



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP19/08

Friday, 8 February 2019

Benjamin Hornigold Limited 02 and Henry Morgan Limited 02 - Orders

The Panel made a declaration of unacceptable circumstances on 25 January 2019 in relation to applications dated 28 December 2018 from shareholders in Benjamin Hornigold Limited (**BHD or target**) and Henry Morgan Limited (**HML or target**)¹ in relation to the affairs of each company (see [TP18/80](#) and [TP19/04](#)). The applications relate to concurrent takeovers bids by John Bridgeman Limited (**JBL**) for each of BHD and HML.

The Panel has made final orders (Annexures A and B), the effect of which in relation to each bid includes:

- At a certain time² all acceptances received by JBL under the bid are cancelled.³
- JBL and the target must dispatch supplementary information, in a form acceptable to ASIC, to all target shareholders explaining among other things the effect of the Panel's declaration and orders
- Within a certain period JBL must repay to BHD the \$4.5 million loan entered into after the bid was announced upon conversion of a receivable JBL owed to BHD
- JBL must then within a certain period dispatch (in a form acceptable to ASIC) either (i) a replacement bidder's statement including certain information prescribed in the orders or (ii) a supplementary bidder's statement stating the bid is closed or has been cancelled. JBL may reintroduce any conditions previously attached to its bid in the replacement bidder's statement
- If JBL does not dispatch the replacement bidder's statement before the dates specified in the orders, and the bid remains on foot, the bid is cancelled (and if JBL does not repay the loan, its bid for BHD is cancelled)
- If the bid is not cancelled, within a certain period of JBL dispatching its replacement bidder's statement, the target must dispatch a supplementary

¹ In relation to both applications - Jonathan Allan Dixon, Ms Wendy Lynn Cowan, Mrs Susan Jean Dixon ATF Dixon Super Fund, GM Enterprises Australia Pty Ltd ATF GTM Super Fund and Inspired Asset Management Pty Ltd

² The actual timing will depend on whether the orders are stayed while any review proceedings are resolved

³ The orders also prohibit JBL from processing any acceptances received under its bid until this time

target's statement and supplementary independent expert's report to shareholders which specifically consider certain matters outlined in the orders.

The sitting Panel was Yasmin Allen, James Dickson (sitting President) and Bruce McLennan.

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

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Australian Government

Takeovers Panel

ANNEXURE A

**CORPORATIONS ACT
SECTION 657D
ORDERS**

BENJAMIN HORNIGOLD LIMITED 02

The Panel made a declaration of unacceptable circumstances in relation to the affairs of BHD on 25 January 2019 (**Declaration**).

THE PANEL ORDERS

1. JBL, and all officers, agents or persons acting on its behalf, must not take any further steps to process any acceptances received under JBL's bid until after the operation of Order 2.
2. At the end of 5 days after the Commencement Date, all acceptances of JBL's bid at that time are cancelled.
3. After the operation of Order 2, any acceptance of JBL's bid received before dispatch of the Further Disclosure (or on an acceptance form attached to the Bidder's Statement whether received before or after dispatch of the Further Disclosure) is cancelled at the time it is received by JBL.
4. JBL must within 5 days of the Commencement Date dispatch a supplementary bidder's statement, in a form acceptable to ASIC, to all BHD shareholders explaining the effect of the Panel's declaration and orders, including that any acceptances of JBL's bid received before dispatch of the Further Disclosure are cancelled.
5. BHD must within 5 days of the Commencement Date dispatch a supplementary target's statement, in a form acceptable to ASIC, to all BHD shareholders explaining the effect of the Panel's declaration and orders and stating that BHD shareholders should wait until they receive the Supplementary Target's Statement and Supplementary Expert's Report before deciding whether to accept JBL's bid.
6. Within 20 days after the Commencement Date, JBL must repay to BHD the JBL Loan (with any interest).

7. Within 30 days after the Commencement Date, JBL must dispatch either of the following to BHD shareholders:
 - (a) a Replacement Bidder's Statement complying with Order 9 (in a form acceptable to ASIC) or
 - (b) a supplementary bidder's statement (in a form acceptable to ASIC) stating that its takeover offer for BHD is closed or has been cancelled in accordance with these orders.
8. If JBL does not comply with Order 6 or dispatch the Replacement Bidder's Statement in accordance with Order 7, and JBL's bid remains open for acceptance, offers under JBL's bid are cancelled and accordingly Orders 9 to 12 cease to apply.
9. The Replacement Bidder's Statement must comply with s636 of *Corporations Act 2001* (Cth) and applicable ASIC regulatory guides and include the following:
 - (a) a prominent statement on the front cover that BHD shareholders should wait until they receive the Supplementary Target's Statement and accompanying Supplementary Expert's Report before deciding whether to accept the bid
 - (b) a description of the various relationships, and transactions, between JBL, BHD, HML, BRL, JBFG, JB Trading and their associates
 - (c) the risk that BHD shareholders will receive materially less value if JBL only obtains voting power of 50% or less in either or both BHD and HML
 - (d) most recent financial statements of JBL and BHD noting the effect of the repayment of the JBL Loan
 - (e) a prominent statement noting that the most recent audit opinions of JBL and JBFG refer to material uncertainty regarding going concern
 - (f) details of the financial effect of the transactions referred to in paragraphs 10, 16 and 18 of the Declaration and the repayment of the JBL Loan and how each may impact on BHD shareholders' decision whether to accept the JBL bid and
 - (g) acceptance forms that are identifiably different from the acceptance forms in the Bidder's Statement.
10. JBL may reintroduce any conditions originally in the Bidder's Statement in the Replacement Bidder's Statement. If JBL does so in relation to a condition, its notice under s650F dated 24 December 2018 has no effect as it is stated to apply to that condition.

11. Before the Replacement Bidder's Statement is dispatched to BHD shareholders, JBL and BHD must provide to the independent expert all financial information in their possession in relation to JBL, BHD, HML, BRL, JBFG and JB Trading, including but not limited to the effect of repayment of the JBL Loan on the financial position of JBL and BHD.
12. Within 14 days of dispatch of the Replacement Bidder's Statement (if dispatched), BHD must dispatch:
 - (a) a Supplementary Target's Statement disclosing the Voting Director's recommendation following consideration of the Replacement Bidder's Statement and Supplementary Expert's Report and
 - (b) a supplementary independent expert's report stating whether at the date of the supplementary independent expert's report JBL's bid is fair and reasonable following consideration of the Replacement Bidder's Statement, repayment of the JBL Loan and cancellation of the acceptances.
13. In these orders the following terms apply:

Bidder's Statement	JBL's bidder's statement in relation to JBL's bid lodged on or about 31 October 2018
BHD	Benjamin Hornigold Limited
BHD shareholders	Shareholders of BHD, including any shareholder who has accepted JBL's bid
BRL	Bartholomew Roberts Pty Limited
Commencement Date	14 February 2018 or two business days after any stay of these orders (other than Order 1) is lifted
Further Disclosure	Either the Replacement Bidder's Statement or supplementary bidder's statement referred to in Order 7
HML	Henry Morgan Limited
JBFG	JB Financial Group Pty Ltd
JBL	John Bridgeman Limited
JBL's bid	JBL's bid for BHD
JBL Loan	The \$4.5 million loan given to JBL by BHD on or about 17 September 2018

JB Trading	JB Trading House Pty Ltd
Replacement Bidder's Statement	The replacement bidder's statement referred to in Order 7(a)
Supplementary Expert's Report	The supplementary independent expert's report referred to in Order 12(b)
Supplementary Target's Statement	The supplementary target's statement referred to in Order 12(a)
Voting Directors	BHD directors authorised to consider and provide a recommendation in relation to JBL's bid

Allan Bulman
Director
with authority of James Dickson
President of the sitting Panel
Dated 8 February 2019



Australian Government

Takeovers Panel

ANNEXURE B

**CORPORATIONS ACT
SECTION 657D
ORDERS**

HENRY MORGAN LIMITED 02

The Panel made a declaration of unacceptable circumstances in relation to the affairs of HML on 25 January 2019 (**Declaration**).

THE PANEL ORDERS

1. JBL, and all officers, agents or persons acting on its behalf, must not take any further steps to process any acceptances received under JBL's bid until after the operation of Order 2.
2. At the end of 5 days after the Commencement Date, all acceptances of JBL's bid at that time are cancelled.
3. After the operation of Order 2, any acceptance of JBL's bid received before dispatch of the Further Disclosure (or on an acceptance form attached to the Bidder's Statement whether received before or after dispatch of the Further Disclosure) is cancelled at the time it is received by JBL.
4. JBL must within 5 days of the Commencement Date dispatch a supplementary bidder's statement, in a form acceptable to ASIC, to all HML shareholders explaining the effect of the Panel's declaration and orders, including that any acceptances of JBL's bid received before dispatch of the Further Disclosure are cancelled.
5. HML must within 5 days of the Commencement Date dispatch a supplementary target's statement, in a form acceptable to ASIC, to all HML shareholders explaining the effect of the Panel's declaration and orders and stating that HML shareholders should wait until they receive the Supplementary Target's Statement and Supplementary Expert's Report before deciding whether to accept JBL's bid.
6. Within 30 days after the Commencement Date, JBL must dispatch either of the following to HML shareholders:
 - (a) a Replacement Bidder's Statement complying with Order 8 (in a form acceptable to ASIC) or

- (b) a supplementary bidder's statement (in a form acceptable to ASIC) stating that its takeover offer for HML is closed or has been cancelled in accordance with these orders.
7. If JBL does not dispatch the Replacement Bidder's Statement in accordance with Order 6, and JBL's bid remains open for acceptance, offers under JBL's bid are cancelled and accordingly Orders 8 to 11 cease to apply.
 8. The Replacement Bidder's Statement must comply with s636 of *Corporations Act 2001* (Cth) and applicable ASIC regulatory guides and include the following:
 - (a) a prominent statement on the front cover that HML shareholders should wait until they receive the Supplementary Target's Statement and accompanying Supplementary Expert's Report before deciding whether to accept the bid
 - (b) a description of the various relationships, and transactions, between JBL, HML, BHD, BRL, JBFG, JB Trading and their associates
 - (c) the risk that HML shareholders will receive materially less value if JBL only obtains voting power of 50% or less in either or both HML and BHD
 - (d) most recent financial statements of JBL and HML noting the effect of the repayment of the JBL Loan on JBL
 - (e) a prominent statement noting that the most recent audit opinions of JBL and JBFG refer to material uncertainty regarding going concern
 - (f) details of the financial effect of the transactions referred to in paragraphs 8 (including the extension) and 14 of the Declaration and the repayment of the JBL Loan and how each may impact on HML shareholders' decision whether to accept the JBL bid and
 - (g) acceptance forms that are identifiably different from the acceptance forms in the Bidder's Statement.
 9. JBL may reintroduce any conditions originally in the Bidder's Statement in the Replacement Bidder's Statement. If JBL does so in relation to a condition, its notice under s650F dated 24 December 2018 has no effect as it is stated to apply to that condition.
 10. Before the Replacement Bidder's Statement is dispatched to HML shareholders, JBL and HML must provide to the independent expert all financial information in their possession in relation to JBL, HML, BHD, BRL, JBFG and JB Trading, including but not limited to the effect of repayment of the JBL Loan on the financial position of JBL.
 11. Within 14 days of dispatch of the Replacement Bidder's Statement (if dispatched), HML must dispatch:

- (a) a Supplementary Target's Statement disclosing the Voting Director's recommendation following consideration of the Replacement Bidder's Statement and Supplementary Expert's Report and
- (b) a supplementary independent expert's report stating whether at the date of the supplementary independent expert's report JBL's bid is fair and reasonable following consideration of the Replacement Bidder's Statement, repayment of the JBL Loan and cancellation of the acceptances.

12. In these orders the following terms apply:

Bidder's Statement	JBL's bidder's statement in relation to JBL's bid lodged on or about 31 October 2018
BHD	Benjamin Hornigold Limited
BRL	Bartholomew Roberts Pty Limited
Commencement Date	14 February 2018 or two business days after any stay of these orders (other than Order 1) is lifted
Further Disclosure	Either the Replacement Bidder's Statement or supplementary bidder's statement referred to in Order 6
HML	Henry Morgan Limited
HML shareholders	Shareholders of HML, including any shareholder who has accepted JBL's bid
JBFG	JB Financial Group Pty Ltd
JBL	John Bridgeman Limited
JBL's bid	JBL's bid for HML
JBL Loan	The \$4.5 million loan given to JBL by BHD on or about 17 September 2018
JB Trading	JB Trading House Pty Ltd
Replacement Bidder's Statement	The replacement bidder's statement referred to in Order 6(a)
Supplementary Expert's Report	The supplementary independent expert's report referred to in Order 11(b)

Supplementary Target's Statement

The supplementary target's statement referred to in Order 11(a)

Voting Directors

HML directors authorised to consider and provide a recommendation in relation to JBL's bid

Allan Bulman
Director
with authority of James Dickson
President of the sitting Panel
Dated 8 February 2019