



No: 92/2007

Monday, 12 November 2007

Consolidated Minerals Limited 03R – Panel makes Declaration and Orders

The Takeovers Panel advises that it has made a declaration of unacceptable circumstances and final orders in relation to an application from Pallinghurst Resources Australia Limited (**Pallinghurst**) seeking review of the Panel's decision of 31 October 2007 to make a declaration of unacceptable circumstances and orders (see [TP07/87](#)). The Panel's decision of 31 October 2007 ([TP07/85](#)) was in relation to an application received on Monday, 15 October 2007 from Palmary Enterprises Limited in relation to the affairs of Consolidated Minerals Limited ([TP07/76](#)).

The Panel set aside the declaration of the Initial Panel and substituted a new (albeit similar) declaration of unacceptable circumstances in relation to the affairs of Consolidated Minerals and the circumstances of Pallinghurst announcing and offering the Top-up Note as a part of an alternative consideration under the Pallinghurst Offer. See annexure A for the Declaration.

The Panel ordered that the Top-up Note be withdrawn and that Consolidated Minerals shareholders who had accepted the Pallinghurst Offer after 12 October 2007, and had elected to receive the Top-up Note should have the opportunity to withdraw their acceptances. The right to withdraw was required because the terms of those acceptances were varied by the Panel's order to remove the Top-up Note, leaving only the cash component of \$4.50.

The Panel advised that it would not consider it unacceptable for Pallinghurst to withdraw the last and final statements that it made on 12 October 2007 (with respect to either or both of the no increase in price and no voluntary extension aspects). This would allow Pallinghurst to keep the Pallinghurst Offer open if it wished to and to increase its offer price, if it chose to do so, while the Pallinghurst Offer was open for acceptance. See annexure B for the orders.

The President of the Panel appointed Robert Johanson, Simon Mordant and Norman O'Bryan SC (sitting President) to hear the application.

The Panel will publish its reasons for decision as soon as practicable on its website at www.takeovers.gov.au.

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Annexure A

Corporations Act Section 657A Declaration of Unacceptable Circumstances

In the matter of CONSOLIDATED MINERALS LIMITED 03R

WHEREAS

Circumstances

1. Consolidated Minerals Limited is a listed public company (**Consolidated Minerals**). It is the subject of an off market takeover bid (**Pallinghurst Offer**) by Pallinghurst Resources Australia Limited (**Pallinghurst**) and an off market takeover bid (**Palmary Offer**) by Palmary Enterprises (Australia) Pty Limited (**Palmary**).
2. On 12 October 2007 Pallinghurst lodged with ASX Limited its second supplementary bidder's statement in relation to the Pallinghurst Offer. This provided for an additional form of consideration of \$4.50 cash plus a Top-up Note, as an alternative to the existing \$4.50 cash offer consideration.
3. The Top-up Note would operate to pay electing shareholders an additional cash payment that would match an increase in the offer price for Consolidated Minerals shares under the Palmary Offer, subject to the conditions set out in Pallinghurst's second supplementary bidder's statement. The cash payment under the Top-up Note (if any) would be payable even if it was triggered after the Pallinghurst Offer had closed.

Circumstances are unacceptable

4. It appears to the Panel that the circumstances referred to above (**Circumstances**) are unacceptable having regard to:
 - (a) the effect that the Panel is satisfied that the Circumstances have had, are having, or are likely to have, on:
 - (i) the control or potential control of Consolidated Minerals; or
 - (ii) the acquisition or proposed acquisition by Pallinghurst or Palmary of a substantial interest in Consolidated Minerals; or
 - (b) the purposes of Chapter 6 of the Act as set out in section 602 of the Act.
5. The Panel considers that it is not against the public interest to make a declaration of unacceptable circumstances in relation to the Circumstances and the affairs of Consolidated Minerals.

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6. The Panel has had regard to the matters in subsection 657A(3) of the Act, but has not had regard to whether the Circumstances constitute, will constitute or are likely to constitute or give rise to a contravention of Chapters 6, 6A, 6B or 6C of the Act.

DECLARATION

The Panel sets aside the Declaration of the Panel dated 30 October 2007 and, under section 657A of the Act, the Takeovers Panel declares that the Circumstances constitute unacceptable circumstances in relation to the affairs of Consolidated Minerals.

Norman O'Bryan SC

President of the Sitting Panel

Dated 10 November 2007



Annexure B

Corporations Act Section 657D Orders

In the matter of CONSOLIDATED MINERALS LIMITED 03R

PURSUANT TO:

1. A declaration of unacceptable circumstances (**Declaration**) in relation to the affairs of Consolidated Minerals Limited (**Consolidated Minerals**) made by the Takeovers Panel (**Panel**) on 10 November 2007 under section 657A of the Corporations Act 2001 (Cth) (**Act**); and
2. Section 657D of the Act;

THE PANEL ORDERS THAT

3. As soon as practicable after the date of this order, Pallinghurst Resources Australia Limited (**Pallinghurst**) withdraw from its off market takeover bid for Consolidated Minerals (**Pallinghurst Offer**) the alternative consideration of \$4.50 cash and one Top-up note by issuing a supplementary bidder's statement.
4. All Top-up notes issued by Pallinghurst pursuant to the Pallinghurst Offer be cancelled.
5. Each Consolidated Minerals shareholder who did both of the following:
 - (a) accepted the Pallinghurst Offer after the dispatch of Pallinghurst's second supplementary bidder's statement; and
 - (b) accepted the consideration alternative of \$4.50 and one Top-up note;**(Affected Consolidated Minerals Shareholder)**

has a right to withdraw their acceptance, which is equivalent to the right conferred by section 650E of the Corporations Act (except that the period of notice in paragraph 650E(2)(a) of the Corporations Act shall be 10 business days after Pallinghurst sends the letter referred to in paragraph 6).

6. Pallinghurst as soon as practicable send:
 - (a) a letter (in a form acceptable to the Panel) to each Affected Consolidated Minerals Shareholder informing them of their withdrawal rights and clearly setting out what the shareholder must do to exercise those withdrawal rights; and

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- (b) a letter (in a form acceptable to the Panel) to each shareholder who accepted the Pallinghurst Offer before the dispatch of Pallinghurst's second supplementary bidder's statement and subsequently elected to receive the consideration alternative of \$4.50 and one Top-up note informing them of the effect of these orders on the alternative.
7. Pallinghurst may withdraw its statement of 12 October 2007 that it has declared the \$4.50 cash component of the Pallinghurst Offer final in the absence of a competing higher offer. If Pallinghurst chooses to withdraw its statement, it must do so by issuing a supplementary bidder's statement no later than 4.00 pm (Melbourne time) on the day after the date of these orders.
8. Pallinghurst may withdraw its statement of 12 October 2007 that there will be no further voluntary extension of the Pallinghurst Offer. If Pallinghurst chooses to withdraw its statement, it must do so by issuing a supplementary bidder's statement no later than 4.00 pm (Melbourne time) on the day after the date of these orders.
9. If Pallinghurst is required to issue a supplementary bidder's statement by paragraph 7 or 8 above, Pallinghurst must further extend its offer until the date at least 7 days after the day that it issues the supplementary bidder's statement.

Norman O'Bryan SC

President of the Sitting Panel

Dated 12 November 2007