

2 July 2021

Reference: 36144

ASX
525 Collins Street,
Rialto, North Tower, Level 4
Melbourne VIC 3000

Attention: Listings Compliance (Melbourne)
By email: listingscompliancemelbourne@asx.com.au

Response to ASX Query Letter dated 25 June 2021

We refer to your letter dated 25 June 2021. Our responses to your questions are addressed below.

Capitalised terms in this letter have the same meaning as those set out in your letter, unless otherwise noted.

As a preliminary matter, RSH notes it has engaged its external lawyers to conduct an independent investigation of the events surrounding the Transaction. RSH presently anticipates that the independent investigation will be finalised by 6 August 2021. As the investigation is in its early stages, RSH's response to ASX in this letter is necessarily confined to the materials that the company has made available and reviewed to date. If the internal investigation uncovers additional information that is directly relevant to the queries raised in your letter, RSH will provide that information to you as a matter of course. Whilst the findings of the investigation and the contents of any report will be confidential and subject to legal professional privilege, RSH will announce details of all disciplinary actions that it implements.

In addition, while reviewing the Sales Announcement following receipt of your letter, RSH has determined that the announcement could be considered ambiguous in some respects. As such, RSH has decided to provide additional clarification in relation to the subject matter of that announcement, which will be made by way of a separate announcement.

Question 1

RSH takes its continuous disclosure obligations very seriously. As such, RSH adopts a risk-averse approach to disclosure of information to the market in circumstances where it may be uncertain whether that information is of a nature that a reasonable person would expect to have a material effect on the price or value of its securities.

At the time RSH made the Sales Announcement, there was some discussion among its officers as to whether the Sales Announcement was price sensitive. By adopting RSH's risk-averse approach to its continuous disclosure obligations, RSH erred on the side of caution, elected to disclose the Information and marked the announcement as "price sensitive" on the MAP.

Notwithstanding the above, it is still unclear to RSH whether the Information was information that a reasonable person would expect to have a material effect on the price or value of its securities. Arguments in support of the position that the Information was *not* information that a reasonable person would expect to have a material effect on the price or value of its securities include the fact that:

- (a) RSH did not negotiate any direct supply agreement with Sigma, but merely reached an agreement to supply units of wheezo to Sigma under Sigma's standard terms and conditions of supply;
- (b) as RSH holds an exclusive distribution arrangement with Cipla (as announced to ASX on 21 October 2020), any arrangement with Sigma would only open a channel through which RSH could sell its wheezo devices into Sigma's retail pharmacies via Cipla;
- (c) there were no minimum order quantities agreed with Sigma; and
- (d) there was not expected to be any immediate or material impact on RSH's retail sales of wheezo.

In light of the above, RSH considers that it is open for ASX to take the view that the Information was not required to be disclosed by RSH in accordance with its continuous disclosure obligations. Further to this, RSH notes the following extract from section 10 of ASX Guidance Note 14: *ASX Markets Announcements Platform*:

MAP should only be used to publish information that is appropriately given to ASX under the Listing Rules or the Corporations Act for publication to the market. It should not be used as a guise to publish material that is really promotional, political or tendentious in nature.

Again, RSH reiterates that its intention was not to release the Sales Announcement for promotional purposes, but rather to ensure that RSH was complying with its continuous disclosure obligations. In doing so, RSH took a cautious approach that potentially risked over-disclosure.

Question 2

Please refer to RSH's response in Question 1 above.

Question 3

On 7 June 2021, RSH received implicit confirmation from Sigma that it would permit RSH to sell its wheezo device, through RSH's exclusive distribution arrangement with Cipla, to various pharmacies within the Sigma network, under Sigma's standard terms and conditions of supply. This was the result of several months of negotiation beginning in March 2021.

The confirmation from Sigma referred to above was implicit for the following reasons. In or around May 2021, during negotiations between RSH and Sigma (and in anticipation of an agreement being reached between the parties), RSH provided a draft version of the Sales Announcement to Sigma for its review and comment. On 7 June 2021, RSH received Sigma's comments on the draft version of the Sales Announcement. RSH inferred from this communication that Sigma was implicitly confirming that the arrangement with RSH regarding the sale of its wheezo device was no longer an incomplete proposal or negotiation.

The Sales Announcement, and more particularly the Information, did not concern the announcement of an agreement being reached with Sigma but rather the commencement of sales of wheezo across various pharmacies within the Sigma network. Although an initial purchase order from Sigma relating to the preliminary delivery of wheezo units to its distribution centre was received from RSH on or about 9 or 10 June 2021, the commencement of sales of wheezo in Sigma pharmacies may not commence until early July 2021. The reason that the announcement was made on 23 June 2021 was to align more closely with the timing of when units of wheezo were expected to be delivered to Sigma's distribution centre in Rowville, Victoria, for supply into pharmacies, which was expected to occur between 20 and 25 June 2021. Once the units were delivered to Sigma's distribution centre, those units would be available for order by pharmacies for retail sale to customers. The timing of the announcement was to align with the availability of supply into pharmacy.

Question 4.1

RSH confirms that it made no announcement relating to the arrangement with Sigma prior to 23 June 2021, other than tacitly referring to the negotiations with Sigma in its announcement dated 28 April 2021 in which RSH stated:

As previously announced to the market, the Company remains in active discussions with several other large pharmacy banner groups expects to make further ASX announcements once these discussions are finalised, and initial orders have commenced.

By not releasing the Information to market prior to 7 June 2021, RSH was relying on the exception set out in Listing Rule 3.1A.1 that permits entities not to immediately tell ASX that information where the "information concerns an incomplete proposal or negotiation". As RSH was not aware of the Information (being that an implicit agreement had reached between Sigma and RSH) prior to 7 June 2021, RSH was not required to disclose the Information prior to that date.

Following RSH's awareness of an arrangement being reached with Sigma on 7 June 2021, RSH decided to delay the announcement of the arrangement with Sigma until RSH was able make a more material announcement, being the disclosure of the Information (i.e., the availability of supply of wheezo units throughout pharmacies within the Sigma network). The decision was made that the appropriate timing, as discussed above, was the date upon which units of wheezo would be delivered to Sigma's distribution centre in Rowville, ensuring that supply would be available for the pharmacy network following the announcement. For clarity, as discussed above, what occurred on 7 June was the receipt of comments from Sigma on the proposed ASX announcement. No terms or similar were signed. A purchase order was received from Sigma on or about 9 or 10 June, which resulted in an expectation that supply would be available at Sigma's Rowville distribution centre between 20 and 25 June.

Question 4.2

After further investigations into this matter, RSH confirms that it appears that Mr Mikel was in possession of the following information:

- (a) an arrangement had been reached with Sigma which would enable the sale of wheezo units through the Sigma pharmacy network; and
- (b) wheezo units would be available for purchase via the Sigma network of pharmacies in approximately late June / early July 2021.

Question 5.1

In relation to question 5.1, RSH has been advised by Mr Mikel that he did not turn his mind to the Trading Policy before executing the Transaction, and therefore did not follow the approval processes set out in that policy. Mr Mikel has advised the company that he regrets his actions.

Question 5.2

In relation to disciplinary or remedial action against Mr Mikel, RSH has engaged its external lawyers to conduct an independent investigation of the events that have occurred. The Board will consider whether there are any disciplinary, remedial, corrective or preventative actions that need to be taken, following the receipt of the investigation report from the company's external lawyers.

In addition to the independent investigation referred to above, RSH will implement additional training programs for its directors and employees around RSH's Trading Policy and continuous disclosure obligations. RSH will also seek external legal review of all of its ASX announcement for the next 12 months.

Question 6

RSH confirms that it is complying with all of the Listing Rules, including Listing Rule 3.1.

Question 7

RSH confirms that this response has been authorised and approved by its Board. While these matters are under investigation, RSH confirms that Mr Mikel is not participating in any Board discussions in relation to these matters.

Yours sincerely



Alastair Beard
Company Secretary, Respi Limited



25 June 2021

Reference: 36144

Mr Alastair Beard
Company Secretary
Respiri Limited
Level 9, 432 St Kilda Road
Melbourne VIC 3004

By email: alastair@respiri.co

Dear Mr Beard

Respiri Limited ('RSH'): General – Aware Query

ASX refers to the following:

- A. RSH's announcement titled "Notice of Dispatch" attaching a replacement bidder's statement in relation to RSH's off-market takeover bid for all of the ordinary shares in Adherium Limited released on MAP on 15 June 2021.
- B. RSH's announcement titled "Appendix 3Y Change of Director's Interest Notice" attaching an Appendix 3Y for Mr Marjan Mikel, Managing Director of RSH, lodged on MAP on 22 June 2021 (the 'Appendix 3Y Announcement'). The Appendix 3Y Announcement disclosed:
 - (i) The on-market purchase of 517,420 shares at \$0.070 per share in RSH by Mr Marjan Mikel on 18 June 2021 (the 'Transaction');
 - (ii) The shares were purchased during a closed period being after the end of the March 2021 quarter and before the release of RSH's June quarterly cash flow report (Appendix 4C);
 - (iii) The shares were purchased without written clearance being provided to allow the trade to proceed during the closed period;
 - (iv) Mr Mikel was not in possession of any price sensitive or inside information when he effected the Transaction.
- C. The change in the price of RSH's securities from a closing price of \$0.070 on Tuesday 22 June 2021 to a closing price of \$0.075 on Wednesday 23 June 2021, together with the increase in the volume of RSH securities traded on Wednesday 23 June 2021.
- D. RSH's announcement titled "Pharmacy Network to Commence Sales of wheezo" released on the ASX Market Announcements Platform ('MAP') on 23 June 2021 (the 'Sales Announcement'), which disclosed the following (the 'Information'):

"[RSH] is excited to announce the commencement of sales of wheezo across 570+ pharmacies within the Sigma Healthcare Australia-wide.

The Company is in active discussions with a number of additional pharmacy banner groups, representing a pharmacy footprint of over 2,500 stores across Australia and expects to make further ASX announcement once these discussions are finalised and initial orders have commenced."

ASX notes that the Sales Announcement was marked as 'price sensitive' when it was lodged by RSH.
- E. RSH's securities trading policy lodged on MAP on 9 June 2020 (the 'Trading Policy') which is also available on RSH's website and which states, among other things, the following:

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- ‘1.3. Additional restrictions apply to “Designated Persons” which includes the following:
- ...
- iv. The Managing Director/CEO (“CEO”);
- ...
- 1.4. Specifically, these persons are not permitted to trade in Respire Limited shares unless it is in a trading window.
- 5.1. Sections 5.3, 5.5 and 5.6 of this policy apply only to Respire Limited's directors, the Managing Director/CEO (“CEO”), Chief Financial Officer (“CFO”), direct reports to the CEO and CFO, employees having regular access to confidential communication (including but not limited to Respire Limited business unit or consolidated monthly management reports and forecasts), and such other persons as the CEO nominates (each a “Designated Respire Limited Person”).
- 5.5. Additional clearance requirements apply to Respire Limited's KMP. For Respire Limited, this includes all the Directors of Respire Limited, the CEO and CFO (“KMP”). KMP must obtain clearance for any proposed dealings in Respire Limited's securities and the following principles will apply:
- i. Respire Limited's directors (other than the Chairman) must advise and obtain clearance from the Chairman (or his/her delegate) of a proposed trade in Respire Limited's securities prior to any trade and confirm they are not in possession of any unpublished price sensitive information.
 - ii. Respire Limited's Chairman must advise and obtain clearance from a majority of other directors of a proposed trade in Respire Limited's securities prior to any trade and confirm they are not in possession of any unpublished price-sensitive information.
 - iii. All other KMP must advise and obtain clearance from the Company Secretary of a proposed trade in Respire Limited's securities, prior to any trade and confirm they are not in possession of any unpublished price sensitive information.
 - iv. A request for clearance to trade will be answered as soon as practicable.
 - v. Any clearance to trade can be given, refused, or have conditions imposed on the dealing by the approver in their discretion.
 - vi. The approver may consult with other directors or members of management in order to determine whether there is a legal or reputational reason why the trade should not occur.
 - vii. Clearance will only be effective for 3 business days.
 - viii. KMP must promptly notify the Company Secretary in writing of any dealings in Respire Limited's securities, ideally by close of business on the day of the trade.
9. Breach of this Policy
- A breach of this policy will be regarded as serious and may lead to disciplinary action, including dismissal.’

- F. 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.
- G. 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.”

H. 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.’

I. Paragraph 10.4 of ASX Guidance Note 27: *Trading Policies* (“GN 27”) which states, among other things:

“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.”

GN 27 references Listing Rule 18.7, which requires an entity to give ASX any information or explanation that ASX asks for to enable it to be satisfied that the entity is, and has been, complying with the Listing Rules.

J. Guidance Note 22: *Director Disclosure of Interests and Transactions in Securities – Obligations of Listed Entities* which was published to assist listed entities with their obligations under Listing Rules 3.19A and 3.19B and to give an overview of ASX policy in relation to disclosure of directors’ interests and transactions in securities.

Request for information

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

1. Does RSH consider the Information 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. When did RSH first become aware of the Information?

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4. If the answer to question 1 is “yes”:
- 4.1 and RSH first became aware of the Information before the relevant date, did RSH 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 RSH was obliged to release the information under Listing Rules 3.1 and 3.1A and what steps RSH took to ensure that the information was released promptly and without delay; and
- 4.2 please provide the basis for RSH’s assertion that Mr Mikel was not in possession of any price-sensitive information, noting that the Sales Announcement was released just 3 business days after the Transaction. In so doing, please note that information may be price-sensitive notwithstanding that an entity is excused by Listing Rule 3.1A from disclosing it at a given time.
5. With regard to the following statements in the Appendix 3Y Announcement:
- 5.1 *“... this incident occurred as a matter of personal oversight by Mr Mikel.”*
- Please explain the circumstances surrounding this oversight, including whether the relevant steps in section 5.5 of the Trading Policy were or were not followed.
- 5.2 *“Mr Mikel has been advised that any further breaches of the Company’s policies may result in disciplinary action being taken (depending on the circumstances at the time).”*
- Please explain (with reference to the Trading Policy) why this is the case, and why the board of RSH has not taken, or is not proposing to take, any disciplinary or remedial action in relation to the breach of the Trading Policy?
6. Please confirm that RSH is complying with the Listing Rules and, in particular, Listing Rule 3.1.
7. Please confirm that RSH’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 RSH 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 Friday, 2 July 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, RSH’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 RSH 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 RSH’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;

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- 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 RSH's securities under Listing Rule 17.3.

Listing Rules 3.1 and 3.1A

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

Regards

Melissa Kostopoulos
Compliance Adviser, Listings Compliance (Melbourne)