



**In the matter of Ranger Minerals Limited  
[2002] ATP 11**

**Catchwords:**

*Misleading and deceptive statements in letter accompanying supplementary bidder's statement – competing scheme of arrangement proposal – no reasonable grounds for forward looking statements – use of other analysis – non-disclosure of assumptions and limitations of analysis – disclosure of consent – orders to rectify serious false representation made by bidder*

*Corporations Act 2001 (Cth), sections 602, 670A, 636(2) and 657A*

**An application under section 657C of the Corporations Act by Ranger Minerals Limited for a declaration of unacceptable circumstances and orders concerning the statements made by Revesco Group Limited in relation to a takeover bid for Ranger by Revesco. The Panel declared that the statements constituted unacceptable circumstances in relation to the affairs of Ranger.**

**STATEMENT OF REASONS FOR DECISION**

1. The sitting Panel comprises Peter Cameron (sitting President), Maria Manning (sitting Deputy President) and Les Taylor.
2. On 20 June 2002, Ranger Minerals Limited (**Ranger**) applied to the Panel for a declaration of unacceptable circumstances and orders. The application was in relation to statements made by Revesco Group Limited (**Revesco**) in a letter from the Chairman of Revesco (**Letter**) which accompanied a supplementary bidder's statement dispatched by Revesco to Ranger shareholders on 17 June 2002.
3. On 24 June 2002, the Panel decided to conduct proceedings, pursuant to ASIC regulation 20.
4. The Panel made and published its decision on 15 July 2002.
5. These are our reasons for our decision to:
  - a. make a declaration of unacceptable circumstances under section 657A of the Corporations Act (the **Act**);
  - b. order that Revesco retract and correct certain misleading statements made by it; and
  - c. order that all acceptances by Ranger shareholders of Revesco's offer made after the making of the statements be cancelled, with those Ranger shareholders being given an opportunity to accept once they are given corrected information.

## SUMMARY

6. Shareholders in Ranger were being asked to compare the merits of the Revesco bid for Ranger and the alternative of a merger by scheme of arrangement proposed between Ranger and Perilya Limited (**Perilya**). Perilya had purchased the North and South Mines at Broken Hill (**Broken Hill Mine**).
7. The Letter was one of a series of correspondences from both Revesco and Ranger. It contained a number of statements that independent analysis confirmed Revesco's view that the Broken Hill mine is cash flow negative at current A\$ metal prices.
8. Revesco sought to base these statements on reconstructions by PKF Corporate Advisory Services (WA) Pty. Ltd. (**PKF**) of financial models used in two stockbrokers' research reports. The statements are based on a series of assumptions. However:
  - a. not all of these assumptions were disclosed;
  - b. PKF did not have access to the methodology and models used by the brokers;
  - c. PKF was therefore unable to make the recalculations on a reliable or systematic basis; and
  - d. PKF performed no sensitivity analyses.
9. The statements assert that independent analysts have considered the relevant assumptions and applied their own models and that they agree with Revesco's view. The Panel considers the statements to be false in fact.
10. The Panel decided that the statements were seriously false and misleading, they had been widely published and they were highly likely to have influenced a shareholder in making a decision as to whether they should accept the offers made under the Revesco bid.
11. The Panel considered that rebuttal by Ranger of the false statements would be insufficient. It required Revesco to make a specific retraction and clear explanation of the falsity of the statements.
12. The Panel considered that it would be unsafe to rely on shareholders' acceptances after the date of the Letter. The Panel considered that the appropriate action was to cancel contracts resulting from acceptances after the date of the Letter and give shareholders the right to elect to confirm their acceptance once they had accurate and truthful information before them.
13. The Panel also decided that the period of Revesco's bid should be extended by two weeks to allow time for shareholders to receive adequate and reliable information.

**APPLICATION**

14. Ranger applied to the Panel under section 657C of the Act for:
  - a. A declaration of unacceptable circumstances in relation to the dispatch of the Letter;
  - b. A declaration that the dispatch of further information with content similar to the references in the Letter to the independent support of Revesco's view would constitute unacceptable circumstances; and
  - c. Such remedial, further or other orders as the Panel deemed fit.
15. Ranger submitted that the statements in the Letter did not give Ranger shareholders enough information to enable them to assess the merits of the Revesco bid and did not contain all of the information material to their decision in light of the policy of sections 602 and 657A of the Act.
16. The application is made in the context of shareholders in Ranger being asked to compare the merits of the Revesco bid for Ranger and the alternative of a merger by scheme of arrangement proposed between Ranger and Perilya. At the time of the application, the Revesco offer period was due to close on 1 July 2002. This was extended until 5 July 2002 by way of an undertaking from Revesco, in order to allow time for the Panel to conduct proceedings. At the time of the application, Ranger indicated that an independent expert's report assessing and comparing the Perilya scheme and Revesco offer would be available in late June 2002; the Ranger shareholders' meeting to vote on the scheme of arrangement was expected to be held in late July 2002.

**BACKGROUND**

17. On 18 April 2002, Revesco announced a scrip bid for Ranger. Ranger has cash, liquid assets, and investments, but operates no business of its own. On 27 May 2002, Ranger announced that it had entered into an agreement to merge with Perilya by way of a scheme of arrangement. The board of Ranger said that the Perilya merger was more attractive than the Revesco bid; Revesco argued that the merger offered less value for Ranger shareholders.
18. Perilya has purchased the Broken Hill Mine from Pasminco Limited (Administrators Appointed), and proposes to develop them. Once they are in full production again, they will be the major part of Perilya's business. It will need to raise funds for the purpose. Perilya's own projections are that with changes to mining methods and wages costs, it can become a low-cost producer of zinc and lead at Broken Hill.
19. Two stockbroking firms Euroz Securities Limited (**Euroz**) and Paterson Ord Minnett Limited (**POM**) published broadly consistent projections in relation to Perilya. Both brokers' reports were positive for Perilya's prospects, and for Perilya's acquisition of the Broken Hill Mine. However, both those positive assessments were based on the brokers' assumptions of metal prices increasing

above the then existing prices, and no materially adverse currency moves. For example the Zinc price at which POM predicted that, even with Perilya's proposed cost reductions, the mines would become earnings positive was US\$0.41/lb, whereas the metal prices that were current at the time of the Revesco Letter were around US\$0.35/lb. POM's sensitivity graph (in its report of 29 April 2002) predicted an NPV break even point for the Broken Hill mine, using existing US\$:A\$ exchange rates (approximately US\$/A\$ \$0.52), at a Zinc price of US\$0.36/lb. That was above the then existing price of US\$0.345/lb. However, Euroz's report (May 2002) stated that with Perilya's forecast operating costs to fall to US\$0.33/lb for Zinc, and using then current exchange rates, a positive EBITDA was achievable. Each broker, however, predicted that \$A metal prices would rise over the period and that the mines would be profitable and generate cash.

20. Mr. Ian Trahar is the Chairman of Revesco. He continued, through the application, to be a director of Ranger, and had been until the Revesco bid, chairman of Ranger.

## THE LETTER

21. In the course of a series of exchanges over the relative merits or demerits of the Revesco offer, the Perilya merger, and the Broken Hill investment, Revesco wrote the Letter to Ranger shareholders. The Letter said that independent analysis, checked by PKF, showed that "at current zinc and lead prices, and with the current value of the Australian dollar", the Broken Hill mines would be cash flow negative, and would deplete the cash reserves of the merged Perilya/Ranger within two years. The Letter named PKF, with its consent, but not the independent analysts. The analysis used was in fact research by Euroz and POM. Ranger had mentioned the brokers' projections in its second supplementary target's statement lodged with ASIC on 10 June 2002, also without naming them. Perilya's web site did identify POM as brokers who had provided advice on Perilya and Ranger, and provided copies of POM reports. It was common ground that Revesco had used Euroz and POM's published reports, and had derived the brokers' views only from those public data.
22. What Revesco had done was to ask PKF to reconstruct the brokers' models for Perilya/Ranger from the published projections and then to recalculate the projections for the years to June 2003 and June 2004. It asked PKF to use the same assumptions as the brokers, except that Revesco required PKF to assume no change in metal prices or the \$A/\$US exchange rate from those of 10 June 2002 i.e. US\$0.5706 per A\$1.00 and Zinc US\$0.345/lb (US\$772.50/Tonne).
23. PKF undertook the project, using the values Revesco required, but could only do some of the work required. It provided the figures that it could to Revesco. Specifically, Revesco had requested values for fiscal years 2003 and 2004. However, PKF said that it could only construct *reliable* values for fiscal year 2003, not 2004. Additionally, PKF was unable to adjust the Euroz model for Lead prices, and was unable in some cases to adjust the POM model for Lead or Silver prices or exchange rates.

24. PKF took no responsibility for the validity of its reconstruction of the models or the soundness of the assumptions. Indeed, in its report to Revesco it said that it wished “to emphasize the potential inherent limitations of the procedures that we [PKF] have undertaken”. In this respect its consent to be quoted should have been qualified. Indeed, in PKF’s report to Revesco it expressly stated that the reconstructions had limitations and there were wide discrepancies between them and the brokers’ own sensitivity analyses
25. PKF expressly stated that it had not adjusted for any of:
  - operating costs;
  - capital costs;
  - production levels;
  - treatment and refining costs;
  - depreciation, royalties, overheads and interest; and
  - (in some cases) metal prices and exchange rates.
26. However, based on the criteria set by Revesco, PKF’s analysis was that the brokers’ reports suggest that they would agree that the mines would be unprofitable at present \$A metal prices. Ranger submitted that PKF’s failure to adjust for the other variables in the brokers’ models made even this conclusion unreliable and erroneous.

## **APPLICATION AND SUBMISSIONS**

27. Ranger complained that the statement in Revesco’s letter held out that the brokers and PKF had forecast that the Broken Hill mines would lose money for the merged entity, whereas the brokers had predicted positive cash flow and a profit and PKF had made no forecast at all. The complaint was about the alleged independent support for Revesco’s view. By contrast, in another letter from Revesco to Ranger shareholders on 5 June, Revesco clearly stated that references to future profitability were its own opinions and claimed no external support or other basis for them. In addition, the statements in the 5 June letter were not as black and white as those in the 17 June Letter. Both Perilya and Ranger sent responses to Ranger shareholders in response to Revesco’s 5 June letter.
- 28.
29. Revesco defended the statements on the basis that they were closely and expressly connected with the assumption (which was necessary and sufficient) that current metal prices and exchange rates would continue for the forecast period.
- 30.

31. ASIC submitted that the statements concerning future cash flow and profit could be misleading, in the extended sense, because they were statements about the future which were not supported by reasonable grounds, or in fact, because the assumptions underlying them were not sufficiently disclosed. It regarded the statement that Revesco's analysis was supported by "independent resource investment analysts" as simply untrue and as material. ASIC submitted that the statement should be withdrawn entirely, rather than being qualified and permitted to stand.

### **ARE STATEMENTS IN THE LETTER MISLEADING AND DECEPTIVE?**

32. The first issue that the Panel considered was the nature of the statements in relation to the Broken Hill mine appearing in the Letter which were the subjects of Ranger's application.
33. The Panel agrees with a submission to the Panel by ASIC that the statements are false in fact. The statement that "this view [i.e. that the Broken Hill mine will not be profitable or cash flow positive] is supported by a number of independent resource investment analysts" is, on its face, a plain statement that analysts had turned their mind to this contingency and agreed with Revesco's view as to the effect on Perilya's operations at Broken Hill.
34. The statement that "independent analysis confirms Revesco's view that the Broken Hill mine is cash flow negative at current A\$ metal prices" is a clear statement that when the models used by the independent analysts are applied to the contingency of current A\$ metal prices continuing into the future, those models predict that the Broken Hill mine will be cash flow negative in that contingency. It also implies that the analysts have considered the relevant assumptions and applied their own models to yield this result. The misleading nature of this statement is exaggerated by the fact that Revesco placed the statement, without qualification or explanation, in bold, under the heading "Important Message for Ranger Minerals Shareholders"
35. The statements seem to have been intended to add weight to Revesco's assertion by conveying the (quite false) impression that independent experts had considered and endorsed those views and that an independent international accounting firm (PKF) had (without any disclosed qualification) reviewed and verified the underlying calculations.
36. The brokers' original research reports did not publish sensitivity analyses on the Broken Hill mine cash flow, although they did provide cash flow projections based on their preferred case analyses. The research reports provided sensitivity analyses on the value of Perilya (and in POM's case on the value of the Broken Hill mine as well) for different values of currency rates and metal prices. The sensitivity analysis on page 2 of the Euroz May 2002 report concludes that Perilya would have a modest positive value on assumptions as to the price for zinc and the A\$/US\$ exchange rate which are close to those used by PKF. POM's sensitivity analysis on page 5 of its 29 April 2002 report

shows breakeven earnings (not cash flow) for the mine at prices of about US\$0.40/lb.

37. In submissions, Revesco did not suggest that Euroz and POM had analysed the cash flow for the mine at current prices, or that the brokers expected the Broken Hill mine to be cash flow negative. Revesco's case was that, using its estimates of the models used by the brokers and the conservative assumption that metal prices and the exchange rate would not change, those models predict that the mine will be cash flow negative. The zinc price that Revesco instructed PKF to use was US\$772.5/tonne (i.e. US\$0.345/lb) and the A\$/US\$ exchange rate was 0.57 (i.e. the values that were current as at 10 June 2002).
38. Since Euroz and POM did not perform the analysis proposed by Revesco, and Revesco did not have access to their models, it had to try to reconstruct their models and then apply its preferred parameters to them. PKF did as much of this work as it could for Revesco. PKF did not vouch for any of the assumptions used in the models, or for the models themselves. It attempted to reconstruct the models from the information published by the brokers. In this, it was not entirely successful, being unable to adjust for changes in assumed lead prices, or to produce any figures for the financial year 2004. PKF made no attempt to adjust the other parameters of the brokers' models for the differences in the commercial situation between the scenarios contemplated by the brokers and those contemplated by their adjustments. Nor did it critically review the assumptions of the reconstructed models against currently available information.
39. It follows that the statements, which Revesco sought to base on PKF's reconstructions of the brokers' models, did not represent statements actually made by the brokers. Nor can Revesco say that they represent views at which the brokers would have arrived, had they used Revesco's preferred assumptions in their models. They are literally false, whether in reference to the views actually held by the brokers as to what would happen if current metal prices and exchange rates did not change, or to the conclusions which would emerge from their models, if the same assumptions were used.
40. The misstatement is material. The conclusions of the PKF workings are presented, without the assumptions made in those workings. Those assumptions, and the extent to which they are actually adopted by PKF, are very material to the value of PKF's conclusions. The brokers' reports are confident that they expect the price of zinc to improve over the period to which the forecasts relate. Perilya has published data which indicate that it will be a low-cost zinc producer, if it can achieve its production cost objectives. Ranger has given us data which indicate that other assumptions in the brokers' models would need to be adjusted, if current prices and exchange rates were to be assumed. For example, Ranger point out that the producer's share of the cost of refining zinc is adjusted down as zinc prices fall. Accordingly, it is impossible to base an informed conclusion on PKF's attempt to replicate the brokers'

models, certainly without an explanation of the assumptions, and probably without adjustments to those assumptions as well.

41. The statements are based on a series of assumptions, but not all of these assumptions have been disclosed. The statements are unreasonably absolute, unqualified and aggressive. Because PKF did not have access to the methodology and models used by the brokers, it was unable to make the recalculations on a reliable or systematic basis. PKF performed no sensitivity analyses.
42. The statements were likely to be, and, until corrected, continued to be likely to be materially misleading to Ranger shareholders considering competing proposals for the company. The manner in which the statements were crafted suggest that Revesco was not unaware of the false impression which they were likely to convey.
43. The Panel also considered Revesco's submissions that other statements made by Ranger in relation to the brokers reports were misleading. However in those statements Ranger merely restated the conclusions reached by the brokers. This is not comparable to Revesco's commandeering of the brokers' reports by asserting they supported its position without explaining the material changes it had made in "recalculating" the brokers' figures.

#### **PKF**

44. PKF's report of 12 June did consent to Revesco's use of the statement in the Letter, however its letter assumes very limited acceptance of the figures used in its report. PKF did not confirm the reasonableness of Revesco's assumptions.
45. Further, PKF took pains in its letter to Revesco to "emphasise [to Revesco] the potential inherent limitations of the procedures that we [PKF] have undertaken". Revesco made no reference in the Letter to PKF's warnings, nor did it make any reference to the limitations of the procedures that it had used to achieve the end point numbers which it then cited. It is clearly unacceptable for a bidder to be so carefully warned and then make no disclosure to offerees of such warnings and inherent limitations. It is also unsatisfactory that PKF allowed its name to be used in support of such a defective publication.

#### **Disclosure of Consent**

46. The Panel discussed whether PKF's consent ought to have been disclosed in the Letter and concluded that it should. Even if subsection 636(3) does not extend to a supplementary bidder's statement (which seems unlikely given that that the definition of a bidder's statement embraces such a statement "as supplemented"), as a matter of policy, the requirement to disclose consent in a bidder's statement under subsection 636(2) should not be able to be by-passed by placing the statement in later or supplementary statements or letters relating to the bidder's statement. If this were to be the case, a bidder could easily avoid the operation of and legislative intent underlying subsection 636(2). In the case of statements which are material to a shareholder's decision, failure to disclose



the identity of the maker and the terms of the consent and any relevant qualifications would constitute unacceptable circumstances.

## **DECISION**

47. The Panel decided that the statements were seriously false and misleading, they have been widely published and they were highly likely to have influenced a shareholder in making a decision as to whether they should accept the offers made under the Revesco bid. Accordingly, the Panel considered that it was in the public interest for it to declare that publication of the statements had led to unacceptable circumstances.

## **ORDERS**

48. The Panel considered that it should make orders to allow Ranger shareholders to make their acceptance decisions uninfluenced by the false statements contained in the Letter.

### **Retraction and Correction**

49. The Panel considered that rebuttal by Ranger of the false statements would be insufficient. Rather, it required Revesco to make a specific retraction and clear explanation of the falsity of the statements, so that it was clear that Ranger shareholders should not rely on the unqualified statements in the Letter.

### **Voiding Acceptance contracts**

50. The Panel considered various options for dealing with shareholders who had accepted the offer after the Letter had been issued (and before a competent retraction and clarification). Given that the statements were material and clearly misleading, the Panel decided that merely giving shareholders a right to cancel their acceptances would not be sufficient. It was considered to be unsafe to rely on shareholders' acceptances after the date of the Letter. The Panel considered that the appropriate action was to cancel contracts resulting from acceptances after the date of the Letter and give shareholders the right to elect to confirm their acceptance once they had accurate and truthful information before them.
51. The Panel considered how to deal with shareholders who had accepted the offer after the date of the Letter and had already received their consideration. However, Revesco advised that it had paid no consideration to accepting offerees at the date of the Panel's decision. The Panel therefore sought, and received, an undertaking from Revesco that it would take no steps to complete any contracts with shareholders who had accepted after the date of the Letter, pending the making of, and compliance with, the final orders. If Revesco had not provided an undertaking, an interim order would have been appropriate. This course would minimise the need to unravel the payment of consideration and the issue of securities by Revesco.
52. Because of timing constraints due to the closing date of the bid and the novelty of the procedure, the Panel modified its orders to allow Ranger shareholders to

affirm to their sponsoring brokers their desire to accept the Revesco offer, rather than having to have their securities returned and reaccept in a very narrow time frame. A large majority of the Ranger shareholders who had accepted the Revesco offer affirmed their acceptances.

### **Timing of Payments**

53. The Panel was concerned not to prejudice shareholders who had accepted the offer after the date of the Letter and who wished to confirm their acceptances. The consideration payable to such shareholders could potentially be delayed as a result of the proposed orders. The Panel therefore decided to accelerate payment to such shareholders to minimise the delay and prejudice. In respect of those shareholders, the Panel required Revesco to pay their consideration within the later of:
- a. 7 days of Revesco receiving confirmation that the acceptance was confirmed; or
  - b. the date by which Revesco would have been required to make payment under the original acceptance of the offeree (at the time, that date was likely to be 19 July 2002).

### **Extension of Bid Period**

54. The Panel considered that the period of the bid should be extended to allow time for shareholders to receive adequate and reliable information to make an informed decision, and then, if they wished, to confirm their acceptances.
55. The most appropriate source of this information would be Revesco's retraction and clarification letter. Ranger advised the Panel during the proceedings that the independent expert's report being prepared by KPMG Corporate Finance would be released to Ranger shareholders early on in the confirmation period. This will provide significant further information for Ranger shareholders.
56. The Panel therefore decided that the period of the bid should be extended. The Panel considered that a minimum of an additional two week period after Revesco released its retraction and clarification would be appropriate.

**Peter Cameron**

**President of the Sitting Panel**

**Decision dated 15 July 2002**

**Reasons published 26 September 2002**



**Annexure 1**

CORPORATIONS ACT 2001 - SECTION 657A AND SECTION 657D(2)  
DECLARATION OF UNACCEPTABLE CIRCUMSTANCES AND ORDERS  
IN THE MATTER OF RANGER MINERALS LIMITED

**WHEREAS**

1. Revesco Group Limited (*Revesco*) made offers to acquire all of the issued shares in Ranger Minerals Limited (*Ranger*) on 19 April 2002 (the *Takeover Bid*).
2. Statements contained in a letter accompanying a supplementary bidder's statement dated 17 June 2002 by Revesco to Ranger's shareholders (the *Letter*) were the subject of an application to the Takeover's Panel.
3. The Panel has decided that certain statements appearing in the Letter are likely to mislead shareholders and detract from their ability to decide whether to accept Revesco's bid on the basis of adequate and reliable information.
4. Under section 657A of the Act, the Panel has declared circumstances relating to the affairs of Ranger resulting from the publication of those statements to be unacceptable circumstances.
5. Under section 657D of the Act, the Panel has decided to order that acceptances lodged after the statements were made and before they were retracted be withdrawn.
6. Revesco has undertaken to take no steps to complete any contracts with offerees who have accepted Revesco's offer under the Takeover Bid on or after 17 June 2002 pending compliance with the orders set out below.
7. Revesco on 8 July, at the Panel's direction, retracted the relevant statements by letter to Ranger shareholders and announcement to ASX.

**ORDERS**

Pursuant to subsection 657D(2) of the Act, the Panel makes the following orders:

- (a) Each Participating Organisation of ASX which has after 17 June 2002 and before 8 July 2002 lodged an acceptance of an offer under the bid on behalf of a shareholder must send a Valid Takeover Acceptance Removal

Request message with respect to that acceptance to ASX Transfer and Settlement Corporation Pty Ltd (*ASTC*) by close of business on 17 July 2002 and Revesco must before close of business on 18 July 2002 send a Valid Message to *ASTC* in accordance with the *SCH Business Rules* consenting to the Valid Takeover Acceptance Removal Request, as if the acceptance had been withdrawn under section 650E. The shareholder may accept the offer again.

- (b) Where a shareholder to whose acceptance paragraph (a) applies lodges a fresh acceptance in relation to the shares to which that acceptance related, Revesco must provide all consideration under the bid in relation to those shares to that shareholder within 7 days of the fresh acceptance being received by Revesco, or at the time the consideration would have been required to be provided by subsection 620(2) in relation to the original acceptance, whichever is the later.

**Peter Cameron**

**President of the Sitting Panel**

**15 July 2002**