



Quarterly Bulletin on Takeovers Matters

(Second 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. 61 – June 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 June 2022 issue, the following matters were highlighted:

- Public criticism of Gao Yunhong and Feng Xuelian for breaching the no frustrating action rules
- Reminder of ancillary documents requirements
- Closing announcements and trading suspensions
- Asia Pacific Takeovers Regulators Virtual Conference 2022
- Quarterly update on the activities of the Takeovers Team

TAKEOVERS PANEL OF AUSTRALIA

[Virtus Health Limited 06R](#)

20 June 2022 – The review Panel, Rory Moriarty, John O'Sullivan (sitting President) and Karen Phin, declined to conduct proceedings on an application by Virtus Health Limited to review the decision of the initial Panel to decline to conduct proceedings in Virtus Health Limited 05.

[Nex Metals Explorations Ltd 06 – Panel Declines to Conduct Proceedings](#)

14 June 2022 - The Panel has declined to conduct proceedings on an application dated 24 May 2022 from Nex Metals Explorations Ltd in relation to its affairs. Nex Metals is the subject of an off-market scrip

takeover bid from Metalicity Ltd. The application raised concerns with the ongoing disclosure in respect to the takeover offer by Metalicity, including lack of disclosure of the implied value of the offer following material changes to the parties' respective share prices and the completion of an entitlement offer by Metalicity. While the Panel had concerns in respect to the disclosure provided by Metalicity in connection with the takeover offer, the Panel was satisfied that its concerns were sufficiently addressed by lodgement of a second supplementary bidder's statement by Metalicity. 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 Elizabeth Hallett (sitting President), Christian Johnston and Robert McKenzie.

Virtus Health Limited 05

2 June 2022 – The Panel, Teresa Dyson, Richard Hunt (sitting President) and James Stewart, declined to conduct proceedings on an application by Virtus Health Limited in relation to its affairs. The application concerned disclosure in a bidder's statement given by BGH Bidders for their off-market takeover bid for Virtus and the adequacy of their supplementary bidder's statement in response to a subsequent increase in CapVest's proposal.

DRA Global Limited – Costs Order

2 June 2022 – The Panel has made orders requiring DRA Global Limited, Alistair Hodgkinson, Darren Naylor, James Smith and Brian Dowding to pay the fair and reasonable costs incurred by the applicant, Haydn von Maltitz, in connection with the proceedings in DRA Global Limited. The sitting Panel was Kelvin Barry, Jeremy Leibler (sitting President) and Tara Page.

Bullseye Mining Limited 05

1 June 2022 – The Panel, Bruce McLennan, Kerry Morrow and Sharon Warburton (sitting President), decided not to conduct proceedings on an application by Au Xingao Investment Pty Ltd in relation to the affairs of Bullseye Mining Limited. The application concerned unregistered share transfers in Bullseye and disclosure by the target of information relating to Xingao's bid conditions and other matters. The Panel considered that there was no reasonable prospect that it would make a declaration of unacceptable circumstances.

Nex Metals Explorations Ltd 05 – Costs Order

30 May 2022 – The Panel has made orders requiring Nex Metals Explorations Ltd to pay part of the costs of the applicant, Metalicity Ltd, in Nex Metals Explorations Ltd 05. The sitting Panel was Elizabeth Hallett (sitting President), Christian Johnston and Rob McKenzie.

Nex Metals Explorations Ltd 06 – Panel Receives Application

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

Bullseye Mining Limited 04

20 May 2022 – The Panel, Karen Evans-Cullen (sitting President), Bruce McLennan and Sharon Warburton, made a declaration of unacceptable circumstances in relation to the affairs of Bullseye Mining Limited. This application followed the orders made in Bullseye Mining Limited 03 and concerned whether there had been adequate disclosure in the supplementary bidder’s statement and supplementary target’s statement that the Panel had ordered. The Panel considered that there were material deficiencies in the documents and correspondence. The Panel ordered, among other things, further disclosure and that shareholders who had accepted Emerald’s bid (other than Bullseye’s directors) have a further right to withdraw.

Virtus Health Limited 06R – Panel Declines to Conduct Proceedings

18 May 2022 – The Panel has declined to conduct proceedings on a review application dated 10 May 2022 from Virtus Health Limited (Virtus) in relation to its affairs. The application sought a review of the initial Panel’s decision in Virtus Health Limited 05. Virtus is the subject of competing control proposals for all its fully paid ordinary shares from both BGH Capital Pty Ltd (BGH Bidders) and CapVest Partners LLP (CapVest). The initial and review applications concerned BGH Bidders’ disclosure in its bidder’s statement lodged with ASIC on 6 April 2022 and the adequacy of their supplementary bidder’s statement in response to a subsequent increase in CapVest’s proposal announced on 11 April 2022.

DRA Global Limited – Orders

16 May 2022 – The Panel has made final orders in relation to an application dated 21 March 2022 by Haydn von Maltitz in relation to the affairs of DRA Global Limited.

Virtus Health Limited 02

13 May 2022 – The Panel, Teresa Dyson, Richard Hunt (sitting President) and James Stewart, declined to conduct proceedings on an application concerning the exclusivity arrangements entered in relation to a non-binding, indicative proposal to acquire all the issued shares in Virtus by way of a scheme of arrangement in the context of a competing proposal. The Panel considered that there was no reasonable prospect that it would declare the circumstances unacceptable.

Wollongong Coal Limited 03

13 May 2022 – The Panel, Teresa Dyson, Michelle Jablko (sitting President) and Michael Lishman, declined to conduct proceedings on an application in relation to the affairs of Wollongong Coal Limited. The application concerned the content of a revised independent expert’s report for compulsory acquisition under Chapter 6A1 commenced by Jindal Steel & Power (Mauritius) Limited. The Panel considered that, assuming jurisdiction, shareholders have been provided with enough information to form a view about

the proposed compulsory acquisition and there was no reasonable prospect that it would declare the circumstances unacceptable.

Virtus Health Limited 06R – Panel Receives Review Application

11 May 2022 – The Panel has received an application from Virtus Health Limited seeking a review of the Panel’s decision in Virtus Health Limited 05. The President of the Panel has consented to the application for review under section 657EA(2) of the Corporations Act 2001. 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.

DRA Global Limited – Declaration of Unacceptable Circumstances

10 May 2022 – The Panel has made a declaration of unacceptable circumstances in relation to an application dated 21 March 2022 by Haydn von Maltitz in relation to the affairs of DRA Global Limited.

Virtus Health Limited 05 – Panel Declines to Conduct Proceedings

9 May 2022 – The Panel has declined to conduct proceedings on an application dated 29 April 2022 from Virtus Health Limited (Virtus) in relation to its affairs. Virtus is the subject of competing control proposals for all its fully paid ordinary shares from both BGH Capital Pty Ltd1 (BGH Bidders) and CapVest Partners LLP (CapVest) which have been the subject of several Panel applications. This application concerned BGH Bidders’ disclosure in its bidder’s statement lodged with ASIC on 6 April 2022 and the adequacy of their supplementary bidder’s statement in response to a subsequent increase in CapVest’s proposal announced on 11 April 2022.

Bullseye Mining Limited 05 – Panel Declines to Conduct Proceedings

4 May 2022 – The Panel has declined to conduct proceedings on an application dated 21 April 2022 from Au Xingao Investment Pty Ltd (Xingao) in relation to the affairs of Bullseye Mining Limited (Bullseye). Bullseye is currently the subject of takeover bids by Emerald Resources NL and Xingao. The Panel considered that the matter of the unregistered share transfers was more appropriately dealt with by a court, and was not satisfied on the information provided that the disclosure issues were material or had any frustrating or impeding effect or, in some cases, were matters for the Panel. 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 Bruce McLennan, Kerry Morrow and Sharon Warburton (sitting President).

Virtus Health Limited 04R – Panel Declines to Conduct Proceedings

4 May 2022 – The review Panel has declined to conduct proceedings on a review application dated 22 April 2022 from CapVest Partners LLP (CapVest) in relation to the affairs of Virtus Health Limited (Virtus). The application sought a review of the initial Panel’s decision in Virtus Health Limited 03. Virtus is the

subject of competing control proposals for all its fully paid ordinary shares from CapVest and BGH Capital Pty Ltd. The sitting Panel was Rory Moriarty, John O’Sullivan (the sitting President) and Karen Phin.

Virtus Health Limited 03

3 May 2022 – The Panel, Teresa Dyson, Richard Hunt (sitting President) and James Stewart, declined to make a declaration of unacceptable circumstances in relation to the affairs of Virtus Health Limited after accepting undertakings. The application concerned (among other things) the operation of ASIC Market Integrity Rule 5.13.1 and whether the acquisition of control of Virtus would take place in an efficient, competitive and informed market if BGH Bidders carried out their intention (as stated in their bidders’ statement) to acquire Virtus shares on market during their bid period, which may be at prices above the bid price, and to then follow with an announcement. The Panel accepted undertakings from BGH Bidders which, in effect, required them to make such an announcement immediately.

Virtus Health Limited 05 – Panel Receives Application

2 May 2022 – The Panel has received an application from Virtus Health Limited (Virtus) in relation to its affairs. Virtus is the subject of competing control proposals for all its fully paid ordinary shares from both BGH Capital Pty Ltd and CapVest Partners LLP which have been the subject of several Panel applications. Details of the application, as submitted by Virtus, 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 05 – Declaration of Unacceptable Circumstances and Orders

28 April 2022 – The Panel has made a declaration of unacceptable circumstances and final orders in relation to an application dated 18 March 2022 by Metalicity Ltd in relation to the affairs of Nex Metals Explorations Ltd. The Panel proposes to seek further submissions from the parties as to whether a costs order should be made. The sitting Panel was Elizabeth Hallett (sitting President), Christian Johnston and Rob McKenzie.

Virtus Health Limited 04R – Panel Receives Review Application and President Makes Interim Orders

26 April 2022 – On 22 April 2022, the Panel received an application from CapVest Partners LLP seeking a review of the Panel’s decision in Virtus Health Limited 03. The President of the Panel has consented to the application for review under section 657EA(2) of the Corporations Act 2001 and has made interim orders pending the review. The interim orders in effect prohibit the BGH Bidders (without the consent of the President or, once appointed, the review Panel) from acquiring on market any Virtus shares above the Bid Price, unless and until they have made an announcement to ASX that informs the market that the Bid Price is to be increased and the amount of that increase. The interim orders have effect until the earliest of further order of the President or the review Panel, determination of the review proceedings or 2 months from the date of the interim orders. 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.

Bullseye Mining Limited 05 – Panel Receives Application

22 April 2022 – The Panel has received an application from Au Xingao Investment Pty Ltd 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.

Keybridge Capital Limited 04, 05 & 06 – Further Variation Orders

22 April 2022 – On the application of WAM Active Limited, the Panel has varied the Panel’s orders 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 variation Panel. The sitting Panel was Chelsey Drake, Bruce McLennan and Sharon Warburton (sitting President).

Virtus Health Limited 03 – Panel Accepts Undertaking

22 April 2022 – The Panel has accepted an undertaking from BGH Bidders and declined to make a declaration of unacceptable circumstances in response to an application dated 7 April 2022 from CapVest Partners LLP in relation to the affairs of Virtus Health Limited. The sitting Panel was Teresa Dyson, Richard Hunt (sitting President) and James Stewart. The Panel will publish its reasons for the decision in due course.

Wollongong Coal Limited 03 – Panel Declines to Conduct Proceedings

21 April 2022 – The Panel has declined to conduct proceedings on an application from Mr Gordon Elkington in relation to the affairs of Wollongong Coal Limited. The application concerned the content of a revised independent expert’s report (Revised IER) required for a compulsory acquisition under Chapter 6A commenced by Wollongong’s major shareholder, Jindal Steel & Power (Mauritius) Limited. 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, Michelle Jablko (sitting President) and Michael Lishman. The Panel will publish its reasons for the decision in due course on its website.

Virtus Health Limited

13 April 2022 – The Panel, Teresa Dyson, Richard Hunt (sitting President) and James Stewart, made a declaration of unacceptable circumstances in relation to the affairs of Virtus. The application concerned the exclusivity arrangements Virtus entered into with a potential bidder who had submitted a non-binding, indicative proposal to acquire all the issued shares in Virtus by way of a scheme of arrangement (or proceed with an alternative transaction structure which requires acceptance by Virtus shareholders

with 50.1% of its shares). The Panel declared the circumstances unacceptable having considered that the exclusivity arrangements, taken as a whole, and having regard to the factual matrix of this matter, inhibited or were likely to inhibit the acquisition of control over voting shares in Virtus taking place in an efficient, competitive and informed market. The Panel made orders including (a) prohibiting Virtus and the potential bidder from entering into (in effect) a scheme implementation agreement for a limited period and (b) that certain of the exclusivity arrangements be of no force and effect unless they were amended to ensure it was clear that the 'fiduciary out' was effective to create an exception in certain circumstances.

Lincoln Minerals Limited

12 April 2022 – The Panel, Kristen Jung, Bill Koeck and Tony Osmond (sitting President), declined to conduct proceedings on an application by Olary Holdings Limited in relation to the affairs of Lincoln Minerals Limited. The application concerned (among other things) the proposed issue of convertible notes by Lincoln, subject to necessary approvals, to APMI (a company associated with Lincoln's 19.91% shareholder) which, upon their conversion into shares, could increase APMI's voting power to a maximum of 48.55%. The Panel decided not to conduct proceedings after accepting an undertaking from Lincoln. The Panel considered that there was no reasonable prospect that it would declare the circumstances unacceptable.

Virtus Health Limited 03 – Panel Makes Interim Orders

11 April 2022 – The Panel has made interim orders in response to an application for interim orders dated 7 April 2022 from CapVest Partners LLP in relation to the affairs of Virtus Health Limited. The interim orders in effect prohibit BGH (without the consent of the sitting Panel) from acquiring on market any Virtus shares above its Bid Price, unless and until it has made an announcement to ASX that informs the market that the Bid Price is to be increased and the amount of that increase. 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. The sitting Panel (Teresa Dyson, Richard Hunt (sitting President) and James Stewart) has decided to conduct proceedings in relation to this application.

Virtus Health Limited 03 – Panel Receives Application

8 April 2022 – The Panel has received an application from CapVest Partners LLP (CapVest) in relation to the affairs of Virtus Health Limited (Virtus). Virtus is the subject of competing control proposals for all the fully paid ordinary shares in Virtus from both BGH Capital Pty Ltd (BGH) and CapVest. 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

6 April 2022 – The Panel, Karen Evans-Cullen (sitting President), Bruce McLennan and Sharon Warburton, made a declaration of unacceptable circumstances in relation to the affairs of Bullseye Mining Limited.

The application concerned (among other things) director intentions and early director acceptances, association, and disclosure issues in relation to a bid by Emerald Resources NL for all the shares in Bullseye. The Panel considered that there had been a limiting effect on potential control of Bullseye and that there were material deficiencies in Bullseye's target statement. The Panel ordered further disclosure, that accepting shareholders have a right to withdraw, and that Bullseye directors' acceptances be cancelled if a superior proposal is made. The Panel also ordered extension of the bid and no change to Bullseye's board by Emerald while shareholders can withdraw. Lastly, it ordered that item 9 of section 6111 not apply in respect of any withdrawn or cancelled acceptances.

Wollongong Coal Limited 03 – Panel Receives Application

5 April 2022 – The Panel has received an application from Mr Gordon Elkington (Applicant) in relation to the affairs of Wollongong Coal Limited. The application concerns the content of the independent expert's report required for compulsory acquisition under Chapter 6A that was the subject of undertakings to the Panel in the Wollongong Coal Limited 02 matter. 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 – Declaration of Unacceptable Circumstances and Orders

4 April 2022 – The Panel has made a declaration of unacceptable circumstances and final orders in relation to an application dated 28 February 2022 by Hongkong Xinhe International Investment Company Limited in relation to the affairs of Bullseye Mining Limited.

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION

22-149MR Caloundra Man Sentenced for Insider Trading

20 June 2022 – Mr Jin Xi Li, of Caloundra, Queensland, has been sentenced to nine months imprisonment for insider trading. The Court ordered Mr Li be released forthwith on recognisance upon the condition that he be of good behaviour for a period of two years. Mr Li traded in Contracts for Difference (CFD) of PanAust Limited (ASX: PNA) while he was in possession of inside information regarding a takeover bid for PanAust by Guangdong Rising H.K (Holding) Limited (GRAM) (17-390MR). He made \$343,000 profit as a result of his criminal conduct.

NEW ZEALAND TAKEOVERS PANEL

Code Word – Issue 54 (May 2022)

- [Revisions to the Panel’s Guidance Note on Schemes of Arrangement](#)
- [Deal Protection Devices](#)

New Image Group to Pay \$1.5 million Penalty for Breaching the Takeovers Code

28 June 2022 – The High Court has today made a declaration that New Image Group Limited (New Image) and New Image Holdings Limited (New Holdings) breached the Takeovers Code in relation to the 2013 acquisition of New Holdings. New Image has been ordered to pay a pecuniary penalty of \$1.5 million in respect of the breaches of the Code. The Court decided that New Image breached the Code by making a selective offer to certain shareholders on different terms to other shareholders. In addition, New Image’s pre-offer shareholding was obscured when New Image and New Holdings failed to make all of the required Code disclosures. Carl Blanchard, Acting Chair of the Panel, commented that: “This is an important decision, being the first pecuniary penalty imposed in respect of breaches of the Code. Today the Court agreed with the Panel that the non-compliance was serious and that a pecuniary penalty was appropriate. The Panel takes Code compliance seriously and will take enforcement action where parties have failed to meet their obligations. The Panel encourages market participants to engage with the Panel in order to best understand how to comply with the Code.” The Panel began its investigation in 2019 after allegations relating to the matter came to its attention.

Andrew Lowe to Pay Former Blue Sky Shareholders Additional Consideration for Shares Acquired Prior to Takeover Offer

22 April 2022 – On 18 March 2022, Southern Lamb Investments Limited (Southern Lamb) made an offer to acquire all of the shares in Blue Sky Meats (N.Z.) Limited (Blue Sky) at \$3 per share. Southern Lamb is owned by interests associated with Andrew Lowe and Scott O’Donnell. Prior to the offer being made, Andrew Lowe acquired 28,312 shares in Blue Sky in three transactions on the USX market. At the time of Mr Lowe’s acquisitions, interests associated with Mr Lowe controlled approximately 18% of the voting rights in Blue Sky and interests associated with Mr O’Donnell controlled approximately 17% of the voting rights in Blue Sky, an aggregate of approximately 35%. Accordingly, if Mr Lowe was associated with Mr O’Donnell’s interests at the time of these acquisitions, these acquisitions may not have been in compliance with the Takeovers Code. The Panel and Mr Lowe have agreed to settle the matter in lieu of formal enforcement proceedings. Mr Lowe has undertaken to pay the difference between the price paid for the 28,312 shares he acquired prior to the offer and the \$3 offer price. Subject to Mr Lowe complying with these undertakings and no additional facts coming to the Panel’s attention, the Panel has agreed to take no further action in relation to this matter.