

# NEXT SCIENCE®

7 November 2023

Ms Lisa Banh  
Senior Adviser, Listings Compliance  
ASX Limited  
20 Bridge Street  
Sydney NSW 2000

By Email: [ListingsComplianceSydney@asx.com.au](mailto:ListingsComplianceSydney@asx.com.au)

Dear Ms Banh

## ASX QUERY

I refer to your letter dated 3 November 2023 regarding ASX's queries in respect of Next Science Limited ("Next Science" or "Company"), and specifically in relation to:

1. the cleansing notice lodged on 1 November 2023 (**Cleaning Notice**); and
2. the announcement titled "EXPERIENCE study findings released" lodged on 3 November 2023 (**Announcement**).

## Response to ASX queries

In response to ASX's queries outlined in your letter (and using your question numbering), Next Science, advises the following:

1. ***Does NXS 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?***

**Answer:**

Yes.

2. ***If the answer to question 1 is "no", please:***

***2.1 Explain the basis for that view.***

**Answer:**

Not applicable.

***2.2 Explain why NXS lodged the Announcement as 'market-sensitive' on MAP.***

**Answer:**

Not applicable.

**3. If the answer to question 1 is “yes”:**

**3.1 When did NXS first become aware of the Information?**

**Answer:**

NXS was first informed that the video of the author reviewing his research was posted to a third party hosted site (VuMedi) on 2 November 2023.

ASX should also be aware that the date reference of 31 October 2023 in the VuMedi presentation is a reference to the date at a place in the USA (which NXS believes may have been Alabama, where Dr Harris is situated), which (at the time) was 16 hours behind AEST.

**3.2 Is NXS of the view that it complied with Listing Rule 3.1, which requires the immediate disclosure of material information? If so, please explain the basis for that view.**

**Answer:**

Yes. Following confirmation of the research being posted to VuMedi, NXS released the Announcement via ASX on 3 November 2023 less than 24 hours after NXS first became aware of the Information.

**3.3 Is NXS of the view that it has appropriate and timely access to material information to meet its continuous disclosure obligations? If so, please explain the basis for that view. If not, please outline any planned improvements to NXS's policies and procedures in this regard.**

**Answer:**

Yes. NXS is in continuous contact with physicians and scientists conducting research that is sponsored by NXS or where NXS has donated product for the study. NXS monitors continued performance of the products in clinical usage. NXS does not have control of independent journals or publication media and therefore when research is submitted for review. NXS does not always receive courtesy updates prior to debut and can only respond once the work appears upon final public release. NXS does so in a timely fashion in accordance with continuous disclosure protocol.

This is the same procedure that NXS followed for the ASX release announcing the clinical study results of Dr. Andrew Wickline on 9 August 2023 (titled 'Knee Study Finds Potential Anti-Inflammatory Benefit for XPERIENCETM').

**3.4 Is NXS of the view that the Cleansing Notice was valid, noting that the Information appeared to be available but not disclosed on MAP at the time that the Cleansing Notice was published. Please note that if NXS forms the view that its cleansing notice may be defective, NXS may need to consider whether it has an obligation to correct a defective cleansing notice pursuant to section 708A of the Act, or through any alternative action it considers appropriate.**

**Answer:**

NXS is of the view that the Cleansing Notice is valid. The Cleansing Notice was released on 1 November 2023, before NXS first became aware (on 2 November 2023) that the results of Dr Harris's study had been made public.

# NEXT SCIENCE®

Additionally, NXS disclosed in multiple ASX lodged documents that clinical study results were anticipated in the months of the December quarter. Particularly, in the presentation and documents lodged during the NXS Capital Raise period in August and as recent as disclosures for the end of the September quarter. NXS has referenced the expected publication of these results on at least three occasions:

- (1) ASX release of 8 August 2023, titled 'Investor Presentation' (issued in respect of the Capital Raise) on Slides 11 and 21;
- (2) ASX Release of 23 October 2023, titled 'Investor Presentation - Q3 2023' (in respect of the NXS 3QFY23 Results) on Slide 13, Row 1 of Table; and
- (3) ASX Release of 25 October 2023, titled 'General Meeting - CEO 90 Day Update' acknowledging upcoming retrospective clinical trial data (see page 3 of the release).

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

**Answer:**

Yes, confirmed.

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

**Answer:**

Yes, confirmed.

Yours sincerely,



**Grant Hummel**  
**Non-Executive Director**  
**Next Science Limited**



3 November 2023

Reference: 83952

Ms Olivia Christensen  
Special Counsel  
HWL Ebsworth Lawyers C/o Next Science Limited  
Level 19, 480 Queen Street  
Brisbane QLD 4000

By email: ochristensen@hwle.com.au

Dear Ms Christensen

### **Next Science Limited ('NXS'): Aware Query**

ASX refers to the following:

- A. NXS's cleansing notice lodged on the ASX Market Announcements Platform ('**MAP**') on 1 November 2023 ('**Cleansing Notice**'), confirming that NXS had complied with the provisions of Chapter 2M of the *Corporations Act 2001* (Cth) ('**Act**'), sections 674 and 674A of the Act and that there was no "excluded information" within the meaning of sections 708A(7) and 708(8) of the Act which was required to be disclosed under section 708A(6)(e) of the Act.
- B. NXS's announcement entitled "XPERIENCE study findings released" lodged on MAP on 3 November 2023 (the '**Announcement**') disclosing, amongst other things, that Dr Robert Harris MD released the finding of a retrospective study which examined infection rates up to 90 days post Primary joint Arthroplasties across Hip (THA), Knee (TKA) and Shoulder (TSA) surgery. ('**Information**').
- C. Relevantly, the Announcement provides a link to a presentation titled "*Efficiency of a Novel Intraoperative Surgical Irrigant in Preventing Periprosthetic Joint Infections in Primary Knee, Hip, and Shoulder Arthroplasties: A Retrospective Analysis*" by Robert Harris, dated 31 October 2023.
- D. 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.
- E. 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."*
- F. 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 5 situations 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."*

- G. 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."*

#### **Request for information**

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

1. Does NXS 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:
  - 2.1 Explain the basis for that view.
  - 2.2 Explain why NXS lodged the Announcement as 'market-sensitive' on MAP.
3. If the answer to question 1 is "yes":
  - 3.1 When did NXS first become aware of the Information?
  - 3.2 Is NXS of the view that it complied with Listing Rule 3.1, which requires the immediate disclosure of material information? If so, please explain the basis for that view.
  - 3.3 Is NXS of the view that it has appropriate and timely access to material information to meet its continuous disclosure obligations? If so, please explain the basis for that view. If not, please outline any planned improvements to NXS's policies and procedures in this regard.
  - 3.4 Is NXS of the view that the Cleansing Notice was valid, noting that the Information appeared to be available but not disclosed on MAP at the time that the Cleansing Notice was published. Please note that if NXS forms the view that its cleansing notice may be defective, NXS may need to consider whether it has an obligation to correct a defective cleansing notice pursuant to section 708A of the Act, or through any alternative action it considers appropriate.
4. Please confirm that NXS is complying with the Listing Rules and, in particular, Listing Rule 3.1.
5. Please confirm that NXS'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 NXS with delegated authority from the board to respond to ASX on disclosure matters.

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### **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 AM AEDT on Wednesday, 8 November 2023**. 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, NXS'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 NXS 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 the ASX Market Announcements Platform.

### **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 NXS'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 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*.

### **Suspension**

If you are unable to respond to this letter by the time specified above, ASX will likely suspend trading in NXS's securities under Listing Rule 17.3.

### **Listing Rules 3.1 and 3.1A**

In responding to this letter, you should have regard to NXS'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 NXS'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**

ASX reserves the right to release all or any part 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.

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Yours faithfully

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**Lisa Banh**

Senior Adviser, Listings Compliance