

25 February 2019

Mr George Tharian  
Adviser, Listings Compliance (Sydney)  
Exchange Centre  
20 Bridge Street  
Sydney NSW 2000

Dear Mr Tharian

### **Bingo Industries Limited (Company) - Response to ASX Aware Letter**

Thank you for your letter of 20 February 2019, which set out a number of questions relating to an announcement made by the Company on 18 February 2019.

Set out below are the responses from the Company to those questions.

*1. When did BIN first become aware of the revised EBITDA guidance (including any of the factors that led to the revised guidance)?*

The Company determined that it would need to provide revised EBITDA guidance at the conclusion of a Board sub-committee meeting on Sunday 17 February 2019, which completed a review process undertaken by management in conjunction with the Company's accounts auditing process and half year results preparation.

The Board and management review process involved consideration of the performance of the business in the first half of FY19 (which was largely on track with budget estimates), recent changes in market conditions (including an accelerated softening of market conditions reported in December 2018 and January 2019 in one aspect of the Company's business, being residential collections), pricing and volume related options, network reconfiguration and redevelopment options, status and potential timing of completion of the proposed DADI acquisition and various cost out strategies, to determine whether the EBITDA expectations had changed materially.

As soon as it was clear that, in aggregate, the developments had materially altered EBITDA expectations, the Board determined to immediately issue revised EBITDA guidance.

*2. Does BIN consider the revised EBITDA guidance (or any of the factors that led to the revised guidance) to be information that a reasonable person would expect to have a material effect on the price or value of its securities?*

Yes, when considered in totality. In isolation, none of the factors were considered material.

*3. If the answer to question 2 is "yes" and BIN first became aware of the information before the relevant date, did BIN make any announcement prior to the relevant date which disclosed the information? 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 BIN was obliged to release the information under Listing Rules 3.1 and 3.1A and what steps BIN took to ensure that the information was released promptly and without*

delay.

Not applicable. Refer to question 2.

4. If the answer to question 2 is "no", please advise the basis for that view.

Not applicable.

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

The Company confirms that it is in compliance with ASX Listing Rules and, in particular, Listing Rule 3.1.

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

The Company confirms that the responses to the questions above have been authorised by the Board of Directors.



Stephen Schmidhofer  
General Counsel



20 February 2019

Mr Stephen Schmidhofer  
General Counsel/Joint Company Secretary  
Bingo Industries Limited  
305 Parramatta Road  
Auburn NSW 2144

By email:

Dear Mr Schmidhofer

**Bingo Industries Limited ('BIN'): Aware Query**

ASX refers to the following:

- A. BIN's announcement entitled "Bingo market update and FY19 outlook" lodged on the ASX Market Announcements Platform and released at 8:19AM on 18 February 2019 (the 'Announcement'), disclosing revised underlying EBITDA guidance for the full year ending 30 June 2019 will be broadly in line with the previous year, compared to BIN's previous EBITDA growth guidance of 15-20% (first announced on 21 August 2018 and then reaffirmed in BIN's annual general meeting presentation, dated 14 November 2018), due to a combination of the following factors:
- (i) Faster than anticipated softening in multi-dwelling residential construction activity;
  - (ii) A delay in implementation of BIN's forecasted price rise; and
  - (iii) Reconfiguration of BIN's development projects.
- B. The change in the price of BIN's securities from a closing price of \$2.30 on Friday, 15 February 2019, to a low of \$1.17 on Monday, 18 February 2019. We also note the significant increase in the volume of BIN's securities traded following release of the Announcement.
- C. 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.
- D. 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."*
- E. 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.”

- F. 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 BIN to respond separately to each of the following questions and requests for information:

1. When did BIN first become aware of the revised EBITDA guidance (including any of the factors that led to the revised guidance)?
2. Does BIN consider the revised EBITDA guidance (or any of the factors that led to the revised guidance) 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 “yes” and BIN first became aware of the information before the relevant date, did BIN make any announcement prior to the relevant date which disclosed the information? 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 BIN was obliged to release the information under Listing Rules 3.1 and 3.1A and what steps BIN took to ensure that the information was released promptly and without delay.
4. If the answer to question 2 is “no”, please advise the basis for that view.
5. Please confirm that BIN is complying with the Listing Rules and, in particular, Listing Rule 3.1.
6. Please confirm that BIN’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 BIN 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 **9.00 AM AEDT Monday, 25 February 2019**.

If we do not have your response by then, ASX will have no choice but to consider suspending trading in BIN’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, BIN’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 at [ListingsComplianceSydney@asx.com.au](mailto:ListingsComplianceSydney@asx.com.au). It should

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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 Rules 3.1 and 3.1A**

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

### **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 BIN's securities under Listing Rule 17.1. If you wish to request 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 BIN's securities under Listing Rule 17.3.

### **Enquiries**

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

Yours sincerely

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**George Tharian**  
Adviser, Listings Compliance (Sydney)