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Wednesday, 26 November 2008

## **MYOB Limited - Declaration of Unacceptable Circumstances and Orders**

The Panel has made a declaration of unacceptable circumstances (Annexure A) and final orders (Annexure B) in relation to an application dated 10 November 2008 by MYOB Limited in relation to its affairs.

On 30 October 2008, Manhattan Software Bidco Pty Ltd announced an off-market takeover bid for MYOB. The announcement of the bid and page 12 of the bidder's statement discloses that:

*A number of MYOB institutional shareholders have already indicated to Manhattan Software that they will accept the Offer as soon as the Offer opens for all of their MYOB shares. These shareholders are Guinness Peat Group Australia, Colonial First State Global Asset Management Australian Equities, Growth Team and Octavian Special Master Fund, LP. MYOB's other significant institutional shareholder, Schroders Investment Management, has also indicated an intention to accept the Offer once it is open on the basis that acceptance will increase the likelihood of the Offer being increased to \$1.25. In aggregate, MYOB Shareholders that have indicated they will accept the Offer once it is open represent 34% of the outstanding shares and 48% of the non Board member shareholdings.*

The Panel considers that the unqualified intention statements, to which each of the identified shareholders had consented, evidenced an agreement, arrangement or understanding Manhattan has or had with each of those shareholders to accept Manhattan's bid as soon as it opened. Moreover, Manhattan had made it clear to those shareholders that the success of its bid depended on firm, upfront and public support of its bid.

The Panel was satisfied that there was an agreement, arrangement or understanding with each of those shareholders resulting in Manhattan obtaining a relevant interest in approximately 34% of the issued shares in MYOB held by those shareholders prior to the bid which contravened s606 of the Corporations Act and was unacceptable.

The Panel was also satisfied, regardless of whether there was a contravention, that the circumstances of Manhattan approaching the investors and their unqualified intention statements to accept the offer as soon as it opened:

- inhibited an efficient, competitive and informed market in MYOB shares and
- affected control or potential control of MYOB or the acquisition of a substantial interest in MYOB.

This gave rise to unacceptable circumstances.

The Panel did not consider it against the public interest to make the declaration, and in making the declaration had regard to the matters in s657A(3).

On 17 November 2008, Manhattan lodged a replacement bidder's statement with ASX. The Panel considered that the replacement bidder's statement dealt with the other issues raised in MYOB's application.

### **Orders**

The Panel considered that orders which enabled a competing proposal to emerge were sufficient in this case.

Accordingly it made orders that the investors cannot accept Manhattan's bid before 9 December and must accept a superior proposal if it is announced before that date, in the absence of a further superior proposal. If the investors have already lodged an acceptance into an institutional acceptance facility, it must be withdrawn. Manhattan is also required to lodge a supplementary bidder's statement explaining the Panel's orders.

The sitting Panel for the proceedings was Michael Ashforth (sitting President), Paula Dwyer and Marie McDonald.

The Panel will publish its reasons for its decision on its website at [www.takeovers.gov.au](http://www.takeovers.gov.au) in due course.

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**Annexure A**  
**Corporations Act**  
**Section 657A**  
**Declaration of Unacceptable Circumstances**  
**In the matter of MYOB Limited**

**WHEREAS**

1. MYOB Limited (**MYOB**) is the subject of an off-market takeover bid by Manhattan Software Bidco Pty Limited (**Manhattan**)
2. In its initial announcement of the takeover bid, and in the bidder's statement, Manhattan disclosed that each of Guinness Peat Group Australia, Colonial First State Global Asset Management Australian Equities, Growth Team, Octavian Special Master Fund LP and Schroders Investment Management (collectively, the **investors**) had indicated an unqualified intention to accept the takeover bid as soon as it opened
3. These statements by Manhattan to which the investors consented evidenced an understanding between Manhattan and each investor. The understanding was also evidenced by discussions and correspondence between the parties before the bid was announced
4. The understanding gave Manhattan a relevant interest in approximately 34% of the issued shares in MYOB held by the investors prior to the bid,  
(collectively, the **circumstances**).
5. It appears to the Panel that the circumstances are unacceptable:
  - (a) having regard to the effect that the Panel is satisfied that the circumstances have had, are having, or are likely to have, on the control or potential control of MYOB
  - (b) having regard to the purposes of Chapter 6 set out in section 602 of the *Corporations Act 2001* (Cth) (the **Act**) or
  - (c) because they constituted or constitute, or gave or give rise to a contravention of section 606 of the Act.
6. The Panel considers that it is not against the public interest to make a declaration of unacceptable circumstances in relation to the circumstances and the affairs of MYOB Limited.
7. The Panel has had regard to the matters in section 657A(3) of the Act.

**DECLARATION**

Under section 657A, the Panel declares that the circumstances constitute unacceptable circumstances in relation to the affairs of MYOB Limited.

**Alan Shaw**  
**Counsel**  
**with authority of Michael Ashforth**  
**President of the Sitting Panel**  
**Dated 21 November 2008**

**Annexure B**  
**Corporations Act**  
**Section 657D**  
**Orders**

**IN THE MATTER OF MYOB LIMITED**

**PURSUANT TO**

1. A declaration of unacceptable circumstances in relation to the affairs of MYOB Limited (*MYOB*) on 21 November 2008
2. Section 657D of the Corporations Act 2001 (Cth)

**THE PANEL ORDERS**

1. Each of Guinness Peat Group Australia, Colonial First State Global Asset Management Australian Equities - Growth Team, Octavian Special Master Fund LP, and Schroders Investment Management (each, an *investor*) is released from any commitment to accept the offer by Manhattan Software Bidco Pty Limited under its takeover bid for MYOB Limited (*offer*).
2. Each investor must not accept the offer or commit to do so prior to 9 December 2008.
3. If a superior proposal for the acquisition of all the shares in MYOB is announced prior to 9 December 2008, each investor must accept (or, if a scheme, vote in favour of) that superior proposal in respect of all of their MYOB shares in the absence of a further superior proposal (which may include an improved offer by Manhattan).
4. Manhattan, MYOB or any investor may apply to the Panel, after having given 24 hours notice in advance to each party, seeking a variation of these orders - including an order adapting paragraph 3 in respect of non-cash consideration, conditions and proposed or actual transactions other than a takeover offer open for acceptance.
5. From the date of these orders, each investor must not lodge an acceptance into an institutional acceptance facility established for the purposes of the bid (*IAF*) prior to 9 December 2008. If an investor lodged an acceptance into an IAF before the date of these orders, that acceptance must be withdrawn forthwith. Each investor and Manhattan must take any action required to effect that withdrawal.
6. Manhattan must forthwith prepare and lodge a supplementary bidder's statement which explains these orders. The explanation must be in a form approved by the Panel.

**Alan Shaw**  
**Counsel**  
**with authority of Michael Ashforth**  
**President of the Sitting Panel**  
**Dated 25 November 2008**