



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP18/30

Thursday, 26 April 2018

Finders Resources Limited 02 – 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 28 March 2018 by ASIC in relation to the affairs of Finders Resources Limited (see [TP18/22](#)).

Background

On 23 October 2017, Eastern Field Developments Limited lodged a bidder's statement in relation to an off market bid for all the shares in Finders at \$0.23 per share. The bid was subject to a number of conditions, including a 50% minimum acceptance condition. On 5 December 2017, Finders lodged its target's statement which stated that the independent directors recommended that shareholders reject the bid and two of the independent directors who owned or controlled shares intended to reject the bid in relation to the shares they owned or controlled.

On 7 December 2017, Finders announced that Taurus Funds Management Pty Ltd, which managed approximately 11.31% of Finders shares, had "*notified Finders that it does not intend to accept the Offer at the Offer Price of \$0.23 per Finders share in respect of the Finders shares that Taurus manages, on the basis that Taurus considers that the Offer Price does not reflect the fair value of Finders shares*". Taurus was given an opportunity to comment on the draft letter and the draft announcement but did not require that the statement in the announcement be qualified.

Between 11 and 13 December 2017, Euroz Securities Limited (on Finders' behalf) obtained letters from other Finders shareholders who were not substantial holders consenting to Finders making an announcement which disclosed the relevant shareholder's name, the number of Finders shares that the shareholder owned or controlled and the fact that the shareholder has notified Finders that the shareholder does not intend to accept the bid at the bid price in respect of those shares. Euroz subsequently advised Finders that Euroz did not inform these shareholders that ASIC's truth in takeovers policy¹ may apply to these statements.

¹ ASIC Regulatory Guide 25 – *Takeovers: false and misleading statements*

On each of 12, 13 and 15 December 2017, Finders released an announcement stating that shareholders representing 33.19%, 37.58% and 38.21%, respectively, of Finders shares in aggregate had notified Finders that they did not intend to accept the offer at the offer price of \$0.23 per Finders share. In each case, the holding of the two independent directors was included in the aggregated figure, along with the shares managed by Taurus.

On 14 February 2018, Eastern Field declared its bid unconditional (after previously declaring its bid free from the minimum acceptance condition on 12 December 2017).

On 19 March 2018, Taurus accepted the bid and Finders made an ASX announcement advising (among other things) that the independent directors: (a) continued to believe the offer does not reflect fair value but now recommended shareholders consider accepting the offer to avoid the risk of being left as minority shareholders and (b) the two independent directors who owned or controlled Finders shares now intended to accept the offer (which they subsequently did in relation to some of their shares on 20 March 2018 and the rest on 28 March 2018).

Declaration

In summary, the Panel considered that the circumstances were unacceptable because:

- as a result of the statement authorised by Taurus and Taurus's subsequent acceptance of the takeover bid, the acquisition of control over Finders shares did not take place in an efficient, competitive and informed market and
- as a result of Finders authorising the solicitation of rejection statements from shareholders and aggregating those statements with the statements made by Taurus and the independent directors, the market and Finders shareholders were not in a position to properly assess the likelihood that, or circumstances in which, 38.21% of Finders shares could be accepted into the Takeover Bid.

The Panel did not consider it against the public interest to make the declaration, and in making it had regard to the matters in section 657A(3) of the *Corporations Act 2001* (Cth).

Orders

The Panel has made orders to the effect of:

- cancelling Taurus's acceptance of the bid
- providing withdrawal rights for Finders shareholders who accepted the bid on or after 20 March 2018 and
- prohibiting Eastern Field from relying on Taurus's acceptances and any acceptances that are subsequently withdrawn, for the purposes of the creep exception in item 9 of section 611.

The sitting Panel was Yasmin Allen, Stephanie Charles and Karen Evans-Cullen (sitting President).

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

Allan Bulman
Director, Takeovers Panel
Level 10, 63 Exhibition Street
Melbourne VIC 3000
Ph: +61 3 9655 3500
takeovers@takeovers.gov.au



Australian Government

Takeovers Panel

ANNEXURE A

CORPORATIONS ACT SECTION 657A

DECLARATION OF UNACCEPTABLE CIRCUMSTANCES

FINDERS RESOURCES LIMITED 02

CIRCUMSTANCES

1. Finders Resources Limited (**Finders**) is an ASX listed company.
2. On 23 October 2017, Eastern Field Developments Limited (**Eastern Field**) lodged a bidder's statement in relation to an off market takeover bid for all the shares of Finders at \$0.23 cash per share (**Takeover Bid**). The Takeover Bid was subject to a number of conditions including that, before expiration of the bid period, Eastern Field has received valid acceptances so that Eastern Field has a relevant interest in more than 50% of the Finders shares at that time (**Minimum Acceptance Condition**).
3. On 5 December 2017, Finders issued its target's statement (**Target's Statement**), which disclosed that:
 - (a) for the purposes of the Target's Statement, the independent directors were Messrs Gary Comb, Barry Cahill and Gordon Galt (**Independent Directors**)
 - (b) each of the Independent Directors recommended that Finders shareholders reject the Takeover Bid and
 - (c) the Independent Directors (relevantly Messrs Comb and Cahill)² intended to reject the Takeover Bid for any Finders shares they own or control.
4. Taurus Funds Management Pty Limited (**Taurus**) is manager of two vehicles who, together, hold a substantial holding in Finders. On 6 December 2017, Finders provided a draft letter and announcement to Taurus. Later that day, a representative of Taurus signed the final form of that letter which stated, among other things, that Taurus consented to Finders releasing an announcement on the ASX containing the following statement:

² Noting that Mr Galt did not own or control any Finders shares

Finders' second largest shareholder, Taurus Funds Management, does not intend to accept the Offer

Taurus Funds Management Pty Ltd ("Taurus") currently manages 87,339,525 Finders shares, being equal to 11.31% of the Finders shares currently on issue, making it the second largest Finders shareholder after the bidder consortium that owns Eastern Field.

Taurus has notified Finders that it does not intend to accept the Offer at the Offer Price of \$0.23 per Finders share in respect of the Finders shares that Taurus owns or controls, on the basis that Taurus considers that the Offer Price does not reflect the fair value of Finders shares.

5. The draft letter and final form of the letter referred to in paragraph 4 also stated that *"Taurus confirms that it will notify Finders as soon as reasonably practicable if Taurus' intentions with respect to accepting the Offer change"*. This statement was not a part of the disclosure which Taurus consented to being in a Finders' announcement.
6. On 7 December 2017, Finders made an ASX announcement that contained the statement referred to in paragraph 4 but not the statement referred to in paragraph 5. Taurus was provided an opportunity to comment on the draft letter and the announcement before its release. Taurus made a change to the draft letter and commented on the announcement. However it did not comment on the omission of the statement referred to in paragraph 5 in the announcement.
7. Between 11 and 13 December 2017, Euroz Securities Limited (**Euroz**) obtained letters from other Finders shareholders who were not substantial holders (on Finders' behalf) consenting to Finders making an announcement which disclosed the relevant shareholder's name, the number of Finders shares that the shareholder owned or controlled and the fact that the shareholder has notified Finders that the shareholder does not intend to accept the Takeover Bid at the bid price in respect of those shares. The letters did not include the statement referred to in paragraph 5. Euroz subsequently advised Finders (in response to Finders' query to Euroz following receipt of correspondence from ASIC) that Euroz did not inform these shareholders that ASIC Regulatory Guide 25 - *Takeovers: false and misleading statements (ASIC RG 25)* may apply to these statements.
8. On 12 December 2017, Finders made an ASX announcement that stated that shareholders who in aggregate own or control 20.15% of the Finders shares on issue had notified Finders that they do not intend to accept the Takeover Bid and, when aggregated with Taurus and Messrs Comb and Cahill, statements by shareholders that they do not intend to accept the Takeover Bid amounted to 33.19% of the Finders shares on issue.
9. On 12 December 2017, Eastern Field declared the Takeover Bid free from the Minimum Acceptance Condition.

10. On 13 December 2017, Finders made an ASX announcement stating that additional shareholders who in aggregate own or control 4.39% of Finders shares had informed Finders that they do not intend to accept the Takeover Bid. On 15 December 2017, Finders made an ASX announcement stating that additional shareholders who in aggregate own or control 0.63% of Finders shares had informed Finders that they do not intend to accept the Takeover Bid. Both announcements aggregated these intention statements with previous statements made by Finders shareholders, including Taurus and Messrs Comb and Cahill. The 15 December 2017 ASX announcement noted that Finders shareholders representing 38.21% of Finders shares in aggregate had notified Finders that they do not intend to accept the Takeover Bid at the bid price of \$0.23 per Finders share in respect of the Finders shares which each of them own or control.
11. On 14 February 2018, Eastern Field declared the Takeover Bid unconditional. Eastern Field solicited acceptances from Finders shareholders, including shareholders who had given intention statements to Finders via Euroz. On 8 March 2018, Eastern Field had voting power of 33.76% in Finders. On 12 March 2018, Eastern Field gave notice that it would not increase the consideration offered under the Takeover Bid. On 16 March 2018, Eastern Field had voting power of 48.40% in Finders.
12. On 19 March 2018, Taurus accepted the Takeover Bid for all its shares. As a result of Taurus's acceptance, Eastern Field's voting power in Finders increased over 50% to 60.22%.
13. Also on 19 March 2018, Finders made an ASX announcement advising that:
 - (a) The Independent Directors continued to believe that the Takeover Bid does not reflect fair value for Finders shares.
 - (b) However, Eastern Field had now acquired a relevant interest in more than 60% of Finders shares and therefore had a controlling interest in Finders.
 - (c) *"In light of these developments, the Independent Directors now urge shareholders to quickly consider ACCEPTING the Offer, to avoid the risks of being left as a minority shareholder in Finders when it is controlled by Eastern Field"*.
 - (d) The Independent Directors intended to accept the Takeover Bid for any Finders shares they owned or controlled.
14. Later on 19 March 2018, Finders issued its second supplementary target's statement. None of the second supplementary target's statement, the Target's Statement or first supplementary target's statement dated 22 December 2017 discussed the intention statements by shareholders other than Messrs Comb and Cahill.

15. On 20 March 2018, Mr Comb accepted the Takeover Bid in relation to 1,566,667 shares and Mr Cahill accepted the Takeover Bid in relation to 450,000 shares.

16. On 21 March 2018, Eastern Field issued its second supplementary bidder's statement, noting Taurus's acceptance of the Takeover Bid and stating that:

Eastern Field considers that the effect of Taurus' statement (that it would not accept the offer at the Offer Price of \$0.23) may be that Taurus is prevented from accepting the Offer for the reasons set out in ASIC's Regulatory Guide 25 (Takeovers: false and misleading statements). Eastern Field has raised this matter with ASIC. This issue may also apply to other acceptances received.

17. On 28 March 2018, Messrs Comb and Cahill accepted the Takeover Bid for their remaining shares.

EFFECT

18. For the period between 7 December 2017 and 19 March 2018, as a result of Finders making (with the consent of Taurus) the statement by Taurus referred to in paragraph 4 which was not expressly qualified and made no reference to the statement referred to in paragraph 5:

(a) Finders' shareholders and market participants could reasonably assume that Taurus would not accept the Takeover Bid in the circumstances that existed on 19 March 2018

(b) Taurus's acceptance of the Takeover Bid was inconsistent with those assumptions and those assumptions had the potential to affect assessment of whether to accept the Takeover Bid and decisions whether to acquire or dispose of Finders shares and

(c) the acquisition of control over Finders shares did not take place in an efficient, competitive and informed market.

19. As a result of Finders authorising the solicitation of statements from shareholders other than Taurus that they will not accept the Takeover Bid and aggregating those intention statements with statements made by Taurus and Messrs Comb and Cahill, and noting these shareholders were not informed of the possible application of ASIC RG 25; Finders shareholders (including shareholders who made intention statements) and the market did not have sufficient information to assess whether and in what circumstances persons making the statements may change their intentions or act inconsistently with their statements. Accordingly, the market and Finders shareholders were not in a position to properly assess the likelihood that, or circumstances in which, 38.21% of Finders shares could be accepted into the Takeover Bid.

CONCLUSION

20. It appears to the Panel that the circumstances are unacceptable circumstances:
- (a) having regard to the effect that the Panel is satisfied they have had, are having, will have or are likely to have on:
 - (i) the control, or potential control, of Finders or
 - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in Finders
 - (b) in the alternative, having regard to the purposes of Chapter 6 set out in section 602 of the *Corporations Act 2001* (Cth).
21. 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 Finders.

Bruce Dyer
Counsel
with authority of Karen Evans-Cullen
President of the sitting Panel
Dated 26 April 2018



Australian Government

Takeovers Panel

ANNEXURE B

CORPORATIONS ACT SECTION 657D ORDERS

FINDERS RESOURCES LIMITED 02

The Panel made a declaration of unacceptable circumstances on 26 April 2018.

THE PANEL ORDERS

1. Eastern Field not take any action to process an acceptance of the Takeover Bid in relation to shares managed by Taurus.
2. On the expiry of three business days after the relevant date, any acceptances of the Takeover Bid in relation to shares managed by Taurus are cancelled.
3. While the Takeover Bid remains open for acceptance, Taurus must not accept the Takeover Bid or sell any shares it manages for a price at or below \$0.23 per share.
4. Eastern Field must, within 14 days after the relevant date, send a letter to each Accepting Shareholder (in a form approved by ASIC and the Panel) that includes:
 - (a) a description of how an Accepting Shareholder has until 15 business days after dispatch of the letter a right to withdraw their acceptance, which is equivalent to the right conferred by section 650E of the *Corporations Act 2001* (Cth) (except to the extent contemplated by these orders)
 - (b) a summary of the Panel's declaration and orders
 - (c) Eastern Field's current intentions regarding the business of Finders, including its intentions as to whether it will keep Finders as a listed entity and
 - (d) any other information known to Eastern Field that is material to the making of the decision by an Accepting Shareholder whether to withdraw their acceptance.

5. Eastern Field must ensure that each Accepting Shareholder has, for a period of 15 business days after dispatch of the letter referred to in paragraph 4, a right to withdraw their acceptance which is equivalent to the right conferred by section 650E (except to the extent contemplated by these orders).
6. Eastern Field must not purport to rely on item 9 of section 611 in circumstances where it would not have been able to rely on that section if it had been taken to have never acquired voting power in shares that are the subject of the cancellation under paragraph 2 or the withdrawal under paragraph 5.
7. In these orders the following terms apply.

Accepting Shareholder	A person who accepted the Takeover Bid on or after 20 March 2018
Eastern Field	Eastern Field Developments Limited
Finders	Finders Resources Limited
relevant date	The date being the later of: <ul style="list-style-type: none"> • 26 April 2018 and • the date on which any stay or suspension of these orders ends
Takeover Bid	Eastern Field's off market takeover offer to acquire all the ordinary shares in Finders at \$0.23 per share
Taurus	Taurus Funds Management Pty Ltd

Bruce Dyer
Counsel
with authority of **Karen Evans-Cullen**
President of the sitting Panel
Dated 26 April 2018