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## Regis Resources questions, no ASIC answers

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### THE board contest for Regis Resources has come and gone -- with a resounding win for the challengers -- but the memory lingers on.

One of the issues during the contest was whether the challengers had misled investors and contravened the substantial shareholding requirements by secretly accumulating a strategic stake in Regis months before it was disclosed to the market. Whilst there was plenty to support that conclusion, Regis was unsuccessful in attempts to get ASIC and the Takeovers Panel to take action. However, elements of the ousted group are considering whether to persist, including the possibility of recourse to the courts.

Another issue was the behaviour of a Regis shareholder of long standing, and former owner of its Duketon gold project, the US gold major Newmont. The US group at no stage had expressed dissatisfaction with the performance of the board and management and only told Regis two days before the meeting that it was supporting the challengers.

The incumbent three-man board, including the former chairman of ASIC, Jeffrey Lucy, was rolled this week by three former executives of Equigold, but it couldn't have happened without the support of Newmont.

The result is that Newmont has effected a change of control at Regis. Admittedly it was board control that changed, not ownership, which is why the panel wouldn't get involved. However, the result is that the former Equigold trio are now in the driver's seat and they would be hard to remove without the support of Newmont.

The challengers held only 10.7 per cent of Regis whereas Newmont owns 23 per cent. The other four largest holders, Seamans Capital Management, Gold 2000, Libra Advisers and Walnut St Capital, which collectively owned another 30 per cent, fell into line when they knew which way Newmont was going to vote. The result was that more than 60 per cent of the capital voted to remove the incumbents, with only 8 to 9 per cent in favour of their retention.

Two of the incumbents, Lucy and Paul Dowd, a former chief executive of Newmont Australia, resigned at the shareholder meeting rather than be voted off the board.

Newmont, probably unbeknownst to the other major holders, actually directed its proxies in favour of Dowd, but that still meant the challengers had the numbers to vote him off the board.

Dowd wouldn't have stayed in any case. He was scathing of Newmont, questioning whether it had acted with integrity, and declared that he could not serve with "a group of opportunists".

The Equigold trio -- Mark Clark, the former managing director, Morgan Hart and Nick Giorgetta, former chairman -- first surfaced on March 4 when Clark wrote to Regis saying he represented a group of six shareholders and their wives who were dissatisfied with the performance of the incumbent and wanted them to agree to an orderly transition to the former Equigold trio, failing which they would requisition a shareholder meeting to bring about that outcome. The board wouldn't walk and so the meeting was requisitioned.

The requisitioning shareholders began buying early in October and had accumulated the 10.7 per cent stake by the end of November, but a substantial shareholding notice was not lodged until March 6. That's because they claim to only have become associates on March 4, as a result of the letter which was written to Regis. Prior to that date they were all acting independently of each other.

That stretches credulity. It's inherently hard to accept that they each decided to independently acquire shares in Regis and four months after they had concluded buying to somehow come together and decide to act in concert.

Most of the buying was conducted through one sharebroker, Patersons. Moreover, on one day in November five of six members of the ginger group all bought, at the same price and through the same broker. Is that really just coincidence?

Moreover, it is suggested that in early November Patersons approached the major Regis holders inquiring about buying on behalf of clients up to 30 million shares, or 12 per cent of the capital. At that stage the ginger group would have held between 3 per cent and 4 per cent of Regis.

Regis also told the panel, and presumably ASIC, that before approaching Regis the requisitioning shareholders had admitted an intention to act together in relation to another company. It is thought that refers to Andamus Resources.

The requisitioning shareholders maintain that prior to March 4 they had no mutual understanding, and neither had they agreed to act or co-operate in concert with each other. But they weren't longstanding shareholders dissatisfied with the board's performance. Their recent buying and subsequent requisitioning of a meeting point to the conclusion they had some corporate objective in mind.

Moreover, how is that they all managed to come together in the first place? What happened to bring that about? In fact, as there had been no disclosure, how did they each manage to find out that the others had been buying? They are represented by the same law firm, did that come about before or after the March 4 letter?

These are all questions that ASIC could have been expected to pursue but there's nothing to suggest that it gave the Regis referral other than the most cursory consideration.

### Noble superior?

NOBLE Group yesterday lodged its bidder's statement with Gloucester Coal and requested that the target board agree to early despatch.

It remains to be seen whether Gloucester will agree but it's worth noting that it co-operated to enable its favoured merger partner Whitehaven Coal to send its target's statement (recommending Gloucester's bid) in the same booklet as Gloucester's bidder's statement for Whitehaven.

Gloucester has told Noble that it will need to study the bidder's statement before deciding whether to allow early despatch. Fair enough, but this a cash bid so it shouldn't take long to consider. No doubt the main area for scrutiny would be the claims made by Noble in its section which argues why Gloucester shareholders should accept its offer. The Noble offer is conditional on the Whitehaven merger not proceeding. The Takeovers Panel has required Gloucester to include a condition that the Whitehaven bid be subject to no superior proposal -- that the Noble offer is more in the interests of Gloucester shareholders than the Whitehaven merger.

That condition only has to remain until May 21; after that date the Gloucester board can waive that condition and complete the Whitehaven merger, which would be a fait accompli as the major Whitehaven shareholders own 74 per cent of the company and have stated their intention to accept, thereby delivering them control of the combined entity.

If a superior proposal is made before the May 21 deadline then the condition cannot be waived. Noble raised its cash offer to \$6 a Gloucester share after the Gloucester board decided that its earlier offer price of \$4.85 a share was not a superior proposal. It's difficult to see how the higher price could be anything other than superior but it remains to be seen how the Gloucester directors view it.

Clearly, it is in the interests of Gloucester shareholders that the directors do all they can to help bring about a superior proposal before the May 21 deadline. In that regard, the earlier the target board decides whether the revised Noble bid is a superior proposal the better because, in the event the decision went against Noble, it would leave time to see whether agreement on a superior proposal could be reached.

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