



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP15/52

Tuesday, 6 October 2015

Affinity Education Group Limited - Declaration of Unacceptable Circumstances

The Panel has made a declaration of unacceptable circumstances (Annexure A) in relation to an application dated 26 August 2015 by Affinity Education Group Limited (ASX code: AFJ) in relation to its affairs (see [TP15/42](#)).

Background

On 3 July 2015, G8 Education Limited, an ASX listed company (ASX Code: GEM) that held 19.89% of Affinity shares, announced its intention to make an off-market scrip takeover bid for all the shares in Affinity (implied value of \$0.703). On 3 August 2015, the scrip bid consideration was increased (implied value of \$0.80) and a separate on-market cash offer for Affinity was announced at \$0.80 per Affinity share. The scrip bid opened on 21 August 2015 and the on-market bid opened on 26 August 2015.

On 6 July 2015, JB Super Fund Pty Ltd acquired 97,500 Affinity shares (0.04%).

On 9 and 10 July 2015, Taxonomy Pty Ltd acquired in total 10,500,000 Affinity shares (4.54%).

Between 13 July and 28 July 2015, West Bridge Holdings Pty Ltd acquired 11,300,000 Affinity shares (4.88%).

By 24 August 2015, each of JB Super and Taxonomy had accepted its shares into the scrip bid.

Declaration

The Panel made a declaration of unacceptable circumstances because (among other things):

- there are family links between Ms Jennifer Hutson, the chairperson of G8, and the owner of JB Super
- there are, or have been, structural links, common investments and common dealings between Ms Jennifer Hutson and each of the parties identified above

- there were unusual funding arrangements and unusual use of common intermediaries and
- the acceptances of the scrip bid by JB Super and Taxonomy occurred in uncommercial circumstances.

The relevant interests, and associations, led to the market not being efficient, competitive and informed, to information deficiencies and to contraventions of provisions of chapters 6 and 6C of the *Corporations Act 2001* (Cth).

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 is considering what final orders to make and will publish details in due course. The interim orders remain in effect (see [TP15/049](#)).

The sitting Panel is Geoff Brunsdon (Sitting President), Elizabeth Bryan AM and Karen Evans-Cullen.

The Panel will publish its reasons for the decision in due course on its [website](#).

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 657A
DECLARATION OF UNACCEPTABLE CIRCUMSTANCES**

AFFINITY EDUCATION GROUP LIMITED

CIRCUMSTANCES

1. Affinity Education Group Limited (**Affinity**) is an ASX listed company (ASX code: AFJ).
2. On 2 July 2015, G8 Education Limited (**G8**), an ASX listed company (ASX Code: GEM), acquired 16.41% of Affinity shares. G8's chairperson is Ms Jennifer Hutson.
3. On 3 July 2015, G8 acquired further Affinity shares, increasing its interest to 19.89% of Affinity shares.
4. On the same day G8 announced to the market its intention to make an off-market takeover bid for all of Affinity's shares. The consideration offered was to be one G8 share for every 4.61 Affinity shares (implied value of \$0.703) (**scrip bid**).
5. On 6 July 2015, JB Super Fund Pty Ltd (**JB Super**) acquired 97,500 Affinity shares (0.04%). The sole director and shareholder of JB Super is Dr Jane Hutson, Ms Jennifer Hutson's sister.
6. On 9 and 10 July 2015, Taxonomy Pty Ltd (**Taxonomy**) acquired in total 10,500,000 Affinity shares (4.54%). The sole shareholder of Taxonomy is Bamson Pty Ltd, which is owned by Mr Alwyn Peffer and his wife, Ms Karen Peffer. The sole director of Taxonomy is Mr Peffer.
7. Between 13 July and 28 July 2015, West Bridge Holdings Pty Ltd (**West Bridge**) acquired 11,300,000 Affinity shares (4.88%). The sole director and shareholder of West Bridge is Mr Nigel Elias.
8. On 30 July 2015, G8 lodged a bidder's statement in relation to the scrip bid.
9. On 3 August 2015, G8 increased the consideration under the scrip bid to one G8 share for every 4.25 Affinity shares (implied value of \$0.80). It also freed the bid from all conditions. It lodged a supplementary bidder's statement and a replacement bidder's statement. It also announced an on-market offer at \$0.80.
10. On the same day Affinity announced that its directors were in discussions with an interested third party.
11. On 21 August 2015, offers under the scrip bid opened.
12. On 24 August 2015, G8 lodged a substantial holder notice indicating that it had acquired a relevant interest in 4.58% of Affinity shares through acceptances of the scrip bid, taking its interest to 24.48%.

13. On 28 August 2015, G8 lodged a further substantial holder notice indicating that it had acceptances taking its interest to 24.55% of Affinity shares, the details of which included an acceptance for 97,500 shares.

Taxonomy

14. There are, or have been, structural links and common investments and dealings between Ms Jennifer Hutson and Mr Pepper. Funding for Taxonomy's acquisition of Affinity shares was provided by a company whose principal has structural links to Ms Jennifer Hutson. Further, Taxonomy's acquisition was facilitated through intermediaries who have structural links with Ms Jennifer Hutson. These same intermediaries acted for both West Bridge and Taxonomy, with one of the intermediaries acting for G8, West Bridge and Taxonomy on the acquisition of shares.
15. The acceptance of the scrip bid by Taxonomy occurred in uncommercial circumstances, on the first day the scrip bid was open, before more information about Affinity's potential alternative proposal was available, and where substantial additional profits were forgone.

West Bridge

16. There are structural links and common investments and dealings between Ms Jennifer Hutson and Mr Elias. The funds for West Bridge's acquisition of Affinity shares were paid through an intermediary that has links to Ms Hutson. Further, West Bridge's acquisition was facilitated through intermediaries who have structural links with Ms Jennifer Hutson. As mentioned above, these same intermediaries acted for both West Bridge and Taxonomy, with one of the intermediaries acting for G8, West Bridge and Taxonomy on the acquisition of shares.

JB Super

17. There are structural and family links and common investments and dealings between Ms Jennifer Hutson and Dr Hutson.
18. The acceptance of the scrip bid by JB Super occurred in uncommercial circumstances, on either the first or second day the scrip bid was open, before more information about Affinity's potential alternative proposal was available, and where additional profits were forgone.

G8

19. The Panel considers that G8 has (or had) a relevant agreement, or is (or was) acting in concert, in connection with the acquisition of Affinity shares and acceptance of those shares in to the scrip bid. Accordingly, G8:
 - (a) has (or had) a relevant agreement for the purpose of the conduct of Affinity's affairs with each of Taxonomy, West Bridge and JB Super and is associated with each of them under section 12(2)(b)¹ or

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

- (b) is (or was) acting in concert for the purpose of the conduct of Affinity's affairs with each of Taxonomy, West Bridge and JB Super and is associated with each of them under section 12(2)(c).

Unacceptable circumstances

- 20. The acquisitions of Affinity shares by Taxonomy (4.54%), West Bridge (4.88%) and JB Super (0.04%) occurred when G8 had a relevant interest in Affinity shares of 19.89%.
- 21. As a result of the acquisition by Taxonomy:
 - (a) G8's voting power increased to more than 20% of Affinity and Taxonomy contravened s606
 - (b) G8 acquired a relevant interest in Taxonomy's Affinity shares and contravened s606
 - (c) Taxonomy began to have a substantial holding but did not lodge a substantial holder notice and contravened s671B and
 - (d) G8 increased its substantial holding by more than 1% but did not lodge a change of substantial holder notice and contravened s671B.
- 22. As a result of the acquisition by West Bridge:
 - (a) G8's voting power increased from above 20% and below 90% of Affinity and West Bridge contravened s606
 - (b) G8 acquired a relevant interest in West Bridge's Affinity shares and contravened s606
 - (c) West Bridge began to have a substantial holding but did not lodge a substantial holder notice and contravened s671B and
 - (d) G8 increased its substantial holding by more than 1% but did not lodge a change of substantial holder notice and contravened s671B.
- 23. Further, G8's bidder's statement, supplementary bidder's statement and replacement bidder's statement did not include:
 - (a) information regarding the amount per security paid by its associates for securities acquired in the 4 months before the date of the scrip bid and G8 contravened s636(1)(h) and
 - (b) information regarding the bidder's voting power and G8 contravened s636(1)(l).
- 24. The Panel considers that the circumstances surrounding the acquisitions by Taxonomy, West Bridge and JB Super are unacceptable because:
 - (a) they constitute or give rise to contraventions of Chapters 6 and 6C
 - (b) the acquisition of control over Affinity shares did not take place in an efficient, competitive and informed market and
 - (c) Affinity shareholders were not given enough information to enable them to assess the merits of the scrip bid proposal.

25. It appears to the Panel that the circumstances are unacceptable:
- (a) having regard to the effect that the Panel is satisfied the circumstances have had on:
 - (i) the control, or potential control, of Affinity or
 - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in Affinity and
 - (b) having regard to the purposes of Chapter 6 set out in section 602 and
 - (c) because they constituted, constitute, or gave or give rise to, contraventions of a provision of Chapter 6 or Chapter 6C.
26. 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 Affinity Education Group Limited.

Alan Shaw
Counsel
with authority of Geoff Brunson
President of the sitting Panel
Dated 5 October 2015