

# DEAL REPORT: BROOKFIELD'S PROPOSAL TO ACQUIRE AVEO GROUP

NOVEMBER 2019

## KEY POINTS TO NOTE FOR FUTURE TRANSACTIONS



The Aveo directors and the independent expert based their recommendation and conclusion (respectively) on the Cash Consideration, with the expert expressing the view that if it had assessed the fairness of the two schemes based solely on the Scrip Consideration, it would likely have concluded that the Transaction was not fair.



The Court took particular interest in certain aspects of the risk disclosure in respect of the Scrip Consideration in the scheme booklet, including by raising questions of whether the extent of repetition of that disclosure might undermine the objective of clear and concise disclosure in the scheme booklet and whether there was sufficient disclosure of specific near term risks.



The Scrip Consideration takes the form of units in a Bermudan limited partnership, with the choice of that jurisdiction perhaps being made in response to ASIC's recent consultation paper on the use of "stub equity" in control transactions. The Court noted the risks associated with an investment in an unlisted foreign body but was satisfied that those risks were adequately disclosed to Aveo securityholders.



The fact that an Aveo securityholder also holds performance rights as an incident of their employment by Aveo is not itself class creative for the purposes of the Scheme and an interest in such rights does not prevent an executive director from making a recommendation in respect of the Transaction.

## PARTIES



### TARGET

Aveo Group comprising Aveo Group Limited (AGL) and Aveo Funds Management Limited as responsible entity of the Aveo Group Trust (Aveo Funds RE, and together with AGL, Aveo).



### BIDDER

Hydra RL BidCo Pty Ltd (Bidder), an entity controlled by Brookfield Asset Management Inc. (Brookfield) on behalf of its managed funds.

## TRANSACTION SNAPSHOT

The transaction (Transaction) involves a proposal by Bidder to acquire all of the issued securities in Aveo via:

- + in the case of AGL, a scheme of arrangement under Part 5.1 of the Corporations Act 2001 (Cth) (Corporations Act) (Scheme); and
- + in the case of Aveo Group Trust, a trust scheme as contemplated by the Takeovers Panel's Guidance Note 15 *Trust Scheme Mergers* (Trust Scheme).

The consideration offered takes the form of a choice between Cash Consideration and Scrip Consideration.

The execution of a scheme implementation deed in respect of the Transaction (SID) on 14 August 2019 represented the culmination of a strategic review announced by Aveo in November 2018 (Strategic Review). That review was overseen by an independent board committee of Aveo directors and is reported to have involved a number of interested parties. Aveo made a series of announcements regarding the status of that review, including in response to media articles about it.

## CONSIDERATION

A choice of:

- + cash consideration of \$2.15 (Cash Consideration); or
  - + scrip consideration representing 2.15 AOG LP Units (Scrip Consideration),
- per Aveo security.

## PERMITTED DISTRIBUTION

A distribution of 4.5 cents per security which was announced prior to announcement of the Transaction (Permitted Distribution).

## TRANSACTION VALUE

Based on the Cash Consideration and the Permitted Distribution:

- + an implied equity value of \$1.3 billion; and
- + an enterprise value of \$2.0 billion.

## BOARD RECOMMENDATION

Unanimous support for the Transaction, but no recommendation made in relation to the Scrip Consideration.

## PREMIUM

Based on the Cash Consideration and together with the Permitted Distribution, a premium of approximately 28% compared to the price of securities on the trading day immediately prior to Aveo announcing receipt of a number of indicative proposals in February 2019.

## LEVEL OF SECURITYHOLDER SUPPORT

- + Scheme: agreed to by 81.35% in number of securityholders present and voting in person or by proxy and 91.86% of votes cast.
- + Trust Scheme: necessary resolutions passed by majorities of 91.87% and 91.86% (respectively) of votes cast in favour of those resolutions.



## FINANCING ARRANGEMENTS

A combination of:

- + equity commitments from alternative investment vehicles controlled by Brookfield;
- + shareholder loans from those same vehicles; and
- + third party debt financing.

The third party debt financing is proposed to take the form of a combination of term loan and revolving facilities for an aggregate amount of approximately \$1.1 billion from a syndicate of ANZ, Barclays and Bank of China.

## DETAILS OF SCRIP CONSIDERATION

The Scrip Consideration takes the form of units (**AOG LP Units**) in a Bermuda exempt limited partnership (**AOG LP**) which will hold a class of securities in the Australian holding company of Bidder (**TopCo**).

The availability of the Scrip Consideration is subject to:

- + a minimum Scrip Consideration threshold, being scrip elections from holders of more than 10% of Aveo securities; and
- + a cap on such elections representing 30% of the total issued share capital of TopCo, with a pro rata scale back mechanism to apply if such cap is reached. If scrip elections are scaled back, then Cash Consideration will be paid in respect of the excess over the 30% cap.

The AOG LP Units are to be issued subject to the terms of a partnership agreement which includes a range of provisions which may affect the attractiveness of a scrip election for some holders of Aveo securities. Those provisions include restrictions on transferring AOG LP Units and, for certain securityholders, a restraint on (among other things) engaging or being interested in a competing business in Australia which survives for 3 years after disposing of AOG LP Unit.

The selection of a Bermudan entity to hold interests in TopCo may have been influenced by ASIC's *Consultation Paper 312: Stub equity in control transactions* which proposes the introduction of a number of legislative instruments that seek to address ASIC's concerns about recent control transactions where the consideration offered includes "stub equity" in proprietary companies or which involve the holding of scrip through custody arrangements which result in the issuer of that scrip not being subject to Chapter 6 (and certain other provisions) of the Corporations Act.

We infer that the scrip component is, in part, directed at ensuring that Mulpha Group has an ability to retain an exposure to Aveo following implementation of the Transaction, should their support of the Transaction be dependent on that matter (see comments below).

## ACQUISITION OF PRE-BID STAKE

No.

The Aveo board nominees of Aveo's largest securityholder, Mulpha Group, joined the other Aveo directors in unanimously recommending that Aveo securityholders vote in favour of the Transaction in the absence of a superior proposal and subject to the independent expert concluding that the Transaction is in the best interests of Aveo securityholders; however, they made no representation as to the voting intentions of the Mulpha Group.

On 28 October 2019, Aveo announced that Mulpha Group had elected to receive the Scrip Consideration in respect of 94,926,342 Aveo securities (representing approximately 16.3% of Aveo securities and out of a total of 141,615,220 Aveo securities held by Mulpha Group) and that, in total, scrip elections were made in respect of approximately 100 million Aveo securities.



## CONDITIONS PRECEDENT



FIRB approval and any necessary ASIC relief.



The support of Aveo securityholders by the requisite majorities.



Court approval of the Scheme and the grant of judicial advice in respect of the Trust Scheme.



No legal restraint rendering unlawful implementation of the Transaction.



No material adverse change in respect of Aveo – triggered by diminution in net assets (2%) or underlying EBITA (\$10 million).



No prescribed occurrence or regulated event in respect of Aveo.



No breach of representation or warranty.



Completion of certain corporate restructure steps.



The making of a technical determination by Aveo Funds RE.

## EXCLUSIVITY

Yes - customary suite of no-shop, no-talk, notification and matching right provisions; however, one notable feature is that the no-shop / no-talk provision restricts Aveo from recommending “existing discussions and negotiations with all persons other than Brookfield in respect of any Alternative Transaction” and such restriction is not subject to the fiduciary exception. We infer that this aspect of the exclusivity arrangements is referable to the Transaction following the Strategic Review.

## BREAK FEE

Amount: 1% of implied equity value.

Payable if:

- + any Aveo board member withdraws recommendation, unless the independent expert concludes that the Transaction is not in the best interests of Aveo securityholders or Aveo is entitled to terminate the Transaction in accordance with the SID;
- + any Aveo board member recommends an ‘Alternative Transaction’;
- + an ‘Alternative Transaction’ of certain specified kinds completes or becomes the subject of an agreement with Aveo within 12 months from the date of its announcement; or
- + Brookfield has terminated the SID in certain specified circumstances.

## REVERSE BREAK FEE

No.

## TERMINATION

- + Either party may terminate for material unremedied breach, the imposition of a permanent restraining order by a government agency, the non-fulfilment of a condition precedent which is expressed to benefit that party or if the schemes have not become effective by the agreed sunset date.
- + Brookfield may terminate if Aveo experiences a prescribed occurrence or a regulated event and fails to remedy that circumstance within 5 business days or if an Aveo director fails to recommend the Transaction or withdraws or modifies their support of the Transaction or their recommendation in respect of it.
- + Aveo may terminate if all or a majority of the Aveo directors change, withdraw or modify their recommendation following receipt of an unmatched superior proposal or if the independent expert concludes that the Transaction is not in the best interests of Aveo securityholders.
- + Either party may terminate in certain circumstances as a result of the other party being in breach of a representation or warranty given by that other party.



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