



**Australian Government**

**Takeovers Panel**

# MEDIA RELEASE

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**No: TP22/02**

**Monday, 10 January 2022**

## **Bullseye Mining Limited 03 – Panel Receives Application**

The Panel has received an application from Hongkong Xinhe International Investment Company Limited in relation to the affairs of Bullseye Mining Limited. Bullseye is currently the subject of a recommended off-market takeover bid by Emerald Resources NL (ASX: EMR).

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**

Bullseye is an unlisted public company with more than 50 shareholders.

Since at least May 2021, Bullseye has been in discussions with Emerald in relation to a possible merger transaction.

On 29 November 2021, Bullseye and Emerald entered into a Bid Implementation Agreement.<sup>1</sup>

Between 29 November 2021 and 3 December 2021, Bullseye issued 71,641,270 Bullseye shares at between \$0.20 and \$0.27 per share.

On 7 December 2021, Emerald announced, among other things:

- the signing of the Bid Implementation Agreement and its proposal to acquire all of the issued shares of Bullseye by way of a conditional scrip off-market takeover offer recommended by the Bullseye Board
- that Emerald had acquired 19.45% of the Bullseye shares on issue as a pre-bid stake from existing Bullseye shareholders on the same terms as under the offer

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<sup>1</sup> As disclosed in Bullseye's target's statement

- that the directors of Bullseye had agreed to accept the offer (within 7 days of the offer opening) in respect of all shares they control in the absence of a superior proposal and
- the offer applies to shares issued as a result of the conversion of convertible notes and convertible loans during the offer period.

On 8 December 2021, Emerald lodged its bidder's statement and the offer opened on 13 December 2021.

On 13 December 2021, Bullseye issued 17,251,236 Bullseye shares at \$0.23 per share and 17,386,494 Bullseye shares at \$0.25 per share.

On 28 December 2021, Bullseye lodged its target's statement disclosing that as of that date Emerald held a relevant interest in 46.09% of Bullseye's shares.

The offer is scheduled to close on 14 January 2022.<sup>2</sup>

The applicant submits, among other things:

- that the target's statement, and potentially the bidder's statement, are deficient and prevent Bullseye shareholders making a properly informed decision in relation to the offer
- an alleged contravention of section 606<sup>3</sup> by Emerald as a result of the pre-bid acquisitions and the acquisition of a relevant interest in the shares held by the Bullseye directors, as well as an undisclosed association between Emerald and each of the Bullseye directors
- that other alleged undisclosed associations between Emerald and Bullseye shareholders can be inferred as a result of the high level of acceptances into the offer over the Christmas period and before the release of the target's statement, particularly given the significant dilution through the issue of Bullseye shares since Emerald's announcement on 7 December 2021
- an alleged breach of Emerald's continuous disclosure obligations as a result of failing to disclose to ASX the execution of the Bid Implementation Agreement in the period between 29 November 2021 and 7 December 2021
- a contravention of the principles in section 602 resulting from the failure by each of Bullseye and Emerald to announce the Bid Implementation Agreement at the time of execution

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<sup>2</sup> Late on 6 January 2022 (the same evening the application was lodged), Emerald made an announcement declaring its offer unconditional, accelerating the payment terms under the offer and disclosing a relevant interest in 52.85% of Bullseye

<sup>3</sup> All statutory references are to the *Corporations Act 2001* (Cth), and all terms used in Chapter 6 or 6C have the meaning given in the relevant chapter (as modified by ASIC)

- a contravention of the principle in section 602(c) for at least the following reasons:
  - Bullseye shareholders who had their shares acquired as part of the pre-bid agreements received a benefit over and above other shareholders
  - Bullseye shareholders, optionholders and noteholders who were issued shares, options or notes (respectively) in the period where Bullseye was in discussions with Emerald stand to receive a short-term uplift in their investment and
  - the issue of a significant number of Bullseye shares whilst Bullseye was in discussions with Emerald at a significant discount to the Emerald bid price has diluted the interests of the pre-existing Bullseye shareholders and therefore potentially deprived them of the opportunity of a higher bid price based on total enterprise value absent such dilution and
- a potential contravention of section 621, as a consequence of the delay in announcing the execution of the Bid Implementation Agreement, on the basis that the value of the offer under the bid is lower than the highest price paid by Emerald for Bullseye shares in the 4 months prior to the bid.

The applicant seeks an interim order restraining Emerald from processing any acceptances under the bid prior to the application being determined.

The applicant seeks final orders including to require corrective disclosure from Bullseye and Emerald, to vest certain Bullseye shares acquired by Emerald and, in effect, whatever orders the Panel considers necessary to address the 'springboard' advantage gained by Emerald through its pre-bid conduct that is found to have been unacceptable.

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