



NICO RESOURCES

ABN 80 649 817 425

29 July 2022

Ms Sandra Wutete
Principal Advisor, Listings Compliance (Perth)
ASX Limited
Level 40 Central Park
152-158 St Georges Tce
Perth WA 6000

By email: ListingsCompliancePerth@asx.com.au

Dear Ms Wutete

NICO Resources Limited ('NC1'): Short term trading - Query

Responses to ASX queries

We refer to your letter dated 26 July 2022 (in response to our letter to ASX dated 22 July 2022 (**Query Response Letter**)) and respond to your further questions as follows:

1. *Noting NC1's responses to questions 6 to 8 in the Query Response Letter, please confirm that NC1's response complies with Section 5.1 of the Trading Policy's requirement for all directors and officers of NC1 to "give at least two trading days' notice (or such shorter period approved by the Chair) prior written notice of any proposed Trading in Securities".*

Section 5.1 of the Securities Trading Policy of Nico Resources Limited (**Trading Policy**) provides (in part):

"When permitted to Trade in accordance with this Policy, all Restricted Persons must give at least two trading days' (or such shorter period approved by the Chair) prior written notice of any proposed Trading in Securities and confirm that they do not possess any inside information:

...

- (b) *in the case of the Chief Executive Officer, to the Chair and Company Secretary (in circumstances where the Chair is an independent director) or otherwise to the Board and Company Secretary; ..."*

In respect of trades in Company shares by the Company's Managing Director Mr Rod Corps during the period 12 May 2022 to 9 June 2022:

- (a) Prior notice of an intended purchase of shares was notified by Mr Corps to the Board but the notification was not given in writing, as required by Trading Policy. The notifications were given verbally by Mr Corps to the full Board and Company Secretary at the Board meeting held on 11 May 2022, and the Board approved the purchase of shares at that meeting. We note the Trading Policy permitted Mr Corps' notice to be given directly to the Board and on shorter



notice than two trading days, as approved by the Chair. At the meeting Mr Corps confirmed he was not, and the Board confirmed that the Company was not, in possession of any inside information, and that all material matters requiring disclosure to ASX had been notified to ASX. Accordingly, in respect of the purchase of shares during the relevant period, the Company considers there was substantial compliance with requirements of Section 5.1 of the Trading Policy, but not strict compliance (in that notification of the proposed purchase was not given in writing by Mr Corps before the Board meeting).

- (b) Prior notice of the intended sales of shares that occurred during the period 12 May to 9 June 2022 was not expressly notified by Mr Corps either in writing, as required by the Trading Policy, nor verbally to the Board. The Board did not approve the sales of shares, neither at the Board meeting held on 11 May 2022 nor at any other time before the sales occurred. Accordingly the sales of shares were not undertaken in accordance with the requirements of Section 5.1 of the Trading Policy.
- (c) At no time was the Board notified by Mr Corps of any intended short-term trading in shares and the Board did not give any approval of any short-term trading in shares.
- (d) The Company wishes to clarify the responses it gave to questions 6 to 8 of the Query Response Letter by stating that, regrettably, the trading in shares by Mr Corps during the period 12 May to 9 June 2022 was not undertaken in accordance with all requirements of Section 5.1 of the Trading Policy.
- (e) The Company reiterates that at no time during the period of the trading was the Company nor any of its officers, including Mr Corps, in possession of market sensitive information and that at all relevant times the Company has complied with its continuous disclosure obligations. The Company notes the Board made these determinations at the Board meeting held on 11 May 2022 before the trades occurred, and subsequently at the Board meeting held on 16 June 2022.

2. *Noting NC1's responses to questions 6 to 8 in the Query Response Letter, please confirm the Transactions comply with the Trading Policy, in particular Section 4.3(a) of the Trading Policy that prohibits short term trading? If not, please explain why the Transactions were permitted.*

- (a) The trades in shares constituted short-term trading. Sections 4.3(a) and 7.1 of the Trading Policy expressly prohibit the short-term trading in shares by employees and "Restricted Persons" (which includes directors, officers and senior executive, and their associates). As an employee and officer of the Company, Mr Corps was prohibited from engaging in short-term trading. As noted in paragraphs 2(b) and (c) above, the sales of shares and short-term trading in shares were not notified by Mr Corps to the Board, nor approved by the Board before relevant trades occurred.
- (b) The Company wishes to clarify the responses it gave to questions 6 to 8 of the Query Response Letter by stating that the trades of shares by Mr Corps during the period 12 May to 9 June 2022 constituting short-term trading were not in compliance with Sections 4.3(a) and 7.1 of the Trading Policy and were not permitted by the Trading Policy nor by the Board.

3. *Please confirm that NC1 is complying with the Listing rules and, in particular, Listing Rule 3.1.*

The Company is complying with the Listing Rules and, in particular, Listing Rule 3.1.



4. *Please confirm that NC1's responses to the questions above have been authorised and approved under its published continuous disclosure policy or otherwise by its board or an officer of NC1 with delegated authority from the board to respond to ASX on disclosure matters.*

The Company confirms that the Company's Board of Directors has approved this letter and the responses to ASX in this letter.

Determinations in respect of the share trading

The Company has determined, and Mr Corps has acknowledged to the Company, that regrettably the trades in shares by Mr Corps during the period 12 May 2022 to 9 June 2022 were:

- (a) not notified to ASX within the time periods and in the manner required by Listing Rule 3.19A.2A;
- (b) not notified by Mr Corps to the Company in accordance with the requirements of Listing Rule 3.19B and the terms of Mr Corps' Executive Service Agreement with the Company, which expressly requires Mr Corps to provide details of changes in Company securities held by Mr Corps within 3 business days of the date of the change; for this reason there has been breach of the Executive Services Agreement; the Company accepts that Mr Corps' failure to give notices within time was occasioned by (but not excused by) Mr Corps' travel at the relevant time and the failure was inadvertent and not deliberate in nature; and
- (c) not, in respect of the intended sales of shares, notified to the Board beforehand for approval in accordance the requirements of the Trading Policy and were not in compliance with the requirement of the Trading Policy that there be no short-term trading in shares; compliance with the Company's corporate governance policies, including the Trading Policy, is an express term of the Executive Service Agreement, and for this reason there has been a breach of the Executive Services Agreement.

Further action by Company

As a consequence of the identified breaches, the Company has undertaken the following actions:

- (a) The Company has reiterated to all directors, including to Mr Corps, the requirements of the Trading Policy and directors obligations with respect to dealings in Company securities. In particular, the Company has instituted a further procedure to better ensure the timely written notification of proposed dealings for approval in accordance with the Trading Policy and notification to the Company and to ASX of actual dealings in Company securities as soon as they occur.
- (b) The Company has taken disciplinary action by formally notifying Mr Corps that his dealings in shares have been in breach of the Trading Policy and have constituted breaches of the Executive Services Agreement. The Company has also notified Mr Corps that a future breach of the Trading Policy will not be tolerated and would constitute grounds for dismissal and termination of the Executive Services Agreement. Mr Corps has fully acknowledged and accepted that he has acted in breach of the Trading Policy and the terms of his Executive Service Agreement.
- (c) The Board has determined that Mr Corps that will not be awarded or entitled to earn any short term incentive bonus or any long term incentives during the current financial year. Mr Corp's



remuneration entitlements under his Executive Service Agreement for the current financial year will consist only of base salary and superannuation entitlements.

This letter has been approved and authorised by the Board of Nico Resources Limited for release to ASX.

Your faithfully



Amanda Burgess
Company Secretary





26 July 2022

Reference: 55454

Ms Amanda Burgess
Company Secretary
Nico Resources Limited

By email

Dear Ms Burgess

Nico Resources Limited ('NC1'): Short term trading – Query

ASX refers to the following:

- A. The query letter issued to NC1 by ASX on 20 July 2022 and the query letter response that was received by ASX and lodged on the ASX Market Announcements Platform ('MAP') on 22 July 2022 ('Query Response Letter'). The Query Response Letter stated, among other things, the following:

"6. Were the Transactions permitted Trades in accordance with NC1's Trading Policy?

The Company believes the trades were in accordance with the trading policy. The Company was not in a mandated block out period and the Company had no market sensitive information that had not already been released to the market.

- 7. Were the Transactions notified in writing to the Chairman and Company Secretary in accordance with section 5.1 of the Trading Policy before entering into the Transactions? If not, why not?**

Each individual transaction was not specifically notified to the Chairman and Company Secretary in advance of entering into the transaction nor do we believe our trading policy requires this, however, the director, Mr Rod Corps did discuss his trading with the Chairman and at the Board of Directors meeting held on 11 May 2022 and again on 16 June 2022 where the Board discussed the trading of shares, including trading by Mr Rob Corps. The Company was not in a mandated block out period and the Company had no market sensitive information that had not already been released to the market. The reason for the delay in reporting being the director, Mr Rod Corps was travelling at the time the transactions occurred and it was overlooked.

- 8. Did the Chairman or Company Secretary grant approval (written or otherwise) to Mr Corps to carry out the on-market Transactions?**

The Chairman confirms that at the Board of Directors meeting on 11 May 2022 and again on 16 June 2022 the Board discussed the trading of shares, including trading by Mr Rob Corps. The Board believed that the market was fully informed and the Company was not in Black out period and trading could proceed until the mandated period to be imposed from 15 July 2022."

- B. NC1's securities trading policy lodged on MAP on 17 January 2022 (the 'Trading Policy') which is also available on NC1's website and which states, among other things, the following:

"4.3 When is Trading prohibited?

Even if the Trading Window is open, the laws prohibiting insider trading continue to apply to Employees and Restricted Persons so that they must not trade if they possess any inside information. Refer to clause 2 of this Policy for further details.

Employees are prohibited from:

- (a) **(short term trading)** other than when an Employee exercises employee options or performance rights to acquire Securities at the specified exercise price, Trading in Securities (or an interest in Securities) on a short-term trading basis. Short-term trading includes buying and selling Securities within a 12-month period, and entering into other short-term dealings (e.g. forward contracts);”

...

5.1 Who and when must give notification of an intention to Trade?

When permitted to Trade in accordance with this Policy, **all Restricted Persons must give at least two trading days' (or such shorter period approved by the Chair) prior written notice of any proposed Trading in Securities** [emphasis added] and confirm that they do not possess any inside information:

- (a) in the case of Senior Executives (other than the Chief Executive Officer), to the Chair and Company Secretary; (b) in the case of the Chief Executive Officer, to the Chair and Company Secretary (in circumstances where the Chair is an independent director) or otherwise to the Board and Company Secretary;
- (c) in the case of a Director of the Company, to the Chair and Company Secretary;
- (d) in the case of the Chair, the Board and Company Secretary, (each a Notification Officer). If the relevant Notification Officer objects to the proposed Trade, they must immediately notify the relevant Director or Senior Executive that the Trade must not proceed and must advise the Directors (who may overrule the decision if they think appropriate).”

- C. Guidance Note 27: Director Disclosure of Interests and Transactions in Securities – Obligations of Listed Entities which was published to assist listed entities with their obligations under Listing Rules 3.19A and 3.19B and to give an overview of ASX policy in relation to disclosure of directors’ interests and transactions in securities, and Guidance Note 22: Trading Policies which was published to assist listed entities to comply with their obligations under Listing Rules 12.9-12.12 regarding trading policies.

Request for information

Having regard to the above, and pursuant to Listing Rule 18.7, ASX asks NC1 to respond separately to each of the following questions.

1. Noting NC1’s response to questions 6 to 8 in the Query Response Letter, please confirm that NC1’s response complies with Section 5.1 of the Trading Policy’s requirement for all directors and officers of NC1 to “give at least two trading days' (or such shorter period approved by the Chair) prior written notice of any proposed Trading in Securities”.
2. Noting NC1’s response to questions 6 to 8 in the Query Response Letter, please confirm that the Transactions comply with the Trading Policy, in particular Section 4.3(a) of the Trading Policy that prohibits short term trading? If not, please explain why the Transactions were permitted.

3. Please confirm that NC1 is complying with the Listing Rules and, in particular, Listing Rule 3.1.
4. Please confirm that NC1's responses to the questions above have been authorised and approved under its published continuous disclosure policy or otherwise by its board or an officer of NC1 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 **3:00 PM AWST Friday, 29 July 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, NC1'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 NC1 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 NC1'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 NC1's securities under Listing Rule 17.3.

Listing Rules 3.1 and 3.1A

In responding to this letter, you should have regard to NC1'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 NC1'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

Sandra Wutete
Principal Adviser, Listings Compliance (Perth)