

David Stock

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Anthony Stewart
Senior Investigator
Commerce Commission
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EMAIL: anthony.stewart@comcom.govt.nz


Dear Anthony

**NEW ZEALAND WOOL SERVICES INTERNATIONAL LIMITED (WSI)
CAVALIER WOOL HOLDINGS LIMITED (CWH)**

- 1 Under the draft determination of the Commission dated 13 April 2011 the timetable required further submissions to be filed by today. You will be aware that this has caused WSI significant difficulties and accordingly some of the information may not be provided until later this week.
- 2 WSI has instructed two further consultants namely:
 - 2.1 Garry Forward who is providing a detailed analysis of the accounting information provided by CWH. The analysis carried out by Mr Forward is to be provided to your Commission on Friday as agreed. Futures Consultants Limited will complete its summary after receipt of that report. Mr Forward and Dr Brent Layton will be available to meet with the staff of the Commission relating to this financial information as it is important that the correct financial information be placed before the Commission for its consideration.
 - 2.2 Dr Alan Reay who is a consulting engineer and who is providing an expert report in respect of the buildings on the properties owned by the two subsidiaries of WSI. A copy of Dr Reay's opinion as an expert is attached.
- 3 Also attached is a response to the draft determination from Futures Consultants Limited subject to the qualification in 2.1 above. You have been made aware that Dr Brent Layton is not available for the two days set aside for the conference next week but is available to discuss this report with the Commission staff at any other time. There would be no objection to representatives of CWH being present during any discussions with Dr Layton.

- 4 WSI wishes to provide further comment on the ability of CWH to implement its proposal to rationalise and close the two scours if CWH is successful in obtaining an authorisation and then acquiring the 64% shareholding from the receivers of Plum Duff Limited and Woolpak Holdings Limited.
- 5 WSI is a listed issuer and is bound by the provisions of the NZAX Listing Rules. It is also a Code Company under the Takeovers Code. Consequently the following matters could arise in respect of the proposal made by CWH:
 - 5.1 If CWH purchases the 64% shareholding then it is bound under the Takeovers Code to make the same offer on the same terms and conditions to all other shareholders of WSI. Those shareholders do not have to accept that offer. If they consider the price is unreasonable or an independent report is obtained which states the price is not fair then the directors will be bound to advise the shareholders not to accept that offer;
 - 5.2 If Cavalier makes a takeover offer and acquires further shares but does not attain a 90% shareholding in WSI then it will not be able to compulsorily acquire the balance of the shares to enable it to implement its proposal;
 - 5.3 If Cavalier holds between 64% and 90% of the voting shares then if it wishes to implement its proposal it must seek shareholder approval pursuant to a special resolution as the transactions are a major transaction under the provisions of section 129 of the Companies Act 1993. Section 9 of the NZAX Listing Rules then provides that in respect of any such resolution CWH will not be able to vote its shares as it is a related party to a material transaction. Accordingly it will be the balance of the shareholders who will determine whether or not the transaction will be approved by a 75% vote. The key employees and directors of WSI who hold approximately 10% of the total voting shares on issue may play a deciding part on whether or not such a resolution is approved.
- 6 Accordingly there are a number of hurdles which CWH will need to overcome before it can implement the transactions as contained in its application for authorisation. CWH has stated that it would make any purchase of the 64% shareholding conditional upon it achieving its objectives; those objectives may be difficult to achieve under the requisite provisions of the Takeovers Code and the NZAX Listing Rules.
- 7 David Goddard QC has also prepared a letter relating to a number of other legal issues and a copy of that letter is also being provided to the Commission. That letter should be taken as being part of the submission from WSI.

Yours sincerely



David Stock