



Australian Government

Takeovers Panel

# MEDIA RELEASE

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No: TP21/48

Friday, 17 December 2021

## Nex Metals Explorations Ltd 02 – Additional Orders

The Panel has made additional orders in relation to the *Nex Metals Explorations Ltd 02* proceedings (see Annexure A).

### Background

Nex Metals Explorations Ltd (**Nex Metals**) is the subject of an off-market scrip takeover bid from Metalicity Ltd (**Metalicity**).

On 30 November 2021, the Panel made a declaration of unacceptable circumstances and orders in relation to the affairs of Nex Metals following an application from Metalicity dated 2 November 2021 (see [TP21/42](#)).

The Panel considered, among other things, that there were material deficiencies in Nex Metals' target's statement issued in respect of Metalicity's bid which resulted in contraventions of sections 638 and 670.<sup>1</sup>

The Panel made orders, including that Nex Metals must prepare a replacement target's statement, in a form that ASIC does not object to, that complies with section 638 and is accompanied by a report prepared by an independent expert (of ASIC's nomination) opining on whether the bid is fair and reasonable (**Final Orders**).

In making the Final Orders, the Panel communicated that it continued to have significant concerns about Nex Metals shareholders receiving a compliant target's statement from Nex Metals and was currently considering whether to make any additional orders.

### Additional orders

The Panel has made additional orders, including that:

- Nex Metals must provide the Panel, ASIC and Metalicity weekly updates on the status and progress of its replacement target's statement and the accompanying

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<sup>1</sup> References are to the *Corporations Act 2001* (Cth) unless otherwise indicated

independent expert's report commissioned by Nex Metals pursuant to the Final Orders.

- If Nex Metals does not prepare and lodge its replacement target's statement by 14 January 2022 (unless extended with the Panel's consent), Metalicity may engage an expert to produce an independent expert's report opining on whether the bid is fair and reasonable (**Metalicity IER**) and dispatch the Metalicity IER to Nex Metals shareholders.
- The external costs of the Metalicity IER (including the fees and expenses of the independent expert and dispatch costs) are to be borne by Nex Metals' directors jointly and severally up to an amount of \$50,000 (with no indemnification or reimbursement from Nex Metals) and with the balance to be borne by Metalicity.
- Nex Metals must immediately advise the market that (among other things) its target's statement is misleading and contains material information deficiencies, and that it will lodge a replacement target's statement to be accompanied by an independent expert's report.
- Until Nex Metals has lodged with ASIC and ASX a replacement target's statement or the Metalicity IER is dispatched to Nex Metals shareholders (whichever is earlier), Nex Metals is not permitted to publish any further statements with respect to the bid, except:
  - as required by the Panel's additional orders
  - statements which indicate when its replacement target's statement and accompanying independent expert's report will be available to its shareholders and
  - pending the availability of its replacement target's statement and accompanying independent expert's report, Nex Metals shareholders may be advised to take no action with respect to the bid.

The sitting Panel was Marina Kelman, Michael Lishman 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).

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**Takeovers Panel**

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

**NEX METALS EXPLORATIONS LTD 02**

The Panel made a declaration of unacceptable circumstances and final orders on 30 November 2021.

**THE PANEL ORDERS**

1. Nex Metals must provide the Panel, ASIC and Metalicity with a weekly update on the status and progress of its Replacement Target's Statement by 5pm (Melbourne time) each Friday.
2. Nex Metals must provide the Panel, ASIC and Metalicity with a weekly update on the status and progress of the Nex Metals IER from each of:
  - (a) Nex Metals and
  - (b) the expert engaged by Nex Metals to produce the Nex Metals IERby 5pm (Melbourne time) each Friday.
3. If Nex Metals does not prepare and lodge with ASIC and ASX a Replacement Target's Statement which complies with the Panel's final orders in *Nex Metals Explorations Ltd 02* dated 30 November 2021 by 14 January 2022 (unless extended with the Panel's consent), Metalicity may:
  - (a) engage an expert to produce an independent expert's report providing an opinion for Nex Metals shareholders on whether the Bid is fair and reasonable (**Metalicity IER**) and
  - (b) dispatch the Metalicity IER to Nex Metals shareholders.
4. Nex Metals must use its best endeavours to assist the independent expert engaged to produce the Metalicity IER with its inquiries, including:
  - (a) by making available to the independent expert all information reasonably requested by the independent expert and

- (b) by making (on behalf of the independent expert) reasonable enquiries of Mr Ken Allen, Mr Thomas Percy QC and Mr Hock Hoo Chua regarding whether there may be any other information that should be made available to the independent expert and providing any such information to the independent expert.
- 5. Mr Ken Allen, Mr Thomas Percy QC and Mr Hock Hoo Chua must provide full and accurate answers to all questions directed to them by or on behalf of the independent expert engaged to produce the Metalicity IER.
- 6. The external costs of the Metalicity IER (including the fees and expenses of the independent expert and dispatch costs) are to be borne by Mr Ken Allen, Mr Thomas Percy QC and Mr Hock Hoo Chua jointly and severally up to an amount of \$50,000 and with the balance to be borne by Metalicity.
- 7. Mr Ken Allen, Mr Thomas Percy QC and Mr Hock Hoo Chua cannot be indemnified or reimbursed by Nex Metals for their costs borne under Order 6 of these orders.
- 8. Nex Metals must immediately advise the market of all of the following:
  - (a) that its target's statement lodged with ASIC on 29 October 2021 is misleading and contains material information deficiencies
  - (b) that the supplementary target's statement referred to in its ASX announcements dated 29 October 2021 and 8 November 2021 will not be lodged or issued by Nex Metals and
  - (c) that it will lodge, and send each Nex Metals shareholder, a Replacement Target's Statement, in a form that ASIC does not object to, which is accompanied by an independent expert's report opining on whether the Bid is fair and reasonable.
- 9. Until Nex Metals has lodged with ASIC and ASX a Replacement Target's Statement or the Metalicity IER is dispatched to Nex Metals shareholders (whichever is earlier), Nex Metals is not permitted to publish any further statements with respect to the Bid except for:
  - (a) the statements required to be made pursuant to Order 8 of these orders
  - (b) statements which indicate when the Replacement Target's Statement and accompanying independent expert's report will be available to Nex Metals shareholders and
  - (c) pending the availability of the Replacement Target's Statement and accompanying independent expert's report, Nex Metals shareholders may be advised to take no action with respect to the Bid.

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

11. In these orders, the following definitions apply:

<b>Bid</b>	Metalicity's off-market all scrip bid for all of the ordinary shares in Nex Metals, offering 4.81 Metalicity shares for every 1 Nex Metals share, the terms of which are set out in its bidder's statement dated 24 September 2021
<b>Metalicity</b>	Metalicity Ltd
<b>Metalicity IER</b>	Has the meaning given in Order 3(a)
<b>Nex Metals</b>	Nex Metals Explorations Ltd
<b>Nex Metals IER</b>	The independent expert's report to be commissioned by Nex Metals to accompany the Replacement Target's Statement as required by the Panel's final orders in <i>Nex Metals Explorations Ltd 02</i> dated 30 November 2021
<b>Replacement Target's Statement</b>	Has the meaning given in Order 2 of the Panel's final orders in <i>Nex Metals Explorations Ltd 02</i> dated 30 November 2021

**Tania Mattei**  
**General Counsel**  
**with authority of Karen Phin**  
**President of the sitting Panel**  
**Dated 17 December 2021**