



Australian Government

Takeovers Panel

**Reasons for Decision
Finders Resources Limited 03R
[2018] ATP 11**

Catchwords:

Declaration of unacceptable circumstances – orders – truth in takeovers – intention statements by substantial holders – rejection statements – aggregation of intention statements – departure from intention statements – efficient, competitive and informed market – extension of time to make an application

Corporations Act 2001 (Cth), sections 602, 606, 608(8), 618(1)(b), 638(3)(5), 657A, 657C(3), 657D, 657EA, 662A, 662C, item 10 of s670B(1), Part 6A.1

Cemex Australia Pty Ltd v Takeovers Panel [2009] FCAFC 78, Australian Pipeline Limited v Alinta Limited [2006] FCA 1378

ASIC Regulatory Guide 25 – Takeovers: false and misleading statements, Guidance Note 2 – Reviewing Decisions, Guidance Note 5 – Specific Remedies – Information Deficiencies, Guidance Note 12 – Frustrating Action, Guidance Note 23 – Shareholder intention statements

Procedural Rules r3.3.1

Finders Resources Limited 02 [2018] ATP 9, Finders Resources Limited 01 [2018] ATP 6, Ambassador Oil & Gas Limited [2014] ATP 14, Bullabulling Gold Limited [2014] ATP 8, MYOB Limited [2008] ATP 27, Golden West Resources Limited 03 and 04 [2008] ATP 1, BreakFree Limited 04R [2003] ATP 42, BreakFree Limited 03 and 04 [2003] ATP 38 & 39

Interim order	IO undertaking	Conduct	Declaration	Final order	Undertaking
NO	NO	YES	YES	YES	NO

INTRODUCTION

1. The Panel, Ian Jackman SC, Ron Malek (sitting President) and David Williamson, affirmed the initial Panel’s¹ decision to make a declaration of unacceptable circumstances in relation to the affairs of Finders Resources Limited, but (by a 2:1 decision) set aside the initial Panel’s orders and substituted new orders. The Panel considered that the facts of this case left considerable room for reasonable minds to differ on the interaction and effects of the unacceptable circumstances and the application to them of "truth in takeovers" principles. On the majority's views on such matters, it was not open to them to make the same orders as the initial Panel, even though they fully agreed with the declaration.

2. In these reasons, the following definitions apply.

Eastern Field Eastern Field Developments Limited

Declaration declaration of unacceptable circumstances in relation to the affairs of Finders Resources Limited made by the initial Panel

¹ All references to the initial Panel are to the Panel in *Finders Resources Limited 02 [2018] ATP 9*

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	on 26 April 2018 (Annexure A)
Finders	Finders Resources Limited
Independent Directors	Messrs Gary Comb, Barry Cahill and Gordon Galt
Original Orders	the orders made by the initial Panel on 26 April 2018
RG 25	ASIC Regulatory Guide 25 – Takeovers: false and misleading statements
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

FACTS

3. The facts are as set out in the Declaration and the initial Panel’s reasons.² We adopt those³ as our findings of fact. None of the parties⁴ took issue with the facts stated in the Declaration (as opposed to what was unacceptable). Briefly:
- (a) Eastern Field, which had a relevant interest in approximately 19.8% of Finders, made the Takeover Bid offering \$0.23 cash per share (the pre-announcement closing price) subject to conditions including a 50% minimum acceptance condition.
 - (b) In Finders’ target’s statement, the Independent Directors recommended that shareholders reject the Takeover Bid and stated that they intended to reject the offer for any Finders shares they owned or controlled. Finders’ target’s statement indicated that Messrs Comb and Cahill had relevant interests in Finders shares but Mr Galt did not.
 - (c) Mr Galt is a principal of Taurus Funds Management. Taurus managed 11.31% of Finders shares (the largest holding after Eastern Field). Taurus authorised Finders to state in an ASX announcement (drafted by Finders) that Taurus “*does not intend to accept the Offer at the Offer Price of \$0.23 per Finders share*” (no qualification was expressed). Finders made the announcement on 7 December 2017.
 - (d) Euroz obtained letters (on Finders’ behalf) from other Finders shareholders authorising Finders to disclose in ASX announcements that each shareholder had notified Finders that the shareholder did not intend to accept the Takeover Bid at \$0.23 per Finders share (no qualification was expressed). Finders made announcements disclosing the aggregate percentage of Finders shares in respect of which it had been informed of such intentions on 12

² [2018] ATP 9 at [3]-[14], [21]-[23] and [38]-[39]

³ As supplemented below

⁴ Unless otherwise indicated this term includes ASIC

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December 2017 (33.19%), 13 December 2017 (37.58%) and 15 December 2017 (38.21%).

- (e) Eastern Field declared the Takeover Bid unconditional on 14 February 2018 and solicited acceptances from Finders shareholders, including those who had given intention statements to Finders through Euroz. Eastern Field declared its offer final on 12 March 2018.
- (f) Taurus accepted the Takeover Bid on 19 March 2018. On the same day Finders made an ASX announcement advising that Eastern Field had acquired a controlling interest in Finders and urging shareholders to quickly consider accepting to avoid being left as a minority shareholder. The announcement also advised that the Independent Directors intended to accept the Takeover Bid for any Finders shares they owned or controlled.
- (g) On 21 March 2018, Eastern Field issued its second supplementary bidder's statement in which it noted Taurus's acceptance and indicated that Eastern Field considered (and had raised with ASIC) that Taurus may be prevented from accepting for reasons set out in RG 25.
- (h) On 28 March 2018, ASIC applied for a declaration of unacceptable circumstances and orders.

- 4. On 26 April 2018, the initial Panel decided to make the Declaration and the Original Orders, which provided (among other things) for Taurus's acceptances of the Takeover Bid to be cancelled and for persons accepting the Takeover Bid after Taurus accepted to have a right to withdraw their acceptance.

APPLICATION

Declaration sought

- 5. By application dated 26 April 2018, Taurus sought a review of both the Declaration and the Original Orders.⁵
- 6. Taurus submitted (among other things) that:
 - (a) no declaration should have been made because Taurus believed at the time it gave its intention statement that it would be aggregated with intention statements to be given by other shareholders
 - (b) the application of RG 25 to shareholders has always been controversial and its application in this matter to Taurus, and not to other sophisticated shareholders who made statements, was anomalous and
 - (c) the Original Orders were unfairly prejudicial to Taurus, given that Taurus was only one of multiple parties contributing to the circumstances.

⁵ Decisions under s657A and s657D are treated as separate decisions: see s657EA(2). Unless otherwise indicated, all statutory references are to the *Corporations Act 2001* (Cth), and all terms used in Chapter 6 or 6C have the meaning given in the relevant Chapter (as modified by ASIC)

DISCUSSION

Materials considered

7. In deciding this matter, we have been provided with, and have considered, the following:
 - (a) all material before the initial Panel
 - (b) the initial Panel’s reasons for decision and
 - (c) all submissions and material provided to us in the review.
8. We received extensive submissions on matters including the Declaration, the Original Orders, RG 25, “truth in takeovers” principles and various alternative orders. We will address specifically only what is necessary to explain our findings on material questions of fact, the material on which they are based, and our reasons.

Truth in takeovers and RG 25

9. ASIC released its current version of RG 25 in 2002. It had been revised, after consultation, following criticism that ASIC’s previous policy encouraged bidders to make “no increase” statements to pressure shareholders to accept,⁶ confident that if the tactic failed ASIC would allow an increase provided the bidder paid compensation. The risk of having to compensate did not necessarily discourage such tactics by bidders since the compensation payable was likely to be small relative to the cost of increasing the bid.
10. The revised RG 25 indicated among other things that:
 - (a) market participants need to expressly reserve any right to depart from certain “last and final statements”⁷ (a previous exception for “unforeseeable circumstances” was deleted from the policy)
 - (b) market participants should be held to those statements “as with a promise”⁸ and
 - (c) compensation does not adequately address ASIC’s regulatory concerns.⁹
11. In addressing “last and final statements”, RG 25 is focused primarily on statements by bidders and targets. It also deals with acceptance statements by substantial holders and foreshadows possible regulatory action where a substantial holder departs from an unqualified statement. In this context, RG 25 focuses on the impact on other shareholders in a target company,¹⁰ not on the bidder.
12. As the initial Panel acknowledged, while the Panel may have regard to RG 25, a decision as to whether circumstances are unacceptable and, if so, the appropriate orders (if any), is a matter for the Panel. The Panel has endorsed “truth in

⁶ We are not suggesting this was necessarily the reason for revising RG 25 (or reflects ASIC’s view)

⁷ RG 25.4 to 25.6

⁸ RG 25.9

⁹ RG 25.23, referring to RG 25.10 and RG 25.11

¹⁰ See RG 25.30 to 25.32

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takeovers” principles and RG 25 in several decisions¹¹ and has cited RG 25 in Guidance Notes.¹² We agree with that endorsement, but it must always be understood to be subject to the duty of the Panel to exercise its powers in accordance with the Act, including by complying with s657A in making a declaration and s657D in making orders. The orders that it is open to the Panel to make in a particular case under s657D(2)(a) or (b) will depend on what circumstances have been declared to be unacceptable and:

- (a) the effects of the circumstances on rights or interests that the Panel is satisfied are affected or
- (b) the way that a takeover bid or proposed takeover bid would have proceeded if the circumstances had not occurred.

Unacceptable circumstances

13. We invited submissions from parties regarding the Declaration.
14. Taurus submitted that the Declaration should not have been made because the events that occurred after it made its intention statement were not foreseeable and because its intention statement was made on the understanding that it would be aggregated with those of the other rejecting shareholders. In our view, neither argument provides a reason not to make the Declaration or requires any change to its terms. These arguments are not inconsistent with either the description of the circumstances or the effects described in paragraphs 18 and 19 of the Declaration. Taurus and Finders should have ensured that Taurus’s intention statement was appropriately qualified. If Taurus was not aware of the implications of RG 25, it should have sought advice.
15. Eastern Field submitted that it was open to us to extend the Declaration to refer specifically to the conduct of the Independent Directors, which Eastern Field considered went beyond the usual statement of intention proximate to a target director’s recommendation. Eastern Field queried the initial Panel’s view that in most circumstances statements of intention in a target’s statement by directors who are not substantial holders should not attract RG 25. ASIC made similar submissions.
16. In our experience, it is common if not universal practice for directors of a target subject to a hostile bid, on effective control of the target passing, to change their recommendation as to acceptance, and as a consequence to accept in respect of their own holdings despite having previously expressed an unqualified intention to reject the bid. In our view, treating such statements as “last and final” statements under RG 25 is unlikely to promote either the purposes in s602 or the

¹¹ Including some involving intention statements by shareholders (although the Panel did not make orders holding shareholders to their statements in these decisions). See: *Ambassador Oil & Gas Limited* [2014] ATP 14, *Bullabulling Gold Limited* [2014] ATP 8, *MYOB Limited* [2008] ATP 27, *Golden West Resources Limited 03 and 04* [2008] ATP 1, *BreakFree Limited 04R* [2003] ATP 42, *BreakFree Limited 03 and 04* [2003] ATP 38 & 39

¹² See *Guidance Note 5 – Specific Remedies – Information Deficiencies* fn 1, *Guidance Note 12 – Frustrating Action* fn 26, *Guidance Note 23 – Shareholder intention statements (GN 23)* fn 7. Note that each of these Guidance Notes also states that nothing in that note “binds the Panel in a particular case”

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objective of s638(3) in requiring target directors to make a recommendation or give reasons for not doing so. Some shareholders may doubt recommendations by directors who act inconsistently in respect of shares they control. Requiring directors to qualify their intentions may also detract from their recommendations or confuse shareholders, especially where the qualification is reasonably considered unlikely to arise. That may have been so in this case, given the Takeover Bid offered no premium over the closing market price before it was announced.

17. Like the initial Panel, we were concerned about the manner in which unqualified intention statements were obtained from other shareholders, aggregated, and used in market announcements¹³ by Finders. Finders submitted¹⁴ that:
 - (a) On or before 5 December 2017, a representative of Finders' corporate adviser and Mr Comb discussed a proposed strategy of seeking intention statements from Taurus and from Finders shareholders who were clients of Euroz. The former spoke to a representative of Euroz and the latter spoke to Mr Galt. Finders' legal adviser, Ashurst, was not involved in the discussions.
 - (b) Ashurst was instructed by Finders' corporate adviser to prepare a draft letter for Taurus, and later a draft template letter for Euroz clients, and was directed in each case what the intention statement should say.
18. No party pressed us to investigate further¹⁵ who was responsible for the strategy described above and its implementation. Given it concerned events more than 3 months before the application to the initial Panel, we did not pursue that. On the material before us we do not wish to comment further on the conduct of the Independent Directors. In our view, the unacceptable circumstances that resulted from the strategy are sufficiently described in the Declaration.
19. We agree with the Declaration and do not wish to make any changes to it.

DECISION

Declaration

20. For reasons above, it appears to us that the circumstances are unacceptable as described in the Declaration. Accordingly, we decline Taurus's review application to the extent that it relates to the Declaration and we affirm the Declaration. In doing so, we had regard to the matters in s657A(3).

¹³ Although the Finders ASX announcements referred to in paragraphs 8 and 10 of the Declaration placed great emphasis on these statements, no mention was made of them (apart from the statements by Messrs Comb and Cahill) in any supplementary target's statement (as paragraph 14 of the Declaration notes). Including those statements in a supplementary target's statement would likely have required consent from the persons making the statements under s638(5), potentially exposing those persons to liability for loss or damages suffered as a result under item 10 of s670B(1). In our view GN 23.11(c) does not condone addressing such matters in announcements rather than a supplementary target's statement or bidder's statement.

¹⁴ In rebuttal submissions made to the initial Panel on 15 April 2018

¹⁵ As opposed to drawing conclusions on the material before us: see paragraph 15

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Extension of time

21. For the avoidance of doubt, to the extent that Taurus's review application extends to the initial Panel's decision to extend time under s657C(3), we affirm that decision for the same reasons.

Orders

22. After affirming the Declaration, we set aside the Original Orders and substituted the final orders set out in Annexure B. The Original Orders cancelled Taurus's acceptance of the bid and provided withdrawal rights. Our orders require Taurus to compensate persons acquiring Finders shares above Eastern Field's offer price and allow Eastern Field (in effect) to defer payment for the acquisition of Taurus's Finders shares.
23. Under s657EA(4) and s657D the Panel is empowered to make 'any order'¹⁶ if 4 tests are met:
- (a) it has made a declaration under s657A. The initial Panel did so on 26 April 2018.
 - (b) it must not make an order if it is satisfied that the order would unfairly prejudice any person. For reasons below, we are satisfied that our orders do not unfairly prejudice any person.
 - (c) it gives any person to whom the proposed order would be directed, the parties and ASIC an opportunity to make submissions. This was done on 8, 15, 22, 28 and 30 May 2018 and 3 June 2018.
 - (d) it considers the orders appropriate under one or more of the paragraphs in s657D(2). For reasons below, we are satisfied that our orders are appropriate to protect rights or interests of persons who have been, are being or will be or are likely to be affected by the unacceptable circumstances.

No orders to ensure the takeover bid proceeds as it would have otherwise

24. ASIC and Eastern Field submitted that orders cancelling Taurus's acceptances are appropriate orders to make under s657D(2)(b) to ensure that the Takeover Bid proceeds (as far as possible) as it would have proceeded if the unacceptable circumstances had not occurred. That argument treats Taurus's action in resiling from its statement¹⁷ as the only relevant unacceptable circumstance in determining how the Takeover Bid would have proceeded. However, the Declaration identifies a number of other unacceptable circumstances, including Finders' actions¹⁸ in providing the draft announcement to Taurus and authorising the solicitation of similar statements from other shareholders, who were not informed that RG 25 may apply.¹⁹ There is room for reasonable minds to differ as to the significance of

¹⁶ Including a remedial order but other than an order requiring a person to comply with a provision of Chapters 6, 6A, 6B or 6C

¹⁷ Declaration paragraphs 4-6 and 12, with the effects described in paragraph 18

¹⁸ See paragraph 17 above and Declaration paragraphs 4-7

¹⁹ Declaration paragraphs 4-8 and 10, with the effects described in paragraph 19

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the latter set of circumstances in determining what order is appropriate under s657D(2)(b). In our view, it is at least possible, and perhaps even likely, that if the draft intention statements provided by Finders to Taurus and the Euroz clients had been appropriately qualified,²⁰ they would have been free to accept as they have done. How the Takeover Bid would have proceeded, if not for the unacceptable circumstances, depends very much on *which* of the circumstances in the Declaration are emphasised.

25. Since this is a de novo review on the merits,²¹ we must form our own view as to what is the correct or preferable decision on this issue. We do not think that the unacceptable circumstances relating to the manner in which the intention statements were prepared and solicited can be ignored in determining what is appropriate under s657D(2). We do not believe RG 25 requires us to do so. We do not think it appropriate to make an order under s657D(2)(b) that addresses the effects of only one²² of a complex and interrelated set of unacceptable circumstances. If regard is had to *all* of the unacceptable circumstances, we think it as likely as not they made little difference to the ultimate outcome.
26. There are also a number of ameliorating factors arising from the facts of this case that support our view that it is not appropriate to permanently cancel Taurus's acceptance of the Takeover Bid:
 - (a) In our view, it is not surprising that where directors of a target company (Finders) are recommending against acceptance of a hostile offer, a holding associated with a director – ie Taurus – would make a statement (analogous to those made by Messrs Comb and Cahill in relation to shares they control) that it did not intend to accept the (Eastern Field's) offer.
 - (b) Taurus's initial statement to Finders was accompanied by a qualification, albeit – and Taurus acknowledges it was at fault here – that qualification was not sufficiently clear and was not repeated in Finders' announcements to ASX.
 - (c) It seems clear Taurus was aware that its intentions statement was to be aggregated with similar statements by other Finders shareholders.
 - (d) ASIC did not query Taurus (or Finders) regarding Taurus's statement or the aggregated statements until more than three months after they were announced.²³
 - (e) No contemporaneous evidence was provided of reliance by Eastern Field or any other person on Taurus's intention statement. Notwithstanding Eastern

²⁰ For example, the intention statement could have been made subject to a time limitation of 3 months or cease to apply if copper cathode production rates and recovery levels at the Wetar project fell below specified levels (as to which, see *Finders Resources Limited 01* [2018] ATP 6)

²¹ See s657EA, Procedural Rules r3.3.1, Guidance Note 2 – Reviewing Decisions at [31]

²² That is, Taurus resiling from its intention statement

²³ We are not suggesting that ASIC can be expected always to query unqualified statements (as ASIC says it *may* do in RG 25.8). However, any lack of qualification in a statement will inevitably have greater significance if maintained despite ASIC seeking clarification.

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Field's claim that it relied on Taurus's intention statement, Eastern Field did not query Taurus regarding its statement.

- (f) What occurred when Eastern Field acquired effective control of Finders was not unlike the ordinary course of control passing in many targets subject to hostile bids.²⁴ The Independent Directors changed their recommendation and accepted Eastern Field's offer in respect of shares they controlled, as did Taurus also in respect of its holding associated with Mr Galt. This was to be expected. A target board is often apprehensive as to the new controlling shareholder's intentions and/or about shareholders being locked into a minority position.

Orders to protect rights or interests

27. We turn now to the question of whether it is appropriate to make orders under s657D(2)(a) (and if so what orders) to protect rights or interests of persons affected by the unacceptable circumstances. Determining whether we are satisfied rights or interests have been affected requires us to engage in a degree of speculation, drawing on our commercial expertise.²⁵ We must, of course, have a suitable foundation for any conclusion, but once again there is considerable scope for reasonable minds to differ.

Eastern Field

28. We accept that it may be appropriate to make orders protecting rights or interests of a bidder where they are affected by unacceptable circumstances. For example, if a bidder's interests are affected by circumstances that the Panel considers unacceptable, having regard to s602(a), because the acquisition of control over voting shares has not taken place in an efficient, competitive and informed market, we see no reason in principle why the bidder's interests should not be protected to the same extent as any other market participant. However, we note that the purposes in paragraphs (b), (c) and (d) of s602 are largely for the benefit of target shareholders and it may not be appropriate to make orders that are inconsistent with those purposes. In the context of "truth in takeovers" principles, this may mean that the Panel has greater power to make orders regarding a bidder's last and final statements for the benefit of current or former shareholders (which orders may be supported by all of s602(a), (b) and (c)) than it does to make orders regarding statements by shareholders for the benefit of a bidder (which orders may be supported only by s602(a), and may even be contrary to s602(b) and (c)).
29. Eastern Field submitted that it would be adversely affected²⁶ in various ways by achieving voting power of 90% due to Taurus resiling from its intention statement

²⁴ See paragraph 16

²⁵ Similarly to what is required under s657A(2)(a) in making a declaration: *Cemex Australia Pty Ltd v Takeovers Panel* [2009] FCAFC 78 at [135] quoting Emmett J in *Australian Pipeline Limited v Alinta Limited* [2006] FCA 1378 at [148]

²⁶ We invited Eastern Field to "quantify, and provide evidence of, the loss you claim to have suffered as a result of Taurus resiling from its intention statement". Eastern Field responded that it would "suffer clear, substantial and unfair commercial prejudice ... a broader concept than loss suffered", which it then

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and accepting the Takeover Bid. Eastern Field submitted that, despite making a bid for all ordinary shares on issue,²⁷ it “always envisaged that [it] could get control” without being required to make a compulsory buy-out offer.²⁸ Eastern Field submitted that it relied on Taurus’s intention statement in declaring its offer unconditional and extending the offer, believing it could never reach 90% because Taurus could not accept, and consequently it would be adversely affected in ways including:

- (a) Eastern Field would be required to acquire Taurus’s shares (at a cost of more than \$20 million) and, if it did so, would not have sufficient funding available to it to make a loan to Finders that it considered Finders was likely to require.
- (b) Eastern Field would be required to make compulsory buy-out offers under section 662A.
- (c) Eastern Field's intention was now to maintain Finders' ASX listing (including by taking measures to ensure appropriate spread if required by ASX) due to the treatment under Indonesian tax laws of Indonesian residents holding more than 50% in unlisted foreign companies.
- (d) Eastern Field had fixed the amount of its banking facility on the basis that Taurus would not (and could not) accept.

30. We accept that Eastern Field may have hoped that Taurus could be prevented from accepting the Takeover Bid, but we are not satisfied on the material before us that Eastern Field *relied* on Taurus’s intention statement to any significant extent in declaring the Takeover Bid unconditional on 14 February 2018 and declaring its offer price final on 12 March 2018. We were not provided with any contemporaneous evidence of such reliance. We note also that:

- (a) When declaring its offer unconditional, Eastern Field made no mention of relying on Taurus’s intention statement, but did state:

“Now that our offer is unconditional and we are Finders' largest shareholder with a 25% stake, we urge Finders' other shareholders to make the most of the certainty of our 23c per share cash offer, accept as soon as possible and receive cash within one month of their acceptances.”

Eastern Field may well have considered the effect of Taurus’s intention statement before declaring its offer unconditional. However, given Eastern Field had only a 25% stake at the time and was urging acceptance of a “nil-premium” offer, we expect that Eastern Field would have been reluctant to

described in its submissions. After considering submissions and rebuttals we then asked all parties whether Eastern Field had “adequately quantified and established its loss and/or commercial prejudice” and invited Eastern Field to “provide further submissions and material to support” any claim to compensation. We also received and considered further submissions from Eastern Field addressing the manner in which it was affected in response to draft orders and revised draft orders. We have considered all of these submissions but will not describe them in detail.

²⁷ As opposed to a proportional bid under s618(1)(b)

²⁸ Eastern Field rebuttal in relation to the supplementary brief on orders dated 11 April 2018 at [4.6]

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rule out Taurus accepting if that proved to be the only way to acquire effective control of Finders.

- (b) The terms of an order sought in *Finders Resources Limited 01*²⁹ on 1 March 2018 (at which time Eastern Field had increased only to 26.32%³⁰) was also consistent with Eastern Field being open to Taurus accepting the Takeover Bid.
- (c) On 12 March 2018, when Eastern Field had voting power of approximately 34.2%,³¹ it declared its offer price final. Even at this stage, we would be surprised if Eastern Field was sufficiently confident to rule out relying on Taurus's acceptance to obtain control.
- (d) On 15 March 2018, when Eastern Field had voting power between 44% and 48%,³² it extended its offer period to close on 30 March 2018 (unless further extended).
- (e) On 21 March 2018, Eastern Field lodged its second supplementary bidder's statement, which stated (after noting that its voting power had increased to 60.22%):

“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.”

Eastern Field did not expressly state that it was or had been relying on Taurus's statement or disclose any intention to maintain Finders' ASX listing or that it had arranged its banking facility on the basis that Taurus could not accept.

- 31. In our view, Eastern Field should reasonably have expected, when it announced a “nil-premium” bid for all ordinary shares on issue,³³ that it would need to declare its offer unconditional in order to encourage acceptance and would then have limited control over the level of acceptances it would achieve. In our experience, an unconditional bid that achieves 50% acceptance will often go on to reach 90% acceptance, sometimes within a day or two. Shareholders are often persuaded to accept by one or more of the change of control, concern that the share price will fall after the bid closes or the risk of remaining a minority shareholder in a company with reduced liquidity. No doubt Eastern Field hoped to close its offer shortly after reaching its desired level of acceptance. However, its ability to do so was limited by s624(2), which provides for a 14 day extension where a bidder's voting power increases to more than 50% within the last 7 days of the offer period.

²⁹ [2018] ATP 6, as discussed by the initial Panel: [2018] ATP 9 at [63]

³⁰ Eastern Field form 604 dated 1 March 2018

³¹ Eastern Field form 604 dated 13 March 2018 (including the acquisition of 3,334,832 shares on 9 March 2018 disclosed in that notice)

³² Eastern Field form 604 dated 14 March 2018 and Eastern Field form 604 dated 19 March 2018

³³ As opposed to a proportional bid under s618(1)(b)

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32. Given the above, we are not satisfied that the consequences of Eastern Field obtaining voting power of 90% or more should be attributed to the unacceptable circumstances rather than to Eastern Field's own decisions to make an offer for all ordinary shares on issue, declare its offer unconditional and extend the offer. Moreover, we do not think it appropriate to make orders protecting Eastern Field from those consequences.
33. We are satisfied, however, that Eastern Field changed its financing arrangements in reliance on Taurus's intention statement and its interests have been affected by the unacceptable circumstances to that extent.
34. We think it appropriate to protect those interests by effectively allowing Eastern Field to defer payment for the acquisition of Taurus's shares until 30 November 2018. In our view this should give Eastern Field sufficient opportunity to mitigate the effects of any reliance on Taurus's intention statement.
35. For technical reasons, Orders 1 to 6 achieve an effective deferral of Eastern Field's obligation to pay consideration to Taurus by means of:
- (a) negating Eastern Field's obligations under the Takeover Bid except as contemplated by the Orders (Order 1)
 - (b) cancelling Taurus's acceptances immediately after the close of the offer³⁴ (Order 2)
 - (c) preventing Taurus exercising any rights (after cancellation of its acceptances) under s662C³⁵ (Order 3)
 - (d) preventing Taurus selling its shares prior to 30 November 2018 except as contemplated by the Orders³⁶ (Order 4) and
 - (e) giving Eastern Field a call option³⁷ (Order 5) and Taurus a put option exercisable only after 30 November 2018³⁸ (Order 6).³⁹
36. Eastern Field requested a stay of the Orders. A stay of all of the Orders would have resulted in Eastern Field having an immediate obligation to pay Taurus under the terms of the Takeover Bid (since Order 1 would also be stayed). Instead, to accommodate Eastern Field's request, we altered the definition of "Effective Date" to give 20 business days after the receipt of these reasons for any person to seek orders effecting a stay. We note that it is open to Eastern Field to extend the

³⁴ Which ensures that buy-out rights under Part 6A.1 (which depend on relevant interests of Eastern Field at the end of the offer period) are not affected

³⁵ Since that would allow Taurus to effectively require payment before 30 November 2018

³⁶ This was intended to accommodate a request by Eastern Field

³⁷ Allowing Eastern Field to acquire Taurus's Finders shares, should it wish to

³⁸ Allowing Taurus to require Eastern Field to acquire its Finders shares, but only once the deferral period has ended on 30 November 2018

³⁹ In combination, the put and call options ensure that Eastern Field will continue to have a relevant interest in Taurus's Finders shares (under s608(8)) after cancellation of Taurus's acceptances under Order 2 and will be able to exercise its call option without breach of s606, since Eastern Field will already have a relevant interest in the shares it acquires

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offer in order to avoid triggering buy-out offers under Part 6A.1 while it seeks a stay from the court in the event that proceedings for judicial review are commenced.

Persons trading in Finders shares

37. In our view, it is likely that trading in Finders shares has been affected by the unacceptable circumstances. Determining whether we are satisfied that rights or interests of persons have been affected (and if so, which group or groups of persons) requires an exercise of judgement, drawing on our commercial expertise.⁴⁰ In doing so we have had regard to a range of matters including: Finders' production and recovery history, the fact that the Takeover Bid offered no premium over the pre-announcement closing price and only what we consider a relatively small premium based on other metrics, and the likely impact of the production and disclosure issues raised in *Finders Resources Limited 01*.⁴¹ We are not satisfied that interests of persons who accepted the Takeover Bid (before or after Taurus accepted) have been materially affected. However, we consider that there is sufficient material to support a conclusion that the intention statement of Taurus and actions of Finders are likely to have led some market participants to place a higher probability on Eastern Field increasing its offer, supporting acquisitions above Eastern Field's offer price.
38. Accordingly, we are satisfied that the interests of persons who acquired shares above Eastern Field's offer price of \$0.23 between the release of Taurus's intention statement and Taurus accepting the Takeover Bid⁴² have been affected by the unacceptable circumstances. We think it appropriate to protect the interests of this group of persons by requiring Taurus to pay compensation.⁴³ Orders 7-36 provide for this. They are based on draft orders proposed by Taurus and amended to accommodate comments by parties. The terms are self-explanatory. We will not discuss them except to note that we considered that:
- (a) other shareholders who made intention statements should be excluded from claiming compensation due in part to their involvement in and greater personal knowledge of the unacceptable circumstances
 - (b) Finders should not be required to contribute to the compensation given that Eastern Field now owns more than 90% of Finders and
 - (c) the Orders should provide a process for resolving disputes, with Taurus bearing the cost of its administration.

⁴⁰ *Cemex Australia Pty Ltd v Takeovers Panel* [2009] FCAFC 78 at [81]-[89] and [134]-[139]

⁴¹ [2018] ATP 6

⁴² That is, from 17 December 2017 to 19 March 2018 (inclusive)

⁴³ Noting that our power under s657D(2) is not analogous to a claim for statutory damages and it is open to us to make an "en globo" assessment: *Cemex Australia Pty Ltd v Takeovers Panel* [2009] FCAFC 78 at [148]-[167]

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Other persons

39. We were not satisfied that the material provided established a sufficient basis for us to conclude that rights or interests of any other person were affected to an extent that we think would make it appropriate to make other orders.

Unfair prejudice

40. As noted already, we must not make an order if satisfied it would unfairly prejudice any person.
41. Eastern Field submitted that the grant of an unlimited put option to Taurus in Order 6 was unfairly prejudicial to Eastern Field. We note, however, that Eastern Field has an unlimited call option under Order 5 that enables it to put an end to Taurus's put option at any time. We indicated to parties that we considered Orders 1-6, in combination, appropriate to give Eastern Field (effectively) a means to defer payment for the acquisition of Taurus's shares until 30 November 2018, and we would not consider it appropriate to make Orders 1-4 without also making Orders 5 and 6. Eastern Field did not request that we refrain from making all of Orders 1-6. We are satisfied that Orders 1-6 in combination confer a benefit on Eastern Field (namely, a means to defer payment of consideration to Taurus) and do not unfairly prejudice Eastern Field or any person.
42. Had we considered it appropriate to make orders cancelling Taurus's acceptances while the Takeover Bid remains open we would have considered further whether such orders would unfairly prejudice persons likely (if those orders were not made) to receive buy-out offers under Part 6A.1 Division 2.⁴⁴ We note that:
- (a) the likely prejudice to those persons could be considerable, particularly for those who were not entitled to accept the Takeover Bid. Finders advised that Standard Bank Plc holds 12,248,538 Finders shares (issued on conversion of convertible notes) and 11 Finders employees hold a total of 4,150,000 Finders shares (issued on conversion of performance rights) that could not be accepted into the Takeover Bid and
 - (b) on our view of the unacceptable circumstances,⁴⁵ the initial Panel's basis for concluding there was no unfair prejudice⁴⁶ may not have been open to us.
43. Given we do not think it appropriate to make such a cancellation order, we did not need to reach a conclusion on that issue. For the same reason we did not need to decide whether⁴⁷ an order holding Taurus to its intention statement would unfairly prejudice Taurus.

⁴⁴ It was clear from Eastern Field's submissions and its repeated short extensions during the proceedings that if our orders cancelled Taurus's acceptances (thereby reducing its voting power below 90% at the end of the offer period), Eastern Field intended to allow its offer to close and would not then be required to offer buy-out rights under Part 6A.1 Division 2.

⁴⁵ See paragraphs 24 to 25

⁴⁶ [2018] ATP 9 at [64]-[65]

⁴⁷ Having regard to the factors mentioned in paragraph 26

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No costs orders

44. In our view, the review application was not made, or the proceedings conducted, in such a way as to warrant the exercise of our discretion to award costs. Accordingly no order for costs is made.

Conclusion on orders

45. Eastern Field submitted that our decision on the orders would create “absolute confusion” as to the regulation of “truth in takeovers” in Australia. We do not agree. In our view, the circumstances of this case raised quite distinct issues from the more common and familiar use of “last and final” statements by bidders.
46. The treatment of intention statements by shareholders may well be a suitable topic for further guidance. However, we do not believe that this decision offers any incentive to shareholders to make unqualified intention statements and depart from them. Although we did not consider it open to us to hold Taurus to its statement on the view we took of the unacceptable circumstances, there may be no obstacle in different circumstances. Our Orders should, in any case, act as a significant deterrent to holders of significant stakes making (or authorising) intention statements without clearly stating any qualifications on which they wish to rely. This is for a variety of reasons, including (in circumstances which were relatively benign): (a) the Declaration (b) delayed payment to Taurus and (c) Taurus being required to compensate affected shareholders, together with the expense and distraction of Panel proceedings.

Minority reasons

47. Mr Malek’s reasons are set out below.

Ian Jackman SC

Deputy President of the sitting Panel

Orders dated 6 June 2018

Reasons given to parties 22 June 2018

Reasons published 27 June 2018

Minority reasons in relation to the Original Orders

48. I agree with the majority that the Declaration should be affirmed but consider the Original Orders appropriate for similar reasons to the initial Panel.
49. Taurus submitted that it believed when giving its intention statement that greater than 20% of shareholders would also give similar statements. The majority cite this⁴⁸ as a factor supporting their view that it is not appropriate to cancel permanently Taurus’s acceptance. I draw different conclusions. Taurus ought to have realised that the significance of its holding meant its intention statement was

⁴⁸ See paragraph 26(c)

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critical to the strategy's success and would encourage other shareholders to make similar statements. Taurus's statement was deliberate and calculated to prevent Eastern Field acquiring control. Unlike the other shareholders who made intention statements, Taurus had the benefit of one of its principals, Mr Galt, being on the Finders board.⁴⁹

50. The initial Panel, in concluding that an order cancelling Taurus's acceptance was not unfairly prejudicial, stated:⁵⁰

Taurus had a holding in Finders that could block compulsory acquisition. We consider, drawing on our experience, that this would have a greater market impact than intention statements made by other shareholders which are not covered by RG 25.

51. I agree and consider that making an order cancelling Taurus's acceptance is appropriate to protect the rights and interests of persons affected by the unacceptable circumstances and to ensure that the Takeover Bid proceeds as it would have if the circumstances had not occurred.⁵¹
52. The Original Orders also have the benefit of supporting, in ASIC's submission, "a consistent approach between ASIC's day to day administrative approach in seeking to identify and address unacceptable circumstances arising from 'last and final statements' and the Panel's approach to those statements when disputes come before it".
53. Therefore I think this is an entirely appropriate circumstance for a substantial shareholder to be held to their intention statement in accordance with RG 25. To do otherwise would in my view lead to uncertainty as to exactly when RG 25 might or might not be strictly applied.

Ron Malek
President of the sitting Panel

⁴⁹ I also agree with the initial Panel's comments on this issue, see [2018] ATP 9 at [31]

⁵⁰ [2018] ATP 9 at [67]

⁵¹ It follows that I take a different view to the majority at paragraphs 24 to 26

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Advisers

Party	Advisers
Eastern Field	Johnson Winter & Slattery
Finders	Ashurst Australia
Messrs Comb and Cahill	Corrs Chambers Westgarth
Taurus	King & Wood Mallesons



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)⁵² 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:

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

⁵² Noting that Mr Galt did not own or control any Finders shares

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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

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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).

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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

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(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

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Annexure B

**CORPORATIONS ACT
SECTIONS 657EA AND 657D
ORDERS**

FINDERS RESOURCES LIMITED 03R

The Panel in Finders Resources Limited 02 made a declaration of unacceptable circumstances on 26 April 2018.

THE PANEL ORDERS

Deferral of Payment of Consideration to Taurus

1. Eastern Field is not obliged to take any action to process an acceptance of the Takeover Bid or pay consideration in respect of the Taurus Shares except as contemplated by these Orders.
2. Immediately after the Offer Close, all acceptances in respect of the Taurus Shares and all takeover contracts resulting from those acceptances are cancelled.
3. Taurus must not exercise any rights under s662C of the *Corporations Act 2001* (Cth) in respect of the Taurus Shares.
4. Without the consent of Eastern Field, Taurus must not sell or offer to sell any of the Taurus Shares prior to 30 November 2018 except as contemplated by these Orders.
5. If Eastern Field gives written notice to Taurus under this Order 5 after the Offer Close, Taurus must sell and Eastern Field must acquire (or must procure that its nominee acquires) all Taurus Shares held by Taurus at the time Taurus receives the notice for 23 cents per Finders share on the same terms as the terms of the Takeover Bid immediately before the Offer Close (except that interest is payable on the consideration after 30 November 2018 at the rate applied by the Federal Court of Australia for pre-judgment interest).
6. If Taurus gives written notice to Eastern Field under this Order 6 after the later of the Offer Close and 30 November 2018, Eastern Field must acquire and Taurus must sell all Taurus Shares held by Taurus at the time Taurus gives the notice for 23 cents per Finders share on the same terms as the terms of the Takeover Bid immediately before the Offer Close (except that interest is payable on the consideration after 30 November 2018 at the rate applied by the Federal Court of Australia for pre-judgment interest).

Administration Expenses

7. Taurus must pay the fees and expenses of any person engaged by the Panel to assist with the administration of these Orders.

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Compensation

8. Subject to Order 22, Taurus must pay to each Affected Shareholder who signs and returns a claim form (within the applicable period specified in Order 17) the Compensation Amount.

Affected Shareholders

9. An Affected Shareholder means a person who acquired legal title to Finders shares through an on-market acquisition at more than 23 cents per Finders share during the Relevant Period, but excluding any Excluded Shareholder.
10. An Excluded Shareholder means:
 - (a) any Rejecting Shareholder;
 - (b) the registered holder of Finders shares in which a Rejecting Shareholder acquired only a beneficial interest during the Relevant Period (but such a person is only an Excluded Shareholder in respect of Finders shares held on behalf of a Rejecting Shareholder); and
 - (c) Eastern Field.

Dispute Referred by Affected Shareholder

11. Any Affected Shareholder may, within 7 months after the Effective Date, refer to the Panel a dispute with Taurus as to any matter regarding their entitlement under these Orders (including whether that person is an Affected Shareholder). Before referring a matter to the Panel under this Order 11, the Affected Shareholder must give 14 days written notice to Taurus.

Claim Forms

12. Within 10 business days after the Effective Date, Taurus must send to each person who it has identified from the Finders share register acquired Finders Shares during the Relevant Period:
 - (a) a claim form and a notice as set out in these Orders; and
 - (b) a prepaid self-addressed envelope.
13. A notice sent under these Orders must set out the following information:
 - (a) the effect of, and a summary of the reasons for, the Orders;
 - (b) who is an Affected Shareholder and what is meant by acquiring legal title to Finders shares through an on-market acquisition;
 - (c) what an Affected Shareholder must do to receive payment (and the process that will be followed for the making of the payment);
 - (d) how an Affected Shareholder can obtain a blank claim form;
 - (e) the applicable time period in which Affected Shareholders must act to receive payment under the Orders;

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- (f) the Affected Shareholder Warranties; and
 - (g) a telephone number and email address at which Taurus can be contacted for further information.
14. A claim form sent under these Orders must set out the following information:
- (a) the name, address and HIN or SRN or other holder identification number appropriate for the Affected Shareholder;
 - (b) space for details of the Finders shares the Affected Shareholder acquired on-market at more than 23 cents per Finders share during the Relevant Period;
 - (c) space for the Affected Shareholder to correct the information in a. and b. above (if necessary);
 - (d) space for the Affected Shareholder to specify each person that has a beneficial interest in the Finders shares the Affected Shareholder acquired on-market at more than 23 cents per Finders share during the Relevant Period;
 - (e) space for the Affected Shareholder to, if they wish, include details of an Australian bank account to which payment can be made;
 - (f) space for the Affected Shareholder to sign and date the claim form; and
 - (g) prominent notice of the Affected Shareholder Warranties that the Affected Shareholder will be giving to Taurus by submitting the claim form to Taurus.
15. If a person requests a blank claim form, notice or both from Taurus within 6 months after the Distribution Date, Taurus must within 5 business days of that request send the person a blank claim form and notice.
16. The Panel must approve the form of the notice and claim form.

Payment to Affected Shareholders

17. For the purposes of Order 8, to be entitled to payment an Affected Shareholder must sign and return a claim form within 6 months after the Distribution Date.
18. If Taurus does not refer a claim form to the Panel under Order 22, Taurus must pay the Affected Shareholder under Order 17 within 21 days of the receipt by Taurus of the claim form.
19. If Taurus refers a claim form to the Panel under Order 22, and the Panel determines that Taurus must pay an amount to the Affected Shareholder, Taurus must pay that amount to the Affected Shareholder within 21 days of the Panel notifying Taurus of that determination.
20. Taurus must pay the Affected Shareholders entitled to payment under Order 17 by:
- (a) sending a cheque to the address notified in the claim form (payments are taken to be made on the day that Taurus sends the cheque); or

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- (b) if the Affected Shareholder provided details of an Australian bank account in the claim form, making an electronic funds transfer to that account (payments are taken to be made on the day that Taurus makes the transfer).
21. In the case of a holding where there is more than one registered holder, Taurus's obligations under these Orders are satisfied by:
- (a) Taurus sending the cheque to the person and the address provided on the claim form for the person first named on the claim form; or
 - (b) if the Affected Shareholder provided details of an Australian bank account in the claim form, making an electronic funds transfer to that account.

Dispute as to Entitlement to Payment

22. Taurus may refer a claim form to the Panel within 14 days of Taurus receiving the claim form. Taurus must provide to the Panel, with the referred claim form, the reasons it considers that the person submitting the claim form may not be entitled to the compensation because Taurus:
- (a) considers that the person submitting the claim form is not an Affected Shareholder; or
 - (b) disputes some or all of the details in the claim form.
23. If Taurus refers a claim form to the Panel under Order 22, the Panel will within 14 days of receipt of that claim form make a determination, after consultation with Taurus if the Panel considers it desirable, as to whether or not the person submitting the claim form is entitled to be paid in accordance with the Orders and if necessary, for how many Finders shares. Taurus must comply with the Panel's determination.
24. Before the Panel decides that Taurus is not required to pay a person in accordance with the claim form the person has submitted, the Panel will:
- (a) advise the person of the proposed decision and the reasons for the proposed decision;
 - (b) provide copies of any information or documents on which the Panel proposes to base their decision; and
 - (c) allow the person a reasonable period to make submissions on the proposed decision.

Taurus May Request Further Information

25. Taurus may request further information from a person submitting a claim form to support the person's entitlement to payment if Taurus has reasonable grounds to believe that the person may not be entitled to compensation because Taurus:
- (a) considers that the person submitting the claim form is not an Affected Shareholder; or
 - (b) disputes some or all of the details in the claim form.

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26. If Taurus refers a claim form to the Panel under Order 22, Taurus must provide any information it receives, or has received, under Order 25 (or evidence as to a lack of it having been provided after a request) to the Panel for the purposes of the Panel making a determination under Order 23 and advise the Panel of the details of any outstanding requests for information that Taurus has made to the relevant person.
27. The Panel may extend the time it has under Order 23 to make a determination where:
 - (a) the Panel has advised the person of its proposed decision not to require Taurus to pay the person all or some of the amount claimed by that person, and the Panel is conducting the procedure in Order 24; or
 - (b) Taurus has made a request for further information under Order 25 and in the Panel's opinion it would be reasonable for further time to be allowed before a determination is made.

Reporting

28. Taurus must provide the following reports to the Panel:
 - (a) a report within 5 business days of the Distribution Date setting out such information as reasonably required by the Panel;
 - (b) a report, within 35 days of the Distribution Date, of all the claim forms submitted to Taurus within 14 days of the Distribution Date which are either paid as claimed in the claim forms or referred to the Panel under Order 22, setting out such information as reasonably required by the Panel; and
 - (c) a report, within 7 months of the Distribution Date, of all the claim forms submitted to Taurus within 6 months of the Distribution Date which are either paid as claimed in the claim forms or referred to the Panel under Order 22, setting out such information as reasonably required by the Panel.

Affected Shareholder Warranties

29. In submitting a claim form to Taurus, the person(s) submitting the claim form must warrant to Taurus to the effect that, to the best of the person's or persons' knowledge after due enquiry:
 - (a) the information in the claim form is true and correct; and
 - (b) the person(s) is/was a person who became the/a registered holder of the Finders shares acquired during the Relevant Period through the acquisition.

Unclaimed Monies

30. Taurus must publish in the ASIC Gazette details of any monies from cheques returned, or unrepresented, for which it cannot reasonably establish a forwarding address for the Affected Shareholder concerned.
31. Details published under Order 30 must include the name of the Affected Shareholder, the amount the Affected Shareholder is entitled to and the last known address of the Affected Shareholder.

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32. Taurus must hold funds represented by any returned or unrepresented cheques for 12 months after publication in an ASIC Gazette under Order 30.

Publication of Entitlement to Payment

33. Taurus must within 2 business days of the Effective Date cause to be published in one newspaper with a national circulation in Australia and one newspaper in each Australian State and Territory circulating in that State or Territory a notice that is approved by the Panel and is not smaller than 15 cm by 20 cm and placed in the general news sections of those newspapers which clearly states:
- (a) the effect of, and a summary of the reasons for, the Orders;
 - (b) a description of the group of persons likely to be the Affected Shareholders;
 - (c) what the Affected Shareholders must do to receive payment (and the process that will be followed for the making of the payment);
 - (d) what an Affected Shareholder must do to obtain a blank claim form;
 - (e) the applicable time period in which Affected Shareholders must act to receive payment under the Orders; and
 - (f) a telephone number and email address at which Taurus can be contacted for further information.
34. The information in the notices published under Order 33 must also be set out in an announcement to ASX to be released by Finders. The Panel must approve the form of the announcement.

Manner of Sending Documents

35. Any document (including any cheque) required to be sent under these Orders must be sent in accordance with section 648C of the *Corporations Act 2001* (Cth) and also by email if an email address is available, in each case (where applicable) to the current or most recent postal or email address for a shareholder set out in the Finders share register unless Taurus is advised in writing to the contrary by that shareholder.

Assistance from Finders

36. Finders must procure that its share registry promptly provides to Taurus any details regarding the Affected Shareholders as may be reasonably requested by Taurus and which the share registry is able to provide for the purpose of implementing these Orders.

Definitions

37. In these Orders the following terms apply.

Affected Shareholder A person described in Order 9

Affected Shareholder The warranties set out at Order 29

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Warranties

ASIC

Australian Securities & Investments
Commission

Compensation Amount For an Affected Shareholder, the Australian dollar amount calculated as follows:

$$Co = ((AC \div AS) - TBC) \times AS$$

where:

Co = Australian dollar amount payable to each Affected Shareholder

AC = the aggregate consideration paid by the Affected Shareholder to acquire AS, as set out in the claim form

AS = the aggregate number of Finders shares in which the Affected Shareholders acquired legal title through an on-market transaction during the bid period where the considerations paid for those shares is greater than 23 cents, as set out in the claim form

TBC = the consideration offered under the Takeover Bid, being 23 cents

Distribution Date

The date on which the notices and claim forms are first sent to Affected Shareholders in accordance with Order 12

Eastern Field

Eastern Field Developments Limited

Effective Date

20 business days after the parties are provided with the reasons of the review Panel in this matter

Excluded Shareholder

A person described in Order 10

Finders

Finders Resources Limited

Finders share

The security that traded on the Australian Securities exchange during the Relevant Period under the symbol “FND” being an ordinary share in Finders

Takeovers Panel

Reasons – Finders Resources Limited 03R

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Intention Statement	An intention statement referred to in the declaration of unacceptable circumstances made by the Panel in Finders Resources Limited 02 on 26 April 2018
Offer Close	The end of the offer period of the Takeover Bid
Panel	The Panel in Finders Resources 03R or any member of the Panel Executive, or other person engaged by the Panel to assist, to whom the Panel delegates functions or matters to be determined under these Orders
Rejecting Shareholder	any person that made an Intention Statement
Relevant Period	The period from 7 December 2017 to 19 March 2018 (inclusive)
Taurus	Taurus Funds Management Pty Limited
Takeover Bid	Eastern Field's off-market takeover bid to acquire all the ordinary shares in Finders at 23 cents per share
Taurus Shares	ordinary shares in Finders managed by Taurus in respect of which the Takeover Bid was accepted prior to 26 April 2018

Bruce Dyer
Counsel
with authority of Ian Jackman SC
Deputy President of the sitting Panel
Dated 6 June 2018