



Quarterly Bulletin on Takeovers Matters

(First Quarter 2022)

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 centralised 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. 60 – March 2022

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 2022 issue, the following matters were highlighted:

- Public censure and cold shoulder order imposed on Chu Hing Tsung for breaching the mandatory general offer obligation
- Public censure of Wonderful Sky and Liu Tianni and public criticism of Liu Kiki Ching Tung for breaching the Code on Share Buy-backs
- Close of offer period in winding-up proceedings
- Chairmen in Codes-related shareholders' meetings
- Reappointments to the takeovers-related committees
- Quarterly update on the activities of the Takeovers Team

Public Censure of Wonderful Sky Financial Group Holdings Limited and Liu Tianni and Public Criticism of Liu Kiki Ching Tung for Breaching the Code on Share Buy-backs

17 March 2022 - The Securities and Futures Commission today publicly censures Wonderful Sky Financial Group Holdings Limited and Liu Tianni and publicly criticises Liu Kiki Ching Tung in respect of a buy-back transaction in the shares of the Company conducted on 27 March 2020 in breach of the Code on Share Buy-backs.

SFC Sanctions Chu Hing Tsung for Breaches of the Takeovers Code

25 January 2022 - The Securities and Futures Commission publicly censured and imposed a 12-month cold-shoulder order (Note 1) against Chu Hing Tsung for breaching the mandatory general offer obligation under Rule 26.1 of the Takeovers Code (Note 2).

Cold Shoulder Order and Public Censure for a Breach of the Mandatory Offer Obligation in the Takeovers Code in Respect of Zhuguang Holdings Group Company Limited

25 January 2022 - The SFC today publicly censures and imposes a 12-month cold-shoulder order against Mr Chu Hing Tsung (also known as Zhu Qing Yi) (“Mr HT Chu”) for breaching the mandatory general offer obligation under Rule 26.1 of the Code on Takeovers and Mergers. Mr HT Chu will be denied direct or indirect access to the Hong Kong securities market for a period of 12 months commencing on 25 January 2022 and ending on 24 January 2023.

TAKEOVERS PANEL OF AUSTRALIA

Smoke Alarms Holdings Limited 03

25 March 2022 – The Panel, Anthony Jarvis, Marina Kelman and Rory Moriarty (sitting President), declined to make a declaration of unacceptable circumstances in relation to the affairs of Smoke Alarms. The application concerned a pro-rata entitlement offer by Smoke Alarms to eligible shareholders. Following receipt of the application, Smoke Alarms revised the entitlement offer from a 2 for 1 offer ratio to a 1 for 1 offer ratio. The Panel considered that, among other things, the revised offer ratio reduced the potential control effect of the entitlement offer. During the proceedings, Smoke Alarms provided further disclosure which addressed the remaining concerns of the Panel. Accordingly, the Panel was not satisfied that the circumstances were unacceptable.

PM Capital Asian Opportunities Fund Limited 03R & 04R

25 March 2022 – The Panel, Alex Cartel (sitting President), Rebecca Maslen-Stannage and John Sheahan QC affirmed the declaration and varied the orders made by the initial Panel in relation to the affairs of PM Capital Asian Opportunities Fund Limited. The review Panel agreed with the initial Panel’s conclusions, for substantially the same reasons, but varied the orders to deal with the change of circumstances, including the desire by parties associated with Mr Paul Moore to accept the bid by WAM Capital Limited.

DRA Global Limited – Panel Receives Application

22 March 2022 – The Panel has received an application from Haydn von Maltitz in relation to the affairs of DRA Global Limited (ASX/JSE: DRA). 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 05 – Panel Receives Application

21 March 2022 – The Panel has received an application from Metalicity Ltd in relation to the affairs of Nex Metals Explorations Ltd. Nex Metals is the subject of an off-market scrip takeover bid from Metalicity. 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.

Virtus Health Limited 02 – Panel Declines to Conduct Proceedings

10 March 2022 – The Panel has declined to conduct proceedings on an application dated 3 March 2022 from BGH Capital Pty Ltd in its capacity as manager or adviser to each of the constituent entities of the BGH Capital Fund I (BGH) in relation to the affairs of Virtus Health Limited (Virtus). Virtus is the subject of competing control proposals made by BGH and CapVest Partners LLP (CapVest). The Panel made no comment on the merits of the decision. 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 Teresa Dyson, Richard Hunt (sitting President) and James Stewart.

Bullseye Mining Limited 04 – Undertaking

8 March 2022 – The Panel has accepted an undertaking from Emerald Resources NL in relation to the application dated 28 February 2022 by Hongkong Xinhe International Investment Company Limited.

Lincoln Minerals Limited – Panel Accepts Undertaking and Declines Court Proceedings

7 March 2022 – The Panel has declined to conduct proceedings on an application from Olary Holdings Limited in relation to the affairs of Lincoln Minerals Limited (LML) after accepting an undertaking from LML. The Panel was satisfied its concerns were sufficiently addressed by the undertaking and that there was no reasonable prospect that it would make a declaration of unacceptable circumstances. Accordingly, the Panel declined to conduct proceedings. In making its decision, the Panel does not seek to limit any powers or discretions of ASIC or ASX in relation to any regulatory requirements applicable to the issue of the Notes or shareholder approval being sought by LML. The sitting Panel was Kristen Jung, Bill Koeck and Tony Osmond (sitting President).

Keybridge Capital Limited 04, 05, 06 Variation – Invitation to Processed Shareholders to Make Submissions on Proposed Orders Variation

7 March 2022 – The Panel received an application from WAM Active Limited on 15 September 2021 to vary the orders made in Keybridge Capital Limited 04, 05 & 06. These orders were previously affirmed by the review Panel in Keybridge Capital Limited 08R, 09R & 10R and subsequently varied by the review Panel. Before making its final decision on the proposed variation of orders, the Panel considers it appropriate to consult with Processed Shareholders.

Appointment of Panel Members

4 March 2022 – The Takeovers Panel notes the announcement by the Treasurer of the reappointment of 13 members and the appointment of 4 new members to the Panel for terms of 3 years, effective 8 March 2022. Mr Alex Cartel has been reappointed as President and a member of the Panel. The following members have been appointed: Mr James Burchnall, Mr Alberto Colla, Mr Timothy Longstaff and Mrs Deborah Page AM. The President and the Panel executive warmly welcome the new members. The following members have been reappointed: Mr Kelvin Barry, Mr Robin Bishop, Mr Michael Borsky QC, Mr Bruce Cowley, Ms Chelsey Drake, Ms Marissa Freund, Ms Elizabeth Hallett, Ms Denise McComish, Mr John McGlue, Mr Bruce McLennan, Ms Kerry Morrow and Ms Philippa Stone. The President and Panel executive thank Ms Amy Alston and Ms Shirley In't Veld for their service to the Panel, their terms will finish on 7 March 2022. The Panel now has 50 members all of whom are appointed on a part-time basis.

Virtus Health Limited 02 – Panel Receives Application

4 March 2022 – The Panel has received an application from BGH Capital Pty Ltd in its capacity as manager or adviser to each of the constituent entities of the BGH Capital Fund I (BGH) in relation to Virtus Health Limited (Virtus). Virtus is the subject of competing control proposals made by BGH and CapVest Partners LLP. 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.

Bullseye Mining Limited 04 – Panel Receives Application

1 March 2022 – The Panel has received an application from Hongkong Xinhe International Investment Company Limited in relation to the affairs of Bullseye Mining Limited. Bullseye is currently the subject of takeover bids by Emerald Resources NL and Au Xingao Investment Pty 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.

Wollongong Coal Limited 02

25 February 2022 – The Panel, Teresa Dyson, Michelle Jablko (sitting President) and Michael Lishman, declined to conduct proceedings on an application by Mr Gordon Elkington in relation to the affairs of Wollongong Coal Limited. The application concerned whether an independent expert's report provided in the context of a compulsory acquisition commenced under Chapter 6A.21 by Jindal Steel & Power (Mauritius) Limited complied with section 667C(2). The Panel decided not to conduct proceedings after accepting undertakings provided by the independent expert and Jindal. The Panel considered that there was no reasonable prospect that it would declare the circumstances unacceptable.

Virtus Health Limited – Declaration of Unacceptable Circumstances and Orders

23 February 2022 – The Panel has made a declaration of unacceptable circumstances and final orders in relation to an application dated 2 February 2022 by BGH Capital Pty Ltd in its capacity as manager or

adviser to each of the constituent entities of the BGH Capital Fund I in relation to the affairs of Virtus Health Limited (ASX: VRT).

Nex Metals Explorations Ltd 02 Variation – Further Variation of Orders

11 February 2022 – On an application from Nex Metals Explorations Ltd, the Panel has made a further variation to its additional orders (which were varied on 21 January 2022) made in Nex Metals Explorations Ltd 02. Nex Metals is currently the subject of an off-market scrip takeover bid from Metalicity Ltd. Among other things, the Panel’s final orders and additional orders (as varied) made in these proceedings provide that if Nex Metals does not prepare and lodge a replacement target’s statement in respect of the Metalicity bid in a form that ASIC does not object to and is accompanied by a report prepared by an independent expert of ASIC’s nomination (Nex Metals IER) by 21 January 2022: Metalicity may engage an expert to produce an independent expert’s report (Metalicity IER); and dispatch the Metalicity IER to Nex Metals shareholders and Nex Metals’ replacement target’s statement is no longer required to be accompanied by the Nex Metals IER. Nex Metals did not lodge a replacement target’s statement with the Nex Metals IER by 21 January 2022. Accordingly, the orders described above are operative. Following Nex Metals’ request, the Panel has now made a further variation to the additional orders to, among other things, allow Nex Metals to engage, at its own cost, an expert of its choosing to produce an independent expert’s report opining on the Metalicity bid and dispatch that independent expert’s report to Nex Metals shareholders. While the Panel did not consider the variation necessary, because the orders do not in any way prohibit Nex Metals from obtaining an expert’s report, it considered that the requested variation was not objectionable. The sitting Panel was Marina Kelman, Michael Lishman and Karen Phin (sitting President).

Lincoln Minerals Limited – Panel Receives Application

10 February 2022 – The Panel has received an application from Olary Holdings Limited in relation to the affairs of Lincoln Minerals Limited (LML). The application concerns, among other things, the proposed issue by LML of shares on conversion of convertible notes to its major shareholder. 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.

Bullseye Mining Limited 03 – Declaration of Unacceptable Circumstances and Orders

7 February 2022 – The Panel has made a declaration of unacceptable circumstances and final orders in relation to an application by Hongkong Xinhe International Investment Company Limited in relation to the affairs of Bullseye Mining Limited.

Smoke Alarms Holdings Limited 03 – Panel Declines to Make Declaration

3 February 2022 – The Panel has declined to make a declaration of unacceptable circumstances in response to an application dated 5 January 2022 from Mr Anthony Richard Lewis and Greenwich Capital Partners Pty Ltd. The application concerned a pro-rata entitlement offer to eligible shareholders launched

by Smoke Alarms. Following receipt of the application, Smoke Alarms revised the structure of the entitlement offer from a 2 for 1 offer ratio to a 1 for 1 offer ratio (Revised Offer) and provided to the Panel a copy of a draft Second Replacement Offer Information Statement (Second ROIS) in relation to the Revised Offer. The Second ROIS disclosed that under the Revised Offer the maximum voting power that the underwriters Fast Future Pty Ltd and Synergy 4 Pty Ltd could potentially obtain following completion of the offer was approximately 32.82% and 19.82% respectively. The Panel considered that, among other things, the 1 for 1 offer ratio under the Revised Offer reduced the potential control effect of the entitlement offer. During the course of proceedings, Smoke Alarms provided further disclosure which addressed any remaining concerns of the Panel. 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 Panel did not conduct proceedings in relation to the alleged associations between Mr Cameron Davis and Mr Randall Deer or Fast Future and Synergy 4 or the Australian financial services licensing issues raised in the application. The sitting Panel was Anthony Jarvis, Marina Kelman and Rory Moriarty (sitting President). The Panel will publish its reasons for the decision in due course on its website.

Virtus Health Limited – Panel Receives Application

2 February 2022 – The Panel has received an application from BGH Capital Pty Ltd in its capacity as manager or adviser to each of the constituent entities of the BGH Capital Fund I (BGH) in relation to Virtus Health Limited (ASX: VRT). VRT is the subject of competing control proposals made by BGH and CapVest Partners LLP. 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.

Wollongong Coal Limited 02 – Panel Accepts Undertakings and Declines to Conduct Proceedings

24 January 2022 – The Panel has declined to conduct proceedings on an application from Mr Gordon Elkington in relation to the affairs of Wollongong Coal Limited (Wollongong) after accepting undertakings from BDO Corporate Finance (WA) Pty Limited (BDO) and Jindal Steel & Power (Mauritius) Limited (Jindal). The application submitted in effect that an independent expert's report (IER) provided by BDO in the context of a compulsory acquisition under Chapter 6A commenced by Jindal did not comply with section 667C(2). The Panel asked a number of questions of the parties and ASIC to assist it in determining whether to conduct proceedings. In its submissions in response, ASIC stated that it had raised various queries with BDO in relation to the IER and that its primary concern was that BDO did not engage an independent technical specialist to assess the mineral assets of Wollongong. BDO has undertaken to (in summary) prepare a supplementary or replacement independent expert's report which includes an explanation as to how it took the matters referred to in section 667C(2) into account in determining the value of Wollongong's securities, an independent technical specialist report, and any additional disclosure as a result of ASIC's enquiries. Jindal has undertaken to (in summary and among other things) apply to ASIC for relief to withdraw its notice of compulsory acquisition dated 17 December 2021 and issue a new notice of compulsory acquisition (with the further disclosure from BDO). The Panel was satisfied its concerns were sufficiently addressed by the undertakings and that 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 Teresa Dyson, Michelle Jablko (sitting President) and Michael Lishman. The Panel will publish its reasons for the decision in due course on its website.

Nex Metals Explorations Ltd 02 Variation – Variation of Orders

21 January 2022 – On an application from Nex Metals Explorations Ltd, the Panel has varied its additional orders made in Nex Metals Explorations Ltd 02. Nex Metals is currently the subject of an off-market scrip takeover bid from Metalicity Ltd. The Panel’s final orders made in Nex Metals Explorations Ltd 02 require Nex Metals to, among other things, prepare a Replacement Target’s Statement which must be in a form that ASIC does not object to and is accompanied by an independent expert’s report (Nex Metals IER). The Panel’s additional orders provide, among other things, that if Nex Metals does not prepare and lodge its Replacement Target’s Statement by 14 January 2022 (unless extended with the Panel’s consent), Metalicity may engage an expert to produce an independent expert’s report (Metalicity IER) and dispatch the Metalicity IER to Nex Metals shareholders. Following a request from Nex Metals, on 14 January 2022, the Panel decided to consent to a one week extension to give Nex Metals until Friday, 21 January 2022 to lodge its Replacement Target’s Statement while the Panel considered whether to make any variation to its orders. The Panel has now varied the additional orders to include, among other things, that if Nex Metals does not prepare and lodge its Replacement Target’s Statement by 21 January 2022, the Replacement Target’s Statement is no longer required to be accompanied by the Nex Metals IER. The orders allowing Metalicity to engage an expert to provide the Metalicity IER, with the external costs of the Metalicity IER to be borne by Nex Metals’ directors jointly and severally up to an amount of \$50,000, remain in place. The Panel was advised by Metalicity that it has engaged an expert and intends to provide Nex Metals’ shareholders with the Metalicity IER (subject to compliance with Order 4 of the additional orders, which requires Nex Metals to use its best endeavours to assist the expert engaged to produce the Metalicity IER with its inquiries. The sitting Panel was Marina Kelman, Michael Lishman and Karen Phin (sitting President).

Nex Metals Explorations Ltd 02 – Consent to Extension Request

14 January 2022 – The Panel received a request from Nex Metals Explorations Ltd for an extension to lodge its Replacement Target’s Statement in relation to Metalicity Ltd’s off-market scrip bid for Nex Metals pursuant to Order 3 of the Panel’s additional orders dated 17 December 2021. The Panel has decided to consent to a one week extension which gives Nex Metals until Friday, 21 January 2022 to lodge its Replacement Target’s Statement. The sitting Panel was Marina Kelman, Michael Lishman and Karen Phin (sitting President).

PM Capital Asian Opportunities Fund Limited 03R & 04R – Variation of Orders

14 January 2022 – The review Panel has further varied the orders of the initial Panel to delete order 1. Order 1 required corrective substantial holder notice disclosure. The review Panel was informed that the parties required to make the further disclosure have accepted, or are in the process of accepting, into

WAM's takeover bid for PM Capital Asian Opportunities. Accordingly, the review Panel accepted the submissions from PM Capital Global Opportunities Fund Limited, PM Capital Limited and Paul Moore (and associated entities) that corrective substantial holding notice disclosure was no longer necessary.

Bullseye Mining Limited 03 – Undertaking

13 January 2022 – The Panel has accepted an undertaking from Emerald Resources NL in relation to the application dated 6 January 2022 by Hongkong Xinhe International Investment Company Limited. Emerald has undertaken (in summary) not to process acceptances of, or issue Emerald shares to, accepting Bullseye Mining Limited shareholders pursuant to its off-market takeover bid for Bullseye dated 13 December 2021 until the determination of the Panel proceedings. The Panel is otherwise still considering the matter.

PM Capital Asian Opportunities Fund Limited 03R & 04R – Decision

12 January 2022 – The review Panel has affirmed the decision of the initial Panel to make a declaration of unacceptable circumstances in PM Capital Asian Opportunities Fund Limited 01 and varied the initial Panel's orders. On 7 December 2021, the Panel received separate applications 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. The review Panel decided to vary the initial Panel's orders to allow Roaring Lion Pty Ltd as trustee for the Roaring Lion Super Fund and Horizon Investments Australia Pty Ltd <Hawkins Trust> to accept WAM's takeover bid for PM Capital Asian Opportunities in relation to the Excess Shares that they hold on or before 18 February 2022. As a result of the review Panel's decision, the President's interim orders cease to have effect. The sitting Panel was Alex Cartel (sitting President), Rebecca Maslen-Stannage and John Sheahan QC. The Panel will publish its reasons for the decision in due course on its website.

Smoke Alarms Holdings Limited 03 – Panel Receives Application

10 January 2022 – The Panel has received an application from Mr Anthony Richard Lewis and Greenwich Capital Partners Pty Ltd in relation to the affairs of Smoke Alarms Holdings Ltd (SAS). 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.

Bullseye Mining Limited 03 – Panel Receives Application

10 January 2022 – The Panel has received an application from Hongkong Xinhe International Investment Company Limited in relation to the affairs of Bullseye Mining Limited. Bullseye is currently the subject of a recommended off-market takeover bid by Emerald Resources NL (ASX: EMR). 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.

Wollongong Coal Limited 02 – Panel Receives Application

7 January 2022 – The Panel has received an application from Mr Gordon Elkington in relation to the affairs of Wollongong Coal Limited. The application concerns an independent expert’s report provided in the context of a compulsory acquisition under Chapter 6A commenced by the major shareholder of Wollongong. 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

New Image Group Admits Breaches of Takeovers Code during 2013 Takeover Offer

4 February 2022 – The Takeovers Panel has filed civil proceedings in the High Court against New Image Group Limited (NEW) and New Image Holdings Limited (NEW Holdings) alleging NEW Holdings made a selective offer to certain shareholders in breach of the Code, and both NEW and NEW Holdings failed to make all of the disclosures they were required to make, in the 2013 takeover offer for NEW by NEW Holdings. The Takeovers Panel has agreed with NEW and NEW Holdings to resolve the proceedings and requested that the Court schedule a penalty hearing. The Panel began its investigation in 2019 after allegations relating to the matter came to its attention. No further comment will be made until the Court issues its judgment.