



Australian Government

Takeovers Panel

MEDIA RELEASE

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McAleese Limited – Panel Receives Application

The Panel has received an application from Havenfresh Pty Ltd in relation to the affairs of McAleese Limited. The application concerns the proposed recapitalisation of McAleese announced on 7 June 2016.

Details of the application, as submitted by the applicant, are below.

A sitting Panel has not been appointed at this stage and no decision has been made whether to conduct proceedings. The Panel makes no comment on the merits of the application.

Details

On 7 June 2016, McAleese announced it had entered into a binding heads of agreement with its existing financiers and a consortium led by SC Lowy Primary Investments Ltd for a proposed conditional recapitalisation of McAleese. The recapitalisation involves:

- *“Extinguishment of all Existing Financier claims (Senior Debt) in exchange for \$112.3 million, comprising:*
 - *\$16 million to be repaid by the Company from cash (\$1 million) on its balance sheet and drawings (\$15 million) under a new \$25 million working capital facility (New Working Capital Facility), the key terms of which are summarised in Annexure 1;*
 - *the acquisition by the SC Lowy Consortium of McAleese’s remaining Senior Debt for \$91.3 million (Senior Debt Acquisition); and*
 - *\$5 million payable by the Company, which is deferred for up to 12 months after the date of the Senior Debt Acquisition.*
- *the Senior Debt acquired by the SC Lowy consortium will, following shareholder approval of the Recapitalisation, be replaced by a new senior debt facility (New Senior Debt Facility) totalling \$91.3 million plus fees and interest accrued from the time of the Senior Debt Acquisition...*

- *in part consideration of the compromise of the Senior Debt acquired by the SC Lowy Consortium, the Company will issue to the SC Lowy Consortium options over McAleese ordinary shares with a zero strike price (Options) in such number that the SC Lowy Consortium will hold 35% of the McAleese shares on issue post-exercise of the Options and post-Recapitalisation...*
- *an underwritten, \$26 million, pro-rata entitlement offer of subordinated, secured convertible notes (Notes) to McAleese shareholders. The Notes will be issued in such number that the Note holders will, on conversion of the Notes, hold 60% of the McAleese shares on issue post-Recapitalisation (assuming the exercise of the Options) (Notes Issue). If McAleese shareholders do not subscribe for their entitlement of Notes under the Notes Issue, then they will be materially diluted by the conversion of the Notes... and*
- *the proposed delisting of McAleese from the official list of ASX."*

The senior debt acquisition will occur before the general meeting to approve the recapitalisation (and issue of options to the consortium). McAleese's ASX announcements indicate that, if McAleese shareholders do not approve the recapitalisation, then:

- the proposed compromise of the senior debt will not proceed and
- the consortium may withdraw its support as lender, and may seek to acquire its equity interest in McAleese by way of an alternative transaction which otherwise reflects in substance, the overall transaction contemplated by the recapitalisation.

Havenfresh submits that the recapitalisation, in particular, the timing of the senior debt acquisition, results in unacceptable coercive pressure being applied to existing shareholders to approve the issue of the options.

Havenfresh also submits:

- the entitlement offer and underwriting arrangements have been structured to deliver control of McAleese to the Rowsthorn entities (underwriter) without shareholder approval and
- the consortium and Rowsthorn entities are associates, based on their common goal and agreement in relation to the delisting of McAleese. Accordingly, the consortium has voting power of 29.34% in McAleese and has failed to disclose that voting power.

Havenfresh seeks interim orders that the senior debt acquisition and entitlement offer not proceed until the Panel has concluded its proceedings, or if the Panel decides not to commence proceedings, until that time.

Havenfresh seeks final orders that:

- the senior debt acquisition be delayed until after the shareholders' meeting and McAleese shareholders approve the recapitalisation (and issue of options)
- shareholder approval be obtained for the underwriting arrangements, and the Rowsthorn entities not vote and
- the consortium disclose its association with the Rowsthorn entities and lodge a substantial holding notice.

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