



Your reference: 45252

20 January 2022

Ms Melissa Kostopoulos

Compliance Adviser, Listings Compliance (Melbourne)

ASX Limited

By email: [Melissa.Kostopoulos@asx.com.au](mailto:Melissa.Kostopoulos@asx.com.au)

Dear Ms Kostopoulos

**RE: Immuron Limited ('IMC'): Aware Query**

We refer to your letter dated 14 January 2022 regarding IMC's announcement titled "Immuron Receives European Patent on Drug to Treat Diarrhea" lodged on the ASX Market Announcements Platform on 13 January 2022. The Company's responses to the numbered questions set out in the letter are as follows:

1. Does IMC 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?

IMC considers that receipt of the European Patent, and its validation in European member states, referred to in the announcement is information that a reasonable person would expect to have a material effect on the price or value of its securities, according to the test in section 677 of the Corporations Act, where a reasonable person would be taken to expect information to have a material effect on the price or value of an entity's securities 'if the information would, or would be likely to, influence persons who commonly invest in securities in deciding whether to acquire or dispose of the entity's securities'.

2. If the answer to question 1 is "no", please advise the basis for that view, commenting specifically on why IMC marked the announcement as 'price-sensitive'.

Not applicable.

3. If the answer to question 1 is "yes", why did IMC release the Announcement on 13 January 2022 when the patent was granted on 5 January 2022? In your answer, please address when IMC became aware of the Information as per the definition reproduced in paragraph C.

Whilst the patent itself was granted on 5 January 2022, the benefit to IMC only arises once the patent is validated in the various European member states. When the European Patent Office (EPO) decides that a patent is to be granted, a number of steps must be taken, notably:

1. the EPO must grant the patent (the grant was first published in the European Patents Bulletin on 5 January 2022), and
2. the patent must be "validated" in the designated countries of interest (which was the subject of our ASX announcement dated 13 January 2022, informing the market on the designated

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countries of interest to Immuron), and the validation requirements must generally be met within three months from the European grant date.

There is a window in which validation needs to occur (before 5 April 2022), and then the dates on which the actual validations occur. With that context, we were notified of the UK validation on 18 January 2022, the Spanish validation on 14 January 2022, and the other countries are in the process of being validated now.

IMC referred the matter to IMC's Australian patent attorney for assistance to validate the patent in the various European members states (France, Spain, Sweden, Austria, Germany, Denmark, Finland, Greece and the United Kingdom), and to assist in determining appropriate content for inclusion in the ASX announcement. IMC then prepared final ASX announcement, sought IMC Board approval and made the announcement as soon as practical in compliance with its immediate disclosure obligations under ASX Listing Rule 3.1.

Having said that, in this instance the email had been buried amongst a volume of correspondence in an account that was only being checked periodically over the year end / beginning break. The email was located several days after it had been sent.

To address this delay the company has taken steps to add email recipients to the notification process and we will in future have a draft announcement near ready to release.

4. Please confirm that IMC is complying with the Listing Rules and, in particular, Listing Rule 3.1.

Consistent with IMC's Communication and Disclosure Policy available at [www.immuron.com.au/corporate-directory-and-governance](http://www.immuron.com.au/corporate-directory-and-governance), IMC continues to be in compliance with the Listing Rules and, in particular, Listing Rule 3.1.

5. Please confirm that IMC'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 IMC with delegated authority from the board to respond to ASX on disclosure matters.

This response has been authorised and approved by Directors.

Yours Sincerely

Phillip Hains  
Company Secretary

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14 January 2022

Reference: 45252

Mr Phillip Hains  
Company Secretary  
Immuron Limited  
Level 3, 62 Lygon Street  
Carlton, Vic 3053

By email: Phillip@thecfo.com.au

Dear Mr Hains

### **Immuron Limited ('IMC'): Aware Query**

ASX refers to the following:

- A. IMC's announcement titled "Immuron Receives European Patent on Drug to Treat Diarrhea" lodged on the ASX Market Announcements Platform ('MAP') on 13 January 2022 (the '**Announcement**'), which disclosed that IMC had been granted a European Patent (no. 3159357) on 5 January 2022 ('**Information**').

ASX observes that IMC marked the announcement as 'price-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. 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."*

- D. 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."*

- E. 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 IMC to respond separately to each of the following questions and requests for information:

1. Does IMC 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. If the answer to question 1 is "no", please advise the basis for that view, commenting specifically on why IMC marked the announcement as 'price-sensitive'.
3. If the answer to question 1 is "yes", why did IMC release the Announcement on 13 January 2022 when the patent was granted on 5 January 2022? In your answer, please address when IMC became aware of the Information as per the definition reproduced in paragraph C.
4. Please confirm that IMC is complying with the Listing Rules and, in particular, Listing Rule 3.1.
5. Please confirm that IMC'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 IMC 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 AEDT Thursday, 20 January 2022**. 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, IMC'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 IMC 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 IMC'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

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- 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 IMC's securities under Listing Rule 17.3.

### **Listing Rules 3.1 and 3.1A**

In responding to this letter, you should have regard to IMC'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 IMC'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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**Melissa Kostopoulos**  
Compliance Adviser, Listings Compliance (Melbourne)

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