



Australian Government

Takeovers Panel

# MEDIA RELEASE

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No: TP18/71

Tuesday, 23 October 2018

## **Bullseye Mining Limited 02 – Orders and Undertaking**

The Panel made a declaration of unacceptable circumstances on 2 October 2018 in relation to the affairs of Bullseye Mining Limited (see [TP18/70](#)).

The Panel has made final orders (Annexure A) prohibiting Bullseye from issuing certain convertible notes unless it first obtains shareholder approval for the issue of the convertible notes and a related gold prepayment financing facility entered into by Bullseye with an associate of Mr Desmond Mullan (collectively, the **Mullan Proposal**). Mr Mullan is the father of Bullseye executive director, Ms Dariena Mullan.

In light of the Mullan Proposal's significance for potential control of Bullseye and Ms Mullan's involvement in the decision making process in relation to the Mullan Proposal, the Panel requires that shareholder approval is required for the provision of a financial benefit to a related party of Bullseye, in a manner which is similar to that required under Chapter 2E of the Corporations Act, including as to who may vote at the general meeting. Unless Bullseye satisfies ASIC otherwise, Bullseye is required to provide a valuation from an independent expert with the notice of meeting.

The Panel also requires specific disclosure in the explanatory statement for the shareholders meeting in relation to certain terms of the convertible notes which the Panel found may deter or block a potential control transaction, inhibit the acquisition of voting shares taking place in an efficient, competitive and informed market and have a coercive effect on shareholders.

In addition to final orders, the Panel accepted an undertaking (Annexure B) from Ms Mullan that she will not vote on future board resolutions relating to the Mullan Proposal.



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The sitting Panel was Richard Hunt (sitting President), Rory Moriarty and Neil Pathak.

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

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## **ANNEXURE A**

# **CORPORATIONS ACT SECTION 657D ORDERS**

### **BULLSEYE MINING LIMITED 02**

The Panel made a declaration of unacceptable circumstances on 2 October 2018.

#### **THE PANEL ORDERS**

1. Bullseye must not issue any Notes unless it first obtains the approval of Bullseye's shareholders for the Transactions and:
  - (a) Bullseye does so in the way that would be required under sections 218, 219, 220, 222, 223, 224 and 225 if Bullseye sought approval under section 208(1)(a) to give a financial benefit to a related party of Bullseye under or in connection with the Transactions, but subject to the following:
    - (i) Bullseye provides to ASIC the proposed notice of meeting, explanatory statement and any other documents as would be required under section 218
    - (ii) the notice of meeting, explanatory statement and any other required documents sent to shareholders are in the same form as a draft reviewed by ASIC and to which ASIC has stated in writing it has no objection or further comments and
    - (iii) no vote is cast (in any capacity) at the general meeting on any proposed resolution required under order 1(a) by or on behalf of a related party of Bullseye to whom any such resolution would permit a financial benefit to be given or an associate of such a related party (including Mr Mullan or an associate of Mr Mullan)
  - (b) the explanatory statement discloses:
    - (i) (A) the names of the persons to whom Notes will be issued (if known after making all reasonable enquiries) or the basis upon which those persons will be identified or selected and (B) the number of Notes to be issued to each such person and the voting power that those Notes

may confer upon conversion and the voting power conferred on exercise of any options that may be issued in connection with those Notes

- (ii) (A) the maximum number of Notes that Mr Mullan and his associates could potentially obtain, (B) the voting power that those Notes may confer upon conversion and (C) the maximum potential voting power of Mr Mullan and his associates in Bullseye including the voting power in paragraph (B) and that conferred on exercise of any options that may be issued in connection with the Notes
  - (iii) the veto rights that Mr Mullan will have if he is the Majority Noteholder (as defined in the Convertible Note Deed)
  - (iv) a full and clear description of the terms set out in paragraph 13 of the Declaration and the effect of those terms, including as set out in paragraph 14 of the Declaration
- (c) unless Bullseye satisfies ASIC that the explanatory statement otherwise provides Bullseye shareholders with sufficient information to assess the approval referred to in order 1(a) (or order 2), Bullseye provides with the notice of meeting and explanatory statement a valuation from an independent expert that satisfies *ASIC Regulatory Guide 76: Related party transactions*, as it would apply to the approval referred to in order 1(a) (or order 2).
2. If Bullseye obtains approval under section 208(1)(a) to give a financial benefit to a related party of Bullseye under or in connection with the Transactions, then order 1(a) does not apply.

## Interpretation

In these orders all section references are to the *Corporations Act 2001 (Cth)* and the following terms apply:

<b>Bullseye</b>	Bullseye Mining Limited
<b>Convertible Note Deed</b>	Deed Poll dated 17 July 2018 by Bullseye in favour of each person who is a Noteholder (as defined in the document), as may be amended or otherwise replaced on substantially similar terms
<b>Declaration</b>	the declaration of unacceptable circumstances in relation to the affairs of Bullseye dated 2 October 2018
<b>give a financial benefit to a related party</b>	has the same meaning as in section 208

<b>Gold Prepayment Deed</b>	Gold Prepayment Deed dated 18 July 2018 between Bullseye and Saghtar Holdings Limited, as may be amended or otherwise replaced on substantially similar terms
<b>Note</b>	a convertible note in Bullseye issued under the Convertible Note Deed
<b>Transactions</b>	transactions contemplated by the Convertible Note Deed and the Gold Prepayment Deed

**Bruce Dyer**  
**Counsel**  
**with authority of Richard Hunt**  
**President of the sitting Panel**  
**Dated 22 October 2018**



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**ANNEXURE B**

**Undertaking in favour of the Takeovers Panel**

Ms Mullan undertakes to the Takeovers Panel under section 201A of the *Australian Securities and Investments Commissions Act 2001* (Cth) that she will not in her capacity as a director of Bullseye vote on any resolution considered by the Bullseye board of directors relating to the Mullan Proposal, provided that in, giving this undertaking, Ms Mullan:

- a) makes no admission of any fact, matter or circumstance; and
- b) retains all of the rights and entitlements in respect of the Bullseye Shares held or controlled by her.

In this undertaking, the following terms have the corresponding meaning:

Bullseye	Bullseye Mining Limited (ACN 118 341 736).
Bullseye Share	a share issued in the capital of Bullseye.
Convertible Note Deed	Deed Poll dated 17 July 2018 by Bullseye in favour of each person who is a Noteholder (as defined in the document), as may be amended or otherwise replaced on substantially similar terms.
Gold Prepayment Deed	Gold Prepayment Deed dated 18 July 2018 between Bullseye and Saghtar Holdings Limited, as may be amended or otherwise replaced on substantially similar terms.
Mullan Proposal	Has the meaning given to that term in the notice for the general meeting of Bullseye's shareholders held on 17 September 2018 (and as amended by the Parties' Undertakings).
Ms Mullan	Ms Dariena Mullan.
Parties' Undertakings	This undertaking and the undertakings provided by Mr Mullan and Bullseye on or about the date of these undertakings in favour of the Panel.

**Signed by Ms Dariena Mullan**

**Dated 19 October 2018**