



5 February 2018

Mr Ben Secrett
Senior Adviser, ASX Listings Compliance
ASX Compliance Pty Ltd
Level 40, Central Park
152 – 158 St Georges Terrace
Perth WA 6000

Dear Ben

Yowie Group Ltd – ASX aware query

Yowie Group Ltd (**YOW** or **the Company**) refers to your letter dated 1 February 2018 and provides the following responses to your letter:

1. **Does YOW consider the information in the Claims Announcement, including that YOW had agreed to pay a total of US\$1.95 million in stock adjustment claims, 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 advise the basis for that view.**

Not applicable

3. **When did YOW first become aware of the information in the Claims Announcement regarding the conclusion of negotiations and an agreement being made regarding stock adjustment claims and payments? In answering this question, please state the date and time that the entity first became aware of the conclusion of negotiations and an agreement being made regarding stock adjustment claims and payments (“Agreed Claims and Payments”).**

Verbal agreement as to the quantum, period of claim and payment timing was reached on the morning of Thursday 11 January 2018 AEDT and documentation was finalised on 19 January 2018 AEDT. Having regard to Listing Rules 3.1 and 3.1A, although not formalised, YOW released the substantive elements of the verbal agreement at 2.14pm AEDT on 12 January 2018.

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4. If YOW first became aware of the Agreed Claims and Payments before the Claims Announcement, did YOW make any announcement prior to the Claims Announcement which disclosed the Agreed Claims and Payments? If so, please provide details. If not, please explain why this information was not released to the market at an earlier time, commenting specifically on when you believe YOW was obliged to release the information under Listing Rules 3.1 and 3.1A and what steps YOW took to ensure that the information was released promptly and without delay.

No announcement in relation to this issue was made prior to 2.14pm AEDT on Friday 12 January 2018.

As mentioned in 3 above, verbal agreement as to the quantum, period of claim and payment timing was reached on the morning of Thursday 11 January 2018 AEDT and documentation was finalised on 19 January 2018 AEDT. Having regard to Listing Rules 3.1 and 3.1A, although not formalised, YOW released the substantive elements of the verbal agreement at 2.14pm AEDT on 12 January 2018.

5. In respect of the Agreed Claims and Payments, please:

5.1 explain the basis for the total of US\$1.95 million in stock adjustment claims;

The amount of the customer's claim was verified to the satisfaction of management and the amount of \$US1.95M was a commercially negotiated amount. The \$US1.95M negotiated claim is based on actual stock adjustment by the customer from February, 2016 through July, 2017, plus an estimate for August, 2017 through to the end of January, 2018.

5.2 advise whether the payment of US\$1.95 million in stock adjustment claims constitutes full and final resolution of the customer's stock adjustment claims, and if not, please provide details of the basis for a continuing claim or claims; and

Yes with respect to the periods to which the claims relate. However, in the ordinary course of business there may be claims with respect to subsequent periods. YOW and the customer will audit stock adjustments quarterly to determine if adjustments need to be made with respect to subsequent periods.

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5.3 advise whether there are any non-monetary aspects to the resolution of the customer's stock adjustment claims.

There are no non-monetary aspects to the resolution of the claim.

6. When did YOW first become aware of the information in the Claims Announcement regarding YOW's major US retail customer retrospectively claiming stock adjustment payments? In answering this question, please state the date and time that the entity first became aware that its major US retail customer retrospectively claiming stock adjustment payments ("Retrospective Claims").

Management was informed by the customer at 6:38am AEDST on 3 January 2018 of a stock adjustment claim after a routine customer audit.

7. If YOW first became aware of the Retrospective Claims before the Claims Announcement, did YOW make any announcement prior to the Claims Announcement which disclosed the information? If so, please provide details. If not, please explain why this information was not released to the market at an earlier time, commenting specifically on when you believe YOW was obliged to release the information under Listing Rules 3.1 and 3.1A and what steps YOW took to ensure that the information was released promptly and without delay.

YOW made no announcement in relation to the Retrospective Claim until 2.14pm AEDT on Friday 12 January 2018. For the reasons outlined in paragraphs 3 and 4 the Board considered that an announcement prior to formal agreement was not appropriate. YOW believes that it was obliged to release the details of the agreed Retrospective Claim when the Retrospective Claim was finalized. This was not done until 19 January 2018 but, having regard to Listing Rules 3.1 and 3.1A, YOW released the substantive elements of the verbal agreement at 2.14pm AEDT on 12 January 2018.

The fact of an audit adjustment claim by one party to a contractual relationship as part of the ordinary course of a business relationship is not a matter that requires announcement. It is not in any way similar to the commencement of legal proceedings or the threat of litigation, for example. In any event, information regarding the fact of a claim was confidential, concerned the commencement of a (necessarily incomplete) negotiation and would not have been expected to be disclosed to ASX.

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8. Is YOW aware of any customer or customers intending to make or having made a material stock adjustment claim (other than the claims the subject of the Agreed Claims and Payments) against YOW? If so, please provide details.

YOW is not aware of any material stock adjustments claims from other customers. However, there can be no assurance such claims will not arise in the future.

9. Does YOW consider the information in the Guidance Announcement regarding the 11.7% decline in North America net sales to be information that a reasonable person would expect to have a material effect on the price or value of its securities?

No.

10. If the answer to question 9 is “no”, please advise the basis for that view.

If it were the sole data point for YOW’s performance over a six month period, it is possible that the 11.7% decline in North America net sales might have been material. However, in the context of all information, trading history and disclosures to the market the Board was not of the view that the North American H1 2018 shortfall to the prior corresponding period of 11.7% was material to the price or value of YOW securities. It was relevant to the assessment of the revision of the Revenue Guidance.

YOW notes that the market had been kept fully and timely informed of group and North American actual trading net sales performance. On 19 October 2017 YOW disclosed a 7% negative comparison between group Q1 2017 and group Q1 2018 actual trading net sales performance. It also disclosed a 22% negative comparison between North American Q1 2017 actual trading net sales performance and North American Q1 2018 actual trading net sales performance. Against this background, the 11.7% shortfall for the 6 months reflected an overall and significant improvement in actual trading performance in North America during Q2. It is the board’s belief that the revised net sales growth guidance rather than the disclosure of the improvement in North American trading performance compared to Q1 had and could be reasonably expected to have had a material impact on the price or value of YOW’s securities.

The board became aware that there was an actual 11.7% shortfall in North American net sales compared to the prior corresponding half year period subsequent to the half year ended 31 December 2017 and whilst the company was in trading halt. The 11.7% shortfall in North American net sales was disclosed by Yowie in the release to the market prior to the commencement of trading on Wednesday, 3 January 2018.

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- 11. Please confirm that YOW is in compliance with the Listing Rules and, in particular, Listing Rule 3.1.**

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

- 12. Please confirm that YOW'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 the Entity with delegated authority from the board to respond to ASX on disclosure matters.**

YOW confirms that its responses to the questions above have been authorised and approved by its board.

Yours sincerely,

Neville Bassett
Company Secretary

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1 February 2018

Neville Bassett
Yowie Group Ltd
Level 4, 216 St Georges Terrace
PERTH WA 6000

By email

Dear Mr Bassett

YOWIE GROUP LTD ("YOW"): AWARE QUERY

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

- A. The change in the price of YOW's securities from \$0.175 at 2.20pm AEDT to a closing price of \$0.165 on Friday, 12 January 2018, constituting a price decrease of 5.71%.
- B. YOW's announcement entitled "Stock Adjustment Claim" lodged at 2.14pm AEDT and released on the ASX Market Announcements Platform ("Platform") at 2.16pm AEDT on Friday, 12 January 2018 (the "Claims Announcement"), which disclosed the following.

"Yowie Group Ltd (ASX:YOW, OTC ADR: YWRPY)) (the "Group" or "Yowie") advises that after a standard periodic internal audit of its suppliers, the Group's major US retail customer retrospectively claimed payments based on various stock adjustment factors relating to the last two years.

Negotiations on the quantum and merits of the claim were conducted and have now successfully concluded. Yowie has agreed to pay a total of US\$1.95 million for claims going back two years, to February 2016, to be paid progressively over the next twelve months.

The Board is satisfied that this event will not adversely affect the trading relationship or outlook with the customer nor the recently revised year-end revenue guidance. Increased retail penetration is continuing in the US, Canada and Australia."

- C. YOW's "Response to ASX Aware Letter" released on the Platform at 9.35am AEDT on Monday, 8 January 2018, which disclosed, amongst other things, the following.

"6. If YOW first became aware of the information that there was an 11.7% decline in the North American net sales before 3 January 2018, did YOW make any announcement prior to 3 January 2018 which disclosed the information? If so, please provide details. If not, please explain why this information was not released to the market at an earlier time, commenting specifically on when you believe YOW was obliged to release the information under Listing Rules 3.1 and 3.1A and what steps YOW took to ensure that the information was released promptly and without delay.

In the context of all information, trading history and disclosures to the market the board is not of the view that the North American H1 2018 shortfall to the prior corresponding period



of 11.7% is material. It is relevant to the assessment of the revision of the Guidance. In any event, the board is of the view that the information was disclosed promptly and without delay.

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

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

- D. YOW's announcement entitled "Revenue Guidance Update and CEO Appointment" released on the Platform at 9.52am AEDT on Wednesday, 3 January 2018 (the "Guidance Announcement"), which disclosed, amongst other things, the following.

"Net sales growth guidance for FY18 revised to 17%, from 55%."

"Group net Sales for H1 FY18 were US\$10 million, representing growth of 7.5% over the opening half of the previous year."

"• North America net sales for H1FY18 were US\$8.2M, an 11.7% decline versus last year and below plan.

- Australia net sales for 1HFY18 were US\$1.8M, beating plan by 15%."*

- E. 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.

- F. 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"*.

- G. 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."*

H. 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."

Having regard to the above, ASX asks YOW to answer separately each of the following questions and provide the following confirmations in a format suitable for release to the market in accordance with Listing Rule 18.7A.

1. Does YOW consider the information in the Claims Announcement, including that YOW had agreed to pay a total of US\$1.95 million in stock adjustment claims, 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 advise the basis for that view.
3. When did YOW first become aware of the information in the Claims Announcement regarding the conclusion of negotiations and an agreement being made regarding stock adjustment claims and payments? In answering this question, please state the date and time that the entity first became aware of the conclusion of negotiations and an agreement being made regarding stock adjustment claims and payments ("Agreed Claims and Payments").
4. If YOW first became aware of the Agreed Claims and Payments before the Claims Announcement, did YOW make any announcement prior to the Claims Announcement which disclosed the Agreed Claims and Payments? If so, please provide details. If not, please explain why this information was not released to the market at an earlier time, commenting specifically on when you believe YOW was obliged to release the information under Listing Rules 3.1 and 3.1A and what steps YOW took to ensure that the information was released promptly and without delay.



5. In respect of the Agreed Claims and Payments, please:
 - 5.1. explain the basis for the total of US\$1.95 million in stock adjustment claims;
 - 5.2. advise whether the payment of US\$1.95 million in stock adjustment claims constitutes full and final resolution of the customer's stock adjustment claims, and if not, please provide details of the basis for a continuing claim or claims; and
 - 5.3. advise whether there are any non-monetary aspects to the resolution of the customer's stock adjustment claims.
6. When did YOW first become aware of the information in the Claims Announcement regarding YOW's major US retail customer retrospectively claiming stock adjustment payments? In answering this question, please state the date and time that the entity first became aware that its major US retail customer retrospectively claiming stock adjustment payments ("Retrospective Claims").
7. If YOW first became aware of the Retrospective Claims before the Claims Announcement, did YOW make any announcement prior to the Claims Announcement which disclosed the information? If so, please provide details. If not, please explain why this information was not released to the market at an earlier time, commenting specifically on when you believe YOW was obliged to release the information under Listing Rules 3.1 and 3.1A and what steps YOW took to ensure that the information was released promptly and without delay.
8. Is YOW aware of any customer or customers intending to make or having made a material stock adjustment claim (other than the claims the subject of the Agreed Claims and Payments) against YOW? If so, please provide details.
9. Does YOW consider the information in the Guidance Announcement regarding the 11.7% decline in North America net sales to be information that a reasonable person would expect to have a material effect on the price or value of its securities?
10. If the answer to question 9 is "no", please advise the basis for that view.
11. Please confirm that YOW is in compliance with the Listing Rules and, in particular, Listing Rule 3.1.
12. Please confirm that YOW'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 YOW 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, 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 6.30am AWST on Tuesday, 6 February 2018**. If we do not have your response by then, ASX will have no choice but to consider suspending trading in YOW'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, YOW'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 tradinghaltspert@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 Rules 3.1 and 3.1A

In responding to this letter, you should have regard to YOW'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 YOW'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.

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 YOW'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*.

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

Yours sincerely

[sent electronically without signature]

Ben Secrett
Senior Adviser, ASX Listings Compliance