



Australian Government

Takeovers Panel

**Reasons for Decision
Gascoyne Resources Limited 02R
[2021] ATP 11**

Catchwords:

Decline to conduct proceedings – scheme of arrangement – lock-up device – fiduciary out – superior proposal – jurisdiction – disclosure

Corporations Act 2001 (Cth), section 602

Gascoyne Resources Limited [2021] ATP 10

Interim order	IO undertaking	Conduct	Declaration	Final order	Undertaking
NO	NO	NO	NO	NO	NO

INTRODUCTION

1. The Panel, Kelvin Barry, Diana Nicholson (sitting President) and John O’Sullivan, declined to conduct proceedings on an application by Westgold seeking a review of the Panel’s decision in *Gascoyne Resources Limited*.¹ Gascoyne had entered into a scheme implementation agreement to merge with Firefly by way of a Firefly scheme of arrangement. Westgold submitted (in effect) that without Gascoyne having a termination right, the presence of a ‘fiduciary out’ to the no talk restriction on Gascoyne was illusory and unacceptable. The Panel considered that in the circumstances there was no reasonable prospect that it would declare the circumstances unacceptable.
2. In these reasons, the following definitions apply.

Firefly	Firefly Resources Limited
Firefly Scheme	The scheme of arrangement whereby Gascoyne would acquire 100% of the fully paid ordinary shares in Firefly, with Firefly shareholders to receive 0.34 Gascoyne shares for each Firefly share
Firefly Scheme Meeting	The meeting convened to approve the Firefly Scheme, originally scheduled for 2pm (WST) on 21 October 2021 and postponed to 2pm (WST) on 27 October 2021
Gascoyne	Gascoyne Resources Limited
Gascoyne 13 October 2021 Announcement	has the meaning given in paragraph 11

¹ [2021] ATP 10

Takeovers Panel

Reasons - Gascoyne Resources Limited 02R [2021] ATP 11

Gascoyne Competing Proposal	as defined in the SID, see paragraph 4(b)
Gascoyne Superior Proposal	as defined in the SID, see paragraph 4(a)
NBIO	has the meaning given in paragraph 5
SID	The Scheme Implementation Deed entered into between Gascoyne and Firefly in relation to the Firefly Scheme dated 15 June 2021
Westgold	Westgold Resources Limited
Westgold Offer	has the meaning given in paragraph 9
Westgold Revised Offer	has the meaning given in paragraph 17

FACTS

3. Gascoyne is an ASX listed mining company (ASX code: GCY).
4. On 16 June 2021, Gascoyne announced that it had agreed to merge with Firefly by way of the Firefly Scheme and released the SID.² The provisions of the SID are discussed in detail in the initial Panel's reasons.³ In summary:
 - (a) The SID contains mutual exclusivity provisions including 'no talk' restrictions. The 'no talk' restriction on Gascoyne is subject to a 'fiduciary out' which applies if (among other things) the Gascoyne Board determines in good faith, after consultation with its advisers, that an actual, proposed or potential competing proposal for Gascoyne is a superior proposal (defined in the SID as a **Gascoyne Superior Proposal**⁴).
 - (b) In certain circumstances where the Gascoyne Board promotes a Gascoyne Superior Proposal, Firefly has a termination right. Gascoyne does not have a corresponding termination right for its benefit in respect of a competing proposal for Gascoyne (defined in the SID as a **Gascoyne Competing Proposal**).
 - (c) Gascoyne must pay the break fee (\$500,000 (excluding GST)) to Firefly if Gascoyne announces (in summary) a Gascoyne Competing Proposal that is publicly recommended, promoted or otherwise endorsed by the Gascoyne Board or a Gascoyne director on the basis that the Firefly Scheme not proceed. Clause 12.7 of the SID in effect limits liability under the SID to the break fee, except "*in the case of any payment required to be made by a party for a Claim arising from wilful misconduct designed to frustrate or delay the Transaction or fraud*".

² In connection with the Firefly Scheme, Gascoyne and Firefly also intend to undertake a demerger of certain of their assets. The proposed demerger is not relevant for present purposes.

³ See *Gascoyne Resources Limited* [2021] ATP 10 at [4] to [8]

⁴ See further *Ibid.*, at [5] in relation to what constitutes a Gascoyne Superior Proposal

Takeovers Panel

Reasons – Gascoyne Resources Limited 02R [2021] ATP 11

5. On 17 August 2021, Westgold delivered a confidential non-binding indicative offer to acquire 100% of the Shares in Gascoyne (**NBIO**) to the Chair of Gascoyne. The NBIO provided that Westgold would offer 1 Westgold share for every 4 Gascoyne shares and included conditions, including a 90% minimum acceptance condition.
6. On 24 August 2021, Gascoyne wrote to Westgold advising receipt of the NBIO and that following consultation with its advisers, the Gascoyne Board had unanimously determined that the Westgold proposal contained in the NBIO was not a Gascoyne Superior Proposal.
7. Also on 24 August 2021, Gascoyne announced that it had received an unsolicited, non-binding and indicative proposal from the Rivet Group, involving the acquisition of the gold rights of Rivet Group's 100%-owned Snake Well gold project. The proposal was conditional on the Firefly Scheme not proceeding. Gascoyne stated that its Board had unanimously determined that Rivet Group's proposal *"was not a superior proposal to the merger with Firefly"*.
8. On 7 September 2021, Gascoyne announced that on 6 September 2021 the Supreme Court of Western Australia had made orders approving the despatch of the scheme booklet in relation to the Firefly Scheme and had ordered the convening of the Firefly Scheme Meeting for 2pm (WST) on 21 October 2021.
9. On 30 September 2021, Westgold announced its intention to make an off-market takeover offer for the issued shares in Gascoyne, offering 1 Westgold share for every 4 Gascoyne shares (**Westgold Offer**). The Westgold Offer is conditional on, among other things, the Firefly Scheme not proceeding, including because of the *"valid termination of the Scheme Implementation Deed for the Firefly Scheme"*.
10. Also on 30 September 2021, Gascoyne announced the receipt of the Westgold Offer, stating (among other things) that the Board was not yet in a position to make a formal recommendation to shareholders.
11. On 13 October 2021, Gascoyne released an announcement titled 'Updated Business Plan and REJECT Westgold Offer' (**Gascoyne 13 October 2021 Announcement**), which included its recommendation to Gascoyne shareholders that they reject the Westgold Offer, stating that (among other things):
 - (a) The Westgold Offer *"undervalues Gascoyne shares and does not represent a superior alternative for Gascoyne shareholders when compared to the Scheme"* and *"is opportunistic in its timing and made at a time when material information was not available to Gascoyne shareholders"*.
 - (b) *"In relation to the Scheme with Firefly, the SID includes customary "no talk" restraints on Gascoyne's ability to engage with Westgold in relation to the Offer (which would be a Competing Proposal under the SID because it is conditional on Gascoyne announcing that the Scheme is not proceeding). The SID allows the Gascoyne Board to engage with a proponent of a Competing Proposal if the Board determines that the proposal is or could become a Superior Proposal and the Board determines that complying with the restrictions would amount to a breach of the Gascoyne directors' fiduciary or statutory duties. As a result of the Board determining that the Offer by Westgold is not a Superior Proposal as contemplated by the SID, these "no talk" restraints will continue*

Takeovers Panel

Reasons – Gascoyne Resources Limited 02R [2021] ATP 11

to apply to Gascoyne meaning the Company is contractually restricted from engaging with Westgold in relation to the current Offer.”

- (c) Gascoyne’s largest shareholder, “Deutsche Balaton AG, which holds approximately 22.1% of Gascoyne has stated that it does not intend to accept the Westgold Offer in the absence of a superior proposal”.
12. Also on 13 October 2021, Westgold made its initial application to the Panel, submitting (among other things) that the ‘fiduciary out’ to the exclusivity provisions in the SID was “ultimately illusory and does not achieve what it is intended to achieve (i.e. an ability for the Gascoyne Board to support a superior offer to the Scheme which requires the Scheme to not proceed)”, in particular Gascoyne “has no express contractual ability of its own volition to in fact terminate the Scheme and instead would need to argue that there exists some form of implied right of termination where such termination would be in accordance with their equitable fiduciary obligations to Gascoyne Shareholders”.
13. On 15 October 2021, Firefly announced that it had released supplementary disclosure in relation to the Firefly Scheme and that the Firefly Scheme Meeting had been postponed to 2pm (WST) on 27 October 2021.
14. On 18 October 2021, Westgold made an announcement attaching a copy of its bidder’s statement and noting that it had lodged its bidder’s statement with ASIC on 15 October 2021. The Chairman’s letter in the bidder’s statement included the following statement:
- “In recognition of this clear value proposition, Westgold has received supportive correspondence from key Gascoyne shareholders led by 10.04% shareholder First Sentier. First Sentier has stated that it considers the Westgold Offer to be superior to the Firefly Scheme and has directly advised the Gascoyne Board of its position in this matter.”*
15. Also on 18 October 2021, Gascoyne released an ASX announcement noting the lodgement of Westgold’s bidder’s statement and stating that it continued to recommend that shareholders reject the Westgold Offer.
16. On 22 October 2021, the initial Panel announced that it had declined to conduct proceedings in relation to Westgold’s application stating that (among other matters, footnote omitted) “in light of the Gascoyne Board having determined that Westgold’s proposed takeover offer for Gascoyne is “not a Superior Proposal as contemplated by the SID”, there was no reasonable prospect that it would make a declaration of unacceptable circumstances”.
17. On 25 October 2021, (now some 4 months after the Firefly Scheme was announced and with the Firefly Scheme Meeting scheduled for 27 October 2021) Westgold announced that:
- (a) it would increase its offer to 3 Westgold shares for every 11 Gascoyne shares if Westgold obtains a relevant interest in at least 50.1% of Gascoyne shares by no later than 7pm Sydney time on the closing date of the offer and
- (b) if the Firefly Scheme does not proceed, once Westgold received a relevant interest in at least 50.1% it intended to immediately declare its bid unconditional (**Westgold Revised Offer**).

Takeovers Panel

Reasons – Gascoyne Resources Limited 02R [2021] ATP 11

18. Also on 25 October 2021, Gascoyne made an announcement noting Westgold's announcement and stated, among other things, that "*The Company is currently reviewing the Westgold Announcement and will shortly be able to provide a recommendation to shareholders in respect of the Updated Offer.*" (emphasis added).

APPLICATION

19. On 25 October 2021, Westgold sought the President's consent for leave to review the initial Panel's decision in *Gascoyne Resources Limited* and submitted its review application, submitting (among other things) that:
- (a) The Gascoyne Board in the discharge of their fiduciary duties, are required to reconsider their prior position, given the announcement of the Westgold Revised Offer.
 - (b) There is an apparent tension between the Gascoyne Board considering whether the Westgold Revised Offer is superior to the Firefly Scheme (and potentially triggering the payment of the break fee) and not having an express right to terminate the Firefly Scheme. "*It is expected that this tension contributes to the Gascoyne Board's (and its advisors) overall consideration of whether the Applicant's offer is or could reasonably become a 'Gascoyne Superior Proposal'. It is [Westgold's] view that in this scenario the Gascoyne Board has a clear ability to enliven its 'fiduciary-out' to the 'no shop-no talk' restrictions applicable to it under the SID however as is the subject of the Application the effect of the 'fiduciary-out' is illusory, and in Westgold's submission unacceptable as it relates to the affairs of Gascoyne.*"
20. The President consented to the review application being made.

Interim orders

21. The Firefly Scheme Meeting was scheduled for 27 October 2021. Westgold confirmed that it sought an interim order that the Firefly Scheme Meeting be adjourned, deferred, or postponed until a date not less than 14 days after the conclusion of the Panel proceedings the subject of its review application.
22. Submissions were sought from the parties in relation to Westgold's request for an interim order and in effect whether the review Panel should instead consider (if necessary) making an interim order requiring Firefly to defer the Court hearing to approve the scheme (scheduled for 1 November 2021).
23. Firefly submitted that the Panel did not have any jurisdiction to either defer the court ordered Firefly Scheme Meeting or require Firefly to seek a deferral of the Court hearing to approve the scheme, stating (among other things) that:
- "With respect to the Panel's view that it has the ability to make an interim order requiring Firefly to defer the Court hearing to approve the Firefly scheme, the effect of making such an order would be to prevent Firefly from exercising rights, and complying with judicial orders, which are governed by the exclusive jurisdiction of the Supreme Court."*
- "The Panel does not have any jurisdiction to, and is prohibited from preventing or otherwise imposing pressure on Firefly not to exercise such rights in this Court."*

Takeovers Panel

Reasons – Gascoyne Resources Limited 02R [2021] ATP 11

24. Gascoyne submitted that we had time before the Court hearing to approve the scheme “to consider any interim orders including requiring Firefly to defer the court hearing to approve the scheme”.
25. Westgold also submitted in effect that it would be satisfied if we decided to only make an interim order that Firefly seek a deferral of the Court hearing to approve the scheme. It submitted that it considered that “once the Firefly Scheme has reached the Second Court hearing, it may become difficult for the Panel to fashion an appropriate order as sought by the Review Application (and therefore preservation of status quo ought dictate a deferral of the Second Court hearing to allow the Review Panel proceedings)”.
26. We decided that, even if it were possible, it was not necessary to make an interim order deferring the Firefly Scheme Meeting as the Firefly Scheme Meeting of itself did not conclude the Firefly Scheme. Further, as we have decided not to conduct proceedings prior to the Court hearing to approve the scheme, we did not need to consider whether we should make an interim order that Firefly apply to the Court to defer the Court hearing to approve the scheme (although we are of the preliminary view that we could have made such an interim order while leaving the ultimate decision of whether to defer the hearing to the Court).
27. In light of the review application and the impending Firefly Scheme Meeting, to ensure all stakeholders were fully informed we decided on 27 October 2021 (prior to the Firefly Scheme Meeting) to issue a media release stating that we declined to make an interim order deferring the Firefly Scheme Meeting and that we were still considering whether to conduct proceedings.

DISCUSSION

28. Late on 26 October 2021, Westgold announced that NRW Holdings Limited (a 14.71% shareholder of Gascoyne) had stated that, in the absence of a superior proposal emerging (determined by NRW Holdings Limited in its discretion), its current intention was to accept the Westgold Revised Offer.
29. On 27 October 2021 and after we announced that we had decided not to make an interim order deferring the Firefly Scheme Meeting, Gascoyne made an announcement noting NRW Holdings Limited’s intention statement and disclosing the following (emphasis in the original):

*“Furthermore, Gascoyne has also received a letter on 26 October 2021 from the Company’s major shareholder, Deutsche Balaton Aktiengesellschaft (“**Deutsche Balaton**”) in relation to the Westgold Offer. Deutsche Balaton has indicated that it holds 55,461,462 Gascoyne shares, representing 22.09% of the Company’s issued capital.*

The letter states that:

- *Its previous intention statement that it does not intend to accept the Westgold Offer, in the absence of a superior proposal (as referred to in the Company’s announcement of 13 October 2021) no longer applies and that Deutsche Balaton reserves its rights in respect of the Westgold Offer;*

Takeovers Panel

Reasons – Gascoyne Resources Limited 02R [2021] ATP 11

- *Deutsche Balaton does not support the carrying out of the scheme of arrangement (“Scheme”) with Firefly Resources Limited (“Firefly”), as they do not believe that transaction is in the best interests of Gascoyne shareholders;*
- *Deutsche Balaton is aware that Westgold has applied for a review of the application it made to the Takeovers Panel and that they want the Takeovers Panel to assist Gascoyne shareholders by ensuring the scheme implementation deed (“SID”) with Firefly is amended to the extent necessary; and*
- *Deutsche Balaton considers that the Westgold Offer is superior to the Firefly Scheme.*

*The Company continues to review the Westgold Offer and is taking advice from its legal and financial advisors. In addition to assessing the value of the Westgold Offer, the Company and its advisors are undertaking a comprehensive assessment of the ability of the Westgold Offer conditions to be met, most notably the condition contained in section 7.2(a) of the Westgold Bidder’s Statement regarding the Firefly Scheme not proceeding including as a result of the valid termination of the SID. Until such time as Gascoyne completes its review, Gascoyne reiterates shareholders should **TAKE NO ACTION** in relation to the Westgold Offer.”*

30. Shortly after the Firefly Scheme Meeting, Firefly announced that the resolution to approve the scheme had passed with 92.96% of Firefly shareholders present and voting and 99.64% of the total number of votes cast voting in favour.
31. Notwithstanding that we did not order that the Firefly Scheme Meeting be deferred, we were concerned that Gascoyne, despite advising that its directors would “*shortly be able to provide a recommendation to shareholders*” in its announcement of 25 October 2021, did not inform its shareholders by the time of the Firefly Scheme Meeting whether the Westgold Revised Offer was a Gascoyne Superior Proposal, noting that three of its shareholders holding in aggregate 46.84% of the total number of shares on issue had stated or implied that they supported the Westgold Offer or Westgold Revised Offer – namely First Sentier (see paragraph 14), NRW Holdings Limited (see paragraph 28) and Deutsche Balaton Aktiengesellschaft (see paragraph 29).
32. We decided to ask Gascoyne some questions and accepted further preliminary submissions from Firefly and Westgold.
33. It is conceivable that a company that is ‘in play’ may decide to make a bid for another company, thereby locking itself up in an unacceptable manner. We asked Gascoyne whether it had been in receipt of any indications or proposals from potential bidders, or was otherwise aware of potential third-party interest in a control transaction or other material transaction involving Gascoyne or its assets, at the time it entered into the SID or in the previous 3 months.
34. Gascoyne submitted (in summary) that, in addition to the discussions with Westgold discussed above, it had:
 - (a) received an indicative proposal to merge with another entity in late April 2021 and

Takeovers Panel

Reasons – Gascoyne Resources Limited 02R [2021] ATP 11

- (b) had discussions with another entity for a potential three-way merger between Gascoyne, Firefly and the other entity in April 2021, each of which Gascoyne determined not to proceed with at that time.⁵
35. We consider there is insufficient material before us to conclude that the entry into the SID itself had some defensive purpose.
36. We asked Gascoyne whether its Board considered the Westgold Revised Offer a Gascoyne Superior Proposal and to comment on both its consideration of value and conditionality. Gascoyne submitted that:
- (a) *“The Gascoyne board is continuing to obtain advice from its corporate and financial advisers who are undertaking a comprehensive assessment of the value of the Revised Westgold Proposal vis a vis a post-merger Gascoyne (which holds Firefly assets).”*
 - (b) *“The Gascoyne board’s preliminary view, taking into account advice received to date from its corporate and financial advisers, is that the Revised Westgold Proposal is superior to the scheme with Firefly in terms of value for Gascoyne shareholders.”*
 - (c) The current Westgold offer is conditional on the Firefly Scheme not proceeding.
 - (d) Given the statements from NRW Holdings Limited, Deutsche Balaton and First Sentier, *“the Gascoyne board considers that if the Firefly Scheme Condition is satisfied, there would be a high probability of the Westgold proposal being “reasonably capable of beingcompleted in a reasonable timeframe” (a consideration for whether the Revised Westgold Proposal is a Superior Proposal for the purposes of the SID).”*
 - (e) *“The Gascoyne board therefore considers that the Revised Westgold Proposal is a Gascoyne Superior Proposal if the Firefly Scheme Condition is satisfied.”*
37. On Friday, 29 October 2021, a day after Gascoyne made the submission above, it made an announcement noting the Westgold Revised Offer. The announcement again made no comment in relation to whether the Westgold Revised Offer was a Gascoyne Superior Proposal but stated that (emphasis in the original):
- “Gascoyne reminds shareholders that the Westgold Offer remains subject to the condition that the proposed scheme of arrangement with Firefly Resources Limited does not proceed. Gascoyne notes that it is not currently possible to determine if this condition is capable of being satisfied. The matter is currently before the Takeovers Panel and there is a separate Court hearing scheduled for 1 November 2021 to consider the approval of the Firefly scheme.*
- Until the status of this condition of the Westgold Offer is known, Gascoyne reiterates that shareholders should TAKE NO ACTION in relation to the Westgold Offer.*
- If you accept the Westgold Offer prior, you will give up your right to sell your Gascoyne shares on the ASX or otherwise deal with your Gascoyne shares while the Westgold Offer remains open and you will only have limited rights to withdraw your acceptance of the Westgold Offer as set out in section 4.2(g) of the Bidder’s Statement.***

⁵ Gascoyne did not refer to the unsolicited, non-binding and indicative proposal from the Rivet Group discussed in paragraph 7 above

Takeovers Panel

Reasons – Gascoyne Resources Limited 02R [2021] ATP 11

The Board of Gascoyne will keep shareholders fully informed of further developments as they occur.”

38. We understand that it was difficult for Gascoyne, having determined that the Westgold Offer was superior in value, to state (in order to satisfy the definition of Gascoyne Superior Proposal) whether the Westgold Offer was reasonably capable of being completed while it remained committed to the Firefly Scheme. However, while not strictly relevant to our reasons not to conduct proceedings, we consider it is disappointing that Gascoyne delayed in informing its shareholders that the Westgold Revised Offer would be a Gascoyne Superior Proposal if the Firefly Scheme Condition was satisfied.⁶
39. Firefly submitted to the initial Panel that:
- “By clause 13.1(c)(1), the right to terminate for support of a Gascoyne Competing Proposal is Firefly’s right, which it secured in order to justify its costs and Board’s focus in pursuing the transaction. If a Gascoyne Competing Proposal is supported by Gascoyne, then Firefly gets to choose to terminate or not, amongst other potential remedies. That is, a choice of whether or not its merger with Gascoyne, with that Gascoyne Competing Proposal, is best for Firefly’s shareholders. There is nothing novel or unprincipled about this. The commercial and legal balance has been fairly struck, including for certainty for Firefly, its board and shareholders.”*
40. We asked Gascoyne whether it agreed with Firefly’s submission. Gascoyne submitted among other things that:
- (a) *“Gascoyne is not able to comment on the protections that Firefly sought to secure for itself or its shareholders by having a right to terminate the SID as contemplated by clause 13.1(c)(1).”*
- (b) *“Gascoyne negotiated the SID in good faith, having regard to the best interests of Gascoyne and its shareholders (as a whole) at the relevant time and alongside its legal and financial advisers.”*
- (c) *“The initial draft of the SID did not include a termination right in favour of Firefly as contemplated by clause 13.1(c)(1). Gascoyne considered that agreeing to the termination rights framework in the SID in these circumstances was appropriate as part of the overall commercial bargain struck between the parties at the relevant time, including having regard to the parties’ mutual commitment at the time of entering into the SID to implement the scheme.”*
41. Firefly submitted in response (among other things) that:
- “Gascoyne has entered into the legally binding SID after taking advice and which includes clauses which were negotiated at arm’s length between sophisticated parties... Westgold’s complaints ignore that the SID is... also about Firefly’s rights.”*

⁶ On 29 October 2021, after we communicated our decision, Gascoyne announced (among other things) that *“Following a comprehensive assessment in consultation with its financial and legal advisors, the Board of Gascoyne has determined that if the Westgold Offer was capable of being completed it would be superior in value for Gascoyne shareholders compared to completing the [Firefly Scheme]”*.

Takeovers Panel

Reasons - Gascoyne Resources Limited 02R [2021] ATP 11

42. In considering whether to conduct proceedings, we consider that the following matters are relevant:
- (a) There is no material to suggest that the SID was not negotiated on arm's length terms and to make any order giving Gascoyne a termination right under the SID would affect the rights of Firefly shareholders.
 - (b) The terms of the SID have been publicly known since June 2021.
 - (c) Gascoyne has not submitted to us, or submitted to the initial Panel, that we should make an order allowing it to terminate the SID.
43. We note the initial Panel expressed concern about the presence of the fiduciary out to a no talk restriction in the SID with no corresponding termination right and how the market interpreted Gascoyne's ASX announcements in light of this.⁷ Given we have decided not to conduct proceedings, we did not need to consider this issue further.
44. While the SID has become problematic for Gascoyne, there is insufficient material presented to us to warrant interfering with the commercial position that the boards of Gascoyne and Firefly agreed to when the SID was entered into.
45. For completeness, we note that Gascoyne advised us that it intended to brief the court in relation to the matters the subject of the application at the second court hearing. Firefly also advised us that it was prepared to raise the subject matter at the second court hearing.

DECISION

46. For the reasons above, we do not consider that there is any reasonable prospect that we would make a declaration of unacceptable circumstances. Accordingly, we have decided not to conduct proceedings in relation to the application under regulation 20 of the *Australian Securities and Investments Commission Regulations 2001* (Cth). Given that we have decided not to conduct proceedings, we do not (and do not need to) consider whether to make any interim or final orders.
47. We also note for completeness that we agree with the initial Panel's comments in relation to the Panel's jurisdiction. Similarly, like the initial Panel, we do not (and do not need to) consider whether to extend time for the purposes of section 657C given that we have not conducted proceedings.⁸

Diana Nicholson
President of the sitting Panel
Decision dated 29 October 2021
Reasons given to parties 13 January 2022
Reasons published 18 January 2022

⁷ Noting that Gascoyne's announcements regarding the Westgold Offer did not clearly disclose the fact that Gascoyne had no right to terminate the Firefly Scheme even if it determined that the Westgold Offer was a Gascoyne Superior Proposal

⁸ See *Gascoyne Resources Limited* [2021] ATP 10 at [33] to [35]

Takeovers Panel

Reasons - Gascoyne Resources Limited 02R
[2021] ATP 11

Advisers

Party	Advisers
Westgold Resources Limited	HopgoodGanim Lawyers
Gascoyne Resources Limited	Herbert Smith Freehills
Firefly Resources Limited	HWL Ebsworth Lawyers