



Australian Government

Takeovers Panel

# MEDIA RELEASE

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No: TP14/43

Friday, 20 June 2014

## Sherwin Iron Limited – Panel Receives Application

The Panel has received an application from Mr Jerry Ren and his related parties Citizen International Investment Pte Ltd and Citizen International Investment Limited (together, “**Citizen Parties**”) in relation to the affairs of Sherwin Iron Limited. The application concerns a 1 for 1 non-renounceable pro-rata entitlement offer and share purchase plan announced by Sherwin on 6 June 2014.

Details of the application, as submitted by the applicant, are below.

A sitting Panel has not been appointed at this stage and no decision has been made whether to conduct proceedings. The Panel makes no comment on the merits of the application.

### Details

The Citizen Parties have a relevant interest in 561,534,495 Sherwin shares (approximately 78.17%).

On 6 June 2014, Sherwin announced a 1 for 1 non-renounceable rights issue at an issue price of \$0.05 per share to raise up to approximately \$35.91 million. The issue is not underwritten. A shortfall facility will be provided and any additional shares will be allocated at Sherwin’s absolute discretion (subject to the *Corporations Act 2001* and ASX Listing Rules).<sup>1</sup> Also on 6 June 2014, Sherwin announced a share purchase plan at an issue price of \$0.05 per share to raise up to \$5 million. Eligible shareholders can participate in either or both corporate actions.

New shares are scheduled to be issued under the rights issue and share purchase plan by 10 July 2014.

Also on 6 June 2014, as part of the notice under section 708AA<sup>2</sup>, Sherwin stated that on 30 May 2014 Mr Ren proposed a number of actions, including in relation to the

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<sup>1</sup> Sherwin indicated that it would seek to ascertain whether the Citizen Parties would participate before considering underwriting and how to deal with any shortfall

<sup>2</sup> References are to the *Corporations Act 2001* (Cth) unless otherwise indicated

reconstitution of the Sherwin board. Sherwin noted that the proposal stated that if the board did not agree to the terms Mr Ren would requisition a shareholders' meeting immediately. The board did not agree to the terms.

On 10 June 2014, Sherwin announced that the Citizen Parties had issued a notice under s249D to replace the Sherwin board.

The Citizen Parties submit that Sherwin knew they were not in a position to take up their rights, which could result in them being diluted. They also submit that:

- the directors proposed the rights issue and share purchase plan despite or in response to the proposal
- Sherwin does not have any urgent need for the funds to be raised
- the rights issue, placement of shortfall shares and share purchase plan are potentially dilutionary to an extent that is punitive on the Citizen Parties, given no need for funding on that the scale and
- *“the structuring and timing of the Rights Issue and Share Purchase Plan – in particular the ability of the directors to place the (likely significant) shortfall in their discretion - are unfairly dilutive of, and in the context of the shareholder meeting requisition, undermine, the control position of the Citizen Parties to an extent that the conduct in proposing them constitutes unacceptable circumstances.”*

The Citizen Parties seek final orders that the rights issue and share purchase plan not proceed, and that Sherwin be restrained from making a similar proposal until after the s249D meeting. They seek interim orders to the same effect if final orders are not made by 30 June 2014.

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