

5 November 2021

Madeleine Green  
Australia Securities Exchange  
Level 40, Central Park  
152-158 St Georges terrace  
Perth WA 6000

**By email: [Madeleine.Green@asx.com.au](mailto:Madeleine.Green@asx.com.au)**

Dear Madeleine,

**Berkeley Energia Limited**

1. Berkeley Energia Limited (**Berkeley** or **Company**) refers to your letter dated 3 November 2021 (**ASX Letter**). Defined terms in this letter have the same meaning as in the ASX Letter unless otherwise indicated.
2. The ASX Letter requests that the Company respond to a number of questions relating to the Resignation Announcement, the Trading Halt and the Company announcement entitled "Company Update" (**Announcement**) lodged on MAP on 3 November 2021.

**Response to questions in ASX Letter**

The Company's response against each query in the ASX Letter is as follows:

1. Yes.
2. Not applicable.
3. The Company was first aware of the Claim following an email and Claim letter (dated 1 November 2021) sent from a director of the Singapore Mining Acquisition Co Pte Ltd (**OIA Subsidiary**) to the Company Secretary in the evening (AWST) on 1 November 2021. The Company was not aware of the Claim at the time of Mr Panigrahi's resignation and the release of the Resignation Announcement.
4. Not applicable. The Company received the Claim letter after market close on 1 November 2021. The Company then requested the Trading Halt prior to market open on 2 November 2021.
5. The Company confirms that it is in compliance with the Listing Rules, in particular, Listing Rule 3.1.
6. The Company confirms that its 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.

Yours faithfully

*[sent electronically without signature]*

**Dylan Browne**  
**Company Secretary**



3 November 2021

Mr Dylan Browne  
Company Secretary  
Berkeley Energia Limited

By email: [dbrowne@apollogroup.com.au](mailto:dbrowne@apollogroup.com.au)

Dear Mr Browne

**Berkeley Energia Limited ('BKY'): Aware Query**

ASX refers to the following:

- A. BKY's announcement entitled "Resignation of Director" lodged on the ASX Market Announcements Platform ('MAP') on Friday, 26 October 2021 (the 'Resignation Announcement'), disclosing that Mr Deepankar Panigrahi had resigned immediately as a non-executive director of BKY and that Mr Panigrahi was the nominee director of the Oman Investment Fund ('OIA').
- B. BKY's request for trading halt prior to the commencement of trade on Tuesday, 2 November 2021 pending an announcement regarding a claim made by the OIA in relation to the investment agreement and convertible note entered into in 2017 ('Trading Halt').
- C. BKY's announcement entitled "Company Update" lodged on MAP today, Wednesday 3 November 2021, lifting the trading halt, disclosing that BKY had received a claim from the Singapore Mining Acquisition Co Pte Ltd (a subsidiary of the OIA) in relation to the convertible note dated 2017 that alleged the principle amount of the convertible note, US\$65 million, is immediately payable ('Claim') and that BKY strongly disputes the allegations and is seeking legal advice ('Information').
- 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 BKY to respond separately to each of the following questions and requests for information:

1. Does BKY consider the Claim received 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 commenting on why BKY requested the Trading Halt in order to announce the Claim.
3. When did BKY first become aware of the Claim? In answering this question, please specifically address whether BKY was aware of the Claim at the time of Mr Panigrahi's resignation and the release of the Resignation Announcement.
4. If the answer to question 1 is "yes" and BKY first became aware of the Claim before the Trading Halt, did BKY make any announcement prior to the Trading Halt which disclosed the Claim? If so, please provide details. If not, please explain why the Information was not released to the market at an earlier time, commenting specifically on when you believe BKY was obliged to release the Information under Listing Rules 3.1 and 3.1A and what steps BKY took to ensure that the Information was released promptly and without delay.
5. Please confirm that BKY is complying with the Listing Rules and, in particular, Listing Rule 3.1.
6. Please confirm that BKY'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 BKY 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 **11:00 AM AWST Monday, 8 November 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, BKY'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 BKY to request a trading halt immediately.

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.

### 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 BKY'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 BKY's securities under Listing Rule 17.3.

### Listing Rules 3.1 and 3.1A

In responding to this letter, you should have regard to BKY'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 BKY'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

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**Madeleine Green**

Principal Adviser, Listings Compliance (Perth)