



24 February 2021

Mr. Jon Chow  
Adviser, Listings Compliance (Melbourne)  
ASX Compliance Pty Ltd  
Level 4, North Tower, Rialto Towers  
525 Collins Street  
Melbourne VIC 3000

By email

Dear Mr. Chow

**Re: Candy Club Holdings Limited ('CLB'): Trading during closed period (Appendix 3Y) – Query**

We refer to ASX's letter of 23 February 2021 providing questions and requests for information in relation to the above matter.

We now write to provide CLB's response to the questions and requests for information, adopting the same numbering and defined terms as contained in your letter:

***1. Please confirm when the Updated Trading Policy came into effect and which of Mr Baillieu's on-market purchases referred to in paragraphs B, C and D were covered by the Trading Policy and which were covered by the Updated Trading Policy.***

The Updated Trading Policy came into effect on 18 February 2021.

The Board of CLB approved the Updated Trading Policy to be adopted with effect from 18 February 2021.

Mr Baillieu's on-market purchases referred to in the Appendix 3Y noted in paragraphs B, C and D (partially) were covered by the Trading Policy.

Part of Mr Baillieu's on-market purchases referred to in the Appendix 3Y noted in paragraph D was covered by the Updated Trading Policy.

***2. Please provide copies of the prior written clearances referred to in paragraph E (not for release to the market).***

A Board meeting was held on 13 January 2021 where the Board provided its authorisation for the intended share trading by Mr Baillieu following the future lodgement and release to market of CLB's Appendix 4C and quarterly activities report, subject to there not being any inside price sensitive information that Mr Baillieu was aware of.

In addition, the Board held a call prior to its AGM on 28 January 2021 where Mr Baillieu's proposed trading in February was again discussed and noted.

It is noted that Mr Baillieu advised the Managing Director and the Company Secretaries in writing of his specific intention to trade on 2 February 2021 and confirmed that he was not aware of any material price sensitive information. It was confirmed by the Managing Director in writing prior to trading occurring on 2 February 2021 that there was no price sensitive information that was not disclosed to market to preclude him from trading. This

confirmation from the Managing Director was considered as written clearance to trade at 4:08 pm and Mr Baillieu shortly after at 4:11 pm executing a trade for 100,000 CLB prior to market close.

Non-Executive Director, Andrew Clark provided verbal approval directly to Mr Baillieu prior to the trading on 2 February 2021 and Non-Executive Director, Kan Tang, provided written approval directly to Mr Baillieu via written message on the evening of 2 February 2021.

The Company Secretary, Justyn Stedwell, sent a further email to the Board in the early morning of 3 February 2021 asking the Board to respond in writing to approve the trading by Mr Baillieu, as he was not aware of all the approval communication on 2 February 2021. Mr Baillieu responded to the Secretary and all directors confirming that he had already received written approval from the Managing Director, Keith Cohn and Non-Executive Director, Kan Tang, and verbal approval from Non-Executive Director, Andrew Clark (per 2 February 2021 approvals noted above). This response was considered confirmation of the prior days approval which was acknowledged as received by the Secretary and no further authorisation was considered necessary until 18 February 2021.

On 18 February 2021 all directors approved Mr Baillieu's trading under the Updated Trading Policy. Trading was considered to be approved on 18 February 2021 upon receipt of written approval from the Managing Director, Keith Cohn, and Non-Executive Director, Andrew Clark (being the majority of the Board). Non Executive Director Kan Tang provided his approval on the evening of 18 February 2021.

Please find enclosed copies of written confirmation from Managing Director and Non-Executive Director provided on 2 February 2021, 3 February 2021 email to the Board from the Secretary and Mr Baillieu's response confirming approval of all the directors, and confirmations from directors and Secretary on 18 February 2021 respectively.

**3. Please comment on ASX's observations about the application of CLB's Trading Policy and Updated Trading Policy to Mr Baillieu's purchases of CLB securities.**

CLB notes and understands ASX's observations regarding the matter, however it does consider that it is intended that that the Board has a discretion under the Trading Policy and the Updated Trading Policy to approve Mr Baillieu's purchases of CLB securities.

It is noted that ASX Guidance Note 27 notes that it is acceptable for a trading policy to include a "catch all" discretionary power for a senior officer of a company to determine that there are exceptional circumstances that warrant the granting of approval of key management personnel to trade during a prohibited period.

It was considered that it was the intention of the CLB trading policy to provide this discretionary power to authorise trading during a prohibited period by the Board or a senior officer of the Company.

Accordingly, Mr Baillieu discussed the intended trading with fellow Board members on several occasions in January 2021, obtained prior Board approval for trading at the most recent Board meeting prior to such trading occurring (subject to there being no price sensitive information available) and in February prior to undertaking any trading Mr Baillieu first obtained written approval and confirmation from the Managing Director that there was no price sensitive information not disclosed to market and obtained prior verbal approval from Non-Executive Director, Andrew Clark.

It is noted that under the Trading Policy it was intended that proposed dealings during a prohibited period could be approved either under clause 5.5 (containing specific circumstances for approval) or clause 5.8 (containing general discretionary approval power).

Clause 5.5 of the Trading Policy provided examples of circumstances where clearance is to be sought and it is noted that such listed examples were not intended by the Board to be an exhaustive list of circumstances where trading during a prohibited period can be approved. The Board acknowledges that the specific circumstances relating to its approval of Mr Baillieu's trading is not explicitly stated within the Trading Policy. The explicit discretionary powers of the Board to approve a sale or disposal in exceptional circumstances during a prohibited period specifically noted in the Trading Policy was considered to apply to trading in general at the time.

Clause 5.8 of the Trading Policy provided the Chairman must discuss the proposed dealing with and obtain approval from the Managing Director prior to trading company shares at any time, and it was understood that

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such provision was also intended to provide a catch-all discretionary power for approval to trade under any other exceptional circumstances.

CLB considered that exceptional circumstances applied as Mr Baillieu advised the Board of his proposed trading in CLB securities during January 2021 (outside a prohibited period). Mr Baillieu and the Board agreed for him not to conduct trading in CLB shares during the period of January 2021 pending the release of the quarterly reports at end of January 2021. It was considered that the quarterly reports contain a detailed overview of CLB's operations for the quarters of the previous financial year and its financial operating results and hence it was considered appropriate to not trade during the period prior to the release of such reports.

Given the information contained in the quarterly reports relating to full year cash flow and detailed quarterly results commentary, the Board considered the preliminary final report would not contain material price sensitive information, and was of the view it would contain information that is in line with market expectations and thus would not result in any material price change on release.

Given Mr Baillieu was restricted during a non-prohibited period under the trading policy, it was considered reasonable that he be permitted to trade during a prohibited period where there was no price sensitive information that had not been announced. Hence it was considered that exceptional circumstances applied to justify exercise of a discretion to allow trading during such prohibited period.

**4. Please explain the purpose of the amendments to the Trading Policy contained in the Updated Trading Policy.**

To remove any doubt and provide greater clarity regarding the Board's ability to exercise discretion to allow trading in CLB's shares in certain circumstances, the Board adopted the Updated Trading Policy.

In addition, the Updated Trading Policy provides greater prohibited periods than the previous Trading Policy. Whilst it provides for a reduction of prohibited periods from 30 to 14 days prior to release of annual and half-year financial reports, the Updated Trading Policy also includes as restricted periods the 14-day periods immediately prior to the release of the 4 x quarterly reports during the year. This provides a further 16 days (approx.) of prohibited periods throughout the year.

In light of the agreed cessation of trading prior to the release of the quarterly reports in January 2021, the Board considered that it was appropriate to update its trading policy to give effect to this process going forward.

**5. Why did CLB revise its Trading Policy and release the Updated Trading Policy shortly prior to the due date of 28 February 2021 for release by CLB of its appendix 4E preliminary final report for the year ended 31 December 2020?**

The reasons for the adoption of the Updated Trading Policy are specified in the response to question 4 above.

There was no connection or relationship between the adoption and release of the Updated Trading Policy and the timing of the release of the Appendix 4E preliminary final report for the year ended 31 December 2020.

The Updated Trading Policy was promptly released to market following formal adoption of the policy by the Board.

**6. If CLB agrees with ASX's observation that it did not correctly apply the Trading Policy to Mr Baillieu's on-market purchases of CLB securities, why then did the CLB Board approve the dealings? If CLB considers it did correctly apply the Trading Policy to Mr Baillieu's on-market purchases of CLB securities, what is the basis for CLB's view? In your answer, please explain what exceptional circumstances the Board considered were a justification for its approval.**

The Board acknowledges that the specific circumstances relating to its approval of Mr Baillieu's trading is not explicitly stated within the Trading Policy. The Board considered trading was approved in accordance with the discretionary powers under the Trading Policy.

The exceptional circumstances are detailed in the response at question 3 above.

**7. Does CLB consider it correctly applied the Updated Trading Policy to Mr Baillieu's on-market purchases of CLB securities? What is the basis for CLB's view? In your answer, please explain what exceptional circumstances the Board considered were a justification for its approval.**

Yes, CLB considers it correctly applied the Updated Trading Policy to Mr Baillieu's on market purchases of CLB's securities.

The same exceptional circumstances applied for trading as are referred to in response to question 3 above.

**8. If CLB considers it did not correctly apply the Updated Trading Policy to Mr Baillieu's on-market purchases of CLB securities, why then did the CLB Board approve the dealings?**

Not applicable

**9. If CLB agrees with ASX's observation that it did not correctly apply the Trading Policy to Mr Baillieu's on-market purchases of CLB securities, what remedial action is the CLB Board proposing to take in relation to that failure?**

The reasons in which trading was considered permissible by the Board are outlined in detail above. The Board has or will implement the below actions:

- CLB notes that it has adopted the Updated Trading Policy to remove any doubt and provide greater clarity around the approval processes and exercise of discretionary approval powers going forward.
- CLB will ensure all future trading complies explicitly with the Updated Trading Policy to ensure there can be no doubts in regard to future policy approvals or compliance to ensure this occurs.
- The Board notes that prior approvals granted on 2 February 2021 and 18 February 2021 have not included a detailed written summary of the exceptional circumstances (even though such circumstances were known and understood by the Board from prior discussions) and were more focused on confirming trading was being conducted while not in possession of any inside information. It is noted that the Secretary circulated an email more fully summarising the exceptional circumstances that the Board had considered when approving prior trades. This email was circulated on 18 February 2021 to note these circumstances in writing as the full details had previously only been fully expressed in various discussions. Such detail will be included in future approval confirmations.

**10. If CLB considers it did not correctly apply the Updated Trading Policy to Mr Baillieu's on-market purchases of CLB securities, what remedial action is the CLB Board proposing to take in relation to that failure?**

Not applicable

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

Confirmed.

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

CLB's responses have been approved by its Board.

At a Board meeting held today, the Board also confirmed and ratified its approval of Mr Baillieu's trading in February 2021 and confirmed again that all trading was conducted with the prior knowledge and consent of the Board.

Yours faithfully

Justyn Stedwell  
**Company Secretary**

On behalf of the Board of Directors  
Candy Club Holdings Limited

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23 February 2021

Mr Justyn Stedwell  
Company Secretary  
Candy Club Holdings Limited  
Suite 103, Level 1, 2 Queens Street  
Melbourne VIC 3000

By email:

Dear Mr Stedwell

**Candy Club Holdings Limited ('CLB'): Trading during closed period (Appendix 3Y) – Query**

ASX refers to the following:

- A. The Appendices 3Y Change in Director's Interest Notices lodged by CLB on the ASX Market Announcements Platform ('MAP') on 9 February 2021, 16 February 2021 and 22 February 2021 (the 'Appendices 3Y').
- B. The Appendix 3Y lodged on 9 February 2021 disclosed among other dealings, the on-market purchase of 1,660,658 shares in CLB by Mr James Baillieu, Chairman of CLB from 2 to 9 February 2021.
- C. The Appendix 3Y lodged on 16 February 2021 disclosed the on-market purchase of 3,513,228 shares in CLB by Mr Baillieu from 9 to 15 February 2021.
- D. The Appendix 3Y lodged on 22 February 2021 disclosed the on-market purchase of 2,880,000 shares in CLB by Mr Baillieu from 16 to 19 February 2021.
- E. In each case, the Appendix 3Y at part 3 confirmed the on-market purchases occurred during a closed period which is defined in listing rule 19.12 to mean:

*closed period*                      *fixed periods specified in the trading policy when an entity's key management personnel are prohibited from trading in the entity's securities.*

and that to allow trading to proceed, confirmed the dealings referred to in paragraphs B and C were cleared with prior written approval given on 2 February 2021 and for dealings referred to in paragraph D, prior written approvals were given on 2 February 2021 and 18 February 2021.

- F. CLB's securities trading policy lodged on MAP on 18 February 2019 (the 'Trading Policy') which states, among other things, the following:

*5.2 Directors, officers and employees should never communicate any Inside Information to any other person, including family members and associates. In addition, directors, officers and employees are prohibited from trading in the Company's shares during:*

*(a) Each period of 30 days immediately prior to the intended date upon which the Company releases its annual financial statements to the ASX;*

*(b) Each period of 30 days immediately prior to the intended date upon which the Company releases its half year financial statements to the ASX; and*

*(c) Each period of 24 hours immediately after the date upon which the Company issues a price-sensitive ASX announcement.*

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5.5 An officer or employee who is not in possession of Inside Information may be given clearance by the Chairman (in the case of the Chairman all of the other members of the Board) to sell or otherwise dispose of Company securities during a prohibited trading period in the following circumstances:

- (a) Where that officer or employee faces financial hardship, to be approved and determined by the Board;
- (b) Where the person is required to sell their securities by court order, court enforceable undertaking or other requirement by law; or
- (c) Where such other exceptional circumstances exist as approved and determined by the Chairman (or in the case of the Chairman, the Board).

5.6 To obtain clearance for trading in the above circumstances, the officer or employee in question must submit an application in writing to the Chairman (or in the case of the Chairman, an application in writing to the Board), setting out reasons for requesting the approval and including supporting documentation. Any exemption, if granted will be in writing and is to contain a specified time period during which the trading of the securities can be made.

G. CLB's updated trading policy entitled 'Securities Trading Policy' lodged on MAP on 18 February 2021 ('Updated Trading Policy') with a revision date referred to of 17 February 2021. The Updated Trading Policy shortens the periods that directors, officers and employees are prohibited from trading from 30 days immediately prior to the intended release of half and full year financial results to 14 days prior to the intended release. The Updated Trading Policy also replaces in substance previous clauses 5.5 and 5.6 with new Clauses 5.6 and 5.7 which state:

5.6 .. in exceptional circumstances, the Board has discretion to, and may, approve dealings in the Company securities during a Prohibited Trading Period, or other dealings that would otherwise be prohibited by this policy. Any approval given under this clause 5.6 must be provided by electronic delivery via email or message or by Board resolution.

5.7 What constitutes "exceptional circumstances" will be assessed on a case-by-case basis within the absolute discretion of the Board and may include, without limitation:

- (a) financial hardship, to be approved and determined by the Board; or
- (b) where the person is required to sell their securities by court order, court enforceable undertaking or other requirement by law.

#### **ASX's Observations**

ASX notes that clause 5.5 of the Trading Policy states that clearance by the Board is required when the Chairman sells or disposes of securities during a prohibited trading period based on certain circumstances. It makes no reference to purchasing or acquiring securities during a prohibited period. It appears to ASX that in so far as dealings by Mr Baillieu were covered by the Trading Policy, that any clearance given by Board was not given in accordance with the Trading Policy.

ASX notes that while clause 5.6 of the Updated Trading Policy widens the scope of clearance the Board may give to apply to 'dealing' by the Chairman (and perhaps include purchase or acquisition of securities during a prohibited period), it is not apparent what 'exceptional circumstance' would justify the Board's approval of Mr Baillieu's on-market purchases.

#### **Questions and Request for information**

Having regard to the above, and pursuant to Listing Rule 18.7, ASX asks CLB to respond separately to each of the following questions and requests for information.

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1. Please confirm when the Updated Trading Policy came into effect and which of Mr Baillieu's on-market purchases referred to in paragraphs B, C and D were covered by the Trading Policy and which were covered by the Updated Trading Policy.
  2. Please provide copies of the prior written clearances referred to in paragraph E (not for release to the market).
  3. Please comment on ASX's observations about the application of CLB's Trading Policy and Updated Trading Policy to Mr Baillieu's purchases of CLB securities.
  4. Please explain the purpose of the amendments to the Trading Policy contained in the Updated Trading Policy.
  5. Why did CLB revise its Trading Policy and release the Updated Trading Policy shortly prior to the due date of 28 February 2021 for release by CLB of its appendix 4E preliminary final report for the year ended 31 December 2020?
  6. If CLB agrees with ASX's observation that it did not correctly apply the Trading Policy to Mr Baillieu's on-market purchases of CLB securities, why then did the CLB Board approve the dealings? If CLB considers it did correctly apply the Trading Policy to Mr Baillieu's on-market purchases of CLB securities, what is the basis for CLB's view? In your answer, please explain what exceptional circumstances the Board considered were a justification for its approval.
  7. Does CLB consider it correctly applied the Updated Trading Policy to Mr Baillieu's on-market purchases of CLB securities? What is the basis for CLB's view? In your answer, please explain what exceptional circumstances the Board considered were a justification for its approval.
  8. If CLB considers it did not correctly apply the Updated Trading Policy to Mr Baillieu's on-market purchases of CLB securities, why then did the CLB Board approve the dealings?
  9. If CLB agrees with ASX's observation that it did not correctly apply the Trading Policy to Mr Baillieu's on-market purchases of CLB securities, what remedial action is the CLB Board proposing to take in relation to that failure?
  10. If CLB considers it did not correctly apply the Updated Trading Policy to Mr Baillieu's on-market purchases of CLB securities, what remedial action is the CLB Board proposing to take in relation to that failure?
  11. Please confirm that CLB is complying with the Listing Rules and, in particular, Listing Rule 3.1.
  12. Please confirm that CLB'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 CLB 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 AEDT Thursday, 25 February 2021**. You should note that if the information within the exceptions mentioned in Listing Rule 3.1A, CLB'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 CLB to request a trading halt immediately.

Your response should be sent to me by e-mail at [ListingsComplianceMelbourne@asx.com.au](mailto: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.

#### **Suspension**

If you are unable to respond to this letter by the time specified above, ASX will likely suspend trading in CLB's securities under Listing Rule 17.3.



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

In responding to this letter, you should have regard to CLB'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 CLB'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**

We reserve the right to release a copy 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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**Jon Chow**  
Adviser, Listings Compliance (Melbourne)