

Australian Securities and Investments Commission
Corporations Act 2001 – Subsections 601QA(1) and 1020F(1)(a) – Declaration and Exemption

Enabling legislation

1. The Australian Securities and Investments Commission (**ASIC**) makes this instrument under subsections 601QA(1) and 1020F(1)(a) of the *Corporations Act 2001 (Act)*.

Title

2. This is ASIC Instrument 21-0736.

Commencement

3. This instrument commences on the date it is signed.

Exemptions

4. Redcape Hotel Group Management Limited ACN 610 990 004 (**Redcape RE**) in its capacity as the responsible entity of Redcape Hotel Trust I (ARSN 629 354 614) and Redcape Hotel Trust II (ARSN 629 354 696) (**the Schemes**) does not have to comply with:
 - (a) paragraph 601FC(1)(d) to the extent that it requires the responsible entity of a registered scheme to treat members who hold interests in the same class equally;
 - (b) paragraph 601FG(1)(a); and
 - (c) Division 5A of Part 7.9.

Declaration

5. Chapter 5C of the Act applies to a responsible entity as if Part 5C were modified or varied by, after Part 5C.6, inserting:

“Part 5C.6B – Buy-backs by listed schemes

Division 1 – Preliminary**601KJ Application of this Part**

This Part applies to the purchase of interests in a listed managed investment scheme by the responsible entity of the scheme where the purchase is off-market and does not take place in the ordinary course of trading on the financial market of ASX Limited (**ASX**), and the purchase price is paid from scheme property. For the purposes of this Part, such a purchase is referred to as a **buy-back**.

Division 2 – Requirements for buy-backs

601KK Constitutional provisions about buy-backs

If the responsible entity of the scheme is to have the power to buy back an interest in the scheme, the power must be specified in the scheme's constitution.

601KL Procedural requirements for buy-backs

- (1) A responsible entity must not buy back an interest in the scheme otherwise than in accordance with the scheme's constitution and this section.
- (2) A responsible entity may buy back an interest if it does not materially prejudice the responsible entity's ability to pay its creditors in relation to liabilities incurred or acquired by it as responsible entity of the scheme.
- (3) A responsible entity that buys back an interest in the scheme:
 - (a) must only buy the interest if it has:
 - (i) obtained, by resolution at a meeting of members of the scheme in the last 12 months, the approval of members of the terms of the proposed buy-back arrangement; and
 - (ii) included with the notice of meeting a statement setting out all information known to the responsible entity that was material to the decision how to vote on the resolution other than information that it would be unreasonable to require the responsible entity to disclose because it had previously disclosed the information to the scheme's members;
 - (b) if it reasonably believes that it complies with the listing rules of the ASX that apply to buy-backs as if:
 - (i) the scheme were a company included in the official list of the financial market of the ASX; and
 - (ii) interests in the scheme were shares in the company; and
 - (c) must not dispose of the interests it buys back.
- (4) Immediately after registration of the transfer to the responsible entity of the interests bought back, the interests are cancelled.

601KM Interaction with other provisions of this Chapter

For the avoidance of doubt, subsection 601GA(4) and Part 5C.6 do not apply to a buy-back under this Part."

Where this instrument applies

6. Paragraphs 4 and 5 apply where:
- (a) Redcape RE makes an invitation to Eligible Redcape Securityholders to participate in the Buy-Back at the Buy-Back Price;
 - (b) Redcape RE has given the Explanatory Statement to all members of the Schemes who are eligible to participate under the Buy-Back that:
 - (i) states all information known to Redcape RE that is material to the decision of a member of the Schemes whether or not to participate in the Buy-Back;
 - (ii) specifies the period to elect to participate in the Buy-Back, being at least 21 days;
 - (iii) specifies the scheme assets that will be used to satisfy the liability to pay for interests to be bought back; and
 - (iv) specifies the Buy-Back Execution Rules to be applied if the elections to participate in the Buy-Back exceed the Buy-Back Limit;
 - (c) after the Explanatory Statement are given to members of the Schemes, the members have a reasonable opportunity to elect to participate in the Buy-Back at the Buy-Back Price; and
 - (d) Redcape RE carries out the Buy-Back in accordance with the terms as described in the Explanatory Statement under which all members of the Scheme are to be treated equally except as follows:
 - (i) elections to participate in the Buy-Back will be accepted in accordance with the Buy-Back Execution Rules.

Interpretation

7. In this instrument:

Buy-Back means an acquisition of Redcape Securities by Redcape RE through an off-market buy-back in accordance with this instrument.

Buy-Back Closing Date means 18 October 2021.

Buy-Back Date means the date the Redcape Securities will be bought back by Redcape RE.

Buy-Back Execution Rules means if at the Buy-Back Closing Date, Redcape RE has received elections to participate in the Buy-Back that in aggregate are:

- (a) more than the Buy-Back Limit then:
- (i) all Redcape Securities elected by Redcape Securityholders to participate in the Buy-Back are bought back subject to a reduction by the same proportion (pro rata subject to rounding of fractions) being the proportion needed to ensure that:
 - (A) after taking into account the Priority Acquisition and the Small Holding Acquisition, no more than the number of Redcape Securities corresponding to the Buy-Back Limit is bought back; and
 - (B) the Priority Acquisition and the Small Holding Acquisition may be bought back; and
 - (ii) the Priority Acquisition and the Small Holding Acquisition are bought back; or
- (b) equal to or less than the Buy-Back Limit then all Redcape Securities elected by Redcape Securityholders to participate in the Buy-Back are bought back.

Buy-Back Price is the price at which the Redcape Securities will be bought back under the Buy-Back which will be \$1.15 per security.

Buy-Back Limit is the maximum number of Redcape Securities, being up to 215.0 million Redcape Securities, that may be bought back under the Buy-Back as set out in the Explanatory Statement.

Eligible Redcape Securityholder means Redcape Securityholders who are eligible to participate in the Buy-Back as set out in the Explanatory Statement.

Explanatory Statement means the Notice of Meeting and Explanatory Statement dated 18 August 2021 sent to Redcape Securityholders in relation to the Buy-Back, which is substantially in the same form as provided to ASIC on 17 August 2021.

Market Price has the meaning given by the listing rules of ASX Limited as in force at the date of this instrument.

Priority Acquisition means Redcape RE buying back Redcape Securities from a Redcape Securityholder who has elected to participate in full in the Buy-Back and where the entire holding of the Redcape Securityholder is \$2,000 or less as based on the Market Price at or about the time of determination by Redcape RE (being a time on a date not earlier than 7 days before the Record Date) or such lesser number of Redcape Securities as is required to ensure that the Buy-Back Limit is not exceeded as a result of the aggregate number of Redcape Securities bought back by Redcape RE pursuant to this Priority Acquisition and the Small Holding Acquisition.

Record Date means 17 September 2021.

Redcape Security means an interest in each of the Schemes where under the terms on which each is to be traded, they must be transferred together.

Redcape Securityholder means the holder of a Redcape Security.

Small Holding Acquisition means Redcape RE buying back the entire remaining balance of a Redcape Securityholder who has elected to participate in full in the Buy-Back, where the remaining holding of the Redcape Securityholder after :

- (a) the Priority Acquisitions are bought back; and
- (b) application of a pro-rata scale-back to remaining Redcape Securities elected to be bought back under the Buy-Back (so that no more than the number of Redcape Securities corresponding to the Buy-Back Limit would be bought back);

is \$500 or less based on the Market Price at or about the time of determination by Redcape RE (being a time on a date not earlier than 7 days before the Record Date) and the Redcape Securityholder does not hold any more Redcape Securities than were held by that Redcape Securityholder at the Record Date.

Dated this 18th day of August 2021.



Signed by Christine Binder
as delegate of the Australian Securities and Investments Commission