



Australian Government

Takeovers Panel

**Reasons for Decision
Strategic Minerals Corporation NL
[2018] ATP 2**

Catchwords:

On-market bid – bidder’s statement – target’s statement – independent expert’s report – technical expert’s report – VALMIN Code – association – placement – declaration – orders

Corporations Act 2001 (Cth), Chapter 6D and sections 602, 611, 636, 638, 657A, 657C(3), 657D, 708A

ASX Listing Rule 10.11

Guidance Note 19: Insider Participation in Control Transactions, ASIC Regulatory Guide 111: Content of expert reports, ASIC Regulatory Guide 112: Independence of experts, ASX Guidance Note 33: Removal of Entities from the ASX Official List

Australian Securities and Investments Commission v MacDonald and Others (No 11) (2009) 71 ACSR 368

Orion Telecommunications Ltd [2006] ATP 23; Austral Coal Ltd (No 3) [2005] ATP 14

Interim order	IO undertaking	Conduct	Declaration	Final order	Undertaking
NO	NO	YES	YES	YES	NO

INTRODUCTION

1. The Panel, Alex Cartel (sitting President), Bruce Cowley and Neil Pathak, made a declaration of unacceptable circumstances in relation to the affairs of Strategic Minerals Corporation NL. The application concerned QGold Pty Ltd’s bid for Strategic Minerals. The Panel considered that a number of factors relating to the bid gave rise to unacceptable circumstances. These included the circumstances connected with a recent placement, the placee’s additional on-market purchase of Strategic Minerals shares and the sale of the placee’s shares. The Panel also considered that these factors were compounded by deficiencies in QGold’s bidder’s statement and deficiencies in Strategic Minerals’ target statement, including in relation to the commissioning and engagement of experts by Strategic Minerals and deficiencies in the technical expert’s report. The Panel made a declaration of unacceptable circumstances and orders including disclosure, the commissioning of revised experts’ reports and (in effect) withdrawal rights. The Panel also awarded costs.

2. In these reasons, the following definitions apply.

- Applicant** Ms Veronica Oma
- Bidder’s Statement** QGold’s bidder’s statement dated 4 December 2017 in relation to the Takeover Bid
- Independent Expert** Stantons International Securities Pty Ltd
- Strategic Minerals** Strategic Minerals Corporation NL

Takeovers Panel

Reasons – Strategic Minerals Corporation NL [2018] ATP 2

Placee	The entity that received the placement of Strategic Minerals shares as announced on 15 November 2017
QGold	QGold Pty Ltd
Target's Statement	Strategic Minerals target's statement dated 18 December 2017 in relation to the Takeover Bid
Takeover Bid	QGold's on-market takeover bid for all of Strategic Minerals' shares that it did not already own, offering \$0.40 cash per Strategic Minerals share
Takeover Response Committee	A Strategic Minerals committee formed to consider the Takeover Bid
Technical Expert	Corvidae Pty Ltd as trustee for Ravensgate Unit Trust trading as Ravensgate

FACTS

3. Strategic Minerals is an ASX listed company (ASX code: SMC) and predominately an explorer of gold tenements at Woolgar, near Richmond in Queensland. Strategic Minerals' directors are Mr Christopher Wallin, Mr Laif McLoughlin (Chair and son-in-law of Mr Wallin) and Mr Jay Stephenson.
4. In April 2017, in order to raise funding, Strategic Minerals made a placement of 916,667 shares (in aggregate) to a number of sophisticated investors at \$0.36 per share and announced a 1 for 10 renounceable entitlement offer at an issue price of \$0.33 per share.
5. On 15 November 2017, in order to raise further funding, Strategic Minerals made a placement of 1,388,889 shares at \$0.36 per share to the Placee (who was not an existing shareholder). As the Placee took up 100% of the placement, shares were not issued to any existing shareholders or other investors.
6. On or about 30 November 2017, a substantial shareholder sold its Strategic Minerals shares. The Placee acquired a large parcel of these shares (1,456,314 shares, resulting in the Placee holding approximately 4.04% of the issued capital of Strategic Minerals).
7. On 4 December 2017, QGold announced its intention to make the Takeover Bid and its broker started purchasing Strategic Minerals shares on-market on its behalf. As at that date, QGold held approximately 69.15% of the issued shares in Strategic Minerals. Mr Wallin is the sole director of QGold.
8. Later that day, QGold lodged the Bidder's Statement, which included statements to the effect that QGold intended to apply to ASX for the removal of Strategic Minerals from the official list of ASX (subject to any required approvals on the part of ASX), irrespective of whether the Takeover Bid resulted in QGold holding a relevant interest in more or less than 90% of Strategic Minerals shares.

Takeovers Panel

Reasons – Strategic Minerals Corporation NL [2018] ATP 2

9. On 5 December 2017, Strategic Minerals advised shareholders to take no action in relation to the Takeover Bid and the Bidder's Statement until they had received and considered the Target's Statement.
10. On 5 December 2017, the Placee disposed of its Strategic Minerals shares on-market.
11. On 8 December 2017, Strategic Minerals formed a takeover response committee comprising Mr Jay Stephenson (the sole independent director of Strategic Minerals), a representative of Strategic Minerals' legal advisor and a representative of Strategic Minerals' corporate advisor. 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*".
12. By 12 December 2017, QGold had voting power in Strategic Minerals of at least 75% (being the threshold required to apply for the delisting of Strategic Minerals under paragraph 2.10 of ASX Guidance Note 33: *Removal of Entities from the ASX Official List*).
13. On 18 December 2017, Strategic Minerals lodged the 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 Strategic Minerals 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.
14. In late December 2017 and early January 2018, the Applicant and ASIC separately raised with Strategic Minerals material disclosure deficiencies in relation to the report prepared by the Technical Expert (and, as a consequence, the Independent Expert's report).
15. On 2 January 2018, Strategic Minerals was placed in a trading halt pending the release of a supplementary target's statement due to revisions in the Technical Expert's report and Independent Expert's report. On 4 January 2018, the securities of Strategic Minerals were suspended from official quotation.

APPLICATION

Declaration sought

16. By application dated 2 January 2018, the Applicant sought a declaration of unacceptable circumstances. The Applicant submitted (among other things) that:
 - (a) Strategic Minerals' April and November 2017 placements were taken up by persons and entities with relationships to QGold (and a related company to QGold, QCoal Pty Ltd) and some of those persons also acquired shares in Strategic Minerals "*just before*" the announcement of the Takeover Bid. These persons transferred their shares to QGold on-market "*within a few days*" after the announcement of the Takeover Bid.

Takeovers Panel

Reasons – Strategic Minerals Corporation NL [2018] ATP 2

- (b) The above transactions amounted to a sale of approximately 6.15% of Strategic Minerals' issued capital and resulted in QGold obtaining greater than 75% voting power in Strategic Minerals prior to the issue of the Target's Statement.
 - (c) There are disclosure deficiencies in relation to the Bidder's Statement and Target's Statement. In particular the Target's Statement contains a mineral resource valuation by the Technical Expert which appears to substantially undervalue Strategic Minerals' Woolgar gold resources. The Technical Expert's valuation was relied upon by the Independent Expert to arrive at an opinion that the Takeover Bid price was fair and reasonable.
 - (d) *"There may be questions over the legality and independence of" the Takeover Response Committee.*
17. The Applicant submitted that the effect of the circumstances was:
- (a) to enable QGold to obtain more than 75% voting power in Strategic Minerals, to the detriment of the remaining minority shareholders and
 - (b) that Mr Stephenson's recommendation to accept the Takeover bid was based on a deficient valuation by the Technical Expert, including an additional statement by him that the application to delist Strategic Minerals *"would likely to be able to be completed as the delist threshold has already been reached"*, which has resulted in *"large shareholdings being acquired by QGold"*.
18. The Applicant also sought an extension of time under s657C(3)(b)¹ to make her application in relation to the April 2017 placement.

Interim order sought

19. The Applicant sought an interim order preventing (in effect) the further sale or acquisition of shares in Strategic Minerals until the information deficiencies were rectified. Strategic Minerals provided an undertaking that it would provide 12 hours' notice of it releasing a further announcement in relation to the Takeover Bid. Until such an announcement was made, trading in Strategic Minerals' shares would remain suspended. As the undertaking was provided, we considered that an interim order was not necessary.

Final orders sought

20. The Applicant sought final orders including (in effect) that the information deficiencies be rectified (including a new technical valuation and independent expert's report) and that the shares in Strategic Minerals acquired by QGold during the Takeover Bid be vested in ASIC or the selling shareholders be given withdrawal rights.

DISCUSSION

21. We have considered all the material, but address specifically only that part of the material we consider necessary to explain our reasoning.

¹ Unless otherwise specified, all statutory references are to the *Corporations Act 2001* (Cth) (as modified by ASIC) and all terms used in Chapter 6 or 6C have the meaning given in the relevant Chapter

Takeovers Panel

Reasons – Strategic Minerals Corporation NL [2018] ATP 2

22. Strategic Minerals' requests for a trading halt and suspension in effect acknowledged there were errors in the Technical Expert's report. We determined that this issue should be considered further.
23. In addition, we were concerned about the timing of the November placement, acquisitions and disposals on-market and the Takeover Bid, particularly given that Mr Wallin is a director of both Strategic Minerals and QGold. We were also concerned that the Bidder's Statement might not sufficiently disclose the ownership structure of QGold or its intentions regarding Strategic Minerals if the Takeover Bid was successful. Therefore we decided to conduct proceedings.
24. We decided not to make enquiries in relation to whether any of the persons who received shares in the April placement were associated with Mr Wallin or QGold. We thought it was not likely that we would find sufficient material to suggest that any such associations existed in relation to the acquisition of control of Strategic Minerals.

Placement and related transactions

25. Strategic Minerals submitted that it had become apparent that it needed additional funds in September and October 2017. Mr Wallin submitted that Mr McLoughlin informed him of the need for funds in October 2017. He submitted that they both agreed that a placement of \$500,000 (in total) would be the most efficient way to raise funds given timing and cost. Mr Wallin understood that Mr McLoughlin informed Mr Stephenson of their discussion and Mr Stephenson agreed that a placement was the preferable course of action.
26. Mr McLoughlin submitted that Mr Wallin had recommended that he approach the sole director of the Placee, who was a sophisticated investor, in connection with the contemplated placement. Mr McLoughlin submitted that Mr Wallin had recently become aware that the Placee's director had sold shares in another company and therefore may be in a position to take up a placement in Strategic Minerals. Mr Wallin made a similar submission.
27. Mr McLoughlin submitted that he met with the Placee's director on 26 October 2017 to discuss Strategic Minerals' 2017 business objectives. The Placee's director signed a subscription agreement on 10 November 2017. Mr McLoughlin submitted that he decided not to approach other potential investors because (among other reasons) the Placee's director was ready to invest \$500,000 and could assist with future capital raising and rights issues, and QGold's majority shareholding made the prospects of sourcing other investors difficult "*in the relevant timeframe*".
28. Submissions indicated that, prior to Mr Wallin's and Mr McLoughlin's discussions around the potential placement (and the recommendation that Mr McLoughlin contact the director of the Placee), Mr Wallin was already considering (through QGold) making a takeover bid for Strategic Minerals. Mr Wallin initially submitted that the Takeover Bid was initially considered in mid-October 2017, legal advisers were first engaged in early November 2017 and it was determined to make the Takeover Bid in early November 2017.

Takeovers Panel

Reasons – Strategic Minerals Corporation NL [2018] ATP 2

29. Mr Wallin in a subsequent submission provided a more detailed chronology in relation to his consideration of whether to make the Takeover Bid, which included (among other matters) the following:
- (a) on or about 8 October 2017, he had a conversation with an employee of QCoal when (among other things) Mr Wallin asked for assistance in the preparation of paperwork for a takeover bid in the event he decided to proceed
 - (b) on 9 October 2017, he had an initial discussion with a broker “*canvassing general takeover issues*”
 - (c) on 10 October 2017, “[p]reliminary and generic advice” was sought regarding “*general takeover issues*”
 - (d) on 24 October 2017, further “*preliminary and generic advice [was] sought regarding process for removal from official quotation/listing*”
 - (e) on 7 November 2017, QGold/Mr Wallin were minded to consider further and investigate a potential on-market takeover bid again as a means to privatise Strategic Minerals and therefore Mr Wallin asked the employee of QCoal referred to in paragraph 29(a) to obtain a fee estimate from the lawyers who previously acted for QGold in its 2014 takeover bid for Strategic Minerals
 - (f) on or about 21 November 2017, QGold’s lawyers were requested to submit (among other things) a draft timetable for the proposed takeover bid
 - (g) on or about 24 November 2017, Mr Wallin instructed (via the QCoal employee referred to above) QGold’s solicitors to prepare a draft bidder’s statement which included details of the timing and pricing of the Takeover Bid
 - (h) around 28 November 2017, QGold decided to finalise the documentation but, after becoming aware that certain drilling results would soon be released to ASX by Strategic Minerals, it was decided that it would be necessary and appropriate to delay the announcement of the Takeover Bid until after Strategic Minerals released its drilling results (which occurred on 1 December 2017) and
 - (i) on 4 December 2017, the Takeover Bid was announced.
30. Mr Wallin submitted that his earlier submission that QGold had determined to make the Takeover Bid in early November 2017 was a reference to the decision regarding the form of the takeover bid. He submitted that “*no decision had been made other than the more likely form of a bid if made (being an on-market takeover bid, similar to that which was made by QGold in 2014)*” and “*the material and critical elements of the proposed takeover bid ... had not been determined*”.
31. Two aspects arising from the chronology, the November placement and Mr Wallin’s preparations for making a bid particularly concern us. These are:
- (a) When Strategic Minerals announced the November placement it gave a cleansing statement under s708A(5)(e). Strategic Minerals submitted that Mr Stephenson had issued the cleansing statement in accordance with its standard practice on the basis that no ‘excluded information’ (see s708A(7))

Takeovers Panel

Reasons – Strategic Minerals Corporation NL [2018] ATP 2

had *“been disclosed at a board level prior to issue”* of the statement. Strategic Minerals, QGold, Mr Wallin and Mr McLoughlin all submitted that Mr Wallin had not been consulted in relation to the cleansing notice. We agree with ASIC’s submission that *“selectively not asking confirmation and approval of the third director, a major shareholder who had previously made a bid for Strategic Minerals, in circumstances where according to the Wallin Supplementary Submissions it had become apparent that QGold/Mr Wallin (as directing mind of QGold) had contemplated a takeover bid since early October, undermines the intent of the cleansing notice regime”*.

- (b) Mr Wallin knew of Strategic Minerals’ need for funds and that Strategic Minerals was attempting to arrange a placement at a time when he was seeking external advice in relation to a possible takeover. He continued to be a director of the target and, in our view, should have realised that it would be necessary for Strategic Minerals to issue a cleansing notice. Given those circumstances, we consider that he should, at the very least, have ensured that he would be consulted before any cleansing notice was given.
32. Raising \$500,000 of equity capital via a placement was a significant transaction for Strategic Minerals. We would expect all directors of a company in this position to be involved in the review and consideration of announcements relating to the transaction, including the cleansing statement.²
33. We sought submissions from the Placee’s director in relation to the November placement, the Placee’s subsequent acquisition of Strategic Minerals shares and the Placee’s disposal of its Strategic Minerals shares on 5 December 2017 (within one day of the announcement of the Takeover Bid and around the time that Strategic Minerals advised shareholders to take no action in relation to the Takeover Bid). He submitted that he had, shortly before the November placement was made, sold the majority of the shareholding of his business, providing him with substantial cash to invest. He submitted that, during his meeting with Mr McLoughlin, *“we discussed an opportunity to invest in [Strategic Minerals]. After our discussion I decided to participate fully in the share placement that was on offer”*. He submitted that:
- “I have other investments that have been held in privately owned companies, and the decision to purchase the SMC shares was partly based on the fact that they were being traded on the share market and could be sold if required. I was not concerned that QGold held a large proportion of the shares as, despite this, shares could still be traded, and if required, I could dispose of the shares relatively easily when compared with an investment in a private business not listed on the share market.”*
34. The Placee’s director submitted that he sold his Strategic Minerals’ shares to make a commercial profit and because the Bidder’s Statement had stated that QGold intended to delist the company. He said he had not previously been aware that the company might be delisted and he did not want to be in a position where his shareholdings were not *“liquid, nor easily valued or sold”*, noting his previous experiences with unlisted companies.

² *Australian Securities and Investments Commission v MacDonald and Others (No 11)* (2009) 71 ACSR 368 at [259]-[260] and [331]-[336]

Takeovers Panel

Reasons – Strategic Minerals Corporation NL [2018] ATP 2

35. He later submitted that he instructed his broker to sell after reading Strategic Minerals' announcement on 5 December 2017 to take no action in relation to the Takeover Bid. He submitted that he was about to travel overseas for a long vacation, wanted to have his investment tidied up before he went away and did not wish to have to monitor the takeover while he was away.³
36. The Applicant submitted in effect that the Placee's director's bad experience in investing in an unlisted company should have made him wary of making a similar investment again in an illiquid stock, however he instead agreed to take the whole of the November placement at a slightly higher price than the prevailing market price, and then acquired further shares on-market. ASIC made a similar submission, noting that at the time of the November placement, QGold held 69% of Strategic Minerals shares and Strategic Minerals' trading history demonstrates the market for its shares is illiquid.
37. ASIC and the Applicant in effect both submitted that the matters referred to above, together with a previous business relationship between Mr Wallin and the Placee's director, provided us with sufficient material to draw an inference that Mr Wallin and the Placee's director were associates.
38. QGold and Mr Wallin submitted that there was "*clearly an insufficient body of evidence of association*". One of the matters that QGold cited supporting this submission was that it was open for QGold to rely on the 3% creep exception in item 9 of s611 and therefore there was no need for QGold to arrange for any shares to be warehoused by an associate. We do not find that submission particularly persuasive. If QGold attempted to acquire 3% of Strategic Minerals on-market, that would have been likely to have had a significant effect on the trading price of Strategic Minerals' shares (which may have affected the viability of a takeover bid), given the lack of liquidity. In addition Mr Wallin and QGold would have needed to satisfy themselves that they were not in possession of any market sensitive information. We note that it would be likely that any placement to QGold would need shareholder approval under ASX Listing Rule 10.11.
39. We do not believe that there is sufficient material before us to support an inference of association between Mr Wallin and the Placee's director. However we consider that the conduct of the Placee's director in taking the placement after discussion with the chair of Strategic Minerals (and notwithstanding the director of the Placee's dislike of illiquid investments), acquiring further shares in Strategic Minerals later that month and selling one day after the announcement of the Takeover Bid (not taking into account Strategic Minerals' advice to take no action and selling well in advance of the release of the Target's Statement) was not consistent with commercially rational behaviour. This is particularly the case in circumstances where the Placee's director had met with Mr McLoughlin as recently as around one month earlier to discuss Strategic Minerals' strategic plans, and

³ The Applicant submitted that the Placee's director accepted the Takeover Bid before the release of the 5 December 2017 announcement, based on an assumption that particular market trades on that day were his. We do not think we can establish this without making further enquiries and have decided to accept the Placee's director's submission on this issue

Takeovers Panel

Reasons – Strategic Minerals Corporation NL [2018] ATP 2

expressed his support for Strategic Minerals by taking up the entirety of the \$500,000 placement.

40. We also considered whether there was material to support an inference that Mr Wallin was associated with another shareholder who acquired Strategic Minerals shares and sold after the Takeover Bid was announced (who was the father of the QCoal employee referred to in paragraph 29(a)). While we were concerned about this relationship, we had insufficient material to justify an inference that Mr Wallin was associated with this shareholder.
41. We consider the circumstances connected with the placement to the Placee, the Placee's additional on-market purchase of Strategic Minerals shares and the sale of the Placee's shares give rise to unacceptable circumstances. These circumstances include Mr Wallin's involvement in the decision to make the placement and the decision to approach the Placee's director at a time when Mr Wallin was considering whether QGold should make a takeover bid for Strategic Minerals, the failure of Strategic Minerals to ask or consult Mr Wallin in relation to the cleansing statement, the failure of Mr Wallin to ensure that he was consulted and the uncommercial conduct of the Placee's director described above.
42. We consider the circumstances also include the sale of the Placee's shares on 5 December 2017 which contributed to QGold acquiring voting power in 75% or more of Strategic Minerals shares, thereby facilitating QGold's ability to cause Strategic Minerals to apply for delisting from ASX. This, together with QGold's stated intention in the Bidder's Statement to apply to ASX for the delisting of Strategic Minerals (even where the Takeover Bid results in QGold holding less than 90% of Strategic Minerals shares), had the potential to coerce shareholders to accept the Takeover Bid
43. We consider that the circumstances also include deficiencies in the Bidder's Statement. We now turn to these.

Bidder's statement

Identity of the bidder

44. The Bidder's Statement discloses that Mr Wallin is the sole director of QGold,⁴ however it does not provide any information regarding the control or legal or beneficial ownership of QGold.
45. QGold provided details of relevant interests and voting power held in QGold as part of its submissions to the Panel. This information indicated that:
 - (a) The sole shareholder of QGold is Queensland Gold Holdings Pty Ltd (QGH).
 - (b) QGH holds the shares in QGold in its capacity as corporate trustee for the Christopher Wallin Family Trust No 2 (which is a discretionary trust).
 - (c) QGH holds the legal interest only and does not have any beneficial interest in the shares in QGold (or any shares in Strategic Minerals).

⁴ See page 9 (Frequently asked question 4), and page 14 (section 3.1), of the Bidder's Statement

Takeovers Panel

Reasons – Strategic Minerals Corporation NL [2018] ATP 2

- (d) QGH has a relevant interest in the shares in QGold (by virtue of its direct shareholding in QGold).
- (e) Mr Wallin has sole and ultimate control of the trust (and effective control of QGold), and under the trust deed for the Christopher Wallin Family Trust No 2, Mr Wallin:
- (i) as “Principal”, has the power to remove QGH as trustee
 - (ii) as “Principal”, has the power to appoint any new or replacement trustee and
 - (iii) has an express, unilateral and unequivocal right to exercise such powers (in respect of such matters) at any time in his absolute and sole discretion.
46. Mr Wallin and QGold also submitted that Mr Wallin is the directing mind and will of the bidder.
47. We consider that this information should have been provided to shareholders, and clearly set out in the Bidder’s Statement, in order to satisfy s602(b)(i) and s636(1)(a). It is a fundamental principle of Australian takeover law that shareholders in a target company be given information to allow them to know the identity of any person who proposes to acquire a substantial interest in the target. The Bidder’s Statement was deficient in this regard.
48. The Bidder’s Statement included the following statements (emphasis added):
- “The statements of intention contained in this Bidder’s Statement are based on information concerning SMC and its businesses that is **known to the Bidder** as at the date of this Bidder’s Statement, **from publicly available information.***
- However, **the Bidder has not undertaken any formal due diligence** in relation to SMC and its businesses in connection with the Offer **and consequently does not believe that it is aware of all material information, facts and circumstances that may be necessary** to enable it to assess all of the operational, commercial, taxation and financial implications of its current intentions.*
- Christopher Wallin is the sole director of the Bidder and is also a director of SMC. **As a result of Mr Wallin’s directorship in SMC, information about SMC may as a matter of law be imputed to or known by the Bidder.** However, the Bidder considers that it has no such information that is material to the price or value of SMC Shares that is not in the public domain. Further, no such information has been used by the Bidder to form any intentions to seek to change the business of SMC or the future employment of the present employee/s of SMC.”*
49. The statements above do not properly reflect that Mr Wallin is the directing mind and will of QGold and at the same time, as a director of Strategic Minerals, had access to significant commercial, operational and technical information with the opportunity to consider the implications of such information. The circumstances of this matter are very different from the more usual case of a holding company making a bid for the shares it does not own in its subsidiary. It may be possible in such a case for the holding company to put in place information barriers and adopt protocols to ensure that it does not know, and is not imputed with, all information

Takeovers Panel

Reasons – Strategic Minerals Corporation NL [2018] ATP 2

known to target directors it has nominated for appointment. In other cases, to avoid a potential conflict and potential difficult disclosure issues, the target director associated with the bidder may resign from the target board in the lead up to the takeover bid. In this case, however, Mr Wallin himself is a continuing director of Strategic Minerals and his submissions indicate that he is the only person whose state of mind is relevant in determining the intentions of QGold. Consequently, it is not possible in this case for Mr Wallin to “*maintain an impervious Chinese wall through the middle of his brain*”.⁵

50. We are concerned that the disclosure in the Bidder’s Statement may be based (only) on publicly available information. Mr Wallin is likely to have received information which is not publicly available regarding Strategic Minerals as a result of his position as a director or from QGold being the controlling shareholder of Strategic Minerals. Any information provided by QGold in the Bidder’s Statement (including in relation to the intentions of QGold regarding Strategic Minerals) should be based on all information known to QGold (as required by s636(1)(m)(ii)), whether that information is publicly available information or not.

Exploration permits

51. By email dated 10 January 2018, the Applicant sought to amend the application to include concerns regarding the lack of disclosure in the Bidder’s Statement of exploration permits held by QGold and Energy Minerals Pty Ltd (an entity controlled by Mr Wallin) in close proximity to Strategic Minerals’ tenements. After considering submissions from the parties, we decided to consent to the amendment.⁶
52. ASIC noted that QGold stated in its Bidder’s Statement that QGold “*currently holds Exploration Permits for Minerals in Queensland*”.⁷ ASIC submitted that it considered the information about the exploration permits to be:
- (a) material information that should have been disclosed in the Bidder’s Statement, given it is relevant to QGold’s motivations for making the bid and its intentions regarding the business and assets of Strategic Minerals and
 - (b) information that could have had a material impact on a decision by a Strategic Minerals shareholder to dispose of their shares to QGold and the current offer price or whether they should wait to see whether a higher offer price would emerge during the course of the bid, given Strategic Minerals’ assets may hold some ‘value’ for QGold,⁸

⁵ *Orion Telecommunications Ltd* [2006] ATP 23 at [110(c)]

⁶ To the extent that it was necessary to give consent – we considered that material deficiencies in disclosure in the Bidder’s Statement fell within the scope of the original application as an aspect of the circumstances in which on-market transactions occurred to take QGold Pty Ltd above 75% voting power in Strategic Minerals Corporation NL, and on that basis it may not have been necessary for the Applicant to amend the application

⁷ See page 9 (Frequently asked question 4), and page 14 (section 3.1), of the Bidder’s Statement

⁸ An expert might consider “any special value of the target to the bidder” when deciding whether an offer is reasonable – see ASIC Regulatory Guide 111: *Content of expert reports* at RG 111.13 and RG 111.63

Takeovers Panel

Reasons – Strategic Minerals Corporation NL [2018] ATP 2

such that the acquisition of shares by QGold after the release of the Bidder's Statement was contrary to the principle in s602(a), as the acquisition did not take place in an informed market.

53. Mr Wallin submitted that the existence and ownership of the exploration permits (and the value of them) is *“completely irrelevant to the value of shares in Strategic Minerals and is not material to the making of a decision by shareholders in Strategic Minerals as to whether to accept the offer under the Takeover Bid”*, including because:
- (a) the exploration permits were applied for in 2010 and 2011, and granted significantly prior to Mr Wallin being appointed as a director of Strategic Minerals and
 - (b) QGold has not formed any intentions in respect of the exploration permits.
54. Strategic Minerals submitted that it was not aware of the identity of the holder of the tenements and that information was therefore not considered in the process of drafting the Target's Statement. We are concerned that, without disclosure of the exploration permits by QGold, the Independent Expert may not be able to make a fully informed assessment of the value of Strategic Minerals and whether the Takeover Bid is fair and reasonable.
55. QGold submitted that further information regarding the exploration permits *“is publicly and readily available by search of government databases”*. While the Applicant conducted such searches in connection with making the application, it should not be incumbent on Strategic Minerals shareholders to conduct their own title searches at the Queensland Department of Mines. At a minimum, the existence of the exploration permits held by QGold and Energy Minerals Pty Ltd, which abut or are in the vicinity of the tenements held by Strategic Minerals, should be disclosed. It is then open to QGold to provide an explanation to Strategic Minerals shareholders as to why it considers shareholders should not take into account the existence and ownership of these exploration permits when considering the Takeover Bid. This further information would allow Strategic Minerals shareholders to make an informed decision whether to accept the Takeover Bid (including considering whether there is any 'special value' to QGold), ensuring that the acquisition of control in Strategic Minerals takes place in an informed market.
56. We consider that the omissions of information regarding the identity of the bidder and the exploration permits held by QGold and Energy Minerals Pty Ltd from the Bidder's Statement give rise to unacceptable circumstances.

Target's Statement

Disclosure in the Technical Expert's report and Independent Expert's report

57. The Applicant submitted that the Technical Expert's report was difficult to follow and the assumptions used were not explained. The Applicant further submitted that that the Technical Expert relied on a comparable transaction (being *“the January 2017 acquisition of the Dalgaranga Gold project by Gascoyne Resources which transacted at a price of equivalent of \$10.51 per oz au in resources”*), which was incorrect

Takeovers Panel

Reasons – Strategic Minerals Corporation NL [2018] ATP 2

because the Dalgaranga transaction was for a 20% share of the project; which the Applicant submitted materially undervalued the resource.

58. Strategic Minerals provided a submission, which attached a letter it sent to QGold dated 4 January 2018 stating that it had received a revised Independent Expert's report, based on an updated Technical Expert's report, which concluded that the Takeover Bid was not fair but reasonable to minority Strategic Minerals' shareholders. The letter requested that QGold provide all Strategic Minerals shareholders who accepted the Takeover Bid between the publication of the Independent Expert's report and 3 January 2018 with withdrawal rights. Strategic Minerals also submitted that it had received comments on the Technical Expert's report and Independent Expert's report from ASIC on 10 January 2018 and received revised reports from the experts (after passing on ASIC's comments to the relevant expert) on 16 January 2018.
59. ASIC submitted that the Technical Expert's report failed to disclose and provide sufficient information in relation to the material assumptions and methodologies used in its valuation in order for Strategic Minerals shareholders to consider adequately and assess the value prescribed by the Technical Expert of Strategic Minerals' assets.⁹ ASIC, in its communications with Strategic Minerals, stated that it expected the expert should consider any exploration permits held by QGold in its assessment of whether the Takeover Bid is reasonable, because Strategic Minerals assets may have a special value to QGold in light of its other holdings.
60. QGold submitted that it shared ASIC's concerns in relation to the Technical Expert's report and Independent Expert's report. Strategic Minerals also accepted that there were significant errors in the Technical Expert's report and Independent Expert's report that needed to be rectified.
61. We consider that it is clear that there were significant technical and disclosure issues with the Technical Expert's report. Therefore we consider that the Target's Statement does not include all the information required under s638.

Commissioning and engagement of experts

62. ASIC submitted that it had obtained information to suggest that Mr McLoughlin "directly engaged" the Independent Expert and Technical Expert and facilitated the provision of information to the Independent Expert.
63. Strategic Minerals submitted that Mr McLoughlin was involved in the engagement of the Independent Expert because Mr Stephenson was overseas and unavailable for personal reasons. It submitted that:

"Given that the target's statement was required to be lodged imminently, and that there was a significant amount of work required to complete preparation of the independent expert's report and associated valuation report, it was agreed that it would be suitable for Mr McLoughlin to be involved in the engagement of the independent expert. Mr McLoughlin did not seek to influence the opinion of the

⁹ As a result the Technical Expert's report did not comply with the VALMIN Code (sections 3.3 and 4.1) and ASIC Regulatory Guide 111: *Content of expert reports* (RG111.75-76 and RG111.64-67)

Takeovers Panel

Reasons – Strategic Minerals Corporation NL [2018] ATP 2

independent expert in undertaking the independent expert's engagement, or that of the takeover response committee in general."

64. Strategic Minerals provided correspondence between Mr McLoughlin and each of the Independent Expert and Technical Expert. On 5 December 2017, Mr McLoughlin asked the Independent Expert whether it had capacity to prepare a report. He was involved with engaging the experts and dealing with their queries until 11 December 2017, when he requested that all future enquires and documents be addressed to Mr Stephenson and the Strategic Minerals lawyer who was on the Takeover Response Committee.
65. Strategic Minerals also provided a copy of the charter of the Takeover Response Committee, which stated that:
- (a) *"QGold also nominated Mr Laif McLoughlin as a director, who is Chairman of the Company's board. However, Mr McLoughlin has had no knowledge of the Bid and no involvement in formulating the Bid."*
 - (b) Mr McLoughlin *"is not considered a Participating Insider, by virtue of him not having an interest in the Bidder or having been involved in, or aware or (sic), the formulation of the Bid. However, in order to avoid any perceived conflict of interest, he will not be a member of the IBC"*.
 - (c) The Strategic Minerals' board was concerned to ensure that *"consideration by the Company's board of directors...and Company's management of the Bid, and any competing proposal, is undertaken free from any actual influence, or appearance of influence from QGold or Mr Laif McLoughlin"* (emphasis added).
"It is acknowledged that, due to Mr Wallin being a Participating Insider and Mr Stephenson being outside of Australia due to unforeseen personal circumstances, Mr McLoughlin may be required to undertake a number of administrative tasks in connection with the Bid in order to ensure that the Company is able to comply with its obligations with respect to the Bid under the Corporations Act."
66. Guidance Note 19: *Insider Participation in Control Transactions* states that as soon as the board of a company becomes aware of a bid or potential bid where there is likely to be the participation of insiders, it should normally establish an independent board committee consisting of those directors who are not participating insiders and that any directors who are participating insiders should not be present at, or participate in or vote on, any consideration by the board of the bid or any competing bid.¹⁰
67. In this case Strategic Minerals was prudent in excluding Mr McLoughlin from the Takeover Response Committee given he was nominated by QGold and was a relative of Mr Wallin. However we consider that Mr McLoughlin's involvement in the commissioning and engagement of the Independent Expert and Technical

¹⁰ GN 19 at [16]

Takeovers Panel

Reasons – Strategic Minerals Corporation NL [2018] ATP 2

Expert put at risk the (actual or perceived) integrity of that process and the conclusions reached by the Independent Expert and Technical Expert.¹¹

68. We consider that transactions involving insiders require an increased sensitivity and vigilance (including by advisers) to ensure that conflicts are avoided, full disclosure of all material information is made and consideration by the target board and management of their response, is undertaken free from any actual influence (or appearance of influence), from participating insiders. This was simply not done in this case: insignificant and late attempts were made to manage the conflicts, the Bidder's Statement disclosure was defective, the expert appointment process was managed in an unsatisfactory way and the Technical Expert's report contained material errors. The accumulation of these matters, as well as the circumstances involving the Placee's acquisition and sale of over 4% of the shares in the company within 4 weeks, gave rise to serious concerns resulting in a declaration of unacceptable circumstances.

DECISION

Declaration

69. It appears to us that the circumstances are unacceptable:
- (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 Strategic Minerals or
 - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in Strategic Minerals
 - (b) in the alternative, having regard to the purposes of Chapter 6 set out in s602
 - (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.
70. Accordingly, we made the declaration set out in Annexure A and consider that it is not against the public interest to do so. We had regard to the matters in s657A(3).

Extension of time

71. It is arguable that some of the circumstances occurred more than 2 months from the date of the application, in particular in relation to preparations made in relation to the November placement and the Takeover Bid. We decided, after seeking submissions from the parties, to extend time under s657(3)(b) for the following reasons:
- (a) to the extent that relevant circumstances occurred more than 2 months before the application was made, the significance of those matters, and the need to

¹¹ ASIC Regulatory Guide 112: *Independence of experts* highlights the need for experts to be, and to appear to be, independent (see, e.g., RG 112.8-RG 112.9)

Takeovers Panel

Reasons – Strategic Minerals Corporation NL [2018] ATP 2

make the application, did not become apparent until QGold announced the Takeover Bid¹²

- (b) the relevant circumstances largely occurred less than 2 months before the application was made and
- (c) the application made credible allegations of clear and serious unacceptable circumstances which had not been rectified.

Orders

72. Following the declaration, we made the final orders set out in Annexure B. Under s657D the Panel's power to make orders is very wide. The Panel is empowered to make 'any order'¹³ if 4 tests are met:

- (a) It has made a declaration under s657A. This was done on 1 February 2018.
- (b) It must not make an order if it is satisfied that the order would unfairly prejudice any person. We are satisfied that our orders do not unfairly prejudice any person.
- (c) It gives any person to whom the proposed order would be directed, the parties and ASIC an opportunity to make submissions. This was done on 2 February 2018. Each party made submissions and rebuttals, and Mr McLoughlin made submissions.
- (d) It considers the orders appropriate to either protect the rights and interests of persons affected by the unacceptable circumstances, or any other rights or interests of those persons, or ensure that a takeover or proposed takeover proceeds as it would have if the circumstances had not occurred. We consider the orders do this for the reasons discussed below.

73. We consider that QGold should issue a supplementary bidder's statement which discloses (among other things) an explanation that Mr Wallin is the directing mind and will of QGold and the ownership structure of QGold, details of exploration permits held by an entity controlled by Mr Wallin which abut (or are located within 100 kilometres of) a tenement held by Strategic Minerals and revised and updated disclosure of QGold's intentions.¹⁴ We accept QGold's submission that 5 business days is sufficient time for it to provide us with a draft of the supplementary bidder's statement.

74. We were initially minded to order that Strategic Minerals procure a new independent expert's report and (if the new independent expert could not undertake a technical valuation of the Strategic Minerals' tenements) a new technical expert's report from experts other than the Independent Expert and Technical Expert. We considered this was necessary because of the significant

¹² *Austral Coal Ltd (No 3)* [2005] ATP 14 at [18]-[21]

¹³ Including a remedial order but other than an order requiring a person to comply with a provision of Chapters 6, 6A, 6B or 6C

¹⁴ Based on all information known to Mr Wallin and QGold in relation to Strategic Minerals and each of the exploration permits held by an entity controlled by Mr Wallin as discussed above

Takeovers Panel

Reasons – Strategic Minerals Corporation NL [2018] ATP 2

deficiencies in the commissioning and engagement of the Independent Expert and Technical Expert discussed above.

75. However we note that Strategic Minerals submitted that it had an urgent need for further capital and may not be able to meet the costs of new experts. We considered that these costs, and the potential timing implications of requiring new experts' reports to be prepared, would not in this particular instance be in the best interests of shareholders. We were also provided with a revised draft of each of the experts' reports, which indicated the Independent Expert had significantly increased its valuation of Strategic Minerals. Therefore we have ordered that the Independent Expert and Technical Expert prepare revised reports after considering the supplementary bidder's statement and that, following an ASIC review of the revised experts' reports, Strategic Minerals send these documents to its shareholders with a supplementary target's statement.
76. We also consider that, due to deficiencies in the bidder's disclosure, QGold should offer to sell Strategic Minerals shares to shareholders who sold shares from the date that the Takeover Bid was announced to the date of the issue of the supplementary target's statement. QGold submitted that it would need relief from Chapter 6D to make such offers. We consider that if ASIC does not give relief, QGold can either comply with Chapter 6D (for example by procuring Strategic Minerals to issue a prospectus) or apply for a variation of the orders. We consider that Strategic Minerals should remain suspended until the issue of the supplementary target's statement so any further acceptances of the Takeover Bid occur in an informed market.
77. As noted above we are concerned (given our concerns regarding the circumstances in which the Placee acquired shares in Strategic Minerals and quickly sold its shares after the Takeover Bid was announced) that the sale of the Placee's shares on 5 December 2017 contributed to QGold acquiring voting power in 75% or more of Strategic Minerals' shares, thereby facilitating QGold's ability to cause Strategic Minerals to apply for delisting from ASX. To remedy this, we have ordered that Strategic Minerals must not (and QGold must procure that it does not) request delisting, unless QGold and its related bodies corporate own or control at least 79.04% of Strategic Minerals' shares – following the later of the close of the Takeover Bid and the end of the process of QGold offering to sell shares described above. We consider that this order neutralises the effect of the Placee's acceptance.

Costs

78. The Applicant sought an order for costs. QGold and Mr Wallin submitted that a costs order would be prejudicial to QGold. Strategic Minerals submitted that no costs order should be made against it because of its financial position and its willingness to procure corrections of the Independent Expert's report and Technical Expert's report. ASIC submitted that it should be awarded costs because it has taken an active role and will be required to undertake further work in considering new reports from the Independent Expert and Technical Expert.

Takeovers Panel

**Reasons - Strategic Minerals Corporation NL
[2018] ATP 2**

79. After considering the conduct of the parties in this matter, we consider that a small costs order in favour of the Applicant, to cover her disbursements, is appropriate in the circumstances.

Alex Cartel

President of the sitting Panel

Decision dated 1 February 2018 (declaration), 15 February 2018 (orders)

Reasons given to parties 20 February 2018

Reasons published 21 February 2018

Takeovers Panel

Reasons - Strategic Minerals Corporation NL
[2018] ATP 2

Advisers

Party	Advisers
Ms Veronica Oma	-
Strategic Minerals Corporation NL	Steinepreis Paganin Wolfstar Corporate Pty Ltd
QGold Pty Ltd	Delphi Partners
Mr Christopher Wallin	Delphi Partners



Australian Government

Takeovers Panel

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

Takeovers Panel

Reasons – Strategic Minerals Corporation NL [2018] ATP 2

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*).

Takeovers Panel

Reasons – Strategic Minerals Corporation NL [2018] ATP 2

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.

Takeovers Panel

Reasons – Strategic Minerals Corporation NL [2018] ATP 2

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
 - (a) the holders of shares in SMC do not know the identity of persons who have acquired a substantial interest in SMC and
 - (b) 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

Takeovers Panel

Reasons – Strategic Minerals Corporation NL [2018] ATP 2

- (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



Australian Government

Takeovers Panel

Annexure B

**CORPORATIONS ACT
SECTION 657D
ORDERS**

STRATEGIC MINERALS CORPORATION NL

The Panel made a declaration of unacceptable circumstances on 1 February 2018.

THE PANEL ORDERS

Supplementary bidder's statement

1. Within 5 business days after the date of these orders, QGold must provide to the Panel for review a supplementary bidder's statement in relation to the Takeover Bid which includes the following information:
 - (a) An explanation that Mr Wallin is the directing mind and will of QGold, details of the ownership structure of QGold and the information specified in s671B(3)(a), (b), (c) and (d)¹⁵ in respect of each person having a relevant interest in either Queensland Gold Holdings Pty Ltd or QGold.
 - (b) The information referred to in s671B(3)(a), (b), (c) and (d) in respect of any person through which QGold or Mr Wallin holds voting power in Strategic Minerals.
 - (c) All information known to Mr Wallin (whether obtained as a director of Strategic Minerals, QGold or otherwise) that is material to a decision of a shareholder in Strategic Minerals whether to accept the Takeover Bid (other than information clearly disclosed in the Target's Statement or ASX announcements of Strategic Minerals since 1 December 2016).
 - (d) Details of each exploration permit held by an entity controlled by Mr Wallin, which abuts, or of which all or part is located within 100 kilometres of, a tenement held by Strategic Minerals.
 - (e) A revised and updated version of section 5 of the Bidder's Statement, which includes details of QGold's intentions on the matters referred to in s636(1)(c) and which is based on all information known to Mr Wallin or QGold (rather than only information that is known to QGold from publicly available information) in relation to Strategic Minerals and each exploration permit referred to in Order 1(d) that is held by an entity controlled by Mr Wallin.

¹⁵ Unless otherwise specified, all statutory references are to the *Corporations Act 2001* (Cth) (as modified by ASIC) and all terms used in Chapter 6 or 6C have the meaning given in the relevant Chapter

Takeovers Panel

Reasons – Strategic Minerals Corporation NL [2018] ATP 2

- (f) An explanation of the decision of the Panel and effect of its orders (including an explanation that QGold will offer to sell shares to Eligible Shareholders and the reasons for that offer).
2. Within 2 business days of the Panel's review of the supplementary bidder's statement contemplated by Order 1 being completed, QGold must send a copy of the supplementary bidder's statement (in a form approved by the Panel) to the ASX and Strategic Minerals, lodge it with ASIC and send it to each holder of Strategic Minerals shares (other than QGold).

New independent expert's report

3. Strategic Minerals must procure a revised independent expert's report regarding, and valuation of, Strategic Minerals on the following terms:
- (a) the independent expert's report and independent technical expert's report must comply with the ASIC regulatory guides on expert reports, the Australasian Code for Public Reporting of Technical Assessments and Valuations of Mineral Assets (VALMIN Code) and the Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves 2012 Edition (JORC Code)
 - (b) the independent expert and independent technical expert must consider the effect of the information set out in the supplementary bidder's statement (including the exploration permits referred to in Order 1(d)) on:
 - (i) the value of Strategic Mineral shares (including any special value to QGold) and
 - (ii) the independent expert's opinion of whether the Takeover Bid is fair and reasonable and
 - (c) the independent expert and independent technical expert must confirm to the Panel that they are satisfied that they were given access to all information reasonably requested.
4. Strategic Minerals must make available to the independent expert and independent technical expert all information reasonably requested by the independent expert and independent technical expert, including by making (on behalf of the independent expert and independent technical expert) reasonable enquiries of Mr McLoughlin and Mr Wallin regarding whether there may be any other information that should be made available to the independent expert and independent technical expert and by providing any such information to the independent expert and independent technical expert.
5. Mr McLoughlin and Mr Wallin must provide full and accurate answers to all questions directed to them by or on behalf of the independent expert and independent technical expert.

Takeovers Panel

Reasons – Strategic Minerals Corporation NL [2018] ATP 2

6. Strategic Minerals must submit a draft of the revised independent expert's report (containing the revised independent technical expert's report) to ASIC to review and consider, and take reasonable steps to address ASIC's comments as to whether the independent expert's report and independent technical expert's report comply with ASIC's regulatory guides on expert reports.
7. Within 14 days after the date of the supplementary bidder's statement, Strategic Minerals must send a copy of a supplementary target's statement (containing the revised independent expert's report and the revised independent technical expert's report) to the ASX and QGold, lodge it with ASIC and send it to each holder of Strategic Minerals shares (other than QGold).
8. Strategic Minerals must procure that the securities of Strategic Minerals remain suspended from official quotation on the ASX until Strategic Minerals has issued its supplementary target's statement pursuant to Order 7.

QGold to offer to sell Strategic Minerals shares to Eligible Shareholders

9. QGold must offer and transfer shares in accordance with these orders.
10. QGold must provide to the Panel for review (and take reasonable steps to address the Panel's comments) a letter to Eligible Shareholders that provides an explanation of QGold's offer to sell shares and the reasons for that offer and:
 - (a) attaches the supplementary target's statement (including the revised independent expert's report and revised independent technical expert's report), supplementary bidder's statement and any further supplementary bidder's statements issued by QGold
 - (b) offers Eligible Shareholders the right to buy the same number of shares they sold after the Takeover Bid was announced on ASX, or part thereof, on the following terms:
 - (i) the price is the takeover offer price of \$0.40 per share and
 - (ii) the offer is open for 15 business days from the date the last of the offers is dispatched and
 - (c) encloses an application form:
 - (i) requiring details of how many shares are proposed to be bought by the person
 - (ii) specifying the documentation that the person is required to include with the application form for the purposes of determining whether the person is an 'Eligible Shareholder'
 - (iii) specifying the payment methods acceptable to QGold (which must include at least by cheque) and

Takeovers Panel

Reasons – Strategic Minerals Corporation NL [2018] ATP 2

- (iv) specifying that the money (in cheque or other form acceptable to QGold) for the shares to be bought is to be sent to QGold (at an address in Australia) with the application form.
11. On the same date that the supplementary target's statement is issued to the market, Strategic Minerals must provide QGold with the names and addresses of the Eligible Shareholders.
 12. Within 5 business days of the issue of the supplementary target's statement to the market, QGold must send the letter and accompanying documents referred to in Order 10 (in the form approved by the Panel) to the persons notified to QGold by Strategic Minerals pursuant to Order 11.
 13. If for any reason QGold does not accept an application to accept QGold's offer:
 - (a) within 1 business day it must provide the application and its reasons for non-acceptance to ASIC
 - (b) ASIC must, within 2 business days of receipt, make a decision on whether or not the application should be accepted and
 - (c) if ASIC is unable to make a determination as to whether the application should be accepted, ASIC must refer the matter to the Panel within 3 business days of receipt of the application from QGold.
 14. By the later of:
 - (a) 5 business days of the receipt of a properly completed application (subject to ASIC or Panel review) and
 - (b) 1 business day of QGold's receipt of cleared funds

QGold must process an off market transfer of Strategic Minerals shares equal to the number specified in the application by the Eligible Shareholder into that Eligible Shareholder's name.

Restriction on application to seek delisting

15. Strategic Minerals must not (and QGold must procure that it does not) request removal of Strategic Minerals from the official list of the ASX, unless QGold and its related bodies corporate own or control at least 79.04% of Strategic Minerals' ordinary securities immediately following the later of:
 - (a) the last off market transfer of Strategic Minerals shares contemplated by Order 14 being processed and registered and
 - (b) the close of the Takeover Bid.

Takeovers Panel

Reasons – Strategic Minerals Corporation NL [2018] ATP 2

Costs

16. Within 15 business days after the date of these orders, QGold and Strategic Minerals must pay in aggregate \$3,122.90 to the applicant, representing the costs and expenses actually, necessarily, properly and reasonably incurred by the applicant in connection with these proceedings. Liability for these costs is joint and several.

Commencement of these orders

17. These orders do not have any effect before the date of these orders.

Interpretation

18. In these orders the following terms apply.

Bidder's Statement	QGold's bidder's statement dated 4 December 2017 in relation to the Takeover Bid
date of these orders	The date on which these orders take effect being the later of: <ul style="list-style-type: none">• 20 February 2018 and• the date on which any stay or suspension of these orders ends
QGold	QGold Pty Ltd
Eligible Shareholders	Persons who sold Strategic Minerals shares between the date the Takeover Bid was announced on ASX and the date of the issue of a supplementary target's statement (containing the revised independent expert's report and the revised independent technical expert's report) to the market (inclusive)
Strategic Minerals	Strategic Minerals Corporation NL
Takeover Bid	The on-market takeover offer announced by QGold on 4 December 2017 for all issued ordinary shares of Strategic Minerals at a price of \$0.40 per share
Target's Statement	Strategic Minerals' target's statement dated 18 December 2017 in relation to the Takeover Bid

Bruce Dyer
Counsel
with authority of Alex Cartel
President of the sitting Panel
Made on 15 February 2018