



22 April 2004

INVESTORINFO LIMITED: CONCLUSION OF PANEL PROCEEDINGS

The Panel advises that it has concluded the proceeding (the "Proceeding") arising from the application made by Mr Gregory Bright ("Mr Bright") on 11 March 2004 (the "Application") in relation to the affairs of InvestorInfo Limited ("INV"). The Panel concluded the Proceeding without making a declaration of unacceptable circumstances under section 657A¹, following the lodgement of a supplementary prospectus dated 21 April 2004 ("Supplementary Prospectus") by INV and the acceptance by the Panel of undertakings from Mr Anthony Young ("Mr Young").

Background

Rights Offer and Underwriting

Mr Young is a director and substantial shareholder of INV. Mr Young and his associates constitute the largest shareholding group of INV. As at 10 February 2004, Mr Young and his associates held 13,952,026 ordinary shares, representing 25.98% of INV's issued capital².

Mr Bright is a founder and former director of INV. As at 19 February 2004, Mr Bright and his associates held 8,592,565 ordinary shares, representing approximately 16.00% of INV's issued capital. Mr Bright resigned from the board of INV on 23 January 2004.

On 6 February 2004, INV announced to ASX its intention to undertake a pro rata renounceable rights offer (the "Rights Offer") under which all existing Australian and New Zealand shareholders of INV would be offered an entitlement to one new ordinary share for each ordinary share held, at an issue price of 6.7 cents per share, to raise a total of approximately \$3.6 million.

On 5 February 2004 (the day before the Rights Offer was announced) INV shares were trading at 6.95 cents per share, making the issue price a 3.6% discount to the market price. The average closing price of INV shares on the five days before the Rights Offer was announced was 7.11 cents per share, making the issue price a 5.7% discount to that average market price.

On 13 February 2004, INV issued the prospectus ("Prospectus") for the Rights Offer, to which section 713 applied. The rights under the Rights Offer commenced trading on 19 February 2004 and ceased trading on 16 March 2004.

A feature of the Rights Offer was that it was fully underwritten (the "Underwriting") by Mr Young. The Underwriting stated that Mr Young would receive a fee of \$72,000

¹ Statutory references are to the *Corporations Act* 2001 (Cth), unless otherwise stated.

² The issued capital of INV does not include shares to be issued under the Rights Offer, unless otherwise stated.

in connection with the Underwriting, being 2% of the amount sought under the Prospectus. No sub-underwriters were identified in the Prospectus.

The Prospectus stated that if no one (except Mr Young and his associates) made applications under the Rights Offer, Mr Young and his associates would hold 58.93% of the post-Rights Offer issued capital in INV. The Prospectus disclosed Mr Young's potential interests in INV shares under various scenarios of applications under the Rights Offer.

The Prospectus stated (at page 1) that INV intended to use the proceeds of the Rights Offer to "*fund future acquisition or investment opportunities consistent with INV's growth and diversification strategy*". As at 31 December 2003, INV held approximately \$1.44 million in cash.

Application

The Application alleged that the Rights Offer and the Underwriting allowed Mr Young to acquire control over voting shares of INV in a way that was not effective or competitive. The Application also alleged that the Underwriting did not allow other INV shareholders a reasonable and equal opportunity to participate in any benefits accruing to Mr Young.

Mr Bright sought a declaration of unacceptable circumstances by the Panel and final orders to protect the rights or interests of Mr Bright and other INV shareholders (other than Mr Young) affected by the circumstances.

On 16 March 2004, the Panel received notices of appearance from two other INV shareholders advising their intention to be a party to the matter, being:

- Mr Hiran Nicholas Selvaratnam, the beneficial owner of 4,050,000 ordinary shares, representing 7.54% of INV's issued capital; and
- Mr Jeffrey Bresnahan, the holder and beneficial owner of 1,015,915 ordinary shares, representing 1.89% of INV's issued capital.

ASIC Stop Order

The Panel issued a brief to parties on 16 March 2004 seeking further details regarding the Rights Offer, the Underwriting and other relevant matters (including the seven elements listed below in relation to the Panel's decision). The parties provided submissions in response to the brief on 18 March 2004.

On 19 March 2004, following receipt of parties' submissions, ASIC issued an interim stop order under section 739(3) that no offers, issues, sales or transfers of shares in INV be made under the Prospectus. This interim order was replaced with a further order issued on 8 April 2004 on the same terms as the initial order. In its statement of its areas of concern, ASIC drew attention to deficiencies in the Prospectus' disclosure regarding the proposed use of the Rights Offer proceeds.

Supplementary Prospectus

Following the interim stop order, INV agreed to issue the Supplementary Prospectus. The Supplementary Prospectus:

- included additional disclosure regarding the intended use of funds and gave further details of potential acquisitions being investigated by the INV board in order to satisfy ASIC's concerns;
- at the suggestion of the Panel, gave shareholders an opportunity to subscribe for any shortfall shares under the Rights Offer (the "Secondary Offer") before those shares were dealt with under the Underwriting; and
- in accordance with section 724(2), gave shareholders who had already made applications under the Rights Offer an opportunity to withdraw those applications.

The Supplementary Prospectus also provided additional details regarding sub-underwriting of the Rights Offer by Mr John Caldon. These sub-underwriting arrangements with Mr Caldon substantially reduced the potential shortfall that Mr Young may have been required to take under the Underwriting. INV has stated in the Supplementary Prospectus that Mr Caldon is not an associate of INV or any INV directors, including Mr Young and Mr Caldon has provided the Panel with a witness statement to this effect.

Mr Young's undertakings

Mr Young has undertaken to the Panel that he will sell any shares he is obliged to take up under the Underwriting which, when aggregated with the existing post-Rights Offer shares in which Mr Young or his associates have a relevant interest, exceed 28.3% of INV's post-Rights Offer issued capital ("Excess Shares").

28.3% is the maximum percentage to which Mr Young may have increased his voting power under the "creep" provision in item 9 of section 611.

Under the undertakings provided by Mr Young:

- if the Excess Shares represent 5% or less of INV's post-Rights Offer issued capital, Mr Young must sell those Excess Shares within 3 months of the date of their issue;
- if the Excess Shares represent more than 5% INV's post-Rights Offer issued capital, Mr Young must transfer those Excess Shares to a trustee (approved by the Panel) to be held on the basis that those Shares will be transferred back to Mr Young as and when Mr Young arranges for the sale of those Excess Shares. If not all the Excess Shares are sold within 3 months, then the trustee is to appoint a broker to sell the remaining shares within 1 month at the best possible price and the proceeds (net of costs) will be remitted to Mr Young via the trustee;
- no sale of the Excess Shares is to be made to an associate of Mr Young or any of his associates; and
- neither Mr Young nor the trustee will exercise any voting rights attached to the Excess Shares, or any voting rights attached to the same proportion of Mr Young's existing shares as the Excess Shares represent of the whole of INV's post-Rights Offer issued capital, until all the Excess Shares are sold.

The Panel's decision

In considering the Application, the Panel was keenly aware that rights issues (and their underwriting by persons connected with the issuer) are an important means of raising capital, particularly for smaller companies. The Panel was concerned not to create unnecessary regulatory restrictions for companies undertaking rights issues in the future.

In assessing whether or not the Rights Offer and the Underwriting constituted unacceptable circumstances, the Panel had reference to the indicative factors set out in Panel Guidance Note 1 ([1.25] to [1.27]) and ASIC Policy Statement 159 ([159.152] to [159.187]).

The Panel considered that the Rights Offer and the Underwriting contained a number of elements that, when taken together, may have led to control of INV passing in an unacceptable manner. Those elements include:

- Mr Young's current role as a director, his existing substantial shareholding and the potential for his voting power to increase to 58.93% through the Underwriting;
- the INV board's failure to obtain appropriate external advice regarding the Rights Offer and the Underwriting;
- unsatisfactory efforts by the INV board to find an unrelated underwriter who was not an existing substantial shareholder of INV;
- the small discount to market price represented by the Rights Offer price, which reduced the attractiveness to shareholders of the Rights Offer;
- INV's failure to clearly and fully explain in the Prospectus the proposed use of funds to be raised under the Rights Offer;
- the INV board's failure to seek shareholder approval for the entry by INV into the underwriting agreement with Mr Young, either in relation to item 7 of section 611 or Chapter 2E; and
- INV's relatively secure financial position and the lack of an explained and compelling need for urgent capital raising.

In the Panel's view, the Rights Offer and the Underwriting would have resulted in unacceptable circumstances, having regard to the purposes of Chapter 6 set out in section 602, because:

- INV shareholders (other than Mr Young) and the market would not have had sufficient information to make an informed assessment of the merits of the Rights Offer;
- the deficiencies in the Prospectus would have inhibited an efficient, competitive and informed market in shares in INV; and
- other INV shareholders may not have had a reasonable or equal opportunity to participate in the benefits accruing through the Rights Offer proposal under which Mr Young may have acquired a controlling interest in INV.

However, the Panel considers that the Supplementary Prospectus and Mr Young's undertakings remove those circumstances which would have been considered unacceptable, by:

- ensuring that Mr Young does not increase his voting power in INV through the Rights Offer or the Underwriting above the level to which he would be entitled to go under the "creep" exception in item 9 of section 611;
- offering all INV shareholders an opportunity to participate on an appropriate proportional basis in any Rights Offer shortfall, in priority to Mr Young, through the Secondary Offer;
- providing INV shareholders with enhanced disclosure regarding the proposed use of the funds to be raised under the Rights Offer, in response to ASIC's concerns; and
- allowing any INV shareholders whose decision to participate in the Rights Offer may have been affected by the inadequate disclosure in the initial Prospectus to withdraw their applications.

On this basis, the Panel concluded the Proceeding on the basis that it was not necessary or appropriate to make a declaration of unacceptable circumstances and no order was required.

The sitting Panel comprised Les Taylor (sitting President), Peter Scott and Mark Paganin.

The Panel will post its reasons for this decision on its website (<http://www.takeovers.gov.au/>) when they have been settled.

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