

29 August 2024



ASX Compliance  
Level 40, Central Park  
152-158 St Georges Terrace  
Perth WA 6000

### MCS Services (ASX:MSG) – Response to ASX Aware Letter

The Company refers to ASX's aware letter dated 26 August 2024 (**Aware Letter**). The Company makes this announcement to provide a response to the Aware Letter which is set out below:

1. **In relation to the potential acquisition with an unrelated third party as referred to in the Further Response ('Potential Transaction'), when did MSG commence the negotiations?**

The Company commenced negotiations with the unrelated third party on or around 29 April 2024.

2. **If MSG commenced the negotiations in relation to the Potential Transaction, or any part thereof, before providing the Initial Response to ASX, did MSG make any announcement in relation to the Potential Transaction prior to the date of the Initial Response?**

No.

3. **If the answer to question 2 above is "no", taking into account the instruction set out in paragraph 2 of the Price Query, please explain:**

- 3.1 **why the information available in relation to the Potential Transaction was not disclosed prior to or within the Initial Response:**

At the date of the Price Query and Initial Response, the Company considered that the information regarding the Potential Transaction was confidential (and had remained confidential) and was not disclosable on the basis as set out in the letter to ASX of 14 August 2024 in Question 1, paragraphs 1 and 2.

- 3.2 **if MSG was relying on Listing Rule 3.1A not to announce the Potential Transaction under Listing Rule 3.1, why MSG did not contact ASX immediately:**

Refer to the response to query 3.1 above and contact was not made on the basis that the Company was of the view it did not need to do so.

- 3.3 **how the directors of MSG determined that the information regarding the Potential Transaction did not need to be included in the Initial Response:**

Refer to the response to query 3.1 above.

- 3.4 **when did you believe MSG was obliged to release the information regarding the Potential Transaction under Listing Rules 3.1?**

On 15 August 2024, the Company released the Further Response, which amended the Company's Initial Response to the Price Query. At the time of making the Further Response, the Board decided to release the information regarding the Potential Transaction in light of the fact the Proposed Transaction had progressed further and therefore made a request for voluntary suspension, which was made on the date of its Further Response.



Chamber of Commerce  
and Industry WA



- 4. Please confirm that MSG is in compliance with the Listing Rules and, in particular, Listing Rule 3.1.**

MSG confirms that it is in compliance with the Listing Rules, including Listing Rule 3.1.

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

MSG confirms that the responses provided in this letter have been authorised and approved by the Board.

On behalf of the Company

A handwritten signature in black ink, appearing to read 'J Asquith', is written over a light grey rectangular background.

Jonathan Asquith  
Company Secretary



26 August 2024

Reference: 98079

Mr Jonathan Asquith  
Company Secretary  
MCS Services Limited

By email

Dear Mr Asquith

**MCS Services Limited ('MSG'): ASX Aware Letter**

ASX refers to the following:

A. The ASX Price and Volume Query issued to MSG on 16 July 2024 ('Price Query') disclosing the following:

- "1. Is MSG aware of any information concerning it that has not been announced to the market which, if known by some in the market, could explain the recent trading in its securities?"*
- 2. If the answer to question 1 is "yes".*
  - (a) Is MSG relying on Listing Rule 3.1A not to announce that information under Listing Rule 3.1? Please note that the recent trading in MSG's securities would suggest to ASX that such information may have ceased to be confidential and therefore MSG may no longer be able to rely on Listing Rule 3.1A. Accordingly, if the answer to this question is "yes", you need to contact us immediately to discuss the situation.*
  - (b) Can an announcement be made immediately? Please note, if the answer to this question is "no", you need to contact us immediately to discuss requesting a trading halt (see below).*
  - (c) If an announcement cannot be made immediately, why not and when is it expected that an announcement will be made?"*

B. MSG's announcement titled "Response to ASX Price and Volume Query" ('Initial Response') released on the ASX Market Announcements Platform at 1:44 PM on 16 July 2024 disclosing the following:

*"Further to your price query letter today, MCS Services Ltd (Company) provides the following responses.*

- 1. The Company is not aware of any information concerning it that has not been announced to the market which, if known by some in the market, could explain the recent trading in its securities.*
- 2. Not Applicable."*

C. MSG's announcement titled "Response to Share Price Query" ('Further Response') released on the ASX Market Announcements Platform at 9:22 AM on 15 August 2024 disclosing the following:

*"The Company refers to ASX's price query letter dated 16 July 2024 and the Company's response to the letter on the same date (Price Query). The Company makes this announcement to provide an amended response to the Price Query which is set out below:*

- 1. Is MSG aware of any information concerning it that has not been announced to the market which, if known by some in the market, could explain the recent trading in its securities?"*

*At the date of the Price Query, the Company had previously signed a confidentiality agreement (undated and unsigned by the counterparty) and subsequently signed a memorandum of understanding dated 10 May 2024 (MOU) which set out preliminary steps to progress negotiations regarding a potential restructure and re-compliance with Chapters 1 and 2 of the ASX Listing Rules, including an acquisition with an unrelated third party.*

The MOU did not contain any material terms of the potential acquisition or potential subsequent re-compliance.

...

2. If the answer to question 1 is "yes".

(a) Is MSG relying on Listing Rule 3.1A not to announce that information under Listing Rule 3.1? Please note that the recent trading in MSG's securities would suggest to ASX that such information may have ceased to be confidential and therefore MSG may no longer be able to rely on Listing Rule 3.1A. Accordingly, if the answer to this question is "yes", you need to contact us immediately to discuss the situation.

Yes. See response to query 1 above."

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."*

F. Section 4.4 in *Guidance Note 8 Continuous Disclosure: Listing Rules 3.1 – 3.1B* titled "When does an entity become aware of information?"

G. Listing Rule 3.1A, which sets out exceptions from the requirement to make immediate disclosure as follows.

"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. The concept of "confidentiality" 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 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 is no longer a secret and it ceases to be confidential information for the purposes of this rule."*

## Request for information

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

1. In relation to the potential acquisition with an unrelated third party as referred to in the Further Response ('Potential Transaction'), when did MSG commence the negotiations?
2. If MSG commenced the negotiations in relation to the Potential Transaction, or any part thereof, before providing the Initial Response to ASX, did MSG make any announcement in relation to the Potential Transaction prior to the date of the Initial Response?
3. If the answer to question 2 above is "no", taking into account the instruction set out in paragraph 2 of the Price Query, please explain:
- 3.1 why the information available in relation to the Potential Transaction was not disclosed prior to or within the Initial Response;
  - 3.2 if MSG was relying on Listing Rule 3.1A not to announce the Potential Transaction under Listing Rule 3.1, why MSG did not contact ASX immediately;
  - 3.3 how the directors of MSG determined that the information regarding the Potential Transaction did not need to be included in the Initial Response; and
  - 3.4 when did you believe MSG was obliged to release the information regarding the Potential Transaction under Listing Rules 3.1?
- Please answer separately for each of the above and provide details of the prior announcement if applicable.
4. Please confirm that MSG is in compliance with the Listing Rules and, in particular, Listing Rule 3.1.
5. Please confirm that MSG'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 MSG 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 **4.00 PM AWST Thursday, 29 August 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, MSG'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 MSG to request a trading halt immediately if trading in MSG's securities is not already halted or suspended.

Your response should be sent by e-mail to **ListingsCompliancePerth@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 MSG's securities under Listing Rule 17.3.

#### Listing Rules 3.1 and 3.1A

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

Yours sincerely

---

ASX Compliance