



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP19/12

Thursday, 14 February 2019

Flinders Mines Limited 02 & 03 – Panel Accepts Undertakings

The Panel has accepted undertakings, in lieu of making orders, from Flinders Mines Limited (**Flinders Mines**) and TIO (NZ) Limited (**TIO**) (see Annexures A and B). The Panel made a declaration of unacceptable circumstances on 8 February 2019 in relation to the affairs of Flinders Mines (see [TP19/09](#)). The Panel is satisfied that performance of the undertakings in accordance with their terms sufficiently addresses the unacceptable circumstances identified in its declaration.

In broad terms, the undertakings provide (among other things) that:

- Flinders Mines will seek formal ASX approval for a revised process to delist, involving an equal access scheme off-market buy-back of 10% of the shares at a fixed price of \$0.075 per share with a pro rata scale back. This will take the place of the previously proposed on-market buy-back (which by its nature operates on a first in basis and does not permit pro-rating and was at a price equal to the lower of \$0.075 per share or a 5% premium to the 5 day volume weighted average price for the shares before the purchase). The Panel considered the on-market buy-back was likely to coerce Flinders Mines' shareholders (other than TIO) to sell their shares.
- In place of Flinders Mines' proposed rights issue to repay a TIO loan funding the buy-back, TIO will extend the term of the proposed loan (which may also be increased in specified circumstances).
- TIO will not vote shares representing any increase in its voting power (which is currently 55.56%) as a result of the off-market buy-back for 18 months after its completion, and will seek to sell these shares either on market or otherwise

The sitting Panel was Alex Cartel (sitting President), Elizabeth Hallett and Diana Nicholson. 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

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ACT 2001 (CTH) SECTION 201A UNDERTAKINGS

UNDERTAKINGS IN RESPECT OF FLINDERS MINES LIMITED

Flinders Mines Limited (**Flinders**) undertakes to the Panel that as soon as practicable after the date of these undertakings:

1. Flinders agrees not to request ASX to remove Flinders from the official list of ASX except on the terms, or substantially on the terms, set out in these undertakings.
2. Flinders will seek ASX formal approval of the De-Listing but will only do so after a copy of these undertakings, the undertakings provided to the Panel by TIO (NZ) Limited (**TIO NZ**) on or about the date of these undertakings (**TIO NZ Undertakings**) and the Panel's published reasons for its decision are provided to ASX.
3. Subject to the shareholders of Flinders approving the removal of Flinders from the official list of ASX (**De-Listing**), Flinders will instead of its proposed on-market buy-back propose a limit based equal access scheme off-market buy-back of its shares of up to the 10/12 limit under the *Corporations Act 2001 (Cth)* (**Corporations Act**) at a fixed price of \$0.075 per share (unfranked) (**Buy-Back Price**) with a pro rata scale back (**Buy-Back**).
4. Flinders will prepare and issue a new notice of meeting to its shareholders in relation to the De-Listing.
5. Flinders will:
 - (I) provide appropriate guidance to its shareholders on the tax consequences of the Buy-Back in the form of an opinion from its lawyers in the Buy-Back booklet; and
 - (II) state in the Buy-Back booklet that it is seeking (and will endeavour to promptly obtain) an ATO tax ruling and expects the tax ruling to reflect the tax consequences described in the opinion.
6. Flinders will extend the period of trading post shareholder approval and pre implementation of the De-Listing to the date which is

approximately four weeks after the announcement to ASX of the results of the Buy-Back, including any scale back.

7. On request by TIO NZ, Flinders will provide reasonable assistance to place any Excess Shares (as defined in the TIO NZ Undertakings) required to be sold by TIO NZ at the Buy-Back Price pursuant to the TIO NZ Undertakings.
8. In substitution for Flinders' previously proposed rights issue (**Rights Issue**), Flinders and TIO NZ (via its subsidiary, PIO Mines Pty Ltd) will agree to extend the term of their proposed loan (**Loan**) to 3 years on terms which are no more favourable to TIO NZ than arm's length terms (which will include capitalised interest at a rate to be agreed and specified in the new notice of meeting).
9. The Loan amount will be increased such that it equals the amount required to fund the Buy-Back (up to A\$25.3 million) plus A\$3 million for Flinders' working capital and in the unlikely event of Flinders' incurring a franking deficit tax liability in connection with the unfranked dividend component of the Buy-Back, increased to the extent of that franking deficit tax liability, up to a further A\$4.6 million.
10. Flinders will use reasonable endeavours to seek alternative means by which retail Flinders' shareholders may trade their shares after the De-Listing, provided the cost and compliance burden of such trading platforms do not exceed the benefits.
11. Flinders agrees to amend the Loan and its previously agreed 'Commitment Agreement' with TIO NZ to reflect the above.
12. Flinders will make supplementary disclosures in the form of an ASX announcement regarding the changes to the De-Listing, Buy-Back, Loan, 'Commitment Agreement' and Rights Issue arising as a result of the above matters.

Flinders agrees to confirm in writing to the Panel when it considers that it has satisfied its obligations under this undertaking.

In this undertaking the following terms have the corresponding meaning:

- | | |
|------------|---|
| ASX | ASX Limited, or as the context requires, the financial market known as the 'Australian Securities Exchange' operated by it. |
| ATO | Australian Taxation Office. |

Signed by David McAdam, Executive Director of Flinders Mines Limited with the authority, and on behalf, of Flinders Mines Limited
Dated 13 February 2019



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ANNEXURE B

AUSTRALIAN SECURITIES AND

INVESTMENTS COMMISSION ACT 2001 (CTH) SECTION 201A

UNDERTAKINGS

FLINDERS MINES LIMITED 02 & 03

TIO (NZ) Limited (**TIO NZ**) undertakes to the Panel that it will, as soon as practicable:

1. If the Buy-Back (as defined in the Flinders Mines Limited (**Flinders**) undertaking) results in TIO NZ's voting power increasing above its present voting power of 55.56%, TIO NZ will seek to reduce its voting power from its level of voting power immediately following completion of the Buy-Back (**Post Buy-Back Voting Power**) to the level of TIO NZ's voting power prior to the commencement of the Buy-Back, being 55.56% (**Existing Voting Power**) by:
 - (a) offering shares for sale on-market following completion of the Buy-Back at \$0.075 per share (**Buy-Back Price**) for a number of shares equal to the Post Buy-Back Voting Power minus the Existing Voting Power (**Excess Shares**) to the date the De-Listing (as defined in the Flinders undertaking) is implemented; and
 - (b) to the extent that TIO NZ is unable to sell the Excess Shares under the process described above prior to the date that the De-Listing is implemented, TIO NZ will use reasonable commercial endeavours to sell the remaining Excess Shares at the Buy-Back Price for a period of 18 months after the completion of the Buy-Back including via any trading platform established by Flinders under paragraph 10 of the Flinders undertaking.

To avoid doubt:

- (c) the number of Excess Shares will be reduced by the number of Flinders shares sold by TIO NZ following completion of the Buy-Back; and
- (d) to the extent TIO NZ is unable to sell the Excess Shares in accordance with the above process in the period ending 18 months after completion of the Buy-Back, TIO NZ will be under no further obligation to sell any Excess Shares.

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2. To the extent TIO NZ holds Excess Shares, TIO NZ will not exercise any votes in relation to the Excess Shares until the earlier of 18 months after completion of the Buy-Back and completion of the sale of the Excess Shares under paragraph 1. To avoid doubt, this undertaking does not apply to any increase in TIO NZ's voting power above its Existing Voting Power which occurs independently of TIO NZ holding the Excess Shares, nor does it restrict TIO NZ exercising any votes in respect of its Existing Voting Power.
 3. In substitution for Flinders' previously proposed rights issue, TIO NZ (via its subsidiary, PIO Mines Pty Ltd) will agree to extend the term of its proposed loan (**Loan**) to 3 years on terms which are no more favourable to TIO NZ than arm's length terms (which will include capitalised interest at a rate to be agreed).
 4. The Loan amount will be increased such that it equals the amount required to fund the Buy-Back plus A\$3 million for Flinders' working capital and in the unlikely event of Flinders' incurring a franking deficit tax liability in connection with any unfranked dividend component of the Buy-Back, increased to the extent of that franking deficit tax liability, up to a further A\$4.6 million.
 5. TIO NZ's voting power for the purpose of determining its entitlement to rely on the 3% creep exception under the *Corporations Act 2001* (Cth) will disregard TIO NZ's voting power derived from holding the Excess Shares until the earlier of 6 months following completion of the sale of the Excess Shares under paragraph 1 and 24 months from the completion of the Buy-Back.
 6. TIO NZ agrees to procure that the Loan and the previously agreed 'Commitment Agreement' with Flinders be amended to reflect the above.

TIO NZ agrees to confirm in writing to the Panel when it considers that it has satisfied its obligations under this undertaking.

Signed by Christopher Brian Hall, Director of TIO (NZ) Limited with the authority, and on behalf, of TIO (NZ) Limited
Dated 13 February 2019