

6 May 2024

ASX Limited
Ref: 92988

By email: ListingsComplianceMelbourne@asx.com.au

Dear ASX Limited - Compliance Melbourne,

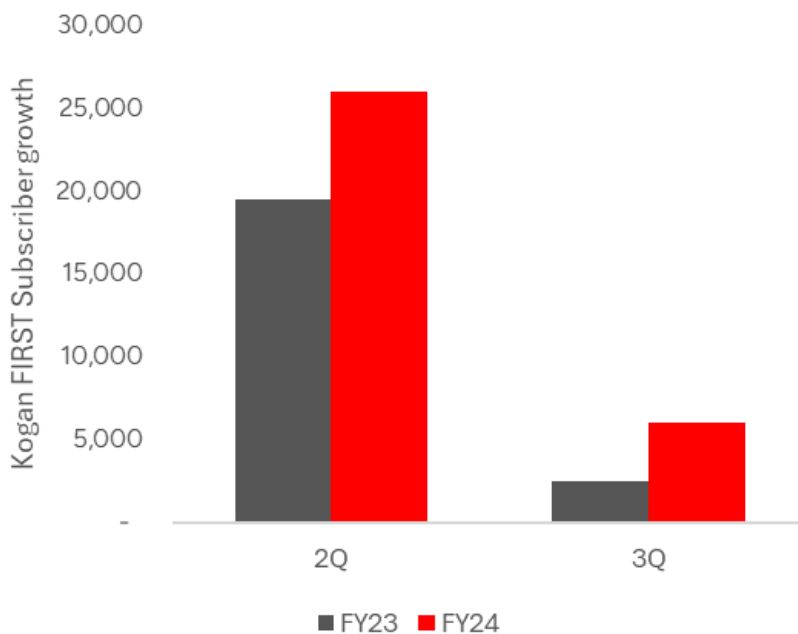
We refer to your letter dated 2 May 2024 titled **Kogan.Com Ltd ('KGN'): Query Letter**. Please refer to our responses to your Request for information below, using the same numbering as set out in your letter.

1. No.

2. Not applicable.

3. Kogan FIRST Subscriber growth correlates with overall transaction volumes in any given period. Consequently, Kogan FIRST Subscriber growth accelerates in the second quarter of the financial year (which includes Black Friday, Christmas and Boxing Day sales) and normalises in the third quarter of the financial year. The information in the Announcement in relation to Kogan FIRST was consistent with that trend. Figure 1 illustrates the seasonality of the quarterly growth of Kogan FIRST Subscribers and the consistency of this YoY. The figure also demonstrates an improvement in trend.

Figure 1



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The Company does not assess the materiality of information for the purpose of ASX Listing Rules or otherwise based on the views of analysts communicated after the fact. In any event, the Company notes that:

- A) The analyst views referred to in ASX's letter - which for instance, perceive a decline in Kogan FIRST subscriptions and Kogan Marketplace sales - ignore important context concerning seasonality trends referred to above.
- B) The mentioned analysts also referred to Gross Sales of Kogan Marketplace and Mighty Ape. These business divisions comprise two of twelve divisions mentioned in the Announcement.
- C) There was no material revision to consensus estimates following the Announcement, as can be seen in Figure 2 below. Further, the Company believes that the Information is consistent with consensus estimates prior to the Announcement.

4. See Figure 2¹. The consensus for these 5 metrics did not materially change following the release of the Announcement.

Figure 2

| FY24 | Consensus as 1HFY24 | Consensus at 3QFY24 | Variance (%) |
|------------------------------|----------------------------|----------------------------|---------------------|
| Gross Sales (\$m) | 813.8 | 794.1 | (2.4%) |
| Revenue (\$m) | 467.6 | 461.6 | (1.3%) |
| Gross Profit (\$m) | 171.7 | 167.6 | (2.3%) |
| Gross Margin | 36.7% | 36.3% | (1.1%) |
| Adjusted EBITDA (\$m) | 41.0 | 39.0 | (4.9%) |

5.i The Company's financial accounts undergo two audits annually by KPMG Melbourne, taking place at the close of the half-year on 31 December and the full-year on 30 June. The Company also issues additional market updates in April, July, October, November (during the AGM), and in January. These updates are expressly released as 'unaudited management accounts', which are not subject to audit.

A draft of the financial results for the 3QFY24 were first communicated to the CEO and CFO by the Company's Director of Finance & Investor Relations on 10 April 2024. The results then continued to be reviewed by the Finance team. The final results were conveyed to the Board on 15 April 2024 as part of the Monthly Board Report.

5.ii. Not applicable.

6. Confirmed.

7. Confirmed.

8. Not applicable.

9. The above responses have been approved and authorised by the Board of the Company.

¹ Consensus for Gross Sales, Revenue, Gross Profit and Gross Margin is based on research reports published by Canaccord Genuity, RBC, Barrenjoey, Jarden, CITI and UBS. Consensus for Adjusted EBITDA is according to CapitalIQ S&P Global Market Intelligence.

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Kind Regards,

A handwritten signature in black ink, appearing to read 'GR:JJ', with a horizontal line underneath.

Greg Ridder,
Chairman
Kogan.com Ltd



2 May 2024

Reference: 92988

Mr Mark Licciardo
Company Secretary
Level 7, 330 Collins Street
Melbourne, VIC, 3000

By email: m.licciardo@acclime.com

Dear Mr Licciardo

Kogan.Com Ltd ('KGN'): Query Letter

ASX refers to the following:

- A. KGN's response received on 1 May 2024 (the '**KGN Response**') to ASX's query letter dated 26 April 2024 (the '**First ASX Letter**'). Capitalised terms in this letter have the same meaning as those in the First ASX Letter unless defined otherwise.
- B. Extracts from Dow Jones Newswires on 26 April 2024 providing commentary on the Announcement from analysts of some of the entities referred to in the KGN Response:

- **DJ Kogan.com Price Target Cut 11% to A\$8.00/Share by Canaccord Genuity*
- **DJ Kogan.com Price Target Cut 13% to A\$4.80/Share by Citi*

Australian online retailer Kogan's 3Q FY 2024 update shows that multiple metrics are pointing in the wrong direction, says Citi analyst James Wang in a note. These include slowing Kogan First subscribers and lower subscriber revenue. At the same time, Kogan marketplace and Mighty Ape appear resuming a decline. "The 3Q update represents a significant departure from the narrative of strong subscription driven revenue growth established at the February result," says Citi.

- **DJ Kogan.com Price Target Cut 14% to A\$6.00/Share by UBS*

Kogan's 3Q FY 2024 update is hard to reconcile with the strong outlook commentary provided at the last result, say UBS analysts in a note. Some weaknesses, as UBS sees it, include the deterioration of marketplace sales amid increased competition, while Kogan First's net member growth is continuing to slow. The investment bank says a key question for investors remains around the sustainability and growth outlook of Kogan First."

Request for information

Having regard to the above, ASX asks KGN to respond separately to each of the following questions:

1. ASX notes KGN's position that ASX's definition of Information did not include various other metrics considered by KGN, and that KGN did not consider the defined Information to be material. To that end, does KGN consider any part of the Announcement to be material information for the purposes of Listing Rule 3.1? If so, please identify that information.
2. If any information was identified in response to question 1, please outline when KGN became aware of that information.
3. If no information was identified in response to question 1, please explain the basis for this view in light of the significant decrease in the price of KGN's securities and analysts' views reproduced above.

4. Please confirm what KGN considers to be the most recent consensus for the relevant metrics for FY24, and whether KGN considers this consensus to have materially changed as a result of the release of the Announcement.
5. Please outline KGN's processes and procedures concerning the interpretation of:
- KGN's unaudited management accounts for the quarter ending 31 March 2024; and
 - any other information identified in response to question 1.
- In your answer, please specifically address (but do not limit it to) how and when this information was made available to each of the CFO; CEO; and the Board.
6. Please confirm whether the acceptances of the cash settlement offers by Messrs Kogan and Shafer (produced to ASX on 1 May 2024) were the relevant notifications pursuant to sections 6.1 and 6.2 of the Trading Policy, which states (relevantly) that:
- "Any person that gives a notification under section 6.1 will be deemed to have irrevocably declared and confirmed the following statements to the Company and to the Designated Officer:*
- (a) they have read the Security Trading Policy and that their decision to deal in securities of the Company has not been made on the basis of information that: (i) is not generally available, and (ii) would be expected by a reasonable person to have a material effect on the price or value of the securities of the Company, if it was generally available..."*
7. Please confirm that KGN is satisfied that Messrs Kogan and Shafer complied with the Trading Policy, in that it agrees that:
- Both Messrs Kogan and Shafer provided the requisite notification under section 6.1 of the Trading Policy;
 - KGN appropriately considered the notification by each of Messrs Kogan and Shafer for the purposes of compliance with its Trading Policy; and
 - Neither Messrs Kogan nor Shafer were in possession of any material information which was not generally available at the time they accepted the cash settlement offers on 4 April 2024.
8. If KGN did not consider the cash settlement acceptances to constitute the appropriate notifications under section 6.1 of the Trading Policy, please provide a copy of the notifications required under the Trading Policy (not for release to market). If KGN is unable to produce these notifications, please outline any disciplinary or remedial action KGN intends to take in response to the apparent non-compliance with the Trading Policy.
9. Please confirm that KGN'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 KGN 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 **9.30 AM AEST Wednesday, 8 May 2024** .

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, KGN's obligation is to disclose the information 'immediately'. This may require the information to be disclosed before the deadline set out above and may require KGN to request a trading halt immediately if trading in KGN's securities is not already halted or suspended.

Your response should be sent by e-mail to **ListingsComplianceMelbourne@asx.com.au**. It should not be sent directly to the ASX Market Announcements Office. This is to allow us 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.

Suspension

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

Listing Rules 3.1 and 3.1A

In responding to this letter, you should have regard to KGN'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 KGN'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 all or any part of this letter, your reply and any other related correspondence between us to the market under listing rule 18.7A. The usual course is for the correspondence to be released to the market.

Kind regards

ASX Compliance

1 May 2026
ASX Limited
Ref: 92988

By email: ListingsComplianceMelbourne@asx.com.au

Dear ASX Limited - Compliance Melbourne,

We refer to your letter dated 26 April 2024 titled '**Kogan.com Ltd ('KGN'): Query Letter**'. Please refer to our responses to your 'Request for information' below, using the same numbering as set out in your letter.

1.1 \$2.934 per Option.

1.2 The price was calculated in accordance with rule 2.4 of the Company's Equity Incentive Plan Rules, being based on the 'Current Market Price' (as defined in the Company's Equity Incentive Plan Rules, and set out below), less the 'Exercise Price' that would otherwise have been payable in respect of the exercise of the Options.

The 'Current Market Price' is defined as follows: *"in relation to a Share means the arithmetic average of the daily volume weighted average market price (rounded to the nearest cent) of all Shares sold on the ASX during the previous twenty trading days, or any other calculation as determined by the Board"*.

The 'Exercise Price' that would otherwise have been payable in respect of the exercise of the Options is \$5.29.

1.3 The value of the cash payments were as follows:

| | Payment net of PAYG |
|-----------------|----------------------------|
| Mr Ruslan Kogan | \$5,598,072.00 |
| Mr David Shafer | \$3,732,048.00 |

The payments net of PAYG were scheduled to be made in two instalments on the salary payment dates for April and May. At the date of this letter, half of the payment net of PAYG has been paid (on 15 April 2024). PAYG payments are remitted to the ATO in accordance with the law.

2. No.

3. The Company generally discloses the four metrics referred to in the Information – namely, Gross Sales, Revenue, Gross Profit and Gross Margin - to the market on a quarterly basis in January, April, July and October.

Below is a snapshot of each quarterly result's updates of the four metrics provided by the Company to the market in FY24 (see *Figure 1*).

Figure 1

| Metric | 1QFY24 | 2QFY24 | 3QFY24 (the Announcement) |
|------------------------------------|---------------|---------------|----------------------------------|
| Gross Sales - <i>growth on PCP</i> | (6.5%) | (4.9%) | (6.2%) |

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| | | | |
|------------------------------|---------|--------|--------|
| Revenue - growth on PCP | (12.8%) | (7.8%) | (2.4%) |
| Gross Profit - growth on PCP | 19.5% | 64.9% | 13.8% |
| Gross Margin - absolute | 36.3% | 35.9% | 36.8% |

The Information was consistent with prior quarters. Gross Profit remained positive on prior quarters. Gross Margin improved. For reference, the Gross Margin in the prior corresponding period (being 3QFY23) was 31.6%. The rate of reduction in Revenue also reduced.

For completeness, the increase in Gross Profit noted in 2QFY24 coincided with a period of deep discounting to right-size the Company's inventory levels in the prior corresponding period, being 2QFY23. This was disclosed by the Company to the market in the Company's January 2023 Business Update on 24 January 2023. Relevantly, it was also noted in this same update that excess inventory had largely been resolved.

The Information was in line with FY24 consensus estimates for the Company's Gross Sales, Revenue, Gross Profit, Gross Margin and Adjusted EBITDA which applied prior to the Announcement, as summarised below (see *Figures 2 and 3*).

Figure 2

| | Gross Sales (\$m) | Revenue (\$m) | Gross Profit (\$m) | Gross Margin |
|---|-------------------|---------------|--------------------|--------------|
| FY24 consensus¹ post 1HYF24 results | 813.8 | 467.6 | 171.7 | 36.7% |
| 3QFY24 YTD actual results | 624.9 | 354.1 | 128.5 | 36.3% |
| Percentage achieved 3QFY24 YTD | 77% | 76% | 75% | |

Figure 3

| | |
|---|---------|
| FY24 Adjusted EBITDA consensus² post 1HFY24 release | \$41.0m |
| Adjusted EBITDA achieved 3QFY24 YTD | \$30.5m |
| Percentage achieved 3QFY24 YTD | 74% |

The Company also notes that the Announcement included various information not captured in the ASX's definition of Information. This included the growth of Kogan First subscribers to over 472,000 as at 31 March 2024 (which represented a growth of over 16% YOY, an increase in growth rate from 15% as at 31 December 2023 notwithstanding an announced price rise) and the relaunch of Kogan Travel.

4. Not applicable.

5. Refer to Appendix 1 through 6.

6. Not applicable.

7. The Company confirms that it is complying with the Listing Rules, including Listing Rule 3.1.

8. The above responses have been approved and authorised by the Board of the Company.

¹ Consensus is based on research reports published by Canaccord Genuity, RBC, Barrenjoey, Jarden, CITI and UBS.

² According to CapitalIQ S&P Global Market Intelligence

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Kind Regards,

A handwritten signature in black ink, appearing to read 'Greg Ridder', with a horizontal line underneath.

Greg Ridder,
Chairman
Kogan.com Ltd

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Appendix 1 - Cash settlement offer to Mr David Shafer upon exercise of Options



By E-mail
Private & Confidential

29 February 2024

Mr David Shafer
[REDACTED]

Dear David

Exercise of vested options in Kogan.com Limited – cash settlement

I refer to the 2,400,000 options (**Options**) in Kogan.com Limited ACN 612 447 293 (**Kogan**) granted to you as set out in the deed of confirmation of agreement to grant options dated 27 September 2020 between you and Kogan (**Option Deed**). Unless stated otherwise, terms defined in the Option Deed have the same meaning in this letter.

Cash settlement option

As you are aware, your Options vested last year. The Company's previous offer of cash settlement described in a letter to you dated 29th August is due to expire on the 26th March (being 20 trading days after the release of 1H 2024 results).

To this effect, I am writing to advise you that the Board has resolved to extend the previous period of cash settlement by 90 days. Therefore, any Options exercised by you will be cash settled by the Company in accordance with the terms of your Option Deed subject to each of the following conditions being satisfied:

- (a) you exercise your Options **by 24th June 2024**, which is 90 days after the expiry of the previous offer for cash settlement; and
- (b) the Current Market Price (as defined below) does not exceed **\$8.29** per Share.

Specifically, if you elect to exercise any Options under this letter (and assuming the conditions above are satisfied):

- (a) the Company will pay you a cash payment in lieu of an allocation of Shares calculated by multiplying the number of Shares in respect of which Options have been exercised by the Current Market Price, less any Exercise Price that would otherwise have been payable in respect of the Options exercised and less amounts of PAYG withholding that the Company is required to withhold and remit to the ATO on your behalf; and
- (b) you will not be required to pay the Exercise Price in respect of the exercised Options, as the Exercise Price that would otherwise have been payable will reduce the cash payment that is being paid in lieu of an allocation of Shares.

For the purpose of this letter, "Current Market Price" means the arithmetic average of the daily volume weighted average market price (rounded to the nearest cent) of all Shares sold on the ASX during the previous twenty trading days.

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Next steps

If you wish to exercise any of your Options for cash in accordance with this letter, you must complete, sign and return the 'exercise notice' set out in Annexure A of this letter to **Greg Ridder or James Spenceley** at any time from the date of this letter to the date that is the 24th June 2024..

If you choose not to exercise your Options within the time period specified above, the Board reserves its rights to reconsider whether to cash or share settle any subsequent exercise of your Options.

Notwithstanding this letter, your Options may not be exercised if to do so would contravene the Corporations Act 2001 (Cth), the ASX Listing Rules, or any other applicable law.

You are encouraged to seek your own independent tax advice in respect of the personal tax consequences of choosing to exercise your Options.

Yours sincerely



James Spenceley
Chair of Rem and Nom Committee
Kogan.com Limited

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Appendix 2 - Cash settlement offer to Mr Ruslan Kogan upon exercise of Options



By E-mail
Private & Confidential

29 February 2024

Mr Ruslan Kogan
[REDACTED]

Dear Ruslan

Exercise of vested options in Kogan.com Limited – cash settlement

I refer to the 3,600,000 options (**Options**) in Kogan.com Limited ACN 612 447 293 (**Kogan**) granted to you as set out in the deed of confirmation of agreement to grant options dated 27 September 2020 between you and Kogan (**Option Deed**). Unless stated otherwise, terms defined in the Option Deed have the same meaning in this letter.

Cash settlement option

As you are aware, your Options vested last year. The Company's previous offer of cash settlement described in a letter to you dated 29th August is due to expire on the 26th March (being 20 trading days after the release of 1H 2024 results).

To this effect, I am writing to advise you that the Board has resolved to extend the previous period of cash settlement by 90 days. Therefore, any Options exercised by you will be cash settled by the Company in accordance with the terms of your Option Deed subject to each of the following conditions being satisfied:

- (a) you exercise your Options **by 24th June 2024**, which is 90 days after the expiry of the previous offer for cash settlement; and
- (b) the Current Market Price (as defined below) does not exceed **\$8.29** per Share.

Specifically, if you elect to exercise any Options under this letter (and assuming the conditions above are satisfied):

- (a) the Company will pay you a cash payment in lieu of an allocation of Shares calculated by multiplying the number of Shares in respect of which Options have been exercised by the Current Market Price, less any Exercise Price that would otherwise have been payable in respect of the Options exercised and less amounts of PAYG withholding that the Company is required to withhold and remit to the ATO on your behalf; and
- (b) you will not be required to pay the Exercise Price in respect of the exercised Options, as the Exercise Price that would otherwise have been payable will reduce the cash payment that is being paid in lieu of an allocation of Shares.

For the purpose of this letter, "Current Market Price" means the arithmetic average of the daily volume weighted average market price (rounded to the nearest cent) of all Shares sold on the ASX during the previous twenty trading days.

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Next steps

If you wish to exercise any of your Options for cash in accordance with this letter, you must complete, sign and return the 'exercise notice' set out in Annexure A of this letter to **Greg Ridder or James Spenceley** at any time from the date of this letter to the date that is the 24th June 2024..

If you choose not to exercise your Options within the time period specified above, the Board reserves its rights to reconsider whether to cash or share settle any subsequent exercise of your Options.

Notwithstanding this letter, your Options may not be exercised if to do so would contravene the Corporations Act 2001 (Cth), the ASX Listing Rules, or any other applicable law.

You are encouraged to seek your own independent tax advice in respect of the personal tax consequences of choosing to exercise your Options.

Yours sincerely

A handwritten signature in black ink, appearing to read 'James Spenceley', is written over a faint horizontal line.

James Spenceley
Chair of Rem and Nom Committee
Kogan.com Limited

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Appendix 3 - Exercise of Options for cash-settlement by Mr David Shafer

David Shafer <[REDACTED]>
To: James Spenceley <[REDACTED]>, Gregory Ridder <[REDACTED]>
Cc: Rohan Dhaygude <[REDACTED]>

Thu, Apr 4, 2024 at 7:30 AM

Dear James and Greg-

In accordance with the terms of the Options and the letter from the Company dated 29 February 2024, please see the Notice of Exercise of Options attached in respect of all of my 2,400,000 Options to be settled for Cash.

Thanks very much
-David

David Shafer
Executive Director



Helping customers live their best lives by delivering remarkable value.

We're hiring! Check out our current opportunities at [Kogan.com Careers](#) | Follow us on [LinkedIn](#)

DS-Kogan - Cash Settlement Letter.pdf
35K

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Annexure A – Exercise Notice

To: Kogan.com Limited of Level 7, 330 Collins Street, Melbourne VIC 3000
(Kogan)

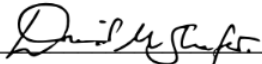
**No. of Options
being exercised:** 2,400,000 (Options)

By signing this Exercise Notice, I hereby:

- 1 agree to exercise my Options in accordance with the letter provided by Kogan dated **29 February 2024 (Cash Settlement Letter)**, which includes in accordance with the proposed cash settlement arrangement;
- 2 agree to any disclosure of the exercise of my Options by Kogan, including as may be required by law or the listing rules of the Australian Securities Exchange; and
- 3 agree to the Company withholding amounts of PAYG income tax from the cash payment to me.

If cash settlement of my Options as set out in the Cash Settlement Letter is not be available for any reason, this Exercise Notice is null and void and my Options will remain unexercised.

Print name David Shafer

Signature 

Date _4 April 2024_____

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Appendix 4 - Exercise of Options for cash-settlement by Mr Ruslan Kogan

Ruslan Kogan <[REDACTED]>
To: James Spenceley <[REDACTED]>, Greg Ridder <[REDACTED]>
Cc: Rohan Dhaygude <[REDACTED]>

Thu, Apr 4, 2024 at 7:32 AM

Hi James and Greg,

Please see attached Options Exercise Notice.

Many thanks,
Ruslan

Ruslan Kogan
CEO



Helping customers live their best lives by delivering remarkable value.

We're hiring! Check out our current opportunities at [Kogan.com Careers](#) | Follow us on [LinkedIn](#)

RK-Kogan - Cash Settlement Letter.pdf
34K

Annexure A – Exercise Notice

To: Kogan.com Limited of Level 7, 330 Collins Street, Melbourne VIC 3000
(Kogan)

No. of Options

being exercised: 3,600,000 (Options)

By signing this Exercise Notice, I hereby:

- 1 agree to exercise my Options in accordance with the letter provided by Kogan dated **29 February 2024 (Cash Settlement Letter)**, which includes in accordance with the proposed cash settlement arrangement;
- 2 agree to any disclosure of the exercise of my Options by Kogan, including as may be required by law or the listing rules of the Australian Securities Exchange; and
- 3 agree to the Company withholding amounts of PAYG income tax from the cash payment to me.

If cash settlement of my Options as set out in the Cash Settlement Letter is not be available for any reason, this Exercise Notice is null and void and my Options will remain unexercised.

Print name Ruslan Kogan

Signature



Date _4 April 2024_

Appendix 5 – Notification of exercise of Options to the Company's Company Secretary

Rohan Dhaygude <[REDACTED]>
To: Mark Licciardo <[REDACTED]>, Robyn Fry <[REDACTED]>
Cc: David Shafer <[REDACTED]>

Thu, Apr 4, 2024 at 9:45 AM

Hi Mark and Robyn,

Today, both Ruslan and David have elected to exercise their Options (6,000,000 Options in total).

The exercising of these options will be in the form of a cash settlement. Given no Ordinary Shares are being issued, what ASX appendix do we have to issue to communicate that these shares have been exercised?

Ro

Rohan Dhaygude
Director - Finance & Investor Relations



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Appendix 6 – Email to the Board confirming exercise of Options

----- Forwarded message -----

From: Greg Ridder <[REDACTED]>

Date: Thu, 4 Apr 2024 at 10:32 AM

Subject: Fwd: Ken Executive Options exercise

To: Allis Janine <[REDACTED]>, Debnay Harry <[REDACTED]>, Spenceley James <[REDACTED]>

Cc: Kogan Ruslan <[REDACTED]>, Shafer David <[REDACTED]>

Hi everyone,

Ruslan and David have each decided to exercise all their 2020 options under the terms of the cash settlement arrangements that we are all familiar with.

In broad terms the 20 day VWAP is \$8.224 and the option price was \$5.29. The difference of \$2.934 over 6 million options is ~\$17.6m (RK \$10.56m & DS \$7.04m), which will be paid in cash. Shareholders should be pleased that there is no dilution.

This is recognition for the outstanding work that Ruslan and David always deliver and reflects the substantially improved business we have today compared to four years ago. I am delighted for both Ruslan and David.

You will find an announcement in the trail below which will go to market in due course.

Cheers,

Greg Ridder

[REDACTED]

e:
m: [REDACTED]

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26 April 2024

Reference: 92988

Mr Mark Licciardo
Company Secretary
Level 7, 330 Collins Street
Melbourne, VIC, 3000

By email: m.licciardo@acclime.com

Dear Mr Licciardo

Kogan.Com Ltd ('KGN'): Query Letter

ASX refers to the following:

- A. KGN's announcement titled 'Kogan.com Executive Options exercise', released on the ASX Market Announcements Platform ('**MAP**') on 4 April 2024, which disclosed (relevantly):

"Given the Company's strong Balance Sheet, ongoing on-market buyback and desire to avoid further dilution for Shareholders, the Board (excluding the Executive Directors) has exercised its discretion under the Company's Equity Incentive Plan (Plan) to make a payment to the CEO and CFO in lieu of allocation of Shares upon exercise of the Options. The payment will be calculated in accordance with the Plan, based on the Current Market Price, less the Exercise Price that would otherwise have been payable in respect of the Exercise of the Options."

(the '**Disposals**')

- B. KGN's announcement titled 'Kogan.com - April 2024 Business Update', released on MAP on 24 April 2024 (the '**Announcement**'), which disclosed (relevantly):

"The Company provides the following update which, where applicable, is based on unaudited management accounts as at 31 March 2024. The update compares the 3QFY24 to 3QFY23:

- Gross Sales of \$178.3 million reflects a decline of 6.2% PCP following a recalibration to our quality of Revenue and focus on Platform-based Sales, which resulted in a significant reduction in inventories YoY. The reduction in inventories has been discussed at length in recent announcements made by the Company, and follows the Company's plan to reposition itself into a more capital-light business.*
- Revenue of \$105.9 million reflects a decline of 2.4% PCP, and is a result of the recalibration of Revenue quality and inventories right-sizing outlined above.*
- Gross Profit of \$39.0 million increased 13.8% PCP, driven by an improved Gross Margin.*
- Gross Margin of 36.8% improved by 5.2pp PCP, underpinned by a larger contribution from Platform-based Sales and improved profitability of in-warehouse inventory sales after the prior sell-through of excess inventory."*

(the '**Information**')

- C. KGN's securities trading policy, available on its website,¹ (the '**Trading Policy**') which states (relevantly, emphasis added):

¹ <https://www.kogancorporate.com/resources/pdf/governance/SECURITY%20TRADING%20POLICY%20-%20KOGAN.pdf>

At section 1 – ‘Definitions’

“dealing” or “trading” (singular use “deal” or “trade”) includes:

- (a) any acquisition or disposal of any securities of the Company;
- (b) entering into any agreement to apply for, acquire or dispose of any securities of the Company;
and
- (c) **the grant, acceptance, acquisition, disposal, exercise or discharge of any option or other right or obligation to acquire or dispose of any securities of the Company.”**

At section 5.1

“Subject to compliance with the procedure set out in section 6, dealing by Key Management Personnel in the Company’s securities may take place at any time, **except during the following periods:**

...

any other time imposed by the Board, including (without limitation) when it is considering matters which are subject to the exceptions to the continuous disclosure requirements set out in ASX Listing Rule 3.1A”

At section 6.1

“For all periods during which dealing in the Company’s securities is permitted in accordance with this policy, Key Management Personnel must, prior to dealing in the Company’s securities, provide the Company Secretary on behalf of the Designated Officer written notification (which, for the avoidance of doubt, may include by e-mail) of their intention to deal in the securities of the Company.”

At section 6.2

“Any person that gives a notification under section 6.1 will be deemed to have irrevocably declared and confirmed the following statements to the Company and to the Designated Officer:

- (a) they have read the Security Trading Policy and that their decision to deal in securities of the Company has not been made on the basis of information that:
 - (i) is not generally available, and
 - (ii) would be expected by a reasonable person to have a material effect on the price or value of the securities of the Company, if it was generally available;
- (b) they are not in possession of any inside information that might preclude them from trading at that time;
- (c) the Company is not advising or encouraging them to trade in any securities of the Company and is not providing any securities recommendation; and
- (d) they are not aware of any reason that they should be prohibited from trading in the Company’s securities (whether under this policy, the law, the ASX Listing Rules or any other reason).”

- D. The decrease in the price of KGN’s securities from a close of \$7.03 on 23 April 2024 to lows of \$5.08 on 24 April 2024, reflecting a decrease of 27.7%.
- 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 5 situations 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.”

- I. Listing Rule 12.9 which states:

*“An entity must have a *trading policy that complies with the requirements of ASX Listing Rule 12.12. An entity must give its *trading policy to the *market announcements office for release to the market.”*

- J. Listing Rule 12.12, which states:

*“At a minimum, an entity’s *trading policy must include the following information:*

*12.12.1 The entity’s *closed periods.*

*12.12.2 The restrictions on trading that apply to the entity’s *key management personnel.*

*12.12.3 Any trading which is not subject to the entity’s *trading policy.*

*12.12.4 Any exceptional circumstances in which the entity’s *key management personnel may be permitted to trade during a *prohibited period with prior written clearance.*

12.12.5 The procedures for obtaining prior written clearance for trading under rule 12.12.4.”

Request for information

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

1. Please:
 - 1.1 confirm the price at which KGN cash settled the options relevant to the Disposals;
 - 1.2 explain how this price was calculated; and
 - 1.3 confirm the cash value paid to each of Messrs Kogan and Shafer.
2. Does KGN 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?
3. If the answer to question 2 is “no”, please explain the basis for that view, noting the decrease in the price of KGN’s securities following the release of the Announcement.
4. If the answer to question 2 is “yes”:
 - 4.1 When did KGN become aware of the Information, thus requiring disclosure under Listing Rule 3.1? Please outline the circumstances which led to KGN becoming aware of the Information at that time.
 - 4.2 If KGN became aware of the Information prior to 24 April 2024, please explain why it was not disclosed at an earlier time, commenting specifically when KGN believes it was obliged to release the information under Listing Rules 3.1 and 3.1A and what steps KGN took to ensure that the information was released promptly and without delay.
 - 4.3 Please outline KGN’s processes and procedures concerning the interpretation of its unaudited management accounts for the quarter ending 31 March 2024. In your answer, please specifically address (but do not limit it to) how and when these accounts were made available to each of the CFO; CEO; and the Board.
 - 4.4 Is KGN of the view that the Disposals complied with the Trading Policy? If so, please provide the basis for that view. In your answer please specifically address whether Messrs Kogan and Shafer were aware of the Information (or any part thereof) at the time of the Disposals, and the applicability of section 5.1 of the Trading policy (extracted at paragraph C of this letter).
5. Please provide a copy of the written requests and subsequent approvals from KGN concerning the Disposals, as required by section 6.1 of the Trading Policy (not for release to market).
6. If the Disposals did not comply with the Trading Policy, please outline any disciplinary or remedial action KGN intends to take in response.
7. Please confirm that KGN is complying with the Listing Rules and, in particular, Listing Rule 3.1.
8. Please confirm that KGN’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 KGN 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 **5 PM AEST Wednesday, 1 May 2024**. 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, KGN'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 KGN to request a trading halt immediately.

Your response should be sent to me by e-mail at **ListingsComplianceMelbourne@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 KGN'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 KGN's securities under Listing Rule 17.3.

Listing Rules 3.1 and 3.1A

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

ASX reserves the right to release all or any part of this letter, your reply and any other related correspondence between us to the market under Listing Rule 18.7A.

Kind regards

ASX Compliance