



Australian Government

Takeovers Panel

MEDIA RELEASE

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20 August 2013

Coppermoly Limited- Declaration of Unacceptable Circumstances and Orders

The Panel has made a declaration of unacceptable circumstances (Annexure A) and final orders (Annexure B) in relation to an application dated 26 July 2013 by Yeaman Nominees Pty Limited as trustee for the Yeaman Super Fund in relation to the affairs of Coppermoly Limited (see [TP/32](#) and [TP/33](#)).

Background

The application concerned a 1 for 4 non-renounceable entitlement offer at a price of \$0.045 per share to raise up to approximately \$1.95 million¹, fully underwritten by Jelsh Holdings Pty Ltd.

After entering into the underwriting arrangement, a related entity of Jelsh entered into an agreement to acquire 16,290,333 Coppermoly shares. As a result of this acquisition, and additional on-market acquisitions, Jelsh's voting power in Coppermoly increased to 12.06%.

The entitlement offer closed on 30 July 2013. Based on the participation of shareholders and Jelsh's obligations as underwriter, Jelsh's voting power in Coppermoly will increase to approximately 26.76%.

Declaration

The Panel considered that:

- the acquisition of shares by a related entity of Jelsh, after Jelsh became the underwriter to Coppermoly's proposed entitlement offer, put Jelsh in a position where it would be likely to increase its voting power in Coppermoly to more than 20%
- all reasonable steps to minimise the potential control impact of the entitlement offer on Coppermoly were not taken and

¹ Subsequently reduced to approximately \$1.62 million by supplementary prospectus dated 11 July 2013

- there are material deficiencies in Coppermoly's disclosure, including in relation to the identity of Jelsh and its intentions for Coppermoly and the changed intentions of directors in respect of taking up their entitlements.

The Panel did not consider it against the public interest to make the declaration, and in making it had regard to the matters in s657A(3).

Orders

The Panel has made orders, including orders to the effect that:

1. Coppermoly and Jelsh comply with their obligations under the underwriting arrangement
2. Jelsh not rely on any right it may have to terminate the underwriting arrangement as a consequence of the application to the Panel, the declaration or the orders
3. Jelsh is obliged to divest shares it receives as underwriter of the entitlement offer so that shareholders who were originally entitled to participate in the entitlement offer are offered:
 - (a) as many shares as is necessary for them to take up what was their full original entitlement in the entitlement offer and
 - (b) shares in excess of their entitlement
4. Jelsh and its associates are restricted from:
 - (a) voting any shares held in excess of 20% voting power (subject to such voting rights being restored at a rate of 3% every 6 months) and
 - (b) participating in any future rights issue in respect of shares subject to the voting restriction above and
5. the letter of offer to shareholders in respect of shares to be divested by Jelsh be in a form approved by the Panel.

The determination of these proceedings brings to an end the interim orders dated 29 July 2013.

The sitting Panel was Ewen Crouch, Elizabeth Hallett and Robert Johanson (sitting President).

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

Allan Bulman
Director, Takeovers Panel
Level 10, 63 Exhibition Street
Melbourne VIC 3000
Ph: +61 3 9655 3597
allan.bulman@takeovers.gov.au



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Annexure A

CORPORATIONS ACT SECTION 657A DECLARATION OF UNACCEPTABLE CIRCUMSTANCES

COPPERMOLY LIMITED

CIRCUMSTANCES

1. Coppermoly Limited (**Coppermoly**) is a company listed on ASX and Port Moresby Stock Exchange.
2. On 26 June 2013, Coppermoly announced:
 - (a) 1 for 4 non-renounceable entitlement offer at \$0.045 per share to raise up to approximately \$1,950,000², fully underwritten by Jelsh Holdings Pty Ltd (**Jelsh**) and
 - (b) placement of 3,700,000 shares to Jelsh.
3. The entitlement offer included a shortfall facility. The prospectus included a statement that the directors of Coppermoly reserved the right to reject any application for shortfall shares.
4. The prospectus stated that Jelsh had voting power of 0.53% in Coppermoly.
5. On 10 July 2013, Coppermoly announced that a related entity of Jelsh had entered into an agreement to acquire 16,290,333 Coppermoly shares. As a result of this acquisition, and additional on-market acquisitions, Jelsh's voting power in Coppermoly increased to 12.06%.
6. The entitlement offer closed on 30 July 2013. On the basis of the total number of shares applied for under the entitlement offer and shortfall facility, Jelsh is entitled to be issued 35,341,331 shares under the underwriting agreement. The effect is that Jelsh will increase its voting power to approximately 26.76% in circumstances when it could not otherwise have done so.
7. All reasonable steps to minimise the potential control impact of the entitlement offer on Coppermoly were not taken.
8. There are material information deficiencies in Coppermoly's disclosure, including in relation to the identity of Jelsh and its intentions for Coppermoly and the changed intentions of directors in respect of taking up their entitlements.

² Subsequently reduced to approximately \$1,620,000 by supplementary prospectus dated 11 July 2013

9. As a result of the foregoing, the acquisition of control over voting shares in Coppermoly has not taken place in an efficient, competitive and informed market, and the holders of shares were not given enough information.
10. It appears to the Panel that the circumstances are unacceptable having regard to:
 - (a) the effect that the Panel is satisfied the circumstances have had, will have or are likely to have on:
 - (i) the control, or potential control, of Coppermoly or
 - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in Coppermoly or
 - (b) the purposes of Chapter 6 set out in section 602 of the Corporations Act 2001 (Cth) (Act).
11. 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).

DECLARATION

The Panel declares that the circumstances constitute unacceptable circumstances in relation to the affairs of Coppermoly.

Alan Shaw
Counsel
with authority of Robert Johanson
President of the sitting Panel
Dated 20 August 2013



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Annexure B

CORPORATIONS ACT SECTION 657D ORDERS

COPPERMOLY LIMITED

The Panel made a declaration of unacceptable circumstances on 20 August 2013.

THE PANEL ORDERS

Completion of underwriting obligations and divestment of shortfall shares

1. Coppermoly and Jelsh must comply with their obligations under the underwriting arrangement, amended to delete 'Closing Date' in clause 10.1 and replace it with the date of these orders.
2. Jelsh must not rely on any right it may have to terminate the underwriting arrangement as a consequence of the application to the Panel in this matter, the declaration of unacceptable circumstances or these orders
3. Jelsh must:
 - (a) divest the shortfall shares as set out in these orders and
 - (b) until completion of orders 1 to 8, not otherwise deal with or vote any of the shortfall shares.
4. Within 10 business days of the date of these orders Coppermoly must, on behalf of Jelsh, offer eligible shareholders the shortfall shares obtained by Jelsh under the rights issue on terms to the following effect:
 - (a) the price is the rights issue price
 - (b) the offer is open for 2 weeks from the date the last of the offers is dispatched
 - (c) eligible shareholders who did not take up their full entitlement in the rights issue are offered as many shares as is necessary for them to take up what were their full original entitlements
 - (d) eligible shareholders who accept shares under order 4(c) are treated as if they had subscribed for those shares pursuant to the rights issue
 - (e) eligible shareholders (excluding the Jelsh Group) are invited to apply for any shares remaining after the acceptances in order 4(c) have been satisfied in full. Applications must be filled as follows:

- (i) each shareholder who has applied for additional shares will be allocated their pro rata share of the shortfall having regard to their holding at the closing date (if a shareholder has made a shortfall application for an amount less than the amount of shares that the shareholder would otherwise be allocated under this process, the shareholder will be allocated the amount applied for) and
- (ii) if, following allocation of the shortfall in the first round, there remains any shortfall, the above allocation process will be repeated in rounds until either all the shortfall has been allocated or all shortfall applications have been satisfied in full.

For avoidance of doubt, the Corporations Act limits apply to the acquisition of shortfall shares.

- (f) the money (in cheque or other form acceptable to Coppermoly) for the shares accepted under order 4(c) is to be sent to Coppermoly with the acceptance. The money is to be banked in a special purpose trust account no later than the end of the day of receipt
 - (g) the money (in cheque or other form acceptable to the Coppermoly) for the shares applied for under order 4(e) is to be sent to Coppermoly with the application for remaining shares and
 - (h) Coppermoly must return any surplus application money to applicants, without interest, where the number of shares applied for is greater than the amount of shares allocated to an applicant pursuant to order 4(e).
5. The offer must be made in a letter of offer dispatched to eligible shareholders. The letter of offer must be in a form approved by the Panel and include:
- (a) disclosure of the allocation policy under the shortfall facility as described in order 4(e)
 - (b) disclosure in relation to the identity, financial position of Jelsh and Jelsh's intentions in relation to Coppermoly
 - (c) the outcome of the rights issue and
 - (d) the Coppermoly directors' participation under the rights issue and their intentions in relation to their participation in the offer and the possible control effect of the rights issue and the offer.
6. Within 5 business days of the close of the offer, Coppermoly must:
- (a) scale back the applications if necessary
 - (b) disclose in a market announcement the scale back, its detailed calculation methodology, the outcome of the offer and the number of shares issued to Jelsh
 - (c) register the transfers of the shares and

- (d) pay over the money, and account, to Jelsh for the shares sold.
7. Jelsh must provide proper transfers for the sale of the shares.
 8. Coppermoly must issue any refund due to an applicant within 5 business days of transfers being completed.

Restrictions on voting and participation in future rights issues

9. None of the Jelsh Group or their respective associates may exercise, and Coppermoly must disregard, any voting rights in respect of shares held by them upon completion of the process set out in orders 1 to 8 in excess of 20% voting power in Coppermoly, subject to such voting rights in respect of those shares being restored at a rate of 3% every 6 months from the date of these orders.
10. The Jelsh Group and their respective associates must not make any acquisition of Coppermoly shares that, but for Item 9 of section 611 of the *Corporations Act 2001* (Cth), would contravene section 606 until order 9 ceases to apply in relation to any Coppermoly shares held by them.
11. The Jelsh Group and their respective associates may participate in any future rights issues other than in respect of any shares held by them that are subject to the voting restriction in order 9.

Interpretation

12. In these orders the following terms apply.

closing date	the closing date for the rights issue, being 30 July 2013
Coppermoly	Coppermoly Limited
eligible shareholders	shareholders of Coppermoly who were eligible to participate in the rights issue
Jelsh	Jelsh Holdings Pty Ltd
Jelsh Group	Jelsh, WXH Holdings Pty Ltd, WXH Holdings Limited, Wanfu Huang and Xiaoyi Shen
rights issue	the 1 for 4 non-renounceable entitlement offer announced by Coppermoly on 26 June 2013 (as revised by supplementary prospectus dated 11 July 2013) to raise up to approximately \$1,620,000
shortfall shares	shares not subscribed for under the rights issue by

**underwriting
arrangement**

eligible shareholders

the Placement and Underwriting Agreement
between Jelsh and Coppermoly dated 25 June 2013

**Alan Shaw
Counsel
with authority of Robert Johanson
President of the sitting Panel
Dated 20 August 2013**