

2 March 2023

Ms Karina So
Adviser, Listings Compliance
Australian Securities Exchange
Level 5, 20 Bridge Street
SYDNEY NSW 2000

By Email: ListingsComplianceSydney@asx.com.au

Response to ASX Query

Dear Ms So

BIR Financial Limited (**BIR** or the **Company**) (ASX:BIR) provides this response to ASX's letter dated 27 February 2023 (**ASX Letter**).

1. **Please explain why the Appendix 3Y was lodged late.**

Director Jody Elliss is the owner of Amram Corp Pty Ltd ("Amram"). Amram has a team of active traders of ASX securities. Unbeknownst to Jody Elliss an Amram trader acquired the BIR shares in error.

The Appendix 3Y was lodged late due to a miscommunication between the person within Amram responsible for investment decisions and Mr Elliss concerning the acquisition of the shares.

The BIR Company Secretary became aware of the Transactions shortly before the Notice was lodged and alerted Mr Elliss who, following inquiries, caused the Notice to be lodged with ASX.

2. **ASX What arrangements does BIR have in place under Listing Rule 3.19B with its directors to ensure that it is able to meet its disclosure obligations under Listing Rule 3.19A?**

BIR and its directors are aware of their responsibilities under the Listing Rules, including Listing Rule 3.19A and 3.19B, which are set out in the appointment letters for each director where, amongst other things, they agree to provide the relevant information to the Company so that it can meet its disclosure obligations under Listing Rule 3.19A. These requirements are also contained in the Company's Securities Trading Policy and Continuous Disclosure Policy.

3. **Were Transaction 1 and Transaction 2 carried out during the closed period ? If yes, when did BIR first become aware of Amram Corp Pty Ltd's on-market Transactions ?**

Yes.

BIR first became aware of the Transactions shortly before the Notice was lodged.

4. **Did Mr Elliss comply with section 5.1 of the Trading Policy and notify the Chairman in writing of his intention to carry out the Transactions before entering into it ? If not, why not ?.**

No. At the time the Transactions were entered into, Mr Elliss was not aware of them.

5. **Did the Board advise Mr Elliss in writing that there is no known reason to preclude him/her from dealing in BIR's securities before Amram Corp Pty Ltd entered into the on-market Transaction ? If so, please provide a copy of the written communications. If not, why not ?**

No.

6. **Did the Chairman of the Board grant approval (written or otherwise) to Mr Elliss to carry out the Transaction that took place/appear to have taken place during a closed period ? If so, on what basis did it do so ? If not, why not ?**

No. By the time the Transactions came to the attention of the Board, they had already occurred.

7. **Were copies of written approvals forwarded to the Company Secretary in relation to the proposed Transactions in accordance with section 5.4 of the Trading Policy? If not, why not ?**

No – see above.

8. **If there were breaches of BIR's Trading Policy, what disciplinary or remedial action is the Board of BIR proposing to take ?**

Mr Elliss has reminded his staff of their obligations to keep him informed of share trades in the Company given his status as a director of the Company.

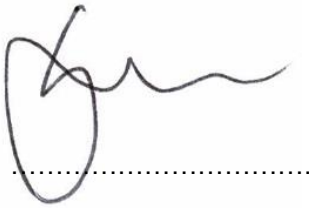
9. **Please confirm that BIR is complying with the Listing Rules and, in particular, Listing Rule 3.1 ?**

Confirmed.

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

Confirmed.

Yours faithfully


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Greg Starr
Company Secretary
BIR Financial Limited



27 February 2023

Reference: ODIN69054

Mr Greg Starr
Company Secretary
BIR Financial Limited
Suite 104/109 Oxford Street
Bondi Junction NSW 2022

By email

Dear Mr Starr

BIR Financial Limited ('BIR'): Appendix 3Y – Change of Director's Interest Notice Query

ASX refers to the following:

- A. The announcement by BIR entitled 'Change of Director's Interest Notice' lodged on the ASX Market Announcements Platform on 20 February 2023 for Mr Jody W Elliss (the 'Announcement'). The Announcement disclosed:
- (i) The on-market purchase of 49,626 shares in BIR by Amram Corp Pty Ltd, of which the director Mr Jody W Elliss is the sole director/shareholder of Amram Corp Pty Ltd, on 1 February 2023 ('Transaction 1');
 - (ii) The on-market purchase of 1,189,166 shares in BIR by Amram Corp Pty Ltd on 14 February 2023 ('Transaction 2');
 - (iii) No information as to whether the Transactions were carried out during a closed period; and
 - (iv) No information as to whether prior written clearance was provided to allow the trade to proceed during the closed period, and if prior written was provided, on what date was this provided.
- B. 'BIR Securities Trading Policy' lodged on the ASX Market Announcements Platform on 28 June 2018 (the 'Trading Policy') which states, among other things, the following:

"4.2 'Closed periods' and 'prohibited periods'

Directors and key management personnel must not deal in the Company's securities during the following periods:

- *Within 1 month immediately preceding and 48 hours immediately following the release by the Company of its annual results to the ASX;*
- *Within 1 month immediately preceding and 48 hours immediately following the release by the Company of its half-yearly results to the ASX;*
- *Within 2 weeks immediately preceding and 48 hours immediately following the Company's Annual General Meeting; and*
- *Other periods as advised by the Board or Chief Executive Officer.*

Requests to trade during the closed periods may be considered in exceptional circumstances. The current procedure is that a written request is made to the Chairman and/or an independent director if the Chairman makes the request, describing the claim. Any approval to trade should be in writing and will be determined on a case by case basis."

- C. Listing Rule 3.19A.2 which requires an entity to tell ASX the following:

'A change to a notifiable interest of a director of the entity (or in the case of a trust, a director of the responsible entity of the trust) including whether the change occurred during a closed period where prior written clearance was required and, if so, whether prior written clearance was provided. The entity must complete Appendix 3Y and give it to ASX no more than 5 business days after the change occurs.'

D. Listing rule 3.19B which states that:

'An entity must make such arrangements as are necessary with a director of the entity (or in the case of a trust, a director of the responsible entity of the trust) to ensure that the director discloses to the entity all the information required by the entity to give ASX completed Appendices 3X, 3Y and 3Z within the time period allowed by listing rule 3.19.A. The entity must enforce the arrangements with the director.'

E. Guidance Note 27: *Director Disclosure of Interests and Transactions in Securities – Obligations of Listed Entities* which was published to assist listed entities with their obligations under Listing Rules 3.19A and 3.19B and to give an overview of ASX policy in relation to disclosure of directors' interests and transactions in securities, and Guidance Note 22: *Trading Policies* which was published to assist listed entities to comply with their obligations under Listing Rules 12.9-12.12 regarding trading policies.

ASX notes the following:

1. The Notice indicates that a change in Mr Elliss's notifiable interest resulted from Transaction 1 occurred on 1 February 2023. It appears that the Notice should have been lodged with ASX by 8 February 2023. Consequently, BIR may have breached Listing Rules 3.19A and/or 3.19B. It also appears that Mr Elliss may have breached section 205G of the *Corporations Act 2001* (Cth).
2. BIR's closed period commenced from one month immediately preceding and 48 hours immediately following the release of BIR's half-year results to ASX, which is due by 28 February 2023.
3. BIR's half-year results for the half-year ended 31 December 2022 have yet to be lodged on the ASX Market Announcement Platform.
4. Transaction 1 and Transaction 2 would appear to have taken place during a closed period in breach of section 4.2 of the Trading Policy.

Request for Information

Having regard to the above, and pursuant to Listing Rule 18.7, ASX asks BIR to respond separately to each of the following questions.

1. Please explain why the Appendix 3Y was lodged late.
2. Please explain what arrangements BIR has in place under Listing Rule 3.19B with its directors to ensure that it is able to meet its disclosure obligations under Listing Rule 3.19A.
3. Were Transaction 1 and Transaction 2 carried out during the closed period? If yes, when did BIR first become aware of Amram Corp Pty Ltd's on-market Transactions?
4. Did Mr Elliss comply with section 5.1 of the Trading Policy and notify the Chairman in writing of his intention to carry out the Transactions before entering into it? If not, why not?
5. Did the Board advise Mr Elliss in writing that there is no known reason to preclude him/her from dealing in BIR's securities before Amram Corp Pty Ltd entered into the on-market Transaction? If so, please provide a copy of the written communications. If not, why not?
6. Did the Chairman of the Board grant approval (written or otherwise) to Mr Elliss to carry out the Transaction that took place/appear to have taken place during a closed period? If so, on what basis did it do so? If not, why not?

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7. Were copies of written approvals forwarded to the Company Secretary in relation to the proposed Transactions in accordance with section 5.4 of the Trading Policy? If not, why not?
 8. If there were breaches of BIR's Trading Policy, what disciplinary or remedial action is the board of BIR proposing to take?
 9. Please confirm that BIR is complying with the Listing Rules and, in particular, Listing Rule 3.1.
 10. Please confirm that BIR's responses to the questions above have been authorised and approved under its published continuous disclosure policy or otherwise by its board or an officer of BIR 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 **9:00 AM AEDT on Friday, 3 March 2023**.

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, BIR'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 BIR to request a trading halt immediately.

Your response should be sent to me by e-mail at ListingsComplianceSydney@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.

Trading halt

If you are unable to respond to this letter by the time specified above, you should discuss with us whether it is appropriate to request a trading halt in BIR's securities under Listing Rule 17.1. If you wish a trading halt, you must tell us:

- the reasons for the trading halt;
- how long you want the trading halt to last;
- the event you expect to happen that will end the trading halt;
- that you are not aware of any reason why the trading halt should not be granted; and
- any other information necessary to inform the market about the trading halt, or that we ask for.

We require the request for a trading halt to be in writing. The trading halt cannot extend past the commencement of normal trading on the second day after the day on which it is granted. You can find further information about trading halts in Guidance Note 16 *Trading Halts & Voluntary Suspensions*.

Suspension

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

Listing Rules 3.1 and 3.1A

In responding to this letter, you should have regard to BIR'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 BIR'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.

Questions

If you have any questions in relation to the above, please do not hesitate to contact me.

Regards

Karina So
Adviser, Listings Compliance

CC: Catriona Glover