



Thursday, 9 December 2004

GENERAL PROPERTY TRUST: PANEL CONCLUDES PROCEEDINGS

The Panel has concluded the proceedings arising from the application from GPT Management Limited as responsible entity of General Property Trust (GPT) dated 3 December 2004¹ alleging unacceptable circumstances in relation to the off-market takeover bid by Stockland Trust Management Limited as the responsible entity for Stockland Trust (Stockland²) for all the ordinary units in GPT. The Panel's media release TP04/111 provides further details regarding the application.

Decision

The Panel has accepted an undertaking from Stockland to send a supplementary bidder's statement with Stockland's bidder's statement, in a form approved by the Panel, which addresses the Panel's concerns in relation to:

- basing comparisons within Stockland's bidder's statement on the price of Stockland securities immediately before Stockland's announcement of its takeover offer over a month ago on 5 November 2004 rather than the most recent price of Stockland securities;
- basing comparisons within Stockland's bidder's statement only on the price of GPT securities immediately before the announcement of a merger proposal made by Lend Lease Corporation over six months ago on 19 May 2004 rather than on the most recent price of GPT securities; and
- disclosing the effect of the Stockland offer on the notional Net Tangible Assets (NTA) backing of GPT securities in the merged entity.

The Panel declined GPT's request that Stockland adjust its "offer value" to reflect the expected Stockland distribution in December which GPT security holders will not receive, but the Panel required Stockland to explain why it is not appropriate to make such an adjustment.

Based on the undertaking provided by Stockland, the Panel concluded the proceedings on the basis that it was not necessary to make a declaration of unacceptable circumstances and that no order was required.

¹ Unless otherwise specified, all dates relate to 2004.

² Unless otherwise stated the Panel refers collectively to both Stockland Trust Management Limited and Stockland Trust as Stockland.

Application

In its application, GPT raised concerns regarding the following statements in, and omissions from, Stockland's bidder's statement dated 24 November (**Bidder's Statement**):

- Stockland adopted an "Offer Value" throughout the Bidder's Statement of \$3.65 per GPT unit, based on the five trading day volume weighted average price (VWAP) of Stockland securities to 5 November of \$6.00. This was more than a month prior to the intended dispatch of the Bidder's Statement. GPT submitted that the Bidder's Statement should use the most up to date prices available in calculating the "Offer Value", notwithstanding that the Bidder's Statement indicated that the actual value of the offer depended upon the value of Stockland securities from time to time.
- The Bidder's Statement did not make any adjustment to the "Offer Value" to take account of the anticipated Stockland December distribution which, under the terms of the offer, accepting GPT unitholders will not receive.
- The Bidder's Statement claimed that the "Offer Value", which was calculated using Stockland securities prices as at 5 November, represented a 20% premium to the GPT unit price, based on the three month GPT VWAP prior to the announcement of the initial Lend Lease Corporation proposal to merge with GPT (**Lend Lease Proposal**): i.e. to 19 May. GPT submitted that the Bidder's Statement was misleading in that it failed to make clear that the values used for this comparison were at dates almost six months apart. GPT also submitted that the use of the 19 May GPT VWAP was misleading as it took no account of the fact that the Listed Property Trust (LPT) ASX market sector had increased overall by 11% in the period since 19 May. On that basis GPT submitted that Stockland's offer should be represented as offering a much lower premium (if any) over the value of GPT units.
- The Bidder's Statement represented that the Stockland offer was at a premium to the NTA backing of GPT units. However, it did not include a clear analysis of the effect of the bid on NTA backing per equivalent GPT unit. GPT submitted that the NTA backing of a listed property trust (LPT) security is an important factor for security holders to consider in assessing the merits of a scrip takeover bid in relation to such securities.
- The Bidder's Statement included three tables illustrating compound annual growth rate (CAGR) calculations for three previous acquisitions by Stockland, which represented the returns to target security holders if they had held securities in the target and received Stockland securities. GPT submitted that these tables were misleading because they included takeover premia paid to the target security holders in those transactions.

GPT's submissions noted that approximately 85% of its unitholders (by number) held less than 10,000 units each, who were likely to be influenced by "headline" numbers in the overview section of the Bidder's Statement.

Dispatch of Stockland bidder's statement

Following receipt of the application from GPT, the Panel accepted an undertaking from Stockland that it would not dispatch the Bidder's Statement before 9 December. The Panel considered that this undertaking gave a reasonable opportunity for a final decision to be made in proceedings without the need for interim orders. In the event, finalisation of the replacement pages of the Bidder's Statement was not able to be completed until 9 December and Stockland gave a further undertaking not to dispatch prior to 13 December, by which time the supplementary bidder's statement would be printed.

Consideration of issues by the Panel

Stockland "Offer Value" – date of valuation

The Panel considered that it would constitute unacceptable circumstances for Stockland to describe, in the Bidder's Statement, the value of its offer based solely on the VWAP of Stockland securities for the period ending 5 November when its Bidder's Statement was to be dispatched on or after 9 December. The Panel noted that the current market price of Stockland securities is not materially different to the 5 November VWAP, but considered this to be fortuitous and not a basis for saying that unacceptable circumstances did not exist.

The Panel required Stockland to base the value of its offer also on the most recent VWAP value of the Stockland securities being offered (meaning, practically, the VWAP for the five trading days prior to the last day on which Stockland could make changes before its printers actually commenced printing the Bidder's Statement) rather than only on the 5 November VWAP. The Panel noted Stockland's submission that the most appropriate price of its securities for assessing the value of its offer is the VWAP of its securities immediately prior to the announcement of Stockland's offer for GPT. The Panel does not suggest that such a price may not be relevant and useful for GPT unitholders. However, the Panel considered that a material period of time had elapsed between 5 November and the expected date of dispatch of the Stockland offers. The Panel considered that the elapse of that period of time makes the 5 November VWAP no longer appropriate to be used as the sole indicator of the value of the Stockland offer in the Bidder's Statement. In the absence of any clear material updating unitholders regarding the Stockland VWAP since that period, use of the 5 November VWAP was misleading and constituted unacceptable circumstances.

The Panel considers that the Bidder's Statement should include, clearly and prominently, the most recent value which Stockland could practically include in the bidder's statement.

Statements regarding Premium to GPT unit VWAP

Frequently a bidder will compare the value of its offer to the price of the target's securities prior to the announcement of the proposal. However, the Panel considers that it is normal and appropriate market practice in scrip takeover offers for the bidder to include in its bidder's statement a comparison of the most recent practical market values of the target's securities and the bidder's securities.

The Panel noted Stockland's view that the most appropriate price of GPT units to compare against Stockland's offer is the price prior to the announcement of the Lend

Lease Proposal. The Panel also noted that the market price of GPT units has been influenced by takeover speculation and activity since the announcement of the Lend Lease Proposal. On this basis, the Panel accepted that Stockland had a rational basis for using the 19 May VWAP for GPT units in the comparative pricing disclosure. However, the Panel considered it unacceptable for the offer premium comparison in the Bidder's Statement to refer only to the VWAP of GPT units at 19 May. The Panel considered that a material period of time has elapsed since 19 May. Further, there have been too many material changes and too much market activity in the LPT sector (and in other sectors of the market and the wider economy) in the intervening six month period for the 19 May price to be the sole relevant figure, without a current price comparison.

The Panel considered that the statement that the Stockland offer represents a 20% premium to the 19 May VWAP of GPT units (and its graphical presentation) in the Bidder's Statement i.e. using a value of GPT units for a comparison that is more than six months old at the date of dispatch of the Bidder's Statement, in the absence of any clear material updating unitholders regarding the GPT VWAP since that period, was misleading and constituted unacceptable circumstances.

The Panel required Stockland to amend the statement and the graphical representation so that they compared the most recent price of Stockland securities against a similarly calculated price for GPT units presented in an equally prominent manner and revise the headings for the relevant sections accordingly.

Stockland December distribution

GPT submitted that Stockland's bidder's statement failed to make any adjustment in relation to the offer value of \$3.65 for the fact that GPT unitholders who accept the offer will not receive any amount in respect of Stockland's December. GPT submitted that the VWAP for Stockland securities cited in the Stockland bidder's statement has an expectation of that distribution "built into it".

The Panel accepted submissions from Stockland that there appears to be no consistent pattern of price movement of Stockland securities one month after the books closing date for entitlement to Stockland distributions. Given the evidence which Stockland produced, the Panel considered that there was no basis for requiring Stockland to adjust the "Offer Value" specified in the Bidder's Statement to take account of any expected December distribution by Stockland.

Having regard to current market practice and the nature of an LPT's distributions, the Panel required Stockland to state clearly in its Bidder's Statement that the imputed "Offer Value" does not take into account, or make any adjustment for, the expected December distribution of \$0.19 per Stockland security. The Panel also required Stockland to explain clearly why it would not be appropriate to make any adjustment to the "Offer Value" for the expected Stockland distribution.

Effect on NTA

The Panel considered that in the LPT sector, NTA backing is considered a material feature and value measure for LPT securities. On that basis, the Panel considered that it would be consistent with market practice for Stockland to disclose, in an appropriately prominent position, a comparison of the NTA of GPT securities (using

the most recent value publicly available) with the notional NTA backing per GPT security for the merged entity if the Stockland offer is successful.

Stockland submitted that information regarding the NTA backing per Stockland security after the proposed merger of GPT and Stockland was contained in a Stockland investor presentation released to ASX on 8 November 2004. Similarly, Stockland submitted that the projected NTA of the merged entity, and hence the notional NTA per GPT security, could be calculated using information in section 6 of the Bidder's Statement.

Given market practice, and the importance of NTA in the LPT sector, the Panel did not consider this to be adequate disclosure. Unitholders should not be required to search out and calculate information in relation to a material valuation criterion for LPT securities when it is readily available to Stockland and plainly material. The Panel also noted the fact that Stockland had prominently compared the value of its offer to the NTA of GPT securities. The Panel considered that this increased the onus on Stockland to disclose the notional effect of its offer on the notional NTA of GPT securities.

The Panel required Stockland to insert a clear and prominent analysis of the NTA issue in an appropriately prominent position in the supplementary bidder's statement.

CAGR calculations

The Panel did not consider the presentation in the Bidder's Statement concerning Stockland's claims as to "Success in integrating acquisitions and executing a growth strategy" to be misleading. The basis for calculating the percentage CAGR increases set out in the three tables discussed in the application was adequately disclosed.

The Panel did not agree with GPT's assertions that non-takeover-premium CAGRs ought to be disclosed instead or as well. If GPT chooses, it has the opportunity to make its own comments in its target's statement as to its preferred methodology for calculating CAGRs, its reasons for preferring that methodology and its reasons for disagreeing with Stockland's methodology.

Decision

On 8 December, the Panel wrote to parties advising them of its views in relation to the above issues and stating that it was minded to make a declaration of unacceptable circumstances and final orders to remedy the unacceptable circumstances it had identified.

However, the Panel advised that it was prepared to consider an undertaking by Stockland to correct its Bidder's Statement to remedy the unacceptable circumstances.

Form of corrective statements

The Panel's preferred approach regarding the correction of the identified mis-statements and omissions was to have a replacement bidder's statement prepared, incorporating the amended and new information, for dispatch to GPT unitholders.

However, in order to mitigate any unnecessary cost or delay, the Panel was prepared to consider having the additional and corrective disclosure contained in a supplementary bidder's statement to be dispatched with the existing Bidder's Statement. The Panel was only prepared to accept corrective disclosure in this form on the following bases:

- The supplementary bidder's statement contained statements consistent with those required under the Panel's *Guidance Note 16: Correction of Takeover Documents*.
- As the additional and corrective disclosure was to replace existing misleading disclosure on pages 6 and 7 of the Bidder's Statement, the supplementary bidder's statement must be as close as possible in form to those relevant pages of the Bidder's Statement which were to be disregarded and clearly state that unitholders should disregard those pages in the Bidder's Statement .
- The supplementary bidder's statement be placed ahead of the Bidder's Statement in the package of material provided to GPT unitholders, so that unitholders are more likely to read and consider this material.

Stockland accepted the Panel's requirements and provided a draft supplementary bidder's statement correcting the identified mis-statements and omissions for the Panel's review. GPT was given an opportunity to make submissions regarding the draft supplementary bidder's statement.

The Panel accepted an undertaking from Stockland to issue a supplementary bidder's statement with the Bidder's Statement, in the final form approved by the Panel.

Based on the undertaking provided by Stockland, the Panel concluded its proceedings on the basis that it was not necessary to make a declaration of unacceptable circumstances and that no order was required.

The Panel will publish its reasons for its decision in these proceedings on its website in due course.

The sitting Panel comprised Norman O'Bryan SC (sitting President), Mark Paganin (sitting Deputy President) and Marian Micalizzi.

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