

19 August 2021

By Email: ListingsComplianceSydney@asx.com.au

ASX Limited
Exchange Centre
20 Bridge Street
SYDNEY NSW 2000

Attention: Alex Sutton

Dear Alex

Archer Materials Limited: Query Letter

We refer to your letter of 16 August 2021 (**Your Letter**).

Capitalised words or expressions used, but not defined, in this letter have the meanings ascribed to them in Your Letter.

Using the numbering contained in Your Letter, AXE responds as follows:

1. Yes, AXE considers that the progression of the graphene-based A1 biochip (**A1 Biochip**) patent application to the National Phase and filing in the United States of America (**U.S.A**) is likely to have been market sensitive.

This is because the A1 Biochip is one of the two core technologies that AXE is focussed on developing, and that the failure to have progressed to the National Phase would have effectively precluded AXE from obtaining patent protection and, in turn, impinged upon the commercialisation of the A1 Biochip in the U.S.A, being a key jurisdiction for the commercialisation of that technology.

2. The Announcement does not concern a patent application merely having been filed by AXE and, therefore, does not offend the referenced paragraph of the *Code of Best Practice for Reporting by Life Science Companies* (2nd edition) (the **Biotech Code**) (to the extent that code applies to AXE).

Instead, the Announcement provides a progress update on the previously announced¹ application made by AXE under the international patent cooperation treaty (**PCT**) and advises the market of the progression of that application to the National Phase and the formal filing in the U.S.A.

¹ See ASX Announcement dated 17 February 2020;

That patent application was originally lodged on 14 February 2020 under the international PCT process and had a priority date of 15 February 2019. The PCT process enables entities to simultaneously pursue patent protection in a large number of jurisdictions and maintain a priority date in each of those jurisdictions before having to incur the inherent costs of entering into patent prosecution in those jurisdictions.

For an early stage company such as AXE who is currently focussed on the commercialisation of only two patent families, the progression to the National Phase and filing in the U.S.A is a significant milestone as failure to have done so within the designated timeframe² would have meant that AXE would have lost its priority status under the PCT and, effectively, precluded AXE from obtaining patent protection in the U.S.A. This would, in turn, significantly impinge upon the commercialisation of the A1 Biochip in the U.S.A.

Entry into the National Phase is a necessary pre-requisite to achieving patent granting, as described in the hyperlink to the World Intellectual Property Organisation's website embedded in the Announcement (**WIPO site**). The WIPO site contains full details of the National Phase and the steps, hurdles and risks associated with the patent granting procedures, ensuring that investors are provided complete and balanced information about the status of the A1 Biochip patent application in a clear, concise and effective manner.

As described in the WIPO site, there remains a risk that, despite reaching this phase, the granting of a patent may still take a protracted period of time, be disputed and may, ultimately, not be granted.

While it is acknowledged that there are often differences of opinion as to whether information may be considered to be market sensitive, in AXE's opinion, where there is any uncertainty it is preferable to take a precautionary approach to disclosure so as to ensure that the market is fully informed. This is particularly the case in circumstances where more sophisticated investors have the means to access certain information via publically available sources and, as a result, ensures that the necessary information is available to all sections of the market and that any incidences of information inequality are reduced.

3. Not-Applicable.
4. Confirmed.
5. Confirmed.

Yours sincerely,



.....
Damien Connor

Company Secretary

Archer Materials Limited ACN 123 993 233

² Within 30 months of the patent application priority date (i.e. before 15 August 2021);

16 August 2021

Mr Damien Connor
Company Secretary
Archer Materials Limited
Lot 14, Frome Rd
Adelaide, SA 5000

By email:

Dear Mr Connor

Archer Materials Limited ('AXE'): Query Letter

ASX refers to the following:

- A. AXE's announcement titled "Biochip patent application enters US National Phase" lodged on the ASX Market Announcements Platform ('MAP') on 16 August 2021 (the 'Announcement'), which disclosed that AXE had:

"progressed to the National Phase of the patent granting procedure and has been filed in the US and assigned a US Application Number, which now allows the Company to pursue and achieve patent granting in the US for the respective patent application." (the 'Information')

AXE lodged the Announcement as market-sensitive when submitted to ASX Online.

- B. 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.
- C. Section 7.10 of Guidance Note 8, which outlines ASX's view on "ramping" announcements and provides (relevantly):

"Ramping announcements come in many forms, including:

- the release of a "business update" or something similar, which will typically be worded in an exuberant fashion but which on closer examination contains little in the way of substance that has not already been disclosed to the market;" ...*
- "an announcement that has no substance but seeks to ride on the back of strong market sentiment in a particular sector;" ...*

"Whenever ASX detects what it suspects to be a ramping announcement, it will give careful consideration to suspending the entity's securities from trading and issuing a query letter to the entity asking the entity:

- if it marked the announcement as market sensitive when it was lodged on MAP, to identify what information in the announcement the entity considered was market sensitive and why;*
- if it marked the announcement as not being market sensitive when it was lodged on MAP, to explain its purpose in lodging the announcement on MAP, given its evident view that the information was not market sensitive and therefore not required to be disclosed under Listing Rule 3.1; ..."*

- D. The *Code of Best Practice for Reporting by Life Science Companies* (2nd edition)¹ published by ASX and AusBiotech (the '**Code**'), which provides (emphasis added):

"The fact that a patent application has been filed is seldom material, it is generally only after grant that a patent right becomes a material asset, which should be disclosed. If information relating to patent filings or progress on patent applications is made, however, communication to the market should be balanced and informative. Particular care needs to be taken to ensure that investors are not given a misleading impression of the breadth of protection afforded by a patent, the likelihood of grant of a patent or the ability of the company to enforce its patent rights."

Although the Code was published to provide guidance to Life Sciences entities, the principle is of general application to all technology businesses.

Request for information

Having regard to the above, ASX asks AXE to respond separately to each of the following questions and requests for information:

1. Does AXE consider the Information to be information that a reasonable person would expect to have a material effect on the price or value of its securities?
2. As reflected in the Code, an application for a patent is rarely 'material' for the purposes of Listing Rule 3.1. This is because it does not confer enforceable patent rights on the holder and so does not represent an asset beyond the invention itself.

If the answer to question 1 is "yes", please explain the basis for that view, commenting specifically on why AXE believes the general rule outlined does not apply to the Information.
3. If the answer to question 1 is "no", please explain AXE's purpose for lodging the Announcement on MAP, and why it was lodged as market-sensitive.
4. Please confirm that AXE is complying with the Listing Rules and, in particular, Listing Rule 3.1.
5. Please confirm that AXE'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 AXE 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 **05:00 PM AEST Thursday, 19 August 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, AXE'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 AXE 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

¹ https://www.asx.com.au/documents/research/Code_of_Best_Practice_for_Reporting_by_Life_Science_Companies.pdf

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 AXE'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 AXE's securities under Listing Rule 17.3.

Listing Rules 3.1 and 3.1A

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

Kind regards



Alex Sutton

Compliance Adviser, Geology, Listings Compliance (Sydney)