



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP20/53

Wednesday, 19 August 2020

Alto Metals Limited – Declaration of Unacceptable Circumstances and Orders

The Panel has made a declaration of unacceptable circumstances (Annexure A) and final orders (Annexure B) in relation to an application dated 14 July 2020 by Habrok (Alto) Pty Ltd in relation to the affairs of Alto Metals Limited (see [TP20/43](#)).

Background

On 10 July 2020, Habrok lodged a bidder's statement in respect of a previously announced unconditional all-cash off-market takeover bid for 100% of the ordinary shares and options in Alto which it does not currently own for 6.6 cents per share.

On 13 July 2020, Alto announced that it would conduct a 1 for 4 accelerated pro-rata non-renounceable entitlement offer to raise approximately \$5.1 million at 7 cents per share (**Entitlement Offer**).

Also on 13 July 2020, Alto announced its recommendation that Alto shareholders reject the Habrok bid (**Recommendation Announcement**). The Recommendation Announcement included the following undervalue statement:

"The Directors of Alto have assessed the Offers, and it is the Directors' very strong view that the unsolicited Offers are opportunistic and undervalue your shares and options, and shareholders and optionholders should reject the Offers."

The Recommendation Announcement also stated that in reaching their recommendation, the Alto directors had considered several factors in support of their undervalue statement.

On 15 July 2020, Alto made an announcement stating among other things *"Statements of intention received from key shareholders holding 38.15% of the issued shares in Alto, [stating] that they do not intend to accept the Habrok Offer"*. On 16 July 2020, Alto announced that additional statements of intention had been received.

Declaration

The Panel considered, among other things, that:

1. The reasons provided in the Recommendation Announcement are misleading or have the potential to mislead Alto shareholders, for reasons including that Alto's internal records as provided to the Panel did not adequately establish that its directors had appropriate regard to the matters set out in the Recommendation Announcement in reaching their decision to recommend rejection of the Habrok bid.
2. The Recommendation Announcement did not adequately explain why the Alto directors had previously recommended a takeover bid from Goldsea Australia Mining Pty Ltd (which was at an offer price below the Habrok bid and subject to conditions).
3. The timing and pricing of the Entitlement Offer in conjunction with the timing of the Recommendation Announcement:
 - (a) were in part designed as a defensive tactic in response to the Habrok bid
 - (b) required Alto shareholders to decide whether to take up the Entitlement Offer before being given adequate information to assess the Habrok bid and
 - (c) has adversely affected the prospects of the Habrok bid succeeding.
4. The shareholder intention statements (as presented in Alto's ASX announcements on 15 and 16 July 2020) are misleading or have the potential to mislead Alto shareholders in that they do not disclose that certain of the shareholders who have provided shareholder intention statements are related to Alto directors.
5. The Recommendation Announcement and the Entitlement Offer in combination had an effect which may contribute to a proposed acquisition by Habrok not proceeding and is contrary to an efficient, competitive and informed market.

The Panel did not consider it against the public interest to make the declaration, and in making it had regard to the matters in s657A(3) of the *Corporations Act 2001* (Cth).

Orders

The Panel has made orders that (in effect):

- Alto must terminate the Entitlement Offer.
- Alto must not announce (among other things) the terms of any new capital raising, or request or accept any commitments from Alto shareholders to

participate in a new capital raising, for two weeks following the dispatch of Alto's supplementary target's statement (described below).

- Alto shareholders who have provided a shareholder intention statement (other than those Alto shareholders who are related to Alto directors) be given a right to withdraw their shareholder intention statement.
- Alto must dispatch a supplementary target's statement including an explanation of the effect of the Panel's declaration and orders, and details of the relationship (if any) between the Alto shareholders who have provided a shareholder intention statement and the Alto directors.

The sitting Panel was Kelvin Barry, Paula Dwyer (sitting President) and Rory Moriarty.

The Panel will publish its reasons for the decision in due course on its website www.takeovers.gov.au.

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Australian Government

Takeovers Panel

ANNEXURE A

CORPORATIONS ACT

SECTION 657A

DECLARATION OF UNACCEPTABLE CIRCUMSTANCES

ALTO METALS LIMITED

CIRCUMSTANCES

1. Alto Metals Limited is an ASX listed company (ASX code: AME) (**Alto**). Habrok (Alto) Pty Ltd (**Habrok**), the applicant, has a relevant interest in 12.55% of Alto shares.
2. On 10 July 2020, Habrok lodged its bidder's statement in respect of an unconditional all-cash off-market takeover bid for 100% of the ordinary shares and options in Alto which it does not currently own for 6.6 cents per share.
3. On 13 July 2020, Alto announced that it would conduct a 1 for 4 accelerated pro-rata non-renounceable entitlement offer to raise approximately \$5.1 million at 7 cents per share (**Entitlement Offer**). While the announcement stated that the offer represented a 6.67% discount to the last closing share price of 7.5 cents, Alto was informed by its financial advisers on 12 July 2020 that the 10 day VWAP¹ of Alto shares was 6.98 cents. The institutional component of the Entitlement Offer took place from 13 to 15 July 2020. The retail component was to open on 20 July 2020 and close on 29 July 2020.
4. Also on 13 July 2020, Alto announced its recommendation that Alto shareholders reject the Habrok bid (**Recommendation Announcement**). The Recommendation Announcement included the following undervalue statement:

"The Directors of Alto have assessed the Offers, and it is the Directors' very strong view that the unsolicited Offers are opportunistic and undervalue your shares and options, and shareholders and optionholders should reject the Offers."
5. The Recommendation Announcement also stated that in reaching their recommendation, the Alto directors had considered several factors in support of their undervalue statement, including that:

¹ Volume Weighted Average Price

- (a) Alto being presented three separate unsolicited takeover offers in the last 15 months is a clear endorsement that *“third parties can see the long-term value potential associated with the Company’s Sandstone Gold Project”*
 - (b) the Habrok bid offer price of 6.6 cents per share *“doesn’t represent a premium to recent trading price of Alto shares”* and *“represents a 5.7% discount to the Entitlement Offer price of at (sic) \$0.07 per new share announced today”* and
 - (c) the Habrok bid *“fails to recognise any of Alto’s unrealised potential”*.
6. The Recommendation Announcement further stated that *“Further detail regarding the reasons for the Directors’ recommendation to reject the unsolicited Offers from Habrok will be set out in the Target’s Statement”*.
7. It is noted that the Alto directors had previously recommended a conditional all-cash off-market takeover bid from Goldsea Australia Mining Pty Ltd (**Goldsea**) for 100% of the ordinary shares and options in Alto which it did not currently own for 6.5 cents per share.²
8. On 15 July 2020, Alto made an announcement stating *“Statements of intention received from key shareholders holding 38.15% of the issued shares in Alto, [stating] that they do not intend to accept the Habrok Offer”*. Alto also stated that it had secured \$2.6 million in acceptances and commitments under the Entitlement Offer.
9. On 16 July 2020, Alto announced that additional statements of intention had been received, such that shareholders *“holding 51.45% of the Alto shares on issue have confirmed their intention not to accept the Habrok Share Offer”* (together with the intention statements referred to in paragraph 8, **Shareholder Intention Statements**).
10. On 17 July 2020, Habrok announced that it would increase the offer price under the Habrok bid to 7 cents per share, subject to Alto (among other related things) terminating the Entitlement Offer. On 20 July 2020, Alto announced that the persons providing the Shareholder Intention Statements had confirmed that *“they would not accept a takeover offer from Habrok of \$0.07 per share”*.
11. Limited material was provided by Alto to establish that:
 - (a) Alto’s directors had considered any internal analysis or external advice in relation to the timing and pricing of the Entitlement Offer or the Recommendation Announcement.
 - (b) Alto had an urgent need for funds that would justify the timing of the Entitlement Offer.

² See Alto’s ASX Announcement from 1 May 2020 – Supplementary Target’s Statement

12. Alto's internal records as provided to the Panel do not adequately establish that its directors had appropriate regard to the matters set out in the Recommendation Announcement in reaching their decision to recommend rejection of the Habrok bid (including the factors set out in paragraphs 5(a) to (c) above). Rather, Alto's internal records suggest that the pricing of the Entitlement Offer was an important factor upon which the directors determined to recommend rejection of the Habrok bid.
13. The Panel considers that:
 - (a) in light of paragraphs 11 and 12 above, the reasons provided in the Recommendation Announcement are misleading or have the potential to mislead Alto shareholders
 - (b) the Recommendation Announcement did not adequately explain why the Alto directors had previously recommended the Goldsea bid (which was at an offer price below the Habrok bid and subject to conditions)
 - (c) the Shareholder Intention Statements (as presented in Alto's ASX announcements from 15 and 16 July 2020) are misleading or have the potential to mislead Alto shareholders in that they do not disclose that certain of the shareholders who have provided Shareholder Intention Statements are related to Alto directors and
 - (d) the timing and pricing of the Entitlement Offer in conjunction with the timing of the Recommendation Announcement:
 - (i) were in part designed as a defensive tactic in response to the Habrok bid
 - (ii) required Alto shareholders to decide whether to take up the Entitlement Offer before being given adequate information to assess the Habrok bid and
 - (iii) has adversely affected the prospects of the Habrok bid succeeding.

EFFECT

14. By reason of the information deficiencies in the Recommendation Announcement and the Shareholder Intention Statements, Alto shareholders did not have sufficient information to make an informed assessment of the undervalue statement and the merits of the Habrok bid, such that the market for control of Alto shares was not taking place in an efficient, competitive and informed market.
15. The Recommendation Announcement and the Entitlement Offer in combination had an effect which may contribute to a proposed acquisition by Habrok not proceeding and is contrary to an efficient, competitive and informed market.

CONCLUSION

16. 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, will have or are likely to have on:
 - (i) the control, or potential control, of Alto or
 - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in Alto
 - (b) in the alternative, having regard to the purposes of Chapter 6 set out in section 602.
17. 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).

DECLARATION

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

Tania Mattei
Counsel
with authority of Paula Dwyer
President of the sitting Panel
Dated 19 August 2020



Australian Government

Takeovers Panel

ANNEXURE B

**CORPORATIONS ACT
SECTION 657D
ORDERS**

ALTO METALS LIMITED

The Panel made a declaration of unacceptable circumstances on 19 August 2020.

THE PANEL ORDERS

Entitlement Offer

1. Alto must immediately take all action necessary to terminate the Entitlement Offer.
2. Alto must return all received subscription monies received under the Entitlement Offer and not process any applications under the Entitlement Offer and must not issue or allot any new shares under the Entitlement Offer.
3. Alto must not:
 - (a) announce the terms of any new capital raising or the indication of any Alto shareholder support for any new capital raising or
 - (b) request or accept any commitments from Alto shareholders to participate in a new capital raising

within 2 weeks following the date of dispatch of the Supplementary Statement.

Shareholder Intention Statements

4. Alto shareholders (other than Windsong Valley Pty Ltd (and Marymount Pty Ltd) and Sinotech (Hong Kong) Corporation Limited) who have provided a Shareholder Intention Statement have the right to withdraw their Shareholder Intention Statement.
5. Alto must notify Alto shareholders of their withdrawal rights under order 4 as soon as practicable following the date of these orders.

Supplementary Statement

6. Alto must dispatch a supplementary target's statement (**Supplementary Statement**) to Alto shareholders within 3 business days after the Panel has approved the draft Supplementary Statement under order 7 which will include:
 - (a) details of the relationship (if any) between the Alto shareholders who have provided a Shareholder Intention Statement and the Alto directors and
 - (b) an explanation of the effect of the Declaration and these orders.
7. Alto must provide the Panel with a draft Supplementary Statement within 2 business days from the date of these orders.

Other

8. In these orders, the following terms apply:

Alto	Alto Metals Limited
Declaration	The declaration of unacceptable circumstances made by the Panel in relation to the affairs of Alto on 19 August 2020
Entitlement Offer	Alto's proposed 1 for 4 accelerated pro-rata non-renounceable entitlement offer of \$0.07 to raise approximately \$5.1 million announced on 13 July 2020
Habrok	Habrok (Alto) Pty Ltd
Habrok offer	Habrok's unconditional all-cash off-market takeover bid for 100% of the ordinary shares and options in Alto for 6.6 cents per share announced on 22 May 2020
Shareholder Intention Statement	The statements of intention of certain Alto shareholders that they do not intend to accept into the Habrok offer, as set out in Alto's ASX announcements from 15 and 16 July 2020
Supplementary Statement	has the meaning given in order 6
date of these orders	19 August 2020

Tania Mattei
Counsel
with authority of Paula Dwyer
President of the sitting Panel
Dated 19 August 2020