



Henry Morgan

First Supplementary Target's Statement

**In response to the offer by John Bridgeman Limited (JBL) to
acquire all of shares in Henry Morgan Limited (HML)**

**The Voting Directors of HML recommend that
Shareholders TAKE NO ACTION in relation to the JBL Offer and wait
until they have received and read in full the HML's Supplementary
Target's Statement and Supplementary Independent Expert's
Report to be issued by HML by no later than 30 March 2019**

This is an important document and requires your immediate attention.

**If you are in doubt as to how to deal with this document, you should consult your
legal, financial or other professional adviser immediately.**

1. Introduction

1.1 Nature of this document

This document is a Supplementary Target's Statement dated 19 February 2019. It is issued in accordance with Order 5 of the Takeovers Panel Orders made 8 February 2019 (**Orders**) (**First Supplementary Target's Statement**).

This First Supplementary Target's Statement supplements, and must be read with, the Target's Statement issued by HML and dated and lodged with ASIC on 6 December 2018 (**Target's Statement**).

This is an important document and requires your immediate attention.

On 25 January 2019 the Takeovers Panel made a declaration of unacceptable circumstances in relation to the affairs of Henry Morgan Limited (HML) as they relate to the off-market takeover bid announced on 10 September 2018 by John Bridgeman Limited ACN 603 477 185 (**JBL**) (**Declaration**). As a result of the Declaration, the Panel made the Orders. A copy of the Declaration and the Orders is attached to this First Supplementary Target's Statement.

The purpose of the First Supplementary Target's Statement is to:

- (a) explain to all HML shareholders the effect of the Declaration and the Orders; and
- (b) advise HML Shareholders to wait until they receive and have read in full HML's Supplementary Target's Statement and Supplementary Independent Expert's Report (to be issued by HML by no later than 30 March 2019) before deciding to accept JBL's Offer.

1.2 First Supplementary Target's Statement prevails

This First Supplementary Target's Statement prevails over the Target's Statement to the extent of any inconsistency.

1.3 ASIC and ASX

A copy of this First Supplementary Target's Statement was lodged with ASIC on 19 February 2019 and provided to the ASX on 19 February 2019.

As required by order 5 of the Orders made by the Takeovers Panel, this First Supplementary Target's Statement is in a form acceptable to ASIC.

Neither ASIC nor ASX, nor any of their respective officers, takes any responsibility for the content of this First Supplementary Target's Statement.

1.4 Target's Statement definitions and interpretation apply

Capitalised terms used in this First Supplementary Target's Statement have the same meaning given to them in the Target's Statement, unless defined otherwise in this First Supplementary Target's Statement or the context otherwise requires.

Section 11.2 of the Target's Statement sets out certain rules on interpretation, which apply equally to this First Supplementary Target's Statement.

2. Takeovers Panel Update

2.1 Declaration of Unacceptable Circumstances

On 28 December 2018, certain shareholders of HML and BHD ¹ sought a declaration of unacceptable circumstances in relation to the JBL Offer for each of HML and BHD.

In respect of the bid for HML, the Takeovers Panel conducted the proceedings and made a Declaration of unacceptable circumstances on 25 January 2019 due to the parties' insufficient disclosure and shareholders receiving inadequate time to consider the bid. The Takeovers Panel has not yet released its reasons for the Declaration and the Orders. Full details of the Declaration were released to the ASX on 25 January 2019 and are attached as Annexure A to this First Supplementary Target's Statement. They are also available to HML Shareholders through the ASX platform or the Panel's website www.takeovers.gov.au.

2.2 Orders

On 8 February 2019, the Takeovers Panel made Orders under section 657D of the Corporations Act. The effect of these Orders on HML Shareholders and the JBL Offer are set out in this First Supplementary Target's Statement. A copy of the Orders are attached as Annexure B to this First Supplementary Target's Statement. They are also available to HML Shareholders through the ASX platform or the Panel's website www.takeovers.gov.au.

HML Shareholders should read this document carefully as explains the effect of the Orders on the JBL Offer, what Further Disclosure they will receive and what steps they should take.

3. Effect of Orders on HML Shareholders

3.1 If you have previously accepted the JBL Offer, your acceptance has been cancelled

The Takeovers Panel has ordered that all acceptance forms received by JBL are to be cancelled. This will take effect on or about 19 February 2019.

If you accepted the JBL Offer, you will be free to deal with your HML Shares from 19 February 2019. You will not receive the Offer Consideration despite your acceptance, as it has been cancelled by order of the Takeovers Panel. This is despite the JBL Offer becoming unconditional on 24 December 2018 (see further discussion regarding JBL's ability to re-introduce its conditions at 3.3 below).

If you did not accept the JBL Offer, this order does not affect you or your HML Shares.

¹ The applicants in relation to both applications were Jonathan Allan Dixon, Ms Wendy Lynn Cowan, Mrs Susan Jean Dixon ATF Dixon Super Fund, GM Enterprises Australia Pty Ltd ATF GTM Super Fund and Inspired Asset Management Pty Ltd.

3.2 Do not accept the JBL Offer until you have received the Further Disclosure

The Takeovers Panel has ordered that any acceptances received by JBL before the dispatch of its Further Disclosure must be cancelled. The Further Disclosure required to be made is detailed in section 4 of this First Supplementary Target's Statement.

HML Shareholders should **not** make a decision to accept or reject the JBL Offer until they receive the Further Disclosure from JBL and HML's Supplementary Target's Statement which will be accompanied by a Supplementary Independent Expert's Report. The JBL Further Disclosure will be accompanied by a Replacement Acceptance Form for completion and return to JBL in the event that a HML Shareholder wishes to accept the JBL Offer.

3.3 Conditions to JBL Offer

The Panel has ordered that JBL may reintroduce any conditions in the Replacement Bidder's Statement which were contained in the Bidder's Statement.

Where JBL elects to do so, its notice dated 24 December 2018 which freed the bids from the Defeating Conditions has no effect as it is stated to apply to that Defeating Condition.

4. What further documents will HML Shareholders receive?

The Orders require that HML and JBL provide at least the following further documents to HML Shareholders to assist HML Shareholders in making a decision in relation to the JBL Offer. . Each of these documents must be in a form acceptable to ASIC.

4.1 HML Shareholders should not make a decision to accept or reject the JBL Offer until they receive and consider each of the documents described below. JBL must dispatch a Supplementary Bidder's Statement

JBL must dispatch a Supplementary Bidder's Statement by 19 February 2019:

- (a) explaining the effect of the Declaration and Orders; and
- (b) advising HML Shareholders that any acceptances of the JBL Offer received before the dispatch of the Replacement Bidder's Statement are cancelled.

4.2 HML must dispatch a First Supplementary Target's Statement

HML must dispatch this First Supplementary Target's Statement by 19 February 2019:

- (a) explaining the effect of the Declaration and Orders; and
- (b) recommending HML Shareholders not take any action prior to receiving the Second Supplementary Target's Statement and Supplementary Independent Expert's Report before deciding whether to accept the JBL Offer.

4.3 JBL must dispatch a further Supplementary or Replacement Bidder's Statement

JBL must dispatch by 16 March 2019 one of the following documents:

- (a) if JBL chooses to *cancel or close* JBL Offer, a Supplementary Bidder's Statement stating that the JBL Offer is cancelled or closed; or
- (b) if JBL chooses to *continue* the JBL Offer, a Replacement Bidder's Statement which sets out:
 - (i) a prominent statement on the front cover that HML Shareholders should wait until they receive the Second Supplementary Target's Statement and accompanying Supplementary Independent Expert's Report before deciding whether to accept the JBL Offer;
 - (ii) a description of the various relationships and transactions between JBL, HML, BHD, Bartholomew Roberts Limited, JB Financial Group Pty Ltd, JB Trading House Pty Ltd and their associates;
 - (iii) the risk that HML Shareholders will receive materially less value if JBL only obtains voting power of 50% or less in either or both HML and BHD;
 - (iv) the most recent financial statements of JBL and HML noting the effect of the repayment of the JBL Loan on JBL;
 - (v) a prominent statement noting the most recent audit opinions of JBL and JBFG refer to material uncertainty regarding going concern for these entities;
 - (vi) details of the financial effect of the following transactions on JBL and how each may impact on HML Shareholders' decision whether to accept the JBL Offer:
 - (A) BHD's agreement on 17 September 2018 to:
 - (I) amend the terms of a \$2.3 million convertible loan to JBFG, including extending the expiry date from 10 September 2018 to 11 March 2020²;
 - (II) convert a receivable it was owed by JBL into an unsecured loan of up to \$4.5 million at an interest rate of 11.50% per annum repayable within 18 months;³
 - (B) BHD's agreements with JBL on 8 August 2018 to make an unsecured loans to JBL for a term of one year at 11.5% interest for \$1,134,000;⁴

² Detailed in paragraph 14 of the Declaration.

³ Detailed in paragraph 15 of the Declaration.

⁴ Detailed in paragraph 8 of the Declaration.

- (C) HML's agreement with JBL on 8 August 2018 to make an unsecured loan to JBL for a term of one year at 11.5% interest for \$2,411,000;⁵ and
- (D) repayment of the JBL Loan.⁶

4.4 Second Supplementary Target's Statement

In circumstances where JBL dispatches a Replacement Bidder's Statement, HML must, in accordance with order 11 and by no later than 30 March 2019⁷, dispatch to HML Shareholders:

- (a) a Supplementary Target's Statement disclosing the Voting Director's recommendation following consideration of the Replacement Bidder's Statement and Supplementary Independent Expert's Report and
- (b) a supplementary independent expert's report stating whether at the date of the supplementary independent expert's report JBL's bid is fair and reasonable following consideration of the Replacement Bidder's Statement, repayment of the JBL Loan and cancellation of the acceptances.

4.5 Supplementary Independent Expert's Report

HML has appointed Leadenhall to complete the Supplementary Independent Expert Report.

Before the Replacement Bidder's Statement is dispatched to HML shareholders, JBL and HML must, in accordance with order 10, provide to the independent expert all financial information in their possession in relation to JBL, HML, BHD, BRL, JBLFG and JB Trading, including but not limited to the effect of repayment of the JBL Loan on the financial position of JBL.

The Voting Directors of HML recommend that Shareholders TAKE NO ACTION in relation to the JBL Offer and wait until they have received and read in full HML's Supplementary Target's Statement and Supplementary Independent Expert's Report to be issued by HML by no later than 30 March 2019.

⁵ Detailed in paragraph 8 of the Declaration.

⁶ The JBL Loan is defined by the Orders to mean the \$4.5 million loan given to JBL by BHD on or about 17 September 2018. The Takeovers Panel has ordered that this loan be repaid (with any interest) by not later than 6 March 2019.

⁷ Or any date within 14 days from the dispatch of the Replacement Bidder's Statement by JBL.

5. Relevant Dates

Date of the Bidder's Statement	31 October 2018
Date of this First Supplementary Target's Statement	19 February 2019
Last day for dispatch of JBL Further Disclosure to HML Shareholders	16 March 2019
Last day for dispatch of Second Supplementary Target's Statement and Supplementary Independent Expert's Report to HML Shareholders	30 March 2019
Offer Period ends (unless extended further or withdrawn in accordance with the Corporations Act, or cancelled in accordance with the Orders)	7.00pm (Sydney time) 15 April 2019

6. Approval of First Supplementary Target's Statement

This First Supplementary Target's Statement is dated 19 February 2019 (being the date on which this First Supplementary Target's Statement was lodged with ASIC) and has been approved by a unanimous resolution of the Directors of HML.



Mr Peter Ziegler
Non-Executive Director

Annexure A Declaration



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP19/04

Friday, 25 January 2019

Benjamin Hornigold Limited 02 and Henry Morgan Limited 02 - Declaration of Unacceptable Circumstances

The Panel has made declarations of unacceptable circumstances (Annexure A) in response to applications dated 28 December 2018 by shareholders¹ of Benjamin Hornigold Limited (ASX: BHD) (**BHD**) and Henry Morgan Limited (ASX:HML) (**HML**) in relation to the affairs of each company (see [TP18/80](#)).

Background

On 10 September 2018, John Bridgeman Limited (NSX: JBL) (**JBL**) announced its intention to make scrip off-market takeovers bids to acquire all of the issued capital in BHD and HML, attaching signed bid implementation agreements. The bids were not inter-conditional.

In the bid implementation agreements, each of BHD and HML represented that their respective voting directors would unanimously recommend the bids in the absence of a superior proposal and subject to, among other things, consideration of matters detailed in an independent expert's report. BHD and HML also agreed to early dispatch of the bidder's statements without qualification.

After the bids were announced, BHD agreed to:

- convert the repayment of a receivable it was owed by JBL into an unsecured loan of up to \$4.5 million repayable within 18 months and
- extend the terms of certain loans to JBL and JB Financial Group Pty Ltd (**JBFG**),

(the **Loan Arrangements**).

On 31 October 2018, JBL lodged bidder's statements for its bids for BHD and HML which stated on the first page and throughout "*[HML's/BHD's] Voting Directors*

¹ In relation to both applications - Jonathan Allan Dixon, Ms Wendy Lynn Cowan, Mrs Susan Jean Dixon ATF Dixon Super Fund, GM Enterprises Australia Pty Ltd ATF GTM Super Fund and Inspired Asset Management Pty Ltd



Australian Government

Takeovers Panel

unanimously recommend that you accept this offer in the absence of a superior proposal”. JBL did not amend these statements to reflect the conditionality of the recommendations, despite BHD and HML requesting this occur.²

On 22 November 2018, following discussions with ASIC, JBL lodged supplementary bidder’s statements and offered withdrawal rights to BHD and HML shareholders who had previously accepted the bids.

On 27 November 2018, the voting directors of BHD and HML each recommended to their shareholders for the first time that they take no action in relation to the JBL bids prior to the release of their respective target’s statements. On 6 December 2018, BHD and HML lodged their target’s statements which each contained an independent expert’s report concluding that the relevant bid is not fair but reasonable.

Declaration

The Panel considers that the circumstances in relation to each company are unacceptable based on a number of factors in combination, including:

- the bidder’s statements (as supplemented) did not adequately disclose information material to the acceptance of the bids, including the various relationships and transactions between JBL, BHD, HML and JBFG and the financial position of JBL and JBFG
- in relation to BHD, the Loan Arrangements diminished the value of important assets of BHD making BHD less attractive to an acquirer and less likely to attract competing proposals
- BHD and HML agreed in advance and without qualification to early dispatch of the bidder’s statements
- JBL, BHD and HML failed to promptly correct the misrepresentation of the conditions of the voting director’s recommendation in the bidder’s statements and
- BHD and HML delayed in giving clear advice to shareholders to take no action in relation to the bids before considering the target’s statement and independent expert’s report.

² On 9 November 2018, JBL released an announcement “*clarifying*” that these statements must be read in the context of its announcement on 10 September 2018 (but did not retract the statements)



Australian Government

Takeovers Panel

The Panel decided to extend time under s657C for the making of the application.

The Panel did not consider it against the public interest to make the declaration, and in making it had regard to the matters in s657A(3).

Orders

The Panel is considering what final orders it will make and will publish details in due course.

On 31 December 2018, the Panel made interim orders that JBL and all officers, agents or persons acting on its behalf must not take any further steps to process any acceptances received under each bid. The interim orders remain in effect.

The sitting Panel was Yasmin Allen, James Dickson (sitting President) and Bruce McLennan.

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

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



Australian Government

Takeovers Panel

ANNEXURE A

CORPORATIONS ACT SECTION 657A

DECLARATION OF UNACCEPTABLE CIRCUMSTANCES

BENJAMIN HORNIGOLD LIMITED 02

CIRCUMSTANCES

1. John Bridgeman Limited (**JBL**) is an NSX listed company.
2. Benjamin Hornigold Limited (**BHD**) and Henry Morgan Limited (**HML**) are ASX listed investment companies. Trading in BHD and HML shares is suspended.
3. JBL and HML have voting power of approximately 51.71% and 30.12% respectively in Bartholomew Roberts Pty Limited (**BRL**). JBL, HML and BRL have voting power of approximately 7.43%, 19.87% and 32.86% respectively in JB Financial Group Pty Ltd (**JBFG**). JBFG has a number of subsidiaries including JB Trading House Pty Ltd (**JB Trading**).
4. JBL is the manager for BHD, HML and BRL under investment management agreements. Mr Stuart McAuliffe is the Managing Director of JBL, HML, BHD and BRL and the Group Chief Executive Officer of JBFG. Mr John McAuliffe is the Chairman and non-executive director of JBL and BRL and the Chairman of HML. Mr Peter Aardoom is a director of BHD and JBFG. Mr Ross Patane is a director of JBL, HML and BRL. JBL, HML and BHD have the same two company secretaries.
5. Mr Stuart McAuliffe also has voting power of 22.58% in JBL and has an outstanding \$1 million loan to JBL (as a part of a \$2.5 million loan facility).
6. On 4 January 2018, JBL announced that it had made an offer to all shareholders in JBFG to acquire their shares for shares and options in JBL, subject to conditions. Offers are still open but not all conditions have been fulfilled.
7. On 6 June 2018, BHD announced that its board had approved in principle entering into an exclusive trading arrangement with JB Trading, with JB Trading issuing to BHD a \$13.5 million convertible note as consideration for entering into the exclusive trading arrangement (**JB Trading Transaction**).



Australian Government

Takeovers Panel

8. On 30 June 2018, JBL issued a tax invoice to BHD of \$4,169,237 (excluding GST), which included performance fees, based on the impact on net tangible assets of the issue of convertible notes under the JB Trading Transaction. The amount referred to in the invoice was paid by BHD before the date of the invoice. The JB Trading Transaction was ultimately terminated.¹ BHD's preliminary final report² stated that:

"Due to a timing adjustment in relation to the proposed convertible note transaction with JB Trading House Pty Ltd and the subsequent exercise by the ASX of their discretion to require the Company to seek shareholder approval for the proposed convertible note transaction, fees of \$4,553,773 (which had been calculated on the basis that the transaction had been implemented at that time) were paid to the Investment Manager at 30 June 2018 and are now refundable."

9. On 3 August 2018, 536,585 JBL shares held by BHD were bought back by JBL for approximately \$1.1 million (\$2.05 per share). Also on 3 August 2018, 1,398,573 JBL shares held by HML were bought back by JBL for approximately \$2.8 million (\$2.05 per share).
10. On 8 August 2018, BHD and HML each made unsecured loans to JBL for a term of one year at 11.5% interest for \$1,134,000 and \$2,411,000 respectively.
11. On 5 September 2018, the boards of BHD and HML each considered confidential non-binding letters of intent from JBL for the proposed acquisition of all of the issued share capital in BHD and HML respectively. BHD and HML's boards each appointed a sub-committee to consider JBL's bid.
12. On 9 September 2018, BHD's board sub-committee approved entering into a bid implementation agreement with JBL. On 10 September 2018, HML's board sub-committee approved entering into a bid implementation agreement with JBL.
13. On 10 September 2018, JBL announced its intention to make scrip off-market takeover bids to acquire:
- (a) all of the issued shares and options in BHD that it did not currently own and
 - (b) all the issued shares of HML that it did not currently own,

¹ On 24 October 2018, BHD announced JB Trading had given notice to BHD terminating the JB Trading Transaction

² Released on ASX on or about 3 September 2018



Australian Government

Takeovers Panel

attaching signed bid implementation agreements. The announcement stated:

“If appropriate, following their consideration of HML’s due diligence in relation to the HML Offer and their assessment of the independent expert report to be commissioned by them to consider the fairness and reasonableness of the offer, the HML independent directors have undertaken to recommend the HML Offer to HML shareholders in the absence of a superior proposal.”

“Following their due diligence in respect of the BHD Offer, and the advice of an independent expert engaged by them to consider the fairness and reasonableness of the BHD Offer, the independent directors have undertaken to recommend the BHD Offer to BHD shareholders in the absence of a superior proposal.”

The announcement also included a statement (towards the end) that BHD and HML shareholders should carefully consider the target’s statements before deciding whether to accept the bids.

14. In the bid implementation agreements, each of BHD and HML represented that their respective voting directors³ would unanimously recommend the bids in the absence of a superior proposal and subject to consideration of due diligence, matters detailed in any independent expert’s report and the assessment of the bid by the expert. They also agreed to early dispatch of JBL’s bidder’s statements. The bid implementation agreements provided that parties would use best endeavours to comply with a timetable which included dispatch of BHD’s and HML’s target’s statements and independent expert’s reports at the same time as the bidder’s statements (which, as noted below, did not occur).
15. JBL’s bids for BHD and HML were not inter-conditional. Each bid was initially subject to a waivable 50.1% minimum acceptance condition.
16. On 17 September 2018, BHD’s board agreed to amend the terms of a \$2.3 million convertible loan to JBFG, including extending the expiry date from 10 September 2018 to 11 March 2020.
17. On 17 September 2018, BHD’s board agreed to convert the repayment of performance fees referred to in paragraph 8 into an unsecured loan of up to \$4.5 million at an interest rate of 11.50% per annum repayable within 18 months. Mr Stuart McAuliffe participated in this board decision.

³ In the case of BHD – Messrs Aardoom and Cook. In the case of HML – Mr Ziegler and Ms Gunner



Australian Government

Takeovers Panel

18. On 16 October 2018, the boards of BHD and HML extended the loans to JBL (referred to in paragraph 10) for six months.
19. On 31 October 2018, JBL lodged bidder's statements in relation to its bids for BHD and HML. The bidder's statement for BHD stated on the first page:

"BHD'S VOTING DIRECTORS UNANIMOUSLY RECOMMEND THAT YOU ACCEPT THIS OFFER IN THE ABSENCE OF A SUPERIOR PROPOSAL"

The bidder's statement for HML stated on the first page:

"HML'S VOTING DIRECTORS UNANIMOUSLY RECOMMEND THAT YOU ACCEPT THIS OFFER IN THE ABSENCE OF A SUPERIOR PROPOSAL"

20. The statements referred to in paragraph 19 were repeated throughout JBL's bidder's statements for BHD and HML. Prior to lodgement,⁴ BHD and HML had asked JBL to amend these statements to reflect the conditionality of the recommendation. JBL did not make the requested amendments.
21. On 9 November 2018, JBL announced that it had completed dispatch of its bidder's statements for both BHD and HML. At the time of dispatch, JBL had voting power of 0.19% in BHD and 11.07% in HML respectively. On the same day JBL also released an announcement "*clarifying*" (but not retracting) the statements referred to in paragraph 19 stating "*these statements must be read in the context of JBL's announcement of 10 September 2018 and other information provided in the Bidder's Statements despatched by JBL*".
22. On 22 November 2018, JBL:
 - (a) following discussions with ASIC, lodged supplementary bidder's statements in relation to its bids for BHD and HML. These supplementary bidder's statements, among other things, retracted the statements referred to in paragraph 19 and
 - (b) extended the offer period for its bids for BHD and HML to 14 January 2019.⁵ The extensions of the offer period for JBL's bids for BHD and HML triggered a right of withdrawal for BHD and HML shareholders who had

⁴ On 24 October 2018

⁵ The offer period has since been extended to 11 February 2019



Australian Government

Takeovers Panel

accepted the bid before the date of the supplementary bidder's statement under ss650D(1)(a)(ii) and 650E of the *Corporations Act 2001* (Cth) (**Act**).

23. As at 22 November 2018, JBL had voting power in BHD and HML of 40.69% and 57.02% respectively.
24. On 26 November 2018, the same day that BHD and HML were required to lodge and dispatch their respective target's statements, the Panel affirmed earlier decisions of ASIC to refuse relief to BHD and HML to either (a) extend time for the dispatch of their target's statements or (b) permit them to lodge incomplete target's statements.⁶
25. On 27 November 2018, the voting directors of BHD and HML, in separate announcements, recommended to their shareholders for the first time that they take no action in relation to the JBL bids prior to the release of their respective target's statements.
26. On 6 December 2018, BHD and HML lodged their respective target's statements. Each target's statement:
 - (a) contained an independent expert's report concluding that the relevant bid is not fair but reasonable and
 - (b) included a statement that the voting directors recommend that shareholders accept the bid in the absence of a superior proposal.
27. The independent expert stated in its report on JBL's bid for BHD, as factors in determining that the bid is reasonable, that:
 - (a) *"BHD's current trading suspension, JBL's current relevant interest in BHD and BHD's significant exposure to JBL (through existing loans and convertible instruments) are likely to act as impediments to investors realising returns through distributions or capital appreciation in the near-term"*
 - (b) *"JBL's existing interest in BHD would likely act as a significant impediment to any third party considering a takeover offer for BHD as well as limit the ability of BHD Non-Associated shareholders who do not accept the BHD Offer to change investment manager in order to implement an alternative investment strategy"*

⁶ See *Benjamin Hornigold Limited and Henry Morgan Limited* [2018] ATP 23



Australian Government

Takeovers Panel

- (c) *“JBL has a relevant interest in BHD in excess of 40% (subject to any withdrawals of acceptances) which may allow JBL to determine future investment decisions of BHD in addition to control of the management rights of BHD. JBL’s relevant interest is also likely to preclude any other takeover offers for BHD or other corporate activity from a third party”* and
- (d) *“Due to the significant loans made by BHD to JBL and JBFG, BHD has a dependency on JBL to be able to realise its investments in JBFG. BHD is unlikely to be able to realise the value of its loans other than in conjunction with JBL”.*
28. On 24 December 2018, JBL announced that it had obtained shareholder approval for its bids for BHD and HML to proceed and declared both bids free of conditions.
29. The following transactions, which occurred after the announcement of JBL’s bid, diminish the value of important assets of BHD making BHD less attractive to an acquirer and less likely to attract competing proposals (and as a result diminish the value of BHD if shareholders do not accept JBL’s bid), in effect operating as a lock up device:
- (a) the loan provided by BHD to JBL described in paragraph 17
- (b) the extension of the convertible loan to JBFG described in paragraph 16 and
- (c) the extension of the loan to JBL described in paragraph 18.
30. JBL’s bidder’s statement in relation to its bid for BHD (as supplemented) did not adequately disclose:
- (a) the various relationships, and transactions, between JBL, BHD, HML, BRL, JBFG, JB Trading and their associates, noting that as the investment manager for BHD, HML and BRL, JBL had all the material information on this issue
- (b) the risk that BHD shareholders will receive materially less value if JBL only obtains voting power of 50% or less in either or both BHD and HML
- (c) the financial position of JBL and JBFG, including that audit opinions in both their most recent accounts refer to material uncertainty regarding going concern and



Australian Government

Takeovers Panel

- (d) the financial effect of the transactions referred to in paragraphs 10, 16, 17 and 18 and how they may impact on BHD shareholders' decision whether to accept the JBL bid.
31. JBL's supplementary bidder's statement in relation to its bid for BHD did not adequately deal with ASIC's disclosure issues in a way that was accessible to BHD shareholders. BHD shareholders who had accepted the bid prior to the issue of JBL's supplementary bidder's statement were not adequately protected by the disclosure in the supplementary bidder's statement and the ability to withdraw their acceptances.
32. The above disclosure issues have not been adequately remedied by the issue of BHD's target's statement and independent expert's report.
33. The following in combination (among other things) indicate that BHD shareholders were denied sufficient time and information to assess the merits of JBL's bid and did not have the benefit of appropriate and sufficiently timely advice in relation to JBL's bid:
- (a) BHD agreeing in advance and without qualification, in the bid implementation agreement, to early dispatch of the bidder's statement
 - (b) BHD and JBL not ensuring that the target's statement and independent expert's report were dispatched at the same time as the bidder's statement, as envisaged in the bid implementation agreement timetable that each party agreed to use its best endeavours to comply with
 - (c) JBL and BHD's directors' failure to promptly alert BHD shareholders of their concerns regarding JBL's bidder's statement including the fact that statements in the bidder's statement misrepresented the conditionality of the voting directors' recommendation (referred to in paragraphs 19 and 20)
 - (d) BHD dispatching its target's statement and independent expert's report late, in contravention of items 11 and 12 of s631(1) of the Act
 - (e) BHD's directors' failure to clearly advise its shareholders prior to 27 November 2018 to take no action in relation to the JBL bid before considering the target's statement and independent expert's report and
 - (f) the almost identical responses of both BHD and HML to JBL's bids.



Australian Government

Takeovers Panel

EFFECT

34. It appears to the Panel that:

- (a) the acquisition of control over voting shares in BHD has not taken place in an efficient, competitive and informed market
- (b) the holders of shares in BHD have not been given enough information to enable them to assess the merits of JBL's bid and
- (c) as a result of the lock up device referred to in paragraph 29, the holders of shares in BHD have been denied a reasonable and equal opportunity to participate in the benefits of JBL's bid.

CONCLUSION

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

- (a) having regard to the effect that the Panel is satisfied they have had, are having, will have or are likely to have on:
 - (i) the control, or potential control, of BHD or
 - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in BHD
- (b) in the alternative, in relation to the effect the circumstances have had, are having, will have or are likely to have in relation to BHD, having regard to the purposes of Chapter 6 set out in section 602 of the Act and
- (c) in the further alternative, because they constituted, constitute, will constitute or are likely to constitute a contravention of a provision of Chapter 6 of the Act.

DECLARATION

The Panel declares that the circumstances constitute unacceptable circumstances in relation to the affairs of BHD.

Bruce Dyer
Counsel
with authority of James Dickson
President of the sitting Panel
Dated 25 January 2019



Australian Government

Takeovers Panel

**CORPORATIONS ACT
SECTION 657A
DECLARATION OF UNACCEPTABLE CIRCUMSTANCES**

HENRY MORGAN LIMITED 02

CIRCUMSTANCES

1. John Bridgeman Limited (**JBL**) is an NSX listed company.
2. Benjamin Hornigold Limited (**BHD**) and Henry Morgan Limited (**HML**) are ASX listed investment companies. Trading in BHD and HML shares is suspended.
3. JBL and HML have voting power of approximately 51.71% and 30.12% respectively in Bartholomew Roberts Pty Limited (**BRL**). JBL, HML and BRL have voting power of approximately 7.43%, 19.87% and 32.86% respectively in JB Financial Group Pty Ltd (**JBFG**). JBFG has a number of subsidiaries including JB Trading House Pty Ltd (**JB Trading**).
4. JBL is the manager for BHD, HML and BRL under investment management agreements. Mr Stuart McAuliffe is the Managing Director of JBL, HML, BHD and BRL and the Group Chief Executive Officer of JBFG. Mr John McAuliffe is the Chairman and non-executive director of JBL and BRL and the Chairman of HML. Mr Peter Aardoom is a director of BHD and JBFG. Mr Ross Patane is a director of JBL, HML and BRL. JBL, HML and BHD have the same two company secretaries.
5. Mr Stuart McAuliffe also has voting power of 22.58% in JBL and has an outstanding \$1 million loan to JBL (as a part of a \$2.5 million loan facility).
6. On 4 January 2018, JBL announced that it had made an offer to all shareholders in JBFG to acquire their shares for shares and options in JBL, subject to conditions. Offers are still open but not all conditions have been fulfilled.
7. On 3 August 2018, 536,585 JBL shares held by BHD were bought back by JBL for approximately \$1.1 million (\$2.05 per share). Also on 3 August 2018, 1,398,573 JBL shares held by HML were bought back by JBL for approximately \$2.8 million (\$2.05 per share).
8. On 8 August 2018, BHD and HML each made unsecured loans to JBL for a term of one year at 11.5% interest for \$1,134,000 and \$2,411,000 respectively.



Australian Government

Takeovers Panel

9. On 5 September 2018, the boards of BHD and HML each considered confidential non-binding letters of intent from JBL for the proposed acquisition of all of the issued share capital in BHD and HML respectively. BHD and HML's boards each appointed a sub-committee to consider JBL's bid.
10. On 9 September 2018, BHD's board sub-committee approved entering into a bid implementation agreement with JBL. On 10 September 2018, HML's board sub-committee approved entering into a bid implementation agreement with JBL.
11. On 10 September 2018, JBL announced its intention to make scrip off-market takeover bids to acquire:
 - (a) all of the issued shares and options in BHD that it did not currently own and
 - (b) all the issued shares of HML that it did not currently own,

attaching signed bid implementation agreements. The announcement stated:

"If appropriate, following their consideration of HML's due diligence in relation to the HML Offer and their assessment of the independent expert report to be commissioned by them to consider the fairness and reasonableness of the offer, the HML independent directors have undertaken to recommend the HML Offer to HML shareholders in the absence of a superior proposal."

"Following their due diligence in respect of the BHD Offer, and the advice of an independent expert engaged by them to consider the fairness and reasonableness of the BHD Offer, the independent directors have undertaken to recommend the BHD Offer to BHD shareholders in the absence of a superior proposal."

The announcement also included a statement (towards the end) that BHD and HML shareholders should carefully consider the target's statements before deciding whether to accept the bids.

12. In the bid implementation agreements, each of BHD and HML represented that their respective voting directors¹ would unanimously recommend the bids in the absence of a superior proposal and subject to consideration of due diligence, matters detailed in any independent expert's report and the assessment of the bid by the expert. They also agreed to early dispatch of JBL's bidder's statements. The bid implementation agreements provided that parties would

¹ In the case of BHD – Messrs Aardoom and Cook. In the case of HML – Mr Ziegler and Ms Gunner



Australian Government

Takeovers Panel

use best endeavours to comply with a timetable which included dispatch of BHD's and HML's target's statements and independent expert's reports at the same time as the bidder's statements (which, as noted below, did not occur).

13. JBL's bids for BHD and HML were not inter-conditional. Each bid was initially subject to a waivable 50.1% minimum acceptance condition.
14. On 17 September 2018, BHD's board agreed to amend the terms of a \$2.3 million convertible loan to JBFG, including extending the expiry date from 10 September 2018 to 11 March 2020.
15. On 17 September 2018, BHD's board agreed to convert a receivable it was owed by JBL into an unsecured loan of up to \$4.5 million at an interest rate of 11.50% per annum repayable within 18 months.
16. On 16 October 2018, the boards of BHD and HML extended the loans to JBL (referred to in paragraph 8) for six months.
17. On 31 October 2018, JBL lodged bidder's statements in relation to its bids for BHD and HML. The bidder's statement for BHD stated on the first page:

"BHD'S VOTING DIRECTORS UNANIMOUSLY RECOMMEND THAT YOU ACCEPT THIS OFFER IN THE ABSENCE OF A SUPERIOR PROPOSAL"

The bidder's statement for HML stated on the first page:

"HML'S VOTING DIRECTORS UNANIMOUSLY RECOMMEND THAT YOU ACCEPT THIS OFFER IN THE ABSENCE OF A SUPERIOR PROPOSAL"

18. The statements referred to in paragraph 17 were repeated throughout JBL's bidder's statements for BHD and HML. Prior to lodgement,² BHD and HML had asked JBL to amend these statements to reflect the conditionality of the recommendation. JBL did not make the requested amendments.
19. On 9 November 2018, JBL announced that it had completed dispatch of its bidder's statements for both BHD and HML. At the time of dispatch, JBL had voting power of 0.19% in BHD and 11.07% in HML respectively. On the same day JBL also released an announcement "*clarifying*" (but not retracting) the

² On 22 October 2018



Australian Government

Takeovers Panel

statements referred to in paragraph 17 stating “*these statements must be read in the context of JBL’s announcement of 10 September 2018 and other information provided in the Bidder’s Statements despatched by JBL*”.

20. On 22 November 2018, JBL:
 - (a) following discussions with ASIC, lodged supplementary bidder’s statements in relation to its bids for BHD and HML. These supplementary bidder’s statements, among other things, retracted the statements referred to in paragraph 17 and
 - (b) extended the offer period for its bids for BHD and HML to 14 January 2019.³ The extensions of the offer period for JBL’s bids for BHD and HML triggered a right of withdrawal for BHD and HML shareholders who had accepted the bid before the date of the supplementary bidder’s statement under ss650D(1)(a)(ii) and 650E of the *Corporations Act 2001* (Cth) (**Act**).
21. As at 22 November 2018, JBL had voting power in BHD and HML of 40.69% and 57.02% respectively.
22. On 26 November 2018, the same day that BHD and HML were required to lodge and dispatch their respective target’s statements, the Panel affirmed earlier decisions of ASIC to refuse relief to BHD and HML to either (a) extend time for the dispatch of their target’s statements or (b) permit them to lodge incomplete target’s statements.⁴
23. On 27 November 2018, the voting directors of BHD and HML, in separate announcements, recommended to their shareholders for the first time that they take no action in relation to the JBL bids prior to the release of their respective target’s statements.
24. On 6 December 2018, BHD and HML lodged their respective target’s statements. Each target’s statement:
 - (a) contained an independent expert’s report concluding that the relevant bid is not fair but reasonable and
 - (b) included a statement that the voting directors recommend that shareholders accept the bid in the absence of a superior proposal.

³ The offer period has since been extended to 11 February 2019

⁴ See *Benjamin Hornigold Limited and Henry Morgan Limited* [2018] ATP 23



Australian Government

Takeovers Panel

25. The independent expert stated in its report on JBL's bid for HML, as a factor in determining that the bid is reasonable, that:

"JBL has a relevant interest in HML in excess of 50% (subject to any withdrawals of acceptances) which may allow JBL to determine future investment decisions of HML in addition to control of the management rights of HML. JBL's existing interest in HML is also likely to preclude any other takeover offers for HML or other corporate activity from a third party"

26. On 24 December 2018, JBL announced that it had obtained shareholder approval for its bids for BHD and HML to proceed and declared both bids free of conditions.
27. JBL's bidder's statement in relation to its bid for HML (as supplemented) does not adequately disclose:
- (a) the various relationships, and transactions, between JBL, BHD, HML, BRL, JBFG, JB Trading and their associates, noting that as the investment manager for BHD, HML and BRL, JBL had all the material information on this issue
 - (b) the risk that HML shareholders will receive materially less value if JBL only obtains voting power of 50% or less in either or both BHD and HML
 - (c) the financial position of JBL and JBFG, including that audit opinions in both their most recent accounts refer to material uncertainty regarding going concern and
 - (d) the financial effect of the transactions referred to in paragraphs 8, 14 and 15 and how they may impact on HML shareholders' decision whether to accept the JBL bid.
28. JBL's supplementary bidder's statement in relation to its bid for HML did not adequately deal with ASIC's disclosure issues in a way that was accessible to HML shareholders. HML shareholders who had accepted the bid prior to the issue of JBL's supplementary bidder's statement were not adequately protected by the disclosure in the supplementary bidder's statement and the ability to withdraw their acceptances.
29. The above disclosure issues have not been adequately remedied by the issue of HML's target's statement and independent expert's report.



Australian Government

Takeovers Panel

30. The following in combination (among other things) indicate that HML shareholders were denied sufficient time and information to assess the merits of JBL's bid and did not have the benefit of appropriate and sufficiently timely advice in relation to JBL's bid:
- (a) HML agreeing in advance and without qualification, in the bid implementation agreement, to early dispatch of the bidder's statement
 - (b) HML and JBL not ensuring that the target's statement and independent expert's report were dispatched at the same time as the bidder's statement, as envisaged in the bid implementation agreement timetable that each party agreed to use its best endeavours to comply with
 - (c) JBL and HML's directors' failure to promptly alert HML shareholders of their concerns regarding JBL's bidder's statement including the fact that statements in the bidder's statement misrepresented the conditionality of the voting directors' recommendation (referred to in paragraphs 17 and 18)
 - (d) HML dispatching its target's statement and independent expert's report late, in contravention of items 11 and 12 of s631(1) of the Act
 - (e) HML's directors' failure to clearly advise its shareholders prior to 27 November 2018 to take no action in relation to the JBL bid before considering the target's statement and independent expert's report and
 - (f) the almost identical responses of both BHD and HML to JBL's bids.

EFFECT

31. It appears to the Panel that:
- (a) the acquisition of control over voting shares in HML has not taken place in an efficient, competitive and informed market and
 - (b) the holders of shares in HML have not been given enough information to enable them to assess the merits of JBL's bid.

CONCLUSION

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



Australian Government

Takeovers Panel

- (a) having regard to the effect that the Panel is satisfied they have had, are having, will have or are likely to have on:
 - (i) the control, or potential control, of HML or
 - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in HML
- (b) in the alternative, in relation to the effect the circumstances have had, are having, will have or are likely to have in relation to HML, having regard to the purposes of Chapter 6 set out in section 602 of the Act and
- (c) in the further alternative, because they constituted, constitute, will constitute or are likely to constitute a contravention of a provision of Chapter 6 of the Act.

DECLARATION

The Panel declares that the circumstances constitute unacceptable circumstances in relation to the affairs of HML.

Bruce Dyer
Counsel
with authority of James Dickson
President of the sitting Panel
Dated 25 January 2019

Annexure B Orders



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP19/08

Friday, 8 February 2019

Benjamin Hornigold Limited 02 and Henry Morgan Limited 02 - Orders

The Panel made a declaration of unacceptable circumstances on 25 January 2019 in relation to applications dated 28 December 2018 from shareholders in Benjamin Hornigold Limited (**BHD or target**) and Henry Morgan Limited (**HML or target**)¹ in relation to the affairs of each company (see [TP18/80](#) and [TP19/04](#)). The applications relate to concurrent takeovers bids by John Bridgeman Limited (**JBL**) for each of BHD and HML.

The Panel has made final orders (Annexures A and B), the effect of which in relation to each bid includes:

- At a certain time² all acceptances received by JBL under the bid are cancelled.³
- JBL and the target must dispatch supplementary information, in a form acceptable to ASIC, to all target shareholders explaining among other things the effect of the Panel's declaration and orders
- Within a certain period JBL must repay to BHD the \$4.5 million loan entered into after the bid was announced upon conversion of a receivable JBL owed to BHD
- JBL must then within a certain period dispatch (in a form acceptable to ASIC) either (i) a replacement bidder's statement including certain information prescribed in the orders or (ii) a supplementary bidder's statement stating the bid is closed or has been cancelled. JBL may reintroduce any conditions previously attached to its bid in the replacement bidder's statement
- If JBL does not dispatch the replacement bidder's statement before the dates specified in the orders, and the bid remains on foot, the bid is cancelled (and if JBL does not repay the loan, its bid for BHD is cancelled)
- If the bid is not cancelled, within a certain period of JBL dispatching its replacement bidder's statement, the target must dispatch a supplementary

¹ In relation to both applications - Jonathan Allan Dixon, Ms Wendy Lynn Cowan, Mrs Susan Jean Dixon ATF Dixon Super Fund, GM Enterprises Australia Pty Ltd ATF GTM Super Fund and Inspired Asset Management Pty Ltd

² The actual timing will depend on whether the orders are stayed while any review proceedings are resolved

³ The orders also prohibit JBL from processing any acceptances received under its bid until this time

target's statement and supplementary independent expert's report to shareholders which specifically consider certain matters outlined in the orders.

The sitting Panel was Yasmin Allen, James Dickson (sitting President) and Bruce McLennan.

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

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



Australian Government

Takeovers Panel

ANNEXURE A

CORPORATIONS ACT SECTION 657D ORDERS

BENJAMIN HORNIGOLD LIMITED 02

The Panel made a declaration of unacceptable circumstances in relation to the affairs of BHD on 25 January 2019 (**Declaration**).

THE PANEL ORDERS

1. JBL, and all officers, agents or persons acting on its behalf, must not take any further steps to process any acceptances received under JBL's bid until after the operation of Order 2.
2. At the end of 5 days after the Commencement Date, all acceptances of JBL's bid at that time are cancelled.
3. After the operation of Order 2, any acceptance of JBL's bid received before dispatch of the Further Disclosure (or on an acceptance form attached to the Bidder's Statement whether received before or after dispatch of the Further Disclosure) is cancelled at the time it is received by JBL.
4. JBL must within 5 days of the Commencement Date dispatch a supplementary bidder's statement, in a form acceptable to ASIC, to all BHD shareholders explaining the effect of the Panel's declaration and orders, including that any acceptances of JBL's bid received before dispatch of the Further Disclosure are cancelled.
5. BHD must within 5 days of the Commencement Date dispatch a supplementary target's statement, in a form acceptable to ASIC, to all BHD shareholders explaining the effect of the Panel's declaration and orders and stating that BHD shareholders should wait until they receive the Supplementary Target's Statement and Supplementary Expert's Report before deciding whether to accept JBL's bid.
6. Within 20 days after the Commencement Date, JBL must repay to BHD the JBL Loan (with any interest).

7. Within 30 days after the Commencement Date, JBL must dispatch either of the following to BHD shareholders:
 - (a) a Replacement Bidder's Statement complying with Order 9 (in a form acceptable to ASIC) or
 - (b) a supplementary bidder's statement (in a form acceptable to ASIC) stating that its takeover offer for BHD is closed or has been cancelled in accordance with these orders.
8. If JBL does not comply with Order 6 or dispatch the Replacement Bidder's Statement in accordance with Order 7, and JBL's bid remains open for acceptance, offers under JBL's bid are cancelled and accordingly Orders 9 to 12 cease to apply.
9. The Replacement Bidder's Statement must comply with s636 of *Corporations Act 2001* (Cth) and applicable ASIC regulatory guides and include the following:
 - (a) a prominent statement on the front cover that BHD shareholders should wait until they receive the Supplementary Target's Statement and accompanying Supplementary Expert's Report before deciding whether to accept the bid
 - (b) a description of the various relationships, and transactions, between JBL, BHD, HML, BRL, JBFG, JB Trading and their associates
 - (c) the risk that BHD shareholders will receive materially less value if JBL only obtains voting power of 50% or less in either or both BHD and HML
 - (d) most recent financial statements of JBL and BHD noting the effect of the repayment of the JBL Loan
 - (e) a prominent statement noting that the most recent audit opinions of JBL and JBFG refer to material uncertainty regarding going concern
 - (f) details of the financial effect of the transactions referred to in paragraphs 10, 16 and 18 of the Declaration and the repayment of the JBL Loan and how each may impact on BHD shareholders' decision whether to accept the JBL bid and
 - (g) acceptance forms that are identifiably different from the acceptance forms in the Bidder's Statement.
10. JBL may reintroduce any conditions originally in the Bidder's Statement in the Replacement Bidder's Statement. If JBL does so in relation to a condition, its notice under s650F dated 24 December 2018 has no effect as it is stated to apply to that condition.

11. Before the Replacement Bidder's Statement is dispatched to BHD shareholders, JBL and BHD must provide to the independent expert all financial information in their possession in relation to JBL, BHD, HML, BRL, JBFG and JB Trading, including but not limited to the effect of repayment of the JBL Loan on the financial position of JBL and BHD.
12. Within 14 days of dispatch of the Replacement Bidder's Statement (if dispatched), BHD must dispatch:
 - (a) a Supplementary Target's Statement disclosing the Voting Director's recommendation following consideration of the Replacement Bidder's Statement and Supplementary Expert's Report and
 - (b) a supplementary independent expert's report stating whether at the date of the supplementary independent expert's report JBL's bid is fair and reasonable following consideration of the Replacement Bidder's Statement, repayment of the JBL Loan and cancellation of the acceptances.
13. In these orders the following terms apply:

Bidder's Statement	JBL's bidder's statement in relation to JBL's bid lodged on or about 31 October 2018
BHD	Benjamin Hornigold Limited
BHD shareholders	Shareholders of BHD, including any shareholder who has accepted JBL's bid
BRL	Bartholomew Roberts Pty Limited
Commencement Date	14 February 2018 or two business days after any stay of these orders (other than Order 1) is lifted
Further Disclosure	Either the Replacement Bidder's Statement or supplementary bidder's statement referred to in Order 7
HML	Henry Morgan Limited
JBFG	JB Financial Group Pty Ltd
JBL	John Bridgeman Limited
JBL's bid	JBL's bid for BHD
JBL Loan	The \$4.5 million loan given to JBL by BHD on or about 17 September 2018

JB Trading	JB Trading House Pty Ltd
Replacement Bidder's Statement	The replacement bidder's statement referred to in Order 7(a)
Supplementary Expert's Report	The supplementary independent expert's report referred to in Order 12(b)
Supplementary Target's Statement	The supplementary target's statement referred to in Order 12(a)
Voting Directors	BHD directors authorised to consider and provide a recommendation in relation to JBL's bid

Allan Bulman
Director
with authority of James Dickson
President of the sitting Panel
Dated 8 February 2019



Australian Government

Takeovers Panel

ANNEXURE B

**CORPORATIONS ACT
SECTION 657D
ORDERS**

HENRY MORGAN LIMITED 02

The Panel made a declaration of unacceptable circumstances in relation to the affairs of HML on 25 January 2019 (**Declaration**).

THE PANEL ORDERS

1. JBL, and all officers, agents or persons acting on its behalf, must not take any further steps to process any acceptances received under JBL's bid until after the operation of Order 2.
2. At the end of 5 days after the Commencement Date, all acceptances of JBL's bid at that time are cancelled.
3. After the operation of Order 2, any acceptance of JBL's bid received before dispatch of the Further Disclosure (or on an acceptance form attached to the Bidder's Statement whether received before or after dispatch of the Further Disclosure) is cancelled at the time it is received by JBL.
4. JBL must within 5 days of the Commencement Date dispatch a supplementary bidder's statement, in a form acceptable to ASIC, to all HML shareholders explaining the effect of the Panel's declaration and orders, including that any acceptances of JBL's bid received before dispatch of the Further Disclosure are cancelled.
5. HML must within 5 days of the Commencement Date dispatch a supplementary target's statement, in a form acceptable to ASIC, to all HML shareholders explaining the effect of the Panel's declaration and orders and stating that HML shareholders should wait until they receive the Supplementary Target's Statement and Supplementary Expert's Report before deciding whether to accept JBL's bid.
6. Within 30 days after the Commencement Date, JBL must dispatch either of the following to HML shareholders:
 - (a) a Replacement Bidder's Statement complying with Order 8 (in a form acceptable to ASIC) or

- (b) a supplementary bidder's statement (in a form acceptable to ASIC) stating that its takeover offer for HML is closed or has been cancelled in accordance with these orders.
7. If JBL does not dispatch the Replacement Bidder's Statement in accordance with Order 6, and JBL's bid remains open for acceptance, offers under JBL's bid are cancelled and accordingly Orders 8 to 11 cease to apply.
 8. The Replacement Bidder's Statement must comply with s636 of *Corporations Act 2001* (Cth) and applicable ASIC regulatory guides and include the following:
 - (a) a prominent statement on the front cover that HML shareholders should wait until they receive the Supplementary Target's Statement and accompanying Supplementary Expert's Report before deciding whether to accept the bid
 - (b) a description of the various relationships, and transactions, between JBL, HML, BHD, BRL, JBFG, JB Trading and their associates
 - (c) the risk that HML shareholders will receive materially less value if JBL only obtains voting power of 50% or less in either or both HML and BHD
 - (d) most recent financial statements of JBL and HML noting the effect of the repayment of the JBL Loan on JBL
 - (e) a prominent statement noting that the most recent audit opinions of JBL and JBFG refer to material uncertainty regarding going concern
 - (f) details of the financial effect of the transactions referred to in paragraphs 8 (including the extension) and 14 of the Declaration and the repayment of the JBL Loan and how each may impact on HML shareholders' decision whether to accept the JBL bid and
 - (g) acceptance forms that are identifiably different from the acceptance forms in the Bidder's Statement.
 9. JBL may reintroduce any conditions originally in the Bidder's Statement in the Replacement Bidder's Statement. If JBL does so in relation to a condition, its notice under s650F dated 24 December 2018 has no effect as it is stated to apply to that condition.
 10. Before the Replacement Bidder's Statement is dispatched to HML shareholders, JBL and HML must provide to the independent expert all financial information in their possession in relation to JBL, HML, BHD, BRL, JBFG and JB Trading, including but not limited to the effect of repayment of the JBL Loan on the financial position of JBL.
 11. Within 14 days of dispatch of the Replacement Bidder's Statement (if dispatched), HML must dispatch:

- (a) a Supplementary Target's Statement disclosing the Voting Director's recommendation following consideration of the Replacement Bidder's Statement and Supplementary Expert's Report and
- (b) a supplementary independent expert's report stating whether at the date of the supplementary independent expert's report JBL's bid is fair and reasonable following consideration of the Replacement Bidder's Statement, repayment of the JBL Loan and cancellation of the acceptances.

12. In these orders the following terms apply:

Bidder's Statement	JBL's bidder's statement in relation to JBL's bid lodged on or about 31 October 2018
BHD	Benjamin Hornigold Limited
BRL	Bartholomew Roberts Pty Limited
Commencement Date	14 February 2018 or two business days after any stay of these orders (other than Order 1) is lifted
Further Disclosure	Either the Replacement Bidder's Statement or supplementary bidder's statement referred to in Order 6
HML	Henry Morgan Limited
HML shareholders	Shareholders of HML, including any shareholder who has accepted JBL's bid
JBFG	JB Financial Group Pty Ltd
JBL	John Bridgeman Limited
JBL's bid	JBL's bid for HML
JBL Loan	The \$4.5 million loan given to JBL by BHD on or about 17 September 2018
JB Trading	JB Trading House Pty Ltd
Replacement Bidder's Statement	The replacement bidder's statement referred to in Order 6(a)
Supplementary Expert's Report	The supplementary independent expert's report referred to in Order 11(b)

Supplementary Target's Statement

The supplementary target's statement referred to in Order 11(a)

Voting Directors

HML directors authorised to consider and provide a recommendation in relation to JBL's bid

Allan Bulman
Director
with authority of James Dickson
President of the sitting Panel
Dated 8 February 2019