



**Australian Government**

**Takeovers Panel**

# MEDIA RELEASE

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**No: TP23/23**

**Thursday, 8 June 2023**

## **The Market Herald Limited – Orders**

The Panel has made final orders (Annexure A) in relation to an application dated 6 February 2023 by UIL Limited in relation to the affairs of The Market Herald Limited (TMH) (see [TP23/08](#)).

### **Background**

On 18 May 2023, the Panel made a declaration of unacceptable circumstances in relation to the affairs of TMH (see [TP23/20](#)).

Considering the whole of the material, and drawing appropriate inferences, the Panel considered (among other things) that:

- from no later than 9 August 2022, Mr David Argyle (a substantial shareholder of TMH) and Mr Gavin Argyle (appointed as Non-Executive Director of TMH following a request by his father, Mr David Argyle, to appoint a nominee to the board) became associated for the purpose of controlling or influencing the composition of TMH's board or the conduct of its affairs
- from no later than 6 October 2022, Mr Gavin Argyle became associated with each of Ms Kasey Linney and Mr Eric Rosenal (two employees of an entity controlled by Mr Gavin Argyle) with respect to their respective holdings of TMH shares for the purpose of the conduct of TMH's affairs and
- from no later than 29 November 2022, Mr Alec Pismiris (Non-Executive Chairman of TMH) became associated with each of Mr David Argyle and Mr Gavin Argyle in relation to the composition of TMH's board.

The Panel considered that there is insufficient material to establish whether any of the associations detailed above have ended.

The Panel considered that the circumstances were unacceptable because (among other things):

- shareholders in TMH, and the market, are not informed, and continue not to be informed, of the aggregate relevant interest in TMH shares held by the associated parties
- there have been numerous contraventions of the substantial holder provisions in section 671B<sup>1</sup> in relation to TMH and
- the disclosure in relation to the entitlement offer announced by TMH on 26 August 2022 (**2022 Entitlement Offer**) and the disclosure in relation to the entitlement offer announced by TMH on 24 January 2023 (**2023 Entitlement Offer**) was deficient.

## Orders

The Panel has made orders that (in effect):

- 1,974,019 TMH shares held by Mr Gavin Argyle (through GAB Superannuation Fund Pty Ltd (**GAB**)), being:
  - the number of TMH shares placed by TMH to Ms Linney and Mr Rosenal following the 2022 Entitlement Offer and
  - the number of TMH shares to which GAB became entitled under the 2023 Entitlement Offer as a result of its acquisition of 550,000 TMH shares in October 2022, two days after Mr Rosenal sold 550,000 TMH shares on marketare to be vested in the Commonwealth for ASIC to sell.
- 87,324 TMH shares held by Mr David Argyle (directly or through Zero Nominees), being the number of shares to which Mr David Argyle became entitled under the 2023 Entitlement Offer as a result of his acquisition of 523,944 TMH shares in October 2022, two days after Ms Linney sold 550,000 TMH shares on market are to be vested in the Commonwealth for ASIC to sell.
- Mr David Argyle, Mr Gavin Argyle, Mr Pismiris, Ms Linney and Mr Rosenal and any of their respective associates (**Relevant Parties**) disclose in the form of a substantial holder notice their association with each other Relevant Party with whom they are associated in relation to TMH.
- In the event any of the Relevant Parties is of the view that they no longer are associated with any of the other Relevant Parties in relation to TMH, they

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<sup>1</sup> unless otherwise indicated, all statutory references are to the *Corporations Act 2001* (Cth)

disclose in the form of a substantial holder notice such information, including how and when their association ceased.

- A Relevant Party must not exercise any voting rights in respect of the TMH shares that Relevant Party acquired since the relevant association commenced (**Relevant Shares**) or otherwise deal with its Relevant Shares until the date that is 21 days after the Relevant Party has complied with its disclosure obligations under these orders.
- TMH disclose, in an ASX announcement, the Panel's decision.
- For 12 months from the date of these orders, none of Mr David Argyle, Mr Gavin Argyle and their respective associates may make any acquisition of a relevant interest in TMH shares, except with the prior consent of the Panel or pursuant to a pro rata entitlement offer to all TMH shareholders in order to maintain their respective percentage ownership interest in TMH.
- TMH appoint at least two independent directors to the board of TMH, one of which as the chair, in consultation with an independent recruitment consultant and report to the Panel every month on the steps it and the independent recruitment consultant have respectively taken to satisfy this order until both independent directors have been appointed.
- For 12 months from the date of an appointment of an independent director under these orders, Mr David Argyle, Mr Gavin Argyle and their respective associates must not exercise any voting rights in respect of their Relevant Shares regarding any resolution for the removal of a director the subject of such appointment.
- If 6 months after the date of these orders or such later date as the Panel may reasonably consent to, TMH has not appointed at least two independent directors in accordance with these orders, then, until TMH does so, Mr David Argyle, Mr Gavin Argyle and Mr Pismiris and their respective associates must not exercise their voting rights in respect of their Relevant Shares for so long as they are associated with any director of TMH and, in the case of Mr Gavin Argyle and Mr Pismiris, for so long as they are directors of TMH.

The Panel also made costs orders requiring:

- TMH to pay the fair and reasonable costs, as determined by the Panel, incurred by UIL, Mr Jagdip Sanger and ASIC in connection with the conference conducted in these proceedings and
- TMH and Mr Gavin Argyle to pay a portion of the fair and reasonable costs, as determined by the Panel, otherwise incurred by UIL and Mr Jagdip Sanger in connection with these proceedings.

The sitting Panel was Kelvin Barry, Kerry Morrow and Karen Phin (sitting President).

The Panel will publish its reasons for the decision in due course on its website [www.takeovers.gov.au](http://www.takeovers.gov.au).

Tania Mattei  
General Counsel, Takeovers Panel  
Level 16, 530 Collins Street  
Melbourne VIC 3000  
Ph: +61 3 9655 3500  
[takeovers@takeovers.gov.au](mailto:takeovers@takeovers.gov.au)



**Australian Government**

**Takeovers Panel**

**ANNEXURE A**  
**CORPORATIONS ACT**  
**SECTION 657D**  
**ORDERS**

**THE MARKET HERALD LIMITED**

The Panel made a declaration of unacceptable circumstances on 18 May 2023.

**THE PANEL ORDERS**

**Divestment Order**

1. The Sale Shares are vested in the Commonwealth on trust for GAB and Mr David Brian Argyle.
2. ASIC must:
  - (a) sell the Sale Shares in accordance with these orders and
  - (b) account to GAB and Mr David Brian Argyle for the proceeds of sale, net of the costs, fees and expenses of the sale and any costs, fees and expenses incurred by ASIC and the Commonwealth (if any).
3. ASIC must:
  - (a) retain an Appointed Seller to conduct the sale and
  - (b) instruct the Appointed Seller:
    - (i) to use the most appropriate sale method to secure the best available sale price for the Sale Shares that is reasonably available at that time in the context of complying with these orders, including the stipulated timeframe for the sale and the requirement that none of the Relevant Parties may acquire, directly or indirectly, any of the Sale Shares
    - (ii) to provide to ASIC a statutory declaration that, having made proper inquiries, the Appointed Seller is not aware of any interest, past, present, or prospective which could conflict with the proper performance of the Appointed Seller's functions in relation to the disposal of the Sale Shares

- (iii) unless the Appointed Seller sells Sale Shares on market, that it obtain from any prospective purchaser of Sale Shares a statutory declaration that the prospective purchaser is not associated with any of the Relevant Parties and
  - (iv) to dispose of all of the Sale Shares within 6 months from the date of its engagement.
- 4. TMH, GAB and Mr David Brian Argyle must do all things necessary to give effect to these orders, including:
  - (a) doing whatever is necessary to ensure that the Commonwealth is registered with title to the Sale Shares in the form approved by ASIC and
  - (b) until the Commonwealth is registered, complying with any request by ASIC in relation to the Sale Shares.
- 5. None of the Relevant Parties may, directly or indirectly, acquire any of the Sale Shares.
- 6. GAB and Mr David Brian Argyle must not otherwise dispose of, transfer, charge or vote any Sale Shares.
- 7. Nothing in these orders obliges ASIC or the Commonwealth to invest, or ensure interest accrues on, any money held in trust under these orders or exercise any rights (including voting rights) attaching to, or arising as a result of holding, the Sale Shares.

#### **Corrective Disclosure Orders – Relevant Parties**

- 8. As soon as practicable after and subject to approval by the Panel under Order 9, each Relevant Party must give to TMH and the ASX, either separately or combined:
  - (a) a notice in the form of ASIC Form 603 “Notice of initial substantial holder” or a notice in the form of ASIC Form 604 “Notice of change of interests of substantial holder”, as applicable, disclosing:
    - (i) the existence and nature of their association with each other Relevant Party with whom they are associated,
    - (ii) any transaction undertaken during the period from the date of commencement of the association through to the date of the notice and
    - (iii) any other information required by an ASIC Form 603 or an ASIC Form 604, as applicable, and

- (b) if any of the Relevant Parties is of the view that they are no longer associated with any of the other Relevant Parties in relation to TMH, a notice in the form of ASIC Form 605 “Notice of ceasing to be a substantial holder” or a notice in the form of ASIC Form 604 “Notice of change of interests of substantial holder”, as applicable, disclosing:
  - (i) how and when the association ceased,
  - (ii) copies of any document evidencing the ceasing of the association, and
  - (iii) any other information required by an ASIC Form 605 or an ASIC Form 604, as applicable, and
- (c) an explanatory covering letter to accompany the notices referred to in paragraphs (a) and (b),

(in relation to each Relevant Party, the notices, together with accompanying covering letter, is the **Disclosure**).

- 9. A draft of the Disclosure must be provided by each Relevant Party to the Panel within five business days of the date of these orders for review and approval by the Panel. Any changes requested by the Panel must be reflected in the draft of the Disclosure in a form acceptable to the Panel. The Panel will only approve a notice under Order 8(b) disclosing the cessation of an association if the Relevant Party can provide a reasonable basis for the cessation.
- 10. TMH must publish the Disclosure on its ASX Announcements Platform within 1 business day of receiving the Disclosure.
- 11. A Relevant Party must not exercise, and TMH must disregard, any voting rights in respect of its Relevant Shares and must not dispose of, transfer, charge or otherwise deal with its Relevant Shares until the date that is 21 days after the Relevant Party has complied with Order 8.

#### **Corrective Disclosure Orders – TMH**

- 12. As soon as practicable after and subject to approval by the Panel under Order 13, TMH must give the ASX an announcement explaining the Panel’s declaration and orders.
- 13. A draft of the ASX announcement must be provided by TMH to the Panel within five business days of the date of these orders for review and approval by the Panel. Any changes requested by the Panel must be reflected in the draft of the ASX announcement in a form acceptable to the Panel.

## Acquisition Restriction

14. For 12 months from the date of these orders, none of Mr David Brian Argyle, Mr Gavin Argyle and their respective associates may make any acquisition of a relevant interest in TMH shares, except:
  - (a) with the prior consent of the Panel or
  - (b) pursuant to a pro rata entitlement offer to all TMH shareholders in order to maintain (but not increase) the percentage ownership interest in TMH.
15. For the avoidance of doubt:
  - (a) Order 14 does not prohibit Mr David Brian Argyle, Mr Gavin Argyle and their respective associates from committing to take up their entitlement at the time of or prior to a capital raising and
  - (b) for 12 months from the date of these orders, none of Mr David Brian Argyle, Mr Gavin Argyle and their respective associates (including in the case of Mr Gavin Argyle, CIP) may underwrite or sub-underwrite any entitlement offer of TMH shares without the prior consent of the Panel.

## Independent Directors

16. TMH must commence a process to identify and select suitably qualified candidates for directorship to the board of TMH who are independent, and are identified in consultation with an independent recruitment consultant, with the view to appointing at least two of the candidates to the board of TMH. Once selected, the existing board of TMH must consider the appointment of at least two of the candidates, one of which as the chair. If the existing board of TMH does not approve at least two of the candidates, one of which as the chair, TMH must identify and select other candidates in accordance with this Order 16 until at least two appointments are approved (each time, an **Appointment**).
17. Every month after the date of these orders until the date of the second Appointment and prior to the date of each Appointment, TMH must:
  - (a) report to the Panel the steps it has undertaken to identify, select and appoint at least two independent directors to the board of TMH in accordance with Order 16 and
  - (b) provide a report to the Panel prepared by an independent recruitment consultant disclosing:
    - (i) the steps undertaken by the independent recruitment consultant to assist TMH in identifying, selecting and appointing at least two independent directors to the board of TMH in accordance with Order 16 and



- (ii) the identity and background of any candidate for directorship to the board of TMH selected in accordance with Order 16, including (to the extent known after making reasonable enquiries of the candidate and TMH) any connection that candidate has, or has had, with any of:
    - (A) the Relevant Parties
    - (B) UIL or Mr Duncan Saville
    - (C) CIP
    - (D) Mr Jagdip Sanger and
    - (E) TMH.
- 18. For 12 months from the date of an Appointment, Mr David Brian Argyle, Mr Gavin Argyle and their respective associates must not exercise, or allow the exercise of, and TMH must disregard, any voting rights in respect of their Relevant Shares regarding any resolution for the removal of a director the subject of such Appointment.
- 19. If 6 months after the date of these orders or such later date as the Panel may reasonably consent to (**End Date**), TMH has not appointed at least two directors in accordance with Order 16, then from the End Date until the date that the second Appointment is approved in accordance with Order 16:
  - (a) Mr Gavin Argyle and his respective associates must not exercise, or allow the exercise of, and TMH must disregard, any voting rights in respect of his Relevant Shares for so long as he is a director of, or is associated with any director of, TMH
  - (b) Mr Alec Pismiris and his respective associates must not exercise, or allow the exercise of, and TMH must disregard, any voting rights in respect of his Relevant Shares for so long as he is a director of, or is associated with any director of, TMH and
  - (c) Mr David Brian Argyle and his respective associates must not exercise, or allow the exercise of, and TMH must disregard, any voting rights in respect of his Relevant Shares for so long as he is associated with any director of TMH.

## Costs

- 20. Within 30 days of the date of this order, TMH and Mr Gavin Argyle must pay to UIL \$80,000 excluding GST in the following proportions:
  - (a) TMH must pay to UIL:

- (i) \$5,000 excluding GST, representing UIL's Conference Costs and
    - (ii) \$37,500 excluding GST, representing a portion of UIL's Residual Costs and
  - (b) Mr Gavin Argyle must pay to UIL \$37,500 excluding GST, representing a portion of UIL's Residual Costs.
21. Within 30 days of the date of this order, TMH and Mr Gavin Argyle must pay to Mr Jagdip Sanger \$65,000 plus GST in the following proportions:
- (a) TMH must pay to Mr Jagdip Sanger:
    - (i) \$15,000 plus GST, representing Mr Jagdip Sanger's Conference Costs and
    - (ii) \$25,000 plus GST, representing a portion of Mr Jagdip Sanger's Residual Costs and
  - (b) Mr Gavin Argyle must pay to Mr Jagdip Sanger \$25,000 plus GST, representing a portion of Mr Jagdip Sanger's Residual Costs.
22. Within 30 days of the date of this order, TMH must pay to ASIC \$1,000 excluding GST representing ASIC's Conference Costs.

#### Other

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

#### DEFINITIONS

24. In these orders the following terms apply.

<b>Appointed Seller</b>	an investment bank or stock broker
<b>Appointment</b>	has the meaning set out in Order 16
<b>ASIC</b>	Australian Securities and Investments Commission, as agent of the Commonwealth
<b>CIP</b>	Capital Investment Partners Pty Ltd
<b>Conference Costs</b>	the fair and reasonable costs, as determined by the Panel, incurred by a party in connection with the conference conducted in these proceedings
<b>Disclosure</b>	has the meaning set out in Order 8

<b>End Date</b>	has the meaning set out in Order 19
<b>GAB</b>	GAB Superannuation Fund Pty Ltd
<b>on market</b>	in the ordinary course of trading on Australian Securities Exchange and not by crossing or special crossing
<b>Relevant Parties</b>	Mr David Brian Argyle, Mr Gavin Argyle, Mr Alec Pismiris, Ms Kasey Linney and Mr Eric Rosenal and any of their respective associates
<b>Relevant Shares</b>	<p>the number of TMH shares listed below for each Relevant Party:</p> <p>Mr David Brian Argyle (held directly and through Zero Nominees) – 46,691,158</p> <p>Mr Gavin Argyle (held through GAB) – 10,686,482</p> <p>Mr Alec Pismiris (held through ACP Investments Pty Ltd and Pismiris Holdings Pty Ltd) – 750,000</p> <p>Ms Kasey Linney – 391,176</p> <p>Mr Eric Rosenal – 391,176</p>
<b>Residual Costs</b>	the fair and reasonable costs, as determined by the Panel, incurred by a party in connection with these proceedings through 25 May 2023, excluding any costs incurred by a party in connection with the conference conducted in these proceedings and the Panel’s application for an extension of time under section 657B of the <i>Corporations Act 2001</i> (Cth)
<b>Sale Shares</b>	<p>1,974,019 TMH shares held by GAB</p> <p>87,324 TMH shares held by Mr David Brian Argyle (directly or through Zero Nominees)</p>
<b>TMH</b>	The Market Herald Limited
<b>TMH shares</b>	ordinary shares in the issued capital of TMH
<b>UIL</b>	UIL Limited

**Zero Nominees**

**Zero Nominees Pty Ltd**

**Tania Mattei  
General Counsel  
with authority of Karen Phin  
President of the sitting Panel  
Dated 8 June 2023**