

Via ASX Online

ASX ANNOUNCEMENT – 30 October 2023

ASX Market Announcements Office

ASX Limited

Market commentary regarding Competing Proposal

Diverger Limited (**Diverger** or **the Company**) notes the article in this morning's 'Street Talk' column of the Australian Financial Review regarding a Competing Proposal from COG Financial Services Limited (ASX:COG).

Diverger confirms it has received a non-binding indicative proposal from COG subject to a number of conditions. A copy of the proposal is attached, which sets out its terms. The proposal is not currently regarded by the Board of the Company as a Superior Proposal for the purposes of the Scheme Implementation Agreement with Count Ltd (ASX: CUP) dated 22 September 23.

The Diverger Board is working through the COG proposal and to date has not made any recommendation in relation to the proposal. The Board has not changed their unanimous recommendation in favour of the current Scheme proposal with Count.

Shareholders should note that the COG proposal is non-binding and there is no assurance that it will proceed in accordance with its terms or at all. Shareholders are urged not to take any action in response to the COG proposal.

Ends

Authorised for release by the Board of Diverger Limited.

Further information: For all enquiries, please contact Diverger at 1300 655 695 and info@diverger.com.au.

13 October 2023

The Board of Directors
Diverger Limited
Level 7, 115 Pitt Street
Sydney NSW 2000

Attention: Mr Peter Brook, Chairman

By email

Dear Peter,

Revised Non-Binding, Indicative Proposal to Acquire 100% of Diverger Limited

COG Financial Services Limited (**COG**) is pleased to submit a confidential, non-binding, indicative proposal (the **Indicative Proposal**) to acquire all of the ordinary shares on issue (**Diverger Shares**) in Diverger Limited (ASX:DVR) (**Diverger**) on the terms set out in this letter (**Transaction**).

The purpose of this letter is to provide the board of directors of Diverger (**Diverger Board**) with details of the Indicative Proposal and to set out the key terms and conditions of the Indicative Proposal (including any assumptions on which the Indicative Proposal Price (defined below) has been determined).

COG's strategic rationale for this transaction is that there are many revenue and expense synergies and growth opportunities across COG's asset finance broking, novated leasing and funds management activities and Diverger's operating businesses.

COG intends to engage collaboratively with Diverger to progress the Indicative Proposal in an expeditious manner. We recognise you have commenced a Scheme of Arrangement process with Count Limited (**Count**). We can provide any additional information you may require to demonstrate the COG Transaction as a superior offer in financial and other terms.

COG is proposing this Transaction as a base for further acquisitions within our combined areas of operation and the opportunity to cross sell asset finance, novated leasing and insurance broking. The increased size and liquidity of a larger combined entity both provides increased support for equity funded acquisitions and increases the rationale for a market re-rating of COG shares.

The board of directors of COG (**COG Board**) has approved the Indicative Proposal and is supportive of the Transaction.

1 Indicative Proposal Price

Based on publicly available information, and subject to the assumptions and conditions set out in this letter, under the Indicative Proposal, COG proposes to acquire all of the Diverger Shares on issue for A\$1.4083 per share with A\$0.679 in cash per Diverger Share (48%) and A\$0.731 in COG shares (52%) (the **Indicative Proposal Price**).

The Indicative Proposal Price implies an equity value for Diverger of A\$56 million.¹

The Indicative Proposal Price represents a 32% premium to the current share price of A\$1.07 per share and a premium of 38% over the 30day VWAP (A\$1.01387) and, therefore, represents compelling value for the holders of Diverger Shares (**Diverger Shareholders**). In addition, COG is prepared to re-imburse Diverger for the Break Fee payable to Count on terminating the current Scheme. COG is also prepared to accept a Liquidated Damages liability in any future Scheme should COG withdraw from the transaction for any reason.

The Indicative Proposal Price will be reduced by the value of any dividend or other distribution (including a capital return or reduction or an in-specie distribution) to Diverger Shareholders determined, declared, announced and/or paid by Diverger on or after the date of this letter.

2 Benefits of the Transaction for Diverger Shareholders

COG believes that the Indicative Proposal is compelling for Diverger Shareholders and delivers compelling and certain value for their investment in Diverger:

- (a) **Value:** as described in section 1 above, the Indicative Proposal Price represents a substantial premium to recent market prices of Diverger Shares and the Count offer of \$1.14;
- (b) **Increased Cash:** COG is offering \$27 million cash, which is a 83% increase over the Count offer;
- (c) **Certainty:** the Indicative Proposal provides Diverger Shareholders with certainty of value for their investment in Diverger in the near term, in contrast to the risks of remaining a Diverger Shareholder at a time of global economic and market volatility and uncertainty;
- (d) **Roll through:** the scrip component allows Diverger Shareholders who wish to have the ability to roll through to COG and potentially avoid a capital gain, gaining shares in a merged entity with an 11.1% earnings per share uplift; and
- (e) **Size and Liquidity:** Diverger shareholders will gain shares in an entity with over \$300 million market capitalisation, with an increased ability to support further expansion in financial planning, accounting and other aggregation.

3 Structure of the Transaction

Under the Transaction, it is currently intended that COG (or a subsidiary of COG) will acquire all of the Diverger Shares on issue by way of a members' scheme of arrangement under Part 5.1 of the *Corporations Act 2001* (Cth) (**Corporations Act**). The terms of this scheme of arrangement (and the Transaction) would be set out in the Scheme Implementation Deed, as defined and described in more detail in section 6.2 below.

The Transaction will also address any outstanding Diverger Performance Rights such that, on implementation of the Transaction, COG will acquire 100% of the equity securities on issue in Diverger on terms satisfactory to COG, and no person will have the right to be issued any additional equity securities in Diverger after implementation of the Transaction. COG will discuss with Diverger the mechanism for dealing with, and the treatment of, the Diverger Performance Rights as part of the Transaction during the period in which COG conducts its due diligence in Diverger.

¹ This assumes 39,769,638 Diverger Shares on issue and performance rights

4 Sources of finance

COG currently intends to finance the aggregate consideration payable to Diverger Shareholders under the Transaction (**Aggregate Consideration**) as follows:

- (a) **Existing internal cash resources:** COG has approximately A\$25.8 million of internal cash resources available to use for this transaction.
- (b) **Capital raise:** COG will also undertake a small capital raise of \$10m to further support the transaction.
- (c) **Acquisition finance from CBA.** COG has an acquisition facility available with the Commonwealth Bank of Australia with an undrawn limit of approximately A\$10.0 million which it intends to draw down upon.
- (d) **COG Scrip.** The scrip component allows Diverger Shareholders who wish to have the ability to roll through to COG and potentially avoid a capital gain.

5 Key assumptions

The Indicative Proposal has been determined on the basis of COG's review of publicly available information about Diverger. Any final, binding offer in respect of the Transaction may be higher or lower than the Indicative Proposal Price, and the final structure of the Transaction may change, as a consequence of COG's confirmatory due diligence, updated trading and further investigations and/or developments after the date of this letter.

In developing the Indicative Proposal (including determining the Indicative Proposal Price), COG has made a number of key assumptions, including that:

- (a) there are 37,674,103 Diverger Shares on issue and Diverger has granted 2,095,580 performance rights under the terms of Diverger's employee incentive plan(s) (**Diverger Performance Rights**). The Indicative Proposal assumes that Diverger has no other securities on issue and no person has the right to be issued any Diverger Shares or other securities in Diverger, and that Diverger does not issue any additional Diverger Shares or other securities after the date of this letter;
- (b) Diverger's material contracts can be reviewed and verified by COG as part of its due diligence and any material change of control implications as a result of the Transaction can be resolved to the satisfaction of COG;
- (c) Diverger is not in breach of any of its financing arrangements or material contracts;
- (d) Diverger holds all necessary licences, authorisations and approvals for its current business operations, and it is in compliance with all requirements of those licences, authorisations and approvals;
- (e) there has been no material adverse change in Diverger's financial position or prospects, nor any changes to its capital structure, since its most recently filed accounts and announcements made to the ASX;
- (f) there are no material off-balance sheet liabilities, underestimated liabilities, undisclosed material contingencies or liabilities, or pending and/or outstanding litigation or dispute processes, or other liabilities due to non-compliance with law;

- (g) no dividend or other distribution (including a capital return or reduction or an in-specie distribution) will be announced, declared or paid by Diverger after the date of this letter (and, as stated in section 1 above, in the event that any dividend or other distribution (including a capital return or reduction or an in-specie distribution) is announced, determined, declared or paid by Diverger after the date of this letter, the Indicative Proposal Price will be reduced by the value of that dividend or other distribution;
- (h) no material assets of Diverger will be divested (or agreed to be divested), and no material acquisitions will be made (or agreed to be made) by Diverger, after the date of this letter;
- (i) the synergies that COG currently expects to achieve as a result of the Transaction are supported by COG's due diligence findings; and
- (j) Diverger's publicly available information is complete and accurate.

Should these assumptions prove to be incorrect (in whole or in part) following COG's due diligence (or otherwise), the Indicative Proposal (and/or the Indicative Proposal Price) may change or be withdrawn.

6 Conditions

6.1 Due diligence

Any final, binding offer made by COG in respect of the Transaction, and the entry by COG into a Scheme Implementation Deed, would be subject to the satisfactory completion of operational, accounting, financial, legal, tax, insurance, HR/employment and other due diligence. COG expects that this would include, but not be limited to a review of Diverger's financial information and records, including historical and forecast financial performance, audit notes, tax records and asset valuations; and

- (a) a review and analysis of Diverger's latest detailed budget, business plan and financial model (with forecasts for Diverger);
- (b) other accounting and tax due diligence customary for a business of the nature of Diverger's business;
- (c) a review of Diverger Board papers (including board committee papers), reports and minutes for the last three years, Diverger's corporate structure (including share registers and material group governance documents), and the number, type and terms of all securities outstanding (including incentive arrangements);
- (d) the review and verification of material contracts (including leases and debt financing facilities and related arrangements);
- (e) a review of a detailed organisational chart, employment agreements for key management, template employment contracts for other employees, information about consultants/independent contractors engaged in the business, details of salaries, employee share plans, bonus plans and Diverger Performance Rights, and information about customary workplace/HR-related matters;
- (f) other customary legal diligence (including in respect of Diverger's real property, intellectual property and IT-related arrangements, details of any non-compliance with authorisations or licences, details of any known failures to comply with applicable laws or regulations, any actual, pending or threatened claim or proceeding or governmental investigation, policies, procedures and compliance with applicable anti-bribery and anti-corruption, sanctions and AML/CTF laws and global standards); and

- (g) interviews with/presentations by Diverger's senior management.

COG and its advisers are prepared to move forward immediately to perform and complete the required due diligence in a timely manner and are willing to work with Diverger management to complete this work as quickly and efficiently as possible. On this basis, COG envisages a period of approximately four weeks of confirmatory due diligence from the date on which COG is granted access to a comprehensive electronic data room and management of Diverger to complete due diligence investigations.

6.2 Other conditions

For COG to be in a position to provide a binding proposal to Diverger in respect of the Transaction, the following conditions will need be fulfilled:

- satisfactory completion of COG's due diligence investigations referred to in section 6.1 above;
- the key assumptions referred to in section 5 not proving to be incorrect (in whole or in part) following COG's due diligence (or otherwise);
- receipt of all necessary internal approvals, including final COG Board approval; and
- the entry into a Scheme Implementation Deed (as defined below) on the terms described below and, in any case, on terms satisfactory to COG.

Implementation of the Transaction will be subject to COG and Diverger entering into a binding scheme implementation deed to give effect to the Transaction (**Scheme Implementation Deed**), which includes customary terms and conditions for a transaction of the nature of the Transaction, including:

- (a) customary conditions precedent to the scheme of arrangement becoming effective under the Corporations Act, including Diverger Shareholder and Court approval, no court order or regulatory impediment to implementation of the Transaction, an Independent Expert concluding that the scheme of arrangement is in the best interests of Diverger Shareholders, no material adverse change in respect of Diverger, no prescribed occurrences or regulated events, no breach of Diverger's representations and warranties, the approval of COG Shareholders for the purpose of ASX Listing Rule 7 and/or 11 (only to the extent required), the receipt of any necessary regulatory approvals, and the receipt of any other third party consents required in respect of any change of control provisions in Diverger's material contractual arrangements that would be triggered by the Transaction (to be determined by COG during due diligence);
- (b) customary requirements for the Diverger Board to unanimously recommend that Diverger Shareholders vote in favour of the Transaction (in the absence of a superior proposal and subject to an Independent Expert concluding that the Transaction is in the best interests of Diverger Shareholders) and each member of the Diverger Board (**Diverger Director**) to confirm and publicly state that he or she will vote all Diverger Shares held or controlled by that Diverger Director in favour of the Transaction, subject only to those same qualifications;
- (c) exclusivity provisions customary for a transaction of the nature of the Transaction, including a "no-talk" restriction, "no-shop" and "no-due diligence" restrictions (with an appropriate fiduciary carve-out, consistent with market practice), a "notification" obligation and a matching right;

- (d) a break-fee of 1.0% of the Diverger equity value implied by the Indicative Proposal Price payable by Diverger in certain, customary circumstances;
- (e) joint preparation of all Diverger Shareholder communications, including Diverger's scheme booklet;
- (f) customary transaction support obligations on Diverger and the Diverger Board;
- (g) customary pre-implementation conduct of business restrictions on Diverger;
- (h) a commitment to work towards an agreed timetable (to be set out in the Scheme Implementation Deed);
- (i) certain warranties and undertakings about Diverger's business are given by Diverger (including, but not limited to, no changes to the capital structure of Diverger, no dividends, no material acquisitions or disposals, no insolvency events, no breach of material contracts, no breach of laws, licences or authorisations, no existing, pending or threatened litigation or claims, or certain other specified occurrences);
- (j) the Diverger Board (and the board of each subsidiary of Diverger) being reconstituted on implementation of the Transaction in accordance with the direction of COG;
- (k) all Diverger Performance Rights are to vest or otherwise be acquired or cancelled/lapsed on terms acceptable to COG; and
- (l) other customary terms and conditions.

The Scheme Implementation Deed would be negotiated during COG's due diligence period.

7 Exclusivity

If Diverger wishes to move forward with the Indicative Proposal, given the necessity for COG to direct significant internal resources to the Transaction and incur substantial costs in undertaking confirmatory due diligence, COG requests a period of initial exclusivity (commencing on the date of this letter and ending six weeks after the date on which COG is granted access to a comprehensive electronic data room) within which to undertake due diligence and negotiate and enter into the Scheme Implementation Deed.]

COG requires such exclusivity to include customary "no shop", "no talk" and "no due diligence" obligations on Diverger. COG also requires that such exclusivity includes a notification obligation on Diverger, and a matching right in favour of COG, in respect of competing proposals received or made during the exclusivity period.

COG also requires that Diverger agrees to make available for COG and its advisers a detailed electronic data room that provides all information COG considers necessary for the purposes of conducting its due diligence investigations described in section 6.1 above and to facilitate such management presentations as COG may reasonably request.

We would seek to formalise the exclusivity and due diligence facilitation arrangements in the confidentiality agreement to be agreed between COG and Diverger to facilitate COG's due diligence.

8 Confidentiality and status of this letter

This letter is non-binding and conditional on the matters set out in this letter and should not be construed as a binding offer to acquire Diverger. This letter (and the Indicative Proposal) is an incomplete, non-binding proposal that is subject to negotiation and is strictly confidential. The Indicative Proposal (and this letter) expresses COG's current intentions only and is not intended to constitute, and does not constitute, an offer capable of acceptance or to otherwise give rise to a binding contract. For the avoidance of doubt, this letter is not, and cannot be considered to be, notification or a public announcement of an intention to make a takeover offer in respect of Diverger pursuant to section 631 of the Corporations Act. Unless and until a Scheme Implementation Deed is entered into, COG will not be under any obligation whatsoever with respect to the Transaction or anything set out in this letter (including, but not limited to, to Diverger or Diverger Shareholders), including, without limitation, to negotiate terms of the Transaction with Diverger or anyone else.

This letter and its contents (and the Indicative Proposal, including its terms and conditions) are strictly confidential and the Indicative Proposal is submitted on the basis and condition that this letter, including its existence, or any of its terms and contents (including any information or document appended to it), is not disclosed to anyone (including, without limitation, any other prospective purchaser of Diverger), publicly or privately, other than the Diverger Board and Diverger's advisers engaged directly in connection with the Transaction (on a need to know basis), without first obtaining the prior written consent of COG. Any disclosure of a copy of this letter without the prior express consent of COG may prejudice COG's willingness to proceed with the Indicative Proposal.

Confidentiality is extremely important to COG as an ASX-listed company, as we would expect for Diverger, and, if it is lost at any point prior to the announcement of an agreed Transaction, there can be no certainty that COG would proceed any further with the Indicative Proposal. Further, COG does not believe that disclosure of the existence or contents of this letter or the Indicative Proposal is required under the ASX Listing Rules or any other law or regulation. If Diverger has received legal or other advice (or the Diverger Board has otherwise formed a view) to the contrary, we request to be consulted prior to any announcement proposed to be made by Diverger in connection with this letter. We reserve the right to withdraw the Indicative Proposal in the event of such disclosure by Diverger.

Without limiting the above, COG reserves the right to withdraw the Indicative Proposal and/or cease discussions with Diverger in relation to the Indicative Proposal at any time.

9 Next steps

We are pleased to submit the Indicative Proposal and would welcome the opportunity to commence due diligence with a view to announcing the entry into a Scheme Implementation Deed before 1 November 2023. COG is in a position to commence due diligence and discussions in respect of a Scheme Implementation Deed immediately.

We believe that the Indicative Proposal is a compelling opportunity for Diverger Shareholders and we look forward to progressing it with Diverger.



We look forward to discussing the Indicative Proposal and potential next steps with you.

Yours sincerely,
COG Financial Services Limited

A handwritten signature in black ink, appearing to read 'Patrick Tuttle', is written over a horizontal line.

Patrick Tuttle
Chairman

Appendix A – Preliminary due diligence request list

A. Group and ownership structure (and other tax and legal due diligence information)
Organisation charts and details of the management structure including names of line of service, individuals, their responsibilities, salaries, length of service and location
Corporate structure documentation (including details of issued capital, share registers, material Diverger Financial group governance documents) and shareholders'/joint venture agreements, if relevant)
Copies of board minutes and board papers for the last three (3) years
Office locations with lease terms (including copies of property leases) and copies/details of other material real property documentation
Details on key financial and non-financial KPIs monitored by the business
Overview of key accounting policies including revenue and cost recognition policies, highlighting any material changes in the historical period
Income tax returns for the last three financial years
Material licensing arrangements and material authorisations, copies of any material correspondence with regulators, and details of any compliance or possible non-compliance by a Diverger Financial group company
Copies of material financing arrangements (including bank facilities) and any correspondence with financiers (including details and documentation of any default or non-compliance with reporting obligations or covenants), as well as details of any security interests or other encumbrances over any Diverger Financial group company
Copies of all material contracts, including any contracts with a value exceeding A\$200,000, and any contract or arrangement with a related party (including a director or a shareholder of Diverger Financial)
Details of any actual, pending, potential or threatened claims/litigation or governmental/regulatory investigations by or against (as applicable) a Diverger Financial group entity (and details of any facts or circumstances that may give rise to any claim(s)/litigation or governmental/regulatory investigation(s), including any default by a party under a material contract or any failure by a Diverger Financial group member to comply with any law, regulation, licence or authorisation)
Details of any recent (within the last three (3) years) or proposed material disposals or acquisitions (including any trailing liabilities)

Key management contracts, other standard form employment agreements and any applicable enterprise agreements/industrial instruments, and details of any contractors, consultants or other persons (other than employees) who provide services to the business
Details of all patents and trademarks (granted, registered and pending) and other material IP of the Diverger Financial group (including any infringement or potential infringement of third party IP or Diverger Financial's IP)
Details of financial systems and controls used
Details and copies of employee incentive plans and any incentives/benefits that have been granted under them, and details of company bonus/incentive schemes
Summary of superannuation/pension/defined benefit schemes in place (including details of any outstanding and unpaid contributions by any Diverger Financial group company)
Details of current insurance policies (including D&O insurance)
List of shareholders and corresponding number and classes of shares held, including details of rights as to dividends, votes, conversion, etc.
Confirmation that Diverger Financial has complied, and is currently in compliance, with its continuous disclosure obligations under ASX Listing Rule 3.1 and, except as it relates to the Transaction, Diverger Financial is not relying on the carve-out in ASX Listing Rule 3.1A to withhold any information from public disclosure.
Details of any other matter that Diverger Financial management considers is material in the context of the business. This should include any matter that would seem significant or important to a person proposing to enter into a control transaction in respect of Diverger Financial or its business.

B. Trading

Analysis to be provided for the three years ending Jun-20, Jun-21, Jun-22
Copies of FY24 Financial Budget/Forecast
Monthly management accounts for the periods referred to above and to include P&L, balance sheet and cash flow (in Excel)
Monthly trial balances (in Excel)
Split of monthly sales and gross profit by product, customer, location, etc.
Split of monthly other income such as insurance rebates, volume-based rebates, etc.

Details of top 20 customers for each period (i.e., FY20, FY21, FY22) including category, region, length of customer relationship, revenue in the historical period, invoicing currency, credit terms and any other key trading terms

Invoice listing including details such as client name, invoice date, amount, etc.

Details of any key customer wins and losses in the historical period (including source of customer wins and reasons for any losses)

Analysis of costs by supplier (for example, supplier turnover reports), together with key trading / framework terms, details of services provided, currencies, length of relationship and any disputes (top 10 only)

Monthly analysis of operating costs (to the extent not available in the management accounts of Diverger)

Supplementing the above cost analysis, a monthly breakdown of employment costs, headcount and average staff costs by function including details with respect to pensions, bonuses / commissions, and incentive schemes to reconcile to P&L costs

Details of monthly directors' remuneration (gross, bonus, pension) (to the extent not covered by the above request)