

9 September 2022

Laura Gomme
Adviser, Listings Compliance (Perth)
ASX Limited
Level 40, Central Park
152-158 St Georges Tce
Perth WA 6000

Sent by email: ListingsCompliancePerth@asx.com.au

Dear Laura

RESPONSE TO ASX AWARE QUERY LETTER

We refer to your letter (**ASX Letter**) dated 6 September 2022 to DW8 Limited (**DW8** or the **Company**).

Unless specifically defined otherwise, capitalised terms used in this letter have the same meaning as given in the ASX Letter.

The Company responds to each of the queries in the ASX Letter as follows:

1. **Does DW8 consider the information (including the Convertible Note Agreement) contained in the Triton Announcement to be information that a reasonable person would expect to have a material effect on the price or value of its securities?**

Yes.

If the answer to question 1 is “no”, please advise the basis for that view.

Not applicable.

2. **Does DW8 consider the termination of the Convertible Note Agreement, as announced in the New Technology Announcement, to be information that a reasonable person would expect to have a material effect on the price or value of its securities?**

Yes.

If the answer to question 2 is “no”, please advise the basis for that view.

Not applicable.

3. **Please provide details of:**

- 3.1. **the time and date that DW8 first became aware that Triton was experiencing delays in receiving the funding required to satisfy its obligations at completion of the Convertible Note Agreement;**

At 2.58pm (Sydney time) on 4 August 2022 by a telephone conversation between Triton and

DW8's Chief Executive Officer, Dean Taylor, Triton informed DW8 that it was experiencing delays in securing the approvals required to initiate the transfer of A\$5m to DW8 and required additional time. DW8 understood at that time from Triton that the additional time would only be a matter of days, and therefore not material.

3.2. the time and date that the Convertible Note Agreement with Triton was terminated; and

At a Board meeting held at 6pm (Sydney time) on 17 August 2022 (**DW8 Board Meeting**), the Board resolved to terminate the Convertible Note Agreement with Triton. The negotiations with Triton were continuing at all times up until the DW8 Board Meeting.

The notice of termination with Triton was provided by DW8's Chairman to Triton by email at 8.36am (Sydney time) on 18 August 2022.

3.3. the time and date that the New Technology Agreement was executed,

At the DW8 Board Meeting, the Board resolved to enter into the New Technology Agreement.

DW8 provided its executed counterpart of the New Technology Agreement to New Technology by email at 7:43pm (Sydney time) on 17 August 2022. DW8 received the executed counterpart from New Technology by email at 8:30am (Sydney time) on 18 August 2022.

4. If DW8 first became aware of any of the Events before the date of the New Technology Announcement, did DW8 make any announcement prior to that date which disclosed the relevant Event/s? If so, please provide details.

No.

If not, please explain why each Event was not disclosed to the market at an earlier time, commenting specifically on when you believe DW8 was obliged to disclose each Event under Listing Rules 3.1 and 3.1A and what steps DW8 took to ensure that the information was released promptly and without delay.

The first "Event" is DW8's knowledge that Triton was experiencing delays in receiving the required funding.

DW8 had stated in the Triton Announcement that completion was "*expected to occur on or about 4 August 2022.*" Given DW8's initial understanding from its discussions with Triton that the delay would only be a matter of days, the delay was not considered by DW8 to be sufficiently material to warrant disclosure at that time.

In light of the delay continuing beyond one week, which was longer than what had been initially communicated by Triton to DW8 as required, DW8 resolved during the weekend of 13-14 August 2022 that the delay and uncertainty as to the timing for completion had become material and a trading halt was necessary to manage DW8's continuous disclosure obligations. DW8 therefore requested a trading halt prior to the commencement of trading on 15 August 2022 to, amongst other things, resolve the position with Triton.

The negotiations with Triton were continuing at all times up until the DW8 Board Meeting, when it was resolved to terminate the Convertible Note Agreement.

Accordingly, DW8 does not consider that it was obliged to disclose the first "Event" at any time before the date of the New Technology Announcement.

The second and third “Events” both occurred after the close of trading on 17 August 2022 and before the commencement of trading on 18 August 2022. The New Technology Announcement, which was released prior to the commencement of trading on 18 August 2022, disclosed these two Events.

5. Please confirm that DW8 is complying with the Listing Rules and, in particular, Listing Rule 3.1.

The Company confirms it is in compliance with the Listing Rules and, in particular, Listing Rule 3.1.

6. Please confirm that DW8’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 DW8 with delegated authority from the board to respond to ASX on disclosure matters.

The Company confirms that the responses provided in this letter have been authorised and approved by the Board.

Yours sincerely

Arron Canicais

Company Secretary

On behalf of the Board of DW8 Limited



6 September 2022

Reference: ODIN57425

Mr Arron Canicais
DW8 Limited
Level 7, 61 York Street
Sydney, NSW 2000

By email: arron@smallcapcorporate.com.au

Dear Mr Canicais

DW8 Limited ('DW8'): Aware Query

ASX refers to the following:

- A. DW8's announcement entitled 'Strategic investor provides DW8 access of up to A\$10m funding to accelerate Kaddy platform growth' released on the ASX Market Announcements Platform ('MAP') on 29 July 2022 (the 'Triton Announcement'), disclosing amongst other things, that:
- (i) Singapore based strategic investor, Triton Growth ('Triton') has agreed to invest up to A\$10.0m (before costs) into DW8 via Convertible Notes (the 'Convertible Note Agreement').
 - (ii) A\$5.0m will be drawn down at completion with an additional A\$5.0m available on the same terms, subject to mutual agreement from both parties.
 - (iii) Completion of the A\$5m is expected to occur on or about 4 August 2022.
 - (iv) The funding with Triton Growth was selected due to its certainty in respect of the initial A\$5.0m and efficiency of completion.
- B. DW8's Request for a Trading Halt, released on MAP on 15 August 2022 which disclosed that DW8 requested an immediate trading halt over its securities '*pending the release of an announcement in relation to an update regarding the recently announced capital raising*' (the 'Trading Halt') (the 'Relevant Date').
- C. DW8's announcement entitled 'DW8 secures institutional funding arrangement and launches entitlement offer, totalling up to \$9.85m, to support growth' released on MAP on 18 August 2022 (the 'New Technology Announcement'), disclosing amongst other things, the following:
- (i) The parties have been negotiating in good faith an extension to the completion date under the Convertible Note Agreement, following Triton Growth experiencing delays in receiving the funding required to satisfy its obligations at completion. However in light of the ongoing delay and DW8's requirement for certainty in its funding, DW8 has now terminated the Convertible Note Agreement with Triton Growth.
 - (ii) DW8 had entered into an agreement for an institutional placement of shares raising up to \$5million (before costs) with US based investor New Technology Capital Group LLC (the 'New Technology Agreement'), replacing the previously announced Convertible Note Agreement.
- D. 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.
- E. 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.”

F. 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.”

G. 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. 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 DW8 to respond separately to each of the following questions and requests for information:

1. Does DW8 consider the information (including the Convertible Note Agreement) contained in the Triton Announcement to be information that a reasonable person would expect to have a material effect on the price or value of its securities?

If the answer to question 1 is “no”, please advise the basis for that view.

2. Does DW8 consider the termination of the Convertible Note Agreement, as announced in the New Technology Announcement, to be information that a reasonable person would expect to have a material effect on the price or value of its securities?

If the answer to question 2 is “no”, please advise the basis for that view.

3. Please provide details of:

3.1 the time and date that DW8 first became aware that Triton was experiencing delays in receiving the funding required to satisfy its obligations at completion of the Convertible Note Agreement;

3.2 the time and date that the Convertible Note Agreement with Triton was terminated; and

3.3 the time and date that the New Technology Agreement was executed,
(each, an 'Event').

4. If DW8 first became aware of any of the Events before the date of the New Technology Announcement, did DW8 make any announcement prior to that date which disclosed the relevant Event/s? If so, please provide details.

If not, please explain why each Event was not disclosed to the market at an earlier time, commenting specifically on when you believe DW8 was obliged to disclose each Event under Listing Rules 3.1 and 3.1A and what steps DW8 took to ensure that the information was released promptly and without delay.

5. Please confirm that DW8 is complying with the Listing Rules and, in particular, Listing Rule 3.1.
6. Please confirm that DW8'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 DW8 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 **12:30 PM AWST Friday, 9 September 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, DW8'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 DW8 to request a trading halt immediately.

Your response should be sent to me by e-mail at **ListingsCompliancePerth@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 DW8'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 DW8's securities under Listing Rule 17.3.

Listing Rules 3.1 and 3.1A

In responding to this letter, you should have regard to DW8'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 DW8'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 sincerely

Laura Gomme
Senior Adviser, Listings Compliance (Perth)