



30<sup>th</sup> April 2018

Mr. Ben Secrett  
Senior Advisor  
ASX Listing Compliance  
By Email (tradinghaltspert@asx.com.au)

Dear Mr. Secrett,

**Ensurance Limited (Company or Entity): Listing Rule 10.1 Breach**

We refer to your letter dated 27 April 2018 requesting further information with regards to the Company's breach of ASX Listing Rule 10.1.

We will respond separately to each of the questions raised in your letter which have been reproduced below in bold.

**1. Does the Entity consider the information that it had entered into any of the following funding arrangements (together, the "Funding Arrangements") to be information that a reasonable person would expect to have a material effect on the price or value of its securities?**

- **September Kalonda Loan Agreement**
- **Kalonda Unsecured Facility**
- **December Kalonda Loan Agreement**

The Company does not consider the information that it had entered into Funding Arrangements with Kalonda Pty Ltd (**Kalonda**) 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" for any of the Funding Arrangements, please advise the basis for that view.**

The Funding Arrangements were entered into on the same basis as if they were a commercial loan arrangement negotiated on arms-length terms. On that basis, it did not occur to the Company at the time of entering into the Funding Arrangements that this information should be disclosed to the market. On reflection this was an error. As the Funding Arrangements are a secured loan arrangement with a related entity, disclosure to the market should have been made.

3. ***Did the Entity make any announcement at the time that it entered into each of the Funding Arrangements which disclosed that 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 the Entity was obliged to release the information under Listing Rules 3.1 and 3.1A (including an explanation of procedure followed by the Entity to determine whether the information is required to be released 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.***

The Company did not make any announcement that it entered into each of the Funding Arrangements with Kalonda as it did not occur to the Company at the time that it was required to do so. As soon as the Company became aware that it had an obligation to disclose such information, the Company made contact with the ASX in order to take corrective measures.

4. ***What are the material terms and the status of the December Kalonda Loan Agreement?***

The December Kalonda Loan Agreement is a secured cash advance facility limited to \$1 million, for a period of 12 months from the initial advance. Interest is payable monthly in advance on the drawn amount at a rate of 1.5% per month and at a rate of 0.66% in arrears on the balance of the unused facility. The December Kalonda loan Agreement was renegotiated to a limit of \$1.35 million on 21 February 2018, to a limit of \$1.75 million on 14 March 2018 and to a limit of \$2.5 million on 27 April 2018, on the same terms as the December Kalonda Loan Agreement.

5. ***Are the December Kalonda Loan Agreement and the Kalonda Unsecured Facility the same Funding Arrangement?***

Yes.

6. ***If the answer to question 5 is “yes”, please explain why the Kalonda Unsecured Facility is referred to as an “unsecured loan facility”.***

This was an oversight. The Kalonda Unsecured Facility should have been disclosed as a secured loan facility.

7. ***What are the material terms and the status of the September Kalonda Loan Agreement?***

The September Kalonda Loan Agreement was a secured cash advance facility limited to \$1.15 million, for a period of 3 months from the initial advance or the finalization of a \$3.5 million share placement. Interest was payable monthly in advance on the drawn amount at a rate of 1.8% per month. It was also a condition of the September Kalonda Loan Agreement that the Company issue Kalonda with options to acquire 1,150,000 ordinary shares of ENA at an exercise price of \$0.05 and an expiry of 24 months beginning on the date of the agreement. The issue of the options to Kalonda was approved by shareholders at the Company's 2017 Annual General Meeting held on 29 November 2017. The September Kalonda Loan Agreement was varied to \$2.15 million on 18 October 2017 and again to

\$2.8 million on 22 November 2017. The September Kalonda Loan Agreement was then settled on 13 December 2017, at which time a new \$1 million cash advance facility was entered into (the December Kalonda Loan Agreement).

**8. Why was the September Kalonda Loan Agreement not referred to in Item 8 of the September 2017 Appendix 4C?**

This was an oversight. The September Kalonda Loan Agreement should have been disclosed as a \$1.15 million secured loan facility at Item 8 of the September 2017 Appendix 4C.

**9. Please detail (including the material terms) of all loan agreements, convertible notes and other funding arrangements between the Entity and a person (as defined by the Listing Rules) subject to Listing Rule 10.1.**

The Current funding arrangements between the Company and a person subject to Listing Rule 10.1 are as follows:

- a) Loan Agreement with Kalonda, an entity related to Mr. Tony Leibowitz the Executive Chairman of the Company, comprising of a secured cash advance facility limited to \$2.5 million, for a period of 12 months from the initial advance. Interest is payable monthly in advance on the drawn amount at a rate of 1.5% per month and at a rate of 0.66% in arrears on the balance of the unused facility.
- b) \$100,000 Convertible Note Agreement with Kalonda Pty Ltd <Leibowitz Super Fund>, an entity related to Mr. Tony Leibowitz the Executive Chairman of the Company. Unless previously redeemed, converted or purchased and cancelled in accordance with the agreement, the convertible note will be redeemed on that date which is 3 years after the subscription date. Interest is payable quarterly in arrears at a rate of 8% per annum.
- c) \$100,000 Convertible Note Agreement with Mr. Adam Davey, a Non-Executive Director of the Company. Unless previously redeemed, converted or purchased and cancelled in accordance with the agreement, the convertible note will be redeemed on that date which is 3 years after the subscription date. Interest is payable quarterly in arrears at a rate of 8% per annum.
- d) \$500,000 Convertible Note Agreement with Savill Hicks Corp (VIC) Pty Ltd (Hicks Big Buckaroo Superannuation Fund), an entity related to Mr. Stefan Hicks a Non-Executive Director of the Company. Unless previously redeemed, converted or purchased and cancelled in accordance with the agreement, the convertible note will be redeemed on that date which is 3 years after the Subscription Date. Interest is payable quarterly in arrears at a rate of 8% per annum.
- e) \$20,000 Convertible Loan Agreement with Elmwood Enterprises Pty Ltd, an entity related to Mr. Grant Priest, a previous Non-Executive Director of the Company who resigned on 3 November 2017. Unless previously redeemed, converted or purchased and cancelled in accordance with the agreement, the convertible note will be redeemed on that date which is 3 years after the Subscription Date. Interest is payable quarterly in arrears at a rate of 8% per annum.

Other than the above agreements, some Directors also hold share options, partly paid shares and performance rights.

**10. What arrangements does the Entity have in place to ensure the completeness and accuracy of its Appendix 4C quarterly cash flow reports? In answering this question, please comment on whether the Entity considers that these arrangements are adequate or being enforced and, if not, what additional steps the Entity intends to take to ensure compliance.**

The Company's Appendix 4C is currently prepared by the Financial Controller and reviewed by the Chief Finance Officer (**CFO**). Subsequent to the CFO review, the Appendix 4C is forwarded to all Directors for their review and approval. Notwithstanding the oversight that has occurred with regards the disclosure of the Funding Arrangements, the Company considers that this arrangement is adequate and will ensure that all Appendices lodged with the ASX in future will be complete and accurate.

**11. Please confirm that the Entity has taken the following corrective action pursuant to Listing Rule 10.9.**

**11.1. Executed a variation to the December Kalonda Loan Agreement to the effect that any security interest granted by the December Kalonda Loan Agreement may only be enforced against the Entity following the Entity first obtaining shareholder approval pursuant to Listing Rule 10.1 or an ASX waiver of Listing Rule 10.1.**

The Company can confirm that it has executed a variation to the December Kalonda Loan Agreement (as varied) to the effect that any security interest granted by the December Kalonda Loan Agreement may only be enforced against the Entity following the Entity first obtaining shareholder approval pursuant to Listing Rule 10.1 or an ASX waiver of Listing Rule 10.1.

**11.2. Notified the market, by way of releasing an announcement on MAP, that the Entity breached Listing Rule 10.1 by executing the December Kalonda Loan Agreement without the approval of the Entity's shareholders and that the December Kalonda Loan Agreement has been varied in accordance with question 11.1 above.**

The Company can confirm that it has notified the market, by way of releasing an announcement, that the Entity breached Listing Rule 10.1 by executing the December Kalonda Loan Agreement without the approval of the Entity's shareholders and that the December Kalonda Loan Agreement has been varied to the effect that any security interest granted by the December Kalonda Loan Agreement (as varied) may only be enforced against the Entity following the Entity first obtaining shareholder approval pursuant to Listing Rule 10.1 or an ASX waiver of Listing Rule 10.1.

**11.3 Notified the market, by way of releasing correct Appendix 3Y – Change of Director’s Interest Notices, of the relevant interests in the Entity’s securities and interest in contracts with the Entity of each of Entity’s directors.**

The Company can confirm that it has released a correct Appendix 3Y – Change of Director’s Interest Notice in respect of Mr. Tony Leibowitz reflecting the relevant interests in the Company’s securities and interest in contracts with the Company. The Company confirms that all other Directors’ interests have been accurately disclosed on MAP.

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

Other than the oversight that has occurred with regards the disclosure of the Funding Arrangements, which has now been rectified by release of the documents the subject of items 11.2 and 11.3 above, the Company confirms that it is in compliance with the Listing Rules, in particular, Listing Rule 3.1.

**13. Please confirm that the Entity’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.**

The Company confirms that the Entity’s responses to the questions above have been authorised and approved by the Board of Directors of the Company.

Yours Faithfully,

A handwritten signature in black ink, appearing to read 'Sam Hallab', with a long horizontal flourish extending to the right.

Sam Hallab  
Company Secretary

27 April 2018

Sam Hallab  
Ensurance Ltd  
Level 2, 2 Glen Street  
MILSONS POINT NSW 2061

By email

Dear Mr Hallab

**ENSURANCE LTD (THE "ENTITY"): LISTING RULE 10.1 BREACH**

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

- A. The Entity's announcement entitled "Full Year Statutory Accounts" released on the ASX Market Announcements Platform ("MAP") on 29 September 2017 ("2017 Annual Report") disclosing, amongst other things, on pages 4, 22 and 56 of the 2017 Annual Report that the Entity "entered into a loan agreement on 27 September 2017 with Kalonda Pty Ltd ATF Leibowitz Superannuation Fund to make available to the Group a cash advance facility on a progressive basis up to but not exceeding \$1,150,000, payable at the earliest of 3 months from the initial drawdown or the finalisation of the \$3,000,000 share placement plan." ("September Kalonda Loan Agreement") The 2017 Annual Report also states that the Entity had total equity interests of negative \$1,998,839 as at 30 June 2017.
- B. The Entity's announcement entitled "Commitments Test Entity – First Quarter Report" released on MAP on 27 October 2017 ("September 2017 Appendix 4C"), disclosing, amongst other things, that the only financing facility available to the Entity as at 30 September 2017 was an overdraft of \$150,000 repayable on demand and carrying an interest rate of 11.22% pa, of which \$146,000 had been drawn. The September 2017 Appendix 4C does not detail the September Kalonda Loan Agreement in Item 8 of the September 2017 Appendix 4C.
- C. The Entity's announcement entitled "Appendix 4C – quarterly" released on MAP on 31 January 2018 ("December 2017 Appendix 4C"), disclosing, amongst other things, the following.
- That a "permanent unsecured loan facility was established with Kalonda Pty Ltd, an entity owned by Executive Chairman, Tony Leibowitz. The facility carries an interest rate of 1.5% per month (payable in advance) on the drawn portion and 0.66% (payable in arrears) on the undrawn portion." ("Kalonda Unsecured Facility")
  - The total facility amount of the Kalonda Unsecured Facility was stated as \$1,000,000, with the amount of \$510,000 having been drawn as at 31 December 2017.
  - That the Entity's company secretary, Mr Sam Hallab, signed the December 2017 Appendix 4C's compliance statement (set out below).
- Compliance statement**
- 1 *This statement has been prepared in accordance with accounting standards and policies which comply with Listing Rule 19.11A.*
  - 2 *This statement gives a true and fair view of the matters disclosed.*
- D. A letter and email correspondence from the Entity's lawyers dated 27 April 2018 advising ASX that:
- the Entity had entered into a loan agreement dated 13 December 2017 with Kalonda Pty Ltd and others, pursuant to which Kalonda Pty Ltd agreed to advance an amount of up to \$1,000,000 to the Entity ("December Kalonda Loan Agreement"), and which was revised on 17 April 2018 to increase the facility limit to \$2,500,000;

- pursuant to the December Kalonda Loan Agreement, the Entity has granted Kalonda security interests over certain of its assets;
  - \$1,950,000 has been advanced to date by Kalonda to the Entity pursuant to the December Kalonda Loan Agreement; and
  - Kalonda is a related party of the Entity by virtue of being controlled by Mr Leibowitz and his spouse, and that no shareholder approval was sought by the Entity prior to execution of the December Kalonda Loan Agreement.
- 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."*
- I. Listing Rule 10.1, which requires a listed entity to obtain prior shareholder approval for certain acquisitions and disposals.
- "10.1 An entity (in the case of a trust, the responsible entity) must ensure that neither it, nor any of its <sup>+</sup>child entities, <sup>+</sup>acquires a substantial asset from, or <sup>+</sup>disposes of a substantial asset to, any of the following <sup>+</sup>persons without the approval of holders of the entity's <sup>+</sup>ordinary securities.*
- 10.1.1 *A <sup>+</sup>related party of the entity.*

10.1.2 A *\*child entity of the entity.*

10.1.3 A *+substantial holder in the entity, if the person and the person's +associates have a relevant interest, or had a relevant interest at any time in the 6 months before the transaction, in at least 10% of the total votes attached to the voting +securities in the entity.*

10.1.4 An *+associate of a +person referred to in rules 10.1.1 to 10.1.3.*

10.1.5 A *+person whose relationship to the entity or a \*person referred to in rules 10.1.1 to 10.1.4 is such that, in ASX's opinion, the transaction should be approved by \*security holders.*

*If an entity breaks this rule, ASX may require it to take the corrective action set out in rule 10.9."*

J. Listing Rule 10.2, which states what is a substantial asset for the purposes of Listing Rule 10.1.

*"10.2 An asset is substantial if its value, or the value of the consideration for it is, or in ASX's opinion is, 5% or more of the +equity interests of the entity as set out in the latest +accounts given to ASX under the listing rules.*

10.2.1 *In calculating the value, each of the following rules applies.*

- *Intangibles will be included.*
- *Provisions for depreciation and amortisation will be deducted.*
- *Liabilities acquired as part of an +acquisition will not be deducted.*
- *Separate transactions will be aggregated if, in ASX's opinion, they form part of the same commercial transaction."*

K. Listing Rule 19.12, which defines the term "dispose" as follows.

*"dispose to dispose or agree to dispose directly or through another \*person by any means, including the following.*

- *Granting or exercising an option.*
- *Using an asset as collateral.*
- *Decreasing an economic interest.*
- *Disposing of part of an asset."*

L. The Entity's execution of the December Kalonda Loan Agreement without the approval of holders of the Entity's ordinary securities constituted a breach of Listing Rule 10.1.

M. ASX is required to record details of breaches of the Listing Rules by listed entities as part of its reporting obligations. ASX also reminds the Entity of its contract with ASX to comply with the Listing Rules. In the circumstances, ASX considers that it is appropriate that the Entity make arrangements to ensure that there is not a reoccurrence of a breach of Listing Rule 10.1.

N. The issues highlighted in this letter give ASX cause for concern that the Entity's governance policies and practices are not adequate to achieve compliance with its obligations under the Listing Rules.

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### ***Queries and Confirmations***

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

1. Does the Entity consider the information that it had entered into any of the following funding arrangements (together, the “Funding Arrangements”) to be information that a reasonable person would expect to have a material effect on the price or value of its securities?
  - September Kalonda Loan Agreement
  - Kalonda Unsecured Facility
  - December Kalonda Loan Agreement
2. If the answer to question 1 is “no” for any of the Funding Arrangements, please advise the basis for that view.
3. Did the Entity make any announcement at the time that it entered into each of the Funding Arrangements which disclosed that 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 the Entity was obliged to release the information under Listing Rules 3.1 and 3.1A (including an explanation of procedure followed by the Entity to determine whether the information is required to be released 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.
4. What are the material terms and the status of the December Kalonda Loan Agreement?
5. Are the December Kalonda Loan Agreement and the Kalonda Unsecured Facility the same Funding Arrangement?
6. If the answer to question 5 is “yes”, please explain why the Kalonda Unsecured Facility is referred to as an “unsecured loan facility”.
7. What are the material terms and the status of the September Kalonda Loan Agreement?
8. Why was the September Kalonda Loan Agreement not referred to in Item 8 of the September 2017 Appendix 4C.
9. Please detail (including the material terms) of all loan agreements, convertible notes and other funding arrangements between the Entity and a person (as defined by the Listing Rules) subject to Listing Rule 10.1.
10. What arrangements does the Entity have in place to ensure the completeness and accuracy of its Appendix 4C quarterly cash flow reports? In answering this question, please comment on whether the Entity considers that these arrangements are adequate or being enforced and, if not, what additional steps the Entity intends to take to ensure compliance.
11. Please confirm that the Entity has taken the following corrective action pursuant to Listing Rule 10.9.
  - 11.1. Executed a variation to the December Kalonda Loan Agreement to the effect that any security interest granted by the December Kalonda Loan Agreement may only be enforced against the Entity following the Entity first obtaining shareholder approval pursuant to Listing Rule 10.1 or an ASX waiver of Listing Rule 10.1.
  - 11.2. Notified the market, by way of releasing an announcement on MAP, that the Entity breached Listing Rule 10.1 by executing the December Kalonda Loan Agreement without the approval of the Entity’s shareholders and that the December Kalonda Loan Agreement has been varied in accordance with question 11.1 above.
  - 11.3. Notified the market, by way of releasing correct Appendix 3Y – Change of Director’s Interest Notices, of the relevant interests in the Entity’s securities and interest in contracts with the Entity of each of Entity’s directors.
12. Please confirm that the Entity is in compliance with the Listing Rules and, in particular, Listing Rule 3.1.

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13. Please confirm that the Entity'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.

#### **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 7.00am AWST on Tuesday, 1 May 2018**. If you are unable to respond to this letter by this time, ASX will likely suspend 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 and may require the Entity to request a trading halt immediately.

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 [tradinghaltsperth@asx.com.au](mailto:tradinghaltsperth@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 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*.

It should be noted that the Entity'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 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 require any 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.

Kind regards

*[Sent electronically without signature]*

**Ben Secrett**

Senior Adviser, Listings Compliance (Perth)

T 08 9224 0000