



Tuesday, 22 November 2005

Coopers Brewery Limited 03 - Panel Receives Application

The Takeovers Panel advises that it has received an application dated 21 November 2005 from Lion Nathan Limited and Lion Nathan Australia Pty Limited (together **Lion Nathan**) in relation to the off-market takeover offer by Lion Nathan Australia Pty Limited, a wholly owned subsidiary of Lion Nathan Limited, of Coopers Brewery Limited (**Coopers**).

Lion Nathan has sought interim orders, a declaration of unacceptable circumstances in relation to Coopers' conduct under section 657A of the Corporations Act and final orders.

Lion Nathan's application (amongst other things):

- a) submits that the Coopers' target's statement contains misleading or confusing information;
- b) submits that proceeding with the proposed EGM on 29 November 2005 for the purposes of making the proposed modifications to the Coopers Articles of Association constitutes frustrating action; and
- c) questions the administration of the pre-emptive rights regime by the directors of Coopers.

Lion Nathan's application also submits that in relation to the Coopers share buy back the principles set out in Village Roadshow Limited 03 [2004] ATP 22 should be applied and that the directors of Coopers' should not vote on the resolution to approve the share buy back. The resolution is due to be put to Coopers shareholders on 7 December 2005.

The interim order that Lion Nathan seeks from the Panel is postponement or adjournment of the reconvened EGM to be held on 29 November 2005 (**29 November EGM**). The EGM is to consider alterations to Coopers' Constitution which would remove the current Pre-Emptive Rights which Lion Nathan has under the Coopers Constitution, and to remove the exception which allows Lion Nathan, as a brewer, to hold shares in Coopers. Approval of the alterations to Coopers' constitution would, in effect, prevent the Lion Nathan takeover offer for Coopers from proceeding. Lion Nathan has submitted that the information issues which it has raised in relation to the Coopers target statement are such that Coopers shareholders would not be able

to make a properly informed decision on the alteration to Coopers' Constitution. Lion Nathan submits, that the Panel should therefore order the postponement or adjournment of the EGM in order to allow the corrective disclosure which Lion Nathan submits is required, to be put before Coopers shareholders before they vote on the alterations to the Coopers Constitution.

The Panel is currently asking the parties for submissions on the issues which Lion Nathan has raised in the application and will consider and make a decision on whether there is, or is not, a proper basis for postponing or adjourning the 29 November EGM.

Coopers shareholders who are intending to attend, or vote at, the 29 November EGM need to be alert for a media release from the Panel late in the afternoon of Friday 25 November 2005. The media release will confirm whether or not the Panel will make orders that the 29 November EGM will be postponed or adjourned.

The Panel has decided to conduct proceedings but, as it has not received submissions from the parties on the relevant issues, makes no comment on the merits of the application.

The President of the Panel has appointed Susan Doyle, Marian Micalizzi and Mark Paganin as the sitting Panel to consider the application.

Nigel Morris
Director, Takeovers Panel
Level 47, 80 Collins Street
Melbourne, VIC 3000
Ph: +61 3 9655 3501
nigel.morris@takeovers.gov.au