



Market Announcement

4 May 2020

iSignthis Limited (ASX: ISX)

Release of correspondence by ASX with ISX

In the interest of an informed market, ASX Limited ('ASX') releases a copy of ASX's letter to ISX today regarding assertions that ISX has made in communications with its shareholders that *"ASX has not allowed the Company to communicate with its shareholders via the ASX platform"*.

Issued by ASX Limited



4 May 2020

The Board of Directors
iSignthis Ltd
456 Victoria Parade
East Melbourne VIC 3002

By email

Dear Directors

iSignthis Ltd ('ISX'): Misleading Communications with Shareholders

ASX Limited ('ASX') is writing to ISX in connection with ISX's email to ASX entitled '*Letter to Shareholders: ASX Directions*' sent by ISX to ASX at 2.36 pm on 1 May 2020 ('ISX Shareholder Email'), which ASX infers from the information in the header to the email was also sent by ISX to its shareholders at or about that time.

The ISX Shareholder Email included the following statement:

'Please find attached a Market Update that was placed on the ASX announcement platform yesterday at circa 4.30 pm and again today.'

Unfortunately, the ASX has not allowed the Company to communicate with its shareholders via the ASX platform, so we are writing to our shareholders directly. By Copy to ASX under LR17.3 [sic] and 17.3.1 [sic], we expect that the ASX will publish this communication in order to ensure that there is an informed market.'

The references to listing rules 17.3 and 17.3.1 in the quoted passage above are an error (those rules relate to ASX's power of suspension rather than the release of information and documents on MAP). They presumably should have been references to listing rules 3.17 and 3.17.1.

The Market Update referred to in the quoted passage above is a document entitled '*Shareholders Update re ASX Directions*' dated 1 May 2020 ('ISX Update'). The genesis of that document is described below.

The purpose of this letter is to correct the statement made by ISX and quoted above that "*ASX has not allowed the Company to communicate with its shareholders via the ASX platform*". ASX considers this statement misleading.

First, the purpose of ASX Market Announcements Platform ('MAP') is not for listed companies to communicate with their shareholders *simpliciter*, but rather to lodge announcements to the market under the listing rules.

Secondly, it is just not correct on the facts (as outlined below) to say that ASX has not allowed ISX to communicate with its shareholders – the true position is that, in accordance with its published guidance, ASX has not allowed ISX to release certain information on MAP that could mislead ISX shareholders or the market more generally.

In this regard, section 14 of ASX Listing Rules Guidance Note 14 *ASX Market Announcements Platform*, which applies to all market announcements (including those lodged under listing rule 3.17.1), states:

'An announcement for release to the market must be accurate, complete and not misleading.

Opinions expressed in an announcement should be honestly held and balanced and should be clearly identified as a statement of opinion rather than a statement of fact ...

MAP should only be used to publish information that is appropriately given to ASX under the Listing Rules or the Corporations Act for publication to the market. It should not be used as a guise to publish material that is really promotional, political or tendentious in nature.

An announcement for release to the market must also be couched in language that is appropriate for release to the market. It should be factual, relevant and expressed in a clear and objective manner. Emotive, intemperate or defamatory language should not be used ...

ASX may refuse to accept or publish an announcement from a listed entity that does not meet the standards described above or may require the entity to lodge a corrective announcement.'

Thirdly, the ISX Update attached to the ISX Shareholder Email was not the version of the ISX Update lodged by ISX for publication on MAP at 4.23 pm on 30 April 2020 (the first version) nor the version lodged by ISX for publication on MAP at 10.57 am on 1 May 2020 (the second version). Both the first version and the second version had been rejected by ASX for publication on MAP as being misleading and therefore not suitable for release to the market under ASX's published guidance (see below). Those facts are nowhere mentioned in the ISX Shareholder Email.

The ISX Update attached to the ISX Shareholder Email was in fact a third version that had not been lodged by ISX for publication on MAP.

ASX had told ISX in two separate telephone conversations, one in the morning and one in the middle of the day, on 1 May 2020 – well before the ISX Shareholder Email was sent – that ASX was deferring its review of any further versions of the ISX Update due to its concerns about the contents of the first two versions. ASX also mentioned in the middle of the day conversation its concerns about ISX's attempted misuse of listing rule 3.17.1 and that ASX was in the process of writing to ISX that day regarding those concerns and that it would not review any further versions of the ISX Update until after that letter had been sent to ISX. That letter was promptly sent to ISX at 2.37 pm on 1 May 2020. ISX chose to send the ISX Shareholder Email just prior to receiving that letter, despite being forewarned that a letter from ASX directly relevant to the matters referred to in the ISX Shareholder Email was imminent.

The genesis of the ISX Update

Below is a brief history of the ISX Update:

1. ISX attempted to release the first version of the ISX Update on MAP at 4.23 pm on 30 April 2020. ASX advised ISX in separate telephone conversations at 5.55 pm with ISX's CEO and CFO and at 5.59 pm with ISX's Chairman that day that ASX would not release the first version of the ISX Update on MAP because, in ASX's view, it was misleading and therefore not suitable for release to the market under ASX's guidance. The particular passage to which ASX objected stated:

*'... the Company notes that each of the directors, officers and Red 5 Solutions who hold ordinary shares received on conversion of the milestone performance rights have previously offered on the 17th December 2019 to place those shares in voluntary escrow. **They remain committed to do so for a total period of 12 months from today.***

ISX expects that, upon satisfying the written directions of the ASX, together with the voluntary escrow of the milestone performance shares, the ASX will allow ISX to recommence trading of its securities.'

ASX considered the highlighted sentences above to be misleading. At no stage up to and including 30 April 2020 had any of the ISX directors, officers or Red 5 Solutions given any commitment to ASX to have their shares escrowed for a period of 12 months. Nor had ASX given any indication to ISX that compliance with ASX's written directions and a "voluntary escrow" for 12 months from 30 April 2020 would alone be sufficient for ASX to reinstate ISX's shares to quotation.

During the course of the above-mentioned telephone conversations, both ISX's Chairman and ISX's CEO stated that the ISX Update was a document ISX had sent or intended to send to its shareholders that was being lodged by ISX under listing rule 3.17.1 and that ASX had no right to reject it for publication or to require any changes to it under that rule.

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2. ISX attempted to release the second version of the ISX Update dated 1 May 2020 at approximately 10.57 am that morning. The second version included some modifications to the statements quoted above from the first version and also attached a copy of a letter from ASX to ISX dated 1 May 2020 setting out various directions to ISX under Listing Rule 18.8 ('ASX's Directions Letter'). ASX again advised ISX in a telephone conversation at 11.14 am with ISX's Chairman that ASX would not release the second version of the ISX Update on MAP because it did not adequately address the issues raised by ASX in relation to the first version. ISX's Chairman was also invited to telephone the writer to speak about the ISX Update.
 3. At 11.26 am on Friday 1 May 2020 the writer and ISX's Chairman had a telephone conversation that lasted for approximately 50 minutes in which (among other things) the writer explained to ISX's Chairman that ASX had withheld the first two versions of the ISX Update from publication on MAP because they were misleading, and because they were lodged under listing rule 3.17.1 purportedly as a document sent to ISX shareholders when there was no evidence to suggest that they in fact had been sent to ISX shareholders.
- ISX's Chairman confirmed in that telephone conversation that the ISX Update at that stage had not been sent to ISX shareholders. He further confirmed that another document entitled '*Letter to Shareholders – Federal Court Action*' dated 30 April 2020 ('ISX 30 April Letter'), which had been released by ISX on MAP purportedly under listing rule 3.17.1 on that date, also had not been sent to ISX shareholders.
- During that telephone conversation, the writer specifically advised ISX's Chairman that ASX was in the process of writing to ISX regarding the ISX Update and ISX's misuse of listing rule 3.17.1.
4. ASX wrote a letter to ISX ('ASX's LR 3.17.1 Letter') on 1 May 2020 (copy attached) regarding the ISX Update and the ISX 30 April Letter.

ASX's LR 3.17.1 Letter was sent to ISX's Chairman and copied to (among others) ISX's CEO, Mr Karantzis, at 2.37pm on 1 May 2020. It contained a direction to ISX concerning the lodgement of documents under listing rule 3.17.1, as follows:

'In a conversation with [ASX] yesterday, you stated that the ISX Update was a letter to ISX shareholders that ASX could not prevent being released under listing rule 3.17.1.

When questioned by the writer today, you confirmed that neither the ISX Letter nor the ISX Update had in fact been sent to ISX shareholders.

Listing rule 3.17.1 provides that an entity must immediately give ASX a copy of a document it sends to the holders of its securities generally or in a class.

Listing rule 19.2 provides that a listed entity must comply with the listing rules as interpreted in accordance with their spirit, intention and purpose and in a way that best promotes the principles on which the listing rules are based.

The purpose of listing rule 3.17.1 is to inform the market of genuine communications an entity has with its shareholders that may be relevant to other investors, not to release a market announcement or press release in the guise of a shareholder communication.

Please cease this conduct immediately.

In the future, any announcement ISX properly makes under listing rule 3.17.1 must take the form of a cover letter attaching the relevant shareholder communication, with confirmation in the letter that the attached communication has in fact been sent to shareholders or a class of shareholders and is being lodged with ASX under listing rule 3.17.1. The cover letter should have ISX's name, address and corporate logo, should be dated and should identify the title of the body, or the name and title of the officer, of ISX who authorised the cover letter to be given to ASX (see listing rule 15.5).

ASX is imposing this requirement on ISX under listing rule 18.8.'

ASX would note that this direction simply brings ISX into line with normal market practice when a listed entity lodges a document sent to shareholders under listing rule 3.17.1.

5. Just prior to receiving ASX's LR 3.17.1 Letter, ISX sent the ISX Shareholder Email to its shareholders. ISX did so despite being forewarned by ASX that a letter from ASX directly relevant to the matters referred to in the ISX Shareholder Email was imminent.

The ISX Shareholder Email attached a composite PDF document incorporating a third version of the ISX Update together with a copy of ASX's Directions Letter. The third version included some further modifications to the statements quoted above from the first version.

The ISX Shareholder Email did not accord with usual market practice regarding the form and content of lodgements under listing rule 3.17.1. Nor was it formally lodged by ISX for release on MAP under listing rule 3.17.1.

6. At 8.12am on 4 May 2020, ISX formally lodged a copy of the ISX Shareholder Email for release on MAP under listing rule 3.17.1, this time reformatted as a letter to shareholders attaching the third version of the ISX Update and ASX's Directions Letter. It has since been released by ASX to the market, despite ASX having continuing concerns with the references in the ISX Update to the 'voluntary' escrow arrangements.

ASX is releasing a copy of this letter and ASX's LR 3.17.1 Letter in the exercise of its powers under listing rule 18.7A in the interests of a properly informed market and in order to ensure that the market operates in a fair, orderly and transparent way.

Yours sincerely



Kevin Lewis
Chief Compliance Officer, ASX Limited



1 May 2020

Mr Timothy Hart
Chairman
iSignthis Ltd
456 Victoria Parade
East Melbourne VIC 3002

By email

Dear Mr Hart

iSignthis Ltd ('ISX'): Escrow offer

ASX Limited ('ASX') refers to the document entitled '*Letter to Shareholders – Federal Court Action*' dated 30 April 2020 ('ISX Letter') and released by ISX on the ASX Market Announcements Platform ('MAP') purportedly under listing rule 3.17.1 yesterday afternoon.

ASX also refers to the announcement entitled '*Shareholders Update re ASX Directions*' dated 30 April 2020 ('ISX Update') that ISX attempted to release on MAP yesterday evening. ASX declined to release the ISX Update on the basis that, in ASX's view, it was misleading.

Misuse of listing rule 3.17.1

In a conversation with James Gerraty yesterday, you stated that the ISX Update was a letter to ISX shareholders that ASX could not prevent being released under listing rule 3.17.1.

When questioned by the writer today, you confirmed that neither the ISX Letter nor the ISX Update had in fact been sent to ISX shareholders.

Listing rule 3.17.1 provides that an entity must immediately give ASX a copy of a document it sends to the holders of its securities generally or in a class.

Listing rule 19.2 provides that a listed entity must comply with the listing rules as interpreted in accordance with their spirit, intention and purpose and in a way that best promotes the principles on which the listing rules are based.

The purpose of listing rule 3.17.1 is to inform the market of genuine communications an entity has with its shareholders that may be relevant to other investors, not to release a market announcement or press release in the guise of a shareholder communication.

Please cease this conduct immediately.

In the future, any announcement ISX properly makes under listing rule 3.17.1 must take the form of a cover letter attaching the relevant shareholder communication, with confirmation in the letter that the attached communication has in fact been sent to shareholders or a class of shareholders and is being lodged with ASX under listing rule 3.17.1. The cover letter should have ISX's name, address and corporate logo, should be dated and should identify the title of the body, or the name and title of the officer, of ISX who authorised the cover letter to be given to ASX (see listing rule 15.5).

ASX is imposing this requirement on ISX under listing rule 18.8.

Any other announcements that ISX submits for publication on MAP should be made under the relevant rule in chapter 3 of the listing rules (which in most cases will be listing rule 3.1) and comply with the content guidelines for such announcements set out in Guidance Notes 8 and 14.

Misleading statements in ISX Letter and ISX Update

ASX notes the statement in the ISX Letter that:

*'... the Company notes that each of the directors, officers and Red 5 Solutions who hold ordinary shares received on conversion of the milestone performance rights have previously offered on the 17th December 2019 to place those shares in voluntary escrow. **They remain committed to do so for a total period of 12 months from today.***

ISX expects that, upon satisfying the written directions of the ASX, together with the voluntary escrow of the milestone performance shares, the ASX will allow ISX to recommence trading of its securities.'

The highlighted sentences above are clearly misleading. At no stage have any of the ISX directors, officers or Red 5 Solutions given any commitment to ASX to have their shares escrowed for a period of 12 months (see below). Nor has ASX given any indication to ISX that compliance with ASX's written directions and a "voluntary escrow" for 12 months from today would alone be sufficient for ASX to reinstate ISX's shares to quotation.

The ISX Update that ASX declined to release to the market also included the following statements:

'In addition, the Company repeats its 17 December 2019 offer of escrow of the milestone performance shares (as defined in the 2014 prospectus) by the directors, officers, Select All Enterprise Ltd and Red 5 Solution Ltd.

The ASX 'Statement of Reasons' is primarily concerned with the milestone performance shares arising from the revenue generated by the Company's deployment of technology platforms. In order to allow time to resolve any further concerns about this matter, the milestone performance shares held by directors, Select All Enterprise Ltd and Red 5 Solutions Ltd will be voluntarily placed in escrow for 12 months from today, noting that there has been an effective escrow during the lengthy period of suspension. The Company is already proactively engaging with ASIC which has been examining the issues since the 8th October 2019, following the suspension of ISX.

ISX expects that, upon satisfying the written directions of the ASX, together with the voluntary escrow of the milestone performance shares, the ASX will allow ISX to recommence trading of its securities.'

These statements are also misleading, for the same reasons as set above in relation to the ISX Letter.

The facts regarding this matter are set out in section 11 of the Statement of Reasons published by ASX to the market yesterday. As there stated:

11.1 In an open letter to ASX dated 17 December 2019, the solicitors for ISX strongly objected to ASX's decision to publish the findings of its investigations to the market and conveyed the following offer to ASX:

'... in order to forthwith lift the suspension of ISX's shares from quotation, we are instructed that all of the directors and officers of ISX who received ordinary shares from the conversion of the performance rights and Red 5 Solutions Limited, are prepared to escrow those ordinary shares which they currently hold for a period of 6 months. This represents 84% of the ordinary shares which converted from the performance rights (being 282,750,000 of the 336,666,667 issued to directors, officers, staff and Red 5 Solutions Limited). The remaining ordinary shares have either been sold (the vast majority having been sold by the Chief Operating Officer when he resigned from the company) or are too dispersed among staff members to be included in the proposed 6 month escrow arrangement.'

11.2 ASX responded to this offer by letter dated 20 December 2019 as follows:

'ASX is unlikely to consider that ISX's securities could be reinstated to quotation without appropriate disclosure to ensure that the market is informed. Your letter suggests, but does not expressly state, that ISX's proposal is made on the basis that ASX does not publish its finalised findings. Would you please confirm if that is ISX's proposal? If so, you should also detail the disclosure to the market that ISX considers would provide a suitable basis for the reinstatement of ISX's securities to quotation. Please note that any such disclosure would need, at a minimum, to appropriately inform the market with respect to:

- The four key contracts referred to in our draft findings*
- The matters under review by ASX and ASIC and the potential consequences for ISX shareholders if those matters result in enforcement action by ASIC.*

In order that ASX can properly consider this proposal, please also provide the following additional information:

- Details of the current holders of the 282,750,000 Milestone Shares that are proposed to be escrowed, including how and when those holders acquired their shares and for what consideration*
- Details of the 53,916,667 Milestone Shares which you say have been sold, including: details of the persons who were issued these shares, how and when and for what consideration they were issued these shares, how and when and for what consideration they sold these shares, and, if they sold these shares through an off market transaction, to whom they were sold*
- A copy of ISX's share register evidencing the information referred to in the previous two bullet points*
- Draft terms of the proposed escrow arrangement, including the terms on which the Milestone Shares will be released from escrow and the applicable terms if, before the expiry of the escrow period, ASIC commences proceedings concerning the issue of the Milestone Shares.*

Without representing that any proposal put forward by ISX will be acceptable to ASX, and subject to any representations that may be made by ISX with respect to the matters set out in ASX's draft findings, in view of the seriousness of those matters and the ongoing ASIC investigation, an escrow period of 12 months is more likely to be considered suitable by ASX. Please also confirm if ISX is prepared to procure a 12 month escrow period for the Milestone Shares.

Consistently with our previously stated position, ASX would consult with ASIC in relation to any proposal put to it by ISX concerning its reinstatement to quotation. This would include confirming with ASIC that the terms of any proposed escrow arrangement and announcement were acceptable to it.'

This remains ASX's position.

- 11.3 ISX has not responded to ASX's letter dated 20 December 2019 beyond stating in its 24 January Submissions that, in light of ISX's detailed responses to ASX's Query Letters, the market is fully informed about the four Key Contracts, that ISX's offer ought to have been accepted by ASX and that ASX's failure to do so was unreasonable.
- 11.4 ASX does not agree that the market has been fully informed about the Key Contracts as a consequence of the publication of the ASX's Query Letters and ISX's responses. In ASX's opinion, the information concerning the Key Contracts set out in section **Error! Reference source not**

found. of these reasons ought to have been clearly disclosed by ISX to the market. The market should not have to try to distil that information from ASX's lengthy Query Letters and ISX's lengthy and sometimes incomplete or argumentative responses. Hence, ASX has determined that it is appropriate to publish this statement of reasons to correct the lack of information, and misinformation, in the market on the matters set out in it.

- 11.5 Further, ASX has not acted unreasonably by not accepting ISX's offer. ASX's response to ISX's offer in its letter to ISX dated 20 December 2019 was clearly reasonable in the circumstances. ASX could not, acting responsibly as a market operator, have allowed ISX's shares to resume trading without the market being properly informed of the concerns ASX has identified with the Key Contracts, as well as the matters under review by ASX and ASIC and the potential consequences for ISX shareholders if those matters result in enforcement action by ASIC.'

ASX is not currently intending to release this letter to the market. However, if there are any further instances of ISX mischaracterising market announcements as communications to shareholders or making clearly misleading statements in such announcements, ASX reserves the right to release this letter under listing rule 18.7A so that the market is aware that ASX has previously warned ISX about this type of behaviour.

Yours sincerely



Kevin Lewis
Chief Compliance Officer, ASX Limited