



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP20/02

Monday, 6 January 2020

Smoke Alarms Holdings 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 3 December 2019 by Greenwich Capital Partners and Anthony Richard Lewis in relation to the affairs of Smoke Alarms Holdings Limited (**SAH**) (see [TP19/73](#)).

Background

SAH is an unlisted public company with more than 50 members. Its directors are Randall Deer, Cameron Davis and Matthew Driscoll.

On 24 October 2019, SAH entered into a Convertible Note Issue Agreement (**Agreement**) with Fast Future Pty Ltd as trustee for Fast Future Trust (**Fast Future**), an entity controlled by Randall Deer (having previously entered into a term sheet relating to the proposed issue of the convertible notes on 26 September 2019).

Under the terms of the Agreement, Fast Future could subscribe for up to 3 tranches of convertible notes. Each convertible note entitles the holder to convert that note into 8.33 ordinary shares in SAH at an effective issue price of 12 cents per share. Upon conversion each share has 3 options attached for the issue of an ordinary share in SAH at 12 cents. Interest on the face value of each convertible note accrues daily at 10% per annum, and can be capitalised by the convertible note holder upon notice to SAH.

SAH sought shareholder approval under item 7 of section 611¹ for the issue of up to 211,830,604 shares in SAH to Fast Future pursuant to the Agreement. The explanatory memorandum disclosed that Randall Deer's voting power in SAH would increase from 5.7%:

- if all the convertible notes are subscribed for and converted, to 40.33% of SAH

¹ All statutory references are to the *Corporations Act 2001* (Cth), and all terms used in Chapter 6 have the meaning given in that Chapter (as modified by ASIC)

- if all the options are exercised, to 71.61% of SAH and
- if all the interest is capitalised, to 80.04% of SAH.

The Notice of Meeting did not include an Independent Expert's Report. On 6 December 2019, the resolution passed at SAH's AGM.

Declaration

The Panel considered, among other things, that:

1. The Agreement was a control transaction involving a participating insider (Randall Deer), who was in a position to influence SAH's consideration of the Agreement. Cameron Davis took the lead role in negotiating the Agreement with Fast Future on behalf of SAH. In view of his connection to Randall Deer (including his involvement in a company with Randall Deer that had a 14.7% interest in SAH), there were conflicts of interest, or potential conflicts of interest, and appropriate protocols and processes were not put in place.
2. The explanatory statement for the item 7 of section 611 approval was not accompanied by an independent expert's report. In light of the conflicts described above, an independent expert's report would have assisted SAH shareholders in assessing the merits of approving the Agreement.
3. The explanatory statement contained insufficient or misleading information regarding:
 - (a) Randall Deer's relationship to Cameron Davis and the company that they both were involved in and any consequent voting power in SAH
 - (b) the use of the funds to be raised under the Agreement
 - (c) what convertible notes had been issued
 - (d) whether options would be exercised
 - (e) the voting exclusion of Cameron Davis and entities controlled by him
 - (f) current financial information for SAH, including its cash position
 - (g) valuation information to allow shareholders of SAH to ascertain whether it was fair and reasonable to approve the item 7 of section 611 resolution, including an independent expert's report or a sufficiently detailed directors' report and
 - (h) whether negotiations for the Agreement had been undertaken free from any actual influence, or appearance of influence, from participating insiders and if not, why not.

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).

Orders

Following consideration of submissions, including material provided by SAH regarding its financial position, the Panel became concerned about the near term solvency of SAH and considered that, in the difficult circumstances that SAH now finds itself in, it was important that SAH had the certainty of receiving the injection of convertible note capital under the Agreement. Accordingly, the Panel has made orders including that (in effect):

- Randall Deer must subscribe for the remaining tranche of convertible notes and convert all his convertible notes (thereby eliminating the accumulation of interest under the convertible notes and minimising his potential control position on later conversion).
- Other than in reliance on the creep exception, the options can only be exercised if new approval is sought with updated disclosure and an independent expert's report.

The Panel considered it was important to ensure the interests of all shareholders in SAH were protected, notwithstanding the unacceptable circumstances.

The sitting Panel was Elizabeth Hallett (sitting President), Bill Koeck and John McGlue.

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

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Takeovers Panel

ANNEXURE A

**CORPORATIONS ACT
SECTION 657A**

DECLARATION OF UNACCEPTABLE CIRCUMSTANCES

SMOKE ALARMS HOLDINGS LIMITED

CIRCUMSTANCES

1. Smoke Alarms Holdings Limited (**SAH**) is an unlisted public company with more than 50 members. Its directors are Randall Deer, Cameron Davis and Matthew Driscoll.
2. As at 12 November 2019, SAH had 55,449,867 ordinary shares on issue.
3. On 26 September 2019, SAH entered into a convertible note commercial term sheet (**Term Sheet**) with Fast Future Pty Ltd as trustee for Fast Future Trust (**Fast Future**), an entity controlled by Randall Deer.
4. On 24 October 2019, SAH entered into a Convertible Note Issue Agreement (**Agreement**) with Fast Future.
5. The Agreement included terms to the effect that:
 - (a) Fast Future could subscribe for up to 3 tranches of convertible notes, entitling the holder to convert each note into 8.33 ordinary shares in SAH at an effective issue price of 12 cents per share.
 - (b) Upon conversion, each share had 3 options attached. Each option was for the issue of an ordinary share in SAH at 12 cents.
 - (c) Interest on the face value of each convertible note at the rate of 10% per annum accrued daily, and could be capitalised by the convertible note holder upon notice to SAH.
 - (d) The notes were not convertible before 12 months after the date of issue and subject to any required shareholder approval for the issue of shares.
6. Tranches 1 and 2 were issued on 26 September 2019 and 25 October 2019, respectively.

7. By reason of the Agreement,² Randall Deer's voting power in SAH will increase from 5.7%:
 - (a) if all the convertible notes are subscribed for and converted, to 40.33% of SAH
 - (b) if all the options are exercised, to 71.61% of SAH and
 - (c) if all the interest is capitalized, to 80.04% of SAH.
8. R2-D2 Partners Pty Ltd (**R2-D2**) is a company of which Randall Deer was the secretary and sole director from 15 April 2015 to 8 November 2019. Cameron Davis was alternate director until appointed director on 8 November 2019.
9. A share transfer dated 14 September 2016 signed by Randall Deer as sole director and company secretary of both R2-D2 and Fast Future, purported to transfer 2,463,750 SAH shares from R2-D2 as trustee for the R3-D3 Unit Trust to Fast Future for \$1.00. This transfer was not recorded on the SAH share register. On or about 8 November 2019, this transfer was reversed.
10. As at 13 November 2019, R2-D2 had a relevant interest in 7,895,500 ordinary shares in SAH (14.7%).
11. The Agreement was a control transaction involving a participating insider (Randall Deer), who was in a position to influence SAH's consideration of the Agreement. Cameron Davis took the lead role in negotiating the Agreement with Fast Future on behalf of SAH. In view of his connection to Randall Deer, there were conflicts of interest, or potential conflicts of interest, and appropriate protocols and processes were not put in place.
12. On 12 November 2019, a notice of meeting and explanatory statement was issued by SAH. One of the resolutions sought approval by SAH shareholders under item 7 of section 611³ for the issue of up to 211,830,604 shares in SAH to Fast Future pursuant to the Agreement.
13. Randall Deer was a signatory to the circular resolution approving the notice of meeting.
14. The explanatory statement said:
 - (a) *"Fast Future has stated that it has no intention of injecting further capital outside of the Convertible Notes, so it is likely that the Investment Agreement will only raise a maximum of \$3,864,000 for [SAH]"* and

² As set out in the notice of meeting described in paragraph 12

³ All statutory references are to the *Corporations Act 2001* (Cth), and all terms used in Chapter 6 have the meaning given in that Chapter (as modified by ASIC)

- (b) *“Other than subscribing for the Convertible Notes under the [Agreement], Fast Future has no intention of injecting further capital into [SAH].”*
15. However, it also said:
- (a) *“Under the Investment Agreement, the Company may raise up to approximately \$15.45 million in the event all Convertible Notes are converted and all Options are exercised....”* and
- (b) *“If Shareholder approval is not obtained, it is highly unlikely that Fast Future will apply for tranche 2 or tranche 3 of the Convertible Notes.”* It also said that Tranches 1 and 2 of the convertible notes had been issued.
16. In light of the conflicts of interest described in paragraph 11, an independent expert’s report would have assisted SAH shareholders in assessing the merits of approving the Agreement under item 7 of section 611. The explanatory statement said *“The Board believes that the investment proposal is in the best interest of all Shareholders ...”* and *“The Board has determined ... that an independent expert’s report is not beneficial in the current circumstances”*. The explanatory statement set out reasons for not obtaining an independent expert’s report, including *“the extra time required to obtain such a report”* although there was approximately 6 weeks between the signing of the Agreement and holding of the meeting (and approximately 10 weeks between the signing of the Term Sheet and holding of the meeting).
17. The explanatory statement said *“Fast Future will convert the Convertible Notes into Shares unless the Company defaults under the Investment Agreement, in which case Fast Future may redeem the Convertible Notes for cash.”*
18. The explanatory statement said *“Shareholder approval under section 611 item (7) is only effective if no votes are cast in favour of the resolution by the person proposing to make the acquisition and their associates. It is for these reasons that Randall, Bridget Deer and Fast Future are excluded from being able to vote for the Resolution.”* Subsequently it was decided to exclude Cameron Davis and entities controlled by him from voting.
19. The explanatory statement contained insufficient or misleading information regarding:
- (a) Randall Deer’s relationship to Cameron Davis and R2-D2 and any consequent voting power in SAH
- (b) the use of the funds to be raised under the Agreement
- (c) what convertible notes had been issued
- (d) whether options would be exercised
- (e) the voting exclusion of Cameron Davis and entities controlled by him

- (f) current financial information for SAH, including its cash position
 - (g) valuation information to allow shareholders of SAH to ascertain whether it was fair and reasonable to approve the item 7 of section 611 resolution, including an independent expert's report or a sufficiently detailed directors' report and
 - (h) whether negotiations for the Agreement had been undertaken free from any actual influence, or appearance of influence, from participating insiders and if not, why not.
20. By reason of the lack of adoption of appropriate protocols and processes, and disclosure thereof, and by reason of the material deficiencies of information in the notice of meeting, SAH shareholders have not been given enough information to enable them to assess the merits of approving the Agreement under item 7 of section 611.
21. Further, given the benefits that flow to Fast Future from the Agreement, SAH shareholders were entitled to full and detailed disclosure.

EFFECT

22. The acquisition of control over voting shares in an unlisted company with more than 50 members will not take place in an efficient, competitive and informed market.
23. The holders of the shares in SAH have not been given enough information to enable them to assess the merits of the proposal.

CONCLUSION

24. It appears to the Panel that the circumstances are unacceptable circumstances:
- (a) having regard to the effect that the Panel is satisfied they will have or are likely to have on:
 - (i) the control, or potential control, of SAH or
 - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in SAH
 - (b) in the alternative, having regard to the purposes of Chapter 6 set out in section 602.
25. 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).

DECLARATION

The Panel declares that the circumstances constitute unacceptable circumstances in relation to the affairs of Smoke Alarms Holdings Limited.

Tania Mattei
Counsel
with authority of Elizabeth Hallett
President of the sitting Panel
Dated 2 January 2020



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ANNEXURE B

CORPORATIONS ACT SECTION 657D ORDERS

SMOKE ALARMS HOLDINGS LIMITED

The Panel made a declaration of unacceptable circumstances on 2 January 2020.

THE PANEL ORDERS

1. By 30 January 2020, Fast Future (or any person to whom the rights or benefits under the Agreement have been transferred) must subscribe for Tranche 3 of the convertible notes pursuant to the Agreement.
2. By 30 January 2020, Fast Future and SAH must amend the terms of the Agreement to allow for the immediate conversion of the convertible notes and Fast Future must immediately exercise the amended right of conversion for Tranches 1, 2 and 3 of the convertible notes pursuant to the Agreement.
3. Other than in reliance on the exception in item 9 of section 611 of the *Corporations Act 2001* (Cth) (**Act**), no options issued as a result of the conversion of convertible notes pursuant to the Agreement may be exercised, unless SAH shareholders approve the exercise under item 7 of section 611 of the Act at a further general meeting or meetings of shareholders (**item 7 approval**) for which a notice of meeting and an explanatory statement is issued and which includes:
 - (a) adequate disclosure of:
 - (i) Randall Deer's relationship to Cameron Davis and R2-D2 and any consequent voting power in SAH
 - (ii) use of the funds to be raised via the exercise of the options
 - (iii) current financial information for SAH, including its cash position and
 - (iv) the relationship that existed between Randall Deer and Cameron Davis at the time of negotiations for the Agreement and whether (and what) arrangements SAH had in place to ensure that the

negotiations were undertaken free from any actual influence, or appearance of influence, from participating insiders

- (b) an independent expert's report containing relevant information to enable shareholders to form a view as to whether:
 - (i) a control premium is being paid
 - (ii) a control premium is appropriate, and if so what and
 - (iii) the exercise of any options is fair and reasonable to shareholders other than the proposed exerciser of the options and why that opinion is held and
 - (c) a voting exclusion statement that SAH will disregard any votes cast in favour of the item 7 approval by or on behalf of Randall Deer, Fast Future, R2-D2, Cameron Davis or any of their associates, and any person to whom shares will be issued as a result of the exercise.
4. Any notice of meeting, explanatory statement and independent expert's report referred to in order 3 must be provided to ASIC at least 10 business days prior to its dispatch to SAH shareholders.
5. In the absence of further shareholder approval in accordance with the requirements for such in order 3, none of Randall Deer, Fast Future or any of their associates may acquire any of the businesses of SAH for a period of 12 months from the date of the orders.
6. Within 10 business days of the date of the orders, SAH must issue a letter, in form and content approved by a member of the Panel, to all shareholders explaining:
- (a) the deficiencies the Panel found in the notice of meeting and explanatory statement dated 12 November 2019 and
 - (b) the effect of the Panel's declaration and orders.
7. In these orders the following terms apply:

Agreement	The Convertible Note Issue Agreement between Fast Future and SAH dated 24 October 2019
ASIC	Australian Securities and Investments Commission
Fast Future	Fast Future Pty Ltd as trustee for Fast Future Trust

R2-D2

R2-D2 Partners Pty Ltd

SAH

Smoke Alarms Holdings Limited

Tania Mattei
Counsel
with authority of Elizabeth Hallett
President of the sitting Panel
Dated 2 January 2020