



Wednesday, 14 May 2003

PANEL DECLINES APPLICATION IN RELATION TO SIRTEx MEDICAL

The Takeovers Panel has declined to make a declaration of unacceptable circumstances in relation to the affairs of Sirtex Medical Limited in response to an application by Hunter Hall Investment Management Limited (in its capacity as responsible entity for the Australian Value Trust, the Value Growth Trust and the International Ethical Fund) dated 17 April 2003.

The application related to an off-market takeover bid by Cephalon Australia Pty Ltd, a subsidiary of US-based biopharmaceutical Cephalon, Inc. for all the shares in Sirtex.

Hunter Hall alleged that unacceptable circumstances existed because Sirtex shareholders did not have sufficient information to assess whether or not to accept the bid. Hunter Hall asserted that there was deficient information regarding the possibility raised by Cephalon in its first and second supplementary Bidder's Statements that if it achieved between 50% and 90% acceptance levels under the bid:

- (a) Cephalon would consider Sirtex entering into an agreement under which Sirtex licensed (non-exclusively) its only significant asset to Cephalon;
- (b) Cephalon may consider underwriting a capital raising by Sirtex that could have a dilutive effect on other shareholders.

Hunter Hall was also concerned about the relationship between Cephalon, on the one hand, and Sirtex and its principal shareholder, on the other.

The Panel declined the application although it acknowledged some of the applicant's concerns regarding disclosure. However, the Panel believed that most of those concerns were no longer relevant following a binding statement in Cephalon's third supplementary Bidder's Statement dated 8 May that it would not waive the minimum 90% condition in its bid.

The Panel did not believe that an Independent Expert's Report was necessary or desirable in the circumstances.

The Panel considered that Cephalon's description in its third supplementary Bidder's Statement of Sirtex shareholders' withdrawal rights (caused by its bid extension) could inform shareholders more clearly of their rights.

The Panel also noted that it was provided with no evidence that any aspect of Cephalon's bid prevents a rival bid from emerging.

Takeovers Panel

The sitting Panel comprises Alison Lansley (sitting President), Scott Reid and Luise Elsing.

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