

Our Ref:

TAKEOVER OFFER BY ELTHAM HOLDINGS LIMITED FOR ALL THE SHARES OF FAY, RICHWHITE & COMPANY LIMITED - REPURCHASE OF SHARES BY TRANZ RAIL LIMITED

MEMORANDUM OF THE SECURITIES COMMISSION

1. On 9 February 1995, Eltham Holdings Limited ("Eltham") made a takeover offer under the Companies Amendment Act 1963 for all the shares of Fay, Richwhite & Company Limited ("Fay Richwhite").
2. Eltham is a company that was owned and controlled by certain directors of Fay Richwhite. Sir Michael Fay and Mr D.M. Richwhite each held 50% of the shares in Eltham. These shares were held on behalf of themselves and Mr W.N. Birnie, Mr R.M.P. Dunphy and Mr G.B.M. Williams. The directors of Eltham were Sir Michael Fay and Mr Richwhite. Sir Michael Fay, Mr Richwhite, Mr Birnie, Mr Dunphy and Mr Williams were also directors of Fay Richwhite.
3. Fay Richwhite was listed on the New Zealand Stock Exchange when Eltham made its takeover offer. The directors of Fay Richwhite were Sir Laurence Stevens (Chairman), Sir Michael Fay, Dr R.L. Congreve, Mr Richwhite, Mr Birnie, Mr Dunphy, Mr Williams and Mr G.T. Ricketts. These directors were all beneficially entitled to Fay Richwhite shares. Interests associated with Sir Michael Fay, Mr Richwhite, Mr Birnie, Mr Dunphy and Mr Williams held approximately 72% of the Fay Richwhite shares. Sir Laurence Stevens, Dr Congreve and Mr Ricketts each held small interests aggregating some 4%. The balance of some 24% was held by members of the public.
4. The Fay Richwhite directors who were associated with Eltham were Sir Michael Fay, Mr Richwhite, Mr Birnie, Mr Dunphy and Mr Williams. The Fay Richwhite directors who were not associated with Eltham were Sir Laurence Stevens, Dr Congreve and Mr Ricketts. A list of the directors and shareholders of Eltham and Fay Richwhite is attached as Appendix A.
5. Eltham was not beneficially entitled to any Fay Richwhite shares when it made its takeover offer. However, all the Fay Richwhite directors, including those who were associated with Eltham and held 72% of Fay Richwhite, stated that they intended to accept the offer. Thus, in this sense, the buyers of Fay Richwhite shares were also sellers of Fay Richwhite shares.
6. Eltham offered 80 cents in cash for each 25 cent ordinary Fay Richwhite share. The shares

were trading at 36 cents each at that time. Eltham stated that the offer was conditional on acceptances for at least 90% of the company's shares.

7. Upon receiving Eltham's takeover offer, Fay Richwhite directors formed a committee of those directors who were not associated with Eltham, namely Sir Laurence Stevens, Dr Congreve and Mr Ricketts, to advise Fay Richwhite shareholders on the offer ("the Committee").
8. The Committee commissioned Grant Samuel & Associates Limited to value Fay Richwhite and to advise the Committee in respect of the offer. The Committee also commissioned McIntosh Corporate Limited (a subsidiary of Hendry Hay McIntosh Limited) to review the valuation and to provide a separate commentary on the Grant Samuel report for the benefit of shareholders.
9. A valuation of Fay Richwhite involved a valuation of Fay Richwhite's main assets. One of these was a 29.4% shareholding in Tranz Rail Limited, the parent company of New Zealand Rail Limited.¹ Fay Richwhite was entitled to appoint two directors to each of the Tranz Rail and the New Zealand Rail boards. Fay Richwhite appointed Mr Richwhite and Mr Leigh Davis, a senior executive of Fay Richwhite, to both.
10. A list of the directors and shareholders of Tranz Rail and New Zealand Rail is attached at Appendix A. Neither Tranz Rail nor New Zealand Rail is listed on the New Zealand Stock Exchange.
11. Grant Samuel and McIntosh Corporate required access to confidential information about Tranz Rail and New Zealand Rail. Mr Richwhite and Mr Davis were permitted by Tranz Rail and New Zealand Rail under the terms of a Disclaimer Agreement to release information about these companies to Grant Samuel and McIntosh Corporate subject to a number of conditions. Grant Samuel and McIntosh Corporate were required to enter into Confidentiality Deeds under which they were permitted to use information provided to them by Mr Richwhite and Mr Davis about Tranz Rail and New Zealand Rail for the purpose of preparing their valuation and were not permitted to disclose the information to any other person. The information which was released included details of performance of the two companies for the six months ended 31 December 1994. They were required to include in their report the disclaimers of Tranz Rail and New Zealand Rail from any responsibility for the accuracy or completeness or suitability of the information supplied.
12. The corporate finance division of Fay Richwhite also held confidential information about Tranz Rail and New Zealand Rail in its capacity as an adviser to these companies. The corporate finance division had given advice to Tranz Rail and New Zealand Rail towards the end of 1994 on the possibility of a return of capital, including the option of a repurchase of shares. This information was communicated to Mr Richwhite and Mr Davis by Tranz Rail and New Zealand Rail in their capacity as directors of those companies and was

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In October 1995, Tranz Rail Limited changed its name to Tranz Rail Holdings Limited and New Zealand Rail Limited changed its name to Tranz Rail Limited. For the purposes of this memorandum, we have used the names of those companies as at the date that Eltham Holdings Limited made its takeover offer.

communicated to Grant Samuel under the arrangements described in paragraph 11 above.

13. Grant Samuel estimated the value of the Fay Richwhite shares to be within the range of 66 to 73 cents per share. Grant Samuel expressed the opinion that the sharemarket price of Fay Richwhite shares would be significantly less than the 80 cents offered by Eltham in the absence of the Eltham offer. Grant Samuel believed that, in the absence of a takeover offer and assuming unchanged market conditions, shares in Fay Richwhite would trade at prices above 36 cents but significantly below 80 cents. Grant Samuel advised the Committee that it believed Eltham's takeover offer was fair and reasonable.
14. McIntosh Corporate regarded the value placed on the Fay Richwhite shares by Grant Samuel as "a marginally higher value" than that which it would have adopted. It endorsed the Grant Samuel advice that the Eltham offer was fair and reasonable and could be recommended to shareholders.
15. The Committee unanimously recommended to Fay Richwhite shareholders that they accept the Eltham offer.
16. Takeover offer documents were dispatched to Fay Richwhite shareholders on 6 March 1995. These documents included a letter from the Committee and the full text of the Grant Samuel and the McIntosh Corporate reports.
17. The takeover offer was declared unconditional on 22 March 1995. The offer was due to expire on 6 April 1995 but was extended to 20 April 1995. By this time, Eltham had obtained acceptances for some 99% of Fay Richwhite's shares.
18. On 14 June 1995, the Tranz Rail board of directors resolved that Tranz Rail should repurchase its own shares to a total of \$100 million by means of a pro rata offer to all shareholders.
19. On 21 June 1995, Tranz Rail shareholders unanimously consented to Tranz Rail's \$100 million repurchase of shares. Fay Richwhite decided to accept this offer. At that time, Fay Richwhite held a 28.18% interest in Tranz Rail and was entitled to receive \$28.18 million of this amount. This represented some 8.9 cents per Fay Richwhite share.
20. The possibility of some form of a return of capital was not disclosed in the Grant Samuel or the McIntosh Corporate reports.
21. The Commission received complaints from interested persons in relation to the return of capital. We requested documents from Fay Richwhite, Tranz Rail, Grant Samuel and McIntosh Corporate. We also invited each company to comment. All companies co-operated fully with the Commission.
22. Grant Samuel informed the Commission that it was aware from Tranz Rail's board papers that a return of capital was an option which Tranz Rail was considering towards the end of 1994. Grant Samuel informed the Commission that it did not refer to the possibility of a return of capital in its report because:

- a. there would be no impact on the valuation; and
 - b. to its knowledge, while the return of capital was a possibility at the time the report was being prepared, no decision had been made to proceed.
23. In the opinion of Grant Samuel, "the capital return does not create a windfall gain. It simply converts part of the value attributed to the investment in Tranz Rail into cash. It does not increase overall value."
24. McIntosh Corporate informed the Commission that it was appointed for a more limited task than Grant Samuel, namely to review the valuation and to comment on the Grant Samuel report. McIntosh Corporate stated that it was "not aware of the prospect of a return of capital by Tranz Rail at the time of our review of the Grant Samuel and Associates report but even if we were aware of such a situation it would not have affected our conclusions." This is because "[i]f a return of capital was to be made, it would have to be funded by increased debt and therefore there would be a compensating reduction in shareholder investment value."
25. Tranz Rail and Fay Richwhite both supplied information to the Commission on the matters which they each had taken into account when making their respective decisions on the proposed repurchase of shares.
26. The Commission has carefully reviewed all the information which it has received. Our conclusions are:
- a. At the time that Eltham made a takeover offer for all the shares of Fay Richwhite, Tranz Rail was considering the possibility of making some form of a return of capital but had not made a decision on the matter;
 - b. Fay Richwhite and Grant Samuel were aware that Tranz Rail was considering the possibility of some form of a return of capital at the time of the offer by Eltham but were not at liberty to disclose this information;
 - c. Grant Samuel had formed the opinion that the return of capital was no more than a possibility, that it would, if made, make no difference to the value it placed on Fay Richwhite at the time of the valuation and that it would, if made, have no impact on its opinion that the offer was fair and reasonable;
 - d. McIntosh Corporate may not have been aware of the possibility of some form of a return of capital at the time of its review of the Grant Samuel report but if it had been aware of this it would not have affected its conclusion that the offer was fair and reasonable;
 - e. Grant Samuel and McIntosh Corporate could reasonably and properly have come to the conclusion that the repurchase of shares as implemented, or that possibility, would have had no impact on their respective opinions on the offer; and

- f. Eltham was not precluded from making an offer to all Fay Richwhite shareholders by virtue of any knowledge it or any of its officers may have had of the possibility of some form of a return of capital by Tranz Rail.
27. Finally, the Commission notes that the offer by Eltham for all the shares in Fay Richwhite was made under the Companies Amendment Act 1963. This provides a substitute to compliance with Part I of the Securities Amendment Act 1988 relating to insider trading (see section 8(2)(a) of the Securities Amendment Act). The Commission has no insider trading concerns.
28. The Commission has completed its enquiry in relation to this matter.
29. The Members of the Securities Commission who constituted a quorum to consider this matter were:

Mr M.R.H. Webb (Chairman);
Ms E.M. Hickey;
Miss J.M. Potter; and
Mr J.M. Robson.



J. Farrell
Chief Executive

17 November 1995

DIRECTORS AND SHAREHOLDERS OF FAY RICHWHITE, ELTHAM, TRANZ RAIL AND NEW ZEALAND RAIL

Set out below are the directors and the shareholders of Fay Richwhite, Eltham, Tranz Rail and New Zealand Rail at the date that Eltham made a takeover offer for all the shares of Fay Richwhite.

Eltham -

(a) Shareholders:

- Sir Michael Fay (50%); and
- Mr D.M. Richwhite (50%).

Sir Michael Fay and Mr Richwhite held these shares on behalf of:

- Sir Michael Fay (39%);
- Mr Richwhite (39%);
- Mr W.N. Birnie (9.75%);
- Mr R.M.P. Dunphy (9.75%); and
- Mr G.B.M Williams (2.5%).

(b) Directors:

- Sir Michael Fay; and
- Mr Richwhite.

Fay Richwhite -

(a) Shareholders:

- Fay Richwhite was listed on the New Zealand Stock Exchange;
- All Fay Richwhite directors were beneficially entitled to Fay Richwhite shares;
- Interests associated with Sir Michael Fay, Mr Richwhite, Mr Birnie, Mr Dunphy and Mr Williams held some 72% of the shares;
- Sir Laurence Stevens, Dr R.L. Congreve and Mr G.T. Ricketts held some 4% of the shares; and
- Members of the public held approximately 24% of the shares.

(b) Directors:

- Sir Laurence Stevens (Chairman);
- Sir Michael Fay;
- Dr Congreve;

- Mr Birnie;
- Mr Dunphy;
- Mr Richwhite;
- Mr Ricketts; and
- Mr Williams.

Tranz Rail -

(a) Shareholders:

- Wisconsin Central International Inc (29%);
- Berkshire Fund III, a Limited Partnership, and associates (25.7%);
- Fay, Richwhite & Company Limited (29.4%);
- Tessaro Developments Limited (8.4%);
- David Lloyd Investments Limited (4.2%); and
- New Zealand Rail management (3.3%).

(b) Directors:

- E. A. Burkhardt (Chairman);
- K. C. Bowell (Alternate);
- Mr Davis;
- C. Ferenbach;
- T. F. Power;
- Mr Richwhite;
- T. W. Rissman;
- A. F. Small (Managing Director);
- A. P. van Heeren; and
- R. H. Wheeler.

New Zealand Rail -

(a) Shareholders:

- New Zealand Rail is a wholly owned subsidiary of Tranz Rail.

(b) Directors:

- The directors of New Zealand Rail are the same as the directors of Tranz Rail.