

8 April 2022

Nikki Ciavatta
Listings Compliance (Perth), ASX Limited
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Dear Ms Ciavatta

Query Letter

Billabong Gold Pty Ltd v Vango Mining and Dampier (Plutonic) Pty Ltd – WA Supreme Court proceedings CIV 2932 of 2018

1. I refer to your letter dated 25 March 2022 with respect to the above matter. I outline Vango's responses to your queries below.

Question 1

2. Are the terms of the binding offer, as described in points 1 to 4 of Superior Gold's release (paragraph C) an accurate representation of the agreement entered into by VAN and Billabong Gold on 11 March 2022 (the 'March Agreement')?

Answer 1

3. Points 1 to 4 of Superior Gold's release are an accurate representation of (part of) the March Agreement except to the extent that it refers to 'K2 Tenements', indicating more than 1 tenement.
4. There is only one tenement that is known as the K2 Tenement and that is M52/183. This misrepresentation of "tenements" may lead to the incorrect impression that the project involving K2, as referred to in the March Agreement, includes more than M52/183. At this stage, it does not include any tenement other than M52/183. It may at some stage include a contiguous tenement if it contains on-strike or down-dip extensions of the K2 ore-body or mineralised zones however it is not currently understood that any such contiguous tenements are affected.
5. Further, point 4 may be more clearly expressed using the actual words of the March Agreement which states:

*...the parties envisage, after good faith negotiations, the **possibility** of them entering into and executing a more detailed Mining Agreement, in terms reasonably satisfactory to both Billabong and Vango, including terms of a usual nature in documents of that kind, and expressly including a right for Billabong to be offered at any time following 12 months from the date of signing the Mining Agreement...the priority right to earn the same interest, in the same manner....over the other tenements held or partly held by Vango (as previously acquired from Dampier Gold Ltd or DPPL) that are to be developed by Vango....[emphasis added].*

Question 2

6. If the answer to question 1 is "yes", please indicate which part(s) of Superior Gold's release (paragraph C) are "false and misleading" per VAN's announcement in paragraph D?

Answer 2

7. Please see paragraph 4 above in this respect. Further, point 2 provides that "Billabong's Farm-in Interest shall be calculated on the basis of Billabong's contribution to CAPEX (\$X) as per the ratio of \$X/\$CAPEX or 50% (whichever is the lesser)." While this statement is strictly correct, it fails to include the next sentence of the March Agreement which states that "if Billabong contributes less than 50% of the CAPEX it shall be entitled to a pro-rata Farm In interest based on the previous paragraph."

8. The previous paragraph states that *"Billabong may contribute up to the lesser of 50% of the CAPEX or \$3,000,000 to the development of the K2 Mine and the mining of gold ore and its processing for the extraction of gold in accordance with the mining exploration and related work programs and budgets."*
9. The omission of the qualifying sentence may properly be considered misleading and deceptive.
10. The inclusion of *"K2 Tenements"* when K2 is a deposit on 1 tenement only (M52/183) is also potentially misleading and deceptive.

Question 3

11. If the answer to question 1 is "no", please indicate what the relevant material differences are.

Answer 3

12. Please see paragraphs 4, 7 and 8 above.

Question 4

13. The offer that triggered the right of first refusal clause contemplated a contribution of the *"lesser of \$3,000,000 or 50% of the [capital expenditures]."* Please explain why VAN is of the view that Billabong Gold has to contribute at least \$3,000,000 (paragraph E) rather than the lesser of \$3,000,000 or 50% of capital expenditures?

Answer 4

14. Vango was required to offer Billabong two agreements, both of which contained the same formula for earning into the K2 tenement. In the agreement that was not accepted by Billabong (but which is in substantially similar terms) the CAPEX was defined as being estimated at \$6,000,000, being a figure contemplated in 2017 when this offer was originally drafted. The same figure of \$6,000,000 is included in clause 4 of the March Agreement which states *"Vango's capital cost estimate for the development of the K2 Mine is \$6M (CAPEX) or such other amount as agreed between the parties."* Vango considers it is reasonable to expect that construction and development costs for M52/183 have increased over the past 5 years. Internal costings indicate that the CAPEX will exceed \$6,000,000.
15. Accordingly, on this basis, the "lesser" contribution by Billabong Gold will need to be \$3,000,000 as 50% of CAPEX will not be less than \$6,000,000.

Question 5

16. Can Billabong potentially earn a 50% interest in the K2 Tenements by contributing less than \$3,000,000? If not, please provide further details.

Answer 5

17. Vango does not consider that this is the proper construction of the March Agreement. A 50% interest may only be obtained by expending \$3,000,000 or 50% of the CAPEX (which will exceed \$6,000,000). The terms of the March Agreement are clear on this point.

Question 6

18. If the answer to question 5 is "yes", please identify the specific announcement(s) on MAP disclosing this possibility. If no announcement was made, please explain why not.
19. Please see paragraph 17 above.

Question 7

20. Were the terms of the March Agreement identical to the terms of the offer previously made to Billabong Gold by Vango (as described in paragraph A)? If not, please detail the differences between what was offered and what was entered into in the March Agreement.

Answer 7

21. During various discussions with the (former) President of Superior Gold (being the parent of Billabong Gold), the Chairman and Deputy Chairman of Vango offered Billabong Gold the opportunity to earn into the K2 tenement on the same basis as an agreement which was executed by Dampier Gold (as it was then known) and being the second agreement that was offered to Billabong Gold as a result of the proceedings. No written offer was made (prior to being ordered to make the order) as the concept was rejected by Billabong Gold during those earlier discussions.

22. The key commercial terms of the March Agreement and the agreement referenced above were substantially similar in that both provided for the same mechanism for Billabong Gold to earn into the K2 tenement. However, the offer previously made to Billabong Gold did not include the clause set out at paragraph 5 above.

Question 8

23. Following the entry into the March Agreement, is VAN still of the view that the impact of the decision is immaterial to VAN (paragraph F)? Please provide the basis for that view.

Answer 8

24. The extract cited at paragraph F is taken from the notes to the consolidated financial statements for the half year ended 31 December 2021 and is headed 'contingent liabilities'. In this respect Vango stated that *"the Directors do not believe that the settlement of any obligations arising from these matters will be material."* For clarity, the Directors did not state that the impact of the decision was immaterial.
25. In the context of contingent liabilities, Vango has not provided for any estimates of ongoing costs of litigation as it is not possible to do so.
26. If the legal proceedings settled before any final judgments, then any provision for legal costs would necessarily be inaccurate.
27. If Vango was unsuccessful in the proceedings, then the outcomes of the litigation would be that a third party has a right to earn an interest in a tenement held by Vango. Such interest is earned through the party who is earning in, expending monies on exploration and mining activities on the tenement, rather than at a direct financial cost to Vango. The practical result is that Vango is required to spend less monies on its tenure than it would otherwise be required to do as the party earning in would incur some of the minimum expenditure obligation that is placed on tenements as a condition of grant. The litigation is focused on party's various rights to expend monies on earning certain interests, rather than the payment of damages by Vango.

Question 9

28. Please provide ASX with a copy of the March Agreement and any other relevant agreements between Billabong Gold and VAN (not for release to the market).

Answer 9

29. Please see attached a copy of the March Agreement (being Annexure 1) and the second agreement offered to Billabong Gold informally through discussion and later by way of court order (being Annexure 2).

Question 10

30. Please detail the consequences to VAN if it were to be unsuccessful in the appeal (as referred to in paragraphs C and E).

Answer 10

31. VAN notes that Billabong Gold filed a notice of appeal from the judgment on 2 March 2022 and filed its case for the appeal on 6 April 2022. Vango is now preparing its responsive case.
32. By its appeal, Billabong Gold asserts that it was entitled to be offered purported agreements contemplated between Vango, Dampier (Plutonic) Pty Ltd and Dampier Gold Limited (as it was then known) in March and May 2016. Justice Martin held there was no such entitlement. Billabong Gold is seeking the May 2016 agreement which is in the terms announced by Vango on 12 May 2016 (attached) as well as an earlier draft of that agreement from March 2016. Vango considers that Justice Martin was correct in finding that any purported "rights of first refusal" relating to the draft March 2016 agreement and the May 2016 agreement were unassignable and does not consider it likely that Billabong Gold's will be successful in its Appeal.

Question 11

33. Please confirm that VAN is complying with the Listing Rules and, in particular, Listing Rule 3.1.

Answer 11

34. We confirm that Vango is complying with the Listing Rules and in particular, Listing Rule 3.1.

Question 12

35. Please confirm that VAN's responses to the questions above have been authorised and approved in accordance with its published continuous disclosure policy or otherwise by its board or an officer of VAN with delegated authority from the board to respond to ASX on disclosure matters.

Answer 12

36. I confirm that the responses to the above questions have been authorised by the Vango Mining Limited Executive Chairman, Bruce McInnes.

Yours faithfully,



Ian Morgan
Company Secretary
Vango Mining Limited



25 March 2022

Reference: ODIN49742

Mr Ian Morgan
Company Secretary
Vango Mining Limited

By email: ihm@bigpond.net.au

Dear Mr Morgan

Vango Mining ('VAN'): Query Letter

ASX refers to the following:

Supreme Court of Western Australia Proceedings

- A. VAN's announcement titled "WA Court's Decision on Billabong Gold Matter Received" released on the ASX Market Announcements Platform ('MAP') on 17 December 2021, which disclosed (relevantly, emphasis added) that:

*"On 14 December 2021 Justice Martin handed down his decision which provided for Billabong Gold to be offered, in essence, the Binding Term Sheet that had previously been offered to Billabong Gold by the Company. This result means that, in effect, **Billabong Gold has spent the last 2 years of time and money pursuing what had already been offered to them.***

All other claims made by Billabong Gold were unsuccessful, including its claim to an agreement which would have enabled them to obtain forty percent of Vango's tenements."

- B. VAN's announcement titled "Vango Response to ZAG's Opinion on WA Court's Decision" released on MAP on 5 January 2022, which disclosed that:

"Vango stands by its market announcement of 17 December 2021"

- C. The release by Superior Gold, Billabong Gold's parent, on 14 March 2022,¹ which disclosed (emphasis added) that:

*"Final orders were provided by the Supreme Court of Western Australia in Civil ("the Court") on February 11, 2022, whereby Superior Gold was largely successful in the litigation, with the Court agreeing that Vango breached its obligations under the OTA in respect of the 2017 transaction. While Superior Gold was not ultimately successful as regards the 2016 transaction, **it has filed an appeal** and remains confident that its position will ultimately prevail..."*

The Court ordered Vango to make offers to Billabong with respect to its K2 Tenements [the 'K2 Tenements']. On March 11, 2022, Billabong elected to accept the following binding offer, the key terms of which are:

1) Billabong may earn an interest in the K2 Tenements ("Farm-in Interest") by contributing up to the lesser of 50% of the Capital Expenditures ("CAPEX") or AUD\$3.0 million to the development of the K2 Tenements as agreed to by a committee consisting of equal numbers of Vango and Billabong representatives with each party entitled to one vote.

¹https://money.tmx.com/en/quote/SGL/news/5315120956083004/SUPERIOR_GOLD_ANNOUNCES_COURT_AWARDS_IT_THE_ABILITY_TO_EARN_UP_TO_50_JOINT_VENTURE_INTEREST_IN_VANGOS_K2_TENEMENTS

2) Billabong's Farm-in Interest shall be calculated on the basis of Billabong's contribution to CAPEX (\$X) as per the ratio of \$X/\$CAPEX or 50% (whichever is the lesser).

3) At the completion of Billabong's expenditure Vango must transfer to Billabong the legal and beneficial interest in the K2 Tenements equal in percentage to the Farm-in Interest.

4) Billabong and Vango may enter good faith negotiations to conclude a more detailed Mining Agreement that expressly includes a right for Billabong to be offered within 12 months from signing the Mining Agreement, the right to earn the same interest, and in the same manner as provided for above, over the other tenements acquired by Vango in 2016 from Dampier Gold Ltd (now Zuleika Gold Limited) that are to be developed by Vango."

- D. VAN's request for a trading halt released on MAP on 16 March 2022, which disclosed (emphasis added):
- "[VAN] requests a halt in trading of Vango's Equity Securities listed on ASX from trading on Wednesday 16 March 2022 pending the release of an announcement **to rectify false and misleading information about the Company**, that was released yesterday by a foreign domiciled company."*
- E. VAN's announcement titled "Update to WA Court's Decision on Billabong Gold Matter" released on MAP on 18 March 2022, which disclosed (emphasis added):
- "...Billabong accepted an offer from Vango on 11 March 2022. The acceptance of this offer will now provide it with **an opportunity to earn an interest in, and work with Vango in relation to, the K2 tenement by contributing at least \$3,000,000 to its development**. It will also have an opportunity to undertake good faith negotiations with Vango for the possibility of entering into a future mining agreement which would see, if an agreement can be reached, the potential to earn an interest in other tenements that may be subject to development..."*
- F. VAN's Half Yearly Report for the period ending 31 December 2021 released on MAP on 16 March 2022, which disclosed (emphasis added):
- "A judgement was delivered in respect of the Billabong matter on 14 December 2021 and the Dampier matter is ongoing. At present the Directors do not believe that it is reasonably possible to estimate any potential obligation in relation to these matters with sufficient reliability and consequently no provisions have been raised as at the balance date. The Directors **do not believe that the settlement of any obligations arising from these matters will be material**."*

Listing Rules

- G. Listing Rule 3.1, which requires a listed entity to immediately give ASX any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities.

Request for information

Having regard to the above, ASX asks VAN to respond separately to each of the following questions and requests for information:

1. Are the terms of the binding offer, as described in points 1 to 4 of Superior Gold's release (paragraph C) an accurate representation of the agreement entered into by VAN and Billabong Gold on 11 March 2022 (the 'March Agreement')?
2. If the answer to question 1 is "yes", please indicate which part(s) of Superior Gold's release (paragraph C) are "false and misleading" per VAN's announcement in paragraph D?
3. If the answer to question 1 is "no", please indicate what the relevant material differences are.

- For personal use only
4. The offer that triggered the right of first refusal clause contemplated a contribution of the “lesser of \$3,000,000 or 50% of the [capital expenditures]”.² Please explain why VAN is of the view that Billabong Gold has to contribute at least \$3,000,000 (paragraph E) rather than the lesser of \$3,000,000 or 50% of capital expenditures?
 5. Can Billabong potentially earn a 50% interest in the K2 Tenements by contributing less than \$3,000,000? If not, please provide further details.
 6. If the answer to question 5 is “yes”, please identify the specific announcement(s) on MAP disclosing this possibility. If no announcement was made, please explain why not.
 7. Were the terms of the March Agreement identical to the terms of the offer previously made to Billabong Gold by VAN (as described in paragraph A)? If not, please detail the differences between what was offered and what was entered into in the March Agreement.
 8. Following the entry into the March Agreement, is VAN still of the view that the impact of the decision is immaterial to VAN (paragraph F)? Please provide the basis for that view.
 9. Please provide ASX with a copy of the March Agreement and any other relevant agreements between Billabong Gold and VAN (not for release to the market).
 10. Please detail the consequences to VAN if it were to be unsuccessful in the appeal (as referred to in paragraphs C and E).
 11. Please confirm that VAN is complying with the Listing Rules and, in particular, Listing Rule 3.1.
 12. Please confirm that VAN’s responses to the questions above have been authorised and approved in accordance with its published continuous disclosure policy or otherwise by its board or an officer of VAN with delegated authority from the board to respond to ASX on disclosure matters.

When and where to send your response

This request is made under Listing Rule 18.7. Your response is required as soon as reasonably possible and, in any event, by no later than **12:00PM AWST Wednesday, 30 March 2022**. You should note that if the information requested by this letter is information required to be given to ASX under Listing Rule 3.1 and it does not fall within the exceptions mentioned in Listing Rule 3.1A, VAN’s obligation is to disclose the information ‘immediately’. This may require the information to be disclosed before the deadline set out in the previous paragraph and may require VAN to request a trading halt immediately.

Your response should be sent to me by e-mail at **ListingsCompliancePerth@asx.com.au**. It should not be sent directly to the ASX Market Announcements Office. This is to allow me to review your response to confirm that it is in a form appropriate for release to the market, before it is published on the ASX Market Announcements Platform.

Trading halt

If you are unable to respond to this letter by the time specified above, you should discuss with us whether it is appropriate to request a trading halt in VAN’s securities under Listing Rule 17.1. If you wish a trading halt, you must tell us:

- the reasons for the trading halt;
- how long you want the trading halt to last;

² As described in paragraph [228] of *Billabong Gold Pty Ltd v Vango Mining Ltd* (No 2) [2021] WASC 459.

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- the event you expect to happen that will end the trading halt;
 - that you are not aware of any reason why the trading halt should not be granted; and
 - any other information necessary to inform the market about the trading halt, or that we ask for.

We require the request for a trading halt to be in writing. The trading halt cannot extend past the commencement of normal trading on the second day after the day on which it is granted. You can find further information about trading halts in Guidance Note 16 *Trading Halts & Voluntary Suspensions*.

Suspension

If you are unable to respond to this letter by the time specified above, ASX will likely suspend trading in VAN's securities under Listing Rule 17.3.

Listing Rules 3.1 and 3.1A

In responding to this letter, you should have regard to VAN's obligations under Listing Rules 3.1 and 3.1A and also to Guidance Note 8 *Continuous Disclosure*: Listing Rules 3.1 – 3.1B. It should be noted that VAN's obligation to disclose information under Listing Rule 3.1 is not confined to, nor is it necessarily satisfied by, answering the questions set out in this letter.

Release of correspondence between ASX and entity

We reserve the right to release a copy of this letter, your reply and any other related correspondence between us to the market under listing rule 18.7A.

Questions

If you have any questions in relation to the above, please do not hesitate to contact me.

Yours sincerely

Nikki Ciavatta
Adviser, Listings Compliance (Perth)