



Australian Government

Takeovers Panel

Reasons for Decision

Identitii Limited

[2026] ATP 3

Catchwords:

Disclosure – dispersion strategy – effect on control – need for funds – rights issue – shortfall shares – shortfall allocation policy – declaration – orders

Corporations Act 2001 (Cth), sections 228, 606, 611 item 10, 615, 708AA

ASX Listing Rules 10.11 and 10.2

Guidance Note 4: Remedies General, Guidance Note 17: Rights Issues

Robert Simkiss, LexisNexis, Takeovers & Reconstructions in Australia

Sementis Limited [2021] ATP 7, Alto Metals Limited [2020] ATP 17, Avalon Minerals Limited [2013] ATP 11, InvestorInfo Limited [2004] ATP 6

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

INTRODUCTION

1. The Panel, Chelsey Drake (sitting President), Louise Higgins, and Emma-Jane Newton, made a declaration of unacceptable circumstances in relation to the affairs of Identitii Limited. The application concerned a one-for-two pro rata non-renounceable rights issue carried out by Identitii (**Rights Issue**) which was to be partially underwritten by Beauvais Capital Pty Ltd (**Underwriter**), a significant shareholder of Identitii. Because of the underwriting arrangements, the Underwriter’s voting power in Identitii could have increased from 29.92% to up to 49.91% (depending on the level of take-up under the Rights Issue). The Panel considered that the Rights Issue was not structured in a way that mitigated its possible effects on the control of Identitii. The Panel made a declaration of unacceptable circumstances and orders requiring supplementary disclosure, the re-opening of the Rights Issue, the offering of a withdrawal right to participating shareholders, and in effect shareholder approval for the Underwriting.

2. In these reasons, the following definitions apply.

Identitii	Identitii Limited
MAM	Mitchell Asset Management Pty Ltd, including in its capacity as trustee for the Mitchell Asset Management Go-Innovation Finance Fund
Underwriter	Beauvais Capital Pty Ltd, including in its capacity as trustee for The Reginald Hector Trust

FACTS

3. Identitii is an ASX-listed company (ASX code: ID8).
4. The applicant, MAM, is a shareholder of Identitii. It was formerly also a debt financier of Identitii.
5. The Underwriter is a major shareholder of Identitii. As at 4 December 2025, the Underwriter held approximately 29.92% of Identitii's shares.
6. On 5 June 2024, Identitii entered into a loan agreement with MAM pursuant to which MAM would loan Identitii approximately \$888,000 to be secured against future research and development tax incentive (**R&DTI**) refunds to be received by Identitii.
7. On 30 July 2025, Identitii announced that it had entered into an interest-free and unsecured loan agreement with the Underwriter (**Underwriter Loan**), the proceeds of which loan would be used to repay the MAM Facility.
8. On 24 September 2025, Identitii announced a debt-to-equity conversion under which it would issue 45 million shares to the Underwriter or its nominee at \$0.009 per share in exchange for the partial settlement of the Underwriter Loan.
9. On 30 October 2025, Identitii announced that Cameron Beavis (who controlled the Underwriter) had *“agreed to join the Board of Directors as a Non-Executive Director. His appointment is expected to occur next month.”*
10. On 4 December 2025, Identitii announced a one-for-two pro-rata non-renounceable rights issue of approximately 411 million shares at an issue price of \$0.007 per share, to raise approximately \$2.88 million (**Rights Issue**) and released on ASX the offer document in relation to the Rights Issue (**Offer Document**).
11. The Offer Document:
 - (a) stated that the Rights Issue included an offer for shortfall which was *“a separate offer made pursuant to this Offer Document and will remain open for up to three months following the Closing Date”* (**Shortfall Offer**)
 - (b) stated that the Shortfall Offer would be partially (up to approximately \$1.44 million) underwritten by the Underwriter, in consideration for which Identitii would issue the Underwriter one option¹ for every two shares underwritten by the Underwriter by way of an underwriting fee (**Underwriting Arrangements**) and
 - (c) stated that the Underwriter's voting power in Identitii would increase from 29.92% to:
 - (i) 49.91% if the Rights Issue was 0% to 50% subscribed and
 - (ii) 38.25% if the Rights Issue was 75% subscribed.

¹ Exercisable at \$0.014 on or before the date that is 5 years from the date of issue

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12. The Offer Document also included an indicative timetable showing that:
 - (a) on 9 January 2026, the offer period would end
 - (b) on 12 January 2026, ASX and the Underwriter would be notified of “Shortfall”
 - (c) on 13 January 2026, the Underwriter would subscribe for Shortfall under the terms of the Underwriting
 - (d) on 2 February 2026, the “Underwritten Shares” would be issued and an Appendix 2A would be lodged with ASX applying for quotation of the Underwritten Shares
 - (e) on 8 April 2026, the offer period under the Shortfall Offer would end and
 - (f) on 9 April 2026, shortfall shares would be issued and an Appendix 2A would be lodged with ASX applying for quotation of the shortfall shares.
13. The Offer Document also stated that:
 - (a) the Rights Issue was not being extended to shareholders *“with a registered address which is outside Australia, New Zealand, Bermuda, Canada, Germany, Hong Kong, Singapore and the United Kingdom”*
 - (b) the allocation of shortfall shares by Identitii’s directors:
 - (i) would *“be at the absolute discretion of the Board”* and that no shares *“would be issued to an applicant under the Shortfall Offer if the issue of Shares would contravene the takeover prohibition in section 606 of the Corporations Act”*
 - (ii) would be influenced by factors including *“the Company’s desire to expand its spread of institutional shareholders”, “the size and type of funds under management of particular Applicants”, “the likelihood that particular Applicants will be long-term Shareholders, support the Company’s share price post the Offer by purchasing Shares on-market [and] support future funding rounds if and when required”* and *“any factors other than those described above that the Company and its brokers consider appropriate”*
14. On 15 December 2025, MAM indicated to Identitii that it was prepared to offer a debt facility secured against its R&DTI refund and potentially willing to underwrite the Rights Issue up to \$700,000, both subject to certain conditions (**MAM Funding Proposal**).
15. On 19 December 2025, Identitii amended sections 1.4 and 1.5 of the Offer Document. The effect of the amendments was to allow Identitii shareholders resident in the United States to participate in the Rights Issue.²
16. On 24 December 2025, Identitii announced that the closing date for the Rights Issue would be extended by 10 days from 9 January 2026 to 19 January 2026.

² Although shareholders resident in the United States were required to complete and return a US investor certificate and an application form that were available from Identitii

17. On 13 January 2026, Identitii announced that it had entered an R&D loan facility with Kashcade RD1 Pty Ltd (**Kashcade**) pursuant to which Kashcade would loan Identitii \$600,000, to be repaid using Identitii’s R&DTI refund (**Kashcade Loan**).

APPLICATION

Declaration sought

18. By application dated Friday, 16 January 2026, MAM sought a declaration of unacceptable circumstances.
19. MAM submitted that:
- (a) *“the potential control effects of the underwriting arrangement are material in that they permit a related party and the largest shareholder in the Company to increase its shareholding by up to ~20% to 49.91% of the Company’s issued share capital”*
 - (b) *the price of the Rights Issue “was above the closing price of the Company’s shares on the date the [Rights Issue] was announced, and the Company’s shares have consistently traded below” that price*
 - (c) *the timing of the Rights Issue over the Christmas/New Year period was likely to “significantly exacerbate the likely control effect of the [Rights Issue] by reducing the likelihood of participation by otherwise willing shareholders who may not have sufficient opportunity to source funding”*
 - (d) the non-renounceability of the Rights Issue increased its likely control effect
 - (e) the Rights Issue did not fall within the exception in item 10 of section 611³
 - (f) the Rights Issue was pursued by Identitii in preference to other non-dilutive sources of capital available to it
 - (g) Identitii did not have an urgent need for funds to justify the size of the Rights Issue and
 - (h) Identitii had not taken positive steps to mitigate the potential control effects of the Rights Issue.
20. MAM also submitted that, in relation to Identitii’s need for funds:
- (a) In late October 2025 Identitii announced its quarterly activity report for the period ending 30 September 2025 stating that it:
 - (i) had total available funding of \$1,300,000 at the end of the first quarter of the financial year and
 - (ii) did not expect to continue to have the current level of net operating cash flows⁴ for the upcoming quarters due in effect to increased revenue and an R&D rebate and

³ 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)

⁴ Which for the quarter ending 30 September 2025 was \$1,339,000

- (b) Identitii’s disclosure of the use of the funds in the Offer Document demonstrated that 70% of the capital to be raised was in relation to items that did not constitute “*immediate funding requirements*” but instead “*appear to be items that relate to generally improving the Company’s software assets and improving its sales and revenue*”. In addition, the remainder of the funds raised were for working capital “*stated to be used for administration expenses of the Company over the next 15 months*”.

Interim orders sought

21. MAM sought interim orders restraining Identitii from issuing or allotting any new shares pursuant to the Rights Issue or any other capital raising without the prior approval of the Panel and requiring money received by Identitii as subscriptions for new shares under the Rights Issue to be held separately from all other funds of the company and on trust for the subscribers.

Final orders sought

22. MAM sought final orders:
- (a) requiring that Identitii terminate the Rights Issue and Underwriting Arrangements
 - (b) requiring shareholder approval for any future rights issues undertaken by Identitii in the next two years (with the Underwriter and its related bodies corporate and associates being restrained from exercising any voting rights in respect of that shareholder approval)
 - (c) restraining the Underwriter and its related bodies corporate and associates from underwriting any share offer or issue by Identitii for a period of two years and
 - (d) restraining the Underwriter and its related bodies corporate and associates from increasing their voting power in Identitii for a period of 12 months.

DISCUSSION

Decision to conduct proceedings

23. Under the revised timetable (see paragraph 16) the closing date for the Rights Issue was Monday, 19 January 2026. On 21 January 2026, Identitii announced that it had received applications under the Rights Issue for 186,739,630 shares raising \$1,307,177.
24. On reading the Offer Document, it was not clear how applications under the Shortfall Offer would be treated in relation to the allocation of shares to the Underwriter. The indicative timetable in section 3.3 of the Offer Document showed that shares would be issued to the Underwriter more than two months before shortfall shares were issued. This could be read as suggesting that shares would be allocated to the Underwriter before all shortfall applications had been received. However, the Offer Document also stated in section 3.10 that all eligible shareholders would “*have (in priority) a pro-rata entitlement to subscribe for Shares under the Offer if they choose to participate, and to [sic] the Shortfall Offer*”.

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25. Accordingly, we sought clarification from Identitii on matters including the number of shares applied for by the Underwriter and how the shortfall would be allocated. In response, on 22 January 2026, Identitii submitted (among other things) that:
- (a) the Underwriter had subscribed for 123,036,266 shares out of the 186,739,630 shares applied for under the Rights Issue
 - (b) the \$1,307,177 raised under the Rights Issue (see paragraph 23) was made up of \$1,225,584 raised through subscriptions for entitlements under the Rights Issue and \$81,593 was raised through applications under the Shortfall Offer
 - (c) the Underwriter did not apply for any shares under the Shortfall Offer
 - (d) if no further applications were received under the Shortfall Offer, the Underwriter’s voting power would increase to 44.7% and
 - (e) any applications received under the Shortfall Offer would reduce any increase in the Underwriter's voting power. For example, should *“all shares available be placed under the Shortfall Offer be placed to third parties, then the Underwriter’s maximum voting power would remain at approximately 29.92%, with the Underwriter only being issued Shares under their entitlement.”*
26. Also on 22 January 2026, Identitii made a preliminary submission, submitting that we should decline to conduct proceedings because, in summary and among other things:
- (a) MAM delayed making its application on 16 January 2026. MAM had notified Identitii, *“of its intention to make the Application on 23 December 2025, however subsequently agreed not to make the Application prior to 12 January 2026, should the Company extend the closing date of the Offer from 9 January 2026 to 19 January 2026, which subsequently occurred.”* Accordingly, there was no reason why MAM should not have made its application on 12 January 2026.
 - (b) Identitii has had a working relationship with MAM, with MAM providing R&D funding for Identitii for the 2023, 2024 and 2025 financial years. However, there has been a breakdown in trust between the two entities.
 - (c) Identitii has an urgent need for funds. For the second quarter of the financial year (ending 31 December 2025) Identitii estimated that its available cash at \$155,000. This estimation included *“directors and executives not claiming their compensation entitlements or reimbursement of Company expenses dating back to September 2025, as part of several measures to extend the Company’s cash runway”*.
27. After considering Identitii’s submission, we considered that Identitii needed the funds to be raised under the Rights Issue. However, we also considered that the Rights Issue and the Underwriting would likely have a material effect on the control of Identitii, with the Underwriter potentially increasing its voting power in Identitii from 29.92% to 44.7% and that Identitii may not have taken sufficient steps to mitigate that control effect. Accordingly, we decided to conduct proceedings. We did not consider that the short delay in the new year in making an application was relevant in the circumstances.

28. We also informed the parties that we were minded to make interim orders in order to maintain the status quo pending the determination of the application. The orders we proposed to make were in substantially the same form as those sought by MAM (see paragraph 21) except that we were not minded to prohibit Identitii from issuing or allotting any new shares pursuant to a capital raising that was not the Rights Issue on the basis that we did not think it necessary to do so.
29. Identitii informed us that it was willing to provide an undertaking to the same effect as the proposed interim orders. In the circumstances,⁵ we considered it was appropriate to accept an undertaking in lieu of making interim orders.
30. On 23 January 2026, Identitii gave an undertaking (Annexure A) to the Panel that it would:
 - (a) not issue or allot any new securities under the Rights Issue without the prior approval of the Panel and
 - (b) hold any money received by Identitii as subscriptions for new securities under the Rights Issue separately from all other Identitii funds and on trust for the subscribers.

Structure of the Rights Issue

31. MAM submitted that the Underwriting Arrangements had been “*designed to substantially increase Beauvoais Capital’s shareholding in the Company*”.
32. Identitii submitted that it had entered into the Underwriting Arrangements because they were “*the only feasible underwriting option available to the Company*”, the directors of Identitii having undertaken “*informal market engagement*” and having “*consulted with several of the Company’s top 10 shareholders*”.
33. Although the Underwriter was permitted to engage one or more sub-underwriters under the Underwriting Arrangements, it did not do so.
34. As discussed in paragraph 27, we considered that the Rights Issue and the Underwriting would likely have a material effect on the control of Identitii. In our view insufficient steps were taken to mitigate the potential control effects of the Rights Issue – particularly given the price at which shares were offered under the Rights Issue, the timing of the Rights Issue over the Christmas/New Year period and the extent of the directors’ discretion under the shortfall allocation policy. These issues are discussed below.

Price and discount to market

35. MAM submitted that the Rights Issue price of \$0.007 was above the closing price of Identitii shares of \$0.0067⁶ on 3 December 2025 (the day before the Rights Issue was announced) and that shares in Identitii had consistently traded below the Rights

⁵ Having regard to Guidance Note 4: *Remedies General* at [38]–[43]

⁶ Identitii disputed this price and said that the shares closed at \$0.007 on December 2025

Issue price after the announcement of the Rights Issue, meaning that there was “no incentive [for shareholders] to take up their entitlements” under the Rights Issue.

36. Identitii submitted that the Rights Issue price had been determined on 27 November 2025, at which time the 15-day volume-weighted average price (VWAP) of Identitii shares was \$0.0076, so that the Rights Issue price in fact represented a 7 per cent discount to the 15-day VWAP at that time and a 12.5 per cent discount to the share price on 27 November 2025 of \$0.008.
37. Identitii also submitted that the Underwriting Agreement had been executed on 1 December 2025⁷ and that its announcement of the Rights Issue had been delayed from 1 December 2025 to 4 December 2025 because of the ASX Market Announcements Platform outage that occurred on 1 December 2025.
38. Whatever the reasons may have been for Identitii having not announced the Rights issue closer to the time at which the price had been determined, we consider that the pricing of the Rights Issue – at varying points in time at a small discount to the market price or equal to the market price – was not set at a sufficient discount to encourage shareholders to participate.⁸

Timing of the Rights Issue

39. The Rights Issue was open from 4 December 2025 to 19 January 2026.⁹
40. We asked the parties what significance (if any) should be given to the fact that the Rights Issue was open over the Christmas/New Year period.
41. MAM submitted that the timing of the Rights Issue had “likely had an effect of reducing participation in and accessibility of the [Rights Issue] from otherwise willing shareholders, in turn increasing the size of the Shortfall Offer available for take up by Beauvoais Capital, and exacerbating the likely control effect” of the Rights Issue.
42. Identitii submitted that the timing of the Rights Issue was driven by the company’s urgent need for funds and that the offer period “provided shareholders with sufficient time to consider and participate” in the Rights Issue.
43. Although there may have been good reasons for the Rights Issue being open over the Christmas/New Year period, we nevertheless consider that the timing of the Rights Issue did not encourage shareholder participation.

Methods of raising funds available to the company

44. MAM submitted that “given the material control effects of the [Rights Issue] and the Underwriting Arrangements, [Identitii] should have pursued and obtained a debt funding facility in relation to its R&D expenditure before it undertook the [Rights Issue]” and that “it was prepared to provide alternative funding to [Identitii] as per the MAM Funding

⁷ At market open on 1 December 2025, Identitii shares were trading at \$0.007

⁸ See Guidance Note 17: *Rights Issues* at [16]

⁹ It was originally scheduled to close on 9 January 2026, but the closing date was extended following an offer by MAM to refrain from lodging this application until after the Christmas/New Year period if Identitii extended the closing date to 19 January 2026

Proposal” but Identitii “did not provide a substantive response to the MAM Funding Proposal.”

45. Identitii submitted that its directors did not believe that the MAM Funding Proposal was in the best interests of the company including because “*[t]he Board continued to hold the view that ... MAM was not an appropriate business partner” given a “breakdown in the commercial relationship with MAM” that had occurred in mid-2025. Identitii also contested MAM’s assertion that it “did not provide a substantive response to the MAM Funding Proposal.”*
46. Identitii further submitted that it had “*engaged with brokers, institutions and investors to gauge interest in investment”*, including “*several of its top 10 shareholders”*, and had concluded that “*a rights issue would be the most appropriate way to raise funds”*. It said that “*any additional debt funding is not realistically viable”* because of the existence of a first-priority general security over some of Identitii’s assets held by an existing lender.
47. Although methods of raising capital other than the Rights Issue may have been available to Identitii, we are hesitant to second-guess its directors’ views about the appropriateness or otherwise of pursuing those methods.¹⁰ There appeared to have been a commercially reasonable justification for the decision taken by Identitii’s directors about the method of raising funds.

External financial advice

48. We asked whether Identitii received any external advice in relation to (1) the selection of the underwriter and whether there should be any sub-underwriters, (2) the dispersion strategy, including whether the underwriter should take up its entitlement before or after any shortfall applications and (3) the likely shortfall and take-up of the shortfall.
49. Identitii replied that it “*did not obtain specific professional advice regarding the selection of underwriters”* because of its “*financial position and urgent funding requirements”* and in the context that its directors were already aware, given previous experience, that “*appetite for third-party professional underwriting of Identitii’s equity raising has been consistently limited”*.
50. Identitii also stated that it had obtained advice from its legal adviser, Steinepreis Paganin, about mitigating the potential control effects of the underwriting and that its dispersion strategy had been developed having regard to that advice.
51. Identitii also stated that it “*did not receive formal forecasting advice regarding the likely level of shortfall”* but that given the Board’s assessment that “*achieving full take-up of the offer and shortfall offer would be challenging”* and the efforts made by Identitii to identify and approach possible shortfall participants, it had “*structured the underwriting as a necessary backup to provide funding certainty, rather than on the assumption that the underwriter would necessarily be allocated a portion of the shortfall.”*

¹⁰ See Guidance Note 17: *Rights Issues* at [11]; see also *Alto Metals Limited* [2020] ATP 17 at [63]

52. In the context of Identitii’s relatively small market capitalisation¹¹ and urgent need for funds, we did not form the view that Identitii’s directors should have obtained external financial advice in relation to the Rights Issue. However, as the Panel explained in *InvestorInfo Limited*,¹² external financial advice can help to explain why an issuer chose to raise funds by a rights issue and, potentially, the commercial terms of the rights issue.

Shortfall allocation policy

53. We asked the parties whether the allocation of shortfall shares by Identitii’s directors in a manner influenced by the factors enumerated in section 4.5 of the Offer Document was consistent with the policy set out in Guidance Note 17 that directors should not “*exercise any discretion regarding [a] shortfall in a manner likely to exacerbate a potential unacceptable control effect, except to the extent they consider necessary (acting reasonably) to prevent the issue of shares contrary to law or the ASX Listing Rules*”.¹³
54. MAM submitted that such an allocation would not be consistent with that policy and that the directors’ “*broad discretion to allocate shares under the shortfall facility*” could have the effect of “*increasing the uncertainty surrounding how the shortfall facility operates and possibly having the effect of deterring shareholders from participating due to the potential control effects.*”
55. Identitii drew our attention to the fact that the Offer Document also stated in section 3.10 that “*the Board will not [exercise their discretion regarding the allocation of shortfall shares] in a manner which is likely to exacerbate a potential unacceptable control effect on the Company*” and submitted that the directors’ “*discretion is directed to mitigating, rather than exacerbating, any potential control effect.*”
56. In our view, despite the qualifications in section 3.10 of the Offer Document, the shortfall allocation policy set out in section 4.5 of the Offer Document still provided Identitii’s directors with too much discretion in relation to the allocation of shortfall shares.

Renounceability

57. MAM submitted that the fact that the Rights Issue was non-renounceable increased its potential control effect. It referred to the statement in Guidance Note 17 that “[a] *non-renounceable rights issue may result in greater flow through to an underwriter or sub-underwriter, so increasing the potential control effect. The effect is exacerbated if the rights issue is underwritten or sub-underwritten by a related party.*”¹⁴
58. While we agree that it was likely that the non-renounceability of the Rights Issue would increase its potential control effect, we do not think that the directors’ decision that the Rights Issue should be renounceable was unreasonable in the circumstances having regard to the greater time required to undertake and complexity involved in a

¹¹ Approximately \$4.16 million at the date of our decision

¹² [2004] ATP 6 at [38(a)]

¹³ Guidance Note 17: *Rights Issues* at [7(b)(iii)]

¹⁴ Guidance Note 17: *Rights Issues* at [20]

renounceable rights issue in comparison to a non-renounceable rights issue and the low level of rights trading that could reasonably be expected given Identitii’s relatively small market capitalisation.

Use of funds disclosure in the Offer Document

59. We asked Identitii to reconcile its statement that it was forecasting available cash of \$155,000 at the end of the quarter ended 31 December 2025 (see paragraph 26(c)) with the disclosure in the table in section 3.2 of the Offer Document as to the proposed use of funds to be raised through the Rights Issue and the disclosure in Identitii’s Quarterly Activity Report dated 30 October 2025.¹⁵
60. Identitii responded that the statements *“in section 3.2 of the Offer Document are forward looking and the Company still expects to allocate capital received under the offer as outlined in [section] 3.2 of the Offer Document.”*
61. Identitii also submitted that the Offer Document contained *“clear and detailed disclosure regarding the intended use of funds”* and that it *“provide[d] shareholders with sufficient information to assess how the funds are intended to be used”*.
62. We do not find Identitii’s explanation particularly convincing and consider that the disclosure as to the proposed use of funds to be raised through the Rights Issue could be improved. For example, the table in section 3.2 of the Offer Document did not explain the distinction between ‘Administration expenses’ and ‘Working capital’, while the footnote 1 to the table referred to working capital being used for administrative purposes.¹⁶

Other disclosure matters in the Offer Document

63. There were three other aspects of the Offer Document which concerned us from a disclosure perspective.
64. First, the Offer Document did not disclose that the Underwriter was likely to be a related party of Identitii given that there were reasonable grounds to believe that it would be controlled by a director of Identitii in the future (namely Mr Beavis, who had agreed to join Identitii’s board)¹⁷ or that as a result shareholder approval would be required under the Listing Rules for the issue of options to the Underwriter by way of an underwriting fee (see above at paragraph 11(b)).¹⁸

¹⁵ In particular, the statements that Identitii had total available funding of \$1.3 million at the end of the quarter, that the company did *“not expect that it will continue to have the current level of net operating cash flows for the upcoming quarters”* and that the directors believed *“that the Company will be able to continue its operations and meet its business objectives in light [of] revenue generation and the ongoing support of its majority [sic] shareholder, should further funding be required”*

¹⁶ It stated that *“[f]unds allocated to working capital will be used for administration expenses of the Company over the next 15 months, including administration fees, Director’s remuneration and other administration and obligatory overheads”*

¹⁷ See subsections 228(2), 228(4), and 228(6)

¹⁸ See ASX Listing Rules 10.11 and 10.2 Exception 2 (including the statement in the note to Exception 2 that *“Exception 2 only applies to an issue of securities to make up the shortfall from a pro rata issue. It does not apply to*

65. Second, as discussed in paragraph 24 above, the Offer Document did not make clear how applications under the Shortfall Offer would be treated in relation to the allocation of shares to the Underwriter.
66. Third, the Offer Document did not disclose the Underwriter’s intentions for Identitii in the event that it obtained control of Identitii. Although section 708AA does not require that a person who might obtain control of a company as a result of a rights issue discloses their intentions for the company if the person in fact obtains control of the company, we agree with the statement of the Panel in *Sementis Limited*¹⁹ that:
- “[d]isclosure of ‘the intentions for the company of persons who may obtain control’ in connection with a rights issue enables shareholders to better make an informed decision on whether to participate. Whether such intentions should be disclosed depends upon the circumstances.”*
67. Given the potential for the Underwriter to obtain effective control of Identitii, we consider that it would have been prudent for Identitii to have attempted to ascertain the Underwriter’s intentions for the company in the event that it obtained control of Identitii and then to disclose those intentions.

Applicability of the item 10 exception

68. MAM submitted that the exception in item 10 of section 611 did not apply to the Rights Issue because, under the terms set out in the Offer Document (as amended on 19 December 2025) participation in the Rights Issue would not be offered to Identitii shareholders resident in Germany, Singapore, the United Kingdom, and Canada to whom it would be necessary to issue a prospectus or equivalent document.
69. Identitii submitted that the Rights Issue fell within the item 10 exception because *“[t]he Company has taken all steps reasonably necessary to extend the [Rights Issue] to foreign shareholders”* and *“any differences in treatment [between Australian and foreign shareholders] are limited to procedural matters necessary to address foreign legal or regulatory requirements”*.
70. An acquisition will not fall within the item 10 exception unless the rights issue in question meets all of the conditions set out in item 10 – namely that offers are made to every person who holds securities in the relevant class, all of those persons have a reasonable opportunity to accept the offers made to them, and the terms of all the offers are the same (disregarding the foreign nominee procedure set out in section 615, which was not used in this case).²⁰

any other issue of securities under an underwriting agreement (for example, in payment of an underwriting fee or other amount due under an underwriting agreement)”)

¹⁹ [2021] ATP 7 at [39]

²⁰ See Robert Simkiss, LexisNexis, *Takeovers & Reconstructions in Australia* (online accessed at 13 March 2026) [510]; see also *Avalon Minerals Limited* [2013] ATP 11 at [36]–[44]

71. We had concerns about whether the item 10 exception applied to the Rights Issue.²¹ However, we do not think it was necessary for us to decide the question.

DECISION

Declaration

72. It appears to us that the circumstances are unacceptable:
- (a) having regard to the effect that the Panel is satisfied they have had, are having, will have or are likely to have on:
 - (i) the control, or potential control, of Identitii or
 - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in Identitii or
 - (b) in the alternative, having regard to the purposes of Chapter 6 set out in section 602.
73. Accordingly, we made the declaration set out in Annexure B and consider that it is not against the public interest to do so. We had regard to the matters in s657A(3).

Orders

74. Following the declaration, we made the final orders set out in Annexure C. We were not asked to, and did not, make any costs orders. The Panel is empowered to make ‘any order’²² if 4 tests are met:
- (a) it has made a declaration under s657A. This was done on 10 February 2026.
 - (b) it must not make an order if it is satisfied that the order would unfairly prejudice any person. We are satisfied that our orders do not unfairly prejudice any person.
 - (c) it gives any person to whom the proposed order would be directed, the parties and ASIC an opportunity to make submissions. This was done on 3 February 2025. Each party made submissions and rebuttals. The Underwriter was also provided with an opportunity to make submissions.
 - (d) it considers the orders appropriate to either protect the rights and interests of persons affected by the unacceptable circumstances, or any other rights or interests of those persons. The orders do this by requiring supplementary disclosure, requiring the re-opening of the Rights Issue, requiring Identitii to offer all participants in the Rights Issue a withdrawal right, and requiring

²¹ Noting that the definition of “rights issue” in section 9A, which in some circumstances has the effect of permitting an offering entity not to offer shares to non-residents in the context of a non-renounceable rights issue without using the foreign nominee procedure, does not apply in relation to the item 10 exception (although it is relevant for the purposes of section 708AA)

²² Including a remedial order but other than an order requiring a person to comply with a provision of Chapters 6, 6A, 6B or 6C

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shareholder approval for the issue of securities to the Underwriter pursuant to the Underwriting Agreement.

75. If we had not been satisfied that Identitii had an urgent need for funds (see paragraph 27 above), we would have considered making orders different those we made, including (for example) orders cancelling the Rights Issue or orders imposing a voting restriction over some or all of the shares to be acquired by the Underwriter as a result of the Rights Issue.

Post-script

76. On 17 February 2026, Identitii applied for a variation to Order 1 to extend the date before which supplementary disclosure was required to be sent to Identitii’s shareholders after being informed by the Underwriter that it intended to terminate the Underwriting Agreement and to withdraw its application for its entitlement under the Rights Issue.
77. On 19 February 2026, we varied (see Annexure D) Order 1 to allow time for the supplementary disclosure to be updated and dispatched and to no longer require it to address certain matters that related to the Underwriting Arrangements by:
- (a) omitting “7” days and substituting “10 days”
 - (b) omitting “in advance of determining the shortfall available to the Underwriter” in paragraph (b) and
 - (c) omitting subparagraph (d)(iii).

Chelsey Drake

President of the sitting Panel

Decision dated 10 February 2026

Reasons given to parties 20 April 2026

Reasons published 24 April 2026

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Advisers

Party	Advisers
MAM	Gadens
Identitii	Steinepreis Paganin



Australian Government

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Annexure A

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

IDENTITII LIMITED

Identitii Limited (**Identitii**) undertakes to the Panel that it will:

1. not issue or allot any new securities under the rights issue announced by Identitii on 4 December 2025 without the prior approval of the Panel and
2. hold any money received by Identitii as subscriptions for new securities under the rights issue:
 - (a) separately from all other Identitii funds and
 - (b) on trust for the subscribers.

This undertaking ceases to apply on the earlier of:

- (i) the determination of the proceedings in the matter of Identitii Limited and
- (ii) 2 months from the date of this undertaking.

**Signed by John Rayment, CEO of Identitii Limited
with the authority, and on behalf, of
Identitii Limited
Dated 23 January 2026**



Australian Government

Takeovers Panel

Annexure B

**CORPORATIONS ACT
SECTION 657A**

DECLARATION OF UNACCEPTABLE CIRCUMSTANCES

IDENTITII LIMITED

CIRCUMSTANCES

1. Identitii Limited (**Identitii**) is an ASX-listed company.
2. On 4 December 2025, Identitii announced a one-for-two pro-rata non-renounceable rights issue of approximately 411 million shares at an issue price of \$0.007 per share, to raise approximately \$2.88 million (**Rights Issue**) and released on ASX the offer document in relation to the Rights Issue (**Offer Document**).
3. The announcement stated that Mr Cameron Beavis, through his investment entity Beauvais Capital Pty Ltd as trustee for The Reginald Hector Trust (**Underwriter**), had entered into an underwriting agreement with Identitii pursuant to which Mr Beavis would “accept his full entitlement under the Offer and subscribe for \$861,754 worth of New Shares” and “to subsequently underwrite \$1,438,246 of the Shortfall” (**Underwriting**).
4. The announcement also disclosed that “in consideration for providing the Underwriting, [Identitii] will issue the Underwriter one Option for every two Underwritten Shares applied for under the underwriting. The options are exercisable at \$0.014 each and expire 5 years from the date of issue.”
5. The Offer Document:
 - (a) stated that the Rights Issue included an offer for shortfall which was “a separate offer made pursuant to this Offer Document and will remain open for up to three months following the Closing Date” (**Shortfall Offer**)
 - (b) stated that the Underwriter’s voting power in Identitii could increase from 29.92% to:
 - (i) 49.91% if the Rights Issue was 0% to 50% subscribed and
 - (ii) 38.25% if the Rights Issue was 75% subscribed
 - (c) included an indicative timetable which provided that:
 - (i) on 9 January 2026, the offer period would end

- (ii) on 12 January 2026, shares to be issued pursuant to the Rights Issue would be quoted on ASX on a deferred settlement basis, and ASX and the Underwriter would be notified of “Shortfall”¹
 - (iii) on 13 January 2026, the Underwriter would subscribe for Shortfall under the terms of the Underwriting
 - (iv) on 2 February 2026, the “Underwritten Shares”² would be issued and an Appendix 2A would be lodged with ASX applying for quotation of the Underwritten Shares
 - (v) on 8 April 2026, the offer period under the Shortfall Offer³ would end and
 - (vi) on 9 April 2026, shortfall shares would be issued and an Appendix 2A would be lodged with ASX applying for quotation of the shortfall shares
- (d) stated that the allocation of shortfall shares by Identitii’s directors:
- (i) would “be at the absolute discretion of the Board” and that no shares “would be issued to an applicant under the Shortfall Offer if the issue of Shares would contravene the takeover prohibition in section 606 of the Corporations Act”
 - (ii) would be influenced by factors including “the Company’s desire to expand its spread of institutional shareholders”, “the size and type of funds under management of particular Applicants”, “the likelihood that particular Applicants will be long-term Shareholders, support the Company’s share price post the Offer by purchasing Shares on-market [and] support future funding rounds if and when required” and “any factors other than those described above that the Company and its brokers consider appropriate”
- (e) stated that “the purpose of the underwriting is not to confer control onto the Underwriter, but rather to provide a degree of certainty in raising funds under the Offer (on the basis that all Eligible Shareholders will have (in priority) a pro-rata entitlement to subscribe for Shares under the Offer if they choose to participate, and to the Shortfall Offer)”
- (f) stated that “[i]f the Offer is oversubscribed (by take up of Entitlements and applications for Shortfall Shares by Eligible Shareholders) scale back will be applied to applications under the Shortfall Offer on a pro-rata basis to the respective shareholdings of Eligible Shareholders”.
6. There was no disclosure in the Offer Document regarding the Underwriter’s intentions if the Underwriter obtained effective control of Identitii.

¹ Defined in section 6 of the Offer Document as “those Shares under the Offer not applied for by Shareholders under their Entitlement”

² Defined in section 3.10 of the Offer Document as the “up to 205,436,714” shares to be underwritten by Mr Beavis under the underwriting agreement

³ Defined in section 6 of the Offer Document as “the Shares offered under the Shortfall Offer”

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7. Identitii’s directors did not obtain any external financial advice in relation to the Rights Issue.
8. Identitii’s share price closed at \$0.007 on the 3 trading days prior to the announcement of the offer on 4 December 2025.
9. On 24 December 2025, Identitii announced that the offer period for the Rights Issue would be extended by 10 days so that it ended on 19 January 2026 instead of 9 January 2026.
10. On 21 January 2026, Identitii announced that the Rights Issue closed on 19 January 2026 and that applications were received “for 186,739,630 new shares, with total funds received being \$1,307,177”.
11. On 23 January 2026, Identitii provided an undertaking to the Panel to (among other things) not issue or allot any new securities under the Rights Issue without the prior approval of the Panel.
12. Identitii has informed the Panel that Identitii and the Underwriter have agreed in principle not to issue options in connection with the Underwriting.
13. The Panel considers that:
 - (a) The Rights Issue and the Underwriting are likely to have a material effect on the control of Identitii.
 - (b) The pricing of the Rights Issue is not set at a sufficient discount to encourage shareholders to apply.
 - (c) The time of the year when the Rights Issue was open reduced the likelihood that Identitii’s shareholders would take up their rights and apply under the Shortfall Offer prior to the proposed issue date for the Underwritten Shares.
 - (d) The Shortfall Offer is not designed in a way that mitigates the effect on the control of Identitii because (among other things):
 - (i) The disclosures in the Offer Document provide the Identitii directors an inappropriate level of discretion to reject applications under the Shortfall Offer.
 - (ii) It is unclear how applications under the Shortfall Offer would have priority over the Underwriter (as stated in paragraph 5(e) above), given the Offer Document stated that the Underwriter would be issued shares on 2 February 2026 and the shares applied for under the Shortfall Offer would be issued on 9 April 2026 (three months after the scheduled closing date of the Rights Issue). Accordingly, it is likely that shareholders, on reading these disclosures, would have been discouraged from applying under the Shortfall Offer.
 - (e) The Offer Document contains inadequate disclosure, including in relation to the Shortfall Offer, the issue of options to the Underwriter, the Underwriter’s status as a related party of Identitii and the Underwriter’s intentions if it obtains control of Identitii.

EFFECT

14. The Panel considers that the Rights Issue could potentially result in the Underwriter acquiring control or potential control of, or a substantial interest in, Identitii in a way that is contrary to an efficient, competitive and informed market.

CONCLUSION

15. It appears to the Panel that the circumstances are unacceptable circumstances:
- (a) having regard to the effect that the Panel is satisfied they have had, are having, will have or are likely to have on:
 - (i) the control, or potential control, of Identitii or
 - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in Identitii
 - (b) in the alternative, having regard to the purposes of Chapter 6 set out in section 602 of the *Corporations Act 2001* (Cth) (**Act**).
16. The Panel considers that it is not against the public interest to make a declaration of unacceptable circumstances. It has had regard to the matters in section 657A(3) of the Act.

DECLARATION

The Panel declares that the circumstances constitute unacceptable circumstances in relation to the affairs of Identitii.

Tania Mattei
General Counsel
with authority of Chelsey Drake
President of the sitting Panel
Dated 10 February 2026



Australian Government

Takeovers Panel

Annexure C
CORPORATIONS ACT
SECTION 657D
ORDERS

IDENTITII LIMITED

The Panel made a declaration of unacceptable circumstances on 10 February 2026.

THE PANEL ORDERS

1. Within 7 days of the date of these orders, Identitii must send to each Identitii shareholder supplementary disclosure in a form the Panel does not object to that:
 - (a) explains the effect of the Declaration and these orders
 - (b) clarifies that shareholders or others can apply for additional shares under the Shortfall Offer in advance of determining the shortfall available to the Underwriter
 - (f) explains that the factors regarding the allocation of shortfall shares set out in section 4.5(a)-(g) of the Offer Document do not apply and that the Identitii directors will not exercise any discretion regarding the shortfall except to the extent they consider necessary (acting reasonably) to prevent an issue of shares contrary to law or the ASX Listing Rules and
 - (g) includes disclosure clarifying the matters referred to in paragraph 13(e) of the Declaration, including:
 - (i) a statement as to whether it is still proposed that options will be issued to the Underwriter and, if so, an explanation that the issue of the options will be subject to shareholder approval under order 4
 - (ii) a statement that the Underwriter is a related party of Identitii and an explanation of why this is the case
 - (iii) an explanation of the Underwriter's intentions (to the extent this can be ascertained by Identitii) if it obtains control of Identitii.
2. Identitii must re-open the Rights Issue for at least 7 days after the release of the supplementary disclosure to give shareholders a further opportunity to consider whether to participate in the Rights Issue (and Shortfall Offer) with the benefit of the supplementary disclosure.

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3. Identitii must offer all shareholders who have participated in the Rights Issue as at the date of these orders a withdrawal right exercisable from the date that the supplementary disclosure referred to in order 1 is dispatched until the revised closing date of the Rights Issue.
4. Identitii must not issue any securities¹ to the Underwriter pursuant to the Underwriting Agreement unless an ordinary resolution is passed at a general meeting of Identitii (with the Underwriter and its associates² not voting) approving the issue of securities to the Underwriter.

Interpretation

5. In these orders, capitalised terms have the following meanings.

Declaration	The declaration of unacceptable circumstances made by the Panel on 10 February 2026
Identitii	Identitii Limited
Offer Document	the offer document in relation to the Rights Issue
Rights Issue	the 1-for-2 non-renounceable rights issue announced by Identitii on 4 December 2025
Shortfall Offer	the offer for shortfall described in section 4.5 of the Offer Document
Underwriter	Beauvais Capital Pty Ltd as trustee for The Reginald Hector Trust
Underwriting Agreement	the agreement between Identitii and the Underwriter dated 1 December 2025

Tania Mattei
General Counsel
with authority of Chelsey Drake
President of the sitting Panel
Dated 10 February 2026

¹ Including any options

² Including, for the avoidance of doubt, Arnott Park Investments Pty Ltd and Mr Cameron Beavis



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Annexure D

**CORPORATIONS ACT
SECTION 657D
VARIATION OF ORDERS**

IDENTITII LIMITED

Pursuant to section 657D(3) of the *Corporations Act 2001* (Cth)

THE PANEL ORDERS

The final orders made on 10 February 2026 are varied by:

1. Amending Order 1 by:
 - (a) omitting “7 days” and substituting “10 days”
 - (b) omitting “in advance of determining the shortfall available to the Underwriter” in paragraph (b) and
 - (c) omitting subparagraph (d)(iii).

Tania Mattei
General Counsel
with authority of Chelsey Drake
President of the sitting Panel
Dated 19 February 2026