

**MINUTES OF THE MEETING OF THE CREDITORS HELD UNDER SECTION 436E OF THE CORPORATIONS ACT OF FEA PLANTATIONS LIMITED (ADMINISTRATORS APPOINTED) ACN 055 969 429**

HELD IN THE ALBERT HALL, 45 TAMAR STREET, LAUNCESTON, TASMANIA 7250 ON 27 APRIL 2010 AT 9:05 AM.

<b>PRESENT</b>	Mr Brian Silvia	Chairman and Administrator
	Mr Mathew Muldoon	Administrator
	Mr Peter Krejci	Administrator
	Mr Simon Raftery	Administrators' assistant
	Mr Peter Sheppard	Administrators' assistant and minutes secretary
	Mr Stephen Sawer	Administrators' solicitor

**ATTENDANCE** Refer to the attached Attendance Register for creditor and proxy-holder attendance.

Mr Tony Cannon and Mr Will Edwards, company directors  
Mr Fergus Leicester, former Chief Financial Officer.

Mr Mark Korda

Other observers as noted in the attached Observer Attendance Register.

Webcast viewers by Boardroom Radio.

**APOLOGY** Mr Andrew White, former Chief Executive Officer and director of FEA Group.

**CHAIRMAN** In accordance with reg. 5.6.17 of the *Corporations Regulations* Mr Silvia took the Chair.

**INTRODUCTION** Mr Silvia introduced himself, his co-Administrators, the company's officers, his solicitor and his staff and explained that the meeting was the first meeting of the creditors of the company required to be held by Section 436E of the *Corporations Act*.

The purpose of the meeting was to report to creditors on the progress of the Voluntary Administration; to allow creditors to consider whether the Administrators should be replaced, and to consider the formation of a committee of creditors to assist the Administrators.

He referred to the projected slideshow (attached to these minutes) and noted that it set out the agenda for the meeting and noted that the meeting had been convened by notice sent to creditors on 19 April 2010 and by advertisements placed in the *Launceston Examiner*, *Hobart Mercury*, *Melbourne Age* and *Sydney Morning Herald*, the *West Australian*, *Adelaide Advertiser* and *Northern Territory Times* newspapers.

#### **QUORUM AND CONVENIENCE**

Mr Silvia declared:

*"That a quorum of creditors was present"*.

He noted that creditors were dispersed around the country and there was no location convenient to a predominance of creditors. With this in mind, he had determined to convene the first meetings of FEA Plantations and its associated companies in Launceston as many of the creditors were located there and it was the location of the corporate headquarters. To facilitate communication of the conduct of the meeting, he had arranged for it to be webcast, although this process did not permit creditors unable to attend in Launceston to participate in the meeting.

He noted also that the Federal Court had ordered that the meeting might be held on 27 April 2010 even though there had been no public holiday in Launceston on 26 April 2010.

Mr Silvia advised that, unless there was an objection, he proposed to and proceeded to declare:

*"That the meeting was being held at a time and place convenient for the attendance of a majority of those entitled to receive notice of the meeting."*

There was no objection.

#### **ADJUDICATION AND ENTITLEMENT TO VOTE**

Mr Silvia advised that he would be adjudicating on creditors' entitlements to participate in the meeting for voting purposes at the meeting only, and that there would be a fresh adjudication at the next meeting and if any dividend was paid.

He observed that there were some claims that were contentious, as to which he said:

*Grower/Investors*

The company was the Responsible Entity, that is trustee, of 17 Managed Investment Schemes ("MISs"), under which around 13,000 interests had been created. As some investors held an interest in more than one scheme, there were fewer growers, however they numbered around 10,000. The terms of the

schemes varied, earlier schemes including periodic plantation management levies, while later schemes had no corresponding obligation.

The Administrators had received some 2794 proxy appointments from investors, mostly in favour of Mr White and/or Mr Cannon.

The Administrators had considered whether grower/investors were creditors, and had sought advice. Having regard to the advice, they had concluded that they were because:

- There was a prospect that there had been breaches of the managed investment scheme Constitutions before their appointment, in particular in the purported charging of the MIS assets;
- The termination by the recently appointed Receivers and Managers of Forest Enterprises Australia Limited ("FEA") of a management agreement between FEAP and FEA meant that FEAP was not presently in a position to carry out the forestry operations under set up under the MISs; and
- The events surrounding their appointment, in particular the purported crystallization of a charge over the assets of the company, had made continuation of the Managed Investment Schemes as presently constituted impractical. This crystallization, the Administrators had been told, had had the effect of "fixating" the charge, with the effect that the Administrators were not entitled to deal with any assets or receipts coming into their hands;
- Were the land to be realized by straight sale without allowance to the grower-investors for the prospective value of the trees standing on them, the growers were likely to suffer losses of the order of \$300 million such that the investors would have a claim for non-performance and/or breach of warranty against, among others, the Responsible Entity.

The investors' claims were contingent and prospective. They differed from scheme to scheme; some schemes had required on-going contributions by investors, while in others the first investment had been made in return for a percentage stake in the final harvest. Although the Administrators had received some proofs of debt from investors claiming the amount of their investment, in the Chairman's view this was not a just estimate of the extent to which the investors were creditors.

In their First Report to the Creditors, the Administrators stated their intention to seek Directions from the Court as to whether grower-investors were creditors. The Administrators had since received advice that it was preferable not to seek directions as:

- (a) It appeared clear that the investors were creditors;

(b) The question was properly one for determination, in the first instance, by the Chairman of the meeting;

(c) Without bringing before the Court all parties who might be affected by the decision, directions could not be determinative of the question.

Having regard to the different interests of different investors and contingency of the claims, it was appropriate to allow investor-creditors to participate for a nominal amount of \$1 each, regardless of the number of investments held. This would allow investors to participate in the conduct of the meeting.

The Administrators had determined that where an investor had filed a proxy without filing a proof, the investor should be permitted to participate in the meeting: the filing of a proxy evidenced the informal assertion of a claim; however the Chairman was allowing only those proxies that related to claims by investors whose names appeared in the company's lists of investors.

#### *Related companies*

The Administrators had received proofs and proxy appointments from three related companies in relation to which the secured creditors had made appointments, Tasmanian Plantations Pty Limited; Forest Enterprises Australia Limited and FEA Carbon Pty Limited based on property leases between the entities.

The Administrators had corresponded with the solicitors acting for the Receivers and Managers of those companies concerning the claims. There appeared to be cross-claims between the companies, and in due course it would be appropriate to review all of the dealings between the companies in arriving at the correct amount of the debt.

The Administrators were of the view that the proofs of debt did not reflect a complete reconciliation of all relevant inter-company claims, and did not sufficiently reflect reductions in the extent of the amount that might be due from the company due to loss mitigation and the requirement to discount future payments. Nonetheless, the Chairman accepted that the related companies were probably creditors, and had admitted them for nominal amounts of \$1 each. He understood that, while not accepting the conclusion at which he had arrived, the creditors understood and acknowledged the reasoning by which he had arrived at this view.

#### *Banks*

The Administrators had received proofs of debt and proxies from each of Commonwealth Bank of Australia and ANZ Bank. These claims were admitted in full for voting purposes.

### *Unsecured Creditors*

The Administrators had received 25 proofs of debt from unsecured creditors, which the Chairman allowed in full for voting purposes.

Mr Silvia noted that the proof and proxy documents had been compiled and were available for inspection by creditors. The relevant adjudications were reflected in the Attendance Registers prepared under the *Corporations Regulations*.

Mr Silvia invited questions or comments on the adjudication. Ms Pam Sutcombe asked about future fees payable by holders of 2002 MIS investments. No further questions or comments were forthcoming.

The Chairman advised that the proof and proxy documents, which extended to some 40 lever-arch files, would be available for inspection.

He invited observations from creditors and their representatives in respect of his adjudication. One proxy-holder sought confirmation that under the later MIS schemes no on-going plantation management fees were payable. The Chairman confirmed that this was the effect of the schemes. No further questions were forthcoming.

#### **TABLING OF DOCUMENTS**

Mr Silvia tabled copies of:

- ✦ The report sent to creditors on 16 April 2010
- ✦ The notice of meeting
- ✦ The advertisements of the meeting
- ✦ His and his co-Administrators' Declaration of Independence, Relevant Relationships and Indemnities.

#### **DECLARATION OF INDEPENDENCE, RELEVANT RELATIONSHIPS AND INDEMNITIES**

Mr Silvia referred to the Declaration of Independence, Relevant Relationships and Indemnities and noted that it remained current and there was no requirement to update it as there had been no change in the circumstances of the Administrators.

He noted particularly that the Administrators and their partners currently held appointments from each of the secured creditors, and that some of their colleagues also took appointments from the Australian Tax Office, which was likely to be a significant creditor.

#### **VOLUNTARY ADMINISTRATION GUIDE**

Mr Silvia referred to a flowchart in the slideshow setting out the phases of voluntary administration, the communication steps and decisions that would finally be made by creditors at their second meeting. He noted that it was possible, given the complexity of the administrations, that the Administrators

might seek an extension of time for the second meeting of the creditors.

## REPORT

Mr Silvia referred to the Administrators' report and to the slideshow, as follows.

### *Background to Appointment*

The Administrators had been approached late on 13 April 2010, and had been appointed on 14 April 2010. The approach came at the suggestion of a barrister, Mr Andrew Davis, who was a common acquaintance of one of the directors and of the Chairman of the Administrators' firm, Mr Ferrier. The Administrators had had no dealings with the company, its directors or senior managers before the approach, and in particular had not carried out any consultancy work on their behalf or provided any advice, either to them or to their banks.

Shortly after the Administrators' appointment, the Commonwealth Bank and ANZ Bank had appointed Mr Tim Norman and Mr Sam Algeri as Receivers and Managers of two related companies, Forest Enterprises Australia Limited (a listed public company, the parent of FEA Plantations) and FEA Carbon Pty Limited, and had taken possession of the assets of Tasmanian Plantations Pty Limited and appointed Messrs Norman and Algeri as their agents.

### *Role of Voluntary Administrators*

Mr Silvia summarised the role of the Voluntary Administrators, which was to:

- Take control of the company's assets
- Investigate and report to creditors on the company's affairs
- Convene a second meeting of creditors and recommend to creditors whether the company should:
  - be wound up;
  - be returned to its directors; or
  - enter into a Deed of Company Arrangement.

### *Company Background*

As noted earlier, the company had been established to act as Responsible Entity for forestry MISs sponsored by the Forest Enterprises group of companies, of which Forest Enterprises Australia Limited ("FEA") was the head entity. As Responsible Entity, it received subscriptions from the public, which were applied to fund the establishment of schemes which were managed by FEA.

As Responsible Entity, the company leased land from FEA and from around 300 other parties and had granted sub-leases to investors, with the intention that the investors would have a form of proprietary interest in the trees grown on the land. Under the leases, the company was due to pay rent of around \$1.3 million each month to FEA, and paid a nominal monthly management fee of \$1 per scheme per month under a Head Management Agreement which had since been terminated by the Receiver and Manager of FEA. The lease payments were up to

date at the date of appointment, but there no funds on hand to fund future payments.

The company had been Responsible Entity for 17 schemes created annually, one of which had now been completed. Under the schemes, the company had issued some 13,000 interests.

The MISs had a custodian, or trustee of their assets. From July 2009, this had been FEA under a Custodianship Agreement.

Mr Silvia understood the Receivers and Managers would be seeking to sell the land owned by other companies in the group together with the trees growing on them, with a view to the proceeds of sale being divided between the secured creditors, who held security over the land, and the investors, whose interests arose under the schemes. His discussion with the Receivers had involved reference to a form of "net present value" calculation for the apportionment of the proceeds of sale; in Mr Silvia's view such an approach might tend to prejudice growers' interests, especially those of investors in later schemes where the trees were very immature and so the extent of discounting would be large.

He understood it was unlikely that a purchaser of the assets would wish to take them subject to the growers' interests.

In August 2009, FEA had indicated that it would provide financial support of up to \$5.5 million per month.

The company also acted as trustee of the FEA Timberland Fund.

As well as serving as custodian, FEA also undertook management of the assets of the MISs under a Head Management Agreement. As noted in the context of adjudication, this agreement had been terminated by the Receivers on their appointment.

One area of on-going investigation was the extent and nature of the securities granted by the company and other members of the group. It appeared, although investigations were only preliminary, that the two secured lenders had obtained security in and after April 2009. Previously they had lent on mortgage security, and had then taken a form of "quasi-security" known as a negative pledge. Importantly, by September 2009, the company's auditors, issuing the audit opinion on FEA as at 30 June 2009, had emphasised the dependence of the use of "going concern" values in the accounts on successful resolution of financing requirements.

Since April 2009 there had been correspondence between the companies in the FEA group and the banks concerning the scope of the security where there appeared to be confusion regarding the treatment of assets belonging in the MISs which may have been purportedly charged in circumstances prevented by the terms of the MIS constitutions.

### *Activities to date*

So far, the Administrators had met with representatives of the secured creditors and with the directors to begin their investigation of the companies' affairs. They had communicated and reported to the secured creditors and their appointees, the Receivers and Managers/Agents for the mortgagees in possession; with the Unsecured Creditors; with the Investors/Growers, and their financial advisors; with representatives of the Australian Securities and Investments Commission; and with the Tasmanian Government.

The Administrators had sought the assistance and advice of the Federal Court, which, in addition to extending the period within which the first meeting could be held, had also extended the time within which the Administrators might elect to assume liability on contracts under which the company occupied or made use of other parties' property.

The Administrators had undertaken a preliminary review of the managed investment schemes in order to understand the terms of the schemes, their viability, and whether there were any breaches of their constitutions or of the *Corporations Act*.

Mr Silvia explained the corporate structure of the group by reference to a chart projected as part of the attached slideshow.

The Administrators had conferred with representatives of ASIC concerned with the administration of MISs, and had in particular sought to address questions concerning the issues relating to the securities granted by the company in favour of FEA's bankers, to secure a guarantee of FEA's liabilities to them, where the charge appeared to extend to assets held within the MISs, and where the "breach" had not been rectified at the date of the Administrators' appointment.

### *Financial Position*

Mr Silvia referred to two slides summarising the most recent financial statements of the company and of its associates. These showed that the principal assets of the company were financial instruments and inventories; and that on its own account the company had comparatively few liabilities.

It had, however, granted a guarantee of the liabilities of other companies in the group to the secured creditors which was not reflected in the simple form of accounts.

### *Assets*

Mr Silvia noted that shortly before his appointment the secured creditors had instructed the company that, if they had not done so automatically before, any floating charge over its assets had crystallized and had become fixed, and that the company was not permitted to deal with any of its assets. This instruction



had been repeated to the Administrators.

Mr Silvia noted that there was a prospect that grower-investors' interests might be prejudiced by the company's inability to meet rent payments, some of which fell due in June 2010. In connection with the leases, he recalled that the management agreement had been terminated; at around the same time a request for an indication of intention as to the rent payment had been made. He added that the most recent variation documents relating to the leases included a form of acknowledgement of fairness of past and future rents. Such an acknowledgement was unusual.

He observed that his investigations would extend to the rights of tenants where the company, or the investors, might have the assistance of various protective agricultural legislation and in particular the *New South Wales Agricultural Tenancies Act 1990*.

The Administrators had identified, but not yet resolved, questions concerning the status of a bank account held by FEA, referred to as the "Custody" account. This account appears to reflect the proceeds of sale of growers' assets; although whether growers or the company retained title to the funds was a matter of contention. This was a matter the Administrators would be pursuing promptly in their investigations.

In the wider FEA group, there were substantial land holdings – valued at around \$279 million; and the Bell Bay Mill, carried at \$70 million, and loans receivable by FEA Limited from grower-investors of around \$50 million.

In terms of trading activities, the group overall had lost around \$52 million in the eight months to the end of February 2010. Of that, impairment of non-current assets was the largest part, reflecting a change in the accounting methodology. In terms of a "pure" trading loss, it was of the order of \$5 million - \$10 million.

These losses occurred in a context where the company succeeded in raising equity of \$37.5 million net, of which about \$12 million was absorbed in company activities and the balance was paid to the group's banks. The directors had indicated to the Administrators that it had been their expectation that all of the funds raised by the equity raising would, with the banks' agreement, be available for use by the company as working capital.

Salaries and many creditors had been paid up to around the date of appointment; a significant number of creditors had been paid shortly before appointment.

#### *The projects*

Overall, around \$417 million had been raised over 17 years; the largest amount being \$108.2 million in 2008.

### *Investigations*

In addition to the issues identified, the Administrators would consider whether there are any :

- Unfair preference payments
- Claim for Insolvent Trading liability
- Uncommercial or otherwise voidable transactions

that may be recoverable in the interests of creditors.

### *Smart Fibre*

Mr Silvia noted that one company in the FEA group was not externally administered. Smart Fibre Pty Limited, which was a corporate joint venture with Elders, remained on foot. Elders had given notice of a default under the joint venture agreement, and the receivers were acting in respect of the group's position.

### *Potential Purchasers*

The Administrators had spoken with three parties who had expressed interest in the group's assets. These parties were also discussing their interest with the Receivers.

## **MANAGED INVESTMENT SCHEMES**

Mr Silvia reported that the Administrators' initial view is that, if the MISs are to survive they will require variation. They are currently without means of funding operations and management. Variation will require agreement, within the terms contemplated by the Corporations Act, of the MIS investors, as well as identification of a commercially practical reconstruction/reorganisation plan.

## **QUESTIONS**

Mr Silvia invited questions of his report.

Mr Howard Calvert asked whether rent would be paid to third party landlords, and whether it might not be raised from investors?

Mr Silvia answered that this was a matter yet to be determined, but that the answer would be provided as soon as possible and in the second report to creditors. This was an issue that required further analysis after discussion with the Receivers.

Another creditor asked about the extent of the growers' rights given that security had been granted over the MIS assets, and when the legality of them would be determined.

Mr Silvia answered that this was a requirement for further testing and analysis of the relationship and obligations of the various group companies and the banks.

Mr Silvia continued that, to date, his investigations had not revealed suggestions

of fraud or theft. However, there would need to be consideration of the historical and future dealings under the transaction documents; for example the lease and management relationships had a commercial significance for the banks as mortgagees in possession of some of the land.

He added that marshalling growers' contribution would be difficult, given that most of them had no current obligation to fund. To change this relationship between the growers and FEAP would require amendment to the MIS constitutions which would take time to effect. However, any scheme of voluntary subscription was likely to be hampered by the unwillingness or inability of other scheme members to contribute.

Two creditors raised questions concerning the creation and priority of the secured creditors' charges. Mr Silvia summarised the status of discussions and investigations. While some discussions had occurred, the Administrators' focus had been on understanding the MIS structures, and the Administrators expected to undertake further discussion with the banks over the coming weeks, after the Administrators had had an opportunity to consult with their solicitors.

A creditor asked about the prospects of a sale of the land to investors.

Mr Silvia replied that it was unlikely that land could be sold separately. This would probably involve subdivision, which itself would be costly and in many cases unlikely to succeed given that many lots would be landlocked, and there would be access and planning issues. It was a matter that could be considered, but as FEAP itself was party to larger leases of property which it had sub-let in smaller parcels, it was unlikely to be possible to break the schemes into smaller parts.

It might be possible for separate MISs to seek to deal with the Receivers in connection with particular scheme allotments, but there would remain difficulties regarding the ability and willingness of sufficient majorities of MIS investors to agree on a particular amendment or variation of their scheme.

Mr Silvia explained that the Administrators contemplated a reconstruction but it was too early to determine the form.

A creditor asked who owned the trees planted on third party land. Mr Silvia answered that this would rest on the terms of the lease.

Mr Calvert asked what the difference was between the position of internal and external landlords. Mr Silvia indicated that the extent of internal and external leases had varied across different schemes. He noted that creditors could seek representation on the committee of creditors to obtain a closer understanding of these issues.

**REPLACEMENT OF** Mr Silvia referred to a foreshadowed proposal for the replacement of the

## LIQUIDATOR

Administrators. He said that he had been advised the day before that Mr Mark Korda and Mr Mark Mentha of Korda Mentha had consented to act, and that the banks supported their election as replacement appointees. He had now received a DIRRI made by Messrs Korda and Mentha, which is attached to the minutes, and which he summarised.

The meeting adjourned briefly to allow discussion between Mr Johns, the banks' proxy, Mr Silvia and Mr Korda regarding the manner of debate on the motion.

Mr Silvia outlined the procedure for voting on a resolution set out in regs 5.6.19 to 5.6.21 of the *Corporations Regulations*. The result would initially be determined on the voices. If requested, a poll would be undertaken in which to pass a resolution would require the support of both majorities of value and number. If there was a tie or no outcome on the proposal, the Chairman would exercise a casting vote. He indicated that the outcome of any poll would be recorded in the minutes, and therefore requested that creditors carefully complete their voting cards, and sought assurance that all creditors had signed in and obtained voting papers.

## MOTION

*"That the current Administrators of FEA Plantations Limited, Mr Silvia, Mr Muldoon and Mr Krejci, be removed and be replaced by Mr Mark Mentha and Mr Mark Korda of Korda Mentha."*

Moved: Mr Michal Johns, proxy for the Commonwealth Bank and the ANZ Bank

The Chairman noted that, for administrative reasons, proxy-holders for multiple creditors could exercise their vote on a single voting card.

Mr Johns addressed the meeting.

**Mr Johns** Mr Korda and Mr Mentha had significant recent experience, notably in Timbercorp. Consequently, they will not need to work out how to deal with issues, to "re-invent the wheel", which could come at considerable cost to the administration. The banks felt Mr Korda and Mr Mentha were able to bring about the best outcome for all stakeholders.

**Mr Korda** Mr Korda noted that he undertook the first voluntary administration in Australia and this was the first time he had participated in a challenge to an incumbent voluntary administrator. While nominated by the banks, he could also have been nominated by a number of growers. He offered himself because he had the benefit of the Timbercorp experience; he and his staff knew the issues arising on forestry MISs inside out, back to front and up to down. They had been through every issue, including all the issues landlords had such as when and how they would get paid; dealing with the growers and with the banks.

He did not work for the banks on Timbercorp, where they were already in place. He had sought to work for the benefit of all, with all the managers, so he had spent a huge amount of time on such schemes. He understood the race against time to deal with the trees and the restructuring, all of which was very difficult. On Timbercorp he had worked with the growers group. In his view, this resolution is really about how Mr Cannon would vote, as the banks would have the “value” side of the vote. He had spoken with the grower group the previous Thursday, and had spoken with Mr Haintz and Mr Garnaut.

The process of voluntary administration had to be a consensual one: while the parties could beat up on the banks, on management or the CEO, but the process had to arrive at a consensual outcome. It was necessary to get funds from the banks to fund lawyers - something they would provide to Korda Mentha – but the parties needed to move very quickly.

He and Mr Mentha had a lot of experience. The Receivers would look after the assets; he and Mr Mentha were not there to be the puppets of the banks, but to try to get a consensual outcome between the landlords, ASIC, the growers and the banks. Creditors had already seen, as Mr Silvia had alluded to, the matter would probably end up in court again. At the end of the day it was the creditors’ decision – the creditors’ meeting and their vote.

**Further speakers** Mr Silvia invited further speakers in favour or against the motion.

Mr Gibson expressed disappointment at the Korda Mentha conduct of the Timbercorp administration.

Mr Cannon said that Mr Korda had provided no reason for replacement, and the schemes were not complicated: they required someone to read through documents and acquaint themselves with the terms. The investors understood them, and the current Administrators could also do so. “Reinventing the wheel” was what would happen if there was a change in officeholders. The distinction between the current Administrators and Messrs Korda and Mentha was the experience of Timbercorp; if creditors thought that sufficient they should vote for Mr Korda and Mr Mentha.

## **VOTING**

Mr Silvia invited creditors to vote “on the voices” by a show of hands due to the acoustics of the room. He offered the creditors the opportunity to expressly abstain.

NOT CARRIED, with no abstentions.

Mr Johns requested a poll

A poll was conducted. Mr Silvia noted that proxy-holders representing more than one creditor could vote any vote in either direction. If necessary, further voting slips could be provided to enable this to occur.

The meeting was adjourned to permit the counting of the vote.

The creditors voted as follows:

<b>CREDITORS AND THEIR PROXIES ENTITLED TO ATTEND AND VOTING FOR THE RESOLUTION</b>		
<i>Number</i>	<i>Creditor/Proxy</i>	<i>Amount (\$)</i>
1	Commonwealth Bank/Michael John	115,993,756
2	ANZ Bank/Michal John	107,966,653
3	Forest Enterprises Australia Limited (Receiver and Manager appointed)(Administrators appointed)/Mr Michael Johns	1
4	FEA Carbon Pty Ltd (Receiver and Manager appointed)(Administrators appointed)/Mr Michael Johns	1
5	Tasmanian Plantations Pty Limited (Controller acting)(Administrators appointed)/Mr Michael Johns	1
<b>5</b>		<b>\$223,960,408</b>

<b>CREDITORS AND THEIR PROXIES ENTITLED TO ATTEND AND VOTING AGAINST THE RESOLUTION</b>		
<i>Number</i>	<i>Creditor/Proxy</i>	<i>Amount (\$)</i>
1 – 2557	2557 Grower-investors/Tony Cannon (“PH1” and “PH2”)	2,795
2558 – 2652	95 Grower-investors/Chairman	95
2653 – 2677	25 Grower-investors/Judith Watson	
2678 – 2710	33 Grower-investors/Eric Walters	33

2711 – 2839	129 Grower-investors/David Gibson (“PH3”)	129
2840 – 2854	15 Grower-investors/S D McGuiness	15
2,855	Craig and Susan Davison	1
2,856	Susan Davis	1
2,857	Alastair McKendrick	1
2,858	Kelrose Pty Ltd	1
2,859	Mark Curnelivs	1
2,860	LA & ML Investments	1
2,861	Pamela Stancombe	1
2,862	James Williams	1
2,863	Bluelay Pty Ltd	1
2,864	Duchhole	1
2,865	Tarawod	1
2,866	Malcolm Matthews	1
2,867	Michael Lorenz	1
2,868	Paul Stancombe	1
2,869	Orana Fnt Pty Ltd	1
2,870	Bradley and Joanne Watson	1
2,871	Satinder Cheema	1
2,872	Jaswinder Cheema	1
2,873	Michael and Maria Kelly	1
2,874	Tony Proctor	1
2,875	Tuit Pty Ltd	1
2,876	Anne and Anthony Cannon	1
2,877	Barry Ward	1
2,878	John Jacobs	1

2,879	Kenneth Last	1
2,880	Warren and Maryanne Clark	1
2,881	S. Burke	1
2,882	Antoinette Augustinus	1
2,883	Fergus Leicester	1
2,884	William and Penelope Cromarty	1
2,885	Gary Eiszele	1
2,886	Gerald Matthews	1
2,887	RV Bowdenoson	1
2,888	John Fletcher	1
2,889	Foxhat Pty Ltd	1
<b>2,889</b>		<b>\$10,630</b>

<b>SUMMARY OF OUTCOME</b>	
<i>Value in favour</i>	<u>\$223,960,412</u>
<i>Number in favour</i>	5
<i>Value against</i>	<u>\$10,630</u>
<i>Number against</i>	2,889
There were no abstentions recorded in the poll.	

Mr Silvia noted that the value of votes against the resolution largely reflected the uncertainty of valuation of grower-investor votes, where although \$417 million or thereabouts had been raised, each grower-investor had been admitted for \$1. The growers' claims, if valued at the amount contributed to the MISs, might reasonably be \$300 million.

The effect of the poll was that there was no result, and Mr Silvia held a casting vote under regulation 5.6.21 of the *Corporations Regulations*. He explained that he intended to exercise the casting vote, as to do so was part of chairing the meeting, and advanced the administration by ensuring certainty of outcome. He would also provide brief reasons for the exercise of his vote.



**Casting vote** Mr Silvia exercised his casting vote against the resolution and declared the outcome of the poll as follows:

**NOT CARRIED**

Mr Silvia observed in relation to the casting vote that he did not propose to elaborate extensively on his reasons for voting, as to do so would unnecessarily delay the meeting. However, in exercising the vote, he had had regard to the following matters:

- ✦ The interest of creditors in maintaining continuity of appointment, where he had begun investigations of the company's affairs;
- ✦ The absence, in his view, of persuasive reasons being provided for the proposed alternative appointment;
- ✦ That a vast majority of the creditors by number have expressed support for his and his colleagues' continuation in office;
- ✦ The majority in value reflects, in great measure, the vote of creditors claiming security, who, provided their securities are valid, may have direct recourse to those securities, and are thus not impeded relatively speaking by continuation of our appointment.
- ✦ Without reflecting on Korda Mentha's expressed independence, I consider that an impartial observer is likely to regard someone who has not nominated by the banks as more likely to act independently and to apply an appropriate degree of scrutiny to the company's dealings with the banks.
- ✦ The banks hold security over FEAP and have exercised the rights to appoint receivers in respect of FEA. They can do so at any time.
- ✦ The schedule of hourly rates used by Korda Mentha are considerably more expensive than BRI.

**COMMITTEE OF CREDITORS**

The Chairman noted that there was interest in the formation of a committee of creditors. He invited nominations for a committee. Mr Silvia noted that he expected that were issues to arise concerning any conflict of duty and interest, especially as between the secured creditors and the general body of creditors, the member concerned would not participate in the business of the committee.

There being no opposition to any of the nominations, he put the following resolution from the chair:

*"That there be a Committee of Creditors in the voluntary administration of FEA Plantations Limited comprising the Commonwealth Bank of Australia, ANZ Bank, Mr Eric Walters; Mr Rob Byrnes, Dr Judith Watson, Mr Michael Butler, Mr Malcolm Cleland, Mr Michael Kelly, Mr Howard Calvert, Mr Kenneth Last and Mr Tony Cannon."*

**CARRIED, NEM CON**

**OTHER BUSINESS**      The Chairman invited further business or questions. None were forthcoming.

**CLOSE OF MEETING**      The Chairman declared the meeting closed at 11.58 am.

Signed as a correct record.

DATED this *10th* day of *May* 2010.



BRIAN SILVIA

CHAIRMAN