



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP22/25

Monday, 4 April 2022

Bullseye Mining Limited 04 - 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 28 February 2022 by Hongkong Xinhe International Investment Company Limited (**Xinhe**) in relation to the affairs of Bullseye Mining Limited (**Bullseye**) (see [TP22/16](#)).

Background

Bullseye is the subject of a recommended off-market takeover bid by Emerald Resources NL (ASX: EMR) and a separate off-market takeover bid by Au Xingao Investment Pty Ltd (**Xingao**).

On 3 February 2022, Xingao, which together with Xinhe has voting power in 14.85% of Bullseye, announced its intention to make an off-market takeover bid for Bullseye offering \$0.31 cash per Bullseye share (**Xingao Bid**). The Xingao bid is subject to conditions. The announcement stated that the bid consideration would be increased to \$0.35 per Bullseye share if the due diligence conditions and the 40% condition were satisfied.

On 7 February 2022, in earlier proceedings, the Panel made a declaration of unacceptable circumstances and orders in relation to the affairs of Bullseye.¹ It ordered (among other things) that:

- (a) Bullseye issue a supplementary target's statement to deal with disclosure issues and
- (b) Emerald offer withdrawal rights for Bullseye shareholders who had accepted the Emerald Bid (other than the Bullseye directors) and issue a supplementary bidder's statement to explain the Panel's orders.

¹ Bullseye Mining Limited 03 see [TP 22/12](#)

On 21 February 2022, Emerald announced that it had lodged its supplementary bidder's statement with ASIC.

Also on 21 February 2022, Bullseye emailed its supplementary target's statement to its shareholders. The covering email stated (among other things) that:

"Bullseye Shareholders should note that Au Xingao has not yet made a formal bid and that the only live offer currently capable of acceptance is the Emerald offer..." and

"On 15 February 2022, Au Xingao sent to Bullseye a copy of the draft Bidder's Statement which it intends to send to Bullseye Shareholders and which would contain Au Xingao's formal takeover offer for Bullseye".

Neither Emerald's supplementary bidder's statement nor Bullseye's supplementary target's statement disclosed the date on which the withdrawal rights ended.

On 1 March 2022, Emerald made an ASX announcement:

- extending its bid until 18 March 2022
- disclosing a relevant interest in 54.7% of Bullseye and
- noting that *"the withdrawal rights period will expire at 5:00pm (WST) on Monday, 7 March 2022."*

On 3 March 2022, Xingao announced the increase of its offer price to \$0.35 per Bullseye share.²

On 4 March 2022, Bullseye released a letter to shareholders on its website enclosing the Xingao Bid documents and stating, in highlighted text: ***"Your Board has determined that the Offer is not a superior proposal as compared to the Emerald offer."*** The letter also stated *"Following extensive deliberation ... the Board's position is that the Offer is not a superior proposal. On that basis, pursuant to clauses [sic] 6.2(b)(iii) of the BIA³, Bullseye is not currently able to provide due diligence access to Au Xingao."*

On 8 March 2022, Bullseye released a second letter to shareholders on its website, stating (among other things) that the BIA clause referred to in the 4 March letter *"ceased to legally bind Bullseye as at 1 March 2022"*.

Also on 8 March 2022, Emerald made an announcement stating, among other things, that *"following the expiry of the withdrawal rights period at 5:00pm (WST) on Monday 7 March 2022, it has a relevant interest in 49.41% of the 445,599,851 Bullseye shares currently on issue"*

² in effect removing the conditions to that increase, although the bid itself remained subject to a number of conditions

³ Bid Implementation Agreement

Declaration

The Panel considered that the actions of Bullseye and Emerald had reduced the efficacy of the Panel's orders and had resulted in Bullseye shareholders not having enough information to enable them to assess the merits of the Emerald and Xingao proposals.

Accordingly, the Panel considered that the circumstances were unacceptable.

The Panel did not consider it against the public interest to make the declaration, and had regard to the matters in s657A(3).

Orders

The Panel has made orders that include further withdrawal rights for Bullseye shareholders who had accepted the Emerald bid (other than the directors) and further disclosure.

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.

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ANNEXURE A

CORPORATIONS ACT SECTION 657A

DECLARATION OF UNACCEPTABLE CIRCUMSTANCES

BULLSEYE MINING LIMITED 04

CIRCUMSTANCES

1. Bullseye Mining Limited (**Bullseye**) is an unlisted public company. Bullseye has previously submitted to the Panel that it has “339 largely unsophisticated shareholders” and now has 392 shareholders.
2. Emerald Resources NL (**Emerald**) is an ASX listed company (ASX: EMR).
3. Emerald has made a conditional off-market takeover bid for Bullseye offering 1 Emerald share for every 3.43 Bullseye shares (**Emerald Bid**). The Emerald Bid was declared unconditional on 6 January 2022. The Emerald Bid is due to close (unless extended) on 1 April 2022.
4. Bullseye and Emerald entered into a bid implementation agreement in relation to the Emerald Bid (**BIA**). The BIA included exclusivity provisions.
5. On 3 February 2022, Au Xingao Investment Pty Ltd (**Xingao**), which together with Hongkong Xinhe International Investment Company Limited has voting power in 14.85% of Bullseye, announced its intention to make an off-market takeover bid for Bullseye offering \$0.31 cash per Bullseye share (**Xingao Bid**). The bid announcement was subject to conditions, including due diligence conditions (**Due Diligence Conditions**) and a 40% minimum acceptance condition (**40% condition**). The bid announcement stated that the bid consideration would be increased to \$0.35 per Bullseye share if the Due Diligence Conditions and the 40% condition were satisfied.
6. On 7 February 2022, the Panel made a declaration of unacceptable circumstances and orders in relation to the affairs of Bullseye.⁴ It ordered (among other things) that:

⁴ Bullseye Mining Limited 03 see TP 22/12

- (a) Bullseye issue a supplementary target's statement to deal with disclosure issues identified by the Panel and
 - (b) Emerald issue a supplementary bidder's statement to explain the Panel's orders and the withdrawal rights that the Panel had granted accepting shareholders of the Emerald Bid other than the Bullseye directors.
7. The withdrawal rights that the Panel ordered were to be available for a period of not less than 10 trading days (in total) that met the following requirements:
 - (a) *trading in Emerald shares is available on market and not subject to any trading halt or trading suspension and*
 - (b) *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.*
 8. Also on 7 February 2022, Bullseye posted on its website that after business hours on 3 February 2022 it had received Xingao's 3 February 2022 announcement.
 9. On 14 February 2022, Xingao lodged its bidder's statement with ASIC. Xingao served its bidder's statement on Bullseye on 15 February 2022.
 10. On 18 February 2022, Xingao sent a letter to Bullseye shareholders via its media advisers outlining the Xingao Bid.
 11. On 21 February 2022, Emerald announced that it had lodged its supplementary bidder's statement (as required by the Panel orders) with ASIC.
 12. Also on 21 February 2022, Bullseye emailed its supplementary target's statement to its shareholders, the covering email stating (among other things) that:

"Bullseye Shareholders should note that Au Xingao has not yet made a formal bid and that the only live offer currently capable of acceptance is the Emerald offer..." and

"On 15 February 2022, Au Xingao sent to Bullseye a copy of the draft Bidder's Statement which it intends to send to Bullseye Shareholders and which would contain Au Xingao's formal takeover offer for Bullseye".
 13. Neither Emerald's supplementary bidder's statement nor Bullseye's supplementary target's statement disclosed the date on which the withdrawal rights ended.
 14. On 23 February 2022, Xingao lodged with ASIC a supplementary bidder's statement and replacement bidder's statement in relation to the Xingao Bid.
 15. On 1 March 2022, Emerald made an ASX announcement:

- (a) extending its bid until 18 March 2022
 - (b) disclosing a relevant interest in 54.7% of Bullseye
 - (c) noting that *“the withdrawal rights period will expire at 5:00pm (WST) on Monday, 7 March 2022.”*
16. On 2 March 2022, the Bullseye board met to consider the Xingao Bid. It determined (with one director abstaining) that it did not represent a superior proposal as compared with the Emerald Bid.
 17. On 3 March 2022, Xingao announced the increase of its offer price to \$0.35 per Bullseye share (in effect removing the conditions to that increase, although the bid itself remained subject to a number of conditions).
 18. On 4 March 2022, Bullseye released a letter to shareholders on its website enclosing the Xingao Bid documents and stating, in highlighted text: ***“Your Board has determined that the Offer is not a superior proposal as compared to the Emerald offer.”***
 19. The letter also stated *“Based on the closing price of Emerald shares on ASX on 2 March of \$1.135, the Emerald offer currently equates to \$0.33 per Bullseye share, as compared with \$0.35 for the Offer. On the face of it, this means that the value of the Offer is marginally superior. However, the following points were considered by the Board in arriving at its ultimate decision that the Offer is not a superior proposal: [followed by a list of 16 points]”*.
 20. The letter also stated *“Following extensive deliberation, as detailed above, the Board’s position is that the Offer is not a superior proposal. On that basis, pursuant to clauses 6.2(b)(iii) of the BIA, Bullseye is not currently able to provide due diligence access to Au Xingao.”*
 21. On 8 March 2022, Bullseye released a second letter to shareholders on its website, stating:
 - (a) the BIA clauses referred to in the 4 March letter *“ceased to legally bind Bullseye as at 1 March 2022”*
 - (b) at its meeting on 7 March 2022, the Bullseye board *“determined that, at the present time, it is not prepared to provide due diligence access to Au Xingao on the basis sought by way of the Due Diligence Condition.”* The letter did not disclose that one director was not present.
 - (c) *“The Board considers that it would be inconsistent with its publicly announced position in support of the Emerald bid (and contrary to the spirit if not the letter of the BIA) were it to provide due diligence to Au Xingao in the current circumstances.”*

22. Also on 8 March 2022, Emerald made an announcement stating, among other things, that *“following the expiry of the withdrawal rights period at 5:00pm (WST) on Monday 7 March 2022, it has a relevant interest in 49.41% of the 445,599,851 Bullseye shares currently on issue”*.
23. In relation to Bullseye the Panel considers that the following (among other things) have reduced the efficacy of the Panel’s orders and have resulted in Bullseye shareholders not having enough information to enable them to assess the merits of the Emerald and Xingao proposals:
- (a) non-disclosure of the end of the withdrawal rights period in a supplementary target’s statement
 - (b) the delay in informing Bullseye shareholders of progress in relation to the Xingao Bid, including the delay in providing Xingao’s bidder’s statement and replacement bidder’s statement
 - (c) Bullseye’s misleading statements in the email to shareholders dated 21 February 2022 and its supplementary target’s statement in relation to the status of the Xingao Bid
 - (d) non-disclosure of the risk that Emerald may accept the Xingao Bid, thereby depriving Bullseye shareholders who had accepted Emerald’s Bid from exposure to Bullseye’s assets, which was a material information deficiency
 - (e) the false and misleading statement in Bullseye's letter to shareholders dated 4 March 2022 that Bullseye was *“pursuant to clauses 6.2(b)(iii) of the BIA ... not currently able to provide due diligence.”* It was not corrected until after the expiry of the withdrawal rights
 - (f) non-disclosure in the letters of 4 and 8 March that the decisions of the board referred to in each letter were not decisions of the whole board
 - (g) information provided in the 4 and 8 March letters to shareholders in relation to the relative values and premia of the Emerald and Xingao Bids was not to the standard required under a target's statement
 - (h) the misleading statement in Bullseye's 8 March letter to shareholders regarding the *‘spirit of the BIA’*.
24. In relation to Emerald, the Panel considers that:
- (a) non-disclosure until 1 March 2022 of the end of the withdrawal rights period in a supplementary bidder’s statement reduced the efficacy of the Panel’s orders and resulted in Bullseye shareholders not having enough information to enable them to assess the merits of the Emerald proposal and

- (b) Emerald should have disclosed to Bullseye shareholders whether it had any intentions in relation to accepting the Xingao Bid and, if so, what those intentions were.

EFFECT

- 25. 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
 - (b) Bullseye shareholders were not given enough information to enable them to assess the merits of Emerald's proposal and
 - (c) Bullseye shareholders were not given enough information to enable them to assess the merits of Xingao's proposal.
- 26. 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 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) in the alternative, having regard to the purposes of Chapter 6 set out in section 602 of *the Corporations Act 2001 (Cth) (Act)*
 - (c) in the further alternative, because they constituted a contravention of a provision of Chapter 6 of the Act.
- 27. 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 Bullseye.

Tania Mattei
General Counsel
with authority of Karen Evans-Cullen
President of the sitting Panel
Dated 1 April 2022



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Takeovers Panel

ANNEXURE B

CORPORATIONS ACT SECTION 657D ORDERS

BULLSEYE MINING LIMITED 04

The Panel made a declaration of unacceptable circumstances on 1 April 2022.

THE PANEL ORDERS

1. Emerald must offer a withdrawal right (further to the withdrawal right previously offered to Bullseye shareholders) to accepting Bullseye shareholders, other than Bullseye's directors, for a period of not less than 10 trading days from the date of the supplementary bidder's statement referred to in order 2.
2. Emerald must dispatch a supplementary bidder's statement on the date of the supplementary bidder's statement, in a form which ASIC and the Panel (through at least one sitting member) does not object to, that:
 - (a) explains the effect of the Panel's declaration and these orders
 - (b) discloses whether it has any intentions in relation to accepting the Xingao bid and, if so, what those intentions are
 - (c) offers the further withdrawal right to accepting Bullseye shareholders, other than Bullseye's directors, for a period of not less than 10 trading days from the date of the supplementary bidder's statement referred to in this order
 - (d) includes details of how to exercise the further withdrawal right
 - (e) includes the date when the period of the further withdrawal right will end
 - (f) explains that a shareholder may confirm in writing to Emerald that the shareholder does not wish to exercise the further withdrawal right, in which case the shareholder's acceptance may be processed by Emerald
 - (g) includes instructions and a form for a shareholder to complete in relation to withdrawal and
 - (h) includes instructions and either a separate form or combined with the form referred to in paragraph 2(g) for a shareholder to complete in relation to confirmation that the shareholder does not wish to exercise the further withdrawal right.
3. Emerald must not process any acceptances under the Emerald Bid until the expiry of the period that Bullseye shareholders can withdraw their acceptances under order 1

unless that shareholder has confirmed in writing to Emerald in accordance with order 2 that they do not wish to exercise the withdrawal right.

4. 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 1.
5. 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 1.
6. Bullseye must not make any statement to its shareholders in relation to the effect of the Panel's declaration and these orders other than by way of a supplementary target's statement.
7. Xingao must within 2 trading days of the date of these orders issue a supplementary bidder's statement disclosing the number of acceptances it has received in response to the Xingao Bid and the percentage of Bullseye shares that the acceptances represent.

Interpretation

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

accepting Bullseye shareholders	Bullseye shareholders who accepted the Emerald Bid prior to the date of the supplementary bidder's statement referred to in order 2
Act	<i>Corporations Act 2001</i> (Cth)
BIA	The bid implementation agreement between Emerald and Bullseye attached to the ASX announcement of 7 December 2021 by Emerald
Bullseye	Bullseye Mining Limited
Emerald	Emerald Resources NL
Emerald Bid	The off-market takeover bid announced by Emerald on 7 December 2021 for all the ordinary shares of Bullseye
Xingao	Au Xingao Investment Pty Ltd
Xingao Bid	The off-market takeover bid by Xingao for all the ordinary shares of Bullseye pursuant to the replacement bidder's statement and second supplementary bidder's statement dated 3 March 2022

Tania Mattei
General Counsel
with authority of Karen Evans-Cullen
President of the sitting Panel
Dated 1 April 2022