



2 July 2012

ASX Compliance Pty Limited
20 Bridge Street
Sydney NSW 2000

Attention: Stephanie Yong, Senior Adviser, Listings (Sydney)

Dear Stephanie

We refer to your letter dated 29 June 2012.

We respond to each of the matters referred to in your letter below.

Rather than respond to each of your questions in isolation, we feel it is appropriate to explain the position in context and answer your questions together below.

Terms not defined in this letter adopt the same definitions as in your letter dated 29 June 2012.

Background facts

- 1.1 The Company first received an unsolicited letter from EB Private Equity (**EBPE**) dated 22 May 2012 which was received on 28 May 2012. This letter contained a highly conditional, uncertain and incomplete expression of interest in making an offer for the Company.
- 1.2 The Company subsequently undertook inquiries in relation to publicly available information in relation to EBPE and was unable to obtain any meaningful information in relation to it. This remains the case today.
- 1.3 At that time, given the matters set out above, the Company had concerns about EBPE's expression of interest and noted that the value indicated in the letter significantly undervalued the Company. The Company subsequently wrote to EBPE indicating that because of the highly conditional, uncertain and incomplete nature of the proposal, the Company was not in a position to give consideration to it.
- 1.4 The Company received a response from EBPE on 30 May 2012 foreshadowing that it would be in further contact. The Company received correspondence from its share registry provider on 19 June 2012 which brought to the Company's attention that the share registry service provider had received a request from EBPE for beneficial holder information which they did not hold. The share registry service provider referred EBPE to the Company. The Company did not receive any such request from EBPE.
- 1.5 On 28 June 2012, the Company received a further letter from EBPE containing a further expression of interest in making an offer for the Company. Despite the this expression of interest being expressed to be "an unconditional offer subject only to legally required due diligence", this letter was again highly conditional, incomplete and uncertain in many material respects, and contained no details of

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EBPE's financial capacity, its management or any terms of the residual equity which was part of the offer.

- 1.6 On the morning of 29 June 2012, the Company became aware that information in relation to an expression of interest concerning the Company was likely to have been known to several third parties outside of the Company including two financial market participants and one property market participant. At that time, the Company did not know the precise extent of any knowledge outside of the Company of the expression of interest.
- 1.7 At the opening of market trading on 29 June 2012, the First Announcement was made.
- 1.8 In the period between the First Announcement and the Second Announcement the Company became aware that international media outlets had details of the EBPE expression of interest as contained on a UK blog site and were intending to publish the details contained on the blog site. The Company also became aware that EBPE's name and the Proposed Value were being reported by SMH Online.
- 1.9 At 1.50pm (AEST) on 29 June 2012 the Second Announcement was provided to the ASX for release to the market.
- 1.10 Late in the afternoon of 29 June 2012 the Company wrote to EBPE seeking considerable further clarification of its proposal and inviting them to make contact with the Chairman of the Company.
- 1.11 In the afternoon of 2 July 2012 the Company received a letter from EBPE informing it that EBPE has decided to withdraw its proposal and subsequently the Company requested and was granted a trading halt. The Company then made an announcement informing the market that EBPE had withdrawn its proposal.

The Company's position on disclosure

The Company has at all times been mindful of its obligations under the Listing Rules including its continuous disclosure obligations.

The Company notes Listing Rule 3.1B in relation to ASX powers to require information to correct or prevent a false market.

The Company also notes ASX Guidance Note 8 and in particular paragraphs 11 to 13. In paragraph 13 of Guidance Note 8 ASX acknowledges that it is important to strike a balance between encouraging timely disclosure of material information and preventing premature disclosure of incomplete or indefinite matters.

Against this background, the Company appropriately took the following position in relation to disclosure:

- (a) At all times the Company has held the position that the information contained in the approaches from EBPE was not deemed to be material for the purposes of Listing Rule 3.1. As stated in the Announcements, this includes for the following reasons:
- the Board at no time had relevant information to qualify or value the approach;
 - the approach was from an entity about which no usual public information is available and the Company has not had available to it any details of EBPE's financial capacity, its investors, its management, or any of the terms of the residual equity. In addition, the approach was on the basis that David Jones shareholders would participate in the "residual equity".
- (b) The Company was concerned to ensure that at all times there was not likely to be information in the public domain that would lead to trading based on a false market.

- (c) As set out above, at the time of the First Announcement the Company was not aware of the extent of broader knowledge of the EBPE expression of interest but was aware that some third parties were aware of the existence of an expression of interest. Given this, and the unusual, incomplete and uncertain nature of the approach, the Company considered that the contents of the First Announcement were appropriate to inform the market while minimising the disclosure of potentially speculative and therefore misleading information which may have risked there being a false market. The Company was concerned not to give more credibility to the approach than was necessary pending receipt of more details from EBPE.

Appropriately, the Company also recommended that shareholders treat any related market comment cautiously. The Company notes its regard for the statements referred to above in paragraph 13 of Guidance Note 8 and also the statement in that paragraph that the "purpose of the rule is to elicit disclosure of the highest quality which is of benefit to the market".

- (d) Once the Company became aware of the further information referred to in paragraph 1.8 above after the First Announcement, it made the Second Announcement. Importantly, the Company was concerned to ensure that public information in relation to a "\$1.65 billion offer" was not misunderstood and was being correctly reported. That is, it was important to ensure that the components of the proposal (including the "residual equity") were also provided. This information was provided by the Second Announcement.

- (e) To the extent that it could be said that the information contained in the expression of interest from EBPE was material for Listing Rule 3.1 purposes (which the Company does not consider it was) the Company did not make an announcement until the opening of the market on the morning of 29 June 2012 because up until that time each limb of the exception in Listing Rule 3.1A applied in relation to the approach. That is, a reasonable person would not expect the information to be disclosed, the information was confidential, concerned an incomplete proposal or negotiation and was insufficiently definite to warrant disclosure.

The Company submits that in particular it could rely on the "reasonable person" limb, given the insufficiency of information in relation to the proposer and proposal and the issues in meeting the objectives of Listing Rule 3.1 as enumerated in Guidance Note 8.

- (f) Further, and again even if information in relation to either of the expressions of interest from EBPE were material (which the Company does not consider it was), given that the Company was not aware of any unusual trading activity or price movement in relation to its shares during the period from 28 May 2012 to 28 June 2012 and made the First Announcement prior to the opening of trade on 29 June 2012 (when it became concerned that some information regarding the 28 June 2012 expression of interest may have been made available to third parties), the Company did not consider that a trading halt prior to the First Announcement was necessary.

- 1 **Whether the Company considers the contents of the First Announcement and the Second Announcement (together, the 'Announcements') to be material to the Company pursuant to Listing Rule 3.1?**

See above.

- 2 **If the answer to question 1 is 'no', please advise the basis on which the Company does not consider the Announcements to be material.**

See above.

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3 **If the answer to question 1 is 'yes', when did the Company first become aware of the Approach?**

See above.

4 **If the Company became aware of the Approach prior to release of the First Announcement, please advise why the Company did not make an announcement at an earlier time, or request a trading halt prior to the Announcement?**

Please comment specifically on the application of Listing Rule 3.1, and the exception to the Listing Rule in clause 3.1A.

See above.

5 **When did the Company first become aware of the identity of EBPE, and the Proposed Value?**

See above.

6 **If the Company became aware of the identity of EBPE and the Proposed Value prior to the release of the First Announcement, why was the information not released to the market in the First Announcement?**

Please comment specifically on the application of Listing Rule 3.1, and the exceptions to the rule in Listing Rule 3.1A.

See above.

The Company considers that having regard to the information of which it was aware as set out in this letter, in making the Announcements it has kept the market appropriately informed and complied with Listing Rule 3.1.

7 **Please confirm that the Company is in compliance with Listing Rule 3.1**

We confirm that the Company is in compliance with Listing Rule 3.1.

Yours sincerely



Caroline Waldron
Company Secretary

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29 June 2012

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Dear Caroline

David Jones Limited (the "Company")

ASX Limited ("ASX") refers to the following:

1. The Company's announcement to ASX titled "David Jones Response to Unsolicited Approach" lodged with ASX at 9:50 am on Friday, 29 June 2012 and released at 10:01 am on Friday, 29 June 2012 (the "First Announcement"), disclosing that the Company has received an unsolicited letter from a non-incorporated UK entity, indicating its interest in making an offer for the Company (the "Approach").
2. The Company's announcement to ASX titled "Update on David Jones Response to Unsolicited Approach" lodged with ASX at 1:53 pm on Friday, 29 June 2012 and released at 2:11 pm on Friday, 29 June 2012 (the "Second Announcement"), disclosing that the Company noted that a UK blog site has released the name of EB Private Equity (EBPE) as the party that had made an approach to the Company to acquire the Company. The Company also disclosed in the Second Announcement that EBPE's proposal was said by EBPE to be A\$1,650 million (the "Proposed Value") for a 100 percent acquisition of the Company.
3. Listing rule 3.1, which requires an entity, once it becomes aware of 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, to immediately tell ASX that information.
4. The definition of "aware" in Chapter 19 of the listing rules. This definition states that:
"an entity becomes aware of information if a director or executive director (in the case of a trust, director or executive officer of the responsible entity or management company) has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as a director or executive officer of that entity."
5. Paragraph 17 of Guidance Note 8 states:
"Once a director or executive officer becomes aware of information, he or she must immediately consider whether that information should be given to ASX. An entity cannot delay giving information to ASX pending formal sign-off or adoption by the board, for example."
6. Listing rule 3.1A, which sets out an exception from the requirement to make immediate disclosure, provided that each of the following are satisfied.

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- 3.1A.1 A reasonable person would not expect the information to be disclosed.
- 3.1A.2 The information is confidential and ASX has not formed the view that the information has ceased to be confidential.
- 3.1A.3 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.
 - The information is a trade secret."

7. ASX's policy position on the concept of "confidentiality" which is detailed in paragraphs 33 to 39 of Guidance Note 8. In particular, paragraphs 34 and 35 of the Guidance Note state that:

"Confidential' in this context has the sense of 'secret'..." and "Loss of confidentiality may be indicated by otherwise unexplained changes to the price of the entity's securities, or by reference to the information in the media or analysts reports".

Having regard to the above, we ask that the Company answer the following questions in a format suitable for release to the market in accordance with listing rule 18.7A.

1. Whether the Company considers the content of the First Announcement and the Second Announcement (together, the "Announcements") to be material to the Company pursuant to listing rule 3.1?
2. If the answer to question 1 is "no", please advise the basis on which the Company does not consider the Announcements to be material.
3. If the answer to question 1 is "yes", when did the Company first become aware of the Approach?
4. If the Company became aware of the Approach prior to the release of the First Announcement, please advise why the Company did not make an announcement at an earlier time, or request a trading halt prior to the Announcement? Please comment specifically on the application of listing rule 3.1, and the exceptions to the rule in listing rule 3.1A.
5. When did the Company first become aware of the identity of EBPE, and the Proposed Value?
6. If the Company became aware of the identity of EBPE and the Proposed Value prior to the release of the First Announcement, why was the information not released to the market in the First Announcement? Please comment specifically on the application of listing rule 3.1, and the exceptions to the rule in listing rule 3.1A.
7. Please confirm that the Company is in compliance with listing rule 3.1.

Your response should be sent to me by a return e-mail or by facsimile on **facsimile number (02) 9241 7620**. It should not be sent to the Markets Announcements Office.

Unless the information is required immediately under listing rule 3.1, a response is requested as soon as possible and, in any event, not later than the close of business (i.e. before 6:00 p.m. A.E.S.T.) on Monday, 2 July 2012.

If you are unable to respond by the time requested, you should consider a request for a trading halt in the Company's securities. As set out in listing rule 17.1 and Guidance Note 16 - Trading Halts, we may grant a trading halt at your request. We may require the request to be in writing. We are not required to act on your request. You must tell each of the following.

- 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.
- Any other information necessary to inform the market about the trading halt, or that we may ask for.

The trading halt cannot extend past the commencement of normal trading on the second day after the day on which it is granted. If a trading halt is requested and granted and you are still unable to reply to this letter before the commencement of trading, suspension from quotation would normally be imposed by us from the commencement of trading if not previously requested by you. The same applies if you have requested a trading halt because you are unable to release information to the market, and are still unable to do so before the commencement of trading.

If you have any queries regarding any of the above, please let me know.

Yours sincerely,

(Sent electronically without signature)

Stephanie Yong
Senior Adviser, Listings (Sydney)