



Friday, 22 February 2008

Allegiance Mining NL - Declaration of Unacceptable Circumstances and Orders

The Panel advises that it has made a declaration of unacceptable circumstances (Annexure A) and final orders (Annexure B) in relation to an application dated 11 February 2008 by Allegiance Mining NL (**Allegiance**) in relation to the affairs of Allegiance ([TP07-76](#)).

Background

Zinifex Australia Limited (**Zinifex**) made an off-market takeover bid for all the ordinary shares in Allegiance dated 3 January 2008 (**Offer**). The Offer was scheduled to close at 7.00 pm on Friday 8 February 2008.

At 4.55 pm on 8 February 2008 Zinifex lodged with ASIC a notice of variation to extend the closing date of the Offer until 7.00 pm on Friday 22 February 2008 (**Notice of Variation**).

A letter advising each Allegiance shareholder that the Offer was extended was collected by Australia Post at around 5:00 pm on 8 February 2008. Zinifex emailed the Notice of Variation to Allegiance at 6:56 pm on 8 February 2008.

At 7:18 pm on 8 February 2008, Zinifex emailed an announcement containing the Notice of Variation to ASX. At 7:30 pm on 8 February 2008 the Notice of Variation appeared on the ASX website.

Declaration

The Panel considered that any acquisition of control over voting shares in Allegiance should take, and in this case should have taken, place in an informed market and shareholders should have enough information to consider the merits of the extension of the Offer and reasonable time to consider it.

The Panel considered that Zinifex was committed to the extension at 5:00 pm on 8 February 2008 by the collection by Australia Post, a step which could not be retracted and which could have resulted in significant confusion if the extension did not proceed for any reason. Thus, at 5:00 pm on 8 February 2008 Zinifex should have informed Allegiance so that Allegiance could notify its shareholders.

By not doing so, some shareholders, who otherwise might not have accepted the offer when they did, accepted in the mistaken belief that the Offer had not been extended.

Takeovers Panel

Media Release – Allegiance Mining NL

Therefore, it appeared to the Panel that the circumstances are unacceptable having regard to the effect of the circumstances and the purposes of section 602. The Panel does not consider it is against the public interest to make this declaration, and in making it has had regard to the matters s657A(3).

Orders

The Panel has made orders to the effect that Allegiance shareholders who accepted the Offer after 5:00 pm (Melbourne time) but before 7.30 pm (Melbourne time) on 8 February 2008 have a right to apply to Zinifex to cancel their acceptance of the Offer.

The Panel will publish its reasons for decision in due course on its website www.takeovers.gov.au.

Allan Bulman
Director, Takeovers Panel
Level 47, 80 Collins Street
Melbourne, VIC 3000
Ph: +61 3 9655 3597
allan.bulman@takeovers.gov.au



Annexure A

**Corporations Act
Section 657A
Declaration of Unacceptable Circumstances**

In the matter of ALLEGIANCE MINING NL

WHEREAS

1. Zinifex Australia Limited (**Zinifex**) made an off-market takeover bid for all the ordinary shares in Allegiance Mining NL (**Allegiance**) dated 3 January 2008 (**Offer**). The Offer was scheduled to close at 7.00 pm on Friday 8 February 2008.
2. The Offer became unconditional on 17 January 2008.
3. At 4.55 pm on 8 February 2008 Zinifex lodged with ASIC a notice of variation to extend the closing date of the Offer until 7.00 pm on Friday 22 February 2008 (**Notice of Variation**).
4. A Notice of Variation (addressed to each Allegiance shareholder) was collected by Australia Post from Computershare at around 5:00 pm on 8 February 2008.
5. Zinifex emailed the Notice of Variation to Allegiance at 6:56 pm on 8 February 2008.
6. At 7:18 pm on 8 February 2008, Zinifex emailed an announcement containing the Notice of Variation to ASX. At 7:30 pm on 8 February 2008 the Notice of Variation appeared on the ASX website.
7. By Zinifex not informing Allegiance of the extension of the Offer as soon as practicable after the Notice of Variation to shareholders was collected by Australia Post:
 - (a) the acquisition of control over voting shares in Allegiance had not taken place in an efficient, competitive and informed market; and
 - (b) Allegiance shareholders were not given enough information to assess the merits of the extension of the Offer and reasonable time to consider it.(the **Circumstances**).
8. It appears to the Panel that the Circumstances are unacceptable having regard to:
 - (a) the effect that the Panel is satisfied that the Circumstances have had on:
 - (i) the control or potential control of Allegiance; or
 - (ii) the acquisition or proposed acquisition by Zinifex of a substantial interest in Allegiance; or
 - (b) the purposes of Chapter 6 set out in section 602 of the Act.

Takeovers Panel

Declaration – Allegiance Mining NL

9. 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 Allegiance.

10. The Panel has had regard to the matters in section 657A(3).

Under section 657A, the Panel declares that the Circumstances constitute unacceptable circumstances in relation to the affairs of Allegiance.

Alan Shaw
Counsel
with authority of John Fast
President of the Sitting Panel
Dated 20 February 2008



Annexure B

Corporations Act Section 657D

IN THE MATTER OF ALLEGIANCE MINING NL

PURSUANT TO:

A declaration of unacceptable circumstances dated 20 February 2008 in relation to the off market takeover offer for Allegiance Mining NL (**Allegiance**) by Zinifex Australia Limited (**Zinifex**) (the **Offer**)

UNDER SECTION 657D THE PANEL ORDERS

1. On Monday, 25 February 2008, as soon as practicable before 10:00 am (Melbourne time), that Zinifex issue a statement (in a form acceptable to the Panel) to the market. The statement must inform Allegiance shareholders who accepted the Offer after 5:00 pm (Melbourne time) but before 7.30 pm (Melbourne time) on 8 February 2008 that:
 - (a) at any time before 5:00 pm on Wednesday, 27 February 2008 they have a right to apply to Zinifex to cancel their acceptance;
 - (b) how and to whom that application is to be directed; and
 - (c) such application must be accompanied with evidence that is reasonably satisfactory to Zinifex as to the time of their acceptance of the Offer.
2. The contracts that were formed on the acceptances of the Offer by the following shareholders be cancelled as soon as practicable after 5:00 pm on Wednesday, 27 February 2008:
 - (a) Lion Selection Group Limited, Andrew Lambert and Caroline Lee and the Lambert and Lee Superannuation Fund on 8 February 2008; and
 - (b) any Allegiance shareholder who contacts Zinifex by 5:00 pm on Wednesday, 27 February 2008 providing reasonably satisfactory evidence (whether by statutory declaration which will be taken as prima facie evidence, or otherwise) that they accepted the Offer after 5:00 pm (Melbourne time) but before 7.30 pm (Melbourne time) on 8 February 2008,
(each a **Qualifying Shareholder**).
3. Zinifex and the Qualifying Shareholder take all necessary steps and, to the extent necessary, any third party including a Participating Organisation of ASX or the ASX Transfer and Settlement Corporation take any necessary steps, to cancel the relevant acceptance as soon as practicable after 5:00 pm on Wednesday, 27 February 2008.

Alan Shaw
Counsel
with authority of John Fast
President of the Sitting Panel

Dated 22 February 2008