

26 January 2016

Mr Ben Tippet  
Adviser, ASX Listings Compliance  
ASX Compliance Pty Limited  
Level 40 Central Park  
152-158 St Georges Terrace  
PERTH WA 6000

**By email: [ben.tippet@asx.com.au](mailto:ben.tippet@asx.com.au)**

Dear Mr Tippet

## **Empired Limited – ASX aware query**

Empired Limited (the “**Entity**” or “**Company**”) refers to your aware query letter dated 22 January 2016 in respect of the Entity’s announcement entitled “Trading Update” and lodged with ASX and released at 9.37am (AEDT) / 6.37am (WST) on 22 January 2016 (the “**Announcement**”) and provides the following responses:

- 1. Does the Entity consider the information in the Announcement, or part thereof (“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, in respect of some parts of the Information as set out in paragraph 3 below.

- 2. If the answer to question 1 is “no”, please advise the basis for that view.**

Not applicable.

- 3. If the answer to question 1 is “yes”, when did the Entity first become aware of the Information?**

The Company became aware of various aspects of the Information at various times. Set out below (in the order in which the Information appears in the Announcement) are the dates on which the Company became aware of the relevant Information:

- (a) The Company first became aware that:

- (i) H1 FY16 revenue would be approximately \$79 million; and
- (ii) reported EBITDA for H1 FY16 would be in the range of 1% to 2% of revenue,

at some time after 12.20pm (AEDT) / 9.20am (WST) on 21 January 2016 following provision to the Managing Director and Chief Financial Officer (**CFO**) of revised December monthly financial information for its New Zealand and US subsidiaries at 12.20pm (AEDT) / 9.20am (WST) on 21 January 2016. The Company notes that its New Zealand and US operations account for approximately 35% to 40% of total revenues. The

December 2015 management accounts for the Company's Australian operations were finalised after close of the market on 20 January 2016.

- (b) The Company first became aware that it expects H2 FY16 revenue to be in the range of \$80m to \$90m, with EBITDA margins of 8% to 10% of revenue, after the market closed on 21 January 2016, when the CFO, having reviewed actual H1 FY16 performance and expected H2 FY16 performance, refined previous revenue guidance for FY16 (as set out in the Company's AGM presentation released to ASX on 16 November 2015) and communicated that information to the Company's board of directors (**Board**).
  - (c) The Company first became aware of full year revenue guidance being refined to be between \$159 million and \$169 million (from previous guidance of \$155 million to \$175 million) on 21 January 2016 following the CFO's review referred to above.
  - (d) The Company first became aware that the effect of the Australian sales restructure on revenue was to reduce sales revenues by \$4.1 million on 21 January 2016 during the CFO's review of the December management accounts for Australian operations, which were received on 20 January 2016. The impact of this amount on the Company's earnings was more severe than had been anticipated by the Company prior to 21 January 2016.
  - (e) The information concerning additional contract costs of approximately \$1.1 million was foreshadowed in the Company's AGM Presentation released to ASX on 16 November 2015. The costs were identified but not quantified in the AGM Presentation as new strategic contract commitment costs. The Company became aware of the total quantum of these costs on 12 November 2015 following preparation of the Company's management accounts for October 2015.
  - (f) The expense reduction program information was contained in the Company's AGM Presentation. The additional integration cost amount of \$0.7 million was not contained in the AGM Presentation. The Company became aware of this cost on 12 November 2015 following preparation of the management accounts for October 2015.
- 4. If the answer to question 1 is "yes" and the Entity first became aware of the Information, or part thereof, before the relevant date, did the Entity make any announcement prior to the relevant date which disclosed the Information? If so, please provide details. If not, please explain why the 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 and what steps the Entity took to ensure that the Information was released promptly and without delay.**

The Company was aware of some of the Information referred to in the Announcement before the date of the Announcement but did not release that Information to the market at an earlier time for the following reasons:

- (a) The Company was aware of some components of the H1 FY16 revenue and EBITDA after market close on 20 January 2016, notably the results of

Australian operations, but the Company's revenue and EBITDA for H1 FY16 remained incomplete pending receipt of revised December financial information for its New Zealand and US subsidiaries at 9.20am (WST) on 21 January 2016 (ie. after the commencement of market trading on 21 January 2016). Shortly after reviewing the revised financial information for its New Zealand and US subsidiaries, the Company requested a trading halt on 21 January 2016 pending the Board's review of the revenue guidance previously given and release of the Announcement. The trading halt request was first made verbally at 11:59am (WST) and then subsequently confirmed in writing. The Announcement was prepared by the Company and given to ASX on 21 January 2016 and released by ASX on 22 January 2016.

- (b) The Company was aware of some of the cost amounts referred to in the Announcement, notably the additional contract cost of approximately \$1.1 million and the cost reduction program cost of \$0.7m, on 12 November 2015 following preparation of the management accounts for October 2015. These particular cost amounts on their own were not considered to be market sensitive at the time as the Company did not at the time expect its EBITDA for H1 FY16 to be materially different from expectations.

Whilst the items noted at paragraphs 3(d), 3(e) and 3(f) above have together had a material effect on profitability, at all times prior to 21 January 2016 the Company still expected to deliver EBITDA for H1 FY16 in line with what the Company understood to be market expectations.

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

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

Please do not hesitate to contact me on (08) 6333 2200 if you have any further questions.

Yours sincerely

Mark Waller  
Company Secretary  
Empired Limited



22 January 2016

Mark Waller  
Company Secretary  
Empired Limited  
Level 7, The Quadrant  
1 William Street  
Perth WA 6000

**By Email**

Dear Mr Waller

**Empired Limited (the "Entity"): ASX aware query**

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

1. The price query letter issued to the Entity by ASX at 12:57 AEDT on Thursday 21 January 2016 in response to a change in the price of the Entity's securities, and the price query response from the Entity lodged with ASX Market Announcements Platform and released at 9:37 AEDT on Friday 22 January 2016.
2. The Entity's request for a trading halt in its securities lodged with ASX Market Announcements Platform and released at 15:22 AEDT on Thursday 21 January 2016.
3. The Entity's announcement entitled "Trading Update" lodged with ASX Market Announcements Platform and released at 09:37 AEDT, Friday 22 January 2016 (the "Announcement"), disclosing an update regarding the Entity's 31 December 2015 financial half-year operating results.
4. 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.
5. The definition of "aware" in Chapter 19 of the Listing Rules. This definition 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.*

Additionally, you should refer to section 4.4 in Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B "When does an entity become aware of information"*.

6. 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 requirements 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.*

7. 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 "Listing Rule 3.1A.2 – the requirement for information to be confidential"*. 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, we ask that you answer the following questions in a format suitable for release to the market in accordance with Listing Rule 18.7A:

1. Does the Entity consider the information in the Announcement, or part thereof ("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 advise the basis for that view.
3. If the answer to question 1 is "yes", when did the Entity first become aware of the Information?
4. If the answer to question 1 is "yes" and the Entity first became aware of the Information, or part thereof, before the relevant date, did the Entity make any announcement prior to the relevant date which disclosed the Information? If so, please provide details. If not, please explain why the 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 and what steps the Entity took to ensure that the Information was released promptly and without delay.
5. Please confirm that the Entity is in compliance with the Listing Rules and, in particular, Listing Rule 3.1.

#### **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 half an hour before the start of trading (ie before 9.30 a.m. AEDT) on **Wednesday 27 January 2016**. If we do not have your response by then, ASX will have no choice but to consider suspending 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.

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 [ben.tippett@asx.com.au](mailto:ben.tippett@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**

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.

The obligation of the Entity to disclose information under Listing Rules 3.1 and 3.1A is not confined to, nor is it necessarily satisfied by, answering the questions set out in this letter.

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*.

### **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 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*.

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

Yours sincerely

*[Sent electronically without signature]*

Ben Tippett  
**Adviser, Listings Compliance (Perth)**