



Australian Government

Takeovers Panel

# MEDIA RELEASE

No: TP22/23

Monday, 21 March 2022

## Nex Metals Explorations Ltd 05 – Panel Receives Application

The Panel has received an application from Metalicity Ltd in relation to the affairs of Nex Metals Explorations Ltd. Nex Metals is the subject of an off-market scrip takeover bid from Metalicity.

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 30 November 2021, the Panel made a declaration of unacceptable circumstances and orders in relation to the affairs of Nex Metals in *Nex Metals Explorations Ltd 02* (see [TP21/42](#)).<sup>1</sup>

In those proceedings, the Panel considered (among other things) that there were material deficiencies in Nex Metals' target's statement issued in respect of Metalicity's bid which resulted in contraventions of sections 638 and 670A.<sup>2</sup> The Panel made orders, including that Nex Metals must prepare a replacement target's statement, in a form that ASIC does not object to, that complies with section 638.

On 17 March 2022, Nex Metals lodged its replacement target's statement in respect of Metalicity's bid (**Replacement Target's Statement**). The Replacement Target's Statement stated that it had been "ordered by the Takeover[s] Panel to replace the Original Target's Statement" and included the Nex Metals' directors' unanimous recommendation that Nex Metals shareholders reject the bid in the absence of a higher offer.

<sup>1</sup> Additional orders were made on 17 December 2021 (see [TP21/48](#)) and the orders were subsequently varied on 21 January 2022 (see [TP22/08](#)) and on 10 February 2022 (see [TP22/14](#))

<sup>2</sup> References are to the *Corporations Act 2001* (Cth) unless otherwise indicated

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Metality submits that the Replacement Target's Statement:

- contains statements that are misleading and deceptive, in breach of section 670A and
- does not contain "*all the information that holders of bid securities and their professional advisers would reasonably require to make an informed assessment whether to accept the offer under the bid*", in breach of section 638(1).

Metality further submits that each of the reasons given by Nex Metals' directors for recommending rejection of Metality's bid "*is unsound and not defensible*".

Metality seeks interim orders restraining dispatch of the Replacement Target's Statement and removal of the Replacement Target's Statement from the ASX announcements platform and Nex Metals' website.

Metality seeks final orders, including that:

- Nex Metals be prohibited from distributing the Replacement Target's Statement
- Nex Metals immediately advise the market that the Replacement Target's Statement is misleading and deceptive and that no person rely on it
- Nex Metals must issue a further replacement target's statement, in a form approved by the Panel, that addresses the disclosure deficiencies and
- Nex Metals' directors pay Metality's and Nex Metals' costs of the Panel application, such costs to be fixed, with no indemnification or reimbursement from Nex Metals.

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