

15 August 2019

Ms Anjuli Sinniah
Senior Adviser
Listings Compliance (Perth)
Australian Securities Exchange
Level 40, Central Park
152-158 St George's Tce
Perth WA 6000

By email: Anjuli.Sinniah@asx.com.au; ListingsCompliancePerth@asx.com.au

Dear Anjuli,

Response to ASX Query

We refer to your letter dated 13 August 2019 (**ASX Query Letter**) to ECS Botanics Holdings Ltd (the **Company**). Unless specifically defined otherwise, capitalised terms used in this letter have the same meaning as given in the ASX Query Letter.

The Company responds to each of your queries as follows using the numbering in the ASX Query Letter.

1. When did the Company first become aware of the TapAgrico Strategic Investment?

The commercial terms of the TapAgrico Strategic Investment were finalised after market close on the afternoon of 12 August 2019 when the Company's wholly owned subsidiary ECS Botanics Pty Ltd (the **Subsidiary**) and Tasmanian Agricultural Producers Pty Ltd (**TapAgrico**) signed a subscription agreement for the Strategic Investment (**Subscription Agreement**). Accordingly, the Company first became aware of the TapAgrico Strategic Investment after market close on 12 August 2019.

Prior to execution of the Subscription Agreement, there was a period of confidential and incomplete negotiation between the Subsidiary and TapAgrico with respect to a potential investment by the Subsidiary in TapAgrico.

2. Does the Company consider the TapAgrico Strategic Investment to be information that a reasonable person would expect to have a material effect on the price or value of its securities?

Yes.

3. If the answer to question 2 is "no", please advise the basis for that view.

Not applicable.

4. **If the answer to question 2 is “yes” and the Company first became aware of the TapAgrico Strategic Investment before 13 August 2019, did the Company make any announcement prior to this 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 the Company was obliged to release the information under Listing Rules 3.1 and 3.1A and what steps the Company took to ensure that the information was released promptly and without delay.**

The Company did not make any announcement prior to 13 August 2019 which disclosed information about the TapAgrico Strategic Investment.

The Subsidiary and TapAgrico finalised their negotiation of the terms of the TapAgrico Strategic Investment after market close on the afternoon of 12 August 2019 and therefore, the Company was not in a position to announce information regarding the TapAgrico Strategic Investment until 13 August 2019.

Prior to the execution of the Subscription Agreement, all negotiations between the Subsidiary and TapAgrico were incomplete and confidential, and a reasonable person would not have expected the Subscription Agreement to be disclosed.

As the Subscription Agreement was finalised and signed on 12 August 2019 (after market) and announced on 13 August 2019, the Company took all steps to ensure that the information about the TapAgrico Strategic Investment was released to the market promptly and without delay.

5. **Noting the Company’s Commitments detailed in the Commitments Announcement, how does the Company intend to fund the Initial Investment into TapAgrico?**

Pre-acquisition, and based on the audited accounts of the Subsidiary as at 31 January 2019, the Subsidiary’s cash balance was \$1,435,386 (as disclosed as “Cash and Cash Equivalents” in the Pro Forma Statement of Financial Position released to the market on 19 July 2019 (**Pro Forma**)).

As set out in the Pro-Forma, as at the date of listing, the cash and cash equivalent amount for the consolidated entity, on a pro-forma basis, was approximately \$7,466,672.

Accordingly, the Initial Investment into TapAgrico will be funded from the cash balance of the Subsidiary and will not be funded from the monies raised under the Company’s Public Offer.

The Company notes that its Strategic Investment in TapAgrico is consistent with ECS’ business model in respect of optimising the existing supply chain.

6. **Noting the Company’s Commitments detailed in the Commitments Announcement, how does ECS intend to fund the Subsequent Investment into TapAgrico?**

The Subsidiary is not contractually obliged to proceed with the Subsequent Investment. Rather, the Subsidiary has a call option to acquire the further shares in TapAgrico at its election (**Option**).

Accordingly, whether or not the Subsidiary will proceed with the Subsequent Investment into TapAgrico, is not certain. This call Option can be exercised at the Subsidiary’s discretion any time over the next 13 months (up to 14 September 2020). To date, the Company has not made any further determination of this matter. The Company is aware of its continuous disclosure obligations and if and when the Company makes a decision regarding the Option, it will update the market in due course.

In the event the Subsidiary elects (in its discretion) to exercise the Option before 14 September 2020, it is the Company's current intention that the Subsequent Investment will be funded by a combination of: the remaining cash held by the Subsidiary; the Company's working capital; and future anticipated revenue from ECS' product sales.

7. Noting the disclosure requirements in section 4.15 of Guidance Note 8, can the Company confirm that all material terms of the Strategic Investment, including but not limited to conditions precedent, term, consideration, termination provisions etc have been disclosed in the TapAgrico Announcement? If not, what other material terms are required to be disclosed?

The material financial terms of the Strategic Investment were announced on 13 August 2019. However, a summary of the other operative provisions of the Subscription Agreement are set out below:

- (a) The Subscription Agreement is subject to and conditional on:
 - (i) TapAgrico maintaining the status quo of its business and its capital structure; and
 - (ii) TapAgrico obtaining the written consent of its shareholders and the waiver of any pre-emptive rights(collectively, **Conditions Precedent**).
- (b) Subject to satisfaction of the Conditions Precedent, the Initial Investment will occur in two tranches. Accordingly, the parties agree that the Subsidiary will subscribe for shares in TapAgrico (totalling 28.4% of TapAgrico's issued capital) in consideration for a total subscription of \$750,000 (**Subscription Price**) as follows:
 - (iii) 50,000 shares to be issued three business days from the date of signing the Subscription Agreement (being an issue date of 15 August 2019) (**First Tranche**), subject to payment of the First Tranche of the Subscription Price at completion of the First Tranche; and
 - (iv) 25,000 shares to be issued on the date which is 30 days from the date of issue referred to in (a) above, (being an issue date of 14 September 2019) (**Second Tranche**), subject to payment of the Second Tranche of the Subscription Price at completion of the Second Tranche.
- (c) If the Conditions Precedent are not satisfied (or waived) prior to the dates listed in (a) and (b) above, either party may terminate the Subscription Agreement.
- (d) At completion of the Subscription Agreement, Alexander Keach is to be appointed as a director of TapAgrico.
- (e) In addition to the above, TapAgrico has granted the Subsidiary the call Option in respect of the Subsequent Investment to acquire a further 25,000 shares in TapAgrico (to increase the Subsidiary's Initial Investment shareholding in TapAgrico to a total of 34.6%). The Option may be exercised at the Subsidiary's election at any time up to 14 September 2020.

The Subscription Agreement otherwise contains terms, conditions, warranties and representations considered standard for a document of this nature.



8. Please confirm the Company is complying with the Listing Rules and, in particular, Listing Rule 3.1.

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

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

The Company confirms that its responses to the questions provided in this letter have been authorised and approved by the Board of the Company.

For and on behalf of ECS

Alex Keach
Managing Director
ECS BOTANICS HOLDINGS LIMITED



13 August 2019

Ms Sarah Smith
Company Secretary
Mirador Corporate

By email: ss@miradorcorporate.com

Dear Ms Smith

ECS Botanics Holdings Limited ('ECS'): Aware Query

ASX refers to the following:

- A. ECS's announcement entitled "Prospectus" lodged on the ASX Market Announcements Platform and released at 10:47 AM on 19 July 2019 (the "Prospectus"), disclosing information pertaining to the re-compliance between Axxis Technology Group Limited and ECS Botanics Pty Ltd (now ECS) ("Re-compliance Transaction") including, but not limited to, all material contracts and agreements.
- B. ECS's announcement entitled "Updated Use of Funds" lodged on the ASX Market Announcements Platform and released at 10:54 AM on 19 July 2019 (the "Commitments Announcement"), disclosing the updated statement of commitments of funds based on the actual amount raised under the Prospectus ("Commitments"). ASX notes the following Commitments:

Use of funds	Maximum Subscription
Expenses of the Offers	\$262,633
Capital Raising and Joint Lead Manager Fees	\$570,000
Purchase hemp from farmers	\$1,050,000
Processing and manufacturing	\$925,000
Business development and marketing	\$250,000
Farming costs, leasing and commercial farming trials	\$210,000
Seeds – general planting stock	\$120,000
Infrastructure and storage investment (including purchase of leased property in the event of Maximum Subscription)	\$1,500,000
Medicinal cannabis (feasibility study & consulting)	\$100,000
Administration Costs	\$1,450,000
Working Capital	\$62,367
TOTAL	\$6,500,000

- C. We note the change in the price of ECS's securities from a close of \$0.072 on 9 August 2019 to an intraday high and subsequent close of \$0.087 on 12 August 2019. We also note the increase in the volumes of trades on 12 August 2019 ("Price and Volume Increase").

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- D. ECS's announcement entitled "Strategic Investment in TapAgrico & Distribution Agreement" lodged on the ASX Market Announcements Platform and released at 09:50 AM on 13 August 2019 ("TapAgrico Announcement"), disclosing that ECS has entered into a strategic investment into Tasmanian Agricultural Producers Pty Ltd ("TapAgrico") for a 28.4% stake in the business ("TapAgrico Strategic Investment"). ECS will invest an initial \$750,000 for its 28.4% stake in the business ("Initial Investment") and in addition, it has been granted a call option to increase this stake to 34.6% on the same terms ("Subsequent Investment").
- E. 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.
- F. 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."*
- G. 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."*
- H. 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 ECS to respond separately to each of the following questions and requests for information:

1. When did ECS first become aware of the TapAgrico Strategic Investment?

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2. Does ECS consider the TapAgrico Strategic Investment to be information that a reasonable person would expect to have a material effect on the price or value of its securities?
 3. If the answer to question 2 is “no”, please advise the basis for that view.
 4. If the answer to question 2 is “yes” and ECS first became aware of the TapAgrico Strategic Investment before 13 August 2019, did ECS make any announcement prior to this 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 ECS was obliged to release the information under Listing Rules 3.1 and 3.1A and what steps ECS took to ensure that the information was released promptly and without delay.
 5. Noting ECS’s Commitments detailed in the Commitments Announcement, how does ECS intend to fund the Initial Investment into Tap Agrico?
 6. Noting ECS’s Commitments detailed in the Commitments Announcement, how does ECS intend to fund the Subsequent Investment into Tap Agrico?
 7. Noting the disclosure requirements in section 4.15 of Guidance Note 8, can ECS confirm that all material terms of the Strategic Investment, including but not limited to conditions precedent, term, consideration, termination provisions etc have been disclosed in the TapAgrico Announcement? If not, what other material terms are required to be disclosed?
 8. Please confirm that ECS is complying with the Listing Rules and, in particular, Listing Rule 3.1.
 9. Please confirm that ECS’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 ECS 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 PM AWST Thursday, 15 August 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, ECS’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 ECS 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 ECS'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 ECS'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 ECS's securities under Listing Rule 17.3.

Enquiries

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

Regards

Anjuli Sinniah
Senior Adviser, Listings Compliance (Perth)