



25 September 2020

Ms Jessica Coupe
Adviser, Listings Compliance (Perth)
ASX Compliance Pty Ltd
Level 40, 152 – 158 St Georges Terrace
PERTH WA 6000

By email: listingscomplianceperth@asx.com.au

Dear Jessica

Response to ASX Query

In response to your Query Letter dated 3 September 2020, we provide the following information in response to the questions and requests for information therein (following your numbering):

1. A copy of the executed Original Term Sheet has been provided.
2. Copies of the executed Formal Sale Agreement and a deed of variation to that agreement have been provided.
3. With reference to the Original Term Sheet:
 - (a) Regarding exclusivity, clause 2 provided that “Under the terms of the Option, subject to the Initial Conditions (as defined below) being satisfied, Tyranna has agreed to grant the Buyer an exclusive (our emphasis) 7 month option to do all things required to complete the Acquisition...”.

Regarding the “Initial Conditions”, clause 4 provided that “The successful completion of Due Diligence, receipt of the ASX Preliminary Approval¹ and the payment of the Option Fee in full are the **Initial Conditions**”. We note that The Initial Conditions were satisfied on 18 November 2019 when Syngas paid the balance of the Option Fee.

Regarding the binding nature of the Original Term Sheet, clause 5 provided that “The Parties agree that, on and from the date that the Initial Conditions have been satisfied, this Terms Sheet in its entirety will be legally binding on the Parties (our emphasis) and the Parties will announce the terms of the Acquisition to the ASX in the form of an agreed joint announcement.”

¹ Relating to the restructure of Syngas

- (b) Not applicable.
4. Under the terms of the Formal Sale Agreement (as varied), the sale of the Jumbuck Project to Syngas for consideration of \$2.25 million is subject to the Company obtaining shareholder approval. The payment of the Termination Fee, whilst an integral part of the amended Syngas deal, is not subject to shareholder approval – it is a consequence of a failure to obtain that approval.
5. The tallied results of the proxy voting for Resolution 1 have been provided.
6. The notice convening the general meeting conducted on 31 July 2020 (**Meeting**) provided that proxies must be received by 10.00am on 29 July 2020. Between that time and the commencement of the Meeting, the Company received three offers for the Jumbuck Project, being:
- (a) on 30 July 2020, a conditional offer from Alliance Resources Limited (ASX:AGS) to acquire the Jumbuck Gold Project for \$2 million;
- (b) on 31 July 2020, a conditional offer from Marmota Limited (ASX:MEU) to acquire the Jumbuck Gold Project for \$2.6 million; and
- (c) also on 31 July 2020, an increased offer of \$2 million from Syngas (**Syngas Offer**),
- (together, the **Further Offers**).

In light of the receipt of the Further Offers, the Directors took the view that proxy voting had been undertaken without the benefit of (1) the Directors having had the opportunity to consider the Further Offers, and (2) shareholders having had the opportunity to consider the Directors recommendations in respect of those Further Offers, including the Syngas Offer. The existence of the Further Offers had the potential to significantly improve shareholders' outcomes in respect of the sale of the Jumbuck Project, and to cause the Directors to change their recommendation; the Directors considered that, in all the circumstances, withdrawal of Resolution 1 was appropriate to enable that process to complete, and would have (and should have, in accordance with their fiduciary obligations) withdrawn the resolution regardless of the proxy position.

Tyranna considers that, notwithstanding the exclusivity obligations referred to in paragraph 3(a) above, it was entitled to consider the Further Offers for the following reasons:

- (d) first, one of the Further Offers was the improved Syngas Offer – it goes without saying that Tyranna did not breach its exclusivity obligations by entering into further discussions with Syngas in response to its Further Offer, the consequence of which was to result in a further \$1.3 million being offered; and
- (e) secondly, given the magnitude of the price differential between MEU's and AGS' offers and SYS' original offer, the Directors were entitled to:
- (i) take advice as to the likely consequences of entering into negotiations with either or both of MEU or AGS; and

(ii) develop an understanding of SYS' rights in the event Tyranna breached its exclusivity obligations by:

A. entering into negotiations with either or both of MEU or AGS; or

B. selling the Jumbuck Project to MEU or AGS.

Having taken advice, and having given the matter proper consideration, the Directors determined that there was no point in entering into negotiations with either or both of MEU or AGS at this time.

7. There were no terms in the Formal Sale Agreement which necessitated Syngas to prepare the Syngas Offer.
8. On 10 August 2020, in the Company's announcement entitled "Consideration for Jumbuck Gold Project increased to \$2.25m", the Company announced that the terms of the Formal Sale Agreement had been varied to provide for an increase in the consideration payable for the Jumbuck Gold Project and an obligation to pay the Termination Fee if shareholders did not approve the transaction. Although the announcement did not make explicit reference to the Marmota and Alliance offers not being accepted, the clear inference of the acceptance of the Syngas Offer was that the Marmota and Alliance offers had not been accepted; the Company considers that the ongoing commentary confirms that to be the market's understanding.
9. The Company confirms that it is complying with the Listing Rules and, in particular, Listing Rule 3.1.
10. The Company confirms that the responses to the questions and requests for information have been authorised by the Board of Directors.

On behalf of the Board

Tim Slate
Company Secretary



3 September 2020

Mr Tim Slate
Company Secretary
Tyranna Resources Limited
Level 26, 140 St Georges Terrace
PERTH WA 6000

By email

Dear Mr Slate

Tyranna Resources Limited ('TYX'): Query Letter

ASX refers to the following:

- A. TYX's announcement titled "Term Sheet for the Sale of Jumbuck Gold Project" released on the ASX Market Announcements Platform ('MAP') on 17 October 2019, disclosing that (among other things):
- A term sheet had been signed in relation to an option granted by TYX to Syngas Limited ('Syngas') to acquire all of the issued shares in Half Moon Pty Ltd ('HMP') (the owner of a joint venture interest) and tenements owned by HMP and Trafford Resources Pty Ltd, collectively referred to as the "Jumbuck Gold Project", for cash consideration of \$950,000 ('Original Term Sheet') (the 'Syngas Offer').
 - A non-refundable option fee of \$50,000 is payable (\$10,000 paid in cash (which had been paid) and \$40,000 to be paid subject to due diligence and the 'receipt of ASX preliminary approval to the restructuring of Syngas...').
 - Once the option fee was paid, the "Term Sheet will be binding".
- B. ASX's email to Blackwall Legal of 24 April 2020 which confirmed that Listing Rule 11.4 applied to the sale of the Jumbuck Gold Project to Syngas ('Transaction') and the following:
- "Accordingly, if the Company proceeds with the Transaction, it must obtain shareholder approval for the Transaction before proceeding to consummate, including any steps towards consummating, the Transaction (see section 3.3 of Guidance Note 12).*
- ASX notes that any announcement in respect of the Transaction must disclose that prior shareholder approval is required, and any Transaction document/s must be subject to the Company obtaining that shareholder approval..."*
- (the 'ASX Email')
- C. TYX's announcement titled "Update on Sale of the Jumbuck Gold Project" released on MAP on 24 April 2020 which confirmed that TYX had been advised by ASX that Listing Rule 11.4 applied to the Transaction and 'it will be required to obtain shareholder approval as a precondition to completing the Disposal.'
- D. Marmota Energy Limited's ('Marmota') announcement titled "\$1.3m fully-funded Offer for proposed acquisition of TYX Jumbuck Gold Project" cross released to TYX's ASX platform and released on MAP at 12.33pm AEST on 14 May 2020 which outlines the terms of Marmota's initial offer to acquire the Jumbuck Gold Project from TYX (details below).
- E. TYX's announcement titled "Offer to acquire Jumbuck Gold Project Received" released on MAP at 6.31pm AEST on 14 May 2020, disclosing that (among other things):

- Marmota had made a formal offer to acquire the assets comprising the Jumbuck Gold Project (the same assets the subject of the Syngas Offer). Marmota had offered to pay \$A\$1.3 million (\$1 million in cash and the remainder by way of in specie distribution of Marmota shares to TYX shareholders) (the 'Marmota Offer').
 - *"The Tyranna Board are considering the offer with consideration to obligations under the Syngas offer and expects to provide an update to its shareholders by 25 May 2020."*
- F. TYX's announcement titled "Update on Sale of the Jumbuck Gold Project" released on MAP on 25 May 2020 ('May Update Announcement'), disclosing in relation to the Marmota Offer (emphasis added):
- "Tyranna has sought legal advice and considers that under the terms of the offer from Syngas Limited ("Syngas" ASX:SYS) as announced on 17 October 2019 and updated on 24 April 2020, which terms include binding exclusivity obligations, **the Company is not in a position to consider alternative offers at this time.**"*
- G. TYX's announcement titled "Formal Agreement signed for the Sale of the Jumbuck Gold Project" released on MAP on 29 June 2020, disclosing that a Share and Asset Sale Agreement (the 'Formal Sale Agreement') had been executed between TYX and Syngas for the sale of the Jumbuck Gold Project, with the same consideration as outlined in paragraph A. The announcement did not refer to any term/s in the agreement regarding exclusivity or competing offers.
- H. TYX's notice of meeting released on MAP on 1 July 2020 (the 'Notice'). Resolution 1 of the Notice was for the approval of the sale of the Jumbuck Gold Project to Syngas for the purposes of Listing Rule 11.4.1(b). The Notice also made the following disclosures:
- Shareholders are encouraged to vote by proxy for health and safety reasons due to the ongoing Covid-19 pandemic (on page 2).
 - Any proxy forms must be received at the specified address no later than 48 hours before the commencement of the meeting (being 10am WST on 29 July 2020 as the meeting was scheduled for 10am WST (12.00pm AEST) on 31 July 2020) (on page 9).
 - On page 15, paragraph 2.7:

"The Directors refer to the Company's ASX announcement of 14 May 2020 regarding Marmota Energy Limited's (ASX:MEU) formal fully-funded \$1.3m offer to acquire all of the Company's rights, title and interest in the Jumbuck Gold Project. Marmota's offer comprised of \$1 million in cash and \$300,000 in Marmota shares (at an issue price equal to the 5-day volume-weighted average price of Marmota's ordinary shares over the 5 trading days prior to issue), to be distributed pro rata to the Company's shareholders.

As announced to ASX on 25 May 2020, the Company sought legal advice in respect of Marmota's offer, and considers that under the terms of the offer from Syngas (as announced to ASX on 17 October 2019 and updated on 24 April 2020), which includes binding exclusivity obligations, the Company is not in a position to consider alternative offers for the Jumbuck Gold Project.

The Company notes that, as at the date of this Notice, Marmota's offer has not been withdrawn."
- I. Alliance Resources Limited's ('Alliance') announcement titled "Offer to Acquire Jumbuck Gold Project from Tyranna Resources Lodged" cross-released to TYX's ASX platform and released on MAP at 5.44pm AEST, which outlines the terms of the Alliance offer to TYX to acquire all of tenements and interests comprising the Jumbuck Gold Project held by TYX or its subsidiaries (details below).

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- J. Marmota's announcement titled "\$2.6m fully funded Binding Cash Offer to acquire TYX Jumbuck Gold Project" cross-released to TYX's ASX platform and released on MAP at 8.15am AEST on 31 July 2020, which stated amongst other things:
- Marmota has made a formal fully funded A\$2.6 binding all cash offer to acquire TYX's Jumbuck Gold Project, immediately adjacent to Marmota ground.
 - The Marmota offer is subject to TYX shareholders voting against the current transaction with Syngas.
 - The Marmota offer exceeds the Syngas offer by 160% and the Alliance offer by \$575,000.
- K. TYX's announcement titled "Further offer to acquire Jumbuck Gold Project received" released on MAP at 8.17am AEST on 31 July 2020, which outlined that Alliance had made a formal offer for TYX's rights, title and interest in the Jumbuck Gold Project for consideration of A\$2.025 million (comprised of a A\$25,000 non-refundable payment for rights to conduct due diligence and a cash payment of A\$2 million). In addition, Alliance had offered for TYX shareholders to participate in a rights issue to subscribe for shares in Alliance up to a total issue value of \$1 million at a discount to the Alliance share price at the time of completion of the proposed transaction.
- L. TYX's announcement titled "Quarterly Activities Report" released on MAP at 11:16am AEST on 31 July 2020 ('June 2020 Quarterly Activities Report'), stating, amongst other things (emphasis added):
- "Tyranna notes that on 31 July 2020 it received a \$2.6m cash offer from Marmota Limited (ASX:MEU) to acquire all of Tyranna's rights, title and interest in the Jumbuck Gold Project. On 30 July 2020, Tyranna received a further cash offer of \$2,025,000 for the Jumbuck Gold Project from Alliance Resources Limited. **Given Tyranna's binding obligations to Syngas, neither offer has been accepted.**"*
- M. Syngas' announcement titled "Acquisition of Jumbuck Gold Project" cross-released to TYX's ASX platform and released on MAP at 12.08pm AEST on 31 July 2020, which stated amongst other things:
- "The Board of Syngas is pleased to announce that Syngas has submitted an increased offer to the Board of Tyranna for the Acquisition. The purchase consideration is now revised to \$2,000,000 for the Jumbuck Gold Project. Syngas intends to proceed with the SASA with the revised purchase consideration of \$2,000,000."*
- N. TYX's announcement titled "Results of Meeting" released on MAP at 1:16pm AEST on 31 July 2020 ('Results of Meeting'), disclosing (emphasis added):
- "The Company notes that in the last two days, it has received an enhanced offer from Marmota Limited (ASX:MEU dated 31 July 2020), an offer from Alliance Resources Limited (ASX:AGS dated 30 July 2020) and a proposed variation of terms from Syngas Limited (ASX:SYS dated 31 July 2020).*
- As a consequence of these developments, the Directors decided to withdraw Resolution 1 as to appropriately consider the competing offers. The Company will update the market in due course."***
- O. TYX's announcement titled "Consideration for Jumbuck Gold Project increased to \$2.25M", released on MAP on 10 August 2020, disclosing the following variations to the Formal Sale Agreement ('Variation'):
- "Consideration: Syngas will pay Tyranna \$2,250,000 for the Jumbuck Gold Project.*
- Termination Fee: If all approvals and resolutions of shareholders of Tyranna as required by ASX or under the Corporations Act necessary to complete the Acquisition are not obtained, Tyranna must pay Syngas \$250,000 as a termination fee."*

The announcement also stated that TYX expects to hold a general meeting of shareholders to approve the transaction in mid-September 2020 and, subject to shareholder approval being obtained, expects settlement to occur soon after.

P. 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.

Q. 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."

R. 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 TYX to respond separately to each of the following questions and requests for information:

1. Please provide a copy of the executed Original Term Sheet and any variations thereof (not for release to the market).
2. Please provide a copy of the executed Formal Sale Agreement and any variations thereof (not for release to the market).
3. Having regard to the ASX Email, and with reference to the Original Term Sheet (and any variations thereof), please:
 - a. outline and explain the term/s which gave rise to the "binding exclusivity obligations" referred to in the May Update Announcement;

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- b. if there was no such express term in the documentation, please outline the basis for TYX's statement in the May Update Announcement that *'the Company is not in a position to consider alternative offers at this time.'*
4. The ASX Email states that *"any Transaction document/s must be subject to the Company obtaining that shareholder approval"*.
- Please confirm that the Variation itself, and the payment of the Termination Fee, is subject to shareholder approval.
5. TYX notified the market regarding the withdrawal of resolution 1 of the Notice (to approve the sale of the Jumbuck Gold Project to Syngas for the purposes of Listing Rule 11.4.1(b)) with the Results of Meeting (that is, after the relevant meeting had been held). The Notice stated however, that proxy votes were due 48 hours before the commencement of the meeting. ASX therefore infers that TYX would have been in possession of the results of the proxy voting for resolution 1 at the time that it withdrew the resolution.
- Please provide the tallied results of the proxy voting for resolution 1 (not for release to market).
6. Having regard to the references in the May Update Announcement, the June 2020 Quarterly Activities Report, and the Notice to TYX's "binding obligations" to Syngas which prevented TYX from considering alternative offers, please explain why TYX withdrew Resolution 1 from the agenda of the 31 July 2020 meeting to "appropriately consider the competing offers".
7. In light of TYX's "binding obligations" to Syngas, and the Formal Sale Agreement, please explain what term/s in the Formal Sale Agreement (or any variation thereof) necessitated Syngas to prepare the revised offer (that subsequently resulted in the Variation) when it already had a binding agreement in place which did not allow TYX to consider any alternative offers?
8. In the Results of Meeting, after noting why Resolution 1 of the Notice had been withdrawn (ie, to 'appropriately consider the other offers'), TYX stated that it would "update the market in due course". If the Alliance and Marmota offers are no longer being considered, please identify the announcement in which TYX informed the market of this. If TYX considered no disclosure was necessary, please explain the basis for that view.
9. Please confirm that TYX is complying with the Listing Rules and, in particular, Listing Rule 3.1.
10. Please confirm that TYX'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 TYX 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 PM AWST Wednesday, 9 September 2020**. 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, TYX'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 TYX to request a trading halt immediately.

Your response should be sent to me by e-mail at **ListingsCompliancePerth@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 TYX'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 TYX's securities under Listing Rule 17.3.

Listing Rules 3.1 and 3.1A

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

Jessica Coupe
Adviser, Listings Compliance (Perth)