



Australian Government

Takeovers Panel

# MEDIA RELEASE

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No: TP12/62

Thursday, 30 August 2012

## Alesco Corporation Limited 03 – Panel Receives Application

The Panel has received an application from Alesco Corporation Limited in relation to its affairs. Alesco is currently the subject of takeover bid by DuluxGroup Limited.<sup>1</sup>

Details of the application, as submitted by the applicant, are below.

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 23 July 2012, DuluxGroup announced that it had increased its offer for Alesco by increasing its cash offer to \$2.05 per share and by allowing Alesco shareholders to receive up to 18c per share in franking credits attached to the dividends declared by Alesco (through a 42c franked dividend).<sup>2</sup> The announcement stated that “Revised Offer is its **best and final** offer”.<sup>3</sup> On 24 July 2012, Alesco declared a 15c fully franked dividend.

There have been subsequent discussions between Alesco and DuluxGroup in relation to a proposal that would provide shareholders with 75c per share of fully franked dividends.

On 28 August 2012, DuluxGroup made an announcement which stated, among other matters, that it was willing to engage in a “Takeovers Panel process” to determine whether it could provide the effective increase in consideration on condition that “in the event that Takeovers Panel proceedings determine that the 75c [dividend] Proposal cannot be implemented (or cannot be implemented without significant

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<sup>1</sup> And its wholly owned subsidiary, DuluxGroup (Nominees) Pty Ltd

<sup>2</sup> The announcement footnoted that “*Eligibility to utilise franking credits will depend on individual shareholders’ specific circumstances. Shareholders are advised to consult with their tax adviser*”

<sup>3</sup> Emphasis in original

financial consequences), then the Alesco board would unanimously recommend DuluxGroup's best and final \$2.05 cash offer and 42c [dividend] Proposal".

Alesco submits (among other things) that DuluxGroup's 28 August announcement:

- misrepresented that Alesco's support of the fallback 42c proposal was a key outstanding issue in negotiations between the parties and omitted material conditions that are crucial to Alesco's support of any proposal involving payment of additional dividends<sup>4</sup> and
- is likely to mislead shareholders and other market participants as to the likelihood of the 75c proposal and the 42c proposal being implemented.

Alesco submits that the effect of DuluxGroup's 28 August announcement is that it would seem to have brought an end to prospects of the 75c proposal and control of Alesco may pass at an undervalue.

Alesco seeks interim orders that DuluxGroup and Alesco be prevented from making any further announcements (among other things) in relation to the 75c and 42c proposals. Alesco seeks final orders to the effect that:

- DuluxGroup issue corrective disclosure
- DuluxGroup be prevented from deducting from its offer the value of any franking credits attaching to fully franked dividends under the 75c proposal and
- ASIC's "Truth in Takeovers" policy should not apply to prevent implementation of the 75c Proposal.

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<sup>4</sup> In particular DuluxGroup achieving acceptances of at least 90% (including within an institutional acceptance facility) and obtaining an ATO ruling