



Australian Government

Takeovers Panel

**Reasons for Decision
Ambassador Oil and Gas Limited 02
[2014] ATP 17**

Catchwords:

Bidder's statement – supplementary bidder's statement – disclosure – decline to conduct proceedings – misleading – intentions – broker valuation – independent technical assessment report – Valmin code – JORC – reserves and resources – sale facility – foreign scrip

Corporations Act 2001 (Cth), sections 633(1) item 6, 710 and 712

GN 18 – Takeover documents

ASIC Regulatory Guide 228 – Prospectuses: Effective disclosure for retail investors

ASX Guidance Note 32 – Reporting on Oil and Gas Activities

Tower Software Engineering Pty Ltd 01 [2006] ATP 20, Taipan Resources NL (No.8) [2001] ATP 3

Interim order	IO undertaking	Conduct	Declaration	Final order	Undertaking
Yes	No	No	No	No	No

INTRODUCTION

- The Panel, Martin Alciaturi, David Friedlander and Nora Scheinkestel (sitting President), declined to conduct proceedings on an application by Drillsearch Energy Limited in relation to the affairs of Ambassador Oil and Gas Limited. Ambassador was the subject of competing offers from Drillsearch and Magnum Hunter Resources Corporation. The application concerned disclosure in Magnum's bidder's statement. The Panel declined to conduct proceedings after Magnum made supplementary disclosure.
- In these reasons, the following definitions apply.

Ambassador	Ambassador Oil and Gas Limited
Drillsearch	Drillsearch Energy Limited
Magnum	Magnum Hunter Resources Corporation

FACTS

- Ambassador is an ASX listed company (ASX code: AQO).
- On 28 May 2014, Drillsearch (ASX code: DLS) and Ambassador announced Drillsearch's intention to make a recommended conditional off-market bid for Ambassador. The offer consideration was 1 Drillsearch share for every 5.4 Ambassador shares.
- On 10 June 2014, Magnum (a NYSE-listed company) announced its intention to make an off-market bid for Ambassador, through its wholly owned subsidiary - Outback Shale Hunter Pty Ltd. The offer consideration was 1 share of Magnum common stock for every 27.8 Ambassador shares.

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6. On 16 June 2014, Drillsearch increased its bid by adding 5 cents cash per Ambassador share and declared its bid unconditional. The Ambassador board announced that the revised offer was superior to Magnum's offer.
7. On 17 June 2014, Magnum increased its bid by offering 1 share of Magnum common stock for every 23.6 Ambassador shares and declared its bid unconditional.
8. On 20 June 2014, Magnum lodged its bidder's statement with ASIC.

APPLICATION

Declaration sought

9. By application dated 22 June 2014, Drillsearch sought a declaration of unacceptable circumstances. Drillsearch submitted that Magnum's bidder's statement contained material information deficiencies in relation to (among other things):
 - (a) the value of consideration if accepting shareholders elected to receive cash under a sale facility
 - (b) comparison of Australian and US legal regimes, in particular regarding shareholder rights and oil and gas regulatory requirements (including reserves reporting and the failure to provide an independent technical report)
 - (c) disclosure of the matters required under GN 18 *Takeover documents*, regarding aggregated broker valuations
 - (d) details of the circumstances surrounding Magnum changing auditors, the SEC investigation into Magnum's financial reporting and class actions against Magnum
 - (e) disclosure of Magnum's capital structure
 - (f) disclosure of Magnum's intentions regarding Ambassador and
 - (g) inappropriate incorporation by reference of SEC filings.
10. Drillsearch submitted that the bidder's statement would cause material prejudice to Ambassador shareholders and was contrary to an efficient, competitive and informed market.

Interim orders sought

11. Drillsearch sought an interim order preventing dispatch of Magnum's bidder's statement.
12. On 23 June 2014, the Acting President made an interim order (Annexure A) to the effect that Outback Shale Hunter Pty Ltd not take any steps, or allow any steps to be taken, to process any acceptances. The Acting President considered the interim order preserved the status quo pending determination of the application by the sitting Panel.

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Final orders sought

13. Drillsearch sought final orders to the effect that Magnum provide supplementary disclosure addressing the alleged deficiencies.

DISCUSSION

14. We informed the parties that we would be minded not to conduct proceedings if Magnum addressed a number of issues (see below) in a supplementary bidder's statement. Magnum did so.

Sale facility

15. The bidder's statement disclosed that Magnum would establish a share sale facility under which accepting shareholders could elect to have their consideration Magnum shares issued to a sale agent who would then sell those shares outside the United States to non-US persons. Accepting shareholders would receive the net proceeds.
16. Drillsearch submitted that the offer of the sale facility was misleading as it failed to disclose the high probability that the net proceeds would be materially less than the implied value of the offer given the features of the sale facility.
17. We consider that the bidder's statement disclosure in relation to the sale facility was deficient. However, the sale facility required ASIC relief, which was not granted. As a result, Magnum could not offer the sale facility as originally contemplated and this aspect of the bidder's statement was withdrawn. In response, we required Magnum to offer withdrawal rights to all shareholders.
18. Should Magnum implement a sale facility for its offer in the future, the value implications for shareholders electing to participate in it must be fully disclosed.

Reserves and resources

19. Drillsearch submitted that Magnum's bidder's statement was deficient because it did not include:
 - (a) an independent technical expert's report, which was required for the s710¹ disclosure test to be satisfied and
 - (b) disclosure of an equivalent standard to that under Chapter 5 of the ASX Listing Rules and ASX Guidance Note 32, which sets the standard for market disclosure in Australia for oil and gas reporting and must be complied with by ASX listed companies.
20. Similarly, ASIC submitted that Ambassador shareholders would reasonably require information in Magnum's bidder's statement that complied in all material respects with relevant industry codes and Chapter 5 of the ASX Listing Rules. This included information that would generally be found in an independent technical assessment report compiled in accordance with the Valmin Code.

¹ References are to *Corporations Act 2001* (Cth) unless otherwise indicated

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21. Magnum's bidder's statement contained reserves reporting in accordance with SPE-PRMS, a widely-accepted industry guideline for reporting oil and gas reserves internationally.² The bidder's statement did not contain an independent technical assessment report or Chapter 5-standard disclosure.
22. Magnum offered to deal directly with ASIC to resolve the issue of what information Ambassador shareholders should receive in relation to its reserves and resources. This took some time. Ultimately we were provided with additional reserves and resources disclosure, although it was not compliant with the Valmin Code in all respects. In particular, there was no report on Magnum's tenements and title, which we would normally expect to see when scrip consideration is being offered by a mining and exploration entity.
23. However, we are satisfied that, in the circumstances, Ambassador shareholders will not suffer material detriment as a result of receiving the additional reserves and resources disclosure provided by Magnum that is not fully compliant with the Valmin Code. Any further delay to Magnum's offer that would result from requiring it to produce an independent technical assessment report fully compliant with the Valmin Code is not in Ambassador shareholders' interests. Ambassador is subject to competing offers by Magnum and Drillsearch; it is in Ambassador shareholders' interests that any auction for control develop without undue delay.

Aggregated broker valuation

24. Magnum's bidder's statement disclosed an aggregated broker valuation without the additional information specified at paragraph 22 of GN 18 *Takeover documents*.
25. Magnum submitted that its aggregated broker valuation statements were not misleading or confusing as the heading under which the aggregated broker valuation appeared clearly stated that the purpose of that section of the bidder's statement was to inform Ambassador shareholders that Magnum was covered by a large number of analysts. Irrespective of the purpose we consider that, by disclosing an aggregated broker valuation, Magnum should have disclosed the information required under paragraph 22 of GN 18. This would reduce the risk of the aggregated broker valuation being misleading.
26. Magnum agreed to provide an updated broker valuation as at 14 August 2014 and the further information as to how its broker valuations were derived.

Other disclosure deficiencies

27. We consider that the bidder's statement was also materially deficient in the following respects:
 - (a) Magnum did not disclose the circumstances surrounding it changing auditors twice in the last two and a half years (the first change occurred in May 2012; the second change in July 2012). We consider that two changes of auditors in the last two years is material to an Ambassador shareholder's decision

² ASX GN 32 states that "The reporting framework for oil and gas activities in Chapter 5 is underpinned by [SPE-PRMS]"

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whether to accept Magnum's offer and the circumstances surrounding those changes should have been disclosed.

- (b) Magnum did not provide a clear, concise and effective summary of the classes and number of Magnum securities on issue as well as the rights attaching to those securities. This information should have been provided.
- (c) Magnum did not disclose its intentions for Ambassador in the event that it acquired a non-controlling interest in Ambassador. This was distinctly possible given Magnum's and Drillsearch's offers were unconditional and should have been addressed.
- (d) As a NYSE-listed company, Magnum had filed a significant amount of information about its operations with the SEC. Drillsearch submitted that Magnum was seeking to incorporate its SEC filings by reference, in accordance with s712, which it was not permitted to do; and therefore Magnum had omitted material information from its bidder's statement. Magnum should have, but did not, provide a summary of its SEC filings or state that all material information contained in the filings that is required to be disclosed in accordance with s710 had been disclosed.

Supplementary bidder's statement

28. Magnum offered to address the issues identified above and provided us with a draft supplementary bidder's statement, which addressed our issues. The supplementary bidder's statement was lodged with ASX on 20 August 2014 and dispatched to Ambassador shareholders.

DECISION

29. Given the supplementary disclosure by Magnum, we consider that a declaration of unacceptable circumstances is unnecessary. Accordingly, we have decided not to conduct proceedings in relation to the application under regulation 20 of the *Australian Securities and Investments Commission Regulations 2001 (Cth)*.

Orders

30. Given that we have decided not to conduct proceedings, we do not (and do not need to) consider whether to make any order.

Nora Scheinkestel

President of the sitting Panel

Decision dated 20 August 2014

Reasons published 27 August 2014

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Advisers

Party	Advisers
Ambassador	Johnson Winter & Slattery
Drillsearch	Ashurst
Magnum	Norton Rose Fulbright



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Annexure A

**CORPORATIONS ACT
SECTION 657E
INTERIM ORDER**

AMBASSADOR OIL AND GAS LIMITED 02

Drillsearch Energy Limited made an application to the Panel dated 22 June 2014 in relation to the affairs of Ambassador Oil and Gas Limited (**Ambassador**).

The Acting President ORDERS:

1. Outback Shale Hunter Pty Ltd (a wholly owned subsidiary of Magnum Hunter Resources Corporation) must not take any steps, or allow any steps to be taken, to process any acceptances received under its bid for Ambassador until the earliest of:
 - (a) further order of the Panel
 - (b) the determination of the proceedings and
 - (c) 2 months from the date of this interim order.

**Alan Shaw
Counsel
with authority of Dr Nora Scheinkestel
Acting President
Dated 23 June 2014**