



ASIC
Australian Securities &
Investments Commission

Committee	Parliamentary Joint Committee on Corporations and Financial Services
Inquiry	Oversight of ASIC, the Takeovers Panel and the Corporations Legislation No.1 of the 46th Parliament
Question No.	020.1
Date	26 November 2021
Topic	Strategic Minerals Corporation Pty Ltd (formerly Strategic Minerals Corporation NL)
Reference	Spoken, 26 November 2021, Hansard page 47
Committee member	Senator Pratt

Question

CHAIR: We're going to go to Senator Pratt, so we'll interrupt that. We can come back to it, of course.

Senator PRATT: ASIC said it didn't have any information relevant to a commitment to mine in relation to Strategic Minerals Corporation. I've got before me documentation in their mining application that says, 'Stage 1 activities will be completed within two years of the mining licence application or agreement.' Is that something ASIC was aware of? ASIC said it had no information that there was a commitment to mine in relation to the Strategic Minerals Corporation compulsory acquisition.

Mr Hughes: I will be brief, in the interests of time. I can say that ASIC received the notice of compulsory acquisition, accompanied by the independent expert's report and a mining technical specialist's report. I don't know, because I don't have those materials sitting in front of me right now, whether there were appendices or other information attached which includes the information you have just summarised. I would need to take that on notice.

Senator PRATT: That information, as far as I'm aware, was not attached. We've just been having a discussion about market manipulation. I put to you that this company intentionally didn't let ASIC know about its commitment to mine or its existing application in an effort to dud this minority of shareholders. ASIC has since said it doesn't consider that revisiting this issue is in its regulatory interest. ASIC is confident it made the decision based on the information it had, but this information was not disclosed through those processes. On what basis can you say it's not in the regulatory interest to pursue this matter?

Mr Hughes: We received a report of misconduct by one of the objecting shareholders. We formed the view that the matter was no longer current because the compulsory acquisition had taken place. We had no information in front of us to indicate that there had been any breach of the continuous disclosure obligations. On that basis, assessing the resources we have to apply to the vast number of reports of misconduct we receive, we made the decision not to take further action. That decision was challenged. It was confirmed on review, and we closed our book on the matter. I'm happy for us to again consider the matter you've raised, noting this relates to a matter where the transaction has already passed and that concerns the objections of just six shareholders representing 1.4 per cent of the shares that were acquired. I will take that on notice.

Senator PRATT: Thank you. I'll be sure to ensure you've got all the relevant information. Can I ask you to address, in that answer, the original issue and the nature of the misconduct. I'd like to know if it just wasn't looked at because it had already passed and whether the matter of whether or not any misconduct had occurred had been considered. In this context I note there was previous criticism of some of the parties to this takeover from the Takeovers Panel previously. I wonder if you might also comment on that. Thank you for reconsidering this matter.

Mr Hughes: We will take that on notice. I'm conscious you raised this matter overnight with ASIC officers. Unfortunately, in the time available we haven't had an opportunity to exhaustively run down every line of inquiry. We will take it on notice. Please let me know if you require anything further.

Answer

Chronology of events

2018 takeover bid, Takeovers Panel proceedings and entitlement offers

1. Strategic Minerals Corporation NL (now Strategic Minerals Corporation Pty Ltd) (Strategic Minerals) was an ASX listed gold and mineral exploration company (ASX: SMX).
2. On 4 December 2017 QGold Pty Ltd (QGold) announced its intention to make an on-market takeover bid for all of the shares in Strategic Minerals that it did not already own for an offer price of \$0.40 per share. A bidder's statement was lodged with ASIC and the ASX the same day.
3. By application dated 2 January 2018 a minority shareholder of Strategic Minerals sought a declaration of unacceptable circumstances from the Takeovers Panel noting, among other matters, persons and entities connected to the director of QGold had engaged in share warehousing ahead of the takeover bid which resulted in QGold acquiring an interest in more than 75% of the share capital in Strategic Minerals. The application also alleged that the recommendation of the independent director of Strategic Minerals to accept QGold's offer was based on a deficient valuation by the technical expert, Ravensgate.
4. In early January 2018, ASIC raised with Strategic Minerals material disclosure deficiencies in relation to the technical expert report prepared by Ravensgate (and, as a consequence, the independent expert's report (IER) prepared by Stantons International Securities Pty Ltd (Stantons)) accompanying Strategic Minerals target's statement.
5. On 1 February 2018 the Takeovers Panel made a declaration of unacceptable circumstances and orders in connection with the on-market takeover bid by QGold. The Panel ordered, among other matters, QGold provide a supplementary bidder's statement addressing certain disclosure deficiencies, and Strategic Minerals procure a revised IER containing a revised independent technical expert's report.
6. Following the close of the on-market takeover bid, QGold had a relevant interest in 86.75% of the shares in Strategic Minerals.
7. On 20 August 2018 Strategic Minerals closed a 1 for 8 renounceable entitlement offer at \$0.36 per share. Upon the allotment of shares, QGold increased its relevant interest from 86.75% to 87.91% of Strategic Minerals.
8. On 2 May 2019 Strategic Minerals closed a 1 for 9 renounceable entitlement offer at \$0.34 per share. Upon the allotment of shares and a small number of on-market purchases prior to the allotment date, QGold increased its relevant interest from 87.91% to 88.96% of Strategic Minerals.
9. On 19 June 2019 ASIC banned Mr John Van Dieren of Stantons from providing any financial services for three years, following a surveillance of IERs he produced or was involved in. One of the four reports relied on by ASIC in obtaining the banning order was the IER prepared for QGold's 2018 takeover bid of Strategic Minerals. The Administrative Appeals Tribunal varied ASIC's banning decision on 26 June 2020 so that the period of banning was reduced to one year.

Mining Lease Application, 2020 entitlement offer and compulsory acquisition

1. On 7 January 2020 SMC lodged the Southern Star Mining Lease Application 100236 (MLA) with the Queensland Department of Resources. The permit area of the MLA borders SMC's Northern Star Mining Lease 90238 which contains SMC's Big Vein South deposit.

2. On 8 January 2020 SMC announced it had lodged the MLA with the Queensland Department of Natural Resources, Mines and Energy. The announcement states “the new MLA will provide additional surface areas for infrastructure and other associated activities in support of potential gold mine development and operations at Woolgar”.
3. On 6 April 2020 Strategic Minerals announced a proposed 2 for 15 renounceable entitlement offer at \$0.36 per share. The Prospectus disclosed that QGold’s relevant interest in Strategic Minerals at the date of the Prospectus was 89.59% and that the potential maximum voting power of QGold after the offer would be 90.70% (assuming QGold took up its full entitlement, no other shareholders took up their entitlements and no other shareholders sold their rights).
4. By application dated 20 April 2020 a minority shareholder of Strategic Minerals sought a declaration of unacceptable circumstances from the Takeovers Panel noting, among other matters, the structure of the rights issue (together with the 2018 and 2019 entitlement offers) was an alternative takeover mechanism to enable QGold to proceed to compulsory acquisition.
5. On 27 April 2020 the Takeovers Panel declined to conduct proceedings as it did not consider there was any reasonable prospect it would make a declaration of unacceptable circumstances. While the Panel held some concerns given QGold may have reached the 90% compulsory acquisition threshold as a result of the entitlement offer, on balance, the Panel considered it unlikely it would find unacceptable circumstances based on the strength of the evidence and, if unacceptable circumstances were found, the availability of suitable remedies in the circumstances (particularly when balanced against the need for funds). The Panel also noted the protections in place under Part 6A.2 of the *Corporations Act 2001* (Cth) (Corporations Act) if QGold proceeded to compulsory acquisition. Those protections include the potential for Court challenge. The Panel indicated a Court is better placed than the Panel to adjudicate on some of the factual matters of the kind raised in the application.
6. Following the close of the entitlement offer, on 12 May 2020 Strategic Minerals released a notice to the market indicating QGold’s interest in Strategic Minerals had increased from 88.96% to 90.73%.
7. On 28 August 2020 QGold lodged a Notice of Compulsory Acquisition (Notice) in connection with its proposed acquisition of the remaining 9.27% of shares in Strategic Minerals it did not already own for consideration of \$0.50 per share. The Notice was accompanied by an IER prepared by BDO Corporate Finance (East Coast) Pty Ltd and a Mining Technical Specialist Report (MTSR) prepared by Mining One Pty Ltd. BDO deemed the offer price to be fair. As part of ASIC’s oversight of control transactions, we reviewed the Notice, IER and MTSR. We made some inquiries about the valuation in the IER and MTSR, but this did not result in a change to BDO’s ‘fairness’ opinion. The IER referred to the MLA. Neither the Notice nor the accompanying documents (IER and MTSR) referred to any commitment to fund a \$200,000,000 mine.
8. Shareholders were able to object to the Notice between 28 August 2020 and 2 October 2020 by completing and returning an objection form. On 5 October 2020 QGold announced that 6 shareholders had objected to the compulsory acquisition representing 1.4% of the ordinary shares covered by the notice. As this was less than 10% of the securities subject of the Notice, under the law, the compulsory acquisition process did not need to be approved by the Court. On 5 October 2020 QGold lodged a list of objectors with ASIC and announced an indicative timetable for Strategic Minerals’s removal from the official list of the ASX. On 13 October 2020 Strategic Minerals’s shares were suspended from official quotation, and its shares were removed from the official list of the ASX on 16 October 2020.
9. In late 2020 and early 2021, after completion of the compulsory acquisition, ASIC received complaints from former minority shareholders of Strategic Minerals stating they had not received consideration from QGold for the compulsory acquisition. Following ASIC’s enquiries with Strategic Minerals and QGold, these shareholders confirmed payment of their consideration for the compulsory acquisition.

10. A copy of the MLA was published on the Queensland Department of Resources website during the public consultation period between 15 April 2021 and 17 May 2021. From public records, we understand the MLA was granted on 15 November 2021.

May 2021 report of misconduct and compulsory acquisition process

On 23 May 2021 ASIC received a report of misconduct (ROM) from a former minority shareholder of Strategic Minerals in relation to the MLA lodged by Strategic Minerals with the Queensland Department of Resources on 7 January 2020.

This ROM raised concerns, among other matters, that Strategic Minerals failed to comply with its continuous disclosure obligations and disclose material information about the MLA and its intention to fund, develop and operate a new mine development in the near future. The ROM alleges this information was withheld from the market to allow QGold to proceed to compulsory acquisition of Strategic Minerals at a lesser value, to the detriment of minority shareholders.

ASIC receives many reports of misconduct and must choose which matters to pursue and which matters to take no further action on. ASIC considered this ROM and determined not to make further enquiries or take further action. ASIC did not contact the Queensland Department of Resources for more information. The reasons for this decision were communicated to the reporter of misconduct on 13 August 2021.

The reasons for this included that we considered there was limited regulatory benefit for ASIC in pursuing the alleged conduct. This was particularly the case as the compulsory acquisition process provides shareholders with the opportunity to object to the offer. Further, by the time of the complaint to ASIC, the compulsory acquisition had been implemented, the company had been delisted and shareholders had received their consideration.

Further explanations of our decision is below.

Continuous disclosure obligations and speculative nature of information

Under the continuous disclosure regime, listed companies must provide information to the market if a reasonable person would expect it to have a material effect on the price or value of the company's securities. Whether a decision to commit to fund a new gold mine is required to be disclosed to the market will depend on the facts of the case and whether it is material in the circumstances.

Having reviewed the MLA and ROM, ASIC is not aware whether Strategic Minerals made a binding commitment to the Queensland Government to fund the \$200,000,000 construction of a new mine. The only reference to that alleged commitment is on page 36 of the MLA, which states the Woolgar Gold Project requires circa \$200,000,000 to commission construction and operation. While it is a matter for the Queensland Government as to what level of assurances they require, as a general observation, we do note that we observe exploration companies applying for mining leases prior to having completed technical and economic feasibility studies for their projects and prior to obtaining any necessary funding. The ROM appears to suggest Strategic Minerals had completed its technical and economic pre-feasibility studies and that a decision had been made by the board to commence and fund a mine, requiring disclosure on the ASX. ASIC is not in possession of information to suggest this was the case, that the information in Strategic Minerals' announcement dated 8 January 2020 is misleading or incorrect, or that Strategic Minerals' announcements to the market on for example 10 February, 2 March and 10 March 2020 (that suggest these studies were to occur in the future) are misleading or incorrect.

Further, even if Strategic Minerals had in fact made a business decision to commence and fund a mine to the value of approximately \$200,000,000, it is not certain that this commitment would have resulted in a substantial increase in the value of the consideration offered to minority shareholders under the compulsory acquisition. At the time of the compulsory acquisition, Strategic Minerals' market capitalisation was approximately \$50,000,000. Management accounts for the half-year ended 30 June 2020 state Strategic Minerals had approximately \$3,693,000 cash on hand. Strategic Minerals would have been required to source funding for this commitment which may have been provided in return for an interest in Strategic Minerals, diluting the holdings of minority shareholders. This factor

impacts the materiality of the information to shareholders as it may not have resulted in a material change to the consideration paid under the compulsory acquisition, as alleged in the ROM. Please note this is a general observation only with reference to valuation principles. ASIC is unable to provide any further comments on any potential value of shares or the consideration offered under the compulsory acquisition.

Compulsory acquisition process and actions available to ASIC post-completion

Under the law, if holders of 10% or more of the securities covered by the notice (that is, 10% of the remaining minority shareholders), object to the compulsory acquisition, the 90% holder must apply to the court for approval of the acquisition, and bear the cost of court proceedings, if it wishes to proceed with the compulsory acquisition. If court proceedings are commenced, the onus is on the 90% holder to establish that their offer represents fair value.

Only 6 minority shareholders of Strategic Minerals objected to the Notice, representing 1.4% of the securities covered by the Notice. As this was less than 10% of the shares covered by the Notice, under the law, the compulsory acquisition process did not need to be approved by the Court.

In circumstances where most of the minority shareholders do not object to the Notice, ASIC must take this into account.

Following the completion of the compulsory acquisition and removal of Strategic Minerals from the official list of the ASX, there are limited actions available to ASIC to address the alleged conduct. We also note the enforcement outcomes available to ASIC for the alleged continuous disclosure contravention noted above are impacted by Strategic Minerals circumstances, including that it is no longer listed. For example, certain administrative outcomes are not available to ASIC.

ASIC does not intend to reopen this matter.