

24 March 2015

Dean Litis  
Principal Adviser  
Listings Compliance (Melbourne)  
ASX Compliance Pty Limited  
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Dear Dean

**Myer Holdings Limited: ASX aware query**

We refer to your letter of 20 March 2015 and respond as follows. We have used the same defined terms as you used in your letter.

**1. Does the Entity consider the information contained in the Results Announcement pertaining to:**

**1.1. the decrease in the HY Result to be information that a reasonable person would expect to have a material effect on the price or value of its securities?;**

No, not whilst Myer continued to believe that the FY2015 Full Year NPAT result would be consistent with Consensus. See the answer to question 2.

**1.2. the FY2015 Outlook to be information that a reasonable person would expect to have a material effect on the price or value of its securities?**

Yes.

**2. If the answer to question 1.1 and/or 1.2 is “no”, please advise the basis for that view, particularly in light of the Trading Activity.**

Market expectations of the Company's performance as measured by Consensus (of up to 13 analysts recognised by Bloomberg who cover Myer) relate to the full 2015 financial year (FY2015).

So long as Myer maintained its expectation that its FY2015 NPAT would be consistent with Consensus, Myer considered the decrease in the HY Result would not, in itself, be price sensitive.

On a number of occasions in December, January and February, the Board and management reviewed trading in the context of the forecast FY2015 NPAT. A number of factors supported Myer's position that the Company's results would be in line with the Consensus NPAT for FY2015, notwithstanding the HY Result. These included that:

- the trading results from immediately prior to Christmas and through January were relatively strong compared to FY2014;

- a number of one-off costs were unique to H1;
- benefits from two new and four refurbished stores were expected to be realised;
- projections for merchandise sales mix were positive and would drive operating gross profit (OGP);
- the business anticipated achieving further growth in online sales; and
- opportunities were expected to arise through targeted cost reduction initiatives.

In addition, the Board considered the relevant information in the context of Myer's historical splits between H1 and H2 NPAT.

A full review of the forecast for FY2015 NPAT was presented to the Board in its meeting on 27 February 2015. Analysis of the data continued to support the view that the Company was in line with the Consensus NPAT for FY2015.

Until the day before the Results Announcement, Myer considered that its FY2015 full year NPAT result would be consistent with market expectations, as measured by Consensus, despite the fall in the HY Result compared to the prior corresponding period.

Myer considers that the change in FY2015 Outlook in relation to NPAT was the primary driver of the Trading Activity which immediately followed the Results Announcement.

**3. If the answer to question 1.1 and/or 1.2 is "yes", when did the Entity first become aware of the following information:**

**3.1 the HY Result would materially differ from the previous corresponding period?**

Not applicable, given the answer to question 1.1.

**3.2 the FY2015 Outlook would be below Consensus?**

**In answering question 3.2, we note that the Results Announcement contained the following statement.**

**'While ahead of last year, sales in February were below expectations and this trend has continued into March. The February operating gross profit margin result and early read on March sales has led to the Company revising expectations for the year'.**

**Therefore, in answering question 3.2, please also address when the Entity became aware that sales in February and the February operating gross profit margin result would be below expectations?**

Myer first became aware that the FY2015 Outlook specifically relating to NPAT would be materially below Consensus during the Board meeting on 18 March in which the Board determined the revised forecast for FY2015 NPAT.

As part of its regular operations, Myer determines NPAT forecasts by way of a rigorous and iterative interdepartmental process to appropriately quantify all aspects of the forecast. While sales data is received on a daily basis, the entire process of generating a forecast NPAT is complex and involves an analysis of the P&L (YTD actuals and forecast for the balance of the FY), proposed promotions, current and forecast inventory positions and sell-through, preparation of OGP margin expectations, merchandise forecasts and numerous competitive and macro-

economic factors. This process culminates in the CFO preparing a recommended view of the NPAT forecast for the Board. The Board then considers the recommended NPAT forecast and determines a final NPAT forecast (with or without modification or subject to further work or analysis).

In the case of the revised forecast for FY2015 NPAT, this complex and comprehensive validation process began as soon as the February P&L result became available. Numerous data points were evaluated including:

- the February P&L, including sales<sup>1</sup>;
- the deterioration in OGP and OGP margin<sup>2</sup> which has a particular sensitivity for NPAT;
- the adverse change in sales mix in February which continued into March;
- proposed sales and margin generating activities;
- proposed cost adjustments; and
- a perspective on a rapidly changing and heightened competitive environment.

Each of these items was not material in isolation.

The CFO completed and presented the analysis of the combined impact of the above items and a re-forecast to the Board on 18 March. Based on this analysis, the Board then determined a revised FY2015 NPAT forecast range of \$75-80 million (excluding one-off costs) on 18 March.

We note that the following ASX guidance in section 4.4 of Guidance Note 8 *Continuous Disclosure*, is particularly relevant:

*"An entity may receive information about a particular event or circumstance in instalments over time. Sometimes the initial information about the event or circumstance is such that the entity cannot reasonably form a view on whether or not it is market sensitive and the entity may need to await further, more complete, information, or to make further enquiries or obtain expert advice, in order to be able to make that determination. In such a case the entity will only become aware of information that needs to be disclosed under Listing Rule 3.1 when an officer has, or ought reasonably to have, come into possession of sufficient information about the event or circumstance in order to be able to appreciate its market sensitivity."*

Consistent with this ASX guidance, even though Myer executives were aware of various key data relevant to the reforecasting analysis, it was not possible to ascertain what the revised forecast for FY2015 NPAT would be and whether that revised forecast would be price sensitive until 18 March – when that analysis was complete. Myer considers that its processes are robust, efficient and consistent with market practice.

- 4. If the answer to question 1.1 and/or 1.2 is “yes” and the Entity first became aware of the information before the release of the Results Announcement, please explain why this information was not released to the market at an earlier time, (commenting specifically on the Entity’s compliance with sections 4.10, 7.3 and 7.4 of GN8 referred to above); when you believe the Entity was obliged to release the information under Listing Rules 3.1 and**

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<sup>1</sup> The February sales results had been available on a daily basis and were not price sensitive in isolation.

<sup>2</sup> The February OGP and OGP margin had been determined on 8 March 2015, and were not price sensitive in isolation.

**3.1A; and what steps the Entity took to ensure that the information was released promptly and without delay?**

As noted in the answer to question 3, Myer's awareness of the FY2015 Outlook, and its disclosure obligation, resulted from the Board's determination of the revised FY2015 NPAT forecast at its meeting on 18 March.

Myer was conscious that the timing of the announcement of revised NPAT forecast for full year FY2015 was coinciding with the time of Myer's announcement of its periodic H1 FY2015 results. The Myer Board was fully aware of the obligation to immediately announce if it thought its forecast FY2015 NPAT would depart from Consensus to an extent that is considered materially price sensitive and to not wait until the time of announcement of periodic results. Myer only became aware of the need to update the market on its expected FY2015 results late on the day before the scheduled announcement of the H1 FY2015 results. Appropriate processes have at all times been in place to monitor Myer's financial performance on an ongoing basis and regularly assess Myer's expectations against market expectations, as measured by analysts' consensus.

Therefore Myer was in compliance with sections 4.10, 7.3 and 7.4 of GN8 and released the FY2015 Outlook promptly and without delay, before the market opened on 19 March.

**5. Please confirm that the Entity is in compliance with the Listing Rules and, in particular, Listing Rule 3.1.**

Myer confirms that it is in compliance with the Listing Rules and, in particular, Listing Rule 3.1.

Yours sincerely



Marion Rodwell  
Chief General Counsel & Company Secretary  
**Myer Holdings Limited**



20 March 2015

Marion Rodwell  
Chief General Counsel & Company Secretary  
Myer Holdings Limited  
Level 7, 800 Collins Street  
Docklands VIC 3008

By email only

Dear Marion

**Myer Holdings Limited (the “Entity”): ASX aware query**

ASX Limited (“ASX”) refers to the following:

1. The Entity’s announcements released on the ASX Market Announcements Platform on 19 March 2015 entitled *“Myer Half Year Results (1H2015)”* and *“Myer Half Year Results (1H2015) Release and Presentation”* (together, the “Results Announcement”), disclosing the following.
  - 1.1. The Entity’s net profit after tax (“NPAT”) for the 26 weeks ended 24 January 2015 was down 23.1% to \$62,152,000 (“HY Result”);
  - 1.2. The Entity now expects NPAT for the 2015 Full Year to be between \$75-\$80 million (excluding on-off costs relating to a strategic review estimated at approximately \$7 million) (“FY2015 Outlook”);
2. The Entity’s share price following the Results Announcement which decreased from a closing price on 18 March 2015 of \$1.53 to an intra-day low of \$1.335; and closing price of \$1.375 (“Trading Activity”).
3. The FY2015 Outlook is reported to be approximately 13 percent below analyst’s consensus according to various news outlets and broker research reports (“Consensus”).
4. Listing Rule 3.1, which requires a listed entity to give ASX immediately 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.
5. 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”*.

6. 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 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.”*

7. 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* (“GN8”)- 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.”*

8. Section 4.10 of GN 8 which, in particular, states (footnotes not included):

*“All other things being equal, a listed entity is not expected to release the information in a periodic disclosure document ahead of the scheduled release date for that document. Sometimes, however, in the course of preparing a periodic disclosure document, market sensitive information may become apparent that ought to be disclosed immediately under Listing Rule 3.1. Two areas where this issue commonly arises are “earnings surprises” and material post-balance date events.*

*If, in the course of preparing a periodic disclosure document, it becomes apparent to a listed entity that its reported earnings will differ materially from market expectations to an extent which is market sensitive, the entity must disclose that information to ASX immediately under Listing Rule 3.1. It cannot wait until the periodic disclosure document is released. The same is true for information about a market sensitive post-balance date event.”*

9. Section 7.3 of GN8 entitled ‘Earnings Surprises’.

10. Section 7.4 of GN8 entitled ‘Correcting analyst forecasts’.

Having regard to the above, we ask that you answer the following questions in a format suitable for release to the market in accordance with Listing Rule 18.7A:

1. Does the Entity consider the information contained in the Results Announcement pertaining to:
  - 1.1. the decrease in the HY Result to be information that a reasonable person would expect to have a material effect on the price or value of its securities?;
  - 1.2. the FY2015 Outlook 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 1.1 and/or 1.2 is “no”, please advise the basis for that view, particularly in light of the Trading Activity.
3. If the answer to question 1.1 and/or 1.2 is “yes”, when did the Entity first become aware of the following information:
  - 3.1 the HY Result would materially differ from the previous corresponding period?
  - 3.2 the FY2015 Outlook would be below Consensus?

In answering question 3.2, we note that the Results Announcement contained the following statement.

*‘While ahead of last year, sales in February were below expectations and this trend has continued into March. The February operating gross profit margin result and early read on March sales has led to the Company revising expectations for the year’.*

Therefore, in answering question 3.2, please also address when the Entity became aware that sales in February and the February operating gross profit margin result would be below expectations?
4. If the answer to question 1.1 and/or 1.2 is “yes” and the Entity first became aware of the information before the release of the Results Announcement, please explain why this information was not released to the market at an earlier time, (commenting specifically on the Entity’s compliance with sections 4.10, 7.3 and 7.4 of GN8 referred to above); when you believe the Entity was obliged to release the information under Listing Rules 3.1 and 3.1A; and what steps the Entity took to ensure that the information was released promptly and without delay?
5. Please confirm that the Entity is in compliance with the Listing Rules and, in particular, Listing Rule 3.1.

### **When and where to send your response**

This request is made under, and in accordance with, Listing Rule 18.7. Your response is required as soon as reasonably possible and, in any event, by not later than **4:00 pm AEDT on Tuesday 24 March 2015**. If we do not have your response by then, ASX will have no choice but to consider suspending trading in the Entity’s securities under Listing Rule 17.3.

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, the Entity’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.

ASX reserves the right to release a copy of this letter and your response on the ASX Market Announcements Platform under Listing Rule 18.7A. Accordingly, your response should be in a form suitable for release to the market.

Your response should be sent to me by e-mail at [dean.litis@asx.com.au](mailto:dean.litis@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.

### **Listing Rule 3.1**

Listing Rule 3.1 requires a listed entity to give ASX immediately 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. Exceptions to this requirement are set out in Listing Rule 3.1A.

The obligation of the Entity to disclose information under Listing Rules 3.1 and 3.1A is not confined to, nor is it necessarily satisfied by, answering the questions set out in this letter.

In responding to this letter, you should have regard to the Entity's obligations under Listing Rules 3.1 and 3.1A and also to Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*.

### **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 the Entity'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 may 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*.

If you have any queries or concerns about any of the above, please contact me immediately.

Yours sincerely

[Sent electronically, without signature]

Dean Litis

**Principal Adviser**

**Listings Compliance (Melbourne)**