



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP14/41

Friday, 20 June 2014

Northern Iron 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 23 May 2014 by Northern Iron Limited in relation to its affairs (see [TP14/33](#)).

Background

Northern Iron is a company listed on ASX (ASX code: NFE). Its largest shareholder is Dalnor Assets Ltd, which holds a relevant interest of approximately 19.95%.

On 11 December 2012, Dalnor lodged a substantial holder notice which disclosed that the registered holder of the securities was SIX-SIS Ag as depository and the holder of a relevant interest of 5% was Dalnor.

On 27 March 2013, a tracing notice under s672A¹ was issued to Dalnor. On 11 April 2013, Dalnor responded without providing the information required by s672B. On 28 May 2013, Ms Gabriella Bell was disclosed to Northern Iron as the sole shareholder of Dalnor.

On 13 May 2014, Dalnor lodged a notice of change of interests of substantial holder, which disclosed that the registered holder of the securities was SIX-SIS Ag as depository and the holder of a relevant interest of 18.99% was Dalnor.

On 22 May 2014, Dalnor lodged a revised notice of change of interests of substantial holder, which disclosed that the registered holder of the securities was SIX-SIS Ag and each of the following held a relevant interest of 18.99%:

- SIX-SIS Ag (as custodian and bare trustee for Dalnor)
- Dalnor
- Ms Gabriella Bell (as sole shareholder of Dalnor, for the benefit of Fund GP - a wholly owned subsidiary of SPA Financial Services - in its capacity as general partner of SPA Fund)
- SPA Multi-Strategy Fund II LP, SPA GP (II) Limited (Fund GP) and SPA Financial Services Ltd.

¹ References are to the *Corporations Act 2001 (Cth)* unless otherwise indicated

On 20 May 2014, Dalnor provided, in response to the tracing notice dated 27 March 2013, the information referred to in the 22 May 2014 substantial holding notice and advised that it was not aware of any other person who had given it instructions in respect of the shares.

The disclosure by Dalnor in its 20 May 2014 letter and 22 May 2014 revised substantial holding notice was deficient because it did not disclose all information required under the tracing and substantial holding notice provisions. For example, the revised substantial holding notice did not identify every person who has a relevant interest and did not contain details of any relevant agreement through which the parties disclosed have a relevant interest or provide a copy of relevant documents, including the SPA Fund Memorandum.

Declaration

The Panel considered that Dalnor's failure to disclose information in accordance with the tracing and substantial holding notice provisions was unacceptable because:

- (a) the acquisition of control over voting shares in Northern Iron has not taken place, and continues not to take place, in an efficient, competitive and informed market and
- (b) the holders of Northern Iron shares, the board of Northern Iron and the market in general has not known, and continues not to know, the identity of persons who acquired a substantial interest in Northern Iron.

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

The Panel has made orders to the effect that:

- Dalnor lodge a new substantial holding notice and
- Dalnor is not eligible to rely on the exception in item 9 of s611 until six months after the lodgement of the notice referred to above.

The sitting Panel was Richard Hunt (sitting President), John Sheahan QC and Jane Sheridan.

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

NORTHERN IRON LIMITED

CIRCUMSTANCES

2. Northern Iron Limited (**Northern Iron**) is a company listed on the Australian Securities Exchange (ASX code: NFE).
3. Dalnor Assets Ltd (**Dalnor**) is a company incorporated in the British Virgin Islands. It holds approximately 19.95% of the shares in Northern Iron.
4. On 11 December 2012, Dalnor lodged a substantial holder notice which disclosed that the registered holder of the securities was SIX-SIS Ag as depository and the holder of a relevant interest of 5% was Dalnor.
5. On 27 March 2013, a tracing notice under section 672A² was issued to Dalnor. On 11 April 2013, Dalnor responded without providing the information required by section 672B. On 28 May 2013, Ms Gabriella Bell was disclosed to Northern Iron as the sole shareholder of Dalnor.
6. On 13 May 2014, Dalnor lodged a notice of change of interests of substantial holder, which disclosed that the registered holder of the securities was SIX-SIS Ag as depository and the holder of a relevant interest of 18.99% was Dalnor.
7. On 22 May 2014, Dalnor lodged a revised notice of change of interests of substantial holder, which disclosed that the registered holder of the securities was SIX-SIS Ag and each of the following held a relevant interest of 18.99%:
 - SIX-SIS Ag (as custodian and bare trustee for Dalnor)
 - Dalnor
 - Ms Gabriella Bell (as sole shareholder of Dalnor, for the benefit of Fund GP - a wholly owned subsidiary of SPA Financial Services - in its capacity as general partner of SPA Fund)

² References are to the *Corporations Act 2001* (Cth) unless otherwise indicated

- SPA Multi-Strategy Fund II LP (**SPA Fund**), SPA GP (II) Limited (**Fund GP**) and SPA Financial Services Ltd (**SPA Financial Services**).
8. By letter dated 20 May 2014, Dalnor provided, in response to the tracing notice dated 27 March 2013, the information referred to in paragraph 7 and advised that it was not aware of any other person who had given it instructions in respect of the shares.
 9. The information referred to in the third and fourth bullet points in paragraph 7:
 - (a) was not disclosed in previous substantial holder notices and
 - (b) was not provided for more than a year in response to the tracing notice.
 10. Moreover, the revised notice of change of interests of substantial holder does not include all of the information required by section 671B including:
 - (a) details of any relevant agreement through which the parties disclosed have a relevant interest
 - (b) the declaration of trust by Ms Gabriella Bell in favour of SPA Fund
 - (c) how the shares in Northern Iron were acquired, in particular that one of the transactions was off-market
 - (d) a copy of the relevant documents, including the SPA Fund Memorandum
 - (e) any explanation of why the owners of SPA Financial Services do not have a relevant interest and
 - (f) every person who does have a relevant interest.
 11. Moreover, the 20 May 2014 response to the tracing notice dated 27 March 2013 does not include all of the information required by section 672B including:
 - (a) the name and address of each person who has given instructions about the acquisition or disposal of the shares
 - (b) the name and address of each person who has given instructions about the voting rights in respect of the shares and
 - (c) depending on whether the owners of SPA Financial Services have a relevant interest, their names and addresses.
 12. Consequently:
 - (a) the acquisition of control over voting shares in Northern Iron has not taken, and continues not to take, place in an efficient, competitive and informed market and
 - (b) the holders of Northern Iron shares, the board of Northern Iron and the market in general has not known, and continues not to know, the identity of persons who acquired a substantial interest in Northern Iron.
 13. It appears to the Panel that the circumstances are unacceptable:
 - (a) having regard to the effects that the Panel is satisfied the circumstances have had, and are having, on:

- (i) the control, or potential control, of Northern Iron or
 - (ii) the acquisition by a person of a substantial interest in Northern Iron
 - (b) having regard to the purposes of Chapter 6 set out in section 602 and
 - (c) because they constitute a contravention of provisions of Chapter 6C.
14. 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 Northern Iron.

Alan Shaw
Counsel
with authority of Richard Hunt
President of the sitting Panel
Dated 19 June 2014



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ANNEXURE B

CORPORATIONS ACT SECTION 657D ORDERS

NORTHERN IRON LIMITED

The Panel made a declaration of unacceptable circumstances on 19 June 2014.

THE PANEL ORDERS

1. Dalnor Assets Ltd (Dalnor) must lodge with ASX a notice of change of interests of substantial holder that is not materially different to the draft notice proposed by Dalnor in its rebuttal submissions provided to the Panel on 17 June 2014 and which:
 - (a) discloses the nature of the relevant interest held by Gabriel Anastasiades in section 4 of the notice and
 - (b) also attaches a copy of the SPA Multi-strategy Fund I.I. L.P. Private Placement Memorandum.
2. Dalnor and its associates must not make an acquisition of shares in Northern Iron Limited in reliance on the exception in item 9 of section 611 of the *Corporations Act 2001* until six months after the lodgement of the notice referred to in order 1.

Alan Shaw
Counsel
with authority of Richard Hunt
President of the sitting Panel
Dated 19 June 2014