Australian Government

Takeovers Panel

Reasons for Decision
Accelerate Resources Limited 01 & 02
[2020] ATP 7

Catchwords:

Substantial holding disclosure – contravention of s606 – board spill – placement – capital raising – effect on control – frustrating action – requisitioned meeting – deferral of requisitioned meeting – declaration – orders – interim order

Corporations Act 2001 (Cth), sections 249D, 249HA, 606, 611, 657A, 657C, 657D, 657EA, 671B

Australian Securities and Investments Commission Regulations 2001 (Cth), regulation 16

ASIC v NRMA Ltd [2002] NSWSC 1135, *Guss v Veenhuizen* [1976] HCA 25

Guidance Note 12: Frustrating Action

Accelerate Resources Limited 02 (Consent to Review of Interim Orders) [2020] ATP 5, *Aguia Resources Limited* [2019] ATP 13, *Yowie Group Ltd 01 & 02* [2019] ATP 10, *Factor Therapeutics Limited* [2019] ATP 5, *Resources Generation Limited* [2015] ATP 12, *Blackham Resources Limited* [2014] ATP 16, *Hastings Rare Metals Limited* [2013] ATP 13, *Redflex Holdings Limited* [2009] ATP 17, *Taipan Resources NL 09* [2001] ATP 4

Interim order	IO undertaking	Conduct	Declaration	Final order	Undertaking
YES	**NO**	**YES**	**YES**	**YES**	**NO**

INTRODUCTION

1. The Panel, Shirley In't Veld, Jeremy Leibler and John O'Sullivan (sitting President), made a declaration of unacceptable circumstances in relation to the affairs of Accelerate Resources Limited. The two applications (heard together) were made in the context of a requisitioned general meeting and concerned (among other things), a contravention of section 606[1] as a result of shareholder support deeds entered into between Accelerate and certain shareholders. The Panel considered that Accelerate's delay in disclosing its interests under those shareholder support deeds, in contravention of section 671B, had the effect of misinforming the market as to the existence and nature of those arrangements and therefore declared the circumstances unacceptable. The Panel made orders, which included releasing the relevant shareholders to those arrangements from their respective shareholder support deeds.

2. In these reasons, the following definitions apply.

Accelerate	Accelerate Resources Limited
Alto Capital	Alto Capital Pty Ltd
Applicant	GTT Global Opportunities Pty Ltd on behalf of itself and other shareholders who signed the s249D Notice
ASIC	Australian Securities and Investments Commission

[1] Unless otherwise indicated, all statutory references are to the *Corporations Act 2001* (Cth)

Board	the board of directors of Accelerate
Entitlement Offer	has the meaning given in paragraph 4
Escrow Agreements	has the meaning given in paragraph 12
General Meeting	has the meaning given in paragraph 8
Gibb River	Gibb River Diamonds Ltd
Interim Orders	has the meaning given in paragraph 30
Kaolin Acquisition	has the meaning given in paragraph 4
Kaolin Project	the kaolin project the subject of the Kaolin Acquisition
Placees	the placees in respect of the Placement
Placement	has the meaning given in paragraph 7
s249D General Meeting	has the meaning given in paragraph 9
s249D NoM	has the meaning given in paragraph 59
s249D Notice	has the meaning given in paragraph 6
Shareholder Support Deed	has the meaning given in paragraph 22(b)
Vendors	the vendors to the Kaolin Acquisition
Voting Deeds	has the meaning given in paragraph 12

FACTS

3. Accelerate is an ASX listed company (ASX code: AX8).

4. On 18 November 2019, Accelerate announced the acquisition of a kaolin project in consideration for Accelerate shares[2] (**Kaolin Acquisition**). As part of that announcement, Accelerate stated that it intended to raise capital via an entitlement offer to provide funding for exploration of the Kaolin Project and for working capital (**Entitlement Offer**) and that the terms of the Entitlement Offer were being finalised.

5. On 21 January 2020, Accelerate's shares were placed into a trading halt on ASX pending the release of an announcement regarding a capital raise.

6. On 22 January 2020, Accelerate received a notice under section 249D signed by the Applicant and other shareholders that collectively hold approximately 13% in Accelerate requiring Accelerate to convene a general meeting to consider resolutions to replace two of the four Accelerate directors (**s249D Notice**).

7. On 23 January 2020, Accelerate announced a placement of 4,905,000 shares at a price of $0.02455 per share to sophisticated existing and new investors to raise $120,418

[2] The terms of the Kaolin Acquisition included a deferred consideration component which was payable on the achievement of certain milestones. The deferred consideration component would be satisfied by the issuance of Accelerate shares (subject to shareholder approval), or if shareholder approval was not obtained, an equivalent cash component.

(**Placement**). At the time of announcing the Placement, Accelerate reiterated that it intended to undertake the Entitlement Offer "*in due course*".

8. On 7 February 2020, Accelerate called a general meeting to be held on 16 March 2020 (**General Meeting**) to, among other things:

   (a) ratify prior issues of securities (including the shares under the Placement and 7,000,000 shares issued under the Kaolin Acquisition) which would (if passed) increase the number of securities Accelerate could issue without shareholder approval under its placement capacity pursuant to ASX Listing Rules 7.1 and 7.1A and

   (b) approve the issue of options to Alto Capital, Accelerate's corporate adviser to the Placement, as partial consideration for corporate advisory services.

9. On 12 February 2020, Accelerate called a separate general meeting to be held on 20 March 2020 (being four days after the General Meeting) to consider the resolutions the subject of the s249D Notice (**s249D General Meeting**).

10. On 4 March 2020, the Applicant lodged the *Accelerate Resources Limited 01* application with the Panel (see paragraph 15 for further details). At the time of the *Accelerate Resources Limited 01* application, no further announcements had been made by Accelerate in relation to the Entitlement Offer.

11. On 13 March 2020, as a result of the Panel's consideration of interim orders in respect of the *Accelerate Resources Limited 01* application, Accelerate made an announcement to the effect that the General Meeting (scheduled for 16 March 2020) would be adjourned until 20 March 2020 (see paragraphs 16 to 20 for further details).

12. On 16 March 2020, Accelerate lodged a number of substantial holder notices disclosing, among other things, that it had a relevant interest of 12.82% in itself as a result of the shares issued under the Kaolin Acquisition being subject to a nine month voluntary escrow (**Escrow Agreements**) and that certain Vendors had agreed to enter into shareholder support deeds in relation to the shares issued to them (**Voting Deeds**).

13. The terms of the Voting Deeds required, among other things, that the Vendors vote all their Accelerate shares at a meeting of Accelerate shareholders in accordance with the voting intentions stated by the chair of the meeting in respect of undirected proxies. The Voting Deeds were dated 18 November 2019 and expire nine months from that date (unless terminated earlier).

14. On 17 March 2020, the Applicant lodged the *Accelerate Resources Limited 02* application with the Panel (see paragraph 22 for further details).

ACCELERATE RESOURCES LIMITED 01

Declaration sought

15. By application dated 4 March 2020, the Applicant sought a declaration of unacceptable circumstances. The Applicant submitted, among other things, that:

   (a) the Placement "*represents a clear frustrating action directly analogous to the actions*

the subject of Panel Guidance Note 12"

(b) the Placement to undisclosed Placees had been conducted at a price lower than Accelerate's shares had ever traded and *"in the absence of any disclosed or discernible requirement to raise capital through the placement"*

(c) if all resolutions the subject of the General Meeting passed, the Board would have the capacity to issue a significant number of additional shares in Accelerate by way of further placements prior to the s249D General Meeting and

(d) existing shareholders of Accelerate who did not participate in the Placement suffered a dilution of their shareholdings without the opportunity to participate in the capital raising, which is likely to have a significant effect on the control of Accelerate and in particular the composition of its board after the s249D General Meeting.

Interim order sought

16. The Applicant sought an interim order restraining Accelerate from issuing any securities in reliance on any resolutions passed at the General Meeting (scheduled for 16 March 2020).

17. On 13 March 2020, after we decided to conduct proceedings on the *Accelerate Resources Limited 01* application, we sought submissions on a number of preliminary questions, including whether we should instead make an interim order that the General Meeting be deferred to the date of, and held after, the s249D General Meeting (to be held on 20 March 2020).

18. Having considered the submissions received from the parties, we were minded to make the alternate interim order which would, in effect, address the concerns raised by the Applicant in requesting the interim order set out in paragraph 16.

19. Accelerate informed us that, in lieu of the Panel making the alternate interim order, Accelerate would be willing to make an announcement to that effect. We agreed and requested that Accelerate make that announcement.

20. Accordingly, Accelerate announced on 13 March 2020 that the General Meeting would *"be opened and then adjourned by the chairman until 11:00am (WST) on Friday, 20 March 2020"*. The result, in effect, was that the General Meeting would be held after the s249D General Meeting which was scheduled for 10:00am (WST) that same day.

Final orders sought

21. The Applicant sought final orders:

(a) prohibiting the Placement shares from being voted at the s249D General Meeting and

(b) prohibiting any further shares issued by Accelerate prior to the s249D General Meeting from being voted at that meeting.

ACCELERATE RESOURCES LIMITED 02

Declaration sought

22. By application dated 17 March 2020, following the disclosure by Accelerate of a number of substantial holder notices the day before,[3] the Applicant sought a declaration of unacceptable circumstances. The Applicant submitted, among other things, that:

    (a) Accelerate had delayed in lodging a substantial holder notice in relation to its relevant interest as a result of the Voting Deeds in breach of the substantial holding provisions

    (b) at the time Accelerate acquired a 12.82% relevant interest in itself as a result of the Voting Deeds, it had in place a similar shareholder support deed with the Applicant and other shareholders who signed the s249D Notice (**Shareholder Support Deed**) and as a result, had a relevant interest of at least 25.7% in breach of section 606 and the substantial holding provisions (prior to the lapse of the Shareholder Support Deed in December 2019) and

    (c) two or more of Accelerate's directors are associates of Accelerate and the Vendors, and another Accelerate substantial shareholder, Gibb River, is an associate of Accelerate and Accelerate's managing director, Ms Yaxi Zhan, in breach of section 606 and the substantial holding provisions.

Interim orders sought

23. The Applicant sought interim orders restraining until the determination of the *Accelerate Resources Limited 02* application:

    (a) the parties to the Voting Deeds (being the Vendors) from voting any shares they control at any general meeting of Accelerate and

    (b) Accelerate's directors from voting any shares they control on the resolution at the General Meeting to ratify the issue of shares the subject of the Voting Deeds (being the 7,000,000 shares issued under the Kaolin Acquisition).

24. On 19 March 2020, we decided not to make the interim orders requested in the *Accelerate Resources Limited 02* application following a further request for an interim order in respect of the *Accelerate Resources Limited 01* application for the reasons discussed in paragraphs 26 to 33 below.

Final orders sought

25. The Applicant sought final orders including unwinding the Kaolin Acquisition (or, in the alternative, vesting all of the shares issued pursuant to the Kaolin Acquisition in ASIC for disposal) and requiring corrective and updated notices to be issued by Accelerate pursuant to Chapter 6C.

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[3] See paragraph 12

FURTHER REQUEST FOR INTERIM ORDERS

26. By email dated 18 March 2020, the Applicant sought an interim order in respect of the *Accelerate Resources Limited 01* application that the s249D General Meeting (to be held on 20 March 2020) be deferred by seven days until 27 March 2020.

27. As the s249D Notice was given by the Applicant on 22 January 2020, Accelerate had until 22 March 2020 to hold the section 249D meeting to meet the two month time requirement set out in section 249D(5).

28. The Applicant's request, to defer the s249D General Meeting from 20 March 2020 until 27 March 2020, required the Panel to defer the meeting beyond the two month time requirement for the meeting to be "held". Based on submissions received from the parties and ASIC, we concluded that it is doubtful that the Panel has such a power. Specifically, in *ASIC v NRMA*, Windeyer J said:

    … Without going to authority I would have considered that the ordinary meaning of "held" in s249D(5) requires completion and does not allow adjournment outside the statutory date, unless by order of the court... [4]

29. We requested submissions on alternative interim orders to address the Applicant's concerns if the Panel's power to defer the s249D General Meeting beyond two months was in doubt.

30. Following submissions by the parties, we made interim orders on 19 March 2020 to the effect that:

    (a) Accelerate must defer the date of its General Meeting (which had previously been adjourned to 20 March 2020[5]) until the later of 27 March 2020 and the date on which the Panel has made a determination in respect of both the *Accelerate Resources Limited 01* and *Accelerate Resources Limited 02* applications and

    (b) Accelerate keep for a period of 14 days, and provide to the Panel at its request, a record of any votes cast on the resolutions at the s249D General Meeting in respect of the ordinary shares in Accelerate held by certain shareholders, including the Placees, the Accelerate directors, the Vendors and Gibb River

    (**Interim Orders** – see Annexure A).

31. In formulating the Interim Orders, we were of the view that deferring the General Meeting by seven days and tagging the votes at the s249D General Meeting would sufficiently address both of the concerns in the interim orders requested in the *Accelerate Resources Limited 02* application[6] given that:

    (a) tagging the votes of the primary subjects of the *Accelerate Resources Limited 01* and *Accelerate Resources Limited 02* applications would enable the Panel to determine how the voting outcomes of the s249D General Meeting would have

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[4] See *ASIC v NRMA Ltd* [2002] NSWSC 1135 at [12]. See also *Guss v Veenhuizen* [1976] HCA 25, to which Windeyer J referred. Both ASIC and Accelerate referred to *ASIC v NRMA* as the authority on the issue of adjourning a section 249D meeting

[5] As per Accelerate's announcement on 13 March 2020

[6] As set out in paragraph 23

differed in the instance that unacceptable circumstances are found

(b) we could make a final order requiring the s249D General Meeting resolutions to be put forward again at a new meeting, conceivably with a shorter notice period and

(c) delaying the General Meeting for the period of the proceedings has the same effect in preserving the status quo as preventing the Vendors voting at the General Meeting (one of the two interim orders requested in the *Accelerate Resources Limited 02* application).

32. We also considered that the interim order requested in the *Accelerate Resources Limited 02* application, to disallow votes by Accelerate's directors and Vendors, was a request for a final order.

33. Accordingly, for the reasons above, we determined that we would not separately make the interim orders requested in the *Accelerate Resources Limited 02* application and advised parties to the *Accelerate Resources Limited 02* proceeding of our decision.[7]

DISCUSSION

34. We have considered all the material, but address only specifically that part of the material we consider necessary to explain our reasoning.

Decision to conduct proceedings

35. On reading the material, we were concerned about (among other things):

(a) in respect of the *Accelerate Resources Limited 01* application, the circumstances surrounding the Placement and

(b) in respect of the *Accelerate Resources Limited 02* application, the potential breaches of section 606 and the substantial shareholder provisions by virtue of Accelerate entering into the Voting Deeds and because of the associations alleged by the Applicant.

36. Accordingly, we decided to conduct proceedings in each case and hear each of the matters together pursuant to Regulation 16 of the *Australian Securities and Investments Commission Regulations 2001* (Cth). We also made ancillary directions under Regulation 16 to facilitate hearing the matters together, including that notices of appearance lodged in respect of one matter were valid for the other matter and vice versa.

Placement – a frustrating action?

37. The Applicant submitted that the Placement was not made for a proper purpose.

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[7] At the time of the Panel's decision, a direction had not yet been made to hear the *Accelerate Resources Limited 01* and *Accelerate Resources Limited 02* applications together. The Applicant subsequently sought the consent of the President of the Panel to review the Panel's decision not to make the interim orders requested in the *Accelerate Resources Limited 02* application on 19 March 2020 pursuant to section 657EA(2). The substantive President of the Panel, Alex Cartel, declined to grant consent to that review application. See *Accelerate Resources Limited 02 (Consent to Review of Interim Orders)* [2020] ATP 5

Rather, it submitted that the Placement was made to *"garner additional support for the incumbent Board in the face of a section 249D request…"* The Applicant pointed to the Placement shares being placed to the Placees at a *"significant discount to the market price"* (the shares were placed at $0.02455 per share[8]) and that the Placement was made shortly before the s249D General Meeting and after Accelerate had previously announced the Entitlement Offer.

38. As a starting point, Guidance Note 12: *Frustrating Action* relates to actions that could frustrate a *bid* or *potential bid*.[9] There is no reference to board control situations in Guidance Note 12.

39. However, in *Factor Therapeutics Limited*, it was stated that:

While Guidance Note 12: Frustrating Action does not apply to a s249D meeting to consider changes to a company's board, a placement made prior to such a meeting may have an effect on control and impact on voting at the meeting in an unacceptable way.[10]

40. The Panel in *Factor Therapeutics Limited* had regard to a number of matters in determining that there was no reasonable prospect that the Panel would make a declaration of unacceptable circumstances in relation to a placement conducted prior to a section 249D requisitioned meeting.[11] It is helpful to consider Accelerate's submissions in light of these matters:

(a) Need for funds – Accelerate submitted that the Board *"had a genuine need to raise funds to undertake drilling at its Kaolin Project (which has subsequently occurred) and the Placement was undertaken for a proper purpose."* It denied that the Placement was structured to attempt to frustrate the proposed changes to the Board in the face of the s249D Notice.

(b) Contemplation of the Placement – Accelerate submitted that the Board had been planning a capital raising since August 2019 and that the Placement was approved by the Board and publicly announced before the receipt of the s249D Notice.

(c) No substantial holder or association between Placees – Accelerate submitted that:

(i) *"No person became a substantial shareholder following the conclusion of the Placement and no existing shareholder increased its shareholding such that it was required to file a [substantial holder] notice under section 671B… There is no accumulation or exercise of voting power in contravention of Chapters 6-6C or in otherwise unacceptable circumstances that give rise to control issues or will impact voting at the section 249D meeting"* and

(ii) there are no associations between any of the Placees.

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[8] Accelerate in its submissions noted that this was a discount of approximately 9.74% to the 15 day VWAP which, it submitted, was considered appropriate by the Board given current market conditions
[9] *Guidance Note 12: Frustrating Action* at [3]
[10] *Factor Therapeutics Limited* [2019] ATP 5 at [12]
[11] *Factor Therapeutics Limited* [2019] ATP 5 at [13]

41. There are factors that weigh against accepting Accelerate's submissions and which cause us some concern, including:

    (a) First, it was not entirely apparent to us that Accelerate needed to undertake the Placement. Accelerate's Consolidated Interim Financial Report for the Half-Year Ended 31 December 2019 showed that Accelerate's cash and cash equivalents at the end of 31 December 2019 was $514,621. The Placement (undertaken less than a month later) raised $120,318 and at a discounted price (which the Applicant submitted was "*a 60% discount to an alternative placement offered by [the Applicant] and in circumstances where AX8 had not accepted a series of previous placement offers at substantially higher prices*"). However, we note Accelerate's submission that the Placement was required "*to keep the Company's cash reserves at a level the Board considered prudent*".

    (b) Second, it was not entirely clear why Accelerate determined to undertake a capital raising by way of the Placement rather than the previously announced Entitlement Offer. Accelerate submitted that "*the Placement represented a more expeditious, cost-effective and certain means of raising the requisite funds in the short term rather than a prospectus based entitlement issue.*" However, this was difficult to reconcile with the fact that at the time of first announcing its intention to undertake the Entitlement Offer on 18 November 2019, Accelerate had already held two due diligence meetings and prepared a draft prospectus for the Entitlement Offer.

    (c) Third, there was limited material produced by Accelerate to evidence its internal deliberation of capital raising options (including of the Placement and Entitlement Offer). For example, as pointed out by the Applicant in its submissions, Accelerate submitted that at its Board meeting on 15 November 2019, "*The board discussed a potential capital raising in detail, including the funding required to support the proposed exploration and drilling program and accordingly the potential size of the raising.*" However, in the Board minutes provided for that meeting, the minutes simply state "*Capital raising: Approved that a statement disclosure (sic) on the capital raising be included in the announcement. To be finalised for pre-market Monday.*"

    (d) Fourth, the timing of the General Meeting, being held four days prior to the s249D General Meeting, is peculiar and certainly not cost conscious in circumstances where the Board is concerned with Accelerate's cash reserves. On this point, the Applicant submitted that the General Meeting was called "*to seek approvals from shareholders which will enable the incumbent Board to issue further shares to 'friendly' shareholders prior to the [s249D] General Meeting called to consider changes to the AX8 Board.*" Accelerate denied these allegations and submitted that the only reason the two meetings were not held on the same day was to "*avoid any potential confusion to shareholders*" in light of feedback it had

previously received from its shareholders.[12]

(e) Fifth, Alto Capital, Accelerate's corporate adviser to the Placement, had made a number of curious statements to the Placees:

(i) On one occasion, Alto Capital had emailed each of the Placees attaching a proxy form for the General Meeting simply requesting they "*… please tick "The Chair" box, vote FOR all resolutions…*", thereby appointing the chair as the Placee's proxy and directing the proxy to vote in favour of the General Meeting resolutions.

(ii) On another occasion, Alto Capital had emailed each of the Placees attaching a proxy form for the s249D General Meeting stating that "*Accelerate… is holding an EGM following multiple requests pursuant to section 249D… to remove and replace current directors Yaxi Zhan and Terry Topping. The AX8 board recommends voting against the resolutions and we are in full support of these recommendations.*"

42. However, while we had a number of concerns, we were not satisfied that there was sufficient material to establish that the Placement had been designed to frustrate the resolutions to be considered at the s249D General Meeting or that it had an effect on control, and impact on the voting at the s249D General Meeting, that gave rise to unacceptable circumstances.[13]

43. In coming to our conclusion, we make the following observations:

(a) The Placement was made to persons, each of whom holds less than 5% after the Placement. While we have some concerns that Alto Capital was "rounding up" the votes of the Placees for the General Meeting and s249D General Meeting, there is otherwise little evidence to satisfy us that an association existed between Accelerate and Alto Capital and/or the Placees.

(b) There is at least some material available to show that the Placement was in contemplation and in the process of implementation some months before the s249D Notice was received. For example, a proposal for a corporate advisory mandate was presented to Accelerate from Alto Capital on 27 August 2019 which provided for corporate and commercial advisory services in respect of future capital raisings, including a placement.

(c) Accelerate submitted that based on the budget and drilling program for the Kaolin Project finalised in advance of the Placement, "*it was apparent to the Board that the drilling program would quickly expend the Company's cash reserves*." It further submitted that"*[t]his has proven to be the case*" given that Accelerate's cash balance had depleted from $514,621 (at 31 December 2019) [14] to "*approximately $283,000*" by 31 March 2020. This appears to support

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[12] Accelerate submitted that in 2018, its received feedback from its shareholders that convening the first 249D meeting requisitioned by the Applicant on the same day as its 2018 Annual General Meeting was confusing to several shareholders

[13] *Factor Therapeutics Limited* [2019] ATP 5 at [12]

[14] See Accelerate's Consolidated Interim Financial Report for the Half-Year Ended 31 December 2019

Accelerate's contention that the Placement was undertaken to keep the company's cash balance at desired levels, noting that Accelerate had also submitted that "*Mr Grant Mooney* (Accelerate's chairman) *as an experienced chairman of exploration companies… has consistently preferred to maintain at least $500,000 in cash to ensure that the company can continue as a going concern.*"

(d) It is not clear that the Placement had any material effect on the results of the s249D General Meeting. None of the resolutions at the s249D General Meeting held on 20 March 2020 were successful, with 66.74% of total votes being cast against each resolution. As part of the Interim Orders, the votes of certain shareholders, including the Placees, were tagged at the s249D General Meeting. The voting records show that the Placees accounted for approximately 11.31% of the votes cast at the s249D General Meeting and there is insufficient evidence to establish that the Placees were associates (either with each other or any other shareholder). In the absence of evidence to the contrary, we are not satisfied that the Placement distorted voting at the s249D General Meeting in an unacceptable way.[15]

We note that the s249D Notice is one of four separate section 249D requests from the Applicant and other shareholders that has sought to remove certain Accelerate directors since October 2018, in each case unsuccessfully. In the face of reoccurring section 249D notices from the same group of requisitioning shareholders,[16] it would be unfair on Accelerate to be hindered in its ability to undertake a placement where there is insufficient evidence to suggest that it was not within the ordinary course of its business.[17]

(e) Accelerate submitted that "*the Placement was not in substitution for the Entitlement Offer*" and that it "*still intends to undertake the Entitlement Offer following the conclusion of the section 249D meeting as part of its broader capital raising program…*" Materials provided by Accelerate appeared to support its contention that work on the Entitlement Offer is still progressing.

(f) Finally, the Panel is not the appropriate forum for determining whether the Placement was made for a proper purpose; that remains a matter for the courts.[18]

Voting Deeds

44. On the basis of the material before us, it is clear that:

(a) as at 18 November 2019, Accelerate had a relevant interest of 11.27% in itself because of the Shareholder Support Deed in place and

(b) by virtue of entering into the Voting Deeds on 18 November 2019, in which

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[15] A similar conclusion was drawn, on similar facts, in *Redflex Holdings Limited* [2009] ATP 17 at [24]
[16] Postscript: On 17 April 2020, Accelerate announced that it received a notice under section 249D signed by the Applicant and other shareholders requisitioning a general meeting to consider resolutions, including for the removal of Ms Zhan
[17] *Guidance Note 12: Frustrating Action* at [12(d)]
[18] *Hastings Rare Metals Limited* [2013] ATP 13 at [18]

Accelerate acquired a relevant interest of 12.82% in itself,

Accelerate had increased its voting power in Accelerate shares from below 20% to above 20% without any exceptions in section 611 applying, in contravention of section 606.

45. Further, by only lodging a substantial holder notice disclosing its relevant interest in Accelerate shares pursuant the Voting Deeds on 16 March 2020, Accelerate contravened section 671B. As a starting point, we do not consider that section 657A(2)(c) operates as to provide automatically that any contravention or a likely contravention of Chapter 6, 6A, 6B or 6C is *per se* unacceptable.[19] However, the Panel may be more inclined to find a contravention of section 606 unacceptable, as that section is recognised as one of the cornerstone provisions of Chapter 6.[20]

46. Among other things, we sought submissions from the parties and ASIC as to whether the breaches of sections 606 and 671B constituted unacceptable circumstances.

47. Accelerate did not dispute the breaches in question. However, it submitted (among other things) that:

    (a) Accelerate's delay in lodging a substantial holder notice had no effect that may give rise to unacceptable circumstances, including because the Voting Deeds were disclosed to shareholders in advance of both the s249D General Meeting and its proxy cut-off time and

    (b) given that the Shareholder Support Deed expired on 8 December 2019, "*the period of overlap in which Accelerate had a relevant interest in itself of more than 20% was for less than three weeks. During this period no corporate actions were undertaken by Accelerate, meaning there would have been no impact on the control or potential control of Accelerate.*" We note, however, that Accelerate's annual general meeting was held within this period of overlap on 28 November 2019.

48. The Applicant submitted (among other things) that:

    (a) the failure to lodge substantial shareholder notices relating to a material number of shares undermines the operation of a properly informed market

    (b) the notices of meeting to the General Meeting and s249D General Meeting issued by Accelerate subsequent to the Voting Deeds being signed "*should have disclosed to shareholders both the existence and effect of the Voting Deeds in relation to the general meetings. This could obviously have affected the outcome of the s249D General Meeting…*"and

    (c) the fact that the Shareholder Support Deed subsequently expired "*in no way limits the unacceptable circumstances it gave rise to and continues to give rise to*".

49. ASIC, in a similar vein to the Applicant, raised concerns regarding the negative impact on market integrity that can result as a failure to lodge substantial holding

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[19] *Yowie Group Ltd 01 & 02* [2019] ATP 10 at [46]
[20] *Yowie Group Ltd 01 & 02* [2019] ATP 10 at [47], citing *Taipan Resources NL 09* [2001] ATP 4

notices promptly. It submitted that:

From the time of entry into the Voting [Deeds] and acquisition of the relevant interest by Accelerate until the holding was eventually disclosed, the market has been uninformed as to both the interest held by Accelerate and the Voting [Deeds] themselves…

…the non-disclosure may potentially have had an impact on:

(a) [The Applicant] and the requisitioning shareholders, who may have acted differently if they were aware of the substantial holding, including with respect to requisitioning of the s249D meeting; and

(b) shareholders generally, who similarly may have undertaken different actions, including with respect to voting at [Accelerate's] general meeting on 28 November 2019.

50. We share those concerns expressed by ASIC.

51. In *Aguia Resources Limited*, the Panel stated that:

A contravention of the substantial holding provisions alone can give rise to unacceptable circumstances. However, it may be less likely to be in the public interest to intervene in a board dispute and make a declaration of unacceptable circumstances on a contravention of the substantial holding provisions alone if it is not material or where the market is <u>not</u> misinformed.[21] (emphasis added)

52. Here, the market *was* misinformed.

53. By entering into the Voting Deeds (which resulted in a contravention of section 606) and subsequently delaying disclosure of its relevant interest in those Voting Deeds (which resulted in a contravention of section 671B), Accelerate has caused the integrity of the market to be compromised. The Applicant and Accelerate shareholders at large were unaware of the voting block that existed as a result of the Voting Deeds and may not have had sufficient time to consider the implications of that voting block. This is particularly the case given that the Voting Deeds were only disclosed four days prior to the s249D General Meeting[22] and in the case of Accelerate's annual general meeting held in November 2019, not disclosed beforehand at all.[23]

54. We are also concerned about the timing of Accelerate eventually disclosing its relevant interest arising out of the Voting Deeds, which occurred soon after we asked Accelerate to "*confirm whether any of the placees have any encumbrances over their voting rights in respect of their placement shares or whether a person has the power to vote a placees' shares*". It would appear that Accelerate's delayed disclosure was prompted by us.[24]

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[21] *Aguia Resources Limited* [2019] ATP 13 at [24(g)]

[22] The Voting Deeds were disclosed on 16 March 2020, being four days prior to the s249D General Meeting scheduled for 20 March 2020

[23] Noting that at Accelerate's annual general meeting held on 28 November 2019, Accelerate was "f*acing a 'second strike' in relation to its remuneration report and a 'spill resolution'*"

[24] Accelerate's relevant interest in the Shareholder Support Deed was disclosed in a notice of initial substantial holder dated 11 December 2018

Alleged associations

55. The associations alleged by the Applicant included associations between:

    (a) Accelerate's directors and Accelerate

    (b) Accelerate's directors and the Vendors and

    (c) Gibb River and Accelerate and/or Accelerate's managing director, Ms Zhan.

56. The Applicant submitted that the alleged associations gave rise to *"a myriad of breaches of both section 606 of the Corporations Act and Chapter [6C] of the Corporations Act"*.

57. We note that the various associations are alleged in the context of a potential board dispute. This does not necessarily take the matter outside the purview of the Panel. As the Panel considered in *Aguia Resources Limited*:

    If, in the context of issues regarding the composition of a company's board, there is an accumulation or exercise of voting power possibly in contravention of s606, without proper disclosure under Chapter 6C or in otherwise unacceptable circumstances, those issues may be treated as control issues for the purposes of s657A.[25]

58. We turn to each of the associations alleged by the Applicant.

Alleged association between Accelerate and Accelerate directors

59. The Applicant submitted that the evidentiary basis for the association between Accelerate and its directors included that each of the Accelerate directors had signed the notice of meeting for the s249D General Meeting (**s249D NoM**) which recommended shareholders vote to maintain the existing Board. The Applicant submitted that this was *"…sufficient in the absence of any evidence to the contrary to support an inference that both [Accelerate] and each of the [Accelerate] directors are acting in concert in maintaining the existing composition of the Board"*.

60. Accelerate denied the association. It submitted (among other things) that a concurrence of views amongst the Board regarding the merits of the resolutions proposed at the s249D General Meeting did not, in and of itself, constitute an association between persons.

61. ASIC noted that it was expected that directors of a company may take steps in common in the context of pursuing a proposed course of action, which may include approving, signing or making recommendations in connection with a notice of meeting. ASIC considered this to be a normal function of directorship which may not give rise to associations where the directors are acting in their capacity as directors and/or on behalf of the company, and in accordance with their directors' duties. However, it noted that where directors engage in a common course of action to further their own interests rather than the interests of the company, it may be the case that those directors are associates of each other and/or the company.

62. The effect of the association alleged between Accelerate and its directors would give

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[25] *Aguia Resources Limited* [2019] ATP 13 at [24(a)], quoting *Resources Generation Limited* [2015] ATP 12 at [48]

rise to a breach of section 606. The Panel in *Blackham Resources Limited* stated that *"a finding of association, where one has not been admitted or disclosed previously, is a serious finding for the Panel to make, particularly if the parties have committed a breach of section 606… It follows that the evidence presented to the Panel must be sufficient to support such a finding…"*[26]

63. Without more, it is difficult to see how the signing of the s249D NoM by the Accelerate directors could be sufficient evidence of an association between Accelerate and its directors.

64. While we broadly agree with sentiments expressed by ASIC, we are not satisfied in this instance that the material provided by the Applicant or by Accelerate in response to our inquiries established that the Accelerate directors were acting to further their own interests (rather than the interests of the company).

65. Accordingly, we do not consider that the alleged association between Accelerate and its directors is established.

Alleged association between Accelerate directors and the Vendors

66. The Applicant submitted that an inference of association between the Accelerate directors and the Vendors could be drawn from a combination of:

    (a) the Voting Deeds, which required that the Vendors vote their Accelerate shares at a meeting of shareholders in accordance with the voting intentions stated by the chairperson in respect of undirected proxies

    (b) the directors' recommendation in the s249D NoM which recommended that shareholders vote against the resolutions proposed at the s249D General Meeting and

    (c) the chairperson's voting intention set out in the s249D NoM which stated that the chairperson intends to vote all undirected proxies against the resolutions proposed at the s249D General Meeting.

67. The Applicant submitted that the effect of the Voting Deeds was to contractually bind each of the Vendors to vote in accordance with the chairperson's stated intention for discretionary proxies. Therefore, the chairperson's stated intention *"evidences that he was acting in concert with each of the vendors of the Kaolin [Acquisition] in relation to voting at the [s249D] General Meeting as he is, in effect, requiring them to vote the same way as he is voting"*. It submitted that the fact that the other Accelerate directors had endorsed that recommendation is also evidence that they were also acting in concert with the Vendors, or alternatively, a party to a relevant agreement with them.

68. While the Voting Deeds were not initially disclosed, we do not think that their mere existence is indicative of an association between the Accelerate directors and the Vendors and in the circumstances of this matter, we do not consider that the matters

[26] *Blackham Resources Limited* [2014] ATP 16 at [51]

set out in paragraph 66 are sufficient to support such a finding.[27]

69. As we do not consider a finding of association between the Accelerate directors and the Vendors available on the evidence before us, we also do not find any corresponding breach of sections 606 or 671B.

Alleged association between Gibb River and Accelerate and/or Ms Zhan

70. The Applicant alleged a further undisclosed association between Gibb River (a 5.04% holder in Accelerate) and Accelerate and/or Accelerate's managing director, Ms Zhan, based on "*circumstantial evidence*", including that:

    (a) Accelerate's announcement on 16 March 2020 disclosing Accelerate's interest in the Voting Deeds also attached notices of change of interest of substantial holder for both Gibb River and Ms Zhan. These notices were on identical terms and disclosed changes in substantial holder that occurred on 28 January 2020

    (b) Ms Zhan is an ex-employee of Mr Jim Richards, the executive chairman of Gibb River

    (c) Mr Grant Mooney, the non-executive chairman of Accelerate, is also a non-executive director and the company secretary for Gibb River

    (d) Mr Richards attended the s249D General Meeting and "*spoke at length in favour of Ms Zhan remaining on the AX8 Board*" and "*provided a detailed personal endorsement*" and

    (e) Mr Richards also spoke at the s249D General Meeting in favour of Mr Terry Topping remaining on the Board and stated that he had known Mr Topping for seven years.

71. Accelerate denied the alleged associations. It submitted (among other things) that:

    (a) Accelerate and Gibb River are not associates merely because of common directorships and some commonality of shareholders

    (b) Mr Mooney does not have the ability to control the boards of Accelerate or Gibb River given that he is one of four Accelerate directors and one of three Gibb River directors respectively and

    (c) Ms Zhan has "*an informal professional mentoring relationship with Mr Richards*" borne out of the prior employment relationship but that there was otherwise no relationship.

72. While there are clearly historical structural links, such as previous employment, and current links, such as through common directorships, we did not consider that there was any shared goal or purpose, or acting in concert, between the parties to find an association between Gibb River and Accelerate and/or Ms Zhan. It follows that we do not find contraventions of sections 606 or 671B.

Other alleged associations

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[27] To the extent an association exists between Accelerate and the Vendors, Accelerate's relevant interest has already been disclosed in the substantial holder notices lodged by Accelerate on 16 March 2020

73. During the course of the proceedings, the Applicant submitted that a number of other associations existed in relation to the affairs of Accelerate, including between:
    (a) certain Vendors and the Placees
    (b) each of the Vendors themselves
    (c) Alto Capital and Accelerate and
    (d) the Placees and Alto Capital.
74. In our view, while there were connections between the parties that the Applicant identified, the links were tenuous and the evidence fell far short of establishing an association.

DECISION

Declaration

75. It appears to us that the circumstances are unacceptable circumstances:
    (a) having regard to the effect that we are satisfied they have had on:
        (i) the control, or potential control, of Accelerate or
        (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in Accelerate
    (b) in the alternative, having regard to the purposes of Chapter 6 set out in section 602 or
    (c) in the further alternative, because they constituted or constitute a contravention of a provision of Chapter 6 or of Chapter 6C.
76. Accordingly, we made the declaration set out in Annexure B and consider that it is not against the public interest to do so. We had regard to the matters in section 657A(3).

Extension of time – Accelerate Resources Limited 02 application

77. Section 657C(3) says:

    An application for a declaration under section 657A can be made only within:

    (a) two months after the circumstances have occurred; or

    (b) a longer period determined by the Panel.
78. We sought submissions from parties on whether we should extend time based on the circumstances on which the *Accelerate Resources Limited 02* application was based.
79. While the Voting Deeds were entered into on 18 November 2019, given that Accelerate did not disclose its interest in the Voting Deeds until 16 March 2020, we decided to extend time to make the application to the date the *Accelerate Resources Limited 02* application was made.

Orders

80. Following the declaration, we made the final orders set out in Annexure C. We were

not asked to, and did not, make any costs orders. Under section 657D the Panel's power to make orders is very wide. The Panel is empowered to make 'any order'[28] if 4 tests are met:

(a) it has made a declaration under section 657A. This was done on 16 April 2020.

(b) it must not make an order if it is satisfied that the order would unfairly prejudice any person. We are satisfied that our orders do not unfairly prejudice any person.

(c) it gives any person to whom the proposed order would be directed, the parties and ASIC an opportunity to make submissions. This was done on 12 April 2020 (in relation to a supplementary brief on orders). The Applicant and Accelerate made submissions and Accelerate made rebuttals. Further submissions were sought on 18 April 2020 regarding the proposed orders. Both Accelerate and ASIC made submissions.

(d) it considers the orders appropriate to either protect the rights and interests of persons affected by the unacceptable circumstances, or any other rights or interests of those persons. The orders do this by:

  (i) releasing the Vendors from their respective Voting Deeds, thereby giving the Vendors the freedom to vote their Accelerate shares according to their own wishes and

  (ii) requiring Accelerate to give its shareholders at least 28 days' notice in respect of reconvening its General Meeting and issue a new notice of meeting with details of the terms of the Voting Deeds and the effect of our declaration and orders.

81. We consider that the final orders initially sought by the Applicant in the *Accelerate Resources Limited 02* application, to unwind the Kaolin Acquisition, would be unfairly prejudicial to the Vendors. We also do not consider it necessary to require corrective substantial holder disclosure in the circumstances of this case.

82. We initially proposed an order to release the Vendors from their respective Voting Deeds.

83. The Applicant submitted that a series of additional orders should be made by the Panel to remedy the unacceptable circumstances, including:

(a) preventing any votes being cast in relation to the shares the subject of the Voting Deeds for the remaining duration of the Voting Deeds

(b) cancelling the Escrow Agreements so that the Vendors would also be free to dispose of their shares and

(c) requiring Accelerate to:

  (i) provide a further 28 days' notice to its shareholders before holding the

[28] Including a remedial order but other than an order requiring a person to comply with a provision of Chapters 6, 6A, 6B or 6C

adjourned General Meeting, given that the General Meeting (originally scheduled for 16 March 2020) had been adjourned for more than 28 days and

(ii) disclose in its notice of meeting for the adjourned General Meeting details of Voting Deeds, the declaration and the orders made in respect of the Applications.

84. In response, Accelerate submitted that "*imposing a voting restriction upon the [Vendors] is unnecessary and punitive… In light of the lack of any association between the [Vendors] and Accelerate, there is no reasonable basis to conclude that the [Vendors] will continue to vote in accordance with the Voting Deeds and the recommendations of the Accelerate Board once they are free to vote as they wish*". We agree. There is no material to suggest that the Vendors were involved in Accelerate's failure to disclose its interest resulting from the Voting Deeds. Accordingly, we are satisfied that such an order would be unfairly prejudicial to the Vendors.

85. We consider that the Escrow Agreements do not need to be cancelled given that these arrangements were disclosed to the market on announcement of the Kaolin Acquisition on 18 November 2019. In doing so, we have had regard to Accelerate's submission that the Escrow Agreements were in place to maintain an orderly market in Accelerate shares.

86. On the orders proposed by the Applicant in respect of the notice of meeting for the adjourned General Meeting (as set out in paragraph 83(c) above), Accelerate submitted that there was no need for the Panel to make any such orders given that:

(a) Accelerate would provide shareholders with adequate notice in accordance with Accelerate's constitution (which requires Accelerate to give notice of a meeting of members resumed from an adjourned meeting if the period of adjournment exceeds 28 days) and

(b) details of the Voting Deeds, the declaration and the orders are, or will be, in the public domain.

87. Having considered the responses from the parties, we consider that disclosure of the Voting Deeds, the declaration and the orders in the notice of meeting for the adjourned General Meeting is necessary to ensure Accelerate shareholders are properly and fully informed when asked to vote at the adjourned General Meeting and revised our proposed orders accordingly.

88. We sought further submissions from the parties on whether a specific notice period to Accelerate shareholders for the adjourned General Meeting should be specified in final orders (noting the Applicant's submission that a period of 28 days was appropriate[29]).

89. Accelerate submitted that a notice period of not less than 14 days' would provide shareholders with ample time to consider new information prior to the adjourned

[29] See paragraph 83(c)(i)

General Meeting.

90. ASIC submitted that if a new notice of meeting was required to be issued, the relevant statutory period of 28 days as set out in section 249HA is an appropriate period. However, ASIC noted that if the disclosure in the notice of meeting was limited to supplementary disclosure in relation to the Voting Deeds, the declaration and the orders, a shorter period may be sufficient.

91. Given our orders require Accelerate to prepare and issue a new notice of meeting for the adjourned General Meeting (and therefore, was not limited to supplementary disclosure), we are of the view that a notice period of 28 days to shareholders is appropriate. The final orders reflect that notice period.

John O'Sullivan
President of the sitting Panel
Decision dated 16 April 2020
Reasons given to parties 13 May 2020
Reasons published 15 May 2020

Advisers

Party	Advisers
Applicant	Bennett + Co
Accelerate	DLA Piper
Alto Capital	HWL Ebsworth
Jonathan Davies	Not applicable

Australian Government
Takeovers Panel

Annexure A

CORPORATIONS ACT
SECTION 657E
INTERIM ORDERS

ACCELERATE RESOURCES LIMITED 01

GTT Global Opportunities Pty Ltd[1] made an application to the Panel dated 4 March 2020 in relation to the affairs of Accelerate Resources Limited (**Accelerate**).

The Panel ORDERS:

1. Accelerate must defer the date of its general meeting previously adjourned to Friday, 20 March 2020 (as announced by Accelerate on Monday, 16 March 2020) until the later of Friday, 27 March 2020 and the date on which the Panel has made a determination in respect of both *Accelerate Resources Limited 01* and *Accelerate Resources Limited 02*.

2. In relation to the section 249D extraordinary general meeting of Accelerate to be held on Friday, 20 March 2020 at 10:00am (WST), that Accelerate keeps a record of any votes cast on the resolutions to be considered at that meeting in respect of the ordinary shares in Accelerate held by each of:

   (a) the placees in respect of the placement completed by Accelerate on 28 January 2020

   (b) the Vendors to the Acquisition Agreement (as defined in Accelerate's notice of general meeting dated 6 February 2020)

   (c) the Accelerate directors

   (d) Alto Capital Pty Ltd and

   (e) Gibbs River Diamonds Limited

   and each of their associates, and:

   (f) ensures copies of such voting records (being any voting card, proxy form or other document evidencing votes cast on the poll) are kept for 14 days

[1] On behalf of itself and other shareholders who signed a notice pursuant to section 249D of the *Corporations Act 2001* (Cth) dated 22 January 2020

following the date of the meeting, which must be provided to the Panel upon its request and

(g) provides to the Panel by 5:00pm (Melbourne time) on the day of the meeting the poll report for each resolution.

3. These interim orders have effect until the earliest of:

(i) further order of the Panel

(ii) the determination of the proceedings and

(iii) 2 months from the date of these interim orders.

Tania Mattei
Counsel
with authority of John O'Sullivan
President of the sitting Panel
Dated 19 March 2020

Australian Government
Takeovers Panel

Annexure B

CORPORATIONS ACT
SECTION 657A
DECLARATION OF UNACCEPTABLE CIRCUMSTANCES

ACCELERATE RESOURCES LIMITED 01 & 02

CIRCUMSTANCES

1. Accelerate Resources Limited is an ASX listed company (ASX code: AX8) (**Accelerate**).

2. On 18 November 2019, Accelerate announced the acquisition of a kaolin project (**Kaolin Acquisition**) in consideration for Accelerate shares.

3. On 16 March 2020, Accelerate lodged a number of substantial holder notices disclosing for the first time that it had a relevant interest of 12.82% in itself as a result of the shares issued under the Kaolin Acquisition being subject to a 9 month voluntary escrow and that certain vendors under the Kaolin Acquisition (**Kaolin Vendors**) had agreed to enter into shareholder support deeds in relation to the shares issued to them (**Voting Deeds**).

4. The terms of the Voting Deeds required, among other things, that the Kaolin Vendors vote all their Accelerate shares at a meeting of Accelerate shareholders in accordance with the voting intentions stated by the chair of the meeting in respect of undirected proxies. The Voting Deeds were dated 18 November 2019 and expire 9 months from that date (unless terminated earlier).

5. As at 18 November 2019, Accelerate also had in place a similar shareholder support deed with GTT Global Opportunities Pty Ltd and other shareholders[1] which gave Accelerate a relevant interest of 11.27% in itself (**Shareholder Support Deed**).[2]

6. Accordingly:

   (a) by virtue of entering into the Voting Deeds when the Shareholder Support Deed was still on foot,[3] Accelerate increased its voting power in Accelerate

[1] The other shareholders were Mounts Bay Investments Pty Ltd, Syracuse Capital Pty Ltd, Murdoch Capital Pty Ltd and Kcirtap Securities Pty Ltd.
[2] Accelerate lodged a substantial holder notice in respect of the Shareholder Support Deed on 11 December 2018.
[3] The Shareholder Support Deed lapsed in December 2019.

shares from below 20% to above 20% without any exceptions in section 611[4] applying, in contravention of section 606 and

(b) Accelerate delayed in lodging a substantial holder notice disclosing details of its relevant interest in 12.82% of Accelerate shares pursuant to the Voting Deeds, in contravention of section 671B.

EFFECT

7. Accelerate shareholders and the market were not aware of Accelerate's relevant interest in the shares held by the Kaolin Vendors and the agreements giving rise to it.

CONCLUSION

8. 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 on:

      (i) the control, or potential control, of Accelerate or

      (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in Accelerate

   (b) in the alternative, having regard to the purposes of Chapter 6 set out in section 602 or

   (c) in the further alternative, because they constituted or constitute a contravention of a provision of Chapter 6 or of Chapter 6C.

9. 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 Accelerate.

Tania Mattei
Counsel
with authority of John O'Sullivan
President of the sitting Panel
Dated 16 April 2020

[4] References are to the *Corporations Act 2001* (Cth) unless otherwise indicated.

Australian Government
Takeovers Panel

Annexure C

CORPORATIONS ACT
SECTION 657D
ORDERS

ACCELERATE RESOURCES LIMITED 01 & 02

The Panel made a declaration of unacceptable circumstances on 16 April 2020.

THE PANEL ORDERS

Voting Deeds

1. The Vendors are released from their respective Voting Deeds with effect from the date of these orders.

2. By no later than two business days from the date of these orders, Accelerate must provide to the Vendors a notice confirming that, as a result of Order 1, the Vendors are no longer required to vote their Relevant Shares in accordance with the terms of the Voting Deeds and are free to vote their Relevant Shares according to their own wishes.

General Meeting

3. Accelerate must comply with the notice requirements set out in its constitution in respect of reconvening its General Meeting and provide at least 28 days' notice to its shareholders in accordance with section 249HA of the *Corporations Act 2001* (Cth).

4. Accelerate will prepare and issue a new notice of meeting to its shareholders in relation to its reconvened General Meeting, which will include:

   (a) details of the terms of the Voting Deeds and

   (b) an explanation of the effect of the Declaration and these orders.

Other

5. The parties to these proceedings and ASIC have the liberty to apply for further orders in relation to these orders.

6. In these orders the following terms apply:

Accelerate	Accelerate Resources Limited

Applications	The applications dated 4 March 2020 and 17 March 2020 by GTT Global Opportunities Pty Ltd in relation to the affairs of Accelerate
ASIC	Australian Securities and Investments Commission
date of these orders	20 April 2020
Declaration	The declaration of unacceptable circumstances made by the Panel in relation to the affairs of Accelerate on 16 April 2020
General Meeting	Accelerate's general meeting originally scheduled for 16 March 2020 which was adjourned until 20 March 2020 and subsequently deferred by order of the Panel until the later of 27 March 2020 and the date on which the Panel had made a determination in respect of the Applications
Kaolin Acquisition	The kaolin acquisition announced by Accelerate on 18 November 2019
Relevant Shares	In respect of each Vendor, their Accelerate shares which are the subject of their respective Voting Deeds
Vendors	The vendors to the Kaolin Acquisition
Voting Deeds	The shareholder support deeds dated 18 November 2019 entered into between Accelerate and each of the Vendors in respect of the Accelerate shares issued to them under the Kaolin Acquisition

Tania Mattei
Counsel
with authority of John O'Sullivan
President of the sitting Panel
Dated 20 April 2020