



Australian Government

Takeovers Panel

# MEDIA RELEASE

No: TP22/43

Wednesday, 25 May 2022

## Nex Metals Explorations Ltd 06 – Panel Receives Application

The Panel has received an application from Nex Metals Explorations Ltd (ASX: NME) in relation to its affairs. Nex Metals is the subject of an off-market scrip takeover bid from Metalicity Ltd (ASX: MCT).

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 14 September 2021, Metalicity announced its intention to make an off-market scrip takeover bid for Nex Metals on the basis of 4.81 Metalicity shares for each Nex Metals share (**Bid**). On 24 September 2021, Metalicity issued and served its bidder's statement in relation to the Bid (**Bidder's Statement**).

Since the issue of the Bidder's Statement, the Panel has dealt with a number of applications in relation to the affairs of Nex Metals.<sup>1</sup>

On 3 May 2022, Metalicity announced that it was undertaking a 2 for 7 fully underwritten, pro rata non-renounceable rights issue to raise approximately \$3.65 million before costs (**Rights Issue**). The Rights Issue prospectus (dated 4 May 2022) disclosed that the Rights Issue would close on 24 May 2022 (subject to any extension).

Nex Metals submits that there are "*new material circumstances*" which render the Bidder's Statement "*potentially misleading or deceptive, and there are [o]missions which could lead to NME shareholders being misleading (sic) without MCT releasing a Supplementary Bidder's Statement*". In particular, it submits that the "*materially outdated*" Bidder's Statement should be "*revised*" because (among other things):

- There has been a significant fall in the share prices of both Nex Metals and Metalicity since the issue of the Bidder's Statement and that "[t]hese material changes in share price

<sup>1</sup> See Nex Metals Explorations Ltd 01 (see [TP21/34](#)), Nex Metals Explorations Ltd 02 (see [TP21/42](#)), Nex Metals Explorations Ltd 03 (see [TP21/39](#)), Nex Metals Explorations Ltd 04R (see [TP21/47](#)) and Nex Metals Explorations Ltd 05 (see [TP22/34](#)).

*have not since been addressed and provided to the market expressly in the form of a Supplementary Bidder's Statement."*

- The Bidder's Statement, "in six separate instances, refers to an effective 30% premium to the closing price of NME shares of \$0.037 on 13 September 2021" and that "[t]his 'premium' is no longer accurate and reflective of the respective companies' share prices."
- Shareholders should be informed of the impact of the Rights Issue on the Bid, including the dilutionary effect on Nex Metals shareholders who intend to accept, or have accepted, the Bid.

Nex Metals also submits that given the "material decrease" in the respective share prices of Nex Metals and Metalicity, pursuant to section 621(3)<sup>2</sup> (the minimum bid price rule) Metalicity is required to increase the number of Metalicity shares offered under its Bid consideration as "[t]he offer of 4.81 MCT shares for 1 NME share no longer reflects the offer value as set out in the Bidder's Statement."

As a result of the above, Nex Metals submits that there are contraventions of sections 621(3), 636(1)(m), 643(1) and 670(1).

Nex Metals seeks an interim order restraining Metalicity from proceeding with its Rights Issue. The President considered Nex Metals' request for an interim order on an urgent basis. He decided not to make an interim order (noting that the sitting Panel may reconsider the matter once appointed) on the basis that the application for an interim order was not timely.

Nex Metals seeks final orders, including that:

- Metalicity issue a supplementary bidder's statement that addresses the disclosure deficiencies
- Metalicity "increase the Bidder's Statement offer price in compliance with s 621(3) for consistency with [the] Bidder's statement" and, if it fails to do so, that Metalicity be required to withdraw its Bid
- Nex Metals be restrained from proceedings with its Rights Issue unless it is made subject to shareholder approval and former Nex Metals shareholders (who accepted the Bid) are given equivalent shares so as to not dilute their percentage shareholdings in Metalicity and
- Metalicity pay the costs of Nex Metals' application.

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