



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP16/20

Friday, 8 April 2016

Investa Office Fund – Panel Decision

The Panel has made a declaration of unacceptable circumstances (Annexure A) and final orders (Annexure B) on an application dated 21 March 2016 in relation to the affairs of Investa Office Fund (IOF).¹

The application, by the responsible entity for DEXUS Property Group, arose out of the DEXUS proposal by trust scheme to acquire all the units in IOF.

The application concerned issues of conflict management by the manager of IOF, voting by Morgan Stanley of units in IOF, disclosure deficiencies in a document (**the IOMH Document**) issued by the holding company of the manager (Investa Office Management Holdings Pty Ltd - IOMH),² and incomplete substantial holder disclosure (see [TP16/17](#)).

The Panel was satisfied that, by reason of the issue of the IOMH Document, the acquisition of control over voting interests in IOF was not taking place in an efficient, competitive and informed market and IOF unit holders were not given enough information to enable them to assess the merits of the proposal. The Panel was also satisfied that the substantial holder notices lodged by IOMH contravened section 671B.³ Accordingly it made a declaration and orders.

Details

The Panel considered that the IOMH Document did not disclose readily and reasonably the interests that the manager had when advocating the position adopted. The Panel ordered that further disclosure be published on www.investaforiof.com.au, and sent to unit holders by express post and email (if available), making clear the role of the manager, the fees payable to it under the current arrangements, and the relevant effect of a Share Sale Agreement (under which a Morgan Stanley entity sold the “platform”, including the manager, to

¹ Comprising Armstong Jones Office Fund and Prime Credit Property Trust, with Investa Listed Funds Management Limited as responsible entity and Investa Office Management Pty Ltd as manager

² The IOMH Document recommended that unit holders vote against the proposal. The independent board committee of the IOF responsible entity recommended that unit holders vote in favour of the proposal

³ References are to the *Corporations Act 2001* (Cth) unless otherwise indicated

Investa Commercial Property Fund) if the DEXUS proposal should succeed or fail. The Panel also made orders that IOMH must ensure that the proxy form attached to the IOMH document is no longer available (including website removal) and IOF releases the supplementary disclosure on ASX.

Additionally, the Panel considered that the proxy form attached to the IOMH Document, although valid, was likely to mislead or confuse IOF unit holders, given its similarity to the proxy form issued by IOF's responsible entity, and ordered that IOMH inform unit holders that the proxy form was from IOMH, and provide further information to assist unit holders who submitted the form and may feel misled on how to change their vote.

The Panel also found that IOMH's notice of ceasing to be a substantial holder of 8 March 2016, and its amended notice of 23 March 2016, did not comply with s671B in that the original notice was not accompanied by a document that contributed to the notice (namely a Share Sale Agreement), and the amended notice was accompanied by a redacted version of a Share Sale Agreement. The Panel ordered IOMH to lodge an amended notice of ceasing to be a substantial holder⁴ accompanied by an unredacted version of the Share Sale Agreement.

As to the submission in the application that Morgan Stanley should not be allowed to vote, the Panel was not satisfied that a sufficient basis had been established for it to interfere with the voting rights attaching to units in IOF in which Morgan Stanley has a relevant interest.

During consideration of the application by the Panel, concern was raised about whether other statements in the IOMH Document were misleading, in particular statements about the value of the proposal compared to the value of IOF. The Panel was not satisfied that these concerns properly formed part of the application, and indicated that they could be the subject of a fresh application or clarifying disclosure by a party if it wished.

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⁴ together with a covering letter explaining that it is an amended notice



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ANNEXURE A

**CORPORATIONS ACT
SECTION 657A**

DECLARATION OF UNACCEPTABLE CIRCUMSTANCES

INVESTA OFFICE FUND

CIRCUMSTANCES

1. Investa Office Fund (**IOF**) is an ASX listed stapled entity comprising managed investment scheme. It is subject to a proposal under which the responsible entity for DEXUS Property Group (**DEXUS**, which is also an ASX listed managed investment scheme) will, with another DEXUS entity, acquire all the units in IOF.
2. After seeking judicial advice, the independent directors of the responsible entity for IOF issued a notice of meeting and explanatory memorandum for IOF unit holders to vote on a resolution under item 7 of section 611⁵ and a resolution under section 601GC to effect the proposal. The recommendation in the explanatory memorandum was for unit holders to vote in favour of the resolutions.
3. Investa Office Management Holdings Pty Ltd (**IOMH**) is the holding company of the manager of IOF and the responsible entity for IOF.
4. On or about 14 March 2016, in relation to the proposal, IOMH issued a document titled "*Important Information for IOF Unitholders*" (**IOMH Document**). The recommendation in the IOMH Document was for unit holders to vote against the resolutions.
5. The IOMH Document is misleading or confusing for, or has the potential to mislead or confuse, IOF unit holders in that it is not sufficiently clear that IOMH has an interest in the proposal not succeeding, particularly by reason of the management arrangements currently in place potentially being lost if the proposal succeeds and by non-disclosure of the relevant effect of the Share Sale Agreement on IOMH's interests if the DEXUS proposal should succeed or fail.
6. The proxy form attached to the IOMH Document is not sufficiently clear in that, whilst intended for use by an IOF unit holder who votes against the proposal, it is not sufficiently identified as an alternative proxy form.

⁵ References are to the *Corporations Act 2001* (Cth) unless otherwise indicated

7. Morgan Stanley Real Estate Investing (**MS**) is a real estate investment platform for which an affiliate of Morgan Stanley acts as general partner. It has a relevant interest in units in IOF. IOMH was a related entity of MS. On 8 March 2016, IOMH lodged a notice of ceasing to be a substantial holder in IOF. The notice was not accompanied by a document that contributed to IOMH ceasing to be a substantial holder, namely a Share Sale Agreement. On 23 March 2016, IOMH amended the notice and included a copy of a Share Sale Agreement dated 1 March 2016. The Share Sale Agreement had various clauses in it redacted.
8. Neither the notice of ceasing to be a substantial holder in IOF dated 8 March 2016 nor the one dated 23 March 2016 comply with section 671B.

EFFECT

9. By reason of the issue of the IOMH Document the acquisition of control over voting interests in IOF is not taking place in an efficient, competitive and informed market and IOF unit holders are not given enough information to enable them to assess the merits of the proposal.

CONCLUSION

10. It appears to the Panel that the circumstances are unacceptable circumstances:
 - (a) having regard to the effect that the Panel is satisfied they have had, are having, will have or are likely to have on:
 - (i) the control, or potential control, of IOF or
 - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in IOF
 - (b) in the alternative, having regard to the purposes of Chapter 6 set out in section 602
 - (c) in relation to the notices of ceasing to be a substantial holder in IOF, because they constituted a contravention of a provision of Chapter 6C.
11. The Panel considers that it is not against the public interest to make a declaration of unacceptable circumstances. It has had regard to the matters in section 657A(3).

DECLARATION

The Panel declares that the circumstances constitute unacceptable circumstances in relation to the affairs of Investa Office Fund.

Alan Shaw
Counsel
with authority of Andrew Lumsden
President of the sitting Panel
Dated 8 April 2016



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ANNEXURE B

**CORPORATIONS ACT
SECTION 657D
ORDERS**

INVESTA OFFICE FUND

The Panel made a declaration of unacceptable circumstances on 8 April 2016.

THE PANEL ORDERS

1. Investa Office Management Holdings Pty Ltd (**IOMH**) must make supplementary disclosure to the document titled "Important Information for IOF Unitholders" it issued on or about 14 March 2016 (**IOMH document**), in the form approved by the Panel, that provides the following disclosure in way that an ordinary, unsophisticated unit holder can readily understand:
 - (a) an explanation of IOMH's relationship with Investa Office Fund (**IOF**), the manager of IOF and the independent board committee of IOF's responsible entity (**IBC**)
 - (b) identification of the role of the manager, the fees payable to it under the current arrangements and the relevant effect of the Share Sale Agreement if the Dexus proposal succeeds or fails
 - (c) a description that the proxy form attached to the IOMH document came from IOMH (and not IOF or IBC) and recommended that unit holders vote against the proposals at the meeting to approve the Dexus proposal and
 - (d) information to assist unit holders, who have submitted a proxy form attached to the IOMH Document and may feel that they have been misled, on how to change their vote by either lodging another proxy form or voting at the unit holder meeting in person.
2. The supplementary disclosure in order 1 must:
 - (a) as soon as practicable but no later than 5:00pm (EST) on 11 April 2016, be dispatched by IOMH to all unit holders by express post
 - (b) as soon as practicable but no later than 5:00pm (EST) on 11 April 2016, be emailed by IOMH to IOF unit holders where an email address is available to IOMH and
 - (c) as soon as practicable be placed by IOMH prominently on the website: www.investaforiof.com.au.

3. IOMH must, as soon as practicable, ensure that the proxy form attached to the IOMH document is no longer made available to IOF unit holders, including by removing it from the website: www.investaforiof.com.au.
4. IOMH lodge an amended notice of ceasing to be a substantial holder, amending the notice dated 23 March 2016 and attaching an unredacted copy of the Platform Sale Agreement, together with a covering letter explaining that it is an amended notice.
5. IOF must, as soon as practicable after the media release of the Panel's decision is published on ASX, publish on ASX the supplementary disclosure in order 1 (a copy of which IOMH must provide to IOF).

Alan Shaw
Counsel
with authority of Andrew Lumsden
President of the sitting Panel
Dated 8 April 2016