



## Quarterly Bulletin on Takeovers Matters

**(First Quarter 2019)**

For the benefit of Takeovers Forum members, we have compiled various information and updates relating to takeover matters extracted from the official site of each Forum member. This bulletin will be published quarterly to serve as a centralized information hub on takeover matters.

*(Please click on the title of each item to go to the full write-up at the original source)*

### ***SECURITIES & FUTURES COMMISSION, HONG KONG***

#### **Appointments to SFC committees**

28 Mar 2019 - The Securities and Futures Commission (SFC) is pleased to announce new appointments and reappointments to amongst others, the Takeovers and Mergers Panel and Takeovers Appeal Committee with effect from 1 April 2019.

#### **Takeovers Bulletin - Issue No. 48 - March 2019**

- Disclosure of special deals in Rule 3.5 announcements
- Presumption of acting in concert
- Use of email by the Executive
- Appointments and reappointments to the takeovers-related committees
- Quarterly update on the activities of the Takeovers Team

### ***MONETARY AUTHORITY OF SINGAPORE***

#### **Take-overs Bulletin - Issue No. 6 - February 2019**

- Welcome Message
- Reminder to financial advisers to consult the SIC if they have or had dealings with the offeror or offeree company
- Reminder that IFA opinions must be clear and unequivocal
- Disclosure obligations by an EFM or EPT

- Lodgement of documents on MAS OPERA
- H2 2018 Statistics on M&A activity

### **Code on Take Overs and Mergers revised to clarify application for dual class share companies**

24 January 2019 - The Monetary Authority of Singapore (MAS) today issued a revised Singapore Code on Take-overs and Mergers (the Code) to clarify its application to companies with a dual class share structure (DCS companies) with a primary listing on the Singapore Exchange.

## ***AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION***

### **19-031MR Queensland lawyer pleads guilty to giving false or misleading information to ASIC**

15 February 2019 - Mary-Anne Greaves, of Mount Sheridan, Queensland, has pleaded guilty before the Brisbane Magistrates' Court to one count of giving false or misleading information to ASIC.

The examination of Ms Greaves, a former lawyer, was part of an investigation conducted by ASIC into a 2015 takeover bid by G8 Education Limited (G8 Education) for ASX-listed Affinity Education Group Limited (Affinity). The investigation included enquiries into alleged undisclosed arrangements between G8 Education and West Bridge Holdings Pty Ltd (West Bridge) for the acquisition of Affinity shares as part of the takeover bid.

### **19-010MR ASIC appoints Morgan Stanley to sell shares in Tribune Resources Limited**

23 January 2019 - ASIC has appointed Morgan Stanley Wealth Management Australia Pty Ltd (Morgan Stanley) to sell 12,025,519 ordinary shares (Sale Shares) in Tribune Resources Limited (Tribune).

The sale follows a decision by the Takeovers Panel (the Panel) to vest shares in the Commonwealth for sale by ASIC. As of 23 January 2019, the Sale Shares represent approximately 21.67% of Tribune's issued capital.

## ***TAKEOVERS PANEL OF AUSTRALIA***

### **Finders Resources Limited 03R (Variation of Orders)**

25 March 2019 - The Panel, Ian Jackman SC, Ron Malek (sitting President) and David Williamson, varied the final orders the Panel made on 6 June 2018. The variation makes it possible to comply with the orders following the Federal Court's discharge of a stay.

### **Henry Morgan Limited 05**

25 March 2019 - The Panel, Robert McKenzie (sitting President), Bruce McLennan and Karen Phin made a variation and correction to the final orders made in Benjamin Hornigold Limited 02 and Henry Morgan Limited 02 [2019] ATP 1 in relation to the affairs of Henry Morgan Limited, including to extend the time period for John Bridgeman Limited to dispatch its replacement bidder's statement.

### **Flinders Mines Limited 02 & 03**

4 March 2019 - The Panel, Alex Cartel (sitting President), Elizabeth Hallett and Diana Nicholson made a declaration of unacceptable circumstances in relation to the affairs of Flinders Mines Limited. The two applications (heard together) concerned Flinders Mines' proposal to de-list after undertaking an on-market buy-back and an unmarketable parcels sale process. The buy-back was to be funded by a loan facility from a subsidiary of Flinders' majority shareholder, TIO (NZ) Limited, to be repaid through a proposed non-renounceable pro-rata rights issue following the buy-back. The Panel declared the circumstances unacceptable because of the coercive effects of certain features of the proposed de-listing and associated transactions. The Panel decided not to make orders after accepting undertakings from Flinders and TIO (NZ) Limited.

### **Benjamin Hornigold Limited 02 and Henry Morgan Limited 02**

4 March 2019 - The Panel, Yasmin Allen, James Dickson (sitting President) and Bruce McLennan, made a declaration of unacceptable circumstances in relation to the affairs of Benjamin Hornigold Limited and a declaration of unacceptable circumstances in relation to the affairs of Henry Morgan Limited. The applications concerned concurrent non-inter-conditional scrip takeover bids made by John Bridgeman Limited for each of Benjamin Hornigold and Henry Morgan. The Panel declared the circumstances unacceptable because (among other things) shareholders had not been given sufficient information to assess the bids, John Bridgeman, Benjamin Hornigold and Henry Morgan failed to adequately advise shareholders in relation to the bids, and certain transactions between John Bridgeman, Benjamin Hornigold and another entity operated as a lock-up device in relation to the bid for Benjamin Hornigold. The Panel made orders, which included cancelling acceptances, requiring repayment of a \$4.5 million loan from Benjamin Hornigold to John Bridgeman and further disclosure.

### **Panel welcomes new President and members**

28 February 2019 - The Panel welcomes Alex Cartel as its new President, effective from 8 March 2019. Mr Cartel's appointment was announced today by the Treasurer, the Hon Josh Frydenberg MP, together with the appointment of new, and reappointment of existing, Panel members.

Mr Cartel was appointed as a Panel member in 2015 and has served on numerous sitting Panels and also participated in policy sub-committees.

### **Factor Therapeutics Limited**

28 February 2019 - The Panel, Christian Johnston, Denise McComish (sitting President) and Rory Moriarty declined to conduct proceedings on an application by Pura Vida Energy NL in relation to the affairs of Factor Therapeutics Limited. The application concerned a placement made by Factor Therapeutics shortly after the applicant and another shareholder gave a s249D notice to the company. The Panel considered that there was no reasonable prospect that it would declare the circumstances unacceptable and Pura Vida had not provided a sufficient body of material to justify the Panel making further enquiries as to the placement.

### **IndiOre Limited**

27 February 2019 - The Panel, Teresa Dyson, Rod Halstead (sitting President) and Sarah Rennie, declined to conduct proceedings on an application by Mr Benjamin Pauley in relation to the affairs of IndiOre Limited. The application concerned whether IndiOre's shareholders were misled when they voted to approve an issue of convertible notes. The Panel considered that there was no reasonable prospect that it would declare the circumstances unacceptable until such time as the notes had been issued or it became clear that it was IndiOre's intention to issue the notes. IndiOre undertook not to do so until it had completed a previously announced strategic review.

### **Nimrod Resources Limited**

27 February 2019 - The Panel, Bill Koeck, Rebecca Maslen-Stannage and Tony Osmond (sitting President) declined to conduct proceedings on an application by JPC International Pty Ltd and Romell Pty Ltd (as trustee for Romell Trust) in relation to the affairs of Nimrod Resources Limited. The application concerned Nimrod issuing shares to a company that may have resulted in a contravention s606 if Nimrod had over 50 members. Nimrod had not registered a transfer from JPC to 11 new shareholders that would have resulted in Nimrod having over 50 members. The Panel considered that s606 did not apply and it did not have jurisdiction. The Panel considered that there was no reasonable prospect that it would declare the circumstances unacceptable.

## ***NEW ZEALAND TAKEOVERS PANEL***

### **Code Word - No. 48 (March 2019)**

- Partial Offers - Specified Percentage
- Guidance Update
- New Panel Member Appointments
- Extension of 6-month period in the Class Exemptions Notice

## **Takeovers Panel announces new board members**

22 January 2019 - Takeovers Panel Board Chair Andy Coupe today announced the appointment of Anna Buchly and Martin Stearne to the Takeovers Panel, the government's regulator of the corporate takeovers market.

Anna Buchly is the current Chair and a Partner in national law firm, Bell Gully. She has extensive experience advising on mergers and acquisitions and capital market transactions. Ms Buchly is ranked as a leading lawyer in *Chambers Asia Pacific 2018* and *The Legal 500 Asia Pacific 2018*.