



In the matter of Accent Resources Limited

[2007] ATP 14

Catchwords:

Notice of meeting, information deficiencies, placement, issue to shareholders under prospectus, control implications of placement, decline to commence proceedings, evidence of control implications, shareholder approval of issue of shares and options.

*Corporations Act 2001 (Cth) section 249D, section 657A(2),
ASX listing rules 7.1, 7.4, 10.11.*

Accent Resources Limited; Cleo Holdings Limited; Ascot Securities Pty Ltd

SUMMARY

1. The Panel declined to commence proceedings in relation to the Application.
2. Cleo complained about the holding of a meeting of Accent on 26 June 2007 under the ASX listing rules. The meeting was to approve the issue of shares and options in Accent, the effect of which would be to more than double its issued share capital.
3. The Panel did not consider the Application, on its face, raised issues for the Panel relating to control or potential control of, or the acquisition or proposed acquisition of, a substantial interest in, Accent.

INTRODUCTION

4. In these reasons the following definitions apply.

Term	Meaning
Accent	Accent Resources Limited
Application	application by Cleo Holdings Limited dated 25 June 2007 to the Takeovers Panel concerning the affairs of Accent
Cleo	Cleo Holdings Limited
New Issue Proposal	Proposal to issue shares and options in Accent as set out in the notice of meeting
Notice of Meeting	Notice of meeting for shareholders' meeting to be held on 26 June 2007 under ASX listing rules and the chapter 2E of the Corporations Act
Proceedings	proceedings by the Panel on the Application

5. For this Application Teresa Handicott (Deputy President), Robert Johanson (President) and Marian Micalizzi were appointed.

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6. For these Proceedings the Panel:
 - (a) adopted the Panel's published procedural rules (to the extent required) and
 - (b) consented to Cleo being legally represented by its commercial lawyers (Accent had not lodged a notice of appearance).

DISCUSSION

Application

7. Cleo sought a declaration of unacceptable circumstances in relation to Accent's shareholders' meeting held on 26 June 2007 and the notice of meeting.
8. Although the Application did not specify, the Panel treated the Application as being made under sections 657A(2)(a) and (b) of the Corporations Act¹.
9. Cleo submitted that shareholder approval was being sought for what was effectively a reverse takeover of Accent three weeks before a vote was to be held in relation to changing the company's board. Cleo and another shareholder had requisitioned a meeting under section 249D to remove 3 directors of Accent and elect 2 others.
10. Cleo submitted that there were information deficiencies in the notice of meeting.
11. Cleo sought interim orders that the meeting be adjourned and that Accent not issue any shares under the New Issue Proposal until the Panel had fully considered the matter and for inspection of proxies. It was not necessary for the Panel to consider making interim orders because Accent gave an undertaking to the Panel not to issue any securities prior to 29 June 2007.
12. Cleo sought final orders prohibiting Accent from proceeding with the resolutions until Accent shareholders had been given sufficient information to consider the New Issue Proposal.

Jurisdiction

13. The Panel did not consider that Cleo's application, on its face, raised issues for the Panel relating to control or potential control of, or the acquisition or proposed acquisition of a substantial interest in, Accent.
14. Accent has on issue approximately 38.8 million shares.
15. There were 7 resolutions put to shareholders:
 - (a) resolution 1 -- ratification under ASX listing rule 7.4 of a placement of 5 million shares. This resolution was defeated.
 - (b) resolution 2 -- ratification under ASX listing rule 7.4 of the grant of 694, 944 options. This resolution was passed.
 - (c) resolution 3 -- approval under ASX listing rule 7.1 for the issue of up to 50 million shares to sophisticated and professional clients of Ascot Securities Pty Ltd and existing shareholders of Accent. According to a letter dated 15 June 2007 from Ascot Securities – financial advisers appointed to complete the

¹ Unless otherwise expressed, all references are to the Corporations Act 2001 (Cth).

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placement - shareholders of Accent were invited to participate in the placement and register their interest in receiving a prospectus. This resolution was passed.

- (d) resolution 4 -- approval under ASX listing rule 10.11 for directors to participate in the issue under resolution 3. Subsequent to lodgment of the notice of meeting, the directors said they would not participate in the resolution 3 issue. Resolution 4 was withdrawn.
 - (e) resolutions 5 and 6 -- approval under ASX listing rule 10.11 and Chapter 2E for the issue of 1 million shares each to two proposed directors to be appointed by the existing board. This resolution was passed.
 - (f) resolution 7 -- approval under ASX listing rule 7.1 for the issue of 2 million shares and 10 million options to Ascot Securities Pty Ltd for corporate advisory and capital raising services. This resolution was passed.
16. In round numbers, the capital of Accent increases from 38.8 million shares (including 5 million already issued and sought to be ratified under resolution 1) to 92.8 million shares, an increase of almost 240%. If the options granted are exercised, the capital increases to approximately 103.5 million shares, an increase of more than 260%.
17. Assuming allotments in resolution 3 are undertaken in accordance with the law, the most any one party will be able to be allotted is 19.9% and any party that acquires above 5% will be required to lodge a substantial holding notice. Accordingly the Panel did not consider there to be a basis to commence proceedings.
18. It is open for Cleo (or any affected party) to apply to the Panel if any evidence of control implications were to arise once allotment intentions are known, or once shares are allotted under the New Issue Proposal.

Notice of meeting

19. Because the Panel has not commenced proceedings, it has not had the benefit of issuing a brief and receiving submission from parties. Nevertheless, it appears that there may be deficiencies in the notice of meeting. The Panel also considered that, the consideration of any such deficiency was for ASX or ASIC.

Other issues

20. Cleo raised a concern about the timing of the meetings. The chronology is as follows:
- | | |
|-------------|--|
| 04 May 2007 | Accent announced the proposed capital raisings and arrangements with Ascot Securities considered under the New Issue Proposal (essentially resolutions 1-3 and 5-7). |
| 17 May 2007 | Cleo served its request under section 249D. |
| 31 May 2007 | The notice of meeting (ie, for the meeting held on 26 June) issued. |
| 8 June 2007 | The notice of meeting for the change of directors (to be held on 17 July) issued. |
21. If wholly successful, the 17 July meeting would result in the removal of 3 of Accent's existing 4 directors and the appointment of 2 nominees of Cleo. While efficiency and cost may have dictated that the two meetings should be combined, the Panel did not

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consider that there was enough information for it to regard the timing as potentially unacceptable circumstances.

22. Cleo also submitted that Accent should have disclosed an alternative proposal to undertake a capital raising from another corporate adviser. It appears that that other corporate adviser is connected to Cleo. The Panel did not consider that this was a matter for it.

DECISION

23. The Panel considers that proposals such as those in the Application can have control implications which the Panel can deal with if it appears that the circumstances fall within sections 657A(2)(a) or (b), but the Panel was not persuaded that that the circumstances did in this case. The Panel declined to commence proceedings.
24. The Panel did not make any order for costs.

Robert Johanson
President of the Sitting Panel
Decision dated 29 June 2007
Reasons published 29 August 2007