

**IN THE HEARING OF THE EXECUTIVE COMMITTEE OF THE SECURITIES  
REGULATION PANEL HELD ON 13 OCTOBER 2006**

**APPROVAL OF OFFER BY GOLD FIELDS LIMITED TO ACQUIRE THE ENTIRE  
ISSUED SHARE CAPITAL OF WESTERN AREAS LIMITED**

**1 BACKGROUND**

- 1.1 Gold Fields Limited ("Gold Fields") submitted a draft offer document for the acquisition of the entire issued share capital of Western Areas Limited ("Western Areas") from the remaining shareholders of Western Areas ("the Offer"), for approval to the Executive Director of the Securities Regulation Panel ("the Executive Director"). The Executive Director referred the matter to the Executive Committee of the Securities Regulation Panel ("the Committee") for its consideration.
- 1.2 In order to give proper consideration to all aspects of the Offer, and to the Rules of the Securities Regulation Panel ("the Rules") which may be applicable thereto, and mindful of the requirements of the Promotion of Administrative Justice Act 3 of 2000, the Committee determined a procedure whereby it would invite all interested parties to make written, and thereafter, oral submissions to the Committee in regard to the proposed transaction. The procedure to be followed was set out in an announcement which was published in the *Business Day* on 9 October 2006.
- 1.3 The Committee received two submissions from Gold Fields and Western Areas respectively. Harmony Gold Mining Company Limited ("Harmony") did not make any submissions, but reserved its right to do so. Harmony chose not to make any representations at the hearing held at the offices of the Securities Regulation Panel on 13 October 2006 and were granted a further opportunity by the Committee to make submissions until 13h00 on 16 October 2006. No such submissions were received by the Committee.
- 1.4 Having considered the written and oral representations it received from Gold Fields and Western Areas, the Committee has come to a decision in regard to the offer document submitted by Gold Fields.

**2 APPLICATION OF THE RULES**

The Committee considered the applicability or otherwise of the following rules to the Offer.

- 2.1 The Committee considered, firstly, whether JCI Limited ("JCI") and Gold Fields were parties acting in concert in the transaction concluded between them on 11 September 2006 ("the JCI Transaction") for the acquisition of

16.5% of the issued share capital of Western Areas, resulting in the shareholding of Gold Fields in Western Areas increasing to 34.7%, and in terms of which Gold Fields acquired a call option from, and granted a put option to JCI in respect of a further 6.3% of the Western Areas shares ("the Put/Call Option").

2.2 In the written submissions made on behalf of Gold Fields Limited, Gold Fields tendered that it was prepared to relinquish its entitlement to require, in terms of the JCI Transaction that, before Gold Fields becomes the holder of the shares in Western Areas, JCI votes its shares in accordance with Gold Fields' wishes.

2.3 After consideration of the submissions made by Gold Fields, the Committee was satisfied that the JCI Transaction was negotiated and concluded at arms length after introduction of the parties through a broker, and that as such, JCI and Gold Fields were not acting in concert.

#### **2.4 Rule 8**

2.4.1 On the submissions, the Committee was satisfied that the JCI transaction was a separate and discrete transaction which, on its own, did not constitute an affected transaction.

2.4.2 Accordingly, the Offer does not give rise to an obligation to make a mandatory offer in terms of Rule 8.

#### **2.5 Rule 4**

2.5.1 Rule 4 provides the following:

*During an offer period, the offeror and persons acting in concert with it shall not sell any securities in the offeree company except with the prior consent of the Panel and following 24 hours public notice as prescribed in Rule 7.1(a) that such sales might be made. The Panel will not give consent for sales where a mandatory offer under Rule 8 is being made. Sales below the value of the offer will not be permitted. After there has been an announcement that sales may be made, neither the offeror nor persons acting in concert with it shall make further purchases.*

2.5.2 The Committee was satisfied that neither Gold Fields nor JCI (even if it was held to be acting in concert) have sold Western Areas shares during the period of the proposed offer ("the Offer Period").

2.5.3 On the submissions, the Committee determined that, as the Put/Call Option would only be exercised after the closing of the Offer Period, JCI would not be selling Western Areas shares during

the Offer Period, and that consequently, Rule 4 does not apply to the Offer.

**2.6 Rule 5**

2.6.1 Rule 5 requires that if Gold Fields or persons acting in concert with it acquired shares in Western Areas within three months (or longer in circumstances determined by the Panel) prior to commencement of the Offer, then the Offer must be on terms similar to the most favourable of such acquisitions.

2.6.2 The Committee determined that, on the submissions, the highest price that was paid by Gold Fields for Western Areas shares during the relevant period was R40.00, and that this was substantially lower than the value offered to Western Areas shareholders in terms of the offer document.

2.6.3 The Committee considered whether the other terms of the JCI Transaction resulted in dissimilarity between the terms of the JCI Transaction and the terms of the Offer.

2.6.4 On the basis of the submissions, the Committee determined that the Put/Call Option does not have sufficient economic value to result in a dissimilarity of the terms of the two transactions as contemplated by Rule 5.

2.6.5 The Committee also determined that the fact that approval by the Competition Tribunal is a condition of the Offer but not of the JCI Transaction did not mean that the terms of the transactions are dissimilar to the extent contemplated in Rule 5 for the following reasons:

2.6.5.1 the Offer is not a mandatory offer and, absent Competition Tribunal approval, it will lapse; and

2.6.5.2 once the Offer becomes unconditional, the terms of the Offer are similar to the terms of the JCI Transaction.

2.6.6 For the reasons set out above, the Committee is satisfied that the terms of the Offer are similar to the terms of the JCI Transaction and that Rule 5 is not applicable to the Offer.

**2.7 Rule 9**

2.7.1 Rule 9(1) provides as follows:

*Where—*

- (a) *except with the consent of the Panel, the securities of any class under offer in the offeree company acquired for cash by an offeror or any person acting in concert with it during the offer period or within three months prior to its commencement carry 10% or more of the voting rights currently exercisable at a class meeting of that class; or*
- (b) *in the view of the Panel there are circumstances which render such a course necessary in order to give effect to General Principle 1,*

*the offer for that class shall be in cash or accompanied by a cash alternative at not less than the highest price paid by the offeror or any person acting in concert with it for securities of that class during the offer period or within three months prior to its commencement.*

2.7.2 General Principle 1 provides that all holders of the same class of securities of an offeree company shall be treated similarly by an offeror.

2.7.3 The Committee decided that Rule 9(1)(a) is not applicable to the offer, because the Western Areas shares acquired by Gold Fields during the relevant period did not carry 10% or more of the voting rights of Western Areas.

2.7.4 The Committee determined that it does not find circumstances which render it necessary to invoke Rule 9(1)(b). If it were to apply Rule 9(1)(b), the cash price or cash alternative would be at the highest cash price paid by Gold Fields during the Offer Period, or within three months prior to the commencement thereof. The Committee determined that, on the basis of the submissions, this price was R40.00, which was lower than the consideration offered in terms of the Offer.

2.7.5 The Committee determined, for the reason set out above, that to apply Rule 9(1)(b) would serve no purpose in that the consideration received by JCI in terms of the JCI Transaction and the Offer would be higher than the cash alternative.

## **2.8 Rule 13**

2.8.1 Rule 13 provides as follows:

*Except with the consent of the Panel, an offeror or persons acting in concert with it shall not make any arrangements with holders of the relevant securities and shall not deal or enter into arrangements to*

*deal in securities of the offeree company, or enter into arrangements which involve acceptance of an offer, either during an offer or when one is reasonably in contemplation, if there are favourable conditions attached which are not being extended to all holders of the relevant securities.*

- 2.8.2 The Committee considered whether the following conditions of the JCI Transaction constituted favourable conditions as contemplated by Rule 13:
- 2.8.2.1 the provision that, if during the period of 3 months after closing of the Offer, Gold Fields paid a higher price for Western Areas shares, it would top-up the consideration payable to JCI ("the Top-Up Provision");
- 2.8.2.2 the Put/Call Option; and
- 2.8.2.3 the fact that the JCI Transaction is not conditional on Competition Tribunal approval, while the Offer is subject to such approval ("the Unconditionality").
- 2.8.3 On the terms of the JCI Transaction, the Committee has determined that the JCI Transaction was concluded at a time when the Offer was reasonably in contemplation.
- 2.8.4 Gold Fields has conceded that the Top-Up Provision constitutes a favourable condition and has undertaken to include it in the Offer.
- 2.8.5 The Committee has decided that, although the Unconditionality constitutes a favourable condition, it is, by virtue of the fact that control over Western Areas changes on implementation of the Offer, imposed by operation of law, and cannot be extended to other holders of relevant securities.
- 2.8.6 The Committee further determined that the Put/Call Option did not constitute a favourable condition as, purely for the purpose of Rule 13, it was, in effect, a sale of 100% of JCI's shareholding in Western Areas.
- 2.8.7 On the basis of the above, the Committee determined that Rule 13 is applicable to the Offer only in respect of the Top-Up Provision.

### **3 CONCLUSION**

For the reasons set out above, the Committee hereby approves the offer document in respect of the acquisition by Gold Fields of the entire issued share capital of Western Areas, subject to:

- 3.1 the condition that the Top-Up Provision is extended to all shareholders of Western Areas and is incorporated into the Offer, as tendered;
- 3.2 the condition that Gold Fields relinquishes its entitlement in terms of the JCI Transaction that JCI is obliged to vote its shares in accordance with the wishes of Gold Fields before Gold Fields becomes holder of the shares in Western Areas, as tendered; and
- 3.3 such comments as may be raised, and such amendments as may be required to the form, but not the substance of the Offer, by the Executive Director.

**SIGNED** at \_\_\_\_\_ on \_\_\_\_\_ 2008

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**RICHARD CONNELLAN**

**SIGNED** at \_\_\_\_\_ on \_\_\_\_\_ 2008

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**REGINALD BERKOWITZ**

**SIGNED** at \_\_\_\_\_ on \_\_\_\_\_ 2008

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**PROF STEPHANIE LUIZ**

**SIGNED** at \_\_\_\_\_ on \_\_\_\_\_ 2008

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**JUANITO DAMONS**