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2 September 2020

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**Smiles Inclusive Limited ('SIL' or "the Company"): Query Letter**

SIL's refers to your letter dated 26 August 2020, and provide the following responses as requested:

**1. Noting:**

- a. ***SIL's statement, reproduced in paragraph B, to the effect that the \$700,000 loan was repayable by December 2019; and***
- b. ***the market intelligence referred to in paragraph D, please explain the basis for SIL's statement, reproduced in paragraph C, to the effect that (insofar as the statement applies to that loan) the loan is repayable at a time to be agreed by the parties after 30 June 2020.***

The \$700,000 loan in question (comprising two separate advances of \$290,000 and \$410,000 respectively) is repayable upon agreement between SIL and the lender at any time following 31 January 2020.

Given the statement in paragraph C relates to the balance date of 30 June 2020, and given each of the loans is repayable upon agreement and had not been repaid by that date, SIL determined that it was appropriate to disclose that the loans were therefore repayable after 30 June 2020. SIL does however appreciate in hindsight that this may have caused some confusion but maintains the statement in paragraph C is correct.

The \$700,000 in loans were provided by lenders associated with a dentist SIL has a longstanding relationship with and were not made by a SIL employee.

**2. *Please provide ASX with copies of any documentation concerning the terms on which the \$700,000 loan was made to SIL, including any recording amendments to the original terms of the loan (not for release to the market).***

Loan documents have been provided to ASX as requested (not for release to the market).

**3. *If SIL is successful in raising capital, does it intend to apply any of that capital in satisfaction of any amounts owing under the \$700,000 loan?***

SIL intends on complying with the terms agreed with the lender under the loan in question and will work with the lender to repay the loan upon agreement. Whether the repayment is to be made directly out of the capital raised or not will be discussed with the lender and will be disclosed in the appropriate forum when agreement is reached with the lender.

**4. How does SIL intend to make the payments to NAB under the deed of release by 11 September 2020?**

SIL is still working to finalise and put into effect its capital raising and recapitalisation plan. While this has taken longer than SIL had hoped, SIL remains optimistic the final stages of the plan will be agreed in the near future. Once agreed, SIL expects to request from NAB an extension of the repayment date, which it hopes to receive. Further details about the recapitalisation plan will be provided in due course.

**5. Please provide an update regarding the status of the matter referred to in paragraph F, including (where relevant):**

- a. **whether SIL complied with ASIC's direction to remedy the failure to lodge its half-yearly accounts within 14 days;**
- b. **if not, whether ASIC made an application to the court as anticipated by subsection 1274(11); and / or**
- c. **whether any such application was heard and, if so, what orders were made, and whether SIL has complied with those orders.**

- a) SIL has not yet complied with the direction but continues to work with its auditor and expects to be able to release its half-year financial report in the near future and once its recapitalisation plan is finalised.
- b) ASIC has not made an application to the court.
- c) No application was heard.

**6. With regard to the Appendix 2As referred to in sub-paragraphs I.iii and J.iii, please advise of the basis on which SIL:**

- a. **concluded that subsection 707(3) of the Act would not require the sale of any of the relevant securities within 12 months of their issue to be accompanied by disclosure under Part 6D.2; and**
- b. **thereby considered that it was in a position to make the warranty to that effect in the Appendix 2As.**

- a) SIL concluded that disclosure would not be required because:
  - a. with respect to the issue of shares announced 10 March 2020:
    - i. the recipient of the shares gave warranties under its commitment letter for the shares in question, including under that 'it is a person to whom the offer and issue of the Placement Shares may lawfully be made without the need for disclosure under Chapter 6D of the Corporations Act 2001 (Cth) or any legislation of another jurisdiction'; and
    - ii. the investor's advisor and intermediary made prior representations that the investor had no intention of disposing of the shares; and
  - b. with respect to the grant of options announced 30 June 2020, the recipient of the options is restricted under the option agreement from dealing with the options, inter alia, unless the dealing complies with all laws and the Company's trading policy. Any such dealing would be treated as void against SIL and members of SIL, and SIL would be entitled to cancel the options for nil consideration.
- b) For the reasons set out above, SIL considered at the time that it had a reasonable basis to give the warranty. SIL understands ASX's position in respect of quoting issued securities where a cleansing notice or cleansing prospectus has not been issued. SIL proposes to remedy any irregularity, to allow the securities to be quoted, at the same time it launches its anticipated capital raise. This may be achieved through an application to the Federal Court under section 1322 of the Corporations Act, or the issue of a prospectus so that any sale offer complies with section 708A(11) of the Corporations Act).

**7. Please confirm that SIL is complying with the listing rules and, in particular, listing rule 3.1.**

SIL considers that it is complying with listing rule 3.1.

- 8. Please confirm that SIL'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 SIL with delegated authority from the board to respond to ASX on disclosure matters.**

This response has been authorised and approved by the Board of SIL.

For further information please contact:

Michelle Aquilina, Chief Executive Officer

E: [michelle.aquilina@totallysmiles.com.au](mailto:michelle.aquilina@totallysmiles.com.au)



26 August 2020

Reference: 23082

Ms Michelle Aquilina  
Chief Executive Officer  
Smiles Inclusive Limited  
Unit 3/38-40 Township Drive  
West Burleigh QLD 4219

By email

Dear Ms Aquilina

### **Smiles Inclusive Limited ('SIL'): Query Letter**

ASX refers to the following:

#### **Debt facilities**

- A. SIL's Appendix 4C quarterly cash flow report, released on the ASX Market Announcements Platform ('MAP') on 31 January 2019, which disclosed:

*"During the quarter a \$700,000 unsecured loan was obtained to fund the 100% acquisition of a dentistry business."*

- B. SIL's annual report for the year ended 30 June 2018, released on MAP on 1 November 2019, which disclosed (on page 43):

*"The Group has received unsecured financing from two parties which are included in 3<sup>rd</sup> party loans. The loans are to assist with the turnaround with \$700,000 repayable in December 2019 and \$200,000 repayable in June 2020. The \$700,000 portion of the loan carries an interest rate of 9.95% and the \$200,000 loan does not incur interest."*

- C. SIL's announcement titled "Appendix 4C - quarterly", released on MAP on 31 July 2020, which disclosed (on page 4):

*"The Group has received unsecured financing from third parties to assist with turnaround plans and working capital. The third party loans in existence at the start of the quarter have an interest rate of 9.95% pa and a repayment date upon agreement between Smiles and the lender anytime after 30 June 2020"*

- D. Market intelligence received by ASX to the effect that:

- i. The \$700,000 loan to SIL was made by a SIL employee.
- ii. The terms of the loan agreement indicated that the principal was repayable at any time after 31 January 2020 as agreed in writing by SIL and the lender.

- E. SIL's announcement titled "Operations Update", released on MAP on 20 August 2020, which disclosed (emphasis original):

- i. *"Commenting on the strategic initiatives Michelle Aquilina, Chief Executive Officer, also provided the following update on the recapitalisation of the Company: "notwithstanding the challenges presented to us during these times I am pleased to advise that we continue to be in advanced discussions with a professional underwriter to raise capital for the Company with a target completion date by the end of September 2020."*

- ii. *“The Company is pleased to announce it has agreed to finalise its banking relationship with its primary financier NAB under a formal release deed (**Deed**). NAB has agreed under the Deed to release and discharge the Company from liability under its various banking facilities (including a full release of security) on receipt of a net payment of \$12,000,000 and repayment of amounts outstanding under the Company’s credit card (if any) and temporary JobKeeper facilities. Payment of the \$12,000,000 and repayment of the credit card facility is due by 11 September 2020 (**Repayment Date**), and repayment of the temporary JobKeeper facility is due within two business days of the Company’s receipt of JobKeeper funds from the ATO for the month of September. The Company confirms that the total debit balance held with NAB at close of business Friday was \$19,290,659 (including \$347,658 under its credit card facility, and \$330,750 under its temporary JobKeeper facility). ...*

*The Deed has been agreed in the context of the Company’s broader recapitalisation plan. Further details of the plan will be released to the market in due course.*

### **Financial reporting**

- F. SIL’s announcement titled “Response to ASX Query”, released on MAP on 25 June 2020, which disclosed (on page 2):

*“... SIL also notes that it received notification from ASIC under section 1274 of the Corporations Act regarding the non-lodgement of the 31 December 2019 half-year financial report. ASIC have not granted an extension for SIL to lodge the accounts and have advised of their intention to submit an application to the court in respect of SIL’s default.”*

ASX infers that the provision referred to here by SIL is subsection 1274(11) of the *Corporations Act 2001* (Cth) (the ‘**Act**’), which provides:

*“If a body corporate or other person, having made default in complying with:*

- (a) any provision of this Act or of any other law that requires the lodging in any manner of any return, account or other document or the giving of notice to ASIC of any matter; or*
- (b) any request of ASIC to amend or complete and resubmit any document or to submit a fresh document;*

*fails to make good the default within 14 days after the service on the body or person of a notice requiring it to be done, a court may, on an application by any member or creditor of the body or by ASIC, make an order directing the body or any officer of the body or the person to make good the default within such time as is specified in the order.”*

- G. The announcement released by SIL on 20 August 2020 and referred to at paragraph E, which also disclosed:

*“The Company expects the audit review of the interim financial statements for the half-year ended 31 December 2019 to be completed by no later than 31 August 2020. The full year audit work for the year ended 30 June 2020 is in progress and the Company expects to have this finalised shortly in the near future.”*

### **Applications for quotation**

- H. The suspension of SIL’s securities from official quotation on 2 March 2020 under listing rule 17.5 for failure to lodge its half-year accounts by the due date.
- I. The following announcements by SIL released on MAP on 10 March 2020:

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- i. The announcement titled “Update” which disclosed that SIL had received a commitment from a sophisticated investor to raise \$430,000 by way of a placement of 11,315,789 new shares at \$0.038 per share.
- ii. The announcement titled “Proposed issue of Securities – SIL” which concerned a proposed placement to a sophisticated investor of a maximum of 11,315,789 ordinary fully paid securities at an issue price of \$0.038 per security.
- None of the securities to be issued were to be subject to voluntary escrow or be “restricted” securities for the purposes of the listing rules.
- iii. The announcement titled “Appendix 2A” concerning an application for the quotation of the securities referred to in sub-paragraph I.ii, and under which SIL (*inter alia*) warranted that an offer of the securities for sale within 12 months after their issue will not require disclosure under section 707(3) of the Act.<sup>1</sup>
- J. The following announcements by SIL released on MAP on 30 June 2020:
- i. The announcement titled “Short-term loan and grant of options” which disclosed that:
- SIL had received \$200,000 from HOLZRC Pty Ltd (**HOLZRC**) on an unsecured basis at an interest rate of 10% per annum. The term of the agreement was 27 July 2020 unless extended by agreement.
  - SIL would issue HOLZRC options to acquire 4,000,000 ordinary fully-paid shares in SIL at an exercise price of \$0.025 and an expiry date of 25 August 2020.
  - HOLZRC had elected to exercise those options immediately at an exercise price of \$100,000 which was set-off against the outstanding principal under the loan.
- ii. The announcement titled “Proposed issue of securities – SIL” concerning the issue by SIL of:
- a maximum of 4,000,000 options with an exercise price of \$0.025 expiring 25 August 2020; and
  - a maximum of 400,000 ordinary fully-paid shares.
- None of the securities to be issued were to be subject to voluntary escrow or be “restricted” securities for the purposes of the listing rules.
- iii. The announcement titled “Appendix 2A” concerning an application for the quotation of the securities referred to in sub-paragraph J.ii, and under which SIL (*inter alia*) warranted that an offer of the securities for sale within 12 months after their issue will not require disclosure under section 707(3) of the Act.
- K. Subsections 707(3) and (4) of the Act, which provides (relevantly) to the effect that the sale of securities within 12 months of their issue needs disclosure to investors under Part 6D.2 if there are reasonable grounds to conclude that the securities were acquired with the purpose of selling or transferring the securities, unless either section 708 or 708A says that disclosure is not required in those circumstances.

#### Continuous disclosure obligations

- L. 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.

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<sup>1</sup> At all relevant times, Appendix 2A to the listing rules provided (relevantly) that the applicant “warrant to ASX that ... An offer of the +securities for sale within 12 months after their issue will not require disclosure under section 707(3) or section 1012C(6) of the Corporations Act.”

- M. 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.”*

### **Request for information**

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

1. Noting:
  - a. SIL’s statement, reproduced in paragraph B, to the effect that the \$700,000 loan was repayable by December 2019; and
  - b. the market intelligence referred to in paragraph D,  
please explain the basis for SIL’s statement, reproduced in paragraph C, to the effect that (insofar as the statement applies to that loan) the loan is repayable at a time to be agreed by the parties after 30 June 2020.
2. Please provide ASX with copies of any documentation concerning the terms on which the \$700,000 loan was made to SIL, including any recording amendments to the original terms of the loan (not for release to the market).
3. If SIL is successful in raising capital, does it intend to apply any of that capital in satisfaction of any amounts owing under the \$700,000 loan?
4. Noting that, as per SIL’s announcement referred to at paragraph E:
  - a. Under the deed of release agreed with the National Australia Bank (**‘NAB’**), the date on which SIL must make the agreed payments to NAB in settlement of its outstanding facility is 11 September 2020.
  - b. Those agreed payments comprise \$12,000,000 plus any amounts still outstanding under the credit card and JobKeeper facilities.
  - c. The deed of release “has been agreed in the context of the Company’s broader recapitalisation plan. Further details of the plan will be released to the market in due course.”
  - d. SIL’s target completion date for recapitalising itself is the end of September 2020,

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- how does SIL intend to make the payments to NAB under the deed of release by 11 September 2020?
5. Please provide an update regarding the status of the matter referred to in paragraph F, including (where relevant):
    - a. whether SIL complied with ASIC's direction to remedy the failure to lodge its half-yearly accounts within 14 days;
    - b. if not, whether ASIC made an application to the court as anticipated by subsection 1274(11); and / or
    - c. whether any such application was heard and, if so, what orders were made, and whether SIL has complied with those orders.
  6. With regard to the Appendix 2As referred to in sub-paragraphs I.iii and J.iii, please advise of the basis on which SIL:
    - a. concluded that subsection 707(3) of the Act would not require the sale of any of the relevant securities within 12 months of their issue to be accompanied by disclosure under Part 6D.2; and
    - b. thereby considered that it was in a position to make the warranty to that effect in the Appendix 2As.
  7. Please confirm that SIL is complying with the listing rules and, in particular, listing rule 3.1.
  8. Please confirm that SIL'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 SIL 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 **5:00 PM AEST Friday, 28 August 2020**. 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, SIL'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 SIL to request a trading halt immediately.

Your response should be sent to me by e-mail at **ListingsComplianceSydney@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 MAP.

#### **Listing rules 3.1 and 3.1A**

In responding to this letter, you should have regard to SIL'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 SIL'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.

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**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 sincerely

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**Corey Lian**  
Adviser, Listings Compliance (Sydney)