



13 March 2009

Ms Kate Kidson  
Principal Adviser, Issuers  
Australian Securities Exchange  
Level 45, South Tower  
525 Collins Street  
MELBOURNE VIC 3000

By email only

Dear Kate

**RE: Hastings Diversified Utilities Fund (HDF)  
Response to ASX query**

We refer to your letter dated 12 March 2009 querying the distribution guidance for calendar year 2009 and respond to each of your questions as follows:

1. **At the time the Fund provided ASX with its First Price Query Response, was the Fund aware that it was likely to issue Revised Distribution Guidance (the "Information")?**

No.

2. **If, at the time that the First Price Query Response was provided to ASX, the Fund was aware of the Information, did the Fund consider that the Information was material to the Fund?**

Not applicable.

3. **If, at the time that the First Price Query Response was provided to ASX, the Fund was aware of the Information, and the Fund did not consider that it was material, please advise the basis on which the Fund did not consider the Information to be material to the Fund.**

Not applicable.

4. **If the answer to question 1 is "no", please advise when the Fund became aware of the Information.**

HDF has been in negotiations with its lenders (ANZ and Westpac) to increase its loan facility by \$20m. These funds together with approximately \$11m of cash on hand will be injected as a capital contribution into South East Water (SEW) as detailed in the ASX release of 5 March 2009 so that appropriate gearing levels will be maintained in the event that the annualised UK Retail Price Index (RPI) for March 2009 falls to a level as low as -3% per annum.

On 4<sup>th</sup> March it became apparent to us from the negotiation process that the lenders were unlikely to increase the facility without security over some of HDF's assets. Legal advice was received that HDF may not be able to provide this security without seeking a waiver from the ASX as under the ASX listing rules Westpac was deemed to be a related party of HDF. HDF informed the lenders of this development and noted that should a waiver be sought it was unlikely to be received in a timeframe to allow for the capital injection into SEW.

On the 5<sup>th</sup> March 2009, the lenders responded by agreeing to finalise the loan facility on the basis that HDF would seek the waiver but if ultimately HDF could not provide the required security, then the loan facility balance would need to be reduced by \$10m by the end of July 2009. A waiver from the ASX has been sought.

In considering the terms proposed by its lenders including the potential requirement to repay \$10m by the end of July 2009, HDF had regard to the potential likely effect on its cash position and in this

context a reduction in distribution guidance for 2009 was considered necessary. This decision was made on the 5th March 2009 and announced forthwith.

5. **If the Fund became aware of the Information prior to the announcement of 5 March 2009, why was the Information not released to the market at an earlier time? Please comment specifically on the application of listing rule 3.1 and the exceptions to the rule in listing rule 3.1A.**

Not applicable.

6. **Please confirm that the Fund is in compliance with the listing rules and, in particular, listing rule 3.1.**

We can confirm that the Fund is compliant with the listing rules and in particular listing rule 3.1.

Yours sincerely

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

**Claire Filson**  
**Company Secretary**  
Hastings Funds Management Limited



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12 March 2009

Claire Filson  
Company Secretary  
Hastings Diversified Utilities Fund  
MELBOURNE

By email only

Dear Claire

**Hastings Diversified Utilities Fund (the "Fund") – Distribution Guidance for calendar year 2009**

We refer to the following.

- The Fund's announcement dated 17 December 2008, advising distribution guidance for the 2009 calendar year of 28.5 cents per security, an increase of 1.8 percent on the 2008 distribution guidance.
- The Fund's response dated 17 February 2009 to the ASX Limited (**ASX**) price query letter sent on 16 February 2009 (**First Price Query Response**).
- The Fund's announcement dated 5 March 2009 entitled "Strategy Update" given to ASX immediately prior to a response to a second price query from ASX on 5 March 2009, advising among other things, that the Fund has revised its distribution guidance for the calendar year 2009 to 12 cents per security (**Revised Distribution Guidance**).

As you are aware listing rule 3.1 requires an entity, once it becomes aware of 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, to immediately tell ASX that information. The exceptions to this requirement are set out in listing rule 3.1A.

We would also like to draw your attention to the definition of "aware" in Chapter 19 of the listing rules. This definition states that:

*"an entity becomes aware of information if a director or executive director (in the case of a trust, director or executive officer of the responsible entity or management company) has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as a director or executive officer of that entity."*

Furthermore, paragraph 18 of Guidance Note 8 states:

*“Once a director or executive officer becomes aware of information, he or she must immediately consider whether that information should be given to ASX. An entity cannot delay giving information to ASX pending formal sign-off or adoption by the board, for example.”*

Listing rule 3.1A sets out an exception from the requirement to make immediate disclosure, provided that each of the following are satisfied.

- 3.1A.1 *A reasonable person would not expect the information to be disclosed.*
- 3.1A.2 *The information is confidential and ASX has not formed the view that the information has ceased to be confidential.*
- 3.1A.3 *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.*
  - *The information is a trade secret.”*

ASX notes that the First Price Query Response did not refer to the Revised Distribution Guidance as a possible explanation for its security price decrease from \$1.97 on 10 February 2009 to \$1.66 on 16 February 2009.

Having regard to the above definition and listing rule 3.1, we ask that you answer the following questions.

1. At the time the Fund provided ASX with its First Price Query Response, was the Fund aware that it was likely to issue Revised Distribution Guidance (the “**Information**”)?
2. If, at the time that the First Price Query Response was provided to ASX, the Fund was aware of the Information, did the Fund consider that the Information was material to the Fund?
3. If, at the time that the First Price Query Response was provided to ASX, the Fund was aware of the Information, and the Fund did not consider that it was material, please advise the basis on which the Fund did not consider the Information to be material to the Fund.
4. If the answer to question 1 is “no”, please advise when the Fund became aware of the Information.
5. If the Fund became aware of the Information prior to the announcement of 5 March 2009, why was the Information not released to the market at an earlier time? Please comment specifically on the application of listing rule 3.1 and the exceptions to the rule in listing rule 3.1A.
6. Please confirm that the Fund is in compliance with the listing rules and, in particular, listing rule 3.1.

Your response should be sent to me by return e-mail. It should not be sent to the Company Announcements Office.

Unless the information is required immediately under listing rule 3.1, a response is requested as soon as possible and, in any event, no later than 10.00am EDST on Friday 13 March 2009.

Please note that ASX reserves the right, under listing rule 18.7A, to release this letter and the Company's response to the market. Accordingly, it would be appreciated if you would prepare your response in a form suitable for release to the market and separately address each of the questions asked.

If you have any queries in relation to the above please let me know.

Yours sincerely

[Sent by electronic means without signature]

Kate Kidson

**Principal Adviser, Issuers (Melbourne)**