

Outcome of the investigation pursuant to the receipt of the inspector's report in terms of section 170(1), read with sections 169 and 209 of the Companies Act, 2008, regarding complaints concerning a transaction carried out by Ascendis Health Limited.

1. Introduction

1.1. Unless otherwise specified:

1.1.1. **Act** means the Companies Act, 2008, as amended from time to time;

1.1.2. **Regulations** means the Companies Regulations, 2011;

1.1.3. **Takeover regulations** has the meaning ascribed to that term in the Act.

1.1.4. **Takeover Provisions** means the takeover regulations and Chapter 5, Parts B and C of the Act;

1.1.5. The terms defined in the Act and the Regulations have the meanings ascribed to them therein, regardless of whether such terms are used in capitalised form;

1.1.6. **Report** means the report received by the Panel from the inspector appointed pursuant to section 169(1)(c), read with sections 170 and 209;

1.1.7. References to a "**section**" are to a section in the Act, while references to a "**regulation**" are to a regulation in the Regulations; and

1.1.8. Terms defined in the Report and used in this ruling shall carry the same meaning ascribed to those terms in the Report.

1.2. On 19 June 2024, my office released a public announcement on the Stock Exchange News Service (SENS) in which I announced that the Panel would be initiating an investigation concerning certain complaints received by the Panel concerning the proposed general offer made by the Consortium to the holders of Ascendis shares (as described more fully in paragraph 2.1 of the Report).

1.3. Following almost two months of investigation, the inspector issued his report according to section 170(1), read with sections 169 and 209, of the Act dated 10 June 2024 and received by me on 11 June 2024.

1.4. A copy of the Report is attached hereto marked **Annexure A**.

- 1.5. Section 170(1) outlines the actions the Panel may take upon receiving the inspector's report. These actions include:
 - 1.5.1. Excusing any person as a respondent in the complaint if the Panel deems it reasonable to do so based on the person's conduct and cooperation with the investigation.
 - 1.5.2. Referring the complaint to the Companies Tribunal or the Commission if the matter falls within their respective jurisdictions as per the Act.
 - 1.5.3. Issuing a notice of non-referral to the complainant, along with a statement advising the complainant of any rights they may have under this Act to seek a remedy in court.
 - 1.5.4. Commencing proceedings in a court in the name of the complainant, if the complainant has a right under the Act to apply to a court in respect of that matter and has consented to the Panel doing so.
 - 1.5.5. Referring the matter to the National Prosecuting Authority or other regulatory authority concerned if the Panel alleges that a person has committed an offence in terms of the Act or any other legislation.
 - 1.5.6. Referring the matter to the Executive Director, who may, among other things, issue a compliance notice in terms of section 171.
2. The relevant sections of the Report outline the details of the complaints and the results of the investigation conducted by the inspector pursuant thereto. The Panel has carefully reviewed this information and is confident that the inspector has fulfilled the requirements of the investigation assigned to him.
3. In light of the above, in my capacity as the Deputy Executive Director, acting pursuant to section 200(3), I endorse the recommendations of the investigator in paragraph 17, read with the conclusions in paragraph 16.2, of the Report, namely:
 - 3.1. The Consortium, Calibre and Theunis de Bruyn are required to disclose their concert party relationship in an appropriate announcement to ensure compliance with the Takeover Provisions;
 - 3.2. The Consortium, Calibre and Theunis de Bruyn are also required to complete Form TRP 84 as required by the Takeover Regulations; and

- 3.3. Ascendis and the Consortium are required to make the relevant announcement and provide a Supplementary Circular to the shareholders of Ascendis Health.
4. Regarding the allegations of breaches to section 127, it is imprudent to arrive at a definitive decision at this juncture, given the lack of conclusive recommendations in the inspector's report. Therefore, the Panel is committed to conducting a further investigation into this aspect of the complaint to ascertain the presence of substantial evidence supporting the claim that the impugned arrangements were indeed established. Subsequently, appropriate measures will be taken to address the situation if deemed necessary. However, such a process will have no direct bearing on the prosecution of the Exit Offer in the immediate term.
5. Regarding the conclusions reached in paragraph 3 above, the Panel will issue a compliance notice against the Consortium to:
 - 5.1. Update both the firm intention announcement and circular in the Exit Offer so that their concert party relationship is fully disclosed to all Ascendis Health shareholders;
 - 5.2. Require the Consortium, Calibre, and Theunis de Bruyn to complete Form TRP 84 as required by the Takeover Regulations regarding their concert party relationship;
 - 5.3. Take immediate action to communicate the findings of the Panel's investigation in this matter with all relevant stock exchanges where Ascendis Health is listed. This is to ensure that they can promptly make a ruling concerning any meetings of holders of Ascendis Health shares regarding the Exit Offer, including whether such meetings will need to be reconvened due to these discrepancies;
 - 5.4. Invalidate any previous acceptances given by Ascendis Health holders and allow for new acceptances to be given after the issuance of supplementary firm intention announcement and circular by the Consortium and/or Ascendis Health. The offer period will be extended by 30 business days from the date of publication of those supplementary documents; and
 - 5.5. Explain to the Panel within 15 business days why legal action should not be taken against the individuals involved in directing the Consortium's activities for repeatedly violating the Takeover Provisions in terms of section 162(3), read with section 162(5). If you fail to do so, the Panel will proceed with its determination without considering any explanations from the individuals in question.

6. Conclusion

6.1. This ruling is given only with respect to the Takeover Provisions. Further, in issuing this ruling, the Panel did not consider the commercial advantages or disadvantages of the transaction in accordance with section 201(3) of the Act.

6.2. Your attention is also drawn to Regulation 118(5), stating that all rulings of the Panel will be given on the assumption that all information provided is correct and complete. Further, your attention is drawn to Regulation 118(8) stating:

“Any person issued with a Ruling of the Panel may apply to the Takeover Special Committee for a hearing regarding the ruling within –

(a) 5 business days after receiving that Ruling; or

(b) Such longer period as may be allowed by the Committee on good cause shown.”

7. Publication

7.1. Ascendis Health must, within 24 hours of this ruling, supplement the publication made on 23 April 2024 by informing its shareholders and the market that, following the investigation referred to in the “TRP Announcement”, the Consortium has been found by the Panel to have contravened certain provisions of the Takeover Provisions. The Panel has now required the Consortium to supplement both the firm intention announcement and circular in the Exit Offer to fully disclose their concert party relationship to all Ascendis Health shareholders. Ascendis Health is required to submit the announcement to the Panel for approval before its publication, in line with the requirements of the Act and the Regulations.

7.2. A copy of this ruling and the Report shall be published by Ascendis Health on its website within 24 hours of its receipt in terms of Regulation 118(7).

Issued on 18 June 2024 by the Deputy Executive Director of the Takeover Regulation Panel, in terms of section 200(3) of the Act.



Mr Zano Nduli

Deputy Executive Director

Takeover Regulation Panel

Annexure A: Inspector's Report

[Attached]