



## Quarterly Bulletin on Takeovers Matters

**(First Quarter 2021)**

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. 56 – March 2021](#)**

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 March 2021 issue, the following matters were highlighted:

- Takeovers and Mergers Panel: Retirement of Mr Stephen Clark and appointment of Mr Freeman Chan as Chairman
- Additional disclosure of future intentions for unlisted securities
- Application of Rule 35.3 on connected exempt principal traders
- Appointments and reappointments to the takeovers-related committees
- Quarterly update on the activities of the Takeovers Team

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

#### **[Webcentral Group Limited 04R](#)**

25 March 2021 – The review Panel, Chelsey Drake, Teresa Dyson and Michelle Jablko (sitting President), declined to conduct proceedings on an application by Keybridge Capital Limited to review the decision of the initial Panel in Webcentral Group Limited 03.

### **The Agency Group Australia Limited 03R**

16 March 2021 – The review Panel, Ian Jackman SC (sitting President), Christian Johnston and Denise McComish, declined to conduct proceedings on a review application by Magnolia Equity III Pty Ltd in relation to the affairs of The Agency Group Australia Limited. The application concerned a review of the initial Panel’s decision not to make a declaration of unacceptable circumstances in relation to information deficiencies in material provided to shareholders of The Agency Group Australia Limited for an item 7 of section 611 vote. The Panel considered that there was no reasonable prospect that it would declare the circumstances unacceptable.

### **Beston Global Food Company Limited**

9 March 2021 – The Panel, Tara Page, Philippa Stone and David Williamson (sitting President), declined to make a declaration of unacceptable circumstances in relation to the affairs of Beston Global Food Company Limited after accepting an undertaking by Beston to make further disclosure clarifying aspects of its Entitlement Offer. The application concerned Beston adjourning its annual general meeting (before any resolutions were put to shareholders) and announcing an Entitlement Offer in circumstances where it was facing a “second strike” on its remuneration report and a possible board spill resolution.

### **Webcentral Group Limited 04R**

26 February 2021 – The review Panel has declined to conduct proceedings on a review application from Keybridge Capital Limited in relation to the affairs of Webcentral Group Limited. The review application sought a review of the decision, in respect of Keybridge’s application to the initial Panel dated 10 January 2021, not to make a declaration of unacceptable circumstances. The review Panel agreed with the initial Panel’s decision not to extend time under section 657C and agreed with the initial panel that there were no appropriate orders now available. The review Panel concluded for these and other reasons that there was no reasonable prospect that it would make a declaration of unacceptable circumstances. Accordingly, the review Panel declined to conduct proceedings.

### **The Agency Group Australia Limited 03R**

23 February 2021 – The review Panel has declined to conduct proceedings on a review application dated 2 February 2021 from Magnolia Equities III Pty Limited in relation to the affairs of The Agency Group Australia Limited. The review application sought a review of the decision in respect of Magnolia’s application to the initial Panel dated 16 December 2020. The application concerned a review of the decision of the initial Panel. The initial application (among other things) concerned information deficiencies in relation to information provided to Agency shareholders ahead of a vote under item 7 of section 611 of the Corporations Act 2001 (Cth). The initial Panel made interim orders regarding the provision of additional information for Agency shareholders. The initial Panel did not make a declaration of unacceptable circumstances in relation to information deficiencies. The President consented to the review application. The review Panel agreed with the initial Panel that the threshold set for a Panel to question the correctness of an expert’s report is high and similarly for any further opinion expressed by

an expert in response to concerns raised on the deficiency of information. The review Panel considered that the matters raised in the review did not get over the threshold. The review Panel concluded for this and other reasons that there was no reasonable prospect that it would make a declaration of unacceptable circumstances. Accordingly, the review Panel declined to conduct proceedings. As the review proceedings are now ended, the undertaking given by Peters Investments ceases.

### **The Agency Group Australia Limited 01 & 02**

23 February 2021 – The Panel, Anthony Jarvis, Rebecca Maslen-Stannage and John O’Sullivan (sitting President) made a declaration of unacceptable circumstances in relation to the affairs of The Agency Group Australia Limited. Two applications (heard together) concerned shareholder approval for the issue of convertible notes by Agency and an off-market takeover bid for Agency by Magnolia Equities III Pty Limited said to provide Agency shareholders with a competing proposal to the convertible notes. The Panel considered (among other things) that proper assessment of the bid was inhibited by Magnolia’s failure to indicate clearly which sources of funding were to be used to pay the consideration and that persons providing cash consideration were appropriately bound to do so or had otherwise accepted responsibility for statements regarding their intention to provide funding. The Panel made orders preventing Magnolia dispatching its Bidder’s Statement without the Panel’s consent.

### **Webcentral Group Limited 03**

22 February 2021 – The Panel, Amy Alston, Stephanie Charles (sitting President) and Bruce Cowley declined to extend time to make a declaration of unacceptable circumstances 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 raised concerns that Webcentral’s target’s statement(s) and 5GN’s bidder’s statement(s) had failed to disclose the existence of a success fee payable in respect of the 5GN bid and Webcentral’s intention to undertake a capital raising immediately following the close of the 5GN bid. The Panel considered that while the failure to disclose the success fee was of sufficient seriousness that the Panel was minded to conclude that there were unacceptable circumstances, the Panel decided not to extend time for the making of the application under section 657C.

### **Registration of Remade Procedural Rules and Public Consultation Response Statement**

22 February 2021 – The Panel’s remade Procedural Rules were registered on the Federal Register of Legislation on Friday, 19 February 2021. The Panel issued a consultation draft of the remade Procedural Rules and accompanying Procedural Guidelines on 2 October 2020. It received 3 submissions in response and has taken them into consideration in finalising the remade Procedural Rules and the Procedural Guidelines. The submissions are summarised, and the Panel’s response is set out, in the public consultation response statement which is available on the Panel’s website ([www.takeovers.gov.au](http://www.takeovers.gov.au)) on the Consultation page. The public consultation response statement annexes the final remade Procedural Rules and the Procedural Guidelines. The Panel’s current Procedural Rules (dated 1 June 2010) are due to sunset on 1 April 2021. The current Procedural Rules will apply to an application made before that date.

The remade Procedural Rules and accompanying Procedural Guidelines will apply in respect of all applications made on or after 1 April 2021.

### **E&P Financial Group Limited**

19 February 2021 – The Panel, Karen Evans-Cullen (sitting President), Bill Koeck and Shirley In't Veld, declined to conduct proceedings on an application by E&P Financial Group Limited in relation to its affairs. E&P is subject to a takeover bid from 360 Capital ED1 Pty Limited, a controlled entity of 360 Capital Group Limited and 360 Capital FM Limited as the responsible entity of the 360 Capital Investment Trust. The application concerned (among other things) whether certain conditions of 360 Capital's bid were so vague or uncertain as to offend the terms or policy of section 629. 1 The Panel decided not to conduct proceedings after accepting undertakings provided by the bidder. The Panel considered that there was no reasonable prospect that it would declare the circumstances unacceptable.

### **The Agency Group Australia Limited 03R**

5 February 2021 – The President has accepted an undertaking from Peters Investments Pty Ltd in relation to the application dated 2 February 2021 by Magnolia Equities III Pty Ltd. Pursuant to the undertaking, Peters Investments Pty Ltd has undertaken, until completion of the Panel proceedings, that it will not without the Panel's consent convert any further Convertible Notes or exercise any further Options that it received in The Agency Group Australia Limited following the shareholder approval given at that company's annual general meeting on 4 January 2021.

### **Webcentral Group Limited 03**

5 February 2021 – The Panel has declined to make a declaration of unacceptable circumstances in response to an application dated 10 January 2021 from Keybridge Capital Limited in relation to the affairs of Webcentral Group Limited. Webcentral was the subject of a takeover bid from 5G Networks Limited. The application raised concerns that Webcentral's target's statement(s) and 5GN's bidder's statement(s) had failed to disclose the existence of a success fee payable to Webcentral's financial adviser in respect of the 5GN bid and Webcentral's intention to undertake a capital raising immediately following the close of the 5GN bid. The Panel considered that it is not against the public interest to decline to make a declaration of unacceptable circumstances. The Panel decided not to make a declaration of unacceptable circumstances.

### **Beston Global Food Company Limited**

2 February 2021 – The Panel has declined to make a declaration of unacceptable circumstances in response to an application dated 4 January 2021 from Kunteng Pte Ltd in relation to the affairs of Beston Global Food Company Limited. The Panel did so following the acceptance of undertakings from Beston in which Beston undertook to make an announcement disclosing the matters referred to in the undertaking. The Panel considers that the undertaking sufficiently addresses the circumstances and that it is not against the public interest to decline to make a declaration of unacceptable circumstances.

## **The Agency Group Australia Limited 01 & 02**

1 February 2021 – The Panel has made a declaration of unacceptable circumstances and final orders in relation to applications dated 8 December 2020 by The Agency Group Australia Limited (Agency) and 16 December 2020 by Magnolia Equities III Pty Ltd (Magnolia), both in relation to the affairs of Agency.

## **E&P Financial Group Limited**

20 January 2021 – The Panel has declined to conduct proceedings on an application from E&P Financial Group Limited (EP1) in relation to its affairs after accepting an undertaking from 360 Capital Group Limited and 360 Capital FM Limited as the responsible entity of the 360 Capital Investment Trust (360 Capital) to provide further disclosure in a supplementary bidder’s statement. The application raised concerns regarding several conditions of the takeover bid announced by 360 Capital for EP1 on 11 December 2020, including a condition relating to the withdrawal, discontinuation, settlement or determination of certain ASIC proceedings concerning a wholly-owned subsidiary of EP1 (ASIC proceedings condition) and a condition relating to regulatory approvals (regulatory approvals condition).

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

### **Guidance Notes – Exemptions**

11 March 2021 – This Guidance Note provides information about the Panel’s exemption power and provides guidance as to when exemptions are likely to be granted. A number of examples have been included for illustrative purposes.

### **Guidance Notes – Creeping Acquisitions**

11 March 2021 – This Guidance Note provides information on the ability of a holder or controller of between 50% and 90% of the voting rights in a Code company to increase its control percentage by “creeping” under rule 7€ of the Code.

### **Guidance Notes – Independent Advisers**

11 March 2021 – This Guidance Note sets out information of assistance for those who are approved as independent advisers by the Panel to prepare a report under the Takeovers Code, a class exemption or an individual exemption. This includes the role of independent advisers and the role of different types of reports that may be required. The Guidance Note also includes the Panel’s policy on the approval of independent advisers, the maintenance of advisers’ independence and the information that must be provided to the Panel by an applicant for approval as an independent adviser. From 1 April 2021, independent advisers seeking the Panel’s approval to act as independent adviser in respect of a Code transaction or a scheme of arrangement as well as their appointors must use these electronic forms.

### **Takeovers Panel determination on the 2013 takeover offer for New Image Group Limited**

16 February 2021 – On 7 August 2020 the Takeovers Panel (Panel) gave notice of a meeting to be held under section 32 of the Takeovers Act 1993 (Act) in relation to potential breaches of the Takeovers Code (Code) by New Image Trustee Limited (now New Image Group Limited) (NTL) and New Image Group Limited (now New Image Holdings Limited) (NEW) relating to NTL’s 2013 takeover offer for NEW (Offer). The meeting was held 3-4 December 2020 at Auckland before a division of the Panel, assisted by Jenny Cooper QC. NTL and NEW were represented at the meeting by one of their directors, Graeme Clegg, and by their legal counsel, David Cooper and Sue Grey. The meeting heard evidence from witnesses and received written and oral submissions from counsel on behalf of NTL and NEW. The Panel reserved its decision. All persons giving evidence at the meeting did so under oath. The witnesses were excluded from the meeting room until they had given evidence, with the exception of Mr Clegg, who attended throughout the hearing as the representative of NTL and NEW. A transcript of the proceedings were taken and was subsequently distributed to the parties to the hearing. The Panel now gives its determination and the reasons for its decision.