



Australian Government

Takeovers Panel

Reasons for Decision

Strategic Minerals Corporation NL 02R, 03R, 04R and 05R

[2018] ATP 5

Catchwords:

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

Corporations Act 2001 (Cth), sections 180-187, 191-195, 602, item 2 of 611, items 12 to 14 of s635, 636, 640(1)(a) and (c), 657A, 657D, 657EA, 671B

Australian Securities and Investments Commission Regulations 2001 (Cth), regulations 16(1)(a)

Corporations Regulations 2001 (Cth), regulation 6.10.01

Guidance Note 2: Reviewing Decisions, Guidance Note 19: Insider Participation in Control Transactions, ASIC Regulatory Guide 112: Independence of experts, ASX Guidance Note 33: Removal of Entities from the ASX Official List

Attorney-General (Cth) v Alinta Limited (2008) 233 CLR 542; [2008] HCA 2

MMA Offshore Limited [2017] ATP 21

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

INTRODUCTION

1. The review Panel, Peter Day (sitting President), James Dickson and Bruce McLennan, made a minor variation to the declaration of unacceptable circumstances made on 1 February 2018 in relation to the affairs of Strategic Minerals Corporation NL.¹ The review Panel otherwise agreed with the initial Panel’s conclusions, for substantively the same reasons, and affirmed the orders made by the initial Panel.

2. In these reasons, the following definitions apply.

| | |
|---------------------------|--|
| 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 |
| Placee | The entity that received the placement of Strategic Minerals shares as announced on 15 November 2017 |
| QGold | QGold Pty Ltd |
| Strategic Minerals | Strategic Minerals Corporation NL |
| Takeover Bid | QGold’s on-market takeover bid for all of Strategic Minerals |

¹ *Strategic Minerals Corporation NL [2018] ATP 2*. All references to the initial Panel are to the Panel in *Strategic Minerals Corporation NL*

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| | |
|------------------------------------|---|
| | 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 |
| Target's Statement | Strategic Minerals' target's statement dated 18 December 2017 in relation to the Takeover Bid |
| Technical Expert | Corvidae Pty Ltd as trustee for Ravensgate Unit Trust trading as Ravensgate |

FACTS

3. The facts are as set out in *Strategic Minerals Corporation NL*.² Briefly:
- (a) Strategic Minerals is an ASX listed company (ASX code: SMC) which became a subsidiary of QGold (the sole director and directing mind and will of which is Mr Christopher Wallin) following a takeover bid by QGold in 2014. Strategic Minerals' directors are Mr Wallin, Mr Laif McLoughlin (Executive Chair and son-in-law of Mr Wallin) and Mr Jay Stephenson.
 - (b) On 15 November 2017, Strategic Minerals made a placement of 1,388,889 shares at \$0.36 per share to the Placee. The Placee subsequently acquired further shares increasing its holding to approximately 4.04% of the issued capital of Strategic Minerals.
 - (c) On 4 December 2017, QGold announced its intention to make the Takeover Bid and immediately commence purchasing Strategic Minerals shares on-market at the offer price. At that date, QGold had voting power of 69.15% in Strategic Minerals.
 - (d) Later that day, QGold gave to ASX 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.
 - (e) On 5 December 2017, the Placee disposed of its Strategic Minerals shares on-market.
 - (f) 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.
 - (g) By 12 December 2017, QGold had voting power in Strategic Minerals of at least 75% (the threshold required to apply for the delisting under paragraph 2.10 of ASX Guidance Note 33: *Removal of Entities from the ASX Official List*).

² [2018] ATP 2

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- (h) 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 relying on the Independent Expert’s opinion.
- (i) In late December 2017 and early January 2018, Ms Veronica Oma and ASIC separately raised with Strategic Minerals material disclosure deficiencies in the Technical Expert’s report (and, as a consequence, the Independent Expert’s report).³
- (j) 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.

4. The initial Panel made a declaration and orders.⁴

APPLICATIONS

5. The Panel received four review applications:

- (a) each of Strategic Minerals and QGold, by applications dated 5 February 2018, separately sought a review of the initial Panel’s decision to make a declaration of unacceptable circumstances and
- (b) each of QGold and Ms Oma, by applications dated 19 February 2018, separately sought a review of the initial Panel’s decision to make orders.

6. Parties had not seen the initial Panel’s reasons before making their applications.⁵ This resulted in the need for assumptions to be made by the parties as to the initial Panel’s reasoning that, in some cases, were not correct. Our review is a *de novo* hearing of the matters before the initial Panel, based on the material before us, in which we form our own view as to what is a correct and preferable decision.⁶ We have considered all the grounds raised by the review applications, but will not discuss some that we consider to be clearly addressed and answered by the initial Panel’s reasons.

7. QGold, in its review applications, submitted, among other things, that:

- (a) the initial Panel’s decision to make the declaration involved “significant errors” and should be set aside

³ Ms Oma then made her application to the initial Panel on 3 January 2018

⁴ See *Strategic Minerals Corporation NL* [2018] ATP 2

⁵ Since review applications need to be made not later than 2 business days after the day the decision is made: *Corporations Regulations 2001* (Cth) regulation 6.10.01

⁶ See eg Guidance Note 2 – Reviewing Decisions at [31]

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- (b) the initial Panel’s finding that the Placee’s conduct in taking the placement and selling early after announcement of the Takeover Bid was not consistent with commercially rational behavior was not supported by objective evidence and wrongly implied that Mr Wallin/QGold was acting in concert with the Placee
 - (c) the information said by the initial Panel to be omitted from the Bidder’s Statement was not material to the decision of shareholders whether to accept offers under the Takeover Bid. In particular, it was apparent from the Bidder’s Statement that Mr Wallin was the directing mind and will of QGold
 - (d) the deficiencies that the initial Panel found to exist in the Target’s Statement and experts reports were beyond the control of QGold and QGold should not be prejudiced by them and
 - (e) the Initial Panel’s orders 1(d)(e), 3(b), 9-14 and 16 contained “significant errors and omissions” and should be set aside.
8. Strategic Minerals, in its review application, submitted that Mr McLoughlin’s initial involvement in the engagement of the experts was entirely appropriate in the circumstances and did not give rise to unacceptable circumstances.
9. Ms Oma, in her review application, submitted, among other things, that:
- (a) orders 3-5, 7-8, 10⁷ and 15 should be modified and
 - (b) additional orders should be made to require Strategic Minerals to undertake a new resource upgrade and reconstitute the Takeover Response Committee.

Interim order sought

10. We decided to make interim orders, in response to an application for a stay by QGold of the initial Panel’s final orders, to maintain the status quo while we considered the review applications. The interim orders:
- (a) stayed the effect of the initial Panel’s final orders
 - (b) required that Strategic Minerals securities remain suspended and
 - (c) required that no request be made to delist Strategic Minerals.
11. The interim orders had effect until the earliest of further order of the Panel, determination of the review proceedings and 2 months from the date of the interim orders.

DISCUSSION

Conducting proceedings

12. The powers of a review Panel are set out in section 657EA.⁸ Subsection (4) provides that a review Panel has the same powers to make a declaration or orders as the

⁷ Among other things Ms Oma submitted that the Takeover Bid should be extended. We note that on 16 March 2018 QGold extended the Takeover Bid to close on Friday 29 June 2018, unless extended or withdrawn

⁸ Unless otherwise indicated, all statutory references are to the *Corporations Act 2001* (Cth), and all terms used in Chapter 6 or 6C have the meaning given in the relevant Chapter (as modified by ASIC)

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initial Panel and may vary or set aside the decision reviewed or substitute a new decision. It may also affirm the decision reviewed after conducting proceedings or decline to conduct proceedings and allow the initial Panel's decision to stand.

13. We decided to conduct proceedings on each of the review applications and considered afresh the circumstances in *Strategic Minerals Corporation NL*.⁹ We directed that the applications be considered together.¹⁰
14. We advised parties that we had been provided with all of the material before the initial Panel, and asked:
 - (a) whether parties agreed with paragraph 68 of the initial Panel's reasons
 - (b) why Mr Wallin did not advise other directors of Strategic Minerals that QGold was considering making the Takeover Bid earlier
 - (c) whether the conduct of the November Placement or the Takeover Bid gave rise to unacceptable circumstances given that Mr Wallin continued to be a director of Strategic Minerals when preparing for and making the Takeover Bid
 - (d) whether the draft revised Independent Expert's report (including the revised independent valuation report) provided to the initial Panel by Strategic Minerals was satisfactory and whether new experts should be engaged to prepare new reports and
 - (e) whether there were any further issues, facts or submissions that parties or ASIC wanted us to consider.

Materials considered

15. In determining this matter, we have been provided with, and have considered, the following materials:
 - (a) all the material before the initial Panel
 - (b) the initial Panel's declaration of unacceptable circumstances, final orders and reasons for decision
 - (c) the review applications and
 - (d) the preliminary submissions, submissions and rebuttals of the parties in the review.
16. We have considered all the materials, but address specifically only those we consider necessary to explain our reasoning.

Initial Panel's conclusions and reasons

17. We agree with the conclusions of the initial Panel, and the reasons given for those conclusions, subject to one minor matter discussed below.¹¹ The further submissions and rebuttals we received added little in our view, and did not

⁹ [2018] ATP 2

¹⁰ Pursuant to regulation 16(1)(a) of the *Australian Securities and Investments Commission Regulations 2001* (Cth)

¹¹ See paragraph 35

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persuade us that we should reach conclusions that differed from those of the initial Panel in any material respect. We adopt the initial Panel's reasons, subject to our comments below.

Handling of conflicts of interest and the role of Mr Wallin

18. Mr McLoughlin, Strategic Minerals, QGold and Mr Wallin all disagreed with the statements in paragraph 68 of the initial Panel's reasons and sought to defend the management of conflicts of interest and the expert appointment process. The lack of advance notice of the Takeover Bid and unavoidable absence of Mr Stephenson¹² clearly created difficulties for Strategic Minerals. However, the submissions we received did not satisfy us that the action taken was adequate. In the case of the expert appointments, we agree with ASIC's submission that Mr McLoughlin's involvement in the commissioning and engagement of the experts put at risk the independence of the expert. Ordinarily, this would warrant requiring the appointment of new experts and preparation of new reports. However, for reasons explained below,¹³ we do not think we should require that here.
19. QGold/Mr Wallin also submitted that the role of Mr Wallin as both a director of Strategic Minerals and the directing mind and will of QGold should not be considered to give rise to unacceptable circumstances. QGold/Mr Wallin submitted that "it is common for there to be common directorships between a bidder and target", although the examples they gave involved target directors who were directors of bidder-related entities but not of the bidder itself. We accept that the latter is not unusual, and may not give rise to unacceptable circumstances where, for example, potential conflicts are suitably addressed and the target has independent directors who will seek to ensure that the purposes in section 602 will be observed for the benefit of target shareholders. However, in our experience, this issue is more difficult to address adequately if the same individual is on the board of both the target and the bidder, particularly if that person is also the sole director and directing mind and will of the bidder. In such a case there may be greater risk of undermining the purposes in section 602, requiring greater care to prevent unacceptable circumstances arising. We are not satisfied that QGold/Mr Wallin adequately appreciated or addressed that risk.
20. This risk is also addressed, of course, by statutory duties¹⁴ and by the fiduciary duty of directors to avoid placing themselves in a position where there is a real sensible possibility of conflict between their personal interests or duty and the duty they owe to the company. The Panel has previously noted that it expects directors to comply with those duties, but the Panel's primary focus is to determine whether unacceptable circumstances have arisen, rather than whether those duties have been breached.¹⁵ It is clear that breach of those duties can give rise to unacceptable

¹² Who was travelling overseas as a result of the death of a close relative

¹³ See paragraph 41

¹⁴ Including ss 180-187 and 191-195

¹⁵ See for example Guidance Note 19: *Insider Participation in Control Transactions* (GN 19) paragraphs 4-5 and *MMA Offshore Limited* [2017] ATP 21 at [19].

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circumstances, and there may be cases where the Panel needs to make a finding as to whether there has been a breach, even though that finding would not be conclusive.¹⁶ We did not consider it necessary in this case to make such a finding, or seek the material necessary to do so, as we were satisfied unacceptable circumstances had arisen regardless and any such finding (if made) would not make a difference to the orders we think appropriate.

Placement

21. QGold/Mr Wallin submitted that the November Placement did not give rise to unacceptable circumstances since, at the time, they had only received preliminary and generic advice regarding a takeover and had made no decisions except to determine the likely form (an on-market bid).
22. The submissions of QGold/Mr Wallin to the initial Panel indicated that, before Mr McLoughlin met with the Placee's director (as recommended by Mr Wallin) on 26 October 2017, QGold/Mr Wallin had:
 - (a) requested assistance from an employee of QCoal (who assisted with QGold's previous bid in 2014), should QGold decide to make a further takeover bid for Strategic Minerals
 - (b) canvassed general takeover issues and alternatives/options for a potential bid with a broker and
 - (c) received "preliminary and generic advice" on 2 occasions, including in respect of the differences between off-market and on-market takeovers and the process for delisting.
23. QGold/Mr Wallin submitted that, before the Placee signed a subscription agreement on 10 November 2017, they:
 - (a) had considered the preliminary and generic advice and decided they "were minded to further consider and investigate a potential on-market takeover bid again as a means to privatize the company" and
 - (b) had requested their lawyers to provide a proposed client agreement and fee estimate (and scope of work) in respect of a potential on-market takeover bid
 - (c) but had not made any decision "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)".
24. We are willing to accept that QGold/Mr Wallin had not made a final decision to proceed with the Takeover Bid on 10 November. Nevertheless, we think the consideration of a potential bid described above made it necessary for QGold/Mr Wallin to appreciate, and to address, the risk mentioned above.¹⁷ We are not satisfied they did so, given that the November Placement proceeded, and a

¹⁶ As the Panel does not exercise judicial power: *Attorney-General (Cth) v Alinta Limited* (2008) 233 CLR 542; [2008] HCA 2

¹⁷ See paragraph 19

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cleansing statement was issued (without any enquiry of, or disclosure by, Mr Wallin) on 15 November 2017.

Bid tactics and timing

25. ASIC noted that the target board plays a vital role during a bid, and target shareholders are entitled to expect it to do so independently and free from influence or the appearance of influence. ASIC submitted that the conduct of QGold/Mr Wallin in making the bid gave rise to unacceptable circumstances given that, among other things, Mr Wallin remained on the Strategic Minerals board and did not notify the other directors so they could put in place procedures to ensure conflicts were handled appropriately (and consequently there were no information barriers leading up to the bid and the Takeover Response Committee was only formed 4 days after the bid was made). ASIC also suggested it may be reasonable to assume that Mr Wallin was informed that Mr Stephenson was unavailable when the Takeover Bid was announced, but QGold/Mr Wallin denied that.
26. Strategic Minerals submitted that it did not consider “that its actions would have been materially different had it been made aware of the Takeover Bid at an earlier stage”. If Strategic Minerals had been given advance notice of the Takeover Bid we would have expected the Takeover Response Committee to be formed before the bid was made and arrangements made to allow the prompt engagement of experts in accordance with *ASIC Regulatory Guide 112: Independence of experts*.
27. It is not ordinarily necessary for a bidder to notify a target before it announces a bid. Even where the bidder is the holding company of the target, we do not think that would necessarily be required, at least where there are target directors who can properly ensure that the purposes of s602 are upheld for the benefit of target shareholders.
28. In this case, however, several unusual features support ASIC’s submission:
 - (a) Mr Wallin was a target director, one of only 3, and target shareholders could reasonably consider that the Executive Chairman, Mr McLoughlin, was not independent.¹⁸
 - (b) QGold was proposing to make an on-market takeover bid and immediately commence buying shares at the offer price under the exception in item 2 of s611, with the result that Strategic Mineral shareholders could respond immediately to the bid, before the preparation and dispatch of the Target’s Statement and making of formal offers under the bid.
 - (c) An independent expert’s report was required under both s640(1)(a) and s640(1)(c) but, as a result of QGold’s strategy of immediately buying shares

¹⁸ We note that in 2014 Mr McLoughlin was not a member of the takeover response committee formed to consider QGold’s 2014 bid due to his relationship with Mr Wallin, and that committee decided that he was a participating insider for the purposes of GN 19

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on-market under item 2 of s611, Strategic Mineral shareholders who sold immediately would not have the benefit of considering that report.¹⁹

- (d) The fact that QGold already had voting power of 69.148% and had disclosed an intention to seek delisting of Strategic Minerals (which paragraph 2.10 of *ASX Guidance Note 33: Removal of Entities* was likely to make possible if QGold reached 75%), made it reasonable for Strategic Mineral shareholders to believe that:
- (i) a competing proposal was highly unlikely and QGold may be unlikely to increase its offer
 - (ii) other shareholders may form the same view and conclude there was no reason to delay selling and
 - (iii) if enough shareholders took that view, delisting was likely and there was even less reason to delay selling.

29. In our view, in these circumstances, if Mr Wallin was proposing not to give any advance notice of the Takeover Bid to Strategic Minerals, he should at least have ascertained whether Mr Stephenson was available to take prompt action in response to the Takeover Bid, given that:

- (a) Mr Wallin continued to be a director of Strategic Minerals and therefore continued to have some responsibility in relation to obligations imposed on Strategic Minerals, for the benefit of all of its shareholders, in responding to a takeover and
- (b) the bid strategy chosen by QGold was reasonably likely to result in immediate selling by some Strategic Minerals shareholders, and could potentially have a coercive effect.

30. In these unusual circumstances, we have some sympathy for the argument that Mr Wallin should have given notice to his fellow directors to ensure a target's statement and independent expert's report could be made available to Strategic Minerals shareholders before they needed to respond to the offer. However, we did not need to reach a view on this issue given our conclusion, in agreement with the initial Panel, that the circumstances described above gave rise to unacceptable circumstances.

Bidder's Statement omissions

31. QGold's review application claimed that it was apparent by virtue of disclosure in the Bidder's Statement that Mr Wallin was the directing mind and will of QGold. QGold/Mr Wallin submitted they did not agree with the initial Panel's reasons that "the Bidder's Statement disclosure was defective".
32. We are in agreement with the initial Panel's conclusions and reasons on the Bidder's Statement's deficiencies.

¹⁹ If QGold was not relying on item 2 of s611, items 12 to 14 of s635 would require that the report, together with the Target's Statement, be given to ASX and dispatched to target shareholders, at the latest, the day before offers were made

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33. It is true that the Bidder's Statement made it clear that Mr Wallin was the sole director of QGold. However that statement would also be accurate if Mr Wallin was no more than a nominee director who could be removed at any time by unnamed owners/controllers. The only information we could find suggesting otherwise was at page 22 of the Bidder's Statement, which indicated that Mr Wallin was funding the offer. (This followed statements at page 16 which appeared to assume that there could be a difference between the knowledge and intentions of Mr Wallin and QGold with respect to Strategic Minerals, despite that being impossible if Mr Wallin is QGold's directing mind and will.)
34. We are not suggesting that many shareholders were unaware that QGold was controlled by Mr Wallin. However, that should have been clearly disclosed in the Bidder's Statement. We agree with the initial Panel that it is a fundamental principle that target shareholders need to be informed of the identity of any person proposing to acquire a substantial interest in the target.

Early acceptance by the Placee

35. The initial Panel considered that the conduct of the Placee in taking the placement and selling early after announcement of the Takeover Bid was not consistent with commercially rational behaviour. We think the initial Panel's reasons (which were not seen by QGold until after it made its review applications) make it clear that the initial Panel did not think there was sufficient material to support an inference of association and did not imply any such finding. Nevertheless, the initial Panel appears to have found some aspects of the Placee's conduct curious. So do we. However, for reasons explained above²⁰ it is not clear to us that the Placee's early selling was necessarily inconsistent with commercial rationality.²¹ Accordingly we decided to vary paragraph 23(c) of the initial Panel's declaration to remove the statement to that effect.²² In our view, this change makes no material difference to our ultimate conclusions, as we consider that the fact of the Placee's early sale, in conjunction with the other matters listed in paragraph 23 of the declaration, gives rise to unacceptable circumstances.

Target's Statement

36. All parties accepted that there were deficiencies in the Independent Expert and Technical Expert reports. When these were considered by the experts, and the reports revised, the Independent Expert changed its opinion from "fair" to "not fair".²³ In our view, none of the submissions provided to the initial Panel or ourselves provided a basis for any conclusion other than that this gave rise to unacceptable circumstances.

²⁰ See paragraph 28(d)

²¹ That may not have been the case, for example, if the Placee considered that QGold was highly unlikely to increase its offer price

²² We also varied paragraph 23(c) to delete "(disregarding SMC's advice to take no action)", accepting Ms Oma's submission that the Placee sold its shares prior to the release of Strategic Minerals' announcement advising its shareholders to take no action in relation to the Takeover Bid

²³ The Independent Expert opined that the Takeover Bid was still reasonable

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DECISION

Declaration

37. 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.
38. We made the variation to the initial Panel's declaration set out in Annexure A. As varied, the declaration sets out the circumstances that appear to us to be unacceptable. We consider that it is not against the public interest to make the varied declaration. We had regard to the matters in s657A(3).

Orders

39. We are empowered to make 'any order'²⁴ under ss657D and 657EA(4) if 4 tests are met:
- (a) The Panel has made a declaration under s657A. This was done on 1 February 2018 and affirmed by us with an immaterial variation on 2 March 2018.
 - (b) The Panel must not make an order if it is satisfied that the order would unfairly prejudice any person. We are satisfied that the initial Panel's orders, which we affirm, do not unfairly prejudice any person.
 - (c) The Panel gives any person to whom the proposed order would be directed, the parties and ASIC an opportunity to make submissions. This was done by the initial Panel on 2 February 2018 and by us on 21 February 2018. Each party and ASIC made submissions and rebuttals, and Mr McLoughlin made submissions.
 - (d) The Panel 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 that the initial Panel's orders, which we affirm, do this for the same reasons as the initial Panel, together with our further reasons below.
40. Like the initial Panel we considered that there were reasons to order that Strategic Minerals engage new experts to prepare a new technical expert's report and

²⁴ Including a remedial order but other than an order requiring a person to comply with a provision of Chapters 6, 6A, 6B or 6C

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independent expert's report. Ms Oma and ASIC presented persuasive arguments for doing so, despite the additional costs and delay that would involve.

41. Ultimately, however, we concluded that requiring new experts to prepare new reports²⁵ would not be likely to satisfy either of the alternative tests referred to in paragraph 39(d) above. In our view, the “withdrawal rights” in paragraphs 9 to 14 of the initial Panel's orders are crucial to ensure, to the extent we can, that rights and interests of persons affected by the unacceptable circumstances are protected and that the Takeover Bid proceeds as it would have if those circumstances had not occurred. Those “withdrawal rights” cannot be meaningfully exercised until shareholders have the benefit of a supplementary target's statement including a revised independent expert's report. If that takes too long, as we think likely if new experts are appointed, the value of those withdrawal rights will likely be undermined.
42. After careful consideration of this issue, we have concluded that the initial Panel's orders are appropriate and we cannot improve on them. Accordingly, we affirm those orders.²⁶

Peter Day
President of the sitting Panel
Decision dated 2 March 2018
Reasons given to parties 27 March 2018
Reasons published 29 March 2018

²⁵ We reached a similar conclusion, due to the likely resulting delay, in relation to the requests in Ms Oma's review application for a new resource upgrade and reconstituted Takeover Response Committee

²⁶ As a result of this decision, our interim orders (see paragraph 11) ceased to have effect, resulting in the final orders taking effect on 2 March 2018 (under the definition of “date of these orders” in paragraph 18 of the final orders)

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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 |



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Annexure A

CORPORATIONS ACT

SECTION 657EA

**VARIATION OF DECLARATION OF UNACCEPTABLE
CIRCUMSTANCES**

**STRATEGIC MINERALS CORPORATION NL 02R, 03R, 04R AND 05R
VARIATION**

The declaration made on 1 February 2018 in relation to the matter of *Strategic Minerals Corporation NL* is varied by deleting subparagraph 23(c) and substituting a new paragraph 23(c) so that the declaration reads as follows:

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**).

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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.

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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 Placee taking the placement and selling early after the announcement of the Takeover Bid
 - (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

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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

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- (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 Peter Day
President of the sitting Panel
Dated 2 March 2018



Australian Government

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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)²⁷ 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.

²⁷ 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

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- (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.

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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

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- (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.

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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

(Affirmed by the review Panel on 2 March 2018)