



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP22/57

Friday, 28 October 2022

Lincoln Minerals Limited 02 – Panel Receives Application

The Panel has received an application from Olary Holdings Limited (**Olary**) in relation to the affairs of Lincoln Minerals Limited (**Lincoln**).

Details of the application, as submitted by Olary and drawn from publicly available information, 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.

Details

On 21 January 2022, Lincoln issued a notice of annual general meeting (**2021 AGM**) seeking approval for the issue of convertible notes (**Convertible Notes**) to Australia Poly Minerals Investments Pty Ltd (**APMI**). On 9 February 2022, Olary made a Panel application in relation to the approval of the Convertible Notes.¹

On 7 March 2022, the Panel announced that it had accepted an undertaking (**Undertaking**) from Lincoln to (among other things):

- prepare a supplementary notice of AGM (**Supplementary Notice**) to address the disclosure concerns of the Panel and comply with any applicable regulatory requirements
- not formally issue the Supplementary Notice or re-schedule the 2021 AGM until ASIC and the Panel have separately provided confirmation that they do not object to the form of the Supplementary Notice and
- not hold the 2021 AGM until 14 days after the Supplementary Notice has been sent to its shareholders (see [TP22/20](#)).

On 27 September 2022, Lincoln announced (among other things) that it intended to re-schedule the 2021 AGM at which it would seek shareholder approval to undertake an entitlement offer (**Entitlement Offer**). Lincoln also announced that APMI had confirmed its support for the Entitlement Offer and that it no longer intended to issue the Convertible Notes which are the subject of the Undertaking. On 10 October 2022, the Panel announced

¹ Lincoln Minerals Limited 01 [2022] ATP 6

that, following a request from Lincoln and on the basis it does not issue the Convertible Notes or seek shareholder approval for it, the Panel had consented to a variation of the Undertaking which would (in effect) allow Lincoln to re-schedule and hold the 2021 AGM without having to issue the Supplementary Notice in respect of the Convertible Notes (see [TP22/53](#)).

On 12 October 2022, Lincoln issued a notice of meeting for the 2021 AGM (**Notice of Meeting**), seeking shareholder approval to undertake the Entitlement Offer and issue shortfall shares to the underwriter, Jigsaw Investments Pty Ltd, and their nominee(s) or sub-underwriters. The Notice of Meeting disclosed (among other things) that:

- funds raised under the Entitlement Offer will be used to repay funds provided by APMI, including any unpaid interest and
- it is proposed that *“APMI would sub-underwriter (sic) the Entitlement Offer for up to approximately \$900,000, which would take its holding in the Company from 19.91% to approximately 29% - assuming the full sub-underwriting commitment was called upon”*.

Olary submits, in effect and among other things, that the following circumstances are unacceptable:

- Not seeking shareholder approval for the termination of the Convertible Notes and the conversion of the outstanding debt into a shareholder loan.
- The effect of the Entitlement Offer and the proposed issue of shortfall shares to the underwriter and sub-underwriters.
- There is inadequate disclosure in the Notice of Meeting of (among other things) information required under the Undertaking, details regarding the shareholder loan and the underwriting and the sub-underwriting arrangements.

Olary seeks an interim order to the effect that the date of the 2021 AGM, currently scheduled for 31 October 2022, be delayed to a date that is the later of 7 December 2022 or the end of the Panel proceedings. Olary seeks a final order that the Entitlement Offer not proceed *“on its current terms without further fulsome information to shareholders”*.

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