*economic, market and other conditions prevailing at the date of this Report*” as referred to by Nexia in the Reports³ and do not define the standard of value.⁴
2. Nexia do not compare Agency’s current share price to the exercise price of the options. The maximum exercise price under the Peters Proposal of \$0.027 per share is 46% lower than Agency’s share price on 9 December 2020 of \$0.05 per share and materially dilutive.
3. Real estate businesses are often valued on a sum of parts basis rather than valuing the business as a whole using the capitalisation of earnings method given the different earnings profile of Agency’s operating segments. This does not appear to be considered by Nexia.
4. Nexia uses an average of two separate valuation calculations, which is inconsistent with market practice. Further, Nexia do not attempt to reconcile the material difference between its separate valuation calculations using the capitalisation of earnings method and quoted market price method.
5. In relation to alternative funding and the possibility of Macquarie appointing a receiver Nexia have not (or do not appear to have):
 - (a) performed a valuation of Agency on the basis of its value in exchange on a piecemeal basis as part of an orderly realisation of assets
 - (b) sought further information on the possibility of further forbearance by Macquarie, noting there were several extensions during FY20
 - (c) commented on other financing options referred to in Agency’s ASX announcement on 29 October 2020
 - (d) commented on the impact of the Peters Proposal on the 101,515,093 listed options which are exercisable at \$0.065 and expire on 31 December 2020⁵

² Nexia state the Reports have been prepared in accordance with APES 225 Valuation Services (**APES 225**). APES 225 paragraph 5.2c requires that a valuation report clearly communicate the date at which the value has been determined

³ See page 56 of the Supplementary Independent Expert Report

⁴ APES 225 paragraph 5.2h requires a valuation report to clearly communicate and define the standard of value

⁵ See section 5.7.2 of the Supplementary Independent Expert Report

- (e) commented on the history of the Macquarie relationship or commented on the likelihood of Macquarie appointing a receiver on or after 30 December 2020 and
 - (f) reviewed or considered correspondence, historic or current draft Macquarie facility documents or deeds of forebearance.
6. In relation to the estimation of expected earnings, Nexia:
- (a) capitalised FY20 EBITDA adjusted for the removal of the west coast rent roll business (**West Coast Business**) sold after 1 July 2020 using trailing multiples of comparable companies. Nexia have included a scenario where 100% of EBITDA for the West Coast Business is excluded. This is an unreasonable assumption given the reciprocal arrangement in place with Managex. Nexia have also included two other scenarios where 25% and 62.5% of FY20 EBITDA is removed from normalised EBITDA. These scenarios seem to be purely subjective
 - (b) have not factored anticipated growth in agent numbers as referred to by Agency in the FY20 annual report
 - (c) exclude reference to continued growth achieved in the “*record-breaking quarter*” in the first quarter of FY21
 - (d) have not quantified the impact of COVID-19 and
 - (e) have not compared their estimate of normalised EBITDA to the cash flow forecasts prepared by Agency Directors.⁶
7. In the capitalisation of earnings valuation Nexia have made the following omissions/errors:
- (a) incorrectly applied a control premium to EBITDA multiples of comparable companies, whereas the control premium should be applied to equity value
 - (b) not included lease liabilities in their calculation of net debt (whereas they have excluded the lease expenses in EBITDA)
 - (c) not included the present value of the remaining retention amount from the sale of the West Coast Business of up to \$0.485 million
 - (d) in assessing the value per share if the Peters Proposal does not go ahead Nexia have not deducted circa \$320,000 that will have to be repaid to Peters and

⁶ See section 5.6 of the Supplementary Independent Expert Report

- (e) not included any other normalisation adjustments for example any potential one-off and non-recurring legal and consulting costs.
8. In adopting a quoted market price valuation methodology Nexia have stated there to be a moderate level of liquidity, however, there were 326 days of no trades over the last three years and substantial shareholders and directors were responsible for a large portion of share trades.
9. In assessing the reasonableness of the Peters Proposal, the key items to look at include:
- (a) whether the offer is fair, which is not stated as a specific disadvantage of the proposed Peters Proposal
 - (b) quantum: a discount of a minimum of 46% to the current share price is material
 - (c) the severe dilutive impact of the Peters Proposal occurring after a record first quarter of FY21
 - (d) comparing the offer to the quantum of any other offers
 - (e) presenting a counterfactual orderly realisation value
 - (f) replacing Macquarie or any other senior debt with a convertible hybrid security is less attractive to shareholders
 - (g) the level of interest being shown by multiple parties in Agency may be positively perceived by the secured creditor as well as its now substantially reduced exposure
 - (h) a non-renounceable rights issue was completed in October 2019 at a price of 6.5 cents per share with an attaching option exercisable at 6.5 cents per share
 - (i) there are alternate options but Nexia does not table alternatives
 - (j) the extent of dilution of existing shareholders
 - (k) acknowledgment of additional value for the options of the convertible notes being issued under the Peters Proposal being material primarily due to the low and dilutive exercise price and
 - (l) release of personal guarantees of a director and senior management.