

Financial Markets Conduct (Firefly Resources Limited) Exemption Notice 2021

Pursuant to section 556 of the Financial Markets Conduct Act 2013, the Financial Markets Authority, being satisfied of the matters set out in section 557 of that Act gives the following notice.

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Notice

1 Title

This notice is the Financial Markets Conduct (Firefly Resources Limited) Exemption Notice 2021.

2 Commencement

This notice comes into force on 8 September 2021.

3 Revocation

This notice is revoked on the close of 7 September 2022.

4 Interpretation

(1) In this notice, unless the context otherwise requires -

Act means the Financial Markets Conduct Act 2013

Corporations Act 2001 means the Corporations Act 2001 (Australia)

demerger means the demerger by Firefly of certain assets and lithium rights of Firefly, its related bodies corporate and Gascoyne Resources Ltd (ACN 139 522 900) to be effected by way of an in-specie distribution of all shares in Firetail held by Firefly to its eligible shareholders following a capital reduction in Firefly

eligible shareholder means a person who:

- (a) is registered as a shareholder of Firefly shares at as 7.00pm (AWST) on the record date;
- (b) has a registered address on Firefly's share register in Australia or New Zealand; and
- (c) is eligible under all applicable securities laws to receive Firetail shares

explanatory memorandum means the explanatory memorandum prepared by Firefly and containing the information prescribed by clause 6(c)



Firefly means Firefly Resources Limited (ACN 118 522 124) an Australian public company listed on the Australian Securities Exchange having its registered office at 'T2', 64 - 68 Hay Street, Subiaco, Western Australia 6008

Firetail means Firetail Resources Limited (ACN 651 057 822) a company incorporated in Australia and a wholly owned subsidiary of Firefly

record date means the date to determine eligibility to participate in the demerger, being Tuesday 9 November 2021

regulations mean the Financial Markets Conduct Regulations 2014

specified securities means shares in Firetail to be distributed to Firefly shareholders pursuant to the demerger.

- (2) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this notice has the same meaning as in the Act or the Regulations.

5 Exemptions

Firefly and Firetail are exempted from Part 3 of the Act in respect of the demerger.

6 Conditions

The exemption in clause 5 is subject to the following conditions:

- (a) the only persons to whom the specified securities are offered in New Zealand are eligible shareholders; and
- (b) the explanatory memorandum is distributed to Firefly shareholders with the notice of meeting for the meeting of Firefly shareholders at which approval for the demerger will be sought; and
- (c) the explanatory memorandum includes particulars of all matters that may be material to Firefly shareholders in making a decision on whether to approve the demerger and in relation to the offer of specified securities, including without limitation –
 - (i) a description of the rights attached to the specified securities; and
 - (ii) the purpose and effect of the demerger; and
 - (iii) the steps necessary to bring the demerger into effect; and
 - (iv) a statement as to why the directors of Firefly believe that the demerger is in the best interests of shareholders; and
 - (v) a summary of the potential impacts of the demerger, including any material advantages and disadvantages of the demerger; and
 - (vi) all information prescribed by the Corporations Act 2001 (*Aus*); and
 - (vii) particulars of any material Australian taxation liabilities for Firefly shareholders caused by the implementation of the demerger;
- (d) the explanatory memorandum is lodged with the Australian Securities and Investment Commission; and
- (e) Firefly is the offeror of the specified securities; and
- (f) immediately prior to completion of the demerger, the only person who is a shareholder of Firetail is Firefly; and
- (g) the offer of the specified securities to persons in New Zealand is made in compliance with

the laws of Australia and any code, rules, or other requirements relating to the offer of those securities that apply in Australia.

Dated at Wellington this 6th day of September 2021.



Liam Mason
General Counsel
Financial Markets Authority

Statement of Reasons

This notice, which comes into force on **8 September 2021** and is revoked on **7 September 2022**, exempts Firefly Resources Limited (**Firefly**) and Firetail Resources Limited (**Firetail**), subject to conditions, from Part 3 of the Financial Markets Conduct Act (**Act**). The exemption relates to shares in Firetail (the **specified securities**) that are to be offered by Firefly to its eligible shareholders under a proposed demerger of certain assets and lithium rights of Firefly, its related bodies corporate and Gascoyne Resources Limited to be effected by way of an in-specie distribution of all shares in Firetail held by Firefly to its eligible shareholders following a capital reduction in Firefly (**demerger**). The Financial Markets Authority (**FMA**), after satisfying itself as to the matters set out in section 557 of the Act, considers it appropriate to grant the exemptions because—

- the offer will only be made to existing shareholders of Firefly and therefore to persons who already have exposure to its lithium assets. Shareholders will have access to a range of information about the assets and business that will be transferred to Firetail, whether or not already owned by Firefly. Firefly and Gascoyne have been subject to the Australian continuous disclosure regime since their ASX listing in 2006 and 2009 respectively. As such, to date, all material information relating to the Firefly demerger assets is required to be disclosed by Firefly to its shareholders:
- shareholders will be invited to a meeting to vote on whether to approve the demerger, to allow it to proceed. It is a condition of the exemption that shareholders are provided with an Explanatory Memorandum that contains all material information to enable them to make an informed decision in relation to the proposed demerger and in relation to the offer of specified securities. In addition, the Explanatory Memorandum must comply with the requirements of the laws and requirements relating to the offer of the specified securities that apply in Australia. The conditions require that the Explanatory Memorandum is lodged with Australia's regulator of securities markets laws:
- Part 3 of the Act focuses on providing information about the financial products being offered including the assets and business of the issuer. However, in these circumstances, shareholders require information about the demerger and the offer of specified securities, including the effects of the demerger, in order to decide whether or not to approve it. It would be unduly onerous to require Firefly or Firetail to prepare a product disclosure statement and register entry required under Part 3 of the Act in addition to the explanatory memorandum which would result in the duplication of certain information. The conditions of exemption require the explanatory memorandum to include information sufficient for New Zealand shareholders to decide whether or not to approve the demerger which includes the offer of specified securities:

- the exemption will allow New Zealand shareholders to participate in the demerger when it would not otherwise be extended to New Zealand shareholders due to the cost of compliance with the disclosure requirements of the Act:
- Firefly and Firetail will remain subject to the fair dealing provisions in Part 2 of the Act and therefore New Zealand shareholders will have protection against misleading or deceptive information being included in the explanatory memorandum:
- Australia's regulation of financial product offerings, including disclosure of information to investors, has been recognised as being broadly equivalent with New Zealand's financial markets conduct laws.

As such, the FMA is satisfied that—

- the exemption is desirable in order to promote the purposes of the Act, specifically for timely, accurate and understandable information to be provided to Firefly shareholders to assist them to make a confident and informed decision on the demerger proposal. The exemptions will avoid unnecessary compliance costs caused by having to prepare separate disclosure documents for the New Zealand shareholders only; and
- the exemption is not broader than is reasonably necessary to address the matters that give rise to it, given that the exemption applies only to the offer of specified securities to eligible shareholders in the context of the demerger and for a limited time period.

