



18 January 2022

## ASX ANNOUNCEMENT

### FOCUS MINERALS LTD TAKEOVER OFFER – SECOND SUPPLEMENTARY BIDDER'S STATEMENT

Theta Gold Mines Limited (**Theta Gold, TGM or Company**) (ASX: TGM | OTCQB: TGMGF | FSE: 3LM) refers to its takeover bid to acquire fully paid ordinary shares in Focus Minerals Ltd (**Focus**) that exist on the Register Date of 21 December 2021 made under the Replacement Bidder's Statement dated 4 January 2022 (**Replacement Bidder's Statement**).

TGM notes ASX announcements by Focus on 5 and 7 January 2022 which attach intention statements by Shandong Gold.

In light of those statements and other matters, TGM has lodged with ASIC today a second supplementary bidder's statement dated 18 January 2022 (**Second Supplementary Bidder's Statement**) to update various disclosures in the Replacement Bidder's Statement.

A copy of the Second Supplementary Bidder's Statement is attached to this announcement in accordance with section 647(3)(a)(ii) of the Corporations Act (as modified by ASIC Class Order [CO 13/528]).

This announcement was authorised for release by Mr Bill Guy, Chairman.

#### For more information:

Bill Guy, Chairman  
Theta Gold Mines Limited  
T: + 61 2 8046 7584 E: [billg@thetagoldmines.com](mailto:billg@thetagoldmines.com)

Webpage: [www.thetagoldmines.com](http://www.thetagoldmines.com)



<https://twitter.com/ThetaGoldMines>



<https://www.linkedin.com/company/thetagoldmines/>

#### ABOUT THETA GOLD MINES LIMITED

Theta Gold Mines Limited (ASX: TGM | OTCQB: TGMGF | FSE: 3LM) is a gold development company that holds a range of prospective gold assets in a world-renowned South African gold mining region. These assets include several surface and near-surface high-grade gold projects which provide cost advantages relative to other gold producers in the region.

Theta Gold's core project is located next to the historical gold mining town of Pilgrim's Rest, in Mpumalanga Province, some 370km northeast of Johannesburg by road or 95km north of Nelspruit (Capital City of Mpumalanga Province). Following small scale production from 2011 – 2015, the Company is currently focussing on the construction of a new gold processing plant

within its approved footprint at the TGME plant, and for the processing of the initial ore reserves.

The Company aims to build a solid production platform to over 160kozpa based primarily around shallow, open-pit or adit-entry shallow underground hard rock mining sources. Theta Gold has access to over 43 historical mines and prospect areas that can be accessed and explored, with over 6.7Moz of historical production recorded.

Theta Gold holds 100% issued capital of its South African subsidiary, Theta Gold (SA) Pty Ltd ("TGSA"). TGSA holds a 74% shareholding in both Transvaal Gold Mining Estates Limited ("TGME") and Sabie Mines (Pty) Ltd ("Sabie Mines"). The balance of shareholding is held by Black Economic Empowerment ("BEE") entities as part of the country's ESG initiatives. The BEE shareholding in TGME and Sabie Mines is comprised of a combination of local community trusts, an employee trust and a strategic entrepreneurial partner.



# Second Supplementary Bidder's Statement

in respect of the offer for shares in Focus Minerals Ltd

## Important Information

This document is the second supplementary bidder's statement (**Second Supplementary Bidder's Statement**) given by Theta Gold Mines Limited (ABN 30 131 758 177) (**TGM**) in connection with its takeover offer for all shares in Focus Minerals Ltd (ABN 56 005 470 799) (**Focus**) that existed on the Register Date of 21 December 2021.

This Second Supplementary Bidder's Statement supplements, and must be read together with, TGM's first supplementary bidder's statement dated 4 January 2022 (**First Supplementary Bidder's Statement**) and TGM's replacement bidder's statement dated 4 January 2022 (**Replacement Bidder's Statement**) which replaced TGM's original bidder's statement dated 20 December 2021. This Second Supplementary Bidder's Statement will prevail to the extent of any inconsistency with the First Supplementary Bidder's Statement and Replacement Bidder's Statement.

A copy of this Second Supplementary Bidder's Statement was lodged with the Australian Securities and Investments Commission (**ASIC**) on 18 January 2022. Neither ASIC nor its officers takes any responsibility for the contents of this Second Supplementary Bidder's Statement.

Unless the context otherwise requires, defined terms used in this Second Supplementary Bidder's Statement have the same meaning as given to them in the Replacement Bidder's Statement. Section 10.2 (*References to certain general terms*) of the Replacement Bidder's Statement also applies to this Second Supplementary Bidder's Statement.

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## 1. SHANDONG GOLD INTENTION STATEMENTS

In the Replacement Bidder's Statement, TGM made clear that because:

- Focus has proceeded with the Focus Entitlement Offer; and
- TGM's Offer only relates to Focus Shares that existed on the Register Date of 21 December 2021 (so does not extend to new Focus Shares issued under the Focus Entitlement Offer),

TGM would not be able to acquire 100% of Focus Shares under the Offer. The Replacement Bidder's Statement contemplated that TGM may be able to acquire control of Focus under the Offer, but that this would only be possible if Shandong Gold accepted the Offer (in respect of those of its Focus Shares to which the Offer relates) and a large proportion of minority Focus Shareholders also accepted the Offer.

On 5 and 7 January 2022, Focus released ASX announcements which attached statements made by Shandong Gold. In those statements, Shandong Gold has said that "it does not support the Offer and does not intend to accept the Offer in its current form in respect of any Focus shares that Shandong Gold owns or controls".

On the basis of these statements, TGM will not be able to acquire control of Focus under the Offer in its current form. In these circumstances (that Shandong Gold does not accept the Offer in respect of those of its Focus Shares to which the Offer relates), the maximum interest that TGM could acquire in Focus as a result of the Offer (in its current form) is 32.65% - as outlined at section 6.3 of the Replacement Bidder's Statement. Focus Shareholders should bear this in mind when considering statements in the Replacement Bidder's Statement that relate to the "Controlled Group" or that otherwise clearly contemplate a situation where TGM has acquired control of Focus (including, without limitation, section 5.3 of the Replacement Bidder's Statement which sets out TGM's intentions should it gain control of Focus).

TGM notes that, were TGM to improve the terms of its Offer (which TGM reserves the right to do), the statements by Shandong Gold would no longer apply and (if Shandong Gold accepted in respect of

those of its Focus Shares to which the Offer relates) it would still be possible for TGM to acquire control of Focus in the circumstances contemplated by the Replacement Bidder's Statement.

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## **2. IMPLIED VALUE OF THE OFFER**

The Replacement Bidder's Statement:

- notes that TGM believes its Offer represents an attractive premium to the price at which Focus Shares were trading prior to the Announcement Date of the TGM Offer (9 December 2021); and
- clearly states in a number of places that the implied value of the Offer will change as a consequence of changes in the market price of TGM Shares from time to time.

For example, and simply by way of update:

(a) as at the close of trade on Thursday 13 January 2022 the Offer implies a value of A\$0.34 for each Focus Share (based on the TGM closing price on ASX of \$0.17 on Thursday 13 January 2022). This represents premiums of:

- 21.4% to the closing price of Focus Shares on ASX of A\$0.28 on 13 January 2022;
- 36% to the Focus Entitlement Offer price of A\$0.25;
- 9.4% to the 30 day VWAP of Focus Shares on ASX of A\$0.3109 to 13 January 2022; and
- 15.5% to the 90 day VWAP of Focus Shares on ASX of A\$0.2943 to 13 January 2022.

(b) as at the close of trade on Monday 17 January 2022 (the last trading day prior to the date of this Second Supplementary Bidder's Statement) the Offer implies a value of A\$0.33 for each Focus Share (based on the TGM closing price on ASX of \$0.165 on Monday 17 January 2022). This represents premiums of:

- 26.9% to the closing price of Focus Shares on ASX of A\$0.26 on 17 January 2022;
- 32% to the Focus Entitlement Offer price of A\$0.25;
- 4.1% to the 30 day VWAP of Focus Shares on ASX of A\$0.3170 to 17 January 2022; and
- 12.1% to the 90 day VWAP of Focus Shares on ASX of A\$0.2944 to 17 January 2022.

As noted in the Replacement Bidder's Statement, these figures will continue to change from time to time as a result of changes in the prices of TGM Shares and Focus Shares on ASX. When assessing the Offer, Focus Shareholders should ensure that they take into account the latest trading price of Focus Shares and the implied price of the Offer based on the latest trading price of TGM Shares.

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## **3. INFORMATION ON TGM**

Sections 1 and 2 of the Replacement Bidder's Statement set out information on TGM and TGM's securities. As noted at section 1.7 of the Replacement Bidder's Statement, TGM is a disclosing entity for the purposes of the Corporations Act, and is subject to regular reporting and disclosure obligations. This includes the continuous disclosure of any information that TGM has concerning it that a reasonable person would expect to have a material effect on the price or value of its securities. Such information is readily available publicly and (as noted at section 1.7 of the Bidder's Statement) a number of items will be provided to Focus Shareholders free of charge and upon request to TGM.

Notwithstanding this, Focus has corresponded with TGM querying certain matters relating to TGM. As a result, TGM makes the following additional statements to assist Focus Shareholders notwithstanding that this information is readily available publicly or can be readily ascertained from such information:

- As noted at section 2.1 of the Replacement Bidder’s Statement, TGM has various classes of securities on issue. These include 16,220,000 unlisted performance rights. The performance hurdles, vesting dates and expiry dates of these performance rights are all set out on page 35 of TGM’s annual financial report for the year ended 30 June 2021 (released by TGM to ASX on 1 November 2021). The performance hurdles are all project related (with the intention of incentivising performance that benefits TGM and TGM shareholders as a whole). Based on the current number of TGM Shares on issue, vesting of all of these performance rights would dilute existing TGM Shareholders by approximately 3.0%.
- In addition to these performance rights, there are currently 41,169,786 TGM options on issue with expiry dates and exercise prices as specified in section 2.1 of the Replacement Bidder’s Statement. These exercise prices are all between A\$0.275 and A\$0.50. To be exercised, these options will require cash proceeds to be paid by the option holder(s) to TGM in return for the issue of the resultant TGM Shares. Based on the current number of TGM Shares on issue, exercise of all of these options would dilute existing TGM Shareholders by approximately 7.3% but would result in cash proceeds for TGM of approximately \$16.16 million.
- TGM has released a Pre-Feasibility Study (**PFS**) for its TGME Underground Project to ASX on 13 April 2021. This PFS included a capital cost estimate (dated February 2021) for TGM’s three underground operations. These capital costs were all developed in South African Rand (ZAR) and converted to USD (TGM’s reporting currency) at an exchange rate of ZAR/USD of 15.89. That PFS noted a total capital requirement of US\$78.5 million, but that the peak funding requirement is US\$37 million (over the first three years of the project) with the remaining capital to be funded from cash flow. The PFS also noted that the TGME Underground Project has a projected EBITDA of \$US241.2 million over the life of mine (of 7.67 years), and a net present value of US\$91.2 million<sup>1</sup>. Further to this, TGM has clearly stated in its Replacement Bidder’s Statement (see section 1.2) that:
  - TGM is progressing a Definitive Feasibility Study for the TGME Underground Project which is scheduled to be delivered in 2022<sup>2</sup>;
  - TGM is targeting project commissioning (of the TGME Underground Project) in 2023;
  - following finalisation of the Definitive Feasibility Study, TGM will assess the further funding requirements for the commissioning of its TGME Underground Project (it being noted, for completeness, that a Definitive Feasibility Study will have a greater level of certainty than a Pre-Feasibility Study);
  - TGM anticipates that such funding would be by way of a mix of debt and equity (with the proportions yet to be determined); and
  - to the extent that equity capital is required, this will necessarily dilute TGM shareholders (with the level of dilution depending upon the size of the equity issue).

Equity capital may also be required to be raised by TGM (which will, in turn, dilute TGM Shareholders) in order to meet TGM’s obligations under existing financing arrangements (as described in the Replacement Bidder’s Statement at section 2.1). This includes, but is not limited

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<sup>1</sup> Subject to the factors and assumptions set out in the PFS, including obtaining the necessary funding to develop the project – see TGM announcement of 13 April 2021, “Pre-Feasibility Study for Initial Underground Projects”. See also the “Production Targets and Forecast Financial Information” notice in the “Important Information” section of the Replacement Bidder’s Statement on page 2.

<sup>2</sup> This is expected to be released in Q2 of 2022 – see TGM announcement of 13 January 2022 “Incorporation of the Rietfontein Mine into TGME Underground Mine’s Definitive Feasibility Study”. As announced on 13 January 2022, TGM proposes to extend the existing PFS to add the Rietfontein Mine to the mine schedule for the PFS (noting that Rietfontein requires validation from metallurgical testwork that is still in progress and is expected in Q2, 2022).

to, equity raised pursuant to TGM's existing at-the-market facility with Acuity Capital. Obviously, any such dilution would also impact holders of New TGM Shares (who receive those shares as consideration under the Offer). Focus Shareholders should bear this in mind when assessing the Offer.

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#### 4. RISK FACTORS

Section 8 of the Replacement Bidder's Statement sets out certain risks that investors in TGM (including those persons who receive New TGM Shares under the Offer) may be exposed to. The list is not (and is not expressed to be) exhaustive. However, in relation to certain specific matters:

- Section 8.2(i) ("Risks associated with a minority stake") outlines scenarios where TGM is able to acquire control of Focus<sup>3</sup>, and where it is not so able. In the control scenario, it outlines the risk that (with both TGM and Shandong Gold as substantial holders) remaining Focus Shareholders could experience lower levels of liquidity. Obviously this (and the possibility of resultant lower trading prices) may also apply in circumstances where TGM is not able to acquire control and Shandong Gold remains as a substantial or controlling shareholder of Focus<sup>4</sup>.
- Section 8.2(k) ("Financing risks and capital requirements") notes that TGM currently has no producing assets and does not generate any revenue; and that Focus' Coolgardie Project is currently in care and maintenance and Focus has suspended mining operations. While this section makes it clear that TGM's ability to effectively implement its strategy over time will depend in part on its ability to obtain sufficient capital; and that any additional financing that TGM undertakes may dilute TGM Shareholders, TGM notes that these factors (relating to access to funding and dilution) will apply to both the development of TGM's own TGME Underground Project and (if TGM is able to acquire control of Focus<sup>5</sup> and further Focus funding is required notwithstanding the receipt of proceeds of the Focus Entitlement Offer<sup>6</sup>) to the resumption of mining operations at Focus' Coolgardie Project.

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#### 5. TGM'S INTENTIONS

Section 5.3(d)(i) of the Replacement Bidder's Statement makes it clear that, if TGM acquires control of Focus pursuant to the Offer<sup>7</sup>, it would use Focus' cash reserves (including the proceeds of the recent Focus Entitlement Offer) and Focus' undrawn loan facilities (to the extent they are available on appropriate terms) to continue (and expedite to the extent possible) the planned resumption of operations at Focus' Coolgardie Project or in further developing the Laverton assets. To be clear:

- TGM is not proposing to use Focus' cash reserves or available loan funds<sup>8</sup> for the development of TGM's projects (and TGM anticipates raising its own funding to develop its projects (via a mix of

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<sup>3</sup> Which can only occur if Shandong Gold accepts the Offer (in respect of those Focus Shares to which the Offer relates) and a large proportion of minority Focus Shareholders also accept the Offer. In relation to Shandong Gold's intentions see section 1 of this Second Supplementary Bidder's Statement above.

<sup>4</sup> Note in particular Shandong Gold's publicly stated intentions as outlined at section 1 of this Second Supplementary Bidder's Statement above.

<sup>5</sup> See footnote 3 above.

<sup>6</sup> As appears contemplated by Focus in the Focus Entitlement Offer Booklet of 3 December 2021 at section 5.3 – noting the risk of further dilution of Focus Shareholders to fund "working capital and development requirements".

<sup>7</sup> See footnote 3 above.

<sup>8</sup> In respect of which loan funds TGM has very little visibility. TGM notes that the terms and conditions of the Shandong Gold loans have not, to TGM's knowledge, been disclosed publicly.



debt and equity) on the basis set out in the Replacement Bidder's Statement and at section 3 of this Second Supplementary Bidder's Statement); and

- TGM's proposition is that it believes it can add value to the development of Focus' projects (for the benefit of all Focus Shareholders) for the reasons set out in the Replacement Bidder's Statement.

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## 6. TAXATION CONSIDERATIONS FOR NON-RESIDENT FOCUS SHAREHOLDERS

Section 7.5 of the Replacement Bidder's Statement outlines some of the potential consequences for non-Australian resident Focus Shareholders who accept the Offer. That section notes (amongst other things) that non-Australian resident Focus Shareholders (who hold their Focus Shares on capital account) will generally not have to pay Australian tax on any capital gain arising on disposal of Focus Shares unless several conditions are met.

Those conditions are where:

- the relevant Focus Shareholder (together with its associates) owns a 'non portfolio interest' of at least 10% of Focus either at the time it disposes of its Focus Shares, or for at least 12 months during the 24 months before it disposes of its Focus Shares; and
- more than 50% of the value of Focus is represented by real property in Australia.

The Replacement Bidder's Statement notes that pursuant to the foreign resident CGT withholding tax rules (and unless an exemption applies) a buyer (here TGM) is required to withhold and pay (in cash) to the ATO an amount equal to 12.5% of the capital proceeds paid for the acquisition of Focus Shares from non-Australian resident Focus Shareholders. This will be 12.5% of the market value of the TGM Shares issued to acquire the Focus Shares.

TGM will be required to withhold a portion of the Offer Consideration (in accordance with the foreign tax resident CGT withholding rules) where:

- (a) TGM knows that the Focus Shareholder is a foreign resident for Australian income tax purposes; or
- (b) TGM reasonably believes that the Focus Shareholder is a foreign resident for Australian income tax purposes; or
- (c) TGM does not reasonably believe that the Focus Shareholder is an Australian resident for Australian income tax purposes and either the Focus Shareholder has an address outside of Australia (according to any record that is in TGM's possession or is kept or maintained on TGM's behalf about the disposal of Focus Shares) or TGM is authorised to provide a related financial benefit to a place outside Australia; or
- (d) the Focus Shareholder has a connection outside Australia of a kind specified in the relevant tax regulations.

The foreign resident CGT withholding tax rules aim to facilitate the collection of CGT from foreign resident sellers and should only apply to the disposal of Focus Shares where a Focus Shareholder meets the following conditions:

- (a) it is a non-resident of Australia for Australian income tax purposes; and
- (b) it (together with its associates) owns at least 10% of Focus either at the time it disposes of its Focus Shares or for at least 12 months during the 24 months before it disposes of its Focus Shares; and
- (c) more than 50% of the value of Focus is represented by real property in Australia.

A relevant non-resident Focus Shareholder that does not meet the conditions of the foreign resident CGT withholding rules described above should provide TGM with a signed and completed foreign resident declaration form. The relevant form (which needs to be completed and returned by the non-resident shareholder) is available by contacting the Offer Information Line on 1300 737 760 (toll-free within Australia) or +61 2 9290 9600 (from outside Australia) Monday to Friday between 8.30am and 5.00pm (Sydney time). Where a non-resident Focus Shareholder has provided a signed and completed foreign resident declaration form, TGM should not be required to withhold the foreign resident withholding amount. However, TGM will be required to withhold the foreign resident CGT withholding amount where it does not receive a signed and completed foreign resident declaration form by the applicable payment date. In this case, the relevant Focus Shareholder would only receive the net proceeds (including, where applicable, the requisite net number of New TGM Shares after an adjustment in respect of deduction on account of this amount to reduce the number of New TGM Shares provided). The deducted amount will be paid by TGM to the ATO.

This may also apply to the cash proceeds distributed to non-resident Focus Shareholders in accordance with the procedure outlined in section 9.3 of the Replacement Bidder's Statement.

A Focus Shareholder who believes that the disposal of their Focus Shares may trigger a foreign resident CGT withholding tax liability should obtain independent professional advice, and consider contacting TGM.

The foreign resident CGT withholding tax is not a final withholding tax. Accordingly, Focus Shareholders may be able to claim a credit for any foreign resident CGT withholding amount remitted on their behalf in their Australian income tax return for the relevant year. In addition, Focus Shareholders may apply to the ATO prior to the transaction to vary the rate of withholding down from 12.5% if the tax liability expected to arise from the disposal of Focus Shares is less than 12.5% of the Offer Consideration.

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## **7. FOCUS ANNOUNCEMENT OF 18 JANUARY 2022**

TGM notes Focus' ASX announcement of 18 January 2022 headed "Lancefield Far North Maiden Mineral Resource". In that announcement, Focus refers to a maiden inferred mineral resource of 33.9koz of gold for the Lancefield Far North deposit, part of Focus' Laverton Gold Project.

In the Replacement Bidder's Statement (including "Reasons to accept the Offer" – reason 4 (The Offer represents a logical combination of complementary assets)), reference is made to Focus' mineral resource estimates including inferred mineral resources of approximately 2.5Moz (based on announcements by Focus prior to the date of that document). When considering these references (and any references based on them) Focus Shareholders should have regard to the additional information contained in Focus' announcement of today's date.

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## **8. AUTHORISATION**

This Second Supplementary Bidder's Statement has been approved by a unanimous resolution of the directors of Theta Gold Mines Limited.

Dated 18 January 2022

Signed for and on behalf of Theta Gold Mines Limited by



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**Charles William Guy – Chairman**