



1 June 2021

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

**engage:BDR Limited**  
**ASX Reference ODIN35388**

Dear Mr Litis

We refer to your letter dated 31 May 2021 in relation to the Company's response to ASX query lodged on 25 May 2021 regarding closed period trades and provided our responses to the further questions in your letter as follows:

**1. Did the Chairman at any time approve Mr Antulov's trade in writing and thereby comply with clause 6.1 of the Trading Policy?**

No, other than viewing the Company's Secretary's response to Mr Antulov and personally determining there was no additional information to add to that response.

**2. Does EN1 consider that any corrective and / or disciplinary action is warranted in relation to the apparent breaches of the Trading Policy?**

The Company has reinforced the Approval requirements for Share Trading with the Board and implements and Share Trading Request Form to be completed by all personnel and Directors and submitted to Chair and Company Secretary. The Company has not implemented any disciplinary actions as this was considered an isolated incident.

**3. Noting that:**

- **EN1 was in possession of price-sensitive information at the time the Chairman approved the trade; and**
- **the Chairman, who is responsible for approving trading requests from key management personnel, was not aware that EN1 was in possession of price-sensitive information, and so could not make an informed determination about the application of the Trading Policy to the request,**

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**does EN1 consider its processes and procedures to be adequate to comply with its obligation under listing rules 12.9 to have a trading policy that meets the requirements of listing rule 12.12?**

The Company has a trading policy that meets the requirement of LR12.12 and will undertake appropriate checks with all EN1 staff when any future request arises. The Company has also implemented a formal Shareholder Trading Request form that must be submitted and signed by the Chair for each share trading request.

**4. Please confirm that EN1 is complying with the listing rules and, in particular, listing rule 3.1.**

The Company believes that its current practices are in compliance with the Listing Rules including Listing Rule 3.1.

**5. Please confirm that EN1'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 EN1 with delegated authority from the board to respond to ASX on disclosure matters.**

The Company's response to the questions above have been authorised and approved by the Board of EN1.

Please do not hesitate to contact me if you have any questions or would like to discuss any of the matters listed above.

For and on behalf of the Board



Melanie Leydin  
Company Secretary  
**engage:BDR Limited**

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31 May 2021

Reference: ODIN35388

Ms Melanie Leydin  
Company Secretary  
engage:BDR Limited

By email

Dear Ms Leydin

**engage:BDR Limited ('EN1'): Query Letter**

ASX refers to the following:

- A. EN1's announcement entitled "Response to ASX Query" (the '**First Response**') lodged on the ASX Market Announcements Platform ('**MAP**') on 14 May 2021, responding to multiple ASX queries concerning Robert Antulov's trading in EN1 securities prior to the release of a price-sensitive announcement by EN1 concerning a material agreement (the '**Infolinks Agreement**'):

[https://cdn-api.markitdigital.com/apiman-gateway/ASX/asx-research/1.0/file/2924-02374748-3A567148?access\\_token=83ff96335c2d45a094df02a206a39ff4](https://cdn-api.markitdigital.com/apiman-gateway/ASX/asx-research/1.0/file/2924-02374748-3A567148?access_token=83ff96335c2d45a094df02a206a39ff4)

- B. EN1's announcement entitled "Response to further ASX Query" (the '**Second Response**') lodged on MAP on 25 May 2021, responding to further queries to do with the trading in question and EN1's continuous disclosure practices:

[https://cdn-api.markitdigital.com/apiman-gateway/ASX/asx-research/1.0/file/2924-02377977-3A567711?access\\_token=83ff96335c2d45a094df02a206a39ff4](https://cdn-api.markitdigital.com/apiman-gateway/ASX/asx-research/1.0/file/2924-02377977-3A567711?access_token=83ff96335c2d45a094df02a206a39ff4)

- C. EN1's trading policy, available on EN1's website (the '**Trading Policy**'), which states relevantly that (emphasis added):

i. "6.1 Approval requirements

- (a) **Any Key Management Personnel (other than the Chairman) wishing to buy, sell or exercise rights in relation to the Company's securities must obtain the prior written approval of the Chairman or the Board before doing so.**
- (b) **If the Chairman wishes to buy, sell or exercise rights in relation to the Company's securities, the Chairman must obtain the prior approval of the Board before doing so."**

EN1's answer to question 1.1 in the Second Response, relating to Mr Antulov's request to trade in EN1 securities, provided that:

*"The Chair did not respond to Mr Antulov over email to these requests."*

ii. "6.2 Approvals to buy or sell securities

- (a) **All requests to buy or sell securities as referred to in paragraph 6.1 must include the intended volume of securities to be purchased or sold and an estimated time frame for the sale or purchase.**
- (b) **Copies of written approvals must be forwarded to the Company Secretary prior to the approved purchase or sale transaction."**

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The attachments provided by EN1 with the Second Response also indicate that Mr Antulov did not include the intended volume of securities to be purchased in his request.

EN1's Second Response also did not provide the evidence requested by ASX as to whether the Chairman or the Board provided the Company Secretary with written approval prior to Mr Antulov's trades.

- D. Listing rule 3.1, which requires a listed entity to immediately give ASX any information of which it is aware and concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities.
- 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. The definition of "aware" in Chapter 19 of the Listing Rules, which states that (emphasis added):

***"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. EN1's answer to questions 1.5 and 1.6, which indicate that EN1 considers that it only became 'aware' of the Infolinks Agreement after it was signed at 6.22am (AEST) on 5 May 2021.

This is supported by one of the attachments provided to ASX, which showed an e-mail from EN1's Chief Revenue Officer<sup>1</sup> Andy Dhanik to Ted Dhanik containing the signed Infolinks Agreement.

ASX considers that Andy Dhanik, as Chief Revenue Officer who negotiated and executed an agreement without the board's apparent knowledge or approval, is an "officer" of EN1 within the meaning of the definition of "aware" in chapter 19. This is consistent with both the spirit and intention on which the listing rules are based and the definition of "officer" in section 9 of the *Corporations Act 2001* (Cth), which includes:

*"a person: (i) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the corporation; or (ii) who has the capacity to affect significantly the corporation's*

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<sup>1</sup> <https://engagebdr.com/team/>

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*financial standing; or (iii) in accordance with those whose instructions or wishes the directors of the corporation are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors or the corporation); ..."*

H. Guidance note 27 ('GN 27'), which provides (at section 2) (emphasis added):

*"The market is particularly sensitive to directors and senior executives trading in the lead up to the release of:*

- *periodic financial reports or other financial data; and*
- *an announcement of market sensitive information under Listing Rule 3.1, such as a material upgrade or downgrade in forecast earnings, a material trading update or **the announcement of a material transaction.***

*During these times, a director or senior executive is **likely to have, or be perceived to have, access to the information in the release ahead of the broader market.** If it becomes known that a director or senior executive of an entity has traded in its securities shortly prior to the publication of the release to the market, there is a risk that some will speculate that the trade was motivated by inside knowledge of the impending release. This speculation is likely to increase if the market price of the entity's securities moves in response to the release in a way that favours the trade. This may attract criticism from market commentators (including investors, investment advisers, proxy advisers, research analysts and the financial press), as well as the scrutiny of market regulators.*

*Good governance therefore demands that an entity has in place a fit-for-purpose trading policy, tailored to its particular circumstances, that regulates when and how its directors and senior executives may trade in its securities. The purpose of such a policy is not only to minimise the risk of insider trading but also to avoid the appearance of insider trading and the significant reputational damage that may cause."*

I. GN 27, which provides (at section 4.5):

*"... the Listing Rules contemplate that an entity may wish to impose ad hoc restrictions on its KMP from trading in its securities at times when it is considering a matter subject to Listing Rule 3.1A. ...*

*... an entity should be especially mindful of the point mentioned previously about the market's sensitivity to KMP trading in the lead up to the announcement of market sensitive information under Listing Rule 3.1, when they may have, or be perceived to have, access to information about the announcement ahead of other investors. ...*

*Some entities tackle this issue [of the potential for ad-hoc blanket restrictions when in possession of price-sensitive information to cause that information to leak] by requiring KMP and other employees covered by the trading policy to seek a clearance for any trading in the entity's securities, regardless of whether it is happening within a permitted trading window, or outside a black-out period, specified in the entity's trading policy. By doing this, the entity can impose an ad hoc restriction on an individual trade, as and when needed."*

J. GN 27, which provides (at section 10.4):

*"If ASX has concerns that an entity may not be taking appropriate measures to enforce compliance with its trading policy, ASX may require the entity to give any information, document or explanation that ASX asks for to enable it to be satisfied that the entity is, and has been, complying with the Listing Rules. ASX can also impose a requirement with which the entity must comply in order to ensure compliance with the Listing Rules."*

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## Request for information

Having regard to the above, ASX asks EN1 to respond separately to each of the following questions and requests for information:

1. Did the Chairman at any time approve Mr Antulov's trade in writing and thereby comply with clause 6.1 of the Trading Policy?
2. Does EN1 consider that any corrective and / or disciplinary action is warranted in relation to the apparent breaches of the Trading Policy?
3. Noting that:
  - EN1 was in possession of price-sensitive information at the time the Chairman approved the trade; and
  - the Chairman, who is responsible for approving trading requests from key management personnel, was not aware that EN1 was in possession of price-sensitive information, and so could not make an informed determination about the application of the Trading Policy to the request,does EN1 consider its processes and procedures to be adequate to comply with its obligation under listing rules 12.9 to have a trading policy that meets the requirements of listing rule 12.12?
4. Please confirm that EN1 is complying with the listing rules and, in particular, listing rule 3.1.
5. Please confirm that EN1'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 EN1 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 AEST Wednesday, 2 June 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, EN1'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 EN1 to request a trading halt immediately.

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.

## 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 EN1'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

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- 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 EN1's securities under Listing Rule 17.3.

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

In responding to this letter, you should have regard to EN1'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 EN1'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.

Yours faithfully

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**Dean Litis**

Principal Adviser, Listings Compliance (Melbourne)