



2 August 2022

Reference: ODIN56165

Ms Melanie Leydin
Company Secretary
ColorTV Limited

By email

Dear Ms Leydin

ColorTV Limited ('CTV'): Financial Condition Query Letter

ASX refers to the following:

- A. CTV's quarterly reports for the period ending March 2022, released on the ASX Market Announcements Platform ('MAP') on 2 May 2022, which disclosed (relevantly) at section 8.6.2 of the Appendix 4C:

"The company has, subsequent to the end of the reporting period, commenced a capital raising process, as a result of which funds will be raised to continue its operations in the quarter ended 30 June 2022."

ASX notes that no capital raise appears to have occurred since this statement.

- B. CTV's announcement titled 'Response to ASX Query Letters (x2)', released on MAP on 17 May 2022, which stated (relevantly, emphasis added) in response to question 8 surrounding the extension of the related party loans:

"It had been intended to seek the shareholder approval at the 2022 AGM, which was anticipated to be the next shareholder meeting to be called after the 2021 annual report. However the notice of the intervening general meeting (to be held on 5 May 2022) was delayed until 1 April 2022, resulting in that meeting being called shortly after, rather than before, the release of the 2021 annual report."

*An independent expert report will be required to be included with the applicable notice of meeting at which shareholder approval for an extension of the loan due dates, and for the notice to be submitted to ASIC for review at least 14 days before being dispatched. It was not possible to obtain a report and for the review period to be completed within the period available before the AGM notice was required to be released. **The Company is currently in the process of seeking quotes for the report and seeking shareholder approval will be included at a further general meeting after the AGM, now expected to be held in June or July 2022.**"*

- C. CTV's announcement titled 'Notification of cessation of securities – CTV', released on MAP on 11 July 2022, which appeared to disclose the repayment of one convertible note.
- D. CTV's quarterly reports for the period ending June 2022, released on MAP on 1 August 2022, which disclosed:

- at section 8.6.2 of the Appendix 4C addressing whether CTV will seek to raise capital:
"Yes, capital raising, highly likely to succeed based on numerous past successful raisings."
- at section 8.6.3 of the Appendix 4C addressing whether CTV expects to have sufficient capital to meet its business objectives:
"Yes, expected revenue growth."

- E. A lawsuit filed by Paychex Inc. (**'Paychex'**) in Monroe County, New York, which names Engage BDR Holdings, Inc. as the defendant. The lawsuit appears to relate to a payroll liability that was advanced by Paychex to CTV after CTV failed to pay its employees, which CTV subsequently failed to reimburse. Paychex seeks US\$54,196.30 plus costs. Relevant court documents are available here:

<https://trellis.law/doc/115309025/SUMMONS-COMPLAINT>

- 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. Listing Rule 12.2, which states:

"An entity's financial condition (including operating results) must, in ASX's opinion, be adequate to warrant the continued quotation of its securities and its continued listing."

Request for information

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

1. Does CTV consider its apparent failure to raise capital by the June 2022 quarter to be information that a reasonable person would expect to have a material effect on the price or value of its securities? ASX notes that CTV specifically identified a capital raise as the means to continue its operations for the June 2022 quarter (paragraph A).
2. If the answer to question 1 is "no", please advise the basis for that view.

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3. If the answer to question 1 is “yes”:
 - 3.1 When did CTV first become aware that it would not raise capital during the quarter?
 - 3.2 Why was this not disclosed to the market at an earlier time?
 4. When does CTV expect to convene a general meeting to vote on the extension for the related party loans?
 5. Please explain why CTV did not appear to update the market when it became aware that the meeting would not be convened July 2022 (paragraph B).
 6. Please state the consideration paid to extinguish the convertible note (paragraph C), and outline the impact this had on CTV’s capital position, as ASX notes the repayment occurred subsequent to the June 2022 quarter.
 7. Has CTV considered, as part of its capital management plan, not extending the term of the related party loans?
 - 7.1 If so, would CTV be able to recover the funds immediately, should it elect to do so?
 - 7.2 If not, why not?
 8. Please provide the basis and assumptions for CTV’s view that revenue growth is expected (paragraph D) and when it is expected with regard to [ASIC Regulatory Guide 170: Prospective financial information](#).
 9. In relation to the the Paychex legal claim against CTV (paragraph E):
 - 9.1 Please explain the circumstances that led to the claim being filed.
 - 9.2 Does CTV intend to defend the claim?
 - 9.3 Is CTV’s financial position adequate to continue paying its employees?
 10. Aside from the Paychex claim, is CTV currently a defendant in any other outstanding legal claims? If so, please provide details on each (regardless of perceived materiality), including the amount sought as relief and CTV’s assessment on the merit of each claim.
 11. Please provide any other information CTV believes would assist ASX in determining whether CTV’s financial position is compliant with Listing Rule 12.2.
 12. Please confirm that CTV is complying with the Listing Rules and, in particular, Listing Rule 3.1.
 13. Please confirm that CTV’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 CTV 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 AEST Monday, 8 August 2022**. 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, CTV’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 CTV 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 CTV'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 CTV's securities under Listing Rule 17.3.

Listing Rules 3.1 and 3.1A

In responding to this letter, you should have regard to CTV'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 CTV'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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Principal Adviser, Listings Compliance (Melbourne)