



**Fortescue Metals Group Ltd**

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24 February 2009

The Companies Officer  
ASX Limited  
2 The Esplanade  
Perth, WA, 6000

Dear Sir

**Fortescue Shipping Contracts**

Fortescue Metals Group ("ASX:FMG" "Fortescue") provides the following as an update to certain contract disputes that exist within Fortescue's shipping operations. As advised on 5 December 2008 and further reviewed in the 2009 Interim Accounts lodged on 28 January 2009, Fortescue suspended its 10 long term shipping Contracts of Affreightment and Consecutive Voyage Contracts on the basis of unforeseen circumstances.

The contracts provide for a dispute resolution process through arbitration and litigation in London. Fortescue's right to suspend the contracts is being contested by the various ship owners. Litigation proceedings have commenced and one arbitration hearing is currently listed for June 2009.

As stated previously the determination of a potential exposure amount is subject to a number of inherently uncertain variables including:

- whether there is any underlying liability for the claims (which is being vigorously contested) in either the litigation and/or the arbitrations;
- the determination of the quantum of damages (if any) which would only be assessed at the time of the Court or arbitration hearing and may also take account of the shipowner's obligation to mitigate losses which requires amongst other issues, reference to the spot shipping rates relative to the contracted rates and also the time value of money; and
- the likelihood of a commercially settled outcome.

The favourable impact of a commercially settled outcome was evident in the announced transaction with Bocimar International NV (**Bocimar**) on 4 February 2009. Two of Fortescue's 10 contested contracts were with Bocimar, leaving eight contracts still in dispute. The Bocimar contracts were the largest of the original 10 contracts at 10 years and five years respectively. The settlement included an equity allotment together with securing a long term agreement for vessel charter at rates that are now currently below the market rate.

The remaining eight contracts were for original terms ranging from three years to six years with an average of approximately five years. The arbitrations concern various claims including demurrage costs, failure to lift cargo and failure to declare laycans. Currently, the total amount of these arbitration claims for the shipping contracts Fortescue has suspended is approximately US\$30 million which is expected to increase. Fortescue has appointed specialist maritime lawyers in London and is vigorously defending the claims.

Until either the suspension is lifted or a resolution is determined through the courts or by negotiated commercial settlement, the claims will aggregate in value each month. As previously commented under release dated 19 December 2008, Fortescue also terminated one of its time charter contracts. The ship owner is disputing this action and has recently commenced arbitration proceedings in the UK claiming approximately US\$100 million. The shipowner also has sought to secure the claims by action in the US for US\$130 million which was included in the figure disclosed in the 2009 Interim accounts (the two amounts are mutually exclusive and would not be aggregated in any resolution). Fortescue is also defending this action and notes that the claim is for the full face value of the contract which would in any event, be subject to assessment at the time of the arbitration hearing to account for the loss mitigation obligations of the ship owner.

Notwithstanding the inherent uncertainty in quantifying potential exposure relating to the out of the money shipping contracts, Fortescue has calculated a potential damages estimate to the company of US\$171 million. This covers all of the unresolved suspended and terminated contracts and a number of existing time charter agreements that remain active.

While this is management's best assessment based on currently available information, the company has used the now settled Bocimar negotiation as a benchmark together with consideration of the current spot rate of around US\$10.50/tn relative to the average contracted rate of US\$15.78/tn.

If there are any further material developments regarding the disputes, Fortescue will keep the market informed.

Yours sincerely  
**Fortescue Metals Group Ltd**

**Rod Campbell**  
Company Secretary