



Market Announcement

28 August 2019

Attached for the information of the market is ASX's query letter to Zyber Holdings Ltd (ASX:ZYB) dated 16 August 2019 and ZYB's response dated 20 August 2019, received by ASX on 27 August 2019.

ASX's enquiries into the matters dealt with in that correspondence are ongoing.



Executive Chairman
George Hatzipapas

Non-Executive Director
John Tomaras
Ted Tzovaras

Company Secretary
Henry Kinstlinger

20 August 2019

Penelope Reid
Adviser, Listings Compliance (Perth)

ListingsCompliancePerth@asx.com.au

Dear Penelope

With respect to ASX Follow Up Query Letter dated 16 August 2019, the Company responds seriatim as follows:

1. ASX notes that:

- *The Response states that the Loan ‘was provided by the Company as an alternate to a cash payment of significant outstanding fees (\$150,000 per annum) to the borrower’ (see sub-paragraph F(ii) above). However, the Loan Agreement states that the purpose of the Loan is ‘personal assistance.’*
- *Mr Hatzipapas was appointed as a director of ZYB just under 18 months ago.*
- *ZYB does not appear to have previously disclosed the terms of any employment, service or consultancy agreement it has entered into with Mr Hatzipapas.*
- *The Appendix 4C stated that:*
 - *‘the directors have resolved to receive remuneration through the issue of shares, subject to approval of shareholders’; and*
 - *the Loan is ‘secured through a PPSR charge over securities to a value of \$630,000’.*
- *The Loan Agreement disclosed that the Charge was a script lien over 45,000,000 ordinary shares in the Company.*
- *The 2018 annual report disclosed that Mr Hatzipapas held 5,000,000 ordinary shares in ZYB at 30 June 2018. ZYB has not subsequently lodged an Appendix 3Y on behalf of Mr Hatzipapas.*

In light of the above:

a) Please explain the inconsistency in the description of the Loan’s purpose in the Loan Agreement and the Response.

The Purpose of the loan was as stated – “Personal Assistance”.

Mr Hatzipapas agreed to forego cash payment and support his remuneration being paid by shares (subject to shareholder approval) on the basis that the Company would provide him the loan.

b) When did ZYB and Mr Hatzipapas enter into the agreement which requires ZYB to pay \$150,000 per annum in fees referred to in sub-paragraph F(ii) above?

Directors resolved to fix his remuneration at \$150,000 per annum on 16 May 2019.

- c) Please provide a copy of any employment, service or consultancy agreements between ZYB and Mr Hatzipapas (or his related entities), including the agreement which requires ZYB to pay \$150,000 per annum in fees referred to in sub-paragraph F(ii) above (not for release to the market).**

No agreement has yet been concluded for his current engagement by the Company.

- d) Please explain how Mr Hatzipapas was able to grant security over 45,000,000 shares in ZYB given he has only disclosed a holding of 5,000,000 shares.**

The securities are not held by Mr Hatzipapas.

- e) Please provide a copy of the documents related to the Charge, including a PPSR search certificate (not for release to the market).**

Lodgment of the PPSR is yet to be completed.

- f) When did the directors resolve to receive their remuneration through the issue of shares (subject to shareholder approval)?**

16 May 2019.

- g) Please provide a copy of the directors' resolution (not for release to the market).**

Attached.

- 2. The Response states that no independent advice was sought regarding the Loan and notes that an 'eminent legal practitioner is a director of the Company' (see sub-paragraph F(iii) above).**

- a) Did this director specifically provide legal advice to the board in relation to the Loan?**

No.

- b) If the director in question did provide legal advice, was the advice written or oral?**

Not Applicable.

- c) If the director in question did provide legal advice, did he consider and advise on the potential application of sections 180, 181 and 182 of the Corporations Act to the Loan?**

Not Applicable.

- d) If the director in question did provide legal advice, did he specifically advise that the Loan was on arm's length terms and therefore did not need member approval under section 210 of the Corporations Act? If so, what factors did he take into account in forming the view that the Loan was on arm's length terms.**

Not Applicable.

- e) If the director in question did not provide legal advice to the board in relation to the Loan, please explain how the Board came to the view that the Loan was appropriate for a listed entity and complied with sections 180, 181, 182 and 208 of the Corporations Act.**

The rational of each director signing the circular resolution is unknown.

3. In light of the conflict of interest presented by the Loan and noting paragraph H above:

a) Why didn't Mr Hatzipapas exclude himself from the approval process for the Loan?

The approval was by way of a circular resolution, requiring the approval of each director in office at the time.

b) Why didn't the non-conflicted directors require Mr Hatzipapas to exclude himself from the approval process for the Loan?

The approval was by way of a circular resolution, requiring the approval of each director in office at the time.

4. Please provide a full account of the circumstances in which Mr Hoffman resigned as a director, along with the reasons for his resignation.

Mr Hoffman resigned by email notice to the Chairman and Company Secretary. The covering email stated:

Dear Henry and George,

I trust your [sic] well. Please see attached my resignation from the board of Zyber. My current activities and family pressures mean I am [sic] able to continue serving on the board. I am happy to advise on a technical and software capacity.

Please let me know if you require anything else from me.

Regards

Richard

5. Please provide a copy of Mr Hoffman's resignation as a director (not for release to the market).

Attached.

6. Please explain why Mr Hoffman's resignation as a director was not announced on 8 August 2019.

The resignation was received at 7.28pm on Thursday, 8 August 2019.

With the resignation, the Company no longer complied with its Constitution or the Corporations Act, which require a minimum of three directors. The Company immediately sought to appoint an additional director, with the intention of announcing both the resignation and the appointment concurrently.

7. The Response states that ZYB 'has engaged competent specialists to develop the "Zyber Secure File Share" application' (see sub-paragraph F(i) above)

a) Who are the 'competent specialists' that ZYB has engaged?

David Di Stefano

David is a blockchain enthusiast first and foremost. He has experience in developing customized business development software. He gained a thorough interest in blockchain and cryptocurrencies since early 2017 developing an extensive knowledge of the industry.

He is the Chief Operating Officer for EQUAL Network (an Ethereum-based cryptocurrency wallet with a vision of making Blockchain simple, whilst allowing users to discover and interact with the Decentralized web.)

David specializes in content creation, partnerships, strategic alignment, accounting, marketing and industry positioning.

b) Please provide a copy of the agreement with the 'competent specialists' (not for release to the market).

No formal agreement has been concluded. Services are provided on a fee for service basis.

8. ASX notes that ZYB is seeking to have the Presentation released on MAP. Having regard to the guidance in ASX Guidance Note 8 mentioned in paragraphs K and L above:

a) What information (if any) in the Presentation is new information that has not previously been released to the market?

Point 1 on slide 6

Zyber is an application installed on-premise or in the cloud which is under the explicit control of IT organizations." - Original purpose

When implementing the Zyber applications onto the blockchain (either on the Ethereum Ecosystem or using Cosmos) the files will be encrypted ON the blockchain, not on-premise or on cloud.

On-premise or in the cloud is hackable, Blockchain is not, due to no central point of failure and the reliance on millions of nodes to power the network.

Slide 10 – Smart Contracts

Smart contracts are specific to the creation of the Ethereum blockchain. Smart contracts are a way to verify a transaction between party a and party b in a trustless nature dependent on specific conditions being met. This will provide end to end encryption on all files implemented with the blockchain solution.

Slide 12 – Signing Transactions

Each file upload, send or receive will require the user to sign to attribute their digital public key to the verified user. This will significantly reduce the number of mistakes involved with sending and receiving confidential files.

None of these 3 critical features are involved with anything that Zyber has done before. Majority of the tech stack will need to be updated, this will include the ability to

implement certain javascript libraries and work with Solidity (or the equivalent on another blockchain).

b) What information (if any) in the Presentation would have a material effect on the price or value of ZYB's securities?

The following information would conceivably impact on the the value of ZYB's securities:

The whole blockchain solution needs to be built in a completely different way to the other products, this includes:

- Finding blockchain developers (scarce)
- Building the code base in a different language to what it is built in now (backend)
- Rebuilding the front-end to connect and interact with the blockchain, may keep small amounts of UI
- Conducting R&D to make the Zyber application as intuitive as possible (current problems in the blockchain industry includes speed)

R&D may include:

- Choosing the blockchain that best fits
- Using the respective language attributed to that blockchain
- Implementing onto that blockchain and testing significantly the user flow

c) What is the purpose of the Presentation?

As advised in paragraph 2 of the Response to the initial query – The Company is embarking on a capital raise from parties exempt under section 708 of the Corporations Act. To this end, the Company's Executive Chairman is conducting a series of presentations through the course of this week, **supported by the "August 2019 Presentation"** [emphasis added] lodged with ASX on Friday 9 August 2019.

9. Please confirm that ZYB is complying with Listing Rule 3.1.

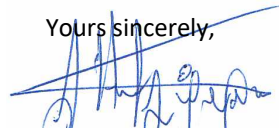
Yes.

10. Please confirm that ZYB'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 ZYB with delegated authority from the board to respond to ASX on disclosure matters.

Yes.

The board has considered the queries raised by the ASX and has commenced a general review of the matters raised. The review is being undertaken by newly appointed director Ted Tzovaras who will make appropriate recommendations to the board going forward.

Yours sincerely,



George Hatzipapas
Executive Chairman



16 August 2019

Reference: ODIN05141

Mr Henry Kinstlinger
Company Secretary
Zyber Holdings Limited
17 Lacey Street
PERTH WA 6000

By email: henryk@dmaltd.com.au

Dear Mr Kinstlinger

Zyber Holdings Ltd ('ZYB'): Query Letter

ASX Limited ('ASX') refers to the following:

- A. The appointment of Mr George Hatzipapas as an executive director of ZYB on 21 February 2018 and as executive Chairman on 15 May 2018.
- B. The remuneration report in ZYB's annual report for the year ended 30 June 2018 released on the ASX Market Announcements Platform ('MAP') on 2 October 2018, which included the following disclosures regarding Mr Hatzipapas' remuneration and shareholding:
 - (i) **'Executive Director Remuneration'**
Mr George Hatzipapas was appointed as an Executive Director on 21 February 2018 and as Executive Chairman on 15 May 2018. Mr Hatzipapas was not paid any fee for services during the year ended 30 June 2018.'
 - (ii) Mr Hatzipapas held 5,000,000 ordinary shares in ZYB at 30 June 2018.
- C. ZYB's Appendix 4C quarterly report for the period ended 30 June 2019 released on MAP on 31 July 2019 (the 'Appendix 4C') which included the following disclosures:
 - (iii) At item 6.3: *'No director fees were paid during the quarter. The directors have resolved to receive remuneration through the issue of shares, subject to approval of shareholders.'*
 - (iv) At item 7.3: *'...a loan of \$550,000 was offered to director George Hatzipapas under the provisions of Section 210 of the Corporations Act 2001 ('Loan').*
The loan is repayable no later than 31 December 2019 and accrues interest of 3% fixed for the term of the loan. The loan is secured through a PPSR charge over securities to a value of \$630,000' ('Charge').
- D. ASX's email of 6 August 2019 raising initial queries regarding the Appendix 4C (not released to market).
- E. ZYB's presentation titled 'Secure file sharing on any device - August 2019' ('Presentation') lodged with ASX on 9 August 2019 and deleted pre-release by ASX on the same date.
- F. ASX's query letter of 9 August 2019 ('Query Letter') and ZYB's response of 12 August 2019 ('Response'), which were released together on MAP on 13 August 2019, which included the following questions (in bold) and answers:
 - (i) **'3. Does ZYB expect to be able to continue its operations and to meet its business objectives and, if so, on what basis?**

Yes. The Company has engaged competent specialists to develop the “Zyber Secure File Share” application as described in the “August 2019 Presentation”.

- (ii) **‘6. Please explain the rationale for the loan to Mr Hatzipapas referred to in paragraph C above (the ‘Loan’).**

The loan was provided by the Company as an alternate to a cash payment of significant outstanding fees (\$150,000 per annum) to the borrower.’

- (iii) **‘8. Please provide a copy of the following (not for release to market):**

8.3. a copy of any advice ZYB received regarding the Loan being in compliance with section 210 of the Corporations Act.

An eminent legal practitioner is a director of the Company. No independent advice was sought.’

- G. The letter agreement (‘Loan Agreement’) in relation the Loan (provided to ASX with the Response), which was dated 13 May 2019 and accepted by Mr Hatzipapas on 26 May 2019, and includes the following terms:

- i) *‘Purpose: Personal Assistance’*
ii) *‘Security: Script lien over 45,000,000 ordinary shares (Shares) in the Company’*

- H. The circular resolution of the directors approving the Loan (provided to ASX with the Response) which was dated 15 May 2019 and signed by all of the directors including Mr Hatzipapas.

- I. ZYB’s announcement titled ‘Executive Movements & Appendix 3Z’ released on MAP on 15 August 2019, which disclosed that Mr Richard Hoffman retired as a director effective 8 August 2019.

ASX notes that as ZYB only has two directors, ZYB fails to meet the requirements of section 201A(2) of the Corporations Act.

- J. Listing rule 3.16 which requires an entity to immediately tell ASX the following:

‘A change of chairperson, director, chief executive officer (or equivalent), or company secretary.’

- K. ASX Guidance Note 8, section 4.2 which states:

‘The test for determining whether information is market sensitive and therefore needs to be disclosed under Listing Rule 3.1 is set out in section 677 of the Corporations Act. Under that section, a reasonable person is taken to expect information to have a material effect on the price or value of an entity’s securities if the information “would, or would be likely to, influence persons who commonly invest in securities in deciding whether to acquire or dispose of” those securities.’

- L. ASX Guidance Note 8, section 4.15 which states:

‘Entities should not use an announcement under Listing Rule 3.1 as a guise to publish material that is really promotional, political or tendentious in nature rather than being information that a reasonable person would expect to have a material effect on the price or value of its securities.’

Questions and Request for Information

Pursuant to listing rule 18.7, in light of the information set out above, ASX requires ZYB to answer the following questions in a form suitable for release to the market:

1. ASX notes that:
- The Response states that the Loan *‘was provided by the Company as an alternate to a cash payment of significant outstanding fees (\$150,000 per annum) to the borrower’* (see sub-paragraph F(ii) above). However, the Loan Agreement states that the purpose of the Loan is *‘personal assistance.’*

- Mr Hatzipapas was appointed as a director of ZYB just under 18 months ago.
- ZYB does not appear to have previously disclosed the terms of any employment, service or consultancy agreement it has entered into with Mr Hatzipapas.
- The Appendix 4C stated that:
 - *'the directors have resolved to receive remuneration through the issue of shares, subject to approval of shareholders';* and
 - the Loan is *'secured through a PPSR charge over securities to a value of \$630,000'.*
- The Loan Agreement disclosed that the Charge was a script lien over 45,000,000 ordinary shares in the Company.
- The 2018 annual report disclosed that Mr Hatzipapas held 5,000,000 ordinary shares in ZYB at 30 June 2018. ZYB has not subsequently lodged an Appendix 3Y on behalf of Mr Hatzipapas.

In light of the above:

- a) Please explain the inconsistency in the description of the Loan's purpose in the Loan Agreement and the Response.
 - b) When did ZYB and Mr Hatzipapas enter into the agreement which requires ZYB to pay \$150,000 per annum in fees referred to in sub-paragraph F(ii) above?
 - c) Please provide a copy of any employment, service or consultancy agreements between ZYB and Mr Hatzipapas (or his related entities), including the agreement which requires ZYB to pay \$150,000 per annum in fees referred to in sub-paragraph F(ii) above (not for release to the market).
 - d) Please explain how Mr Hatzipapas was able to grant security over 45,000,000 shares in ZYB given he has only disclosed a holding of 5,000,000 shares.
 - e) Please provide a copy of the documents related to the Charge, including a PPSR search certificate (not for release to the market).
 - f) When did the directors resolve to receive their remuneration through the issue of shares (subject to shareholder approval)?
 - g) Please provide a copy of the directors' resolution (not for release to the market).
2. The Response states that no independent advice was sought regarding the Loan and notes that an *'eminent legal practitioner is a director of the Company'* (see sub-paragraph F(iii) above).
- a) Did this director specifically provide legal advice to the board in relation to the Loan?
 - b) If the director in question did provide legal advice, was the advice written or oral?
 - c) If the director in question did provide legal advice, did he consider and advise on the potential application of sections 180, 181 and 182 of the Corporation Act to the Loan?
 - d) If the director in question did provide legal advice, did he specifically advise that the Loan was on arm's length terms and therefore did not need member approval under section 210 of the Corporations Act? If so, what factors did he take into account in forming the view that the Loan was on arm's length terms.
 - e) If the director in question did not provide legal advice to the board in relation to the Loan, please explain how the Board came to the view that the Loan was appropriate for a listed entity and complied with sections 180, 181, 182 and 208 of the Corporations Act.

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3. In light of the conflict of interest presented by the Loan and noting paragraph H above:
 - a) Why didn't Mr Hatzipapas exclude himself from the approval process for the Loan?
 - b) Why didn't the non-conflicted directors require Mr Hatzipapas to exclude himself from the approval process for the Loan?
 4. Please provide a full account of the circumstances in which Mr Hoffman resigned as a director, along with the reasons for his resignation.
 5. Please provide a copy of Mr Hoffman's resignation as a director (not for release to the market).
 6. Please explain why Mr Hoffman's resignation as a director was not announced on 8 August 2019.
 7. The Response states that ZYB *'has engaged competent specialists to develop the "Zyber Secure File Share" application'* (see sub-paragraph F(i) above).
 - a) Who are the 'competent specialists' that ZYB has engaged?
 - b) Please provide a copy of the agreement with the 'competent specialists' (not for release to the market).
 8. ASX notes that ZYB is seeking to have the Presentation released on MAP. Having regard to the guidance in ASX Guidance Note 8 mentioned in paragraphs K and L above:
 - a) What information (if any) in the Presentation is new information that has not previously been released to the market?
 - b) What information (if any) in the Presentation would have a material effect on the price or value of ZYB's securities?
 - c) What is the purpose of the Presentation?
 9. Please confirm that ZYB is complying with Listing Rule 3.1.
 10. Please confirm that ZYB'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 ZYB 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 **7:30 AM AWST on Wednesday, 21 August 2019**.

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 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.

Listing Rule 3.1 and 3.1A

Listing Rule 3.1 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. Exceptions to this requirement are set out in Listing Rule 3.1A. In responding to this letter, you should have regard to ZYB'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 ZYB’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.

Enquiries

If you have any queries or concerns about any of the above, please contact me immediately.

Yours sincerely

Penelope Reid
Adviser, Listings Compliance (Perth)