



**In the matter of Anaconda Nickel Limited 13
[2003] ATP 12**

Catchwords:

*Consent to modification of undertaking given to Panel – extension of rights offer
Australian Securities and Investments Commission Act 2001 (Cth), section 201A*

These are the Panel's Reasons for consenting to an application by MP Global to vary the undertaking given to the Anaconda 08 Panel that MP Global would conduct its Rights Offer as far as practicable in accordance with the conditions of the original ASIC Relief granted to MP Global. The Panel consented to MP Global varying the undertaking to allow it to extend its Rights Offer until 2.00 p.m. Sydney time, the following day, Friday 14 February 2003.

1. These reasons relate to the application received at 3.20 p.m. on Thursday 13 February 2003 from Matlin Patterson Global Opportunities Partners LP (**MP Global**) in relation to the affairs of Anaconda Nickel Limited (**Anaconda**).

The Panel & Process

2. The President of the Panel appointed Simon McKeon (sitting President), David Gonski (sitting Deputy President) and Ian Ramsay as the sitting Panel for the application (the **Panel**).
3. The Panel met in the afternoon of Thursday 13 February 2003 to consider the **Anaconda 13** Application. The Panel decided to conduct proceedings in relation to the application. The time available did not allow it to prepare a brief, as the Rights Offer was due to close that evening. The Panel advised all parties that they should make submissions based on the issues raised in the application of that morning. It advised that submissions were due by 7.00 p.m. and rebuttal submissions by 8.00 p.m. that evening. The Panel met at 8.00 p.m. on Thursday 13 February 2003 to consider the submissions.

Definitions

4. Unless indicated to the contrary, terms used in these reasons have the same meaning as in the Panel's reasons for decision in the Anaconda 02 to 05 applications. A copy of the Anaconda 02 to 05 reasons can be found at <http://www.takeovers.gov.au/Content/Decisions/2003/anaconda02-05.asp>. Annexure C of those reasons sets out a glossary of the terms defined in the reasons.

SUMMARY

5. This was another application relating to the closing hours of the MP Global Rights Offer. The issues related to whether MP Global should be allowed to vary the undertaking that it gave to the Anaconda 08 Panel. The variation MP Global sought was to be able to extend the closing time for its Rights Offer from 12 midnight (Sydney time) on Thursday 13 February 2003 into the next day. The Rights Issue was due to close at 5.00 p.m. (Perth time) the next day, Friday 14 February.
6. The Panel consented to MP Global's application.
7. The Panel considered that the primary reason for requiring the Rights Offer to close at least a day before the Rights Issue had been to allow holders of the Anaconda Rights who had sought to accept the Rights Offer a reasonable period to lodge subscription notices for their Rights if the Rights Offer failed to meet its acceptance level and all the contracts lapsed when the Rights Offer closed. However, MP Global had declared its offers free from all conditions earlier that afternoon. Therefore, all acceptances had formed binding contracts.
8. The Panel also considered that there may be some benefit to Anaconda shareholders by allowing them some more time to accept the offer.
9. The Panel considered that extending the time for acceptances under the Rights Offer would have far less detrimental effect on Anaconda shareholders, and might be considered at such a late stage, whereas shortening the time required more notice to ensure that Anaconda shareholders had had a reasonable time to consider the change and to make any necessary adjustments to their own decision making plans.

PREVIOUS UNREPORTED DECISION

10. MP Global had made a request at 9.48 a.m. on Thursday 13 February to the Anaconda 08 Panel for its consent to vary the undertaking in the form requested in these proceedings. The Anaconda 13 application was therefore an application for review of that decision. Because MP Global's request to the Anaconda 08 Panel was merely for a variation of the existing undertaking, it was not reported as a separate application and decision.
11. When MP Global had sought the Anaconda 8 Panel's consent, the MP Global Offers (i.e. the Rights Offer and the Share Offer) had still both been conditional on, inter alia, the 51% overall minimum acceptance condition. The Anaconda 08 Panel agreed with ASIC's view that if there was a risk that the MP Global Offers might close at midnight on Thursday 13 February, Anaconda shareholders who had accepted the Rights Offer should have a clear day in which to arrange to exercise their Rights on Friday 14 February, the last day of the Rights Issue.

Takeovers Panel

Reasons for Decision Anaconda 13

12. Therefore, at 11.41 a.m. on Thursday 13 February, the Anaconda 08 Panel declined to consent to vary the undertaking, for the reasons ASIC had given in first requiring the condition in the ASIC Relief.

BACKGROUND

General

13. The Anaconda 02-05 Panel's reasons set out a brief summary of some aspects of the background, taken from various application documents. The Panel has also published a separate document which sets out the course of events, applications, decisions, course of the various offers, and other information useful to understand the Anaconda takeovers and proceedings. The documents are titled 'Anaconda Nickel Limited 02 to 05' and 'Anaconda Nickel Limited - Chronology of Applications'. They are available at <http://www.takeovers.gov.au/Content/Decisions/2003/anaconda02-05.asp> http://www.takeovers.gov.au/Content/Decisions/2003/ANL_chronology.asp

Facts relating to this application

14. At the time of the application, MP Global had, earlier that day, declared the Share Offer and the Rights Offer to be free from all conditions. Previously they had been conditional on MP Global having received acceptances under the Rights Offer and Share Offer which would entitle it to acquire more than 50% of the fully diluted capital of Anaconda. MP Global had been due to declare the status of that Minimum Acceptance Condition (as discussed in the Panel's reasons in the Anaconda 10 decision) in the MP Global Share Offer by 8.30 p.m. Sydney time on Thursday 13 February, with the bid due to close at midnight that night.
15. MP Global's stated intention in section 8.2 of the Rights Offer document was to close the Rights Offer at midnight (Sydney time) on 13 February 2003.

APPLICATION

16. MP Global applied for the Panel's consent to vary the undertaking given to the Anaconda 08 Panel to the extent that the undertaking would require it to close its Rights Offer at least one business day before the close of the Rights Issue. The Rights Issue was due to close at 5.00 p.m. Perth time on Friday 14 February. The terms of the undertaking at the time¹ were that MP Global would :

"ensure that the Rights Offer complies, as far as practicable, with the conditions set out in Schedule C of the exemption instrument granted by the Australian Securities and Investments Commission to MP Global's subsidiary (Mongoose Pty. Ltd) on 29 January 2003 and which was subsequently revoked by the Takeovers Panel"

¹ The Anaconda 09 Panel had consented to MP Global withdrawing a part of the original Anaconda 08 Panel undertaking. That part had related to MP Global undertaking to exercise as many Rights as it was legally entitled, up to a maximum of 65% of the Rights on issue.

Takeovers Panel

Reasons for Decision Anaconda 13

17. The terms of the ASIC Relief are set out at Annexure A. Relevantly, the Rights Offer was required to:

"remain open for at least 14 days, but end on the day before the last day on which the Rights are exercisable."

SUBMISSIONS

18. The Panel received submissions from MP Global, ASIC and Anaconda.
19. Anaconda advised that it would take whatever reasonable steps it could to facilitate the extension of time and Anaconda shareholders' acceptances if they chose to do so.
20. ASIC considered that more time for Anaconda shareholders to consider the Rights Offer would be a benefit, but considered that it was outweighed by consenting to the change at such a late stage in the Rights Offer.

MP Global Submissions

21. MP Global asserted that the consent would not harm any person and would allow its offer, which had been the subject of much disruption and uncertainty from the many applications before the Panel, as much time as possible to succeed.
22. MP Global also asserted that the primary reason for the condition in the ASIC Relief had passed with the Rights Offer and Share Offer being declared free from conditions.

DECISION

23. The Panel consented to MP Global varying its undertaking to the extent that it would prevent MP Global from extending the offer period under the Rights Offer. The Panel considered that the Rights Offer should however close with a sensible time within which MP Global could give Anaconda's share registry properly completed acceptance and transfer forms. Therefore, it consented to the variation to the extent that it would prevent MP Global extending the Rights Offer offer period up until 2.00 p.m. Sydney time, on Friday 14 February 2003.
24. The Panel considered that allowing MP Global to extend the offer period for the Rights Offer may be of some benefit to Anaconda rightsholders in that it would give them some extra time to consider the offers given the new information, and appeared to cause no harm to any person.
25. Anaconda facilitated the extension of time for its shareholders by agreeing to its implementation.
26. The Panel advised MP Global of its consent shortly before 8.30 p.m. However, it was too late to post the Panel's decision on the ASX Company Announcements website. The Panel's decision was posted the next day. By that time, MP Global had decided not to make use of the consent and had closed the Rights Offer at 12 midnight on the Thursday.

Takeovers Panel

Reasons for Decision Anaconda 13

27. The Panel consented to the parties being represented by their commercial solicitors. It made no order for costs.

Simon McKeon
Sitting President
Anaconda 13 Proceedings
14 June 2003



Annexure A - The terms of the ASIC Relief

Australian Securities and Investments Commission

Corporations Act 2001 - Paragraph 655A(1)(a) -Exemption

Pursuant to paragraph 655A(1)(a) of the Corporations Act 2001 ("Act"), the Australian Securities and Investments Commission ("ASIC") exempts the person specified in Schedule A from subsection 606(1) of the Act in the case referred to in Schedule B on the conditions set out in Schedule C.

Schedule A

Mongoose Pty Limited ACN 103 410 297 ("Mongoose") and its associates.

Schedule B

Acquisitions of fully paid ordinary shares in Anaconda Nickel Limited ACN 060 370 783 ("Anaconda") resulting from the exercise of renounceable rights to acquire fully paid ordinary shares in Anaconda ("Rights"), which Rights were acquired pursuant to an offer in respect of which an offer document ("Offer Document") was given to Anaconda and the Australian Stock Exchange ("ASX") on or about the date of this instrument ("Rights Offer"), and where Mongoose also makes a takeover bid for all the issued fully paid ordinary shares of Anaconda ("Share Offer") at the same time as, or as soon as practicable after, the Rights Offer is made.

Schedule C

The terms and conditions of the Rights Offer, the information provided to Rights Holders, the procedure followed in making the Rights Offer and the conduct of Mongoose in respect of the Rights Offer shall comply as far as practicable with Chapters 6 and 6C of the Act as if the offer were an off-market takeover bid, and in particular:

Mongoose must, as far as practicable, afford all Rights Holders a reasonable and equal opportunity to participate in any benefits accruing to the Rights Holders through the Rights Offer.

The Offer Document must provide all information that is material to the making of a decision by a Rights Holder whether or not to accept an offer under the Rights Offer.

The Rights Offer must remain open for at least 14 days, but end on the day before the last day on which the Rights are exercisable.

Mongoose must conduct the Rights as if sections 621 and 623 of the Act applied.

Any increase in consideration offered or paid to any rights Holder in respect of Rights, either under the Rights Offer or otherwise must be offered to all Rights Holders.

The Rights Offer must include a term under which an accepting Rights Holder may indicate at the time of acceptance whether, if the Rights Offer does not proceed, he or she wishes to exercise all or a proportion of the Rights the subject of the acceptance and make payment for the exercise of those Rights and, if such an election is made,

Takeovers Panel

Reasons for Decision - [Anaconda Nickel Limited 13]

payment for exercise of the relevant Rights is received by Mongoose and the Rights Offer does not proceed, Mongoose must exercise the Rights on behalf of the relevant Rights Holder.

The Offer Document must clearly and prominently disclose that, if the offer is accepted, the accepting Rights Holder loses the right to trade the Rights on the ASX.

Mongoose must give substantial holding information as if Part 6C.1 of the Act applied to its holdings of Rights.

The Offer Document must set out Mongoose's intentions in relation to the exercise of Rights it acquires.

The Rights Offer must be conditional on the Share Offer first becoming unconditional.

The Offer Document must disclose that Mongoose has received this relief from ASIC and provide a brief description of the terms of the relief.

Dated this 29th day of January 2003.

Signed by:

Jeremy Pearson. as a delegate of ASIC.