

UPDATE ON ASX ENQUIRY

Hardey Resources Limited (ASX: HDY) (“HDY” or “the Company”) advises that it has today received the attached letter from ASX (“Letter”).

As outlined in the Letter, in accordance with Listing Rule 18.8 and to ensure compliance with Listing Rule 3.1 and 11.1, ASX has requested that HDY prepare and release to the market a statement (“Explanation”), acceptable to ASX, giving a detailed account of the events surrounding the amendment of the acquisition agreements for Nelly Vanadium and Vanadium Mining, the Off-Market Transfers, the On-Market Disposals and the Additional Disposals (as defined in the Letter), including the reasons why the parties involved engaged in those transactions and the financial benefits that the parties involved received as a result of those transactions.

HDY intends to provide this Explanation to ASX by the due date of 20th December 2018.

For and on behalf of the Board

Sarah Smith
(Company Secretary)



29 November 2018

Ms Sarah Smith
Company Secretary
Hardey Resources Limited
Level 1, 1 Altona Street
WEST PERTH WA 6005

By email: ss@miradorcorporate.com

Dear Ms Smith

HARDEY RESOURCES LIMITED (“HDY”): Requirement for remedial action

ASX Limited (“ASX”) refers to:

- A. The Notice of Initial Substantial Holder by Pacific Continental Holdings Pty Ltd (“PCH”) dated 10 September 2018 (“PCH Substantial Holder Notice”) and lodged on the ASX Market Announcements Platform (“MAP”) on the same day claiming a relevant interest in 409,091,250 shares in HDY that it purchased for \$0.004 per share on 29 August 2018. ASX notes that this document was lodged well outside the 2 business day deadline that it should have been given to HDY and to ASX under section 671B(6) of the Corporations Act 2001 (Cth) (the “Corporations Act”). It also appears to breach the requirement in section 671B(3)(c) of the Corporations Act in that it fails to disclose details of the “relevant agreements” giving rise to that relevant interest, and also section 671B(4) of the Corporations Act in that it fails to attach the certified copy of documents or the certified statement required under that section that would have explained how PCH came to have that relevant interest.
- B. ASX’s query letter dated 14 September 2018 and HDY’s response lodged on MAP and released at 2:36 pm AEST on 26 September 2018 (“1st Query”);
- C. ASX’s query letter dated 4 October 2018 and HDY’s response lodged on MAP and released at 2:02 pm AEDT on 12 October 2018 (2nd Query”); and
- D. ASX’s query letter dated 15 October 2018 and HDY’s response lodged on MAP and released at 2:11 pm AEDT on 24 October 2018 (“3rd Query”).

Unless otherwise defined in this letter, capitalised terms in this letter have the same meaning as is given to them in the 1st, 2nd and 3rd Queries.

ASX would note at the outset its concern that HDY may not have been completely candid in its responses to the 1st, 2nd and 3rd Queries. In particular, ASX finds it difficult to reconcile the statement in HDY’s response to the 1st Query that:

Prior to entering into the Acquisition Agreements, the HDY Board was aware that the controllers of the Additional Parties and the Principals of Everblu were known to each other socially and had prior business dealings. However, the nature and extent of these prior relationships was and is not known in any specific detail to the HDY Board.

*In addition, in relation to the Acquisition Agreements themselves, HDY was aware of a commercial relationship between the Additional Parties and the Principals on 24 July 2018 when a meeting took place between a representative of the Additional Parties and Mr Robin Armstrong (a director of HDY). At this time, it was disclosed to Mr Armstrong that both the Additional Parties and parties related to Everblu were likely to be participating in both transactions. **However, HDY was not aware of the specific commercial terms between the Additional Parties and the parties that ASX describes as associates of Everblu, nor did it enquire because ... the transaction terms did not change when the variations were signed to include the Additional Parties.** [Emphasis added]*

and the statements in the response to the 2nd Query that:

*“HDY was aware that Everblu had an interest in the transactions, **although HDY had no specific details ...**”*

*“The Nelly Vanadium and Vanadium Mining acquisitions were not the subject of the discussions at the meeting between Mr Armstrong and Mr Young. However, in the course of the conversation, Mr Young mentioned to Mr Armstrong that Mr Young was considering some involvement with the Nelly Vanadium and Vanadium Mining vendors and that **Mr Young may seek some assistance from Everblu. However, no further details about the nature of the assistance Mr Young was considering was ever provided to, or discussed with, Mr Armstrong at that meeting or with the Company thereafter.**” [Emphasis added]*

with the admission in the response to the 2nd Query that:

.... HDY understood that Everblu was aware that the HDY Board was assessing the situation and considering any potential conflicts from Everblu having an interest in the transactions. The HDY Board assessed the situation based on the information it had and formed the view that there were no potential conflicts or potential contraventions of the Corporations Act or ASX Listing Rules. The Board’s view was supported by advice obtained by Mr Clee from a Sydney based Commercial Barrister.

The fact that HDY’s board turned its mind to considering whether Everblu’s interest in the transactions involved a potential conflict or a potential contravention of the Corporations Act or ASX Listing Rules necessarily means that the board believed that Everblu had some form of interest in the transactions. This, coupled with the fact that HDY’s chairman sought advice from a commercial barrister about these matters, suggests to ASX that the HDY board may have been aware of more information about the interests of Everblu and its associates in the transactions than some of HDY’s responses admit.

Whether or not that is the case, HDY has provided sufficient information in its responses to the 1st, 2nd and 3rd Queries, for ASX to draw the following conclusions about the matters the subject of those Queries:

1. For reasons that have not been properly explained, HDY and the vendors of the shares in Nelly Vanadium and Vanadium Mining facilitated an amendment to the acquisition agreements for Nelly Vanadium and Vanadium Mining so that approximately 52.55% of the Consideration Shares and the Consideration Options for the acquisition of Nelly Vanadium were issued to Energy Capital Partners Pty Ltd, and 61.37% of the Consideration Shares and the Consideration Options for the acquisition of Vanadium Mining were issued to Aceglow Holdings Pty Ltd, respectively.

HDY has admitted that it was aware that Energy Capital Partners Pty Ltd and Aceglow Holdings Pty Ltd (the “Additional Parties”) were entities controlled by Thomas Young.

On the face of it, therefore, HDY and its legal advisers should have been concerned that the amendment to the acquisition agreements for Nelly Vanadium and Vanadium Mining and the consequent issue of the Consideration Shares to the Additional Parties resulted in a breach of section 606 of the Corporations Act. This is so because the issue, on the face of it, increased Thomas Young’s voting power

in HDY at that time from less than 20% to more than 20%. HDY has admitted as much in its response to the 2nd Query.

However, if HDY's responses to the 1st, 2nd and 3rd Queries are to be believed, HDY had no knowledge of, and made no enquiries to establish, the reasons why the vendors had asked for the acquisition agreements to be amended to provide for such a large proportion of the Consideration Shares and the Consideration Options to be issued to the Additional Parties in breach of section 606.

2. Based on the Appendix 3B lodged by HDY on MAP on 24 August 2018 and information provided by HDY's share registry on 29 August 2018, three business days after being issued the Consideration Shares and the Consideration Options by HDY, the Additional Parties executed off-market transfers ("Off-Market Transfers") transferring:
 - (a) 15,000,000 Consideration Shares and 15,000,000 Consideration Options to Horatio Street Pty Ltd ("Horatio"), an entity controlled by Darrin Blumenthal, the managing director of Everblu;
 - (b) 70,000,000 Consideration Shares and 70,000,000 Consideration Options to Anglo Menda Pty Ltd ("Anglo"), an entity controlled by Adam Blumenthal, the chairman of Everblu; and
 - (c) 630,091,250 Consideration Shares and 640,091,250 Consideration Options to PCH, an entity controlled by Jordan Shamir, an employee of EverBlu.

ASX considers it more likely than not, given their connections to Everblu and the common timing of the Off-Market Transfers, that Horatio, Anglo and PCH (together the "Everblu Associates") were acting in concert in relation to these matters and therefore were associates of each other for the purposes of the Corporations Act.

Further, ASX considers it more likely than not, given the promptness with which the Off-Market Transfers from the Additional Parties to the Everblu Associates took place, that the Off-Market Transfers were pre-arranged and/or there was an agreement, arrangement or understanding in place between the Additional Parties and the Everblu Associates that the Consideration Shares and the Consideration Options were received on trust for, or would otherwise be transferred to or at the direction of, the Everblu Associates.

If this is correct, then:

- (i) Horatio and Anglo have breached section 671B of the Corporations Act by not filing Notices of Initial Substantial Holder in relation to HDY;
 - (ii) the PCH Substantial Holder Notice was deficient in not disclosing the association between PCH and the other Everblu Associates (in addition to the deficiencies mentioned in paragraph A above); and
 - (iii) the amendment and subsequent completion of the acquisition agreements for Nelly Vanadium and Vanadium Mining resulted in a breach by the Everblu Associates of section 606 of the Corporations Act, as their voting power in HDY at that time also increased from less than 20% to more than 20%.
3. Over the period 30 August 2018 to 6 September 2018, Anglo and PCH sold a large number of Consideration Shares on ASX ("On-Market Disposals"), securing a substantial cash return.

Based on the top twenty holders as at 25 September 2018 disclosed in HDY's 2018 Annual Report released on MAP on 1 October 2018, it would also appear that the Everblu Associates may have effected other disposals of the Consideration Shares since 6 September 2018 ("Additional Disposals").

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4. The transactions referred to in paragraphs 1, 2 and 3 above are highly unusual and warrant a proper explanation to the market. The Everblu Associates have effectively received 52.55% of the Consideration Shares and the Consideration Options for the acquisition of Nelly Vanadium, and 61.37% of the Consideration Shares and the Consideration Options for the acquisition of Vanadium Mining, when it would appear to ASX that the Everblu Associates were not shareholders in either company and Everblu had no advisory role in relation to either acquisition.

This raises a serious question in ASX's mind as to bona fides of the Nelly Vanadium and Vanadium Mining acquisitions and for whose benefit they were undertaken.

5. In the absence of a proper explanation to the market, it seems a reasonable inference to draw that the transactions referred to in paragraphs 1, 2 and 3 above were deliberately structured by the Everblu Associates to disguise the fact that they were the true beneficiaries of the issue of the Consideration Shares and the Consideration Options to the Additional Parties (see also paragraph 6 below).

The potential substantial holder notice breaches referenced in paragraphs A and 2(i) and (ii) above lend weight to this inference.

6. ASX would point to the action that it took earlier this year under Listing Rule 10.11 in relation to various parties connected to Everblu (including Horatio and Anglo) concerning their dealings in shares in Monalto Limited (see the ASX letter dated 9 April 2018 and lodged on MAP on 12 April 2018).

In light of that action, it seems plausible to ASX that the transactions referred to in paragraphs 1, 2 and 3 above may have been structured in the way they were because the Everblu Associates did not want ASX to learn of their involvement in the Nelly Vanadium and Vanadium Mining acquisitions in case ASX applied Listing Rule 10.1.5 to those acquisitions and/or in case ASX applied Listing Rule 10.11.2 to the issue of the Consideration Shares and the Consideration Options to the Additional Parties.

7. Given the connections between the HDY chairman, Everblu and the Everblu Associates (which were outlined in paragraph M of the 1st Query), if ASX had been made aware that the Everblu Associates were receiving the majority of the Consideration Shares and the Consideration Options for the Nelly Vanadium and Vanadium Mining acquisitions, ASX would have applied Listing Rule 10.1.5 to those acquisitions, requiring HDY to obtain an independent expert's report on whether the acquisitions were fair and reasonable to HDY's shareholders and also that HDY's shareholders approve the acquisitions. Further, this would have had the consequence that Listing Rule 10.7 would have applied to the acquisitions, requiring the Consideration Shares and the Consideration Options to be restricted securities subject to escrow. This in turn would have prevented the Everblu Associates from immediately selling any of the Consideration Shares on-market.
8. Given the connections between the HDY chairman, Everblu and the Everblu Associates (which again were outlined in paragraph M of the 1st Query), if ASX had been aware that the Everblu Associates were the effective beneficiaries of the Consideration Shares and the Consideration Options being issued to the Additional Parties, ASX would have applied Listing Rule 10.11.2 to that issue, requiring the issue to be approved by HDY's shareholders.
9. By not making proper enquiries about the involvement of the Additional Parties and the Everblu Associates in the Nelly Vanadium and Vanadium Mining acquisitions and bringing those matters to ASX's attention, HDY has effectively precluded ASX from exercising the powers referred to in paragraphs 7 and 8 above.

Remedial action

Listing Rule 18.8 provides:

An entity must comply with any requirement ASX imposes on it in order to ensure compliance with the listing rules.

Listing Rule 17.12 provides:

ASX may at any time remove an entity from the official list if, in ASX's opinion, any of the following applies.

- *The entity is unable or unwilling to comply with, or breaks, a listing rule.*
- *The entity has no quoted securities.*
- *It is appropriate for some other reason.*

In accordance with Listing Rule 18.8 and to ensure compliance with Listing Rule 3.1 and 11.1, ASX directs HDY to prepare and release to the market a statement ("Explanation"), acceptable to ASX, giving a detailed and candid account of the events surrounding the amendment of the acquisition agreements for Nelly Vanadium and Vanadium Mining, the Off-Market Transfers, the On-Market Disposals and the Additional Disposals, including the reasons why the parties involved engaged in those transactions and the financial benefits that the parties involved received as a result of those transactions.

If HDY does not do so by the end of Thursday 20 December 2018, ASX will remove HDY from the official list before the commencement of trading on Friday 21 December 2018.

ASX recognises that to provide the Explanation will require HDY to secure the co-operation of the vendors of the shares in Nelly Vanadium and Vanadium Mining, the Additional Parties and the Everblu Associates, in order to elicit the facts surrounding the transactions in question and the reasons for them. If there are legitimate reasons for the transactions in question, ASX would expect these parties to be fully co-operative in explaining the facts and circumstances. If they are not prepared to co-operate with HDY in preparing the Explanation, then that is a problem of HDY's making in having previously turned a blind eye to these matters and it must live with the consequences.

If and when an acceptable Explanation has been provided to the market, ASX will consider what further remedial action will be required by HDY. Depending on the facts and reasons included in the Explanation, this remedial action could involve:

- (a) reversing the Nelly Vanadium and Vanadium Mining acquisitions; or
- (b) implementing measures to restore HDY to the position that should have prevailed had ASX been able to exercise the powers referred to in paragraphs 7 and 8 above, including:
 - (i) obtaining an independent expert's report on whether the acquisitions of Nelly Vanadium and Vanadium Mining were fair and reasonable to HDY's shareholders;
 - (ii) obtaining the approval of HDY's shareholders to the acquisition of Nelly Vanadium and Vanadium Mining pursuant to Listing Rule 10.1.5 and, if that approval is not forthcoming, reversing those transactions; and
 - (iii) obtaining the approval of HDY's shareholders to the issue of the Consideration Shares and the Consideration Options to the Additional Parties pursuant to Listing Rule 10.11.2 and, if that approval is not forthcoming, arranging for the Everblu Associates to account to HDY, in a manner satisfactory to ASX, for the benefit they received from that issue; and
 - (iv) Everblu Associates taking appropriate action, to the satisfaction of ASX, to make good any breaches of the escrow requirements that would have applied pursuant to Listing Rule 10.7; or
- (c) other remedial measures ASX considers appropriate in light of the Explanation.

ASX expects HDY to make an immediate announcement to the market attaching a copy of this letter and stating whether or not it intends to provide the Explanation. If HDY does not do so, ASX reserves the right to release this letter to the market under Listing Rule 18.7A.

Suffice to say, if HDY indicates that it can't or won't provide the Explanation, HDY will be removed forthwith from the official list.

ASX looks forward to receiving a draft of the Explanation.

Please call me on 08 9224 0000 if you have any queries or wish to discuss any aspects of this letter.

Yours sincerely,

[Sent electronically, without signature]

James Rowe
Manager, Listings Compliance (Perth)