

6 September 2024

ASX Code: MEM

Melissa Kostopoulos
Compliance Adviser, Listings Compliance (Melbourne)
Rialto Building
525 Collins Street
Melbourne VIC 3000

Email address: **ListingsComplianceMelbourne@asx.com.au**

Dear Melissa,

ASX reference: 99187

Responses to each question raised in your letter of 2 September 2024 (**Letter**) are set out below. Capitalised terms in this response have the same meaning as set out in the Letter.

1. It appears that the Cleansing Notice may be defective pursuant to section 708A (10)(a) of the Act because MEM may have been in possession of “excluded information” (as defined in sections 708A(7) and (8) of the Act) at the time MEM lodged the Cleansing Notice on the Platform. Does MEM consider the information disclosed in the Final Report to be information that investors and their professional advisers would reasonably require for the purpose of making an informed assessment of the assets and liabilities, financial position and performance, profits and losses and prospects of MEM? If the answer to this question is “no”, please advise the basis for that view.

MEM considers the information disclosed in the Final Report to be information that investors and their professional advisers would reasonably require for the purpose of making an informed assessment of the assets and liabilities, financial position and performance, profits and losses and prospects of MEM.

2. Was MEM aware of the contents of the Final Report at the time it issued the Cleansing Notice? If not, please explain the basis for that view

Although a Board meeting to approve release of the Final Report was not held until 29 August 2024, the MEM board were aware of the contents of the Preliminary Final Report’ lodged on MAP on 30/08/2024, disclosing MEM’s financial statements for the financial year ended 30 June 2024.

3. If the answers to questions 1 & 2 are “yes”, does MEM consider the Cleansing Notice to have been validly issued? If so, please explain the basis for that view. If not, please outline the remedial action MEM intends to take.

On review, MEM considers that the Cleansing Notice was not validly issued, on the basis that it did not set out information that was ‘excluded information’ as at the date of the Cleansing Notice (being the information contained within the Final Report), as required under section 708A(6)(e) of the Act.

MEM confirms that the 62,500,000 Shares issued on 28 August 2024 (the subject of the Cleansing Notice) have not been traded since being issued. A holding lock has been applied to these Shares, pending further action to validly cleanse the Shares for secondary sale.

In addition, MEM will today release a separate announcement to ASX retracting the Cleansing Notice.

4. Please confirm that MEM complying with the Listing Rules and, in particular, Listing Rule 3.1

MEM confirms it is complying with the Listing Rules, in particular, Listing Rule 3.1.

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

We confirm that the above responses have been authorised and approved by the MEM Board.

Yours sincerely



Dr David Ali
Managing Director and CEO
Memphasys Limited



2 September 2024

Reference: 99187

Mr Andrew Metcalfe
Company Secretary
Memphasys Limited
Level 1, 34-36 Richmond Road
Homebush West, NSW 2140
By email: Andrew@accosec.com

Dear Mr Metcalfe

Memphasys Limited ('MEM'): Cleansing notice – Aware Query

ASX refers to the following:

- A. MEM's announcement titled 'Cleansing Statement' lodged on the ASX Market Announcements Platform ('MAP') on 29 August 2024 (the '**Cleansing Notice**'), seeking to 'cleanse' for secondary sale purposes the securities issued under the Cleansing Notice, and stating that there is no excluded information, as defined in sections 708A(7) and 708A (8) of the *Corporations Act 2001* (the '**Act**') as of the date of the Cleansing Notice.
- B. MEM's announcement entitled 'Preliminary Final Report' lodged on MAP on 30/08/2024, disclosing MEM's financial statements for the financial year ended 30 June 2024 (the '**Final Report**').
- C. The definition of 'aware' in Chapter 19 of the Listing Rules. This definition 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.'

Additionally, you should refer to section 4.4 in Guidance Note 8 *Continuous Disclosure*: Listing Rules 3.1 – 3.1B 'When does an entity become aware of information'.

- D. 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 requirements is satisfied in relation to the information:

3.1A.1 One or more of the following 5 situations 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.'*

- E. ASX's policy position on the concept of 'confidentiality' which is detailed in section 5.8 of Guidance Note 8 *Continuous Disclosure*: Listing Rules 3.1 – 3.1B 'Listing Rule 3.1A.2 – the requirement for information to be confidential'. In particular, the Guidance Note states that:

'Whether information has the quality of being confidential is a question of fact, not one of the intention or desire of the listed entity. Accordingly, even though an entity may consider information to be confidential and its disclosure to be a breach of confidence, if it is in fact disclosed by those who know it, then it ceases to be confidential information for the purposes of this rule.'

Request for information

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

1. It appears that the Cleansing Notice may be defective pursuant to section 708A (10)(a) of the Act because MEM may have been in possession of "excluded information" (as defined in sections 708A(7) and (8) of the Act) at the time MEM lodged the Cleansing Notice on the Platform.

Does MEM consider the information disclosed in the Final Report to be information that investors and their professional advisers would reasonably require for the purpose of making an informed assessment of the assets and liabilities, financial position and performance, profits and losses and prospects of MEM? If the answer to this question is "no", please advise the basis for that view.

2. Was MEM aware of the contents of the Final Report at the time it issued the Cleansing Notice? If not, please explain the basis for that view.
3. If the answers to questions 1 & 2 are "yes", does MEM consider the Cleansing Notice to have been validly issued? If so, please explain the basis for that view. If not, please outline the remedial action MEM intends to take.
4. Please confirm that MEM complying with the Listing Rules and, in particular, Listing Rule 3.1.
5. Please confirm that MEM'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 MEM 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, 6 September 2024**. 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, MEM'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 MEM 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 MEM'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 MEM's securities under Listing Rule 17.3.

Listing Rules 3.1 and 3.1A

In responding to this letter, you should have regard to MEM'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 MEM'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

ASX reserves the right to release all or any part of this letter, your reply and any other related correspondence between us to the market under Listing Rule 18.7A.

Regards

ASX Compliance