

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

MCMURDO J

No 9981 of 2008

GOLDEN CIRCLE LIMITED
(ACN 054355618)

Applicant

BRISBANE

..DATE 08/12/2008

ORDER

HIS HONOUR: This is an application under section 411 of the Corporations Act for the approval of a scheme of arrangement. The scheme is between the applicant Golden Circle Limited and its shareholders and involves the acquisition by H G Heinz Company Australia Limited of all of the shares in Golden Circle for a price of \$1.65 per share. No party other than the applicant appears on this application.

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The Australian Securities and Investments Commission has advised by letter dated 4 December 2008 and expressly written under section 411.17(b) that it has no objection to the scheme, it being satisfied that the scheme has not been proposed for the purpose of enabling any person to avoid the operation of any of the provisions of chapter 6 of the Act. There is nothing to indicate that the scheme has been proposed to enable any person to avoid the operation of any provision of chapter 6, and there is substantial evidence to the contrary.

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At the first Court hearing for this scheme on 24 October last, I ordered that there be a meeting of members on 1 December 2008. The order provided that the meeting was to take place at the Events Centre, 20 Minchinton Street, Caloundra. The material which I then approved to be sent to members included a covering letter, the draft of which erroneously referred to the place of the proposed meeting as the Caloundra Civic Centre, 16 Minchinton Street, Caloundra. This was corrected in the letter which were despatched which advised of the correct address.

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The explanatory booklet which I approved at the first hearing has been posted to each member in substantially the terms which I approved. It is unnecessary to detail the differences because they are in each case inconsequential matters such as pagination and formatting. I am also satisfied that the booklet was lodged with ASIC on 24 October 2008, and it was registered by ASIC on 27 October. A proxy form to the effect approved in my previous order was duly despatched to each member.

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I am satisfied that the meeting was duly held and that the necessary majorities were obtained. There was no objection or debate at the meeting, and there was no response to the Chairman's call for any questions. A total of 440 members holding 119,567,946 or 94.3 per cent of the 126,733,576 issued shares voted. Of them, 427 or 97.05 per cent voted in favour of the scheme. The votes cast in favour of the scheme were 118,713,386 or 99.29 per cent of the votes cast.

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Consistently with the absence of any objection to the scheme at the meeting, there has been no appearance by or on behalf of any member at today's hearing. The hearing was duly advertised in The Australian newspaper on 2 December 2008.

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The proposed scheme of arrangement was described in my reasons for the orders which I made on 24 October. As I there recorded, Ernst and Young have valued the shares of Golden Circle on a capitalisation of earnings basis, as being in the range of \$1.15 to \$1.33 per share, and have expressed the

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opinion that the Heinz offer of \$1.65 per share is fair and reasonable and in the best interests of shareholders, absent a superior offer. There has been no such offer. The shares have been listed on the National Stock Exchange since March this year. The offer price of \$1.65 exceeds any price at which the shares have traded, as well as offers made by external investors in late 2007, which ranged from 65 cents to \$1 and \$1.05 per share. The directors of Golden Circle unanimously recommend the scheme. In my conclusion the price offered is fair and reasonable.

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All conditions precedent within the implementation agreement have been fulfilled save for that in clause 3.1(j) which has been waived and save of course for the condition of the approval which is sought by this application.

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Golden Circle has issued 4,900,000 options to acquire shares in the company at prices of 80 cents or in amounts yet to be determined. These have been granted to eight employees of the company under an incentive plan by which Golden Circle has agreed to issue a further 400,000 options in July next year and another 400,000 in July 2010. As at the first hearing the position was that none of the options could be exercised within any time which was relevant for the scheme of arrangement, and the earliest was exercisable in the middle of 2010. The result of approval of the scheme would then have been that option holders would be entitled only to a cash payment which would then have been the difference between the option price and \$1.65. Since the first hearing, however, all

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option holders have agreed to a variation of their
entitlements and the changes have been approved also by Heinz.
These changes, which are conditional upon the scheme of
arrangement proceeding, are that option holders will be paid
cash in July next year in amounts varying according to the
earnings of the company in the ten months to 30 April 2009.
Accordingly the position of option holders does not affect the
question of whether the scheme should be approved.

The scheme would become effective upon its approval by the
Court and the lodgement of the order with ASIC. The date when
this occurs is described as the so-called "effective date".
The "record date" is then 5 p.m. on the fifth business day or
such other business day as the parties agree, after the
effective date, and it is at this point that the relevant
shares and shareholders will be identified. Next there is the
"implementation date" which is the third business day after
the record date or such other agreed date after then, but
earlier than the end date. In effect this means that the
implementation of the scheme must occur earlier than 1
February 2009, although that date may be extended by written
agreement between Gold Circle and Heinz. However, I am
informed, as the evidence clearly indicates, that there are no
circumstances which indicate any likelihood for the need for
such an agreement to extend the end date. On the
implementation date Heinz will pay the aggregate consideration
into a trust account in the name of Golden Circle to be held
for the sole purpose of paying the consideration to the
shareholders entitled to it. Later that day all of the shares

will be transferred to Heinz subject to its having made that
payment. Thereafter Heinz would become entitled to replace
the Board of Golden Circle, once Golden Circle has paid or
procured payment to its shareholders.

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In summary I am satisfied that the scheme should be approved.
The applicant has complied with the requirements of section
411, shareholders have been fairly appraised of the proposal
and have overwhelmingly approved it without anything being
said at the meeting or at this hearing in opposition to the
scheme, and the scheme is fair and reasonable.

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It is appropriate to exempt Golden Circle from the
requirements of section 411.11. It is ordered that pursuant
to section 411.4(b) of the Corporations Act the scheme of
arrangement between the applicant Golden Circle Limited and
its shareholders in the form which will be annexed to the
order and marked 'A' be approved. It will be further ordered
that Golden Circle be exempted from compliance with section
411.11 in relation to that order. I have initialled a draft
order in those terms which will be placed with the file.

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