

**15 December 2022**

Australian Securities Exchange  
Level 4, North Tower, Rialto  
525 Collins St  
Melbourne VIC 3000

By email: [listingscompliancemelbourne@asx.com.au](mailto:listingscompliancemelbourne@asx.com.au)

Dear Mr Litis

### **Response to ASX Query Letter**

Security Matters Limited (ASX: **SMX**) refers to the ASX Query Letter dated 13 December 2022 (Reference ODIN65560), we respond as follows to the specifically asked questions:

- 1. Does SMX consider 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.

Upon further consideration SMX now considers the information to be that which a reasonable person would expect to have a material effect on the price or value of SMX's securities. SMX acknowledges that this is a one-time error and will ensure that it remains in compliance with its Continuous Disclosure Policy in future, as referred to in Question 6 and 7.

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

Not applicable, please refer to Question 1.

- 3. When did SMX first become aware of the Information?**

Upon execution of the non-binding term sheet on Monday 28<sup>th</sup> November 2022.

- 4. Please explain how the Information appeared on the Stockhead website before being released on ASX? In answering this question and noting that no definitive funding agreement has been executed, please explain why SMX decided to forego the exceptions in Listing Rule 3.1A by providing the Information to Stockhead?**

The information appeared on the Stockhead website following a C level Executive conversation with a member of the Stockhead publication team on Tuesday 6<sup>th</sup> December 2022.

SMX determined the information was not price sensitive when it was provided to Stockhead.

**5. Please provide the following information:**

**5.1 The identity of the counterparty to the funding agreement;**

A Canadian TSXV listed silver mining company which has been in production for over 15 years with several major silver mines based in Latin and North America, and has a market capitalisation of approximately (CAD)\$150+M.

**5.2 The number and price of the securities to be issued under the 'upfront \$1 million';**

The number of securities that the Canadian TSXV company will be issued, is yet to be determined (please see answer to Question 5.4).

**5.3 Whether SMX has existing capacity to issue the securities under Listing Rule 7.1 or 7.1A or will it need to seek shareholder approval for some or all of the securities;**

SMX has existing capacity and will not need to seek shareholder approval.

**5.4 An explanation of the terms of the agreement that allow for a variable investment between \$1 million and \$6 million;**

The difference depends on which offer the Canadian TSXV Company takes up. Should they only have exclusivity on silver (\$3 million investment) or if they include PGM's (\$6 million investment).

**5.5 Any other relevant information ordinarily required when disclosing a capital raise;**  
SMX is not aware of any other relevant information.

**5.6 A copy of the relevant terms sheet (not for release to market).**

Please see attached document.

**6. What arrangements does SMX have in place to ensure compliance with Listing Rule 15.7?**

The executive team and board are aware of their obligations under this Listing Rule. SMX has a Continuous Disclosure Policy in place, which can be found on the SMX [website](#) (schedule 7).

**7. If the current arrangements are inadequate or not being enforced, what additional steps does SMX intend to take to ensure compliance with Listing Rule 15.7?**

SMX has the required procedures in place to ensure compliance with this Listing Rule, however on this occasion due to an oversight, the procedures relevant to these arrangements were not followed. Further to this, SMX will continue to send all potential announcements to the ASX and Company Secretary for consideration prior to Investor Relation activities.

**8. Please confirm that SMX is complying with the Listing Rules and, in particular, Listing Rule 3.1.**

SMX confirms this.

**9. Please confirm that SMX'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 SMX with delegated authority from the board to respond to ASX on disclosure matters.**

SMX confirms this.

If and when, the term sheet becomes binding, both parties will release an announcement on the ASX and TSX respectively ensuring all relevant information is disclosed.

We thank you in advance for your consideration of the above. Should there be any further questions, please do not hesitate to contact either myself or the SMX Company Secretary.

Kind regards,

Haggai Alon  
CEO

13 December 2022

Reference: ODIN65560

Mr Mark Licciardo  
Company Secretary  
Security Matters Limited

By email

Dear Mr Licciardo

**Security Matters Limited ('SMX'): Query Letter**

ASX refers to the following:

- A. A 'Special Report' published on Stockhead<sup>1</sup> on 8 December 2022 which disclosed (relevantly):

*"As part of the agreement, a private Canadian investment company engaged in the silver mining industry will make a one to six million dollar investment in SMX.*

*This will consist of an upfront tranche of \$1 million followed by between a two and five million optional investment into a private investment in public equity (PIPE).*

*The deal includes an exclusive distribution agreement for a 10-year period for silver which the two companies expect to have fully signed and executed before the end of 2022."* (together, the 'Information')

ASX understands these 'Special Reports' to be a form of paid advertising by SMX and notes that the report specifically states that:

*'This article was developed in collaboration with Security Matters, a Stockhead advertiser at the time of publishing'*

- B. The price of SMX securities on 8 December 2022 from a low of \$0.14 to a high (and closing price) of \$0.15 following the publication of the Information.

- C. Listing Rule 3.1, which requires a listed entity to immediately give ASX 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.

- D. 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."*

- E. 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:*

---

<sup>1</sup> <https://stockhead.com.au/tech/smx-secures-funding-to-follow-truegold-with-truesilver/>

- 
- 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.”
- F. 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.”*
- G. Listing Rule 15.7 which states:
- “An entity must not release information that is for release to the market to any person until it has given the information to ASX and has received an acknowledgment that ASX has released information to the market.”*
- H. Listing Rule 18.7, which states (relevantly):
- “An entity must give ASX any information, document or explanation that ASX:*
- (a) *Asks for to enable ASX to be satisfied that the entity is, and has been, complying with, or will comply with, the listing rules or any conditions or requirements imposed under the listing rules; or*
- (b) *Reasonably requires to perform its obligations as a licensed market operator.”*
- I. Listing Rule 18.8, which states (relevantly):
- “ASX may require an entity to do or refrain from doing any act or thing that, in ASX’s opinion, is necessary to ensure or facilitate compliance with the listing rules, including (without limitation):*
- (a) *to give specified information to ASX for release to the market.*

As the Information has appeared on the Stockhead website prior to SMX releasing an announcement on ASX, it appears that SMX may have breached Listing Rules 3.1 and/or 15.7.

#### **Request for information**

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

1. Does SMX consider 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. When did SMX first become aware of the Information?
  4. Please explain how the Information appeared on the Stockhead website before being released on ASX? In answering this question and noting that no definitive funding agreement has been executed, please explain why SMX decided to forego the exceptions in Listing Rule 3.1A by providing the Information to Stockhead?
  5. Please provide the following information:
    - 5.1 The identity of the counterparty to the funding agreement;
    - 5.2 The number and price of the securities to be issued under the 'upfront \$1 million';
    - 5.3 Whether SMX has existing capacity to issue the securities under Listing Rule 7.1 or 7.1A or will it need to seek shareholder approval for some or all of the securities;
    - 5.4 An explanation of the terms of the agreement that allow for a variable investment between \$1 million and \$6 million;
    - 5.5 Any other relevant information ordinarily required when disclosing a capital raise; and
    - 5.6 A copy of the relevant terms sheet (not for release to market).
  6. What arrangements does SMX have in place to ensure compliance with Listing Rule 15.7?
  7. If the current arrangements are inadequate or not being enforced, what additional steps does SMX intend to take to ensure compliance with Listing Rule 15.7?
  8. Please confirm that SMX is complying with the Listing Rules and, in particular, Listing Rule 3.1.
  9. Please confirm that SMX'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 SMX 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 **9:30 AMAEDT Friday, 16 December 2022**. 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, SMX'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 SMX to request a trading halt immediately.

Your response should be sent to me by e-mail at **ListingsComplianceMelbourne@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 SMX'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 SMX'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.



---

**Release of correspondence between ASX and entity**

We reserve the right to release a copy of this letter, your reply and any other related correspondence between us to the market under listing rule 18.7A.

**Questions**

If you have any questions in relation to the above, please do not hesitate to contact me.

Yours faithfully

---

**Dean Litis**

Principal Adviser, Listings Compliance (Melbourne)