



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP19/45

Friday, 9 August 2019

Benjamin Hornigold Limited 05, 06 and 07 – Panel Receives Variation Request and Applications

The Panel has received:

- a request from Benjamin Hornigold Limited to vary the final orders made by the Panel on 8 February 2019¹ and an application from Benjamin Hornigold in relation to its affairs and
- an application from John Bridgeman Limited in relation to the affairs of Benjamin Hornigold.

Details of the variation request and applications, as submitted by the applicants, are below.

A sitting Panel has been appointed in relation to the variation request and applications however no decision has been made whether to conduct proceedings. The Panel makes no comment on the merits of the variation request or applications.

Details

On 10 September 2018, John Bridgeman announced its intention to make an off-market takeover bid to acquire all of the issued shares and options in Benjamin Hornigold that it did not already own (**2018 Bid**).

On 25 January 2019, the Panel made a declaration of unacceptable circumstances in relation to the affairs of Benjamin Hornigold, including the 2018 Bid (see [TP19/04](#)). On 8 February 2019, the Panel made final orders, including (among other things) that John Bridgeman repay to Benjamin Hornigold a \$4.5 million loan given to John Bridgeman by Benjamin Hornigold on or about 17 September 2018 (**Repayment Order**) (see [TP19/08](#)).

¹ See [Benjamin Hornigold Limited 02 and Henry Morgan Limited 02](#) [2019] ATP 1

On 5 March 2019, John Bridgeman announced that it had decided not to proceed with the 2018 Bid and that all acceptances had been cancelled and the 2018 Bid would lapse.

On 7 March 2019, John Bridgeman announced that it had paid \$4.5 million to Benjamin Hornigold in accordance with the Repayment Order. Benjamin Hornigold confirmed receipt of the payment in an announcement dated 12 March 2019.

On 26 April 2019, John Bridgeman announced its intention to make a new off-market takeover bid to acquire all of the issued shares and options in Benjamin Hornigold that it did not already own (**2019 Bid**). John Bridgeman dispatched its bidder's statement in relation to the 2019 Bid on 17 May 2019.

On 30 May 2019, Benjamin Hornigold lodged its target's statement in relation to the 2019 Bid with ASIC. The target's statement was accompanied by an independent expert's report² which opined that the 2019 Bid was 'fair and reasonable' in relation to Benjamin Hornigold shares and 'not fair but reasonable' in relation to Benjamin Hornigold options.

By announcement dated 12 June 2019, Benjamin Hornigold announced the resignation of all of its then current directors and the appointment of new directors.

On 23 July 2019, Benjamin Hornigold lodged its first supplementary target's statement accompanied by an updated report from the independent expert dated 19 July 2019 withdrawing its previous opinion on the 2019 Bid.

Benjamin Hornigold Limited 05

By request dated 24 July 2019, Benjamin Hornigold submits (among other things) that John Bridgeman has effectively circumvented the effect of the Repayment Order by replacing the \$4.5 million loan with foreign currency arrangements from King's Currency Exchange Pty Ltd, a related entity of John Bridgeman.

Benjamin Hornigold requests that the Panel vary the Repayment Order in effect to require King's Currency to provide the foreign currency notes (or equivalent) to Benjamin Hornigold.

Benjamin Hornigold Limited 06

By application dated 8 August 2019, Benjamin Hornigold submits (among other things) that:

² The independent experts report was required pursuant to s640 due to the existence at the time of a common directorship between the boards of John Bridgeman (as bidder) and Benjamin Hornigold (as target). Unless otherwise indicated, all statutory references are to the *Corporations Act 2001* (Cth), and all terms used in Chapter 6 or 6C have the meaning given in the relevant Chapter (as modified by ASIC)

- John Bridgeman and Benjamin Hornigold have circumvented the effect of the Repayment Order (see details above)
- amendments made to a services agreement between Benjamin Hornigold and King's Currency to extend the required notice period for the recall of foreign currency notes from 30 days to 8 months operates as a lock-up device and
- the withdrawal of the opinion of the independent expert is a fundamental change in circumstances in relation to the 2019 Bid.

Benjamin Hornigold seeks final orders including:

- reversing certain transactions between Benjamin Hornigold and King's Currency and that \$4.59 million be paid to Benjamin Hornigold
- declaring the amendments made to the services agreement to be void and
- offering withdrawal rights to Benjamin Hornigold securityholders that have accepted the 2019 Bid.

Benjamin Hornigold Limited 07

By application dated 8 August 2019, John Bridgeman submits (among other things) that:

- the first supplementary target's statement omits material which Benjamin Hornigold securityholders and their professional advisers may reasonably require in order to make an informed assessment of the 2019 Bid and
- the target's statement (as supplemented by the first supplementary target's statement) contravenes s640 as it is not accompanied by a report given by an independent expert.

John Bridgeman seeks interim orders in effect requiring Benjamin Hornigold to make a recommendation to its securityholders to take no action in respect of the 2019 Bid pending the determination of the proceedings. John Bridgeman seeks final orders including that Benjamin Hornigold make corrective disclosure and to commission an independent expert to prepare a supplementary independent expert's report.

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