



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP15/56

Friday, 16 October 2015

Affinity Education Group Limited - Orders

The Panel made a declaration of unacceptable circumstances on 5 October 2015 in relation to an application dated 26 August 2015 by Affinity Education Group Limited in relation to its affairs (see [TP15/42](#) and [TP15/52](#)).

The Panel considered (among other things) that:

- G8 had a relevant agreement and was associated with each of Taxonomy, West Bridge and JB Super
- as a result of acquisitions by Taxonomy and West Bridge, there were contraventions of section 606 (20% threshold) and section 671B (substantial holder notice disclosure) by G8, Taxonomy and West Bridge and
- G8 had not complied with section 636 (bidder's statement content requirements).

The Panel has now made orders (Annexure A) to the effect that:

- Affinity shares held by G8 representing those Affinity shares acquired from Taxonomy in excess of 20% of the total voting power in Affinity are to be sold by G8, in a process to be scrutinised by ASIC
- 'withdrawal' rights be offered to all Affinity shareholders (other than Taxonomy and JB Super) who accepted G8's scrip bid and
- G8 must provide disclosure by an announcement to the market, in a form approved by the Panel, in relation to the relevant agreements and associations found.

The determination of the proceedings brings to an end the interim orders dated 21 September 2015 (see [TP15/49](#)).

The sitting Panel was Geoff Brunsdon (Sitting President), Elizabeth Bryan AM and Karen Evans-Cullen.

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

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Takeovers Panel

**CORPORATIONS ACT
SECTION 657D
ORDERS**

AFFINITY EDUCATION GROUP LIMITED

The Panel made a declaration of unacceptable circumstances on 5 October 2015.

THE PANEL ORDERS

1. Sale Order

- 1.1. G8 must dispose of the Associate Shares within 21 days of the date these orders.
- 1.2. To give effect to order 1.1, G8 must:
 - (a) process the acceptances from, and issue the consideration to, Taxonomy and JB Super under the scrip bid as soon as practicable
 - (b) appoint an investment bank or stock broker, to whom ASIC has (and continues to have) no objection, to effect the sale of the Associate Shares
 - (c) instruct the appointed seller to –
 - (i) sell the shares on-market (as defined in the *Corporations Act 2001* (Cth)) or by special crossing or by off-market transfer
 - (ii) if any of the shares are sold by special crossing or off-market transfer, provide a statutory declaration to ASIC that, having undertaken all reasonable enquiries, it has determined that the buyer of the shares by way of special crossing or off-market transfer is not G8, Ms Jennifer Hutson or any of their associates
 - (iii) provide a written report to ASIC at the close of each trading day on which Associate Shares are sold setting out the number of shares sold, the prices and whether the sale was on market, by special crossing or off-market transfer
 - (iv) provide a written report to ASIC on the business day after the last of the Associate Shares are sold setting out the total amount remitted to G8 and confirming its compliance with the instructions in this order and
 - (v) provide to ASIC, as soon as practicable, any information ASIC requests of the appointed seller in connection with Order 1

- (d) inform ASIC, as soon as practicable, of the instructions, and of any change of instructions, it has given the appointed seller and
 - (e) provide to ASIC, as soon as practicable, any information ASIC requests in connection with Order 1.
- 1.3. None of G8, Ms Jennifer Hutson or any of their associates may acquire any of the Associate Shares.
- 1.4. In the event of a dispute in connection with Order 1, ASIC must refer the dispute to the Panel within 2 business days for decision.

2. Withdrawal Order

- 2.1. In respect of any acceptances by Accepting Shareholders pursuant to the scrip bid that have been processed by G8, each contract of purchase of Affinity Shares by G8 entered into with Affinity Shareholders pursuant to the scrip bid is voidable at the election of each Accepting Shareholder.
- 2.2. To give effect to Order 2.1, G8 must:
- (a) send a notice to each Accepting Shareholder no later than the end of the business day after the date of these orders:
 - (i) advising of their right to avoid the contract
 - (ii) enclosing an election form and any required transfer forms for exercise of that right
 - (iii) advising that to elect to avoid the contract the Accepting Shareholder must take the following steps:
 - (A) return the completed form to G8 before 7pm on the date that is 21 days after the date of dispatch of the form and
 - (B) give G8 any certificates and transfer documents needed to effect the return of the Affinity Shares and the securities issued as consideration or complying with Corporations Regulation 6.6.01(2), as the case may be and
 - (iv) explaining the effect of the Panel's declaration and orders and
 - (b) take all reasonable steps necessary to promptly give effect to the exercise of a right to avoid the contract by an Accepting Shareholder.
- 2.3. G8 must comply with Corporations Regulation 6.6.01(3) in relation to each Affinity shareholder who avoids the contract, as if the Regulation applies to this Order.
- 2.4. In respect of each avoided contract the G8 securities issued as consideration are cancelled.
- 2.5. In respect of any acceptances by Accepting Shareholders pursuant to the scrip bid that have not been processed by G8, each Accepting Shareholder who has accepted the scrip bid has a right to withdraw their acceptance.
- 2.6. To give effect to Order 2.5, G8 must:

- (a) comply with the requirements of Order 2.2, with such modifications as are necessary and
- (b) promptly take all reasonable steps necessary to give effect to the exercise of a right to withdraw by an Accepting Shareholder.

3. Disclosure order

- 3.1. G8 must as soon as practicable, and in any event within two business days after the date of these orders, provide a draft of corrective disclosure for release on ASX to the Panel.
- 3.2. G8 must make the corrective disclosure, in a form approved by the Panel, forthwith after approval setting out:
 - (a) a summary of the Panel's declaration of unacceptable circumstances and orders, including -
 - (i) the associations found by the Panel
 - (ii) the name of each associate who has, or had, a relevant interest in Affinity Shares
 - (iii) the nature of G8's association with each associate and
 - (iv) details of any relevant agreement through which they have a relevant interest in Affinity's shares and the relevant interests of each of G8, Taxonomy, West Bridge and JB Super
 - (b) that the disclosure corrects the substantial holding notice released by G8 dated 30 July 2015 and subsequent notices in the 4 months preceding the date of the scrip bid, for each of Taxonomy, West Bridge and JB Super:
 - (i) the number of shares in Affinity purchased
 - (ii) the dates on which the shares in Affinity were purchased and
 - (iii) the amount per share paid in consideration for the Affinity shares
 - (c) G8's voting power in Affinity and
 - (d) the number of securities in the bid class that G8 had a relevant interest in immediately before the first offer was sent (expressed as a number of securities or as a percentage of the total number of securities in the class).

4. Interpretation

4.1. In these orders the following terms apply.

Accepting Shareholders Affinity shareholders who accepted the scrip bid other than Taxonomy and JB Super

Affinity Affinity Education Group Limited

ASIC	Australian Securities and Investments Commission, as agent of the Commonwealth
Associate Shares	10,366,114 ordinary shares in Affinity, representing the shares held by G8 as a result of the acceptance into the scrip bid by Taxonomy in excess of 20%
G8	G8 Education Limited
JB Super	JB Super Fund Pty Ltd
Scrip bid	G8's off-market takeover bid for Affinity announced by G8 on or about 3 July 2015 (revised on or about 3 August 2015)
Taxonomy	Taxonomy Pty Ltd
West Bridge	West Bridge Holdings Pty Ltd

Alan Shaw
Counsel
with authority of Geoff Brunson
President of the sitting Panel
Dated 15 October 2015