



## Quarterly Bulletin on Takeovers Matters

(Fourth Quarter 2020)

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***

#### **TAKEOVERS BULLETIN – Issue No. 55 – December 2020**

The SFC's Takeovers Bulletin is a newsletter to help participants in Hong Kong's financial markets better understand the Codes on Takeovers and Mergers and Share Buy-backs.

In its December 2020 issue, the following matters were highlighted:

- Identifying all relevant regulatory approvals for completion of offers
- Additional disclosure in delistings of Mainland issuers under Rule 2.2
- Public censure and cold shoulder order imposed on Ngai Lai Ha and reminder on the operation of Note 17 to Rule 26.1
- Public censure and cold shoulder order imposed on So Yuk Kwan
- Quarterly update on the activities of the Takeovers Team

#### **Takeovers Executive of the SFC sanctions Ngai Lai Ha for breaching Rule 26.1 of the Takeovers Code**

2 November 2020 – The SFC publicly censure and imposes an 18-month cold-shoulder order against Ms Ngai Lai Ha (“MS Ngai”) for breaching the mandatory general offer obligation under Rule 26.1 of the Code on Takeovers and Mergers. Ms Ngai will be denied direct or indirect access to the Hong Kong securities market for a period of 18 months commencing on 2 November 2020 and ending on 1 May 2022.

## **Takeovers Executive of the SFC sanctions Dr So Yuk Kwan for breaching Rule 26.1 of the Takeovers Code**

15 October 2020 – The SFC publicly censure and imposes a 24-month cold-shoulder order against Dr So Yuk Kwan (“Dr So”) for breaching the mandatory general offer obligation under Rule 26.1 of the Code on Takeovers and Mergers. Dr So will be denied direct or indirect access to the Hong Kong securities market for a period of 24 months commencing on 15 October 2020 to 14 October 2022.

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

### **Excelsior Capital Limited**

24 December 2020 – The Panel, Kelvin Barry, Elizabeth Hallett (sitting President) and Kristen Jung declined to make a declaration of unacceptable circumstances in relation to the affairs of Excelsior Capital Limited. The application concerned acquisitions of Excelsior shares resulting in Ms Leanne Catelan’s relevant interest in Excelsior increasing from 47.8% to 50.2%. The Panel was not satisfied the market was uninformed to any material extent when the acquisitions occurred and considered that, while Ms Catelan should have ensured she complied with the substantial holding requirements in a timely manner, further action was not necessary or appropriate.

### **Molopo Energy Limited 03R, 04R & 05R Variation**

11 December 2020 – The Panel, Michelle Jablko (sitting President), Christian Johnston and Tara Page, varied the final orders made on 7 July 2017 by the sitting Panel in Molopo Energy Limited 03R, 04R & 05R. The variation stays the sale of the Molopo shares vested in ASIC under the orders until certain Court proceedings are resolved.

### **Cardinal Resources Limited 07**

9 December 2020 – The Panel, Jeremy Leibler, Karen Phin (sitting President) and Sarah Rennie, declined to conduct proceedings on an application by Cardinal Resources Limited in relation to its affairs. The application concerned (among other things) whether certain statements made in an announcement by Nord Gold S.E. in relation to the Panel proceedings in Cardinal Resources Limited 03 & 041 (Cardinal 03 & 04) were misleading or in contravention of the undertakings given in notices of appearance lodged by Nordgold in relation to those proceedings. The Panel considered (among other things) that it was not persuaded that any of the statements made in Nordgold’s announcement were misleading and there was no reasonable prospect that it would declare the circumstances unacceptable.

### **Cardinal Resources Limited 05**

3 December 2020 – The Panel, Jeremy Leibler, Karen Phin (sitting President) and Sarah Rennie, declined to conduct proceedings on an application by Shandong Gold Mining (HongKong) Co., Limited in relation to the affairs of Cardinal. Cardinal is the subject of competing takeover bids from Nord Gold S.E. and Shandong. The application concerned whether Nordgold had come to an agreement, arrangement or understanding that MM Asset Management Inc. would accept into Nordgold's bid for Cardinal in consideration for Nordgold increasing the offer price under its bid, leading to a breach of section 606. The Panel considered that Shandong did not provide sufficient probative material to justify the Panel making further enquiries and considered that there was no reasonable prospect that it would declare the circumstances unacceptable.

### **Cardinal Resources Limited 03 & 04**

3 December 2020 – The Panel, Jeremy Leibler, Karen Phin (sitting President) and Sarah Rennie, declined to conduct proceedings on applications by Samson Rock Capital LLP and Cardinal Resources Limited in relation to the affairs of Cardinal. Cardinal is the subject of competing takeover bids from Nord Gold S.E. and Shandong Gold Mining (HongKong) Co., Limited. The application concerned whether the circumstances in relation to Cardinal, where (among other things) Nordgold and Shandong have made equivalent offers for Cardinal which are both 'last and final' (in the absence of a higher competing offer), are unacceptable, such that both bidders should be released from their respective last and final statements. The Panel considered there was no reasonable prospect that it would declare the circumstances unacceptable.

### **Cardinal Resources Limited 02**

2 December 2020 – The Panel, Jeremy Leibler, Karen Phin (sitting President) and Sarah Rennie, declined to conduct proceedings on an application by Nord Gold S.E. in relation to the affairs of Cardinal Resources Limited. Cardinal is the subject of competing takeover bids from Nordgold and Shandong Gold Mining (HongKong) Co., Limited. The application concerned whether Cardinal's conduct in relation to the solicitation of shareholder intention statements (to the effect that its shareholders intend to accept the Shandong Offer) was unacceptable, and whether Shandong and Cardinal were associated. The Panel considered (among other things) that there was not sufficient evidence that Cardinal's conduct in soliciting shareholder intention statements was unacceptable and that there was not sufficient material to justify the Panel making further enquiries as to whether Shandong and Cardinal were associated. The Panel considered that there was no reasonable prospect that it would declare the circumstances unacceptable.

### **CFOAM Limited**

2 December 2020 – The Panel, Richard Hunt (sitting President), Bill Koeck and James Stewart, declined to make a declaration of unacceptable circumstances in relation to the affairs of CFOAM. The application concerned an announcement by CFOAM that it had entered into a “conditional agreement to invest A\$1,550,000 to acquire a strategic 10.24% interest in Innovaero Technologies Pty Ltd (Innovaero), an Australian Aerospace and Defence Technology business”, conditional (among other things) on CFOAM completing a new equity raising for a minimum of \$3,000,000 (Innovaero Investment) and that CFOAM would undertake the Entitlement Issue to fund the Innovaero Investment. The Panel considered (among other things) that there was no evidence that the Entitlement Issue would have or would be likely to have an effect on the control of CFOAM and delaying the Entitlement Issue could impact on CFOAM’s ability to raise funds.

### **Webcentral Group Limited**

18 November 2020 – The Panel, Amy Alston, Stephanie Charles (sitting President) and Michael Lishman declined to conduct proceedings on an application by Keybridge Capital Limited in relation to the affairs of Webcentral Group Limited. Webcentral was subject to a takeover bid from 5G Networks Limited. The application concerned whether (among other things) disclosures in 5GN’s bidder’s statement and Webcentral’s target’s statement in relation to 5GN providing funding to repay Webcentral’s existing financiers in full (conditional, among other things, on 5GN having a relevant interest in at least 50.1% of the Webcentral shares) coerced Webcentral shareholders to accept the 5GN bid. The Panel considered it was not in the public interest to conduct proceedings for a number of reasons, including Webcentral’s precarious financial position. Accordingly the Panel considered that there was no reasonable prospect that it would declare the circumstances unacceptable.

### **Keybridge Capital Limited 14**

13 October 2020 – The Panel, Bruce Cowley, Richard Hunt (sitting President) and Tracey Horton declined to conduct proceedings on an application by WAM Active Limited in relation to the affairs of Keybridge Capital Limited. WAM Active submitted that Keybridge and Aurora Funds Management Limited had an understanding or were acting in concert in relation to Keybridge to concentrate ownership of ordinary shares in Keybridge in entities associated with Keybridge board members and Aurora for the purpose of stymieing WAM Active’s bid for Keybridge, with the shared goal of ensuring that WAM Active was not able to obtain sufficient voting shares to remove the current Keybridge board. The Panel considered that there was not sufficient material to justify making further enquiries as to whether Keybridge and Aurora were associated and there was no reasonable prospect that it would declare the circumstances unacceptable.

## **Alto Metals Limited**

6 October 2020 – The Panel, Kelvin Barry, Paula Dwyer (sitting President) and Rory Moriarty, made a declaration of unacceptable circumstances in relation to the affairs of Alto Metals Limited. The application concerned (among other things) whether an entitlement offer announced by Alto operated to stymie an unconditional takeover bid made by Habrok (Alto) Pty Ltd. The Panel considered (among other things) that an announcement by Alto recommending rejection of Habrok’s bid was misleading or had the potential to mislead shareholders and the entitlement offer, together with Alto’s announcement recommending rejection of Habrok’s bid gave rise to unacceptable circumstances. The Panel made orders, which included Alto immediately taking all action necessary to terminate its entitlement offer and delaying any new capital raising for two weeks following despatch of further target disclosure.

## **Consultation Paper - Remaking of Procedural Rules**

2 October 2020 - Under the Legislation Act 2003, legislative instruments, such as the Panel’s Procedural Rules to be followed in Panel Proceedings (made on 12 April 2010) (F2010L00948) (Procedural Rules), will repeal automatically, or ‘sunset’, after 10 years, unless action is taken to preserve them. The Panel’s existing Procedural Rules are due to sunset on 1 April 2021. The Procedural Rules set out the procedure to be followed in Panel proceedings. Our preliminary view is that within the legislative framework, the Procedural Rules are operating effectively and efficiently, and continue to be necessary to ensure that Panel proceedings are as fair and reasonable and conducted with as little formality and in as timely a manner, as the relevant legislation, and a proper consideration of the matters before the Panel, permit. We are not aware of significant issues with the current operation of the Procedural Rules. Accordingly, the Panel proposes to remake the Procedural Rules in a new instrument prior to the sunset date of 1 April 2021 without significant changes, so that the ongoing effect of the Procedural Rules is preserved.

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

### **Christmas closedown**

08 December 2020 – The Takeovers Panel offices will close from Thursday, 24 December 2020, and reopen on Monday, 11 January 2021. While the office is closed, the Panel's General Counsel Mark Cunliffe may be contacted on the phone numbers listed for urgent matters.

### **Extension of COVID-19 exemption relief for capital raising**

27 October 2020 –Following recent targeted consultation with market practitioners, the Panel has decided to extend the COVID-19 Exemptions such that they apply to relevant increases in voting control occurring on or before 31 December 2020. The Panel considered that the extension is appropriate given the continued uncertainties arising from the COVID-19 pandemic and market volatility. The Panel does not anticipate further extensions to the COVID-19 Exemptions but will continue to monitor the challenges arising from the evolving COVID-19 pandemic.

## ***SECURITIES AND EXCHANGE COMMISSION, THAILAND***

### **SEC is seeking public comments on amending the takeover regulations**

19 November 2020 –SEC is seeking public comments on amending the takeover regulations to increase flexibility in making a tender offer for all securities of the business, which supports data storage in a machine readable format and can be processed immediately in order to reduce burdens and facilitate the private sector in accordance with the Regulatory Guillotine.

### **SEC advises NBC shareholders to vote on the proposed Komchadluek acquisition, which the independent financial advisor views to be reasonable but the price and certain conditions are inappropriate**

26 October 2020 –SEC is advising the shareholders of Nation Broadcasting Corporation Public Company Limited (NBC) to study information and exercise their voting right at the annual general shareholders' meeting (AGM) to be held on 29 October 2020 with regard to the company's plan to acquire the "Komchadluek" trademark from National Multimedia Group Public Company Limited (NMG) and the assets and business under the "Komchadluek" trademark from Komchadluek Media Co., Ltd. at the total amount of 70 million baht. The independent financial advisor views the objectives of the acquisition plan are reasonable but the price and certain conditions are deemed inappropriate, and therefore is of the opinion that NBC's shareholders should not approve the acquisitions.