



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP24/24

Friday, 17 May 2024

Pacific Smiles Group Limited – Panel Receives Application

The Panel has received an application from NDC BidCo Pty Ltd (**NDC**) in relation to the affairs of Pacific Smiles Group Limited (ASX: PSQ).

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

Pacific Smiles is an ASX-listed company.

On 18 December 2023 (and again on 24 January 2024), Beam Investments Co Pty Ltd (**Beam**)¹ gave notices (**Notices**) under the Panel’s Guidance Note 20 disclosing a purely economic interest in Pacific Smiles shares through a cash settled total return swap, and including a statement that Beam and its associates have no ‘relevant interests’ in Pacific Smiles shares. The notices list Beam, Genesis Capital Manager I Pty Ltd (**Genesis Manager**)², Genesis Capital Ultimate GP Pty Ltd³ and GFT 2 Co Pty Ltd as trustee for GFT 2 Trust (**GFT2**) as associates.

Also on 18 December 2023 (and again on 19 March 2024), Genesis Manager made a non-binding indicative proposal to acquire all of the shares in Pacific Smiles via a scheme of arrangement.

On 28 April 2024, Pacific Smiles entered into a scheme implementation deed with NDC⁴ under which Pacific Smiles has agreed to implement a scheme of arrangement

¹ Beam is a wholly owned subsidiary of Genesis Capital Ultimate GP Pty Ltd

² Genesis Manager is jointly held by Lucolifia Pty Ltd as trustee for the Lucolifia Family Trust and Plum Willow Pty Ltd as trustee for The Plum Willow Family Trust

³ “as general partner of Genesis Capital Management Partnership I, LP (ILP 1900016), the general partner of Genesis Capital Fund I, LP (ILP 2100002)”

⁴ NDC is a wholly owned subsidiary of NDC HoldCo Pty Ltd which operates the National Dental Care network and is a portfolio company of funds managed or advised by Crescent Capital Partners Management Pty Ltd

that is recommended by the board of Pacific Smiles (subject to a positive independent expert's report and no superior proposal emerging) (**NDC Scheme**).

On 7 May 2024, Beam gave a substantial holder notice stating (among other things) that its cash settled total return swap had been amended on 3 May 2024 to "*provide for physical settlement*" and that Beam had exercised its right for physical settlement on 7 May 2024 and became the legal and beneficial owner of approximately 19.9% of Pacific Smiles shares (**Relevant Shares**).

The applicant submits that the Notices contain deficient disclosure including (in summary):

- a statement that Beam and its associates have no relevant interest in any Pacific Smiles shares which is inconsistent with numerous provisions in certain binding documents that Beam entered into which explicitly refer to acquisition of shares in Pacific Smiles (and not an economic exposure to Pacific Smiles shares)
- statements as to no short positions being held, whereas the applicant submits that Beam did have short positions
- inadequate disclosure of the nature and terms of Beam's associations with certain entities including GFT2, a co-investor with Genesis Manager in Beam.

The applicant submits (among other things) that the alleged deficient disclosure gives rise to unacceptable circumstances because of their effect on the control or potential control of Pacific Smiles and having regard to the purposes of Chapter 6.

The applicant does not seek any interim orders. The applicant seeks final orders including (in effect):

- Alternatively:
 - Beam must not vote any Pacific Smiles shares in which they have a relevant interest against the NDC Scheme (provided the NDC Scheme continues to be recommended by the board of Pacific Smiles) or
 - Beam must divest of the Relevant Shares, and
- Beam must make corrective disclosure to the market (in a form approved by the Panel).

Allan Bulman
Chief Executive, Takeovers Panel
Level 16, 530 Collins Street
Melbourne VIC 3000
Ph: +61 3 9655 3500
takeovers@takeovers.gov.au