



Myer Holdings Limited
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By Email

Mr Jon Chow
Adviser, Listings Compliance (Melbourne)
Australian Securities Exchange
Level 4 North Tower, Rialto
525 Collins Street
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26 November 2018

Dear Mr Chow

Myer Holdings Limited (MYR): Aware Query

I refer to your letter of 21 November 2018 in which you asked us to respond to a number of questions and requests for information in relation to matters canvassed in the opening paragraphs A to H of your letter.

By way of background and in order to assist an understanding of the responses to your specific questions, we provide the following:

No guidance to market

Myer has not provided earnings guidance to the market for FY19.

Ceasing providing quarterly sales

On 16 May 2018 Myer advised the market that with effect from the commencement of FY19 it would not report quarterly sales. The market therefore had no expectation that Myer would report those sales for Q1 FY19. We comment later on the disruption to the market caused by the activities of Premier Investments Limited (PMV) (**Premier**) and its Executive Chairman, Mr Solomon Lew.

Myer's announcements of 16 November in response to unlawfully leaked and incomplete information

The announcements which Myer made on 16 November 2018 were due entirely to unlawfully leaked, draft and incomplete financial information, taken from an unapproved internal document, which was printed in the Australian Financial Review (**AFR**) on 16 November. The leaked information related to Myer sales for Q1 FY19. The reported figures were not in fact a complete or accurate record of Myer's total sales for that period. The article then purported to extrapolate from those incomplete reported sales numbers to comment on first-half profits.

The author of the article failed to confirm with Myer prior to publication whether the information was genuine or correct. The author also failed to ask for any comment from Myer for the purposes of the article.

The leak of this confidential information followed an unsuccessful attempt by Premier's lawyers to obtain the Q1 FY19 sales from Myer.

Myer regards NPAT as the most appropriate measure of its financial performance

Myer is of the view and has a policy that NPAT (pre-individually significant items and implementation costs), is the most appropriate measure of its financial performance. This is the financial metric against which Myer reports and against which it assesses its financial performance, and in particular, its financial performance in the context of its continuous disclosure obligations under ASX Listing Rule 3.1.

If ASX disagrees with this view and considers that sales and not NPAT is the most appropriate measure of a listed company's financial performance then we would request ASX issue a guidance note to all ASX listed companies stating the same.

Myer's assessment of its financial performance for Q1 FY19 was an improvement on the corresponding results for Q1 FY18. As noted in the second announcement made at 5:40pm on 16 November 2018, Myer has incurred an NPAT loss (pre-implementation costs and individually significant items) in the first quarter of each of the past five years. In FY19, whilst Myer incurred a loss in the first quarter it was an improvement on Q1 FY18, despite the fall in sales. As noted in the 16 November 2018, Myer reiterates that it has not given earnings guidance and that trading during the second quarter represents the most important contribution to Myer's full year profitability. Note that financial information relating to Q1 FY19 is unaudited.

Quarterly reporting by other retailers

The analysis which we have undertaken shows that approximately 70% of ASX 300 companies with the primary industry classification "Retailing" do not provide quarterly sales reporting. This includes Premier and the major retailers owned by Wesfarmers and Woolworths (Australia).

The trading for Myer shares has occurred in a disrupted market

The market in which the Myer shares have been trading has been particularly disrupted during the past 10 weeks as a consequence of activities by parties other than Myer, its Board or Management. Specifically:

1. Premier has issued two letters to Myer shareholders signed by Mr Solomon Lew which have contained statements which are erroneous, misleading or deceptive and intended to disrupt the trading in Myer shares. These letters were specifically designed to put pressure on Myer to release quarterly sales figures when Myer has made it perfectly clear to the market that it has no intention of doing so. We have sent a letter to the Australian Securities and Investments Commission (**ASIC**) drawing ASIC's attention to the substantial deficiencies in Premier's correspondence. ASIC has advised us that it is considering these matters.
2. There has been considerable media speculation about Myer consistently during this period. It is clear that each of these articles were largely influenced by material published by Premier and/or Mr Solomon Lew.
3. Premier's lawyers have written to the Myer directors and its lawyers threatening legal proceedings and these letters have been released and made available to the media (not by Myer or its directors) to be the subject of further media comment.
4. The reporting by the media of the purported occurrence and contents of discussions between officers of ASX and representatives of Myer on 16 November will have clearly unsettled the market. We are therefore grateful that ASX has confirmed that the statements reported in the media on 16 and 17 November of ASX being "furious" or "annoyed" with Myer are not attributable to or reflective of the views of ASX.

Response to ASX queries

In response to your specific requests for information and questions we advise as follows:

1. Myer does not consider the information released to the market at 5:40pm in the "Response to ASX" announcement to be information that a reasonable person would expect to have a material effect on the price or value of its securities. The circumstances which led to the release of that announcement are detailed in your letter of 21 November 2018 and in our introductory comments above and the reasons for this conclusion are also set out in the background information above.
2. Please see the answer to 1 and the background information above.
3. Not applicable.
4. Not applicable.
5. Myer confirms that it is complying with the ASX Listing Rules and in particular ASX Listing Rule 3.1.
6. This letter and Myer's response to the questions above have been authorised and approved by me as the Chairman of Myer.

Yours sincerely,



Garry Hounsell
Chairman
Myer Holdings Limited

21 November 2018

Mr Jonathan Garland
General Counsel and Company Secretary
Myer Holdings Limited

By email: jonathan.garland@myer.com.au

Dear Mr Garland

Myer Holdings Limited ('MYR'): Aware Query

ASX refers to the following:

- A. MYR's announcement entitled "Response to AFR Article" lodged on the ASX Market Announcements Platform and released at 9.30 AM on 16 November 2018 (the 'Announcement'), disclosing that MYR is in compliance with their continuous disclosure obligation. The Announcement lodged was in relation to an article published on the Australian Financial Review ("AFR") on 16 November 2018 which inaccurately reported MYR's sales performance for Q1 FY19.
- B. MYR went into trading halt prior to the commencement of trading on 16 November 2018 and was lifted by lodging an announcement entitled "Response to the ASX" which was released at 5.40 PM on 16 November 2018. In this announcement, MYR discloses the actual Q1 FY19 sales results.
- C. The Q1 sales results in the last financial year entitled 'Q1 FY2018 Sales' was lodged on the ASX Market Announcements Platform and released at 8.31 AM on 1 November 2017. This announcement was lodged three days after the end of the Q1 period (being the period ending 28 October 2017).
- D. Following the announcement to lift the trading halt on 16 November 2018, MYR's share price has declined by 8.9% from \$0.45 on 15 November 2018 to \$0.41 on the close of trading on 19 November 2018. The share price fell 15% to an intra-day low of \$0.38 on 19 November 2018.
- 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. 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."

Request for Information

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

1. Does MYR consider the information released in the announcement "Response to ASX" 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. If the answer to question 1 is "yes", when did MYR first become aware of the information? Please answer with reference to the similar information that was released to the market three days after the first quarter end as stated in the announcement "Q1 FY2018 Sales".
4. If the answer to question 1 is "yes" and MYR first became aware of the information before the relevant date, did MYR make any announcement prior to the relevant date which disclosed the information? If so, please provide details. If not, please explain why this information was not released to the market at an earlier time, commenting specifically on when you believe MYR was obliged to release the information under Listing Rules 3.1 and 3.1A and what steps MYR took to ensure that the information was released promptly and without delay.
5. Please confirm that MYR is complying with the Listing Rules and, in particular, Listing Rule 3.1.
6. Please confirm that MYR'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 MYR 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 **9.30 AM AEDT Tuesday, 27 November 2018**.

If we do not have your response by then, ASX will have no choice but to consider suspending trading in MYR's securities under Listing Rule 17.3. 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, MYR'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.

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 at ListingsComplianceMelbourne@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.

Listing Rules 3.1 and 3.1A

Listing Rule 3.1 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. Exceptions to this requirement are set out in Listing Rule 3.1A. In responding to this letter, you should have regard to MYR'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 MYR'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.

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 MYR'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 MYR's securities under Listing Rule 17.3.

Enquiries

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

Kind regards

Jon Chow
Adviser, Listings Compliance (Melbourne)