

THE SECURITIES REGULATION PANEL

In the matter between:

08338824 LIMITED (an indirect wholly owned
Subsidiary of PALA investments holdings

Appellant
(Respondent in the first
hearing)

and

ROCKWELL DIAMONDS INC

Respondent
(Applicant in the first
hearing)

RULINGS BY THE PANEL

A. INTRODUCTION

1. On 27 October 2008 the Panel heard an appeal by the Appellant against certain rulings made by the Executive Director of the Panel on 16 September 2008 and 13 October 2008
2. On 16 October the Appellant filed a notice of appeal made in terms of paragraph 2 (b) of Section A of the Code and Rules of the Panel (the Code) read with Section 440 (4) (a) of the Companies Act 1973 as amended (the Act).

3. The foregoing was the basis of the hearing which took place before the Panel and which was argued by the parties on 27 October 2008. As a result of certain matters raised by the members of the Panel during the course of the argument, and, others raised by the parties themselves, certain further representations were made in writing to the Panel. Furthermore on 4 November 2008 after the conclusion of the Panel's private deliberations and after they had decided on the Rulings set out herein the Panel was advised that the Appellant had given notice in Canada it had decided not to proceed with the offer to shareholders. That intention had at that stage not been publicized in South Africa, nor had it been published at the time this document was drafted.

Despite that fact the Panel decided to issue its rulings on the Appeal and they are set out below.

B. RULINGS BY THE PANEL

4. Applicability of the Code to the Offer.
 - 4.1 On the 16 September 2008 following submissions from the Respondent in this Appeal, the Executive Director made a ruling to the effect that the said Respondent was a company which fell within the jurisdiction of the Code and accordingly the offer was an affected transaction and both the present Appellant and the Respondent needed to comply with the requirements of the Code during the course of the offer.
 - 4.2 In terms of the Code Section A Rule 2(b) any appeal against the above Ruling should have been made within 3 business days of the notification of the Ruling to the parties. The Appellant did not comply with the Rule.

5. In fact, prior to the commencement of the proceedings on 27 October the Appellant had not lodged a formal notice of Appeal against the decision of 16 September 2008 nor made a formal application for condonation of the late filing of its appeal against that Ruling. The notice of appeal against the Rulings made by the Executive Director on the 13 October was delivered timeously.
6. The question of whether or not the appeal could continue in relation to the decision on the 16 September to the effect that the parties had to comply with the provisions of the Code relating to the offer was debated at some length. After an adjournment the Panel ruled that it would consider the appeal notwithstanding the late filing of the notice of appeal. Accordingly the late noting of the Appeal was duly condoned by applying the provisions of the Code Section P1. Rule 34.
7. The merits of the decision made by the Executive Director on the 16 September 2008 were then fully debated at the hearing, and after consideration of various written submissions subsequent to the hearing made by both parties, the Panel rules that the Appeal be dismissed and accordingly the decision of the Executive Director is confirmed.
8. As a result of further correspondence between the Attorneys representing the Appellant and the Respondent on the one hand, and the Panel on the other, the Executive Director made a number of Rulings on 13 October 2008. The Appellant has duly appealed to the Panel against those rulings, and the Panel's rulings on those appeals are set out below.
9. Appeal against First Ruling

This appeal was against the Ruling made by the Executive Director to the effect that the Respondent had to make appropriate offers to the holders of

outstanding Rockwell Warrants and Rockwell Options “in the instances where Warrants or Options have a positive monetary value”. The appeal is dismissed and the judgement of the Executive Director is confirmed subject to the Appellant determining an appropriate value at which the offer should be made to the Warrant and Options holders such determination being made in accordance with the procedure described in paragraph 1.1.2 to 1.1.7 of the Ruling dated 13 October 2008 read with paragraph 1.5.3 of the Appellants attorneys letter dated 30 October 2008 and the subsequent acceptance of those terms by the Respondent in its replying note dated 31 October 2008.

10. An appeal does not appear to have been made against the Second Ruling of 13 October 2008.

11. The Third Ruling - Paragraphs 3.2.1, 3.2.5, and 3.2.6

The Appeals in respect of each of the abovementioned 3 sub paragraphs of the Notice of Appeals are upheld on both alternatives raised by the Appellants i.e. either the Executive Director should not have interpreted the various clauses as being totally subjective, or in the alternative, should have waived compliance with the respective Rule in terms of Rule 34 of the Code.

12. No appeal was noted against the fourth and fifth Rulings of the Executive Director dated 16 October 2008.

13. The Sixth Ruling

The Appeal is denied and the decision of the Executive Director is confirmed.

14. Costs

As both parties achieved some success in this matter and as it is not possible to make an accurate assessment of the time and effort involved in dealing

with the separate Appeals, we rule that the Panel's costs should be paid as to 60% by the Appellant and 40% by the Respondent.

15. Compliance with the Promotion of Administrative Justice Act ("PAJA")

The Panel records in terms of Sections 3(d) and 3(e) – the latter read in conjunction with Section 5 – of PAJA that;

“15. the rulings of the Panel are subject to review by the High Court at the instance of either party to this Appeal; and

15.2 where such rulings are not amplified by reasons, as in this case either party to the Appeal may, within 90 days after the date on which such party became aware of the rulings, or might reasonably have been expected to become aware of the rulings, request the Panel to furnish written reasons for such rulings. The Panel shall then, within a further period of 90 days after receiving the request, give such party adequate reasons in writing for its rulings.”

Signed at Johannesburg on 11 November 2008.

C A Jaffé - Chairman

N Matlala

S Siyaka

D A Sylvester

W S Yeowart