



Australian Government

Takeovers Panel

**Reasons for Decision
Maronan Metals Limited
[2024] ATP 10**

Catchwords:

Decline to conduct proceedings – market manipulation – insider trading – placement – share purchase plan – association – substantial holding notice – media canvassing

Corporations Act 2001 (Cth), part 7.10

Takeovers Panel Procedural Rules 2020, rules 18 and 19

Mount Isa Minerals Limited [2024] ATP 7, Benjamin Hornigold Limited 12 [2023] ATP 10, Nitro Software Limited [2023] ATP 2, Firetail Resources Limited [2022] ATP 21, Excelsior Capital Limited [2020] ATP 25, Dragon Mining Limited [2014] ATP 5, Mount Gibson Iron Limited [2008] ATP 4

Interim order	IO undertaking	Conduct	Declaration	Final order	Undertaking
NO	NO	NO	NO	NO	NO

INTRODUCTION

1. The Panel, John McGlue (sitting President), Emma-Jane Newton and James Stewart, declined to conduct proceedings on an application by Mr Benjamin Pauley in relation to the affairs of Maronan Metals Limited. The application concerned certain trading in Maronan shares prior to the announcement of Maronan’s placement and share purchase plan on 16 May 2024. The Panel considered that there was no reasonable prospect that it would declare the circumstances unacceptable.
2. In these reasons, the following definitions apply.

Applicant	Mr Benjamin Pauley
Choco Resources	Choco Resources Limited (formerly Bora Bora Resources Ltd)
Maronan	Maronan Metals Limited
Placement	The \$5.65 million share placement announced by Maronan on 16 May 2024
Red Metal	Red Metal Limited
SPP	The share purchase plan announced by Maronan on 16 May 2024 to raise up to \$1.5 million
Veritas	Veritas Securities Limited
Veritas Directors	Bryce Vaughan Reynolds, Piers Vaughan Reynolds and Roberto Scappatura

FACTS

3. Maronan is an ASX listed mineral exploration company (ASX code: MMA).

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4. The Applicant is a shareholder of Maronan and, as at 19 May 2024, had voting power of 0.79%.
5. On 14 May 2024, Maronan was placed into a trading halt at its request pending an announcement.
6. On 16 May 2024, Maronan announced that:
 - (a) it had received commitments from professional, institutional and sophisticated investors to raise \$5.65 million through the Placement
 - (b) Veritas acted as lead manager to the Placement and
 - (c) it would offer eligible shareholders the opportunity to participate in the SPP on the same terms as the Placement to raise up to an additional \$1.5 million.
7. As at 22 May 2024, prior to the Placement and SPP, Maronan's other shareholders included:
 - (a) Red Metal, who held 52.98%
 - (b) Veritas, who held 0.94%
 - (c) Bryce Vaughan Reynolds and his associates, who held 2.33%
 - (d) Piers Vaughan Reynolds and his associates, who held 1.93%
 - (e) Roberto Scappatura and his associates, who held 1.63% and
 - (f) Choco Resources, who held 0.19%.

APPLICATION

Declaration sought

8. By application dated 20 May 2024, the Applicant sought a declaration of unacceptable circumstances. The Applicant submitted (among other things) that:
 - (a) Veritas directors had *“aggressively sold shares using other company names to create an artificially low price so that options would not be exercised by Red Metal and Maronan shareholders”* in circumstances where they had knowledge of an upcoming placement and
 - (b) Veritas directors own 8% of the total number of Maronan shares on issue *“using other company names possibly to avoid lodging substantial shareholder notices”*.

Interim order sought

9. The Applicant sought an interim order to defer the settlement of the Placement pending determination of the application.
10. The substantive President of the Panel considered whether to make any interim orders. The substantive President decided not to make any interim orders on the basis that any issues with the Placement could be dealt with by final orders by a sitting Panel.

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Final order sought

11. The Applicant sought a final order to cancel, or amend, the Placement or, in the alternative, to limit the shares available to the Veritas Directors.

DISCUSSION

Market manipulation and insider trading

12. The Applicant submitted that trading in Maronan shares prior the announcement of the Placement appeared “*aggressive and collusive*” and designed to deliberately manipulate the Maronan share price.
13. The Applicant submitted that:

“Trading appeared collusive because several accounts would create a sell order at the same price minutes apart from each other. There appeared to be an attempt to create an impression of lots of sellers and now it is beyond doubt now these were Veritas directed companies selling at the same time because they were the only ones with access to different accounts all controlled by them. The volumes that were sold leave Veritas as the only possibility because the only other large holders, ... are obligated to submit change of substantial holding notifications.”
14. Maronan submitted that the matters alleged by the Applicant fall outside of the scope of the Panel’s jurisdiction.
15. Maronan submitted that the Applicant’s claims amount to conjecture and are not consistent with the factual circumstances surrounding Maronan and its proposed capital raising activities.
16. Maronan also submitted that only three of the entities identified by the Applicant have traded in Maronan shares since the admission of Maronan to the ASX, with only one of those entities recording any trades after 15 August 2022.
17. The Applicant responded that “*I believe this to be incorrect and the real holdings belonging to Veritas directed companies prior to the placement being covered up.*”
18. Maronan submitted that, based on the trading history in Maronan Shares, Maronan does not consider that the assertions that the Veritas Directors have engaged in insider trading or market manipulation in respect of the Placement have any merit.
19. ASIC submitted (among other things) that it is open for the Applicant to report misconduct to ASIC about allegations of market manipulation.
20. ASIC also considered the trading patterns in respect of Maronan securities raised by the Applicant in accordance with ASIC’s market supervision functions. ASIC submitted that, based on the trading data reviewed by ASIC, it did not identify any indicators that support the alleged misconduct.
21. We consider that the Applicant did not provide a sufficient body of material to justify his claims of market manipulation. We note that it is not a proper use of the Panel’s processes to use the Panel as a means to gain access to further information (e.g. trading data) or to publicise a theory by making unsupported allegations.

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22. While there may be specific occasions where the facts underlying any market manipulation or insider trading may also be unacceptable¹, this is not one of those cases. We also consider that there is no control event in these circumstances.
23. We also note that it remains open for the Applicant to report misconduct to ASIC about allegations of market manipulation and/or insider trading.

Association

24. The Applicant further submitted that the following persons were acting together as associates to control the share price of Maronan:
 - (a) Veritas and its controlled entities including Indago Asset Management Pty Ltd and Imperium Nominees Pty Ltd (the **Veritas Group**)
 - (b) Bryce Vaughan Reynolds and his controlled entities and related persons
 - (c) Piers Vaughan Reynolds
 - (d) Roberto Scappatura and/or
 - (e) Choco Resources.
25. The Panel's starting point for an association matter is that it is for the applicant to demonstrate a sufficient body of evidence of association and to convince the Panel as to that association, albeit with proper inferences being drawn (see *Mount Gibson Iron Limited* [2008] ATP 4 at [15]).²
26. We sought preliminary submissions from the parties as to whether any association existed between the Veritas Group, the Veritas Directors and/or Choco Resources. We also sought preliminary submissions from Veritas to explain why Veritas considered that it was not necessary to lodge a substantial holding notice that included the relevant interests/voting power of the Veritas Group, the Veritas Directors and/or Choco Resources.
27. The Applicant submitted that "*The association that exists between [the Veritas Group, the Veritas Directors and Choco Resources] is that they all knew of the placement details and could trade accordingly to sell at a price higher than the placement price and then buy back into the placement at the lower price.*"
28. Maronan submitted that it was not aware of any information that would indicate that there is an association between any of the Veritas Group, the Veritas Directors and/or Choco Resources.
29. Maronan noted that no evidence was provided by the Applicant to suggest that such an association exists, other than to note that each of the Veritas Directors are directors of Veritas. Maronan submitted that, of itself, this is not sufficient to evidence the existence of an association between the relevant parties.

¹ See for example *Excelsior Capital Limited* [2020] ATP 25 at [17] to [21]

² This test has been cited in recent cases, for example: *Mount Isa Minerals Limited* [2024] ATP 7 at [23], *Benjamin Hornigold Limited* 12 [2023] ATP 10 at [20] and *Firetail Resources Limited* [2022] ATP 21 at [15]. See also *Dragon Mining Limited* [2014] ATP 5 at [59]-[60]

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30. Veritas submitted that the fact that the Veritas Directors are co-investors in Maronan and co-directors of Veritas Securities does not of itself give rise to an association between them in the absence of a further arrangement or understanding. Veritas submitted that there is no such relevant agreement or other understanding.
31. Veritas submitted that at the time of Veritas' acquisition of Maronan shares in April 2022, the Veritas Group determined that none of the Veritas Directors (or their controlled entities and related persons) or Choco Resources was an associate of any member of the Veritas Group and accordingly, the Veritas Group did not have a substantial holding in Maronan and no substantial holding notice was required to be lodged.
32. Veritas submitted that, in the view of the Veritas Group, nothing has changed since April 2022 which has resulted in the Veritas Group acquiring a substantial holding.
33. Maronan submitted that *"In the absence of evidence with respect to the existence of an association, or an admission to the existence of an association by the relevant parties, the Company does not consider that there has been any non-disclosure of substantial holdings in respect of the Company's shares."*
34. We consider that the Applicant did not provide a sufficient body of material to justify making further enquiries in relation to whether the persons and entities referred to in the application were associates for the purpose of determining whether unacceptable circumstances exist.
35. In particular, the Applicant has not provided any evidence of a relevant agreement or similar understanding between the Veritas Group, the Veritas Directors or Choco Resources that they have agreed to trade Maronan shares in a particular way.

Control effect of the Placement and SPP

36. The Applicant asserted that the alleged unacceptable circumstances promote the likelihood of Red Metal seeking to take over Maronan at an undervalued price in the future.
37. Maronan submitted that this allegation is without merit because:
 - (a) *"[Red Metal] has not acquired any shares since listing, other than shares issued on conversion of performance rights that were issued to [Red Metal] in connection with the Company's initial public offer;*
 - (b) *[Red Metal] is not participating in the Placement so its relevant interest in the Company will decrease (other than any change resulting from conversion of performance rights currently held by [Red Metal]); and*
 - (c) *based on [Red Metal's] ASX announcements, [Red Metal] does not have sufficient cash to seek to acquire the Company by way of a cash offer."*
38. Maronan further submitted that *"the assertion that [Red Metal] would seek to take over the Company is illogical in the Company's view, as the Company was only recently spun-out from [Red Metal] in April 2022. [Red Metal] would not have incurred the time and expense of completing the spin-out if it wanted to retain the assets held by the Company."*

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39. We agree with Maronan that the Applicant's allegations appear unfounded and without merit, on the basis that Red Metal recently demerged Maronan, did not participate in the Placement and its relevant interest in Maronan decreased as a result of the Placement.
40. We consider that the Applicant did not provide a sufficient body of material to justify making further enquiries in relation to any potential control effect of the Placement or SPP.

Other matters

Media canvassing

41. During the course of proceedings, it was brought to our attention that the Applicant made, and was continuing to make, a number of public comments about the application on Hot Copper, Reddit and YouTube. Those comments disclosed information that had not been disclosed in the Panel's media release in relation to the matter.³

42. Rule 19(1) of the Panel's Procedural Rules provides (emphasis added):

(1) A party must not directly or indirectly cause, participate in or assist the canvassing in any media of any issue that is before (or likely to be before) the Panel in proceedings:

- a. until the proceedings are determined or the time limit within which an application under section 657EA of the Corporations Act may be made for review of a Panel decision has expired, whichever is longer and*
- b. if a request is made, or proposed to be made, to vary, revoke or suspend any final orders, from the time the person becomes aware of the request or proposed request until it is determined by the Panel.*

For the purposes of Rule 19, media refers to a means of communication through which the subject information reaches or influences people widely, including (but not limited to): radio, television, newspapers, magazines, letters, the internet, emails, social media and online platforms.

43. We were concerned that the contents of those comments may have been made in contravention of the confidentiality obligation and media canvassing restriction in the Procedural Rules.⁴ We accordingly made enquiries of the Applicant reminding him of the media canvassing prohibition and asking him to confirm why he has made these public comments.
44. The Applicant responded that "*public comments have been an attempt to keep investors informed while at the same time protecting the confidentiality of proceedings.*"
45. As noted by the Panel in *Nitro Software Limited* [2023] ATP 2 at [128], the media canvassing prohibition is important for several reasons and must be taken seriously

³ See TP24/025

⁴ See rules 18 and 19 of the Procedural Rules

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by all parties to Panel proceedings, who undertake to comply with the Procedural Rules in their Notice to Become a Party.

46. We consider that the Applicant's conduct was a flagrant contravention of the confidentiality obligation and media canvassing restriction in the Procedural Rules. The Panel can take action in relation to such contraventions including by giving a public reprimand or making a costs order.
47. Here we do not consider that it is necessary to take any further action, other than making the comments above, as we declined to conduct proceedings.

DECISION

48. For the reasons above, we do not consider that there is any reasonable prospect that we would make a declaration of unacceptable circumstances. Accordingly, we have decided not to conduct proceedings in relation to the application under regulation 20 of the *Australian Securities and Investments Commission Regulations 2001* (Cth).

Orders

49. Given that we have decided not to conduct proceedings, we do not (and do not need to) consider whether to make any interim or final orders.

John McGlue
President of the sitting Panel
Decision dated 6 June 2024
Reasons given to parties 22 July 2024
Reasons published 29 July 2024

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Advisers

Party	Advisers
Benjamin Pauley	-
Maronan Metals Limited	Steinepreis Paganin
Veritas Securities Limited	Maddocks
ASIC	-