



ASX Release

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Boral's response to shareholder queries and media speculation regarding SGH nominee directors on Boral's Board

A few Boral shareholders have raised queries in relation to the appointment of nominee directors of Seven Group Holdings (SGH) to Boral's Board. These issues have also been commented on through the media.

In the interest of addressing speculation and keeping all shareholders informed, Boral provides the following Q&A to help clarify Boral's position. We have also annexed a Summary of the Boral Information Sharing and Conflict of Interest Protocol.

Q. What are the terms of the agreement with SGH and SGH Board nominees Ryan Stokes and Richard Richards?

Boral does not have an agreement with SGH providing the right to director seats on the Board of Boral. Rather, like any other significant shareholder, SGH requested nomination of their representatives on the Board.

The Board gave this careful consideration and agreed to appoint Ryan Stokes and Richard Richards as directors nominated by SGH.

Both Ryan's and Richard's appointments were subject to a rigorous process conducted by the Board, taking into account all factors that would normally be considered with regard to any other appointment (including interviews with all Directors and appropriate reference checking). While the size of SGH's holding and track record of being long term investors in companies were important factors in our decision, the calibre of the individuals put forward, including their skills in running large industrial businesses in their capacity as CEO and CFO coupled with their capital markets and M&A experience and expertise ultimately shaped our final decision.

Q. What protections and protocols do you have in place to protect shareholder interests?

To ensure Boral's position is protected we have put in place a Board Information Sharing and Conflict of Interest Protocol. Recognising of course that Ryan and Richard are experienced directors who are fully aware of their fiduciary obligation to Boral and its shareholders.

The Protocol stipulates that the independent directors must be in a position, where appropriate, to ensure that any SGH nominee director is excluded from decisions or matters where a material conflict of interest may arise, including when other directors consider the interests of SGH might diverge from the interests of other shareholders.

This Protocol also includes requirements in relation to the confidentiality of Boral information.

The Protocol is stronger than other market precedents given the right of the Chairman (in consultation with the independent directors) to call a conflict without legal challenge, which was a Boral non-negotiable and we ensured that it was understood and accepted by all directors and also by SGH before the nominee directors were appointed.

The one aspect that was not standard was, as we disclosed, the commitment from SGH that if its interest falls below 15% then Boral could ask them to procure that Ryan and / or Richard step off the Board unless our preference is for them to stay.

Q. Do the SGH nominee Directors receive all Board material?

The primary purpose of the Protocol is to give the independent directors the right, if they consider there is a potential conflict of interest, to exclude the SGH nominees from receipt of the relevant Board papers and from participating in the relevant discussions and decisions.

Q. If Boral divests assets and there is capital to be returned, for example, how would you manage that situation where the interests of SGH may diverge from other shareholders?

This scenario is a good example of why we have put the Protocol in place. If there is a material conflict of interest (for example, as might arise with a selective buyback or capital reduction), the SGH nominee directors would be excluded from receiving information, from the discussion process and from the decision.

Q. Why didn't you insist on a 'standstill' agreement or a 'come-along' agreement with SGH, which would require SGH to support a takeover proposal recommended by a majority of the Board? Such a shareholders' agreement was put in place between Santos and ENN/Hony Capital in 2017.

In the Santos example, it related to associated shareholders ENN Group (ENN) and Hony Capital (Hony), becoming entitled to a right to nominate a director for appointment to the Board of Santos in the context of a formal strategic relationship which followed an earlier \$500 million equity placement to Hony. Boral's relationship with SGH is not in any way analogous to the ENN/Hony agreements with Santos. SGH bought their holding on market and independently, and to agree to cap their holding via a 'standstill' in these circumstances would be uncommon.

Similarly, a 'come-along' agreement would rarely be given by a shareholder who had acquired their holding on market and may not be in the best interests of shareholders.

As previously mentioned, there is no agreement between Boral and SGH regarding a right to appoint a director. SGH has not been asked nor is contributing any capital to or other support of Boral, in contrast to the circumstances at Santos.

Q. Why did the Board agree to two SGH nominee board seats? Do two seats give SGH more control over the Board agenda? For example, one could move a motion and the other could second it.

Boral's process, consistent with the practice across ASX-listed companies and the AICD guidelines, is that the Chairman will settle the agenda in consultation with the CEO & Managing Director and the Company Secretary. The agenda as determined by the Chairman, reflects specific topics of relevance to the company at the time, and may be guided by the input of directors including incorporating matters arising from previous meetings.

The "mover and seconder" process is not relevant to Boral in setting the Board's agenda. Hence, the number of SGH nominee directors makes no difference to the process of setting the Board's agenda.

Q. Two shareholder nominees may make SGH over-represented on the Board of Boral. It would be acceptable to allow one, but not two representatives. Why did the Board of Boral accept two SGH nominee board seats instead of just one?

When SGH's share ownership moved to holding up to ~19.98% of Boral's issued share capital, SGH requested two Board seats. The Board gave it considerable thought, and given the quality of the individuals put forward as nominees by SGH, the Board was ultimately not uncomfortable with having two SGH nominees on the Board on the basis that it was reasonably proportionate with the size of SGH's shareholding.

At the time of joining the Board, SGH nominees represented ~18% of the Board. As shareholders know, the Board is undertaking an orderly renewal process. Eileen Doyle and John Marlay will retire at the end of the AGM. At the end of the AGM, the level of representation of SGH on the Board will be 22%. We expect to look to appoint additional independent directors in due course (subject always to their adding to the effectiveness of the Board) including replacing Paul Rayner when he retires during the next term of office. This will provide broad alignment between SGH's shareholding and the proportion of their representation on the Board.

Q. Can SGH continue to increase its ownership of Boral shares and take advantage of 'creep' provisions in the legislation?

Any shareholder is able to acquire shares on market, subject to compliance with the Takeovers Code and the insider trading rules.

Boral's directors and executives can only trade in Boral shares in certain time windows, in line with Boral's share trading policy.

One of the risks that SGH has accepted by having executives come onto the Board is that Ryan and Richard will often become aware of confidential price sensitive information. That will preclude them from trading (even during trading windows) and as Officers of SGH, the ability of SGH to 'creep', while not precluded, is inevitably impacted.

Q. Given there are no agreements to secure any new capital or commercial relationship for the company, can you please explain what incremental benefit they provide to the company and other shareholders?

Shareholders will benefit from the calibre of the two SGH nominee directors, including their skills and expertise.

Ryan has significant entrepreneurial and strategic expertise and brings a wealth of commercial, safety and business knowledge including as CEO of SGH since 2015. Together with Richard, Ryan has an excellent working knowledge of the Australian infrastructure market as a result of SGH's interests in Coates and Westrac.

Richard is a financial expert with around 30 years of experience in finance and business, including in industrials, equipment manufacture, sales and service, equipment hire, investments, property, media, oil and gas, and the airline industry. We believe that his experience and financial acumen enhances the Board's ability to oversee Boral's performance and will help guide your company on a successful path in line with our strategy.

Both Ryan and Richard have extensive capital markets and M&A experience and have successfully led SGH over the past five years.

Q. What has been the Board’s focus around Board renewal?

We said we were looking to recruit directors with deep industry experience and finance capability and that we were taking a rigorous approach to Board succession and planning.

The appointment of four new directors with broad experience and a range of perspectives strengthens the diversity of the Board and provides a good balance of corporate knowledge and new perspectives.

Q. Why is the Board recommending Kathryn Fagg’s re-election as Chairman?

Kathryn was appointed Chairman of Boral in July 2018. Under Kathryn’s leadership, clear steps have been taken to re-set Boral in response to a number of challenges and poor performance. These changes include CEO transition, Board renewal and a portfolio review.

The Board believes it is critically important for Kathryn to continue in the role as Chairman to provide important leadership continuity, strength and corporate knowledge through this period of change and renewal. The Board believes Kathryn’s leadership and integrity, including her willingness to engage extensively with Boral’s shareholders, as she has done, and to be accountable and take steps to respond to the Company’s challenges, are important factors in building a stronger Boral. The Board therefore unanimously supports her re-election as Chairman of Boral’s Board and strongly believe it is in the best interests of shareholders.

Q. Will the SGH nominee Directors be on Board committees?

Yes. All Directors on the Board are expected to be actively involved in Board Committees. The following composition and changes to Board committees are planned:

Audit & Risk Committee

- Paul Rayner (Chairman)
- Deb O’Toole (future Chairman)
- Karen Moses
- Richard Richards

Remuneration & Nomination Committee

- John Marlay (retiring Chairman)
- Rob Sindel (incoming Chairman)
- Peter Alexander
- Ryan Stokes

Health, Safety & Environment Committee

- Eileen Doyle (retiring Chairman)
- Karen Moses (incoming Chairman)
- Deb O’Toole
- Richard Richards

In addition, Kathryn Fagg attends and participates in all committee meetings.

In response to additional questions regarding Boral’s Board Committees:

- Boral’s Board Committees support the effective operation of the Board.
- In line with the ASX Corporate Governance Principles, the Committees are made up of a majority of independent non-executive Directors and each Committee is chaired by an independent non-executive Director.
- Boral’s Committees are generally less decision making, and more focused on advising the Board on relevant matters and making recommendations to the Board, generally framed as follows in the Committee charters: *“The Committee acts primarily as an advisory body to the Board and in making recommendations to the Board. The Committee does not, as of itself, have the power or authority of the Board in dealing with the matters on which it advises except where certain powers are specifically set out in this Charter or are otherwise delegated by the Board.”*

Summary of the Boral Information Sharing and Conflict of Interest Protocol

Seven Group has acquired on market ~19.98% of the issued shares in Boral. Following that acquisition Seven Group requested that two of its senior executives, Ryan Stokes and Richard Richards be appointed to the Board. Boral's Remuneration & Nomination Committee and the full Board considered that the candidates had experience and capabilities that would add to the Board and complement the Board renewal planning that was already in process. However, to appropriately manage any information sharing and conflict of interest issues that could arise Boral required the two Seven Group nominated directors (**Nominees**) and the Seven Group itself to accept an information sharing and conflict of interest protocol (**Protocol**) and a confidentiality undertaking between Boral and Seven Group (**Confidentiality Undertaking**).

Key terms of the Protocol and the Confidentiality Undertaking are set out below.

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| Conflict Protocol Committee (CPC) | A Conflict Protocol Committee (CPC), comprised of all Boral directors other than the Nominees will assist the Board in dealing with sensitive matters that may give rise to a conflict of interest or duty on the part of the Nominees or the Seven Group (Sensitive Matters). |
| Examples of potentially Sensitive Matters | <ul style="list-style-type: none">• (Assets or property interests) any proposed agreement or arrangement relating to the purchase, transfer, acquisition or disposal of any assets or property interest held by the Seven Group by or to a member of the Boral Group;• (Investments in Seven operations) any other proposed investment by a member of the Boral Group in, or in connection with, any operation owned by a member of the Seven Group (or in which any member of the Seven Group has a material interest);• (Change of control transactions) a potential transaction, affecting the control of Boral, whether to be undertaken by way of takeover bid, scheme of arrangement, share buy-back, significant equity placement or otherwise where Seven has or is likely to reach an agreement or understanding with a third party who is seeking control or the transaction is being structured in a way that may result in a divergence of interests between Seven and other Boral shareholders as a whole;• (Competing transactions) any proposed transaction by or activity of the Boral Group, including but not limited to the acquisition of assets or securities, that may directly or indirectly compete with the activities or other legal or commercial interests of the Seven Group;• (Other transactions) any other proposed transaction with a member of the Seven Group where Seven's interest in the transaction is not held in common with other Boral shareholders;• (Disputes) any dispute with any member of the Seven Group; and• (Other sensitive matters) any other matters that the CPC determines may give rise to an actual or perceived conflict of interest or duty. |
| Participation in Board and committee deliberations | <ul style="list-style-type: none">• Directors must disclose all potential conflicts of interest and warn of potential conflict with duties to another company.• If the Chairman determines that a director's interest in a matter may be sufficiently material or may result in a conflict of interest arising, the Chairman will discuss the matter with the director concerned.• If the Chairman, acting reasonably and in good faith and having discussed the matter with the director concerned, determines that a Sensitive Matter exists, the impacted director will not attend or vote on the matter, except where the full Board is required by law to determine a particular matter.• Notwithstanding the above, a Nominee may still provide assistance or advice to the Board or the CPC upon request, draw attention to a material issue that should be considered by the Board or the CPC, and/or participate in Board deliberations about a takeover or other change of control proposal where the CPC determines that no conflict of interest or duty arises. |

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| Access to information about a Sensitive Matter | <p>If the Chairman determines that a Sensitive Matter exists, a Nominee will not be provided with any sensitive information relating to that matter, except where the full Board is required by law to determine a Sensitive Matter. In this instance, the company secretary must provide to the Nominee only such sensitive information that is required to enable the Nominee to comply with their duties as director of Boral.</p> <p>Notwithstanding the above, a Nominee is entitled to receive ongoing progress reports from the Chairman of the Board (or such other person nominated by the CPC from time to time) in respect of a Sensitive Matter, to the extent practicable and required to enable the Nominee to comply with his or her duties as a director of Boral.</p> <p>If the Chairman forms the view that a Sensitive Matter has ceased to give rise to an actual or perceived conflict for a Nominee, then any information that was withheld because of this Protocol must be provided to the Nominee upon request.</p> |
| Nominee's duty of confidentiality | <p>A Nominee must maintain the confidentiality of all information obtained in the course of their directorship with Boral, except to the extent permitted by law or the Protocol.</p> <p>Before disclosing any confidential information to any other Seven executive, a Nominee must notify the intended recipient that the information must be held by the intended recipient in strict confidence in accordance with the confidentiality deed that Seven has entered into with Boral. Any information about a Sensitive Matter made available to a Nominee is made available to the Nominee solely in their capacity as a director of Boral and for the sole purpose of the proper discharge of their duties as a director of Boral. In addition to the above, a Nominee may only pass on information received in their capacity as a member of the Board to Seven subject to the following:</p> <ul style="list-style-type: none"> • his or her fiduciary or other duties under any applicable law; • any applicable determination made by the Chairman of the Board or the CPC; and • any applicable protocols adopted by the Board. |
| Confidentiality Undertaking between Boral and Seven | <p>Boral and Seven Group have entered into a confidentiality undertaking (Confidentiality Undertaking) which requires that Seven must maintain the confidentiality of:</p> <ul style="list-style-type: none"> • all information received by Seven's nominee directors in their capacity as directors of Boral; • any financial information provided by Boral at the request of Seven to enable it to meet its financial reporting obligations; and • any non-public information relating to Boral provided by Boral (or any of its related entities). |
| Equity Accounting | <p>Subject to the terms of the Protocol and the Confidentiality Undertaking between Boral and Seven, Seven is entitled to access and request certain financial information from Boral that is reasonably required to comply with reporting obligations, including applying an equity accounting method to Seven's investment in Boral.</p> |
| Seven Group's interest falling below 15% | <p>The Nominees will retire from the Board if Seven ceases to hold at least 15% of the issued share capital of Boral unless the Board requests that they continue in office.</p> |

Authorised for release by the Board of Directors.

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