



Takeovers Panel

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Our Ref: 070430 final letter to Senate Econ Comm.doc

Mr. Peter Hallahan,
Secretary
Senate Standing Committee on Economics
PO Box 6100
Parliament House
Canberra ACT 2600
economics.sen@aph.gov.au

30 April 2007

Dear Mr. Hallahan,

Inquiry into Private Equity Investment

I refer to your letter to the Takeovers Panel (the **Panel**) dated 4 April 2007 in relation to the inquiry by the Standing Committee on Economic into private equity investment.

The Panel is pleased to provide a submission to the Committee on those aspects of the Committee's terms of reference which the Panel considers overlap with its jurisdiction. There appear to be significant areas of the Committee's terms of reference which are clearly outside the Panel's jurisdiction and there are significant areas of the Panel's interest which the Committee's terms of reference do not cover.

The Panel's primary submission is to provide the Committee with a draft Guidance Note and a discussion paper which the Panel has recently published for public comment.

By way of background, I would like to describe the Panel's process in developing the draft Guidance Note and discussion paper.

In September last year, in response to developments in the private equity area in Australia and overseas, the Takeovers Panel decided that it should form a sub-committee to consider issues that may arise from takeover bids involving private equity participants, and other buy-outs, and whether it should provide market participants with guidance on any issues arising. However, following its initial work, the sub-committee came to two conclusions:

1. takeover bids by private equity participants do not raise any specific issues in relation to the Panel's jurisdiction which are unique to private equity transactions; and

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2. takeover bids by private equity participants do raise in higher relief some issues (which are also common to other types of takeovers), the most significant being the issue of insider participation (and the consequential issues which flow).

On those bases, the sub-committee considered that framing any guidance in terms of private equity issues alone would be too narrow. The sub-committee therefore proposed to the Panel that its brief should be amended to consider whether the Panel should provide market participants with guidance on circumstances that may arise where there is insider participation in control transactions and when the Panel may declare such circumstances to be unacceptable having regard to the purposes of Chapter 6 of the *Corporations Act* 2001 (Cth) (**Corporations Act**), as set out in section 602 of that Act.

On 21 February 2007, the Panel published a draft Guidance Note and Issues Paper on Insider Participation in Control Transactions. Enclosed is a copy of each document. The draft Guidance Note and Issues Paper are intended to be read together. The Issues Paper sets out the policy issues on which the Panel is considering providing guidance in the draft Guidance Note and the policy issues on which the Panel does not currently intend to provide guidance. The sub-committee is currently considering the fifteen submissions it has received in response to the draft Guidance Note and Issues Paper. It expects to publish its final decision as to whether to publish a final Guidance Note shortly as well as a summary of the submissions received, which of the submissions it has and has not accepted and why.

As noted above, there is some overlap between the Panel's jurisdiction (as set out in Chapter 6 of the *Corporations Act*) and the Senate's terms of reference to the Committee. However, the Panel considers that the overlap is not large and each of the Panel and the Committee will consider issues that do not fall within the other's jurisdiction or terms of reference. The Panel's role is to consider the process under which takeover bids are conducted in Australia and to ensure that they meet the purposes of the Takeovers Chapters of the *Corporations Act*, as set out in section 602 of the Act. On that basis the Panel considers that it is not in a position to provide submissions on items (a), (b), (c) or (d) of the Committee's terms of reference. The Panel considers that its draft Guidance Note and discussion paper may be relevant to the Committee's consideration of item (e) of the Committee's terms of reference.

Accordingly, the Panel does not propose to make further written submissions to the Committee, other than to provide it with a copy of the draft Guidance Note and Issues Paper, which indicate the Panel's current thinking in relation to issues that it considers are within the ambit of its jurisdiction to consider. The Panel would, however, be happy to provide further submissions to the Committee should the Committee consider that it would be desirable.

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Please contact us if you wish to discuss this matter further or if we may be of any further assistance to the Committee.

Yours sincerely

Nigel Morris

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Takeovers Panel

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Panel sub-committee

External Members

| | |
|---------------|---|
| David Jones | CHAMP Private Equity and Chairman of AVCAL |
| Andrew Sisson | Balanced Equity Management Pty Ltd |
| Laurie Cox | Director of Macquarie Bank Ltd and Smorgon Steel Group, Chairman of Transurban Ltd, Murdoch Children's Research Institute and SMS Management & Technology Ltd |

Panel Members

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|------------------------|---------------------------|
| Elizabeth Alexander AM | Blake Dawson Waldron |
| Guy Alexander | Allens Arthur Robinson |
| Hamish Douglass | Magellan Financial Group |
| John Fast | BHP Billiton Ltd |
| John Keeves | Johnson Winter & Slattery |
| Simon Mordant | Caliburn Partnership |