

27 March 2024

Raj Logarajah  
Senior Adviser, Listings Compliance  
ASX Limited  
By email: [raj.logarajah@asx.com.au](mailto:raj.logarajah@asx.com.au) and [ListingsCompliancePerth@asx.com.au](mailto:ListingsCompliancePerth@asx.com.au).

Dear Mr Logarajah,

**Australian Strategic Materials Limited ('ASM'): General – Aware Query Response**

ASM refers to your letter dated 21 March 2024 and responds as follows, using the definitions in your letter and the numbering in your letter under the heading 'Request for Information'.

- 1. Does ASM consider the following information or any part thereof, to be information that a reasonable person would expect to have a material effect on the price or value of its securities?**

**1.1 Receipt of a Letter of Interest, in particular the funding package, from the US EXIM.**

Yes.

- 2. If the answer to any part of question 1 is "no", please advise the basis for that view.**

Not applicable.

- 3. When did ASM first become aware of the information, referred to in question 1 above?**

ASM first became aware (of receipt of the Letter of Interest) at approximately 1:45 am Australian Western Standard Time on 21 March 2024.

ASM was aware of *the application for and discussions leading to* receipt of the Letter of Interest before this time and, for the reasons outlined in response to Question 4 of your letter, considers that – insofar as the information comprising that application, those discussions and their status was concerned - it was operating under the exception in ASX Listing Rule 3.1A, and entitled to do so, until the point at which the Letter of Interest was received by ASM on 21 March 2024.

- 4. If ASM first became aware of the information contained in the Letter of Interest or any part thereof, before the date of the Announcement, did ASM make any announcement prior to that date which disclosed the information? If not, please explain why the information was not released to the market at an earlier time, commenting specifically on when you believe ASM was obliged to release the information or any part thereof under Listing Rules 3.1 and**

**3.1A and what steps ASM took to ensure that the information referred to in question 1 or any part thereof was released promptly and without delay.**

ASM announced receipt of the Letter of Interest on 21 March 2024 (the **Announcement**), promptly and without delay following receipt of the Letter of Interest in the early hours of that morning.

Up until that time, ASM considers that it was operating under the exception in ASX Listing Rule 3.1A; on the basis that the information comprising the Letter of Interest and the potential funding package contemplated by it remained confidential and was the subject of an incomplete proposal or negotiation, and remained insufficiently definite to warrant disclosure. In addition, ASM considers that, in all of the circumstances, a reasonable person would not expect ASM to have disclosed the application for and discussions leading to receipt of the Letter of Interest before this time.

ASM notes that its intention to facilitate discussions with, and seek support from, export credit agencies, across a variety of jurisdictions (including the United States) has been ongoing for some time, and was publicly disclosed in various ASX announcements.<sup>1</sup> Specifically, ASM has been consistent in announcing to ASX the outcome of key discussions held with relevant agencies. Examples of relevant recent disclosures in ASX announcements are extracted below.

"*Quarterly Activities Report to 31 December 2023*" (29 January 2024), in particular page 3:

*"The Company has also continued discussions with export credit finance agencies from relevant jurisdictions regarding the potential provision of project finance. These discussions have been based on the potential source of content for use in the construction phase of the Dubbo Project and also strategic investment. ASM will continue to progress these discussions with the intention of securing conditional letters of support." [emphasis added]*

"*Half Yearly Report and Accounts*" (14 March 2024), in particular page 4:

*"In October 2023, ASM participated in a trade delegation to the US, facilitated by the Australian Trade and Investment Commission (Austrade). The week-long visit encompassed engagements with government agencies, export credit finance agencies and potential investors – identifying strong potential funding pathways within the region. Notably, during the period, legislation was passed in the US to include Australia as a 'domestic source', allowing Australian businesses from multiple sectors to access US Department of Defense loans,*

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<sup>1</sup> For example, refer to the following ASX releases: "*Dubbo Project Optimisation Delivers Strong Financials*" (7 December 2021), "*Quarterly Activities/Appendix 5B Cash Flow Report*" (27 January 2022), "*Half Year Accounts*" (11 March 2022), "*Full Year Statutory Accounts*" (21 September 2022), "*Full Year Statutory Accounts minor clarification*" (28 September 2022), "*2022 Annual Report to Shareholders*" (24 October 2022), "*Quarterly Activities/Appendix 5B Cash Flow Report*" (27 January 2023), "*Half Year Accounts*" (15 March 2023), "*Full Year Statutory Accounts*" (29 September 2023), "*Annual Report to shareholders*" (23 October 2023), "*Quarterly Activities/Appendix 5B Cash Flow Report*" (29 January 2024), "*Bell Potter Unearthed Conference*" (7 February 2024), "*Mines & Money Conference Miami*" (26 February 2024), "*PDAC 2024 Convention*" (5 March 2024), and "*Half Yearly Report and Accounts*" (14 March 2024).

*grants and subsidies provided for under the US “Defense Production Act”. ASM is exploring opportunities for funding and support pursuant to these changes for the Dubbo Project and is progressing these matters in its interactions with US government entities.” [emphasis added]*

ASM believes that those recent disclosures to ASX established a suitable context for the Announcement that followed, without risking overstating the status of any funding applications, associated discussions or the possible outcomes from them.

While ASM is hopeful that it is successful in obtaining the funding and support sought from government agencies or export credit finance agencies (such as the US EXIM funding), ASM is not in a position to announce that funding or support – or material developments in the process for securing them – until the requisite approvals, confirmations or communications of intent are actually issued by the agency in question and received by ASM. ASM does not consider that it was in a position to announce any detail to ASX regarding the Letter of Interest or the potential US EXIM funding any earlier than 21 March 2024 because it did not receive the Letter of Interest until that date.

For further context:

- The application for the US EXIM letter of interest the subject of the Announcement was prepared by a third party – in this case, global engineering company, Bechtel Mining and Metals, Inc – rather than by ASM directly.
- ASM is not aware of the specific date on which the application for the letter of interest was submitted to US EXIM by Bechtel, but it was likely during the week commencing 11 March 2024. ASM understands that applications of this kind are usually processed by US EXIM within 1 to 2 weeks of lodgement.
- Prior to submitting the application, during the months of February and March 2024:
  - both ASM and Bechtel held discussions with representatives of US EXIM (and with one another about the potential for US EXIM funding) – both informal and formal, and both about the letter of interest the subject of the Announcement and about other matters. Engagement had been ongoing for some time before that period and started before September 2023.
  - Bechtel and ASM discussed ‘rough numbers’ around the quantum of the potential funding package that could be the subject of any conditional letter of interest ultimately received from US EXIM. Bechtel advised ASM about the likely amount of funding that could be referenced in a letter of interest, having regard to the calculations typically applied by US EXIM at a project level and its experience with similar applications. It was this amount that was contemplated by the application for the letter of interest ultimately submitted to US EXIM by Bechtel.
- Both Bechtel and US EXIM were aware that the above discussions and the application for the letter of interest were confidential and were under appropriate confidentiality regimes.

- ASM provided confidential briefings to certain Australian Federal Government agencies (about the potential for conditional letters of interest to be forthcoming from US EXIM in relation to the Dubbo Project) on 18 March and 19 March 2024.
- Although ASM had an indication of the potential quantum of the funding that could be contemplated by US EXIM's Letter of Interest (from the application made by Bechtel) and on or about 19 March 2024 had received an indication that US EXIM had approval to issue a letter of interest to Bechtel, it was not 'aware', for the purposes of ASX Listing Rule 3.1A, of the conditions to that potential funding package or the US EXIM Letter of Interest until receipt of the Letter of Interest (at approximately 1:45 am Australian Western Standard Time on 21 March 2024).
- In the lead up to release of the Announcement, ASM maintained appropriate monitoring of price and volume movements in its shares. Especially when compared to historical price and volume movements and the movements that followed the Announcement, ASM considers that the market's response to the Announcement is consistent with confidentiality (of the information in it) having been maintained through the trading day prior and up until its release.
- ASM considers that it was legitimate for it to withhold disclosure of the status of the application to US EXIM for the letter of interest, the potential quantum of it and the likely conditions to it, until such time as those matters were confirmed by receipt of the Letter of Interest. ASM believes that it would have been precipitate, and could have potentially created a false market in its securities, if it had made an announcement to ASX on the basis only of what it supposed could be extracted from US EXIM (by way of a potential funding package). Again, ASM did provide reasonable updates about its funding efforts – and the potential role of US agencies as part of that - in its ASX announcements leading up to receipt of the Letter of Interest and the making of the Announcement (including those extracted on pages 2 and 3 of this letter, which were released in late- January and mid-March, respectively).
- In the Announcement, ASM confirms that it will update the market again upon reaching a definitive agreement with US EXIM for funding support.
- ASM's specific circumstances, as outlined above, and recent market practice (informed by the approach taken by other ASX listed entities who have received similar indications of conditional funding support from US EXIM<sup>2</sup>), support ASM's reasonable belief that a reasonable person would not expect ASM to have disclosed the application for and discussions leading to receipt of the Letter of Interest before it made the Announcement.

For completeness, the market is, and has been, fully informed of ASM's need for external funding to support the development of the Dubbo Project. ASM disclosed the capital cost estimate for the Dubbo Project in its ASX release "*Dubbo Project Optimisation Delivers Strong*

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<sup>2</sup> IperionX Limited (ASX: IPX, 19 October 2023); Liontown Resources Limited (ASX: LTR, 7 August 2023); Jervois Global Limited (ASX: JRV, 18 and 24 April 2023).

*Financials*" (7 December 2021) as being \$1,678 million (including contingencies). ASM has regularly restated this capital cost estimate in various ASX announcements since 7 December 2021<sup>3</sup>, including most recently on 5 March 2024 in its ASX release "*PDAC 2024 Convention*"; providing the market with broader context for the likely magnitude of the funding (from agencies such as US EXIM) being sought.<sup>4</sup>

**5. Please confirm that ASM is in compliance with the Listing Rules and, in particular, Listing Rule 3.1.**

ASM confirms that it is in compliance with the Listing Rules, and in particular, Listing Rule 3.1.

**6. Please confirm that ASM's responses to the questions and requests above have been authorised and approved in accordance with its published continuous disclosure policy or otherwise by its board or an officer of ASM with delegated authority from the board to respond to ASX on disclosure matters.**

ASM's responses to ASX's questions have been authorised and approved by the ASM Managing Director/CEO.

Yours sincerely



**Annaliese Eames**  
Joint Company Secretary

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<sup>3</sup> See for example the following ASX releases: "*Dubbo Project Optimisation Delivers Strong Financials*" (7 December 2021), "*Export Finance Australia issues letter of support for the Dubbo Project*" (28 June 2021), "*Quarterly Activities/Appendix 5B Cash Flow Report*" (27 January 2022), "*2022 Annual Report to Shareholders*" (24 October 2022), "*Corporate Presentation*" (31 October 2022), "*IMRAC 2022 Conference Presentation*" (3 November 2022), "*Chief Executive Officer's AGM Presentation*" (28 November 2022), "*Bell Potter Unearthed Presentation*" (7 February 2023), "*PDAC Company Presentation*" (7 March 2023), "*Australian Critical Minerals Conference Presentation*" (1 June 2023), "*Diggers & Dealers Mining Forum Presentation*" (8 August 2023), "*Annual Report to Shareholders*" (23 October 2023), "*Chief Executive Officer's AGM Presentation*" (22 November 2023), "*Bell Potter Unearthed Conference 2024*" (15 February 2024), "*Mines & Money Conference Miami*" (26 February 2024) and "*PDAC 2024 Convention*" (5 March 2024).

<sup>4</sup> See in particular the footnote on slide 8 which: (i) confirms that the material assumptions underpinning the estimates in the Optimisation Study Work announcement released on 7 December 2021 continue to apply and have not materially changed; and (ii) sets out the key assumptions. The Announcement itself recapped on conditional funding support already received (from Export Finance Australia), and the contribution of the potential funding package from US EXIM to the overall estimated costs of \$1,678 million.



21 March 2024

Reference: 91268

Dennis Wilkins  
Company Secretary  
Australian Strategic Materials Limited

By email

Dear Dennis

**Australian Strategic Materials Limited ('ASM'): General – Aware Query**

ASX refers to the following:

- A. The change in price of ASM's securities from a close of \$0.99 on Tuesday, 19 March 2024 to a high of \$1.20 on Wednesday, 20 March 2024.
- B. ASM's announcement marked as sensitive dated 21 March 2024 and titled "ASM receives US\$600M (\$A923M) Letter of Interest from USEXIM" released on the ASX Market Announcements Platform at 8:25 AM AEDT on 21 March 2024, disclosing, amongst other things the following:
  - (i) ASM has received a non-binding and conditional letter of interest from the Export-Import Bank of the United States ('US EXIM') in relation to providing ASM a debt funding package of up to US\$600 million (A\$923 million) for the construction and execution phase of ASM's rare earths and critical minerals Dubbo Project ('Letter of Interest').
- C. The change in price of ASM's securities from a close of \$1.19 on Wednesday, 20 March 2024 to a high of \$1.65 on Thursday, 21 March 2024.
- D. Listing Rule 3.1, which requires a listed entity to immediately give ASX any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities.
- E. The definition of "aware" in Chapter 19 of the Listing Rules, which states that:

*"an entity becomes aware of information if, and as soon as, an officer of the entity (or, in the case of a trust, an officer of the responsible entity) has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as an officer of that entity" and section 4.4 in Guidance Note 8 Continuous Disclosure: Listing Rules 3.1 – 3.1B "When does an entity become aware of information."*
- F. Listing Rule 3.1A, which sets out exceptions from the requirement to make immediate disclosure, provided that each of the following are satisfied.

*"3.1A Listing rule 3.1 does not apply to particular information while each of the following is satisfied in relation to the information:*

*3.1A.1 One or more of the following applies:*

  - *It would be a breach of a law to disclose the information;*
  - *The information concerns an incomplete proposal or negotiation;*
  - *The information comprises matters of supposition or is insufficiently definite to warrant disclosure;*
  - *The information is generated for the internal management purposes of the entity; or*

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- *The information is a trade secret; and*
- 3.1A.2 *The information is confidential and ASX has not formed the view that the information has ceased to be confidential; and*
- 3.1A.3 *A reasonable person would not expect the information to be disclosed.”*
- G. ASX’s policy position on the concept of “confidentiality”, which is detailed in section 5.8 of Guidance Note 8 *Continuous Disclosure*: Listing Rules 3.1 – 3.1B. In particular, the Guidance Note states that:

*“Whether information has the quality of being confidential is a question of fact, not one of the intention or desire of the listed entity. Accordingly, even though an entity may consider information to be confidential and its disclosure to be a breach of confidence, if it is in fact disclosed by those who know it, then it ceases to be confidential information for the purposes of this rule.”*

### **Request for information**

Having regard to the above, ASX asks ASM to respond separately to each of the following questions and requests for information:

1. Does ASM consider the following information or any part thereof, to be information that a reasonable person would expect to have a material effect on the price or value of its securities?
  - 1.1 Receipt of a Letter of Interest, in particular the funding package, from the US EXIM.
2. If the answer to any part of question 1 is “no”, please advise the basis for that view.
3. When did ASM first become aware of the information, referred to in question 1 above?
4. If ASM first became aware of the information contained in the Letter of Interest or any part thereof, before the date of the Announcement, did ASM make any announcement prior to that date which disclosed the information? If not, please explain why the information was not released to the market at an earlier time, commenting specifically on when you believe ASM was obliged to release the information or any part thereof under Listing Rules 3.1 and 3.1A and what steps ASM took to ensure that the information referred to in question 1 or any part thereof was released promptly and without delay.
5. Please confirm that ASM is in compliance with the Listing Rules and, in particular, Listing Rule 3.1.
6. Please confirm that ASM’s responses to the questions and requests above have been authorised and approved in accordance with its published continuous disclosure policy or otherwise by its board or an officer of ASM with delegated authority from the board to respond to ASX on disclosure matters.

### **When and where to send your response**

This request is made under Listing Rule 18.7. Your response is required as soon as reasonably possible and, in any event, by no later than **2:00 PM AWST Tuesday, 26 March 2024**. You should note that if the information requested by this letter is information required to be given to ASX under Listing Rule 3.1 and it does not fall within the exceptions mentioned in Listing Rule 3.1A, ASM’s obligation is to disclose the information ‘immediately’. This may require the information to be disclosed before the deadline set out in the previous paragraph and may require ASM to request a trading halt immediately.

Your response should be sent to me by e-mail at [ListingsCompliancePerth@asx.com.au](mailto:ListingsCompliancePerth@asx.com.au). It should not be sent directly to the ASX Market Announcements Office. This is to allow me to review your response to confirm that it is in a form appropriate for release to the market, before it is published on the ASX Market Announcements Platform.

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## **Suspension**

If you are unable to respond to this letter by the time specified above, ASX will likely suspend trading in ASM's securities under Listing Rule 17.3.

## **Listing Rules 3.1 and 3.1A**

In responding to this letter, you should have regard to ASM's obligations under Listing Rules 3.1 and 3.1A and also to Guidance Note 8 *Continuous Disclosure*: Listing Rules 3.1 – 3.1B. It should be noted that ASM's obligation to disclose information under Listing Rule 3.1 is not confined to, nor is it necessarily satisfied by, answering the questions set out in this letter.

## **Release of correspondence between ASX and entity**

We reserve the right to release a copy of this letter, your reply and any other related correspondence between us to the market under listing rule 18.7A. The usual course is for the correspondence to be released to the market so that the market is aware that ASX has made enquiries of ASM about the timeliness of its disclosures and of the Company's response to those enquiries.

Yours sincerely

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ASX Compliance