



Australian Government

Takeovers Panel

MEDIA RELEASE

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Tuesday, 21 May 2024

Metallica Minerals Limited – Panel Receives Application

The Panel has received an application from Diatreme Resources Limited in relation to the affairs of Metallica Minerals Limited. Metallica is currently the subject of an off-market takeover bid by Diatreme.

Details of the application, as submitted by the applicant, are below.

A sitting Panel has not been appointed at this stage and no decision has been made whether to conduct proceedings. The Panel makes no comment on the merits of the application.

Details

Both Metallica (ASX:MLM) and Diatreme (ASX:DRX) operate silica sands projects close to each other in Queensland.

On 30 October 2023, Metallica and Diatreme entered into a confidentiality deed (**Confidentiality Deed**), which included a mutual standstill for the term of the Confidentiality Deed (**Standstill**), being two years or an earlier date agreed by the parties. Clause 7.1 of the Confidentiality Deed provides that “[Diatreme] agrees not to acquire, purchase or sell, or agree to acquire, purchase or sell any securities in [Metallica] without [Metallica’s] prior written consent”.

No confidential information has ever been provided to Diatreme under the Confidentiality Deed.

On 16 February 2024, Diatreme announced an intention to make a takeover bid for Metallica. The announcement did not include a defeating condition that Metallica waive the Standstill, but a condition to that effect was included subsequently.¹

¹ Which stated that:

“Before the end of the Offer Period:

(i) Diatreme receives:

(A) written consent from Metallica under the standstill provision of the Confidentiality Deed to the acquisition of Metallica shares under the Offer; or

Diatreme's bidder's statement was lodged on 28 March 2024 and offers were dispatched on 11 April 2024.

On 24 April 2024, Metallica released its target's statement with the Metallica directors unanimously recommending that Metallica shareholders reject the offer and stating that:

"Your Directors are taking steps to identify and progress potential alternative transactions, which might result in a superior proposal. While there is no guarantee an alternative transaction will arise, acceptance of the Offer might result in Metallica Shareholders being unable to benefit from any superior proposal (should one be made)."

"Your Directors intend to waive the Standstill Condition by having Metallica sign a deed poll in favour of Diatreme, pursuant to which Metallica would waive and release Diatreme from any liability under the Standstill Condition, with such release to take effect (a) if a superior proposal does not eventuate, immediately prior the end of Offer Period; or if a superior proposal does eventuate and is announced to the market prior to the end of the Offer Period (and is subject to Metallica shareholder approval), immediately after the general meeting to consider the proposal, in the event that Metallica shareholders do not vote in favour of a superior proposal. For the purpose of this deed poll, a superior proposal will be one that your Directors, acting reasonably, and having consideration of all material facts, believe is or could be superior to the Offer."

On 8 May 2024, Metallica gave Diatreme an executed copy of the deed poll in a form consistent with the above quoted disclosure in the target's statement.

On 10 May 2024, Metallica released a statement to ASX disclosing (among other things) that:

"Metallica confirms that it is in discussions with other parties regarding potential alternative transactions. It is too early to provide any details on those discussions. If you accept the Diatreme Offer, you will likely be unable to participate in any superior proposal (should one emerge). Your Directors urge you to 'wait and see'."

Following discussions between Metallica and Diatreme, Metallica sent a replacement deed poll regarding the standstill waiver, which *"was essentially in the same terms as the 7 May 2024 deed, but it included a new provision that the standstill would be released on 17 June 2024 if no superior proposal was received by that date"*.

(B) written confirmation, release or waiver, as the case may be, from Metallica that the provisions of the Confidentiality Deed will not be breached by Diatreme acquiring any Metallica shares under the Offer; or
(ii) the Takeovers Panel makes orders and declarations that Diatreme is no longer restrained under the Confidentiality Deed from acquiring Metallica Shares."

Today, Diatreme released a statement to ASX disclosing that it had acceptances which take its voting power to over 56% in Metallica. Metallica's bid is currently scheduled to close on 3 June 2024.²

Diatreme submits (among other things) that:

- It is incumbent on Metallica to update its shareholders about the likelihood of a competing proposal for Metallica, noting that a failure to update *"has the potential to cause losses to shareholders if [Diatreme's] offer expires whilst they are still waiting for a rival transaction to emerge"*.
- *"Given the current circumstances, it is unacceptable for the standstill not to be released immediately."*

Diatreme seeks an interim order that *"[Metallica] update the market no later than Thursday 23 May 2024 as to the status of any discussions it is holding with third parties in relation to potential competing proposals so that shareholders and DRX can make an informed decision about the likelihood of a competing proposal."*

Diatreme seeks final orders to the effect that:

- Metallica update the market no later than 30 May 2024 *"as to the status of any discussions it is holding with third parties in relation to potential competing proposals"*.
- Metallica waive the Standstill under the Confidentiality Deed no later than 30 May 2024.

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² The date for the notice of status of conditions is 24 May 2024