



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP13/17

Friday, 17 May 2013

Firestone Energy Limited – Declaration of Unacceptable Circumstances and Orders

The Panel has made a declaration of unacceptable circumstances (Annexure A) and final orders (Annexure B) in relation to an application dated 18 April 2013 by Firestone Energy Limited in relation to its affairs (see [TP13/10](#)).

Background

Firestone has a right to a 60% participation interest in the Waterberg coal project in South Africa. On 17 December 2012, The Waterberg Coal Company Limited¹ announced an off-market scrip bid for Firestone.

On 30 January 2013, Waterberg issued its bidder's statement, which included a statement that "[Firestone] shareholders will have exposure to a 70% interest in the Waterberg Project (whereas currently [Firestone] holds a 60% interest)." On 27 March 2013, Waterberg increased the bid consideration to 1.25:20 (post consolidation) and declared the offer unconditional. Also on 27 March 2013, Waterberg's shareholders approved (among other things) the acquisition of 46.88% of Waterberg by Haworth Finance Limited.

Declaration

The original and supplementary bidder's statements are deficient, in that they do not:

- (a) adequately disclose Haworth's shareholding in Waterberg, or the identities of the owners and controllers of the investors in Haworth
- (b) adequately identify the lenders under the convertible financing facility between Waterberg and Standard Bank of South Africa and the facility's potential impact on Waterberg's capital structure and
- (c) adequately inform Firestone shareholders of their exposure to the Waterberg coal project, given the contemplated capital structure of Waterberg.

¹ formerly known as Range River Gold Limited

The Panel did not consider it against the public interest to make the declaration, and in making it had regard to the matters in s657A(3).

The Panel declined to make a declaration in relation to the other aspects of the application.

Orders

The Panel has made orders that Waterberg dispatch a supplementary bidder's statement in a form approved by the Panel, provide Firestone shareholders who have accepted the offer with a withdrawal right and extend its offer until at least 7 days after the conclusion of the withdrawal right.

The Panel will refer the matter of the ownership and control of certain of the Haworth trust beneficiaries to ASIC for investigation.

The sitting Panel was Rodd Levy, Peter Scott (sitting President) and John Story.

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

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Annexure A

**CORPORATIONS ACT
SECTION 657A**

DECLARATION OF UNACCEPTABLE CIRCUMSTANCES

FIRESTONE ENERGY LIMITED

CIRCUMSTANCES

1. Firestone Energy Limited (**Firestone**) is an ASX listed company. It has a right to a 60% participation interest in a coal project in South Africa (the **Waterberg Project**).
2. On 17 December 2012, The Waterberg Coal Company Limited, formerly known as Range River Gold Limited (**Waterberg**), announced an off-market scrip bid for all the shares in Firestone. The consideration was 1 Waterberg share for every 2 Firestone shares (post Waterberg consolidation, 1:20).
3. On 30 January 2013, Waterberg issued its bidder's statement. The bidder's statement included the following:
"[Firestone] shareholders will have exposure to a 70% interest in the Waterberg Project (whereas currently [Firestone] holds a 60% interest)."
4. On 20 March 2013, Waterberg issued a supplementary bidder's statement, advising (among other things) of variations to existing arrangements affecting its capital structure.
5. On 27 March 2013, Waterberg issued a second supplementary bidder's statement, increasing its bid consideration to 1.25:20 and freeing its bid from all defeating conditions.
6. Also on 27 March 2013, Waterberg's shareholders approved (among other things) the acquisition of 46.88% of Waterberg by Haworth Finance Limited (**Haworth**).
7. The original bidder's statement and the supplementary bidder's statements contain information deficiencies, in that:
 - (a) they do not adequately disclose the identities of the owners and controllers of Haworth
 - (b) they do not adequately identify the lenders under the convertible financing facility between Waterberg and Standard Bank of South Africa and the facility's potential impact on Waterberg's capital structure and

- (c) they do not adequately inform Firestone shareholders of their exposure to the Waterberg Project given the contemplated capital structure of Waterberg.
8. By reason of the information deficiencies, Firestone shareholders:
- (a) do not know the identity of persons holding a substantial interest in Waterberg, which proposes to acquire a substantial interest in Firestone
 - (b) have not been given enough information to enable them to assess the merits of Waterberg's bid and
 - (c) are required to make decisions whether to hold their shares, accept the offer or dispose of their shares in other ways on the basis of inadequate information, causing the market for control of Firestone shares not to be efficient, competitive and informed.
9. It appears to the Panel that the circumstances are unacceptable having regard to:
- (a) the effect that the Panel is satisfied the circumstances have had, are having, will have or are likely to have on:
 - (i) the control, or potential control, of Firestone or
 - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in Firestone and
 - (b) the purposes of Chapter 6 set out in section 602 of the *Corporations Act 2001 (Cth) (Act)*
10. The Panel considers that it is not against the public interest to make a declaration of unacceptable circumstances. It has had regard to the matters in section 657A(3) of the Act.

DECLARATION

The Panel declares that the circumstances constitute unacceptable circumstances in relation to the affairs of Firestone.

Alan Shaw
Counsel
with authority of Peter Scott
President of the sitting Panel
Dated 17 May 2013



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Annexure B

**CORPORATIONS ACT
SECTION 657D
ORDERS**

FIRESTONE ENERGY LIMITED

The Panel made a declaration of unacceptable circumstances on 17 May 2013.

THE PANEL ORDERS

1. The Waterberg Coal Company Limited (**Waterberg**) must issue a supplementary bidder's statement in relation to its bid for Firestone Energy Limited (**Firestone**), in a form approved by the Panel, that includes:
 - (a) adequate disclosure of the identities of the owners and controllers of Haworth Finance Limited, the identities of persons who own or control the beneficiaries of the Haworth Trust (**Haworth Beneficiaries**) and the aggregate and individual shareholdings of the Haworth Beneficiaries
 - (b) adequate disclosure of the identity of lenders under the convertible financing facility between Waterberg and Standard Bank of South Africa and the facility's potential impact on Waterberg's capital structure
 - (c) adequate disclosure of Firestone shareholders' exposure to the coal project known as the Waterberg Project, given Waterberg's contemplated capital structure
 - (d) a right to withdraw by any Firestone shareholder who accepted the bid
 - (e) instructions setting out what a shareholder must do to exercise the withdrawal right
 - (f) a statement that the corrective disclosure was required by the Panel and
 - (g) a statement that the offer period has been, or will be, extended so as to comply with these orders.
2. Waterberg must release the supplementary bidder's statement on ASX and dispatch it to everyone to whom offers were made in the same manner as the offers were sent.

3. Waterberg must give each Firestone shareholder who accepted Waterberg's offer a right to withdraw their acceptance:
 - (a) by giving Waterberg notice (so that it is received within 10 days of the date of dispatch of the supplementary bidder's statement) in the form attached to the supplementary bidder's statement or complying with Corporations Regulation 6.6.01(1), as the case may be and
 - (b) by giving Waterberg any certificates and transfer documents needed to effect the return of the securities issued as consideration or complying with Corporations Regulation 6.6.01(2), as the case may be.
4. Waterberg must comply with Corporations Regulation 6.6.01(3) in relation to each person who withdraws their acceptance.
5. Waterberg must extend its offer so that it is open for no less than 7 days after the last date for Firestone shareholders to withdraw acceptances.
6. In respect of each acceptance withdrawn, the securities issued as consideration are cancelled.

Alan Shaw
Counsel
with authority of Peter Scott
President of the sitting Panel
Dated 17 May 2013