



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP19/09

Monday, 11 February 2019

Flinders Mines Limited 02 & 03 – Declaration of Unacceptable Circumstances

The Panel has made a declaration of unacceptable circumstances (Annexure A) in relation to an application dated 10 January 2019 by Mr Brendan Dunstan¹ and an application dated 11 January 2019 by OCJ Investment (Australia) Pty Ltd in relation to the affairs of Flinders Mines Limited (**Flinders Mines**) (see [TP19/01](#) and [TP19/02](#)).

The Panel is continuing to consider final orders or undertakings that would enable the delisting to proceed subject to ASX approval. It will publish details of any final orders or undertakings in due course.

Background

The application concerned Flinders Mines' proposal to delist subject to shareholder approval by ordinary resolution. In connection with the delisting, Flinders Mines proposed to undertake an on-market buy-back and an unmarketable parcels sale process. The buy-back was to be funded by a loan facility from a subsidiary of Flinders Mines' largest shareholder, TIO (NZ) Limited (**TIO**), to be repaid through a proposed non-renounceable pro-rata rights issue to be undertaken following the buy-back.

Declaration

The delisting proposed by Flinders Mines was likely to result in Flinders Mines, and indirectly TIO, acquiring a substantial interest in Flinders Mines:

- in a manner that was likely to coerce Flinders Mines' shareholders (other than TIO) to sell their shares
- in a market that would not be sufficiently efficient, competitive and informed
- from shareholders who would not have reasonable time to consider the on-market buy-back, and enough information to assess its merits and

¹ The Applicant is acting with, or on behalf of, a number of Flinders Mines' shareholders

- in a manner that may deny shareholders who sell their shares a reasonable and equal opportunity to participate in benefits accruing to those who buy or retain Flinders Mines shares.

The Panel decided to extend time under s657C² for the making of the application.

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).

The sitting Panel was Alex Cartel (sitting President), Elizabeth Hallett and Diana Nicholson.

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

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² All statutory references are to the Corporations Act 2001 (Cth), and all terms used in Chapter 6 or 6C have the meaning given in the relevant Chapter (as modified by ASIC)



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ANNEXURE A

CORPORATIONS ACT

SECTION 657A

DECLARATION OF UNACCEPTABLE CIRCUMSTANCES

FLINDERS MINES LIMITED 02 & 03

CIRCUMSTANCES

1. Flinders Mines Limited (**Flinders**) is an ASX listed company (ASX: FMS).
2. The two largest shareholders in Flinders are TIO (NZ) Limited (**TIO**) with approximately 55.6% of Flinders' ordinary shares and OCJ Investment (Australia) Pty Ltd with approximately 21.98%. There are no other substantial shareholders.
3. TIO acquired control of Flinders through a takeover bid in 2016. TIO's bidder's statement disclosed an intention, if Flinders became a part owned controlled entity, that:

TIO may, where the Listing Rules permit, seek to remove Flinders' listing on the ASX. If delisting is sought, TIO expects that a final decision as to Flinders' removal will be made by ASX in accordance with its published guidance. This states that it is generally acceptable for an entity to be delisted if, as a result of a takeover, the entity only has a small number of remaining security holders so that its continued listing can no longer be justified. ASX does not prescribe a minimum shareholding that the bidder must have, or a maximum number of remaining shareholders, before it will sanction a delisting, but its published guidance states that it will likely require shareholder approval be obtained unless (among other things) the bidder and its related bodies corporate own or control at least 75% of the entity's ordinary securities, and there are less than 150 minority holders of ordinary securities with holdings with a value of at least \$500.

4. On 2 August 2018 Flinders announced the close of a non-renounceable entitlement offer that had raised \$8.275 million (approximately 88% of the offer) at \$0.07 per share. The announcement quoted Flinders' Chairman as stating "we are extremely pleased with the support shown by all shareholders ...". The offer booklet for the entitlement offer did not refer to any risk of delisting under "Key Risks" or "Risks Specific to the Company", other than to include a cross-reference under "Other Risks" to the intentions of TIO disclosed in the

bidder's statement referred to in paragraph 3 "including that it may seek to remove Flinders' listing on the ASX".¹

5. On 13 December 2018 Flinders announced that it had applied for de-listing and received in-principle approval from the ASX subject to conditions that included shareholder approval by ordinary resolution (**Approval**). The announcement indicated (among other things) that:
 - (a) TIO had committed to the board of Flinders that it intended to vote in favour of the de-listing.
 - (b) Flinders would undertake an unmarketable parcels sale process at a price of not less than \$0.075 per share representing the 30 day volume weighted average price for the shares (**VWAP**) prior to the announcement.
 - (c) Flinders would provide shareholders who do not wish to retain their shares with an opportunity to exit their investment in Flinders through an on-market buy-back (**Buy-Back**) of up to 10% of shares on issue:
 - (i) at a price equal to the lower of a 5% premium to the 5 day VWAP before the purchase or \$0.075 per share and
 - (ii) to remain open until the earlier of one month after the date of the meeting to consider Approval or the time taken to reach 10%.
 - (d) Flinders had entered into a loan agreement with a subsidiary of TIO (**Loan Facility**) for a total of up to \$27 million for the purpose of funding the Buy-Back, which would be repaid by a rights issue to be undertaken following the Buy-Back.
 - (e) TIO had advised Flinders that it did not intend to participate in the Buy-Back and had agreed to subscribe for shares under the rights issue equal to no less than any amount of the Loan Facility principal outstanding.
6. The closing price for Flinders shares on the day of the announcement referred to in paragraph 5 was \$0.035, falling from \$0.070 the previous day.
7. On 21 December 2018 Flinders issued a notice convening a general meeting to consider the Approval on 22 January 2019.²

¹ Identical disclosure was included in the offer booklets of two earlier entitlement offers which closed after TIO's takeover bid

² Currently extended to 26 February 2019

EFFECT

8. Given

- (a) the previous disclosure of Flinders and statements of TIO, including those referred to in paragraphs 3 and 4
- (b) the limited liquidity in the trading of Flinders shares and
- (c) the fact that shareholders other than TIO held approximately 44% of Flinders ordinary shares,

the Panel considers that the de-listing proposed in the announcement referred to in paragraph 5 was likely to result in many shareholders (other than TIO):

- (d) selling, or considering whether to sell, their shares
- (e) reasonably expecting that holders of significantly more than 10% of Flinders ordinary shares may sell their shares
- (f) concluding that they should sell their shares into the Buy-Back as soon as possible, before the 10% limit was reached and
- (g) potentially, accepting a price materially below what they would have otherwise accepted.

9. The Panel considers that the effects described in paragraph 8 are likely to result in Flinders, and indirectly TIO, acquiring a substantial interest in Flinders:

- (a) in a manner that is likely to coerce Flinders shareholders (other than TIO) to sell
- (b) in a market that would not be sufficiently efficient, competitive and informed
- (c) from shareholders who would not have reasonable time to consider the Buy-Back, and enough information to assess its merits and
- (d) in a manner that may deny shareholders who sell their shares a reasonable and equal opportunity to participate in benefits accruing to those who buy or retain Flinders shares.

CONCLUSION

10. It appears to the Panel that the circumstances are unacceptable circumstances:

- (a) having regard to the effect that the Panel is satisfied they have had, are having, will have or are likely to have on:
 - (i) the control, or potential control, of Flinders or

- (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in Flinders or
 - (b) in the alternative, having regard to the purposes of Chapter 6 set out in section 602 of the *Corporations Act 2001* (Cth) (**Act**).
11. 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) of the Act.

DECLARATION

The Panel declares that the circumstances constitute unacceptable circumstances in relation to the affairs of Flinders Mines Limited.

Allan Bulman
Director
with authority of Alex Cartel
President of the sitting Panel
Dated 8 February 2019