



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP20/17

Tuesday, 17 March 2020

Accelerate Resources Limited 02 - Panel Receives Application

The Panel has received an application from GTT Global Opportunities Pty Ltd¹ in relation to the affairs of Accelerate Resources Limited.

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

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

Details

For further background, see Accelerate Resources Limited - [TP20/10](#).

On 18 November 2020, Accelerate announced the acquisition of a kaolin project (**Kaolin Acquisition**) in consideration for the issue of approximately 13% of Accelerate's share capital.

On 22 January 2020, Accelerate received a notice under section 249D² signed by the applicant and other shareholders requiring Accelerate to convene a general meeting to consider resolutions to replace two of the four Accelerate directors.

On 7 February 2020, Accelerate called a general meeting to be held on 16 March 2020 (**General Meeting**) to, among other things, ratify prior issues of securities (including the shares issued under the Kaolin Acquisition). On 12 February 2020, Accelerate called a separate general meeting to be held on 20 March 2020 (being 4 days after the General Meeting) to consider the resolutions the subject of the section 249D notice (**s249D General Meeting**). On 13 March 2020, Accelerate announced that the General Meeting would "*be opened and then adjourned by the chairman until 11:00am (WST) on Friday, 20 March 2020*".

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 9 month voluntary escrow and that

¹ On behalf of itself and other shareholders who signed the section 249D notice referred to under the heading "Details"

² All statutory references are to the *Corporations Act 2001* (Cth)

certain vendors under the Kaolin Acquisition had agreed to enter into shareholder support deeds in relation to the shares issued to them (**Voting Agreements**).

The applicant submits, among other things, that:

- The Kaolin Acquisition was a defensive transaction entered into by Accelerate to entrench support for Accelerate's incumbent directors.³
- Accelerate delayed in lodging a substantial holder notice in relation to its relevant interest as a result of the Voting Agreements in breach of the substantial holding provisions.
- At the time Accelerate acquired a 12.82% relevant interest in itself as a result of the Voting Agreements, it had in place a similar voting agreement with the applicant and other shareholders who have requisitioned the s249D General Meeting (which lapsed in December 2019), and as a result had a relevant interest of at least 25.7% in breach of s606 and the substantial holding provisions.
- Two or more of Accelerate's directors are associates of Accelerate and the vendors under the Kaolin Acquisition and another Accelerate substantial shareholder is an associate of Accelerate and Accelerate's managing director, in breach of s606 and the substantial holding provisions.

The applicant seeks interim orders restraining (prior to the determination of the Panel application):

- all parties to the Voting Agreements from voting any shares they control at any general meeting of Accelerate and
- 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 Agreements.

The applicant seeks final orders in effect unwinding the Kaolin Acquisition (or alternatively vesting the shares issued under the Kaolin Acquisition with ASIC) and disclosure.

Allan Bulman
Director, Takeovers Panel
Level 10, 63 Exhibition Street
Melbourne VIC 3000
Ph: +61 3 9655 3500
takeovers@takeovers.gov.au

³ Noting that the date of the Kaolin Acquisition was 10 days prior to Accelerate's annual general meeting "at which (amongst other things) [Accelerate] was facing a 'second strike' in relation to its remuneration report and a 'spill resolution'."