



Australian Government

Takeovers Panel

MEDIA RELEASE

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Friday, 11 March 2016

ABM Resources NL – Panel Receives Application

The Panel has received an application from APAC Resources Capital Limited, a wholly owned subsidiary of Hong Kong listed company APAC Resources Limited, in relation to the affairs of ABM Resources NL. The application concerns a rights issue by ABM Resources.

Details of the application, as submitted by the applicant, are below.

A sitting Panel has not been appointed at this stage and no decision has been made whether to conduct proceedings. The Panel makes no comment on the merits of the application.

Details

On 9 March 2016, ABM Resources announced a 3 for 5 non-renounceable rights issue at an issue price of \$0.04 per share to raise a total of approximately \$8.2 million. The rights issue is 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. Pacific Road currently holds 19.85% of ABM Resources.

On the same day, ABM Resources entered into a facility agreement with Pacific Road in relation to a \$3.8 million facility in relation to environmental and general performance bonds currently provided by ANZ Bank. The facility is to be implemented simultaneously with the rights issue. It is subject to a number of conditions, including ABM Resources granting a security interest over its assets.

Also on 9 March 2016, ABM Resources announced that one director had resigned from the board and two directors intended to resign upon completion of the capital raising. Two new directors were appointed to the board, one the former interim CEO of ABM Resources and the other a principal at Pacific Road. The next day one of the two directors intending to resign, resigned immediately.

APAC (through a custodian) holds 14.83% of ABM Resources. APAC served ABM Resources with notices under s249D¹, which request the directors of ABM Resources to convene a shareholders meeting to consider resolutions to appoint two nominees of APAC to the board and remove the incumbent ABM directors (other than APAC's current representative on the board).

APAC submits (among other things) that it appears that the rights issue and the underwriting and debt facility arrangements with Pacific Road are being used as a means of gaining control of ABM Resources without Pacific Road making a takeover offer to acquire all outstanding shares in ABM Resources. It submits that the rights issue contravenes the principles in the Panel's Guidance Note 17 – Rights Issues and s602 in that the likely acquisition of control over shares in ABM Resources will not take place in an efficient, competitive and informed market.

APAC seeks interim orders halting the arrangements or, alternatively, just the rights issue prior to the later of voting on the resolutions to be put at the s249D meeting and final orders by the Panel.

APAC also seeks final orders that the rights issue not proceed prior to the occurrence of both voting on the resolutions to be put at the 249D meeting and either the satisfaction of all conditions precedent under the facility agreement (including non-related party shareholder approval of the giving by ABM Resources of the security interest) or disclosure by ABM Resources of the action it would propose to take if it fails to satisfy those conditions precedent.

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¹ References are to the *Corporations Act 2001* (Cth)