

18 September 2024

ASX Compliance

BIOXYNE LIMITED (“BXN”): Aware Letter

In response to your letter dated 26 August 2024, we respond as follows:

1. Does BXN consider the Information, or any part thereof, to be information that a reasonable person would expect to have a material effect on the price or value of its securities?

Yes.

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

N/A

3. If the answer to question 1 is “yes”, please provide an explanation as to why BXN did not disclose in the Announcement the relevant information as prescribed by section 4.15 of Guidance Note 8 in relation to a market sensitive contract.

- *the name of the customer;*

The customer requested that it not be named as the supply contract was commercial in confidence, industry sensitivity in relation to prescribed medicinal cannabis products, and potential security concerns in relation to product moving to and from the manufacturing premises.

The name of the customer is included in the attached clarifying statement.

- *term of the contract;*

The Supply Agreement has no fixed term but has a fixed price for a period of twenty-four months from the date of signing.

- *the nature of the products or services to be supplied to the customer;*

The products to be supplied are identified in the announcement as “pharmaceutical cannabis pastilles (gummies and other edible medicines)”

- *the significance of the contract to the entity;*

The Company received a non-binding forward forecast for a five month period to December 2024. The Company has used this forecast to extrapolate forecasted revenue from the Supply Agreement over a twenty four month period at ~\$28 million.

- *any material conditions that need to be satisfied before the customer becomes legally bound to proceed with the contract; and*

At the time of the announcement, the conditions that needed to be met for the customer to proceed with the contract had been met (see response to question 5 below).

- *any other material information relevant to assessing the impact of the contract on the price or value of the entity’s securities.*

See attached clarifying statement and the information in point 5 below.

4. *When did BXN first become aware of the Information?*

The Supply Agreement was signed on 25 July 2024.

5. *If BXN first became aware of the Information before the date of the Announcement, did BXN make any announcement prior to that date which disclosed the Information? If not, please explain why the information was not released to the market at an earlier time, commenting specifically on when you believe BXN was obliged to release the information under Listing Rules 3.1 and 3.1A and what steps BXN took to ensure that the information was released promptly and without delay.*

The Supply Agreement was executed on 25 July 2024, and announced on 21 August 2024. The Company did not make an announcement prior to 21 August 2024 as a number of conditions precedent needed to be met before the Supply Agreement could proceed, namely:

- a) The Company had to confirm that it would be in a position to meet the forecast demand by the dates required by the customer. The Company ordered the machinery for manufacturing the day after the Supply Agreement was signed, and waited until it had confirmation that the machinery had shipped which was 19 August 2024. The machinery had to be shipped from China and until this was finalised, it was uncertain as to whether the Company could meet the forecast demand by the required dates.
- b) The first purchase orders were received from the customer on 6 August 2024.
- c) The customer requested to undertake a visual audit of the production and packing operation. This took place in the week beginning 12 August 2024.
- d) A meeting had to be held to agree the terms of any announcement, this took place on 20 August 2024.

Prior to these conditions being met, the parties could still decide not to proceed with the Supply Agreement. As such, the Company was of the view that it would have been misleading to disclose the Supply Agreement when the likelihood of the Supply Agreement proceeding was unclear.

Both parties were also aware that until an announcement could be made that confidentiality was paramount. There was little movement in the share price or volume of shares traded from the date the contract was executed until following the announcement having been released.

6. *Please confirm that BXN has reasonable grounds to make the statement in the Announcement that it expects minimum sales under the manufacture and supply agreement to be \$28 million, commenting specifically on how the requirements of ASIC's Regulatory Guide 170 have been satisfied.*

BXN has reasonable grounds to make the statement that it expects forecast revenue from the Supply Agreement to approximate a **forecasted** minimum.

The grounds the Company has for making this statement are as follows:

- The Company received an initial order for \$1.6 million (2.4 million units), and a deposit payment of \$900,000.
- The Company has received the first five months forecast at 1.8 million units per month or \$1.22 million per month from the customer
- The parties have agreed pricing for a 24 month period.

On this basis, the Company has a reasonable basis for expecting that the orders from the customer over the 24-month period will be consistent with the initial order and forecasts given by the customer. It is noted that given this is a short-term estimate (not exceeding 2 years) and based on events that the Company reasonably expects to occur (given the circumstances referred to above), as set out in RG170.39, there is reasonable grounds for making the statement about the forecast revenue.

7. *Please confirm that BXN is in compliance with the Listing Rules and, in particular, Listing Rule 3.1.*

We confirm that BXN is in compliance with the Listing Rules, and in particular Listing Rule 3.1.

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

BXN's responses to this Aware Letter have been approved by the Board.



Guy Robertson
Company Secretary

For further information contact:

Guy Robertson
Company Secretary
Bioxyne Limited
guy@bioxyne.com



26 August 2024

Mr Guy Robertson
Company Secretary
Bioxyne Limited
Suite 506, L 5, 50 Clarence St, Sydney NSW 2000

By email: guy.robertson@bioxyne.com

Dear Mr Robertson

Bioxyne Limited ('BXN'): ASX Aware Letter

ASX refers to the following:

- A. BXN's announcement titled "BXN Manufactures First Pharmaceutical Cannabis Gummies" (the '**Announcement**') released on the ASX Market Announcements Platform on 21 August 2024 which disclosed (relevantly):

*"In July 2024 BLS also signed a 2-year manufacture and supply agreement for a forecast minimum of \$28m of THC Gummies to one of Australia's largest cannabis companies." (the '**Information**')*

- B. The change in the price of BXN's securities from \$0.005 immediately prior to the Announcement to a high of \$0.017 (240%) on 23 August 2024 after the 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. ASIC's *Regulatory Guide 170*: Prospective financial information ('**RG 170**'), which outlines ASIC's guidance on disclosure of prospective financial information. Specifically, RG 170 states (relevantly):

"RG 170.17 - The making of a statement that contains prospective financial information (i.e. a forward looking statement) must have reasonable grounds or it will be taken to be misleading under s728(2) or 769C of the Corporations Act. What are 'reasonable grounds' should be determined objectively in light of all of the circumstances at the time of the statement, so that a reasonable person would view as reasonable the grounds for the statement.

*RG 170.42 - The reasonable grounds requirement means that there should be a relevant factual foundation for the prospective financial information and that the information is not contrived: see *George v. Rockett* (1990) 170 CLR 104 and *Re Aldred & Dept of the Treasury* (1994) 35 ALD 685.*

RG 170.59 - Investors should be given enough information to enable them to: (a) assess whether the prospective financial information is relevant and reliable (i.e. to form their own view about how reasonable the grounds are for making the statement); and (b) identify with certainty the facts and circumstances that support prospective financial information, as well as being able to demonstrate that the information is reasonable."

- E. Section 4.15 of *Guidance Note 8 Continuous Disclosure: Listing Rules 3.1 – 3.1B*, which states (relevantly):

"Similarly, depending on the circumstances, ASX would generally expect an announcement about the signing of a market sensitive contract with a customer to include information about:

- *the name of the customer;*
- *the term of the contract;*
- *the nature of the products or services to be supplied to the customer;*

- *the significance of the contract to the entity;*
- *any material conditions that need to be satisfied before the customer becomes legally bound to proceed with the contract; and*
- *any other material information relevant to assessing the impact of the contract on the price or value of the entity's securities.*

In disclosing the significance of the contract to the entity, regard should be had to the guidance below about forward-looking statements. For example, a statement about the projected revenue to be derived from a customer contract or any other projection that is a proxy for revenue will be a forward-looking statement and therefore must be based on reasonable grounds or else it will be deemed to be misleading.

The disclosure of the name of the counterparty/customer with whom an entity has entered into a market sensitive contact is often particularly significant. It allows the market to assess the standing and creditworthiness of the counterparty/customer. In the case of a customer contract, it also allows the market to assess the quality of the customers the entity is dealing with and the quality of the revenue it is earning from them."

F. 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."

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

H. 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."

I. 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 BXN to respond separately to each of the following questions:

1. Does BXN consider the Information, or any part thereof, 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”, please provide an explanation as to why BXN did not disclose in the Announcement the relevant information as prescribed by section 4.15 of Guidance Note 8 in relation to a market sensitive contract.
4. When did BXN first become aware of the Information?
5. If BXN first became aware of the Information before the date of the Announcement, did BXN make any announcement prior to that date which disclosed the Information? If not, please explain why the information was not released to the market at an earlier time, commenting specifically on when you believe BXN was obliged to release the information under Listing Rules 3.1 and 3.1A and what steps BXN took to ensure that the information was released promptly and without delay.
6. Please confirm that BXN has reasonable grounds to make the statement in the Announcement that it expects minimum sales under the manufacture and supply agreement to be \$28 million, commenting specifically on how the requirements of ASIC’s Regulatory Guide 170 have been satisfied.
7. Please confirm that BXN is in compliance with the Listing Rules and, in particular, Listing Rule 3.1.
8. Please confirm that BXN’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 BXN 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 AEST 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, BXN’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 BXN to request a trading halt immediately if trading in BXN’s securities is not already halted or suspended.

Your response should be sent by e-mail to **ListingsComplianceSydney@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 BXN’s securities under Listing Rule 17.3.

Listing Rules 3.1 and 3.1A

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