

20 May 2021

Jonathan Bisset
ASX Compliance Pty Limited
Level 4, North Tower
525 Collins Street
Melbourne VIC 3000

By Email: ListingsComplianceMelbourne@asx.com.au

Dear Jonathan

Response to ASX Aware Query

In reference to your letter dated 18 May 2021, Viva Leisure Limited (ASX: VVA) (**Company**) provides the following responses to your queries in number order.

1. **Does VVA 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?**

The Company wishes to clarify that the Information is the report in an article published in the Australian Financial Review on 17 May 2021 (**AFR Article**) that the Company received a draft statement of claim prepared on behalf of a number of Plus Fitness franchisees, and in particular, the manner in which the AFR Article was presented.

To avoid doubt, prior to the publication of the AFR Article, the Company did not consider the receipt of the draft statement of claim itself to be market sensitive information on the basis that no claim had or has been initiated and having regard to the nature and substance of the confidential approach made, did not consider it likely to adversely impact its financial position or performance or otherwise influence persons who commonly invest in securities to acquire or dispose of its securities. If any claim were to be initiated against the Company along the lines described in the AFR Article, it would be vigorously defended and the Company is confident it would be successful. It is important to note that the Plus Fitness franchise business operated by the Company's subsidiary Australian Fitness Management is a discrete business which represents approximately 10% of overall revenue. On this basis, a reasonable person would not have expected a disclosure to be made prior to the publication of the AFR Article.

As the AFR Article neglected to identify the relative scale of the Plus Fitness business, the Company appreciates that a reader may have construed the information contained in the AFR Article to be market sensitive. For this reason, the Company considered it prudent to release the Announcement following the publication of the AFR Article.

2. **If the answer to question 1 is “no”, please advise the basis for that view.**

Not applicable based on the response to question 1.

3. When did VVA first become aware of the Information?

The Company first became aware of the publication of the AFR Article in the morning on 17 May 2021.

As the AFR Article has made certain otherwise confidential information public, for completeness, the Company can confirm that as reported in the AFR Article it received a letter from a law firm that enclosed a draft statement of claim. The letter was marked 'without prejudice except as to costs' and requested that arrangements be made for confidential without prejudice discussions involving the Company to occur.

4. If the answer to question 1 is “yes” and VVA first became aware of the Information before the relevant date, did VVA 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 VVA was obliged to release the Information under Listing Rules 3.1 and 3.1A and what steps VVA took to ensure that the Information was released promptly and without delay.

The Information, being the publication of the AFR Article, was not disclosed prior to 17 May 2021 as it did not occur before that date.

In order to prevent a false market developing in its securities, the Company made the Announcement promptly and without delay after becoming aware of the AFR Article and prior to the market opening on Monday, 17 May 2021.

5. Given the decrease in the price of VVA securities since 28 April 2021 and increase in the volume of VVA securities traded on 13 May 2021, what steps did VVA take to satisfy itself that the Information remained confidential in accordance with Listing Rule 3.1A.2 and having regard to section 5.8 of Guidance Note 8 (referred to in paragraph F above)? In answering this question, please advise if VVA considered requesting a trading halt in its securities at any time prior to the release of the Information on ASX? If not, why not? If so, please state why VVA did not request a trading halt before 17 May 2021.

For the reasons stated above, the Company does not consider that it was in possession of market sensitive information prior to the publication of the AFR Article on 17 May 2021.

For completeness, the Company wishes to confirm that the otherwise confidential information disclosed in the AFR Article was kept confidential by the Company, its subsidiaries and its legal advisers and the Company was not aware of any disclosure by the law firm acting for the relevant franchisees or any of that firm's clients. The relevant information was received by the Company on a confidential basis and outside of the Company and its advisers was, to the best of the Company's knowledge, only known to a limited number of Plus Fitness franchisees and their advisers.

The Company is unaware of any explanation for the decrease in the price of its securities since 28 April 2021, but notes that its securities generally trade on low volumes. The increase in the volume of the Company's securities traded on 13 May 2021 can be explained by an isolated institutional trade rather than a series of separate transactions, which indicates the confidential information disclosed in the AFR Article remained confidential until the time of publication.

In the circumstances, the Company did not consider it necessary to request a trading halt.

6. **Please confirm that VVA is complying with the Listing Rules and, in particular, Listing Rule 3.1.**

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

7. **Please confirm that VVA'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 VVA with delegated authority from the board to respond to ASX on disclosure matters.**

These responses to the ASX's questions have been authorised by the Board of the Company.

Yours sincerely

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

Kym Gallagher
Company Secretary



18 May 2021

Reference: 34845

Mr Kym Gallagher
Company Secretary and Chief Financial Officer
Viva Leisure Limited
'OF' Unit 7 Level 1, 141 Flemington Road
Mitchell, Australian Capital Territory 2911

By email: kym.gallagher@vivaleisure.com.au

Dear Mr Gallagher

Viva Leisure Limited ('VVA'): Aware Query

ASX refers to the following:

- A. VVA's announcement entitled "Article published in the Australian Financial Review" lodged on the ASX Market Announcements Platform and released at 9:30 AM on 17 May 2021 (the 'Announcement'), disclosing that VVA and Australian Fitness Management are engaged in confidential discussions with some 'Plus Fitness' franchisees regarding a draft statement of claim prepared on behalf of a number of franchisees and reported in an article published in the Australian Financial Review on 17 May 2021 to have been delivered to VVA on 28 April 2021 ('Information').
- B. VVA's share price decrease from \$2.68 at the close of trading on 27 April 2021 to \$2.10 at the close of trading on 14 May 2021, a decrease of 21.64% over the period. VVA's share price decrease following release of the Announcement to \$1.91 at the close of trading on 17 May 2021, a 9.05% decrease on the day. It is noted that there was a significant increase in the volume of VVA shares traded on 13 May 2021.
- 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 VVA to respond separately to each of the following questions and requests for information:

1. Does VVA 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.
3. When did VVA first become aware of the Information?
4. If the answer to question 1 is “yes” and VVA first became aware of the Information before the relevant date, did VVA 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 VVA was obliged to release the Information under Listing Rules 3.1 and 3.1A and what steps VVA took to ensure that the Information was released promptly and without delay.
5. Given the decrease in the price of VVA securities since 28 April 2021 and increase in the volume of VVA securities traded on 13 May 2021, what steps did VVA take to satisfy itself that the Information remained confidential in accordance with Listing Rule 3.1A.2 and having regard to section 5.8 of Guidance Note 8 (referred to in paragraph F above)? In answering this question, please advise if VVA considered requesting a trading halt in its securities at any time prior to the release of the Information on ASX? If not, why not? If so, please state why VVA did not request a trading halt before 17 May 2021.
6. Please confirm that VVA is complying with the Listing Rules and, in particular, Listing Rule 3.1.
7. Please confirm that VVA’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 VVA 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 AEST Friday, 21 May 2021**. 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, VVA’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 VVA 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 VVA'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 VVA's securities under Listing Rule 17.3.

Listing Rules 3.1 and 3.1A

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

Jonathan Bisset
Compliance Adviser, Listings Compliance (Melbourne)