



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP14/90

Thursday, 4 December 2014

Celamin Holdings NL – Decision

The Panel has declined to make a declaration of unacceptable circumstances following additional disclosure by Celamin Holdings NL in response to an application dated 7 November 2014 from Psons Limited in relation to the affairs of Celamin (see [TP 14/85](#)).

On 4 November 2014, Celamin announced a 15 for 4 renounceable rights issue at an issue price of 1 cent per share to raise up to \$8.8 million. Celamin also offered a shortfall facility to existing shareholders and external ‘sophisticated investor’ applicants and its directors reserved full discretion to allocate shortfall shares.

Two of Celamin’s largest shareholders and two of Celamin’s directors agreed to act as sub-underwriters in an arrangement which fills their commitment in priority to other sub-underwriters. All sub-underwriters were entitled to receive one option for every two shares underwritten, or a cash equivalent if shareholders did not approve the issue of the options under ASX Listing Rule 7.1. If no other shareholders took up their entitlements, this could result in each of the two shareholder sub-underwriters increasing their shareholdings from approximately 12% to approximately 35%.

The Panel considered there was inadequate disclosure regarding:

- the way directors would exercise their discretion to allocate shortfall shares (and also had concerns about how the discretion was to be exercised)
- the fact that approval for conversion of the sub-underwriter options would be sought under item 7 of s611¹ (if required) independently of listing rule approval for the issue of the options and no cash equivalent would be payable if shareholders withheld item 7 approval and
- the scenarios under which a shareholder would be diluted under the rights issue.

The Panel was minded to make a declaration of unacceptable circumstances.

¹ All references are to the *Corporations Act 2001* (Cth) unless specified otherwise

However, Celamin agreed to provide further disclosure regarding the rights issue, which was released to ASX yesterday and the Panel has therefore declined to make a declaration of unacceptable circumstances.

The Panel considers that Celamin's alterations and the additional disclosure sufficiently address the circumstances and that it is not against the public interest to decline to make a declaration of unacceptable circumstances. Celamin has taken the view that the rights issue meets the requirements of item 10 of s611. The Panel makes no comment on this.

The sitting Panel was Ewen Crouch AM (sitting President), Ian Jackman SC and Anthony Sweetman. The Panel will publish its reasons for the decision in due course on its website www.takeovers.gov.au.

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