

22 August 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 17 August 2023 (**ASX Letter**).

1. **Noting that the Transaction appears to have occurred within the 1 month immediately preceding the release by BIR of its annual results, please explain the basis on which BIR considers that it did not occur during a closed period.**

The transaction in question did not comply with the BIR trading policy and was an oversight from Directors Fogarty and Elliss (Relevant Persons). The approval by Jody Elliss for Robert Fogarty to trade was given on the basis that at the time the approval was given it was not perceived that there was any market sensitive operational results or information that was market sensitive. The Relevant Persons overlooked the fact that the approval was given within the one month immediately preceding the release by BIR of its annual results.

2. **Does BIR consider that the Transaction was conducted in accordance with the Trading Policy? If so, please explain the basis for that view?**

No. See above.

3. **Please provide a copy of Mr Fogarty's notification to BIR's Chairman of his intention to trade, and any subsequent approval given and correspondence with BIR's company secretary, as required by paragraphs 5.1 and 5.4 of the Trading Policy in relation to the Transaction (not for release to market).**

Mr Fogarty sought and obtained verbal permission from Mr Elliss in late July/early August. Mr Fogarty had not long returned from overseas and had been unwell and was subsequently hospitalised, hence he verbally sought and obtained verbal consent. Following this oversight, Mr Fogarty and Mr Elliss are both very aware of their obligations under BIR's Trading Policy.

4. **If the Transaction was not conducted in accordance with the Trading Policy:**
  - 4.1 **please explain why the Appendix 3Y stated in Part 3 that no interests in BIR's securities were traded during a closed period; and**
  - 4.2 **please outline any disciplinary and/or remedial action BIR intends to take in response to this breach.**

The response that no interests were traded during a closed period was due to an administrative oversight, in the completion of the Appendix 3Y. Please see the attached amended Appendix 3Y.

All directors and key management personnel of the Company have been reminded of the Trading Policy, including provisions around the black-out periods associated with half-yearly and annual reports, and the Annual General Meeting.

Documents have been drafted and processes are being put in place to ensure compliance with BIR's Securities Trading Policy. This includes ensuring that electronic reminders of closed periods are utilised.

5. **Noting BIR has non-compliance with Listing Rule 3.19A multiple times, please outline the 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.**

The Directors of BIR rely on staff to advise and put into action directions whether verbal or written on a daily basis. Compliance issues are always a priority be it ASIC, ASX compliance or audits over daily operational tasks. The Directors are aware of BIR's disclosure obligations and have instructed their staff to ensure that compliance issues are a priority.

6. **It appears that the current arrangements are inadequate or not being enforced, please outline what additional steps BIR intends to take to ensure compliance with Listing Rule.**

The nature of the business of both Fogarty and Ellis is such that they do not control their trading – they have staff making those decisions. As a result it is the control systems of Fogarty and Ellis which require improvement. That process is underway as described above.

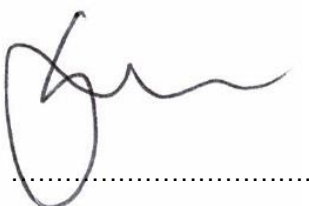
7. **Please confirm that BIR is complying with the Listing Rules and, in particular, Listing Rule 3.1.**

Confirmed.

8. **Please confirm that BIR'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 BIR which delegated authority from the board to respond to ASX on disclosure matters.**

Confirmed.

Yours faithfully



Greg Starr  
Company Secretary

BIR Financial Limited

# Appendix 3Y

## Change of Director's Interest Notice

*Information or documents not available now must be given to ASX as soon as available. Information and documents given to ASX become ASX's property and may be made public.*

Introduced 30/09/01 Amended 01/01/11

<b>Name of entity:</b>	<b>BIR Financial Limited</b>
<b>ABN:</b>	<b>14 074 009 091</b>

We (the entity) give ASX the following information under listing rule 3.19A.2 and as agent for the director for the purposes of section 205G of the Corporations Act.

<b>Name of Director</b>	ROBERT JOHN FOGARTY
<b>Date of last notice</b>	4 August 2023

### Part 1 - Change of director's relevant interests in securities

*In the case of a trust, this includes interests in the trust made available by the responsible entity of the trust*

Note: In the case of a company, interests which come within paragraph (i) of the definition of "notifiable interest of a director" should be disclosed in this part.

<b>Direct or indirect interest</b>	Direct
<b>Nature of indirect interest (including registered holder)</b> Note: Provide details of the circumstances giving rise to the relevant interest.	NA
<b>Date of change</b>	9 August 2023
<b>No. of securities held prior to change</b>	5,794,089 fully paid ordinary shares plus 74,540 unlisted options (exercisable at \$0.12/option, expiry date 3 years from the date of issue)
<b>Class</b>	See above
<b>Number acquired</b>	50,000 fully paid ordinary shares
<b>Number disposed</b>	NIL
<b>Value/Consideration</b> Note: If consideration is non-cash, provide details and estimated valuation	Each share was acquired for \$0.065

## Appendix 3Y

### Change of Director's Interest Notice

<b>No. of securities held after change</b>	5,844,089 fully paid ordinary shares plus 74,540 unlisted options (exercisable at \$0.12/option, expiry date 3 years from the date of issue)
<b>Nature of change</b> Example: on-market trade, off-market trade, exercise of options, issue of securities under dividend reinvestment plan, participation in buy-back	On market trade

## Part 2 – Change of director's interests in contracts

Note: In the case of a company, interests which come within paragraph (ii) of the definition of "notifiable interest of a director" should be disclosed in this part.

<b>Detail of contract</b>	N/A
<b>Nature of interest</b>	
<b>Name of registered holder (if issued securities)</b>	
<b>Date of change</b>	
<b>No. and class of securities to which interest related prior to change</b> Note: Details are only required for a contract in relation to which the interest has changed	
<b>Interest acquired</b>	
<b>Interest disposed</b>	
<b>Value/Consideration</b> Note: If consideration is non-cash, provide details and an estimated valuation	
<b>Interest after change</b>	

## Part 3 – <sup>+</sup>Closed period

<b>Were the interests in the securities or contracts detailed above traded during a <sup>+</sup>closed period where prior written clearance was required?</b>	Yes
<b>If so, was prior written clearance provided to allow the trade to proceed during this period?</b>	No – verbal clearance was obtained due to director being unwell in late July/early August 2023
<b>If prior written clearance was provided, on what date was this provided?</b>	NA

<sup>+</sup> See chapter 19 for defined terms.



17 August 2023

Reference: 78224

Mr Greg Starr  
Company Secretary  
BIR Financial Limited  
Level 19, 10 Eagle Street  
Brisbane QLD 4000

By email

Dear Mr Starr

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

ASX refers to the following:

1. BIR's Appendix 3Y lodged on the ASX Market Announcements Platform ('MAP') on 17 August 2023 for Mr Robert John Fogarty, which disclosed that Mr Fogarty acquired securities on market on 9 August 2023 (the 'Transaction'). ASX observes that BIR indicated that the Transaction was not conducted in a closed period at part 3 of the Appendix 3Y. As noted by BIR's covering note, the Appendix 3Y was also lodged late, being due by 16 August 2023.
2. BIR's preliminary final report (i.e. annual results) for the year ended 30 June 2023 is due by 31 August 2023 and BIR is yet to release its preliminary final report on MAP.
3. BIR's Securities Trading Policy lodged on MAP on 28 June 2018 (the 'Trading Policy'), which provides in section 4 (emphasis added):

**"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."*

4. Section 5 of the Trading Policy which further provides that:

**"5.1 Approval Requirements – Directors**

- (a) *Any Director wishing to buy, sell or exercise rights in relation to the Company's securities must obtain the prior approval of the Chairman of the Board before doing so;"*

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#### ***“5.4 Approvals to buy or sell securities***

- (a) All requests to buy or sell securities must include the intended volume of securities to be purchased or sold and an estimated time frame for the sale or purchase.*
- (b) Copies of written approvals must be forwarded to the Company Secretary prior to the approved purchase or sale transaction.”*

#### **Request for Information**

Under Listing Rule 18.7, we ask that you answer each of the following questions having regard to Listing Rules 3.19A and 3.19B and *Guidance Note 22: Director Disclosure of Interests and Transactions in Securities - Obligations of Listed Entities*.

1. Noting that the Transaction appears to have occurred within the 1 month immediately preceding the release by BIR of its annual results, please explain the basis on which BIR considers that it did not occur during a closed period.
2. Does BIR consider that the Transaction was conducted in accordance with the Trading Policy? If so, please explain the basis for that view.
3. Please provide a copy of Mr Fogarty’s notification to BIR’s Chairman of his intention to trade, and any subsequent approval given and correspondence with BIR’s company secretary, as required by paragraphs 5.1 and 5.4 of the Trading Policy in relation to the Transaction (not for release to market).
4. If the Transaction was not conducted in accordance with the Trading Policy:
  - 4.1 please explain why the Appendix 3Y stated in Part 3 that no interests in BIR’s securities were traded during a closed period; and
  - 4.2 please outline any disciplinary and/or remedial action BIR intends to take in response to this breach.
5. Noting BIR has non-compliance with Listing Rule 3.19A multiple times, please outline the 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.
6. It appears that the current arrangements are inadequate or not being enforced, please outline what additional steps BIR intends to take to ensure compliance with Listing Rule 3.19B.
7. Please confirm that BIR is complying with the Listing Rules and, in particular, Listing Rule 3.1.
8. Please confirm that BIR’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 BIR which 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 Tuesday, 22 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, 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](mailto: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

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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**

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

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**Karina So**  
Adviser, Listings Compliance

CC: Catriona Glover, Tearum Corporate Service