



Wednesday, 20 February 2008

Golden West Resources Limited 04R – Panel Decision

The review Panel has decided not to make a declaration of unacceptable circumstances in relation to an application from Falak Holding LLC (**Falak**) dated 14 February 2008 (see TP08/04) seeking review of the Panel's decision of 12 February 2008. The initial Panel also decided not to make a declaration of unacceptable circumstances (see TP08/07). Fairstar Resources Limited is currently making an off-market scrip bid (**Offer**) for Golden West Resources Limited (**GWR**).

The initial Panel's decision of 12 February 2008 related to a disputed acceptance of the Offer by Falak of approximately 7.12% of the shares in GWR. These shares were held by ANZ Nominees Limited for Falak. Falak had granted a pledge over the shares to Fortis Banque Luxembourg SA (**Fortis**) and Fortis undertook all communications with ANZ Nominees Limited in respect of the shares. On 7 January 2008 Fortis gave instructions to ANZ Nominees to accept the Offer without receiving instructions from Falak.

Falak submitted that the acceptance was a mistake that gave rise to unacceptable circumstances and sought orders to the effect that the acceptance be reversed. The review Panel took the view that the evidence did not support a mistake such that the Panel should interfere to unwind a legally sound contract.

In coming to its conclusion the review Panel considered the material that was before the initial Panel and the further material put before the review Panel in the review proceedings. The Panel was not satisfied that the facts before it were sufficiently clear about the mistake. Falak did not provide evidence concerning Fortis' position. While there was some evidence concerning steps taken by Falak before and after the mistake, details of discussions between the two parties about the mistake were not provided.

The review Panel considered that *Pinnacle VRB Limited (No. 10)* and *Pinnacle VRB Limited (No. 11)*, whilst correct, were decisions based on extraordinary circumstances which were not replicated in this case.

The review Panel was not persuaded that the outcome of the pending shareholders' meeting warranted it coming to a different conclusion.

On that basis, the review Panel decided not to make a declaration of unacceptable circumstances. Given the proceedings have been determined, the interim orders announced on 15 February 2008 cease to have any effect.

The sitting Panel for the proceedings was Irene Lee, Simon McKeon (President) and Norman O'Bryan.

The Panel will publish its reasons for its decision on its website at www.takeovers.gov.au in due course.

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