



Australian Government

Takeovers Panel

Reasons for Decision
Bisalloy Steel Group Limited
[2008] ATP 29

Catchwords:

Rights issue – renounceable – underwriting – sub-underwriting – potential control impact – reasonable steps to minimise control impact – disclosure of intentions – supplementary prospectus

Bisalloy Steel Group Limited – Balron Nominees Pty Ltd – Investors Mutual Limited – Anchorage BSG Pty Ltd – Anchorage Capital Partners 1 Fund – Anchorage Capital Partners Pty Ltd – ABN AMRO Morgans Corporate Limited – Mr Phillip Cave

Corporations Act 2001 (Cth), sections 606, 611 – items 7, 10 and 13, 657A, 657D

Dromana Estate Limited 01R [2006] ATP 8

Takeovers Panel Guidance Note 17 (Rights Issues), paragraphs 12, 25, 35, 40, 46 and 47

INTRODUCTION

1. In December 2008, Bisalloy announced a 4 for 5 renounceable rights issue. The rights issue was fully underwritten by ABN AMRO, and fully sub-underwritten by Anchorage. If none of the rights were taken up, Anchorage's voting power in Bisalloy would have increased from 3.6% to 48%. Anchorage is a wholly owned subsidiary of ACP 1 Fund. Mr Phillip Cave, the Chairman of Bisalloy, is an investor in the ACP 1 Fund and a director of and substantial shareholder in ACP, the manager of the ACP 1 Fund.
2. The sitting Panel, Guy Alexander (sitting President), Marian Micalizzi and Mike Roche, made a declaration of unacceptable circumstances in relation to the affairs of Bisalloy as the Rights Issue and sub-underwriting was likely to have a substantial impact on the control of Bisalloy and the independent directors of Bisalloy did not take all reasonable steps to minimise that potential impact.
3. In these reasons, the following definitions apply.

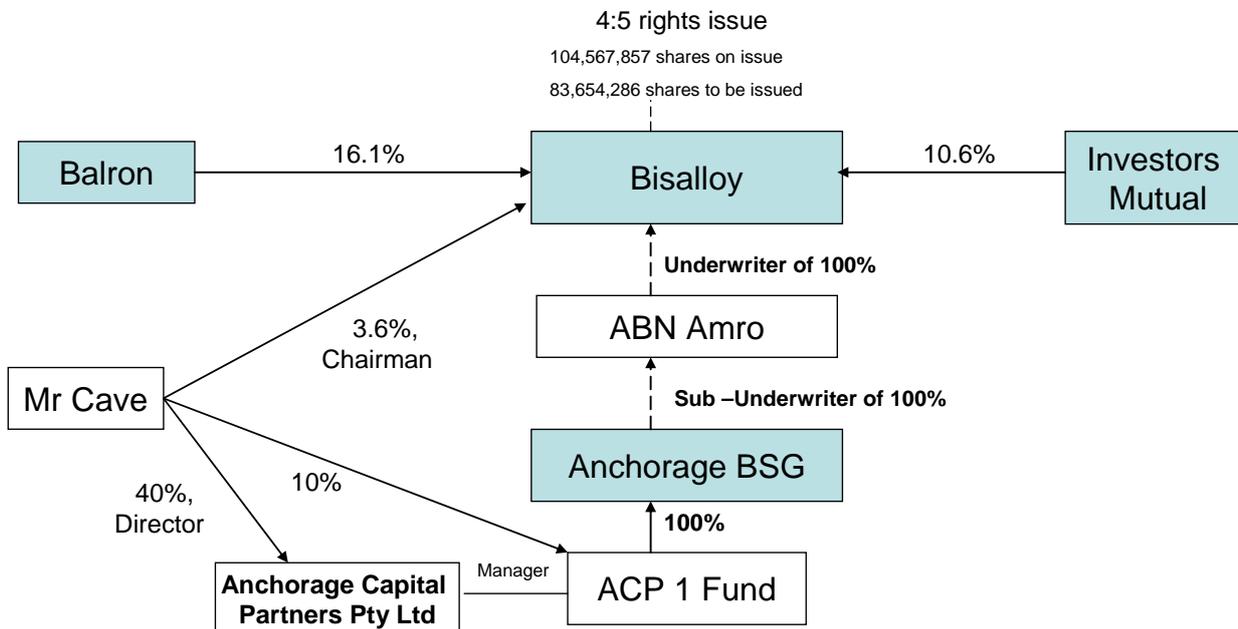
Term	Meaning
ABN AMRO	ABN AMRO Morgans Corporate Limited
ACP	Anchorage Capital Partners Pty Ltd
ACP 1 Fund	Anchorage Capital Partners 1 Fund
Anchorage	Anchorage BSG Pty Ltd
Balron	Balron Nominees Pty Ltd
Bisalloy	Bisalloy Steel Group Limited
Excess Shortfall Shares	new Bisalloy shares to be issued to Anchorage under the Sub-Underwriting Agreement which, if issued to Anchorage, would give Anchorage and Mr Phillip Cave combined voting power in Bisalloy in excess of

Term	Meaning
	20%
Investors Mutual	Investors Mutual Limited
Prospectus	prospectus issued by Bisalloy on 2 December 2008
Rights Issue	the 4 for 5 pro rata renounceable rights issue by Bisalloy under the Prospectus
Sub-Underwriting Agreement	the sub-underwriting agreement in relation to the Rights Issue dated on or about 2 December 2008

4. In these proceedings, the Panel:
- (a) adopted the Panel’s published procedural rules and
 - (b) consented to parties being represented by their commercial lawyers.

FACTS

5. Bisalloy is an Australian public company listed on ASX (ASX code: BIS). Balron and Investors Mutual were at all relevant times major shareholders of Bisalloy.
6. The interests and relationships of relevant persons at 15 December 2008, the date of the application, are summarised in the following diagram¹:



7. On 19 October 2008, Mr Peter Smaller (a director of Balron) informed Mr Cave (Chairman of Bisalloy) that Balron would be prepared to invest in Bisalloy if Bisalloy required extra equity funding. There was some disagreement as to whether Balron was prepared to do so to facilitate an exit from its stake in Bisalloy.

¹ On 18 December 2008, Investors Mutual increased its relevant interest in Bisalloy shares from 10.6% to 11.7%.

8. On 30 October 2008, following the Bisalloy annual general meeting, Mr Smaller spoke to Mr Nick Rowe of ABN AMRO Australia and New Zealand², on the advice of Mr Cave. Mr Smaller indicated to Mr Rowe that Balron, as the largest shareholder of Bisalloy, was willing to assist with any fundraising required by Bisalloy.
9. On 3 November 2008, before being appointed as underwriter, ABN AMRO provided advice to the independent directors of Bisalloy that Bisalloy raise capital by way of a rights issue, that an underwriter (unrelated to Anchorage) be appointed and the underwriter offer sub-underwriting to Anchorage and the major shareholders of Bisalloy on commercial arms-length terms.
10. In December 2008, Bisalloy conducted the Rights Issue to raise approximately \$20.9 million. The Rights Issue was conducted to raise funds to meet a material working capital cash flow shortfall projected for the early part of the financial year ending 30 June 2009 and to otherwise strengthen the company's balance sheet.³
11. The issue price under the Rights Issue was 25c, a discount of 7.4% to the closing price of Bisalloy shares on 1 December 2008 and approximately 11.7% to the VWAP of the shares for the 5 business days to 1 December 2008. During the offer period, the market price for Bisalloy shares fell to a level close to the issue price under the Rights Issue.
12. The Rights Issue was fully underwritten by ABN AMRO and fully sub-underwritten by Anchorage. Anchorage was approached after Mr Cave informed the independent directors of Bisalloy of the potential for Anchorage to act as sub-underwriter. Bisalloy did not approach anyone other than Anchorage to act as a sub-underwriter. Bisalloy submitted that it had not approached Balron given, among other reasons, its previous experience with Balron and its view of Balron's capacity to sub-underwrite. Bisalloy submitted that it had not approached Investors Mutual given, among other reasons, its impression that Investors Mutual was more likely to be a seller (rather than a buyer) of Bisalloy shares.
13. Anchorage would not have entered into the sub-underwriting if it had been offered less than 100% of any shortfall. It said the *"attraction of this 100% sub-underwriting to Anchorage was the prospect, albeit uncertain, that it would end up with a holding in Bisalloy which ... would give it some influence in the affairs of Bisalloy and provide it with an appropriate opportunity for reward for any assistance that it provided to Bisalloy through a subsequent exit for Anchorage and all Bisalloy shareholders"*.
14. Before Anchorage was approached in relation to its sub-underwriting fee, ABN AMRO and Bisalloy discussed ABN AMRO receiving an underwriting fee of 1.5% of which half would be paid to Anchorage. Anchorage required a fee of 1.5%. Bisalloy agreed to increase the underwriting fee to 2.25%, with ABN AMRO receiving 0.75% and Anchorage receiving 1.5%.
15. In its Prospectus, Bisalloy states:

² Operationally separate from ABN AMRO

³ See also sections 3.1 and 3.2, and Bisalloy's pro-forma balance sheet in section 3.6 of the Prospectus.

Mr Phillip Cave, the chairman of the Company, currently has voting power in the Company of 3.6%. Anchorage and [ACP], as manager of the ACP 1 Fund, could be deemed to be associates. As Phillip Cave is a director of Anchorage, this would result in Mr Cave also being an associate of Anchorage and Anchorage being deemed to currently have voting power in the Company of 3.6%, and, in the event of 100% of the New Shares not being taken up under the Offer, being deemed to have voting power in the Company of 48%.⁴

16. Rights trading ended on 19 December 2008. Balron advised that it would take up its full entitlement and that it had acquired 5,596,427 rights on market. If the shares attributable to all of its rights were issued at that time, Balron would have had a relevant interest in Bisalloy shares of between 19% and 20%. Mr Cave intended to take up his full entitlement. He did not acquire any rights on market. Investors Mutual intended to take up its entitlement. Anchorage did not acquire any rights on market.
17. The closing date for applications under the Rights Issue was 30 December 2008. The new Bisalloy shares to be issued under the Rights Issue were scheduled to be issued on 7 January 2009.

APPLICATION

Declaration sought

18. By application dated 15 December 2008, Balron sought a declaration of unacceptable circumstances in relation to Anchorage⁵ sub-underwriting the Rights Issue. Balron submitted that:
 - (a) the sub-underwriting arrangements would provide Anchorage with the opportunity to substantially increase its voting power in Bisalloy
 - (b) this potential increase in voting power was likely to have a substantial impact on the control of Bisalloy and meant that Anchorage would be “*taking unconscientious advantage of the underwriting exceptions*” to the s606⁶ prohibition set out in items 10 and 13 of s611 to the detriment of all other Bisalloy shareholders, as it was likely to result in a change in control of Bisalloy without:
 - (i) Anchorage paying any control premium (as would normally be the case under a takeover bid) or
 - (ii) Bisalloy shareholders having the opportunity to consider and approve the change in control in general meeting and
 - (c) the independent directors of Bisalloy did not take reasonable steps to minimise the potential impact on the control of Bisalloy as a consequence of the sub-underwriting arrangements, including by not canvassing other possible sub-

⁴ Section 1.8 of the Prospectus.

⁵ In its submissions, Balron aggregated the interests of Mr Cave and his associates with that of Anchorage and its associates.

⁶ References to sections or Chapters are to sections or Chapters of the *Corporations Act 2001* (Cth), unless the context requires otherwise.

Orders sought

19. Balron sought an interim order that Bisalloy be prevented from closing the offer period under the Rights Issue or allotting any new shares to shareholders or any shortfall shares to Anchorage until no earlier than 7 days after the date on which the application was determined.
20. Balron proposed a number of alternative final orders, including orders which would have had the effect of:
 - (a) an open tender for sub-underwriters being conducted, with preference given to independent parties or
 - (b) each Bisalloy shareholder being afforded the opportunity to tender for some or all of the sub-underwriting, with the final sub-underwriting contracts allocated proportionally to such shareholders who accept based on the amount of underwriting tendered for and each shareholders' respective shareholding in Bisalloy.

DISCUSSION

21. In considering the control implications of a rights issue, we are not primarily concerned with the motive of the issuer, but whether the effect, or likely effect, of the rights issue does not inhibit the principles set out in s602. The Panel considers, among other things, whether the control effect exceeds what is reasonably necessary for the fundraising purpose, and whether the acquisition or potential acquisition of a substantial interest gives rise to unacceptable circumstances.⁷
22. If a company proposes to implement a rights issue, we would expect it to take reasonable steps to minimise the potential impact of the rights issue on the control of the company.⁸
23. Reasonable steps include (in appropriate cases):
 - (a) seeking to share participation in any shortfall among existing shareholders (for example, by way of a shortfall facility or back end bookbuild) and
 - (b) where the rights issue is to be underwritten or sub-underwritten, seeking to appoint a number of underwriters or sub-underwriters or approaching non-related persons (such as professional underwriters or institutional shareholders) to act as an underwriter or sub-underwriter.⁹

Potential control impact of the Rights Issue

24. In this case, there was a potential for the Rights Issue and the sub-underwriting arrangements to have a substantial impact on the control of Bisalloy. Assuming no

⁷ *Dromana Estate Limited 01R* [2006] ATP 8, paragraph 43 (which refers to Guidance Note 17, paragraph 10).

⁸ Guidance Note 17, paragraph 12.

⁹ Guidance Note 17, paragraph 47.

other Bisalloy shareholders took up their entitlement, Anchorage had the opportunity to increase its voting power in Bisalloy from nil, or 3.6% if Mr Cave's interest is included, up to 44.4%, or 48.196% if Mr Cave's interest is included.

25. We consider it appropriate to aggregate Mr Cave's and Anchorage's interests in Bisalloy for this purpose but we did not need to, and did not, decide whether Mr Cave and Anchorage are associates. In its Prospectus, Bisalloy raised the potential association between Anchorage and Mr Cave¹⁰ and Anchorage consented to that statement¹¹. Moreover, Mr Cave has relationships with and interests in each of Bisalloy, Anchorage, ACP and ACP 1 Fund.
26. There were a number of factors which, indicated that the Rights Issue and sub-underwriting were likely to have a substantial impact on the control of Bisalloy. Those factors were as follows:
 - (a) While the Rights Issue was priced at a discount of 7.4% to the closing share price on 1 December 2008, market events had significantly reduced this discount. In Guidance Note 17, the Panel states:

*A rights issue which is priced more closely to the market price of the securities (or even at a premium) provides less incentive for the rights issue to be taken up by all shareholders and, therefore, may increase the likelihood of control becoming concentrated with an underwriter or other participating major shareholder.*¹²
 - (b) The Rights Issue was renounceable, which decreases the likelihood of a potential control effect being realised.¹³ This is because third parties can participate in the offer, widening the pool of potential applicants under the offer and reducing the likelihood of a shortfall being passed on to the underwriter.¹⁴ At the time of our decision, we were advised that 16,242,726 rights had traded on market (of which, 10,646,299 had been acquired by persons other than Balron). We took this into account, but we considered that a potential control impact remained.
 - (c) The Rights Issue was fully sub-underwritten and Anchorage was the only sub-underwriter. The fact that Bisalloy became aware of the subsequent indications from shareholders that they would take up their entitlements is beside the point.
 - (d) In its submissions, Anchorage advised that it would not have agreed to sub-underwrite anything less than 100% of any shortfall and was attracted to the Sub-Underwriting Agreement because it considered that there was an opportunity to acquire an interest in Bisalloy such that it could exercise some influence in the affairs of Bisalloy.

¹⁰ See paragraph 15.

¹¹ Section 6.9 of the Prospectus.

¹² Guidance Note 17, paragraph 25.

¹³ This may be affected by the value of the rights (see Guidance Note 17, paragraph 40).

¹⁴ Guidance Note 17, paragraph 35.

Steps to minimise potential control impact

27. Bisalloy did not take all reasonable steps to minimise a potential control impact. We accept that Bisalloy had a genuine need for some, if not all, of the funds to be raised under the Rights Issue, and that Anchorage's offer to fully sub-underwrite the offer satisfied this need. However, Bisalloy should have taken steps to minimise the potential control impact, including by requesting ABN AMRO to approach other potential sub-underwriters.
28. Bisalloy submitted that it had decided not to seek a professional sub-underwriter on the basis of advice from ABN AMRO that demand for new investments from small/micro cap fund managers was very limited. We accept that it was not unreasonable for Bisalloy to follow this advice.
29. However, ABN AMRO recommended in its advice that the sub-underwriting be offered to Anchorage and major shareholders of Bisalloy on commercial arms length terms. Notwithstanding this advice, and even though Anchorage required an increased underwriting fee¹⁵, following discussions between the independent directors of Bisalloy and ABN AMRO, Bisalloy did not request ABN AMRO to approach either Balron or Investors Mutual.
30. Bisalloy submitted that, given the urgency of its need for funds and Anchorage's offer to fully sub-underwrite, it had decided not to require ABN AMRO to approach Balron or Investors Mutual in relation to a sub-underwriting position.
31. Bisalloy submitted that it had also not approached Balron (or requested that ABN AMRO approach Balron) on the basis of:
 - (a) previous experience Bisalloy had with Balron in relation to the sale of a major asset to Balron
 - (b) the potential for there to be a dispute with Balron in respect of the completion accounts for that sale while Balron would also be acting as a sub-underwriter
 - (c) it appearing to Bisalloy during that sale process that Balron was capital constrained and
 - (d) it appearing to Bisalloy following a discussion between Mr Cave (as a Bisalloy director) and Mr Smaller (as a Balron director) in October 2008 that Balron was looking to exit its position in Bisalloy and that whilst it may be willing to acquire a larger holding in Bisalloy, it would only be doing so in order to facilitate an effective exit.
32. Bisalloy submitted that it had also not approached Investors Mutual on the basis of:
 - (a) discussions between Bisalloy and Investors Mutual prior to the Rights Issue during which Investors Mutual gave no indication to Bisalloy that it wanted to increase its proportionate shareholding in Bisalloy and
 - (b) earlier discussions during which Investors Mutual indicated to Bisalloy that they were more likely to be a seller (rather than a buyer) of Bisalloy shares.

¹⁵ See paragraph 14.

33. In its submissions, Balron refuted each basis in paragraph 31. In particular, it stated that:
- (a) it was not seeking to exit its position in Bisalloy – it had previously indicated to Bisalloy that it would be willing to assist with any equity fundraising¹⁶ and, in respect of the Rights Issue, was willing to sub-underwrite up to 50% of any shortfall, intended to take up its full entitlement and had acquired rights on market
 - (b) it was not cash constrained – Bisalloy’s assumption was misplaced and did not take into account facts which were relevant to the sale noted above and
 - (c) the completion accounts for that sale were prepared on 8 December 2008, after the Rights Issue was announced on 2 December 2008 and well after the independent directors of Bisalloy began considering the possible structure of the underwriting and sub-underwriting arrangements (which it submitted commenced in October 2008). In any case, the mere potential for a dispute on an unrelated matter could not justify Bisalloy deciding not to approach it on the question of sub-underwriting.
34. We were also advised that Investors Mutual intended to take up its full entitlement and would accept an offer to sub-underwrite a small proportion of any shortfall.
35. The Rights Issue had been in Bisalloy’s contemplation since at least 3 November 2008, when the independent directors of Bisalloy received advice from ABN AMRO. Bisalloy had the time to approach Balron and Investors Mutual in relation to some of the sub-underwriting. We consider that Bisalloy should have requested ABN AMRO to provide Balron and Investors Mutual with this opportunity, particularly in light of ABN AMRO’s advice. By not requesting ABN AMRO to approach Balron or Investors Mutual, Bisalloy failed to take reasonable steps to minimise the likely substantial control impact of the Rights Issue.

Disclosure of intentions

36. Balron submitted that the Prospectus was deficient because it did not provide any details on the intentions of Anchorage with respect to Bisalloy given its potential substantial holding as a result of the sub-underwriting arrangements.
37. Bisalloy submitted that it did not make any specific disclosure on this point because it was not aware of any intentions of Anchorage to change the current operations of Bisalloy. This was on the basis that the independent directors understood Anchorage’s position to be the same as Mr Cave’s, who was not seeking changes to Bisalloy’s operation.
38. As noted above, Anchorage submitted that it was attracted to the sub-underwriting because there was the potential for it to be in a position to have some influence in the affairs of Bisalloy.
39. We consider that disclosure is required. For Bisalloy shareholders to make an informed decision in relation to the offer, they must be provided with sufficient

¹⁶ See paragraphs 7 and 8.

information on the likely effect of the offer, including in the event of a shortfall. For Bisalloy to discharge its disclosure obligation, it should have made specific enquiries of Anchorage as to its intentions in relation to Bisalloy, should it gain a substantial shareholding as a result of the sub-underwriting. We consider the disclosure in the prospectus to be deficient in this regard.

DECISION

Declaration

40. It appears to us that the circumstances, which included:
- (a) a potential control impact as a consequence of the Rights Issue and sub-underwriting which was likely and substantial
 - (b) the independent directors of Bisalloy not taking all reasonable steps to minimise that potential control impact (particularly, by not approaching anyone other than Anchorage, such as a major Bisalloy shareholder, to offer them an opportunity to sub-underwrite some or all of the Rights Issue) and
 - (c) the inadequate disclosure of the intentions of Anchorage in relation to Bisalloy should it be required to take up shortfall shares,
- were unacceptable having regard to:
- (d) the effect which we were satisfied that the circumstances were having, or were likely to have, on the control or potential control of Bisalloy and/or
 - (e) the purposes of Chapter 6 set out in s602.
41. We considered that it was not against the public interest to make a declaration of unacceptable circumstances.
42. We had regard to the matters set out in s657A(3).
43. Accordingly, on 23 December 2008, we made a declaration of unacceptable circumstances under s657A in relation to the affairs of Bisalloy. A copy of the declaration is set out in Annexure A.

Orders

44. Following the declaration, we made final orders on 23 December 2008.
45. Our orders had the effect that the existing major shareholders of Bisalloy (namely, Balron and Investors Mutual) would have the ability to obtain in equal proportion to Anchorage any Excess Shortfall Shares. In making our orders, we were careful that they did not potentially have the effect of passing control of Bisalloy to anyone else.
46. Our orders also required Anchorage and Balron (if Balron decided to take up any Excess Shortfall Shares) to inform Bisalloy of their intentions in relation to Bisalloy. If Anchorage hadn't formed any intentions with respect to Bisalloy, our orders required that it disclose details of the influence it expected to exert on the basis of its potential shareholding in Bisalloy (as discussed in paragraph 39).

47. Our orders in this instance extended to Balron as they had the effect of providing Balron with the opportunity to further increase its substantial shareholding in Bisalloy (if it took up any Excess Shortfall Shares), potentially in excess of 20%.¹⁷
48. Our orders then required Bisalloy to lodge a supplementary prospectus disclosing the effect of our orders and the intentions of Anchorage and Balron with respect to Bisalloy.
49. Our orders were intended not to affect the underwriting arrangements between Bisalloy and ABN AMRO or the sub-underwriting arrangements between ABN AMRO and Anchorage. In this regard, we took into account Bisalloy's concern regarding the urgency of its need for funds and that the timetable for the Rights Issue not be disrupted, and ABN AMRO's concern that it had fully underwritten the Rights Issue on the basis that it had full sub-underwriting commitments in place with Anchorage.
50. Under s657D, we are empowered to make any order¹⁸ including a remedial order, subject to certain requirements being satisfied. We view that our orders satisfy each of those requirements.
 - (a) We made a declaration of unacceptable circumstances on 23 December 2008.
 - (b) We are satisfied that our orders do not unfairly prejudice Bisalloy, ABN AMRO, Anchorage, Mr Cave, Balron, Investors Mutual, or any other Bisalloy shareholder.
 - (c) The parties, including ASIC, were invited to make submissions on proposed orders. Submissions on proposed orders were received from all of the parties.
 - (d) We are satisfied that our orders protect the rights and interests of persons which are affected, will be affected or are likely to be affected by the unacceptable circumstances, or any other rights or interests of those persons.
51. A copy of our final orders, as varied¹⁹, is set out in Annexure B. We did not make any interim orders. Balron did not seek, and we do not make, any order as to costs.

Guy Alexander
President of the Sitting Panel
Decision dated 23 December 2008
Reasons published 6 February 2009

¹⁷Our orders allowed Anchorage to enter into sub-sub-underwriting arrangements in relation to any Excess Shortfall Shares. If instead it merely on-sold any Excess Shortfall Shares, our orders exempted from the prohibition in s606 any relevant interest in those Excess Shortfall Shares acquired in accordance with our orders.

¹⁸ Other than an order requiring a person to comply with a provision of Chapter 6, 6A, 6B or 6C.

¹⁹ Our orders were varied on 24 December 2008 in relation to points of clarification.

Annexure A

Corporations Act

Section 657A

Declaration of Unacceptable Circumstances

In the matter of Bisalloy Steel Group Limited

WHEREAS

1. Bisalloy Steel Group Limited (**Bisalloy**) has a 4:5 rights issue underway under a prospectus dated 2 December 2008. Mr. Phillip Cave is chairman of Bisalloy and has voting power in approximately 3.6% of the Bisalloy shares
2. The rights issue is renounceable and was priced at a small discount to the then market price. The market price for Bisalloy shares has decreased, reducing the discount
3. The rights issue is fully underwritten by ABN AMRO Morgans Corporate Limited. It is fully sub-underwritten by Anchorage BSG Pty Limited (**Anchorage BSG**), for a fee of 1.5%. Anchorage BSG is owned by Anchorage Capital Partners 1 Fund, which is managed by Anchorage Capital Partners Pty Limited. Mr Cave is a director, and has an interest in approximately 40%, of the shares in Anchorage Capital Partners Pty Limited. Mr Cave has an interest of approximately 10% in Anchorage Capital Partners 1 Fund
4. Anchorage BSG was not prepared to sub-underwrite the rights issue on the basis that it would sub-underwrite only 50% of the shortfall and entered the sub-underwriting because of the prospect that it would give it some influence in the affairs of Bisalloy
5. Under the rights issue Anchorage BSG could obtain voting power of up to 44.4% in Bisalloy if no other shareholders exercised their rights. Including Mr Cave's interest, the potential voting power increases to approximately 48%
6. All reasonable steps to minimise the potential control impact of the rights issue on Bisalloy were not taken, and in particular, no other major shareholder was offered an opportunity to participate in sub-underwriting arrangements for the rights issue
7. In addition, the rights issue prospectus does not adequately disclose the intentions of Anchorage BSG should it be required to take up shortfall shares
8. It appears to the Panel that the circumstances are unacceptable:
 - (a) having regard to the effect that the Panel is satisfied that the circumstances are having, or are likely to have, on the control or potential control of Bisalloy and/or
 - (b) having regard to the purposes of Chapter 6 set out in section 602 of the Corporations Act 2001 (Cth) (the **Act**)
9. 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

Under section 657A of the Act, the Panel declares that the circumstances above constitute unacceptable circumstances in relation to the affairs of Bisalloy.

**Alan Shaw
Counsel
with authority of Guy Alexander
President of the Sitting Panel
Dated 23 December 2008**

Annexure B
Corporations Act
Section 657D
Orders

In the matter of Bisalloy Steel Group Limited

PURSUANT TO

10. A declaration of unacceptable circumstances in relation to the affairs of Bisalloy Steel Group Limited (**Bisalloy**) on 23 December 2008
11. Section 657D of the Corporations Act 2001 (Cth) (the **Act**)

THE PANEL ORDERS

1. Each of ABN AMRO Morgans Corporate Limited and Anchorage BSG Pty Ltd (**Anchorage BSG**) not rely on any right they may have to terminate the Underwriting Agreement or Sub-Underwriting Agreement as a consequence of the application to the Panel in this matter and these orders.
2. Until completion of these orders, Anchorage BSG not deal with any Excess Shortfall Shares issued to it otherwise than in accordance with these orders.
3. As soon as possible after the date of these orders, Anchorage BSG ask Balron Nominees Pty Ltd (**Balron**) and Investors Mutual Limited (**Investors Mutual**) to indicate the percentage of Excess Shortfall Shares it wants such that:
 - 3.1. Balron and Investors Mutual have 24 hours from receipt of the request to indicate to Anchorage BSG what percentage of the Excess Shortfall Shares it wants
 - 3.2. If an indication is for up to 1/3, it would be fulfilled (subject to rounding) and
 - 3.3. If an indication is for more than 1/3, it will be fulfilled taking into account each indication for more than 1/3 and so that as nearly as practicable Anchorage BSG and that party share equally (subject to rounding), provided that the party cannot take more shares than in its indication.
4. Immediately after the number of the Excess Shortfall Shares is known to Anchorage BSG, it advise Balron or Investors Mutual (as applicable) of the number of Excess Shortfall Shares that party may acquire under these orders.
5. If Balron or Investors Mutual, by 6pm on the business day after receipt of the notification, provides Anchorage BSG with a bank cheque in the amount of the total subscription price less 1.5% for all of the notified Excess Shortfall Shares, Anchorage BSG provide Balron or Investors Mutual (as applicable) the number of Excess Shortfall Shares.
6. Any relevant interest in the Excess Shortfall Shares acquired in accordance with these orders is, if not exempt under section 611, exempt from the prohibition in section 606 of the Act.

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7. As soon as possible after the date of these orders, Anchorage BSG disclose to Bisalloy:
 - 7.1. any intentions it or Anchorage Capital Partners Pty Ltd have formed with respect to Bisalloy as a consequence of Anchorage BSG's potential maximum shareholding in Bisalloy following the Rights Issue or
 - 7.2. if no intentions are formed, detail of the influence Anchorage BSG or Anchorage Capital Partners Pty Ltd expects to exert in relation to Bisalloy.
8. As soon as possible after the date of these orders, if Balron intends to indicate to Anchorage BSG a percentage of the Excess Shortfall Shares it wants, it disclose to Bisalloy any intentions it has formed with respect to Bisalloy as a consequence of the potential maximum shareholding it may hold following the Rights Issue.
9. Bisalloy must prepare, and lodge with ASIC and ASX, a supplementary prospectus which includes:
 - 9.1. disclosure of these orders and their effect and
 - 9.2. the disclosures provided under paragraphs 7 and 8.

INTERPRETATION

Excess Shortfall Shares means the number of shares in Bisalloy allocated or to be allocated under the Sub-Underwriting Agreement, that take or would take the relevant voting power in Bisalloy beyond 20%. The relevant voting power in this definition is calculated by aggregating:

- (a) the voting power of Anchorage BSG in Bisalloy and
- (b) the voting power of Mr Phillip Cave in Bisalloy.

Rights Issue means the issue of rights to subscribe for new shares in Bisalloy pursuant to the prospectus issued by Bisalloy on 2 December 2008.

Sub-Underwriting Agreement means the sub-underwriting agreement in relation to the Rights Issue dated on or about 2 December 2008.

Underwriting Agreement means the underwriting agreement in relation to the Rights Issue dated on or about 2 December 2008.

Alan Shaw
Counsel
with authority of Guy Alexander
President of the Sitting Panel
Dated 23 December 2008