

ASX: K2F

10 November 2017

ASX Compliance Pty Ltd  
Level 40, Central Park  
152-158 St Georges Terrace  
Perth WA 6000  
Australia

Attention: Dawn James

*By Email:* Dawn.James@asx.com.au

Dear Mrs James,

We refer to the letter received from the ASX dated 8 November 2017 in relation to the announcement and Appendix 3B (the "Announcement") lodged with the ASX on 3 November 2017 regarding the issue of 200,000 fully paid ordinary shares in K2F to former director, Mr Noel Bonnick, in lieu of director's fees ("Retirement Shares").

The Company has reviewed the situation and now acknowledges that the issue of the shares to Mr Bonnick has taken place in breach of ASX Listing Rule 10.11 as shareholder approval was not sought prior to the issue of the Retirement Shares. The Company notes that Mr Bonnick resigned on 20 January 2017 and the issue of the Retirement Shares occurred on 20 June 2017. As a result, Mr Bonnick was still a related party of the Company at the date of issue of the Retirement Shares, so shareholder approval was required prior to the issue being undertaken.

The Company is taking the corrective actions as required by the ASX, including the cancellation of the Retirement Shares which will be approved by shareholders at a General Meeting of the Company. In addition, the Company will be seeking approval from its shareholders, in accordance with the requirements of the Corporations Act, for the issue of Replacement Retirement Shares to Mr Bonnick.

In relation to the letter, we note the following queries have been raised by the ASX:

**1. *When did K2F first become aware of the resignation of Mr Bonnick?***

The Company first became aware of the resignation of Mr Bonnick on 20 January 2017 when Mr Bonnick signed and submitted a letter of resignation to then Director and Company Secretary, Mr Gino D'Anna. The Company did not immediately accept the letter of resignation from Mr Bonnick.

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At the time that the letter of resignation was signed, Mr Bonnick was seeking from the Company the issue of fully paid ordinary shares in lieu of director's fees and extensive discussions occurred in relation to the quantity of shares that would be issued.

This matter was finally resolved on 1 February 2017, and the resignation of Mr Bonnick was accepted by the Board of K2fly on that date. However, an announcement regarding Mr Bonnick's resignation was not immediately made to the ASX as required under ASX Listing Rule 3.1.

**2. *Did K2F make any announcement prior to the Announcement which disclosed the resignation of Mr Bonnick?***

The Company made an announcement in relation the resignation of Mr Bonnick in an announcement which was lodged with the ASX on 15 February 2017 and titled "K2F Appoints High Calibre Directors and Strengthens Board".

The Company acknowledges that this announcement was made 15 calendar days after the resignation of Mr Bonnick was accepted by the Company and that this is in breach of ASX Listing Rule 3.1.

The Company acknowledges that an announcement in relation to the resignation of Mr Bonnick should have been made immediately rather than after the next board meeting when the appointment of new directors to replace Mr Bonnick occurred.

The Company notes that subsequent director resignations have been announced immediately, so the issue with Mr Bonnick is isolated in nature.

The Company also acknowledges that an Appendix 3Z for Mr Bonnick was not lodged at the date of his resignation or at the date that the announcement was made on 15 February 2017. The Company acknowledges that this is a breach of the Listing Rules and that an Appendix 3Z should have been lodged immediately.

Again, the Company notes that subsequent director resignations and the associated lodgement of the Appendix 3Z have occurred in compliance with the Listing Rules, so the issue with Mr Bonnick is isolated in nature.

**3. *In light of the January Appendix 3Y Query, does K2F consider that it had a reasonable basis for its statement that "the Company is confident that these additional processes will ensure that strict adherence to the disclosure obligations is achieved?"***

Notwithstanding the breach that has occurred surrounding the resignation of Mr Bonnick, the Company considers that the circumstances regarding the non-announcement of the resignation of Mr Bonnick is not linked to the processes that the Company has implemented regarding share trading by insiders of the Company and the associated relevant disclosure. The issue of the Retirement Shares to Mr Bonnick did not take place until 20 June 2017, which is approximately 5 months after Mr Bonnick resigned.

The Board has also recently revised its securities trading policy ("STP") and expanded it to not only apply to directors and key management personnel, but to all personnel

(including executives, directors, employees, contractors or agents of K2F). This came into effect / operation on Monday, 6 November 2017. All personnel have been re-advised or informed as to their obligations and requirements to seek approval before dealing in any securities in K2F. A copy of the revised STP has been lodged on the ASX Platform.

The Company is confident that this will ensure strict adherence to the disclosure obligations.

**4. *If the current arrangements are inadequate or not being enforced, what additional steps does K2F intend to take to ensure compliance with Listing Rule 3.19B?***

The Company is confident that the current arrangements are adequate and acknowledges that the breaches occurred in January 2017 and June 2017. Since that date, the Company has taken greater steps to ensure that disclosure is made in a timely fashion and to improve the Company's corporate governance procedures. Actions that the Company has taken include the appointment of Ms Jenny Cutri who has significant corporate governance experience and the revision of the Company's STP.

In addition, acknowledging that the current Company Secretary of K2F has limited workload capacity available, the Company is seeking a replacement Company Secretary that has the required workload capacity available.

The Company takes its obligations under the ASX Listing Rules extremely seriously.

**5. *Please confirm that K2F will take the required corrective action.***

The Company confirms that it is taking the corrective actions as required by the ASX, including the cancellation of the Retirement Shares which will be approved by shareholders at a General Meeting of the Company. In addition, the Company will be seeking approval from its shareholders for the issue of Replacement Retirement Shares to Mr Bonnick in accordance with the requirements of the Corporations Act 2001. The Company will provide the ASX with confirmation of completion of the cancellation by way of an announcement on the ASX Platform by no later than 8 February 2018.

The Company acknowledges that it should have obtained shareholder approval prior to the issue of the Retirement Shares. Current and future directors of K2F will not be offered shares without first obtaining shareholder approval.

In addition, please find attached a letter from the Company's share register, Advanced Share Registry, dated 10 November 2017, which confirms that the Retirement Shares were being held under a holding lock until 1 October 2018.

**6. *Please confirm that K2F is in compliance with the Listing Rules and, in particular, Listing Rule 3.1.***

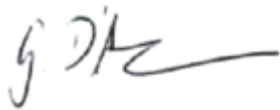
K2F confirms that it is in compliance with the ASX Listing Rules and, in particular, ASX Listing Rule 3.1.

7. *Please confirm that K2F'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 K2F with delegated authority from the board to respond to ASX on disclosure matters.*

The responses provided above have been authorised and approved by the Board in keeping with its published corporate governance procedures and continuous disclosure protocols, and the Board has instructed Mr Gino D'Anna as Company Secretary, to manage all matters of liaison with the ASX, including but not limited to the matters dealt with in the letter from the ASX dated 8 November 2017 and the Company's response dated 10 November 2017.

Should you have any further queries, please do not hesitate to contact the undersigned.

Regards,



Gino D'Anna  
Company Secretary

**For further information, please contact:**

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10 November 2017

Gino D'Anna  
Company Secretary  
K2Fly Limited  
Level 1, Grand Central  
26 Railway Road  
Subiaco WA 6008

By email:

Dear Mr D'Anna

**K2FLY LIMITED ("K2F")**

ASX Limited ("ASX") refers to the following.

- A. K2F's announcement and Appendix 3B of 3 November 2017 ("Announcement") regarding the issue of 200,000 fully paid ordinary shares in K2F ("Shares") to a former director of K2F, Mr Bonnick, in lieu of directors fees ("Remuneration Shares").
- B. K2F's annual report for the year ended 30 June 2017 lodged on the Market Announcements Platform ("Platform") on 2 October 2017 ("Annual Report") noting that Mr Bonnick resigned as a director on 14 February 2017.
- C. ASX's Appendix 3Y query letter and K2F's response released on the Platform on 19 January 2017 ("January Appendix 3Y query") in which K2F stated (inter alia):

*"The Company has recently adopted a revised Securities Trading Policy and Corporate Governance Manual which sets out the key parameters for directors dealing in the securities of the Company. The revised policies include prescriptive timing with respect to the notification of share trades to the Company Secretary and also includes further clarification around trading outside of closed periods and the necessary steps involved in ensuring that appropriate approvals are gained prior to trades taking place.*

*The Company is aware of its obligations under listing rule 3.19A and has circulated the specific listing rule extract to the directors to ensure that they are aware of their obligations in this respect.*

*All trades including contract notes are to be supplied to the Company Secretary on the day the trade becomes effective and the Company Secretary is also to be kept informed where approvals to trade have been sought and granted and the specific timing / length of time for such approvals.*

*The Company is confident that these additional processes will ensure that strict adherence to the disclosure obligations is achieved."*

- D. 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.



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”.

***Breach of Listing Rule 3.16.1 and 3.19A***

Listing Rules 3.16 and 3.16.1 state:

*“3.16 An entity must immediately tell ASX the following information.*

*3.16.1 A change of chairperson, director, chief executive officer (or equivalent), or company secretary.”*

Listing Rule 3.19A and 3.19B state:

*3.19A An entity must tell ASX the following.*

*3.19A.1 The notifiable interests of a director of the entity (or in the case of a trust, a director of the responsible entity of the trust) at the following times.*

- On the date that the entity is admitted to the official list.*
- On the date that a director is appointed.*

*The entity must complete Appendix 3X and give it to ASX no more than 5 business days after the entity’s admission or a director’s appointment.*

*3.19A.2 A change to a notifiable interest of a director of the entity (or in the case of a trust, a director of the responsible entity of the trust) including whether the change occurred during a closed period where prior written clearance was required and, if so, whether prior written clearance was provided. The entity must complete Appendix 3Y and give it to ASX no more than 5 business days after the change occurs.*

*3.19A.3 The notifiable interests of a director of the entity (or in the case of a trust, a director of the responsible entity of the trust) at the date that the director ceases to be a director. The entity must complete Appendix 3Z and give it to ASX no more than 5 business days after the director ceases to be a director.*

*3.19B An entity must make such arrangements as are necessary with a director of the entity (or in the case of a trust, a director of the responsible entity of the trust) to ensure that the director discloses to the*



*entity all the information required by the entity to give ASX completed Appendices 3X, 3Y and 3Z within the time period allowed by listing rule 3.19.A. The entity must enforce the arrangements with the director.*

At no time since the appointment of Mr Bonnick on 18 November 2016 has an announcement been lodged by K2F announcing the resignation of Mr Bonnick in accordance with K2F's obligations pursuant to listing rule 3.16.1. At no time has an Appendix 3Z has been lodged on the Platform in accordance with K2F's obligations pursuant to Listing Rule 3.19A.3. At no time since the appointment of Mr Bonnick on 18 November 2016 has an Appendix 3Y been lodged on the Platform in accordance with K2F's obligations pursuant to Listing Rule 3.19A.2 notifying of any change to Mr Bonnick's holdings in K2F. Accordingly it appears that K2F is in breach of its obligations pursuant to listing rules 3.16.1 and 3.19A.

#### ***Breach of listing rule 10.11***

The Announcement states that the Remuneration Shares were issued to Mr Bonnick on 20 June 2017.

Listing rule 10.11 states:

*"Unless one of the exceptions in rule 10.12 applies, an entity must not issue or agree to issue equity securities to any of the following persons without the approval of holders of ordinary securities.*

*10.11.1 A related party.*

*10.11.2 A person whose relationship with the entity or a +related party is, in ASX's opinion, such that approval should be obtained."*

The definition of related party in Chapter 19 of the Listing Rules includes the following relevant provisions:

- |                      |     |   |
|----------------------|-----|---|
| <i>related party</i> | (2) | <i>The following persons are related parties of a public company:</i>   |
|                      | (a) | <i>directors of the public company</i>  |
|                      | (b) | <i>directors (if any) of an entity that controls the public company</i>   |
|                      | (5) | <i>An entity is a related party of a public company at a particular time if the entity was a related party of the public company of a kind referred to in subsection (1), (2), (3) or (4) at any time within the previous 6 months.</i> |

Mr Bonnick is a related party because he was a director in the six months preceding the date of issue of the Remuneration Shares.

The issue of the Remuneration Shares appears to have been made in breach of listing rule 10.11 because K2F did not obtain prior Shareholder approval for their issue. The listing rules do not provide for the ratification of securities issued in breach of the listing rules.



### **Corrective Action**

In light of the above matters, ASX requires K2F to take the following action.

- Provide a letter to ASX from K2F's share registry confirming a holding lock has been applied to the Remuneration Shares, by no later than **4.00 pm (Perth time) on Monday 13 November 2017**.
- Cancel the Remuneration Shares in accordance with the requirements of the *Corporations Act 2001* (Cth) and provide ASX with confirmation of completion of the cancellation (including a copy of the relevant ASIC filing), by way of announcement on the Platform by **no later than Wednesday 8 February 2018**.

Please note that ASX is required to record details of breaches of the listing rules by listed entities as part of its reporting obligations.

ASX also reminds K2F of its contract with ASX to comply with the listing rules. In the circumstances, ASX considers that it is appropriate that K2F make arrangements to ensure that there is not a reoccurrence of a breach of listing rule 10.11.

### **Queries**

Having regard to the above matters, ASX asks K2F to respond separately to each of the following questions and requests for information in a form suitable for release to the market:

1. When did K2F first become aware of the resignation of Mr Bonnick?
2. Did K2F make any announcement prior to the Announcement which disclosed the resignation of Mr Bonnick? If so, please provide details. If not, please explain why this information was not released to the market earlier, commenting specifically on when you believe K2F was obliged to release the information under Listing Rules 3.1 and 3.1A and what steps K2F took to ensure that the information was released promptly and without delay.
3. In light of the January Appendix 3Y Query does K2F consider that it had a reasonable basis for its statement that *"the Company is confident that these additional processes will ensure that strict adherence to the disclosure obligations is achieved?"*
4. If the current arrangements are inadequate or not being enforced, what additional steps does K2F intend to take to ensure compliance with listing rule 3.19B?
5. Please confirm that K2F will take the required corrective action.
6. Please confirm that K2F is in compliance with the Listing Rules and, in particular, Listing Rule 3.1.
7. Please confirm that K2F'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 K2F with delegated authority from the board to respond to ASX on disclosure matters.



This request is made under, and in accordance with, Listing Rule 18.7. Please note that your response is required by no later than **4:00 pm (Perth time) on Monday 13 November 2017.**

Please contact me if you have any queries about the above.

Yours sincerely

*[sent electronically without signature]*

Dawn James  
**Adviser, ASX Listings Compliance**