



Thursday, 16 September 2021

REVISED NON-BINDING INDICATIVE PROPOSAL FROM WESFARMERS

On 12 July 2021, Australian Pharmaceutical Industries (ASX:API) ("API") announced it had received a non-binding indicative proposal from Wesfarmers Limited (ASX:WES) ("Wesfarmers") to acquire 100% of the shares in API for cash consideration of \$1.38 per share. This proposal was rejected by the API Board on 29 July 2021.

Today, API announces that it has received a revised non-binding indicative proposal ("Revised Indicative Proposal") from Wesfarmers to acquire 100% of the shares in API, by way of a scheme of arrangement, for cash consideration of \$1.55 per share. The Revised Indicative Proposal provides for the payment of fully franked dividends of up to a maximum of 5 cents per share, including any final dividend for the financial year ended 31 August 2021. The cash component of any such dividends will reduce the cash consideration accordingly.

Details of Wesfarmers Revised Indicative Proposal

The Revised Indicative Proposal of \$1.55 per share represents a premium to API's undisturbed share price (as at 9 July 2021) of:

- 35.4% to the closing price of \$1.145 per share on 9 July 2021; and
- 36.8% to the one-month volume weighted average price to 9 July 2021 ("VWAP") of \$1.133 per share.

Wesfarmers Revised Indicative Proposal is subject to a number of conditions including:

- Satisfactory completion of confirmatory due diligence by Wesfarmers;
- Clearance from the Australian Competition and Consumer Commission;
- Receipt by Wesfarmers of required regulatory approvals;
- Unanimous recommendation of the API Board and a commitment from all API Directors to vote in favour of the transaction; and
- Execution of a Scheme of Implementation Deed ("SID").





Support for the Revised Indicative Proposal

Following careful consideration and consultation with its advisers, the API Board (the "Board") has determined that it is in the interests of API's shareholders to progress the Revised Indicative Proposal and allow Wesfarmers to undertake confirmatory due diligence.

The Board unanimously intends to recommend the Revised Indicative Proposal to shareholders (at the offer price of \$1.55 per share), subject to:

- The parties entering into a binding SID on terms no less favourable to API's shareholders than the Revised Indicative Proposal following completion of Wesfarmers' confirmatory due diligence;
- No superior proposal being received; and
- An independent expert concluding (and continuing to conclude) that the Revised Indicative Proposal is in the best interests of API shareholders.

"This revised offer better reflects the strength and potential of our stable of businesses that have been built by the efforts and passion of all of our people within API. Aligned with our vision of "enriching life", we remain firmly focused on making a difference for all our customers and trading partners," API's CEO and Managing Director, Mr Richard Vincent said.

Next steps

API and Wesfarmers have entered into a Process Deed under which Wesfarmers has been granted until 16 October 2021 to undertake exclusive confirmatory due diligence to facilitate a binding offer. A copy of the Process Deed is attached to this announcement.

At this stage API shareholders do not need to take any action in relation to the Revised Indicative Proposal from Wesfarmers.

The Board notes that there is no certainty that the engagement between API and Wesfarmers will result in a change of control transaction or an offer capable of acceptance by API shareholders.

API will continue to keep the market informed in accordance with its continuous disclosure obligations.

This announcement is authorised for release by the Board of Directors of API.

For further information:

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Process Deed

Date ► 16 September 2021

Between the parties

Wesfarmers

Wesfarmers Limited

ABN 28 008 984 049 of Level 14, Brookfield Place, Tower 2, 123 St Georges Terrace, Perth WA 6000, Australia

API

Australian Pharmaceutical Industries Limited

ABN 57 000 004 320 of Level 5, 250 Camberwell Road, Camberwell VIC 3124, Australia

Recitals

- 1 On or before the date of this deed, Wesfarmers submitted a revised non-binding indicative offer to API in respect of a Potential Transaction whereby Wesfarmers (or one of its Related Entities) would acquire up to 100% of the issued securities in API (**Indicative Proposal**).
 - 2 The parties propose to enter into discussions and negotiations in respect of the Potential Transaction.
 - 3 The parties have agreed to facilitate those discussions and negotiations, and Wesfarmers' confirmatory due diligence investigations for the purposes of the Potential Transaction, on the terms set out in this deed.
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This deed witnesses as follows:



1 Definitions and interpretations

- (a) The meanings of the terms used in this deed are set out in Schedule 1.
- (b) This deed will be interpreted in accordance with Schedule 1.

2 Agreed announcement

Immediately after the execution of this deed, API and Wesfarmers will issue public announcements to the ASX in a form previously agreed to in writing between them

3 Confirmatory due diligence

3.1 Conduct of confirmatory due diligence investigations

Subject to API complying with clause 3.2, Wesfarmers will, during the Due Diligence Period, undertake and complete (to its reasonable satisfaction) confirmatory due diligence investigations in respect of the API Group to determine whether to proceed with the Potential Transaction.

3.2 Provision of confirmatory due diligence materials

- (a) Subject to clause 3.5, API will, during the Due Diligence Period, promptly provide or make available (as applicable) to Wesfarmers, its Related Entities and their respective Representatives the Confirmatory Due Diligence Information (including via secured data portals that enable Wesfarmers and its Representatives to conduct quantitative analysis in a secured environment), and otherwise provide such reasonable assistance to Wesfarmers, its Related Entities and their respective Representatives, to allow Wesfarmers to complete its confirmatory due diligence investigations within the Due Diligence Period.
- (b) Without limiting clauses 3.2(a) and 3.5, as soon as reasonably practicable after the date of this deed, API will make available a virtual data room to Wesfarmers, its Related Entities and their respective Representatives, which data room must:
 - (1) be populated with the Confirmatory Due Diligence Information;
 - (2) at API's absolute discretion, be populated with the Black Box Information; and
 - (3) provide a functionality for Wesfarmers, its Related Entities and their respective Representatives to submit questions to API and its Representatives relating to the Confirmatory Due Diligence Information or Black Box Information (if any) and track the progress of responses to those requests.



- (c) API will use reasonable endeavours to populate the virtual data room in accordance with the Confirmatory Due Diligence Request List.

3.3 Progress updates

- (a) During the Exclusivity Period, Wesfarmers must provide verbal updates to API, on a weekly basis, regarding the status of Wesfarmers' due diligence investigations in respect of the API Group and advise whether Wesfarmers has any reason to believe that Wesfarmers would not be willing and able to proceed with the Potential Transaction.
- (b) If, at any time, Wesfarmers decides to cease or suspend progressing the Potential Transaction, it must immediately notify API in writing.

3.4 Other access

- (a) Subject to clause 3.4(b), API will, during the Exclusivity Period, ensure that Wesfarmers, its Related Entities and a reasonable number of their respective Representatives are given:
 - (1) reasonable access (including electronic or virtual access) to inspect the sites, assets and premises of the API Group for the purposes of Wesfarmers' confirmatory due diligence investigations and for assessing the Potential Transaction; and
 - (2) presentations by relevant members of the Executive Leadership Team of the API Group, via video meetings, for the purposes of Wesfarmers' confirmatory due diligence investigations and for assessing and negotiating the Potential Transaction.
- (b) **(Limitations on access and meetings):**
 - (1) API is not required to provide Wesfarmers, its Related Entities or their respective Representatives with any access, meetings or presentations referred to in clause 3.2(a) to the extent it would result in unreasonable disruptions to API's business; and
 - (2) Wesfarmers must ensure that any persons provided with access, meetings or presentations under clause 3.2(a) comply with the reasonable requirements of API in respect of the access.

3.5 Limitations

- (a) API has no obligation to provide Wesfarmers with access to particular information or particular materials if access to that information or those materials would:
 - (1) breach an existing confidentiality obligation owed to a Third Party or any applicable law or requirement of a Government Agency; or
 - (2) require API to make a disclosure that would compromise legal professional privilege,or to provide Wesfarmers with access to particular information or particular materials to the extent they relate to consideration by the board of API of the Potential



Transaction or any Competing Proposal (however, this proviso does not limit API's obligations under clause 5).

- (b) API must, in its discretion, obtain such consents as are required from relevant Third Parties to allow Wesfarmers to complete its confirmatory due diligence investigations within the Exclusivity Period. Wesfarmers acknowledges that such consents may not be forthcoming.

4 Transaction documents

4.1 Negotiation of Potential Transaction

- (a) API and Wesfarmers agree that, during the Exclusivity Period, they will negotiate in good faith an Implementation Agreement and any other transaction documents required to implement the Potential Transaction.
- (b) API and Wesfarmers each acknowledge and agree that:
 - (1) the Potential Transaction remains indicative and incomplete and subject to Wesfarmers' confirmatory due diligence investigations, board approval and negotiations between the parties;
 - (2) the Potential Transaction is expected to proceed by way of a scheme of arrangement, but may proceed by way of takeover bid or other agreed transaction structure;
 - (3) this deed is not intended to, and does not, impose any binding obligations on the parties to give effect to the Potential Transaction; and
 - (4) the Potential Transaction will not become binding on the parties until such time as the Implementation Agreement (and any other transaction documents required to implement the Potential Transaction) is approved by the boards of API and Wesfarmers and is duly executed by each party.

4.2 Commitment of resources

- (a) Wesfarmers agrees during the Exclusivity Period to commit all reasonably necessary resources (including management and financial, legal and other professional advisory resources), at its own cost, to enable Wesfarmers to complete its confirmatory due diligence investigations in relation to the API Group.
- (b) API agrees during the Exclusivity Period to commit all reasonably necessary resources to enable it to comply with its obligations under this deed; and
- (c) API and Wesfarmers agree during the Exclusivity Period to commit all reasonably necessary resources, at their own cost, to enable the preparation, negotiation and finalisation of an Implementation Agreement (and any customary annexures to the Implementation Agreement).



5 Exclusivity

5.1 No shop and no talk

During the Exclusivity Period, API must not, and must ensure that each of its Representatives and Related Entities and the Representatives of those Related Entities do not, directly or indirectly:

- (a) **(no shop)** solicit, invite, encourage or initiate any inquiry, expression of interest, offer, proposal or discussion by any person in relation to, or which would reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Competing Proposal or communicate to any person an intention to do anything referred to in this clause 5.1(a); or
- (b) **(no talk)** subject to clause 5.2:
 - (1) participate in or continue any negotiations or discussions with respect to any inquiry, expression of interest, offer, proposal or discussion by any person to make, or which would reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Competing Proposal or participate in or continue any negotiations or discussions with respect to any actual, proposed or potential Competing Proposal;
 - (2) negotiate, accept or enter into, or offer or agree to negotiate, accept or enter into, any agreement, arrangement or understanding regarding an actual, proposed or potential Competing Proposal;
 - (3) disclose or otherwise provide or make available any Non-public Information to a Third Party (other than a Government Agency that has the right to obtain that information and has sought it) in connection with, with a view to obtaining, or which would reasonably be expected to encourage or lead to the formulation, receipt or announcement of, an actual, proposed or potential Competing Proposal; or
 - (4) communicate to any person an intention to do anything referred to in the preceding paragraphs of this clause 5.1(b),

but nothing in this clause 5.1 prevents API from:

- (c) engaging with its shareholders in relation to API;
- (d) engaging with its customers and suppliers acting in that capacity in relation to API;
- (e) making normal presentations to brokers, portfolio investors and analysts;
- (f) instructing or receiving advice from its Representatives; or
- (g) fulfilling its continuous disclosure obligations or making announcements to ASX,

provided that any conduct pursuant to clauses 5.1(c) to 5.1(e) must be in the ordinary course of business and must not relate to an actual, proposed or potential Competing Proposal or otherwise conflict with clauses 5.1(a) or 5.1(b) (for the avoidance of doubt, in the case of clause 5.1(b), subject to 5.2).



5.2 Fiduciary out

Clause 5.1(b) will not prohibit any action or inaction by API, any of its Related Entities or any of their respective Representatives in relation to an actual, proposed or potential Competing Proposal if the board of API has determined, in good faith:

- (a) after consulting with its financial advisers, that the actual, proposed or potential Competing Proposal is, or would be reasonably likely to become, a Superior Proposal; and
- (b) after receiving written legal advice from its external legal advisers, that compliance with clause 5.1(b) would constitute, or would be reasonably likely to constitute, a breach of any of the fiduciary or statutory duties of the directors of API,

and provided that:

- (c) the actual, proposed or potential Competing Proposal was not directly or indirectly brought about by, or facilitated by, a breach of clause 5.1(a); and
- (d) API immediately notifies Wesfarmers of each action or inaction by it, any of its Related Entities or any of their respective Representatives in reliance on this clause 5.2.

5.3 Warranty as to existing discussions

API represents and warrants to Wesfarmers that, other than discussions with Wesfarmers, its Related Entities and their respective Representatives, as at the date of this deed neither API nor any of its Related Entities nor their respective Representatives are in any discussions or negotiations relating to any actual or proposed Competing Proposal.

5.4 Provision of information

- (a) Subject to clause 5.4(b), during the Exclusivity Period, API must as soon as possible (and, in any event, within 24 hours) make available to Wesfarmers in a virtual data room with:
 - (1) in the case of written materials, a copy of; and
 - (2) in any other case, a written statement of,any Non-public Information disclosed or otherwise provided by API, a Related Entity of API or any of their respective Representatives to any Third Party in connection with an actual, proposed or potential Competing Proposal that has not previously been provided to Wesfarmers or has not otherwise been made available to Wesfarmers in a virtual data room.
- (b) During the Exclusivity Period, API must not, and must ensure that each of its Representatives and Related Entities and the Representatives of those Related Entities do not, directly or indirectly disclose or otherwise provide or make available any Non-public Information to a Third Party in connection with an actual, proposed or potential Competing Proposal, unless:
 - (1) permitted by clause 5.2; and
 - (2) before that information is disclosed or otherwise provided or made available to that Third Party, the Third Party has entered into a confidentiality



agreement with API that contains obligations on the Third Party that are on no less onerous terms in any respect than the obligations of Wesfarmers under the Confidentiality Deed.

6 Termination

6.1 Termination

Subject to clause 6.2, this deed, and the parties' obligations under it, will terminate and be of no further force or effect on the earliest of the following to occur:

- (a) the expiry of the Exclusivity Period;
- (b) Wesfarmers giving API written notice that it has ceased or suspended progressing the Potential Transaction pursuant to clause 3.3(b); and
- (c) the execution by the parties of an Implementation Agreement in respect of the Potential Transaction.

6.2 Effect of termination

If this deed is terminated by either party under clause 6.1:

- (a) each party will be released from its obligations under this deed, except that this clause 6.2, clauses 1 and 8 and Schedule 1 will survive termination and remain in force;
- (b) each party will retain the rights it has or may have against the other party in respect of any past breach of this deed; and
- (c) in all other respects, all future obligations of the parties under this deed will immediately terminate and be of no further force and effect.

7 Acknowledgement

The parties agree that the discussions between the parties before and after the date of this deed concerning the Potential Transaction constitute Information for the purposes of the Confidentiality Deed.

8 General

8.1 Notice

- (a) Any notice or other communication, including any request, demand, consent or approval (**Notice**), to or by a party to this deed must be:
 - (1) in writing and in English and signed by or on behalf of the sending party; and



- (2) addressed to the receiving party in accordance with the details set out below (or any alternative details nominated by the receiving party by Notice).

Party	Address	Email
Wesfarmers	Attention: Ed Bostock, Managing Director, Business Development Level 14, Brookfield Place Tower 2, 123 St Georges Terrace Perth, WA, 6000	
API	Level 5 250 Camberwell Road Camberwell VIC 3124	

- (b) A Notice is regarded as being given by the sender and received by the addressee:
 - (1) if by delivery in person, when delivered to the addressee;
 - (2) if by post, on delivery to the addressee; or
 - (3) if by email, when the email (including any attachment) has been sent to the addressee's email address (unless the sender receives a delivery failure notification indicating that the email has not been addressed to the addressee),
 but if the delivery or receipt is on a day which is not a Business Day or is after 5.00pm (addressee's time), it is regarded as received at 9.00am on the following Business Day.

8.2 Waiver

No party to this deed may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

The meanings of the terms used in this clause 8.1 are set out below.



Term	Meaning
conduct	includes delay in the exercise of a right.
right	any right arising under or in connection with this deed and includes the right to rely on this clause.
waiver	includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

8.3 Variation

A variation of any term of this deed must be in writing and signed by the parties.

8.4 Further action

Each party must, at its own expense, do all things and execute all documents necessary to give full effect to this deed and the transactions contemplated by it.

8.5 Counterparts

This deed may be executed in any number of counterparts.

8.6 Remedies

Each party acknowledges that:

- (a) monetary damages alone may not be adequate compensation to the other party for a breach of the provisions of this deed;
- (b) a party may seek an injunction from a court of competent jurisdiction if the other party fails to, or threatens not to, comply with the provisions of this deed, or the party has reason to believe that the other party will not comply with the terms of this deed.

8.7 Governing law

This document is a deed and is governed by the laws of Victoria, Australia and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of Victoria.



Schedule 1

Definitions and interpretation

1.1 Definitions

The following terms have the meanings set out below:

Term	Meaning
API Group	API and its Related Entities.
Associate	has the meaning set out in section 12 of the Corporations Act, as if section 12(1) of the Corporations Act included a reference to this document.
ASX	ASX Limited (ACN 008 624 691) and, where the context requires, the financial market operated by it.
Black Box Information	any Non-public Information contemplated in the Confirmatory Due Diligence Request List and determined by API, in its absolute discretion, to be sensitive Non-public Information and will comprise Black Box Information.
Business Day	means a day on which banks are open for general banking business in Melbourne, Victoria (not being a Saturday, Sunday or public holiday).
Competing Proposal	any expression of interest, proposal, offer, transaction or arrangement, whether existing before, on or after the date of this deed, which, if entered into or completed, could mean that a person other than Wesfarmers would: <ol style="list-style-type: none">1 directly or indirectly acquire Voting Power in, or have a right to acquire, a legal, beneficial or economic interest in, or control of, 10% or more of the shares in API or of the share capital of any material Controlled Entity of API;2 acquire Control of API or any material Controlled Entity of API;3 directly or indirectly acquire or become the holder of, or otherwise acquire or have a right to acquire, a legal, beneficial

Term	Meaning
	<p>or economic interest in, or control of, all or a material part of API's business or assets or the business or assets of the API Group; or</p> <p>4 otherwise directly or indirectly acquire, be stapled with or merge with API or a material Controlled Entity of API,</p> <p>or would otherwise require API or Wesfarmers to abandon, or otherwise fail to proceed with, the Potential Transaction, whether by way of takeover bid, members' or creditors' scheme of arrangement, shareholder approved acquisition, capital reduction, buy back, sale or purchase of shares, other securities or assets, assignment of assets and liabilities, incorporated or unincorporated joint venture, dual-listed company (or other synthetic merger), deed of company arrangement, any debt for equity arrangement or other transaction or arrangement, whether undertaken by API or a Third Party.</p> <p>For the avoidance of doubt, each successive material modification or variation of any proposal, agreement, arrangement or transaction in relation to a Competing Proposal will constitute a new Competing Proposal.</p>
Confidentiality Deed	<p>the confidentiality deed dated on or about the date of this deed between Wesfarmers and API as varied from time to time.</p>
Confirmatory Due Diligence Information	<p>any Non-public Information contemplated in the Confirmatory Due Diligence Request List (other than Black Box Information) which API has decided to make available for the purposes of confirmatory due diligence investigations in respect of the API Group.</p>
Confirmatory Due Diligence Request List	<p>a list of confirmatory due diligence information requests provided by Wesfarmers to API in a form previously agreed to in writing between them.</p>
Control	<p>with respect to any person (other than an individual), the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such person whether through the ownership of voting securities, by agreement or otherwise and such a person is a Controlled Entity of the person who possess the relevant power.</p>



Term	Meaning
Corporations Act	the <i>Corporations Act 2001</i> (Cth).
Due Diligence Period	the period commencing on the date of this deed and ending on the last day of the Exclusivity Period.
Exclusivity Period	the period commencing on 18 September 2021 and ending on 16 October 2021.
Government Agency	any Australian or other government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity (including any stock or other securities exchange), or any government minister, and any other federal, state, provincial, or local government, whether foreign or Australian.
Implementation Agreement	an agreement or deed to be entered between API and Wesfarmers and, if applicable, one or more of their Related Entities to implement the Potential Transaction on customary terms.
Information	has the meaning given in the Confidentiality Deed.
Non-public Information	any non-public information about the business or affairs of the API Group.
Potential Transaction	a potential transaction under which Wesfarmers (or one of its Related Entities) would acquire up to 100% of the issued securities in API, for a price per API share as stated in the Indicative Proposal.
Related Entity	in relation to an entity (the first entity): <ol style="list-style-type: none">1 a Controlled Entity of the first entity;2 an entity of which the first entity is a Controlled Entity; or3 a Controlled Entity of another entity of which the first entity is also a Controlled Entity.



Term	Meaning
Representative	in respect of a party or its Related Entities, each director, officer, employee, adviser, agent, contractor, consultant or representative of that party or Related Entity.
Superior Proposal	<p>a bona fide Competing Proposal that the board of API, acting in good faith, and after consulting with its financial advisers and receiving written legal advice from its external legal advisers, determines:</p> <ol style="list-style-type: none">1 is reasonably capable of being valued and completed; and2 would reasonably be likely to be, if completed substantially in accordance with its terms, more favourable to the shareholders of API as a whole than the latest proposal provided by Wesfarmers to API, <p>in each case taking into account all terms and conditions and other aspects of the Competing Proposal (including any timing considerations, any conditions precedent, the identity of the proponent, the type of consideration offered or other matters affecting the probability of the Competing Proposal being completed) and all relevant legal, regulatory and financial matters.</p>
Third Party	a person (including a Government Agency) other than Wesfarmers, API and their respective Related Entities and other Associates.
Voting Power	has the meaning given in the Corporations Act.

1.2 Interpretation

In this deed unless the context otherwise requires:

- a reference to a party includes its successors and permitted assigns;
- a reference to a party's directors, officers, employees, agents, professional advisers and consultants includes the directors, officers, employees, agents, professional advisers or consultants of any of its Related Entities;
- a reference to something being "reasonably likely" (or to a similar expression) is a reference to that thing being more likely than not to occur when assessed objectively;
- headings are for ease of reference only and do not affect the meaning of this deed;
- the singular includes the plural and vice versa;
- a reference to a clause is a reference to a clause in this deed;



HERBERT
SMITH
FREEHILLS

Schedule 1 Definitions and interpretation

- (g) a reference to a person will be construed as including an individual, the estate of an individual, firm, body corporate, association (whether incorporated or not), government and governmental, semi-governmental and local authority, or agency; and
- (h) a reference to this deed is to this deed as varied, novated, ratified or replaced from time to time.



Signing page

Executed as a deed

Signed sealed and delivered by
Wesfarmers Limited by

sign here ► 
Company Secretary/~~Director~~

print name Vicki Robinson

sign here ► 
Director

print name ROBERT SCOTT

Signed sealed and delivered by
Australian Pharmaceutical Industries Limited by

sign here ► _____
Company Secretary/Director

print name _____

sign here ► _____
Director

print name _____



Signing page

Executed as a deed

Signed sealed and delivered by
Wesfarmers Limited by

sign here ► _____
Company Secretary/Director

print name _____

sign here ► _____
Director

print name _____

Signed sealed and delivered by
Australian Pharmaceutical Industries Limited by

sign here ► _____
Company Secretary/Director

print name **Anne Mustow**

sign here ► _____
Director

print name **Richard Vincent**