

ASX ANNOUNCEMENT
8 December 2020

RECEIPT OF LETTER

The Agency Group Australia Ltd (ASX: AU1) (“The Agency” or “the Company”) received a letter from Magnolia Equities III Pty Limited (“Magnolia”) on Friday, 4 December 2020, which sets out a “proposal to make an unsolicited, conditional offer” to purchase all of the fully paid ordinary shares in The Agency (“Proposal”). Magnolia is associated with Ex- Director and significant shareholder, Mitchell Atkins.

Without the knowledge and consent of the Company a copy of the letter (in part or full) also appears to have been sent to select media outlets. Consequently, the Board has been made aware of an article which appeared in The Weekend Australian on Saturday, 5 December 2020, regarding a “takeover bid” for the Company from “Magnolia Capital”. The Board considers this article to be misleading because the article refers to a “takeover bid” as opposed to a proposal to make a takeover bid. No formal bid for the Company has been received.

The Board of The Agency does not consider that the Proposal provides shareholders with enough information to even be considered a credible “**Proposal**” or constitute a legitimate alternative to the proposed issue of \$5 million in convertible notes to Peters Investments Pty Ltd (shareholder approval for which is being sought at the Company’s annual general meeting, to be held on 23 December 2020) for the following reasons:

- The Proposal includes conflicting and confusing statements including reference to a “*scrip takeover bid*” and a “*cash takeover bid*”.
- The identity of the proposal bidder is unclear (the letter refers to “*Magnolia Equities III Pty Limited, or an entity nominated by it*” intending to make a bid), which the Board considers to be a fundamental omission.
- If Magnolia is the proposed bidder, the Board is sceptical of Magnolia’s ability to raise the cash required in order to fund a takeover bid for 100% of all of the ordinary shares on issue in AU1 (assuming that it is, in fact, a cash offer) and also arrange for a replacement of the Company’s Macquarie Bank facility. No details of this funding for the Proposal have been provided by Magnolia and the status (if any) of discussions with Macquarie Bank, despite request by the Company.
- The Proposal states that “*the Bid and Magnolia’s obligation to make the Bid is subject to a range of conditions*”. It is not clear from the Proposal what conditions must be satisfied prior to an offer being made and what conditions any takeover bid will be subject to.
- The proposed “takeover” price of 4 cents per share is based on the high fair value “on a minority basis” (included in Nexia’s Independent Expert’s Report which accompanies the Company’s Notice of Annual General Meeting (“IER”)). The Proposal is for a controlling interest in The Agency. Based on Nexia’s IER, the directors would be unable to recommend a takeover bid at this price.
- The Proposal is priced at a DISCOUNT to the current share price of the Company (\$0.05 at the last closing price) on Friday 4 December 2020.

Whilst not strictly required, the Company attaches a copy of the Proposal to this announcement for shareholders to be fully informed of its details.

The Board would like to reiterate that **no formal bid has been received and there is no guarantee a bid will be made**. On this basis shareholders are advised to **Take No Action** in relation to the Proposal or any document received from Magnolia in relation to the Proposal until they receive the Directors’ formal recommendation.

The Board of The Agency will keep shareholders fully informed of further developments as they occur.

Ends



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Announcement authorised for release by the Board of The Agency Group Australia Limited.

If you require further information, please contact:

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THE AGENCY



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ANNEXURE – MAGNOLIA LETTER

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Magnolia Capital

4 December 2020

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ASX ANNOUNCEMENT – TAKEOVER BID

Magnolia Equities III Pty Limited announces off-market all scrip takeover bid for The Agency Group Australia Ltd (ASX:AU1)

Takeover overview

- Magnolia Equities III Pty Limited, or an entity nominated by it (**Magnolia**) intends to make a cash takeover bid (**Bid**) for 100% of the fully paid ordinary shares in The Agency Group Ltd (**AU1**) at 4 cents per share;
- The Bid represents a premium to the high fair value estimated by Nexia Perth Corporate finance Pty Ltd on a minority basis, if the Peters Proposal were to complete;
- The Bid provides AU1 shareholders with a competing proposal to the Peters Proposal discussed in AU1's Notice of AGM dated 23 November 2020 (together with all documents accompanying that notice, the **AGM Materials**).

Takeover Bid for AU1 shares

Magnolia is pleased to announce that it intends to make an off-market cash takeover bid (**Bid**) for all of the shares in AU1. Each AU1 shareholder who accepts the Bid will receive no less than 4 cents per AU1 share.

The proposed Bid, and Magnolia's obligation to make the Bid, are subject to a range of defeating conditions which are summarised in the schedule attached to this announcement.

Magnolia has significant concerns as to the desirability to AU1 and AU1's shareholders of the Peters Proposal, which the Independent Expert, Nexia Peth Corporate Finance Pty Limited, whose report appeared in the AGM Materials found to be **NOT FAIR** (i.e. is at a value less than the value of AU1 shares) but reasonable because of the absence of other proposals. The Bid provides a real alternative proposal to the Peters Proposal. Magnolia looks forward to the revised report of the Independent Expert in light of the announcement of the Bid.

Given that the Macquarie Bank facility has already expired and is subject to forbearance conditions expiring on 31 December 2020, as outlined in the Nexia report referred to in the AGM Materials,

Magnolia proposes that it will arrange for the repayment in full of the current Macquarie Bank facility with a replacement facility on the same or terms more favourable to AU1 than the current Macquarie Bank facility including without the need for individual guarantees from directors or AU1 shareholders.

Magnolia has sought to engage with AU1's board on several occasions to obtain information about the Peters Proposal, the current Macquarie Bank facility position and AU1 to ensure that the AGM Materials provide a true, complete and accurate picture to shareholders, and has been rebuffed by the AU1 board. Several of the conditions set out in the schedule to this announcement are directed to protecting Magnolia against any risk arising from the failure by AU1 to engage with Magnolia. AU1's board can ensure that the Bid when made is less conditional by providing this material to Magnolia so that it can be satisfied that the relevant conditions would not be triggered.

The Bid and Magnolia's obligation to make the Bid is subject to a range of conditions which are set out in the schedule attached to this announcement.

AU1 shareholders do not need to take any action in relation to the Bid at the present time. The indicative timetable in relation to the Bid is set out below:

Key Event	Date
Lodgement of Magnolia's Bidder's Statement with ASIC, ASX and AU1	Late December 2020
Dispatch of Bidder's Statement	Mid January 2021
Bid opens	Late January 2021
Magnolia's Bid closes (unless extended)	Late February/early March 2021

AU1 shareholders

The Bid potentially provides AU1 shareholders with a cash exit strategy, within the fair price range advised by the Independent Expert and a real alternative to the Peters Proposal

Further information

If you have any queries in relation to the Bid, please contact Magnolia on 1300 160 792.

Yours faithfully



Mitchell Atkins

Director | Magnolia Equities III Pty Limited

Schedule

Proposed defeating conditions

(a) **90% minimum acceptance**

During or at the end of the Bid's bid period, Magnolia and its associates have relevant interests in 90% (by number) of the ordinary fully paid shares in AU1 subject to the Bid.

(b) **No approval of the Peters Proposal**

During the period starting on the date of the announcement to which this is attached (Announcement Date) and ending at the end of the Offer Period, none of the proposed resolutions numbered 3-7 in the AGM Materials (i.e. Agenda items 4 – 8) is moved and passed by the AU1 shareholders in general meeting.

(c) **Provision of material information**

EITHER

(Pre-Bid disclosure)

Before 16 December 2020 AU1 provides Magnolia with copies of the following documents (**Listed Documents**) and the Listed Documents do not disclose that any condition other than this condition would be triggered by material contained in the Listed Documents (or any of them) or by performance of any or all of them:

1. Unaudited income statement of AU1 for the 3 months ended 30 September 2020;
2. Unaudited balance sheet of AU1 as at 30 September 2020;
3. AU1's share and option registries at 4 November 2020;
4. AU1's group structure as provided by management;
5. Draft October 2020 Convertible Note Agreement in connection with the Peters Proposal;
6. Final Convertible Note Agreement in connection with the Peters Proposal;
7. Copies of any and all mandates which have not been disclosed in the Independent Expert's Report and Financial Services Guide dated 23 November 2020 (Report) prepared by Nexia Perth Corporate Finance Pty Ltd (Nexia Australia);
8. Management Information relied on by Nexia Australia in the Report;
9. Any and all non-public contracts or arrangements which would have rights of termination or which would impose material obligations or penalties on AU1 if Magnolia made the Bid and the condition in paragraph (a) is satisfied; and
10. Any and all other non-public material information which would impact a valuation of The Agency.

OR

(Target's Statement disclosure)

In its Target's Statement AU1 specifically addresses:

1. the Listed Documents (including whether there are any documents in each category of the Listed Documents); and
2. whether any of the Listed Documents discloses that any condition other than this condition would be triggered by material contained in the Listed Documents (or any of them) or by performance of any or all of them.

(d) **No prescribed occurrences between Announcement Date and the end of the Offer Period**

During the period starting on the Announcement Date and ending at the end of the Offer Period, none of the occurrences listed in section 652C(1) and (2) occurs (each as a separate condition and each condition refreshed and separated each time such an event occurs).

(e) **No material transactions**

Except for any proposed transaction reasonably full details of which are publicly announced by AU1 before the Announcement Date, none of the following events occurs during the period starting on the Announcement Date and ending at the end of the Offer Period without the written consent of Magnolia:

- (1) AU1, or any subsidiary of AU1, acquires, offers to acquire or agrees to acquire one or more companies or assets (or an interest in one or more companies or assets) for an amount in any single transaction of more than A\$1 million or an amount in aggregate in any series of transactions of more than A\$0.5 million, or makes an announcement about such an acquisition or acquisitions;
- (2) AU1, or any subsidiary of AU1, enters into, offers to enter into or announces that it proposes to enter into any joint venture, partnership or dual listed company structure involving a commitment of greater than A\$0.5 million in any single transaction or an amount in aggregate in any series of transactions of more than A\$0.25 million, or makes an announcement about such a commitment; or
- (3) AU1, or any subsidiary of AU1, incurs or commits to, or grants to another person a right the exercise of which would involve AU1 or any subsidiary of AU1 incurring or committing to any capital expenditure or liability for one or more related items of greater than A\$0.5 million, or makes an announcement about such a commitment.

(f) **No material adverse change**

During the period starting on the Announcement Date and ending at the end of the Offer Period, no change occurs, is discovered (including where Magnolia becomes aware that information publicly filed is, or is likely to be, incomplete, incorrect or untrue or misleading) or becomes public which has or could reasonably be expected to have a material adverse effect on the assets, liabilities, financial position, performance, profitability or prospects of AU1 including no material adverse change to the value of the AU1's group total assets (Rent Roll and Mortgage Book) (Assets). For the avoidance of doubt, the Assets are valued at no less than \$27million as described in the ASX Announcement made by AU1 on 29 October 2020.

(g) **No material failings in filings**

Magnolia does not become aware, during the period starting on the Announcement Date and ending at the end of the Offer Period, that:

- (1) any document (including the AGM Documents) filed by or on behalf of AU1 with ASX, ASIC or any other regulator or given to AU1 shareholders contains a statement which is incorrect or misleading in any material particular or from which there is a material omission; or
- (2) there has been an omission by AU1 to give any material information to ASX, ASIC or any other regulator or AU1 shareholders required by the ASX Listing Rules, the Corporations Act or any other applicable law.

(h) **No persons exercising rights under certain agreements or instruments**

Before the end of the Offer Period, there is no person exercising or purporting to exercise or stating an intention to exercise any rights under any provision of any agreement or other instrument to which AU1 is a party or by or to which AU1 or any of its assets may be bound or be subject, which results, or could result, to an extent to which is material in the context of AU1 taken as a whole, in:

- (1) any money borrowed by AU1 being or becoming repayable or being capable of being declared repayable immediately or earlier than the repayment date stated in such agreement or other instrument;
- (2) any such agreement or other such instrument being terminated or modified or any action being taken or arising thereunder;
- (3) the interest of AU1 in any firm, joint venture, trust corporation or other entity (or any arrangements relating to such interest) being terminated or modified; or
- (4) the business of AU1 with any other person being adversely affected.

(i) **Conduct of AU1's business**

During the period starting on the Announcement Date and ending at the end of the Offer Period, none of AU1 nor any body corporate which is or becomes a subsidiary of AU1, without the written consent of Magnolia:

- (1) declares, or distributes any dividend, bonus or other share of its profits or assets except for a dividend by a wholly-owned subsidiary of AU1;
- (2) alters the rights attached to any of its shares or other securities or proposes to do so;
- (3) makes any change to its constitution or passes any special resolution or proposes to do so;
- (4) gives or agrees to give any encumbrance (including a security interest or mortgage) over any of its assets otherwise than in the ordinary course of business;
- (5) increases the aggregate limit of AU1 and its subsidiaries' bank facility limit, or draws down on that facility or otherwise borrows other than in the ordinary course of the business of AU1 and its subsidiaries taken as a whole;
- (6) releases, discharges or modifies any substantial obligation to it of any person, firm or corporation or agrees to do so;
- (7) appoints any additional director to its board of directors whether to fill a casual vacancy or otherwise;
- (8) enters or agrees to enter into any contract of service or varies or agrees to vary any existing contract of service with any director or manager, enters or agrees to enter into any contract for service or varies or agrees to vary any existing contract for service with any consultant or contractor or other person for the provision of the services of a director or manager or the provision of services the same as or substantially similar to those provided (or that otherwise would be provided) by a director or manager, or pays or agrees to pay any retirement benefit or allowance to any director, manager or other employee or consultant or contractor, or makes or agrees to make any substantial change in the basis or amount of remuneration of any director, manager or other employee or consultant or contractor (except as required by law or provided

under any superannuation, provident or retirement scheme as in effect on the Announcement Date);

- (9) conducts its business otherwise than in the ordinary course; or
- (10) executes a deed of company arrangement or passes any resolution for liquidation, or has appointed or becomes susceptible to the appointment of an administrator, a receiver, a receiver and manager or a liquidator, or becomes subject to an investigation under the Australian Securities and Investments Commission Act 2001 (Cth) or any corresponding legislation involving a contravention of the Corporations Act by AU1 or a subsidiary of AU1.

(j) **Conduct of AU1 Key Personnel**

During the period starting on the Announcement Date and ending on the expiry of the Offer Period, any Key Personnel nominated by Magnolia, fail to enter into an agreement to remain in the employ of AU1 for a period of 12 months from the completion of the takeover on terms no less favourable than their current terms of employment.

(k) **No break/inducement fees**

During the period starting on the Announcement Date and ending at the end of the Offer Period, none of AU1 and any body corporate which is or becomes a subsidiary of AU1, pays or provides or agrees (whether conditionally or contingently) to pay or provide any benefit to any person, or foregoes or otherwise reduces any payment or benefit or agrees to forgo or reduce any payment or benefit to which it would otherwise be entitled, in connection with any person making or agreeing to participate in, or enter into negotiations concerning:

- (1) a takeover bid for AU1 or any body corporate which is or becomes a subsidiary of AU1; or
- (2) any other proposal to acquire any interest (whether equitable, legal, beneficial or economic) in shares in, or assets of, AU1 or any body corporate which is or becomes a subsidiary of AU1, or to operate AU1 as a single economic entity with another body corporate;

except for a payment, benefit or agreement:

- (3) for providing professional advisory services to AU1;
- (4) which is approved in writing by Magnolia;
- (5) which is approved by a resolution passed at a general meeting of AU1; or
- (6) which is made to, provided to, owed by or made with Magnolia.

(l) **No force majeure event**

During the period starting on the Announcement Date and ending at the end of the Offer Period, no act of war (whether declared or not) or terrorism, mobilisation of armed forces, civil commotion or labour disturbance, fire or natural disaster, infectious disease or other event beyond the control of AU1 or the relevant subsidiary occurs which has an adverse effect or is likely to have an adverse effect on the assets, liabilities, financial position, performance, profitability or prospects of AU1 and its subsidiaries taken as a whole.

(m) **Non-existence of certain rights**

During the period starting on the Announcement Date and ending at the end of the Offer Period, no person has any right (whether subject to conditions or not) as a result of Magnolia acquiring AU1 shares:

- (1) to acquire, or require AU1 or a subsidiary of AU1 to dispose of, or offer to dispose of, any material asset of AU1 or a subsidiary of AU1; or
- (2) to terminate or vary any material agreement with AU1 or a subsidiary of AU1.

(n) **No superior alternative proposal**

No alternative proposal to Magnolia's takeover bid is announced during the Offer Period that:

- (1) is recommended by any AU1 director; or
- (2) offers consideration that is equal or higher than the consideration offered under the Bid valued, as far as practicable, in accordance with the principles applying under section 621(3) of the Corporations Act and ASIC Regulatory Guide 9: Takeover bids.

(o) **Market movement (10% fall)**

During the period starting on the Announcement Date and ending at the end of the Offer Period:

- 1) The All Ordinaries Index is 10% or more below its level as at the close of trading immediately preceding the Announcement Date; or
- 2) The S&P/ASX 200 Index is 10% or more below its level as at the close of trading immediately preceding the Announcement Date;

for a duration of longer than 3 consecutive ASX trading days.

(p) **No material litigation**

During the period starting on the Announcement Date and ending at the end of the Offer Period:

- (1) none of AU1 and any body corporate which is or becomes a subsidiary of AU1 has threatened or commenced against it any material claims or proceedings in any court or tribunal (and a claim or proceeding is taken to be material if it may reasonably result in a judgment of A\$100,000 or more), other than that which has been fully and fairly publicly disclosed to ASX prior to the Announcement Date;
- (2) the consideration under the Bid is required to be increased or Magnolia or an associate of Magnolia is required or reasonably likely to be required to pay any amount to any one or more AU1 shareholders in connection with the Bid as a result of:
 - (A) any litigation that is commenced, is threatened to be commenced, announced or is made known to AU1 (whether or not becoming public); or
 - (B) any preliminary or final decision or order of any regulator or other government agency, other than as a result of Magnolia publicly undertaking to increase the consideration under the Bid or Magnolia lodging a notice of variation under section 650D of the Corporations Act relating to an increase of the consideration under the Bid; or
- (3) the aggregate liability of AU1 and any body corporate which is a subsidiary of AU1 under or in connection with any existing claim or proceeding in any court or tribunal is or is likely to be materially more than the provision made for the claim or proceeding in AU1's last

audited annual financial statements or, if no provision has been made, is or likely to be more than A\$100,000.

Further information regarding the Bid and the conditions will be provided to AU1 shareholders in Magnolia's Bidder's Statement.