



Australian Government

Takeovers Panel

Reasons for Decision New World Resources Limited 02 [2025] ATP 21

Catchwords:

Decline to make a declaration – frustrating action – placement – on-market acquisitions – efficient, competitive and informed market – ASIC Market Integrity Rules

Corporations Act 2001 (Cth), sections 602, 621(3), 651A, 657A(2), 657D(1), 671B

ASIC Market Integrity Rules (Securities Markets) 2017, rule 5.13.1

Metals Exploration Ltd v Samic Ltd (1994) 123 ALR 289, Samic Ltd v Metals Exploration Ltd (1993) 11 ACSR 84

Guidance Note 12: Frustrating Action

Southern Cross Media Group Limited [2023] ATP 13, Virtus Health Limited 04R [2022] ATP 13, Virtus Health Limited 03 [2022] ATP 10, Midwest Corporation Limited 02 [2008] ATP 15, Skywest Limited [2004] ATP 17

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

INTRODUCTION

1. The Panel, Sylvia Falzon, Jon Gidney, and Philippa Stone (sitting President) declined to make a declaration of unacceptable circumstances in relation to the affairs of NWC. The application concerned whether a proposed placement to CAML frustrated the auction for control of NWC and whether acquisitions of NWC shares by CAML on 20 June 2025 contravened certain provisions of the Corporations Act or were otherwise contrary to an efficient, competitive and informed market. The proposed placement was terminated after the application was made, which sufficiently addressed the Panel's concerns in relation to it. The Panel had concerns regarding the delay in the market being notified of CAML's offer price increase (which resulted from CAML's first acquisition on 20 June 2025). However, the Panel was not satisfied that the effect that the circumstances have had, or are having, was sufficient to justify the making of a declaration.
2. In these reasons, the following definitions apply.

**ASIC Market
Integrity Rules**

ASIC Market Integrity Rules (Securities Markets) 2017

CAML

Central Asia Metals PLC

Kinterra

Kinterra Capital GP Corp. II in its capacity as general partner of the Kinterra Critical Materials & Infrastructure Opportunities Fund II

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NWC (or New World)	New World Resources Limited
Proposed Placement	has the meaning given in paragraph 14(c)
Special Crossing	has the meaning given in paragraph 15
Subscription Agreement	has the meaning given in paragraph 32
Virtus 03	<i>Virtus Health Limited 03</i> [2022] ATP 10
Virtus 04R	<i>Virtus Health Limited 04R</i> [2022] ATP 13

FACTS

3. NWC is an ASX-listed company (ASX code: NWC) which explores and develops mineral resources projects in North America.
4. Kinterra is a Toronto-based private equity firm.
5. CAML is a company listed on the Alternative Investment Market of the London Stock Exchange (AIM code: CAML) which is a base metals producer with operations in Europe and Central Asia.
6. On 21 May 2025, NWC announced that it had entered into a Scheme Implementation Deed with CAML under which it was proposed that CAML would acquire all of the shares in NWC by way of an Australian scheme of arrangement for cash consideration of \$0.05 per share.
7. On 16 June 2025, Moelis (Kinterra's financial adviser) held discussions with NWC representatives during which (according to Kinterra) it was made clear to NWC that Kinterra was considering a number of options, including a potential takeover bid for NWC.¹
8. On 17 June 2025, NWC entered a trading halt pending “a potential material variation, including a proposed increase in Scheme Consideration, to a change of control transaction involving [NWC]”. The trading halt was to last until the commencement of trading on 19 June 2025 (or earlier announcement to the market).
9. Also on 17 June 2025, Kinterra lodged a notice of initial substantial holding disclosing that it had acquired voting power in NWC of 11.99%, which it obtained via a series of on-market purchases of shares or special crossings between 6 June to 16 June 2025.
10. On 19 June 2025 at 10:38 am, NWC entered a voluntary suspension pending NWC making an announcement to the ASX in relation to:

“(i) a potential material variation, including a proposed increase in Scheme consideration, to a change of control transaction involving [NWC]; and (ii) a placement of approximately \$10 million to enable [NWC] to continue advancing the Antler

¹ NWC contested this and stated that it was not informed of Kinterra’s intention to make a takeover bid

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Project towards development, including meeting regulatory bonding requirements for Arizona State Mining Permits over the course of Q3 & Q4 2025 due to an accelerated State permitting process and to finalise acquisition of key project land parcels”.

The announcement also stated that NWC expected that it would execute transaction documents before commencement of trading on 20 June 2025.

11. On 19 June 2025, following NWC going into voluntary suspension, Allens (on behalf of Kinterra) wrote to NWC confirming that Kinterra was *“actively considering a takeover bid for NWC”* and stating that the placement *“is designed to and will likely frustrate our client’s intentions in this regard.”*
12. Also on 19 June 2025, Kinterra made an application to the Panel by way of a letter titled *“Application for interim orders and declaration and final orders in relation to NWC’s Proposed Placement”* which stated that Kinterra undertakes to make a formal application to the Panel in respect of the matters described in the letter. In its letter, Kinterra sought interim orders to prevent NWC from making a placement prior to Kinterra's application being heard by the Panel.
13. The Acting President considered Kinterra’s request on an urgent basis in the evening of 19 June 2025. NWC informed the Acting President that it had *“negotiated a term of the placement that completion is conditional on NWC not receiving, during the 14 days following the placement agreement, a competing proposal from a third party which the NWC board subsequently determines is or may reasonably be expected to become a Superior Proposal”*. The Acting President decided not to make any interim order, noting that a sitting Panel could deal with any unacceptable aspects of the proposed placement by making interim or final orders.² The Panel published a media release in relation to the application and the Acting President’s decision before market open on 20 June 2025.³
14. On 20 June 2025 at 9:19 am,⁴ NWC released an ASX announcement titled *“NWC Enters into Revised Proposal with CAML including Increased Cash Consideration and Conditional Placement”*. The announcement stated (among other things) that:
 - (a) CAML had increased the cash consideration offered by it under the scheme from \$0.05 per share to \$0.053 per share.
 - (b) NWC and CAML had agreed to modify the transaction structure so that it now included a concurrent off-market takeover bid by CAML for NWC (also at \$0.053 per share), subject to the failure of the scheme or the termination of the Scheme Implementation Deed and a 50.1% minimum acceptance condition.
 - (c) CAML had *“committed to provide A\$10.0 million in funding via a placement of new shares in New World at \$0.053 per share (representing c.5% of New World), conditional on either no Competing Proposal being received by New World in the next 14 days (by 5.00pm Sydney time on 4 July 2025), or if a competing proposal is received*

² See [TP25/046](#)

³ The 19 June application was superseded by Kinterra’s subsequent application (see [TP25/052](#))

⁴ All times are in AEST unless otherwise indicated

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within that time, the Directors of New World have not determined that it is or may reasonably be expected to become a Superior Proposal” (Proposed Placement).

- (d) *“This funding enables New World to meet bonding requirements in relation to the Arizona State Permits, driven by a faster-than-expected permitting timeline.”*
15. On 20 June 2025 at 11:13 am, CAML acquired 176,709,950 NWC shares by way of a single special crossing at \$0.055 per share (**Special Crossing**). Following the Special Crossing and prior to market close, CAML acquired a further 2,090,106 NWC shares via on-market acquisitions at \$0.055 per share.⁵
16. On 20 June 2025 at 6:03 pm, NWC announced that it had been notified by CAML *“[f]ollowing market close today ... that it had bought on market today a total of 178,800,056 New World shares, representing approximately 5.0% of the issued capital of [NWC] at \$0.055 per New World share”* and that *“CAML has also advised that it proposes an increase to the cash consideration payable by CAML under both the Scheme and Takeover Offer from \$0.053 to \$0.055 per New World share.”*
17. On 23 June 2025, Kinterra lodged a substantial holding notice disclosing that its voting power in NWC had increased from 11.99% to 19.16%.
18. Also on 23 June 2025, as announced by NWC in response to media speculation, Kinterra submitted a non-binding indicative proposal (**NBIO**) to NWC for the acquisition by Kinterra of all of the shares in NWC that it does not already own by way of an off-market takeover bid at a price of \$0.057 per share, subject to due diligence and a number of other conditions.
19. On 26 June 2025, Kinterra announced its intention to make a takeover bid for all of the ordinary shares it did not already own in NWC at a price of \$0.057 per share, subject only to ‘no prescribed occurrences’. It also lodged its bidder’s statement with ASIC.
20. On 27 June 2025, before market open:
- (a) NWC announced that *“following market close on 26 June 2025”* it was *“notified by CAML that it had bought after market close a total of 253,018,511 New World shares, representing approximately 7.1% of the issued capital of [NWC]... at \$0.062 per New World share”* and that *“immediately after that purchase”*, CAML had advised NWC that it proposed an increase to the cash consideration payable under its scheme and takeover bid for NWC from \$0.055 to \$0.062 per NWC share and
- (b) CAML lodged a substantial holding notice disclosing that its voting power in NWC had increased from 5.00% to 12.08%.
21. On 30 June 2025, Kinterra announced an increase to the offer price under its takeover bid for NWC from \$0.057 to \$0.062 per share. It also announced that it intended to vote any NWC shares it holds at the time of the CAML scheme meeting against the CAML scheme.

⁵ A further 4,958,229 NWC shares traded through the day at \$0.055 per share

APPLICATION

22. By application dated 1 July 2025, Kinterra sought a declaration of unacceptable circumstances. Kinterra submitted (among other things) that:
- (a) NWC and CAML had sought to frustrate the auction for control of NWC, including by entering into the placement agreement with CAML “*despite knowing of Kinterra's objections and the fact that Kinterra was actively considering a takeover bid for NWC, and despite there being no immediate need for the funding*” and
 - (b) CAML had acquired the shares that it held in NWC in contravention of various provisions of the Corporations Act, including those relating to insider trading, market manipulation, and misleading and deceptive conduct.
23. Kinterra submitted that the effect of the circumstances was that the auction for control of NWC was not taking place in an efficient, competitive and informed market, contrary to section 602.⁶
24. Kinterra sought interim orders that NWC not undertake the Proposed Placement, and that CAML not acquire any further NWC shares, pending determination of its application.
25. Kinterra sought final orders that NWC not undertake the Proposed Placement and that CAML dispose of its 12.08% shareholding in NWC.

DISCUSSION

26. We have considered all the material, but address specifically only that part of the material we consider necessary to explain our reasoning.

Interim orders request / undertaking

27. Noting that the condition precedent to the Proposed Placement was due to expire on 4 July 2025, we considered the interim orders request on an urgent basis. We were concerned that the Proposed Placement could potentially close imminently and before we had had the chance to make further enquiries. Accordingly, we were minded to make an interim order to prevent NWC from completing the Proposed Placement to CAML in order to maintain the status quo pending our determination of the application and we communicated this to the parties. However, this became unnecessary as we received an undertaking from NWC in substantially the same form, which we decided to accept (see Annexure A).
28. We did not consider it appropriate on the materials before us to make an interim order preventing CAML from acquiring further NWC shares, noting this would preclude normal market activity.

⁶ Unless otherwise indicated, all statutory references are to the *Corporations Act 2001* (Cth) and all terms used in Chapter 6, 6A or 6C have the meaning given in the relevant Chapter (as modified by ASIC)

Preliminary submission and decision to conduct proceedings

29. We received a preliminary submission from CAML, submitting that there was no basis for any of the allegations against CAML and that we should decline to conduct proceedings. In particular, it submitted (among other things) that:
- (a) *“[A]t the time of the release of the Revised Proposal Announcement, it had no intention to effect the Special Crossing nor to increase its offer price from \$0.053 per NWC share to \$0.055 per NWC share. The increase in the offer price was entirely a function of the acquisition of shares on-market above \$0.053 per NWC share. For instance, if CAML had not acquired any NWC shares above \$0.053, then it would not have increased the offer price under the Takeover Offer and the Scheme.”*
 - (b) CAML was not in possession of material non-public information at the time it acquired its NWC shares, and therefore had not contravened the insider trading provisions of the Corporations Act.
 - (c) CAML had not contravened any provisions of the Corporations Act, nor ASIC Market Integrity Rule 5.13.1,⁷ in relation to its purchases of NWC shares on 20 June 2025.
30. The application raised issues which we considered warranted further enquiry. We were troubled by the Proposed Placement, including the timing of it and the proposed raising of capital by this method noting a placement had recently been conducted by NWC in March this year.⁸ We were concerned the Proposed Placement could potentially have the effect of frustrating Kinterra’s takeover bid for NWC. We also had concerns about CAML’s acquisitions of NWC shares on 20 June 2025. ASIC Market Integrity Rule 5.13.1 requires a market announcement prior to a bidder (through its broker) offering to buy bid class securities on-market during the bid period for a price that varies from the consideration offered under the bid. While the bid period under CAML’s takeover offer had not commenced and hence it did not appear that ASIC Market Integrity Rule 5.13.1 applied, we queried whether the conduct could nonetheless potentially be contrary to section 602 or potentially raise insider trading issues. We decided to conduct proceedings.

⁷ Rule 5.13.1 (Acquisition of Cash Market Products by Bidder) provides that “[a] Market Participant acting on behalf of a Bidder must not offer to buy on behalf of the Bidder Cash Market Products in the Bid Class On-Market during the Bid Period for a price that varies from the consideration offered under the Takeover Bid unless and until an announcement has been made to the Market where Cash Market Products in the Bid Class have been granted Official Quotation”

⁸ NWC submitted, in the context of the 19 June application, that the placement was required “due to imminent funding requirements in relation to the permits for [NWC’s] Antler Copper Project, which [were] arising sooner than expected even at the time of the March 2025 placement”

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Proposed Placement

31. We had a number of preliminary concerns in relation to the Proposed Placement, including in relation to:
- (a) whether ASX Listing Rule 7.9⁹ applied in the circumstances
 - (b) the process undertaken by NWC which led to its decision to undertake the Proposed Placement
 - (c) how and when the need for the funds to be raised were first identified
 - (d) why NWC made no mention of a capital raising in its request to ASX for a trading halt on 17 June 2025
 - (e) why funds could not have been raised by another means, such as by a pro-rata rights issue or through debt funding
 - (f) why it was only made available to CAML and
 - (g) whether it was a frustrating action under the Panel's frustrating action policy.¹⁰
32. In response to submissions on interim orders, we received a copy of the subscription letter agreement of 20 June 2025 in relation to the Proposed Placement (**Subscription Agreement**). The subscription termination condition as set out in the Subscription Agreement contained provisions relating to the condition precedent of the Proposed Placement that were not referred to explicitly in NWC's ASX announcement of 20 June 2025 at 9:19 am.¹¹
33. Relevantly, the Subscription Agreement stated that "[i]f a Competing Proposal is received by the Company prior to the Competing Proposal Deadline and:
- (a) *the Company's directors determine that the Competing Proposal is not and may not reasonably be expected to become a Superior Proposal and/or terminate engagement with the proponent of the Competing Proposal (including where the Subscriber has exercised its rights under clause 12.6 of the SID (Response to Competing Proposal and Counter Proposal)), then the Subscription Condition shall be deemed satisfied on the later of the date of such determination or termination and the Competing Proposal Deadline; or*
 - (b) *the Company's directors make the determination contemplated in clause 12.8(a) of the SID in relation to the Competing Proposal and all of the Subscriber's rights under clause 12.6 of the SID have been exhausted and the Company directors determine that the Competing Proposal constitutes a Superior Proposal, then this letter will automatically terminate and the Subscription will not proceed."*
34. Clause 12.6 of the Scheme Implementation Deed included a 5-business day matching right in favour of CAML, which per clause 12.8, was subject to NWC's directors' fiduciary obligations.

⁹ Which restricts issues of equity during takeovers, subject to certain exceptions

¹⁰ See generally GN 12

¹¹ See paragraph 14(c)

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35. While the market may have interpreted the condition precedent as being subject to the matching rights regime under the Scheme Implementation Deed, it was not clear that NWC's ASX announcement had accurately described the only condition precedent to the Proposed Placement. At the time we were considering a brief, we were within the 14-day window referred to in NWC's 20 June ASX announcement, and NWC had not publicly responded to Kinterra's NBIO received on 23 June 2025 nor its increased revised offer under its proposed takeover bid dated 24 June 2025, which left the status of the condition precedent uncertain.
36. On 4 July 2025, we issued a brief which included questions concerning the above matters.
37. On 7 July 2025, before submissions from the parties were due, NWC announced that NWC and CAML had mutually agreed to terminate the Proposed Placement, and that CAML had agreed to instead provide a US\$6.5 million unsecured loan facility.
38. Also on 7 July 2025, NWC asked whether the Panel wished to revise the brief because of the events detailed in the announcement. We asked for submissions from the parties about whether we should remove the questions relating to the Proposed Placement. None of the parties objected to this course of action. Accordingly, we amended the brief to remove the questions concerning the Proposed Placement, noting that we considered that our concerns in relation to the Proposed Placement had been sufficiently addressed by its termination.

CAML's acquisitions of NWC shares on 20 June 2025

39. We asked at what time on 20 June 2025 NWC was informed that CAML had acquired shares at \$0.055 per share and how long it took NWC to inform the market, and why.
40. CAML submitted:

"CAML confirms that, on 20 June 2025 at 1:52pm (AEST) (4:52am UK time), [a representative of CAML], called [a representative of NWC], to inform him that CAML had acquired shares at \$0.055 per share. At the same time (i.e. 1:52pm (AEST)), [a representative of] BMO Capital Markets (CAML's financial adviser) called [a representative of] Sternship Advisers (NWC's financial adviser) to inform him that CAML had acquired shares at \$0.055 per share.

Following confirmation that CAML and BMO had informed NWC and Sternship (respectively), at 2:02pm (AEST) on 20 June 2025, [a representative of] Clayton Utz (CAML's Australian legal adviser) called [a representative] of Hamilton Locke (NWC's Australian legal adviser) to inform him that CAML had acquired shares at \$0.055 per share. Subsequently, at 5:44pm¹² (AEST) (8:44am UK time), [a representative of CAML] emailed [a representative of NWC] to confirm the final quantum of NWC shares purchased during the trading day."¹³

¹² CAML clarified in rebuttals that the email was sent at 4:44 pm (AEST)

¹³ The names of individuals have been removed

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41. NWC submitted:

“Just before 2pm on 20 June 2025, [a representative of NWC] received a telephone call from [a representative of CAML]. [The representative of CAML] said that CAML had been buying [NWC] shares on market that day, and that the special crossing earlier in the day at \$0.055 was bought by CAML. [The representative of CAML] did not say the number of shares that CAML had purchased, and he told [the representative of NWC] that CAML would advise the final number and the highest price paid after the market closed.

CAML’s financial adviser, BMO, made a telephone call to [NWC’s] financial adviser, Sternship, at the same time, and conveyed essentially the same message.

Following that call, [NWC] immediately began preparing an ASX announcement pending confirmation of the volume purchased by CAML and the price or prices paid.

The first written information received by [NWC] was an email from [the representative of CAML] to [NWC] and its advisers at 4.44pm. This email stated:

‘Hi all,

Figure received from our broker just moments ago:

178,800,056 NWC at 5.5c.’

[NWC] was still unsure at that point what prices had been paid by CAML, as some ASX trades had taken place at different prices that day. [NWC’s] advisers at Sternship therefore emailed [the representative of CAML] at 4.52pm asking whether all buying was at 5.5 cents.

[The representative of CAML] replied by email at 4.54pm confirming all purchases were at 5.5 cents.

[NWC] then finalised its draft ASX announcement, provided it to CAML for confirmation of factual accuracy, and released it to ASX so that it was publicly available at 6.03pm.

In the circumstances, where [NWC] did not know of CAML’s intention to purchase shares until after the on market purchases had already occurred and did not receive written information of any kind until 4.44pm, we submit that [NWC] acted promptly and with regard to ensuring the market had factually accurate information.”¹⁴

42. CAML also supplied, at our request, details of the times and volume of trades after 11:13 am on 20 June 2025 which showed that CAML’s first on-market purchase occurred 28 seconds after the Special Crossing and was followed by a further 40 purchases, the last of which occurred at 3.58 pm.

43. We also asked the parties whether references to the bid period in section 671B(6) and section 651A suggest a legislative policy that there is less urgency for the market to be informed of material trading outside of the bid period and, if so, what relevance that might have here.

¹⁴ The names of individuals have been removed

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44. Kinterra submitted that the fact that these provisions reference the bid period “*does not suggest that market integrity issues are any less important when an off-market takeover bid had been announced, but the bid period has not technically commenced because the bidder’s statement has not been served, than when the bid period has commenced.*” Kinterra submitted that the market was trading on an uninformed basis after 11:13am on 20 June 2025, because CAML had announced an off-market takeover bid for NWC at \$0.053 per share before market open that day so that the operation of section 631 meant that there was “*for all intents and purposes... a bid in the market at that price from before market open.*” From 11:13am, Kinterra submitted, “*market participants were trading on the basis that CAML’s offer price was \$0.053 per share, when it was actually \$0.055 per share.*”
45. CAML submitted that:
- (a) the references to “bid period” in these provisions clearly suggests a legislative policy that there is less urgency for the market to be informed of material trading outside of the bid period as compared to the market being kept informed during a bid period and
 - (b) had the legislative intent been for there to be increased urgency following the proposal to make a takeover bid but before the bid period commences, the relevant provisions would have made it clear that they applied from the date that the bidder “proposes to make a takeover bid” rather than from the “bid period”.
46. NWC submitted that before the bid period starts, “*there is no policy evident in the Corporations Act that a trade which affects a proposed bidder’s bid price must be announced on an accelerated timetable or before the trade occurs*” and that “*[i]n the absence of a ‘truth in takeovers’ statement that a proposed bid price is best and final, market participants cannot reasonably expect that a bidder will not increase its bid price, including by activating the minimum bid price rule*”.
47. NWC also submitted that the “*Panel in the [Virtus 03] and [Virtus 04R] matters noted that target company shareholders who sell on market are willingly taking the risk that they will be unable to sell into a potential higher bid later, and that prior notification of an on market purchase is not required for an efficient, competitive and informed market*”.¹⁵ We do not agree that it follows from the *Virtus 03* and *Virtus 04R* decisions that prior notification of an on market purchase is not required for an efficient, competitive and informed market. In those decisions, the bidder had informed the market that it had appointed a broker to acquire Virtus shares on market at prices equal to, below, or higher than its bid price. As discussed further below, the dispute related to whether it should also have disclosed the amount of the price increase before acquiring Virtus shares above its bid price.
48. In rebuttals, Kinterra submitted that CAML’s off-market takeover bid was “live” as soon as it was announced, because it couldn’t then be withdrawn without breaching

¹⁵ In particular, NWC referred to the review Panel’s comment (at [21]) that “*sellers on-market during a takeover bid always give up the opportunity to accept an improved off-market bid price*”

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section 631; the market was entitled to and did treat it as being live; and that the conduct was not less misleading or egregious because CAML had not yet served a bidder's statement.

49. ASIC submitted that “[w]hile ss671B(6) and 651A are expressions of the principles of s602, the fundamental principles of s602 do not have a valence for less urgency in respect of an informed market outside of a bid period. Sections 671B(6) and 651A should be read in that context – particularly in circumstances where the primary control transaction, at least at the time, was a members’ scheme of arrangement which does not have a defined bid period but must still take place within an efficient, competitive and informed market.”
50. We also asked the parties whether it was unacceptable for CAML to acquire NWC shares via the Special Crossing and on-market at \$0.055 per share from 11:13 am on 20 June 2025 onwards and to continue to acquire shares at \$0.055 while the market understood its offer price to be \$0.053 per share.
51. Kinterra submitted that the acquisitions were unacceptable noting that in addition to its earlier submissions concerning market integrity, all persons who sold NWC shares on the ASX between the time of the Special Crossing at 11.13 am and NWC's announcement at 6:03 pm were “*fundamentally misled as to CAML's true offer price*” and “*sold their shares thinking that they were selling at a premium to the CAML offer price, not at the CAML offer price.*” Kinterra submitted that, had these persons known that CAML had already increased its bid price over the \$0.053 per share announced earlier that morning, they would have held their shares. Kinterra also submitted that CAML had breached the insider trading provisions by purchasing shares on 20 June 2025 after 11:13 am because it was “*in possession of material price sensitive information, namely, that its offer price had been increased*”.
52. CAML rejected any assertion that the acquisitions were unacceptable, including because ASIC Market Integrity Rule 5.13.1 does not apply to bidders prior to the bid period and nor is there any policy which would suggest that this rule applies to a bidder before its bid period has commenced. It also made submissions to the effect that extending the legislative or regulative requirements in question would be detrimental to the certainty that all participants in takeovers and schemes have in those requirements and when they have application. It further submitted that the shareholders who sold to it on market suffered no loss as they sold at the price to which the bid was subsequently increased.
53. CAML also reiterated its submission that it was not in possession of any material non-public information at the time of acquiring any NWC shares and therefore there was no material information disparity between the information known by CAML and the information known to the market. It further submitted that “[i]n any event, even if CAML acquiring NWC shares at \$0.055 may be considered material (which is by no means apparent given the marginal difference in the bid price of \$0.002), the ‘own intentions’ exception in section 1043I of the Corporations Act would apply to the acquisition of those shares.” In rebuttals, Kinterra disputed that CAML had the benefit of the ‘own intentions’ defence here, submitting that the exception only applies to the knowledge of entry into a transaction and does not extend to any other information.

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54. NWC submitted that it did not believe the acquisitions gave rise to unacceptable circumstances noting that the bid period had not commenced. It also submitted that CAML had not made a 'best and final' or other statement that it would not purchase NWC shares on market at prices above its proposed offer price that would have led market participants to believe that such purchases would not be made.
55. ASIC submitted that from "11:13am until market close, the market for NWC shares was uninformed that CAML's offer had automatically increased to \$0.055. Selling shareholders may have chosen not to sell if they were informed – for example, if they were put on notice that CAML reserved its right to purchase, or if an announcement about the increased offer were made immediately after the 11:13am acquisition. That uninformed market may have enabled CAML to acquire a larger stake, than it otherwise may have been able to acquire, before competing acquirers were in a position to respond on an even playing field. To the extent the principles of a competitive and informed market were undermined the market for control of NWC was an inefficient one."
56. ASIC also confirmed in its submissions that ASIC Market Integrity Rule 5.13.1 was not enlivened but submitted that "to uphold the principle of an informed market in s602, which is always enlivened in control transactions", it was open for CAML in its revised proposal announcement of 9.19 am on 20 June 2025 to put the market on notice that CAML may make on-market purchases in NWC or reserve CAML's right to do so. ASIC further submitted that once CAML formed the intention to effect the Special Crossing it was again open for CAML to disclose voluntarily that it may acquire shares on market, addressing the risk that an automatic increase to its offer may not be immediately disclosed (which is what occurred),¹⁶ in circumstances where NWC had told the market two hours earlier CAML's offer was \$0.053.
57. In rebuttals, CAML reiterated that it had no intention to purchase NWC shares at \$0.055 until the point in time that it had the opportunity to do so under the Special Crossing which occurred only during the course of trading. It further submitted:
- "...before the market had opened, CAML placed an on-market buy order at \$0.053 per NWC share which was in line with the increased offer price as disclosed in the Revised Proposal announcement earlier on 20 June 2025. In the first hour of trading on ASX from 10:00am (AEST) onwards, NWC shares were consistently trading at \$0.055 per NWC share, while CAML's buy order remained at \$0.053. At a time shortly before 11:00am (AEST), CAML was presented with an opportunity to acquire NWC shares at \$0.055 which was in line with the market price of NWC shares at that point in time. At 11:13am (AEST), CAML acquired 176,709,950 NWC shares via the Special Crossing at which point CAML's buy order was revised from \$0.053 to \$0.055 per NWC share. As a result of the standing order at \$0.055, an additional 2,090,106 NWC shares were acquired at \$0.055 per NWC share during the balance of the trading day..."*
58. It appears that CAML did not expect that there was any prospect that it would increase its offer above \$0.053 per NWC share when it announced that increased

¹⁶ We note that because the bid period had not commenced, these acquisitions did not trigger an automatic increase in the bid consideration under section 651A. However, the minimum bid price rule in section 621(3) would have the same effect

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offer price before market opened on 20 June 2025 and that the Special Crossing opportunity arose at the last minute. *Prima facie* this first trade did not appear to us to be unacceptable, but we were less certain about the subsequent trades and considered carefully the existing regulatory and policy requirements for disclosure.

59. As noted above, the Panel has previously considered the operation of ASIC Market Integrity Rule 5.13.1 in *Virtus 03*. In that matter, BGH had included in its bidder's statement disclosure for the purposes of rule 5.13.1 reserving the right to buy shares on market at prices different to its bid price (without specifying the varied price). The applicant, competing bidder CapVest, submitted that rule 5.13.1 prevented BGH's broker from buying shares on-market at a price higher than BGH's prevailing bid price without BGH first announcing that price to the market. The Panel declined to decide the interpretation of rule 5.13.1 noting (among other things) that, as submitted by ASIC, there was uncertainty as to the rule's application.
60. CapVest further submitted that failure to inform the market of the amount that the bid price was to be increased before Virtus shares could be purchased on behalf of BGH would be contrary to an efficient, competitive and informed market. The Panel, however, disagreed, stating “... *that but for any application of the principles in section 602 to the contrary:*
- (a) Chapter 6 permits the on-market acquisition of shares during the bid period by a bidder under an off market takeover bid that is conditional only on prescribed occurrences at a price above the bid price, without any prior disclosure of the price at which it intended to acquire the shares*
 - (b) there is no requirement in Chapter 6 for a bidder to announce that it may increase the offer price under a takeover bid prior to the increase being made and*
 - (c) section 651A(1)(c)(i) specifically contemplates that an on-market acquisition may be made by a bidder at a price above the offer price under its off market takeover bid.”¹⁷*
61. The *Virtus 03* Panel was only concerned about the potential delay in BGH disclosing to the market that it had acquired Virtus shares on-market at above the bid price. The Panel accepted undertakings from BGH which, in effect, required them to make such an announcement immediately (and before any further on-market acquisitions) which satisfactorily addressed the “*potential unacceptable circumstances*”.¹⁸ The review Panel in *Virtus 04R* agreed with the conclusions of the initial Panel and declined to conduct proceedings.
62. The circumstances in *Virtus 03*, while similar to the present facts, can be distinguished in that the matter involved a bidder disclosing an intention to buy (but at the time of the application, had yet to do so) shares on-market at a price potentially higher than its bid price *after* its bid period had commenced.
63. While the circumstances in *Virtus 03* clearly engaged ASIC Market Integrity Rule 5.13.1 (which does not apply here), the Panel considered that the focus of its enquiry

¹⁷ *Virtus 03* at [54]

¹⁸ *Virtus 03* at [59]-[62]

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should be on whether any of the principles underpinning Chapter 6 (including section 602) have been offended¹⁹ and we consider that should be our focus here as well.

64. While we agree that there is clear legislative intent that once a bid period has commenced there are accelerated disclosure requirements, in the case before us, where a takeover bid has been announced but the bid period is yet to commence, the principles in section 602 may assume particular importance. More so perhaps, as ASIC highlighted, where the primary control transaction at the relevant time, was a scheme of arrangement without a defined bid period.
65. We agree with ASIC that CAML could have, on its own volition, disclosed its preparedness to acquire shares on market prior to doing so on 20 June 2025. We consider that the lack of such prior notice increased the importance of timely disclosure following the 11.13am acquisition.
66. We acknowledge the observation in *Virtus 03* that shareholders who place sell orders on-market do so accepting the risk that a higher price might be paid by another buyer.²⁰ However, as ASIC pointed out in its submissions, in this instance, after 11.13 am on 20 June the increase to CAML's offer was not a mere possibility and while selling shareholders accepted a risk that a higher price might be paid by another buyer, they were not informed that CAML's offer had in effect been increased.²¹
67. Accordingly, in the circumstances, we consider that there was a delay in the market being notified of the offer price increase. It was open to CAML to have advised the market immediately after 11:13 am on 20 June that its offer price had been increased to \$0.055 per share by providing an announcement to NWC in a form suitable for immediate release. Instead, it delayed advising NWC of its share purchase for over two and a half hours and expected NWC to announce the change in price. Similarly, if NWC felt it did not have sufficient confidence following oral notification during trading hours of the purchase above the offer price, it was open to it to seek a trading halt pending written confirmation. Instead, NWC allowed the market to trade on an uninformed basis for a further two hours.
68. Our concerns in relation to this delay led us to consider making a declaration of unacceptable circumstances. However, we were not satisfied that the effect of the circumstances on the control, or potential control, of NWC, or on the acquisition of a substantial interest in NWC (or otherwise), was sufficient to justify the making of a declaration of unacceptable circumstances here. While there may have been an uninformed market during the period between 11.13 am and 6.03 pm on 20 June 2025, that had been cured by NWC's announcement at 6.03 pm that day. We considered whether the circumstances may have enabled CAML to secure a form of

¹⁹ *Virtus 03* at [47]

²⁰ *Virtus 03* at [52]

²¹ Section 621(3)

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competitive advantage²², such as by acquiring a larger stake in NWC, than it otherwise may have been able to acquire. However, if, for example, an announcement about the increased offer were made immediately after the 11:13 am acquisition on 20 June 2025, we cannot know definitively whether those persons who sold to CAML that day would have held their shares. In any event, the quantum of shares CAML acquired on-market on 20 June 2025 following the Special Crossing represented approximately 0.058% of NWC's issued shares at the time. We also cannot know if the persons selling to CAML may have subsequently sold their shares for a higher price if they had held their shares, but this is always a risk sellers take. We do know that the persons who sold to CAML received \$0.055 per share for their shares being the same price to which CAML's bid was increased and, in that sense, did not suffer a detriment. Having regard to the materials before us and all the circumstances including the developments since 20 June 2025 and the state of play in relation to Kinterra and CAML's competing approaches for NWC at the time of our decision, we considered that any effect of the circumstances was limited.²³

69. Further, we considered that even if the circumstances were unacceptable, it was unlikely that there were any orders we could have made which would have appropriately remedied them (having regard to the relatively small number of NWC shares acquired by CAML on 20 June 2025 after the Special Crossing). We also noted that disclosure of the 7.1% of NWC shares subsequently acquired by CAML after market on 26 June 2025 and consequential price increase to CAML's scheme and takeover had been, based on NWC's announcement, timely.
70. We also took into account CAML's and NWC's submissions concerning their compliance with the legislative requirements and the market integrity rules. The Panel has not, to our knowledge, previously declared similar circumstances to be unacceptable and the Panel's guidance does not deal directly with similar circumstances. Accordingly, in the particular circumstances of this matter, we considered this to be a relevant factor concerning whether it would be in the public interest to make a declaration of unacceptable circumstances.²⁴
71. We consider that the question of whether ASIC Market Integrity Rule 5.13.1 ought to be extended to operate from when an off-market bid has been announced (rather than from when the bidder's statement has been served), and potentially from a scheme of arrangement proposal being announced, is a matter for ASIC. That said, following this matter we intend to raise for consideration by the broader Panel whether it should provide guidance to the market in dealing with similar circumstances.
72. We did not consider it appropriate to make further enquiries in relation to whether CAML had breached the insider trading provisions in connection with its acquisitions of NWC shares on 20 June 2025, as we were not satisfied that further

²² See *Midwest Corporation Limited* 02 [2008] ATP 15 [2008] ATP 15 at [71]. See also *Samic Ltd v Metals Exploration Ltd* (1993) 11 ACSR 84, 100; see also *Metals Exploration Ltd v Samic Ltd* (1994) 123 ALR 289, 301

²³ Compare *Southern Cross Media Group Limited* [2023] ATP 13 at [57]-[61]

²⁴ See section 657A(2)

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investigation was likely to lead to a finding of unacceptable circumstances. We note that the Panel is not concerned with the enforcement of the insider trading provisions themselves.²⁵

DECISION

73. For the reasons above, we declined to make a declaration of unacceptable circumstances. We consider that it is not against the public interest to decline to make a declaration and we had regard to the matters in section 657A(3).

Orders

74. Given that we made no declaration of unacceptable circumstances, we make no final orders, including as to costs.

Philippa Stone

President of the sitting Panel

Decision dated 14 July 2025

Reasons given to parties 2 September 2025

Reasons published 9 September 2025

²⁵ See *Skywest Limited* [2004] ATP 17 at [47]

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Advisers

Party	Advisers
Kinterra	Allens Moelis Australia
NWC	Hamilton Locke Sternship Advisers
CAML	Clayton Utz BMO Capital Markets Canaccord Genuity



Australian Government

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Annexure A

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ACT 2001 (CTH) SECTION 201A UNDERTAKING

NEW WORLD RESOURCES LIMITED 02

New World Resources Limited (NWC) undertakes to the Panel that it will not, without the prior consent of the Panel, issue any NWC shares to Central Asia Metals PLC or any of its associates pursuant to the placement announced by NWC on 20 June 2025.

This undertaking ceases to apply on the earlier of:

- (i) the determination of the proceedings in the matter of New World Resources Limited 02; and
- (ii) 2 months from the date of this undertaking.

Executed by Nicholas Woolrych, Managing Director & CEO of **New World Resources Limited**
by authority of its directors

Dated: 3 July 2025