

BHP faces hurdle of shareholder vote in hostile bid for PotashCorp

By Helen Thomas in New York
and Miles Johnson in London

BHP Billiton will be forced to put its hostile bid for Canada's PotashCorp to a shareholder vote if the global mining group has to significantly increase its \$39bn offer to win over PotashCorp's investors.

A requirement to seek shareholder approval would increase the complexity of a deal, adding another condition to an offer that BHP is taking direct to PotashCorp shareholders.

Under UK listing rules, transactions that are large relative to the buyer's size, known as class one deals, must be voted on by shareholders.

According to analysis by the Financial Times, BHP would be

forced to put its plans to a vote if the offer price rose beyond about \$150 a share, based on PotashCorp's outstanding shares.

On a fully diluted basis, the threshold would be closer to \$145 a share. BHP's current \$130 a share cash offer does not require shareholder approval.

PotashCorp shares traded yesterday at \$149.27, suggesting that the bid will need to be increased to be successful.

PotashCorp investors have suggested that BHP may need to raise its price to between \$150 and \$160 a share to win over the PotashCorp board. BHP and PotashCorp declined to comment.

One UK-based, top 10 BHP investor strongly supported the move for PotashCorp on strate-

gic grounds, but said that raising the offer significantly could damage the benefits for BHP.

Another large investor was concerned that BHP could overpay due to the hostile nature of the deal.

Under UK rules, a shareholder vote is required when the size of the deal relative to BHP's own market value exceeds 25 per cent. How BHP shares trade could therefore raise or lower the threshold above which the miner must consult its investors, should it amend its offer.

BHP's London-listed shares have fallen more than 8 per cent since PotashCorp's rejection.

Lex, Page 10

Jury still out, Page 14

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