

23 July 2019

Attention: Dale Allen
Principal Adviser, Listings Compliance (Perth)
ASX Limited
Level 40 Central Park
152 - 158 St Georges Terrace
PERTH WA 6000

Via e mail; ListingsCompliancePerth@asx.com.au

Dear Dale

ASX Aware Letter – Response by New Energy Minerals

New Energy Minerals Limited (“the Company”) refers to the ASX Limited (“ASX”) Aware Query letter dated 19 July 2019.

The Company has addressed the questions and requests in the same order as the ASX letter dated 19 July 2019 as follows;

- 1. Does NXE consider the Judgment 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.**

N/A

- 3. When did NXE first become aware of the Judgment?**

On 5 July 2019, the Company received notification from the Supreme Court of Western Australia that the Master would be handing down his judgement on this matter on 16 July 2019. The Company released this information to the market on 5 July 2019.

In that same notification on 5 July 2019, NXE was informed that an advance copy of the judgement would be emailed to the parties on Monday, 15 July 2019.

On 15 July 2019 the Company received further notification that there would be no advance copy of the judgement provided but that the Master would still deliver judgement in court on 16 July 2019 in the morning but the reasons would not be available or published until late afternoon on 16 July 2019.

On 16 July 2019, around 9.40am AWST, the Master informed the parties in court that his reasons were still not available and would not be published until 18 July 2019. He did however make orders that the statutory demand would be set aside, but with the orders to take effect only from 18 July 2019. The Company was informed of these matters by its lawyers via email at around 10.09am AWST. An ASX release was immediately completed and circulated to the Board of NXE and subsequently released to market at 12.49 AWST (2.49pm AEST) on 16 July 2019.

At around 3.21pm AWST on 16 July 2019 after Market close, the Company’s lawyers were notified by the Supreme Court that the orders made by the Master earlier that day were available to be

NEW ENERGY MINERALS LIMITED

Level 1, 9 Bowman Street, South Perth WA 6151 Australia

Registered Office: PO Box 840, South Perth WA 6951

Perth Telephone: +61 (0) 8 9217 2400

ACN: 090 047 785 | Website: www.newenergyminerals.com.au

downloaded from the Court's online portal. The Company's lawyers obtained a copy of the orders and emailed them to the Company at around 3.52pm.

4. Noting the share price movement, why did NXE not request a trading halt either immediately before or immediately after the Judgment was delivered?

The Company immediately made an ASX release informing the Market of the Master's decision (delivered verbally on the morning of the 16th to the Company's lawyers) notwithstanding it did not yet have the official sealed order (which was emailed to the Company's lawyers by the Master at 3.52pm AWST on 16 July 2019). A trading halt was therefore not deemed necessary.

Until the orders were published on the Court's online portal (by which time the Company had made its ASX release), the outcome of the Master's decision would have been known only to the parties.

5. Noting the share price movement, why did NXE wait until 2:49 PM AEST to announce the outcome of the Judgment?

The Company only became aware of the Master's decision at 10.09am AWST. The Company Secretary spoke to the ASX at 11.48am AWST advising that a draft ASX release had been prepared and circulated to the Company's directors. Concurrent with this, a pause in trading was activated at 11.54am AWST.

Following review by the Board and final approval from the Company's MD who was overseas, NXE released the result at 2.49pm AWST during the pause in trading.

6. If NXE first became aware of the Judgment before the time of the Judgment Announcement, did NXE make any disclosure prior to the time of the Judgment Announcement which disclosed the Judgment? If so, please provide details. If not, please explain why the Judgment was not released to the market at an earlier time, commenting specifically on when you believe NXE was obliged to release the Judgment under Listing Rules 3.1 and 3.1A and what steps NXE took to ensure that the Judgment was released promptly and without delay.

NXE became aware of the Master's decision at 10.09am AWST with the official order not received until around 3.52pm AWST on 16 July 2019. Prior to this the Company, had no knowledge of the decision and as such made no such disclosure of any sort prior to the release of the results on the ASX at 2.49pm on the same day.

7. Please confirm that NXE is complying with the Listing Rules and, in particular, Listing Rule 3.1.

The Company confirms that it is in compliance with the Listing Rules and in particular, Listing Rule 3.1.

7. Please confirm that NXE'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 NXE with delegated authority from the board to respond to ASX on disclosure matters.

The Company confirms that the responses outlined above have been authorised and approved in accordance with its published continuous disclosure policy.

Yours faithfully



Robert Marusco
Company Secretary



19 July 2019

Mr Robert Marusco
Company Secretary
C/- MVP Financial
Level 1, 9 Bowman Street
South Perth, WA 6151

By email

Dear Mr Marusco

New Energy Minerals Limited ('NXE'): Aware Query

ASX refers to the following:

- A. NXE's announcement entitled "Arena Statutory Demand" released on the ASX Market Announcements Platform ('MAP') on 6 November 2018, disclosing the statutory demand notice served on NXE from Arena Structured Private Investments (Cayman), LLC owned by Arena Investors L.P ('Arena Investors'), arising from debts allegedly owed by NXE under the terms of the convertible note deed between NXE and Arena Investors, for an amount totalling \$5.1 million ('Statutory Demand').
- B. NXE's market capitalisation of \$3.6 million as at 15 July 2019.
- C. NXE's announcement entitled "Arena statutory demand judgment date set" released on MAP on Monday, 8 July 2019, disclosing that the Master of the Supreme Court of Western Australia ('Master') was scheduled to hand down his judgment on NXE's application to set aside the Statutory Demand on Tuesday, 16 July 2019.
- D. The Court Listings for the David Malcolm Justice Centre for 16 July 2019, published on the eCourts Portal of Western Australia website from 4:30 PM (6:30 PM AEST) on Monday, 15 July 2019, which stated that the Master was to deliver his judgment regarding NXE's application to set aside the Statutory Demand at 9:40 AM AWST (11:40 AM AEST) on Tuesday, 16 July 2019.
- E. The increase in the price of NXE's securities from \$0.019 at the close of trade on 15 July 2019 to a high of \$0.025 prior to the pause in trade in NXE's securities and the increase in the volume of NXE's securities traded from 15 July 2019 to 16 July 2019 prior to the pause in trade.
- F. The pause in trade applied to NXE's securities at 1:54 PM AEST on 16 July 2019.
- G. NXE's announcement entitled "Arena statutory demand to be set aside" lodged on MAP and released at 2:49 PM AEST on 16 July 2019 (the 'Judgment Announcement'), disclosing that the Master had confirmed his intention to set aside the Statutory Demand ('Judgment'), with reasons expected to be published by Thursday, 17 July 2019. The Judgment Announcement was marked as sensitive when lodged by NXE on MAP.
- H. 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.
- I. 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."

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- J. 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.”

- K. 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 NXE to respond separately to each of the following questions and requests for information:

1. Does NXE consider the Judgment 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 NXE first become aware of the Judgment?
4. Noting the share price movement, why did NXE not request a trading halt either immediately before or immediately after the Judgment was delivered?
5. Noting the share price movement, why did NXE wait until 2:49 PM AEST to announce the outcome of the Judgment?
6. If NXE first became aware of the Judgment before the time of the Judgment Announcement, did NXE make any disclosure prior to the time of the Judgment Announcement which disclosed the Judgment? If so, please provide details. If not, please explain why the Judgment was not released to the market at an earlier time, commenting specifically on when you believe NXE was obliged to release the Judgment under Listing Rules 3.1 and 3.1A and what steps NXE took to ensure that the Judgment was released promptly and without delay.
7. Please confirm that NXE is complying with the Listing Rules and, in particular, Listing Rule 3.1.

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8. Please confirm that NXE'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 NXE 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 **3:00 PM AWST Tuesday, 23 July 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, NXE'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 NXE 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.

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. 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 NXE'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 NXE'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 NXE'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

Dale Allen

Principal Adviser, Listings Compliance (Perth)