



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP13/50

Monday, 14 October 2013

Avalon Minerals Limited – Final Orders

The Panel made a declaration of unacceptable circumstances on 7 October 2013 in relation to an application dated 5 September 2013 by Sidan Super Pty Ltd as trustee for the Sidan Superannuation Fund in relation to the affairs of Avalon Minerals Limited (see [TP13/48](#)).

The Panel has now made final orders (Annexure). In summary, these orders operate so that:

1. Avalon must reopen its rights issue and offer eligible shareholders¹ the opportunity to take up their entitlements and apply for shortfall shares or withdraw their original applications
2. Avalon must make additional disclosure in relation to various matters
3. Tan Sri Abu Mohamed Sahid must not complete the underwriting of the rights issue
4. Tan Sri Abu and Dato Richard Lim must give notice of their substantial holding in accordance with s671B
5. after completion of the reopened rights issue, any shares held by Tan Sri Abu or Dato Richard Lim in excess of 19.9% and 8.22% respectively² will be vested in the Commonwealth for sale by ASIC and
6. Tan Sri Abu and Dato Richard Lim's collective voting power is restricted to 20%. This limit:
 - (a) increases at a rate of 3% every six months and
 - (b) does not apply to any acquisition not prohibited by Chapter 6.³

As these proceedings have concluded, the interim orders dated 27 September 2013 are no longer in effect.

¹ Excludes shareholders to whom shares were issued following the Panel's interim orders dated 27 September 2013 and Avalon directors

² Their interests prior to the announcement of Avalon's rights issue

³ However, Tan Sri Abu and Dato Richard Lim (and their associates) must not, while the voting restriction is in place, make any acquisitions in reliance on the 'creep' exception in item 9 of s611

The sitting Panel was Sarah Dulhunty, Ron Malek and Nora Scheinkestel (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



Australian Government

Takeovers Panel

**CORPORATIONS ACT
SECTION 657D
ORDERS**

AVALON MINERALS LIMITED

The Panel made a declaration of unacceptable circumstances on 7 October 2013.

THE PANEL ORDERS

Completion of rights issue and additional disclosure

1. Tan Sri Abu must not complete his obligations to acquire the underwritten shares under the underwriting agreement with Avalon.
2. Avalon must reopen the rights issue for a period sufficient to allow Avalon time to comply with the following orders and disclose in a market announcement that it has done so.
3. Within 10 business days of the date of these orders, Avalon must send a letter to eligible shareholders stating that:
 - (a) the rights issue has reopened and that:
 - (i) if they did not take up their entitlement in full they may do so and
 - (ii) they may apply for the shortfall (including shares available due to withdrawn applications under order 3(b)) in addition to their entitlement and
 - (b) eligible shareholders who had validly applied for shares under the rights issue have the right to withdraw their application,
in accordance with the following:
 - (c) eligible shareholders must be allowed 2 weeks from the date the last of the letters referred to in this order 3 is dispatched to apply for remaining shares or withdraw their application
 - (d) the money (in cheque or other form acceptable to Avalon) for the shares applied for is to be sent to Avalon with the application
 - (e) Avalon must return any application money to applicants who withdraw their applications under order 3(b) and
 - (f) Avalon must return any surplus application money to applicants, without interest, where the number of shares applied for under the shortfall is greater than the number of shares allocated to an applicant.
4. The letter to eligible shareholders referred to in order 3 must be in a form approved by the Panel and disclosed to ASX prior to despatch. It must include:

- (a) adequate disclosure in relation to the following:
 - (i) Avalon's need for, and use of, funds
 - (ii) Tan Sri Abu's association with Dato Richard Lim
 - (iii) the original outcome of the rights issue
 - (iv) the Panel's decision in this matter
 - (v) the funding implications of the reopened rights issue without the underwriting agreement with Tan Sri Abu, or information on any new underwriting arrangement and
 - (vi) the possible control effect of the reopened rights issue and
 - (b) application and withdrawal forms.
5. Until the close of the reopened rights issue, Avalon must:
- (a) not issue or allot any remaining shares and
 - (b) hold any money received as subscriptions for the remaining shares separately from all other Avalon funds and on trust for the subscribers.
6. Within 5 business days of the close of the reopened rights issue, Avalon must:
- (a) scale back the applications under the shortfall if necessary
 - (b) issue the shares
 - (c) disclose in a market announcement the scale back, its detailed calculation methodology and the outcome of the reopened rights issue
 - (d) issue any refund due to an applicant under orders 3(e) and 3(f) and
 - (e) notify the Panel and ASIC in writing that it has completed the requirements of paragraphs (a) to (d) of this order 6 and the number of sale shares (with detailed calculations) of each associated party to be vested in the Commonwealth under order 9.
7. Until completion of orders 1 to 6, the associated parties must not dispose of, transfer, grant a security interest over (or agree to any such disposal, transfer or grant) or vote any Avalon shares held by either of them.

Substantial holding notices

8. Within 2 business days after the date of these orders, the associated parties must give notice of their substantial holding in Avalon and their association in accordance with s671B.⁴

Divestment of shares by associated parties

9. The sale shares belonging to each associated party are vested in the Commonwealth on trust for each of them respectively.
10. ASIC must:
- (a) sell the sale shares in accordance with these orders and

⁴ References are to the *Corporations Act 2001* (Cth) unless otherwise specified

- (b) account to the associated parties for the proceeds of sale, net of the costs, fees and expenses of the sale and any costs, fees and expenses incurred by ASIC and the Commonwealth (if any).
11. ASIC must:
 - (a) retain an appointed seller to conduct the sale and
 - (b) instruct the appointed seller to:
 - (i) use the most appropriate sale method to secure the best available sale price for the sale shares that is reasonably available at that time in the context of complying with these orders, including the stipulated timeframe for the sale and the requirement that none of the associated parties or their respective associates may acquire, directly or indirectly, any of the sale shares
 - (ii) provide to ASIC a statutory declaration that, having made proper inquiries, the appointed seller is not aware of any interest, past, present, or prospective which could conflict with the proper performance of the appointed seller's functions in relation to the disposal of the sale shares
 - (iii) unless the appointed seller sells sale shares on market, obtain from any prospective purchaser of sale shares a statutory declaration that the prospective purchaser is not associated with any of the associated parties and
 - (iv) dispose of all of the sale shares within 3 months from the date of its engagement.
 12. Avalon and the associated parties must do all things necessary to give effect to these orders, including:
 - (a) doing whatever is necessary to ensure that the Commonwealth is registered with title to the sale shares in the form approved by ASIC as soon as reasonably practicable after orders 9 to 16 come into effect and
 - (b) until the Commonwealth is registered, complying with any request by ASIC in relation to the sale shares.
 13. None of the associated parties or their respective associates may acquire, directly or indirectly, any of the sale shares.
 14. The associated parties must not otherwise dispose of, transfer, grant a security interest over (or agree to any such disposal, transfer or grant) or vote any sale shares.
 15. Nothing in these orders obliges ASIC to invest, or ensure interest accrues on, any money held in trust under these orders.

Restrictions on voting and additional acquisitions

16. In addition to order 14, for 18 months from the date this order comes into effect, Tan Sri Abu and his associates (excluding Dato Richard Lim) must not exercise, and Avalon must disregard, any voting rights in respect of shares in excess of 'A' % voting power in Avalon (as calculated in the formula below).

$$A = B - C$$

where:

B is 20% + 3% for each 6 month period following the date of these orders⁵

C is the voting power of Dato Richard Lim in Avalon at the time (excluding any shares held by Tan Sri Abu)

17. Order 16 does not apply to any Avalon shares acquired which increase the voting power of the associated parties after the date of these orders where such acquisition is not prohibited by Chapter 6. However, the associated parties and their respective associates must not make any acquisition of Avalon shares that, but for item 9 of s611, would contravene s606 until order 16 ceases to apply in relation to any Avalon shares held by any of them.

Effect

18. Orders 9 to 16 come into effect immediately upon completion of orders 1 to 6. All other orders come into effect immediately or as otherwise specified in that order.

Interpretation

19. In these orders the following terms apply.

appointed seller	an investment bank or stock broker
ASIC	Australian Securities and Investments Commission, as agent of the Commonwealth
associated parties	Tan Sri Abu Dato Richard Lim
Avalon	Avalon Minerals Limited
Dato Richard Lim	Dato Lim Heng Suan
eligible shareholders	shareholders of Avalon who were eligible to participate in the rights issue, other than Tan Sri Abu, Dato Richard Lim and Avalon directors (and their associated entities)
on market	has the meaning in s9
record date	the record date for the rights issue, being 19 August 2013
remaining shares	new shares to be issued under the rights issue other than the 'excluded shares' (as defined in the interim orders dated 27 September 2013)

⁵ Consistent with the 'creep' exception in item 9 of s611

rights issue	the 1 for 1 non-renounceable rights issue at \$0.01 per share announced by Avalon on 9 August 2013 to raise up to approximately \$5,890,000
sale shares	such number of ordinary shares in the issued capital of Avalon held by the associated parties after completion of the reopened rights issue, to the extent that their voting power in Avalon (excluding any shares held by the other associated party) is greater than: <ul style="list-style-type: none"> • 19.90% in respect of Tan Sri Abu and • 8.22% in respect of Dato Richard Lim
Tan Sri Abu	Tan Sri Abu Sahid Mohamed

Allan Bulman
Director
with authority of Nora Scheinkestel
President of the sitting Panel
Dated 14 October 2013