



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP18/06

Friday, 2 February 2018

Strategic Minerals Corporation NL - Declaration of Unacceptable Circumstances

The Panel has made a declaration of unacceptable circumstances (Annexure A) in relation to an application by Ms Veronica Oma in relation to the affairs of Strategic Minerals Corporation NL (see [TP18/01](#)).

Background

Strategic Minerals is currently the subject of an on-market takeover bid by QGold Pty Ltd. Mr Christopher Wallin is the directing mind and will of QGold. Mr Wallin is also, and has at all relevant times been, a director of Strategic Minerals.

Strategic Minerals undertook a placement in November 2017. The placee was recommended to Strategic Minerals by Mr Wallin at a time when Mr Wallin was considering whether QGold should make a takeover bid for Strategic Minerals. The Panel was concerned that Mr Wallin was involved in the decision to make the placement and to approach the placee, and that the conduct of the placee in taking the placement and selling soon after the announcement of the takeover bid (disregarding Strategic Minerals' advice to take no action) was not consistent with commercially rational behaviour.

The Panel considered unacceptable circumstances arose from these and other matters, including:

- deficiencies in QGold's bidder's statement
- the sale of the placee's shares contributing to QGold acquiring voting power in Strategic Minerals of at least 75% (being the threshold required under ASX Guidance Note 33 to apply for the delisting of Strategic Minerals), which had the potential to coerce shareholders to accept the takeover bid
- deficiencies in the commissioning and engagement of experts to prepare the technical expert's report and independent expert's report included in Strategic Minerals' target's statement and

- due to errors and deficiencies in the technical expert's report, the target's statement not including all the information required under section 638 of the *Corporations Act 2001 (Cth) (Act)*.

Declaration

The Panel considered that the circumstances were unacceptable:

1. having regard to the effect that the Panel is satisfied they have had, are having or are likely to have on:
 - (a) the control, or potential control, of Strategic Minerals or
 - (b) the acquisition, or proposed acquisition, by a person of a substantial interest in Strategic Minerals
2. in the alternative, having regard to the purposes of Chapter 6 set out in section 602 of the Act and
3. in the further alternative, because they constituted, constitute, or gave or give rise to a contravention of a provision of Chapter 6 or of Chapter 6B or 6C of the Act.

The Panel did not consider it against the public interest to make the declaration, and in making it had regard to the matters in s657A(3) of the Act.

The sitting Panel was Alex Cartel (sitting President), Bruce Cowley and Neil Pathak.

The Panel is considering what, if any, final orders to make and will publish details in due course. The Panel will also publish its reasons for the decision in due course on its website www.takeovers.gov.au.

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ANNEXURE A

**CORPORATIONS ACT
SECTION 657A
DECLARATION OF UNACCEPTABLE CIRCUMSTANCES**

STRATEGIC MINERALS CORPORATION NL

CIRCUMSTANCES

1. Strategic Minerals Corporation NL (**SMC**) is an ASX listed company (ASX: SMC).
2. Mr Christopher Wallin is, and has at all relevant times been, a director of SMC.
3. Mr Wallin is the directing mind and will of QGold Pty Ltd (**QGold**). On or around 8 October 2017, Mr Wallin was considering whether QGold should make a takeover bid for SMC and, on 10 October 2017, Mr Wallin received preliminary advice regarding takeover issues. At that time, QGold had a relevant interest in approximately 69.15% of SMC's shares.
4. In late October 2017, Mr Laif McLoughlin (the chairman of SMC and son-in-law of Mr Wallin) determined that SMC needed to raise additional funds. Mr McLoughlin contacted Mr Wallin, who recommended that SMC approach someone known to Mr Wallin (**Recommended Investor**) in connection with a placement by SMC.
5. On 26 October 2017, Mr McLoughlin met with the Recommended Investor regarding the proposed placement. The Recommended Investor was supportive of SMC's objectives for SMC and agreed (through his private investment company) to accept the whole placement (being 1,388,889 SMC shares, at an issue price of \$0.36 per share).
6. On or around 7 November 2017, Mr Wallin requested a fee estimate from legal advisors in respect of a potential on-market takeover bid for SMC. Mr Wallin had, in early October 2017, approached a broker in connection with the possible takeover bid.
7. On 14 November 2017, SMC placed 1,388,889 ordinary shares (approximately 1.97% of the issued capital of SMC) with the private investment company controlled by the Recommended Investor (**Placee**).

8. On 15 November 2017, SMC announced the placement and issued a cleansing statement. SMC gave notice in the cleansing statement that, as at the date of the notice, there was “no information to be disclosed which is excluded information (as defined in section 708A(7) of the Corporations Act) that is reasonable for investors and their professional advisers to expect to find in a disclosure document”. No enquiries were made of Mr Wallin before the cleansing statement was issued. Mr Wallin became aware of the cleansing notice and its contents after it had been released to ASX. No correction was made to the cleansing notice.
9. The price at which the SMC shares were issued to the Placee was at a premium to the price at which shares in SMC had last traded on-market.
10. On or around 30 November 2017, the Placee acquired 1,456,314 shares on-market (resulting in the Placee holding approximately 4.04% of the issued capital of SMC).
11. On 4 December 2017, QGold announced to the market its intention to make an on-market takeover bid for all of SMC’s shares that it did not already own, offering \$0.40 cash per SMC share (**Takeover Bid**).
12. On the same day, QGold’s broker started purchasing SMC shares (on behalf of QGold) on market at \$0.40 cash per SMC share.
13. Later that day, QGold lodged its bidder’s statement for the Takeover Bid (**Bidder’s Statement**). The Bidder’s Statement included statements to the effect that QGold intended to apply to the ASX for the removal of SMC from the official list of ASX (subject to any required approvals on the part of ASX), whether the Takeover Bid resulted in QGold holding a relevant interest in more or less than 90% of SMC shares.
14. On 5 December 2017, the Placee disposed of all its shares in SMC.
15. On the same day, Mr McLoughlin approached Stantons International Securities Pty Ltd (**Independent Expert**) to prepare an independent expert’s report and Corvidae Pty Ltd as trustee for Ravensgate Unit Trust trading as Ravensgate (**Technical Expert**) to prepare a technical expert’s report. Mr McLoughlin discussed the terms of engagement and scope with the Independent Expert and Technical Expert.
16. Also on the same day, SMC advised shareholders to take no action in relation to the Takeover Bid and Bidder’s Statement until they had received and considered SMC’s target’s statement.
17. On 8 December 2017, SMC formed a takeover response committee comprised of Mr Jay Stephenson (the sole independent director of SMC), a representative of SMC’s legal advisor and a representative of SMC’s corporate advisor (**Takeover Response Committee**). While the Takeover Response Committee was “of the

view that Mr McLoughlin is independent of QGold in the current circumstances”, it “formed a decision to exclude Mr McLoughlin from the Takeover Response Committee to remove any risk of there being a perceived conflict of interest”. The Takeover Response Committee adopted an Independent Committee Charter.

18. By 12 December 2017, QGold had voting power in SMC of at least 75% (being the threshold required to apply for the delisting of SMC under paragraph 2.10 of ASX Guidance Note 33 *Removal of Entities from the ASX Official List*).
19. On 18 December 2017, SMC lodged its target’s statement for the Takeover Bid (**Target’s Statement**), which attached the Independent Expert’s report and the Technical Expert’s report. The Independent Expert relied on the Technical Expert’s report and concluded that the Takeover Bid was fair and reasonable. Mr Stephenson recommended that SMC shareholders accept the Takeover Bid in the absence of a superior proposal. One of the principal reasons for Mr Stephenson’s recommendation was the Independent Expert’s conclusion.
20. In late December 2017 and early January 2018 the applicant and ASIC separately raised with SMC material disclosure deficiencies in relation to the report prepared by the Technical Expert (and, as a consequence, the Independent Expert’s report).
21. On 2 January 2018, SMC was placed in a trading halt pending the release of a supplementary target’s statement due to identified errors in the Technical Expert’s report and Independent Expert’s report being rectified.
22. On 4 January 2018, the securities of SMC were suspended from official quotation, pending the release of a supplementary target’s statement due to revisions in the Technical Expert’s report and Independent Expert’s report.

Placement and related transactions

23. The Panel considers that the circumstances connected with the placement to the Placee, the Placee’s additional on-market purchase of SMC shares and the sale of the Placee’s shares give rise to unacceptable circumstances. These circumstances include:
 - (a) Mr Wallin’s involvement in the decision to make the placement and to approach the Placee at a time when Mr Wallin was considering whether QGold should make a takeover bid for SMC
 - (b) the failure of SMC to ask or consult Mr Wallin as to whether the cleansing statement issued on 15 November 2017 could be issued
 - (c) the conduct of the Placee in taking the placement and selling early (disregarding SMC’s advice to take no action) after the announcement of the Takeover Bid was not consistent with commercially rational behaviour

- (d) deficiencies in the Bidder's Statement and
- (e) the sale of the Placee's shares on 5 December 2017 that contributed to QGold acquiring voting power in 75% or more of SMC shares, thereby facilitating QGold's ability to cause SMC to apply for delisting from ASX which, together with QGold's stated intention in the Bidder's Statement to apply to the ASX for the delisting of SMC (even where the Takeover Bid results in QGold holding less than 90% of SMC shares), had the potential to coerce shareholders to accept the Takeover Bid.

Bidder's Statement

- 24. The Bidder's Statement does not include all information that is known to QGold and that is required under section 636(1) of the *Corporations Act 2001* (Cth) (**Act**), including sufficient information regarding:
 - (a) the bidder, its ownership structure and that Mr Wallin is the directing mind and will of the bidder
 - (b) QGold's intentions regarding SMC and
 - (c) exploration permits held by entities controlled by Mr Wallin, which abut or are in the vicinity of the tenements held by SMC.

Target's Statement

- 25. There were deficiencies in the commissioning and engagement of experts to prepare the Technical Expert's report and Independent Expert's report included in the Target's Statement.
- 26. Further, due to the errors and deficiencies in the Technical Expert's report, the Target's Statement does not include all the information required under section 638 of the Act.

EFFECT

- 27. It appears to the Panel that:
 - (a) the acquisition of control over voting shares in SMC has not taken place in an efficient, competitive and informed market
 - (b) the holders of shares in SMC do not know the identity of persons who have acquired a substantial interest in SMC and
 - (c) the holders of shares in SMC have not been given enough information to enable them to assess the merits of the Takeover Bid.

CONCLUSION

28. It appears to the Panel that the circumstances are unacceptable circumstances:
- (a) having regard to the effect that the Panel is satisfied they have had, are having or are likely to have on:
 - (i) the control, or potential control, of SMC or
 - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in SMC
 - (b) in the alternative, having regard to the purposes of Chapter 6 set out in section 602 of the Act
 - (c) in the further alternative, because they constituted, constitute, or gave or give rise to a contravention of a provision of Chapter 6 or of Chapter 6B or 6C of the Act.
29. The Panel considers that it is not against the public interest to make a declaration of unacceptable circumstances. It has had regard to the matters in section 657A(3) of the Act.

DECLARATION

The Panel declares that the circumstances constitute unacceptable circumstances in relation to the affairs of SMC.

Bruce Dyer
Counsel
with authority of Alex Cartel
President of the sitting Panel
Dated 1 February 2018