



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP20/06

Thursday, 30 January 2020

Smoke Alarms Holdings Limited 02R – Review Panel Decision

The review Panel has affirmed the decision of the initial Panel to make a declaration of unacceptable circumstances in *Smoke Alarms Holdings Limited* (Annexure A).

The review Panel has accepted undertakings from Smoke Alarms Holdings Limited (SAH), Mr Randall Deer and Fast Future Pty Ltd as trustee for Fast Future Trust (Fast Future) (Annexures B, C and D respectively).

The combined effect of the undertakings is that a Convertible Note Issue Agreement between SAH and Fast Future will be terminated, SAH and Fast Future will enter into a 12 month debt facility for an amount of \$3,684,000 (with amounts previously advanced pursuant to the Convertible Note Issue Agreement to be treated as an advance under the new facility) and SAH will issue a letter to its shareholders explaining the effect of the Panel's declaration and the undertakings.

The review Panel considered that the undertakings sufficiently remedy the unacceptable circumstances as the termination of the Convertible Note Issue Agreement removes the control effect of the funding. Accordingly, the review Panel revoked the initial Panel's orders (Annexure E).

The sitting Panel was Teresa Dyson, Denise McComish and John Sheahan QC (sitting President).

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

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,¹ 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 611² 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

¹ As set out in the notice of meeting described in paragraph 12

² 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

**AUSTRALIAN SECURITIES AND
INVESTMENTS COMMISSION ACT 2001 (CTH) SECTION 201A
UNDERTAKING**

SMOKE ALARMS HOLDINGS LIMITED 02R

Subject to Fast Future and Randall Deer respectively providing to the Panel the Fast Future Undertaking and the Randall Deer Undertaking, SAH undertakes to the Panel that:

1. SAH will immediately take all actions necessary to terminate the Agreement with no penalty to Fast Future.
2. Subject to Fast Future complying with its obligations under the Fast Future Undertaking, SAH will enter into the Debt Facility (with amounts previously advanced pursuant to the Agreement to be treated as an advance under the new facility).
3. Within 10 business days of the date of this undertaking, SAH will issue a letter, in form and content approved by a member of the Panel, to all shareholders explaining the effect of the Panel's declaration, this undertaking, the Fast Future Undertaking and the Randall Deer Undertaking.

SAH agrees to confirm in writing to the Panel when it has satisfied its obligations under this undertaking.

In this undertaking the following terms have the corresponding meaning:

| | |
|----------------------|--|
| Agreement | the Convertible Note Issue Agreement between Fast Future and SAH dated 24 October 2019 |
| Debt Facility | a 12 month debt facility made available by Fast Future for an amount of \$3,684,000 at an interest rate of 10% and otherwise on ordinary commercial terms, in substantially the same form as provided to the Panel prior to the date of this undertaking |
| Fast Future | Fast Future Pty Ltd as trustee for Fast Future Trust |

| | |
|---------------------------------|--|
| Fast Future Undertaking | the undertaking from Fast Future to the Panel in the form consented to by the Panel prior to the date of this undertaking |
| Panel | the Panel in <i>Smoke Alarms Holdings Limited 02R</i> |
| SAH | Smoke Alarms Holdings Limited |
| Randall Deer Undertaking | the undertaking from Randall Deer to the Panel in the form consented to by the Panel prior to the date of this undertaking |

**Signed by Cameron Davis
with the authority, and on behalf, of
Smoke Alarms Holdings Limited
Dated 30 January 2020**



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ANNEXURE C

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ACT 2001 (CTH) SECTION 201A UNDERTAKING

SMOKE ALARMS HOLDINGS LIMITED 02R

Subject to SAH and Fast Future respectively providing to the Panel the SAH Undertaking and the Fast Future Undertaking, Randall Deer undertakes to the Panel that as soon as practicable after the date of this undertaking he will take all steps necessary to ensure Fast Future has the funds to comply with its obligations in relation to the Fast Future Undertaking.

Randall Deer agrees to confirm in writing to the Panel when he has satisfied his obligations under this undertaking.

In this undertaking the following terms have the corresponding meaning:

| | |
|--------------------------------|---|
| Fast Future | Fast Future Pty Ltd as trustee for Fast Future Trust |
| Fast Future Undertaking | the undertaking from Fast Future to the Panel in the form consented to by the Panel prior to the date of this undertaking |
| Panel | the Panel in <i>Smoke Alarms Holdings Limited 02R</i> |
| SAH | Smoke Alarms Holdings Limited |
| SAH Undertaking | the undertaking from SAH to the Panel in the form consented to by the Panel prior to the date of this undertaking |

Signed by Mr Randall Deer
Dated 30 January 2020



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ANNEXURE D

**AUSTRALIAN SECURITIES AND
INVESTMENTS COMMISSION ACT 2001 (CTH) SECTION 201A
UNDERTAKING**

SMOKE ALARMS HOLDINGS LIMITED 02R

Subject to SAH and Randall Deer respectively providing to the Panel the SAH Undertaking and the Randall Deer Undertaking, Fast Future undertakes to the Panel that:

1. Fast Future will immediately take all actions necessary to terminate the Agreement with no penalty to SAH.
2. By 31 January 2020, Fast Future will make available to SAH the Debt Facility (with amounts previously advanced pursuant to the Agreement to be treated as an advance under the Debt Facility).

Fast Future agrees to confirm in writing to the Panel when it has satisfied its obligations under this undertaking.

In this undertaking the following terms have the corresponding meaning:

| | |
|------------------------|--|
| Agreement | The Convertible Note Issue Agreement between Fast Future and SAH dated 24 October 2019 |
| Debt Facility | a 12 month debt facility for an amount of \$3,684,000 at an interest rate of 10% and otherwise on ordinary commercial terms, in substantially the same form as provided to the Panel prior to the date of this undertaking |
| Fast Future | Fast Future Pty Ltd as trustee for Fast Future Trust |
| Panel | the Panel in <i>Smoke Alarms Holdings Limited 02R</i> |
| SAH | Smoke Alarms Holdings Limited |
| SAH Undertaking | the undertaking from SAH to the Panel in the form consented to by the Panel prior to the date of this undertaking |

Randall Deer Undertaking the undertaking from Randall Deer to the Panel in the form consented to by the Panel prior to the date of this undertaking

**Signed by Randall John Deer
with the authority, and on behalf, of
Fast Future Pty Ltd as trustee for Fast Future Trust
Dated 30 January 2020**



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ANNEXURE E

CORPORATIONS ACT SECTION 657EA REVOCATION OF ORDERS

SMOKE ALARMS HOLDINGS LIMITED 02R

The Panel made a declaration of unacceptable circumstances and final orders in relation to the affairs of Smoke Alarms Holdings Limited on 2 January 2020 in *Smoke Alarms Holdings Limited*. A review application was made on 6 January 2020. On 30 January 2020 the Panel affirmed the declaration of unacceptable circumstances made on 2 January 2020 and accepted undertakings from certain of the parties.

THE PANEL REVOKES

The orders made on 2 January 2020 in *Smoke Alarms Holdings Limited*.

Allan Bulman
Director
with authority of John Sheahan QC
President of the sitting Panel
Dated 30 January 2020