



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP16/19

Friday, 8 April 2016

ABM Resources NL - Declaration of Unacceptable Circumstances and Order

The Panel has made a declaration of unacceptable circumstances (Annexure A) and final order (Annexure B) in relation to an application dated 10 March 2016 by APAC Resources Capital Ltd in relation to the affairs of ABM Resources NL (see [TP16/14](#)).

Background

On 9 March 2016, ABM announced:

- A 3 for 5 non-renounceable rights issue to raise a total of approximately \$8.2 million, fully underwritten by Key Pacific Advisory Partners Pty Ltd and fully sub-underwritten by Pacific Road Capital Management Pty Ltd as trustee for Pacific Road Fund II Managed Investment Trust.
- That it entered into a \$3.8 million debt facility with Pacific Road. The debt facility included conditions that the rights issue occur with Pacific Road as a sole sub-underwriter and ABM granting a first ranking security interest over its assets in favour of Pacific Road.

Pacific Road currently holds 19.85% of ABM. If no other shareholder took up their rights, Pacific Road would have obtained voting power of up to 49.91% of ABM.

Declaration

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

- all reasonable steps to minimise the likely control effect of the rights issue had not been taken - for example no attempt, or no genuine attempt, was made to find additional sub-underwriters or accommodate an institution that could do so
- the linking of the debt facility with the rights issue, particularly given the sub-underwriting arrangement, had the potential to exacerbate the control effect and

- the sub-underwriting fee was payable even on shares taken up by Pacific Road under the rights issue as a shareholder.

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).

Order

The Panel has made an order that ABM not proceed with the rights issue and make an announcement to that effect (in a form approved by the Panel). The Panel considered that an order ending the rights issue, and allowing ABM flexibility in structuring a new rights issue or other funding transaction, would be simpler and would likely be less confusing for shareholders.

The sitting Panel was Byron Koster, Denise McComish and Vickki McFadden (President).

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

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ANNEXURE A

**CORPORATIONS ACT
SECTION 657A**

DECLARATION OF UNACCEPTABLE CIRCUMSTANCES

ABM RESOURCES NL

CIRCUMSTANCES

1. ABM Resources NL (**ABM**) is an ASX listed company.
2. Pacific Road Capital Management Pty Ltd (**PRCM**), as trustee for Pacific Road Fund II Managed Investment Trust, holds 19.85% of ABM.
3. On 9 March 2016, ABM announced:
 - (a) a 3 for 5 non-renounceable rights issue to raise a total of approximately \$8.2 million, fully sub-underwritten by PRCM and
 - (b) entry into a \$3.8 million debt facility with PRCM. The debt facility is conditional on (among other things):
 - (i) the rights issue occurring with PRCM as sole arranger and sub-underwriter and
 - (ii) ABM granting a first ranking security interest over its assets in favour of PRCM.
4. If no other shareholders take up their rights, PRCM will obtain voting power of up to 49.91% of ABM.
5. All reasonable steps to minimise the likely control effect of the rights issue on ABM have not been taken. In particular:
 - (a) the issue is structured such that it is unattractive for underwriters, other than the one approached by PRCM, to underwrite and
 - (b) no attempt, or no genuine attempt, was made to find additional sub-underwriters or to accommodate an institution that could do so.
6. The linking of the debt facility with the rights issue, particularly given the sub-underwriting arrangement, has the potential to exacerbate the control effect.
7. In addition, the sub-underwriting fee is payable even on shares the sub-underwriter takes up under the rights issue as a shareholder.

EFFECT

8. As a result of the foregoing, the potential acquisition of control over voting shares in ABM will not take place in an efficient, competitive and informed market and all shareholders will not have a reasonable and equal opportunity to participate in any benefits accruing to PRCM.

CONCLUSION

9. It appears to the Panel that the circumstances are unacceptable circumstances:
 - (a) having regard to the effect that the Panel is satisfied they will have or are likely to have on:
 - (i) the control, or potential control, of ABM or
 - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in ABM
 - (b) in the alternative, having regard to the purposes of Chapter 6 set out in section 602 of the *Corporations Act 2001* (Cth) (**Act**).
10. The Panel considers that it is not against the public interest to make a declaration of unacceptable circumstances. It has had regard to the matters in section 657A(3) of the Act.

DECLARATION

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

Alan Shaw
Counsel
with authority of Vickki McFadden
President of the sitting Panel
Dated 7 April 2016



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ANNEXURE B

CORPORATIONS ACT SECTION 657D ORDER

ABM RESOURCES NL

The Panel made a declaration of unacceptable circumstances on 7 April 2016.

THE PANEL ORDERS

That ABM Resources NL must not proceed with the Rights Issue and must within 2 business days make an announcement to the market, in a form approved by the Panel, stating that it will not proceed with the Rights Issue.

In this order, “Rights Issue” means the 3 for 5 non-renounceable rights issue announced by ABM Resources NL on 9 March 2016.

Alan Shaw
Counsel
with authority of Vickki McFadden
President of the sitting Panel
Dated 7 April 2016