

DEXUS Property Group (ASX: DXS)

ASX release

11 April 2016

IOF - Takeovers Panel declaration of unacceptable circumstances, orders and IOMH's corrective disclosure

DEXUS Funds Management Limited ("DXFM" or "DEXUS RE"), the responsible entity of DEXUS Property Group ("DEXUS"), refers to the Takeovers Panel ("Panel") declaration of unacceptable circumstances in relation to the affairs of Investa Office Fund ("IOF").

The Panel's declaration is in response to an application to the Panel made by DEXUS RE on 21 March 2016. This declaration, together with the Panel's Decision (in its media release of 8 April 2016) and the orders made are attached.

Orders made by the Panel

The Panel found that the document issued by Investa Office Management Holdings ("IOMH"), the holding company of the manager of IOF (Investa Office Management), on 14 March 2016 (the "IOMH Document") is misleading or confusing for, or has the potential to mislead or confuse, IOF Unitholders in circumstances where it is not sufficiently clear that IOMH has an interest in the proposal not succeeding. The Panel considered that the IOMH Document did not disclose readily and reasonably the interests that IOMH had when advocating against the DEXUS Proposal and recommending the "No" vote.

In summary, the Panel ordered that IOMH make further disclosure which makes 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 Investa Office Management Platform, including the manager, to Investa Commercial Property Fund) if the DEXUS Proposal should succeed or fail.

A copy of the corrective disclosure issued by IOMH as ordered by the Panel is attached. IOF Unitholders are encouraged to read that disclosure.

The Panel also considered that the proxy form attached to the IOMH Document was likely to mislead or confuse IOF Unitholders and ordered that IOMH inform IOF Unitholders that the proxy form was from IOMH and was not issued by Investa Listed Fund Management Limited as responsible entity of Investa Office Fund ("IOF RE") or the Independent Directors (the "Independent Board Committee" or "IBC") of the IOF RE.

Further, the Panel determined that neither of IOMH's notice of ceasing to be a substantial holder in IOF dated 8 March 2016 nor the one dated 23 March 2016 complied with section 671B of the Corporations Act 2001. The Panel has ordered that IOMH lodge an amended notice of ceasing to be a substantial holder in IOF, attaching an unredacted copy of the Platform Sale Agreement, together with a covering letter explaining that it is an amended notice.

Meeting of IOF Unitholders on 15 April 2016

DEXUS is pleased to note the Panel's decision in relation to the misleading and confusing IOMH Document. The Panel's declaration of unacceptable circumstances in relation to the matters described above vindicates the action taken by DEXUS. We note the Panel decided not to interfere with the voting rights attached to IOF units with regard to the Morgan Stanley Real Estate Investing entities.

DEXUS RE encourages all IOF Unitholders to express their opinion on the DEXUS Proposal at the forthcoming meeting of IOF Unitholders at 10.00am, Friday 15 April, 2016.

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IOF Unitholders on the IOF Register as at 7.00pm (Sydney time), Wednesday 13 April 2016, will be entitled to attend and vote at the Meeting (subject to any applicable voting exclusions). Completed proxy forms must be received by the IOF Registry no later than 10.00am on Wednesday 13 April 2016.

If you submitted the proxy form provided by IOMH and feel misled and wish to change your vote, you can do so by lodging a new proxy form (online, by mail, by fax or by hand) or by attending the voting at the meeting in person on 15 April 2016. If you need a new proxy form or any assistance with lodging your proxy form, please contact the IOF Registry on 1300 308 902 (or from overseas on +61 2 9098 9228).

Recommendation of the Independent Directors of IOF RE

DEXUS notes the Independent Directors of IOF RE continue to unanimously recommend that you vote in favour of the Proposed Resolutions at the Meeting, in the absence of a Superior Proposal.

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About DEXUS

DEXUS Property Group is one of Australia's leading real estate groups, investing directly in high quality Australian office and industrial properties. With \$21.1 billion of assets under management, the Group also actively manages office, industrial and retail properties located in key Australian markets on behalf of third party capital partners. The Group manages an office portfolio of 1.8 million square metres located predominantly across Sydney, Melbourne, Brisbane and Perth and is the largest owner of office buildings in the Sydney CBD, Australia's largest office market. DEXUS is a Top 50 entity by market capitalisation listed on the Australian Securities Exchange under the stock market trading code 'DXS' and is supported by more than 32,000 investors from 21 countries. With 30 years of expertise in property investment, development and asset management, the Group has a proven track record in capital and risk management, providing service excellence to customers and delivering superior risk-adjusted returns for its investors. www.dexus.com

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DEXUS Funds Management Ltd ABN 24 060 920 783, AFSL 238163, as Responsible Entity for DEXUS Property Group (ASX: DXS)



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



Australian Government

Takeovers Panel

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



Australian Government

Takeovers Panel

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

08.04.16

Investa Office Fund (ASX:IOF)

Takeovers Panel declaration of unacceptable circumstances, orders and IOMH's corrective disclosure

Investa Listed Funds Management Limited (**ILFML**) as responsible entity of the Investa Office Fund (**IOF**) notes the declaration of unacceptable circumstances and final orders made by the Takeovers Panel on 8 April 2016 requiring corrective disclosure to be provided by Investa Office Management Holdings Pty Ltd (**IOMH**), the owner of IOF's manager.

The Panel's declaration and orders were in relation to an application by DEXUS Funds Management Limited as responsible entity of DEXUS Property Group dated 21 March 2016.

The corrective disclosure required by the Takeovers Panel from IOMH is attached.

IOMH has prepared and is responsible for the corrective disclosure.

-ENDS-

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8 April 2016

Dear IOF unitholder,

Investa Office Fund - Supplementary Disclosure by order of the Takeovers Panel

I am writing to you as the Managing Director and CEO of Investa Office Management Holdings Pty Limited (**IOMH**), the owner of the manager of Investa Office Fund.

On 21 March 2016, DEXUS Funds Management Limited as responsible entity of DEXUS Property Group, commenced an application before the Takeovers Panel in relation to a range of matters in respect of the transaction under which it is seeking to acquire all of the units in Investa Office Fund (**DEXUS Proposal**).

The Takeovers Panel made a declaration of unacceptable circumstances and has made orders requiring that Investa Office Management make further disclosure in respect of its interest in IOF and the DEXUS proposal and the proxy form sent out by Investa Office Management. The Panel also required that a further notice of ceasing to be a substantial holder be lodged by Investa Office Management, this time attaching a copy of the agreement between ICPF and Morgan Stanley in relation to the sale of Investa Office Management that did not redact the provisions relating to employees of Investa Office Management.

Accordingly, further to a document issued by Investa Office Management titled "Important Information for IOF unitholders" dated 14 March 2016 which was mailed to IOF unitholders by Investa Office Management (**IOMH Document**) and the letter to IOF unitholders dated 6 April 2016, Investa Office Management provides the following supplementary and corrective disclosure:

- **Investa Office Management's interests in IOF:** As previously disclosed, since 2011, Investa Office Management Group has acted as manager of IOF. Investa Office Management also owns the Responsible Entity of IOF. The board of the Responsible Entity of IOF appointed the independent board committee in conjunction with Morgan Stanley proposing to sell Investa Office Management. The members of the independent board committee now comprise the board of the Responsible Entity of IOF and are independent of Investa Office Management.

The Investa Office Management group receives fees under these arrangements. The responsible entity fee that Investa Office Management receives from IOF is 0.55% per annum of IOF's market capitalisation, to be paid quarterly. The fee for a quarter cannot change by more or less than 2.5% from the previous quarter. Investa Office Management also receives other fees from IOF, including

safe custody fees, property management fees, leasing fees and project management fees. These fees in total amounted to c.\$19 million in FY2015 and are set out in detail in the IOF's 2015 Annual Report, which is available from www.asx.com.au and www.investa.com.au

- **Consequences of DEXUS Proposal:** Many of these fees will be lost if the DEXUS Proposal proceed and DEXUS implements its intentions as described in the IOF Explanatory Memorandum. DEXUS has indicated that it will remove ILFML as the responsible entity of IOF and as manager of IOF. Fees for these services amounted to c.\$11 million in FY 2015. DEXUS has also indicated it will remove Investa Office Management as property manager for IOF when it has the opportunity to do so, however, those agreements are fixed term and so property management fees are likely to continue to the end of the relevant fixed terms.
- **Loss of scale if DEXUS proposal is implemented:** If the DEXUS proposal proceeds, Investa Office Management will lose the fund management rights in respect of IOF, whose assets represent approximately 40% of Investa Office Management's assets under management. Investa Office Management may restructure its business to suit this reduced scale (refer below to the payment arrangements with Morgan Stanley).
- **Effect of the DEXUS Proposal on IPG's rights and obligations under the Platform Sale Agreement:** The Investa Office Management platform was recently acquired from Morgan Stanley by an entity stapled to the Investa Commercial Property Fund (**IPG**). The agreement under which it occurred has been released to the ASX with IOMH's notice that it has ceased to be a substantial holder of IOF, lodged with the ASX on 8 April 2016. Under that agreement, IPG agreed to pay to Morgan Stanley \$90 million for the Investa Office Management business. The first instalment of \$45 million was paid on 4 March 2016. The second instalment of \$45 million is only payable in certain circumstances. If the DEXUS proposal proceeds, while Investa Office Management is likely to lose the management fees as described above, IPG will not be required to pay Morgan Stanley the second half of the of the Investa Office Management platform purchase price of an additional \$45 million. In these circumstances, IPG will also be entitled to recover from Morgan Stanley up to \$8 million in restructuring costs.
- **Proxy form accompanying the IOMH Document:** The IOMH Document included instructions as to how to vote against the DEXUS proposal and was sent with a proxy form appointing Jonathan Callaghan, Managing Director and CEO of Investa Office Management, as proxy and recommending that IOF unitholders vote against the resolutions in respect of the DEXUS proposal. Unitholders should note that under this proxy form, Jonathan Callaghan will be your proxy if no alternative is nominated by you. If no voting direction is given in that proxy form, Jonathan Callaghan will direct any votes against the proposed resolutions, which is the opposite of the default voting direction in the proxy form issued by the independent board committee of the responsible entity of IOF (**IBC**).

This proxy form is valid, but if any IOF unitholders have voted on the proxy form which accompanied the IOMH Document and did not understand that it was a document that was not issued by the responsible entity of IOF or the IBC and now wish to change their vote, they can do so by lodging a new proxy form (online, by mail, by fax or by hand) or by attending and voting at the meeting of IOF unitholders in person on 15 April 2016.

If you need a new proxy form or any assistance with lodging your proxy form, please contact the IOF Registry on 1300 308 902 (or from overseas on +61 2 9098 9228).

The latest time and date for receipt of proxy forms by the IOF Registry for the meeting to consider the DEXUS Proposal is 10.00am Wednesday, 13 April 2016.

Yours sincerely,



Jonathan Callaghan
Managing Director and CEO, Investa

Important Notices

This document is provided by Investa Office Management Holdings Pty Limited (ACN 126 219 903) of Level 6, Deutsche Bank Place, 126 Phillip Street, Sydney NSW 2000, Phone: +61 2 8226 9300 (**IOMH**). IOMH is a related body corporate of Investa Listed Funds Management Limited (ACN 149 175 655) (**IOF RE**), which is the responsible entity of Investa Office Fund (**IOF**). This document has not been issued by or on behalf of, and is not otherwise approved or endorsed by, IOF RE, either in its capacity as responsible entity of Investa Office Fund or in any other capacity. This document contains general financial product advice only and has been prepared without taking account of the investment objectives, financial situation, tax position or particular needs of any Unitholder or any other person. IOMH is the authorised representative of Columbus Investment Services Limited ACN 106 064 644, AFSL 246943 of 20 Hunter Street, Sydney NSW 2000 (phone: +61 2 8277 0020).