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Smiles Inclusive Limited: Update on EGM voting process

Smiles is aware of further press releases from shareholders associated with Mike Timoney, Joao Camacho and Arthur Walsh (**Timoney Associates**) in respect of its shareholder meeting held on 22 May 2019 (**EGM**).

The Timoney Associates are continuing to assert that there were voting irregularities at the EGM and that the vote of a major shareholder was 'switched' in the hours before the deadline for lodgement of proxies at 4pm on 20 May 2019.

Smiles categorically rejects the Timoney Associates' assertions of irregularities in the voting process. In fact, Smiles' own investigations indicate that:

- the 'major shareholder' the Timoney Associates refer to is actually two separate shareholders controlled by one family. One of the shareholders is a company with a sole director. The other is a super fund with natural persons as trustees;
- approximately one month before the EGM, Mr Timoney visited a member of the family and represented that another family member had asked him to arrange signing of hard copy proxy forms for both shareholding entities directing that votes be cast 'for' resolutions to remove David Usasz and Tracy Penn and 'against' resolutions to remove David Herlihy and Mr Timoney (**Herlihy/Timoney proxies**). The family member Mr Timoney visited was not the sole director of the company;
- the sole director company completed directed proxies online at 1.23pm on 16 May 2019 and 7.38am on 20 May 2019 and the super fund completed a directed online proxy at 6.44am on 20 May 2019. These proxies all directed that votes be cast 'against' resolutions to remove Mr Usasz and Ms Penn and 'for' resolutions to remove Mr Herlihy and Mr Timoney (**Usasz/Penn proxies**);
- early in the afternoon of 20 May 2019, Mr Timoney provided Smiles' share registry with the hard copy proxy forms purportedly signed by the sole director company and super fund along with a bundle for another 34 shareholders that he had been collecting and storing. The proxy form for the sole director company was not signed by the director of the company and was therefore invalid;
- the sole director company and the super fund provided written authorisation for representatives to complete further directed Usasz/Penn proxies online. These final proxies were lodged at 2.36pm and 2.30pm on 20 May 2019 respectively; and
- the sole director company and the super fund also completed further hard copy Usasz/Penn proxies. These forms were properly signed by the director of the sole director company and a trustee of the super fund.

The matters above show that there is no basis whatsoever for the Timoney Associates assertion of irregularities in respect of the final votes cast by the 'major shareholder'.

Instead, Smiles is extremely concerned by Mr Timoney's conduct in collecting and storing proxy forms (which in at least one case were not properly executed). This conduct itself appears to have been a broad scale attempt to undermine the electoral process. Smiles' legal advice is that similar conduct has been found by Courts to invalidate resolutions in the past. Luckily it did not change the outcome of any of the resolutions at the EGM.

Notwithstanding these concerns Smiles has in good faith written to Mr Timoney's lawyer responding to questions about the EGM, and offering a fulsome independent review (including as to the accuracy and validity of proxy results and votes cast). The lack of interest of the Timoney Associates in the independent review is indicative of them realising that they lost the vote at the EGM fair and square.

Smiles has also written to Dr Camacho and Dr Walsh on a number of occasions offering to meet and discuss all of their concerns, but they have refused this offer.

Smiles does not understand why the Timoney Associates continue to engage in this course of action, other than that it may be part of an attempt by Mr Timoney to avoid pending legal action over his behaviour during his time as the company's CEO. In any event it is clear that the Timoney Associates have no concern whatsoever for the company's other stakeholders.

Given all of the above facts, Smiles and its directors are taking the spurious accusations made by the Timoney Associates in respect of the EGM very seriously and are considering their options in relation to those accusations.

Smiles again calls on the Timoney Associates to respect the decision of shareholders delivered at the EGM, and cease their destructive, misleading and defamatory campaign.

Smiles regrets the need for this public dialogue made necessary only because the Timoney Associates will not act reasonably and engage with the company.

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