



Wednesday, 13 February 2008

Golden West Resources Limited 03 and 04 – Panel Decision

The Panel advises that it has decided not to make a declaration of unacceptable circumstances in response to applications from Golden West Resources Limited (GWR) dated 30 January 2008 and Falak Holding LLC (Falak) dated 31 January 2008. Fairstair Resources Limited (FAS) is currently making an off-market scrip bid for GWR (Offer). (See [TP08/03](#) and [TP08/04](#))

The applications related to a disputed acceptance of the Offer by Falak Holdings LLC of approximately 7.12% of the shares in GWR. These shares were held by ANZ Nominees Limited for Falak. However Falak granted a pledge over the shares to Fortis Banque Luxembourg SA (Fortis) and Fortis undertook all communications with ANZ Nominees Limited in respect of the shares. On 7 January 2008 Fortis gave instructions to ANZ Nominees to accept the Offer without receiving any instructions from Falak.

GWR's application was made on the basis that Falak had made last and final statements that it would not accept the Offer. Therefore the acceptance into the bid constituted unacceptable circumstances. The Panel considered that the market would have understood from the last and final statements that the rejection intention of Falak was qualified by reference to the consideration not being varied. Once the consideration was varied on 11 December 2007, the Panel considered that the market would not have considered Falak to be bound. The Panel also considered that neither the subsequent oral confirmations from Falak to GWR or the section 249D requisition for a general meeting by Falak on 21 December 2008 established any further last and final statement to which Falak should be bound.

Falak's application was made on the basis that the acceptance was a mistake that gave rise to unacceptable circumstances. The Panel however did not consider that the circumstances were unacceptable having regard to the time that had passed, the actions of the parties, the stage of the Offer and the market reaction. The Panel was not satisfied on material before it of any effect on other shareholders that warranted intervention or that the market had been misled.

On that basis, the Panel decided not to make a declaration of unacceptable circumstances. Given the proceedings have been determined, the interim orders announced on 1 February 2008 cease to have any effect.

The sitting Panel for the proceedings was Alison Lansley, Andrew Lumsden (sitting President) and Chris Photakis

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

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