



## **Declaration of Independence, Relevant Relationships and Indemnities (DIRRI)**

**Helios Corporation Pty Ltd (Administrators Appointed) ACN 636 970 771 (Helios)  
In its own right and as trustee for the Michael Fotios Family Trust ABN 91 504 825 460 (MFFT)**

The purpose of this document is to assist creditors with understanding any relevant relationships that we have with parties who are closely connected to Helios and any indemnities or upfront payments that have been provided to us. None of the relationships disclosed in this document are such that our independence is affected.

This information is provided so you have trust and confidence in our independence and, if not, you can ask for further explanation or information and can act to remove and replace us if you wish.

This declaration is made in respect of ourselves, our partners, the firm McGrathNicol, which for the purpose of this declaration includes the McGrathNicol Partnership, the McGrathNicol Advisory Partnership and McGrathNicol Services Pty Ltd.

We are Professional Members of the Australian Restructuring Insolvency Turnaround Association (**ARITA**). We acknowledge that we are bound by the ARITA Code of Professional Practice (**CoPP**).

### **A. Independence**

We have assessed our independence and we are not aware of any reasons that would prevent us from accepting this appointment.

There are no other known relevant relationships, including personal, business and professional relationships that should be disclosed beyond those I have disclosed in this document.

### **B. Declaration of Relationships**

On 2 August 2021, Ben Morton of Mendelawitz Morton Commercial Lawyers (**MMCL**), the legal advisors of the MFFT, enquired as to whether Rob Kirman and Rob Brauer were free to act in respect of a potential Administration of Helios.

On 9 August 2021, Mr Kirman met with Mr Morton, senior staff of MMCL, Ms Fotios, Kelly Parker of Murfett Legal, Ms Fotios' legal advisor, who was providing additional assistance with the preparation of the documentation for the appointment of administrators to receive a high-level overview of Helios' affairs, the background to the above request and plan for a possible appointment. As part of this background briefing, MMCL sent Helios' recent financial statements and various trust documentation documents relating to the MFFT to Mr Kirman by email on 10 August 2021.

On 13 August 2021, we provided a letter to Renee Fotios, the sole director of Helios, which confirmed our ability to act as Administrators, if appointed, set out general information regarding the administration process and attached draft documentation for the appointment of Administrators to Helios.

We believe the referral of this matter and pre-appointment communication do not result in a conflict of interest or duty because:

- The referral is unconditional;
- From time to time MMCL and separately Murfett Legal refer insolvency engagements to McGrathNicol. Each referral by MMCL or Murfett Legal is conducted on an entirely separate basis and is commenced only after full regard is given to potential conflicts of interest in relation to all interested parties; and



- All communications were limited to obtaining background facts on Helios to check conflicts and understand the company and trust, which were necessary from a planning perspective. This does not impact on our independence and does not result in any duty owed that would conflict with our duties as Administrators.

There is no expectation, agreement or understanding with us regarding the conduct of the Administration and we are free to act independently and in accordance with the law and applicable professional standards.

On 19 August 2021, Ms Parker advised that the appointment of administrators was expected imminently, and we provided our consent to act as administrators. Shortly thereafter, Ms Fotios effected our appointment as administrators.

The meetings and communications with the director Ms Fotios and the legal advisers MMCL and Murfett Legal were for the purpose of:

- gaining a high-level understanding of the current financial position of Helios;
- discussing the types of assistance McGrathNicol could provide to Helios, including providing an overview of the various insolvency processes, including the voluntary administration process; and
- providing a consent to act.

In our opinion, these communications do not result in a conflict of interest or duty because :

- It is recognised by the Courts and the ARITA CoPP that pre-appointment advice on the insolvency process and available options is necessary and does not amount to an impediment to accepting an appointment; and
- The nature of the advice provided, which was focused on gathering factual background and explaining insolvency options, was such that it would not be subject to review and challenge during the course of the Administration. Nor would the advice influence our ability to be able to fully comply with the statutory and fiduciary obligations associated with the Administration in an objective and impartial manner.

### C. Declaration of Relationships

Within the previous two years, have we, or our firm, had a relationship with:

Name	Nature of relationship	Reasons
Whitestone Mining Services Pty Ltd (In Liquidation)	Rob Kirman and Rob Brauer were appointed Liquidators of Whitestone Mining Services Pty Ltd (In Liquidation) ( <b>Whitestone</b> ) by the Federal Court of Western Australia on 30 April 2019.  Helios and MFFT are related to Whitestone by way of: <ul style="list-style-type: none"> <li>▪ The common involvement of Michel Fotios who is a director of Whitestone and the former Trustee and a beneficiary of the MFFT;</li> </ul>	We do not believe this relationship results in a conflict of interest or duty because: <ul style="list-style-type: none"> <li>▪ Clause 6.11 of the ARITA Code of Professional Practice provides that, whilst the potential for a conflict of interest may arise in 'group' circumstances, this must be considered in light of the commercial and practical benefits of a mutual liquidator being appointed;</li> <li>▪ The Administrators are of the view that appointment to both companies will have benefits to the conduct of the appointment, including cost-savings and enabling an as accurate as possible view to be obtained of the</li> </ul>



	<ul style="list-style-type: none"> <li>▪ Loans payable from MFFT to Whitestone of \$16,038 and \$10,165, as a result of funds paid by Whitestone on behalf of MFFT; and</li> <li>▪ A loan receivable from Whitestone by MFFT of \$80,000.</li> </ul>	<p>activities and financial position of the companies as a whole; and</p> <ul style="list-style-type: none"> <li>▪ The loans and monies owing between Helios and Whitestone do not appear to be disputed and are unlikely to be contentious. Should this not be the case, there are remedies that would be considered and implemented to resolve any potential conflict.</li> </ul>
<p>Investmet Limited (In Liquidation)</p>	<p>Rob Brauer and Rob Kirman were appointed Liquidators of Investment (In Liquidation) (<b>Investmet</b>) by the Federal Court of Western Australia on 19 February 2020..</p> <p>Helios and MFFT are related to Investmet by way of:</p> <ul style="list-style-type: none"> <li>▪ The common involvement of Michael Fotios who was a director of Investmet, is recorded as a shareholder of Investmet (in an unknown capacity) and is the former Trustee and a beneficiary of the MFFT; and</li> <li>▪ Loans / trade creditors payable by Investmet to MFFT of \$80,328.</li> </ul>	<p>We do not believe this relationship results in a conflict of interest or duty because:</p> <ul style="list-style-type: none"> <li>▪ Clause 6.11 of the ARITA Code of Professional Practice provides that, whilst the potential for a conflict of interest may arise in 'group' circumstances, this must be considered in light of the commercial and practical benefits of a mutual liquidator being appointed;</li> <li>▪ The Administrators are of the view that appointment to both companies will have benefits to the conduct of the appointment, including cost-savings and enabling an as accurate as possible view to be obtained of the activities and financial position of the companies as a whole; and</li> <li>▪ The loans and monies owing between Helios and Whitestone do not appear to be disputed and are unlikely to be contentious. Should this not be the case, there are remedies that would be considered and implemented to resolve any potential conflict.</li> </ul>



**D. Indemnities and up-front payments**

We have not received any up-front payments or indemnities for this appointment. This does not include any indemnities I may be entitled to under the law.

Dated: 24 August 2021

Handwritten signature of Rob Kirman in black ink.

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**Rob Kirman, Liquidator**

Handwritten signature of Rob Brauer in black ink.

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**Rob Brauer, Liquidator**

Note:

1. The assessment of independence has been made based on an evaluation of the significance of any threats to independence and in accordance with the requirements of the relevant legislation and professional Standards.
2. If the circumstances change or new information is identified, we are required under the Corporations Act 2001 and the ARITA Code of Professional Practice to update this Declaration and provide a copy to creditors with our next communication, as well as table a copy of any replacement Declaration at the next meeting of the insolvent's creditors. For Creditors' Voluntary Liquidations and Voluntary Administrations, this document and any updated versions of this document are required to be lodged with ASIC.
3. Please note that the presentation of the above information is in accordance with the standard format suggested by ARITA.