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Email Letter

From Julian Smith	Date 21/06/2011	
Direct 03 9240 0864	Email julian.smith@maddocks.com.au	
To Rob Garton-Smith	Organisation Primary Securities Ltd	Email rob@primarysecurities.com.au
And to Tony Jack	Black Tree Pty Ltd	info@blacktreeltd.com.au

Our Ref JMS:5674591

Dear Mr Garton-Smith and Mr Jack

**Forest Enterprises Australia Group
Managed Investment Schemes 1999 to 2008 (FEA Schemes)
FEA Limited (subject to deed of company arrangement)(Receivers and Managers Appointed)
(FEA)
FEA Plantations Limited (subject to Deed of Company Arrangement)(Receivers Appointed)
(FEAP)
Grower meetings scheduled for 29 June 2011 and proposed change of Responsible Entity**

We refer to our previous correspondence of 17 February 2011 and 1 April 2011 in respect of the above matter and the proposal for restructuring the FEA Schemes. The purpose of this letter is to reiterate the receivers' concerns from the perspective of FEA as a grower in certain of the FEA Schemes. For your ease of reference we attach our correspondence of 1 April 2011 (8177654) and accompanying commentary (8177675).

1. Response to previous correspondence

- 1.1 We note that we have not had the courtesy of a response to our previous correspondence, or the accompanying 'Commentary on Black Tree Proposal'.
- 1.2 You will appreciate that the matters we have raised are of considerable importance. They go to:
 - 1.2.1 the fundamentals of the process by which the meetings were called;
 - 1.2.2 the process by which it is proposed that the FEA Schemes will be restructured, including serious shortcomings in the proposed scheme documents;
 - 1.2.3 the workability and legal effectiveness of that restructuring process, including a failure to acknowledge the priority of the secured creditors' security and the impediments to proposed actions which are central to the proposed restructure, such as the inability to amend management agreements to which FEAP is a party and lease agreements to which FEA is a party as lessor; and

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- (c) the examination will be made 'ignoring the money that's been spent to date' including, presumably, the payments which Black Tree requires be made by growers immediately following the restructure but prior to the viability assessment being made.

3.1.9 As we have previously observed, it is clear that growers bear all commercial risk associated with the Black Tree proposal. The recent evidence of both Mr Garton-Smith of Primary RE and Mr Marshall of Black Tree brings this observation into sharp relief.

3.2 It is incumbent upon Black Tree and Primary RE to conduct due diligence

3.2.1 Before Black Tree and Primary RE put the proposed restructure to growers, or carry it into effect thereby exposing growers to an uncertain and unlimited exposure to contribute to the FEA Schemes, it is incumbent upon Black Tree and Primary RE to first conduct a due diligence into those schemes and report the outcome of that due diligence to growers.

3.2.2 We are instructed that for this purpose Deloitte is prepared to share its net present value figures with you, which are based on an independent forestry expert's report.

3.3 It is incumbent upon Black Tree and Primary RE to address the other material issues concerning the proposed restructure

3.3.1 For the avoidance of any doubt, the point must also be made that conducting this due diligence will only address one current shortcoming.

3.3.2 It will not address the remaining shortcomings of the proposed restructure set out in our earlier correspondence (copies attached), most of which are fatal, including:

- (a) fatal flaws in the manner in which the meetings have been called;
- (b) significant shortcomings in the disclosures made in the meeting material, and in the proposed scheme documents;
- (c) failing to provide an explanation to growers of how the restructure can be effected in view of the secured creditors' security over agreements that Black Tree will (ineffectively) purport to amend;
- (d) failing to address rights of different classes of growers in the FEA Schemes;
- (e) failing to provide an explanation to growers of how what Black Tree and Primary RE are offering is in the growers' best interests – in this regard, a continuation of the FEA Schemes is not an end in itself, particularly where there is no evidence it would result in a better financial outcome;
- (f) failing to provide an explanation to the growers of the grounds on which Black Tree is exempted from being appropriately licensed under financial services laws, particularly in relation to:
 - (i) providing financial product advice, including via the Grower Calculator which advice growers have likely relied upon when registering their vote via Link Market Services;
 - (ii) dealing in a financial product by proposing a restructure the effect of which is to vary a financial product (being each grower's interest in the FEA Schemes);

- (iii) proposing a restructure the effect of which is that Black Tree, as an unlicensed operator, will have primary responsibility to operate the FEA Schemes;
- (iv) providing financial product advice by publishing on its webpage simplistic and misleading material which constitutes financial product advice, recommending to growers that they favour one restructure proposal over another.

3.4 **Grower calculator**

- 3.4.1 The absence of any proper due diligence investigations did not stop Black Tree from making the Grower Calculator available to growers up until 16 June 2011, nor from allowing that calculator to affect growers' voting intentions.
- 3.4.2 It is clear that Black Tree's subsequent withdrawal of the Growers' Calculator, and the accompanying admission that it cannot be relied upon, is an admission that the calculator was misleading.
- 3.4.3 As we have said previously, that calculator was made available to growers notwithstanding Black Tree's abject failure to meet appropriate regulatory standards which apply to the publication of prospective financial information, including those referred to in ASIC Regulatory Guide 170.
- 3.4.4 Mr David Marshall of Black Tree has acknowledged on oath the importance of this information being reliable, and yet the Growers Calculator was made available:
 - (a) prior to proper due diligence being conducted; and
 - (b) without adherence to regulatory disclosure standards.
- 3.4.5 In evidence in the Great Southern matter, Mr Marshall was asked by counsel and the presiding Judge to assume that the projected yield on which Black Tree and Primary RE were proceeding was not reliable - and that instead the actual yield would be lower than they anticipated and consistent with the yields predicted by an independent forestry expert.

[His Honour] No, Mr Marshall, I know that it might be unpalatable to accept the figures that have been put forward. What is being asked of you is to make certain assumptions, assume for present purposes that they're correct. You may disagree with them for a variety of reasons. You may say they're fundamentally wrong but if you just assume they're correct then the question is what do you make of them?

[Marshall] Then a grower should not be putting their money in.
- 3.4.6 Having so simply acknowledged the importance of forecasted yields, it is perplexing how Mr Marshall, Black Tree and Primary RE continued to make the Grower Calculator available to growers in the manner they did. Indeed, having withdrawn the calculator from the Black Tree website, and disassociated itself from the forecast yields it contained, growers are entitled to be informed by Mr Marshall the extent to which this indicates that his view is now that growers 'should not be putting their money in' and the full details of the basis on which his view is formed.
- 3.4.7 Since our previous correspondence we have had the opportunity to further review how the Grower Calculator operated, and make the following observations:

- (a) No additional disclosures were made in relation to the assumptions, or the reasonableness of the assumptions, which supported the Grower Calculator: for example, there was no information about whether or not the assumptions included the likelihood of some growers ceasing to contribute to the FEA Schemes nor any information about the assumed percentage of defaulting growers;
- (b) Particularly in respect of the earlier schemes, only if the most pessimistic assumptions were adopted in the sensitivity analysis would the Grower Calculator generate negative returns to growers – the subsequent withdrawal of the Grower Calculator, and Black Tree's admission that it should not be relied upon, highlights that there were no reasonable grounds for such optimistic forecasts;
- (c) Very often in the case of entering pessimistic assumptions, the Grower Calculator would simply malfunction (and display an error message) rather than show the extent of losses the grower could expect to suffer;
- (d) There is no explanation for the discrepancies in the number of separate years growers should expect returns in respect to each scheme. For instance in respect of the 2002 scheme returns are forecast to be received in 3 separate years, and in the 2001 scheme returns are forecast to be received in 10 separate years;
- (e) Black Tree still offers no explanation as to how it was exempted from the operation of financial services licensing laws in offering the Growers Calculator.

3.5 2009 Scheme and rent collections

- 3.5.1 The restructure proposal for the FEA Schemes does not deal with the 2009 Scheme.
- 3.5.2 Yet as you will be aware land for the 2009 scheme is subject to the same head lease as for other FEA Schemes. The restructure proposal does not facilitate the collection of and payment of rent in respect of the 2009 Scheme. Thus even if all rent was paid as expenses of the relevant FEA Schemes, this would still not be sufficient to pay all the rent under the head lease as no collections will be made from the growers in the 2009 Scheme.
- 3.5.3 This is a material risk which has not been disclosed to growers. The risk will be magnified in the very likely event that a proportion of growers forfeit their interests in the relevant FEA Schemes – meaning the shortfall in the payment of rent will be the total of those non-participating growers, as well as the rent due in respect of the 2009 Scheme.

3.6 Primary RE AFS Licence authorisations

- 3.6.1 The meeting material issued in February 2011 included the following statements:

As part of the Black Tree Proposal, the Responsible Entity will change from FEAP to Primary RE. Primary RE is a specialist professional responsible entity for agricultural managed investment scheme projects and will operate the Forestry Projects under certain conditions. These conditions include:

(a) ASIC agrees to Primary RE's request to have the Project placed on its license. If ASIC does not agree, within a reasonable timeframe, to Primary RE having the Forestry Projects placed on its license, then Black Tree will procure a replacement company to act as the Responsible Entity for the Forestry Projects;

....

The Resolutions to remove FEAP as the responsible entity and replace FEAP with Primary RE will only be passed once the conditions precedent listed above have been achieved. If these conditions precedent are not met then Growers may pass the first 3 resolutions at the meeting and agree to adjourn the consideration of Resolutions 4 and 5 until a later meeting.

3.6.2 The proposed Black Tree restructure has been presented by Black Tree as a restructure which will include the appointment of a solvent RE. Primary RE's appointment was subject to ASIC approval – ie to list the relevant schemes on the Primary RE AFS Licence.

3.6.3 Courtesy of the adjournments of meetings Primary RE and Black Tree have had over 4 months to seek this approval from ASIC and yet Primary RE's licence is unchanged. We are concerned that the position of Primary RE to assume the responsible entity role has been misrepresented to Growers, and it is incumbent on the parties to update Growers as to what progress has been made with ASIC and, if little progress has been made, whom Black Tree intends to procure as a replacement company to act as the responsible entity.

4. Invalidity of the process

4.1 On its website Black Tree continues to admonish third parties for alleged failures to provide information. Yet despite our prior correspondence, Black Tree has failed to respond to the various issues we have raised.

4.2 Many of those issues go to the very validity of the process by which the Black Tree restructure proposal has been put to growers.

4.3 The withdrawal of the Grower Calculator further calls into question the validity of this process, including the validity of all votes which have been pre-registered in respect of the proposed meetings. Allowing growers to alter their registered votes does not adequately address this issue. The withdrawal continues a misleading practice by Black Tree of allowing growers to pre-register votes while continuing to alter meeting material, alter proposed scheme documents, and make and withdraw various representations.

5. Reservation of rights

5.1 On the basis of:

5.1.1 the matters set out above;

5.1.2 the matters raised in our previous correspondence; and

5.1.3 the secured creditors' continuing rights under their various securities,

FEA and its receivers reserve all of their respective rights to recover any loss or damage (including costs and expenses) incurred by them of in consequence of any act taken to carry the Black Tree proposal into effect and in connection with any actions which they may deem necessary to protect and reserve their rights.

