

Sementis Limited		
September 2022		
Contact	Senior Executive Leader	Executive Director
s 22		

Key Messages

Sementis is an unlisted public company involved in the research and development of new vaccines. It does not currently have a product in the market. In May 2021, it had approximately 70 shareholders.

ASIC reviewed the prospectus lodged by Sementis on 12 April 2021. ASIC required a replacement prospectus to address ASIC's concerns which was lodged on 6 May 2021.

ASIC participated in the Takeovers Panel proceedings brought on 25 May 2021 by a shareholder and former director of Sementis. The Panel accepted Sementis' undertaking to lodge a supplementary prospectus addressing the circumstances raised in the proceedings and an undertaking from a major shareholder not to acquire shortfall shares. A supplementary prospectus was lodged on 28 July 2021.

s 37(1)(b)

Background

Sementis Limited (Sementis) is an unlisted Australian public company that is involved in the research and development of new vaccines. It does not yet have a product in the market. In May 2021, Sementis had approximately 70 shareholders.

On 12 April 2021 Sementis lodged a prospectus (Prospectus) with ASIC in connection with its proposed pro rata entitlement offer to eligible shareholders of 0.6083 new shares for every 1 existing share held at an issue price of \$0.01 per new share, to raise up to \$10 million (Entitlement Offer). On 19 April 2021 ASIC extended the exposure period due to concerns that the prospectus may be defective and our understanding that the Prospectus had not been made generally available during the seven-day exposure period.

On 6 May 2021 Sementis lodged a replacement prospectus (Replacement Prospectus) with additional disclosure that addressed some of the concerns raised by ASIC in relation to the Prospectus. Our concerns included:

- the disclosure of Sementis' financial position did not comply with section 710 of the Corporations Act and ASIC Regulatory Guide 228: Effective Disclosure for retail investors;
- disclosure of Sementis' proposed use of funds under the Entitlement Offer;
- whether financial statements for the period 1 July 2020 to 31 December 2020 were audited, reviewed, or neither;
- disclosure of the emphasis of matter in Sementis' financial statements for the year ended 30 June 2020; and
- concerns in relation to the proposed two week offer period.

It also extended the proposed Entitlement Offer period to three weeks.

On 25 May 2021 a shareholder and former director of Sementis, Dr Glen Burgess, applied to the Takeovers Panel seeking a declaration of unacceptable circumstances in relation to the Entitlement

Offer and Replacement Prospectus. The applicant submitted that the Entitlement Offer was unacceptable because (among other things):

- the control effect of the Entitlement Offer exceeded what is reasonably necessary for the fundraising purposes of Sementis;
- the size, pricing and structure of the Entitlement Offer appeared to be designed to exacerbate that control effect. In particular, the applicant held concerns that the Entitlement Offer, if not fully subscribed, would result in an entity controlled by a director of Sementis (Fortitude Nominees Pty Ltd) acquiring a majority shareholding, and therefore control, of Sementis; and
- the Replacement Prospectus did not provide adequate disclosure in relation to a significant grant that was awarded to Professor John Hayball, Sementis' Chief Scientific Officer. The applicant submitted that this grant was known to the directors prior to the Replacement Prospectus being lodged with ASIC.

ASIC and the various parties made submissions to the Panel concerning the Entitlement Offer and the potential effect on control. During the proceedings, a director of Sementis, Mr Maurice O'Shannassy, provided submissions indicating that he had concerns with the Entitlement Offer and disclosure in the Replacement Prospectus. Mr O'Shannassy resigned his position as director on 21 July 2021 while the Panel proceedings were on foot.

Throughout the Panel proceedings, the applicant and others expressed concerns in relation to Sementis' management of conflicts of interest in relation to the Entitlement Offer. The Panel did not find it necessary to reach a concluded view on the matter given the undertakings offered by Sementis and Fortitude Nominees.

The Panel accepted undertakings by Sementis and Fortitude Nominees to, among other things, provide further disclosure in relation to the entitlement offer (including of Fortitude Nominees' intentions and its financial position), limit Sementis' discretion in relation to the shortfall facility and, in the case of Fortitude Nominees, to not apply for or acquire shortfall shares. Given the undertakings offered by Sementis and Fortitude Nominees, the Panel declined to make a declaration of unacceptable circumstances.

Both the Panel and ASIC provided written confirmation that they did not object to the supplementary disclosure. On 28 July 2021 Sementis lodged the supplementary prospectus with ASIC.

ASIC Action

s 37(1)(b) [REDACTED]
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