



Quarterly Bulletin on Takeovers Matters

(Fourth 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. 59 – December 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 December 2021 issue, the following matters were highlighted:

- Schemes of arrangement and Rule 2.10 of the Takeovers Code
- Application of the Codes to a Grandfathered Greater China Issuer
- New Practice Note 23
- Quarterly update on the activities of the Takeovers Team

TAKEOVERS PANEL OF AUSTRALIA

[AIMS Property Securities Fund 01 & 02](#)

23 December 2021 – Robert McKenzie, Sarah Rennie and Nicola Wakefield Evans (sitting President), declined to make a declaration of unacceptable circumstances in relation to the affairs of AIMS Property Securities Fund. One application concerned an alleged association between a director of AIMS Property Securities Fund and his brother and sister. The other application concerned whether the same director was associated with three persons who (together with that director) collectively acquired approximately 22.84% of the AIMS Property Securities Fund units on issue in December 2020. The Panel was not satisfied

on the material available to it that it could draw the necessary inferences and find the alleged associations. Accordingly, the Panel was not satisfied that the circumstances were unacceptable.

Nex Metals Explorations Ltd 04R

22 December 2021 – The review Panel, Amy Alston, Alex Cartel (sitting President) and John Sheahan QC, declined to conduct proceedings on an application by Nex Metals to review the decision of the initial Panel to decline to conduct proceedings in Nex Metals Explorations Ltd 03.

Nex Metals Explorations Ltd 02 – Additional Orders

17 December 2021 – The Panel has made additional orders in relation to the Nex Metals Explorations Ltd 02 proceedings.

Nex Metals Explorations Ltd

15 December 2021 – The Panel, Marina Kelman, Michael Lishman and Karen Phin (sitting President) made a declaration of unacceptable circumstances in relation to the affairs of Nex Metals Explorations Ltd. Nex Metals is the subject of a conditional off-market scrip bid by Metalicity Ltd. The Panel considered that the proposed Rights Issue by Nex Metals was a frustrating action in respect of Metalicity's Bid and that Nex Metals shareholders had not been given sufficient information to enable them to consider the merits of the Rights Issue and the Bid. It made orders that if Nex Metals proceeds with the Rights Issue, or announces another rights issue, such issue must be subject to shareholder approval.

Nex Metals Explorations Limited 04R – Review Panel Declines to Conduct Proceedings

13 December 2021 – The Panel has declined to conduct proceedings on a review application from Nex Metals Explorations Limited (Nex Metals) in relation to its own affairs. The review application sought a review of the initial Panel's decision to decline to conduct proceedings in Nex Metals Explorations Ltd 03. The Panel considered that notwithstanding additional material provided by Nex Metals in the review proceedings, the material provided did not sufficiently establish the existence of the circumstances alleged in the application. The Panel concluded there was no reasonable prospect that it would make a declaration of unacceptable circumstances. Accordingly, the Panel declined to conduct proceedings. The sitting Panel was Amy Alston, Alex Cartel (sitting President) and John Sheahan QC.

PM Capital Asian Opportunities Fund Limited 03R & 04R – Review Panel Declines to Make Further Interim Orders

10 December 2021 – The Panel refers to the review applications from each of Paul Moore (and other entities) (Moore) and PM Capital Limited seeking a review of the initial Panel's decision in PM Capital Asian Opportunities Fund Limited 01 to make a declaration of unacceptable circumstances and final orders in relation to the affairs of PM Capital Asian Opportunities Fund Limited (ASX: PAF). The President of the Panel (in that capacity) made interim orders dated 7 December 2021 to stay Order 1 of the initial Panel's final orders. The review Panel has considered a request from Moore for further interim orders to stay the

remainder of the final orders, which include an order preventing Moore and their associates from voting, acquiring or disposing of approximately 3.19% of PAF shares. The review Panel has decided not to make any further interim orders. It was not satisfied that the interim orders requested would appropriately preserve the status quo, considering the balance of convenience and PAF's ability to adjourn or seek postponement of the meeting of PAF shareholders to consider the proposed scheme of arrangement to merge PAF and PM Capital Global Opportunities Fund Limited scheduled for 11:00am on Monday, 13 December 2021. The review Panel also considered the President's interim orders dated 7 December 2021 and decided not to vary those orders. The review Panel is still considering whether to conduct proceedings on the review. The review Panel is Alex Cartel (sitting President), Rebecca Maslen-Stannage and John Sheahan QC.

PM Capital Asian Opportunities Fund Limited 03R & 04R – Panel Receives Review Applications

8 December 2021 – The Panel has received an application from each of Paul Moore (and his associated entities) and PM Capital Limited seeking a review of the initial Panel's decision in PM Capital Asian Opportunities Fund Limited 01 (Review Applications). In connection with the Review Applications, the President of the Panel has made interim orders which stay Order 1 of the initial Panel's final orders, which require PM Capital Global Opportunities Fund Limited, PM Capital Limited, and Paul Moore and associated entities to give a corrected substantial holder notice. A review Panel has not been appointed at this stage and no decision has been made whether to conduct proceedings. The Panel makes no comment on the merits of the Review Applications

AusNet Services Limited 02

8 December 2021 – The Panel, Yasmin Allen (sitting President), Michael Borsky QC and Ron Malek, declined to conduct proceedings on an application by Brookfield in relation to the affairs of AusNet. AusNet had received competing proposals made by Brookfield and by APA for control of AusNet. The application concerned statements made by APA in market announcements regarding the value of its proposed scrip consideration and the relative conditionality of the Brookfield and APA proposals. The Panel considered that there was no reasonable prospect that it would declare the circumstances unacceptable.

AusNet Services Limited 01

8 December 2021 – The Panel, Yasmin Allen (sitting President), Michael Borsky QC and Ron Malek, made a declaration of unacceptable circumstances in relation to the affairs of AusNet Services Limited. The application concerned the exclusivity arrangements AusNet entered with one of two potential bidders who had each submitted unsolicited, confidential, indicative and non-binding proposals to acquire all the issued shares in AusNet by way of scheme of arrangement. The Panel declared the circumstances unacceptable having considered the exclusivity arrangements to have an unacceptable effect on competition for control of AusNet. The Panel made orders including that the no-talk restriction be of no force and effect unless it is amended to include a 'fiduciary out'.

PM Capital Asian Opportunities Fund Limited 03R & 04R – President Makes Interim Orders

7 December 2021 – The President of the Panel has made interim orders in response to applications for interim orders dated 7 December 2021 by each of Paul Moore and PM Capital Limited in relation to the affairs of PM Capital Asian Opportunities Fund Limited (PAF). On 3 December 2021, the initial Panel made a declaration of unacceptable circumstances and final orders (initial decision) in relation to an application dated 15 October 2021 by WAM Capital Limited in relation to the affairs of PAF. The Panel has been informed that each of Paul Moore and PM Capital intends to file an application for a review of the initial decision by no later than 11.59pm on 7 December 2021 (Review Applications). The President’s interim orders stay Order 1 of the initial Panel’s final orders, which require PM Capital Global Opportunities Fund Limited, PM Capital Limited, and Mr Moore and associated entities to give a corrected substantial holder notice. The interim orders have effect until the earliest of further order of the President or review Panel, determination of the review proceedings or 2 months from the date of the interim orders. Once the Review Applications have been made and a sitting Panel appointed, the review Panel may consider it appropriate to review the interim orders or make other interim orders.

PM Capital Asian Opportunities Fund Limited 01 – Declaration of Unacceptable Circumstances and Orders

6 December 2021 – The Panel has made a declaration of unacceptable circumstances and final orders in relation to an application dated 15 October 2021 by WAM Capital Limited in relation to the affairs of PM Capital Asian Opportunities Fund Limited (ASX: PAF).

Nex Metals Explorations Ltd 02 – Declaration of Unacceptable Circumstances and Orders

30 November 2021 – The Panel has made a declaration of unacceptable circumstances (Annexure A) and final orders (Annexure B) in relation to an application dated 2 November 2021 by Metalicity Ltd in relation to the affairs of Nex Metals Explorations Ltd.

Nex Metals Explorations Ltd 03

30 November 2021 – The Panel, Marina Kelman, Michael Lishman, and Karen Phin (sitting President), declined to conduct proceedings on an application by Nex Metals Explorations Ltd in relation to its affairs. Nex Metals had submitted (in effect) that following the making of Metalicity’s bid, an agent of Metalicity had engaged in conduct that constituted a breach of sections 619(1) and 623. The Panel considered that insufficient material had been provided to support the Panel conducting proceedings. Accordingly, the Panel concluded there was no reasonable prospect that it would make a declaration of unacceptable circumstances.

AIMS Property Securities Fund 01 & 02 – Panel Declines to Make Declaration

24 November 2021 – The Panel has declined to make a declaration of unacceptable circumstances in response to applications dated 13 August 2021 and 31 August 2021 from Mr Benjamin Graham and Mr

Warwick Sauer in relation to the affairs of AIMS Property Securities Fund (APW). The applications each concerned whether certain unitholders in APW are associated. The Panel considered that there was not sufficient material to establish the alleged associations. The Panel considered that it is not against the public interest to decline to make a declaration of unacceptable circumstances. On the basis of the above, the Panel decided not to make a declaration of unacceptable circumstances. The sitting Panel was Robert McKenzie, Sarah Rennie and Nicola Wakefield Evans (sitting President).

Nex Metals Explorations Ltd 04R – Panel Receives Review Application

24 November 2021 – The Panel has received an application from Nex Metals Explorations Ltd seeking a review of the Panel’s decision in Nex Metals Explorations Ltd 03. A review Panel has not been appointed at this stage and no decision has been made whether to conduct proceedings. The Panel makes no comment on the merits of the application.

Nex Metals Explorations Ltd 03 – Panel Declines to Conduct Proceedings

22 November 2021 – The Panel has declined to conduct proceedings on an application dated 17 November 2021 from Nex Metals Explorations Ltd in relation to its affairs. Nex Metals had submitted (in effect) that following the making of Metalicity’s bid, an agent of Metalicity has engaged in conduct that constituted a breach of sections 619(1) (offers to be the same) and 623 (collateral benefits) of the Corporations Act 2001 (Cth). The Panel considered that insufficient material had been provided to support the Panel conducting proceedings. Accordingly, the Panel concluded there was no reasonable prospect that it would make a declaration of unacceptable circumstances. The sitting Panel was Marina Kelman, Michael Lishman, and Karen Phin (sitting President).

Gascoyne Resources Limited

19 November 2021 – The Panel, Denise McComish (sitting President), Bruce McLennan and Rory Moriarty, declined to conduct proceedings on an application by Westgold in relation to the affairs of Gascoyne. The application concerned (among other things) certain aspects of a Scheme Implementation Deed entered into between Gascoyne and Firefly in relation to their proposed merger by way of a Firefly scheme of arrangement, including a ‘fiduciary out’ to the no talk restriction on Gascoyne and the lack of a right for Gascoyne to terminate the Scheme Implementation Deed in the event it received a superior proposal. The Panel considered that there was no reasonable prospect that it would declare the circumstances unacceptable.

Nex Metals Explorations Ltd 03 – Panel Receives Application

18 November 2021 – The Panel has received an application from Nex Metals Explorations Ltd in relation to its affairs. Nex Metals is currently the subject of an off-market scrip takeover bid from Metalicity Ltd. Details of the application, as submitted by the applicant, are below. A sitting Panel has not been appointed at this stage and no decision has been made whether to conduct proceedings. The Panel makes no comment on the merits of the application.

Nex Metals Explorations Ltd 02 – Panel Makes Interim Orders

15 November 2021 – The Panel has made interim orders in relation to an application from Metalicity Ltd (Metalicity) in relation to the affairs of Nex Metals Explorations Ltd (Nex Metals). The application concerns Nex Metals’ target’s statement lodged in respect of Metalicity’s off-market scrip bid for Nex Metals made pursuant to Metalicity’s bidder’s statement dated 24 September 2021 (Bid). The interim orders state that Nex Metals must not dispatch (that is, physically send) any information to its shareholders in relation to Metalicity’s Bid, including but not limited to a target’s statement or supplementary target’s statement. The interim orders have effect until the earliest of further order of the Panel, determination of the proceedings or 2 months from the date of the interim orders. A copy of the interim orders is attached.

PM Capital Asian Opportunities Fund Limited 02 – Panel Declines to Make Declaration

15 November 2021 – The Panel has declined to make a declaration of unacceptable circumstances in response to an application dated 22 October 2021 from PM Capital Global Opportunities Fund Limited (PGF) in relation to the affairs of PM Capital Asian Opportunities Fund Limited (PAF). PAF is currently party to a scheme implementation deed under which PGF will acquire all of PAF’s shares which it does not already own by way of scheme of arrangement, with PAF shareholders to receive PGF shares as consideration. PAF is also subject to an off-market takeover bid by WAM Capital Limited (WAM), with PAF shareholders to receive 1 WAM share for every 1.99 PAF shares. The application raised concerns regarding several conditions of WAM’s offer, disclosure deficiencies in WAM’s bidder’s statement and the power of attorney provision in the bidder’s statement. The Panel considered that it is not against the public interest to decline to make a declaration of unacceptable circumstances. On the basis of the above, the Panel decided not to make a declaration of unacceptable circumstances. The sitting Panel was Paula Dwyer (sitting President), Christian Johnston and Neil Pathak.

Nex Metals Explorations Ltd 02 – Panel Receives Application

3 November 2021 – The Panel has received an application from Metalicity Ltd in relation to the affairs of Nex Metals Explorations Ltd. Details of the application, as submitted by the applicant, are below. A sitting Panel has not been appointed at this stage and no decision has been made whether to conduct proceedings. The Panel makes no comment on the merits of the application.

Nex Metals Explorations Ltd – Declaration of Unacceptable Circumstances and Orders

3 November 2021 – The Panel has made a declaration of unacceptable circumstances (Annexure A) and final orders (Annexure B) in relation to an application dated 30 September 2021 by Metalicity Ltd in relation to the affairs of Nex Metals Explorations Ltd. The Panel has made orders that if Nex Metals proceeds with the Rights Issue, or announces another rights issue, such issue must be subject to shareholder approval. The sitting Panel was Michael Lishman, Marina Kelman and Karen Phin (sitting President).

Gascoyne Resources Limited 02R – Review Panel Declines to Conduct Proceedings

29 October 2021 – The review Panel has declined to conduct proceedings on an application dated 25 October 2021 from Westgold Resources Limited seeking a review of the Panel’s decision in Gascoyne Resources Limited. The review Panel concluded there was no reasonable prospect that it would make a declaration of unacceptable circumstances. Accordingly, the review Panel declined to conduct proceedings. The review Panel was Kelvin Barry, Diana Nicholson (sitting President) and John O’Sullivan.

PM Capital Asian Opportunities Fund Limited 01 – Panel Makes Interim Orders

29 October 2021 – The Panel has made interim orders in response to an application for interim orders dated 15 October 2021 by WAM Capital Limited in relation to the affairs of PM Capital Asian Opportunities Fund Limited (PAF). The interim orders provide that, without the consent of any member of the sitting Panel, each of PM Capital Global Opportunities Fund Limited and PM Capital Limited and their associates must not acquire any further shares or interests in shares or increase their voting power in PAF. The interim orders have effect until the earliest of further order of the Panel, determination of the proceedings or 2 months from the date of the interim orders.

Gascoyne Resources Limited 02R – Review Panel Declines to Make Interim Order

27 October 2021 – The Panel refers to the application from Westgold Resources Limited seeking a review of the Panel’s decision in Gascoyne Resources Limited. The review Panel has considered a request from Westgold Resources Limited for an interim order to defer the scheme meeting of Firefly Resources Limited (Firefly) shareholders currently scheduled for 2:00pm (Perth time) today, 27 October 2021 in relation to the proposed merger between Gascoyne Resources Limited and Firefly. The review Panel has decided not to make that interim order. The review Panel is still considering whether to conduct proceedings on the review. The review Panel is Kelvin Barry, Diana Nicholson (sitting President) and John O’Sullivan.

Gascoyne Resources Limited 02R – Panel Receives Review Application

26 October 2021 – The Panel has received an application from Westgold Resources Limited seeking a review of the Panel’s decision in Gascoyne Resources Limited. A review Panel has not been appointed at this stage and no decision has been made whether to conduct proceedings. The Panel makes no comment on the merits of the application.

PM Capital Asian Opportunities Fund Limited 02 – Panel Receives Application

25 October 2021 – The Panel has received an application from PM Capital Global Opportunities Fund Limited in relation to the affairs of PM Capital Asian Opportunities Fund Limited. A sitting Panel has not been appointed at this stage and no decision has been made whether to conduct proceedings. The Panel makes no comment on the merits of the application.

Gascoyne Resources Limited – Panel Declines to Conduct Proceedings

22 October 2021 – The Panel has declined to conduct proceedings on an application dated 13 October 2021 from Westgold Resources Limited (Westgold) in relation to the affairs of Gascoyne Resources Limited (Gascoyne). The application concerned (among other things) certain aspects of a Scheme Implementation Deed (SID) entered into between Gascoyne and Firefly Resources Limited (Firefly) in relation to their proposed merger by way of a Firefly scheme of arrangement, including a ‘fiduciary out’ to the no talk restriction on Gascoyne. Westgold had submitted (among other things) that the ‘fiduciary out’ to the exclusivity provisions in the SID is “ultimately illusory and does not achieve what it is intended to achieve (i.e. an ability for the Gascoyne Board to support a superior offer to the Scheme which requires the Scheme to not proceed)”, in particular Gascoyne “has no express contractual ability of its own volition to in fact terminate the Scheme and instead would need to argue that there exists some form of implied right of termination where such termination would be in accordance with their equitable fiduciary obligations to Gascoyne Shareholders”. Among other matters, the Panel considered that in light of the Gascoyne Board having determined that Westgold’s proposed takeover offer for Gascoyne is “not a Superior Proposal as contemplated by the SID”, there was no reasonable prospect that it would make a declaration of unacceptable circumstances. Accordingly, the Panel declined to conduct proceedings. The sitting Panel was Denise McComish (sitting President), Bruce McLennan and Rory Moriarty.

PM Capital Asian Opportunities Fund Ltd – Panel Receives Application

18 October 2021 – The Panel has received an application from WAM Capital Limited in relation to the affairs of PM Capital Asian Opportunities Fund Ltd. A sitting Panel has not been appointed at this stage and no decision has been made whether to conduct proceedings. The Panel makes no comment on the merits of the application.

AusNet Services Limited 01 – Declaration of Unacceptable Circumstances and Orders

15 October 2021 – The Panel has made a declaration of unacceptable circumstances (Annexure A) and final orders (Annexure B) in relation to an application dated 23 September 2021 by Australian Pipeline Limited as responsible entity of the Australian Pipeline Trust and APT Investment Trust (APA) in relation to the affairs of AusNet Services Limited (AusNet). In particular, the Panel has made an order that the no-talk restriction in the Confidentiality Deed will be of no force and effect unless the Confidentiality Deed is amended to include a ‘fiduciary out’ in relation to the no-talk restriction.

Gascoyne Resources Limited – Panel Receives Application

14 October 2021 – The Panel has received an application from Westgold Resources Limited (Westgold) in relation to the affairs of Gascoyne Resources Limited (Gascoyne). A sitting Panel has not been appointed at this stage and no decision has been made whether to conduct proceedings. The Panel makes no comment on the merits of the application.

AusNet Services Limited 02 – Panel Declines to Conduct Proceedings

8 October 2021 – The Panel has declined to conduct proceedings on an application dated 1 October 2021 from Brookfield Infrastructure Group (Australia) Pty Ltd in relation to the affairs of AusNet Services Limited. AusNet has received competing proposals made by Brookfield and by Australian Pipeline Limited as responsible entity of the Australian Pipeline Trust and APT Investment Trust (APA) for control of AusNet. The Panel concluded there was no reasonable prospect that it would make a declaration of unacceptable circumstances in relation to the matters raised in Brookfield’s application (that announcements made by APA contained misleading and incorrect information). Accordingly, the Panel declined to conduct proceedings. The sitting Panel was Yasmin Allen (sitting President), Michael Borsky QC and Ron Malek. The same sitting Panel is conducting proceedings in relation to the AusNet Services Limited 01 application (concerning exclusivity arrangements in a confidentiality deed between AusNet and Brookfield) and is still considering that matter.

AusNet Services Limited 02 – Panel Receives Application

4 October 2021 – The Panel has received an application from Brookfield Infrastructure Group (Australia) Pty Ltd (Brookfield) in relation to the affairs of AusNet Services Limited (AusNet). AusNet has received competing proposals made by Brookfield and by Australian Pipeline Limited as responsible entity of the Australian Pipeline Trust and APT Investment Trust (APA) for control of AusNet. Details of the application, as submitted by the applicant, are below. A sitting Panel has not been appointed at this stage and no decision has been made whether to conduct proceedings. The Panel makes no comment on the merits of the application.

Nex Metals Explorations Ltd – Panel Receives Application

1 October 2021 – The Panel has received an application from Metalicity Ltd in relation to the affairs of Nex Metals Explorations Ltd. A sitting Panel has not been appointed at this stage and no decision has been made whether to conduct proceedings. The Panel makes no comment on the merits of the application.

NEW ZEALAND TAKEOVERS PANEL

Code Word – Issue 53 (November 2021)

- [Clarificatory amendment to the Voting Agreements Class Exemption](#)
- [Updates to the Guidance Note on Upstream Acquisitions](#)
- [Christmas Closedown](#)

Upstream Acquisitions

5 November 2021 – This Guidance Note sets out the Panel’s policy for dealing with the impacts of the Takeovers Code on upstream acquisitions. If an upstream company holds or controls voting rights in a downstream Code company, then the acquisition of effective control of that upstream company may trigger obligations under the Code. This Guidance Note has been updated to clarify the Panel's approach to the Purpose Test and to include an example.

SECURITIES AND EXCHANGE BOARD OF INDIA

Securities And Exchange Board Of India (Substantial Acquisition Of Shares And Takeovers) (Third Amendment) Regulations, 2021

6 December 2021 – In exercise of the powers conferred under section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following regulations to further amend the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, namely:

1. These regulations may be called the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 2021.
2. They shall come into force on the date of their publication in the Official Gazette.
3. In the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

SECURITIES COMMISSION MALAYSIA

Summary of Key Amendments of the Rules on Take-overs, Mergers and Compulsory Acquisitions

28 December 2021 – The SC has issued the second revision to the Rules on Take-Overs, Mergers and Compulsory Acquisitions (Rules). The revised Rules serve, amongst others, to:

- Clarify when an independent adviser may view a take-over offer to be ‘reasonable’ despite it being ‘not fair’ and recommend that such offer be accepted;
- Impose similar conduct requirements applicable during take-over offers on whitewash transactions, including restrictions on the appointment and resignation of directors during such period;

- Impose restrictions on any dealings of securities of an offeree company prior to an offer by any person (other than the offeror) who possesses confidential price-sensitive information concerning the offer; and
- Limit the circumstances under which a mandatory offer will not apply under subparagraph 4.02(a) of the Rules.

The revision took effect on 29 December 2021. You may find the revised Rules as well as the summary of amendments and frequently-asked questions in relation to the revised Rules on the SC's website.