



23 October 2018

Attention Kate Kidson  
Principal Adviser, Listings Compliance (Melbourne)  
525 Collins Street  
Melbourne VIC 3000

Dear Kate,

**RE: PRICE QUERY**

Memphasys Limited (ASX: MEM) ("Memphasys" or "the Company") acknowledges and responds to your letter of 22nd October 2018 following a change in the price of MEM's securities from a close price on Friday 19<sup>th</sup> October 2018 of 3.2 cents to a high of 4.9 cents on 22<sup>nd</sup> October 2018, and the significant increase in the volume of trading of MEM's securities.

In responding to ASX, Memphasys refers to announcement titled "First KOL appointed to undertake FELIX assessment" ("Announcement") lodged on the ASX Market Announcements Platform and released at 8:43 am on 22 October 2018 ("Relevant Date"), disclosing that MEM had signed a significant MOU ("Relevant Information").

Pursuant to ASX listing rule 18.7, the Company responds to each question raised by ASX Melbourne:

1. Memphasys became aware of the Relevant Information on or around 2 October 2018 whereby the Memorandum of Understanding (MOU) was executed between the Company and ANOVA Karolinska, a Swedish based male infertility and andrology centre who are considered a Key Opinion Leader (KOL) to agree to take part in *in-vitro* assessments of the Company's Felix device. The details of the MOU were being finalised and could not be announced to the market until both parties were satisfied as to the contents of the announcement. Changes to various drafts were required by ANOVA Karolinska which was not finalised until 20 October 2018.
2. The Company does not consider the Relevant Information as significant as it is a non-binding agreement and therefore not considered price sensitive, and one that a reasonable person would expect to have a material effect on the price or value of its securities, for reasons given below
3. On 12<sup>th</sup> September 2018, Memphasys advised the market that Global IVF Key Opinion Leaders (KOLs) had expressed strong interest to conduct clinical studies on the Felix device and that it was in advanced discussions with several IVF KOLs in the United States, Europe and Australia with a view to having these IVF clinics undertake *in-vitro* assessments of the Felix device.

In the past six months, Memphasys has referred in detail to the planned Felix KOL assessment program in three announcements: 3 May "Felix Device Development Update" (presentation slide 11), 19 July "Pre-eminent IVF clinics to conduct in-vitro studies on Felix", and 12 September "Felix Development & Commercialisation Update".

The MOU signed with ANOVA Karolinska is the first of what is expected to be several MOUs. The MOU is not a formal contract for clinical assessment studies, but rather a non-binding agreement outlining the terms and details of an understanding between the parties and each parties' requirements and responsibilities, for ANOVA to participate in undertaking studies and to jointly develop the clinical study protocol with Professor John Aitken at University of Newcastle, the key inventor of the technology.

Memphasys also notes that interest from KOLs to conduct clinical studies on the FELIX device are ongoing and expects to make announcements in the future as more MOUs are signed and as these clinical studies develop.

Memphasys advise that it is not aware of any additional material information that it has not announced to the market, which if known by some in the market, could explain the recent trading in its securities.

4. As the response to Question 2 is 'No', therefore no response is required for Question 4.
5. Memphasys confirms that it is complying with the ASX listing rules and in particular listing rule 3.1.
6. Memphasys confirms that the responses given above have been authorised and prepared under its continuous disclosure policy by an officer of the company with delegated authority from the board to respond to ASX on disclosure matters.

For further information please contact:

Andrew Metcalfe  
Company Secretary  
Memphasys Limited  
+61 3 9867 7199

22 October 2018

**Mr Andrew Metcalfe**

Company Secretary  
Memphasys Limited

By email: [andrew@accosec.com](mailto:andrew@accosec.com)

Dear Mr Metcalfe

**Memphasys Limited ("MEM"): aware query**

ASX Limited ("ASX") refers to the following:

- A. MEM's announcement entitled "First KOL appointed to undertake FELIX assessment" ("Announcement") lodged on the ASX Market Announcements Platform and released at 8:43 am on 22 October 2018 ("Relevant Date"), disclosing that MEM had signed a significant MOU ("Relevant Information"). ASX notes that at the time of writing this letter MEM's securities had risen approximately 46% from a close on Friday of 3.2 cents to a high of 4.9 cents today.
- B. MEM's response to ASX's price query dated 18 October 2018, which disclosed that MEM was aware of nothing other than previously disclosed announcements that could explain the recent trading in its securities.
- C. Listing Rule 3.1, which requires a listed entity to give ASX immediately 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 the concept of “confidentiality”, which is detailed in section 5.8 of Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*. In particular, the Guidance Note states that:

*“Whether information has the quality of being confidential is a question of fact, not one of the intention or desire of the listed entity. Accordingly, even though an entity may consider information to be confidential and its disclosure to be a breach of confidence, if it is in fact disclosed by those who know it, then it ceases to be confidential information for the purposes of this rule.”*

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

1. When did MEM first become aware of the Relevant Information?
2. Does MEM consider the Relevant Information to be information that a reasonable person would expect to have a material effect on the price or value of its securities?
3. If the answer to question 2 is “no”, please advise the basis for that view.
4. If the answer to question 2 is “yes” and MEM first became aware of the Relevant Information before the Relevant Date, did MEM make any announcement prior to the Relevant Date which disclosed the Relevant Information? If so, please provide details. If not, please explain why the Relevant Information was not released to the market at an earlier time, commenting specifically on when you believe MEM was obliged to release the Relevant Information under Listing Rules 3.1 and 3.1A and what steps MEM took to ensure that the Relevant Information was released promptly and without delay.
5. Please confirm that MEM is in compliance with the Listing Rules and, in particular, Listing Rule 3.1.
6. Please confirm that MEM’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 MEM 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, and in accordance with, Listing Rule 18.7. Your response is required as soon as reasonably possible and, in any event, by not later than half an hour before the start of trading (ie before 9.30 a.m. AEDT) on Wednesday, 24 October 2018.

ASX reserves the right to release a copy of this letter and your response on the ASX Market Announcements Platform under Listing Rule 18.7A. Accordingly, your response should be in a form suitable for release to the market.

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

#### **Listing Rules 3.1 and 3.1A**

In responding to this letter, you should have regard to MEM’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 MEM’s obligation to disclose information under Listing Rule 3.1 is not confined to, nor is it necessarily satisfied by, providing the information requested in this letter.

Further, 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, MEM’s obligation is to disclose the information

---

“immediately”. This may require the information to be disclosed before the deadline set out in this letter and may require MEM to request a trading halt immediately.

If you wish to request 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 will require the request for the 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 do not respond to this letter by the deadline set out above or if ASX does not consider your response to be satisfactory, ASX is likely to suspend trading in MEM’s securities under Listing Rule 17.3.

If you have any queries or concerns about any of the above, please contact me immediately.

Yours sincerely

*[Sent electronically without signature]*

---

**Kate Kidson**

Principal Adviser, Listings Compliance (Melbourne)