



24 May 2019

Ms Madeleine Green

Adviser, Adviser Listings Compliance (Perth)

ASX Compliance Pty Ltd

Level 40, Central Park

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Perth WA 6000

By email – ListingsCompliancePerth@asx.com.au

Dear Ms Green

### **ASX AWARE QUERY**

We refer to your letter dated 22 May 2019 and respond as follows.

Capitalised terms have the same meaning as in your letter unless otherwise defined in this letter.

- 1. Does FCC 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.

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

Not applicable.

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

FCC had been negotiating a memorandum of understanding with Glencore AG (**MOU**) over the past few weeks. Over the course of the negotiations, there were material updates to the terms as drafts were exchanged. First Cobalt had prepared a draft press release to be disseminated once the MOU was finalized and executed, though needed to ensure there were no further updates to the MOU content before finalizing the press release.

The various parties were located in different time zones during this process, primarily UTC+2 (6:30pm AWST) and UTC-4 (8:30pm AWST). The key Glencore AG parties are located in

Switzerland (UTC+2 or 9:30pm AWST). Trent Mell, CEO of First Cobalt had signed the document on behalf of FCC on May 20, 2019, and at 8:27am on 21 May, 2019 (EDT, UTC-4) (or 8:27pm on 21 May, 2019 AWST), Glencore AG returned the signed MOU with no material changes. It was difficult to manage when Glencore would sign as their decision makers were in three different time zones and FCC's lead contact was not able to confirm when final signoff would occur. Further, Glencore personnel were in consultations with a third party who was ultimately not party to the MOU but important to the negotiation. At this time, both parties had now executed the memorandum of understanding. This time falls prior to the open of market trading hours in Canada (which commence at 9:30am UTC-4 or 9:30pm AWST) and outside of ASX market hours in Australia.

FCC understood this agreement was material to the Company and that public disclosure would be required. While the agreement was signed pre-market in Canada, any news to be published with less than two hours before market open should be pre-cleared by the Investment Industry Regulatory Organization of Canada (IIROC) and the filer usually requests a trading halt until completion of this review, dissemination is complete and a reasonable period of time (determined by IIROC) has elapsed to resume trading. This protocol ensures there is enough time for investors to digest the news prior to Company's stock being available for trading. FCC requested a halt from IIROC at 8:35am EDT (or 8:35pm AWST) and IIROC officially halted the stock at 8:40am EDT (or 8:40pm AWST). This was all prior to market open in Canada and outside Australian market hours.

IIROC reviewed FCC's press release and there was discussion between IIROC and FCC on minor adjustments to the press release. At 1:48pm EDT (or 1:48am AWST on 22 May 2019) the press release was disseminated in Canada and at 2:30pm EDT (or 2:30am AWST on 22 May 2019) the trading halt was lifted by IIROC and FCC shares began trading on the TSX-V. FCC filed the announcement on SEDAR (the electronic filing system for disclosure documents in Canada) at 1:59pm EDT on 21 May, 2019 (or 1:59am AWST on 22 May 2019). This was also outside of Australian market hours.

A copy of the press release was provided by FCC to its Company Secretary located in Perth with the intention that it be lodged on the ASX prior to market open. Unfortunately, there was ambiguity in the email sent to the Company Secretary as it stated that it should be filed on the ASX as usual but the email did not explicitly state it should be pre-market nor did it state the market sensitivity of the press release (or communicate the information set out above).

- 4. If FCC first became aware of the Information before the relevant time and date, did FCC make any announcement prior to the relevant date which disclosed the Information? If so, please provide details. If not, please explain why this Information was not released to the market at an earlier time, commenting specifically on when you believe FCC was obliged to release the Information under Listing Rules 3.1 and 3.1A and what steps FCC took to ensure that the information was released promptly and without delay.**

FCC released the Announcement on SEDAR (the electronic filing system for the disclosure documents of issuers across Canada) at 01:59pm EDT on 21 May 2019, being 01:59am on 22 May 2019 AWST.

A copy of the press release was provided by FCC to its Company Secretary located in Perth at 9.49pm (AWST) on 21 May 2019 with the intention that it be lodged on the ASX prior to market open. Unfortunately, there was ambiguity in the email sent to the Company Secretary as it was stated that it should be filed on the ASX as usual but did not explicitly state it should be pre-market nor did it state the market sensitivity of the press release. General precedent has been for FCC to give the Company Secretary advanced warning on upcoming announcements. Given the nature of

this MOU, and the uncertainty as to when it would actually be signed and agreed amongst the parties, the timing of the FCC announcement in Canada was not well known by FCC in advance.

The Company Secretary did not open the press release in the email and based on previous protocol of receiving advanced warning on pending announcements, assumed based on the note from FCC that the Company was releasing the announcement the next day in Canada (22 May). Therefore, it was not lodged on the ASX prior to market open at 8:00am AWST. FCC noticed it had not been lodged in Australia at approximately 8:40am AWST (UTC+8) and contacted the Company Secretary, who immediately lodged the press release in Australia at approximately 8:48am AWST.

FCC believes this was a one-off incident involving a miscommunication and it is the first time adequate advanced notification was not given to the Company Secretary. FCC is confident this will not happen in the future and will provide advanced notice and clear communication to its Company Secretary for future announcements. FCC will also implement a process to ensure there are additional communications and confirmations between the Company and its Company Secretary for any announcements requiring quick lodging outside of normal practice to ensure this occurs on a timely basis and prior to ASX market open.

FCC confirms that it was obliged to give the Information to ASX immediately following signing and exchange of the MOU, at which stage FCC could no longer rely on the continuous disclosure exemption in ASX Listing Rule 3.1A, and at the same time as it was released on SEDAR.

FCC has reminded its directors of the disclosure requirements set out in Listing Rules 3.1 and 3.1A.

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

FCC confirms that it is complying with the Listing Rules and, in particular, Listing Rule 3.1.

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

FCC confirms that its responses to the questions above have been authorised and approved by its CEO, Trent Mell, being an officer of FCC with delegated authority from the Board to respond to ASX.

Your faithfully



**Michael Naylor**  
Company Secretary



22 May 2019

Reference: ODIN02625

Mr Michael Naylor  
Company Secretary  
First Cobalt Corp.

By email: Michael.Naylor@allianceminerals.com.au

Dear Mr Naylor

**First Cobalt Corp. ('FCC'): Aware Query**

ASX refers to the following:

- A. FCC's announcement entitled "Glencore to Support Restart of First Cobalt Refinery" lodged on the ASX Market Announcements Platform at 8:48 AM AWST and released at 8:50 AM AWST on 22 May 2019 (the 'Announcement'), disclosing that FCC signed a memorandum of understanding with Glencore AG for Glencore AG to supply cobalt feedstock and financing to recommission the First Cobalt Refinery in Ontario, Canada ('Information').
- B. The change in the price of FCC's securities from a low of \$0.15 at the close of trade yesterday, Tuesday, 21 May 2019 to a high of \$0.19 today, Wednesday 22 May 2019, prior the release of the Announcement.
- 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:*

*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.”*

### Request for Information

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

1. Does FCC 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 FCC first become aware of the Information?
4. If FCC first became aware of the Information before the relevant time and date, did FCC make any announcement prior to the relevant date which disclosed the Information? If so, please provide details. If not, please explain why this Information was not released to the market at an earlier time, commenting specifically on when you believe FCC was obliged to release the Information under Listing Rules 3.1 and 3.1A and what steps FCC took to ensure that the information was released promptly and without delay.
5. Please confirm that FCC is complying with the Listing Rules and, in particular, Listing Rule 3.1.
6. Please confirm that FCC’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 FCC 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 **7:00 AM AWST Friday, 24 May 2019**

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, FCC’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 FCC to request a trading halt immediately.

If you wish to request 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.

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You can find further information about trading halts in Guidance Note 16 *Trading Halts & Voluntary Suspensions*.

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 [ListingsCompliancePerth@asx.com.au](mailto:ListingsCompliancePerth@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 FCC'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 FCC'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.

### **Suspension**

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

### **Enquiries**

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

Yours sincerely

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**Madeleine Green**  
Adviser, Listings Compliance (Perth)