

# ASX Announcement

Hastings Diversified Utilities Fund (HDF)

Total pages: 5

20 July 2012

## HDF update – ACCC decision and AFIC Takeovers Panel application

### ACCC decision

Hastings Funds Management Limited (HFML), as Responsible Entity for HDF, notes the announcement by the Australian Competition and Consumer Commission (ACCC) that it will not oppose APA Group's (APA) takeover offer for all remaining securities in HDF, on the condition that APA divests the Moomba to Adelaide Pipeline System (MAPS). HDF also notes that APA has indicated that it will waive the ACCC condition to its bid.

The current implied value of APA's offer, comprised of \$0.425 cash and 0.326 APA stapled securities, for all issued securities in HDF was \$2.08 as at market close on 19 July 2012.

A subcommittee of independent directors of HFML continues to unanimously recommend that HDF Securityholders REJECT APA's offer. APA's offer remains subject to a number of conditions, including 90 percent acceptance of the offer by Securityholders, change of control financing arrangements and other regulatory approvals.

Please see the attached news release outlining the ACCC's decision.

### Takeovers Panel application

HFML notes that further to the 13 July 2012 announcement on HDF's correspondence with Australian Foundation Investment Company (AFIC), AFIC has submitted an application to the Takeovers Panel in relation to the current takeover activity.

HDF will inform the market should the Takeovers Panel decide to commence proceedings in relation to the matter.

Please see the attached media release from the Takeovers Panel.

### For further enquiries, please contact:

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A handwritten signature in blue ink, appearing to read 'Jane Frawley'. The signature is fluid and cursive, with the first name 'Jane' and the last name 'Frawley' clearly distinguishable.

**Jane Frawley**  
**Company Secretary**  
Hastings Funds Management Limited



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# NEWS RELEASE

## ACCC TO NOT OPPOSE ACQUISITION BY APA OF HDF SUBJECT TO DIVESTITURE

The ACCC today announced that it would not oppose the proposed acquisition by APA Group (APA) of Hastings Diversified Utilities Fund (HDF) after accepting a court enforceable undertaking from APA to divest the Moomba to Adelaide Pipeline System (MAPS).

APA owns a number of gas transmission pipelines in Australia including the Moomba to Sydney Pipeline, the Victorian Transmission System and a 50% interest in the SEA Gas pipeline. HDF is the owner of Epic Energy Pty Ltd which in turn owns several gas transmission pipelines including the South West Queensland Pipeline (SWQP), the Queensland to South Australia/New South Wales Link (QSN) and the MAPS.

The ACCC undertook extensive consultation on the proposed acquisition, with a strong focus on the extent to which APA and Epic imposed competitive constraints upon each other. The ACCC examined whether the proposed acquisition would be likely to result in higher prices for the transportation of gas or more costly or difficult developments of new pipelines.

"The ACCC had significant concerns that, absent the undertaking, APA would own all of the pipelines servicing Moomba and have a significant interest in both of the pipelines servicing Adelaide and that this would substantially lessen competition in the supply of gas transmission pipeline services and ancillary services," ACCC Chairman Rod Sims said.

"The ACCC is satisfied that the divestiture of the MAPS addresses these primary competition concerns by ensuring that there is a separate owner of gas pipelines servicing Adelaide and Moomba."

Some market participants expressed concerns in relation to the transaction notwithstanding the undertaking, particularly in relation to the impact on transportation charges for any flows of gas from south to north in eastern Australia and on competition for the construction of new pipelines.

"However, after careful consideration, including close consultation with the relevant industry players, the ACCC formed the view that, while there were concerns, they did not amount to a substantial lessening of competition," Mr Sims said.

The ACCC was not satisfied that if south to north flows were to occur, the MSP and QSN/SWQP would impose a significant competitive constraint on one another. "The ACCC also considered that there were likely to be other competitive constraints on APA which were important in determining the price of the transportation of gas, such as alternative pipelines including MAPS, the threat of gas swaps and generally the countervailing power of the major gas suppliers," Mr Sims said.

The undertaking will be available on the ACCC's website. A Public Competition Assessment will be issued by the ACCC in due course.

### Media inquiries

Mr Rod Sims, ACCC Chair, (02) 6243 1108 or 0408 995 408

Mr Duncan Harrod, media unit, (02) 6243 1108 or 0408 995 408

### General inquiries

Infocentre: 1300 302 502

NR 144/12

19 July 2012



Australian Government

Takeovers Panel

# MEDIA RELEASE

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No: TP12/43

Friday, 20 July 2012

## **Hastings Diversified Utilities Fund 02 – Panel Receives Application**

The Panel has received an application from Australian Foundation Investment Company Limited (AFIC), a unit holder in Hastings Diversified Utilities Fund (HDF), in relation to the affairs of HDF.

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**

HDF is composed of three stapled trusts.<sup>1</sup> Hastings Funds Management Limited (Hastings Funds) is the responsible entity of the trusts. HDF is the subject of competing bids from APT Pipelines Limited (APT) and Pipeline Partners Australia Pty Ltd (PPA).

AFIC submits, among other things, that:

- holders of HDF securities are entitled to a proper and full evaluation of internalisation of management in the context of a takeover bid in which they must decide whether to sell or hold their securities
- AFIC was informed that the board of Hastings Funds was not pursuing an internalisation of management of HDF
- by Takeover Bid Implementation Deed dated 13 July 2012 between Hastings Funds and PPA, under which Hastings Funds has recommended PPA's bid, Hastings Funds is precluded from portraying internalisation of management favourably and

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<sup>1</sup> HDUF Epic Trust, HDUF Finance Trust and HDUF Further Investments Trust

- not providing unit holders in HDF a proper and full evaluation of internalisation of management before they decide whether to accept PPA's bid is contrary to the principles in s602(a) (an efficient, competitive and informed market) and s602(b)(iii) (enough information to assess the merits of a proposal).

AFIC seeks final orders, including:

- that Hastings Funds and PPA amend the Takeover Implementation Deed to allow Hastings Funds to obtain a proper and full evaluation of internalisation of management and to distribute it to unit holders
- that Hastings Funds obtain a proper and full evaluation of internalisation of management prepared by an independent party and
- that acceptances of PPA's bid received before the 11<sup>th</sup> business day following dispatch to unit holders of a proper and full evaluation of internalisation of management be cancelled.

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