



Australian Government

Takeovers Panel

# MEDIA RELEASE

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No: TP23/031

Friday, 6 October 2023

## Bullseye Mining Limited 06 – 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 21 August 2023 by Mr Desmond Mullan (**Applicant**) in relation to the affairs of Bullseye Mining Limited (**Bullseye**) (see [TP23/028](#)).

### Background

Bullseye is an unlisted public company. Bullseye is currently the subject of an off-market takeover bid by Emerald Resources NL (ASX:EMR) (**Emerald**).

As at the date of the application:

- Emerald held approximately 57.34% of Bullseye’s issued share capital
- Hongkong Xinhe International Investment Company Limited (**Xinhe**) held approximately 12.58% of Bullseye’s issued share capital
- AU Xingao Investment Pty Limited (**Au Xingao**) held approximately 5.62% of Bullseye’s issued share capital and
- the Applicant held approximately 3.74% of Bullseye’s issued share capital.

Bullseye, Emerald and Xinhe (among other parties) were previously involved in a number of oppression proceedings in the Supreme Court of Western Australia between 2020 and 2023.

In May 2023, a discussion paper in relation to “*the formulation of a possible takeover offer following a settlement of litigation*” was agreed in principle between Emerald, Xinhe and Au Xingao. The discussion paper contemplated the settlement of the oppression proceedings by way of an issue of new Bullseye shares to Xinhe, and the formulation of Emerald’s takeover bid (including the provision of a shareholder intention statement by Xinhe with respect to the takeover bid).

On 24 May 2023, Bullseye received a non-binding indicative offer from Emerald in relation to its proposal to acquire all of the shares in Bullseye. The offer included a number of indicative terms and conditions, including with respect to the settlement of the oppression proceedings, the provision of shareholder intention statements from Xinhe and Au Xingao with respect to the takeover bid, and the inclusion of a minimum acceptance condition equal to 75.56% of Bullseye.

The shareholder intention statements were negotiated between Emerald, Xinhe and Au Xingao through their respective legal representatives throughout June and July 2023.

On 26 July 2023:

- the shareholder intention statements were signed by each of Xinhe and Au Xingao, as well as Emerald – stating in effect that Xinhe and Au Xingao, in the absence of a superior proposal, intend to accept the Emerald Offer on *“the date that the Offer is first open for acceptance”*
- a bid implementation agreement between Emerald and Bullseye with respect to the takeover bid was signed and
- settlement deeds with respect to the oppression proceedings were signed.

On 27 July 2023, Emerald’s takeover bid was announced, including the terms of the shareholder intention statements, noting timing for acceptance of the takeover bid by Xinhe and Au Xingao as being *“a date that is not earlier than 21 days after the date of this announcement”*.

On 17 August 2023:

- Emerald’s bidder’s statement was lodged with ASIC and
- Bullseye announced that, as part of the settlement for the oppression proceedings, Bullseye had issued 22,800,000 Bullseye shares to Au Xingao.

On 21 August 2023, the takeover bid opened.

On 28 August 2023, Xinhe and Au Xingao accepted the takeover bid.

### **Declaration**

Having regard to the material before it, the Panel considers that (among other things):

- there is sufficient material for the Panel to infer that the takeover bid, the shareholder intention statements and the settlement of the oppression proceedings are interconnected and part of the one commercial transaction

- by virtue of Emerald and each of Xinhe and Au Xingao entering into the shareholder intention statements and the settlement:
  - Emerald acquired a relevant interest in the shares held by Xinhe and Au Xingao, and therefore increased its voting power in Bullseye shares from approximately 57.34% to approximately 75.54% pursuant to section 608<sup>1</sup>, in contravention of section 606 and
  - Bullseye shareholders have not been provided with sufficient information about the connection between the takeover bid, the shareholder intention statements and the settlement of the oppression proceedings, including whether Xinhe and Au Xingao have been provided with a benefit that has not otherwise been provided to other shareholders of Bullseye
- the timing for acceptance by Xinhe and Au Xingao of the takeover bid did not allow a reasonable time to pass for a superior proposal to emerge contrary to the Panel’s guidance on shareholder intention statements and
- the terms of the shareholder intention statements were not accurately disclosed to the market.

Accordingly, the Panel considers that the circumstances were unacceptable as the acquisition of control over Bullseye shares has not taken place in an efficient, competitive and informed market, and Bullseye shareholders have not been provided with sufficient information in order to assess the merits of the takeover bid (including any benefits accruing to shareholders of Bullseye).

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

## Orders

The Panel has made orders that (among other things):

- for a period of 3 years from the date of the orders, Emerald and its associates be restricted from:
  - exercising voting rights in respect of certain of its Bullseye shares (excluding Emerald’s voting power of 57.34% plus any percentage voting power increase resulting from acceptances under the takeover bid, other than the acceptances of Xinhe and Au Xingao) as calculated in the formula set out in the orders

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<sup>1</sup> Unless otherwise indicated, 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)

- acquiring additional Bullseye shares in reliance on items 9 or 11 of section 611 and
- acquiring additional Bullseye shares under an entitlement offer in reliance on items 10, 10A or 13 of section 611 unless all other Bullseye shareholders are entitled to acquire Bullseye shares under the entitlement offer,

with the above restrictions ceasing to apply if, following the time at which the withdrawal rights described below lapse, Emerald or its associates obtains voting power in Bullseye of 90% or more

- Bullseye be required to prepare a supplementary target's statement (**Supplementary Target's Statement**) to include (among other things) an independent expert's report providing an opinion on whether Xinhe and Au Xingao obtained a net benefit in connection with Emerald's takeover bid that was not provided to other Bullseye shareholders
- Bullseye shareholders who have accepted Emerald's takeover bid by the date of the Supplementary Target's Statement be provided with withdrawal rights until the date that is 10 business days after the date of the Supplementary Target's Statement
- the takeover bid remain open until a date that is 10 business days after the date of the Supplementary Target's Statement and
- Emerald be restricted from processing acceptances received from Xinhe and Au Xingao in relation to the takeover bid until the date that is 5 business days after the date of the orders.

The Panel proposes to refer this matter to ASIC under Regulation 18 of the ASIC Regulations 2001, for ASIC to consider making an application to the Panel in the event that the independent expert determines that Xinhe and Au Xingao obtained a net benefit in connection with Emerald's takeover bid that was not provided to other Bullseye shareholders.

The sitting Panel was Ruth Higgins SC, Christian Johnston (sitting President) and Michael Lishman.

The Panel will publish its reasons for the decision in due course on its website [www.takeovers.gov.au](http://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 06**

**BACKGROUND**

1. Bullseye Mining Limited (**Bullseye**) is an unlisted public company. Bullseye has approximately 155 shareholders including<sup>1</sup>:
  - (a) Emerald Resources NL (**Emerald**) which holds approximately 57.34% of Bullseye's issued share capital
  - (b) Hongkong Xinhe International Investment Company Limited (**Xinhe**) which holds approximately 12.58% of Bullseye's issued share capital
  - (c) AU Xingao Investment Pty Limited (**Au Xingao**) which holds approximately 5.62% of Bullseye's issued share capital and
  - (d) Mr Desmond Mullan who holds approximately 3.74% of Bullseye's issued share capital.
2. The current directors of Bullseye are Mr Morgan Hart (Non-Executive Chairman), Mr Peter Gerard Burns (Executive Director), Mr Anthony Short (Non-Executive Director) and Mr Mark Clements (Non-Executive Director and Company Secretary). Mr Morgan Hart is the Managing Director of Emerald. Mr Mark Clements is the Company Secretary and a Non-Executive Director of Emerald.
3. On 3 July 2020, Xinhe commenced oppression proceedings in the Supreme Court of Western Australia against Bullseye and three former or current directors of Bullseye, including current director Mr Burns (**2020 Proceedings**).
4. On 10 August 2021, Xinhe commenced fresh oppression proceedings in the Supreme Court of Western Australia against the same defendants as in the 2020 Proceedings (**2021 Proceedings**).

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<sup>1</sup> As at 1 September 2023

5. On 18 August 2021, the 2020 Proceedings and 2021 Proceedings were consolidated (**2020/2021 Proceedings**).
6. On 6 September 2021, the trial for the 2020/2021 Proceedings commenced in the Supreme Court of Western Australia.
7. On 7 December 2021, Emerald made a takeover offer for all of the shares in Bullseye. The Panel has dealt with a number of previous applications in relation to the affairs of Bullseye, including relevantly in relation to the 2021 takeover offer by Emerald.<sup>2</sup> The takeover offer closed on 21 June 2022 and following the close of the offer, Emerald held approximately 59.32% of Bullseye's issued share capital.
8. On 25 August 2022, Xinhe and Au Xingao commenced oppression proceedings in the Supreme Court of Western Australia against Bullseye, Emerald and five former or current directors of Bullseye, including current directors Mr Burns and Mr Short (**2022 Proceedings**).
9. On 22 November 2022, the trial of the 2020/2021 Proceedings concluded after a total of 73 trial days.
10. On 3 February 2023, Xinhe and Au Xingao commenced fresh oppression proceedings in the Supreme Court of Western Australia against the same defendants as in the 2022 Proceedings, as well as current director of Bullseye Mr Clements and other entities related to former or current directors of Bullseye (**2023 Proceedings**).
11. In March 2023, Emerald "*began to formulate a discussion paper addressing a framework of issues to be considered by the relevant parties in the formulation of a possible takeover offer following a settlement of litigation*" (**Discussion Paper**).
12. On 16 March 2023, the 2022 Proceedings and 2023 Proceedings were consolidated (**2022/2023 Proceedings**).
13. In May 2023, the Discussion Paper was agreed in principle between Emerald, Xinhe and Au Xingao. The Discussion Paper provided (among other things) that "*[c]ontemplated terms of settlement are as follows:*
  - (a) *payment by Bullseye to Xinhe which will be satisfied by the issue of new Bullseye shares to Xinhe;*
  - (b) *an off-market takeover bid being made by Emerald for all of the remaining shares in Bullseye...*",

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<sup>2</sup> See *Bullseye Mining Limited 03* [2022] ATP 4, *Bullseye Mining Limited 04* [2022] ATP 8 and *Bullseye Mining Limited 05* [2022] ATP 14

and referred to as part of the “off-market takeover-bid”, a “[t]ruth in takeover statement by Xinhe supporting and accepting the Takeover Offer subject to any third party making superior offer”.

14. On 24 May 2023, Bullseye received a non-binding indicative offer (NBIO) from Emerald in relation to its proposal to acquire all of the shares in Bullseye (Emerald Offer). The NBIO stated that the Emerald Offer would include the following “key terms and conditions” (among others):
  - (a) “receipt of a formal consent Court order for the Proposed Settlement on terms satisfactory to Emerald”
  - (b) “Xinhe and Au Xingao to provide a shareholder intention statement in a form acceptable to Emerald confirming their intention to accept Emerald’s Offer in respect of all Bullseye shares they hold or control, subject to the required statutory carve-outs” and
  - (c) “subject to a minimum acceptance condition of Emerald acquiring a relevant interest in approximately 75.56% of Bullseye (being Xinhe and Au Xingao acceptance of the Offer for all their shares in Bullseye following completion under the Proposed Settlement)”.
15. On 25 May 2023, Bullseye held a board meeting to establish an independent board committee comprising Mr Burns and Mr Short to consider the NBIO and the Emerald Offer.
16. In June 2023, Emerald provided drafts of shareholder intention statements in relation to acceptance of the Emerald Offer by Xinhe and Au Xingao. The terms of the draft shareholder intention statements were negotiated via email between Emerald, Xinhe and Au Xingao during June and July 2023 through their respective legal representatives.
17. On 18 July 2023, Bullseye held a board meeting to consider Bullseye entering into settlement deeds with respect to the 2020/2021 Proceedings and 2022/2023 Proceedings.

## CIRCUMSTANCES

18. On 26 July 2023:
  - (a) the shareholder intention statements were signed by each of Xinhe and Au Xingao, as well as Emerald, noting timing for acceptance of the Emerald Offer by Xinhe and Au Xingao for the shares they control and for 22,800,000 shares to be issued to Au Xingao in the settlement as being, in the absence of a superior proposal, “the date that the Offer is first open for acceptance” (**Signed Shareholder Statements**)
  - (b) a bid implementation agreement between Emerald and Bullseye with respect to the Emerald Offer was signed and

- (c) settlement deeds with respect to the 2020/2021 Proceedings (**2020/2021 Proceedings Settlement Deed**) and the 2022/2023 Proceedings (**2022/2023 Proceedings Settlement Deed**) were signed (together, the **Settlement Deeds**).
19. Clause 2.3 of the 2020/2021 Proceedings Settlement Deed provided “[b]y the date that is the earlier of, 21 days after execution of this Deed, or the Register Date in respect of the Takeover Offer, Bullseye shall procure that the Settlement Shares are allotted and issued to AU Xingao...”. Xinhe, Au Xingao and Bullseye (but not Emerald) were party to the 2020/2021 Proceedings Settlement Deed.
20. The 2022/2023 Proceedings Settlement Deed was, in substance, conditional on the 2020/2021 Proceedings Settlement Deed, as evidenced by clause 2.1 which stated that “[s]ubject to the Old Proceedings Consent Orders being filed and made by the Supreme Court, in full and final settlement of the New Proceedings Claims made by the Plaintiffs against the Defendants or by the Defendants against the Plaintiffs...the Parties agree to settle the New Proceedings...” (with “Old Proceedings” referring to the 2020/2021 Proceedings and “New Proceedings” referring to the 2022/2023 Proceedings). Xinhe, Au Xingao, Bullseye and Emerald were party to the 2022/2023 Settlement Deed.
21. On 27 July 2023, the Emerald Offer was announced, including the terms of the shareholder intention statements noting timing for acceptance of the Emerald Offer by Xinhe and Au Xingao as being “a date that is not earlier than 21 days after the date of this announcement” (**Announced Shareholder Statements**). Xinhe and Au Xingao approved the form of the Announced Shareholder Statements.
22. On 17 August 2023:
- (a) Emerald’s bidder’s statement was lodged with ASIC (**Bidder’s Statement**) and
- (b) Bullseye announced that, as part of the settlement of the 2020/2021 Proceedings and 2022/2023 Proceedings, Bullseye issued 22,800,000 Bullseye shares (which represented 4.496% of Bullseye shares post-issue) to Au Xingao and all parties to those proceedings had agreed to bear their own legal costs (**Share Settlement**).
23. On 21 August 2023, the Emerald Offer opened with a closing date of 22 September 2023 (unless extended or withdrawn).
24. On 28 August 2023, Xinhe and Au Xingao accepted the Emerald Offer.
25. On 1 September 2023, Emerald lodged a supplementary bidder’s statement with ASIC.
26. On 5 September 2023, Bullseye lodged its target’s statement with ASIC.
27. The Panel considers that, having regards to the material before it including:



- (a) the terms and conditions of the Emerald Offer, the Signed Shareholder Statements and the Settlement Deeds, along with other preliminary documents including the NBIO and the Discussion Paper
- (b) the apparent concurrent negotiating of the Emerald Offer, the Signed Shareholder Statements and the Settlement Deeds (including the Share Settlement) as evidenced in email correspondence between the legal representatives of Xinhe, Au Xingao and Emerald and
- (c) the role of Mr Hart as Managing Director of Emerald and Chairman of Bullseye in settlement negotiations,

there is sufficient material for the Panel to infer that the Emerald Offer, the Signed Shareholder Statements and the Settlement Deeds (including the Share Settlement) are interconnected and part of the one commercial transaction.

28. The Panel considers that by virtue of Emerald and each of Xinhe and Au Xingao entering into the Signed Shareholder Statements and agreeing to the Share Settlement:

- (a) Emerald acquired a relevant interest in the shares held by Xinhe and Au Xingao, and therefore increased its voting power in Bullseye shares from approximately 57.34% to approximately 75.54%, in contravention of section 606<sup>3</sup>, because the Signed Shareholder Statements constitute agreements as between Emerald and each of Xinhe and Au Xingao which provide Emerald with the power to dispose of, or control the exercise of a power to dispose of, shares in Bullseye for the purposes of section 608 and
- (b) Bullseye shareholders have not been provided with sufficient information about the connection between the Emerald Offer, the Signed Shareholder Statements and the Settlement Deeds (including the Share Settlement) including whether Xinhe and Au Xingao have been provided with a benefit that has not otherwise been provided to other shareholders of Bullseye.

29. Further, although Emerald's existing shareholding in Bullseye limits the ability for a superior proposal to emerge, the Panel considers that the timing for acceptance by Xinhe and Au Xingao of the Emerald Offer as stated in the Signed Shareholder Statements did not allow a reasonable time to pass for a superior proposal to emerge contrary to its guidance on shareholder intention statements.<sup>4</sup> The Panel also considers, having regard to the material before it, including the Announced Shareholder Statements, that the terms of the Signed Shareholder Statements were not accurately disclosed to the market.

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<sup>3</sup> Unless otherwise indicated, 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)

<sup>4</sup> See *Guidance Note 23: Shareholder Intention Statements*

## **EFFECT**

30. As a result of the matters referred to above:
- (a) the acquisition of control over Bullseye shares has not taken place in an efficient, competitive and informed market and
  - (b) Bullseye shareholders have not been provided with sufficient information to enable them to assess:
    - (i) the merits of the Emerald Offer and
    - (ii) whether they have been given a reasonable and equal opportunity to participate in benefits accruing to shareholders of Bullseye under the Emerald Offer.

## **CONCLUSION**

31. 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 of the Act.
32. 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 Christian Johnston**  
**President of the sitting Panel**  
**Dated 5 October 2023**



**Australian Government**

**Takeovers Panel**

**ANNEXURE B**

**CORPORATIONS ACT**

**SECTION 657D**

**ORDERS**

**BULLSEYE MINING LIMITED 06**

The Panel made a declaration of unacceptable circumstances on 5 October 2023.

**THE PANEL ORDERS**

**Restrictions on Voting and Additional Acquisitions**

1. For 3 years from the date of these orders, Emerald and its associates must not exercise, and Bullseye must disregard, any voting rights in respect of Bullseye shares in excess of A% voting power in Bullseye (as calculated in the formula below).

$$A = B + C$$

where:

B is 57.34% plus any percentage voting power increase resulting from acceptances into the Emerald Bid (excluding the acceptances of Xinhe and Au Xingao) and

C is 3% voting power for each 6 month period following the date of these orders.

2. For 3 years from the date of these orders, Emerald and its associates must not acquire any Bullseye shares in reliance on items 9 or 11 of section 611<sup>1</sup>.
3. For 3 years from the date of these orders, Emerald and its associates must not acquire any Bullseye shares by way of a subscription under, or the underwriting of, an entitlement offer in reliance on items 10, 10A or 13 of section 611 (as applicable) unless all other Bullseye shareholders are entitled to acquire Bullseye shares under the entitlement offer.

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<sup>1</sup> Unless otherwise indicated, 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)

4. Orders 1, 2 and 3 cease to apply if, following 5.00pm (AWST) on the date that is 10 business days after the date of the Supplementary Target's Statement<sup>2</sup>, Emerald or its associates obtain voting power in Bullseye of 90% or more.

### **Supplementary Target's Statement and Independent Expert's Report**

5. As expeditiously as possible, Bullseye must provide to the Panel for its approval a draft supplementary target's statement (**Supplementary Target's Statement**) which includes:
  - (a) a statement at the beginning of the document that the Supplementary Target's Statement was required by the Panel
  - (b) an explanation of the Declaration and these orders
  - (c) an independent expert's report (**Independent Expert's Report**) providing an opinion on whether, as a result of the Share Settlement, Xinhe and Au Xingao obtained a "net benefit"<sup>3</sup> in connection with the Emerald Offer that was not provided to other Bullseye shareholders and, if so, an estimate of the monetary value of the "net benefit" per Bullseye share issued to Au Xingao pursuant to the Share Settlement<sup>4</sup>
  - (d) a summary of the Independent Expert's Report and
  - (e) instructions setting out what a shareholder must do to exercise the withdrawal rights set out in order 8.
6. Within 2 business days after the date the Panel communicates to Bullseye its approval of the draft Supplementary Target's Statement, Bullseye must:
  - (a) publish the Supplementary Target's Statement on its website and
  - (b) dispatch the Supplementary Target's Statement to all Bullseye shareholders.
7. In relation to order 5(c):
  - (a) ASIC must nominate three independent experts to prepare the Independent Expert's Report.

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<sup>2</sup> Being the time at which the withdrawal rights set out in order 8 lapse

<sup>3</sup> See *Guidance Note 21: Collateral benefits*

<sup>4</sup> The Panel proposes to refer the matter to ASIC (under regulation 18 of the *Australian Securities and Investments Commission Regulations 2001* (Cth)) for ASIC to consider with a view to making a further application to the Panel in the event that the Independent Expert's Report opines that, as a result of the Share Settlement, Xinhe and Au Xingao obtained a "net benefit"

- (b) Bullseye must engage one of the experts nominated by ASIC (**Independent Expert**) to prepare, within 3 months after the date of engagement, the Independent Expert's Report.
- (c) The costs of the Independent Expert's Report, and any independent legal advice that the Independent Expert considers is necessary to obtain in order to prepare the Independent Expert's Report, are to be borne by Bullseye.
- (d) Bullseye must provide to the Independent Expert, in a form approved by the Panel, instructions for preparing the Independent Expert's Report, including an explanation of the meaning of "net benefit" with reference to relevant Panel guidance and Panel and Court decisions.
- (e) Bullseye must, in a timely manner, provide all assistance reasonably requested by the Independent Expert to prepare the Independent Expert's Report, including providing the Independent Expert copies of documentation relating to the Court proceedings the subject of the Share Settlement.
- (f) If the Independent Expert is unable to provide the opinion or estimate contemplated by order 5(c), it must include in the Independent Expert's Report the reasons why the Independent Expert was unable to provide such opinion or estimate.

### **Withdrawal Rights**

- 8. Subject to order 11, in respect of any acceptances of the Emerald Bid by Bullseye shareholders (other than Xinhe and Au Xingao) that have been received by Emerald as at 5.00pm (AWST) on the date of the Supplementary Target's Statement, each acceptance and takeover contract entered into by such shareholders pursuant to the Emerald Bid is voidable at the election of such shareholders from that time until 5.00pm (AWST) on the date that is 10 business days after the date of the Supplementary Target's Statement.
- 9. In relation to order 8, Emerald must:
  - (a) send a notice, the form of which has been approved by the Panel, to each such shareholder which the shareholder receives by no later than 5.00pm (AWST) on the business day after the date of the Supplementary Target's Statement:
    - (i) advising of their withdrawal right
    - (ii) enclosing an election form and any required transfer forms for the exercise of the withdrawal right
    - (iii) advising that to elect to exercise the withdrawal right the shareholder must take the following steps:

- (A) return the completed form to Emerald before 5.00pm (AWST) on the date that is 10 business days after the date of the Supplementary Target's Statement and
  - (B) give Emerald any certificates and transfer documents needed to effect the return of the Bullseye Shares and any Emerald shares issued as consideration under the Emerald Bid and
- (b) take all reasonable steps necessary to promptly give effect to the exercise of the withdrawal right.
- 10. In respect of each avoided contract pursuant to the withdrawal rights set out in order 8, the Emerald shares issued as consideration under the Emerald Bid are cancelled.
- 11. If a Bullseye shareholder (other than Xinhe and Au Xingao) who has accepted into the Emerald Bid disposes of any of the Emerald shares issued to them as consideration under the Emerald Bid, the shareholder is deemed to have forfeited the withdrawal rights they would otherwise be entitled to under order 8.
- 12. If Emerald processes an acceptance of the Emerald Bid by a Bullseye shareholder (other than Xinhe and Au Xingao), it must as soon as practicable send a notice, the form of which has been approved by the Panel, to that shareholder explaining the effect of order 11.

### **Offer Period**

- 13. Emerald must ensure that the Emerald Bid remains open until 5.00pm (AWST) on the date that is 10 business days after the date of the Supplementary Target's Statement.

### **Restriction on Processing Acceptances**

- 14. Without the consent of the Panel, Emerald must not take any steps, and must ensure that no steps are taken by any person, to process any acceptances received from Xinhe or Au Xingao in relation to the Emerald Bid until the date that is 5 business days after the date of these orders.

### **Other**

- 15. The parties to these proceedings and ASIC have the liberty to apply for further orders in relation to these orders.

### **Definitions**

- 16. In these orders the following terms apply.

<b>Au Xingao</b>	AU Xingao Investment Pty Limited
<b>Bullseye</b>	Bullseye Mining Limited
<b>Declaration</b>	The Panel's declaration of unacceptable circumstances in these proceedings dated 5 October 2023
<b>Emerald</b>	Emerald Resources NL
<b>Emerald Bid</b>	Emerald's off-market takeover bid for Bullseye set out in its bidder's statement dated 17 August 2023
<b>Emerald Offer</b>	has the meaning given in paragraph 14 of the Declaration
<b>Independent Expert</b>	has the meaning set out in order 7(b)
<b>Independent Expert's Report</b>	has the meaning set out in order 5(c)
<b>Share Settlement</b>	<p>The issue of 22,800,000 Bullseye shares to Au Xingao in final settlement of the following proceedings:</p> <ul style="list-style-type: none"> <li>• Hongkong Xinhe International Investment Company Limited v Bullseye Mining Limited &amp; Ors COR 83 of 2020 in the Supreme Court of Western Australia</li> <li>• Hongkong Xinhe International Investment Company Limited v Bullseye Mining Limited &amp; Ors COR 139 of 2021 (Supreme Court of Western Australia)</li> <li>• Hongkong Xinhe International Investment Company Limited &amp; Anor v Bullseye Mining Limited &amp; Ors COR 22 of 2023 (Supreme Court of Western Australia)</li> <li>• Hongkong Xinhe International Investment Company Limited &amp; Anor v Bullseye Mining Limited &amp; Ors COR 159 of 2022 (Supreme Court of Western Australia) and</li> <li>• Cheng v Bullseye Mining Limited CIV 1987 of 2020 (District Court of Western Australia)</li> </ul>

limited to the counterclaim made by Bullseye  
against Xinhe and Mr Huang

**Supplementary  
Target's Statement**

has the meaning set out in order 5

**Xinhe**

Hongkong Xinhe International Investment  
Company Limited

**Tania Mattei  
General Counsel  
with authority of Christian Johnston  
President of the sitting Panel  
Dated 5 October 2023**