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17 February 2016

Violetta Codreanu  
Advisor – Listings (Sydney)  
ASX Compliance Pty Limited  
20 Bridge Street  
Sydney NSW 2000

Dear Violetta

**Nick Scali Limited (Company): ASX aware query**

We refer to your letter of 11 February 2016, and set out our response below.

*“Does the Entity consider the information contained in the Appendix 4D concerning the variation from the expected NPAT, as disclosed in the Announcement, to the actual NPAT for the six months to 31 December 2015 (“Variation to NPAT”) to be information that a reasonable person would expect to have a material effect on the price or value of its securities?”*

The Company considers that, in isolation, the Variation to NPAT may be information that a reasonable person may expect, of itself, to have a material effect on the price or value of its securities.

However, in the Company’s strong view, there are a number of other matters detailed in the ASX announcements on 9 February 2016 which are relevant to the current circumstances.

The Company considers it is the combination of the Variation to NPAT and the other material information contained in the announcement of 9 February 2016, being:

- strong forecasts for store growth and outlook for the 2016 financial year including the expected NPAT for the full year quantified; and
- an increased interim dividend of 9 cents per share;

that are relevant in these circumstances.

The Company also considers that it announced to the ASX all relevant information as soon as it was able to correctly gauge the likely impact of the various items which contributed to the increase to NPAT and has complied at all relevant times with Listing Rule 3.1.

The bases for the Company’s position are set out below.

At the Board meeting on Friday 18 December 2015 the net profit after tax for the first financial half year of 2016 (**H1-16 NPAT**) forecast was discussed in detail. At that meeting, the Board decided that a variation to the H1-16 NPAT forecast (if any) was not prudent at that stage for a number of reasons. One of these reasons was that the possible impact of various outstanding and uncertain items was insufficiently definite to allow informative disclosure at that time.

These outstanding and uncertain items refer to matters including finalisation of the Management Representation Certificate, final audit clearance, proper consideration of the financial statements by the Audit Committee/Board and in particular final assurance received by the Board that the valuation of inventory was appropriate and complied with Accounting Standards.

In the last two years the Company has grown sales revenue materially, partly by geographic expansion into Western Australia and this has been accompanied by an increase in the quantity and thus value of inventory held. Since June 2014 the gross (before adjustment to reflect realisable value) value of inventory has increased by ~50%. This increase is somewhat more than the corresponding increase in sales revenue and this is primarily due to the Company's establishment of a Distribution Centre in Perth to support the new Western Australian stores.

The net book value of inventory over that period is as follows:

June 2014	\$19.0 million
December 2014	\$19.7 million
June 2015	\$24.2 million
December 2015	\$27.5 million

This increased size, number and complexity of locations leads to increased risk of incorrect valuations particularly in relation to damaged, returned and slow moving stock. As a result, at the end of the period it was agreed that a robust analysis be undertaken of inventory valuation and determination of the appropriate values placed particularly on those categories mentioned above. This analysis was undertaken by Management and initial findings presented to the Board just prior to Christmas 2015.

Whilst the Board was naturally determined to ensure that the net valuation of inventory was appropriate and supportable, the Board was somewhat surprised that the recommended provision against gross values had doubled in the period to \$1.09 million and had progressively increased as a percentage of inventory value.

The Board considered further inquiry and calculations were required before it could assess:

- the likely impact on NPAT (if any) of various outstanding and uncertain items; and
- whether any such impact could be greater than the 5 – 10% materiality threshold (as set out in ASX's guidance on materiality).

In making this assessment the Company considered its obligations to comply with Listing Rule 3.1, the application of the exceptions in Listing Rule 3.1A and complied with its governance procedures.

Following the Board meeting the Board instructed management to conduct a thorough analysis of the outstanding and uncertain items and to report to the Audit Committee its findings. Management were asked a number of questions, including the categories of inventory the increase in the provision related to, whether any particular location had a worse performance than others and what factors had influenced Management's judgment.

Management conducted this analysis and assessment in January 2016 and reported on a number of factors influencing their recommendation to the Audit Committee in early February 2016. The Audit Committee then considered management's assessment of each of these outstanding and uncertain items and formed a view on their likely impact and approved a report to the Board. The report was presented to the Board on 8 February 2016 and the Audit Committee also reported to the Board. On 8 February the Board met to consider the reports and determined that some further information was required.

That additional information was provided to the Board and it met again on 9 February 2016 at which time it:

- confirmed the final NPAT for the six months and the forecast for store growth;
- determined to increase the interim dividend; and
- approved the ASX announcement to be made on 9 February 2016.

The ASX announcement was then made promptly and without delay.

The Company was not in a position to release information regarding Variation to NPAT, store growth, and outlook, until the Audit Committee properly analysed the items involved and reported its findings to the Board. Consistent with Listing Rule 3.1A, the Board considers that the additional information was insufficiently definite to warrant disclosure until the Audit Committee's consideration of the items, and its presentation to the Board on 8 February 2016.

The Company remains fully cognisant of its obligations to update the market on any material changes to expected NPAT and confirms that it is aware of its obligations on disclosure in relation to the Listing Rules, particularly Listing Rule 3.1, and believes that it has complied with these Rules. It also believes it has in place a robust system of governance designed to ensure disclosures are made once the items are certain as to their likely impact.

In addition, the Board's view is that a premature announcement in relation to any variation to NPAT might have been considered an announcement without a reasonable basis. In this regard, the Board was cognisant of Section 1041H of the Corporations Act. Any such premature announcement would have exposed the Company to the risk of engaging in misleading or deceptive conduct.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Kevin Fine', written in a cursive style.

Kevin Fine  
Chief Financial Officer  
Nick Scali Limited



11 February 2016

Mr Kevin Fine  
Chief Financial Officer and Company Secretary  
Nick Scali Limited  
B1-B3, 3-29 Birnie Avenue  
Lidcombe NSW 2141

By email

Dear Mr Fine

**Nick Scali Limited (the “Entity”): ASX aware query**

ASX Limited (“ASX”) refers to the following:

1. The Entity’s announcement entitled ‘Chairman’s Address to Shareholders’ lodged with the ASX Market Announcements Platform and released at 9:58am on Thursday, 29 October 2015 (the “Announcement”), which disclosed the Entity’s expectation for net profit after tax (“NPAT”) for the six months to 31 December 2015 for growth of approximately 20% on the prior corresponding period.
2. The Entity’s announcement entitled ‘Nick Scali Ltd H1-16 Appendix 4D’ lodged with the ASX Market Announcements Platform and released at 8:18am on Tuesday, 9 February 2016 (the “Appendix 4D”), which disclosed an increase of 40.7% in the Entity’s NPAT for the six months to 31 December 2015 from the prior corresponding period.
3. Listing Rule 3.1, which requires a listed entity to give ASX immediately 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.
4. The definition of “aware” in Chapter 19 of the Listing Rules. This definition 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.”*

Additionally, you should refer to section 4.4 in Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B “When does an entity become aware of information”*.

5. 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 requirements 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.”*

5. 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* “Listing Rule 3.1A.2 – the requirement for information to be confidential”. 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.”*

6. Section 7.3 of Guidance Note 8, which states:

*“If an entity becomes aware that its earnings for the current reporting period will differ (downwards or upwards) from market expectations, it needs to consider carefully whether it has a legal obligation to notify the market of that fact. This obligation may arise under Listing Rule 3.1 and section 674, if the difference is of such magnitude that a reasonable person would expect it to have a material effect on the price or value of the entity’s securities – referred to below as a “market sensitive earnings surprise”. Alternatively, in the case of an entity which becomes aware that its earnings guidance for a reporting period will differ from earnings guidance it has published to the market, it may arise under 1041H, because failing to inform the market that its published guidance is no longer accurate could constitute misleading conduct on its part.”*

Having regard to the above, we ask that you answer the following questions in a format suitable for release to the market in accordance with Listing Rule 18.7A:



1. Does the Entity consider the information contained in the Appendix 4D concerning the variation from the expected NPAT, as disclosed in the Announcement, to the actual NPAT for the six months to 31 December 2015 ("Variation to NPAT") 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.
3. If the answer to question 1 is "yes", when did the Entity first become aware of the Variation to NPAT?
4. If the answer to question 1 is "yes" and the Entity first became aware of the Variation to NPAT before the relevant date, did the Entity make any announcement prior to the relevant date which disclosed the Variation to NPAT? If so, please provide details. If not, please explain why this information was not released to the market at an earlier time, commenting specifically on when you believe the entity was obliged to release the information under Listing Rules 3.1 and 3.1A and what steps the Entity took to ensure that the information was released promptly and without delay.
5. Please confirm that the Entity is in compliance with the Listing Rules and, in particular, Listing Rule 3.1.

#### **When and where to send your response**

This request is made under, and in accordance with, Listing Rule 18.7. Your response is required as soon as reasonably possible and, in any event, by not later than half an hour before the start of trading (**i.e., not later than 9.30 a.m. AEDT) on Wednesday, 17 February 2016**). If we do not have your response by then, ASX will have no choice but to consider suspending trading in the Entity's securities under Listing Rule 17.3.

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, the Entity'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.

ASX reserves the right to release a copy of this letter and your response on the ASX Market Announcements Platform under Listing Rule 18.7A. Accordingly, your response should be in a form suitable for release to the market.

Your response should be sent to me by e-mail. 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.

#### **Listing Rule 3.1**

Listing Rule 3.1 requires a listed entity to give ASX immediately 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. Exceptions to this requirement are set out in Listing Rule 3.1A.



The obligation of the Entity to disclose information under Listing Rules 3.1 and 3.1A is not confined to, nor is it necessarily satisfied by, answering the questions set out in this letter.

In responding to this letter, you should have regard to the Entity's obligations under Listing Rules 3.1 and 3.1A and also to Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*.

### **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 the Entity'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 may 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*.

If you have any queries or concerns about any of the above, please contact me immediately.

Yours sincerely

*[Sent electronically without signature]*

Violetta Codreanu  
**Adviser, Listings Compliance (Sydney)**