



NOVAEYE
MEDICAL®

4 January 2024

The Manager
ASX Limited
20 Bridge Street
SYDNEY NSW 2000

Attention: Ramona Seeto

Dear Ramona,

Nova Eye Medical Limited (EYE) Aware Query

Background

On 27th October 2023 EYE became aware of changes proposed by Wisconsin Physician Services (WPS) a Medicare Administrative Contractor (MAC) to US Medicare reimbursement for glaucoma surgeries conducted using certain glaucoma surgical devices in the USA, may affect the Company's business.

On the 27th October EYE requested a trading halt to allow time for EYE to consider the detail of the proposed changes and the confusion that these proposed changes would make in markets.

On the 31st October 2023 EYE announced the proposed changes by WPS and that they may come into effect on December 24th 2023.

On the 10th November 2023 EYE became aware that an additional four MACs proposed changes similar to those proposed by WPS and **requested a trading halt** to allow time for EYE to consider detail of the changes proposed.

On the 14th November 2023 EYE announced that changes by a total of five MAC's may come into effect on December 24th 2023.

On the 28th November 2023 EYE announced that the proposed changes by National Government Services, one of the five MAC's, had been deferred to March 23rd 2024.

On the 8th December 2023 EYE announced that the proposed changes by all five MAC's had been deferred to January 29th 2024.

On the 29th December 2023 EYE announced that the proposed changes by the five MAC's had been withdrawn.

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ASX letter dated 29th December 2023

We refer to your letter dated 29th December 2023 with respect to EYE's announcement "USA Medicare Changes Withdrawn" lodged on the ASX Market Announcements Platform and released at 10:12 AM AEDT on 29th December 2023 (the 'Announcement') in which you have requested certain information.

Our responses are detailed below:

1. Does EYE 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?

As evidenced by our announcements referred to above and marked "market sensitive", we did consider the information market sensitive.

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

Not applicable. The announcement was material.

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

EYE was aware on 26th December 2023 (USA time), 27th December 2023 Australian time, Wells Fargo in USA released a research note in the USA stating that it believed that the Medicare changes would not become final. The USA analyst cited "remarks made by the American Glaucoma Society to its membership, based on input from congressional offices".

EYE, on the morning of December 27th checked each of the websites of the five MAC's and noted that no change in status was evident on their websites. This status was independently confirmed by our US based reimbursement consultants with whom EYE has a standing engagement (Consultants) to verify such changes. As the MAC's report independently, and their specific regional Geo-Location website settings, makes content confirmation time-consuming. EYE's Consultants confirmed that no official change in status had been posted on any of the 5 MAC's websites. EYE checked again on the 28th and there were still no changes announced. At 6am (ACT) on December 29th the EYE team and Consultants commenced checking the status of content on this matter on the five MAC's websites and confirmed that each had been updated to reflect that the proposed changes had been withdrawn. As soon as this information was confirmed EYE drafted a release for review in accordance with EYE's governance procedures. The release was lodged with the ASX platform as soon as it was approved by the EYE Board at about 9.30am Adelaide time.

EYE has acted in accordance with Listing Rules 3.1 and 3.1A in that it made the release promptly when the announcements by the MAC's had been confirmed by EYE's management and its US based Consultants. It is EYE's view that given the inconsistency of messaging and significant confusion created by the MAC's changes since 27th October 2023, to issue any announcement prior to the MAC's officially issuing their ruling, is not in accordance with EYE's governance procedures and could be misleading.

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

EYE confirms that it is complying with Listing Rules and, in particular, Listing Rule 3.1

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

EYE confirms that the above responses have been authorised and approved by the Board of Directors.

Yours faithfully,



Simon Gray
Company Secretary
NOVA EYE MEDICAL LIMITED



29 December 2023

Reference: 86534

Mr Simon Gray
Company Secretary
Nova Eye Medical Limited

Dear Mr Gray

Nova Eye Medical Limited ('EYE'): Aware Query

ASX refers to the following:

- A. EYE's announcement titled "USA Medicare Changes Withdrawn" lodged on the ASX Market Announcements Platform and released at 10:12 AM AEDT on 29 December 2023 (the 'Announcement'), disclosing the proposed Local Coverage Determinations for minimally invasive glaucoma surgery proposed by five Medicare Administrative Contractors and scheduled to become effective on January 29, 2024, will not go into effect ('Information').
- B. EYE's share price on 29 December 2023 prior to the lodgement of the Announcement, which was approximately 41% higher than the closing price on 28 December 2023 on larger than usual volumes.
- 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."*

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- 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 EYE to respond separately to each of the following questions and requests for information:

1. Does EYE 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 EYE first become aware of the Information?
4. If the answer to question 1 is "yes" and EYE first became aware of the Information before the relevant date, did EYE 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 EYE was obliged to release the information under Listing Rules 3.1 and 3.1A and what steps EYE took to ensure that the information was released promptly and without delay.
5. Please confirm that EYE is complying with the Listing Rules and, in particular, Listing Rule 3.1.
6. Please confirm that EYE'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 EYE 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 Thursday, 4 January 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, EYE'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 EYE to request a trading halt immediately.

Your response should be sent to me by e-mail at **ListingsComplianceSydney@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 EYE'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;

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- 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 EYE's securities under Listing Rule 17.3.

Listing Rules 3.1 and 3.1A

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

ASX reserves 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.

Yours sincerely

ASX Compliance