

2 August 2013

Adam Russo  
Adviser, Listings Compliance (Perth)  
ASX Compliance Pty Limited  
Level 8 Exchange Plaza  
2 The Esplanade  
Perth WA 6000

By email: [adam.russo@asx.com.au](mailto:adam.russo@asx.com.au)

Dear Adam,

**Emerchants Limited (the “Entity”) – ASX aware query**

We refer to your letter dated 31 July 2013 regarding the Entity’s announcement entitled “Negotiations with Queensland Treasury Department” lodged with ASX Market Announcements Platform and released on Monday, 29 July 2013 (the “**Announcement**”). We respond to ASX’s queries as follows.

1. Does the Entity consider the information in the Announcement to be information that a reasonable person would expect to have a material effect on the price or value of its securities?

*It is difficult to make a definitive declaration as to whether the information contained in the Announcement would be information that a reasonable person would expect to have a material effect on the price or value of its securities for the following reasons:*

- *As disclosed in the Announcement, the Entity is in negotiations in relation to an agreement with the Queensland Treasury Department;*
- *An agreement has not been finalised and there is no certainty that an agreement will be concluded;*
- *As the final terms of the agreement are yet to be determined, the materiality of the agreement is also to be determined;*
- *As disclosed in the Announcement, the negotiations are for the Entity to be appointed a preferred supplier, there is no certainty that this will result in the Entity being awarded a fixed number of contracts and therefore the revenue deriving from the agreement with the Queensland Treasury Department is not quantifiable;*
- *However, as the Entity is a micro-cap stock, securing a preferred supplier agreement with the Queensland Treasury Department may provide more credibility to the Entity, thereby having an impact on the price or value of the Entity’s securities.*

*In relation to the recent share price movements, we note that the nature of the Entity’s trading is in a highly illiquid company, whereby large share price increases occur on very limited volume. On 26 July 2013 to 29 July 2013, the Entity’s share price rose by \$0.055 from \$0.335 to \$0.39.*

*The trading volume on 26 July 2013 was 262,415 shares which represents approximately 0.2% of the Entity’s shares, and was traded largely by retail customers. This highlights the fact that low volume trades have a significant impact on the Entity’s share price.*

*Taking the above factors into consideration, the Entity determined it was preferable to err on the side of caution and issue the Announcement.*

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

*Not applicable.*

3. If the answer to question 1 is “yes”, when did the Entity first become aware of the information in the Announcement?

*The Entity first became aware of the information on Friday, 26 July 2013, being the date it was more certain that an agreement with the Queensland Treasury Department would be negotiated.*

4. If the answer to question 1 is “yes” and the Entity first became aware of the information before the Announcement was released at 2:50 pm (EST) on 29 July 2013 (the “Relevant Date”), did the Entity make any announcement prior to the Relevant Date which disclosed the information? If so, please provide details.

*No the information was not released prior to the Relevant Date.*

If not, please explain why this information was not released to the market at an earlier time, commenting specifically on when you believe the Entity was obliged to release the information under Listing Rules 3.1 and 3.1A and what steps the Entity took to ensure that the information was released promptly and without delay.

*The Entity did not release the information at an earlier date as it was relying on the disclosure exceptions in Listing Rule 3.1A as follows:*

*“3.1A Listing rule 3.1 does not apply to particular information while each of the following requirements is satisfied in relation to the information:*

*3.1A.1 One or more of the following applies:*

- The information concerns an incomplete proposal or negotiation; 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.”*

*The Entity confirms that it was bound by confidentiality restrictions under the tender process with the Queensland Treasury Department prohibiting the Entity from making any public comment prior to entering into a formal agreement.*

*As noted in the Announcement, the Entity is yet to enter into a formal agreement with the Queensland Treasury Department.*

*As the Entity was involving third parties in discussions, it was determined that the Entity may no longer be able to rely on the confidentiality carve out in Listing Rule 3.1A.2. At this point, the Announcement was released immediately.*

5. Please confirm that the Entity is in compliance with the Listing Rules and, in particular, Listing Rule 3.1.

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

Yours sincerely

A handwritten signature in black ink, appearing to be 'YB' with a large flourish extending to the left.

Yasmin Broughton  
General Counsel & Company Secretary



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31 July 2013

Ms Yasmin Broughton  
Company Secretary  
Emerchants Limited  
Suite A11, First Floor, 435 Roberts Road  
SUBIACO WA 6008

By email: [ybroughton@emerchants.com.au](mailto:ybroughton@emerchants.com.au)

Dear Ms Broughton

**Emerchants Limited (the "Entity"): ASX aware query**

ASX Limited ("ASX") refers to the following:

1. The Entity's announcement entitled "Negotiations with Queensland Treasury Department" lodged with ASX Market Announcements Platform and released at 2:50 pm (EST) on Monday, 29 July 2013 (the "Announcement"), disclosing (inter alia) the:
  - (a) Entity is in negotiations with the State of Queensland through the Department of Treasury and Trade ("Queensland Treasury Department") in relation to a preferred supplier agreement for the provision of prepaid related services; and
  - (b) Negotiations are as result of the Entity being a successful finalist in the tender process conducted by the Queensland Treasury Department.
2. The significant price movement in the Entity's share price from a close of 33.5 cents on 25 July 2013 to a high of 39 cents on 29 July 2013.
3. Listing Rule 3.1, which requires a listed entity to give ASX immediately 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.
4. The definition of "aware" in Chapter 19 of the Listing Rules. This definition 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."*

Additionally, you should refer to section 4.4 in Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B "When does an entity become aware of information"*.

5. 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 requirements 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."*

6. 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* "Listing Rule 3.1A.2 – the requirement for information to be confidential". 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."*

Having regard to the above, we ask that you answer the following questions in a format suitable for release to the market in accordance with Listing Rule 18.7A:

1. Does the Entity consider the information in the Announcement 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. If the answer to question 1 is "yes", when did the Entity first become aware of the information in the Announcement?
4. If the answer to question 1 is "yes" and the Entity first became aware of the information before the Announcement was released at 2:50 pm (EST) on 29 July 2013 (the "Relevant Date"), did the Entity 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 the Entity was obliged to release the information under Listing Rules 3.1 and 3.1A and what steps the Entity took to ensure that the information was released promptly and without delay.
5. Please confirm that the Entity is in compliance with the Listing Rules and, in particular, Listing Rule 3.1.

#### **When and where to send your response**

This request is made under, and in accordance with, Listing Rule 18.7. Your response is required as soon as reasonably possible and, in any event, by not later than **5:00 pm (WST) Friday, 2 August 2013**. If we do not have your response by then, ASX will have no choice but to consider suspending trading in the Entity's securities under Listing Rule 17.3.

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, the Entity'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.

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 [adam.russo@asx.com.au](mailto:adam.russo@asx.com.au) or by facsimile to (08) 9221 2020. 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 Rule 3.1**

Listing Rule 3.1 requires a listed entity to give ASX immediately 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. Exceptions to this requirement are set out in Listing Rule 3.1A.

The obligation of the Entity to disclose information under Listing Rules 3.1 and 3.1A is not confined to, nor is it necessarily satisfied by, answering the questions set out in this letter.

In responding to this letter, you should have regard to the Entity's obligations under Listing Rules 3.1 and 3.1A and also to Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*.

### **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 the Entity'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 may 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*.

If you have any queries or concerns about any of the above, please contact me immediately on (08) 9224 0052.

Yours sincerely

*[Sent electronically without signature]*

Adam Russo  
**Adviser, Listings Compliance (Perth)**