



17 May 2021

Puja Patel
ASX Limited
Exchange Centre
20 Bridge Street
SYDNEY NSW 2000
By email: ListingsComplianceSydney@asx.com.au

Dear Puja

Nearmap Ltd (ASX: NEA) – Response to ASX Aware Letter

We refer to your letter dated 13 May 2021 (**Letter**). Capitalised terms in the Letter have the same meaning in this correspondence. We also refer to ASX's email of 14 May 2021 confirming that the 'relevant date' for the purposes of query 4 below is 6 May 2021 (9.22am AEST) when an announcement was made (as set out at paragraph C in the Letter).

The Company provides the following responses to the Letter:

- 1. Does NEA consider the Information in relation to the complaint filed against its subsidiary ('Information') to be information that a reasonable person would expect to have a material effect on the price or value of its securities?**

Yes, after NEA conducted an initial review of the Information, a view was formed that the Information could have a material effect on the price or value of its securities but that time would be required to prepare an announcement (see paragraph 4 below).

NEA subsequently made an announcement at 9.22am AEST on 6 May 2021 regarding the Information.

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

Not applicable.

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

At 9.58am AEST on Wednesday 5 May 2021, NEA's General Counsel reviewed an email delivered at 9.55am AEST on Wednesday 5 May 2021. The email, from lawyers in the United States, attached a 96-page complaint which was filed in the United States District Court (District of Utah, Northern Division). The lawyers in the United States had received the complaint via an alert service to which they had subscribed.

This was the first NEA became aware of the Information.

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4. **If the answer to question 1 is “yes” and NEA first became aware of the Information before the relevant date, did NEA 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 NEA was obliged to release the information under Listing Rules 3.1 and 3.1A and what steps NEA took to ensure that the information was released promptly and without delay.**

No, NEA did not make an announcement about the Information (save for the reference to part of it in the request for a trading halt referred to further below) prior to the relevant date.

NEA was not in a position to make an announcement before the relevant date because it required time to consider its disclosure obligations and to prepare an announcement that was accurate, complete and not-misleading. The steps taken to permit this to occur are outlined below.

NEA first became aware of the Information at 9:58am AEST on Wednesday 5 May 2021 and requested, promptly and without delay, a trading halt be granted by ASX at 11:08am AEST on the same day. The request for trading halt stated that the reason for the trading halt was to “*allow the Company to respond to potential legal proceedings*” and that the trading halt will remain in place until such time as NEA makes an announcement to the market in relation to the potential legal proceedings, or until commencement of trading on Friday 7 May 2021.

Steps taken once aware of the Information

After NEA became aware of the Information at 9:58am AEST on 5 May 2021, NEA took steps promptly and without delay to assess whether the Information was required to be disclosed under Listing Rule 3.1. These steps included:

1. notifying the CEO and Chairman promptly and without delay of receipt of the Information;
2. reviewing and considering the Information, being the 96-page complaint raising technical legal matters relating to technical aspects of US law, which was received by NEA without any forewarning; and
3. seeking legal advice from external counsel due to the complexity of the Information.

At 11.01am AEST on 5 May 2021, having undertaken the above steps, NEA made an initial assessment and formed a view that the Information could potentially be material to the market price of NEA’s securities but it required more time to conclude that consideration and prepare an announcement. NEA’s CEO and Chairman determined at that time that NEA should request a trading halt to manage its disclosure obligations and accordingly NEA immediately took the following steps:

1. requested an immediate trading halt be granted in respect of its ordinary shares by email to ASX at 11:08am AEST; and

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2. liaised with ASX Senior Advisor Ms Patel over telephone at 11:08am AEST (NEA) and at 11.21am AEST (NEA's external legal adviser) in relation to the request for an immediate trading halt.

A pause in trading occurred at 11.11am AEST and a trading halt was granted by ASX at 11.26am AEST.

NEA then, without delay, took immediate steps to conduct a more detailed analysis of the Information to enable it to prepare an announcement that was accurate, complete and not-misleading. These steps included:

1. contacting NEA's US legal advisers in the United States at 11.30am AEST on 5 May 2021 / 9.30pm EDT on 4 May 2021;
2. NEA continuing its own review of the materiality of the Information and drafting the language of the announcement, including arranging a Board update and creating a board sub-committee to finalise and approve the announcement; and
3. further engagement with NEA's US legal advisers late on the evening of 5 May 2021 (AEST).

At 7.45am AEST on 6 May 2021, having undertaken the above steps, the board sub-committee reconvened to review and approve the proposed announcement. At that meeting, the board sub-committee satisfied itself that the announcement was accurate, complete, and not-misleading, and approved and then caused the announcement to ASX to be lodged on the Markets Announcement Platform at approximately 8:10am AEST (on 6 May 2021).

Please note, and for the avoidance of doubt, reference above to engagement with legal advisers, is not, and is not intended to be, a waiver of any legal professional privilege. The fact of that engagement is provided solely to comply with NEA's obligation to respond to your Letter including to outline the steps taken by NEA.

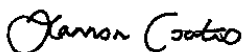
5. **Please confirm that NEA is complying with the Listing Rules and, in particular, Listing Rule 3.1.**

NEA confirms that it is in compliance with the ASX Listing Rules, including ASX Listing Rule 3.1.

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

NEA confirms that the responses to the questions above have been authorised and approved by its Board.

Yours sincerely



Shannon Coates
Company Secretary

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13 May 2021

Reference: 34753

Ms Shannon Coates
Chartered Secretary
Evolution Corporate Services
Suite 5
62 Ord Street
West Perth WA 6005

By email: shannon@evolutioncorp.com.au

Dear Ms Coates

Nearmap Ltd ('NEA'): General – Aware Query

ASX refers to the following:

- A. NEA's announcement "Nearmap increases FY21 ACV guidance" lodged on the ASX Market Announcements Platform ('MAP') and released at 4:35 PM on 4 May 2021, disclosing an increase to NEA's FY21 Annual Contract Value guidance to \$128m - \$132m (from \$120m - \$128m).
- B. NEA's email sent to ASX at 11:08 AM on 5 May 2021, requesting a trading halt in the securities of NEA to allow NEA time to prepare an announcement in relation to potential legal proceedings.
- C. NEA's announcement "Nearmap made aware of complaint in United States District Court (UTAH)" lodged on MAP and released at 9:22 AM on 6 May 2021 disclosing, amongst other things:
 - (i) NEA had been made aware of a complaint filed against its subsidiary, Nearmap US, Inc. in the United States District Court (District of UTAH, Northern Division);
 - (ii) the complaint alleges patent infringement relating to the roof-estimation technology of Eagle View Technologies, Inc and Pictometry International Corp; and
 - (iii) in NEA's view the allegations are without merit, and the business remains unaffected by the complaint.
- D. 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.
- E. 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."
- F. 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.”*

- G. 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 NEA to respond separately to each of the following questions and requests for information:

1. Does NEA consider the Information in relation to the complaint filed against its subsidiary (‘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 NEA first become aware of the Information?
4. If the answer to question 1 is “yes” and NEA first became aware of the Information before the relevant date, did NEA 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 NEA was obliged to release the information under Listing Rules 3.1 and 3.1A and what steps NEA took to ensure that the information was released promptly and without delay.
5. Please confirm that NEA is complying with the Listing Rules and, in particular, Listing Rule 3.1.
6. Please confirm that NEA’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 NEA 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 **9.00 AM AEST on Monday, 17 May 2021**. 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, NEA’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 NEA to request a trading halt immediately.

Your response should be sent to me by e-mail at ListingsComplianceSydney@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.

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 NEA'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 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*.

Suspension

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

Listing Rules 3.1 and 3.1A

In responding to this letter, you should have regard to NEA'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 NEA'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.

Release of correspondence between ASX and entity

We reserve the right to release a copy of this letter, your reply and any other related correspondence between us to the market under listing rule 18.7A.

Questions

If you have any questions in relation to the above, please do not hesitate to contact me.

Yours sincerely

Puja Patel
Senior Adviser, Listings Compliance (Sydney)