



**In the matter of Sydney Gas Limited 02
[2006] ATP 18**

Catchwords:

acting in concert; additional disclosure; association; ASX Listing Rules; content of target's statement; convertible notes; dilution of shareholders; effect on control of rights issue; frustrating action; identity of underwriter etc; misleading information; pricing of rights issue; public offer; rights issue; shareholder approval; shortfall facility; sub-underwriter; supplementary bidder's statement; underwriter; underwriting agreement

*Corporations Act 2001 (Cth) section 602(b)(i) 602(b)(iii), 638
ASX Listing Rule 7.9*

Sydney Gas Limited, Queensland Gas Company Limited

These are the Panel's reasons for declining to commence proceedings in relation to the affairs of Sydney Gas Limited in response to an application by Queensland Gas Company Limited.

SUMMARY

1. Queensland Gas Company Limited (**Queensland Gas**) applied on Monday 24 April 2006 for a declaration of unacceptable circumstances and final orders in relation to the affairs of Sydney Gas Limited (**Sydney Gas**). The application related to a scrip takeover offer for all of the ordinary shares in Sydney Gas (**Offer**) and a recapitalisation plan announced by Sydney Gas on 7 April 2006 (**Recapitalisation Plan**).
2. The Panel decided not to commence proceedings after Sydney Gas offered to the Panel to disclose further information concerning the identity and likely shareholdings of the underwriter and sub-underwriters of the Recapitalisation Plan. The Panel considered that the additional disclosure offered by Sydney Gas would remedy any information deficiencies which Queensland Gas had submitted existed and it would no longer be in the public interest to make a declaration of unacceptable circumstances in relation to the information deficiencies submitted by Queensland Gas.
3. The Panel could not find any reasonable basis for Queensland Gas' allegations that the underwriter and a Sydney Gas shareholder, which had committed to subscribe under the Recapitalisation Plan (**Committed Shareholder**), were associated.

THE PROCEEDINGS

4. The Proceedings, and these reasons, relate to an application (**Application**) to the Takeovers Panel from Queensland Gas on 24 April 2006 in relation to the affairs of Sydney Gas.

THE PANEL & PROCESS

5. The President of the Panel appointed Michael Ashforth, Braddon Jolley (sitting President) and John O'Sullivan (sitting Deputy President) as the sitting Panel

Takeovers Panel

Reasons for Decision – Sydney Gas Limited 02

(**Panel**) for the proceedings (**Proceedings**) arising from the Application. The members had previously sat on the Sydney Gas 01 proceedings.

6. The Panel adopted the Panel's published procedural rules for the purposes of the Proceedings.
7. The Panel consented to the parties being legally represented by their commercial lawyers in the Proceedings.

APPLICATION

Background and Sydney Gas 01 Proceedings

8. On 20 January 2006, Queensland Gas announced its intention to make the Offer.
9. On 14 February 2006, Queensland Gas lodged a bidder's statement (**Original Bidder's Statement**) with the Australian Securities and Investments Commission (**ASIC**), sent it to Australian Stock Exchange Ltd. (**ASX**) and served it on Sydney Gas in relation to its Offer.
10. Sydney Gas considered that the Original Bidder's Statement contained deficiencies, and correspondence passed back and forth between the lawyers for Queensland Gas and Sydney Gas in relation to those deficiencies.
11. On 22 February 2006, Sydney Gas applied for a declaration of unacceptable circumstances submitting that, in summary:
 - (a) statements in the Original Bidder's Statement were misleading, or provided inadequate detail, or were third party statements that required consent under section 636(3)(b) of the Corporations Act 2001 (*Cth*)¹; and
 - (b) Queensland Gas should not include as a term of the Offer that accepting Sydney Gas shareholders give Queensland Gas a proxy even when the Offer had not become unconditional.
12. On or about 28 February 2006 Queensland Gas dispatched to Sydney Gas shareholders the unchanged Original Bidder's Statement and a supplementary bidder's statement (**First Supplementary Bidder's Statement**) in one package. At the Panel's request, Queensland Gas included in the package containing the Original Bidder's Statement, a letter which brought the existence of the Sydney Gas 01 proceedings before the Panel to Sydney Gas shareholders' attention.
13. On 9 March 2006, the Panel found in the Sydney Gas 01 proceedings ([Sydney Gas Limited 01 \[2006\] ATP 09](#)) that the Original Bidder's Statement and First Supplementary Bidder's Statement, together and individually, gave rise to unacceptable circumstances in that they gave inadequate disclosure (and in some cases inadequate prominence) in relation to many of the issues raised by Sydney Gas.
14. The Panel made final orders, including:
 - (a) requiring Queensland Gas to issue a replacement bidder's statement;

¹ All statutory references are to the Corporations Act, unless otherwise stated.

Takeovers Panel

Reasons for Decision – Sydney Gas Limited 02

- (b) revoking acceptances made under the Original Bidder's Statement; and
- (c) extending the closing date of the Offer until at least one month after the date of dispatch of the replacement bidder's statement.

Sydney Gas Recapitalisation

15. Sydney Gas, it was accepted by all parties, required funding to redeem the second of two tranches of convertible notes which were coming due and to continue its gas field developments. In recognition of this, part of the Queensland Gas takeover proposal had included a refinancing proposal under which Queensland Gas would undertake to subscribe for \$30 million worth of convertible notes in Sydney Gas.
16. Sydney Gas had been examining possible funding sources for some time. In its target's statement, Sydney Gas rejected the Offer and funding proposal from Queensland Gas.
17. On 7 April 2006, Sydney Gas announced the Recapitalisation Plan. The Recapitalisation Plan would raise up to \$50 million, and involved the following elements:
 - (a) a non-renounceable pro rata rights issue to Sydney Gas shareholders (**Rights Issue**) of ordinary shares in Sydney Gas at a ratio of 1 for 2.43 existing shares, underwritten by Babcock & Brown Securities Pty Ltd (**Babcock & Brown**) to raise approximately \$30.4 million;
 - (b) a non-underwritten, non-renounceable pro rata issue to Sydney Gas convertible noteholders (**Noteholder Rights Issue**) to raise approximately \$4.0 million; and
 - (c) the issue of convertible notes to Babcock & Brown and its associates (**Convertible Note Issue**) to raise approximately \$15.6 million.
18. Sydney Gas prepared and sent to Sydney Gas shareholders a number of documents relevant to the Recapitalisation Plan, including:
 - (a) a prospectus dated 7 April 2005 in relation to the offers under the Rights Issue and the Noteholder Rights Issue (**Prospectus**); and
 - (b) a Notice of Meeting and Explanatory Memorandum dated 7 April 2006 (**Explanatory Memorandum**).
19. The Prospectus and Explanatory Memorandum stated that Babcock & Brown may at any time (subject to the approval of Sydney Gas) appoint sub-underwriters to sub-underwrite subscriptions for the Rights Issue or procure a nominee to perform its obligations.
20. One of the conditions of the underwriting agreement with Babcock & Brown (**Underwriting Agreement**) was that Sydney Gas must procure commitments to subscribe for at least 25% of the Rights Issue.
21. In an ASX announcement on 10 April 2006, Sydney Gas made the following statements clarifying an earlier announcement by Queensland Gas:

Takeovers Panel

Reasons for Decision – Sydney Gas Limited 02

- (a) it understood that Babcock & Brown had in place sub-underwriting commitments;
 - (b) it expected the Rights Issue to be well supported and any shortfall to be minimal; and
 - (c) Babcock & Brown had already received commitments from “other parties” to subscribe for more than 25% of the issue.
22. Sydney Gas also announced that the Committed Shareholder had committed to Sydney Gas to take up its rights entitlement and a modest amount under the over-subscriptions facility.
23. Sydney Gas later sent to its shareholders a target’s statement dated 18 April 2006 (**Target’s Statement**) which also addressed the Recapitalisation Plan.

Queensland Gas Application

24. Queensland Gas submitted (amongst other matters) that the Target’s Statement, the Prospectus and the Explanatory Memorandum (**Recapitalisation Documents**) were together deficient because they failed to provide Sydney Gas shareholders with sufficient information in relation to the Recapitalisation Plan.

Declaration and orders sought

25. Queensland Gas sought a declaration of unacceptable circumstances having regard to, as Queensland Gas stated it:
- (a) the failure by Sydney Gas to include in its target statement relating to Queensland Gas’s takeover bid for Sydney Gas shares all information which holders of bid class securities and their professional advisers would reasonably require in order to make an informed assessment whether to accept Queensland Gas’s offer, resulting in a contravention of section 638 of the Corporations Act by Sydney Gas; and
 - (b) the effect of the failure to provide that information to Sydney Gas shareholders on the proposed acquisition of a substantial interest in Sydney Gas by Babcock & Brown Securities Pty Ltd, any sub-underwriter and other persons who must agree to take up shares in SGL in order to ensure that the Underwriter’s obligations become unconditional.
26. Queensland Gas sought interim and, in the event that the Panel made a declaration of unacceptable circumstances, final orders (see Annexure A for the orders sought by Queensland Gas).

DISCUSSION

Queensland Gas Submissions

Disclosure

27. Queensland Gas submitted to the Panel in its Application that the Recapitalisation Documents were deficient because they did not disclose:

Takeovers Panel

Reasons for Decision – Sydney Gas Limited 02

- (a) the identity of the sub-underwriters or their associates or any person who would have voting power by reason of the sub-underwriters obtaining any Sydney Gas shares;
 - (b) the voting power of the sub-underwriters (current voting power and future potential voting power as a result of the sub-underwriting);
 - (c) whether there was any limitation on the proportion of the shortfall which Babcock & Brown may sub-underwrite;
 - (d) the intentions of any such sub-underwriters (or their associates or any person who would have voting power by reason of the sub-underwriters obtaining any Sydney Gas shares) in relation to Sydney Gas; or
 - (e) whether any of the proposed sub-underwriters (or their associates or any person who would have voting power by reason of the sub-underwriters obtaining any Sydney Gas shares) was a person who already had a substantial interest in Sydney Gas or any voting power in Sydney Gas.
28. Queensland Gas also submitted that Babcock & Brown and the Committed Shareholder were associates of each other, because of the Committed Shareholder's commitment to subscribe and Babcock & Brown's commitment to underwrite.
29. In the Explanatory Memorandum, Sydney Gas had stated that in the Underwriting Agreement Babcock & Brown had undertaken that, if it acquired any Sydney Gas shares by virtue of its underwriting of the Rights Issue, it currently did not intend holding those Shares for a period greater than 6 months. Queensland Gas submitted that therefore the intentions of any sub-underwriter² in relation to Sydney Gas were of even greater importance.
30. Queensland Gas submitted that none of the Recapitalisation Documents contained clear statements of the maximum number of Sydney Gas ordinary shares which could be acquired by Babcock & Brown as a result of the underwriting (combined with the rest of the Recapitalisation Plan). Queensland Gas submitted that if only 25% of the Rights Issue were taken up by Sydney Gas shareholders (the minimum condition required under the Underwriting Agreement) Babcock & Brown (or any sub-underwriter) could acquire up to 75,909,229 shares in Sydney Gas (approximately 30.86% of the current issued capital of Sydney Gas, and approximately 23% of the expanded capital of Sydney Gas after the Rights Issues).
31. Queensland Gas submitted that this represented the proposed acquisition of a substantial interest in Sydney Gas. Queensland Gas submitted that the fact that Sydney Gas had stated publicly that Babcock & Brown had sub-underwriting in place meant that Sydney Gas knew the identity of the persons who would take up Sydney Gas shares or convertible notes as a result of the Recapitalisation Plan and the maximum numbers of Sydney Gas shares and convertible notes those persons would obtain as a consequence. Queensland Gas submitted that

² or their associates or any person who would have voting power by reason of the sub-underwriters obtaining any Sydney Gas shares.

Takeovers Panel

Reasons for Decision – Sydney Gas Limited 02

it constituted unacceptable circumstances for Sydney Gas not to have disclosed this information in the Recapitalisation Documents.

Structure of Rights Issue

32. Queensland Gas submitted that Sydney Gas had structured the Rights Issue to make a change of control more likely to occur, by:
- (a) making the Rights Issue non-renounceable;
 - (b) pricing the Rights Issue at a premium to the Sydney Gas share price before it was affected by the announcement of the Offer; and
 - (c) establishing an “oversubscriptions facility”, which Sydney Gas stated would be filled pro-rata but where Sydney Gas reserved the right to consider oversubscription applications at its discretion.

Voting on resolution to approve Rights Issue

33. Queensland Gas submitted that the Committed Shareholder, a sub-underwriter or their associates should not be permitted to vote on the resolution, because that would tend to frustrate the equality of opportunity principle if the resolution was passed on the votes of persons with an interest in passing the resolution outside their capacity as an Sydney Gas shareholder.
34. Queensland Gas submitted that the Explanatory Memorandum stated that Babcock & Brown would not be permitted to vote on the resolution “as required by ASX”.
35. However, Queensland Gas submitted that the Explanatory Memorandum did not state that:
- (a) any associate of Babcock & Brown; or
 - (b) any sub-underwriter, or associate of a sub-underwriter,
- would not be permitted to vote on the resolution.
36. Queensland Gas submitted that one of the reasons that Sydney Gas was seeking shareholder approval of the Rights Issue was that because the Rights Issue would trigger a defeating condition of the Offer it may be considered to be frustrating action. Queensland Gas submitted that Babcock & Brown, any sub-underwriter, and their respective associates should not be allowed to vote on a frustrating action resolution where the resolution would provide them with the commercial benefits of the underwriting and sub-underwriting agreements, and none of the other Sydney Gas shareholders would gain those benefits.
37. Queensland Gas submitted that the interests of those persons were sufficiently different from those of other Sydney Gas shareholders that their participation in voting on the Recapitalisation Plan would give rise to unacceptable circumstances.

Association issues

38. Queensland Gas submitted that the Committed Shareholder and Babcock & Brown were very likely to be associates, for the following reasons:

Takeovers Panel

Reasons for Decision – Sydney Gas Limited 02

- (a) there must be some form of agreement between the Committed Shareholder and Babcock & Brown;
- (b) the 25% condition in the Underwriting Agreement meant that Babcock & Brown, as underwriter, must have a relevant agreement binding Sydney Gas shareholders holding at least 25% of the shares in Sydney Gas; and
- (c) the Committed Shareholder, and the 25% shareholders must have agreed to vote for the Recapitalisation Plan, and that constituted acting in concert to facilitate the agreed objective of the underwriting and the Recapitalisation Plan with Sydney Gas and Babcock & Brown.

Identity of persons who will receive convertible notes

39. Queensland Gas submitted that the Explanatory Memorandum should have disclosed the identity of the associates of Babcock & Brown when it stated that new convertible notes under the Convertible Note Issue would be issued to Babcock & Brown “and its associates”. Queensland Gas submitted that this was material information for Sydney Gas shareholders to know in order to make an informed decision on whether or not to vote to approve the Recapitalisation Plan.

Sydney Gas Additional Disclosure

40. In response to the Application, Sydney Gas wrote to the Panel seeking to rebut each of the issues raised by Queensland Gas in the Application. Without conceding that the Application had merit, Sydney Gas offered to the Panel to disclose in a notice to Sydney Gas shareholders information which it submitted would put the issues beyond doubt. Sydney Gas submitted that this meant that there was no proper basis for the Panel commencing proceedings in relation to the Application.
41. Sydney Gas submitted that it was clear that Sydney Gas needed funds, and that it had been seeking funds for some time prior to the Offer, so there was no basis to suggest that the Recapitalisation Plan had been contrived to transfer control of Sydney Gas in response to the Offer.
42. Sydney Gas advised that:
- (a) Babcock & Brown had sub-underwritten the Rights Issue with PMA Capital Management Ltd and Tricom Equities Ltd.;
 - (b) Tricom intended to distribute any Sydney Gas shares it received as sub-underwriter to its broad base of clients;
 - (c) Sydney Gas did not expect PMA, as a large fund manager (\$2.5 billion under management), to hold Sydney Gas shares as a strategic stake; and
 - (d) Saad Investments Company Ltd, an existing Sydney Gas shareholder (5.29%) had undertaken to Sydney Gas to take up its rights entitlement, and a modest additional amount under any shortfall facility.

Disclosure

43. Sydney Gas offered to include in its announcement:

Takeovers Panel

Reasons for Decision – Sydney Gas Limited 02

- (a) the identity of the underwriter, the sub-underwriters and the Committed Shareholder;
 - (b) the voting power which each might have in various scenarios following the Recapitalisation Plan (0%, 50% and 100% take-up by Sydney Gas shareholders of their rights entitlements); and
 - (c) the voting power which Babcock & Brown might hold in consequence of issue of convertible notes.
44. Sydney Gas submitted that because none of Babcock & Brown or any of the sub-underwriters had any material shareholding in Sydney Gas, many of the issues raised by Queensland Gas were not relevant, and that their lack of relevance would be made clear to Sydney Gas shareholders.

Structure of Rights Issue

45. Sydney Gas submitted that the over-subscription facility and public offering of any shortfall of the Rights Issue, plus the professional nature of Babcock & Brown and the sub-underwriters were clear indication that the purpose of the Rights Issue was not to affect control of Sydney Gas. Sydney Gas submitted that these were evidence that the directors of Sydney Gas had taken proper and reasonable steps to mitigate any potential effects on control of the Rights Issue and that the fact of the Rights Issue being non-renounceable was not material.
46. Sydney Gas submitted that a share price from before the date of commencement of the Offer i.e. three months previously in January 2006 (which, according to Sydney Gas, was when the price to which Queensland Gas referred had been taken from) was no longer relevant and that the current market price was the appropriate reference to assess whether the Rights Issue price was attractive or a disincentive to subscription.
47. Sydney Gas advised that it intended, and would state in its announcement, that the discretion it retained in relation to the public over-subscription facility would only be used to ensure that subscribers did not breach the Corporations Act, by scaling back their subscription if necessary. Other than that, all applications would be treated identically pro-rata.
48. Sydney Gas submitted that it had structured the Convertible Note Issue in a number of ways to reduce its effect on control of Sydney Gas, including:
- (a) giving Sydney Gas directors the discretion to draw the notes rather than drawings being obligatory;
 - (b) preventing the notes from being converted into shares for so long as the Offer remained on foot; and
 - (c) allowing Sydney Gas to redeem the convertible notes at face value if there was a change in control of Sydney Gas as a result of the Offer.

Voting on resolution to approve Rights Issue

49. Sydney Gas rejected any submissions that Babcock & Brown, sub-underwriters or the Committed Shareholder were associated in any way.

Takeovers Panel

Reasons for Decision – Sydney Gas Limited 02

50. Sydney Gas submitted that Babcock & Brown and each of the sub-underwriters were professional underwriters or sub-underwriters and that the standard underwriting agreements between them and Sydney Gas provided no basis for suggesting that there was any association.
51. Sydney Gas advised that there was no agreement between the Committed Shareholder and Babcock & Brown or any of the sub-underwriters, the commitment (for no fee or charge) was only between the Committed Shareholder and Sydney Gas. Therefore, there was no association and Queensland Gas had misconstrued the facts of the circumstances.
52. Sydney Gas advised that the 25% condition in the Underwriting Agreement was met by the commitment of one of the sub-underwriters rather than any agreement with a current shareholder. Therefore, there was no association and Queensland Gas had misconstrued the facts of the circumstances.
53. Sydney Gas also advised that neither Babcock & Brown nor sub-underwriters had any material shareholding in Sydney Gas. Therefore, there were no association or entitlement or voting issues and Queensland Gas had misconstrued the facts of the circumstances.
54. Sydney Gas submitted that it had discussed the issues of voting exclusions with ASX and that:
 - (a) it had complied with ASX's recommendations; and
 - (b) ASX had not required any voting exclusion for the sub-underwriters or any associate of Babcock & Brown or the sub-underwriters.

DECISION

Discussion

55. The Panel provided Queensland Gas with an opportunity to provide the Panel with any comments it wished concerning the Sydney Gas proposed announcement.
56. Queensland Gas made further submissions that the disclosure, even after the proposed additional announcement by Sydney Gas, was inadequate for example, that the Recapitalisation Documents did not disclose "*information of the kind that would be relevant concerning PMA, its management or its intentions in relation to SGL*" (PMA was the sub-underwriter which committed to underwrite 25% of the issue, thus satisfying the 25% condition in the Babcock & Brown Underwriting Agreement). After considering each of the further submissions raised by Queensland Gas, the Panel did not consider that they raised issues which would constitute unacceptable circumstances or raised disclosure issues which holders of bid class securities and their professional advisers would reasonably require to be addressed to enable them to make an informed assessment whether or not to vote for the Recapitalisation Plan.

Takeovers Panel

Reasons for Decision – Sydney Gas Limited 02

Disclosure

57. The Panel considered that the disclosure proposed by Sydney Gas would address each of the disclosure issues raised by Queensland Gas.

Structure of Rights Issue

58. The Panel considered that the steps Sydney Gas had originally taken in structuring the Rights Issue, to mitigate any effect of the Rights Issue and Convertible Note Issue on control of Sydney Gas, combined with shareholder approval under ASX Listing Rule 7.9, had addressed the concerns raised by Queensland Gas.
59. The Panel accepted Sydney Gas's submissions as to the appropriateness of the market price to which to compare the Rights Issue exercise price. The Panel did not accept Queensland Gas's submissions as to the acceptability, or unacceptability, of the exercise price.

Voting on resolution to approve Rights Issue

60. The Panel was not shown evidence of, or a basis for, Queensland Gas's allegations concerning association between Babcock & Brown and the Committed Shareholder. Nor did Queensland Gas provide any proper basis for the Panel to infer that such evidence might exist. The Panel did not find that the Underwriting Agreement was likely to cause Babcock & Brown and the sub-underwriters to become associates, or indicate that there was any agreement or common purpose affecting control of Sydney Gas.
61. Queensland Gas did not provide any evidence of an agreement between the Committed Shareholder and any of Babcock & Brown or the sub-underwriters.
62. The fact that none of Babcock & Brown or the sub-underwriters, or their associates, held any material number of Sydney Gas shares was consistent with the Panel's views that Queensland Gas's submissions in relation to association did not establish a basis for, or evidence of, unacceptable circumstances.
63. The Panel accepted Sydney Gas's submissions as to the structure of the underwriting and sub-underwriting arrangements and that these had been adequately disclosed once Sydney Gas had become aware of the information.
64. The Panel noted Sydney Gas's discussions with ASX as to the appropriate voting exclusions for the Recapitalisation Plan meeting.

Identity of persons who will receive convertible notes

65. The Panel considered that the additional announcement proposed by Sydney Gas would adequately identify the associates of Babcock & Brown (as referred to in the Explanatory Memorandum), whether or not this was material information for Sydney Gas shareholders to know in order to make an informed decision on whether or not to vote to approve the Recapitalisation Plan.

Takeovers Panel

Reasons for Decision – Sydney Gas Limited 02

Dissemination

66. The Panel considered that the additional disclosure by Sydney Gas would be disseminated adequately to Sydney Gas shareholders prior to the time for delivery of proxies and prior to the time of the meeting of Sydney Gas shareholders to consider the Recapitalisation Plan.

Decision

67. The Panel considered that when it assessed the circumstances before it, including Sydney Gas's proposed additional disclosure, it did not appear to the Panel that there was any real likelihood that the circumstances in relation to the affairs of Sydney Gas could be found to be unacceptable having regard to the effect of these circumstances on:
- (a) control or potential control of Sydney Gas; and
 - (b) the acquisition or proposed acquisition of a substantial interest in Sydney Gas by Queensland Gas, Babcock & Brown or any of the sub-underwriters.
68. Accordingly, after considering Sydney Gas' proposed additional disclosure, and Queensland Gas' submissions on that proposed additional disclosure, the Panel declined to conduct proceedings.
69. The Panel made no order for costs.

Braddon Jolley

President of the Sitting Panel

Decision dated 28 April 2006

Reasons published 30 June 2006



Annexure A – Interim orders

Corporations Act Section 657E Interim Order

Orders requested by Queensland Gas

Interim Orders

1. Queensland Gas sought interim orders under section 657E, that until the earliest of:
 - (a) two months after the making of the order,
 - (b) the day seven days after Sydney Gas made a public announcement specifying:
 - (i) the sub-underwriters (and their associates and any person who would have voting power by reason of the sub-underwriters obtaining any Sydney Gas shares);
 - (ii) the voting power of the sub-underwriters (current voting power and future potential voting power as a result of the sub-underwriting);
 - (iii) the Committed Shareholders (and their associates and any person who would have voting power by reason of the Committed Shareholders obtaining any Sydney Gas shares); and
 - (iv) the “associates” of Babcock & Brown who might take up the convertible notes; andstating that none of those persons was entitled to vote on any resolution relating to the Recapitalisation Plan; and
 - (c) the day on which the Panel determined not to conduct proceedings or, having decided to conduct proceedings, decided those proceedings,no resolution concerning the Recapitalisation Plan could be put to, or voted on by, the members of Sydney Gas.

Final Orders

2. If the Panel made a declaration of unacceptable circumstances, Queensland Gas sought the following orders.
 1. Sydney Gas, or the relevant persons identified by the Panel, immediately disclose to Sydney Gas shareholders:
 - (a) the identity of the Committed Shareholders and their associates and any person who would have voting power by reason of the Committed Shareholders obtaining any Sydney Gas shares;
 - (b) the identity of any associates of Babcock & Brown who will be issued convertible notes and their associates and any person who would

- (c) have voting power by reason of the those persons obtaining any Sydney Gas shares;
- (d) the identity of the sub-underwriters and their associates and any person who would have voting power by reason of the sub-underwriters obtaining any Sydney Gas shares;
- (e) the voting power of any of the persons identified in paragraphs 1(a) – (c) (inclusive) (current voting power and future potential voting power as a result of the Recapitalisation Plan);
- (f) whether there is any limitation on the proportion of the shortfall which Babcock & Brown may sub-underwrite;
- (g) the intentions of any of the persons identified in paragraphs 1 (a) – (c) (inclusive) in relation to Sydney Gas; and
- (h) whether any of the persons identified in paragraphs 1 (a) – (c) (inclusive) are persons who already have a substantial interest in Sydney Gas,

with the disclosure being made by way of a supplementary target's statement which is sent to all Sydney Gas shareholders.

3. Until the day seven days after Sydney Gas makes a public announcement specifying:

- (a) the sub-underwriters (and their associates and any person who would have voting power by reason of the sub-underwriters obtaining any Sydney Gas shares);
- (b) the voting power of the sub-underwriters (current voting power and future potential voting power as a result of the sub-underwriting);
- (c) the Committed Shareholders (and their associates and any person who would have voting power by reason of the Committed Shareholders obtaining any Sydney Gas shares); and
- (d) the “associates” of Babcock & Brown who might take up the convertible notes; and

stating that none of those persons is entitled to vote on any resolution relating to the Recapitalisation Plan, no resolution concerning the Recapitalisation Plan may be put to, or voted on by, the members of Sydney Gas.

4. All of the persons identified in paragraphs 1 (a) – (c) (inclusive) are prohibited from voting with respect to the resolutions set out in Sydney Gas' notice of meeting dated 7 April 2006.
5. In the event that the disclosure was not made at least 1 week prior to the date of the Sydney Gas extraordinary general meeting (8 May 2006), Queensland Gas also sought an order that the meeting be adjourned to a date which was at least 1 week after such disclosure had been made.