



27 July 2023

Ramona Seeto
Adviser, Listings Compliance
ASX Limited
20 Bridge Street
Sydney NSW 2000

By email to ListingsComplianceSydney@asx.com.au

Confidential

Dear Ms Seeto

Re: Nuix Limited ('NXL') – Query Letter

We refer to the ASX's 24 July 2023 request for information regarding Nuix's "FY23 Preliminary Results Update" release to the ASX Market Announcements Platform on 20 July 2023 (the **Announcement**). As identified in the ASX letter, the Announcement disclosed a range for various expected financial metrics for the financial year ended 30 June 2023 (the **Information**).

The Announcement was provided ahead of Nuix's full year results to be released in mid-August.

Nuix's responses to those requests, adopting the definitions contained in the ASX letter, are outlined below:

1 Does NXL consider the Information to be information that a reasonable person would expect to have a material effect on the price or value of its securities?

Nuix considers it likely that some of the information contained in the Announcement would be information that a reasonable person would expect to have a material effect on the price or value of its securities, which was the underlying reason for the Announcement.

2 If the answer to question 1 is "no", please advise the basis for that view.

Not applicable.

3 When did NXL first become aware that its earnings for the year ended 30 June 2023 would differ materially from market expectations?

Nuix did not provide any forward-looking guidance for FY23, has limited analyst coverage and no consensus earnings estimates. Accordingly, it is difficult for Nuix to ascertain specific market expectations in relation to its FY23 earnings.

As noted in the Announcement, Nuix experienced a strong close to the end of the financial year, with several key contracts executed in June.

As is common with many technology companies with material revenues from on-premise, non-SaaS products, the pattern of Nuix's customer contract execution is not uniform over the year. December and June, in particular, are seasonally stronger months, which can significantly impact revenue and earnings late in each half.



Even with this backdrop, the June trading experience was stronger than internal expectations, with several key contracts executed late in the month favourably impacting Nuix's Statutory Revenue and EBITDA.

Nuix's analysis of the FY23 year-end trading results, revenue and costs continued up to the evening of 19 July 2023, involving:

- Identifying and analysing customer contracts entered into in the final quarter and, particularly, June 2023, for consideration of their potential impact on statutory revenue and Annualised Contract Value;
- Identifying costs relevant to EBITDA, including costs relating to share-based payments, commission finalisations, intellectual property calculation, legal fees accruals, potential credit losses and the acquisition of Topos; and
- Considering, as data continued to become available, the likely range within which the metrics contained in the Announcement are likely to fall.

The result of that work was provided to the Nuix Board as soon as it was sufficiently complete and with sufficient confidence on 19 July 2023 and considered by the Board that evening.

The Announcement was made to the ASX before market opening on 20 July 2023. For the avoidance of doubt, while Nuix considers the ranges provided in the Announcement to be a reasonable estimate, Nuix is continuing to work on its year end results and producing final audited numbers.

4 If NXL was aware that its earnings for the year ended 30 June 2023 would differ materially from market expectations before the release of the Announcement, please explain why the information was not disclosed at an earlier time and how this was compliant with Listing Rule 3.1.

As identified in response to question 3 above, Nuix is not aware of specific market expectations in respect of its FY23 earnings in the period prior to the Announcement.

Nuix considered the information available as to its likely FY23 results in July and, consistent with its practice in relation to the close of previous accounting periods, provided the market with an update as soon as it had a reasonable degree of confidence in the likely range within which the results would fall.

We note the timing of the Announcement is consistent with the timing of similar preliminary results releases made by Nuix in January 2023 and July 2022.

5 If NXL was not aware that its earnings for the year ended 30 June 2023 would differ materially from market expectations until shortly before the release of the Announcement, please explain why NXL was unable to identify this difference at an earlier time.

Again, as identified in relation to questions 3 and 4 above, Nuix is not aware of specific market expectations in respect of its FY23 earnings in the period prior to the Announcement.

The process of gathering relevant financial information at the conclusion of a financial reporting period and analysing it requires substantial and detailed work. In particular, the nature of each individual customer arrangement commenced in the preceding period must be analysed to consider the appropriate revenue recognition, ACV and cost implications. Nuix operates in a number of overseas markets and currencies which adds to the complexity of period end accounting processes.



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Nuix conducted the analysis of its full year financial information (a process which is continuing in preparation for the release of Nuix's full year results) expeditiously and consistently with its practice in previous reporting periods of providing the market with an updated indication of its results as soon as it was in a position to verify the information available and provide a reliable estimate of the likely range of outcomes.

6 Please confirm that NXL is complying with the Listing Rules and, in particular, Listing Rule 3.1.

Confirmed.

This response has been approved by the Board of Nuix Limited.

Please let me know should you wish to discuss this matter further.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'R Mactier', written over a light blue horizontal line.

Robert Mactier
Non-Executive Chairman
Nuix Limited



24 July 2023

Reference: 76689

Ms Ilona Meyer
General Counsel and Company Secretary
Nuix Limited

Dear Ms Meyer

Nuix Limited ('NXL'): Aware Query

ASX refers to the following:

- A. NXL's announcement titled "FY23 Preliminary Results Update", released on the ASX Market Announcements Platform prior to market open on 20 July 2023 (the '**Announcement**'), which disclosed various expected financial metrics for the financial year ended 30 June 2023 (the '**Information**') ahead of NXL's full year results to be released on 18 August 2023.
- B. 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.
- C. 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."*
- D. 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 5 situations 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*
 - 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."*
- E. Section 7.3 of Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*, which says in part (footnotes omitted):

“Generally speaking, an entity’s earnings for a particular reporting period are not required to be reported to the market until the due date for the release of that information under Chapter 4 of the Listing Rules.

However, for many entities, the market’s expectations of its earnings over the near term may be a material driver of the price or value of its securities. Those expectations may have been informed by:

- *earnings guidance the entity has given to the market;*
- *in the case of entities covered by sell-side analysts, the earnings forecasts of those analysts; or*
- *the entity’s pcp earnings.*

Those expectations may also have been informed or modified by:

- *“outlook statements” made by the entity in its last annual report or at its last results announcement or annual general meeting;*
- *other disclosures the entity has made to the market over the reporting period; and*
- *market-wide or sector-wide events that can reasonably be expected to affect the entity.*

If an entity becomes aware that its earnings for the current reporting period will differ materially (downwards or upwards) from market expectations, it needs to consider carefully whether it has a legal obligation to notify the market of that fact. This obligation may arise under Listing Rule 3.1 and section 674, if the difference is of such magnitude that a reasonable person would expect it to have a material effect on the price or value of the entity’s securities – referred to in this Guidance Note as a “market sensitive earnings surprise”. Alternatively, in the case of an entity which becomes aware that its earnings for a reporting period will differ materially from earnings guidance it has published to the market, it may arise under section 1041H, because failing to inform the market that its published guidance is no longer accurate could constitute misleading conduct on its part.”

- F. The closing price of NXL’s shares following the Announcement, which was approximately 37% higher on larger than usual volumes.

Request for information

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

1. Does NXL consider the Information to be information that a reasonable person would expect to have a material effect on the price or value of its securities?
2. If the answer to question 1 is “no”, please advise the basis for that view.
3. When did NXL first become aware that its earnings for the year ended 30 June 2023 would differ materially from market expectations?
4. If NXL was aware that its earnings for the year ended 30 June 2023 would differ materially from market expectations before the release of the Announcement, please explain why the Information was not disclosed at an earlier time and how this was compliant with Listing Rule 3.1.
5. If NXL was not aware that its earnings for the year ended 30 June 2023 would differ materially from market expectations until shortly before the release of the Announcement, please explain why NXL was unable to identify this difference at an earlier time.
6. Please confirm that NXL is complying with the Listing Rules and, in particular, Listing Rule 3.1.

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7. Please confirm that NXL's responses to the questions above have been authorised and approved in accordance with its published continuous disclosure policy or otherwise by its board or an officer of NXL 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 AEST Friday, 28 July 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, NXL'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 NXL 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 NXL'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 NXL's securities under Listing Rule 17.3.

Listing Rules 3.1 and 3.1A

In responding to this letter, you should have regard to NXL'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 NXL'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

ASX reserves the right to release all or any part 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.

Yours sincerely

Ramona Seeto
Adviser, Listings Compliance

CC: Jane Petrolo