



9 April 2024

FOURTH SUPPLEMENTARY TARGET'S STATEMENT AND INDEPENDENT EXPERT'S REPORT

Bullseye Mining Limited (**Bullseye**, or **the Company**) hereby provides its Fourth Supplementary Target's Statement. Unless otherwise stated, capitalised terms used in this announcement have the meaning given in the Fourth Supplementary Target's Statement.

The Fourth Supplementary Target's Statement includes:

- (a) a statement that the Fourth Supplementary Target's Statement was required by the Takeovers Panel (**Panel**);
- (b) an explanation of the Panel's Declaration of Unacceptable Circumstances and Orders in relation to the *Bullseye Mining Limited 06* proceedings (**Proceedings**);
- (c) an independent expert's report (**IER**) providing an opinion on whether, as a result of the Share Settlement, Xinhe and Au Xingao obtained a "net benefit" 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;
- (d) a summary of the IER; and
- (e) instructions setting out what a Bullseye shareholder must do to exercise the withdrawal rights ordered by the Panel under Order 8.

In preparing the IER, the Independent Expert considered several potential methodologies which could validly be used to determine the value of each Bullseye share issued pursuant to the Share Settlement, ultimately adopting the most conservative (ie. highest potential value) outcome from those methodologies for the reason that it represented the "highest watermark" to test whether or not a "net benefit" was provided to Xinhe and Au Xingao.

Conclusion of the IER:

- in the Independent Expert's opinion, **the commercial balance of advantages that flowed to Xinhe and Au Xingao were substantially less than the commercial balance of advantages that flowed from Xinhe and Au Xingao.**
- Accordingly, as a result of the Share Settlement, in the Independent Expert's opinion, **Xinhe and Au Xingao did not obtain a net benefit in connection with the Emerald Offer that was not provided to the minority shareholders of Bullseye.**

Bullseye shareholders should read the Fourth Supplementary Target's Statement and the attached IER in its entirety.

Authorised by the Bullseye Board.

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FOURTH SUPPLEMENTARY TARGET'S STATEMENT

Issued by



Bullseye Mining Limited
(ACN 118 341 736) (Bullseye)

in relation to the takeover offer by **Emerald Resources NL (ACN 009 795 046) (Emerald)** for all of the ordinary shares in Bullseye which Emerald does not already own.

This is an important document and requires your immediate attention.

If you are in doubt as to how to deal with this document, you should consult your financial, legal or other professional adviser immediately.

Legal Adviser to Bullseye



1. IMPORTANT NOTICE

This document (**Fourth Supplementary Target's Statement**) is dated 9 April 2024, is a supplementary target's statement prepared under section 644 of the *Corporations Act 2001* (Cth) (**Act**) as a result of orders made by the Takeovers Panel (**Panel**) on 5 October 2023 in connection with the declaration of unacceptable circumstances (**Declaration**) made by the Panel in the *Bullseye Mining Limited 06* proceedings brought before the Panel (**Proceedings**) and has been approved by the Panel.

It is supplementary to the following documents issued by Bullseye Mining Limited (ACN 118 341 736) (**Bullseye**) in relation to the Offer by Emerald Resources NL (ACN 009 795 046) (**Emerald**):

- (a) Third Supplementary Target's Statement dated 21 March 2024 and lodged with ASIC on 21 March 2024;
- (b) Second Supplementary Target's Statement dated 14 February 2024 and lodged with ASIC on 14 February 2024;
- (c) Supplementary Target's Statement dated 8 November 2023 and lodged with ASIC on 8 November 2023; and
- (d) Target's Statement dated 5 September 2023 and lodged with ASIC on 5 September 2023.

Further information relating to the Offer can be obtained from the Bidder's Statement, the Supplementary Bidder's Statement, the Second Supplementary Bidder's Statement, the Third Supplementary Bidder's Statement, the Target's Statement, the Supplementary Target's Statement, the Second Supplementary Target's Statement, the Third Supplementary Target's Statement and Bullseye's website at www.bullseyemining.com.au.

You should read this document in its entirety. If you are in any doubt as to how to deal with this document, you should consult your own independent legal, financial, tax or other professional adviser.

This Fourth Supplementary Target's Statement supplements, and is to be read with, the Third Supplementary Target's Statement, the Second Supplementary Target's Statement, the Supplementary Target's Statement and the Target's Statement. This Fourth Supplementary Target's Statement will prevail to the extent of any inconsistency with the Third Supplementary Target's Statement, the Second Supplementary Target's Statement, the Supplementary Target's Statement and Target's Statement.

A copy of this Fourth Supplementary Target's Statement was lodged with ASIC on 9 April 2024. Neither ASIC nor any of its officers takes any responsibility for the contents of this Fourth Supplementary Target's Statement or the merits of the Offer.

This Fourth Supplementary Target's Statement has been approved by a resolution passed by the Directors of Bullseye.

Unless the context requires otherwise, the words and phrases defined in this Fourth Supplementary Target's Statement have the same meaning as in the Third Supplementary Target's Statement, the Second Supplementary Target's Statement, the Supplementary Target's Statement and Target's Statement.

A copy of this Fourth Supplementary Target's Statement, as well as the Third

Supplementary Target's Statement, Second Supplementary Target's Statement, the Supplementary Target's Statement and the Target's Statement, can be obtained from the Bullseye website at www.bullseyemining.com.au.

2. PURPOSE OF THIS FOURTH SUPPLEMENTARY TARGET'S STATEMENT

The purpose of this Fourth Supplementary Target's Statement is to:

- (a) provide an update on the status of the Offer;
- (b) explain the Declaration and the associated orders made by the Panel (**Orders**);
- (c) include 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" in connection with the 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;
- (d) include a summary of the Independent Expert's Report; and
- (e) provide Bullseye Shareholders with instructions as to what they must do should they wish to exercise the withdrawal rights which form part of the Orders and which are summarised in section 5 of this Fourth Supplementary Target's Statement.

3. TAKEOVERS PANEL DECLARATION AND ORDERS

3.1 Declaration

On 5 October 2023, the Panel made a declaration of unacceptable circumstances in relation to the affairs of Bullseye in connection with the Proceedings. A full copy of the Declaration, which Bullseye Shareholders are encouraged to read, forms part of Annexure A to the Independent Expert Report, which is itself attached to this Fourth Supplementary Target's Statement as the Appendix.

A summary of key aspects of the Declaration is provided below:

- (a) The Panel considered a number of matters and circumstances which related to:
 - (i) the settlement of certain legal proceedings in the Supreme Court of Western Australia (**Court Actions**) which had been brought by Hongkong Xinhe International Investment Company Limited (**Xinhe**) and Au Xingao Investment Pty Limited (**Au Xingao**) against Bullseye and others;
 - (ii) the formulation, timing and characteristics of the Offer; and
 - (iii) the respective involvement of Emerald, Bullseye, Xinhe and Au Xingao in the above processes,including that:
 - (iv) a discussion paper regarding the settlement of the Court Actions, which contemplated both the issue to Xinhe/Au Xingao of Bullseye Shares and the making by Emerald of an off-market takeover bid for Bullseye, had

been negotiated and agreed between Emerald, Xinhe and Au Xingao in May 2023;

- (v) a Non-Binding Indicative Offer proposal agreed in late May 2023 between Bullseye and Emerald in relation to Emerald's proposed takeover bid contemplated as "key terms and conditions" that the Court Actions would be settled, that Xinhe and Au Xingao would sign intention statements (**Shareholder Statements**) confirming their intention to accept Emerald's bid for all Bullseye Shares they owned or controlled (subject to normal statutory carve-outs) and that Emerald's proposed bid would be subject to a minimum acceptance condition that it acquired a relevant interest in approximately 75.56% of Bullseye (being acceptance by Xinhe and Au Xingao of the bid for all their shares in Bullseye, after they had been issued with Bullseye Shares in connection with the settlement of the Court Actions);
 - (vi) the Shareholder Statements were subsequently negotiated during June and July 2023 between Emerald, Xinhe and Au Xingao; and
 - (vii) on 26 July 2023, the following documents were signed:
 - (A) the Shareholder Statements, which covered the shares then controlled by Xinhe and Au Xingao and also a further 22,800,000 Bullseye Shares to be issued to Au Xingao in connection with the settlement of the Court Actions (**Share Settlement**);
 - (B) a Bid Implementation Agreement between Emerald and Bullseye with respect to the Offer; and
 - (C) two settlement deeds, one for each of the two Court Actions (together, **Settlement Deeds**).
- (b) As a result of the consideration of the above matters and other relevant matters and circumstances set out in the Declaration, the Panel determined that there was sufficient material before it to infer that the Offer, the Shareholder Statements and the Settlement Deeds were interconnected and part of the one commercial transaction.
- (c) The Panel held that, by virtue of Emerald and each of Xinhe and Au Xingao entering into the Shareholder Statements and agreeing the terms of the Settlement Deeds, Emerald acquired a relevant interest in the Bullseye 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 of the *Corporations Act 2001* (Cth) (**Act**), because the Shareholder Statements constituted agreements as between Emerald and each of Xinhe and Au Xingao which provided Emerald with the power to dispose of, or control the exercise of power to dispose of, shares in Bullseye for the purposes of section 608 of the Act.
- (d) The Panel further held that Bullseye Shareholders had not been provided with sufficient information about the connection between the Offer, the Shareholder Statements and the Settlement Deeds, including whether Xinhe and Au Xingao had been provided with a benefit in connection with the Offer that had not otherwise been provided to other Bullseye Shareholders.

3.2 Orders

As a result of the making of the Declaration, the Panel made associated orders under section 657D of the Act. A full copy of the Panel's final, signed document dated 5 October 2023 setting out the Orders, which Bullseye Shareholders are encouraged to read, forms part of Annexure A to the Independent Expert Report, which is itself attached to this Fourth Supplementary Target's Statement as the Appendix.

The Orders which are most relevant for the purposes of this Fourth Supplementary Target's Statement are summarised below:

- (a) Bullseye was ordered to obtain an independent expert report (**IER**) providing an opinion on whether, as a result of the Share Settlement, Xinhe and Au Xingao obtained a "net benefit" in connection with the 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 under the Share Settlement;
- (b) In relation to the IER:
 - (i) ASIC was ordered to nominate three independent experts to prepare the IER;
 - (ii) Bullseye was ordered to:
 - (A) engage one of the experts nominated by ASIC to prepare the IER within 3 months after the date of the engagement;
 - (B) pay the costs of the IER and any independent legal advice the independent expert considered necessary to obtain in order to prepare the IER;
 - (C) provide to the independent expert, in a form approved by the Panel, instructions for preparing the IER, including an explanation of the meaning of "net benefit"; and
 - (D) in a timely manner, provide all assistance reasonably requested by the independent expert to prepare the IER, including providing the independent expert copies of documentation relating to the Court Actions; and
 - (iii) the Panel ordered that, if the independent expert was unable to provide the opinion or estimate contemplated in paragraph (a) above, it must include in the IER the reasons why the independent expert was unable to provide such opinion or estimate.
- (c) Bullseye was ordered to prepare and provide to the Panel for its approval a draft of this supplementary target's statement and, once approved by the Panel, within 2 Business Days to:
 - (i) publish this document on its website; and
 - (ii) dispatch this document to all Bullseye Shareholders; and
- (d) The Panel ordered that withdrawal rights be offered to any Bullseye Shareholders (other than Xinhe or Au Xingao) having accepted the Offer. The nature and

operation of those withdrawal rights is summarised in further detail in section 5 below and is set out in full in Orders 8 and 9 of the Orders which, as stated above, form part of Annexure A to the Independent Expert Report, which is itself attached to this Fourth Supplementary Target's Statement as the Appendix.

4. INDEPENDENT EXPERT'S REPORT

4.1 Background

In compliance with the Orders, the Independent Board Committee appointed PricewaterhouseCoopers Securities Limited (**PwC**) as the Independent Expert to prepare the IER, the purpose of which (as noted in the summary of the Orders above) is to provide an opinion on whether, as a result of the Share Settlement, Xinhe and Au Xingao obtained a "net benefit" in connection with the 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 under the Share Settlement. As part of the appointment process, Bullseye (through its solicitors, MPH Lawyers) provided a briefing letter to PwC in a form which was approved by the Panel (**Briefing Letter**), which contained instructions for preparing the IER, including an explanation of the meaning of "net benefit".

Having regard to the subject-matter to be considered in the context of the IER (being the settlement of complex and protracted litigation proceedings), as part of its process to prepare the IER the Independent Expert engaged Mr Paul Edgar SC, a leading Western Australian barrister with more than 30 years' experience (**Technical Specialist**), to provide a sub-report as to whether in his opinion the Share Settlement involved the provision of a "net benefit" to Xinhe and Au Xingao in connection with the Offer that was not provided to other Bullseye Shareholders.

The Independent Expert has now finalised its overall IER and a copy of that document (which includes the Technical Specialist's sub-report) is attached in full to this Fourth Supplementary Target's Statement as the Appendix. Bullseye Shareholders are encouraged to read the IER in its entirety.

In preparing the IER and reaching its conclusions, which are summarised in section 4.2 below, the Independent Expert took account of the guidance contained in the Briefing Letter and the Panel's Guidance Note 21: *Collateral Benefits* and considered the following in determining whether a net benefit existed:

- (a) The quantum of payment which would have been commercially reasonable in all of the circumstances for Bullseye to have paid in order to settle the Court Actions and otherwise secure the benefits contemplated in the Settlement Deeds.
- (b) An assessment as to the Fair Market Value of the Settlement Shares that were issued in order to settle the Court Actions and otherwise secure the benefits contemplated in the Settlement Deeds.
- (c) In circumstances where the Fair Market Value of the Settlement Shares exceeded the quantum of payment which would have been commercially reasonable for Bullseye to have paid in order to settle the Court Actions and otherwise secure the benefits contemplated in the Settlement Deeds, the extent to which a net benefit was provided to Au Xingao in connection with the Emerald Offer that was not provided to other Bullseye shareholders.

4.2 Summary of IER findings

The Independent Expert has concluded in the IER that Xinhe and Au Xingao **did not, as a result of the Share Settlement, obtain a “net benefit”** in connection with the Offer that was not provided to other Bullseye Shareholders. In preparing the IER, the Independent Expert considered several potential methodologies which could validly be used to determine the value of each Bullseye share issued pursuant to the Share Settlement, ultimately adopting the most conservative (ie highest potential value) outcome from those methodologies for the reason that it represented the “highest watermark” to test whether or not a net benefit was provided to Xinhe and Au Xingao.

The Independent Expert’s conclusion that no net benefit was obtained by Xinhe and Au Xingao in connection with the Offer that was not provided to other Bullseye Shareholders was based on the following findings:

- (a) As a result of entering into the Settlement Deeds, the Independent Expert considered that Xinhe/Au Xingao received benefits in the form of 22,800,000 shares in Bullseye with a Fair Market Value of between **\$12.54 million and \$14.25 million**, with a midpoint of **\$13.40 million**.
- (b) As a result of entering into the Settlement Deeds and the Signed Shareholder Statements, the Independent Expert considered that Bullseye secured broad releases from Xinhe/Au Xingao and their associates in respect of claims for loss and damage of between **\$14 million and \$22.4 million** (or between **\$17.85 million and \$26.25 million** if adverse costs in relation to the Court Actions were claimed).
- (c) The issue of the Settlement Shares to Xinhe/Au Xingao resulted in the dilution of shareholders’ interests (excluding Emerald and Xinhe/Au Xingao for the purposes of the Independent Expert's net benefits analysis) (**Minority Shareholders**) of **\$1.6 million**.
- (d) If Bullseye had not entered into the Settlement Deeds and instead defended the 2022/2023 Proceedings, at an estimated cost to Bullseye exceeding \$7.7 million, this would have resulted in the dilution of Minority Shareholders’ interests of **\$1.9 million**.
- (e) If Bullseye had not entered into the Settlement Deeds and was unable to defend the 2022/2023 Proceedings (for lack of funding or other reason) then Bullseye would have been exposed to claims for loss and damage of between **\$14 million and \$22.4 million** (or between **\$17.85 million and \$26.25 million** if adverse costs were claimed). If these losses crystallised, this would have resulted in the dilution of Minority Shareholders’ interests of:
 - (i) **\$3.3 million to \$4.9 million** (assuming claims for loss and damage of between \$14 million and \$22.4 million); and
 - (ii) **\$4.1 million to \$5.7 million** (assuming claims for loss and damage and adverse costs of between \$17.85 million and \$26.25 million).
- (f) Further, the Technical Specialist has concluded that:
 - (i) **the amount paid by way of the Share Settlement was reasonable and, accordingly, was not excessive**. The broad releases provided by Xinhe

and Au Xingao were arguably worth more than the value of the Share Settlement;

- (ii) it was highly likely that Bullseye would have, but for entering into the Settlement Deeds, been forced into some form of external administration as a direct result of its continued defence of the 2022/2023 Proceedings (and the 2020/2021 Proceedings, to the extent that there remained issues post-trial);
 - (iii) there was no net benefit to Xinhe or Au Xingao as a result of the Share Settlement; and
 - (iv) there was a net benefit to the Minority Shareholders on the basis that the Share Settlement preserved significant value of equity in Bullseye as a going concern where such equity would have been otherwise eroded or lost entirely.
- (g) In consideration of the above factors, in the Independent Expert's opinion, **the commercial balance of advantages that flowed to Xinhe and Au Xingao were substantially less than the commercial balance of advantages that flowed from Xinhe and Au Xingao.**
- (h) Accordingly, as a result of the Share Settlement, in the Independent Expert's opinion, **Xinhe and Au Xingao did not obtain a net benefit in connection with the Emerald Offer that was not provided to the Minority Shareholders.**

As stated in section 4.1 above, a copy of the IER prepared by the Independent Expert is attached in full to this Fourth Supplementary Target's Statement as the Appendix. Bullseye Shareholders are encouraged to read the IER in its entirety.

5. WITHDRAWAL RIGHTS AND EXERCISE

Pursuant to Orders 8 and 9 of the Orders, the Panel has ordered that withdrawal rights in relation to the Offer be made available to all Bullseye Shareholders (other than Xinhe and Au Xingao) who have accepted the Offer as at by 5:00pm on the date of this Fourth Supplementary Target's Statement. Bullseye Shareholders should ensure that they have read and understand those Orders in full. Below is a summary of the withdrawal rights ordered by the Panel:

- (a) each acceptance and takeover contract entered into by such Bullseye Shareholders pursuant to the Offer is voidable at the election of such Bullseye Shareholders from that time until 5:00pm (AWST) on the date that is 10 Business Days after the date of this Fourth Supplementary Target's Statement;
- (b) Emerald will send a notice, the form of which has been approved by the Panel, to each such Bullseye Shareholder which the Bullseye Shareholder receives by no later than 5:00pm (AWST) on the Business Day after the date of this Fourth Supplementary Target's Statement, which:
 - (i) advises Bullseye Shareholders of their withdrawal right;
 - (ii) encloses an election form and any required transfer forms for the exercise of the withdrawal right; and
 - (iii) advises Bullseye Shareholders as to the steps which they must take if

they wish to exercise their withdrawal right (which steps are set out in Order 9 in the Orders); and

- (c) Emerald will take all reasonable steps necessary to promptly give effect to the exercise of the withdrawal right.

Bullseye Shareholders should note that the withdrawal rights offered by the Panel are elective, operate for a limited period only and require positive action by them in order to exercise those rights. Should Bullseye Shareholders fail to comply with the steps necessary to exercise their withdrawal rights within the timeframe set out in paragraph (a) above, those withdrawal rights will lapse and become incapable of exercise.

6. APPROVAL OF THIS FOURTH SUPPLEMENTARY TARGET'S STATEMENT

The copy of this Fourth Supplementary Target's Statement that is to be lodged with ASIC has been approved by a resolution passed by the Directors.

This Fourth Supplementary Target's Statement is dated 9 April 2024, which is the date on which it was lodged with ASIC.

Signed for and on behalf of Bullseye.



Dated 9 April 2024

Mr Anthony Short
Non-Executive Director and Chairman of the Independent Board Committee

APPENDIX – INDEPENDENT EXPERT’S REPORT

See attached.

Takeovers Panel Proceedings

Bullseye Mining Limited 06

Independent Expert's Report

28 March 2024



Independent Board Committee
Bullseye Mining Limited
Ground Floor
1110 Hay Street
Perth WA 6000

28 March 2024

Dear Independent Board Committee

Independent Expert's Report in relation to Takeover Panel Proceedings Bullseye Mining Limited 06

Introduction

1. PricewaterhouseCoopers Securities Ltd (**PwCS**) has been engaged by the Independent Board Committee of Bullseye Mining Limited (**Bullseye** or the **Company**) to prepare this Independent Expert's Report (**IER**) in accordance with a declaration of unacceptable circumstances and final orders dated 5 October 2023 (**Panel Declaration and Orders**) made by the Takeovers Panel (**Panel**) in the Bullseye Mining Limited 06 proceedings (**Panel Proceedings**).
2. The detailed background to this matter is set out in a letter from MPH Lawyers to PwCS, dated 15 November 2023 (**Briefing Letter**). Further background is provided in the Panel Declaration and Orders at **Appendix A**. Unless otherwise defined, capitalised terms used herein have the same meanings that have been ascribed in the Briefing Letter and the Panel Declaration and Orders.
3. The Panel Declaration and Orders include reference to the following matters:
 - a) an off-market scrip bid by Emerald Resources NL (**Emerald**) offering one Emerald share for every four Bullseye shares on issue not currently held by Emerald, on the terms set out in Emerald's bidder's statement dated 17 August 2023 (**Emerald Offer**)
 - b) the agreement for settlement (**Settlement Agreement**), recorded in a 2020/2021 Deed (**20/21 Deed**) and a 2022/2023 Deed (**22/23 Deed**) (together, the **Settlement Deeds**) in respect of four separate proceedings in the Supreme Court of Western Australia (**Supreme Court Proceedings**), which consisted of claims by a shareholder of Bullseye, Hongkong Xinhe International Investment Company Ltd (**Xinhe**) and Au Xingao Investment Pty Ltd (**Au Xingao**) (a related entity of Xinhe), for relief from oppressive conduct.
4. In essence, the Supreme Court Proceedings comprised:
 - a) one consolidated proceeding, on which a trial hearing proceeded for 73 days, and judgment was reserved at the time the Settlement Deeds were executed
 - b) a second consolidated proceeding in respect of which, at the time the Settlement Deeds were executed, no statement of claim had yet been filed.
5. As part of the Settlement Agreement, Au Xingao, as Xinhe's nominee, was to be issued 22,800,000 Bullseye shares in final settlement of the Supreme Court Proceedings (**Share Settlement**) and a related proceeding in the District Court of Western Australia, in which Bullseye

made a counterclaim against Xinhe and its representative in Australia, and others, for damages for tortious conspiracy (**District Court Proceedings**)¹.

6. The Panel Declaration and Orders provide that, 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, amongst other things, an IER.
7. Order 5(c) of the Panel Declaration and Orders stipulates that the IER is to provide:

...an opinion on whether, as a result of the Share Settlement, Xinhe and Au Xingao obtained a 'net benefit' 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.
8. In the event that the IER opines that, as a result of the Share Settlement, Xinhe and Au Xingao did obtain a net benefit, the Panel proposes to refer the matter to Australian Securities and Investments Commission (**ASIC**) (under regulation 18 of the *ASIC Regulations 2001 (Cth)* (**ASIC Act**)), where ASIC may consider making a further application to the Panel¹.
9. Further, the Panel has ordered, amongst other things, that:
 - a) Bullseye is to engage an independent expert to prepare the IER within three months after the date of engagement
 - b) the costs of the IER, and any independent legal advice that the independent expert considers is necessary to obtain in order to prepare the IER, are to be borne by Bullseye
 - c) Bullseye must provide the independent expert, in a form approved by the Panel, instructions for preparing the IER, including an explanation of the meaning of 'net benefit' with reference to relevant Panel guidance, and Panel and Court decisions
 - d) Bullseye must, in a timely manner, provide all assistance reasonably requested by the independent expert to prepare the IER, including providing copies of documentation relating to the Supreme Court Proceedings, the subject of the Share Settlement
 - e) if the independent expert is unable to provide the opinion or estimate contemplated by order 5(c) of the Panel Declaration and Orders, the independent expert must include in the IER the reasons why the independent expert was unable to provide such opinion or estimate.

Purpose of this report

10. In consequence of the Panel Declaration and Orders, and specifically order 5(c), Bullseye has engaged PwCS to provide an IER containing our opinion on whether, as a result of the Share Settlement, Xinhe and Au Xingao obtained a net benefit 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.

¹ To the extent that Bullseye's counterclaim was only settled with respect to Xinhe and Luke Huang only

11. We understand that this IER will be included in Bullseye's Supplementary Target's Statement and will be published on Bullseye's website and dispatched to all Bullseye shareholders.
12. The Briefing Letter (which was in a form approved by the Panel) sets out the background to the Panel Proceedings and provides some guidance for preparing the IER, including an explanation of the meaning of a net benefit, with reference to relevant Panel guidance, and Panel and Court decisions.
13. In accordance with the guidance contained in the Briefing Letter and the Panel's *Guidance Note 21: Collateral Benefits (GN 21)*, we have considered the following in determining whether a net benefit exists:
 - a) The quantum of payment which would have been commercially reasonable in all of the circumstances for Bullseye to have paid in order to settle the Supreme Court Proceedings and otherwise secure the benefits contemplated in the Settlement Deeds.
 - b) An assessment as to the Fair Market Value of the Settlement Shares that were issued, in order to settle the Supreme Court Proceedings and otherwise secure the benefits contemplated in the Settlement Deeds.
 - c) In circumstances where the Fair Market Value of the Settlement Shares exceeds the quantum of payment, which would have been commercially reasonable for Bullseye to have paid, in order to settle the Supreme Court Proceedings and otherwise secure the benefits contemplated in the Settlement Deeds, the extent to which a net benefit was provided to Au Xingao in connection with the Emerald Offer that was not provided to other Bullseye shareholders.

Summary of opinion

14. As a result of entering into the Settlement Deeds and the Signed Shareholder Statements, we consider that Xinhe/Au Xingao received benefits in the form of 22,800,000 shares in Bullseye with a Fair Market Value of between \$12.54 and \$14.25 million, with a midpoint of \$13.40 million.
15. As a result of entering into the Settlement Deeds and the Signed Shareholder Statements, we consider that Bullseye secured broad releases from Xinhe/Au Xingao and Luke Huang in respect of claims for loss and damage of between \$14 million and \$22.4 million (or between \$17.85 million and \$26.25 million if adverse costs were claimed).
16. The issue of the Settlement Shares to Xinhe/Au Xingao, resulted in the dilution of shareholders' interests (excluding Emerald and Xinhe/Au Xingao for the purposes of our net benefits analysis²) (**Minority Shareholders**) of \$1.6 million.
17. If Bullseye had not entered into the Settlement Deeds and instead defended the 2022/2023 Proceedings, at an estimated cost to Bullseye exceeding \$7.7 million, this would have resulted in the dilution of Minority Shareholders' interests of \$1.9 million.

² Our net benefit assessment recognises that Xinhe/Au Xingao stood in a unique position compared to the Minority Shareholders, in that they were the plaintiffs in the 2020/2021 Proceedings and 2022/2023 Proceedings, any settlement of Xinhe/Au Xingao's claims would involve the need for Bullseye to pay consideration to them, and such consideration would need to be paid from Bullseye's capital, and would obviously not be paid to the Minority Shareholders. Accordingly, we have considered the commercial balance of advantages flowing to and from the Minority Shareholders in connection with the issue of the Settlement Shares but note that these advantages also flow to and from Xinhe/Au Xingao, who are also shareholders in Bullseye.

18. If Bullseye had not entered into the Settlement Deeds and was unable to defend the 2022/2023 Proceedings (for lack of funding or other reason) then Bullseye would have been exposed to claims for loss and damage of between \$14 million and \$22.4 million (or between \$17.85 million and \$26.25 million if adverse costs were claimed). If these losses crystallised, this would have resulted in the dilution of Minority Shareholders' interests of:
 - a) \$3.3 million to \$4.9 million (assuming claims for loss and damage of between \$14 million and \$22.4 million)
 - b) \$4.1 million to \$5.7 million (assuming claims for loss and damage and adverse costs of between \$17.85 million and \$26.25 million).
19. Further, the Technical Specialist has concluded that:
 - a) the amount paid by way of Share Settlement was reasonable and, accordingly, was not excessive. The broad releases provided by Xinhe and Au Xingao were arguably worth more than the value of the Share Settlement
 - b) it was highly likely that Bullseye would have, but for entering into the Settlement Deeds, been forced into some form of external administration as a direct result of its continued defence of the 2022/2023 Proceedings (and the 2020/2021 Proceedings, to the extent that there remained issues post-trial)
 - c) there was no net benefit to Xinhe or Au Xingao as a result of the Share Settlement
 - d) there was a net benefit to the Minority Shareholders on the basis that the Share Settlement preserved significant value of equity in Bullseye as a going concern where such equity would have been otherwise eroded or lost entirely.
20. In consideration of the above factors, in our opinion, the commercial balance of advantages that flow to Xinhe and Au Xingao are less than the commercial balance of advantages that flow from Xinhe and Au Xingao.
21. **Accordingly, as a result of the Share Settlement, in our opinion, Xinhe and Au Xingao did not obtain a net benefit in connection with the Emerald Offer that was not provided to the Minority Shareholders.**

Other matters

22. In preparing this IER, we have considered and complied with the relevant provisions of:
 1. ASIC Regulatory Guide 111 *Content of expert reports* (RG 111)
 2. ASIC Regulatory Guide RG 112 *Independence of experts* (RG 112)
 3. GN 21
 4. *Corporations Act 2001 (Cth)* (the Act)
23. This IER is for the benefit of the Panel, the shareholders of Bullseye and the Independent Board Committee and the Board of Directors Bullseye, in consideration of the Emerald Offer and Panel Declaration and Orders. Neither PricewaterhouseCoopers (PwC) nor PwCS, or any member or employee thereof, undertakes responsibility to any other person in respect of this IER, including any errors or omissions however caused.

24. Responsibility for deciding on any actions taken in respect of the Emerald Offer remains with Bullseye.
25. Bullseye has indemnified PwCS, PwC and PwC employees, officers and agents against any claim, liability, loss or expense, cost or damage, including legal costs on a solicitor client basis, arising out of our reliance on any information or documentation provided by Bullseye or its advisors, which is false and misleading or omits any material particulars or arising from a failure to supply relevant documentation or information.
26. Please refer to **Appendix G** of this report to review our statement of qualifications and declarations.
27. Please refer to **Appendix H** of this report to review our Financial Services Guide, which contains information on our Australian financial services licence.
28. Amounts in this report and in the appendices are in Australian dollars and exclude GST unless otherwise indicated.
29. Although amounts in tables are generally presented on a rounded basis, in most cases, the unrounded amounts are used in subsequent calculations. Accordingly, minor variances may exist in table totals when recalculated manually.
30. A draft of this report was provided to the Independent Board Committee of Bullseye for a review of factual accuracy on 27 March 2024. No changes to our opinion arose as a result of this reviews.
31. This letter must be read in conjunction with the remainder of this report, including the attached appendices.

Yours faithfully



Campbell Jaski
Authorised Representative (No. 001299568)
PricewaterhouseCoopers Securities Ltd

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1 Purpose of report

1.1 Scope of Independent Expert's Report

Assessment of net benefit

- 1.1.1 In consequence of the Panel Declaration and Orders, and specifically order 5(c), the Independent Board Committee of Bullseye has engaged PwCS to provide an IER containing our opinion on whether, as a result of the Share Settlement, Xinhe and Au Xingao obtained a net benefit in connection with the Emerald Offer that was not provided to the Minority 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.
- 1.1.2 We understand that this IER will be included in Bullseye's Supplementary Target's Statement and will be published on Bullseye's website and dispatched to all Bullseye shareholders.
- 1.1.3 Further, GN 21 sets out the Panel's approach to collateral benefits, the equality principle, and the concept of net benefit. Section 25 of GN 21 sets out guidance on how an expert's opinion, as to whether there is a net benefit, ought to be prepared. Relevantly, in that regard:
- a) an expert's opinion about whether there is a net benefit may incorporate a valuation by the expert or by another person
 - b) the expert's opinion should:
 - i. meet the standards in RG 111 and RG 112
 - ii. contain full disclosure of the factors that the expert took into account and the methodology used by the expert
 - iii. be clear and concise in its conclusions.
- 1.1.4 Based on guidance in the Briefing Letter and GN 21, we have considered the following, in determining whether a net benefit exists:
- a) The quantum of payment which would have been commercially reasonable in all of the circumstances for Bullseye to have paid in order to settle the Supreme Court Proceedings and otherwise secure the benefits contemplated in the Settlement Deeds.
 - b) An assessment as to the Fair Market Value³ of the Settlement Shares that were issued in order to settle the Supreme Court Proceedings and otherwise secure the benefits contemplated in the Settlement Deeds.
 - c) In circumstances where the Fair Market Value of the Settlement Shares exceeds the quantum of payment, which would have been commercially reasonable for Bullseye to have paid in order to settle the Supreme Court Proceedings and otherwise secure the benefits contemplated in the Settlement Deeds, an estimate of the monetary value of the net benefit per Bullseye share issued to Au Xingao pursuant to the Share Settlement.

³ The estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.

Assistance from Technical Specialist

- 1.1.5 RG 111.134 and RG 111.136 state that an expert preparing an IER must be an expert in the relevant field and that, for technical matters beyond the expert's expertise, an expert should retain a specialist to advise them.
- 1.1.6 Given the nature of the subject-matter (i.e. the settlement of complex legal proceedings involving numerous allegations of shareholder oppression and associated breaches of sections 232 and 606 of the Act, amongst other things), in order to comply with RG 111, we have retained an independent technical specialist, Mr Paul Edgar SC (**Technical Specialist**) to assist us in our determination.
- 1.1.7 Mr Edgar is a Barrister of 32 years standing, primarily practising in consumer law, trusts, companies, contracts, insolvency law and equity. We have also retained the services of a law firm, Lavan, which is a full-service law firm based in Western Australia (**WA**), to assist us with instructing the Technical Specialist. The Technical Specialist's report, dated 23 March 2024 (**Technical Specialist's Report**) and further details of the Technical Specialist's professional experience is attached at **Appendix C**.
- 1.1.8 The Technical Specialist has been instructed to review all relevant materials relating to the Supreme Court Proceedings and District Court Proceedings and, having regard to GN 21 and Chapter 6 of the Act, provide an opinion on the following:
- a) the question posed by MPH Lawyers⁴, being:

Having regard to the above factual instructions and materials with which you have been provided, and relying on the valuation of the Settlement Shares determined by PwC[S], please provide your opinion as to whether the amount paid by Bullseye in terms of the value of the Settlement Shares was reasonable or excessive as consideration to settle the existing litigation and to secure the relevant releases from Xinhe and Au Xingao.
 - b) further, and in the circumstances, what benefit/s, if any, did:
 - i. Xinhe obtain as a result of entering into the Settlement Deeds and accepting the Emerald Offer?
 - ii. Au Xingao obtain as a result of entering into the Settlement Deeds and accepting the Emerald Offer?
 - c) assuming that either Xinhe or Au Xingao did obtain a benefit, was that a net benefit?
 - d) assuming that either Xinhe or Au Xingao did obtain a net benefit, was that net benefit provided to other shareholders? If not, why not?
 - e) in circumstances where Bullseye did not enter into the Settlement Deeds, what alternative options were available to it to advance or otherwise resolve the 2022/2023 Proceedings?
 - f) in answering the above questions, any other matters that I consider are relevant to assist PwCS in the preparation of its report.
- 1.1.9 A summary of the Technical Specialist's Report is provided in Section 6 and the Technical Specialist's Report is attached at Appendix C.

⁴ Technical Specialist's briefing letter, paragraph 54

BDO Expert Report

- 1.1.10 In August 2023, BDO Corporate Finance (WA) Pty Ltd (**BDO**) was commissioned by the Independent Board Committee (which was formed for the purposes of considering the Emerald Offer) to act as the independent expert to give an independent opinion as to whether or not the Emerald Offer was fair and reasonable to the non-associated shareholders of Bullseye.
- 1.1.11 BDO subsequently produced an independent expert's report, dated 5 September 2023 (**BDO Expert Report**), which valued the shares in Bullseye and in the proposed merged Emerald entity. BDO's valuation conclusions relied on opinions contained in an independent technical specialist's report completed by SRK Consulting (Global) Limited (**SRK**) dated 5 September 2023 (**SRK ITSR**).
- 1.1.12 BDO concluded a midpoint value per share in Bullseye prior to the Emerald Offer of \$0.067 on a controlling interest basis. This value per share compares with the most recent share issue by Bullseye, prior to the Emerald Offer, of \$0.29 per share on a minority interest basis and the value implied by the Emerald Offer of \$0.588 per share on a controlling interest basis.
- 1.1.13 We have undertaken a review of the BDO Expert Report, including the SRK ITSR. Based on our review, we consider that the methodologies adopted by BDO and SRK are reasonable considering the early-stage nature of Bullseye's exploration and development assets and the quoted market price of Emerald on the ASX.
- 1.1.14 Given the range between the low value ascribed by BDO and the high value implied by the Emerald Offer, and the inherent uncertainty and subjectivity that can arise in valuing exploration and development projects, we have elected to undertake our net benefit analysis based on the high value implied by the Emerald Offer for the reasons set out in Section 5. We have adopted different values at different points in time for our dilution analyses for the reasons set out in **Appendix E**.
- 1.1.15 Nothing in our IER should be taken as implying that the BDO Expert Report is incorrect, deficient or unsuitable for the purpose for which it was prepared.
- 1.1.16 Further details of our review of the BDO Expert Report are set out at Section 4.
- 1.1.17 Further details of our assessment of the Settlement Shares are set out at Section 5.

1.2 Limitations and reliance on information

- 1.2.1 In preparing this IER, we have had regard to public and non-public information. We have used and relied on the information set out in **Appendix B** and representations made to us by and on behalf of Bullseye. These representations are referenced throughout the body of the IER or in the footnotes.
- 1.2.2 PwCS has conducted such checks, enquiries and analysis on the information provided which it regards as appropriate for the purposes of this IER. However, such information and representations are not always capable of external verification or validation. Based on this evaluation, we believe that the information used in forming our opinions in this IER is reliable, complete and not misleading and we are not aware of any reason to believe that material facts have been withheld. Preparation of this IER does not in any way imply that PwCS has audited the financial statements or source checked the information provided.
- 1.2.3 Bullseye acknowledges that this IER has been prepared solely for the purposes noted above and accordingly PwCS disclaims any responsibility from any reliance on this IER in regard to its use for any other purpose.
- 1.2.4 Except in accordance with the stated purposes, no extract, quote or copy of the IER, in whole or in part, should be reproduced without our prior written consent, as to the form and context in which it may appear.

- 1.2.5 This IER is for the benefit of the Panel, and the shareholders, Board and Independent Board Committee of Bullseye, in consideration of the Emerald Offer and Panel Declaration and Orders. Neither PwC nor PwCS, or any member or employee thereof, undertakes responsibility to any other person in respect of this IER, including any errors or omissions however caused.
- 1.2.6 Responsibility for deciding on any actions taken in respect of the Emerald Offer remains with Bullseye.

1.3 Important Information

- 1.3.1 Please refer to Appendix G of this report to review our statement of qualifications and declarations.
- 1.3.2 Please refer to Appendix H of this report to review our Financial Services Guide, which contains information on our Australian financial services licence.

2 Background on Bullseye

2.1 Overview

2.1.1 Bullseye was established in 2006 in Perth, WA and operates as an unlisted public company focusing on gold exploration, development and production.

2.1.2 Bullseye has a prospective gold portfolio with significant holdings of gold-bearing Greenstone terrain totalling over 1,200km² in WA's Goldfields region. Its flagship project is the North Laverton Gold Project (**NLGP**), which is situated within the Dingo Range Greenstone Belt. Other projects include the Southern Cross Gold Project (**SCGP**), Aurora Gold Project, and Leonora Nickel Project, all situated within Western Australia.⁵

2.2 Capital structure

2.2.1 As of 31 August 2023 (i.e. prior to the Emerald Offer), Bullseye had approximately 150 shareholders, including Emerald. Table 1 summarises the major shareholders of Bullseye at that time.⁶

Table 1 – Summary of the major shareholders of Bullseye

Legal entity	No. ordinary shares	Equity stake
Emerald	290,784,766	57.34%
Xinhe	63,807,693	12.58%
Au Xingao	28,473,635	5.62%
Desmond Mullan	18,955,595	3.74%
Other Minority Shareholders	105,059,824	20.72%
Total ordinary shares on issue	507,081,513	100.0%

Source: BDO Expert Report

Note: Au Xingao stake is inclusive of the Settlement Shares

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⁵ Bullseye Website

⁶ BDO Expert Report, Page 16

2.3 Financial position

2.3.1 Table 2 summarises Bullseye's historical statement of financial position during the financial years ended 30 June 2020 to 30 June 2023.

Table 2 – Summary of Bullseye's historical statement of financial position

\$	30-Jun-20	30-Jun-21	30-Jun-22	30-Jun-23
<i>Current assets</i>				
Cash and cash equivalents	631,379	2,858,300	5,417,723	600,563
Trade and other receivables	60,846	24,251	458,897	741,271
Financial assets at amortised cost	-	3,067,168	2,500,000	-
Inventories	-	-	-	98,649
Asset held for sale	-	-	756,366	825,852
Other current assets	322,749	15,113	-	-
Total current assets	1,014,974	5,964,832	9,132,986	2,266,335
<i>Non-current assets</i>				
Inventories	-	-	-	1,561,153
Property, plant, and equipment	301,756	906,477	250,042	658,076
Exploration and evaluation assets	16,620,447	14,576,909	15,605,486	28,581,700
Development expenditure	-	2,790,505	2,865,900	-
Right-of-use-asset	93,918	47,246	-	-
Total non-current assets	17,016,121	18,321,137	18,721,428	30,800,929
Total assets	18,031,095	24,285,969	27,854,414	33,067,264
<i>Current liabilities</i>				
Trade and other payables	1,973,135	2,411,155	1,616,972	3,423,612
Interest-bearing liabilities	5,361,465	14,424,699	51,113	1,757,793
Provisions	345,843	383,069	90,477	27,845
Other current liabilities	312,201	1,140,378	514,721	205,401
Total current liabilities	7,992,644	18,359,301	2,273,283	5,414,651
<i>Non-current liabilities</i>				
Provisions	-	-	-	284,503
Lease Liabilities	51,332	-	-	-
Total non-current liabilities	51,332	-	-	284,503
Total liabilities	8,043,976	18,359,301	2,273,283	5,699,154
Net assets	9,987,119	5,926,668	25,581,131	27,368,110

Source: Bullseye FY22 and FY23 Annual Reports, BDO Expert Report

2.3.2 We have considered Bullseye's historical statements of financial position⁷ and make the following comments:

- Cash and cash equivalents: increased from \$2.9 million to \$5.4 million between 30 June 2021 to 2022, primarily driven by the proceeds from shares issued (\$26.3 million, net of transaction costs), which were offset by the repayment of borrowings (\$15.27 million) and payments to suppliers and employees (\$8.4 million, inclusive of non-recurring legal expenses).⁸ Cash and cash equivalents at 30 June 2023 was reduced to \$0.6 million, due to increased exploration and evaluation expenditure,

⁷ Bullseye FY22 Annual Report, page 22; Bullseye FY23 Annual Report, page 20

⁸ Bullseye FY22 Annual Report, page 28; BDO Expert Report, page 14

the acquisition of the remaining 30% of the Blue Cap Bullseye Joint Venture, and repayment of borrowings.⁹

- b) Financial assets at amortised cost: relates to the secured loan facility provided by Bullseye to the Blue Cap Bullseye Joint Venture, which has a 12-month term from the date of advance and an interest rate of 15.0% p.a. The facility is secured by the personal property and a fixed charge over any other property of the Blue Cap Bullseye Joint Venture.¹⁰
- c) Inventory: current and non-current inventory at 30 June 2023 relates to diesel and ore stockpiles. The ore stockpiles (\$1.6 million) were allocated on a fair value basis as part of the Blue Cap Bullseye Joint Venture acquisition.
- d) Exploration and evaluation assets: increased from \$15.6 million to \$28.6 million between 30 June 2022 and 30 June 2023, primarily driven by the capitalisation of additional costs (\$8.7 million) and the transfer of a development asset (\$5.2 million), as a result of the Blue Cap Bullseye Joint Venture acquisition.¹¹
- e) Development expenditure: costs associated with the Bungarra development were written off at 30 June 2023 upon the cessation of the Bungarra mining campaigns.¹²
- f) Interest bearing liabilities: decreased from \$14.4 million to \$0.05 million between 30 June 2021 and 30 June 2022. This was due to the conversion of an unsecured loan of \$4.11 million to shareholder equity and the conversion of a convertible note of \$9.07 million to shareholder equity.¹³ The interest-bearing liability balance of \$1.76 million as at 30 June 2023 relates to an unsecured loan facility with Emerald, with a face value of \$1.75 million and an interest rate of 12.0% p.a..¹⁴
- g) Working capital: was net negative and fluctuated between 30 June 2020 to 30 June 2023, as shown in Table 3 below.

Table 3 – Summary of Bullseye’s historical net working capital

\$	30-Jun-20	30-Jun-21	30-Jun-22	30-Jun-23
Trade and other receivables	60,846	24,251	458,897	741,271
Inventories	-	-	-	98,649
Asset held for sale	-	-	756,366	825,852
Other current assets	322,749	15,113	-	-
Trade and other payables	(1,973,135)	(2,411,155)	(1,616,972)	(3,423,612)
Provisions	(345,843)	(383,069)	(90,477)	(27,845)
Other current liabilities	(312,201)	(1,140,378)	(514,721)	(205,401)
Net working capital	(2,247,584)	(3,895,238)	(1,006,907)	(1,991,086)

Source: Bullseye FY22 and FY23 Annual Reports, BDO Expert Report, PwCS analysis

⁹ Bullseye FY23 Annual Report, page 22

¹⁰ Bullseye FY22 Annual Report, page 49

¹¹ Bullseye FY23 Annual Report, page 38

¹² Ibid

¹³ Bullseye FY22 Annual Report, page 52; BDO Expert Report, page 15

¹⁴ Bullseye FY23 Annual Report, page 39

2.4 Sources of capital

- 2.4.1 We have summarised Bullseye's historical sources of capital, including convertible notes and share capital raisings, further below.
- 2.4.2 As of 1 December 2021, Bullseye had unsecured loans outstanding with a combined value of \$5.4 million¹⁵, including:
- a) \$1,897,392 with an interest rate of 8% p.a., which were convertible into shares at the election of the lender on or before the maturity date of 31 December 2021, at a conversion price of \$0.20 per share.
 - b) \$2,133,800 with an interest rate of 8% p.a., which were convertible into shares at the election of the lender on or before the maturity date of 31 December 2021, at a conversion price of \$0.26 per share.
 - c) \$1,385,427 with an interest rate of 10% p.a., which were convertible into shares at the election of the lender on or before the maturity date of 31 December 2021, at a conversion price of \$0.22 per share.¹⁶
- 2.4.3 Further, as of 1 December 2021, Bullseye also had 37 convertible notes with a combined face value of \$8.3 million¹⁷, including:
- a) Four convertible notes with a combined face value of \$375,513, an interest rate of 10% p.a., maturities between 11 December 2022 and 9 February 2022, and a conversion price of \$0.25 per share.
 - b) Seventeen convertible notes with a combined face value of \$3,976,760, an interest rate of 15% p.a., maturities between 10 April 2022 and 26 November 2022, and a conversion price of \$0.23 per share.
 - c) Sixteen convertible notes with a combined face value of \$3,951,783, an interest rate of 15% p.a., maturities between 2 June 2022 and 6 November 2022, and a conversion price of \$0.25 per share.
- 2.4.4 We note that the above convertible notes and unsecured loans were subsequently converted into Bullseye shares during 2021 and 2022.
- 2.4.5 In addition to the above, Emerald also provided several short-term working capital loan facilities to Bullseye between 2022 and 2023, which could be drawn down by Bullseye as required. The loan facilities are unsecured, non-convertible and carried an interest rate of 12.0% p.a.. The first loan of \$3.0 million was repaid in full in December 2022 upon the completion of the entitlement issues. The second loan of \$1.70 million was repaid in March 2023. Bullseye also has a third loan facility which has not yet been repaid.¹⁸
- 2.4.6 During the financial year (FY) ended 30 June 2022 (FY22), Bullseye issued a total of 128.7 million shares via equity placements, conversion of debt (as detailed above) and various share-based payments, which ranged in issue price from \$0.20 to \$0.27 per share.¹⁹
- 2.4.7 During the FY ended 30 June 2023 (FY23), Bullseye issued an additional 38.7 million shares via entitlement issues at \$0.29 per share.²⁰

¹⁵ Ibid

¹⁶ Bullseye FY22 Annual Report, page 5

¹⁷ Emerald December 2021 BIA, pages 28 and 29

¹⁸ Bullseye FY22 Annual Report, page 19 ; Bullseye FY23 Annual Report, page 12

¹⁹ Bullseye FY22 Annual Report, Page 7

²⁰ Bullseye FY23 Annual Report, Page 12

2.4.8 Equity capital raised has historically funded Bullseye's corporate, exploration, and operational activities, including the payment of legal expenses.²¹

2.5 Financial performance

2.5.1 Table 4 summarises Bullseye's historical statement of profit and loss during the period between FY20 to FY23.

Table 4 – Summary of Bullseye's historical statement of profit and loss

\$	FY20	FY21	FY22	FY23
Revenue from continuing operations	27,987	102,312	1,226,961	134,500
Cost of sale	-	-	(147,180)	(23,203)
Accountancy expenses	(122,963)	(253,081)	(434,007)	(184,090)
Consultant fees	(426,960)	(129,457)	(664,212)	(895,818)
Depreciation and amortisation expenses	(94,199)	(84,715)	(75,569)	(1,058,195)
Employee benefits expenses	(828,175)	(834,101)	(1,588,631)	(96,342)
Written off exploration and evaluation expenses	(484,417)	(4,600)	(129,537)	(866,768)
Written off development assets	-	-	-	(1,860,856)
Finance costs	-	(735,460)	(1,169,123)	(258,699)
Other expenses	(830,162)	(4,998,447)	(6,975,398)	(3,934,831)
Loss before tax	(2,758,889)	(6,937,549)	(9,956,696)	(9,044,302)
Income tax expense	-	-	-	-
Loss for the year after income tax expense	(2,758,889)	(6,937,549)	(9,956,696)	(9,044,302)
Other comprehensive income	-	-	-	-
Total comprehensive loss for the year	(2,758,889)	(6,937,549)	(9,956,696)	(9,044,302)

Source: Bullseye FY22 and FY23 Annual Reports, BDO Expert Report

- 2.5.2 In FY22, Bullseye reported a net loss of around \$10.0 million, which was primarily driven by:
- other expenses of around \$7.0 million, including legal expenses of \$5.3 million²²
 - employee benefits of \$1.6 million, driven by an increase in salaries and wages due to increased exploration and mining activity²³
 - revenues of \$1.2 million, which included \$1.0 million of interest received and \$0.15 million of gold produced (which was offset by cost of sales).²⁴
- 2.5.3 In FY23, Bullseye reported a net loss of around \$9.0 million, which was primarily driven by:
- other expenses of \$4.0 million, which included legal expenses of \$3.0 million²⁵
 - depreciation and amortisation of \$1.1 million, including \$1.0 million for the amortisation of the development assets (which were subsequently written off at 30 June 2023)²⁶
 - revenues of \$0.1 million, which relate to interest received of \$0.1 million and gains on disposal of assets of \$0.02 million.²⁷

²¹ Bullseye FY22 Annual Report, Page 7 ; Bullseye FY23 Annual Report, Page 5

²² Bullseye FY22 Annual Report, page 47 ; BDO Expert Report, page 16

²³ Bullseye FY22 Annual Report, page 47; BDO Expert Report, page 15

²⁴ Bullseye FY22 Annual Report, page 46; BDO Expert Report, page 15

²⁵ Bullseye FY23 Annual Report, page 33

²⁶ Bullseye FY23 Annual Report, page 33; Bullseye FY23 Annual Report, page 38

²⁷ Bullseye FY23 Annual Report, page 33

3 Panel Proceedings

3.1 Overview

3.1.1 On 27 July 2023, Emerald announced, amongst other things, that:

- a) it intended to launch an off-market takeover bid for all the shares in Bullseye that it did not currently own, the consideration for which was one Emerald share for every four Bullseye shares
- b) Bullseye, Emerald, Au Xingao and Xinhe had reached agreement to settle all litigation between them (including the Supreme Court Proceedings discussed below and the District Court Proceedings²⁸), and that 22,800,000 Bullseye shares would be issued to Au Xingao as consideration for the settlement (Post Share Settlement, Au Xingao and Xinhe held a total of 18.20% as shown in Table 1 above)
- c) Xinhe and Au Xingao (as Bullseye shareholders) had provided Emerald with signed shareholder intention statements confirming that, in the absence of a superior proposal, they intended to accept the Emerald Offer in respect of all Bullseye shares they controlled.

3.1.2 On 21 August 2023, Mr Desmond Mullan (also a shareholder of Bullseye, holding approximately 3.74% of Bullseye's issued share capital) made an application to the Panel seeking a declaration of unacceptable circumstances in relation to the affairs of Bullseye.

3.1.3 Mr Mullan submitted to the Panel that, among other things, Emerald, through its control of Bullseye, had given a collateral benefit to both Au Xingao and Xinhe, being the issuance of the 22,800,000 Bullseye shares to Au Xingao as part of the agreement to settle the Supreme Court Proceedings, in contravention of the equality principle in section 602(c) of the Act.²⁹

3.2 2020/2021 Proceedings

3.2.1 The following is a summary of the background to the 2020/2021 Supreme Court Proceedings (**2020/2021 Proceedings**) provided in the Briefing Letter.³⁰

3.2.2 The 2020/2021 Proceedings consisted of two oppression actions, which were consolidated for the purposes of enabling them to be tried together, which trial commenced in September 2021 and ran intermittently for 73 days until November 2022. Xinhe and Au Xingao commenced the second oppression action because it wished to rely upon grounds of oppression which, it alleged, had arisen after the commencement of the first oppression action.

3.2.3 The 2020/2021 Proceedings were commenced by Xinhe against Bullseye and its then three directors (Peter Joseph Burns, Peter Gerard Burns and Dariena Mullan) in relation to whether there had been contraventions of section 232 of the Act in the conduct of Bullseye's affairs.

3.2.4 Xinhe alleged, in its consolidated statement of claim, approximately 30 separate grounds of oppression, which had a factual matrix spanning the period from 2015 until 2022. Xinhe amended its statement of claim four times during the 2020/2021 Proceedings to include additional grounds of oppression. The papers for the judge consisting of the pleadings in clean form comprised 384 pages of allegations of material facts and the particulars thereof.

3.2.5 Xinhe sought a range of remedial orders against Bullseye and its three directors, including that a receiver and manager be appointed over Bullseye's assets, that the Board be reconstituted and that Bullseye institute certain proceedings against the three defendant directors.

²⁸ To the extent that Bullseye's counterclaim was settled with respect to Xinhe and Luke Huang only

²⁹ Briefing Letter, paragraphs 9 to 11

³⁰ Briefing Letter, paragraphs 12 to 22

- 3.2.6 In a claim for oppressive conduct in which the Court finds that there has been a contravention of section 232 of the Act (i.e. oppressive conduct), the Court has a wide discretion under section 233 to make any orders it considers appropriate in relation to a company, with the intention of bringing the relevant oppression to an end. Notably, the Court is not limited to the form of relief contended for by any of the parties.
- 3.2.7 Section 233 of the Act lists non-exhaustive forms of orders which a Court may make which are intended to bring the relevant oppression to an end. The Court may, however, in the exercise of its discretion pursuant to section 233 order any form of relief in order to bring the oppressive conduct to an end, such as an order for the compulsory buy back of the shares of the oppressed shareholder, albeit the oppressed shareholder may neither seek nor desire such relief.
- 3.2.8 The following provides a summary as to the scope and scale of the 2020/2021 Proceedings:
- a) The trial of the 2020/2021 Proceedings commenced on 6 September 2021 and concluded on 22 November 2022, comprising 73 sitting days.
 - b) The 2020/2021 Proceedings involved a large number of interlocutory disputes (approximately 25), including:
 - i. an urgent application by Xinhe for an injunction to restrain Bullseye's AGM for FY20 from proceeding
 - ii. numerous applications to compel the production of documents by discovery or subpoena, or applications to set aside subpoenas served on third parties, which involved Bullseye's auditors, accountants, former lawyers and shareholders
 - iii. numerous applications in relation to pleadings and to compel further and better discovery
 - iv. in February 2023, an application by Xinhe to re-open the proceeding and to re-call the three director defendants, after the trial had concluded.
- 3.2.9 In total, during the course of the 2020/2021 Proceedings:
- a) approximately 49 subpoenas were issued at the request of the parties
 - b) eleven lay witnesses and four expert witnesses gave evidence at trial
 - c) over 8,500 pages in transcript were produced from the trial
 - d) approximately 2,600 exhibits were uploaded to the electronic trial bundle
 - e) hundreds of pages of witness outlines were filed by all parties
 - f) Bullseye's written closing submissions were 262 pages and Xinhe's written closing submissions were 235 pages.
- 3.2.10 As at 18 July 2023, Bullseye had incurred costs and disbursements in the 2020/2021 Proceedings totalling approximately \$7.7 million, which comprised the following:
- a) approximately \$6.2 million (incl GST) for the legal fees and disbursements of Bullseye (which included approximately \$2.5 million for the fees of the two counsel who represented Bullseye at the 73-day trial)
 - b) approximately \$1.5 million (incl GST) for the legal fees and disbursements for the three director defendants who were indemnified by Bullseye for their legal costs.
- 3.2.11 The conduct of the 2020/2021 Proceedings caused a significant drain on the resources of Bullseye (in particular, management time), which included the following:
- a) Bullseye's three directors, who were defendants and witnesses and who were key members of Bullseye's small operational team, were required to be in attendance for the majority of the time that evidence was presented at trial
 - b) from the commencement of the 2020/2021 Proceedings in July 2020, Bullseye's directors were required, on a day-to-day basis, to keep themselves informed, and consider advice from, and

provide instructions to, their lawyers and counsel, as to the progress and conduct of the 2020/2021 Proceedings

- c) in preparing for and attending as witnesses at the trial, Bullseye's directors were required to provide detailed factual instructions to Bullseye's lawyers, and the lawyers acting for them in their personal capacities as defendants in the 2020/2021 Proceedings (which included spending extensive amounts of time meeting and attending with lawyers and reviewing documents for the purpose of preparing lengthy proofs of evidence and witness outlines).

3.3 2022/2023 Proceedings

3.3.1 The following provides further high-level background information as to the Supreme Court Proceedings commenced in 2022 (**2022 Proceedings**) and 2023 (**2023 Proceedings**).³¹

3.3.2 The 2022 Proceedings and 2023 Proceedings consisted of two actions, which were consolidated for the purposes of their further conduct (**2022/2023 Proceedings**). Xinhe commenced the fourth action in 2023, because it wished to seek relief in respect of matters which, it alleged, had arisen after the commencement of the third action. The 2022/2023 Proceedings were not limited to claims for relief for oppressive conduct (which relief included a claim for monetary compensation under s233(1)(j) of the Act) but sought relief also in the form of monetary compensation for a wide range of alleged breaches of other sections of the Act.

3.3.3 Xinhe and Au Xingao commenced the 2022/2023 Proceedings against Bullseye, Emerald and six of Bullseye's current or former directors (Peter Joseph Burns, Peter Gerard Burns, Dariena Mullan, Anthony Short, Ian Ladyman and Mark Clements) and the related entities of Anthony Short, Ian Ladyman and Mark Clements.

3.3.4 Xinhe and Au Xingao sought a range of remedial and monetary compensation orders in the 2022/2023 Proceedings, including:

- a) compensation (by the payment of monetary compensation and/or the issue of Bullseye shares to Xinhe)
- b) orders to vest in ASIC the Bullseye shares obtained by Emerald in alleged contravention of section 606 of the Act
- c) orders requiring Bullseye's directors to compensate Bullseye for damage caused by their conduct.

3.4 Mediation

3.4.1 A Court-ordered mediation before the Honourable Justice Kenneth Martin was conducted in September 2022 (**Mediation**), near the end of the trial hearing in relation to the 2020/2021 Proceedings, however the Mediation did not result in a settlement being achieved at that time.³²

3.5 Settlement Deeds

3.5.1 The following provides high level background information on the Settlement Deeds.³³ Settlement communications continued to take place between Bullseye and Xinhe following the Mediation, which ultimately culminated in the two separate Settlement Deeds, referred to in the Panel Declaration and Orders, being entered into on 26 July 2023 with respect to the 2020/2021 Proceedings and the 2022/2023 Proceedings.

³¹ Briefing Letter, paragraphs 23 to 26

³² Briefing Letter, paragraph 27

³³ Briefing Letter, paragraph 28 to 33

- 3.5.2 In summary, pursuant to the 2020/2021 Deed:
- a) 22,800,000 Bullseye shares were to be issued to Au Xingao (as nominee for Xinhe and Au Xingao collectively) (**Settlement Shares**)
 - b) consent orders were to be filed in Court, dismissing the 2020/2021 Proceedings (as between Xinhe and the defendants other than Ms Mullan) with no order as to costs, immediately upon the allotment of the Settlement Shares
 - c) Xinhe, Au Xingao and Luke Huang provided broad releases to Bullseye and the defendants other than Ms Mullan from all claims of any nature, whether known or unknown, based on facts, matters, circumstances, or things which occurred prior to the date of issue of the Settlement Shares.
- 3.5.3 In summary, pursuant to the 2022/2023 Deed:
- a) consent orders were to be filed in Court, dismissing the 2022/2023 Proceedings with no order as to costs (as between Xinhe, Au Xingao and the defendants other than Ms Mullan), immediately upon the consent orders in the 2020/2021 Proceedings being made by the Supreme Court
 - b) Xinhe, Au Xingao and Luke Huang provided releases to Bullseye and the defendants other than Ms Mullan in respect of all claims in connection with the 2022/2023 Proceedings, whether known or unknown.
- 3.5.4 Having regard to the circumstances of the 2020/2021 Proceedings and 2022/2023 Proceedings and other factors, Bullseye determined that it was comfortable with the issue of the Settlement Shares and the terms of the Deeds given that the settlement of the litigation was in the best interest of shareholders due to the following reasons³⁴:
- a) The litigations had been a long running dispute that took up an excessive amount of Bullseye Management's time and diverted attention from Bullseye's company strategy of becoming a gold producer following a successful exploration campaign and development process.
 - b) Bullseye had a depleted working capital position having incurred significant legal costs, which would have otherwise been applied to furthering Bullseye's company strategy to generate shareholder value.
 - c) The Settlement Shares reflected the outcome of mediation discussions with Xinhe and its representatives following a direction from the Judge presiding over the 2020/2021 Proceedings to mediate.
- 3.5.5 The Settlement Shares were subsequently duly issued and the consent orders in relation to the dismissal of the 2020/2021 Proceedings and the 2022/2023 Proceedings were lodged with the Court.
- 3.5.6 Neither the 20/21 Deed nor the 22/23 Deed was conditional on the outcome of the Emerald Offer.
- 3.5.7 A summary of the chronology of events from the 2020/2021 Proceedings up to the date of the Emerald Offer is included in **Appendix D**.

³⁴ Board minutes, page 3

4 BDO Expert Report

4.1 Summary

- 4.1.1 Based on our review of the BDO Expert Report, we consider that the valuation methodologies utilised are reasonable, including as they relate to BDO's assessment of the following:
- a) A Bullseye share prior to the Emerald Offer (on a controlling interest basis). We consider that the valuation methodologies adopted by BDO and SRK to value Bullseye are in-line with the VALMIN Code and generally accepted market practice for the valuation of a mining exploration and development company with mineral assets at a comparable stage of development.
 - b) An Emerald share in the proposed merged Emerald entity (**Proposed Merged Entity**) (on a minority interest basis). We consider that the quoted market price (**QMP**) methodology is an appropriate methodology, given that Emerald's shares display sufficient liquidity and did not appear to have been impacted by any one-off systemic factors.
- 4.1.2 Due to the scope of this IER, we have not undertaken a detailed review of the underlying inputs to BDO's valuation, including, for example, the detailed qualitative assessment and inputs to the mineral asset valuation assessment undertaken by SRK. The BDO Expert Report was prepared for a different purpose and a number of underlying assumptions in the BDO Expert Report are different to those that we have adopted for the purposes of our net benefit assessment.
- 4.1.3 However, we do note that BDO concluded a value per share in Bullseye, prior to the Emerald Offer, of \$0.067 on a controlling interest basis. This value per share compares with the most recent share issue by Bullseye prior to the Emerald Offer of \$0.29 per share on a minority interest basis and the value per share implied by the Emerald Offer of \$0.588 on a controlling interest basis.
- 4.1.4 Given the range between the low value ascribed by BDO and the high value implied by the Emerald Offer, and the inherent uncertainty and subjectivity that can arise in valuing exploration and development projects, we have elected to undertake our net benefit analysis based on the high value implied by the Emerald Offer for the reasons set out in Section 5. In our view, this value represents the value as at the date of the Share Settlement (26 July 2023) and the maximum value in respect of the Settlement Shares. Accordingly, in terms of our net benefit analysis, we consider this to be a conservative approach.
- 4.1.5 We have adopted different values at different points in time for our dilution analyses for the reasons set out in **Appendix E**.
- 4.1.6 Nothing in our IER should be taken as implying that the BDO Expert Report is incorrect, deficient or unsuitable for the purpose for which it was prepared.

4.2 Background to the BDO Expert Report

- 4.2.1 On 27 July 2023, Emerald announced the signing of a Bid Implementation Agreement with Bullseye to acquire 100% of the ordinary shares in Bullseye that it did not already own in an all scrip off-market takeover offer. On 18 August 2023, Emerald released its Bidders Statement detailing the offer to acquire the remaining shares for a consideration of one new ordinary Emerald share for every four Bullseye shares held.³⁵
- 4.2.2 The BDO Expert Report expressed an opinion on whether or not the Emerald Offer was fair and reasonable to the non-associated shareholders of Bullseye.
- 4.2.3 In assessing the Emerald Offer, BDO considered:
- c) how the value of four Bullseye shares prior to the Emerald Offer (on a controlling interest basis) compared to the value of a share in the proposed merged entity (on a minority interest basis)
 - d) the likelihood of an alternative offer being made to Bullseye or its non-associated shareholders
 - e) the position of a non-associated shareholder, should they choose to not accept the Emerald Offer
 - f) other factors that BDO considered relevant to the non-associated shareholders in their assessment of whether they should accept the Emerald Offer.³⁶
- 4.2.4 BDO concluded that the Emerald Offer, in the absence of an alternative offer, was fair and reasonable to the non-associated shareholders of Bullseye.

4.3 Valuation of Bullseye shares

Valuation conclusion

- 4.3.1 Table 5 summarises BDO's assessed Fair Market Value of a Bullseye share prior to the Emerald Offer (on a controlling interest basis).

Table 5: Summary of BDO's valuation assessment of a Bullseye share prior to the Emerald Offer

\$	Low	Mid	High
Value of mineral assets and exploration potential	26,300,000	36,700,000	49,100,000
Other assets and liabilities	(2,553,410)	(2,553,410)	(2,553,410)
Equity value of Bullseye (controlling interest basis)	23,746,590	34,146,590	46,546,590
Number of shares outstanding	507,081,513	507,081,513	507,081,513
Equity value per Bullseye share (controlling interest basis)	0.047	0.067	0.092

Source: BDO Expert Report, PwCS analysis

- 4.3.2 As summarised in Table 5 above, BDO adopted the sum-of-the-parts (**SOTP**) valuation approach, taking into consideration the Fair Market Value of Bullseye's:
- a) mineral assets
 - b) other assets and liabilities.
- 4.3.3 Further details of BDO's SOTP valuation methodology are discussed below.

³⁵ BDO Expert Report, page 6

³⁶ BDO Expert Report, page 2

Valuation methodology

- 4.3.4 The SOTP methodology estimates the value of a company by assessing the realisable value of identifiable assets and liabilities using different methodologies, which are then aggregated using the Net Asset Value (**NAV**) methodology.
- 4.3.5 BDO adopted the SOTP valuation methodology for the following reasons:
- a) the core value of Bullseye lies in its mineral assets, which are in the development and exploration stages
 - b) Bullseye's mineral assets had no material level of foreseeable future net cashflow
 - c) Bullseye does not have a history of generating stable profits
 - d) Bullseye's shares are not listed on a securities exchange, such as the Australian Securities Exchange Ltd (**ASX**), thus, there is no readily observable share price.³⁷
- 4.3.6 To determine the Fair Market Value of Bullseye on a controlling interest basis, BDO adopted the aggregate value of:
- a) the value of Bullseye's mineral assets, based on the valuation conclusions contained in the SRK ITSR
 - b) the value of Bullseye's other assets and liabilities as at 31 May 2023, being the financial reporting date most recently available prior to the date of the BDO Expert Report. BDO also make fair value adjustments to balances including:
 - i. Cash and cash equivalents – adjusted to reflect the cash and equivalent balance as at 31 July 2023, based on information provided by Bullseye.
 - ii. Exploration, evaluation and development expenditure – balances reduced to nil due to SRK providing an assessment of the value of Bullseye's mineral assets and exploration potential in the SRK ITSR, as discussed below.
 - iii. Borrowings – were increased by \$3.05 million to reflect drawdowns as per the facility agreement between 1 June 2023 and 21 August 2023.
 - iv. Litigation settlement payable – an adjustment was included for a litigation settlement payable of \$0.52 million in reference to the Legal Matter CIV 1989 of 2020. This related to the action brought by the trustees of the NEZA Trust in the District Court of WA, who sought the payment of capital raising fees from Bullseye.³⁸

³⁷ BDO Expert Report, page 34

³⁸ BDO Expert Report, page 36

Table 6 – Summary of adjusted statement of Bullseye’s financial position as at 31 May 23

	\$
Cash and cash equivalents	177,286
Trade and other receivables	451,891
Financial assets at amortised cost	-
Inventories	-
Asset held for sale	825,852
Other current assets	228,496
Total current assets	1,683,525
Inventories	1,561,153
Property, plant and equipment	685,246
Exploration and evaluation assets	-
Development expenditure	-
Right-of-use-asset	-
Total non-current assets	2,246,399
Total assets	3,929,924
Trade and other payables	2,226,137
Interest-bearing liabilities	3,452,762
Provisions	-
Other current liabilities	-
Litigation settlement payable	520,000
Total current liabilities	6,198,899
Provisions	284,435
Lease Liabilities	-
Total non-current liabilities	284,435
Total liabilities	6,483,334
Net assets	(2,553,410)

Source: BDO Expert Report

- 4.3.7 Based on BDO’s adjustment’s in Table 6, Bullseye had a net liability position of \$2.6 million as at 31 May 2023.
- 4.3.8 For Bullseye’s mineral assets, BDO relied on the SRK ITSR, which was prepared in accordance with industry practices, including the Joint Ore Reserves Committee Code (**JORC Code**) as well the Australasian Code for Public Reporting of Technical Assessments and Valuation of Mineral Assets (**VALMIN Code**).³⁹
- 4.3.9 SRK determined the value of Bullseye’s mineral assets based on the:
- a) value of defined Mineral Resources held by Bullseye⁴⁰
 - b) value of the exploration potential of the mineral tenure outside the defined Mineral Resource areas.⁴¹
- 4.3.10 To assess the value of the defined Mineral Resources, SRK adopted valuation ranges based on values implied by:
- a) an analysis of comparable transactions
 - b) industry yardsticks.⁴²

³⁹ SRK ITSR, page 1

⁴⁰SRK ITSR, pages 49 to 54

⁴¹SRK ITSR, pages 54 to 65

⁴² SRK ITSR, page 65

- 4.3.11 To assess the value of exploration potential, SRK adopted an equal weight of values implied by:
- an analysis of comparable transactions
 - geoscientific methods
 - multiples of exploration expenditure (**MEE**) methods.⁴³

4.4 Valuation of Emerald shares

Valuation conclusion

4.4.1 BDO assessed the value of an Emerald share in the Proposed Merged Entity (on a minority interest basis) as between \$2.20 and \$2.50.

4.4.2 BDO adopted the QMP valuation methodology, which is discussed in further detail below.

Valuation methodology

4.4.3 BDO adopted the QMP methodology to value a share in the Proposed Merged Entity (on a minority interest basis) assuming acceptance of the Emerald Offer.

4.4.4 BDO adopted a Proposed Merged Entity share price for Emerald of \$2.20 to \$2.50, based on an analysis of Emerald's share price up to twenty-five trading days following announcement of the Emerald Offer using trading data from Bloomberg, including the:

- low and high Emerald share price
- Volume Weighted Average Share Price (**VWAP**)
- volume of trading for Emerald shares.⁴⁴

4.4.5 Table 7 summarises our recalculation of the above using trading data from S&P Capital IQ.

Table 7 – Emerald share analysis post announcement of Emerald Offer

Trading days	Share price low	Share price high	VWAP	Cumulative volume traded (m)	As a % of shares outstanding
27-Jul-23	\$2.19	\$2.28		4.0	0.7%
1 day post announcement	\$2.03	\$2.28	\$2.12	6.8	1.1%
5 days post announcement	\$2.03	\$2.39	\$2.21	14.6	2.4%
10 days post announcement	\$2.03	\$2.39	\$2.23	28.0	4.7%
15 days post announcement	\$2.03	\$2.47	\$2.25	32.7	5.5%
20 days post announcement	\$2.03	\$2.47	\$2.26	39.3	6.6%
25 days post announcement	\$2.03	\$2.47	\$2.27	46.6	7.8%

Source: S&P Capital IQ, PwCS analysis

Note: Discrepancies in data may exist due to differences in data providers

4.4.6 Based on the analysis of Emerald's share price in Table 7 above, we consider BDO's selected range of \$2.20 to \$2.50 for the Fair Market Value of an Emerald share (on a minority interest basis) in the Proposed Merged Entity to be appropriate.

4.4.7 However, RG 111 states that for the QMP methodology to be appropriate, there needs to be:

- a liquid and active market for the shares
- allowance for the fact that the quoted price may not reflect a share's value if 100% of the shares are not available for sale.⁴⁵

⁴³SRK ITSR, page 66

⁴⁴BDO Expert Report, page 40

⁴⁵RG 111, page 22

4.4.8 Accordingly, we have also analysed the liquidity of Emerald's shares further below.

Liquidity analysis

4.4.9 For the purposes of assessing share liquidity, we have compared the average daily and weekly share turnover of Emerald shares to the top ten constituents of the ASX 100 Index (based on market capitalisation). As shown in Table 8 below, the average daily and weekly share turnover of Emerald is relatively in line with, or greater than, the average daily and weekly share turnovers for the ten ASX 100 constituents post the Emerald Offer date.

Table 8 – Emerald share turnover analysis

	% of shares outstanding		% of float	
	Average daily share turnover	Average weekly share turnover	Average daily share turnover	Average weekly share turnover
Emerald	0.3%	1.6%	0.4%	2.1%
<i>ASX Top 10</i>				
Min	0.1%	0.6%	0.1%	0.6%
Mean	0.3%	1.3%	0.3%	1.5%
Median	0.2%	0.8%	0.2%	0.9%
Max	0.9%	4.8%	1.1%	5.5%

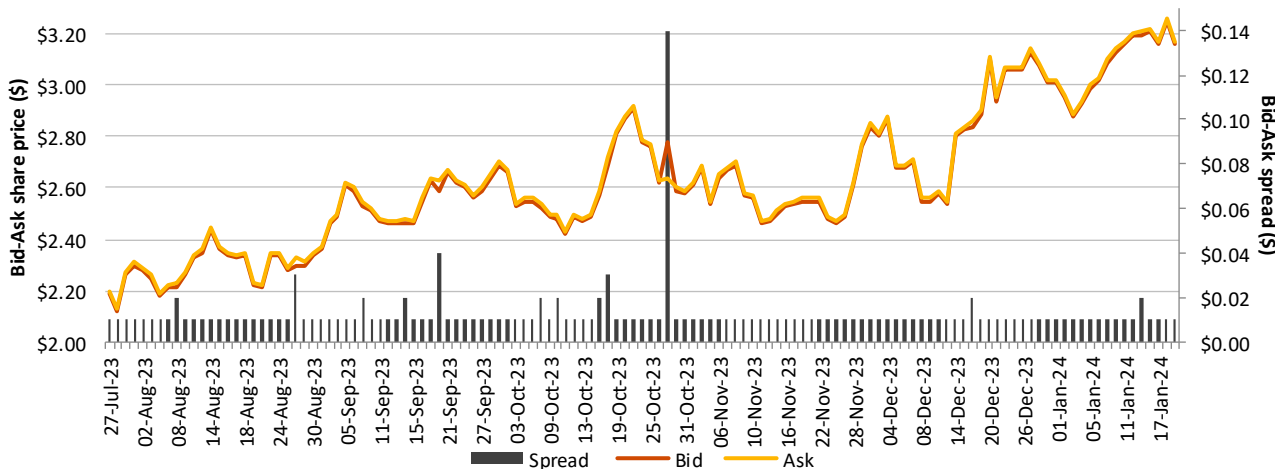
Source: S&P Capital IQ, ASX Website, PwCS analysis

Note: ASX top 10 sourced from the ASX website as at January 2024 and are based on market capitalisation (excluding dual listed companies)

4.4.10 Additionally, we have also considered the bid-ask spread of Emerald shares post the Emerald Offer as shown in Figure 1 below.

4.4.11 Given the spread is within a tight range (average bid-ask spread of around \$0.01 per share), we consider this representative of sufficient share liquidity to adopt the QMP methodology.

Figure 1 – Emerald share bid-ask spread analysis

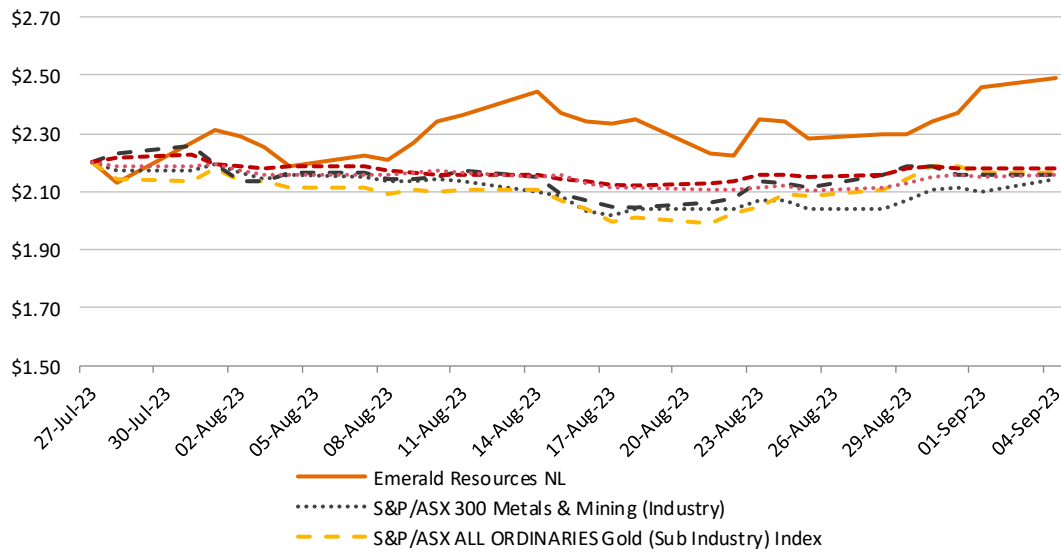


Source: S&P Capital IQ, PwCS analysis

Market announcements

4.4.12 We have also considered whether there are other market factors which could influence Emerald’s share price in the two-month period following the announcement of the Emerald Offer. We have analysed Emerald’s share price in respect of relevant indices, as summarised in Figure 2.

Figure 2 – Emerald share price and relevant index analysis



Source: S&P Capital IQ, PwCS analysis

4.4.13 As shown in Figure 2 above, Emerald’s share price increased following the Emerald Offer, while relevant gold indices remained stable. This suggests that Emerald’s share price appreciation is reflective of unsystematic factors (i.e. asset specific factors), as opposed to market conditions in the gold industry.

5 Value of the Settlement Shares

5.1.1 The Fair Market Value of the Settlement Shares as at 26 July 2023, that we have adopted for our net benefit analysis, was between \$12.54 and \$14.25 million, with a midpoint of \$13.40 million. We have determined this value based on the following inputs:

- a) 22,800,000 Bullseye shares, being the Settlement Shares issued to Au Xingao (as nominee for Xinhe and Au Xingao collectively).
- b) A price of between \$0.55 to \$0.625 (midpoint \$0.588) per Bullseye share, based on BDO's assessment of the Proposed Merged Entity price of between \$2.20 to \$2.50 and an adjustment to reflect the scrip conversion under the Emerald Offer (i.e. four Bullseye shares for one Emerald share).

5.1.2 In forming our opinion on the Fair Market Value of the Settlement Shares to adopt in our net benefit analysis, we have considered the following:

- a) The date that Xinhe/Au Xingao signed the Settlement Deeds (26 July 2023), as the appropriate date on which to value the Settlement Shares (**Valuation Date**).
- b) The Emerald Offer, the Signed Shareholder Statements and the Settlement Deeds (including the Share Settlement), which appear to be part of an interconnected transaction (**Interconnected Transaction**), which occurred on the Valuation Date.
- c) The Bid Implementation Agreement between Emerald and Bullseye with respect to the Emerald Offer, which included (at Schedule 2) a minimum acceptance condition of 75.56% (or 75.54%)⁴⁶.
- d) Although the Settlement Shares represent a minority shareholding of 4.496% in Bullseye, we consider the Fair Market Value of the Settlement Shares would have included a control premium, given that:
 - Emerald already held 57.34% of the shares in Bullseye and therefore already held a controlling stake
 - Xinhe would have expected to be compensated on a control basis.
- e) In practice, determining the value of the control premium in a takeover transaction is difficult. This is because:
 - only a takeover premium can be inferred from a takeover transaction after completion
 - the takeover premium reflects two components, namely the value of control (i.e. control premium) and the value of any synergies specific to that bidder (i.e. special value).
- f) For the purposes of our net benefit assessment, we have valued the Settlement Shares inclusive of the entire takeover premium, which is implied by the Emerald Offer. We have not sought to determine the special value to Emerald included in the takeover premium, if any.
- g) The Minority Shareholders, assuming the Emerald Offer completed, would also participate equally in this takeover premium (consistent with the equality principle at Section 602(c)). For illustrative purposes, in our opinion, the value of the Settlement Shares at \$13.40 million (midpoint) comprised two components:

⁴⁶ Noting that, at the time, the combined holding of Emerald, Xinhe and Au Xingao was 75.54% and that the Emerald Offer stated a minimum acceptance condition of 75.54%

- \$6.61 million, representing the proportion of value in the Settlement Shares⁴⁷, which Xinhe/Au Xingao received, which the Minority Shareholders did not receive.
- \$6.78 million⁴⁸, representing the proportion of value in the Settlement Shares relating to the takeover premium provided under the Emerald Offer, which Xinhe/Au Xingao would receive and which the Minority Shareholders would also receive⁴⁹, if the Emerald Offer was successful.

5.1.3 Although we have assessed the value of the Settlement Shares at \$0.588 per share, it could be argued that the value of the Settlement Shares is \$0.29 per share (based on the most recent share issue price in Bullseye) or \$0.067 per share (based on the BDO Expert Report) on the basis that the takeover premium is not unique to Xinhe/Au Xingao and would flow to both Xinhe/Au Xingao and the Minority Shareholders, if the Emerald Offer completed.

5.1.4 We consider that the highest implied value of the Settlement Shares is between \$12.54 and \$14.25 million, with a midpoint of \$13.40 million (or \$0.588 per share on a control basis at the midpoint) and is therefore the highest watermark to test whether a net benefit was provided to Xinhe and Au Xingao.

5.1.5 In accordance with GN 21, in order to take a holistic approach to our net benefit assessment, we have also considered the implied values of the Settlement Shares under a range of alternative valuation scenarios, which are summarised in Table 9.

5.1.6 We have considered the following alternative scenarios in estimating a range of implied values for the Settlement Shares:

- Bullseye shares on a controlling and minority interest basis:** Bullseye shares are quoted in the BDO Expert Report on a control basis, in compliance with ASIC's guidance when analysing whether an offer is fair and reasonable. We have included a scenario on both a controlling interest and minority interest basis. We adjusted BDO's Bullseye valuation range to be on a minority interest basis by assuming the midpoint of the commonly accepted range of 20% to 30% for typical minority interest discounts.
- Bullseye shares based on prior equity issuances:** We have included a scenario based on prior equity placements and issuances by Bullseye⁵⁰, adopting a share price range of \$0.20 to \$0.29, with a mid-point of \$0.24 per share.

Table 9 Summary of implied values of the Settlement Shares based on alternative valuation going concern basis scenarios

Fair Market Value (going concern basis)	Low	Mid	High
PwCS preferred \$ per Settlement Share	0.550	0.588	0.625
Bullseye (minority) \$ per share (BDO / PwCS minority discount of 25%)	0.035	0.050	0.069
Bullseye (control) \$ per share (BDO)	0.047	0.067	0.092
Bullseye (minority) \$ per share (previous equity placements)	0.200	0.245	0.290
Implied value (\$m) of Settlement Shares (going concern), based on:			
PwCS preferred value of Settlement Shares (\$m)	12.540	13.395	14.250
Bullseye (minority) (BDO / PwCS minority discount of 25%)	0.804	1.146	1.573
Bullseye (control) (BDO)	1.072	1.528	2.098
Bullseye (minority) (previous equity placements)	4.560	5.586	6.612

Source: BDO Expert Report, PwCS analysis

*Note: Our opinion of the value of the Settlement Shares versus a range of alternative scenarios

⁴⁷ Assuming a price of \$0.29 per Bullseye share, based on the price of the entitlements issued by Bullseye in FY23, which represent the most recent transaction of shares in Bullseye, prior to the signing of the Settlement Deeds on 26 July 2023

⁴⁸ Being \$13.40m less \$6.61m

⁴⁹ In accordance with their pro-rata holding of Bullseye shares

⁵⁰ Bullseye FY22 Annual Report, page 7; Bullseye FY23 Annual Report, page 5

5.1.7 Further, the values in Table 9 above are representative of Fair Market Value on a 'going concern' basis of value. In Table 10, we have also restated the values assuming a 'liquidation' basis of value. A liquidation basis of value is the amount that would be realised when an asset or group of assets are sold on a piecemeal basis.⁵¹ Further, there are two assumed scenarios within a liquidation basis of value:

- a) **Forced realisation:** This represents circumstances where a seller is under compulsion to sell and, as a consequence, a proper marketing period is not possible, and buyers may not be able to undertake adequate due diligence.⁵² Based on our experience, the discount to value is material and can be as high as 50% (or higher).
- b) **Orderly realisation:** the value of a group of assets that could be realised in a liquidation sale, given a reasonable period of time to find a purchaser (or purchasers), with the seller being compelled to sell on an as-is, where-is basis.⁵³ Based on our experience, given that administrators are able to run a proper sale process with sufficient marketing, the value discounts are not material and range up to 10%.

Table 10 - Summary of implied values of the Settlement Shares based on alternative liquidation basis valuation scenarios

Fair Market Value (liquidation basis)	Low		Mid		High	
<i>Realisation basis</i>	<i>Forced</i>	<i>Orderly</i>	<i>Forced</i>	<i>Orderly</i>	<i>Forced</i>	<i>Orderly</i>
<i>Realisation basis discount</i>	50%	10%	50%	10%	50%	10%
Implied value (\$m) of Settlement Shares (liquidation basis), based on:						
PwCS preferred value of Settlement Shares (\$m)	6.270	11.286	6.698	12.056	7.125	12.825
Bullseye (minority) (BDO / PwCS minority discount of 25%)	0.402	0.723	0.573	1.031	0.787	1.416
Bullseye (control) (BDO)	0.536	0.964	0.764	1.375	1.049	1.888
Bullseye (minority) (previous equity placements)	2.280	4.104	2.793	5.027	3.306	5.951

Source: BDO Expert Report, PwCS analysis

⁵¹ IVS 104, page 12

⁵² IVS 104, page 15

⁵³ Ibid

6 Net benefit assessment

6.1 Introduction

- 6.1.1 We have considered the commercial balance of advantages flowing to and from Xinhe and AU Xingao and we have engaged a Technical Specialist to provide an opinion on legal matters outside of our area of expertise. For clarity, the opinions of the Technical Specialist have been considered and referenced throughout our net benefit assessment and the Technical Specialist's Report is attached at Appendix C and is also summarised below.
- 6.1.2 In assessing whether Xinhe and AU Xingao received a net benefit as a result of the Share Settlement in connection with the Emerald Offer that was not provided to other Bullseye shareholders, we have:
- a) complied with the Act, including having regard to the meaning of a 'collateral benefit' under Section 623 and the equality principle under section 602(c)
 - b) complied with the relevant regulatory guides issued by ASIC, including RG 111 and RG 112
 - c) drawn on GN 21, including for example, undertaking a 'holistic' approach and considering all of the relevant facts and circumstances, including those that are both quantitative and qualitative in nature.

6.2 The meaning of net benefit

- 6.2.1 Consistent with the Panel's Declaration and Orders, Bullseye provided PwCS, in a form approved by the Panel, instructions for preparing the IER, including an explanation of the meaning of 'net benefit' with reference to relevant Panel guidance, and Panel and Court decisions. Set out below is a summary of that explanation.
- 6.2.2 Section 602(c) of the Act states that the purpose of the takeover provisions in Chapter 6 of the Act is to ensure that all securityholders have a reasonable and equal opportunity to participate in any benefits (i.e. the equality principle).
- 6.2.3 GN 21 sets out the Panel's approach to collateral benefits, the equality principle and the concept of net benefit.
- 6.2.4 The Panel's view is that, prima facie, a benefit will offend the equality principle and give rise to unacceptable circumstances if it is a net benefit. A net benefit is to be assessed by reference to the commercial balance of advantages flowing to and from the security holder.⁵⁴ It is to be assessed on a 'holistic' rather than 'atomistic' approach.⁵⁵

⁵⁴ Re Powertel Ltd (No 3) [2003] ATP 28

⁵⁵ Boral Energy Resources Ltd v TU Australia (Qld) Pty Ltd (1998) 28 ACSR 1

6.2.5 The net benefit approach was discussed and adopted by the Panel in *Re Powertel Ltd (No 3)* [2003] ATP 28. In doing so, the Panel had regard to various judicial and Panel decisions concerning s 623 of the Act ('Collateral benefits not allowed') and its predecessor sections, and stated (at ATP [44], [49]):

In ascertaining whether a benefit has been given (or offered or agreed to be given), the Courts and the Panel have made an assessment as to whether the total effect of the impugned transaction is to confer a benefit on a shareholder (or associate) rather than merely to isolate a beneficial factor without considering the context in which that arises ...

*[T]he balance of judicial authority (including the reasoning of the majority of the High Court in *Sagasco*) and the basis of the Panel decisions which have considered the issue of benefits in CA s 623 supports a "net benefits" approach looking at the commercial balance of advantages flowing to or from the non-bidder from a transaction which is sought to be impugned.*

6.2.6 In accordance with GN 21, the factors that influence the view of the balance of advantages include:

- a) the substance and commercial reality of the transaction
- b) the context in which the benefit is given or the consideration is given up
- c) the overall effect of the transaction
- d) an objective assessment of the transaction (rather than the parties' intentions).

6.3 Summary of Technical Specialist's Report

6.3.1 Given the nature of the subject-matter (i.e. the settlement of complex legal proceedings involving numerous allegations of shareholder oppression and associated breaches of sections 232 and 606 of the Act, amongst other things), in order to comply with RG 111, we have retained an independent Technical Specialist, Mr Paul Edgar SC to assist us in determining whether Xinhe and Au Xingao obtained a net benefit as a result of the Share Settlement in connection with the Emerald Offer.

6.3.2 Mr Edgar is a Barrister of 32 years standing, primarily practising in consumer law, trusts, companies, contracts, insolvency law and equity. We have also retained the services of a law firm, Lavan, which is a full-service law firm based in WA, to assist us with instructing Mr Edgar. Further details of Mr Edgar's professional experience is set out in Appendix C. The Technical Specialist's Report, is attached at Appendix C.

6.3.3 Mr Edgar was instructed to review all relevant materials relating to the Supreme Court Proceedings and District Court Proceedings and, having regard to GN 21 and Chapter 6 of the Act, provide an opinion on the following:

- a) Having regard to the factual instructions and materials provided, and relying on the valuation of the Settlement Shares determined by PwCS, please provide your opinion as to whether the amount paid by Bullseye in terms of the value of the Settlement Shares was reasonable or excessive as consideration to settle the existing litigation and to secure the relevant releases from Xinhe and Au Xingao.
- b) further, and in the circumstances, what benefit/s, if any, did:
 - iii. Xinhe obtain as a result of entering into the Settlement Deeds and accepting the Emerald Offer?
 - iv. Au Xingao obtain as a result of entering into the Settlement Deeds and accepting the Emerald Offer?
- c) assuming that either Xinhe or Au Xingao did obtain a benefit, was that a net benefit?
- d) assuming that either Xinhe or Au Xingao did obtain a net benefit, was that net benefit provided to other shareholders? If not, why not?

- e) in circumstances where Bullseye did not enter into the Settlement Deeds, what alternative options were available to it to advance or otherwise resolve the 2022/2023 Proceedings?
 - f) in answering the above questions, any other matters that I consider are relevant to assist PwCS in the preparation of its report.
- 6.3.4 Mr Edgar's opinion is based on the factual circumstances leading up to the Panel Proceedings, which involved the 2020/2021 Proceedings and the 2022/2023 Proceedings commenced by Xinhe against Bullseye and its directors, alleging shareholder oppression and other claims relating to Bullseye's mineral assets and exploration potential. Xinhe also sought damages for lost opportunity ranging from \$14 million to \$22.4 million.
- 6.3.5 Mr Edgar notes that Bullseye had incurred approximately \$7.7 million in legal fees in defending the 2020/2021 Proceedings, which had been the subject of a lengthy and complex trial and was awaiting the reserved judgment of the court. He also notes that the 2022/2023 Proceedings, which had been commenced after Emerald made an off-market takeover offer for Bullseye, involved several allegations of shareholder oppression against Bullseye and joined eleven defendants, against all of whom relief was sought.
- 6.3.6 Mr Edgar observes that the plaintiff did not always adopt a rational commercial approach in the course of the 2020/2021 Proceedings, and that the court had expressed disappointment at the lack of collaborative collegiality and the overly combative approach of the parties. He also states that it would not be unreasonable to assume that Bullseye would have been required to incur costs exceeding \$7.7 million to defend the 2022/2023 Proceedings, given the nature of the plaintiff's approach, the number of parties and the allegations raised.
- 6.3.7 Mr Edgar considers the position of Bullseye at the time of entering into the Settlement Deeds, which involved the issuance of 22.8 million shares to Au Xingao as consideration to settle the existing litigation and to secure the relevant releases from Xinhe and Au Xingao. He observes that Bullseye had a cash balance of \$177,289, a net liability position of approximately \$2.6 million, and generated approximately \$135,000 in total revenue for the year ended 30 June 2023. He also observes that Bullseye had contingent liabilities of as much as \$22.4 million in claims and millions more in respect of potential adverse cost orders, which would crystallise if Bullseye discontinued its defence of the 2022/2023 Proceedings.
- 6.3.8 Mr Edgar examines Bullseye's capacity to raise capital and its enterprise value at the time of entering into the Settlement Deeds. He notes that Bullseye had issued around 128.7 million shares via equity placements, the conversion of debt into shares and various share-based payments, which ranged in issue price from \$0.20 to \$0.27 per share, and around 38.7 million shares via entitlement issues at \$0.29 per share, and that those issues would have funded, at least in part, Bullseye's legal expenses.
- 6.3.9 He also notes that Emerald, the major shareholder of Bullseye, with a shareholding of 57.34%, had provided Bullseye with several short-term working capital loan facilities, which had an interest rate of 12% per annum and amounted to \$11.75 million in total.
- 6.3.10 Mr Edgar calculates the potential return to shareholders in an external administration scenario, assuming that all of Bullseye's assets were sold and that Bullseye had to pay all of its outstanding liabilities, including the contingent liabilities arising from the litigation.

- 6.3.11 He provides a table that sets out the low, mid and high estimates of the return to shareholders, as well as the return to Xinhe and Au Xingao in respect of their damages claim and adverse costs claim. He concludes that in a forced liquidation scenario, there would be no return to any shareholder, and in an orderly liquidation scenario, the return to shareholders would be either no return (low), 0.01c per share (mid) or 0.025c per share (high). He also concludes that in a forced liquidation scenario, Xinhe or Au Xingao would receive between \$10,596,590 and \$21,996,590, and in an orderly liquidation scenario, they would receive between \$17,000,000 and \$26,900,000.
- 6.3.12 Mr Edgar has provided his opinions on the questions that we posed to him in relation to the reasonableness of the amount paid by way of the Share Settlement, the benefits obtained by Xinhe and Au Xingao as a result of entering into the Settlement Deeds and accepting the Emerald Offer, and the net benefit to Xinhe or Au Xingao and to the Minority Shareholders. He opines that the amount paid by way of the Share Settlement was reasonable and not excessive, and that the broad releases provided by Xinhe and Au Xingao were arguably worth more than the value of the Settlement Shares.
- 6.3.13 He opines that Xinhe did not receive any direct benefit, and that Au Xingao received benefits in the form of 22.8 million shares in Bullseye with a value of between \$803,700 and \$14,250,000 (per PwCS' valuation scenarios).
- 6.3.14 He opines that in all of our valuation scenarios but for one, the high value of the Settlement Shares was less than the low return that Xinhe and Au Xingao would have received had they and Bullseye not entered into the Share Settlement. He opines that there was a net benefit to the Minority Shareholders on the basis that the Share Settlement preserved significant value of equity in Bullseye as a going concern where such equity would have been otherwise eroded or lost entirely.
- 6.3.15 Finally, Mr Edgar states his view that it was highly likely that Bullseye would have, but for entering into the Settlement Deeds, been forced into some form of external administration as a direct result of its continued defence of the 2022/2023 Proceedings (and the 2020/2021 Proceedings, to the extent that there remained issues post-trial).
- 6.3.16 He provides several reasons for this view, such as Bullseye's net deficiency in cash terms and on the current account, its inability to raise further debt or equity on its assets while embroiled in open ended and extraordinarily costly litigation, the takeover provisions that would have severely restricted any capital raise from its largest shareholder, and the improbability of sourcing sufficient capital to defend the litigation on a no interest and no recourse basis.
- 6.3.17 He also states that even if Bullseye could source sufficient capital to defend the litigation, the only basis upon which such funding could be accepted in preference to the terms of the Share Settlement would have been on a no interest and no recourse basis, which he considers would not have been realistically available where Bullseye's requirement for capital would have exceeded \$7.7 million.

6.4 Key considerations in assessing net benefit

- 6.4.1 In addition to the opinions provided by the Technical Specialist, in order to assess whether or not Xinhe/Au Xingao received a net benefit as a result of the Share Settlement in connection with the Emerald Offer, we have also considered the commercial balance of advantages flowing to and from Xinhe and AU Xingao, and to and from the Minority Shareholders.
- 6.4.2 Each of the above considerations are discussed in further detail below.

Commercial balance of advantages flowing to and from Xinhe and AU Xingao

6.4.3 In order to assess whether or not Xinhe/Au Xingao received a net benefit as a result of the Share Settlement in connection with the Emerald Offer, we have firstly considered the commercial balance of advantages flowing to and from Xinhe and AU Xingao associated with the receipt of the Settlement Shares.

Advantages flowing to Xinhe/Au Xingao

6.4.4 Xinhe and AU Xingao received Settlement Shares which:

- a) in our opinion, have a Fair Market Value of between \$12.54 and \$14.25 million, with a midpoint of \$13.40 million, as discussed in Section 5
- b) increased their aggregate shareholding in Bullseye from 14.35% to 18.20% (or in the Proposed Merged Entity from 1.6% to 2.1%). This did not result in Xinhe/AU Xingao receiving any additional control benefits, as shown in Table 11.

Table 11 – Control implications based on equity stake

Percentage stake (%)	Implications
≥5%	Substantial holding notice
>10%	Blocking of compulsory acquisition
>20%	Takeovers threshold
>25%	Blocking of scheme of arrangement
>50%	Blocking of special resolutions
>50%	Passage of ordinary resolutions
≥75%	Passage of special resolutions
≥90%	Entitlement to compulsory acquisition

Source: *The Allens Handbook on takeovers in Australia, June 2023*

Advantages flowing from Xinhe/Au Xingao

6.4.5 Xinhe and AU Xingao gave up claims against Bullseye, including the following:

- a) A loss and damage claim of between \$14 million and \$22.4 million.⁵⁶ Further, the Technical Specialist has estimated that if adverse costs were claimed, the total claim could increase to between \$17.85 million and \$26.25 million.⁵⁷
- b) Any potential further claims against Bullseye. Pursuant to the 2020/2021 Deed and in consideration of the issue of the Settlement Shares, Xinhe, Au Xingao and Luke Huang provided broad releases to Bullseye for all claims of any nature, whether known or unknown.

⁵⁶ Technical Specialist's Report, paragraph 8.3

⁵⁷ The loss and damage of between \$14 million and \$22.4 million, plus an awarded cost recovery of 50% of \$7.7m, being \$3.85m (based on the Technical Specialist's Report).

- 6.4.6 Xinhe and AU Xingao provided Signed Shareholder Statements, which handed over control to Emerald by increasing its voting power in Bullseye shares from approximately 57.34% to approximately 75.56% (or 75.54%).
- 6.4.7 Having regard to the above commercial advantages flowing to and from Xinhe/AU Xingao, we consider the value of the advantages flowing to Xinhe/AU Xingao was less than the value of the advantages flowing from Xinhe/AU Xingao.

Commercial balance of advantages flowing to and from the Minority Shareholders

- 6.4.8 As discussed at paragraph 3, the Emerald Offer represented an all scrip off-market takeover whereby four Bullseye shares would be exchanged for one Emerald share. Accordingly, the Minority Shareholders, were able to participate equally with Xinhe/AU Xingao in the premium (or upside) provided under the Emerald Offer.
- 6.4.9 However, the Minority Shareholders were diluted as a result of the issuing of the Settlement Shares. Therefore, in considering whether Xinhe/AU Xingao received a net benefit as a result of the Share Settlement in connection with the Emerald Offer, we have also considered the commercial balance of advantages flowing to and from the Minority Shareholders (who had an aggregate shareholding of 25.6%⁵⁸ prior to the issue of the Settlement Shares).
- 6.4.10 As discussed in Section 2, Bullseye is a public unlisted gold exploration and development company, which has not generated any material revenue from mining and has historically raised equity to fund its exploration and development operations. This equity capital was used to fund significant legal expenses associated with the 2020/2021 Proceedings and 2022/2023 Proceedings.
- 6.4.11 In relation to the 2022/2023 Proceedings, we note that Au Xingao and Xinhe asserted that their aggregate shareholding had been diluted as a result of the alleged conduct of Bullseye with respect to capital raisings. Accordingly, both the Minority Shareholders and Xinhe/AU Xingao were diluted when equity capital was raised to fund legal expenses. However, our net benefit assessment recognises that Xinhe/AU Xingao stood in a unique position compared to the Minority Shareholders, in that:
- a) they were the plaintiffs in the 2020/2021 Proceedings and 2022/2023 Proceedings
 - b) any settlement of Xinhe/AU Xingao's claims would involve the need for Bullseye to pay consideration to them
 - c) such consideration would need to be paid from Bullseye's capital, and would obviously not be paid to the Minority Shareholders.
- 6.4.12 Accordingly, we have considered the commercial balance of advantages flowing to and from the Minority Shareholders in connection with the issue of the Settlement Shares, but note that these advantages also flow to and from Xinhe/AU Xingao, who are also shareholders in Bullseye.
- 6.4.13 For historical context, during the period FY20 to FY23, the Minority Shareholders were diluted as a result of having to fund Bullseye's legal expenses, which is discussed further in **Appendix E**. For example, Bullseye raised equity of:
- a) \$27.1 million in FY22⁵⁹, whilst incurring \$5.3 million in legal fees and posting a net operating loss of \$10 million. The dilution impact associated with the equity raising attributed to the legal fees alone was \$1.4 million⁶⁰

⁵⁸ BDO Expert Report, Page 16 ; Appendix E, Table 26

⁵⁹ Inclusive of issuance costs

⁶⁰ Appendix E, Table 12 and 13

- b) \$11.2 million in FY23, whilst incurring \$3.0 million in legal fees and posting a net operating loss of \$9 million. The dilution impact associated with the equity raising attributed to the legal fees alone was \$289 thousand.⁶¹

Advantages flowing to the Minority Shareholders

6.4.14 The Minority Shareholders have avoided further possible dilution of:

- a) \$1.9 million, representing the dilutive impact of Bullseye raising a further \$7.7 million in equity funding to continue defending the 2022/2023 Proceedings⁶², noting that according to the Technical Specialist, the ongoing legal costs may have been significantly more than \$7.7 million⁶³
- b) \$3.3 million to \$4.9 million, representing the dilutive impact of Bullseye raising between \$14 million to \$22.4 million in equity funding to pay Xinhe and Au Xingao's loss and damage claim against Bullseye, were they successful or should Bullseye be unable to continue funding its defence.⁶⁴
- c) \$4.1 million to \$5.7 million, representing the dilutive impact of Bullseye raising between \$17.85 million to \$26.25 million in equity funding to pay Xinhe and Au Xingao's loss and damage claim and adverse costs claim against Bullseye, were they successful or should Bullseye be unable to continue funding its defence.⁶⁵

6.4.15 The Minority Shareholders benefit from the issuing of the Settlement Shares as Management's time is no longer absorbed by the ongoing litigation and can instead be focussed on Bullseye's company strategy⁶⁶.

6.4.16 We have been advised by Bullseye's lawyers that during the course of the 2020/2021 Proceedings:

- a) approximately 49 subpoenas were issued at the request of the parties
- b) eleven lay witnesses and four expert witnesses gave evidence at trial
- c) over 8,500 pages in transcript were produced from the trial
- d) approximately 2,600 exhibits were uploaded to the electronic trial bundle
- e) hundreds of pages of witness outlines were filed by all parties.

6.4.17 Bullseye's written closing submissions ran to 262 pages and Xinhe's written closing submissions ran to 235 pages. Further:

- a) Bullseye's three directors, who were defendants and witnesses and who were key members of Bullseye's small operational team, were required to be in attendance for the majority of the time that evidence was presented at trial
- b) from the commencement of the 2020/2021 Proceedings in July 2020, Bullseye's directors were required, on a day-to-day basis, to keep themselves informed, and consider advice from, and provide instructions to, their lawyers and counsel, as to the progress and conduct of the 2020/2021 Proceedings
- c) in preparing for and attending as witnesses at the trial, Bullseye's directors were required to provide detailed factual instructions to Bullseye's lawyers, and the lawyers acting for them in their personal capacities as defendants in the 2020/2021 Proceedings (which included spending extensive

⁶¹ Appendix E, Table 14 and 15

⁶² Appendix E, Table 16 and 17

⁶³ Technical Specialist's Report, paragraph 1.4

⁶⁴ Appendix E, Table 18, 19, 20 and 21

⁶⁵ Appendix E, Table 22, 23, 24 and 25

⁶⁶ Board minutes, page 3

amounts of time meeting and attending with lawyers and reviewing documents for the purpose of preparing lengthy proofs of evidence and witness outlines).

- 6.4.18 Given the nature and scale of the 2020/2021 Proceedings and the potential for the 2022/2023 Proceedings (and any further proceedings) to run a similar course, in our opinion, without settlement, the ongoing diversion of Management's time and focus would likely have a negative impact on Bullseye's business and by extension, its share price.

Advantages flowing from the Minority Shareholders

- 6.4.19 The Minority Shareholders were diluted by 1.15%, as their combined shareholding decreased from 25.61% to 24.46%⁶⁷, which represents a loss of \$1.6 million, as the Fair Market Value of their combined shareholding decreased from \$36.0 million to \$34.3 million⁶⁸, as discussed further in **Appendix E**.

- 6.4.20 Further, the Technical Specialist is of the opinion that:

*...there was a net benefit to the [Minority] Shareholders on the basis that the issuance of the Share Settlement preserved significant value of equity in Bullseye as a going concern where such equity would have been otherwise eroded or lost entirely*⁶⁹

- 6.4.21 Having regard to the above commercial advantages flowing to and from the Minority Shareholders, we consider the value of the advantages flowing to the Minority Shareholders was significantly more than the value of the advantages flowing from the Minority Shareholders.

⁶⁷ Appendix E, Table 26. Note, this assumes a Bullseye share price of \$0.29

⁶⁸ Appendix E, Table 27

⁶⁹ Technical Specialist's Report, paragraph 3.7

7 Conclusion

- 7.1.1 As a result of entering into the Settlement Deeds and the Signed Shareholder Statements, we consider that Xinhe/Au Xingao received benefits in the form of 22,800,000 shares in Bullseye with a Fair Market Value of between \$12.54 and \$14.25 million, with a midpoint of \$13.40 million.
- 7.1.2 As a result of entering into the Settlement Deeds and the Signed Shareholder Statements, we consider that Bullseye secured broad releases from Xinhe/Au Xingao and Luke Huang in respect of claims for loss and damage of between \$14 million and \$22.4 million (or between \$17.85 million and \$26.25 million if adverse costs were claimed⁷⁰).
- 7.1.3 The issue of the Settlement Shares to Xinhe/Au Xingao, resulted in the dilution of Minority Shareholders' interests of \$1.6 million.
- 7.1.4 If Bullseye had not entered into the Settlement Deeds and instead defended the 2022/2023 Proceedings, at an estimated cost to Bullseye exceeding \$7.7 million, this would have resulted in the dilution of Minority Shareholders' interests of \$1.9 million.
- 7.1.5 If Bullseye had not entered into the Settlement Deeds and was unable to defend the 2022/2023 Proceedings (for lack of funding or other reason) then Bullseye would have been exposed to claims for loss and damage of between \$14 million and \$22.4 million (or between \$17.85 million and \$26.25 million⁷¹ if adverse costs were claimed⁷²). If these losses crystallised, this would have resulted in the dilution of Minority Shareholders' interests of:
- a) \$3.3 million to \$4.9 million (assuming claims for loss and damage of between \$14 million and \$22.4 million)
 - b) \$4.1 million to \$5.7 million (assuming claims for loss and damage and adverse costs of between \$17.85 million and \$26.25 million).
- 7.1.6 Further, the Technical Specialist has concluded that:
- a) the amount paid by way of the Share Settlement was reasonable and, accordingly, was not excessive. The broad releases provided by Xinhe and Au Xingao were arguably worth more than the value of the Share Settlement
 - b) it was highly likely that Bullseye would have, but for entering into the Settlement Deeds, been forced into some form of external administration as a direct result of its continued defence of the 2022/2023 Proceedings (and the 2020/2021 Proceedings, to the extent that there remained issues post-trial)
 - c) there was no net benefit to Xinhe or Au Xingao as a result of the Share Settlement
 - d) there was a net benefit to the Minority Shareholders on the basis that the Share Settlement preserved significant value of equity in Bullseye as a going concern where such equity would have been otherwise eroded or lost entirely.

⁷⁰ Technical Specialist's Report, paragraph 3.1.2(b)

⁷¹ The loss and damage of between \$14 million and \$22.4 million, plus Mr Edgar's assumption of an awarded cost recovery of 50% of \$7.7m, being \$3.85m.

⁷² Technical Specialist's Report, paragraph 3.1.2(b)

- 7.1.7 In consideration of the above factors, in our opinion, the commercial balance of advantages that flow to Xinhe and Au Xingao are less than the commercial balance of advantages that flow from Xinhe and Au Xingao.
- 7.1.8 Accordingly, as a result of the Share Settlement, in our opinion, Xinhe and Au Xingao **did not obtain a net benefit** in connection with the Emerald Offer that was not provided to the Minority Shareholders.

8 Appendices

Appendix A

Panel Declaration and Orders



Australian Government

Takeovers Panel

**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 including¹:
 - (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**).
5. On 18 August 2021, the 2020 Proceedings and 2021 Proceedings were consolidated (**2020/2021 Proceedings**).

¹ As at 1 September 2023

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.² 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...*",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**

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

Offer). The N BIO 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 N BIO 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 606³, 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.⁴ 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.

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:

³ 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 See *Guidance Note 23: Shareholder Intention Statements*

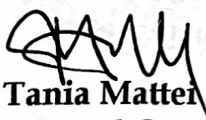
- (i) the merits of the Emerald Offer and
- (ii) whether they have been given a reasonable and equal opportunity to participate in benefits accruing to shareholders of Bullseye under the Emerald Offer.

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 Matter
General Counsel
with authority of Christian Johnston
President of the sitting Panel
Dated 5 October 2023



Australian Government

Takeovers Panel

**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 611¹.
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.
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 Statement², Emerald or its associates obtain voting power in Bullseye of 90% or more.

¹ 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)

² Being the time at which the withdrawal rights set out in order 8 lapse

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"³ 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 Settlement⁴
 - (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.
 - (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.

³ See *Guidance Note 21: Collateral benefits*

⁴ 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"

- (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

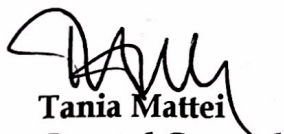
15. The parties to these proceedings and ASIC have the liberty to apply for further orders in relation to these orders.

Definitions

16. In these orders the following terms apply.

Au Xingao	AU Xingao Investment Pty Limited
Bullseye	Bullseye Mining Limited
Declaration	The Panel's declaration of unacceptable circumstances in these proceedings dated 5 October 2023
Emerald	Emerald Resources NL
Emerald Bid	Emerald's off-market takeover bid for Bullseye set out in its bidder's statement dated 17 August 2023
Emerald Offer	has the meaning given in paragraph 14 of the Declaration

Independent Expert	has the meaning set out in order 7(b)
Independent Expert's Report	has the meaning set out in order 5(c)
Share Settlement	<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"> • Hongkong Xinhe International Investment Company Limited v Bullseye Mining Limited & Ors COR 83 of 2020 in the Supreme Court of Western Australia • Hongkong Xinhe International Investment Company Limited v Bullseye Mining Limited & Ors COR 139 of 2021 (Supreme Court of Western Australia) • Hongkong Xinhe International Investment Company Limited & Anor v Bullseye Mining Limited & Ors COR 22 of 2023 (Supreme Court of Western Australia) • Hongkong Xinhe International Investment Company Limited & Anor v Bullseye Mining Limited & Ors COR 159 of 2022 (Supreme Court of Western Australia) and • Cheng v Bullseye Mining Limited CIV 1987 of 2020 (District Court of Western Australia) 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

Appendix B

Sources of information

In preparing this IER, we have had access to and relied upon sources of information, including:

	Title	Source
1	Briefing Letter	Brief for provision of Independent Expert Report
2	BDO Expert Report	BDO Independent Expert Report
3	SRK ITR	SRK Independent Technical Specialist Report
4	Technical Specialist Report	Mr Edgar's Technical Specialist's Report
5	Technical Briefing Letter	Briefing letter to the Technical Specialist
6	Board Minutes	Bullseye - Board minutes regarding Deeds of Settlement dated 18 July 2023
7	FY22 Capital Raising Information	FY22 capital raising information provided by Bullseye Management
8	FY23 Capital Raising Information	FY23 capital raising information provided by Bullseye Management
9	Bullseye FY22 Annual Report	Bullseye Mining Limited 30 June 2022 Annual Financial Report
10	Bullseye FY23 Annual Report	Bullseye Mining Limited 30 June 2023 Annual Financial Report
11	Emerald December 2021 BIA	Emerald Resources NL and Bullseye Mining Limited Bid Implementation Agreement dated 7 December 2021
12	GN 21	Takeover Panel's Guidance Note 21
13	RG 111	ASIC Regulatory Guide RG 111 <i>Content of experts reports</i>
14	RG 112	ASIC Regulatory Guide RG 112 <i>Independence of experts</i>
15	Bullseye Website	Bullseye Mining Limited company website
16	S&P Capital IQ	Information obtained from S&P Capital IQ

We have not performed an audit, review or any other verification of the information presented to us. Accordingly, we express no opinion on the reliability of the information supplied to us.

In forming our opinion PwCS has assumed that the publicly available information relied on by PwCS in its analysis was accurate and not misleading.

In addition, PwCS assumes no responsibility and offers no legal opinion or interpretation on any issue in respect of legal issues relating to assets, properties, or business interests or issues regarding compliance with applicable laws, regulations and policies.

Appendix C

Technical Specialist's Report

23 March 2024

Lavan
Level 20
1 William Street
Perth, WA, 6000

Dear Joe and Millie,

RE: BULLSEYE MINING LTD-TAKEOVERS PANEL PROCEEDING *BULLSEYE MINING LIMITED 06*

I refer to your letters of instruction and the material referred to therein. I have adopted the defined terms used in your letter of instruction, unless otherwise indicated.

You have asked me to advise on:

A. the question posed by MPH Lawyers¹ being:

Having regard to the above factual instructions and materials with which you have been provided and relying on the valuation of the Settlement Shares determined by PwC, please provide your opinion as to whether the amount paid by Bullseye in terms of the value of the Settlement Shares was reasonable or excessive as consideration to settle the existing litigation and to secure the relevant releases from Xinhe and Au Xingao.

B. further, and in the circumstances, what benefit/s, if any, did:

- i. Xinhe obtain as a result of entering into the Settlement Deeds and accepting the Emerald Offer?
- ii. Au Xingao obtain as a result of entering into the Settlement Deeds and accepting the Emerald Offer?

¹ Technical Briefing letter, at [54], **Tab 12**.

-
- C. assuming that either Xinhe or Au Xingao did obtain a benefit, was that a “net benefit”?
- D. assuming that either Xinhe or Au Xingao did obtain a “net benefit”, was that “net benefit” provided to other shareholders? If not, why not?
- E. in circumstances where Bullseye did not enter into the Settlement Deeds, what alternative options were available to it to advance or otherwise resolve the 2022/2023 Proceedings (and the residual issues in the 2020/2021 Proceedings)?
- F. in answering the above questions, any other matters that I consider are relevant to assist PwC in the preparation of its report.

ADVICE

- 1 In reference to F, it is my view that it was highly likely that Bullseye would have, but for entering into the Settlement Deeds, been forced into some form of external administration as a direct result of its continued defence of the 2022/2023 Proceedings (and the 2020/2021 Proceedings, to the extent that there remained issues post-trial). For clarity, I have formed this view because:
- 1.1 Bullseye had a net deficiency in cash terms and on the current account;
 - 1.2 Bullseye had contingent liabilities of as much as \$22 million in claims and millions more in respect of potential adverse costs orders;
 - 1.3 these contingent liabilities would crystallise if Bullseye discontinued its defence of the 2022/2023 Proceedings;
 - 1.4 the future costs of defending the 2022/2023 Proceedings were likely to be significantly more than \$7.7 million;
 - 1.5 Bullseye did not have these funds;
 - 1.6 despite its potential enterprise value, there is no evidence that Bullseye could:
 - 1.6.1 raise further debt on its assets while embroiled in, and for the dominant purpose of defending itself from, open ended and extraordinarily costly litigation; or

- 1.6.2 immediately realise any such enterprise value while the litigation was ongoing;
- 1.7 it is unlikely that any capital could have been raised from its largest shareholder without ASIC relief from section 606 of the Act, alternatively, the takeover provisions would have severely restricted any such capital raise;
- 1.8 it is highly improbable that capital (equity or debt) could be raised by an exploration company like Bullseye for the dominant purpose of defending such litigation; and
- 1.9 even if Bullseye could source sufficient capital to defend the litigation, and any appeal(s) and any other litigation that emanated from the issues, in my view the only basis upon which such funding could be accepted in preference to the terms of the settlement would have been on a no interest and no recourse basis, which I consider would not have been realistically available where Bullseye's requirement for capital would have exceeded \$7.7 million (being the previous costs).
- 2 In an external administration of Bullseye, there would have been very little, if any, equity in the shares held by all shareholders: see paragraph 3.1.1 below.
- 3 Having regard to this and the facts below my answers to the remaining questions are as follows:

Question A.

- 3.1 The amount paid by way of issuing the Share Settlement was reasonable and, accordingly, was not excessive. The broad releases provided by Xinhe and Au Xingao were arguably worth more than the value of the Share Settlement. The alternate to a commercial settlement for Bullseye would have involved external administration, the consequences of which would have been that:
- 3.1.1 there was no return to any shareholder (in a forced liquidation scenario), and in an orderly liquidation the return to shareholders was either no return (low), a return of 0.01c per share (mid) or 0.025c per share (high); and

3.1.2 Xinhe or Au Xingao would have received, in respect of their damages claim and adverse costs claims between:

- (a) \$10,596,590 and \$21,996,590 in a forced liquidation scenario; and
- (b) \$17,000,000 and \$26,900,000 in an orderly liquidation scenario.

Question B.i.

3.2 As a result of entering into the Settlement Deeds and accepting the Emerald Offer, Xinhe did not receive any direct benefit. Though, I am instructed that it is a related entity of Au Xingao and therefore it may have obtained an indirect benefit as a result of Au Xingao receiving the benefits below. I am not able to opine on the value of such an indirect benefit.

Question B.ii.

3.3 As a result of entering into the Settlement Deeds and accepting the Emerald Offer, Au Xingao received benefits in the form of 22,800,000 shares in Bullseye with a value of between \$803,700 and \$14,250,000 as assessed by PwC.

3.4 The value assessment for the Share Settlement conducted by PwC contained four alternative scenarios. They were: (a) Bullseye (minority) per share (BDO / PwC minority discount), the high value was \$1,573,200; (b) Bullseye (control) per share (BDO), the high value was \$2,097,600; (c) Bullseye (minority) per share (previous equity placements), the high value was \$6,612,000; and (d) Emerald (minority) per share (BDO), the high value was \$14,250,000.

Question C.

3.5 In respect of whether Xinhe or Au Xingao obtained a net benefit, in all of PwC's value assessment scenarios but for (d), the high value of the Share Settlement was less than the low return that Xinhe and Au Xingao would have received had they and Bullseye not entered into the settlement. Moreover, the high return in a forced liquidation scenario, and the low return in an orderly liquidation scenario were significantly greater than highest value ascribed by PwC to the Share Settlement.

3.6 On the balance of probabilities, I consider that neither Xinhe nor Au Xingao obtained a net benefit as the likely value of the Share Settlement that they

received was less than the likely return that they would have received had Bullseye not entered into any settlement and had instead been placed into liquidation.

Question D.

3.7 While my view is there was no net benefit to Xinhe or Au Xingao, it is also my view there was a net benefit to the other shareholders on the basis that the issuance of the Share Settlement preserved significant value of equity in Bullseye as a going concern where such equity would have been otherwise eroded or lost entirely.

Question E.

3.8 As described in paragraphs 1 and 2 above, it is my view that absent a settlement it is likely, if not highly likely, that Bullseye would have descended into some form of external administration which would have involved significant erosion, or even complete destruction, of shareholder value.

**BACKGROUND FACTS ASSUMPTIONS AND INSTRUCTIONS UNDERPINNING
ADVICE**

The company

- 4 Bullseye is an unlisted public company incorporated in 2006. It is a gold exploration, development, and production company. A profile of Bullseye's history and projects can be found at paragraph 5 of the BDO Report and paragraphs 4 to 8 of the PwC Summary Document.
- 5 Relevantly, in the years ended 30 June 2022, 2021 and 2020, Bullseye's total revenue was approximately \$1.2 million, \$100,000 and \$28,000, respectively. Revenue increased in the 2022 financial year due to approximately \$1.0 million of interest received. The balance of revenue received in that year was from the sale of gold produced of \$150,000, which was offset entirely by cost of sales.² Bullseye's 2023 annual report indicates that its total revenue for the year ended 30 June 2023 was approximately \$135,000.³

² BDO expert report dated 5 September 2023 at [5.8] page 15, **Tab 11**.

³ Bullseye's 2023 Annual Report, at page 19.

Bullseye share structure

- 6 As at 1 September 2023, Bullseye had approximately 155 shareholders and its share structure was as follows:⁴
- 6.1 57.34% - Emerald.
 - 6.2 12.58% - Xinhe.
 - 6.3 5.62% - AU Xingao.
 - 6.4 3.74% - Mr Desmond Mullan (father of former director, Dariena Mullan).
 - 6.5 20.72% - Others.

Overview of circumstances leading up to Panel Proceedings

- 7 A brief summary of the factual circumstances giving rise to the Panel Proceedings, is set out below:
- 7.1 On 3 July 2020, Xinhe commenced Supreme Court of Western Australia proceedings alleging shareholder oppression (as well as other claims) against Bullseye and three of its former or current directors.
 - 7.2 On 10 August 2021, Xinhe commenced further proceedings in the Supreme Court of Western Australia alleging shareholder oppression (as well as other claims) against the same defendants as the above proceedings.
 - 7.3 On 18 August 2021, the above two proceedings were consolidated (**2020/2021 Proceedings**).
 - 7.4 On 6 September 2021, the trial for the 2020/2021 Proceedings commenced, comprising 73 sitting days, and concluded on 22 November 2022.
 - 7.5 On 7 December 2021, Emerald made a takeover bid for the remaining shares in Bullseye. The Panel has dealt with several previous applications in relation to the affairs of Bullseye, including this takeover bid.⁵

⁴ BDO expert report dated 5 September 2023 [5.9] page 16, **Tab 11** and Panel declaration of unacceptable circumstances dated 5 October 2023, at [1], **Tab 2**.

⁵ See *Bullseye Mining Limited 02* [2018] ATP 20; *Bullseye Mining Limited 03* [2022] ATP 4; *Bullseye Mining Limited 04* [2022] ATP 8; and *Bullseye Mining Limited 05* [2022] ATP 14.

- 7.6 On 25 August 2022, Xinhe and Au Xingao commenced proceedings in the Supreme Court of Western Australia alleging oppression (as well as other claims) against Bullseye, five of its former or current directors and Emerald.
- 7.7 On 3 February 2023, Xinhe and Au Xingao commenced further proceedings in the Supreme Court of Western Australia alleging shareholder oppression (as well as other claims) against the same defendants as above as well as current director of Bullseye, Mr Mark Clements and other entities related to former or current directors of Bullseye.
- 7.8 On 16 March 2023, the above two proceedings were consolidated (**2022/2023 Proceedings**).
- 7.9 Between March and May 2023, Emerald, Xinhe and Au Xingao formulated and agreed in principle a discussion paper that, amongst other things, contemplated terms of settlement of the 2020/2021 Proceedings and 2022/2023 Proceedings which would result in Bullseye paying Xinhe, to be satisfied by the issue of new Bullseye shares, and an off-market takeover bid being made by Emerald for all of the remaining shares in Bullseye.⁶
- 7.10 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 (**Emerald Offer**).
- 7.11 On 26 July 2023:
- 7.11.1 Bullseye entered into settlement deeds in respect of the 2020/2021 Proceedings and 2022/2023 Proceedings, in which, as consideration for Xinhe and Au Xingao agreeing to dispose of those proceedings and to give certain releases, Bullseye agreed to issue 22,800,000 shares to Au Xingao (**Share Settlement**);
- 7.11.2 Xinhe, Au Xingao and Emerald each signed shareholder intention statements (**Shareholder Statements**) noting timing for acceptance of the Emerald Offer by Xinhe and Au Xingao for the shares they

⁶ Deed of Settlement for the 2020/2021 proceedings (**2020/2021 Proceedings Settlement Deed**), **Tab 8**; Deed of Settlement for the 2022/2023 proceedings (**2022/2023 Proceedings Settlement Deed**) (collectively, the **Settlement Deeds**), **Tab 9**.

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 Emerald Offer (as that term is defined in the Shareholder Statements) is first open for acceptance; and

7.11.3 a bid implementation agreement between Emerald and Bullseye with respect to the Emerald Offer was signed.

7.12 The 2022/2023 Proceedings Settlement Deed was, in substance, conditional on the 2020/2021 Proceedings Settlement Deed. Xinhe, Au Xingao, Bullseye and Emerald were all party to the 2022/2023 Proceedings Settlement Deed.

7.13 Xinhe, Au Xingao and Bullseye (but not Emerald) were party to the 2020/2021 Proceedings Settlement Deed. The 22,800,000 Bullseye shares that formed part of the settlement were issued to Au Xingao on 17 August 2023 representing 4.496% of Bullseye shares post-issue.⁷

8 The Panel Proceedings summarise Bullseye's submissions made in respect of the negotiation of the settlement of the 2020/2021 Proceedings and 2022/2023 Proceedings. Relevantly, Bullseye submitted that:⁸

8.1 the value of the Share Settlement, prior to Bullseye obtaining the BDO Report:

8.1.1 should not be based on the implied value of the Emerald Offer given that takeover bids often include a significant premium over market value; and

8.1.2 should instead be based on the price at which Bullseye shares were most recently issued⁹ (which at the time of the submission was approximately \$0.29 per Bullseye share, which would value the Share Settlement at approximately \$6,612,000);

8.2 the BDO Report assessed the fair market value of a Bullseye share prior to the Emerald Offer and on a controlling interest basis in the range of \$0.047 and \$0.091 with a midpoint value of \$0.067 and on that basis, Bullseye submitted

⁷ Panel declaration of unacceptable circumstances dated 5 October 2023, at [22(b)], **Tab 2**.

⁸ *Bullseye Mining Limited 06* [2023] ATP 11 at [42].

⁹ Bullseye's 2023 annual report, at page 12, refers to two capital raises, in December 2022, \$6,206,564 was raised by issuing 21,401,944 shares at \$0.29 per share and in March 2023 a further \$5,011,118 was raised, by issuing 17,279,718 shares at \$0.29 per share.

that the value of the Share Settlement would be in the range of approximately \$1,070,000 to \$2,070,000;

- 8.3 in relation to the 2022/2023 Proceedings, Au Xingao and Xinhe asserted that their aggregate shareholding had been diluted as a result of alleged conduct of Bullseye with respect to capital raisings conducted by the company and, on that basis, Xinhe had calculated its loss and damage for lost opportunity at between \$14 million and \$22.4 million; and
- 8.4 the number of shares to be issued as part of the settlement of the 2020/2021 Proceedings and 2022/2023 Proceedings was negotiated following discussions concerning increasing the aggregate holding of Au Xingao and Xinhe to 19.99% to “make good” their loss identified above, with Bullseye negotiating that back down to 19% (noting that, as a result of entitlement issues undertaken, the aggregate holding of Au Xingao and Xinhe was ultimately diluted to 18.20%).

Details of 2020/2021 Proceedings

- 9 The 2020/2021 Proceedings were particularly large. In summary:¹⁰
 - 9.1 the pleadings extended to some 384 pages;
 - 9.2 approximately 49 subpoenas issued at the request of the parties;
 - 9.3 11 lay witnesses and 4 expert witnesses gave evidence at trial;
 - 9.4 approximately 2,600 exhibits were uploaded to the electronic trial bundle;
 - 9.5 Bullseye’s written closing submissions were 262 pages, the directors’ written closing submissions were 65 pages and Xinhe’s written closing submissions were 235 pages in length; and
 - 9.6 the total hearing occupied 73 days and produced around 8,500 pages of transcript.
- 10 Part way through the trial of the 2020/2021 Proceedings, Solomon J decided (with the consent of the parties) to bifurcate the proceedings with a view to determining merits and liability before considering whether relief should be granted. His Honour did so given Xinhe had indicated that it intended to commence further proceedings

¹⁰ Technical Briefing Letter, at [15] and [20], **Tab 12**.

concerning facts which had occurred following the commencement of the 2020/2021 Proceedings relating to the 2022 Emerald Offer.¹¹

11 Bullseye:

11.1 incurred approximately \$7.7 million in legal fees in defending the 2020/2021 Proceedings, including three director defendants who were indemnified by Bullseye for their legal costs;¹² and

11.2 at the date of settlement, was awaiting the reserved judgment of the trial where, if oppression was found, the decision was only likely to determine the liability for the claim and not what, if any, relief should be awarded.

12 Accordingly, there remained the prospect of:

12.1 lengthy and expensive arguments in respect of relief including a potential application by Bullseye to amend its defence to raise matters which had transpired since December 2021;¹³

12.2 relief being granted to Xinhe such as a compulsory buy back of shares at fair valuation (even though no such relief was pressed);¹⁴ and

12.3 consequential adverse costs orders being made against Bullseye running to several millions of dollars.¹⁵

13 Accordingly, if oppression was found, Bullseye would have had to incur substantial further legal costs on the second stage of the trial in those proceedings.¹⁶

Details of 2022/2023 Proceedings

14 The 2022/2023 Proceedings:

14.1 joined eleven defendants, against all of whom relief was sought;

14.2 contained several allegations of shareholder oppression against Bullseye, including:

¹¹ Ibid, at [27] and [28], **Tab 12**.

¹² Briefing Letter, at [21], **Tab 2**.

¹³ Technical Briefing Letter, at [29], **Tab 12**.

¹⁴ Ibid at [31.1].

¹⁵ Ibid at [31.3].

¹⁶ Ibid at [30].

- 14.2.1 contraventions of Chapters 2E and 6 of the Act;
- 14.2.2 entering into agreements with, or giving benefits to, company officers of Bullseye which were unfair or unconscionable; and
- 14.2.3 contraventions of sections 638 and 670A, alternatively, 1041H, of the Act; and
- 14.3 sought, amongst other relief, relief pursuant to section 233(1)(j) of the Act requiring Bullseye to pay or provide compensation,
- all of which had the potential to exceed in complexity, duration and costs of the 2020/2021 Proceedings by some margin.
- 15 Quite apart from the question of legal costs, Xinhe had calculated its loss and damage for lost opportunity at between \$14 million and \$22.4 million.¹⁷
- 16 Looking at the conduct of the 2020/2021 Proceedings as a guide to how the 2022/2023 Proceedings might have advanced, it appears that the plaintiff did not always, in the course of that proceeding, adopt a rational commercial approach. His Honour Justice Solomon remarked at [6] of [2023] WASC 131 that:
- [i]t will be apparent even from the cursory summary I have provided above that the matter has absorbed a very significant amount of the court's resources. It should be equally evident that the matter has regrettably not been blessed with a collaborative collegiality that may have ameliorated the burden that invariably attends large and complex proceedings. In her interlocutory decision of 2 August 2021, her Honour Justice Hill observed that the matter had already been the subject of a significant number of protracted interlocutory disputes and urged the parties to reconsider what appeared to her Honour to be an 'overly combative approach'. The inability 18 months later and after a very lengthy trial to collaborate in order to produce a timetable on an agreed course of action is a cause for further disappointment, if not lament.*
- 17 Given the nature of the plaintiff's approach to the 2020/2021 Proceedings, the number of parties to the 2022/2023 Proceedings and the allegations raised, it would not be

¹⁷ *Bullseye Mining Limited 06* [2023] ATP 11 at [42].

unreasonable for one to assume that Bullseye would have been required to incur costs exceeding \$7.7 million to defend the 2022/2023 Proceedings.

- 18 Obviously, irrespective of the result avenues of appeal, would have been open to the parties with the attendant costs of such an appeal in terms of money, delay and management disruption.

Circumstances in existence at the time of entering the Settlement Deeds

- 19 Set out below are the circumstances which existed at around 26 July 2023, being the time, the Settlement Deeds were entered into.

District Court of Western Australia proceedings

- 20 In addition to the proceedings described above, at the time of entering into the Settlement Deeds, Bullseye was defending District Court of Western Australia proceedings CIV 1987 of 2020 that had been commenced in May 2020 by Mr Sam Cheng in which he alleged that Bullseye had breached a contract between them by failing or refusing to pay monthly consulting fees to Mr Cheng in the amount of \$580,000.¹⁸
- 21 On 19 October 2020, Bullseye advanced a counterclaim against Xinhe and its representative in Australia, Luke Huang, and others, seeking unliquidated damages for tortious conspiracy and breach of contract and fiduciary duties Mr Cheng owed to Bullseye.¹⁹
- 22 A trial had not yet been listed in these proceedings and they were recorded as a contingent liability in Bullseye's 2023 Annual Report.²⁰
- 23 These proceedings were discontinued as between Bullseye, Mr Luke Huang and Xinhe as part of the terms of the Settlement Deeds.

Net asset position of Bullseye

- 24 As at around the time of entering into the Settlement Deeds, Bullseye had:

¹⁸ Briefing Letter, at [4], **Tab 2**; Bullseye's 2023 Annual Report, at page 16.

¹⁹ Ibid; 2020/2021 Proceedings Settlement Deed, recitals, **Tab 8**.

²⁰ Bullseye's 2023 Annual Report, at page 50.

- 24.1 a cash balance of \$177,289;²¹
- 24.2 a net liability position of approximately \$2.6 million;²² and
- 24.3 generated approximately \$135,000 in total revenue for the year ended 30 June 2023.²³

Bullseye's capacity to raise capital

- 25 As at 1 December 2021, Bullseye had:
 - 25.1 37 convertible notes with a combined face value of \$8.3 million;²⁴ and
 - 25.2 \$5,416,619 in outstanding unsecured loans that were incurring interest.²⁵
- 26 During financial years 2022 and 2023, Bullseye issued:
 - 26.1 circa 128.7 million shares via equity placements, the conversion of debt into shares and various share-based payments, which ranged in issue price from \$0.20 to \$0.27 per share;²⁶ and
 - 26.2 circa 38.7 million shares via entitlement issues at \$0.29 per share,²⁷ and those issues would have funded, at least in part, Bullseye's legal expenses.²⁸
- 27 In addition, between 2022 and 2023, Emerald provided Bullseye with several short-term working capital loan facilities which could be drawn down by Bullseye as required, comprising a:²⁹
 - 27.1 \$3,000,000 unsecured and non-convertible loan which had an interest rate of 12% per annum that was repaid in full in December 2022;
 - 27.2 \$1,750,000 unsecured and non-convertible loan which had an interest rate of 12% per annum that was repaid in full in March 2023; and
 - 27.3 \$7,000,000 in an unsecured and non-convertible loan which has an interest rate of 12% per annum, of which \$1,750,000 had been drawn down and not repaid

²¹ PwC Summary Document, at [19], **Tab 24**.

²² *Ibid*, at [16], **Tab 24**.

²³ Bullseye's 2023 Annual Report, at page 19.

²⁴ PwC Summary Document, at [9], **Tab 24**.

²⁵ *Ibid*, at [10].

²⁶ *Ibid*, at [11].

²⁷ *Ibid*, at [12].

²⁸ *Ibid*, at [13].

²⁹ Bullseye's 2023 Annual Report, at page 12.

as at the end of the 2023 financial year, however, Bullseye's 2023 Annual Report refers to an additional \$5,000,000 being drawn down between 30 June 2023 and around October 2023.³⁰

- 28 Emerald was the major shareholder of Bullseye with a shareholding of 57.34%. Emerald was therefore unable to provide additional capital by way of an issuance of shares without having regard to the limitations in the takeover provisions.

Bullseye's enterprise value

- 29 PwC have evaluated Bullseye's enterprise value at around the time of entering the Settlement Deeds in the range of \$26.3 million to \$49.1 million with a mid-range estimate of \$36.7 million.³¹
- 30 The enterprise value provided by PwC takes into account the value of Bullseye's Mineral Assets and Exploration Potential. I understand this to be an assessment of the value of Bullseye's assets.

Discount for liquidation sale

- 31 PwC have also provided a value for Bullseye's assets if those assets were realised in a liquidation scenario, this scenario contemplates that Bullseye's assets would be realised through an external administration. PwC provides two discount rates: 50% for a forced realisation and 10% for an orderly realisation. The bases for these discounts are explained at paragraph [20] of the PwC Summary Document.

Return to shareholders

- 32 If all of Bullseye's assets were sold, the ordinary course to determine the return to shareholders would be for Bullseye to, first, pay all of its outstanding liabilities and then proceed to return any surplus to shareholders.
- 33 The net asset position provided in the PwC Summary Document at paragraph [17] sets out that Bullseye had a net liability position of approximately \$2.6 million as at the time of the Share Settlement.³² The PwC analysis was only concerned with actual liabilities that were recorded in the books and records of Bullseye.

³⁰ Ibid, at pages 45 and 51.

³¹ PwC Summary Document, at [15], **Tab 24**.

³² Ibid, at [16].

- 34 The books and records of Bullseye did not include any provision for adverse costs in the proceedings, nor did they provide for any amount payable in respect of the loss and damage claim maintained by Xinhe, which I am instructed is between \$14 million and \$22.4 million.
- 35 I have **annexed** to this opinion a table that sets out the potential return to shareholders in an external administration scenario including the matters set out in paragraph 34 above. That table is presented using the figures in the PwC report and includes a “low”, “mid” and “high” number.
- 36 In respect of the additional amounts that I have included, I make the following comments:
- 36.1 **Adverse costs** – I am instructed that the total costs spent by Bullseye in defending the Proceedings was in the order of \$7.7 million. I do not have instructions as to the amount of costs incurred by the parties who interests were adverse to Bullseye. I have assumed that they were the same as those incurred by Bullseye. In respect of adverse cost recovery, in my experience parties who are awarded costs usually recover in the order of 40%-60% of their actual costs. I have used 40% as the low, 50% as the mid, and 60% as the high amounts.
- 36.2 **Xinhe damages claim** – I am instructed that Xinhe claims loss of damage of between \$14 million and \$22 million.
- 36.3 **Administration costs** – I do not have any instructions as to the amount of any administration or liquidation costs. I consider that this is a matter that PwC can address in their expert report. In providing a low, mid and high amount I have assumed that in circumstances where the Xinhe damages claim is disputed, that there will be significant costs to be incurred, these costs would be in the order of the amount expended by Bullseye in defence of the 2020/2021 Proceedings, and I have made an allowance for an amount of fees payable to an administrator or a liquidator. Conversely, if the Xinhe damages claim is admitted in full, I expect the costs of any administration or liquidation would be reduced.
- 37 While I have included in my analysis the return to shareholders on the basis of a going concern sale, I do not consider that such an outcome was practicable having regard to the fact that:

- 37.1 control of Bullseye was an issue in the proceedings, in respect of which orders were sought appointing receivers to Bullseye to manage its affairs. In my view, having regard to the state of the proceedings, it would not be feasible for Bullseye to have run and executed a sales campaign in accordance with the going concern assumptions set out in the PwC Summary Document; and
- 37.2 Bullseye did not have sufficient available funds (it had \$177,289) in order to be able to run and execute a sales campaign in accordance with the going concern assumptions set out in the PwC Summary Document.

The Settlement

- 38 The Share Settlement was issued in consideration for the settlement and releases of all existing and potential claims against Bullseye by Xinhe, Au Xingao and Mr Luke Huang. Given Xinhe's demonstrated propensity to cause the proliferation of substantive and interlocutory issues as litigation proceeded and its apparent bottomless appetite for the funding of the 2020/2021 Proceedings, Bullseye securing releases from Xinhe, Au Xingao and Mr Luke Huang from all claims (both known and unknown) was an important objective for Bullseye in the settlement negotiations.³³
- 39 In summary, pursuant to the 2020/2021 Proceedings Settlement Deed:³⁴
- 39.1 22,800,000 Bullseye shares were to be issued to Au Xingao (as nominee for Xinhe and Au Xingao collectively);
- 39.2 consent orders were to be filed in Court dismissing the 2020/2021 Proceedings (as between Xinhe and the defendants, other than Ms Mullan) with no order as to costs, immediately upon the allotment of the Share Settlement; and
- 39.3 Xinhe, Au Xingao and Luke Huang provided broad releases to Bullseye of all claims of any nature, whether known or unknown, based on facts which occurred prior to the date of issue of the Share Settlement.
- 40 In summary, pursuant to the 2022/2023 Proceedings Settlement Deed:³⁵

³³ Technical Briefing Letter, at [46], **Tab 12**.

³⁴ *Ibid*, at [47].

³⁵ *Ibid*, at [48].

- 40.1 consent orders were to be filed in Court dismissing the 2022/2023 Proceedings with no order as to costs (as between Xinhe, Au Xingao and the defendants, other than Ms Mullan), immediately upon the consent orders in the 2020/2021 Proceedings being made by the Supreme Court; and
- 40.2 Xinhe, Au Xingao and Luke Huang provided releases in respect of all claims in connection with the 2022/2023 Proceedings, whether known or unknown.
- 41 The 2022/2023 Proceedings Settlement Deed was conditional on the completion of the 2020/2021 Proceedings Settlement Deed, in circumstances where Au Xingao was receiving the Share Settlement under the 2020/2021 Proceedings Settlement Deed, in order to ensure that there was a clean break between Xinhe and Au Xingao and Bullseye.
- 42 The Settlement Deeds were tabled and signed-off by Bullseye at board level and were entered into on 26 July 2023.³⁶

Panel Proceedings

- 43 The Panel Proceedings were commenced on an application by Mr Desmond Mullan who holds approximately 3.74% of Bullseye's issued capital. The application concerned (among other things) an alleged collateral benefit in relation to Xinhe and Au Xingao receiving the Share Settlement and giving Shareholder Statements to accept into a takeover bid.
- 44 The Panel determined that, by virtue of Emerald and each of Xinhe and Au Xingao entering into the Shareholder Statements and agreeing to the Share Settlement:³⁷
- 44.1 Emerald increased its voting power and shareholding from approximately 57.34% to approximately 75.54%, in contravention of section 606 of the Act because by entering into those agreements, Emerald has the power to dispose of, or control the exercise of a power to dispose of, shares in Bullseye for the purposes of section 608 of the Act; and
- 44.2 Bullseye shareholders have not been provided with sufficient information about the connection between the Emerald Offer the Shareholder Statements and the

³⁶ Ibid, at [45] and [51].

³⁷ Panel declaration of unacceptable circumstances dated 5 October 2023, at [28], **Tab 2**.

settlement of the 2020/2021 Proceedings and 2022/2023 Proceedings (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.

45 The Panel noted that:³⁸

45.1 although Emerald's existing shareholding in Bullseye (57.34%) 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 Shareholder Statements did not allow a reasonable time to pass for a superior proposal to emerge contrary to its guidance on shareholder intention statements;

45.2 the terms of the Shareholder Statements were not accurately disclosed to the market;

45.3 the acquisition of control over Bullseye shares has not taken place in an efficient, competitive and informed market; and

45.4 Bullseye shareholders have not been provided with sufficient information to enable them to assess:

45.4.1 the merits of the Emerald Offer; and

45.4.2 whether they have been given a reasonable and equal opportunity to participate in benefits accruing to shareholders of Bullseye under the Emerald Offer.

46 The Panel declared that the circumstances constitute unacceptable circumstances in relation to the affairs of Bullseye:³⁹

46.1 having regard to the matters in section 657A(3) of the Act;

46.2 having regard to the effect that the Panel is satisfied they have had, are having, will have or are likely to have on:

46.2.1 the control, or potential control, of Bullseye; or

³⁸ Ibid, at [29] and [30].

³⁹ Ibid, at [31].

- 46.2.2 the acquisition, or proposed acquisition, by a person of a substantial interest in Bullseye;
- 46.3 having regard to the purposes of Chapter 6 set out in section 602 of the Act; and
- 46.4 because they constituted, constitute, will constitute or are likely to constitute a contravention of a provision of Chapter 6 of the Act.
- 47 Accordingly, Bullseye has been ordered to provide the Takeovers Panel with:⁴⁰

an independent expert's report providing an opinion on whether, as a result of the Share Settlement (as defined by the Panel), Xinhe and Au Xingao obtained a "net benefit"⁴¹ in connection with the Emerald Offer (as defined by the Panel) 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.

Conclusion

- 48 I have set out my conclusions in the advice section above.
- 49 If you have any queries in relation to the above, please do not hesitate to call me, otherwise thank you for the instructions.

Kind Regards



Paul Edgar SC

⁴⁰ Ibid, at order 5(c).

⁴¹ See Takeovers Panel *Guidance Note 21: Collateral Benefits*, **Tab 10**.

CURRICULUM VITAE

PERSONAL DETAILS

Full name: Paul Robert Edgar SC
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PROFESSIONAL QUALIFICATIONS

2023 Appointed Senior Counsel
1993 Admitted as a practitioner of the Supreme Court of Western Australia
1990 Admitted as a Solicitor of the Supreme Court of Queensland
1990 Admitted as a practitioner of the Australian Capital Territory
1989 Admitted as a Barrister of the Supreme Court of Queensland

EXPERIENCE

35 years' experience in Insolvency, Reconstruction and sophisticated litigation funding arrangements and after the event litigation insurance.

From 1994 to 2014 acted for the Insurance Commission of Western Australia in funding and conducting various litigation in respect of the Bell Group and Bond Corporation groups of companies. The funding of these matters involved over \$250 million in advances to liquidators and resulted in over \$2 billion in recoveries to the liquidations.

Since 2017, exclusive practice as a Barrister appearing in all superior courts in Western Australia. A list of appearances is attached.

EMPLOYMENT

March 22 - present Barrister, Quayside Chambers
2011 - March 2022 Barrister, Francis Burt Chambers
1999 - 2011 Principal, Edgar & Co
1995 - 1999 Partner, Hely Edgar
1993 - 1994 Consultant Solicitor, Corser & Corser
1991 - 1992 Investigator, McLernon Group Ltd (now Omni Bridgeway)
1987 - 1990 Law Clerk, Morris Fletcher and Cross (Brisbane)

**PART I – SELECTION OF APPEARANCES AT HEARINGS
AS SOLE OR LEADING COUNSEL**

Citation	Hearing type	Description	Judge(s) / Decision-maker	Opposing / other counsel
<i>CIC Projects Pty Ltd v Eyre Kingston Pty Ltd</i> [2023] FCA 800	Application for appointment of Provisional Liquidator or Injunction	Court ordered immediate winding up of company	Jackson J	D Cook SC
<i>Australian Securities and Investments Commission v Marco</i>	Application for remuneration determination	Final application for remuneration determination heard over 2 days-Decision pending	Feutrill J	P Walker
<i>Re Aerison Group Ltd (Administrators Appointed)</i> [2023] WASC 274	Application for relief against personal-liability of administrators for loan funding	Ex parte application for orders facilitating business to continue- Orders made	Strk J	N/A
<i>Casella v Parkridge Group Pty Ltd</i> [2023] WASC 224	Application for extension of caveat	Resisting application-Application failed-orders for indemnity costs to be paid by applicant	Solomon J	J Yeldon
<i>Re Wiluna Mining Corporation Ltd; Ex Parte Ryan (as administrator of Wiluna Mining Corporation Ltd (admins apptd)</i> [2023] WASC 194	Application to vary operation of Corporations Act	Ex Parte application for payment of \$4,500,000 of employee entitlements during voluntary administration-orders made	McDonald AM	N/A
<i>Aries Cars Pty Ltd v Motor2U Pty Ltd (in liquidation)</i> [2023] WASC 123	Application for appointment of Special Purpose Liquidator	Application opposed in part-Application deferred pending further evidence from applicant	Lundberg J	A Hershowitz

<i>Algeri (Administrator), in the matter of Murray & Roberts Pty Ltd (Administrators Appointed) (No 4) [2023] FCA 313</i>	Application for extension	Third application for an extension to the convening period for some Clough Group companies-Application granted	Banks-Smith J	N/A
<i>Francis (Trustee), in the matter of Fotios (Bankrupt) v Helios Corporation Pty Ltd (No 3) [2023] FCA 251</i>	Application for directions	Directions sought in respect of priorities in respect of payments from trust assets- directions made	Colvin J	J Cook C Pearce
<i>Newman Rivergums Village Operations Pty Ltd (ACN 160 237 918) (subject to a deed of Company Arrangement) v BHP Iron Ore Pty Ltd [2022] WASC 312</i>	Application for leave to serve writ out of time	Opposed application- orders for service out of time made	Sanderson M	J K Taylor SC P Mackenzie
<i>Matthew David Woods as joint and several liquidator of Brierty Limited (ACN 095 459 448) (in liquidation) [2022] WASC 310</i>	Application for extension of time for commencing application	Opposed application hearing de novo of application for extension of time for commencing application-orders made	Sanderson M	C Pearce
<i>Tucker (as joint and several administrator of Allegiance Mining Pty Ltd (recs and mgrs apptd) (Subject to Deed of Company Arrangement) (ACN 059 676 783) v Su [2022] WASC 178</i>	Application for leave to intervene	Appeared for Administrators-contested hearing for leave to intervene in an application pursuant to s444GA of the Corporations Act-application refused	Sanderson M	S Maiden QC/J Rudd M Cuerden SC/P Walker J Giles SC
<i>Hurley v Collector of Customs [2022] FCAFC 92</i>	Appeal to the Full Court of the Federal Court	Appeared for Appellant seeking reversal of orders for personal liability for custom duties under s35A of the Customs Act 1903- appeal successful- Collector of Customs application for special leave to HCA dismissed: <i>Collector of Customs v Hurley</i> [2022] HCASL 174	Moshinsky J Colvin J Banks-Smith J	A Michelmore SC/ J Slack-Smith

<i>Francis (Trustee), in the matter of Fotios (Bankrupt) v Helios Corporation Pty Ltd (No 2) [2022] FCA 199</i>	Application for Directions	Appeared for Bankruptcy Trustee-directions sought by Receiver in respect of priorities	Colvin J	C Pearce; C Lusher
<i>Francis (Trustee), in the matter of Fotios (Bankrupt) v Helios Corporation Pty Ltd (No 2) [2022] FCA 652</i>	Application for Directions	Appeared for Bankruptcy Trustee-directions sought by Receiver in respect of priorities	Colvin J	C Pearce; JP Cook
<i>M2 Assets Pty Ltd as trustee for The M2 Assets Trust v Turco [2022] WASC 65</i>	Application to remove caveat	Appeared for applicant-application granted	Hill J	Defendant in person
<i>Australian Securities and Investments Commission v Marco (No 9) [2021] FCA 1306</i>	Application for remuneration determination	Appeared for applicant-application in respect of trustee's right of exoneration and indemnity from trust property-application granted	McKerracher J	A Chai
<i>Kipoi Holdings Mauritius Ltd v Tiger Resources Ltd (Subject to Deed of Company Arrangement) [2021] WASC 165</i>	Application to set aside Deed of Company Arrangement	Appeared for Deed Administrators-application to set aside DOCA refused-Decision appealed	Master Sanderson	RCA Higgins SC, J Hutton & T Palmer S Maiden QC & J Abberton W Zappia
<i>CIG (WA) Pty Ltd v Blondie Capo Pty Ltd [2021] WASC 12</i>	Application by plaintiff for summary judgement	Appeared for defendant-application refused	Master Sanderson	C Chenu
<i>Matthew David Woods as joint and several liquidator of Brierty Ltd (in liq) v B&J Catalano Pty Ltd [2021] WASC 90</i>	Application for case management directions	Appeared for applicant liquidator	Acting Master Strk	M Holler; V Ghosh; S Neagu; T Langdon; DJ Pratt; N Malone; M Stacey

<i>Lithium WA Investments Pty Ltd v Robert Michael Kirman and Robert Conry Brauer (as joint and several administrators of Alita Resources Ltd (Receivers and Managers Appointed) (Administrators Appointed)) [No 2] [2021] WASC 63</i>	Application to modify undertaking supporting injunction	Appeared for fourth defendant-application made to discharge injunction and to construe undertaking-application to discharge injunction dismissed-application for payments to support undertaking granted	Hill J	K de Kerloy/P Keeves W Zappia
<i>Australian Securities and Investments Commission v Marco (No 6) [2020] FCA 1781</i>	Application for orders and declarations in respect of managed investment scheme and breaches of Corporations Act	Appeared for administrators of second defendant which was involved in "Scheme"- various orders and declarations granted	McKerracher J	J Halley SC with Mr M Sherman JA Thornton Mr A Chai
<i>Re Alita Resources Ltd [2020] WASC 430</i>	Application to vary terms of Deed of Company Arrangement	Appeared for applicant Deed Administrators-application granted	Master Sanderson	K de Kerloy J Abberton
<i>Re Alita Resources Ltd [2020] WASC 430(S)</i>	Application for suspension order	Appeared for respondent Deed Administrators-application refused	Master Sanderson	K de Kerloy J Abberton
<i>A & K Collins Investments Pty Ltd v Keto Pumps S A R L [2020] WASC 231</i>	Application to set aside order for service outside the jurisdiction	Appeared for respondent plaintiff-application to set aside granted	Master Sanderson	K de Kerloy
<i>Re Centennial Mining Ltd (Subject to Deed of Company Arrangement); Ex Parte Tucker [2019] WASC 441</i>	Ex parte application for leave pursuant to s444GA of the Corporations Act	Appeared for applicant Deed Administrator-application granted	Vaughan J	N/A

<i>NWC Finance Pty Ltd v The State of Western Australia</i> [2019] WASC 485	Application under Criminal Property Confiscation Act 2000 (WA)	Appeared for applicant mortgagee- order for sale made	Hill J	IS Jones
<i>Smith v Sandalwood Properties</i> [2019] WASC 109	Application for declaratory relief and injunctions in respect of operation of Deed of Company Arrangement	Appeared for Deed Administrators	Vaughan J	AJ Papamatheos/C Spencer SK Dharmananda SC/F Maher
<i>Re Red Lancer Pty Ltd (In Liq); Ex Parte Bumbak</i> [2019] WASC 450	Ex parte application for directions	Appeared for liquidators-application granted	Vaughan J	N/A
<i>Tucker, in the Black Oak Minerals Ltd (Subject to A Deed of Co Arrangement) (In Liq)</i> (2019) 134 ACSR 472; [2019] FCA 293	Ex parte application for leave pursuant to s444GA of the Corporations Act	Appeared for applicant Deed Administrator- Application granted	Banks-Smith J	N/A
<i>Villani (Liquidator), in the matter of Black Oak Minerals Limited (in liq)</i> [2018] FCA 1506	Ex parte application for liquidators to be appointed administrators	Appeared for applicant liquidators- Application granted	Colvin J	N/A

**PART II – SELECTION OF APPEARANCES AT HEARINGS
JUNIORING SENIOR COUNSEL**

Citation	Hearing type	Description	Judge(s) / Decision-maker	Leader	Opposing / other counsel
<i>Martin Bruce Jones joint and several Administrators GD Pork Holdings Pty Ltd (ACN 126 978 676) (administrators appointed) as trustee for the GD Pork Unit Trust</i>	Appeal	Appeal by ASIC against the decision in <i>Martin Bruce Jones joint and several administrators GD Pork Holdings Pty Ltd (ACN 126 978 676) (administrators appointed) as trustee for the GD Pork Unit Trust</i> [2021] WASC 428- Decision Pending	Buss P; Beech JA and Mitchell JA	P D Crutchfield KC	S J Maiden KC; P Walker
<i>Paddington Gold Pty Ltd v Wave Pty Ltd (subject to a deed of company arrangement)</i> [2023] WASC 263	Application for Injunction	Injunction imposed in part; heard over 2 half days-application granted	Strk J; Lemonis J	S J Maiden KC	T Langdon T Porter
<i>Chalmsbury Nominees Pty Ltd v Alita Resources Limited (receivers and managers appointed) (subject to deed of Company Arrangement)</i> [2023] WASC 97	Application for Summary Judgement	Application for summary judgement in a corporations application- application unsuccessful	Hill J	S J Maiden KC	J A Garas SC; R A Collins J K Taylor SC; W Zappia
Algeri (Administrator), in the matter of Murray & Roberts Pty Ltd (Administrators Appointed) (No 3) [2023] FCA 98	Application for extension to convening period	Second extension sought for some but not all of group- Application granted	Banks-Smith J	J K Taylor SC	N/A

<i>Algeri (Administrator), in the matter of Murray & Roberts Pty Ltd (Administrators Appointed) (No 2) [2022] FCA 1563</i>	Application for extension to convening period	First application for an extension of time for the convening period for the Clough Group-Application granted	Banks-Smith J	J K Taylor SC	N/A
<i>Algeri (Administrator), in the matter of Murray & Roberts Pty Ltd (Administrators Appointed) [2022] FCA 1506</i>	Application for alteration to operation of Corporations Act	Application by Administrator of Clough Group for relief against liability for trading liabilities	Banks-Smith J	J K Taylor SC	N/A
<i>Woodhouse (Liquidator), in the matter of Forex Capital Trading Pty Ltd (in liq) [2022] FCA 600</i>	Ex parte application for directions	Appeared for applicant liquidators for directors to expedite process for adjudication of proofs of debt	Banks-Smith J	B Dharmananda SC	N/A
<i>Kipoi Holdings Mauritius Limited v Kirman as joint and several administrators of Tiger Resources Limited (Subject to Deed of Company Arrangement) (No 2) [2022] WASCA 14</i>	Application for joinder and removal as parties to appeal	Appeared for former Deed Administrators-application for removal refused	Buss P; Beech JA	J K Taylor SC	PA Walker SJ Maiden QC; J Abberton
<i>Robert Michael Kirman (As Joint and Several Administrators of Tiger Resources Ltd) [2021] WASC 411</i>	Application for directions	Appeared for Deed Administrators seeking directions-directions granted	Master Sanderson	J K Taylor SC	J Hutton J Abberton
<i>Kipoi Holdings Mauritius Ltd v Tiger Resources Ltd (Subject to Deed of Company Arrangement) [2021] WASCA 186</i>	Appeal	Appeared for respondent to appeal against the decision of the Master in refusing to set aside Deed of Company Arrangement-appeal dismissed	Buss P, Murphy and Mitchell JJA	J K Taylor SC	Dr RCA Higgins SC; J Hutton; PA Walker SJ Maiden QC; J Abberton; N Wallwork

<i>Kipoi Holdings Mauritius Ltd v Kirman and Bauer as joint and several administrators of tiger resources limited (subject to deed of company arrangement) [2021] WASCA 194</i>	Application for stay	Appeared for respondent-stay refused	Buss P; Mitchell JA	J K Taylor SC	Dr RCA Higgins SC; J Hutton; PA Walker SJ Maiden QC/J Abberton/N Wallwork
<i>Freeman and others; Re Pindan Group Pty Ltd (Administrators Appointed) and others COR/172/2021</i>	Ex Parte Application for directions	Directions Application for administrators to continue to act-orders made reasons pending.	Strk J	S J Maiden QC	N/A
<i>Martin Bruce Jones joint and several administrators GD Pork Holdings Pty Ltd (ACN 126 978 676) (administrators appointed) as trustee for the GD Pork Unit Trust [2021] WASC 428</i>	Applications for review of remuneration	Application by ASIC for review of remuneration- substantive argument on issues of independence and fiduciary duties [outcome of matter?]	Martin J	P D Crutchfield QC	SJ Maiden QC/P Walker
<i>Robert Michael Kirman and Robert Conry Brauer as joint and several deed administrators of Alita Resources Limited (ACN 147 393 735) (receivers and managers appointed (subject to deed of company arrangement) [2021] WASC 315</i>	Application for leave pursuant to s444GA of the Corporations Act	Appeared for proponent as interested party-application granted	Master Sanderson	R Newlinds SC	S Penglis SC/W Zappia J Scovell
<i>Robert Michael Kirman and Robert Conry Brauer as joint and several administrators of Tiger Resources Ltd (Subject to Deed of Company Arrangement) [2021] WASC 273</i>	Application for discontinuance of stay-costs application	Appeared for Deed Administrators-stay discontinued, and costs order made in favour of Deed Administrators	Hill J	J K Taylor SC	PA Walker SJ Maiden QC/J Abberton

<i>Litigation Capital Partners LLP PTE Ltd (Registration No 200922518M) v ACN 117 641 004 Pty Ltd (in liquidation) (formerly known as Vale Cash Management Fund Pty Ltd) [2021] WASC 161</i>	Application to strike-out defence and counterclaim	Appeared for applicant-application substantially successful	Hill J	P Cahill SC	A D’Arcy
<i>Western Metropolitan Regional Council v Dicom Awt Operations Pty Ltd [2019] WASCA 117</i>	Appeal	Appeared for Appellants-Appeal dismissed	Quinlan CJ; Mitchell and Beech JJA	P D Crutchfield QC	PJ Ward/Mr EJ Sylwestrzak; KM Pettit SC/Mr AK Sharpe

Appendix D

Summary of key events

Event	Date	Description
Xinhe commenced oppression proceedings (2020 Proceedings)	3-Jul-20	Xinhe filed oppression proceedings in the Supreme Court of Western Australia against Bullseye and Directors.
Xinhe commenced another oppression proceedings (2021 Proceedings)	10-Aug-21	Xinhe filed a new oppression proceeding in the Supreme Court of Western Australia against the same defendants as in the 2020 Proceedings.
Consolidation of 2020 and 2021 Proceedings	18-Aug-21	The 2020 Proceedings and 2021 Proceedings were consolidated.
Trial for 2020/2021 Proceedings commenced	6-Sep-21	The trial for the consolidated 2020/2021 Proceedings begins.
Emerald first takeover bid	7-Dec-21	Emerald signed a Takeover Bid Implementation Agreement to acquire remaining 80.55% stake in Bullseye Mining Limited from Hong Kong Xinhe International Investment Company Limited and others for approximately AUD 110 million. Under the Offer, Bullseye shareholders would receive 1 new Emerald share for every 3.43 Bullseye shares held. Offer was intended to close on 14 January 2022.
Extension of takeover bid	14-Jan-22	Emerald extends its offer to 28 January 2022.
Extension of takeover bid	26-Jan-22	Emerald extends its offer to 11 February 2022.
Xingao Bid Announcement	3-Feb-22	Xingao releases its offer for \$0.31 per Bullseye share, with the Offer to increase to \$0.35 if certain conditions are met.
Declaration of Unacceptable Circumstances	7-Feb-22	Takeover Panel makes Declaration of Unacceptable Circumstances and orders include dispatching supplementary statements by Bullseye and Emerald, and withdrawal rights.
Emerald Announcement	7-Feb-22	Emerald declares relevant interest in Bullseye as 55.87%.
Emerald relevant interest increase	7-Feb-22	Emerald announced on ASX that it had extended the closing date of its bid to 4 March 2022.
Emerald Bid Extension	11-Feb-22	Closing date extended to 4 March 2022.
Xingao Bidder's Statement Lodged	14-Feb-22	Xingao lodges bidder's statement with ASIC.
Xingao Bidder's Statement Served	15-Feb-22	Xingao serves bidder's statement on Bullseye.
Xingao Bid Announcement	18-Feb-22	Letter sent to Bullseye shareholders outlining Xingao Bid.
Supplementary Statements Released	21-Feb-22	Emerald and Bullseye release supplementary statements.
Xingao Supplementary Statements Lodged	23-Feb-22	Supplementary bidder's statement and replacement bidder's statement lodged with ASIC.
Xingao Supplementary Statement Delivered	24-Feb-22	Replacement bidder's statement delivered to Bullseye.
Emerald Bid Extension	1-Mar-22	Closing date extended to 18 March 2022. Withdrawal rights period disclosed.
Bullseye Board Meeting	2-Mar-22	Board determines Xingao bid not superior to Emerald bid.
Xingao Offer Price Increase	3-Mar-22	Offer price increased to \$0.35 per share.
Xingao Bidder's Statement Abridgement	3-Mar-22	ASIC consents to abridgement of time for replacement bidder's statement.
Bullseye Letter to Shareholders	4-Mar-22	Letter enclosed Xingao bid documents. Board's determination on Xingao bid stated.

Event	Date	Description
Bullseye Board Meeting	7-Mar-22	Board meeting held, one director absent.
Bullseye Letter to Shareholders	8-Mar-22	Board's decision not to provide due diligence access to Xingao disclosed.
Emerald Announcement	8-Mar-22	Emerald announces its relevant interest in Bullseye post withdrawal rights period.
Emerald Bid Extension	18-Mar-22	Closing date extended to 1 April 2022. Emerald confirms relevant interest.
Bullseye Target's Statement Released	18-Mar-22	Bullseye recommends rejecting Xingao bid. Chairman's letter to shareholders mentions board's decision on Xingao offer.
Emerald relevant interest increase	21-Jun-22	As of June 21, 2022, the recommended and unconditional takeover bid has now closed with Emerald Resources holding a direct equity ownership in Bullseye of 59.32%.
Xinhe and Au Xingao commenced oppression proceedings (2022 Proceedings)	25-Aug-22	Xinhe and Au Xingao initiated oppression proceedings against Bullseye, Emerald, and five former or current directors.
Conclusion of trial for 2020/2021 Proceedings	22-Nov-22	The trial for the 2020/2021 Proceedings concluded after 73 trial days.
Xinhe and Au Xingao commenced fresh oppression proceedings (2023 Proceedings)	3-Feb-23	Xinhe and Au Xingao started fresh oppression proceedings against the same defendants as in the 2022 Proceedings, along with Mr. Clements and other related entities.
Consolidation of 2022 and 2023 Proceedings	16-Mar-23	The 2022 Proceedings and 2023 Proceedings were consolidated.
Board decision for Settlement Shares	18-Jul-23	
Signing of Shareholder intention statements by Xinhe and Au Xingao, Bid Implementation Agreement, and settlement deeds	26-July-23	The shareholder intention statements were signed by each of Xinhe and Au Xingao., The 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.
Announcement of Emerald Offer and Share Settlement	27-Jul-23	Emerald announced a takeover offer for Bullseye shares and a final settlement of the 2020/2021 Proceedings and 2022/2023 Proceedings.
Lodging of Emerald's bidder's statement	17-Aug-23	Emerald's bidder's statement was lodged with ASIC.
Issuance of Bullseye shares to Au Xingao	17-Aug-23	Bullseye issued 22,800,000 shares to Au Xingao as part of the Share Settlement.
Opening of Emerald Offer	21-Aug-23	The Emerald Offer opened for acceptance.

Source: S&P Capital IQ, Market announcements, Takeover Panel Media Releases

Appendix E

Shareholder dilution analysis

Shareholder dilution considerations

FY22 and FY23

Table 12 shows that the Minority Shareholders were diluted by 10.7% in FY22 as a result of Bullseye issuing 128.7 million new shares via equity placements, conversion of debt and various share-based payments.

Table 12 – Summary of dilution in equity stake of the Minority Shareholders in FY22

Entity	No. shares pre-issuance (m)	Equity stake	No. shares issued (m)	No. shares post-issuance (m)	Equity stake	Dilution in equity stake post-issuance
Emerald Resources	135.7	42.8%	128.7	264.3	59.3%	16.5%
Xinhe and AU Xingao	63.8	20.1%	-	63.8	14.3%	(5.8%)
Minority Shareholders (incl. Desmond Mullan)	117.4	37.1%	-	117.4	26.4%	(10.7%)
Total	316.9	100.0%	128.7	445.6	100.0%	0.0%

Source: FY22 Capital Raising Information, PwCS analysis

Notes:

1. During FY22, Emerald commenced an off-market takeover bid of Bullseye and increased its shareholding from nil to 264.3 million shares (or a 59.32% equity stake).
2. Emerald acquired the 264.3 million shares through two broad methods: 1) the Minority Shareholders contributed a net 135.7 million (or a 42.81% equity stake) via acceptances of the bid, 2) Bullseye issued 128.7 million new shares via equity placements, conversion of debt and various share-based payments, which ultimately flowed to Emerald (increasing its equity stake from 42.81% to 59.32%).
3. For the purposes of our FY22 dilution analysis, we have focussed on the impact that the issuance of 128.7 million new Bullseye shares had on the Minority Shareholders, given that this equity raising was used to fund Bullseye's operational activities, including the payment of legal expenses.

Table 13 summarises the impact on the Minority Shareholders, from a dilution in aggregate shareholding value perspective, which resulted from Bullseye's issuance of 128.7 million new shares to raise \$27.1 million in equity capital in FY22.

The \$27.1 million equity capital raised diluted the Minority Shareholders' aggregate shareholding value by \$7.1 million. Further, given that Bullseye incurred \$5.3 million in legal expenses in FY22, we consider the implied pro-rata dilution to the Minority Shareholders, as a result of funding the legal expenses through the equity raising, was \$1.4 million, as detailed in Table 13.

Table 13 – Summary of dilution in aggregate shareholding value of the Minority Shareholders in FY22

Entity	Value of shares pre-issuance (\$m)	Equity stake	Impact on share value (\$m)	Value of shares post-issuance (\$m)	Equity stake
Emerald Resources	28.6	42.8%	11.0	39.6	59.3%
Xinhe and AU Xingao	13.4	20.1%	(3.9)	9.6	14.3%
Minority Shareholders (incl. Desmond Mullan)	24.7	37.1%	(7.1)	17.6	26.4%
Total	66.7	100.0%	-	66.7	100.0%
<i>Total shares outstanding</i>		316.9			445.6
FY22 equity capital raised (\$m)			27.1		
FY22 legal expenses (\$m)			5.3		
Dilution impact on aggregate shareholding value of Minority Shareholders from new shares issued (\$m)			(7.1)		
Implied dilution to Minority Shareholders associated with legal expenses (\$m)			(1.4)		

Source: FY22 Capital Raising Information, PwCS analysis

Note:

1. While the issue prices of new shares in FY22 ranged from \$0.20 to \$0.27 per share, we have assumed an average issue price of \$0.21 per share, based on the total equity raising of \$27.1 million divided by the total new shares issued of 128.7 million.
2. For the purposes of our dilution analysis, we have assumed the following:
 - a) the entire \$27.1 million equity capital raised was used to fund Bullseye's operational activities, which is a simplifying assumption, but is supported by Bullseye's FY22 financial performance, which resulted in a net operating loss of \$10 million
 - b) the total equity value of Bullseye was \$66.7 million prior to the issuance, representing the 316.9 million shares outstanding in Bullseye prior to the issue of 128.7 million in new shares and an assumed average price of \$0.21 per share, discussed above. We note that this implies a total equity value on a minority interest basis, however we have not applied a control premium for the purposes of analysing the implied dilution impact to Minority Shareholders
 - c) the total equity value of Bullseye was \$66.7 million post the issuance, given that we have assumed that the entire \$27.1 million equity capital was used to fund Bullseye's operational activities. We consider that although this deployment of equity capital could have increased the implied share price of Bullseye throughout the year, we have held the total equity value of Bullseye constant to isolate the implied pro-rata dilution to the Minority Shareholders, as a result of using equity capital to fund the legal expenses.

Table 14 shows that the Minority Shareholders were diluted by 0.7% in FY23 as a result of Bullseye issuing 38.7 million new shares via entitlement issues, conversion of debt and various share-based payments.

Table 14 – Summary of dilution in equity stake of the Minority Shareholders in FY23

Entity	No. shares pre-issuance (m)	Equity stake	No. shares issued (m)	No. shares post-issuance (m)	Equity stake	Dilution in equity stake post-issuance
Emerald Resources	264.3	59.3%	26.4	290.8	60.0%	0.7%
Xinhe and AU Xingao	63.8	14.3%	5.7	69.5	14.3%	0.0%
Minority Shareholders (incl. Desmond Mullan)	117.4	26.4%	6.6	124.0	25.6%	(0.7%)
Total	445.6	100.0%	38.7	484.3	100.0%	0.0%

Source: FY23 Capital Raising Information, PwCS analysis

Notes:

1. For the purposes of our FY23 dilution analysis, we have focussed on the impact that the issuance of 38.7 million new Bullseye shares had on the Minority Shareholders, given that this equity raising was used to fund Bullseye's operational activities, including the payment of legal expenses.

Table 15 summarises the impact on the Minority Shareholders, from a dilution in aggregate shareholding value perspective, which resulted from Bullseye's issuance of 38.7 million new shares to raise \$11.2 million in equity capital in FY23.

The \$11.2 million equity capital raised diluted the Minority Shareholders' aggregate shareholding value by \$1.0 million. Further, given that Bullseye incurred \$3.4 million in legal expenses in FY23, we consider the implied pro-rata dilution to the Minority Shareholders, as a result of funding the legal expenses through the equity raising, was \$289 thousand, as detailed in Table 15.

Table 15 – Summary of dilution in aggregate shareholding value of the Minority Shareholders in FY23

Entity	Value of shares pre-issuance (\$m)	Equity stake	Impact on share value (\$m)	Value of shares post-issuance (\$m)	Equity stake
Emerald Resources	76.7	59.3%	0.9	77.6	60.0%
Xinhe and AU Xingao	18.5	14.3%	0.0	18.5	14.3%
Minority Shareholders (incl. Desmond Mullan)	34.1	26.4%	(1.0)	33.1	25.6%
Total	129.2	100.0%	-	129.2	100.0%
<i>Total shares outstanding</i>		445.6			484.3
FY23 equity capital raised (\$m)			11.2		
FY23 legal expenses (\$m)			3.4		
Dilution impact on aggregate shareholding value of Minority Shareholders from new shares issued (\$m)			(1.0)		
Implied dilution to Minority Shareholders associated with legal expenses (\$m)			(0.289)		

Source: FY23 Capital Raising Information, PwCS analysis

Note:

1. The equity capital was raised through two pro-rata non-renounceable entitlements issues: 1) In December 2022, \$6.2 million was raised by issuing 21.4 million shares at \$0.29 per share, 2) In March 2023 a further \$5.0 million was raised, by issuing 17.3 million shares at \$0.29 per share.
2. For the purposes of our dilution analysis, we have assumed the following:
 - a) the entire \$11.2 million equity capital raised was used to fund Bullseye's operational activities, which is a simplifying assumption, but is supported by Bullseye's FY23 financial performance, which resulted in a net operating loss of \$9 million.
 - b) the total equity value of Bullseye was \$129.2 million prior to the issuance, representing the 445.6 million shares outstanding in Bullseye prior to the issue of 38.7 million in new shares and an assumed price of \$0.29 per share, discussed above. We note that this implies a total equity value on a minority interest basis, however we have not applied a control premium for the purposes of analysing the implied dilution impact on Minority Shareholders
 - c) the total equity value of Bullseye was \$129.2 million post the issuance, given that we have assumed that the entire \$11.2 million equity capital was used to fund Bullseye's operational activities. We consider that although this deployment of equity capital could have increased the implied share price of Bullseye throughout the year, we have held the total equity value of Bullseye constant to isolate the implied pro-rata dilution to the Minority Shareholders, as a result of using equity capital to fund the legal expenses.

Hypothetical future scenarios

We have analysed the impact on the Minority Shareholders, from a dilution in aggregate shareholding value perspective, assuming the Share Settlement did not occur. We have assumed the following hypothetical scenarios where Bullseye would have to continue raising equity capital to either:

- a) defend the 2022/2023 Proceedings through the payment of \$7.7 million or more in expected legal expenses, summarised in Table 16 and Table 17
- b) pay Xinhe/Au Xingao's loss and damage claim against Bullseye, of between \$14 million to \$22.4 million, were they successful or should Bullseye be unable to continue funding its defence, summarised from Table 18 to Table 21
- c) pay Xinhe/Au Xingao's loss and damage claim and adverse costs claim against Bullseye, of between \$17.85 million to \$26.25 million, were they successful or should Bullseye be unable to continue funding its defence, summarised from Table 22 to Table 25.

For the purposes of our dilution analysis, we have assumed the following:

- a) The issue of the Settlement Shares did not occur, and Bullseye had a total of 484.3 million shares outstanding.⁷³
- b) A price of \$0.29 per Bullseye share, based on the price of the entitlements issued by Bullseye in FY23, which represent the most recent transaction of shares in Bullseye, prior to the signing of the Settlement Deeds on 26 July 2023. We note that this implies a total equity value on a minority interest basis, however we have not applied a control premium for the purposes of analysing the implied dilution impact on Minority Shareholders.
- c) The new shares would be issued to a hypothetical purchaser that was not Emerald, Xinhe, Au Xingao or the Minority Shareholders.
- d) The equity capital raised would be simultaneously used to pay legal expenses or damages to Xinhe and Au Xingao and therefore the total equity value of Bullseye would remain unchanged pre and post the new share issuance.
- e) Although the use of equity capital to pay legal expenses or damages could increase the implied share price of Bullseye, we have held the total equity value of Bullseye constant to isolate the implied dilution to the Minority Shareholders.

⁷³ 507.1 million shares as per the BDO Expert Report, less the 22.8 million Settlement Shares

Table 16 – Summary of dilution in equity stake of the Minority Shareholders resulting from hypothetical payment of \$7.7 million in legal expenses

Entity	No. shares pre-issuance (m)	Equity stake	No. shares issued (m)	No. shares post-issuance (m)	Equity stake	Dilution in equity stake post-issuance
Emerald Resources	290.8	60.0%	-	290.8	56.9%	(3.1%)
Xinhe and AU Xingao	69.5	14.3%	-	69.5	13.6%	(0.7%)
Desmond Mullan	19.0	3.9%	-	19.0	3.7%	(0.2%)
Other Minority Shareholders	105.1	21.7%	-	105.1	20.6%	(1.1%)
Hypothetical capital provider	-	0.0%	26.6	26.6	5.2%	5.2%
Total	484.3	100.0%	26.6	510.8	100.0%	0.0%

Source: PwCS analysis

Table 17 – Summary of dilution in aggregate shareholding value of the Minority Shareholders resulting from hypothetical payment of \$7.7 million in legal expenses

Entity	Equity value in Bullseye pre-issuance (\$m)	Impact on equity value from issuance (\$m)	Equity value in Bullseye post-issuance (\$m)
Emerald Resources	84.3	(4.4)	79.9
Xinhe and AU Xingao	20.1	(1.0)	19.1
Desmond Mullan	5.5	(0.3)	5.2
Other Minority Shareholders	30.5	(1.6)	28.9
Hypothetical capital provider	-	7.3	7.3
Total	140.4	-	140.4

Equity capital raised (\$m) (based on 26.6m new shares)

7.7

Legal expenses (\$m)

7.7

Dilution in aggregate shareholding value of Minority Shareholders associated with legal expense (\$m)

(1.9)

Source: PwCS analysis

Table 18 – Summary of dilution in equity stake of the Minority Shareholders resulting from hypothetical payment of \$14 million in damages to Xinhe/Au Xingao

Entity	No. shares pre-issuance (m)	Equity stake	No. shares issued (m)	No. shares post-issuance (m)	Equity stake	Dilution in equity stake post-issuance
Emerald Resources	290.8	60.0%	-	290.8	54.6%	(5.4%)
Xinhe and AU Xingao	69.5	14.3%	-	69.5	13.0%	(1.3%)
Desmond Mullan	19.0	3.9%	-	19.0	3.6%	(0.4%)
Other Minority Shareholders	105.1	21.7%	-	105.1	19.7%	(2.0%)
Hypothetical capital provider	-	0.0%	48.3	48.3	9.1%	9.1%
Total	484.3	100.0%	48.3	532.6	100.0%	0.0%

Source: PwCS analysis

Table 19 – Summary of dilution in aggregate shareholding value of the Minority Shareholders resulting from hypothetical payment of \$14 million in damages to Xinhe/Au Xingao

Entity	Equity value in Bullseye pre-issuance (\$m)	Impact on equity value from issuance (\$m)	Equity value in Bullseye post-issuance (\$m)
Emerald Resources	84.3	(7.6)	76.7
Xinhe and AU Xingao	20.1	(1.8)	18.3
Desmond Mullan	5.5	(0.5)	5.0
Other Minority Shareholders	30.5	(2.8)	27.7
Hypothetical capital provider	-	12.7	12.7
Total	140.4	-	140.4
Equity capital raised (\$m) (based on 48.3m new shares)		14.0	
Payment for damages (\$m)		14.0	
Dilution in aggregate shareholding value of Minority Shareholders associated with payment of damages (\$m)		(3.3)	

Source: PwCS analysis

Table 20 – Summary of dilution in equity stake of the Minority Shareholders resulting from hypothetical payment of \$22.4 million in damages to Xinhe/Au Xingao

Entity	No. shares pre-issuance (m)	Equity stake	No. shares issued (m)	No. shares post-issuance (m)	Equity stake	Dilution in equity stake post-issuance
Emerald Resources	290.8	60.0%	-	290.8	51.8%	(8.3%)
Xinhe and AU Xingao	69.5	14.3%	-	69.5	12.4%	(2.0%)
Desmond Mullan	19.0	3.9%	-	19.0	3.4%	(0.5%)
Other Minority Shareholders	105.1	21.7%	-	105.1	18.7%	(3.0%)
Hypothetical capital provider	-	0.0%	77.2	77.2	13.8%	13.8%
Total	484.3	100.0%	77.2	561.5	100.0%	0.0%

Source: PwCS analysis

Table 21 – Summary of dilution in aggregate shareholding value of the Minority Shareholders resulting from hypothetical payment of \$22.4 million in damages to Xinhe/Au Xingao

Entity	Equity value in Bullseye pre-issuance (\$m)	Impact on equity value from issuance (\$m)	Equity value in Bullseye post-issuance (\$m)
Emerald Resources	84.3	(11.6)	72.7
Xinhe and AU Xingao	20.1	(2.8)	17.4
Desmond Mullan	5.5	(0.8)	4.7
Other Minority Shareholders	30.5	(4.2)	26.3
Hypothetical capital provider	-	19.3	19.3
Total	140.4	-	140.4
Equity capital raised (\$m) (based on 77.2m new shares)		22.4	
Payment for damages (\$m)		22.4	
Dilution in aggregate shareholding value of Minority Shareholders associated with payment of damages (\$m)		(4.9)	

Source: PwCS analysis

Table 22 – Summary of dilution in equity stake of the Minority Shareholders resulting from hypothetical payment of \$17.85 million in damages to Xinhe/AU Xingao

Entity	No. shares pre-issuance (m)	Equity stake	No. shares issued (m)	No. shares post-issuance (m)	Equity stake	Dilution in equity stake post-issuance
Emerald Resources	290.8	60.0%	-	290.8	53.3%	(6.8%)
Xinhe and AU Xingao	69.5	14.3%	-	69.5	12.7%	(1.6%)
Desmond Mullan	19.0	3.9%	-	19.0	3.5%	(0.4%)
Other Minority Shareholders	105.1	21.7%	-	105.1	19.2%	(2.4%)
Hypothetical capital provider	-	0.0%	61.6	61.6	11.3%	11.3%
Total	484.3	100.0%	61.6	545.8	100.0%	0.0%

Source: PwCS analysis

Table 23 – Summary of dilution in aggregate shareholding value of the Minority Shareholders resulting from hypothetical payment of \$17.85 million in damages to Xinhe/AU Xingao

Entity	Equity value in Bullseye pre-issuance (\$m)	Impact on equity value from issuance (\$m)	Equity value in Bullseye post-issuance (\$m)
Emerald Resources	84.3	(9.5)	74.8
Xinhe and AU Xingao	20.1	(2.3)	17.9
Desmond Mullan	5.5	(0.6)	4.9
Other Minority Shareholders	30.5	(3.4)	27.0
Hypothetical capital provider	-	15.8	15.8
Total	140.4	-	140.4

Equity capital raised (\$m) (based on 61.6m new shares)	17.85
Payment for damages (\$m)	17.85
Dilution in aggregate shareholding value of Minority Shareholders associated with payment of damages (\$m)	(4.1)

Source: PwCS analysis

Table 24 – Summary of dilution in equity stake of the Minority Shareholders resulting from hypothetical payment of \$26.25 million in damages to Xinhe/AU Xingao

Entity	No. shares pre-issuance (m)	Equity stake	No. shares issued (m)	No. shares post-issuance (m)	Equity stake	Dilution in equity stake post-issuance
Emerald Resources	290.8	60.0%	-	290.8	50.6%	(9.5%)
Xinhe and AU Xingao	69.5	14.3%	-	69.5	12.1%	(2.3%)
Desmond Mullan	19.0	3.9%	-	19.0	3.3%	(0.6%)
Other Minority Shareholders	105.1	21.7%	-	105.1	18.3%	(3.4%)
Hypothetical capital provider	-	0.0%	90.5	90.5	15.7%	15.7%
Total	484.3	100.0%	90.5	574.8	100.0%	0.0%

Source: PwCS analysis

Table 25 – Summary of dilution in aggregate shareholding value of the Minority Shareholders resulting from hypothetical payment of \$26.25 million in damages to Xinhe/Au Xingao

Entity	Equity value in Bullseye pre-issuance (\$m)	Impact on equity value from issuance (\$m)	Equity value in Bullseye post-issuance (\$m)
Emerald Resources	84.3	(13.3)	71.0
Xinhe and AU Xingao	20.1	(3.2)	17.0
Desmond Mullan	5.5	(0.9)	4.6
Other Minority Shareholders	30.5	(4.8)	25.7
Hypothetical capital provider	-	22.1	22.1
Total	140.4	-	140.4
Equity capital raised (\$m) (based on 90.5m new shares)		26.25	
Payment for damages (\$m)		26.25	
Dilution in aggregate shareholding value of Minority Shareholders associated with payment of damages (\$m)		(5.7)	

Source: PwCS analysis

Share Settlement

We have analysed the impact on the Minority Shareholders, from a dilution in aggregate shareholding value perspective, as a result of the Share Settlement, summarised in Table 26 and Table 27.

For the purposes of our dilution analysis, we have assumed the following:

- After the issue of the Settlement Shares, Bullseye had a total of 507.1 million shares outstanding.
- A price of \$0.29 per Bullseye share, based on the price of the entitlements issued by Bullseye in FY23, which represent the most recent transaction of shares in Bullseye, prior to the signing of the Settlement Deeds on 26 July 2023.
- The equity capital raised was implicitly used to settle Xinhe and Au Xingao's legal claim against Bullseye and therefore the total equity value of Bullseye remained unchanged pre and post the issuance of the Settlement Shares.
- Although the use of equity capital to settle legal claims could increase the implied share price of Bullseye, we have held the total equity value of Bullseye constant to isolate the implied dilution to the Minority Shareholders.

Table 26 – Summary of dilution in equity stake of the Minority Shareholders resulting from Share Settlement

Entity	No shares pre-Settlement (m)	Equity stake	No. Settlement Shares issued (m)	No. shares post-Settlement (m)	Equity stake	Dilution of equity stake post-Settlement
Emerald Resources	290.8	60.0%	-	290.8	57.3%	(2.7%)
Xinhe and AU Xingao	69.5	14.3%	22.8	92.3	18.2%	3.9%
Desmond Mullan	19.0	3.9%	-	19.0	3.7%	(0.2%)
Other Minority Shareholders	105.1	21.7%	-	105.1	20.7%	(1.0%)
Total	484.3	100.0%	22.8	507.1	100.0%	0.0%

Source: PwCS analysis

Table 27 – Summary of dilution in aggregate shareholding value of the Minority Shareholders resulting from Share Settlement

Entity	Equity value in Bullseye pre-Settlement (\$m)	Impact on equity value from issuing the Settlement Shares (\$m)	Equity value in Bullseye post-Settlement (\$m)
Emerald Resources	84.3	(3.8)	80.5
Xinhe and AU Xingao	20.1	5.4	25.6
Desmond Mullan	5.5	(0.2)	5.2
Other Minority Shareholders	30.5	(1.4)	29.1
Total	140.4	-	140.4
Dilution in aggregate shareholding value of Minority Shareholders associated with Settlement Shares (\$)		(1.6)	

Source: PwCS analysis

As shown in Table 26 and 27, the Minority Shareholders were diluted by 1.15%, as their combined shareholding decreased from 25.61% to 24.46%, which represents a loss of \$1.6 million, as the Fair Market Value of their combined shareholding decreased from \$36.0 million to \$34.3 million.

Appendix F

Glossary

Term	Definition
\$	Australian dollars
20/21 Deed	Settlement Deed in relation to the 2020/2021 Proceedings
2020/2021 Proceedings	2020 and 2021 Supreme Court Proceedings
2022 Proceedings	Supreme Court Proceedings commenced in 2022
2022/2023 Proceedings	2022 and 2023 Supreme Court Proceedings
2023 Proceedings	Supreme Court Proceedings commenced in 2023
22/23 Deed	Settlement Deed in relation to the 2022/2023 Proceedings
ASIC	Australian Securities and Investment Commission.
ASIC Act	ASIC Regulations 2001 (Cth)
ASX	Australian Securities Exchange Ltd
Au Xingao	Au Xingao Investment Pty Ltd
BDO	BDO Corporate Finance (WA) Pty Ltd
BDO Expert Report	BDO Independent Expert Report, dated 5 September 2023
Board Minutes	Bullseye - Board minutes regarding Deeds of Settlement dated 18 July 2023
Briefing Letter	Briefing letter from MPH Lawyers, dated 15 November 2023
Bullseye or the Company	Bullseye Mining Limited
Bullseye FY22 Annual Report	Bullseye Mining Limited 30 June 2022 Annual Financial Report
Bullseye FY23 Annual Report	Bullseye Mining Limited 30 June 2023 Annual Financial Report
Bullseye Website	Bullseye Mining Limited company website
Corporations Act or the Act	<i>Corporations Act 2001</i> (Cth)
District Court Proceedings	Counterclaim against Xinhe and its representative in Australia, and others, for damages for tortious conspiracy (District Court Proceedings)
Emerald	Emerald Resources NL
Emerald December 2021 BIA	Emerald Resources NL and Bullseye Mining Limited Bid Implementation Agreement dated 7 December 2021
Emerald Offer	Terms set out in Emerald's bidder's statement dated 17 August 2023
FY	Financial Year ending 30 June

Term	Definition
FY22 Capital Raising Information	FY22 capital raising information provided by Bullseye Management
FY23 Capital Raising Information	FY23 capital raising information provided by Bullseye Management
GN 21	Takeover Panel's Guidance Note 21: Collateral Benefits
IER	Independent Expert's Report
Interconnected Transaction	The Emerald Offer, the Signed Shareholder Statements and the Settlement Deeds (including the Share Settlement) were part of one commercial interconnected transaction, which occurred on the Valuation Date
JORC Code	Joint Ore Reserves Committee Code
m	Million
Mediation	Court-ordered mediation before the Honourable Justice Kenneth Martin, conducted in September 2022
MEE	Multiples of exploration expenditure
Minority Shareholders	Shareholders excluding Emerald, Xinhe and Au Xingao
NAV	Net Asset Value
NLGP	North Laverton Gold Project
Panel	Takeovers Panel
Panel Declaration and Orders	Declaration of unacceptable circumstances and final orders dated 5 October 2023
Panel Proceedings	Bullseye Mining Limited 06 proceedings
Proposed Merged Entity	The proposed merged Emerald entity
PwC	PricewaterhouseCoopers Partnership
PwCS	PricewaterhouseCoopers Securities Ltd (ACN 003 311 617)
QMP	Quoted Market Price
RG 111	ASIC Regulatory Guides 111 Content of expert reports.
RG 112	ASIC Regulatory Guide 112 Independence of Experts.
SCGP	Southern Cross Gold Project
Settlement Agreement	The agreement for settlement, recorded in a 2020/2021 Deed and a 2022/2023 Deed
Shareholders	Non-associated shareholders of Bullseye with respect to the Emerald Offer
Settlement Deeds	2020/2021 Deed and 2022/2023 Deed
Settlement Shares	22,800,000 Bullseye shares were to be issued to Au Xingao (as nominee for Xinhe and Au Xingao collectively)
Share Settlement	As part of the Settlement Agreement, Au Xingao, as Xinhe's nominee, was to be issued 22,800,000 Bullseye shares in final settlement of the Supreme Court Proceedings
SOTP	Sum-of-the-parts

Term	Definition
SRK	SRK Consulting (Global) Limited
SRK ITSR	SRK Independent Technical Specialist's Report, dated 5 September 2023
Supplementary Target's Statement	Supplementary target's statement, which includes, amongst other things, an IER
Supreme Court Proceedings	Collectively, the 2020/2021 Proceedings and 2022/2023 Proceedings
Technical Briefing Letter	Briefing letter to the Technical Specialist
Technical Specialist	Mr Paul Edgar SC
Technical Specialist's Report	Mr Edgar's Technical Specialist's report, dated 23 March 2024
VALMIN Code	Australasian Code for Public Reporting of Technical Assessments and Valuation of Mineral Assets
Valuation Date	26 July 2024
VWAP	Volume Weighted Average Share Price
WA	Western Australia
Xinhe	Hongkong Xinhe International Investment Company Ltd

Appendix G

Statement of qualifications and declarations

Qualifications

PwCS is beneficially owned by the partners of PricewaterhouseCoopers (PwC), a large international entity of chartered accountants and business advisors. PwCS holds an Australian Financial Services License under the Corporations Act.

Mr Campbell Jaski is responsible for the preparation of this report. Campbell is a partner in the Corporate Value Advisory practice of PwC, which is a specialist technical valuation division comprising a team of 16 partners across Australia. Campbell has over 25 years' professional experience and specialises in the valuation of businesses, shares, financial instruments and various intangible assets including contracts, brands, IP and technology assets.

Campbell's experience covers public and private company valuations both in Australia and overseas ranging from small start-up companies and ventures through to large multinational corporations.

Campbell is an Authorised Representative of PricewaterhouseCoopers Securities Ltd. Campbell holds the following qualifications and memberships:

- Bachelor of Science (Honours)
- Master of Business Administration (Rupert Murdoch Fellow)
- Diploma of International Commercial Arbitration
- Affiliate Chartered Accountants Australia & New Zealand (Accredited Business Valuation Specialist)
- Fellow Financial Services Institute of Australasia
- Fellow Chartered Institute of Arbitrators
- Fellow and Chartered Professional of Australasian Institute of Mining and Metallurgy
- Graduate Australian Institute of Company Directors.

Campbell was also assisted by Mr James Moulton, a Director in PwC's Corporate Value Advisory Practice, in the preparation of this Independent Expert's Report.

Declarations

Prior to accepting this engagement, we considered our independence with respect to Bullseye by reference to ASIC Regulatory Guide 112 Independence of Experts. In our opinion, we are independent of Bullseye and the outcome of the transaction.

PwCS has not had any involvement in providing advice connected with the Emerald Offer

Neither PwCS nor PwC has any interest in the outcome of the Emerald Offer. PwCS will receive a fee of approximately \$250,000 exclusive of GST, in relation to the preparation of this Independent Expert's Report. The fee payable to us is payable regardless of the outcome of the Proposed Transaction. None of PwCS, PwC or Mr Jaski hold securities in Bullseye or Emerald and have not held any such beneficial interest in the previous two years.

A draft of this report was provided to the Independent Board Committee of Bullseye for a review of factual accuracy on 27 March 2024. No changes to our opinion arose as a result of this reviews.

Purpose of report

This IER has been prepared at the request of the Independent Board Committee of Bullseye.

This IER is for the sole benefit of the Independent Board Committee, the shareholders of Bullseye, and the Panel, to assist them in their consideration of the Emerald Offer. Neither PricewaterhouseCoopers (PwC) nor PwCS, or any member or employee thereof, undertakes responsibility to any other person in respect of this IER, including any errors or omissions however caused.

Responsibility for deciding on any actions taken in respect of the Emerald Offer remains with Bullseye.

Neither the whole nor any part of this IER nor any reference to it may be included in or attached to any document, circular, resolution, letter or statement without our prior written consent of PWCS to the form and context in which it appears.

Special note regarding forward-looking statements and forecast financial information

Certain statements in this Independent Expert's Report may constitute forward-looking statements. Such forward-looking statements involve known and unknown risks, uncertainties and other factors which may cause the actual results, performance and achievements of Bullseye to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. Such factors include, among other things, the following:

- General economic conditions
- The future movements in interest rates and taxes
- The impact of terrorism and other related acts on broader economic conditions
- Changes in laws, regulations or governmental policies or the interpretation of those laws or regulations to Bullseye in particular
- Other factors referenced in this Independent Expert's Report.

Indemnity

In preparing this Independent Expert's Report, Bullseye has indemnified PwCS, PwC and its employees, officers and agents against any claim, liability, loss or expense, cost or damage, including legal costs on a solicitor client basis, arising out of reliance on any information or documentation provided by Bullseye which is false and misleading or omits any material particulars or arising from a failure to supply relevant documentation or information.

In addition, Bullseye has agreed that if it makes any claim against PwC or PwCS for loss as a result of a breach of our contract, and that loss is contributed to by its own actions, then liability for its loss will be apportioned having regard to the respective responsibility for the loss, and the amount Bullseye may recover from PwCS will be reduced by the extent of its contribution to that loss.

Consent

PwCS has consented in writing to this report in the form and context in which it appears being included in the Supplementary Target's Statement, which will be issued by Bullseye, and which will be distributed to its shareholders.

Neither PwCS nor PricewaterhouseCoopers has authorised or caused the issue of any part of the Supplementary Target's Statement other than this report. Neither the whole nor any part of this report nor any reference to it may be included in or with or attached to any other document, circular, resolution, letter or statement without the prior consent of PwCS to the form in which it appears.

Appendix H

Financial services guide

PricewaterhouseCoopers Securities Ltd

This Financial Services Guide (FSG) is dated 28 November 2024.

About us

PricewaterhouseCoopers Securities Ltd (ABN A54 003 311 617, Australian Financial Services Licence No 244572) has been engaged by the Independent Board Committee of Bullseye to provide a report in the form of an Independent Expert's Report (IER or this report) in accordance with a declaration of unacceptable circumstances and final orders dated 5 October 2023 made by the Takeovers Panel in the Bullseye Mining Limited 06 proceedings.

You have not engaged us directly but have been provided with a copy of the IER as a retail client because of your connection to the matters set out in the IER.

This financial services guide

This FSG is designed to assist retail clients in their use of any general financial product advice contained in the IER. This FSG contains information about PwCS generally, the financial services we are licensed to provide, the remuneration PwCS may receive in connection with the preparation of the IER, and how complaints against us will be dealt with.

Financial services we are licensed to provide

Our Australian financial services licence allows us to provide a broad range of services, including providing financial product advice in relation to various financial products such as securities, interests in managed investment schemes, derivatives, superannuation products, foreign exchange contracts, insurance products, life products, managed investment schemes, government debentures, stocks or bonds, and deposit products.

General financial product advice

The IER contains only general financial product advice. It was prepared without taking into account your personal objectives, financial situation or needs.

You should consider your own objectives, financial situation and needs when assessing the suitability of the IER to your situation. You may wish to obtain personal financial product advice from the holder of an Australian Financial Services Licence to assist you in this assessment.

Fees, commissions and other benefits we may receive

PwCS charges fees to produce reports, including this IER. These fees are negotiated and agreed with the entity who engages PwCS to provide a report. Fees are charged on an hourly basis or as a fixed amount depending on the terms of the agreement with the person who engages us. In the preparation of this report our fees are charged on a time and materials basis and are approximately \$250,000 (excluding GST) and we will be reimbursed for out-of-pocket expenses incurred.

Directors or employees of PwCS, PricewaterhouseCoopers (PwC), or other associated entities, may receive partnership distributions, salary or wages from PwC.

Associations with issuers of financial products

PwCS and its authorised representatives, employees and associates may from time to time have relationships with the issuers of financial products. For example, PwC may be the auditor of, or provide financial advisory services to the issuer of a financial product and PwCS may provide financial services to the issuer of a financial product in the ordinary course of its business.

Complaints

If, for any reason, you are not satisfied with the advice or service you receive from PwCS or from our authorised representatives, you are entitled to make a complaint. If you wish to make a complaint, please initially lodge your complaint with your adviser. We have established procedures to ensure all complaints are resolved quickly and fairly. A copy of our internal complaints handling procedure can be provided to you upon request.

If you do not receive a satisfactory outcome to your complaint, you have the right to contact the Australian Financial Complaints Authority ("AFCA"). AFCA provides independent financial services complaint resolution that is free to consumers.

Australian Financial Services Complaints Authority

GPO Box 3, Melbourne VIC 3001

Tel: 1800 931 678 (Free Call)

E-mail: info@afca.org.au

Website: www.afca.org.au

PwCS is a member of AFCA. You will not be charged for using the AFCA service.

Contact details

PwCS can be contacted by sending a letter to the following address:

Mr Campbell Jaski

Authorised Representative (No. 001299568)

PricewaterhouseCoopers Securities Ltd

One International Towers Sydney, Watermans Quay,

Barangaroo NSW 2000