

15 November 2022

Sean Maloney
Senior Adviser, Listings Compliance (Perth)
ASX Limited
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Sent by email: ListingsCompliancePerth@asx.com.au

Dear Sean

RESPONSE TO ASX AWARE QUERY LETTER

We refer to your letter (**ASX Letter**) dated 10 November 2022 to Sparc Technologies Limited (**SPN** 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 SPN 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?**

Yes.

2. **If the answer to question 1 is “no”, please:**

- 2.1. **advise the basis for that view.**

- 2.2. **explain why SPN lodged the announcement as ‘market-sensitive’ on MAP.**

- 2.3. **state whether SPN considers the Announcement to be consistent with Listed@ASX Compliance Update no. 11/21 and the basis for that view.**

Not applicable.

3. **If the answer to question 1 is “yes”:**

- 3.1. **Please provide the basis for that view.**

The publication of the patent application was an important milestone for Sparc Hydrogen Pty Ltd (**Sparc Hydrogen**), a joint venture in which the Company is a participant, as Sparc Hydrogen has an exclusive royalty free licence to use the technology the subject of the patent application. On this basis, SPN considered the publication of the patent application to be material.



SPN's view was reinforced by several calls SPN received with regards to progress of the patent, which indicated to SPN that the patent process was a matter SPN's shareholders considered to be of material concern to the price or value of SPN's securities.

However, the Company notes your reference to ASX's guidance in Listed@ASX Compliance Update no. 11/21 titled "*Disclosure regarding patent applications*" which reiterates guidance published by AusBiotech and ASX that sets out:

"the fact that a patent application has been filed is seldom material, it is generally only after grant that a patent right becomes a material asset,"

and will refrain from making standalone continuous disclosure updates concerning the patent application process moving forward.

3.2. Noting that SPN stated the patent application was filed in October, when did SPN first become aware of the Information?

The patent application was filed in April 2021. The filing of the patent was first disclosed by SPN in its announcement titled "JV Signed with UoA to develop Ultra Green Hydrogen Tech" released on 27 October 2021. The filing of the patent was again referred to by SPN in its announcement titled "Fortescue Future Industries to Acquire Interest in Sparc Hydrogen" announced on 2 February 2022.

The Company understands that the University of Adelaide became aware of the publication of the patent application on 13 October 2022. The Company was notified at approximately 3:17pm ACDT on 14 October 2022, that the patent had been published.

3.3. If SPN became aware of the Information significantly before it lodged the Announcement on MAP, please explain the apparent delay between the October filing and the Announcement's lodgement on MAP, and provide the basis for SPN's apparent view that this was compliant with Listing Rule 3.1.

At that time the Board became aware of the Information the Board did not consider it to be material.

SPN received several calls from investors with regards to the update of the patent application.

At 8.13am AEDT on 9 November 2022, the Executive Chairman (via its investor relations team) emailed the Board, which reconsidered the materiality of the publication of the patent and determined shortly thereafter that the publication of the patent was sufficiently material to warrant disclosure as a standalone announcement for the reasons outlined above in the response to query 3.1. The announcement was released at 9:56 am AEDT on 9 November 2022.

Noting ASX's Listed@ASX Compliance Update no. 11/21, the Board understands that no such re-consideration of its original position (being that the Information was not material) was required as its original position was consistent with ASX guidance (being that updates on the patent process are unlikely to be material).



- 3.4. If SPN became aware of the Information shortly before lodging the announcement, please explain why SPN was not aware of the Information at an earlier time, commenting on whether SPN believes it has sufficient access to material information to fulfil its obligations under Listing Rule 3.1.

Not applicable.

4. Please confirm that SPN 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.

5. Please confirm that SPN'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 SPN 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

A handwritten signature in black ink, appearing to read 'Stephen Hunt'.

Stephen Hunt

On behalf of the Board of Sparc Technologies Limited



10 November 2022

Reference: 63875

Mr Adrien Wing
Company Secretary
Sparc Technologies Limited

By email: amwing@northernstargroup.com.au

Dear Mr Wing

Sparc Technologies Limited ('SPN'): Query Letter

ASX refers to the following:

- A. SPN's announcement titled "Sparc Hydrogen Patent Application Published", released on the ASX Market Announcements Platform ('**MAP**') on 9 November 2022 (the '**Announcement**'), which disclosed (relevantly, emphasis added):

"In October, an international PCT patent application relating to a photocatalytic solar reactor filed by the University of Adelaide and Flinders University was published. Sparc Hydrogen has an exclusive, royalty-free licence to use this technology." (the '**Information**')

ASX observes that the Announcement was marked as 'market-sensitive' by SPN when it was submitted to MAP.

- B. Listed@ASX Compliance Update no. 11/21¹, which outlines ASX's position on the disclosure of patent applications.
- C. 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.
- D. 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."

- E. 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;*

¹ <https://www2.asx.com.au/content/dam/asx/documents/listings/compliance-updates/2021/listed-compliance-update-december-2021.pdf>

- *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.”*

Request for information

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

1. Does SPN 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:
 - 2.1 advise the basis for that view.
 - 2.2 explain why SPN lodged the announcement as ‘market-sensitive’ on MAP.
 - 2.3 state whether SPN considers the Announcement to be consistent with Listed@ASX Compliance Update no. 11/21 and the basis for that view.
3. If the answer to question 1 is “yes”:
 - 3.1 Please provide the basis for that view.
 - 3.2 Noting that SPN stated the patent application was filed in October, when did SPN first become aware of the Information?
 - 3.3 If SPN became aware of the Information significantly before it lodged the Announcement on MAP, please explain the apparent delay between the October filing and the Announcement’s lodgement on MAP, and provide the basis for SPN’s apparent view that this was compliant with Listing Rule 3.1.
 - 3.4 If SPN became aware of the Information shortly before lodging the announcement, please explain why SPN was not aware of the Information at an earlier time, commenting on whether SPN believes it has sufficient access to material information to fulfil its obligations under Listing Rule 3.1.
4. Please confirm that SPN is complying with the Listing Rules and, in particular, Listing Rule 3.1.
5. Please confirm that SPN’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 SPN 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 **5:00 PM AEDT Tuesday, 15 November 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, SPN’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 SPN 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 SPN’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 SPN’s securities under Listing Rule 17.3.

Listing Rules 3.1 and 3.1A

In responding to this letter, you should have regard to SPN’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 SPN’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

Sean Maloney
Senior Adviser, Listings Compliance (Perth)