

L14, 330 Collins Street Melbourne VIC 3000 ABN 71 125 264 575

12 March 2021

Mr Dean Litis Principal Adviser, Listings Compliance (Melbourne) ASX Limited Level 4, North Tower, Rialto, 525 Collins St, Melbourne VIC 3000

Dear Dean

# Response to ASX Query Letter – Early release of information

I refer to your letter dated 1 March 2021 in relation to the early release of information query (the "**Query Letter**") relating to Dotz Nano Limited ("**Dotz**" or the "**Company**").

Capitalised terms used in this letter have the same meaning given to them in the Query Letter.

The Company provides the following responses to the questions in the Query Letter.

- 1. Question 1: It is acknowledged that certain information presented by the Company's Chairman and Interim CEO Mr Brookes during the Webinar, relating to the Company and its operations, had not been disclosed to the market by the Company at the time of the Webinar. Mr Brookes made statements during the Webinar based on information provided to him by other members of the Company's management and members of the Company's technical teams in the weeks prior to the Webinar, or his understanding of such information. Due to a breakdown in the Company's internal communication processes, some of the statements made did not accurately reflect the position as at the time of the Webinar. Whilst the Company was suspended from trading at the time, this did not relieve the Company of its disclosure obligations and accordingly the Company undertook a review of its continuous disclosure framework to minimise the risk of any future issues arising (see response to Questions 3 and 6 below). At the request of the ASX, the Company released the Announcement and Retraction Announcement on 1 March 2021 to ensure that the market is fully informed.
- 2. <u>Question 2(a)</u>: The error arose because of a one-day delay (due to the time differences between Israel and Australia) and a breakdown in communication within the Company. The Board was informed on 3 December 2020 (Sydney time) that the application for a CE mark was ready to submit and that the submission would be made on 4 December 2020. However, just prior to the submission, the Company's technical team became aware that the submission would be required to name a 'CE approved' manufacturer (noting this was the first CE mark submission for an in vitro diagnostic device by the Company), which then delayed the submission until 17 December 2020 as the Company arranged the appointment of Systaaq Diagnostic Products to satisfy this requirement. When Mr Brookes gave his presentation on 4 December 2020, despite being the the Company's Chairman and Interim CEO, he had not yet been made aware that the Company needed to delay the submission, as the technical team of the Company only became aware of the CE requirement in the hours before his presentation.

- 3. <u>Question 2(b):</u> The Company's technical team working on the FDA Emergency Use Authorisation submission had initially advised the Board that the Test Kit was going to be submitted for FDA approval in late November / early December. On 3 December 2020, the team provided a further update on the status of the regulatory submissions, which Mr Brookes interpreted as indicating that both the CE mark submission and the FDA Emergency Use Authorisation submission would be made on 4 December 2020. However, the team was only referring to the CE mark application which the Company intended to submit on 4 December 2020. The misunderstanding arose due to a breakdown in communication within the Company, and at the time of the Webinar, Mr Brookes was under the impression that the FDA approval submission had been made.
- 4. <u>Question 2(c)</u>: As previously disclosed to the ASX on 21 July 2020, the Company had entered into a pilot agreement with Zohar Dalia Co-operative Agricultural Association. Prior to the Webinar, there had been various internal discussions as to the status of the arrangements with Zohar Dalia, and the Company's technical team had advised the Board in November 2020 that once Zohar Dalia launched their Corona X product, which was expected to occur prior to 25 December 2020, the parties would progress to a definitive agreement. It was in this context that Mr Brookes made the statements in the Webinar (including that the parties had "struck a deal"), believing that the Company and Zohar Dalia had agreed the key principles to a definitive agreement and that the parties simply had to prepare a written agreement to reflect this. However, at the time of the Webinar, no definitive agreement had been agreed between the Company and Zohar Dalia.
- 5. <u>Question 3</u>: The Company has historically had a continuous disclosure policy in place to ensure compliance with Listing Rule 15.7. In response to the queries raised by the ASX since the Company's securities have been suspended from quotation (and in particular, in relation to the Webinar), the Company undertook a review of its continuous disclosure policy and adopted from 31 December 2020 a new and materially more comprehensive continuous disclosure policy which specifically addresses, amongst other things, requirements to ensure compliance with Listing Rule 15.7, including:
  - (a) a requirement not to discuss price sensitive information unless that particular information has been formally disclosed to the market via an announcement;
  - (b) disclosure obligations in connection with investor or analyst briefings; and
  - (c) disclosure obligations while the Company's securities are subject to a trading halt or suspension.

As part of its review of its continuous disclosure arrangements, the Company has taken steps, including weekly calls between the Board and management (which includes the Company's Chairman and Interim CEO Mr Brookes), to ensure:

- (a) management provides timely and fulsome updates to the Board (including to Mr Brookes); and
- (b) management (including Mr Brookes) is made aware of all external disclosures / presentations so as to ensure the accuracy of the information provided and to determine whether any disclosures to the market are required.

The Company has provided a copy of the updated continuous disclosure policy to each of its directors and key management personnel (which includes Mr Brookes) and required them to sign a confirmation that they have reviewed, understood, and undertake to comply with, the updated policy.

In addition, in response to the queries raised by the ASX since the Company's securities have been suspended from quotation:

- (a) the Board has reviewed the Listing Rules as they relate to such matters;
- (b) the Board and certain key management have discussed the key queries and concerns raised by the ASX with a law firm, with a view as to how such matters should be handled by the Company in the future in light of the Listing Rule requirements;
- (c) each of the Company's directors and its key management have recently been provided with information from the law firm on certain Listing Rule obligations of the Company, including its continuous disclosure obligations under Listing Rule 3.1 and the requirements under Listing Rule 15.7; and
- (d) the Company intends to commence a training program in March 2021 with the law firm for its directors and key management in order to further strengthen the Company's continuous disclosure processes, compliance with the Listing Rules and general corporate governance.
- 6. <u>Question 4</u>: The Company considers that its updated arrangements for compliance with Listing Rule 15.7 are adequate. The Company and its personnel will continue to closely monitor the dissemination of price sensitive information in the future.
- 7. <u>Question 5</u>: As outlined in response to Question 3 above:
  - (a) the Company's new continuous disclosure policy outlines the arrangements in place to ensure compliance with its continuous disclosure obligations. This policy is required to be reviewed annually by the Board to ensure it is operating effectively and to determine whether any amendments are required;
  - (b) the Company has taken steps, including weekly calls between the Board and management (which includes the Company's Chairman and Interim CEO Mr Brookes), to ensure:
    - (i) management provides timely and fulsome updates to the Board (including to Brookes); and
    - (ii) management (including Mr Brookes) is made aware of all external disclosures / presentations so as to ensure the accuracy of the information provided and to determine whether any disclosures to the market are required;
  - (c) the Board has reviewed the Listing Rules as they relate to the various queries raised by the ASX since the Company's securities have been suspended from quotation;
  - (d) the Board and certain key management have discussed the key queries and concerns raised by the ASX since the Company's securities have been

suspended from quotation with a law firm, with a view as to how such matters should be handled by the Company in the future in light of the Listing Rule requirements;

- (e) each of the Company's directors and its key management were recently provided with information from the law firm on certain Listing Rule obligations of the Company, including its continuous disclosure obligations under Listing Rule 3.1 and the requirements under Listing Rule 15.7; and
- (f) the Company intends to commence a training program in March 2021 with a law firm for its directors and key management in order to further strengthen the Company's continuous disclosure processes, compliance with the Listing Rules and general corporate governance.

In addition, the Company has engaged a law firm to provide additional assistance to the Company with its dealings with the ASX and compliance with certain Listing Rule obligations, and intends to continue to engage this law firm for key ASX matters (including to review the Company's draft price-sensitive announcements at least during the period that the Company implements its new continuous disclosure policy).

- Question 6: The Company considers that its updated arrangements and the 8. additional steps that the Company has taken for compliance with its continuous disclosure obligations as outlined in response to Question 3 are adequate. In summary, following its review of its continuous disclosure arrangements, the Company has overhauled its existing continuous disclosure arrangements and taken steps to ensure that its Board and key management (which includes the Company's Chairman and Interim CEO Mr Brookes) are fully aware of and comply with the Company's continuous disclosure obligations. Without limitation, the Company's Board and key management have been made fully aware of the specific concerns and examples raised by the ASX in relation to the Company's disclosure practices and obligations (including as set out in the two query letters from the ASX to the Company dated 1 March 2021 (and were provided with copies of these letters)), and have reviewed these matters with the assistance of a law firm to ensure future compliance. The Company and its personnel will continue to closely monitor the Company's compliance with its continuous disclosure obligations.
- 9. <u>Question 7</u>: The Company considers that it has adequate resources, systems and controls to ensure that it complies with its obligations under the Listing Rules. In response to the queries raised by the ASX since the Company's securities have been suspended from quotation, the Company has completed a review of its resources, systems and controls to ensure that it complies with its obligations under the Listing Rules. This included the Company (with the assistance of a law firm) reviewing:
  - the Company's continuous disclosure policy and other arrangements to ensure compliance with the Company's continuous disclosure obligations; and
  - (b) the concerns and examples raised by the ASX in relation to the Company's disclosure practices and obligations (including as set out in the two query letters from the ASX to the Company dated 1 March 2021).

As a result of this review, and as outlined in response to Questions 3 and 6, the Company has made changes to improve its compliance with its ASX disclosure requirements and to specifically address the concerns and examples raised by the ASX in relation to the Company's disclosure practices and obligations, including:

- (a) adopting a new and materially more comprehensive continuous disclosure policy;
- (b) introducing mandatory weekly calls between the Board and management (which includes the Company's Chairman and Interim CEO Mr Brookes);
- (c) providing additional information to its directors and key management on certain Listing Rule obligations of the Company;
- (d) engaging a new law firm to assist with its compliance requirements;
- (e) reviewing its disclosure practices for future announcements by the Company concerning material customer agreements and orders, including ensuring that the Company discloses the following information:
  - the name of the relevant counterparty (unless the ASX agrees otherwise in very limited circumstances where the counterparty has strong and legitimate reasons for not wanting to be named in a market announcement, such as some entities in the defence or security industries);
  - (ii) any material conditions to the agreement and/or orders; and
  - (iii) any material change or development in respect of the agreement and/or orders.
- 10. <u>Question 8</u>: The Company confirms that it is complying with the Listing Rules and, in particular, Listing Rule 3.1.
- 11. <u>Question 9</u>: The Company's response set out above has been authorised and approved in accordance with its published continuous disclosure policy.

Yours sincerely

Ian Pamensky Company Secretary Dotz Nano Limited



1 March 2021

Reference: 31134

Mr Ian Pamensky Company Secretary Dotz Nano Limited Level 14 330 Collins St Melbourne VIC 3000

By email

Dear Mr Pamensky

### Dotz Nano Limited ('DTZ'): Early release of information query

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

A. DTZ's request for a trading halt on 18 November 2020 which was subsequently granted by ASX at 9:25am AEDT on that day. The trading halt request included the following statement:

'The trading halt is necessary as DTZ expects to make an announcement to the ASX in connection with the completion of a material acquisition.'

B. The suspension of DTZ's securities from official quotation, at the request of DTZ, on 20 November 2020. The voluntary suspension request included the following statement:

'Further to the Company's request for voluntary trading halt on Wednesday, 18 November 2020, the Company is not in a position to make an announcement at this time, and requests a voluntary suspension, pending an announcement on the completion of a material acquisition ("Material Acquisition") as referenced in the Company's trading halt request.'

C. DTZ's announcement titled 'Acquisition Update' released on the ASX Market Announcements Platform ('MAP') on 30 November 2020 which included the following statement:

'Dotz remains in discussions with the ASX in relation to an upcoming announcement and hopes to resolve all outstanding matters to the ASX's satisfaction as soon as possible.'

D. The webinar conducted by Sparks+ Singapore on 4 December 2020 with Mr Bernie Brookes, DTZ's Chairman and Acting CEO ('Webinar').

ASX notes that Mr Brookes made a number of statements during the Webinar in relation to a SARS-CoV-2 diagnostic kit ('Test Kit') and a 'deal' with Zohar Dalia Co-operative Agricultural Association (see paragraph F below), and that this information had not previously been announced to the market.

- E. DTZ's announcement titled 'Dotz Nano Business and Trading Update' released on MAP on 1 March 2021 (the 'Announcement') which included the following disclosures:
  - (i) 'Dotz requested a trading halt on 18 November 2020 in relation to a proposed transaction with USbased Caerus Therapeutics Inc. ("Caerus"), a diagnostic research company that identifies and develops new therapeutic biomarkers and antibodies to treat a broad spectrum of human diseases.'
  - (ii) 'Dotz approached and began working with Caerus in mid-September 2020 (ultimately entering into a Services and Research Agreement on 19 November 2020 (the "Caerus Service Agreement")) to facilitate the development and commercialisation of the Company's Rapid SARS-CoV-2 Diagnostic kit, now incorporating RT-LAMP (the "Dotz Test Kit").

As a result of initial work undertaken by Caerus, Dotz had proposed to enter into an Asset Purchase Agreement (the "Caerus Asset Purchase Agreement") ... the Caerus Asset Purchase Agreement was terminated on 2 December 2020. As a result, Dotz agreed to amend the Caerus Service Agreement on 28 February 2021 (the "Updated Caerus Service Agreement") to ensure ongoing protection of its intellectual property rights in the Dotz Test Kit and to remunerate and incentivise Caerus as Dotz continues to pursue the development and commercialisation of the Dotz Test Kit with the assistance of Caerus ...'

- (iii) A section titled 'Update on development and commercialisation of the Dotz Test Kits' which incorporated six sub-sections covering CE mark authorisation, the planned FDA Emergency Use Authorisation Application, manufacturing, business development, pricing and budgeted revenue, and material risks.
- F. DTZ's announcement titled 'Retraction and clarification of statements' released on MAP on 1 March 2021 (the 'Retraction Announcement') which contained retractions and clarifications in relation to the following statements made by Mr Brookes during the Webinar:
  - (i) That the Test Kit had been submitted for CE mark and FDA approval today (i.e. on 4 December 2020).
  - (ii) That DTZ understood that the CE mark and FDA approvals were 'going to take only 10 days because we understand that it will be approved fairly quickly.'
  - (iii) That the Test Kit is being trialled with the Sheba Medical Group in Israel, Turkey and the Middle East.
  - (iv) That the Test Kit has a 99% success rate / 99% accuracy.
  - (v) That about 700 tests can be done in about 17 minutes.
  - (vi) That the Test Kit is 'a saliva test that simply scrapes the tongue'.
  - (vii) That the Test Kit had also been developed in conjunction with a company in South America that specialises in DNA.
  - (viii) That DTZ has also been involved with Washington University and a number of other businesses in relation to the Test Kit.
  - (ix) That DTZ has lined up three manufacturing facilities for the Test Kit with the first in the United States, the second in Canada, and the third in Vietnam.
  - (x) That there are already a number of countries lined up to take the Test Kit.
  - (xi) That, at this stage, there are a large number of international governments that are quite interested in taking the Test Kit.
  - (xii) That DTZ expects significant orders for the Test Kit.
  - (xiii) That DTZ is expecting governments to order multi-millions of Test Kits.
  - (xiv) That a government could take a couple of hundred million of the Test Kits.
  - (xv) That the cost of each Test Kit is about \$5-\$6.
  - (xvi) That the profit margins for the Test Kit would be 60%-70%.
  - (xvii) That DTZ would pay an honorarium or fee per product sold payments [to Caerus] for the Test Kits.
  - (xviii) That DTZ had 'struck a deal' with Zohar Dalia Co-operative Agricultural Association which it would announce before Christmas.

G. Listing Rule 3.1 which states:

'Once an entity is or becomes aware of 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, the entity must immediately tell ASX that information.'

H. Listing Rule 15.7 which states:

'An entity must not release information that is for release to the market to any person until it has given the information to ASX and has received an acknowledgment that ASX has released information to the market.'

I. DTZ's Continuous Disclosure Policy contained in Schedule 7 of DTZ's Corporate Governance Plan (published in December 2016) which was in place at the time of the Webinar, and included the following statements:

'Price sensitive information is publicly released through ASX before it is disclosed to shareholders and market participants. Distribution of other information to shareholders and market participants is also managed through disclosure to the ASX.

All announcements (and media releases) must be:

- a) prepared in compliance with ASX Listing Rules continuous disclosure requirements;
- b) factual and not omit material information; and
- c) expressed in a clear and objective manner to allow investors to assess the impact of the information when making investment decisions.'
- J. Section 7.7 of Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 3.1B* titled 'Analyst and investor briefings', which includes the following guidance:

'An entity should not be disclosing at an analyst or investor briefing any market sensitive information, unless and until it has first been disclosed to ASX under Listing Rules 3.1 and 15.7 ...

[A]n entity should pay particular heed to the guidance in principles 8 and 9 in ASIC Regulatory Guide 62 ...'

K. ASIC's Report 393 titled 'Handling of confidential information: Briefings and unannounced corporate transactions' dated May 2014 (available via <u>https://asic.gov.au/regulatory-resources/find-adocument/reports/rep-393-handling-of-confidential-information-briefings-and-unannouncedcorporate-transactions/</u>)

### ASX notes that:

- Given the Webinar was conducted prior to the Announcement being released on MAP, it appears that DTZ has breached Listing Rule 15.7 and may have breached Listing Rule 3.1.
- The Retraction Announcement retracted and clarified a number of statements made at the Webinar.

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

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

1. Please explain why Mr Brookes made statements during the Webinar which included certain information that was subsequently disclosed in the Announcement and retracted and clarified in the Retraction Announcement.

- 2. Please explain why Mr Brookes in his role as Chairman and Acting CEO of DTZ:
  - a) was not aware of the delay in the submission of the CE mark application at the time of the Webinar;
  - b) made the statements regarding the FDA Emergency Use Authorisation submission during the Webinar; and
  - c) stated that DTZ had 'struck a deal' with Zohar Dalia Co-operative Agricultural Association.
- 3. What arrangements does DTZ have in place to ensure compliance with Listing Rule 15.7?
- 4. If the current arrangements are inadequate or not being enforced, what additional steps does DTZ intend to take to ensure compliance with Listing Rule 15.7?
- 5. What arrangements does DTZ have in place to ensure compliance with its continuous disclosure obligations?
- 6. If the current arrangements are inadequate or not being enforced, what additional steps does DTZ intend to take to ensure compliance with its continuous disclosure obligations?
- 7. In addition to the abovementioned possible listing rule breaches, ASX notes that DTZ breached Listing Rule 10.11 on 31 December 2019.<sup>1</sup> In light of this, does DTZ consider that it has adequate resources, systems and controls to comply with its obligations under the Listing Rules? If the answer to this question is:
  - d) 'yes', please explain why DTZ considers that its resources, systems and controls are adequate.
  - e) 'no', what steps does DTZ intend to take to ensure that it has adequate resources, systems and controls to comply with its obligations under the Listing Rules?
- 8. Please confirm that DTZ is complying with the Listing Rules and, in particular, Listing Rule 3.1.
- 9. Please confirm that DTZ's responses to the above have been authorised and approved under its published continuous disclosure policy or otherwise by its board or an officer of DTZ 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 **9:30am AEDT** on **Monday, 8 March 2021**. 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, DTZ'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.

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 DTZ'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 DTZ's obligation to

<sup>&</sup>lt;sup>1</sup> See DTZ's announcement titled 'Administrative Error' released on MAP on 11 March 2020 which disclosed the Listing Rule 10.11 breach and DTZ's proposed remedial action to cure the breach.

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 with ASX

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.

Yours sincerely

**Dean Litis** Principal Adviser, Listings Compliance (Melbourne)