



**Australian Government**

**Takeovers Panel**

# MEDIA RELEASE

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**No: TP19/61**

**Tuesday, 15 October 2019**

## **Benjamin Hornigold Limited 08R, 10R & 11R - Variation of orders**

The review Panel has made minor variations to the initial Panel's orders in *Benjamin Hornigold Limited 05, 06 & 07* (see [TP19/57](#)). In that matter, the Panel made orders including to permit Benjamin Hornigold securityholders who accepted John Bridgeman's takeover bid to elect to void their acceptance, and to require John Bridgeman to pay costs incurred by Benjamin Hornigold and ASIC in the course of the proceedings.

The review Panel has varied the initial Panel's orders in order to:

- require John Bridgeman to provide additional information to Benjamin Hornigold securityholders who accepted John Bridgeman's takeover bid and
- stay orders relating to the payment of costs incurred by Benjamin Hornigold and ASIC until the review Panel orders otherwise. The review Panel is still considering the question of costs.

The review Panel otherwise agreed with the orders made by the initial Panel. The variation to the orders is set out in Annexure A.

The sitting review Panel is Richard Hunt (sitting President), Diana Nicholson and Karen Phin.

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

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**ANNEXURE A**

**CORPORATIONS ACT  
SECTIONS 657EA AND 657D  
ORDERS**

**BENJAMIN HORNIGOLD LIMITED 08R, 10R & 11R**

The initial Panel in *Benjamin Hornigold Limited 05, 06 & 07* made a declaration of unacceptable circumstances on 6 September 2019 and orders on 24 September 2019. The Panel varied the declaration of unacceptable circumstances on 8 October 2019.

The orders made on 24 September 2019 are varied by:

- (a) amending Order 7(a)(iv)
- (b) including a new Order 15A to stay Order 14 and Order 15 until the Panel orders otherwise
- (c) inserting in Order 18 definitions for “date of these orders” and “Panel” and
- (d) making consequential amendments,

so that the orders read as follows.

**THE PANEL ORDERS**

**Return of Foreign Currency Banknotes**

1. Within 10 days after the date of these orders, King’s Currency must unless restrained by an order of a court return the Foreign Currency Banknotes to Benjamin Hornigold.
2. As soon as practicable (and no later than 3 days) after King’s Currency has returned the Foreign Currency Banknotes to Benjamin Hornigold, King’s Currency must inform the Panel, Benjamin Hornigold, John Bridgeman and JB Financial Group in writing that the Foreign Currency Banknotes have been returned to Benjamin Hornigold and specify the date on which they were returned.
3. On the date that King’s Currency returns the Foreign Currency Banknotes to Benjamin Hornigold, King’s Currency must pay to Benjamin Hornigold all amounts due to Benjamin Hornigold under Item 4 of the Schedule to the Services Agreement as accrued up to that date.

### **Restraint of future bid for Benjamin Hornigold**

4. John Bridgeman, JB Financial Group and King's Currency must not propose, announce or make any change of control transaction (including a takeover bid or scheme of arrangement) in relation to the securities of Benjamin Hornigold until King's Currency has returned the Foreign Currency Banknotes to Benjamin Hornigold or Benjamin Hornigold otherwise consents in writing.
5. Order 4 does not apply if a bona fide change of control transaction is proposed or made in relation to the securities of Benjamin Hornigold by a third party that the Panel is satisfied:
  - (a) is unrelated to John Bridgeman, JB Financial Group or King's Currency
  - (b) has no significant relationship to John Bridgeman, JB Financial Group or King's Currency and
  - (c) is not influenced by any of John Bridgeman, JB Financial Group or King's Currency or anyone who is or at any time since 1 January 2019 has been an officer of any of those entities.

### **Cancellation of acceptances**

6. In respect of all acceptances by Accepting Securityholders pursuant to the 2019 Bid, each contract of purchase of Benjamin Hornigold securities by John Bridgeman entered into with Benjamin Hornigold securityholders pursuant to the 2019 Bid is voidable at the election of each Accepting Securityholder in accordance with and subject to Order 7.
7. To give effect to Order 6, John Bridgeman must:
  - (a) unless the Panel objects under Order 13, send a notice to each Accepting Securityholder within 15 days after the date of these orders:
    - (i) advising of their right to avoid the contract
    - (ii) enclosing an election form and any required transfer forms for exercise of that right
    - (iii) advising that to elect to avoid the contract the Accepting Securityholders must take the following steps:
      - (A) return the completed form to John Bridgeman before 7:00pm (Melbourne time) on the date that is 21 days after the date of dispatch of the notice and
      - (B) give John Bridgeman any certificates and transfer documents needed to effect the return of the Benjamin Hornigold securities and the securities issued as consideration or complying with Corporations Regulation 6.6.01(2), as the case may be and
    - (iv) explaining the effect of the Panel's declaration made 6 September 2019 (as varied 8 October 2019) in relation to the affairs of Benjamin Hornigold and these orders (as varied) and including advice to the

effect that the Accepting Securityholders should seek their own professional advice and

- (b) promptly take all reasonable steps necessary to give effect to the exercise of a right to avoid the contract by an Accepting Securityholder.
8. John Bridgeman must comply with Corporations Regulation 6.6.01(3) in relation to each Accepting Securityholder who avoids the contract, as if the Regulation applies to this Order.
  9. In respect of each avoided contract, the relevant John Bridgeman securities issued as consideration are cancelled with effect immediately after John Bridgeman complies with Order 7 and Order 8.
  10. In respect of any acceptances by Accepting Securityholders pursuant to the 2019 Bid that have not been processed by John Bridgeman, each Accepting Securityholder has a right to withdraw their acceptance.
  11. To give effect to Order 10, John Bridgeman must:
    - (a) comply with the requirements of Order 7, with such modifications as are necessary and
    - (b) promptly take all reasonable steps necessary to give effect to the exercise of a right to withdraw by an Accepting Securityholder.
  12. John Bridgeman must provide a form of the explanation in Order 7(a)(iv) to the Panel within 5 days after the date of these orders.
  13. If the Panel objects to the form of the explanation provided by John Bridgeman under Order 12, John Bridgeman must:
    - (a) make any changes to the explanation as requested by the Panel and
    - (b) send the notice in Order 7(a) with any changes requested under Order 13(a) to each Accepting Securityholder by no later than a date advised by the Panel.

### **Costs**

14. Within 10 days after the date of these orders, John Bridgeman must pay to Benjamin Hornigold \$120,000.00 (plus GST) representing the costs actually, necessarily, properly and reasonably incurred by Benjamin Hornigold in the course of the proceedings.
15. Within 10 days after the date of these orders, John Bridgeman must pay to ASIC \$17,580.75 representing the costs actually, necessarily, properly and reasonably incurred by ASIC in the course of the proceedings.
- 15A. Order 14 and Order 15 are stayed until the Panel orders otherwise.

### **Miscellaneous**

16. John Bridgeman, Benjamin Hornigold, JB Financial Group and King's Currency must do all things necessary (including execute any document) to give effect to these orders (as varied).

17. The parties to these proceedings and ASIC have the liberty to apply to the Panel for further orders in relation to these orders (as varied).

### **Definitions**

18. In these orders (as varied) the following terms apply:

<b>2019 Bid</b>	the off-market takeover bid by John Bridgeman for all of the securities in Benjamin Hornigold announced on 26 April 2019
<b>Accepting Securityholders</b>	Benjamin Hornigold securityholders who accepted the 2019 Bid
<b>ASIC</b>	Australian Securities and Investments Commission
<b>Benjamin Hornigold</b>	Benjamin Hornigold Limited
<b>Corporations Regulations</b>	<i>Corporations Regulations 2001</i> (Cth)
<b>date of these orders</b>	14 October 2019 or in relation to Order 14 and Order 15, the date the stay of those Orders is lifted
<b>Foreign Currency Banknotes</b>	all foreign currency banknotes placed with King's Currency by Benjamin Hornigold or other foreign currency with an equal value of the foreign currency banknotes pursuant to the Services Agreement
<b>JB Financial Group</b>	JB Financial Group Pty Ltd
<b>John Bridgeman</b>	John Bridgeman Limited
<b>King's Currency</b>	King's Currency Exchange Pty Ltd
<b>Panel</b>	the sitting Panel in <i>Benjamin Hornigold Limited 08R, 10R &amp; 11R</i>
<b>Services Agreement</b>	services agreement between Benjamin Hornigold and King's Currency dated 21 February 2018, as amended by variation deeds dated 31 July 2018, 17 September 2018 and 12 June 2019

**Tania Mattei**  
**Counsel**  
**with authority of Richard Hunt**  
**President of the sitting Panel**  
**Dated 14 October 2019**