

8 August 2023

Australian Securities Exchange Limited

20 Bridge Street
Sydney NSW 2000

Via Email: yulia.gurdina@asx.com.au

Attention: Ms Yulia Gurdina

Dear Ms Gurdina,

Re: Ark Mines Limited (“AHK”) Query Letter dated 1 August 2023

We refer to your Query Letter and provide the following background and responses in respect the questions asked.

Background

The Company Secretary, Mr Ian Mitchell is an experienced solicitor with nearly 50 years' Company Secretarial experience (including experience with ASX Listing Rules compliance) and is aware of the ASX disclosure requirements. He has also occupied board seats and secretarial positions on a number of listed companies and is currently a Director of Ark Mines.

As the ASX is aware, Mr Mitchell was absent from his office and hospitalised for a period of nearly 2 months in May and June due to health issues. While Mr Mitchell returned to his office in mid July, to perform limited duties he was still required to convalesce extensively at home and required readmission to hospital on 26 and 27 July.

The matters referred to below occurred during the period of his convalescence prior to Mr Mitchell's return to hospital.

ASX Questions and Ark Mines Responses

Question 1.1

Did AHK lodge an Appendix 3Y disclosing the transactions undertaken on or around 24 September 2021? If so, please identify when that announcement was published on MAP. If not, please explain why not.

Ark Mines Response

No.

*The date of 24 September 2021 set out in the Appendix 3Y dated 21 July 2023 (**First Transaction**) is incorrect and the opening holding of 164,749 FPO shares is also incorrect. This number of shares represents one of a number of holdings held by Mr Mitchell.*

The correct date for the “last notice” in the Appendix 3Y for the First Transaction is 22 December 2021 and the document lodged on this date noted a closing holding of 439,371 which was correct as at this date.

Question 1.2

The last Appendix 3Y lodged on behalf of Mr Mitchell by AHK prior to the First Transaction on MAP was 22 December 2021, which disclosed that Mr Mitchell held “439,371 fully paid ordinary shares, and 296,040 options exercisable at \$0.20 each on or before 17 December 2023”. However, the Appendix 3Y disclosing the First Transaction noted that prior to any changes Mr Mitchell held 164,749 shares in AHK. Please explain the reason for the discrepancy in the number of securities held by Mr Mitchell between the two Appendices 3Y.

Ark Mines Response

The information in the ASX Appendix 3Y disclosing the First Transaction was incorrect as outlined above.

The opening balance of shares held by Mr Mitchell that should have been shown on this Appendix 3Y was 439,371, with a corresponding increase required to the closing balance.

The information in the ASX Appendix 3Y disclosing the First Transaction should also have included 296,040 options exercisable at \$0.20 each on or before 17 December 2023 in both the opening and closing holdings.

Question 2

Noting the Transactions occurred within 2 weeks prior to the release of the Quarterly Report, is AHK of the view that the Transactions were conducted in accordance with the Policy? If so, please explain the basis for that view.

Ark Mines Response

AHK acknowledges that the Transactions were not in this instance in compliance with its Share Trading Policy.

The Company understands that Mr Mitchell instructed a broker to execute the trades following the release of the Quarterly Report within a permitted trading window. Following his convalescence, Mr Mitchell discovered in fact they were executed prior.

The trades were invertedly executed following the release of the share placement announcement of 18 July 2023 rather than the Quarterly as instructed. During much of this period, Mr Mitchell was absent from his office in hospital or in home convalescence as detailed above.

At the time of the trades, Mr Mitchell was not aware of either the form or content of the Announcement or the Quarterly Report as he did not have access to email or internet due to his convalescence. Mr Mitchell only became aware of the information in the Announcement and the Quarterly Report for that matter following convalescences and after it was released to the market.

Mr Mitchell has been counselled by the Board regarding the exercise of diligence in observing the requirements of the company’s Securities Trading Policy and has undertaken to comply with the company’s Securities Trading Policy at all times.

The Company has also circulated its Share Trading Policy to all Directors and received a written acknowledgement from all Directors and it’s CFO that they have once again read and understood the Policy and agreed to be bound by it.

Furthermore, the Company has resolved to appoint Mr Ian White as an additional Company Secretary. Mr Mitchell has agreed to take a leave of absence from his position as Company Secretary until his health is sufficiently recovered for him to resume his duties.

Attached is an ASX Announcement announcing the changes to the Company Secretary role which is intended to be released prior to market open on 9 August 2023.

Question 3

Please provide a copy of Mr Mitchell's notification to AHK's Chairman of his intention to trade (as required by section 5 of the Policy), and any subsequent approval given (not for release to the market).

Ark Mines' Response

Notification was not provided to AHK's Chairman as the trades were intended to be made in a permitted trading window.

Question 4.1

If the Transactions were not conducted in accordance with the Policy, please explain why the Appendices 3Y stated in Part 3 that no interests in AHK's securities were traded during a closed period; and

Ark Mines' Response

This was a clerical error by staff acting on behalf of Mr Mitchell whilst he was in ill health and absent from his office.

Staff concerned have been counselled and reminded in writing of the need for all ASX Announcements to be approved in accordance with Company's continuous disclosure policy and the ASX Listing Rules

Question 4.2

Please outline any disciplinary and/or remedial action AHK intends to take in response to this breach.

Ark Mines' Response

The Board is satisfied that these were isolated incidences due to exceptional circumstances surrounding Mr Mitchell's hospitalisation and recent health issues.

The Company intends to lodge revised Appendix 3Ys to correct the errors noted above.

In any event the Company proposed the following disciplinary and/or remedial action AHK intends to take in response to this inadvertent breach:

- a) Mr Mitchell has been counselled by the Board regarding the exercise of diligence in observing the requirements of the company's Securities Trading Policy and has undertaken to comply with the Company's Securities Trading Policy at all times.*
- b) The Company has also counselled Mr Mitchell's staff regarding the lodgement of announcements and instituted a procedure to ensure that staff lodging announcements are aware of any that are market sensitive.*
- c) The Company has circulated its Share Trading Policy to all Directors and received a written acknowledgement from all Directors and its CFO that they have once again read and understood the policy and agreed to be bound by it.*
- d) The Company has engaged CBW Partners, its legal advisors, to review all of its policies and procedures regarding compliance with the ASX Listing Rules and make recommendations for improvement to avoid any further inadvertent matters arising.*
- e) The Company has resolved to appoint Mr Ian White as an additional Company Secretary to provide assistance to Mr Mitchell at this time. Mr Mitchell has agreed to take a leave of absence from his position as Company Secretary until his health is sufficiently recovered for him to resume his duties.*

Question 5

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

Ark Mines' Response

The Company is aware of the ASX Listing Rule 3.1 requirement that an entity must immediately tell ASX information that a reasonable person would expect to have a material effect on the price or value of the Company's securities.

By ASX Announcements dated 3 April 2023, 27 April 2023 and 22 May 2023 together with the Company's Investor Presentation on 24 May 2023, the Company reported on the previous historic work that had been carried out, the historic assays and the analysis of exploration data in connection with the Sandy Mitchell Project. The Announcement on 26 July 2023 confirmed the Company's expectations noted in previous announcements following the receipt of recent assays for the Project. On balance, however, the Company accepts that the Announcement should have been marked price sensitive.

Question 6.1

If the answer to question 5 is "yes" please provide the basis for this view.

Ark Mines' Response

The Announcement referred to drilling results which are directly related to the value of the company, and as a consequence, a reasonable person would expect to be reflected in the Company's share price.

Question 6.2

Please explain why AHK marked the Announcement as non-market sensitive on MAP.

Ark Mines' Response

This was a clerical error by staff acting in the absence of Mr Mitchell whilst he was recovering from illness.

Question 6.3

When did AHK become aware of the Information provided in the Announcement? Please provide details.

Ark Mines' Response

The Company became aware of the information on receipt of the assay results on the afternoon of 24 July 2023.

Question 6.4

Does AHK consider the release of the Announcement to be consistent with its obligations to immediately give to ASX material information under Listing Rule 3.1?

Ark Mines' Response

Yes, the ASX Announcement that followed was a complex one requiring proper analysis and was prepared and lodged promptly and without delay at 10 am on 26 July 2023.

Question 7.1

If the answer to Question 5 is “no”, please provide the basis for this view.

Ark Mines' Response

NA – response to Question 5 is “yes”.

Question 7.2

If the answer to Question 5 is “no please explain the Listing Rule or Corporations Act basis for lodging the Announcement on MAP, as per section 14 of Guidance Note 14 referred to above.

Ark Mines' Response

NA – response to Question 5 is “yes”.

Question 8

When did Mr Mitchell become aware of the Information provided in the Announcement?

Ark Mines' Response

Mr Mitchell was not aware of the Information and did not participate in the drafting of the Announcement. Mr Mitchell was away from his office due to the issues outlined above during the preparation and lodgment of the Announcement.

The Announcement was prepared by the Board and relevant consultants (excluding Mr Mitchell) and released by Mr Mitchell's office in his absence.

Mr Mitchell became aware of the information in the Announcement (and the Quarterly Report for that matter) following convalescences and after it was released to the market.

Question 9

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

Ark Mines' Response

Ark Mines confirms that it is complying with all Listing Rules and Listing Rule 3.1 in particular.

Question 10

Please confirm that AHK'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 AHK with delegated authority from the board to respond to ASX on disclosure matters.

Ark Mines' Response

The responses above have been authorised by the Board.

Yours Faithfully,



Roger A Jackson

Exutive Chairman



1 August 2023

Reference: ODIN77049

Mr Ian Mitchell
Company Secretary
Ark Mines Limited
Level 9, 19-29 Martin Place
SYDNEY NSW 2000

By email

Dear Mr Mitchell

Ark Mines Limited ('AHK'): Query Letter

ASX refers to the following:

- A. AHK's Appendices 3Y released on the ASX Market Announcements Platform ('MAP') on 21, 25 and 28 July 2023, which disclosed that AHK's director, Mr Ian Mitchell, acquired on-and-off market securities on:
- (i) 21 July 2023 (the 'First Transaction'); and
 - (ii) 24 and 27 July 2023,
- (collectively, the 'Transactions').

ASX observes that AHK indicated that the Transactions were not conducted in a closed period.

- B. AHK's announcement titled "Analysis Phase 1 Sandy Mitchell Rare Earths Drill Program", released on MAP on 26 July 2023 (the 'Announcement'), which disclosed phase 1 pXRF drill results at Sandy Mitchell project (the 'Information').
- C. AHK's Quarterly Activities Report and Appendix 5B, released on MAP on 28 July 2023 (the 'Quarterly Report').
- D. AHK's Securities Trading Policy, released on MAP on 23 December 2021 and published on its website¹ (the 'Policy'), which provides (relevantly):

"5. Trading Embargo

A trading embargo exists in respect of which Key Personnel must refrain from dealing in Ark Shares during the period being 2 weeks prior to the release of the annual accounts and one day thereafter, 1 week prior to company announcements and one day thereafter and 2 weeks prior to the release of ASX quarterly reports and one day thereafter.

Key Persons may request the Chairman in writing to grant special circumstances relief from the limitations referred to above after first presenting to the Chairman an opinion from an approved Australian legal practitioner, that the Key Person is not at that time in possession of any inside information relating to Ark or its shares that is not generally available and if it were generally available, a reasonable person would expect it to have a material effect on the price or value of Ark Shares. Special circumstances relief may include but not be limited to severe financial hardship, necessity to exercise employee share options or Court Order. If the Chairman approves of special circumstances relief he will so advise the applicant for

¹ <https://arkmines.com/governance/#gov>

such relief in writing whereupon the trading embargo will be lifted in respect of such trade by such key person.” [Emphasis Added].

E. 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.

F. 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.”

G. 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*
- 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.”

H. Section 14 of Guidance Note 14, which states (relevantly):

“MAP should only be used to publish information that is appropriately given to ASX under the Listing Rules or the Corporations Act for publication to the market. It should not be used as a guise to publish material that is really promotional, political or tendentious in nature.”

Request for information

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

Information relating to AHK’s compliance with Listing Rules 3.19A and 3.19B

1. ASX notes that the Appendix 3Y concerning the First Transaction refers to the date of the last notice being 24 September 2021, and states that Mr Mitchell held 164,749 shares in AHK prior to any changes.
 - 1.1 Did AHK lodge an Appendix 3Y disclosing the transactions undertaken on or around 24 September 2021? If so, please identify when that announcement was published on MAP. If not, please explain why not.
 - 1.2 The last Appendix 3Y lodged on behalf of Mr Mitchell by AHK prior to the First Transaction on MAP was 22 December 2021, which disclosed that Mr Mitchell held “439,371 fully paid ordinary shares, and

296,040 options exercisable at \$0.20 each on or before 17 December 2023". However, the Appendix 3Y disclosing the First Transaction noted that prior to any changes Mr Mitchell held 164,749 shares in AHK. Please explain the reason for the discrepancy in the number of securities held by Mr Mitchell between the two Appendices 3Y.

Information relating to AHK's compliance with Listing Rule 12.12

2. Noting the Transactions occurred within 2 weeks prior to the release of the Quarterly Report, is AHK of the view that the Transactions were conducted in accordance with the Policy? If so, please explain the basis for that view.
3. Please provide a copy of Mr Mitchell's notification to AHK's Chairman of his intention to trade (as required by section 5 of the Policy), and any subsequent approval given (not for release to the market).
4. If the Transactions were not conducted in accordance with the Policy:
 - 4.1 please explain why the Appendices 3Y stated in Part 3 that no interests in AHK's securities were traded during a closed period; and
 - 4.2 please outline any disciplinary and/or remedial action AHK intends to take in response to this breach.

Information relating to AHK's compliance with Listing Rule 3.1

5. Does AHK consider the Information in the Announcement to be information that a reasonable person would expect to have a material effect on the price or value of its securities?
6. If the answer to Question 5 is "yes":
 - 6.1 please provide the basis for this view;
 - 6.2 please explain why AHK marked the Announcement as non-market sensitive on MAP;
 - 6.3 when did AHK become aware of the Information provided in the Announcement? Please provide details; and
 - 6.4 does AHK consider the release of the Announcement to be consistent with its obligations to immediately give to ASX material information under Listing Rule 3.1? Please provide the basis for this view.
7. If the answer to Question 5 is "no":
 - 7.1 please provide the basis for this view; and
 - 7.2 please explain the Listing Rule or Corporations Act basis for lodging the Announcement on MAP, as per section 14 of Guidance Note 14 referred to above.
8. When did Mr Mitchell become aware of the Information provided in the Announcement?
9. Please confirm that AHK is complying with the Listing Rules and, in particular, Listing Rule 3.1.
10. Please confirm that AHK'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 AHK 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 **4:00PM AEST on Tuesday, 8 August 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, AHK'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 AHK 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 AHK'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 AHK's securities under Listing Rule 17.3.

Listing Rules 3.1 and 3.1A

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

Kind regards

Yulia Gurdina
Senior Adviser, Listings Compliance

cc: Roger Jackson, Benjamin Emery, Ian White