



Henry Morgan Limited
ACN 602 041 770
Level 9 Riverside Centre
123 Eagle Street
Brisbane QLD 4000

Henry Morgan

6 July 2017

Ms Lisa Banh
Senior Advisor, Listings Compliance
ASX Compliance Pty Ltd
20 Bridge Street
Sydney NSW 2000

Dear Lisa

Henry Morgan Limited (**Company** or **HML**) refers to your correspondence dated 3 July 2017, and responds to each of your questions as follows (adopting your numbering):

1. Please refer to Table 1, attached.
2. Please refer to Table 2, attached.
3. Please refer to Table 3, attached.
4. Please refer to Tables 1, 2 and 3, referred to above. We understand by this question you wish us to identify which of the parties listed in the attached Tables are related parties or associates of related parties of HML.
5. Set out below is a detailed submission on the issues raised, as requested.

Application of Listing Rule 10.1

- 1) Listing Rule 10.1 would require HML to obtain shareholder approval if it, or one of its child entities, acquires a substantial asset from, or disposes of a substantial asset to, amongst others, a related party of HML, a child entity of HML, a substantial holder in HML, or an associate of any of these parties.
- 2) HML considered (and continues to consider) that Listing Rule 10.1 did not apply to the acquisition (**Acquisition**) of Risk & Security Management Ltd (**RSM**) by JB Financial Group Ltd (**JB Financial**). HML reached this conclusion after considering whether or not each of the three limbs of the test set out in Listing Rule 10.1 were satisfied. In short, the three limbs of the test are as follows:
 - a) whether JB Financial was a 'child entity' of Henry Morgan Limited (see opening paragraph of Listing Rule 10.1) (**Limb A**);
 - b) whether RSM was a 'substantial asset' (see opening paragraph of Listing Rule 10.1) (**Limb B**); and
 - c) whether RSM was being acquired from or disposed to, a related party, child entity, substantial holder or associate of HML (see Listing Rule 10.1.12 - 10.1.5) (**Limb C**).
- 3) HML was of the view that because not all three limbs were satisfied, Listing Rule 10.1 did not apply.
- 4) In the following paragraphs HML sets out its reasoning with respect to the consideration of each of Limbs A, C and B, in that order.

Limb A: JB Financial is not a child entity of Henry Morgan Limited

- 5) For the purposes of Listing Rule 10.1, a child entity of HML includes:
 - a) an entity which is controlled by HML. Pursuant to section 50AA of the Corporations Act 2001 (Cth) (**Corporations Act**), in the present analysis this would include for example, if HML had



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the capacity to determine the outcome of decisions about JB Financial's financial and operating policies. In determining whether or not HML has this capacity, the practical influence HML can exert and any practice in this regard, or any pattern of behaviour affecting JB Financial's financial or operating policies is to be taken into account; and

b) subsidiaries of HML.

6) Henry Morgan Limited considers that JB Financial is not a *child entity* for the following reasons:

a) HML does not *control* (as that term is defined in section 50 AA of the Corporations Act) JB Financial because:

1) HML directly holds only approximately 21.2% of the shares in JB Financial. Accordingly, HML does not directly control a sufficient percentage of JB Financial's shares to pass either ordinary or special resolutions of JB Financial.

Separately, HML directly holds approximately 37.3% of the shares in Bartholomew Roberts Ltd, which in turn held 35.03% of the shares in JB Financial. Accordingly HML does not hold sufficient shares in Bartholomew Roberts Ltd to control the exercise by Bartholomew Roberts Ltd of Bartholomew Roberts Ltd's shares in JB Financial. Further, for the reasons set out below, HML does not otherwise *control* Bartholomew Roberts Ltd, and therefore does not otherwise have the ability to *control* the exercise by Bartholomew Roberts Ltd of its shareholding in JB Financial.

Accordingly HML does not either directly or indirectly control a sufficient percentage of JB Financial's shares to pass either ordinary or special resolutions in JB Financial. HML notes that its combined direct and indirect economic interest in JB Financial is only 34.16%.

2) Further HML does not otherwise *control* (as that term is defined in section 50 AA of the Corporations Act) JB Financial, because it does not have the ability through either its shareholding or board representation to determine the outcome of decisions about JB Financial's financial and operating policies. In this regard HML notes that there is only one common director on boards of HML and JBFG, being Mr Stuart McAuliffe. On the HML Board, the other three HML directors are John McAuliffe, Ross Pattane and Vanessa Gunner; on the JB Financial Board, the other directors are Peter Aardoom and Michael Martin.

Stuart McAuliffe has only one vote on each of the boards of HML and JB Financial. Decisions of the boards of each of HML and JB Financial are made by majority vote. In accordance with accepted principles of good governance and the requirements of the Corporations Act, the directors of each board declare any conflicts or material personal interests that they may have in respect of a particular matter coming before their respective boards, and do not take part in decision making with respect to those matters.

b) JB Financial is not a *subsidiary* of HML within the meaning of section 46 of the Corporations Act because HML:

1) does not control the composition of the JB Financial board;

2) cannot cast more than 50% of votes at a general meeting of JB Financial; and

3) does not hold more than one-half of the shares in JB Financial.

Separately, HML notes that in accordance with the accounting standards, the financial accounts of JB Financial are not consolidated with the financial accounts of HML.



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Limb C: RSM was not acquired from a related party, child entity, substantial holder of HML, or an associate of any of them

- 7) Pursuant to the terms of the Acquisition, RSM was acquired by JB Financial from the previous seven shareholders in RSM, as set out in Table 1. For the purposes of this analysis, HML notes that the first six of the seven shareholders listed in Table 1 are not related parties, child entities, substantial holders or associates of HML¹.
- 8) In relation to the former seventh shareholder of RSM, Bartholomew Roberts Ltd, Henry Morgan Limited considered that (and continues to consider) that for the purposes of Listing Rule 10.1:
- a) Bartholomew Roberts Ltd is not a *related party* of HML because:
- 1) Bartholomew Roberts Ltd does not *control* HML;
 - 2) Bartholomew Roberts Ltd is not controlled by a *related party* of HML; and
 - 3) it does not act *in concert* with a related party of HML.
- b) Bartholomew Roberts Ltd is not a *child entity* of HML because:
- 1) HML does not *control* (as that term is defined in section 50AA of the Corporations Act) Bartholomew Roberts Ltd:
 - (1) HML only holds 37.3% of the shares in Bartholomew Roberts Ltd. Accordingly HML does not directly control a sufficient percentage of JB Financial's shares to pass ordinary resolutions of Bartholomew Roberts Ltd.
 - (2) Further HML does not have the ability through either its shareholding or board representation to determine the outcome of decisions about Bartholomew Roberts Ltd's financial and operating policies. In this regard HML notes while three of the directors of HML also sit on the board of Bartholomew Roberts Ltd and are therefore *related parties* of each of HML and Bartholomew Roberts Ltd, each of HML and Bartholomew Roberts Ltd have an additional fourth director who is not common to both entities. In accordance with accepted principles of good governance and the requirements of the Corporations Act, the directors of each board declare any conflicts or material personal interests that they may have in respect of a particular matter coming before their respective boards, and do not take part in decision-making with respect to those matters.
 - 2) Bartholomew Roberts Ltd is not a *subsidiary* of HML within the meaning of section 46 of the Corporations Act because HML:
 - (1) does not control the composition of the board of Bartholomew Roberts Ltd;
 - (2) cannot cast more than 50% of votes at a general meeting of Bartholomew Roberts Ltd; and
 - (3) does not hold more than one-half of the shares in Bartholomew Roberts Ltd.HML notes that in accordance with the accounting standards, the financial accounts of Bartholomew Roberts Ltd are not consolidated with the financial accounts of HML.
 - c) Bartholomew Roberts Ltd is not a *substantial holder* of HML because it has not had either directly or through its associates, at any time in the 6 months before the Acquisition, a *relevant interest* in at least 10% of the total votes attached to the shares of HML.

¹ These shareholders are Carter Investments (QLD) Pty Ltd, HFL Pty Ltd, Voco Motor Spirit Pty Ltd, Wright Investments Corporation Pty Ltd, Danshar Pty Ltd and Bryan Cook.



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- d) For the purposes of section 12 of the Corporations Act, Bartholomew Roberts Ltd is not an *associate* of any:
- 1) *related party* of HML;
 - 2) *child entity* of HML; or
 - 3) *substantial holder* of HML.
- 9) Further, HML would respectfully submit that these are not circumstances in which the ASX should exercise its discretion under Listing Rule 10.1.5 to determine that Bartholomew Roberts Ltd is a "person whose relationship to [HML or any of the parties referred to in 10) d) 1) – 3)] is such that, in ASX's opinion, the transaction should be approved by security holders." In this regard HML notes paragraphs 17 to 21 of ASX Guidance Note 24, and in particular that these are not circumstances which "sit squarely within listing rules 10.1.1 to 10.1.4" or at all.

Limb B: Substantial asset test

- 10) On the basis that neither Limb A nor Limb C of Listing Rule 10.1 were satisfied, HML did not consider it relevant as to whether the value of the consideration provided by JB Financial for the Acquisition was equal to or greater than 5% of the equity interests of HML as set out in the latest accounts given to ASX under the Listing Rules.

Conclusion

- 11) In considering the Acquisition, HML concluded on the basis of the above considerations that Listing Rule 10.1 did not apply, and therefore, shareholder approval was not required.

Yours faithfully

Henry Morgan Limited



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Note: As agreed with ASX, the following tables do not identify parties who are not either John Bridgeman Limited, Henry Morgan Limited, Bartholomew Roberts Ltd, or a related party of Henry Morgan Limited, or an associate of such a related party.

Table 1: Risk & Security Management Ltd – shareholders and directors

Part A – Shareholders of RSM from which JB Financial acquired 100% of issued capital in RSM

Shareholders of RSM prior to acquisition by JB Financial	Number of shares in RSM in which a relevant interest is held	Percentage of shares in RSM in which a relevant interest is held	A related party of, or an associate of a related party of HML
Bartholomew Roberts Ltd	10,511,113	62.01%	No

Part B – Directors of RSM

Directors	Number of shares in RSM in which a relevant interest is held	Percentage of shares in RSM in which a relevant interest is held	A related party of, or an associate of a related party of HML
Stuart McAuliffe	10,511,113	62.01%	Yes, Stuart is a director of HML.

Table 2: JB Financial Group Ltd – shareholders and directors

Part A – Shareholders of JB Financial Group Ltd

Shareholders of JB Financial Group Ltd	Number of shares in JB Financial Group Ltd in which a relevant interest is held	Percentage of shares in JB Financial Group Ltd in which a relevant interest is held	A related party of, or an associate of a related party of HML
Henry Morgan Limited	5,350,000	21.19%	No
Bartholomew Roberts Ltd	8,845,071	35.03%	No
Henry Avery Partners Pty Ltd	2,400,000	9.50%	Yes because this is an entity controlled by Stuart McAuliffe who is a director and a related party of HML.



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Part B – Directors of JB Financial Group Ltd

Directors	Number of shares in JB Financial Group Ltd in which a relevant interest is held	Percentage of shares in JB Financial Group Ltd in which a relevant interest is held	A related party of, or an associate of a related party of HML
Stuart McAuliffe	2,400,000	9.5% interest through Henry Avery Partners Pty Ltd	Yes because this is an entity controlled by Stuart McAuliffe who is a director and a related party of HML.

Table 3: Bartholomew Roberts Ltd – shareholders and directors

Part A –Shareholders of Bartholomew Roberts Ltd

Shareholders of Bartholomew Roberts Ltd	Number of shares in Bartholomew Roberts Ltd in which a relevant interest is held	Percentage of shares in Bartholomew Roberts Ltd in which a relevant interest is held	A related party of, or an associate of a related party of HML
John Bridgeman Limited	1,788,596	44.53%	No
Henry Morgan Limited	1,497,616	37.29%	No

Part B – Directors of Bartholomew Roberts Ltd

Directors	Number of shares in Bartholomew Roberts Ltd in which a relevant interest is held	Percentage of shares in Bartholomew Roberts Ltd in which a relevant interest is held	A related party of, or an associate of a related party of HML
Stuart McAuliffe	0	-	Stuart is a director of HML and is therefore a related party of HML. John McAuliffe is a related party of HML because he is Stuart's parent and is a director of HML.
John McAuliffe	0	-	Stuart is a director of HML and is therefore a related party of HML. John McAuliffe is a related party of HML because he is Stuart's parent and is a director of HML.
Ross Patane	0	-	Ross is a director of HML.



3 July 2017

Ms Rachel Weeks
Chief Operating Officer & General Counsel
Henry Morgan Limited
Level 9, Riverside Centre
123 Eagle Street
Brisbane QLD 4000

By email: rachel@johnbridgeman.com.au

Dear Ms Weeks,

Henry Morgan Limited (the “Entity”): ASX query

ASX Limited (“ASX”) refers to the following;

1. The announcement lodged by the Entity on the ASX Market Announcements Platform on Friday, 23 June 2017 in regards to the acquisition made by JB Financial Group Ltd (“JB Financial”) of Risk & Security Management Ltd (“RSM”) (“Announcement”).
2. Listing rule 10.1 which requires an entity to seek approval of the entity’s ordinary securities if it, nor any of its child entities, acquire a substantial asset from, or dispose of a substantial asset to, any of the following persons.

10.1.1 A *related party of the entity.

10.1.2 A *child entity of the entity.

10.1.3 A *substantial holder in the entity, if the person and the person’s *associates have a relevant interest, or had a relevant interest at any time in the 6 months before the transaction, in at least 10% of the total votes attached to the voting *securities in the entity.

10.1.4 An *associate of a *person referred to in rules 10.1.1 to 10.1.3.

10.1.5 A *person whose relationship to the entity or a *person referred to in rules 10.1.1 to 10.1.4 is such that, in ASX’s opinion, the transaction should be approved by *security holders.

If an entity breaks this rule, ASX may require it to take the corrective action set out in rule 10.9.

Introduced 01/07/98 Origin: Listing Rules 3J(3)(a), (b) Amended 01/07/98, 13/03/00, 30/09/01, 01/07/14

Cross reference: Rule 10.7 deals with classified assets. Rule 10.8 deals with getting ASX’s opinion about the application of rule 10.1. Rule 10.9 deals with corrective action. This remedy is in addition to any other that ASX has for a breach of the listing rules.



3. Listing rule 10.2 which states as follows.

10.2 An asset is substantial if its value, or the value of the consideration for it is, or in ASX's opinion is, 5% or more of the *equity interests of the entity as set out in the latest *accounts given to ASX under the listing rules.

Introduced 01/07/98 Origin: Listing Rules 3J(3)(a), (b) Amended 01/07/00

Note: The entity's equity interests are consolidated equity interests, if applicable.

Cross reference: chapter 4, which deals with periodic disclosure and rule 19.11A.

10.2.1 In calculating the value, each of the following rules applies.

- Intangibles will be included.
- Provisions for depreciation and amortisation will be deducted.
- Liabilities acquired as part of an *acquisition will not be deducted.
- Separate transactions will be aggregated if, in ASX's opinion, they form part of the same commercial transaction.

Having regard to listing rules 10.1 and 10.2, under listing rule 18.7 we ask that you answer each of the following questions.

1. Who are the shareholders and directors of RSM and what are their relevant interests in RSM?
2. Who are the shareholders and directors of JB Financial and what are their relevant interests in JB Financial?
3. Who are the shareholders and directors of Bartholomew Roberts Ltd and what are their relevant interests in Bartholomew Roberts Ltd?
4. For each shareholder and director named in the responses to questions 1 to 3 above, please clearly identify any related parties of the Entity or their associates.
5. Please provide a detailed submission setting out why the Entity considers that listing rule 10.1 does not apply to the acquisition of RSM by JB Financial, addressing each of the limbs of listing rule 10.1, including commenting specifically upon whether or not JB Financial is a child entity of the Entity (along with the reasons for this conclusion).

Your response should be sent to me by e-mail at lisa.banh@asx.com.au. It should not be sent to the ASX Market Announcements Office.

A response is requested as soon as possible and, in any event, not later than half an hour before the start of trading (ie before 9.30 a.m. A.E.S.T.) on Friday, 7 July 2017.

Under listing rule 18.7A, ASX reserves the right to release a copy of this letter and your response to the market, so your response should be in a form suitable for release and must separately address each of the questions asked.



ASX

If you have any queries or concerns about any of the above, please contact me immediately.

Yours sincerely

[Sent electronically without signature]

Lisa Banh

Senior Adviser, Listings Compliance