



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP22/12

Monday, 7 February 2022

Bullseye Mining Limited 03 - 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 by Hongkong Xinhe International Investment Company Limited in relation to the affairs of Bullseye Mining Limited (see [TP 22/02](#)).

Background

Bullseye is the subject of a recommended off-market takeover bid by Emerald Resources NL (ASX: EMR).

On 29 November 2021, Bullseye and Emerald entered into a Bid Implementation Agreement (**BIA**). On 7 December 2021, Emerald announced (among other things):

- the signing of the BIA
- its proposal to make a bid for Bullseye shares recommended by the Bullseye directors
- that it had acquired a pre-bid stake of 19.45% of Bullseye and
- that the Bullseye directors had agreed to accept the offer within 7 days of the offer opening.

The offer opened on 13 December 2021. On 28 December 2021, Bullseye lodged its target's statement.

Declaration

The Panel considered that the circumstances were unacceptable because (among other things):

- There are material information deficiencies in Bullseye's target statement
- The following had a limiting effect on the ability for a competing proposal for Bullseye to be made:

- the warranty that the directors of Bullseye intended to accept the Emerald bid within 7 days of its opening
 - the acceptance of the Emerald bid within that timeframe by each of the directors
 - the delay between signing of the BIA and the announcement that it had been entered into and
 - Emerald acquiring its pre bid stake after signing of the BIA and before it was announced and
- Bullseye agreeing to early dispatch of Emerald’s bidder’s statement and deficiencies in disclosure given Bullseye is an unlisted company added to the limiting effect.

The Panel did not consider it against the public interest to make the declaration, and in making it had regard to the matters in section 657A(3) of the *Corporations Act 2001* (Cth).

Orders

Among other things, the Panel has made orders that (in effect):

- requires Bullseye to make supplementary disclosure
- requires Emerald to extend its bid and offer Bullseye shareholders withdrawal rights
- requires Emerald to issue a supplementary bidder’s statement regarding the withdrawal rights
- requires the Bullseye directors’ acceptances to be cancelled if a superior proposal is made
- requires Emerald not to exercise its rights under the BIA to nominate directors to the Bullseye board.

The sitting Panel was Karen Evans-Cullen (sitting President), Bruce McLennan and Sharon Warburton.

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**

BULLSEYE MINING LIMITED 03

CIRCUMSTANCES

1. Bullseye Mining Limited (**Bullseye**) is an unlisted public company. Bullseye submitted to the Panel that it has “339 largely unsophisticated shareholders”.
2. On 29 November 2021, Bullseye entered into a Takeover Bid Implementation Agreement (**BIA**) with Emerald Resources NL (an ASX listed company - **Emerald**), relating to a proposal that Emerald would make a conditional off-market takeover bid for Bullseye, offering 1 Emerald share for every 3.43 Bullseye shares (**Emerald bid**).
3. Under clause 4.4 of the BIA, Bullseye represented and warranted that:
 - (a) *“the Bullseye Board will recommend that all Bullseye Shareholders accept the Offer, subject to there being no Superior Proposal”*
 - (b) *it had “been informed by each of the directors of Bullseye that they intend to accept the Offer within 7 days of the Offer becoming open for acceptance with respect to all Bullseye Shares owned or controlled by that director, subject to there being no Superior Proposal” and*
 - (c) *it had “been informed by each of the directors of Bullseye that they will not withdraw, revise, revoke or qualify, or make any public statement inconsistent with, the recommendation in clause 4.4(a) unless a Superior Proposal emerges”.*
4. Under clause 4.7 of the BIA, Bullseye agreed (by authority of its directors) that Emerald could dispatch its bidder’s statement *“earlier than the date for sending under item 6 of section 633(1) of the Corporations Act as contemplated in the Timetable”*. The timetable in Schedule 1 of the BIA envisaged that Emerald’s bidder’s statement would be lodged on 7 December 2021 and dispatched on 9 December 2021.
5. On 29 November 2021, Emerald requested and obtained a trading halt on its securities.

6. On 1 December 2021, Emerald requested and obtained a voluntary suspension on its securities.
7. On 7 December 2021, Emerald and Bullseye jointly announced¹ that they had entered into the BIA. The announcement attached the BIA. The announcement disclosed (among other things) that the Emerald bid was *“unanimously recommended by the Directors of Bullseye, who have also agreed to accept the Offer in respect of all shares they control, in each case, in the absence of a superior offer”*.
8. The announcement did not disclose that Bullseye directors intended to accept the Emerald bid within 7 days of the offer opening in the absence of a superior offer, leaving readers to gain this information only by reading the attached, detailed BIA.
9. The Panel considers that Emerald and Bullseye should have disclosed prominently in the announcement full details of the Bullseye directors’ intentions. Even more so, this is because Bullseye submitted that its shareholder base was largely unsophisticated.
10. The announcement also disclosed that *“Contemporaneously with and as part of the bid, Emerald has acquired 19.45% of the current Bullseye shares on issue from existing Bullseye shareholders on the same terms as under the Offer.”* These acquisitions occurred between 2 and 6 December 2021.
11. Also on 7 December 2021, following release of the announcement, trading in Emerald’s securities was reinstated.
12. Prior to the announcement, the highest price paid for a Bullseye share between arm’s length parties had been \$0.31 per share.
13. On 8 December 2021, Emerald issued its bidder’s statement. Emerald’s bidder’s statement disclosed (among other things) that:
 - (a) the Emerald scrip consideration valued *“each Bullseye Share at \$0.30 per share, based on the VWAP of Emerald Shares as traded on the ASX for the 30 calendar days from 27 October 2021 to 26 November 2021 (being \$1.03)”* and
 - (b) Bullseye directors own or control 23,321,696 Bullseye shares representing 5.99% of Bullseye shares on issue as at the date of Emerald’s bidder’s statement.
14. On 13 December 2021, Emerald announced that it had completed dispatch of its bidder’s statement.
15. On 14 December 2021, Bullseye’s Chairman accepted the Emerald bid in relation to one of the parcels of Bullseye shares controlled by him. All the

¹ On Emerald’s ASX announcements platform

directors of Bullseye accepted the Emerald bid within the 7-day period specified in the BIA.

16. On 17 December 2021, Emerald announced that it had a 31.8% relevant interest in Bullseye.
17. On 21 December 2021, Emerald announced that it had a 42.1% relevant interest in Bullseye.
18. On 29 December 2021, Bullseye issued its target's statement, which disclosed (among other things) that:
 - (a) the Emerald bid *"values each Bullseye Share at \$0.30 per share, based on the VWAP of Emerald Shares as traded on the ASX for the 30 calendar days from 27 October 2021 to 26 November 2021 (being \$1.03)"*
 - (b) the value of the Emerald bid *"represents the highest all-time price for a Bullseye Share"* and
 - (c) *"Bullseye Shareholders are currently subject to uncertainty and risks arising from the development of Bullseye's North Laverton Gold Project. The risks currently faced by Bullseye Shareholders with regards to the North Laverton Gold Project include labour shortages and inflationary pressures being experienced in the Western Australian labour market, as well as the associated challenges of establishing a team with the required skills and experience to develop the North Laverton Gold Project into an operating mine"*.
19. On 31 December 2021, Emerald announced that it had a 47.5% relevant interest in Bullseye.
20. On 6 January 2022, Emerald announced that it had a 52.85% relevant interest in Bullseye and that it had declared its bid free of conditions.
21. Also on 6 January 2022, Hongkong Xinhe International Investment Company Limited made an application to the Panel for a declaration and orders in relation to the affairs of Bullseye.
22. On 10 January 2022, the Panel announced receipt of the application.
23. Also on 10 January 2022, Emerald requested and obtained a trading halt on its securities.
24. On 12 January 2022, Emerald requested and obtained a voluntary suspension on its securities.
25. The Panel considers that:

- (a) the warranty that the directors of Bullseye intended to accept the Emerald bid within 7 days of its opening
- (b) the acceptance of the Emerald bid within that timeframe by each of the directors
- (c) the delay between signing of the BIA and the announcement that it had been entered into and
- (d) Emerald acquiring its pre bid stake after signing of the BIA and before it was announced,

had a limiting effect on the ability for a competing proposal for Bullseye to be made.

26. The Panel considers that Bullseye agreeing to early dispatch of Emerald's bidder's statement and deficiencies in disclosure given Bullseye is an unlisted company (see below) added to the limiting effect.
27. The Panel considers that Bullseye's target's statement contains material deficiencies including because it:
 - (a) does not adequately describe the progress of Bullseye's North Laverton Gold Project, or provide details of the risks associated with it
 - (b) provides insufficient disclosure of production targets and drilling results and discloses mineral resource estimates that are not fully compliant with the JORC Code 2012 and
 - (c) does not provide adequate financial information of subsequent events to Bullseye's 2021 Annual Report.
28. Further, the statement in Bullseye's target's statement that the value of the Emerald bid "*represents the highest all-time price for a Bullseye Share*" is misleading as it does not take into account premium for control, or that previously an arm's length acquisition of Bullseye shares exceeded the value of the bid consideration disclosed in Emerald's bidder's and Bullseye's target's statements of \$0.30,² or detail how the directors arrived at their valuation of the company by way of peer company valuations.
29. The Panel considers that, given that Bullseye is unlisted, and not subject to continuous disclosure requirements, adequate disclosure to shareholders at the

² Bullseye submitted that "*the announcements by Emerald and Bullseye, including the Bidder's Statement, the value attributable to the consideration under the bid offer was incorrect. In the announcements the value of the bid offer shares were determined by reference to \$1.03 per Emerald share based on Emerald's 30-day VWAP (being 30 calendar days from 27 October 2021 to 26 November 2021)*", "*Bullseye submits the attributable value should have been \$1.065*" and "*the offer provides shareholders with an opportunity to obtain a value of \$0.33 per share*".

time of a control transaction taking place is particularly important for Bullseye shareholders, any potential rival bidder and the market for corporate control.

30. Bullseye's target's statement contravenes sections 670A and 638 of the *Corporations Act 2001 (Cth) (Act)*.

EFFECT

31. As a result of the matters referred to:
- (a) the acquisition of control over Bullseye shares has not taken place in an efficient, competitive and informed market and
 - (b) Bullseye shareholders were not given enough information to enable them to assess the merits of the proposal.

CONCLUSION

32. 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 Bullseye or
 - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in Bullseye
 - (b) having regard to the purposes of Chapter 6 set out in section 602 of the Act and
 - (c) because they constituted, constitute, will constitute or are likely to constitute a contravention of a provision of Chapter 6 or of Chapter 6A, 6B or 6C of the Act
33. 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) of the Act.

DECLARATION

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

Allan Bulman
Chief Executive
with authority of Karen Evans-Cullen
President of the sitting Panel
Dated 7 February 2022



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Takeovers Panel

**ANNEXURE B
CORPORATIONS ACT
SECTION 657D
ORDERS**

BULLSEYE MINING LIMITED 03

The Panel made a declaration of unacceptable circumstances on 7 February 2022.

THE PANEL ORDERS

Disclosure

1. Bullseye must dispatch a supplementary target's statement, in a form which ASIC and the Panel (through one or more sitting member) having been provided a draft does not object to, that deals with the following disclosures:
 - (a) a description of progress of Bullseye's North Laverton Gold Project
 - (b) details of the risks associated with progress of Bullseye's North Laverton Gold Project
 - (c) disclosure of production targets and drilling results and reference to mineral resource estimates that comply with the JORC Code 2012
 - (d) financial information of subsequent events to Bullseye's 2021 Annual Report
 - (e) an explanation of the account taken by directors of premium for control when making the statement in the target's statement that the value of the Bid "*represents the highest all-time price for a Bullseye Share*"
 - (f) an explanation of the account taken by directors of any previous arm's length acquisition of Bullseye shares that exceeded the value of the Bid consideration when making the statement in the target's statement that the value of the Bid "*represents the highest all-time price for a Bullseye Share*" and
 - (g) a description of how the directors undertook their peer company valuations and arrived at their valuation of Bullseye.
2. Emerald must dispatch a supplementary bidder's statement, in a form which ASIC and the Panel (through one or more sitting member) having been provided a draft does not object to, that:
 - (a) explains to shareholders the effect of the Panel's declaration and orders

- (b) prominently advises Bullseye shareholders of:
 - (i) the right to withdraw their acceptances of the Bid
 - (ii) how to exercise the right of withdrawal and
 - (iii) the time within which the right to withdraw is available and
- (c) offers the withdrawal rights (other than the directors' stakes), for a period of not less than 10 trading days (in total) that meet the following requirements:
 - (i) trading in Emerald shares is available on market and not subject to any trading halt or trading suspension and
 - (ii) the period starts from the date which is the later of the dispatch of Bullseye's supplementary target's statement and the dispatch of Emerald's supplementary bidder's statement.

Withdrawal

3. Emerald must offer withdrawal rights to accepting Bullseye shareholders (other than the directors' stakes), which is equivalent to the right conferred by section 650E of the Act (except to the extent contemplated by these orders).

Directors' acceptances

4. If prior to the end of the period that a shareholder can withdraw acceptance under Order 2, a competing proposal for Bullseye is made which the Bullseye directors determine is a superior proposal to the Bid:
 - (a) the Bullseye directors' (and their associated entities') acceptances are cancelled and
 - (b) the Bullseye directors (and their associated entities) must not accept the Bid unless the Bullseye directors subsequently determine that the Bid is superior.

Item 9

5. Emerald must not purport to rely on item 9 of section 611 of the Act by taking into account voting power in shares in respect of which acceptances are withdrawn under Order 2 or in respect of which acceptances are cancelled under Order 4.

Actions under the Bid

6. Emerald must not take any action to process any acceptances under the Bid from the date of these orders until the end of the period that a shareholder can withdraw acceptance under Order 2.

7. Emerald must extend its Bid until no earlier than 5:00pm (AEDT) on the day after the end of the period that a shareholder can withdraw acceptance under Order 2. For the avoidance of doubt, this order does not prevent Emerald further extending its Bid in accordance with the Act.
8. Emerald must not take any action to enforce clause 2.4 of the BIA, or otherwise accept an offer to nominate directors to the board of Bullseye, until the end of the period that a shareholder can withdraw acceptance under Order 2.

Interpretation

9. In these orders the following terms have their corresponding meaning:

Act	<i>Corporations Act 2001 (Cth)</i>
BIA	The bid implementation agreement between Emerald and Bullseye attached to the ASX announcement of 7 December 2021 by Emerald
Bid	The off-market takeover bid announced by Emerald on 7 December 2021 for all the issued ordinary shares of Bullseye
Bullseye	Bullseye Mining Limited
Emerald	Emerald Resources NL
Superior proposal	The meaning in clause 1.1 of the BIA

Allan Bulman
Chief Executive
with authority of Karen Evans-Cullen
President of the sitting Panel
Dated 7 February 2022