



Whitestone Mining Services Pty Ltd (In Liquidation)
ACN 136 481 877
(Whitestone) (the Company)
Statutory Report to Creditors

We refer to our initial information for creditors dated 28 May 2019 in which we advised you of our appointment as liquidator and your rights as a creditor in the liquidation.

The purpose of this report is to:

- provide you with an update on the progress of the liquidation; and
- advise you of the likelihood of a dividend being paid in the liquidation.

We will also be requesting that you consider our detailed remuneration approval report and consider resolutions to approve our remuneration.

1. Update on the progress of the liquidation

1.1 Background

Whitestone Mining Pty Ltd, formally known as Whitestone Minerals Pty Ltd, was incorporated on 6 April 2009 and operated a drilling and labour hire business in Western Australia. Whitestone predominantly provided services to entities related to its sole director, Mr Michael Fotios (**Director**).

InvestMet Limited (**InvestMet**) is the sole shareholder of Whitestone. The Director of Whitestone was, until recently, also a director of InvestMet.

In April 2018 the Company ceased trading, which the Director attributes to the appointment of voluntary administrators to Eastern Goldfields Ltd (**EGS**), also a related entity. The reason stated for this was the Company's assets (mainly drill rigs) were located on EGS's site and could not be operated by Whitestone.

On 13 November 2018 the Australian Taxation Office (**ATO**) began proceedings against Whitestone in relation to unpaid debt (**Petitioning Creditor**). On 30 April 2019, the Court ordered that Whitestone be placed into Liquidation and that Rob Kirman and Rob Brauer be appointed liquidators (**Liquidators**).

2 Estimated assets and liabilities

In a liquidation, the Director is required to complete a Report on Company Activities and Property (**ROCAP**), setting out a detailed assessment of the company's asset and liability position and causes of failure. The Director submitted a ROCAP on 15 May 2019.

The Liquidators have also obtained the Company records, including MYOB management accounts (**MYOB**) and physical books and records containing (but not limited to) employee data and creditor and debtor information.

Based on the Company's records and the Director's ROCAP, set out below is a summary of Whitestone's asset and liability position.



2.1 **Assets**

Whitestone owns a fleet of plant and equipment which comprises several drill rigs and supporting equipment. Its assets also include cash at bank, shares and options in listed entities, and accounts and loans receivable, many of which are due from related entities.

A summary of Whitestone's assets follows and is discussed in more detail in sections 2.1.1 to 2.1.5:

Summary of assets

\$	Notes	MYOB April 2019	ROCAP
Cash and equivalents	2.1.1	21,003	20,779
Shares and options	2.1.2	5,468,895	332,500
Accounts receivable	2.1.3	1,732,619	1,732,619
Loans receivable	2.1.4	87,356	93,756
Plant and equipment	2.1.5	232,074	571,000
Total		7,541,947	2,750,654

Note: Statutory accounts have not been prepared for Whitestone since FY14. Whilst the MYOB accounts appear to capture cash transactions to at least April 2019, typical year end adjustments (such as depreciation and amortisation) have not been recorded since FY14 and, therefore, the MYOB accounts may not accurately reflect the current accounting values of assets.

2.1.1 **Cash and equivalents**

Whitestone's reported cash position is summarised in the table below:

Cash and equivalents

\$	MYOB April 2019	ROCAP
Cash on hand	224	-
NAB - Bank account	198	198
CBA - Bank account	279	279
CBA - Term deposit	10,302	10,302
Funds held on trust	10,000	10,000
Total	21,003	20,779

Whitestone's main trading account was maintained with National Australia Bank (**nab**). The Company also maintained an account with Commonwealth Bank of Australia (**CBA**), however, this account has had minimal transaction activity. Both nab and CBA have closed the accounts and transferred the balance to the Liquidators, being \$195.15 and \$225.37 respectively.

In addition to the trading accounts, Whitestone also held a term deposit with CBA. The balance of this deposit is \$11,297.37 and CBA is in the process of closing the account and transferring the balance to the Liquidators.

The books and records list two other 'cash' assets, namely:

- \$10,000 held on trust by Whitestone's legal advisors. The Liquidators have written to this advisor to determine if these monies are still held and, if so, if they can be released to the Liquidators. At the time of writing, no reply has been received; and
- nominal cash on hand, which is not expected to be recovered.



2.1.2 Shares and options

The Company's management accounts disclose three share holdings in public companies, and some unlisted options, as summarised in the table below:

Shares and options						
Entity	ASX Code	Type	Number of shares held	Last public transaction price (\$ per share)	MYOB Current (\$)	ROCAP Value (\$)
Horseshoe Metals Limited	HOR	Shares	15,000,000	0.011	300,000	135,000
Ora Banda Mining Ltd*	OBM	Shares	1,316,667	0.15	5,150,000	197,500
Ora Banda Mining Ltd*	EGSAI	Unlisted options	125,000	n/a	-	-
Ora Banda Mining Ltd*	EGSAK	Unlisted options	125,000	n/a	-	-
Orion Minerals Ltd	ORN	Shares	629,837	0.026	18,895	-
Total				-	5,468,895	332,500

* Formerly Eastern Goldfields Ltd

The Liquidators have written to the share registries for each of the above holdings and initiated holds to restrict dealings. They are also obtaining holding certificates and statements so that shares may be sold in due course and any recent disposals investigated.

The Liquidators note the following:

- Ora Banda Mining Ltd (**OBM**) was formerly known as Eastern Goldfield's Ltd (**EGS**). EGS recently executed a Deed of Company Arrangement (**DOCA**) and undertook a capital restructuring whereby shares in EGS were consolidated on a 15 for 1 basis. A similar consolidation of Whitestone's unlisted share options also occurred. The above holdings are presented on a "post consolidation" basis;
- Whitestone holds circa 5% of the share capital in Horseshoe Metals Ltd (**HOR**). HOR is a copper and gold explorer whose main assets are the Horseshoe Lights and Kumarina projects in Meekatharra, Western Australia. An unsolicited, off market offer has been received for the HOR shares held by Whitestone, which the Liquidators are considering in the context of independent advice; and
- the MYOB accounts disclose a small shareholding in Orion Minerals Ltd (**ORN**), however, ORNs share registry advised that these shares were sold in January 2019. The Liquidators are obtaining further particulars relating to this sale to confirm whether it was at arm's length and for appropriate value.

The Liquidators have engaged an independent stock broker to assist them to determine (i) the market value of the OBM and HOR shares and options, and (ii) the most effective way to realise them, noting the volatility and limited liquidity of both stocks.



2.1.3 *Accounts receivable*

Material accounts receivable are due to Whitestone, predominantly for drilling services rendered. The majority of these amounts are due from related entities, as summarised below:

Whitestone - Accounts receivable

Name	MYOB	ROCAP (\$)
	April 2019 (\$)	
Top 10		
Murchison Copper Mines Pty Ltd*	356,032	356,032
Pegasus Metals Ltd*	313,427	313,427
Redbank Operations Pty Ltd*	272,332	272,332
Horseshoe Metals Ltd*	219,041	219,041
Eastern Goldfields Mining Services Pty Ltd*	137,638	137,638
Delta Resource Management Pty Ltd*	134,170	134,170
Redbank Copper Limited*	108,502	108,502
InvestMet Ltd*	55,188	55,188
Galaxy Resources Ltd*	39,564	39,564
Balance of accounts receivable (10 parties)	96,726	96,726
Total accounts receivable	1,732,619	1,732,619

* Related entity per initial investigations

The Liquidators note the following:

- Eastern Goldfields Mining Services Pty Ltd (**EGMS**) is a subsidiary of EGS, and also recently executed a DOCA. Accordingly, recoveries will be limited to Whitestone's dividend entitlement in the DOCA, which is estimated to be circa \$55,000. The balance of amounts owed from EGMS will be unrecoverable;
- Delta Resource Management Pty Ltd (**Delta**) and InvestMet are recorded in MYOB and the Director's ROCAP as also being owed monies by Whitestone via accounts payable and loans payable (detailed in sections 2.2.1 and 2.2.2). These parties may seek to offset these amounts against the amounts owing to Whitestone, which may impact recoverability; and
- the Liquidators are currently investigating the recoverability of the accounts receivable. Once this assessment is finalised, requests for payment will be issued to the relevant parties and the Liquidators will pursue recovery of the amounts outstanding where commercially viable to do so.



2.1.4 **Loans receivable**

Several loans receivable are due to Whitestone by related entities, as summarised below:

Loans receivable		
	MYOB	
\$	April 2019	ROCAP
Horseshoe Metals Ltd*	66,764	66,764
Pegasus Metals Ltd*	4,554	4,554
Whotune Music Group Ltd*	-	6,400
Fotios Family Trust and McSweeney Family Trust*	16,038	16,038
Total	87,356	93,756

* Related entity per initial investigations

The Liquidators are currently investigating the recoverability of the loan accounts and will shortly be issuing requests for payment and pursuing any amounts outstanding where commercially viable to do so.

2.1.5 **Plant & Equipment**

As noted previously, Whitestone owns several drill rigs and a fleet of supporting equipment. The Company's balance sheet and the Director's ROCAP disclose the following assets utilised in the business:

Plant & Equipment		
	MYOB	
\$	April 2019	ROCAP
Drill Rig	92,098	225,000
Vehicles	105,796	93,500
Equipment	27,966	252,500
Office equipment	6,214	-
Total	232,074	571,000

Note: Statutory accounts have not been prepared for Whitestone since FY14. Whilst the MYOB accounts appear to capture cash transactions to at least April 2019, typical year end adjustments (such as depreciation and amortisation) have not been recorded since FY14 and, therefore, the MYOB accounts may not accurately reflect the current accounting values of assets.

The Liquidators have engaged Gordon Brothers to (i) provide an independent valuation of the plant and equipment, (ii) collect the plant and equipment from the Davyhurst mine site, and (ii) conduct a public, competitive sale process in relation to the plant and equipment.

Details regarding Gordon Brothers' sale process are set out below in more detail:

- all assets have been collected from the Davyhurst mine site;
- minor repairs and maintenance has been carried on some items in order to maximise sale value;
- minor assets have been placed with Grays Auctioneers to be included in suitable auctions when they arise; and
- noting the specialised nature of the drilling equipment, a public expressions of interest sale process is being conducted for the drill rigs and supporting assets which is due to complete in early August.

The Liquidators are also reconciling various records and attempting to locate some equipment and vehicles which has not yet been accounted for.



2.2 *Liabilities*

Whitestone's liabilities are estimated to exceed \$9.0 million which includes statutory creditors such as the ATO, trade creditors, loans payable and employee entitlements.

These liabilities are summarised in the below table and discussed in further detail in sections 2.2.1 to 2.2.5.

Summary of liabilities			
\$	Section	MYOB April 2019	ROCAP
Petitioning creditor costs	2.2.1	Not disclosed	Not disclosed
Employee entitlements	2.2.2	(661,727)	(1,018,436)
Statutory creditors	2.2.3	(3,345,188)	(3,409,507)
Trade creditors	2.2.4	(2,015,399)	(1,400,603)
Loans payable	2.2.5	(2,863,703)	(3,258,931)
Total related payables		(8,886,017)	(9,087,477)

2.2.1 *Petitioning creditor costs*

The ATO's costs in petitioning the winding up were fixed by the Court at \$1,535. In accordance with section 556(1)(b) of the Corporations Act 2001 (**Act**), these costs enjoy priority status in the liquidation.

2.2.2 *Employee entitlements*

In accordance with section 556(1)(e) of the Act, employee entitlements such as superannuation enjoy a priority ahead of unsecured creditors.

The Directors' ROCAP discloses that there was circa \$660,000 in superannuation owed to 130 employees, and \$360,000 of superannuation guarantee charge (**SGC**) fees which have accrued on this debt. Whitestone's books and records broadly agree with the Director's ROCAP, albeit SGC fees do not appear to have not been recorded.

From preliminary investigation, it appears that superannuation is outstanding for the period September 2013 to December 2018. Accordingly to the books and records, no other entitlements are owed to employees and the Liquidators have not received any claims from the Fair Entitlements Guarantee Scheme or directly from employees.

2.2.3 *Statutory liabilities*

Statutory liabilities are owed to the ATO and the Office of State Revenue (**OSR**) as set out in the table below:

Statutory liabilities		
\$	MYOB April 2019	ROCAP
Australian Taxation Office	(3,260,131)	(3,409,507)
Office of State Revenue	(85,057)	-
Total	(3,345,188)	(3,409,507)

The Liquidators have issued freedom of information requests to the ATO and the OSR and have received, and are considering, replies from both entities.



2.2.4 Trade creditors

Trade payables predominantly comprise debt due to a related entity (Delta), and a material debt to Colby Trading Services (**Colby**).

These liabilities, and the balance of trade creditors, are summarised in the below table below:

Trade payables		
\$	MYOB April 2019	ROCAP
Delta Resources Management*	(784,475)	(784,475)
Colby Trading Services Pty Ltd	(654,008)	(71,909)
Squire Patton Boggs	(300,618)	(300,618)
Coretell Pty Ltd	(58,673)	(58,673)
Camteq International	(48,060)	(48,060)
Seismic Drilling Services	(32,698)	-
Other trade payables (39)	(136,867)	(136,867)
Total related payables	(2,015,399)	(1,400,603)

**Related entity per initial investigations*

The Liquidators note the following:

- **Delta** – the Liquidators understand that Delta is the ‘management entity’ for the Director’s associated companies. The debt owed appears to relate to a range of management charges which Delta has levied, but Whitestone has not repaid. These costs include (but are not limited to) Whitestone’s share of rent and on costs at shared property, bookkeeping fees, assorted purchases made for ongoing trading activities and car hire fees. Delta has not yet submitted a proof of debt for this amount and the Liquidators have not yet formed a view on the admissibility of this claim;
- **Colby** – Amounts owing to Colby relate to the provision of equipment, including drill rigs and supporting items and services. Colby has advised the Liquidators that their claim is \$751,227, which is broadly in line with the debt reported in MYOB. However, the Directors’ ROCAP has classified the amount as a loan payable. Colby and a related entity (Valentino Nominees Pty Ltd (**Valentino**)) have claimed their debts are secured against certain assets, however, as they have not registered on the Personal Property Securities (PPS) register, the Liquidators consider their security is invalid and they are unsecured creditors.
- **Squire Patton Boggs (Squire)** – Squire were Whitestone’s legal advisers and acted for the Company on a number matters relating to winding up applications, employment advice, debtor disputes and other litigation. Squire have submitted a proof of debt for \$300,618, consistent with the amount listed as owing in MYOB and the ROCAP; and
- **Other trade payables** – other trade payables of \$136,867 are made up of 39 individual creditors, with claims ranging from \$20 to \$22,000. The majority of these creditors are unrelated parties.

The Liquidators have not yet called for proofs of debt to be submitted or adjudicated on any claims. This work will be performed if and when it appears a dividend to creditors may be possible (refer section 3).



2.2.5 Loans payable

Whitestone's balance sheet and ROCAP indicates a number of loans payable, the majority of which are owing to related parties. All of these loans appear to be on an unsecured basis and there is no party with a General Security Agreement over the Company and its assets.

These loans are summarised in the table below:

Loans payable		
\$	MYOB April 2019	ROCAP
Delta Resource Management Pty Ltd*	(960,181)	(960,181)
Investmet Limited*	(1,431,431)	(1,431,431)
Apollo Corporation Pty Ltd*	(10,000)	(10,000)
Azurite Corporation Pty Ltd*	(100,000)	(100,000)
Valentino Nominees Pty Ltd	(273,114)	(233,283)
Colby Trading Services Pty Ltd	(8,977)	(436,036)
Fotios Family Trust*	(80,000)	(88,000)
Total related payables	(2,863,703)	(3,258,931)

**Related entity per initial investigations*

The Liquidators note the following:

- **Delta** – trade payables owed to Delta are outlined in detail at section 2.2.4. The loan account is made up of similar management transactions to the trade payable account (i.e. share of rent and on costs at shared property, bookkeeping fees and assorted purchases), with the addition of several cash advances from Delta to Whitestone. Delta has not submitted a proof of debt in relation to this amount; and
- **InvestMet** – the Liquidators understand that InvestMet is the 'treasury' entity for the Director's associated companies. Accordingly, debt owed is predominantly in relation to cash advances to Whitestone from InvestMet to fund operations. InvestMet has not submitted a proof of debt in relation to this amount and the Liquidators are reviewing this account noting its materiality; and
- **Valentino** – Amounts owing to Valentino relate to a loan as a result of the provision of funds from Valentino to Whitestone. Valentino have advised the Liquidators that they are owed \$792,101 in relation to this loan, which is significantly higher than the amounts listed in MYOB and the ROCAP. As outlined in section 2.2.3 Valentino is related to Colby and both entities have asserted security interests over certain assets which the Liquidators consider are invalid and therefore their claims are unsecured.

The Liquidators have not yet called for proofs of debt to be submitted or adjudicated on any claims. This work will be performed if and when it appears a dividend to creditors may be possible (refer section 3).

3 Investigations

The Liquidators have obtained books and records in relation to the affairs of Whitestone, which includes a copy of the MYOB file, electronic records such as emails and file server data and physical debtor, creditor and employee data.

To date, investigations have focused on securing and preserving assets, however going forward this will also include matters such as:

- investigating and quantifying any insolvent trading claim against the Director; and
- identifying and investigating voidable transactions.

The Liquidators will provide an update on investigations in the next report to creditors.



3.1 *Insolvent trading*

Before a Court will order that a person pay compensation in respect of insolvent trading, a liquidator must establish that:

- the person was a director of the company at the time the company incurred the debts that are the subject of the claim;
- the company was insolvent at that time the debts were incurred or became insolvent by incurring the debt;
- at that time, there were reasonable grounds for suspecting that the company was insolvent or would become insolvent by incurring the debt; and
- the debt subject of the claim was wholly or partly unsecured and the creditors to whom the debts are owed have suffered loss and damage.

Notwithstanding the above, the Director was sequestrated in bankruptcy on 30 April 2019, following an application by the ATO. Accordingly, the recoverability of any insolvent trading claim will be considered when conducting the investigations and will be dependent on a dividend being paid from the Director's bankrupt estate.

3.2 *Voidable transactions*

The types of voidable transactions which the Liquidators of Whitestone will investigate are summarised below:

- Unfair preference claims: transactions between Whitestone and its creditors, resulting in an unsecured creditor receiving a greater amount than it would have received in a winding up. These transactions must have occurred when Whitestone was insolvent or have caused Whitestone to become insolvent;
- Uncommercial transactions: being transactions which a reasonable person in the place of Whitestone would not have entered into, taking into account the benefits and the detriment to Whitestone the respective benefits to the other parties involved and any other related matters. These transactions must have occurred when Whitestone was insolvent or have caused Whitestone to become insolvent;
- Unfair loans: being a loan agreement where the interest or charges are considered to be extortionate. Unfair loans made to Whitestone at any time prior to the Administrators' appointment may potentially be overturned by the Liquidators, whether or not Whitestone was insolvent when the loan was entered into (or any time thereafter); and
- Unreasonable director-related transactions: being transactions made to or on behalf or for the benefit of the Director, or a close associate, which a reasonable person in the place of Whitestone would not have entered into, taking into account the benefits and the detriment to Whitestone, the respective benefits to the other parties involved and any other related matters and whether or not Whitestone was insolvent when the transaction was entered into (or subsequently became insolvent).

At this stage, it is unknown if any of the above transactions have occurred, if liquidator recovery claims will exist or if such claims will be commercially viable to pursue. Determining this will be a key focus of the liquidation moving forward.



4 Likelihood of a dividend

A number of factors will affect the likelihood of a dividend being paid to creditors, including:

- the size and complexity of the liquidation;
- the amount of assets realisable and the costs of realising those assets;
- the statutory priority of certain claims and costs;
- existence of liquidator recovery actions and their commerciality;
- the value of various classes of claims including secured, priority and unsecured creditor claims, and
- the volume of enquiries by creditors and other stakeholders.

Based on information available to us at this time, and absent any unforeseen issues, we consider that a dividend to priority creditors (i.e. employee superannuation) is likely. However, the quantum will be dependent on the values realised for assets, Liquidator recovery actions and costs. Given the material amount owing to priority creditors, a dividend to unsecured creditors is less likely, and will be heavily influenced by the amount recovered from loans, debtors and Liquidator recovery actions (if any).

If a dividend is declared, you will be contacted separately, and, if you have not already done so, be asked to lodge a proof of debt. This formalises the record of your claim in the liquidation and is used to determine all claims against Whitestone.

5 Cost of the liquidation

We enclose a detailed report on our remuneration, called a Remuneration Approval Report.

We propose to have our remuneration approved by a proposal without a meeting.

To vote on the proposal, you must return the enclosed voting form to our office by post, fax or email by 19 August 2019. You must also include a completed proof of debt and information to substantiate your claim. A proof of debt form is enclosed, together with guidance notes to assist you when you complete it.

We also enclose an Australian Restructuring Insolvency and Turnaround (**ARITA**) information sheet on passing resolutions without a meeting.

In accordance with our enclosed Remuneration Approval Report, our estimated remuneration for the external administration to 31 December 2019 is \$122,778. Beyond this, it is difficult to estimate as it will depend on the outcome of future liquidator investigations and whether any claims are pursued.

An information sheet on approving remuneration of an external administrator is provided for your information.

6 What happens next?

We will proceed with the liquidation, which will include:

- realising the remaining assets;
- recovering any further available property;
- completing our investigations into Whitestone's affairs;
- if identified, pursuing any viable claims for statutory recovery actions; and
- completing our reporting to the corporate insolvency regulator, the Australian Securities and Investments Commission (**ASIC**).

We may write to you again with further information on the progress of the liquidation.

We expect to have completed this liquidation within 12 months.



7 Where can you get more information?

You can access information which may assist you on the following websites:

- ARITA at www.arita.com.au/creditors.
- ASIC at www.asic.gov.au (search for "insolvency information sheets").

If you have any queries, please contact Amber Andre on (08) 6363 7665. For further information about this engagement, please refer to the website www.mcgrathnicol.com/creditors.

Dated: 29 July 2019

Rob Kirman
Liquidator

Enclosures:

- 1 Remuneration Approval Report
- 2 ARITA Information Sheet – Approving remuneration of an external administrator (if required)
- 3 Notice of Proposal to Creditors
- 4 ARITA Information Sheet – Proposals without meeting
- 5 Proof of Debt (Form 535)
- 6 Proof of Debt Guidance Notes
- 7 ARITA Information Sheet – Offences, Recoverable Transactions & Insolvent Trading