

Section 9

Other Material Information

9. Other Material Information

9.1 Tab Options

Bidder will seek to enter into arrangements with the holders of the Tab Options to effect either the transfer or cancellation of those options based on the 'in the money' value of the Tab Options using a Tab Share price of \$4.50. Any such arrangements with holders of Tab Options will be conditional on all of the conditions of the Offer being satisfied or waived by Bidder and will comply with the Corporations Act.

If such arrangements are pursued, and any of the Tab Options are not transferable under their terms of issue, Bidder will, subject to any consent required under the ASX Listing Rules being obtained, seek to have the Tab Options cancelled for the payment of a cancellation fee.

If Tab Options are not acquired by Bidder or cancelled pursuant to arrangements with the holders of those options as described above, Bidder intends to seek to compulsorily acquire the outstanding Tab Options under the Corporations Act after the close of the Offer, assuming it becomes entitled to do so.

9.2 ASIC modifications and exemptions

(a) Class Orders

ASIC has published various 'Class Order' instruments providing for modifications and exemptions that apply generally to all persons, including Bidder and TABCORP, in relation to the operation of Chapter 6 of the Corporations Act.

Amongst others, Bidder and TABCORP have relied on the modification to section 636(3) of the Act set out in paragraph 11 of ASIC Class Order 01/1543 'Takeover Bids' to include references to certain statements by Tab, the ACCC, UNiTAB and NSW Racing in this Bidder's Statement without obtaining the consent of those persons. The relevant statements were respectively taken from:

- Tab's ASX release dated 12 December 2003 entitled 'Profit Update', Tab's ASX release dated 19 December 2003 entitled 'Tab Welcomes Takeover Proposal from UNiTAB', the half year report for Tab for the six months ended 31 December 2003 (which was lodged with ASIC and provided to ASX on 6 February 2003) and Tab's target's statement dated 5 March 2004 in relation to UNiTAB's offer for Tab (which was lodged with ASIC and given to ASX on 5 March 2004);
- an ACCC media release MR 275/03 on 18 December 2003 entitled 'A.C.C.C. not to oppose merger between TABCORP Holdings Limited and Tab Limited or the proposed merger between UNiTAB Limited and Tab Limited';
- UNiTAB's ASX release dated 19 December 2003 entitled 'Announcement of Recommended Takeover Offer for Tab Limited' and UNiTAB's bidder's statement dated 22 January 2004 in relation to its takeover bid for Tab (which was lodged with ASIC and given to ASX on 22 January 2004); and
- UNiTAB's ASX release dated 23 February 2004 attaching a media release dated 23 February 2004 from NSW Racing entitled 'UNiTAB Proposal Not Accepted by NSW Racing'.

As required by Class Order 01/1543, TABCORP will make available a copy of these documents (or of relevant extracts from these documents), free of charge, to Tab Shareholders who request it during the Bid Period. To obtain a copy of these documents (or the relevant extracts), Tab Shareholders may telephone the TABCORP Offer information line on 1800 010 202 (toll-free within Australia) or on +61 2 9240 7442 (from outside Australia).

(b) Specific relief

Bidder and TABCORP have also obtained the specific exemptions and modifications to the Corporations Act summarised below in relation to both the Offer and the Share Sale Facility.

In summary, the exemptions and modification are:

- An exemption from the prohibition in section 636(3) of the Corporations Act on including in a bidder's statement a statement by, or said in the bidder's statement to be based on a statement by, any person without that person's consent. The effect of the exemption is to enable Bidder to include in this Bidder's Statement statements which fairly represent statements made by an official person (including the New South Wales government and the NSW Casino Control Authority) without obtaining their consent.



In this regard, to the extent that statements in this Bidder's Statement are attributed to the New South Wales government, such statements are based on comments made by, or on behalf of, the New South Wales government in:

- a media release by the Treasurer of New South Wales dated 13 November 2003 entitled 'Media Release - Tab Limited';
- comments in the Parliamentary Debates in relation to the Totalizator Amendment Act (see New South Wales, *Parliamentary Debates*, Legislative Assembly, 4 December 2003, 6082 (Grant McBride, Minister for Gaming and Racing));
- a media release by the Treasurer of New South Wales dated 23 January 2004 entitled 'Media Release - Statewide Links and TABCORP';
- a media release by the Treasurer of New South Wales dated 23 February 2004 entitled 'Media Release' in relation to the Racing Heads of Agreement;
- a media release by the Treasurer of New South Wales dated 27 February 2004 entitled 'Media Release' in relation to a letter from the New South Wales government to UNiTAB;
- a media release by the Treasurer of New South Wales dated 12 March 2004 entitled 'Media Release – Adviser Appointed to Review UNiTAB Offer to Racing';
- a media release by the Treasurer of New South Wales dated 24 March 2004 entitled 'Media Release – Revised Terms of Reference for Financial Advisers Appointed to Review UNiTAB Offer to Racing'; and
- a media release by the NSW Racing Minister dated 1 April 2004 entitled 'UNiTAB Offer to Racing'.

The statements attributed to the NSW Casino Control Authority are based on a media release from the NSW Casino Control Authority on 22 January 2004 entitled 'Casino Control Authority Releases 3 Yearly Report on Star City Casino'.

- An exemption from the prohibition in section 623 of the Corporations Act from giving, offering to give or agreeing to give a benefit to a person if:
 - the benefit is likely to induce the person or an associate to accept the Offer or dispose of Tab Shares; and
 - the benefit is not offered to all holders of Tab Shares.

This exemption allows the Share Sale Facility to be made available only to Eligible Tab Shareholders.

- A modification of section 707 of the Corporations Act to remove the prospect of the provision of the Share Sale Facility resulting in the application of section 707(3) to on-sales of TABCORP Shares.

9.3 Potential for waiver of conditions - General

The Offer is subject to a number of defeating conditions set out in section 10.7, including a minimum acceptance condition (see section 10.7(a)). Under the terms of the Offer and the Corporations Act, any or all of those defeating conditions may be waived by Bidder.

9.4 Minimum acceptance condition

In order for Bidder to become the registered holder of more than 10% of Tab Shares, certain facilitative amendments (set out in the Totalizator Amendment Act) to legislation applying to Tab must come into force (and apply in relation to Bidder and the TABCORP Group), and TABCORP and Bidder will need to meet the requirements of those provisions. In accordance with the Totalizator Amendment Act, Bidder will not be able to rely on the amendments if (amongst other things) Tab does not ultimately become a subsidiary of Bidder. The legislative amendments, and the reasons why they are necessary, are discussed in section 9.6.

In addition, it will also be a condition to the drawdown of funds under the Loan Facility Agreement that Bidder provide evidence that it has obtained relevant interests in more than 50.0% of the Tab Shares (see section 6.5(c)).

These factors may impact on Bidder's ability to waive the minimum acceptance condition set out in section 10.7(a).

9. Other Material Information (cont'd)

9.5 ACCC condition

Section 50 of the *Trade Practices Act 1974* (Cth) prohibits any merger which has, or is likely to have, the effect of substantially lessening competition in a substantial market in Australia. The ACCC, which is responsible for administering the Trade Practices Act, has conducted a review of Bidder's proposed acquisition of all of the Tab Shares in the context of that prohibition.

Neither Bidder nor TABCORP is required to lodge any formal notification with the ACCC in relation to the Offer. However, TABCORP has made submissions to the ACCC as to the likely effect of the proposed merger, and has sought confirmation from the ACCC that it will not seek to intervene in respect of the proposed merger.

On 18 December 2003, the ACCC issued a media release in which it advised that it will not oppose the proposed merger of TABCORP and Tab (which is to be effected by the Offer) as it does not believe that it would substantially lessen competition in the relevant markets.

There is a potential for the ACCC to reassess its view of the merger to be effected by the Offer, or to raise further queries with TABCORP. However, the ACCC's media release indicated that it was expressing its view after having conducted extensive market inquiries with a range of industry participants. In this context, as at the date of this Bidder's Statement neither Bidder nor TABCORP is aware of anything which leads them to expect that the ACCC might reassess the view expressed in its media release of 18 December 2003.

9.6 NSW legislation conditions

Section 33 of the Totalizator Act and section 38 of the Privatisation Act currently prohibit, amongst other things, a person from having a prohibited shareholding interest in Tab (the **Tab Shareholder Restrictions**). A person will have a prohibited shareholding interest in Tab in certain circumstances, including if they hold more than 10% of the total number of voting shares in Tab. Accordingly, in the absence of legislative amendments being made to the Totalizator Act and the Privatisation Act, Bidder could not hold more than 10% of the total number of voting shares in Tab.

In addition, section 20 of the Totalizator Act currently prohibits the holder of a licence under that Act (which includes Tab, as it holds the Tab Totalizator Licences) or a subsidiary or related body corporate of such a person from holding a casino licence under the NSW Casino Control Act. As indicated in section 1.2(d)(ii), Star City, a member of the TABCORP Group, holds such a casino licence. Accordingly, in the absence of legislative amendment being made to the Totalizator Act, Tab could not become a subsidiary of TABCORP, as this would be contrary to section 20 of the Totalizator Act.

The New South Wales Parliament has enacted the Totalizator Amendment Act which includes amendments to the Totalizator Act and the Privatisation Act that, once they commence operation and provided that Bidder is nominated by the NSW Racing Minister to be the Nominated Company (as described below), will enable Tab to become a subsidiary of TABCORP.

(a) Tab Shareholder Restrictions

The Totalizator Amendment Act will amend the Totalizator Act and the Privatisation Act so that the Tab Shareholder Restrictions will not apply to the 'nominated company' (the **Nominated Company**), or a related body corporate of the Nominated Company, subject to certain specified limitations.

The Totalizator Amendment Act provides that the Nominated Company will be nominated by the NSW Racing Minister by an irrevocable notice published in the New South Wales Government Gazette, and will be one of TABCORP, UNiTAB or a wholly-owned subsidiary of either TABCORP or UNiTAB (such as Bidder, which is a wholly-owned subsidiary of TABCORP). It is a condition of the Offer that Bidder is nominated as the Nominated Company. Bidder expects that it will become the Nominated Company if it is in a position to acquire more than 50% of the Tab Shares (such as if it receives acceptances under the Offer in respect of at least 50% of the Tab Shares).

In certain circumstances, the exemption from the Tab Shareholder Restrictions which apply as a result of an entity being nominated as the Nominated Company may cease to apply. In particular, assuming that Bidder becomes the Nominated Company (and hence acquires control of Tab), if at any time the NSW Racing Minister is satisfied that:

- the ultimate holding company of Bidder (ie TABCORP) is no longer listed on ASX; or

- there no longer exists, under the law of another jurisdiction or otherwise, a prohibition with substantially the same effect as the Tab Shareholder Restrictions in relation to the ultimate holding company of Bidder (ie TABCORP). As explained in sections 1.5(c) and 1.5(d), TABCORP is already subject to such restrictions pursuant to Victorian legislation (the Gaming and Betting Act), as well as its own constitution; or
- Tab is not wholly-owned by Bidder or Bidder has not taken all reasonable steps to acquire a relevant interest in all of the issued voting shares of Tab; or
- Tab is not a subsidiary of Bidder,

the NSW Racing Minister will serve a notice on Bidder declaring that the relief from the Tab Shareholder Restrictions will be suspended from a day not less than three months after the notice. Any such notice is to be revoked if the NSW Racing Minister is satisfied that the matters which are the subject of the notice have been rectified.

Following the commencement of the relevant provisions of the Totalizator Amendment Act, and assuming that Bidder becomes the Nominated Company, the Tab Totalizator Licences will be subject to the following additional conditions:

- that no person has a prohibited shareholding interest in TABCORP (being a prohibition with substantially the same effect as the Tab Shareholder Restrictions) for so long as the relief from the Tab Shareholder Restrictions applies to the TABCORP Group; and
- that both Tab and TABCORP put in place, and give effect to, the New NSW Racing Arrangements. For this condition to be satisfied, NSW Racing must have acknowledged in writing to the NSW Racing Minister that the New NSW Racing Arrangements are satisfactory to NSW Racing. As discussed in sections 8.6(n) and 9.7, TABCORP and NSW Racing have entered into the Racing Heads of Agreement which provides the basis for TABCORP to ultimately satisfy proposed legislative requirements in New South Wales relevant to the acquisition of Tab. The material terms of the Racing Heads of Agreement are set out in section 9.7. It is also a condition of the Offer that NSW Racing has acknowledged in writing to the NSW Racing Minister that it has in place unconditional arrangements with TABCORP that constitute New NSW Racing Arrangements.

Certain risks associated with these provisions are discussed in sections 8.6(e), 8.6(f) and 8.6(n).

(b) Casino licence restrictions

The Totalizator Amendment Act will amend section 20 of the Totalizator Act so that the prohibition on holding a casino licence will not apply to the Nominated Company or a related body corporate of the Nominated Company during the period that the exemption described in section 9.6(a) is in force. If Bidder is the Nominated Company, this will mean that section 20 of the Totalizator Act will not apply to the TABCORP Group (including Star City).

(c) Commencement of operation

As at the date of this Bidder's Statement, the Totalizator Amendment Act has not yet commenced operation.

9.7 Racing Heads of Agreement

As discussed in sections 8.6(n) and 9.6(a), on 23 February 2004 TABCORP and NSW Racing (as agent for the NSW Thoroughbred Racing Board, Greyhound Racing New South Wales and Harness Racing New South Wales) entered into the Racing Heads of Agreement. A summary of the terms of the Racing Heads of Agreement is set out in this section 9.7.

(a) Arrangements with NSW Racing

NSW Racing and TABCORP have agreed to the following material commercial terms, and have agreed to negotiate a formal, detailed agreement which would give effect to those terms if the Offer is successful.

The following arrangements are to apply in addition to the Racing Distribution Agreement, although it is anticipated that TABCORP will become a party to the Racing Distribution Agreement and that amendments to the Racing Distribution Agreement will be required to give effect to the terms outlined below. It is a condition of the following arrangements applying that the formal, detailed agreement referred to above is executed.

9. Other Material Information (cont'd)

(i) Payments to NSW Racing

TABCORP has agreed to procure that Tab will increase the product fees payable by Tab to NSW Racing so that the net increases in fees payable to NSW Racing are as set out in Figure 9.7.1:

Figure 9.7.1: Net increases in fees payable to NSW Racing

Financial year	Net increase in fees to NSW Racing
2004/2005	\$3 million
2005/2006	\$6 million
2006/2007	\$9 million
2007/2008	\$12 million
Subsequent financial years	\$12 million, indexed to CPI (Sydney) at 30 June 2008

(ii) Sale of gaming businesses

NSW Racing will consent to, and cooperate in, the disposal or cessation of the Tab Gaming Division and the Investment Licence Business as required by the New South Wales government. NSW Racing will receive 25% of the net profit on the sale of the Tab Gaming Division (measured against the book value of the Tab Gaming Division as at 31 December 2003), less rebates then owed by NSW Racing to Tab in respect of the Tab Gaming Division and the Investment Licence Business. Only rebates up to a value of \$5 million will be taken into account.

Once the Tab Gaming Division is sold, NSW Racing will have no further interest in it.

(iii) Synergies

The parties have agreed cost allocation principles which will apply in respect of the Merged Group's wagering businesses. These principles are those set out in the Racing Distribution Agreement, uplifted to the TABCORP level.

(iv) Pooling

As presently provided for under the Racing Distribution Agreement, Tab will only be able to pool its New South Wales totalizator pools with other jurisdictions' totalizator pools with the consent of NSW Racing. That consent may not be unreasonably withheld.

TABCORP has agreed, however, that any totalizator pooling arrangements will be such that no pooling fees will be charged between the TABCORP Group and Tab in relation to the joining of the New South Wales totalizator pools, which are managed by Tab, with the SuperTAB totalizator pools, which are managed by the TABCORP Group. In addition, if a licensee in relation to the Queensland, South Australian or Northern Territory totalizator pools wishes to pool with a wagering pool administered by the Merged Group, such participation will be managed by Tab so that Tab will benefit from any pooling fees charged for such participation.

Fees from any international pooling arrangements will be allocated between Tab and the TABCORP Group on a 60/40 basis.

(v) Fixed odds wagering

Any fixed odds wagering on racing by Tab will be subject to NSW Racing's approval and, to the extent not conducted during 2003 by Tab, will be subject to a product fee as agreed between Tab and NSW Racing.

(vi) Guarantee

TABCORP will provide a financial and performance guarantee in respect of Tab's obligations under the Racing Distribution Agreement.



(vii) Management structure

Tab will continue to manage Tab's businesses, but, through changes to a consultative committee comprising representatives of Tab and NSW Racing, NSW Racing will have a greater capacity to be consulted and to provide recommendations in relation to New South Wales wagering and, whilst still conducted by Tab, the Tab Gaming Division and the Investment Licence Business.

(viii) Sky Channel

New South Wales racing clubs will be given the option of maintaining, until 30 June 2006, the contractual arrangements relating to Sky Channel which were in place as at 30 June 2003. Alternatively, those clubs will have the option to continue with any other arrangements agreed before TABCORP acquires control of Tab. For clubs other than New South Wales metropolitan thoroughbred racing clubs, any rights of first or last refusal or options to renew or extend in favour of Tab or Sky Channel Pty Ltd will be disregarded.

TABCORP will be required to procure that Sky Channel Pty Ltd negotiates in good faith with the New South Wales racing clubs in relation to broadcast rights for Sky Channel from 30 June 2006 onwards. The Merged Group will not object to those clubs negotiating collectively if they wish to do so.

TABCORP has also given NSW Racing a number of assurances that Sky Channel Pty Ltd will not give undue preference to the Victorian Racing Industry to the detriment of the New South Wales racing industry. In particular, if an equity or similar interest in the Sky Channel business is offered to a Victorian racing entity, a corresponding offer must be made to NSW Racing (or New South Wales racing entities nominated by it). This restriction will not apply to a joint venture in which both Victorian and New South Wales racing entities participate.

There will be annual meetings of a consultative committee comprising representatives of state racing industries to discuss the Sky Channel coverage program.

(ix) Racing Distribution Agreement

Certain amendments will be made to the Racing Distribution Agreement to reflect the fact that Tab will be a subsidiary of TABCORP. For instance, the Racing Distribution Agreement will be amended to clarify that NSW Racing does not have any rights in relation to the TABCORP Group's existing operations, nor in relation to the future revenue of the businesses of the Merged Group other than wagering in New South Wales and, whilst still conducted by Tab, the Tab Gaming Division and the Investment Licence Business.

New termination rights will be added to the Racing Distribution Agreement such that NSW Racing will be entitled to terminate the Racing Distribution Agreement if:

- TABCORP ceases to be listed on ASX;
- TABCORP ceases to have control of Tab or the Merged Group ceases to own 50% of Tab Shares;
- TABCORP ceases to be exempt from the Tab Shareholder Restrictions (see section 9.6(a));
- TABCORP ceases to be subject to a shareholding restriction which would preclude a person from acquiring more than 20% of TABCORP Shares; or
- certain insolvency events occur in relation to TABCORP.

In addition, NSW Racing will waive its rights to terminate the Racing Distribution Agreement in connection with the sale of the Tab Gaming Division and the cessation of the Investment Licence Business required by the New South Wales government and, for as long as TABCORP controls Tab, the delisting of Tab.

(x) Other matters

If the Merged Group controls Tab, but does not own all of the Tab Shares, TABCORP will not procure that any member of the Tab Group does any of the things contemplated by this section 9.7(a) to the extent that legal obligations would preclude the relevant company's board doing those things. In that case,

9. Other Material Information (cont'd)

TABCORP will perform the obligation to the extent that it is able or, otherwise, will make NSW Racing whole for the inability of the relevant member of the Tab Group to perform the obligation.

To the extent that any of the obligations contemplated by this section 9.7(a) require authorisation or exemption in the context of the *Trade Practices Act 1974* (Cth), it will be a condition precedent to the obligation that such authorisation or exemption is obtained.

(b) Exclusivity and right of last refusal

Until 23 May 2004, TABCORP has the exclusive right to negotiate arrangements with NSW Racing in connection with the requirements of proposed section 43A of the Totalizator Act (as amended by the Totalizator Amendment Act) (and any arrangements required to be entered into before the proclamation of the Totalizator Amendment Act) (the **NSW Government Requirements**).

In addition, the following arrangements apply from 23 February 2004 and will extend beyond 23 May 2004.

NSW Racing will not enter into exclusivity arrangements with any other person in relation to the NSW Government Requirements.

TABCORP will have a 'right of last refusal' such that, if NSW Racing enters into a legally binding arrangement (an **Alternative Arrangement**) with another bidder (or related body corporate of another bidder) for Tab Shares for the purpose of the NSW Government Requirements:

- NSW Racing must immediately notify TABCORP of the material terms of the Alternative Arrangement; and
- if TABCORP makes an offer to NSW Racing on terms which (having regard to quantitative and qualitative factors) are on more favourable terms than the Alternative Arrangement:
 - NSW Racing must accept TABCORP's offer and terminate the Alternative Arrangement; and
 - TABCORP may terminate the Racing Heads of Agreement.

(c) Termination rights

TABCORP may terminate the Racing Heads of Agreement if:

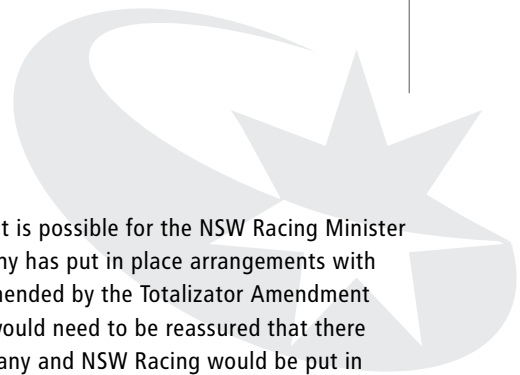
- NSW Racing enters into a legally binding arrangement (including a heads of agreement) with another bidder for Tab Shares for the purpose of the NSW Government Requirements; or
- the New South Wales government makes a public statement, or gives written notice to TABCORP, to the effect that the NSW Government Requirements will no longer apply, or that the New South Wales government is prepared to nominate another bidder for Tab Shares as the Nominated Company notwithstanding that the bidder (or one of its related bodies corporate) has not entered into arrangements with NSW Racing or has entered into arrangements with NSW Racing which are less favourable to NSW Racing than those contemplated by the Racing Heads of Agreement.

The 'right of last refusal' will survive termination by TABCORP pursuant to the above rights.

NSW Racing may terminate the Racing Heads of Agreement if:

- Bidder withdraws the Offer;
- TABCORP announces that a condition of the Offer cannot be fulfilled and will not be waived;
- TABCORP does not acquire control of Tab within six months after execution of the Racing Heads of Agreement; or
- TABCORP does not exercise its right of last refusal to better an Alternative Arrangement in circumstances where the Alternative Arrangement is more favourable to NSW Racing than that contemplated by the Racing Heads of Agreement.

Each party also has the right to terminate the Racing Heads of Agreement in the event of a material breach of it.



The New South Wales government announced on 27 February 2004 that it is possible for the NSW Racing Minister to nominate a company as the 'Nominated Company' before that company has put in place arrangements with NSW Racing for the purposes of section 43A of the Totalizator Act (as amended by the Totalizator Amendment Act). The New South Wales government indicated that, in that case, it would need to be reassured that there was a strong prospect that an agreement between the Nominated Company and NSW Racing would be put in place within a reasonable timeframe.

The New South Wales government has also commissioned an independent review of UNiTAB's 'last and final' proposal to NSW Racing regarding the arrangements to be put in place with NSW Racing if UNiTAB acquired control of Tab. The New South Wales government has announced that it expects to announce the findings of this independent review by 8 April 2004. In light of the New South Wales government's comments, it is possible that the outcome of that review may impact on the circumstances that must exist in order for a company to become the Nominated Company. If that is the case TABCORP may need to consider its position under the Racing Heads of Agreement in accordance with the rights discussed above.

9.8 Status and effect of other conditions

Sections 9.4 to 9.7 describe matters relevant to the status of certain conditions of the Offer as at the date of this Bidder's Statement. This section 9.8 describes the status of the remaining conditions in section 10.7.

In addition to the Approvals discussed above in relation to the Totalizator Amendment Act and the Privatisation Act and Totalizator Act (the latter two Acts being Acts which the Totalizator Amendment Act will amend), at the date of this Bidder's Statement Bidder has identified the Approvals set out below as Approvals which may be relevant to the condition in section 10.7(d):

- the NSW Racing Minister confirming that they have caused to be undertaken such investigations as are necessary to satisfy themselves that TABCORP, Tab and all persons (in the opinion of the NSW Racing Minister) to be concerned in or associated with the conduct of a totalizator in New South Wales after Bidder acquires control of Tab are suitable persons to be concerned in or associated with the conduct of a totalizator in New South Wales and the NSW Racing Minister confirms that they are satisfied as to these matters having regard to the considerations required in section 21(2) of the Totalizator Act; and
- for the purpose of section 172(2)(f) of the Gaming Machines Act, the relevant Minister (currently being the NSW Racing Minister) consenting to Tab entering into or authorising a dealing with or in respect of shares that affects the control of Tab.

In relation to the condition in section 10.7(e), Bidder is not aware, as at the date of this Bidder's Statement, of any decision, order, decree, action or investigation which would result in a breach of that condition.

However, it should be noted that it is not feasible for TABCORP or Bidder to identify in advance all such regulatory actions or related regulatory approvals, as Bidder has not had access to detailed information regarding the Tab Group's operations and assets in the jurisdictions in which the Tab Group operates, and whether they are subject to particular approvals or conditions.

In relation to section 10.7(f), Bidder and TABCORP are aware that the contractual arrangements between Sky Channel Pty Ltd and the Sydney Turf Club and the Australian Jockey Club respectively (concerning the broadcast of races run by those clubs) have expired and have not been renewed as at the date of this Bidder's Statement. It has also been reported that Racing NSW (the controlling body for thoroughbred racing in NSW) and the Australian Hotels Association may seek compensation from Sky Channel Pty Ltd associated with this loss of coverage. TABCORP and Bidder are monitoring the situation in relation to Sky Channel, in particular in the context of whether any of these matters (either individually or in aggregate) could result in the non-fulfilment of the condition set out in section 10.7(f). A final view on this matter cannot be formed until further information about the status of these matters has come to light.

As at the date of this Bidder's Statement, neither Bidder nor TABCORP is aware of any events or circumstances which would result in the non-fulfilment of any of the conditions in sections 10.7(f) (other than as discussed in the previous paragraph), 10.7(g), 10.7(h), 10.7(i) or 10.7(j).

9. Other Material Information (cont'd)

If an event occurs which results in the non-fulfilment of a condition in section 10.7, Bidder might not make a decision as to whether it will either rely on that non-fulfilment, or waive the condition, until the date for giving notice as to the status of the conditions of the Offer under section 630(3) of the Corporations Act (see section 10.11). If Bidder decides it will waive a defeating condition it will announce that decision to ASX in accordance with section 650F of the Corporations Act.

If there is a breach of any of the defeating conditions set out in section 10.7, or those defeating conditions are otherwise not satisfied, and Bidder decides to rely on that occurrence, then any contract resulting from acceptance of the Offer will become void at the end of the Offer Period, and the relevant Tab Shares will be returned to the holder.

9.9 Withdrawal of acceptance of UNiTAB's offer

If a Tab Shareholder has accepted UNiTAB's offer for their Tab Shares and subsequently wishes to accept TABCORP's Offer for those Tab Shares, they must first withdraw their acceptance of UNiTAB's offer.

In accordance with section 11.11(b) of UNiTAB's bidder's statement, Tab Shareholders are able to withdraw their acceptance of UNiTAB's offer at any time prior to the satisfaction of the condition of UNiTAB's offer that the Totalizator Amendment Act is proclaimed and the NSW Racing Minister gazettes UNiTAB as the Nominated Company. As at the date of this Bidder's Statement, that condition has not been satisfied.

Other circumstances may also arise in which Tab Shareholders will be able to withdraw an acceptance of UNiTAB's offer.

A withdrawal of such an acceptance can be effected as follows.

- If the relevant Tab Shares are held in a CHESS Holding, the Tab Shareholder must have their Controlling Participant transmit a valid originating message to ASTC specifying the Tab Shares to be released from the sub-position, in accordance with Rule 14.16 of the ASTC Settlement Rules.
- If the relevant Tab Shares are not held in a CHESS Holding, the Tab Shareholder must send, to any of the addresses specified on the acceptance form for UNiTAB's offer, a notice (signed by the Tab Shareholder, or on their behalf (in which case the notice must be accompanied by documentation proving that the person or persons signing the notice are authorised to do so)) stating that they wish to withdraw their acceptance.

9.10 Broker commission

Bidder may offer to pay a commission to brokers who solicit acceptances of the Offer from their clients, but has made no final decision in relation to the matter at this stage.

Any commission payments will be paid only in respect of parcels of Tab Shares held by retail shareholders who accept the Offer.

If such arrangements are put in place, commission payments will not exceed 0.75% of the value of the consideration payable for parcels of Tab Shares held by retail shareholders who accept the Offer, and will be subject to minimum payments (not exceeding \$50) and maximum payments (not exceeding \$750) for each acceptance.

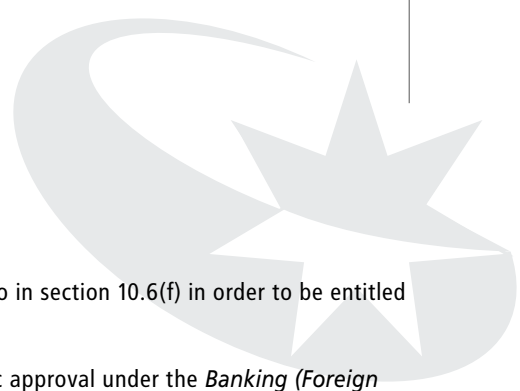
If a commission is offered, it will be payable to brokers only and subject to the condition that no part of the fee will be able to be passed on, or paid, to Tab Shareholders.

If and when Bidder decides to offer such a commission to any broker, it will make an announcement to ASX.

It is Bidder's intention that, if and when an offer of commission has been made to any broker by Bidder, the commission arrangement will remain in place for the balance of the Offer Period and the amount of the commission offered will not be increased during the Offer Period.

9.11 Social security and superannuation implications of the Offer

Acceptance of the Offer may have implications under your superannuation or pension arrangements or on your social security entitlements. If in any doubt, Tab Shareholders should seek specialist advice before accepting the Offer.



9.12 Approvals for payment of consideration

Bidder is not aware of any Tab Shareholders who require any approval referred to in section 10.6(f) in order to be entitled to receive any consideration under the Offer.

So far as Bidder is aware, unless the Reserve Bank of Australia has given specific approval under the *Banking (Foreign Exchange) Regulations 1959* (Cth), payments or transfers to or for the order of prescribed governments (and their statutory authorities, agencies and entities) and, in certain cases, nationals of prescribed countries are subject to certain limited exceptions, restrictions or prohibitions. Based on Bidder's searches, the prescribed governments, countries and entities are as follows:

- supporters of the former government of Federal Republic of Yugoslavia; and
- ministers and senior officials of the Government of Zimbabwe.

The places to which, and persons to whom, the *Charter of the United Nations (Terrorism and Dealing with Assets) Regulations 2002* (Cth) currently apply include the Taliban, Usama bin Laden (also known as Osama bin Laden), a member of the Al-Qaida organisation (also known as the Al-Qaeda organisation), and any person named on the list maintained pursuant to United Nations Resolution 1390 (2002) by the Committee of the United Nations Security Council established pursuant to United Nations Resolution 1267 (1999).

The places to which and persons to whom the *Charter of the United Nations (Sanctions - Afghanistan) Regulations 2001* (Cth) currently apply include a bin Laden Entity and a Taliban Entity (as those terms are defined in those regulations).

The *Iraq (Reconstruction and Repeal of Sanctions) Regulations 2003* (Cth) apply in respect of assets of the previous government of Iraq, and assets removed from Iraq or acquired by a senior official of the previous government of Iraq or their immediate families. Transactions with such assets (including, if relevant, Tab Shares) require Ministerial approval.

9.13 Foreign Shareholders

Tab Shareholders who are Foreign Shareholders will not be entitled to receive TABCORP Shares as part of the consideration for their Tab Shares pursuant to the Offer, unless Bidder otherwise determines.

A Tab Shareholder is a Foreign Shareholder for the purposes of the Offer if their address as shown in the register of members of Tab is in a jurisdiction other than Australia or its external Territories, the United States of America or New Zealand. However, such a person will not be a Foreign Shareholder if Bidder is satisfied that it is not unlawful, not unduly onerous and not unduly impracticable to make the Offer to a Tab Shareholder in the relevant jurisdiction and to issue TABCORP Shares to such a Tab Shareholder on acceptance of the Offer, and that it is lawful for such a Tab Shareholder to accept the Offer in such circumstances in the relevant jurisdiction. Notwithstanding anything else contained in this Bidder's Statement, Bidder is not under any obligation to spend any money, or undertake any action, in order to satisfy itself concerning any of these matters.

The TABCORP Shares which would otherwise have been issued to Foreign Shareholders will instead be issued to a nominee approved by ASIC, who will sell those TABCORP Shares. The net proceeds of the sale of such shares will then be remitted to the relevant Foreign Shareholders. See section 10.6(g) for further details.

9.14 No collateral benefits

Other than as set out below, neither Bidder nor any of its associates has in the four months before the date of this Bidder's Statement, or in the period between the date of this Bidder's Statement and the date of the Offer, given, offered to give or agreed to give a benefit which is not offered to all Tab Shareholders under the Offer to another person which was likely to induce the other person (or an associate) to accept the Offer or dispose of Tab Shares.

As set out in section 11, TABCORP has made arrangements with UBS Securities Australia to make the Share Sale Facility available to Eligible Tab Shareholders. Pursuant to the terms of the Share Sale Facility, Participating Tab Shareholders will not pay any brokerage on the sale of TABCORP Shares issued to them under the Offer (up to a maximum of 200 TABCORP Shares), with any such brokerage being borne by TABCORP.

9. Other Material Information (cont'd)

9.15 No escalation agreements

Neither Bidder nor any of its associates has entered into any escalation agreement that is prohibited by section 622 of the Corporations Act.

9.16 Disclosure of interests of certain persons

Other than as set out below or elsewhere in this Bidder's Statement no:

- director or proposed director of TABCORP;
- person named in this Bidder's Statement as performing a function in a professional, advisory or other capacity in connection with the preparation or distribution of this Bidder's Statement;
- promoter of TABCORP; or
- broker or underwriter to the issue of TABCORP Shares,

(together, the *Interested Persons*) holds at the date of this Bidder's Statement or held at any time during the last two years, any interest in:

- the formation or promotion of TABCORP;
- property acquired or proposed to be acquired by TABCORP in connection with its formation or promotion, or the offer of TABCORP Shares under the Offer; or
- the offer of TABCORP Shares under the Offer.

9.17 Disclosure of fees and benefits received by certain persons

Other than as set out below or elsewhere in this Bidder's Statement, no amounts have been paid or agreed to be paid and no benefits have been given or agreed to be given:

- to a director or proposed director of TABCORP to induce them to become, or to qualify as, a director of TABCORP; or
- for services provided by any Interested Person in connection with the formation or promotion of TABCORP or the offer of TABCORP Shares under the Offer.

Ernst & Young has acted as accountant in relation to the preparation of the Independent Accountant's Report on the Pro-Forma Historical Information. TABCORP has paid or agreed to pay approximately \$165,000 for these services to the date of this Bidder's Statement, and TABCORP may pay or agree to pay Ernst & Young additional fees for services provided in connection with the Offer after the date of this Bidder's Statement. Ernst & Young has also received other fees for advising TABCORP on other matters and acting as its auditor.

Pitcher Partners has acted as accountant in relation to the preparation of the Investigating Accountant's Report on the Forecast and Pro-Forma Information. TABCORP has paid or agreed to pay approximately \$330,000 for these services to the date of this Bidder's Statement, and TABCORP may pay or agree to pay Pitcher Partners additional fees for services provided in connection with the Offer after the date of this Bidder's Statement.

Allens Arthur Robinson has acted as legal adviser to TABCORP and Bidder in connection with the Offer. TABCORP has paid or agreed to pay up to \$2,190,000 for these services to the date of this Bidder's Statement. TABCORP has also paid or agreed to pay Allens Arthur Robinson other fees for advising on other matters and TABCORP may pay or agree to pay it additional fees (based on agreed hourly rates) for legal services provided in connection with the Offer after the date of this Bidder's Statement. Until 31 December 2003, Michael Robinson was a Partner of Allens Arthur Robinson and is presently a Consultant to that firm.

Corrs Chambers Westgarth has provided certain legal advice to TABCORP and Bidder pertaining to certain Jupiters matters referred to in this Bidder's Statement. TABCORP has paid or agreed to pay approximately \$2,500 for these services to the date of this Bidder's Statement. John Story is a Partner of Corrs Chambers Westgarth.



9.18 Disclosure of interests of directors

(a) Interests in TABCORP Shares

The directors of Bidder and TABCORP have relevant interests in the following TABCORP securities at the date of this Bidder's Statement:

Figure 9.18.1: Directors' interests in TABCORP securities

TABCORP and Bidder directors ¹	Number of TABCORP Shares held	Number of options and share rights
Michael Robinson (Chairman)	45,000	Nil
Matthew Slatter ²	500,000	352,349 performance options 2,500,000 other options 15,996 share rights
Tony Hodgson	100,000	Nil
Phil Satre	8,000	Nil
John Story ³	8,149	Nil
Richard Warburton	22,500	Nil
Lawrence Willett	2,548	Nil
Warren Wilson	50,000	Nil
David Elmslie ²	255,000	87,248 performance options 11,883 share rights
Peter Caillard ²	170,000	40,268 performance options 5,484 share rights

(b) Directors' interests in Tab securities

No director of Bidder or TABCORP has a relevant interest in Tab Shares at the date of this Bidder's Statement.

No director has acquired or disposed of Tab Shares in the four months preceding the date of this Bidder's Statement.

(c) Remuneration

TABCORP in general meeting has fixed the maximum aggregate remuneration which can be paid to all non-executive directors of TABCORP in any year at \$1.5 million.

The TABCORP Board has determined that the following annual base fees (before superannuation guarantee contributions) are payable to individual non-executive directors of TABCORP: \$295,500 to the Chairman, \$137,750 to the Deputy Chairman and \$120,750 to other non-executive directors. In addition, non-executive directors receive fees in relation to each Board Committee on which they serve.

The TABCORP Board has terminated retirement benefits for all non-executive directors, effective 30 June 2003. Retirement benefits accrued until that time have been paid into the TABCORP Staff Superannuation Fund. The fund will pay those benefits and any accrued entitlement on them to each director on their retirement from the TABCORP Board.

(d) Indemnity, insurance and access

TABCORP has executed a Director's Deed with each director of TABCORP. In summary each Director's Deed provides:

- an ongoing indemnity to the director against liability incurred by the director in or arising out of the conduct of the business of, or the discharge of their duties as a director of, TABCORP, or, if the TABCORP Board in its discretion specifically determines in a particular case for the purposes of the Director's Deed, the conduct of the business of another corporation, including a subsidiary of TABCORP;
- that TABCORP will maintain an insurance policy for the benefit of the director which insures the director against liability for acts or omissions of the director in the director's capacity (or former capacity) as a director of TABCORP during the period during which the director holds office as a director of TABCORP and

Notes

¹ All persons, other than Messrs Elmslie and Caillard, are directors of TABCORP. The directors of Bidder are Messrs Slatter, Elmslie and Caillard.

² The relevant shares, options and share rights were granted pursuant to various employee share plans.

³ Mr Story is the registered holder of only 3,134 of the relevant TABCORP Shares.

9. Other Material Information (cont'd)

for a period of seven years thereafter, or, if a proceeding is brought against a director within the seven years after they cease to be a director of the company, until that proceeding is determined; and

- the director with a limited right to access, and to take copies of, TABCORP Board papers relating to the period during which the director holds office as a director of TABCORP.

TABCORP's constitution provides for the entry into these Director's Deeds.

(e) Directors' insurance

TABCORP maintains an insurance policy for the benefit of the directors of TABCORP which insures them against liability for their conduct as directors of TABCORP and as directors of any subsidiary of TABCORP to the extent permitted by law. This insurance policy also may insure the directors on the terms and subject to the conditions of the policy against civil liabilities which they may incur in relation to the Offer.

9.19 Consents

This Bidder's Statement contains statements made by, or statements based on statements made by, TABCORP. TABCORP has consented to being named in this Bidder's Statement and has consented to the inclusion of:

- each statement it has made; and
- each statement which is said in this Bidder's Statement to be based on a statement it has made,

in the form and context in which the statements have been included, and has not withdrawn that consent.

The following firms and companies have given, and have not at the date of this Bidder's Statement withdrawn, their written consent to being named in this Bidder's Statement and to the inclusion of the following information in the form and context in which it is included. None of the following firms and companies have caused or authorised the issue of this Bidder's Statement or have in any way been involved in the making of the Offer. The Offer is made by Bidder.

Ernst & Young has consented to the inclusion in this Bidder's Statement of the Independent Accountant's Report on the Pro-Forma Historical Information and all references to that report in the form and context in which those references are included.

Pitcher Partners has consented to the inclusion in this Bidder's Statement of the Investigating Accountant's Report on the Forecast and Pro-Forma Information and all references to that report in the form and context in which those references are included.

Standard & Poor's (Australia) Pty Ltd (trading as Standard & Poor's) has consented to the inclusion of the statements concerning TABCORP's credit rating from Standard & Poor's in the form and context in which those references are included. Standard & Poor's ratings and rating estimates are statements of opinion, not statements of fact or recommendations to buy, hold, or sell any securities. Ratings and rating estimates are based on information available to Standard & Poor's and ratings or rating estimates may change at any time should there be any change in relevant information.

In addition, this Bidder's Statement includes statements which are made in, or based on statements made in, documents lodged with ASIC or given to ASX, and statements made by, or based on statements made by, the New South Wales government and the NSW Casino Control Authority (see section 9.2).

9.20 Expiry date

No securities will be issued on the basis of this Bidder's Statement after the date which is 13 months after the date of this Bidder's Statement.

9.21 Other material information

Except as disclosed in this Bidder's Statement, there is no other information that:

- is material to the making of the decision by a Tab Shareholder whether or not to accept the Offer; and
- is known to Bidder,

which has not previously been disclosed to Tab Shareholders.