

Saturday 26 August, 2023

Ms Renee Hutchens

Adviser

Listings Compliance

By Email: ListingsComplianceSydney@asx.com.au

Dear Ms Hutchens,

Data#3 Limited ('DTL'): General – Aware Query

We refer to your letter dated 23 August, 2023. Our response to the questions and request for information is set out below. We note that the request relates to ASX market announcements released on 22 August, 2023 in respect of our FY23 results, including:

DTL continues to deliver substantial earnings growth

1. Notwithstanding the market's expectations in relation to DTL's FY23 results, does DTL consider the Information (or any part of it) to be information that a reasonable person would expect to have a material effect on the price of value of its securities?
[Data#3 Response: No.](#)
2. When did DTL first become aware of the Information?
[Data#3 Response: DTL's audited financials were signed off by the auditor and Board of DTL on the morning of Tuesday 22 August 2023 and released to the market that same morning before the market opened.](#)
3. If the answer to question 1 is "no", please advise the basis for that view.
[Data#3 Response: DTL does not publish earnings guidance. DTL is covered by analysts. Deviations from market consensus in respect of DTL's earnings were not considered by the Board of DTL to be sufficiently material to be market sensitive.](#)
4. Does DTL consider that its results as disclosed in the FY23 Results Announcements and copied in paragraph A above, differed materially from the market's expectations of the relevant measure of DTL's earnings for FY23, having regard to the following three base indicators which may have informed such market expectations (in decreasing order of relevance and reliability):
 - 4.1 If DTL had published earnings guidance for FY23, that guidance.
[Data#3 Response: Not applicable. DTL does not have published earnings guidance.](#)
 - 4.2 If DTL is covered by sell-side analysts, the earnings forecasts of those analysts for the Relevant Reporting Period.
[Data#3 Response: No DTL does not consider its results differed materially from market expectations having regard to sell-side analyst forecasts. As noted below, the relevant deviations were well within the 15% benchmark provided in ASX guidance in respect of earnings surprise announcements:](#)
 - The average analyst consensus at the relevant time for NPAT was \$40.675m. DTL's NPAT result of \$37.0m is only 9.9% below average market consensus.
 - The average analyst consensus at the relevant time for NPBT was \$57.875m. DTL's NPBT result of \$53.2m is only 8.8% below average market consensus.
 - The average analyst consensus at the relevant time for EPS was 26.288 cents. DTL's EPS result of 23.96 cents is only 9.7% below average market consensus.
 - 4.3 If paragraphs 4.1 and 4.2 are not applicable, DTL's earnings for the prior corresponding period, being the financial year ended 30 June 2022.
[Data#3 Response: Not applicable as DTL is covered by analysts as noted in the response to 4.2.](#)
5. Please explain the basis for the view provided in response to question 4. In doing so, please specify how DTL determined market expectations of each relevant measure of its earnings for FY23, including:
 - 5.1 If DTL had published earnings guidance for FY23, details of that guidance and when it was released to the market.
[Data#3 Response: Not applicable. DTL does not have any published earnings guidance.](#)
 - 5.2 If DTL used sell-side analyst forecasts to estimate the market's expectations of the relevant measure of its earnings for the Relevant Reporting Period, details of the method that DTL used to translate sell-side analyst forecasts into its estimate of such market expectations and, in particular, whether or not DTL used a "consensus estimate" or an "adjusted consensus estimate" or a different specified approach for determining this estimate.

Data#3 Response: DTL monitors sell-side analyst forecasts to gauge market expectations in respect of relevant earnings measures. The table below sets out a summary of the relevant analyst reports reviewed by DTL. DTL assesses market consensus in respect of each of NPAT, NBT and EPS on a simple averaging basis including all known analyst reports in the calculation.

ANALYST SUMMARY - FY23 Projections

LATEST REPORT

Analyst	Report Date	FY23 NPAT (\$M)	FY23 NPBT (\$M)	FY23 EPS (cents)
Morgans	16/02/23	40.0	57.6	26.0
JP Morgan	17/02/23	38.2	56	24.8
Blue Ocean	21/02/23	40.2	57.5	26.0
Morgan Stanley	16/02/23	39.9	57.0	25.7
CCZ	17/02/23	42.3	55.0	27.4
Evans & Partners	16/02/23	41.4	59.9	26.4
Taylor Collison	16/02/23	41.9	59.8	27.0
Goldman Sachs	16/02/23	41.5	60.2	27.0
Consensus (Average)		40.675	57.875	26.288
Actual		37.0	53.2	23.96
Percentage deviation		9.9%	8.8%	9.7%

6. Please confirm DTL is complying with the Listing Rules and, in particular, Listing Rule 3.1. 7.
Data#3 Response: We confirm DTL is complying with the Listing Rules (including LR 3.1.7).
7. Please confirm that DTL'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 DTL with delegated authority from the board to respond to ASX on disclosure matters.
Data#3 Response: We confirm the responses to the questions above have been approved under DTL's published continuous disclosure policy.

Regards

Terence Bonner
 Company Secretary
 Communications Officer

Data#3 Limited



23 August 2023

Reference: 78426

Ms Cherie O’Riordan
Chief Financial Officer
Data#3 Limited

By email: cherie_oriordan@data3.com.au

Dear Ms O’Riordan

Data#3 Limited (‘DTL’): General – Aware Query

ASX refers to the following:

A. The following DTL announcements, all released pre-market open on the ASX Market Announcements Platform (‘MAP’) on 22 August 2023 titled:

- “DTL FY23 Appendix 4E and Annual Financial Report”;
- “DTL continues to deliver substantial earnings growth”; and
- “DTL FY23 Results Briefing”.

(collectively referred to as, the ‘FY23 Results Announcements’ or ‘Information’), in which DTL disclosed (amongst other things) that its key audited FY23 financial results were as follows:

	FY23 \$’000	FY22 \$’000	% Change
Sales revenue	2,560,700	2,192,421	+ 16.9%
Other revenue	3,870	576	+ 571.9%
Total revenue	2,564,570	2,192,997	+ 16.9%
Total gross profit (excluding other revenue)	250,651	218,217	+ 14.9%
<i>Total gross margin</i>	<i>9.8%</i>	<i>10.0%</i>	
Total staff & operating expenses	201,287	174,700	+ 15.2%
NPBT	53,234	44,093	+ 20.7%
NPAT (excluding minority interests)	37,030	30,262	+ 22.4%
<i>Return on equity</i>	<i>54.2%</i>	<i>49.0%</i>	
	FY23	FY22	% Change
Basic earnings per share	23.96 cents	19.61 cents	+ 22.2%
Dividend per share	21.90 cents	17.90 cents	+22.3 %
<i>Dividend payout ratio</i>	<i>91.4%</i>	<i>91.3%</i>	

- B. The decrease in the price of DTL’s shares by 17.84% on 22 August 2023, from its previous closing price of \$7.51 to a closing price of \$6.10.
- C. 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.
- D. 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.”

- E. 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.”

- F. ASX’s policy position on “market sensitive earnings surprises”, which is detailed in section 7.3 of Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B* (‘GN8’). In particular, the Guidance Note (relevantly) states that:

“An earnings surprise will need to be disclosed to the market under Listing Rule 3.1 if it is market sensitive - that is, it is of such a magnitude that a reasonable person would expect information about the earnings surprise to have a material effect on the price or value of the entity’s securities”...

“Where an entity does not have published earnings guidance on foot for the current reporting period and it is covered by sell-side analysts, ASX would recommend that the entity carefully consider notifying the market of a potential earnings surprise if and when it expects there to be a 15% or greater difference between its actual or projected earnings for the period and its best estimate of the market’s expectations for its earnings”...

Request for information

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

1. Notwithstanding the market’s expectations in relation to DTL’s FY23 results, does DTL consider the Information (or any part of it) to be information that a reasonable person would expect to have a material effect on the price or value of its securities?
2. When did DTL first become aware of the Information?
3. If the answer to question 1 is “no”, please advise the basis for that view.

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4. Does DTL consider that its results as disclosed in the FY23 Results Announcements and copied in paragraph A above, differed materially from the market's expectations of the relevant measure of DTL's earnings for FY23, having regard to the following three base indicators which may have informed such market expectations (in decreasing order of relevance and reliability):
 - 4.1 If DTL had published earnings guidance for FY23, that guidance.
 - 4.2 If DTL is covered by sell-side analysts, the earnings forecasts of those analysts for the Relevant Reporting Period.
 - 4.3 If paragraphs 4.1 and 4.2 are not applicable, DTL's earnings for the prior corresponding period, being the financial year ended 30 June 2022.
 5. Please explain the basis for the view provided in response to question 4. In doing so, please specify how DTL determined market expectations of each relevant measure of its earnings for FY23, including:
 - 5.1 If DTL had published earnings guidance for FY23, details of that guidance and when it was released to the market.
 - 5.2 If DTL used sell-side analyst forecasts to estimate the market's expectations of the relevant measure of its earnings for the Relevant Reporting Period, details of the method that DTL used to translate sell-side analyst forecasts into its estimate of such market expectations and, in particular, whether or not DTL used a "consensus estimate" or an "adjusted consensus estimate" or a different specified approach for determining this estimate.
 6. Please confirm DTL is complying with the Listing Rules and, in particular, Listing Rule 3.1.
 7. Please confirm that DTL'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 DTL 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 Monday, 28 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, DTL'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 DTL 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 DTL'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;

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- 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 DTL's securities under Listing Rule 17.3.

Listing Rules 3.1 and 3.1A

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

Renee Hutchens
Adviser, Listings Compliance