

14 June 2019

Mr Dean Litis  
Principal Adviser, Listings Compliance  
ASX Compliance Pty Ltd  
Level 4, North Tower, Rialto Towers, 525 Collins Street  
Melbourne VIC 3000

Dear Mr Litis

**Afterpay Touch Group Limited (APT) – AUSTRAC Query**

APT refers to your letter of 14 June 2019 regarding our ASX announcement on the morning of 13 June 2019 regarding the receipt of a section 162 notice (**Notice**) from AUSTRAC, our "Business Update" announcement which was released to ASX on the morning of 6 June 2019 (the **Business Update**), and other matters.

APT is pleased to provide the following responses in relation to your letter.

1. *When did AUSTRAC first contact APT in relation to its compliance with AML/CTF laws?*

As part of its ordinary business requirements, APT has had contact with AUSTRAC through its provision of annual AML/CTF compliance reports. These did not generate queries from AUSTRAC.

APT proactively approached AUSTRAC in August 2018 to begin an engagement and inform them, as a growing business in a new industry, of how the Afterpay business model worked. This led to discussions around APT's approach to AML/CTF compliance and to AUSTRAC making informal requests for information and documents to APT in the latter part of 2018, to which APT responded. AUSTRAC did not (until receipt of the Notice on 12 June 2019) use statutory information gathering powers in relation to APT.

2. *How long have APT and AUSTRAC been engaged in dialogue regarding APT's compliance with AML/CTF laws, as referred to in the Business Update?*

See above. Following the questions and responses in the second half of 2018, APT did not receive further requests from AUSTRAC until April 2019. At that time, AUSTRAC raised issues with APT regarding its compliance. See further question 3.

3. *What was the nature of the "dialogue" between APT and AUSTRAC? For example, did AUSTRAC conduct any investigation into APT processes and procedures in relation to AML/CTF compliance? Did AUSTRAC issue any notices to APT to produce documents to AUSTRAC or to require staff to answer questions from AUSTRAC?*

The nature of the dialogue was informal and constructive. APT has had a good working relationship with AUSTRAC, and APT has always tried to be proactive with issues and to accommodate requests for information.

At no stage did AUSTRAC use statutory powers to require the production of documents, conduct a formal investigation, or compel staff to answer questions. All of our responses to information and document requests were provided voluntarily.

In April 2019, AUSTRAC indicated that it was considering giving APT notice to appoint an external auditor but requested further information or documents from APT before a decision was made. APT provided further information in mid-April 2019, including further information about its business and its AML/CTF program and notified AUSTRAC that it was due to have an independent review of its AML/CTF compliance in July 2019 in accordance with its AML/CTF program (the **Independent Review**). APT proposed that it continue with that Independent Review (with scope and results to be shared with AUSTRAC) in lieu of an external audit. APT initiated and progressed discussions with potential firms for this purpose, and provided a draft scope of review to AUSTRAC. This proposal was referred to in the Business Update.

APT sought feedback from AUSTRAC on several occasions in May and June 2019 following the APT proposal. APT understood that AUSTRAC was considering the Independent Review proposal. AUSTRAC did not express an intention to issue a Notice. As recently as 4 June 2019 AUSTRAC stated to APT that it had not come to a decision internally.

4. *Was APT aware at the time it announced the Investor Presentation that the AUSTRAC Notice was imminent and/or that the outcome of its dialogue with AUSTRAC would be that AUSTRAC would require it to appoint an external auditor (as approved by AUSTRAC) to carry out an audit in respect of APT's AML/CTF compliance?*

No. The first confirmation that AUSTRAC would issue the Notice was during a telephone call late on 12 June 2019. APT did not have advanced notice of the matters to be raised on that call. During the course of that call, we were informed that AUSTRAC had decided to issue a Notice. APT received the Notice later that evening. A board meeting was convened that night, and an announcement was made to ASX before the commencement of trading the following morning. The Notice was published by AUSTRAC on its website at 8:42am on 13 June 2019.

APT went to efforts prior to announcing the capital raising and releasing the Investor Presentation on 11 June 2019 to ascertain whether a Notice might be issued. This included direct questions to AUSTRAC in a call on 4 June, in response to which we were told that AUSTRAC had not made a decision. Given the level of engagement on the proposal for an Independent Review, APT believed that to be the more likely outcome.

5. *Is the Independent Review APT intends to conduct into its AML/CTF program in addition to the review to be conducted by the external auditor approved by AUSTRAC in accordance with the AUSTRAC Notice or are they one and the same?*

These are two different reviews. APT had been proceeding on the assumption that the Independent Review would be supported by AUSTRAC instead of an external auditor, and for this reason had referred to it in the Business Update. However, now that the Notice has been received and an external audit will be undertaken, APT will consider whether the Independent Review remains necessary, either as contemplated or with a redefined scope taking into account any overlap between the two. In any event, Afterpay's intention is to utilise all required internal and external resources with a view to ensuring that Afterpay has a robust AML/CTF program.

6. *Does APT intend to release the findings of the Independent Review to the market?*

If the Independent Review does proceed, in accordance with usual market practice it is not intended to release the report to the market. Depending on whether there are material findings in any such report and AUSTRAC's response to such findings, there may be material information that would form part of a more specific ASX release at the appropriate time.

7. *If the review to be conducted by the external auditor approved by AUSTRAC in accordance with the AUSTRAC Notice is a separate review to the Independent Review, does APT intend to release the findings of the external auditor's review to the market?*

Again, it would not be the type of report that would typically be released to the market. Afterpay has not yet consulted with AUSTRAC as to its position on a full release. However, if there are material issues identified, or AUSTRAC's response otherwise warrants it, APT might at that time make a specific release to ASX. Regardless, APT will use this as an opportunity to take whatever action is required in a positive and cooperative manner.

8. *In relation to the Briefing, please respond to the following:*

- 8.1 *What was discussed?*

The ASX announcement regarding the Notice was discussed. The Briefing occurred after the ASX announcement had been released to the market.

- 8.2 *Who attended on behalf of APT?*

Senior executives Anthony Eisen (Executive Chairman), David Hancock (Group Head), Luke Bortoli (Chief Financial Officer) and Christopher Stevens (General Counsel & Company Secretary).

- 8.3 *Were there any new presentation or other printed materials provided to attendees? If so, please provide copies.*

No.

- 8.4 *Were the discussions, including responses provided to any questions asked, reviewed by APT to verify that no market sensitive information had been inadvertently disclosed?*

Yes. No such information had been inadvertently disclosed.

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

This is confirmed.

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

I confirm that these responses have been authorised under APT's Continuous Disclosure Policy and approved by the Continuous Disclosure Committee and the Board.

Please feel free to contact me if you would like to discuss these responses further.

Yours sincerely



Christopher Stevens  
General Counsel & Company Secretary  
Afterpay Touch Group Limited



14 June 2019

Reference: ODIN03366

Mr Christopher Stevens  
Company Secretary & General Counsel  
Afterpay Touch Group Limited  
Level 5, 406 Collins Street  
Melbourne VIC 3000

By email: christopher.stevens@afterpay.com.au

Dear Mr Stevens

**Afterpay Touch Group Limited ('APT'): AUSTRAC query**

ASX refers to the following:

- A. APT's announcement entitled '*Business Update*' released on ASX on 6 June 2019 (the 'Business Update') in which APT disclosed, among other things, that APT is "*currently in dialogue with [the Australian Transaction Reports and Analysis Centre (AUSTRAC)] regarding issues that AUSTRAC has raised regarding our [anti-money laundering/ counterterrorism ("AML/CTF")] compliance, the outcome of which is yet to be determined*".
- B. APT's announcement entitled '*Capital Raising to Support Mid-term Targets*' released on 11 June 2019 ('Investor Presentation') in relation to an underwritten institutional placement to raise a minimum \$300 million and secondary sell-down, which expanded on the information contained in the Announcement in relation to AML/CTF on page 16 under the heading 'Key Risks' by noting that:  
  
*"One potential outcome in the short term could be AUSTRAC orders Group AML/CTF reporting entity, Afterpay Pty Ltd, to appoint an external auditor to assess its AML/CTF compliance."*  
  
APT further noted that there is a risk of further action by AUSTRAC depending on any audit or review process, including possible penalty proceedings, fines, remedial directions and enforceable undertakings.
- C. APT's announcement entitled '*AUSTRAC Notice*' released on ASX on 13 June 2019 in which APT disclosed, among other things, that its subsidiary, Afterpay Pty Limited had received a notice from AUSTRAC on the evening of 12 June 2019 requiring it to appoint an external auditor (as authorised by AUSTRAC) to carry out an audit in respect of its AML/CTF compliance ('AUSTRAC Notice') and noting APT's intention to conduct an independent review of its AML/CTF program ("Independent Review").
- D. The suggestion by various media outlets on 14 June 2019, that APT held a selective briefing in relation to matters regarding the AUSTRAC Notice on 13 June 2019 ("Briefing").
- E. Listing Rule 3.1 which states:  
  
*"Once an entity is or 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, the entity must immediately tell ASX that information"*
- 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" and section 4.4 in Guidance Note 8 Continuous Disclosure: Listing Rules 3.1 – 3.1B "When does an entity become aware of information."*

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G. 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.”*

H. 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.”*

I. ASX’s policy position on analyst and investor briefings, which is detailed in section 7.7 of Guidance Note 8.

### **Request for Information**

Having regard to the above, ASX asks APT to respond separately to each of the following questions and requests for information:

1. When did AUSTRAC first contact APT in relation to its compliance with AML/CTF laws?
2. How long have APT and AUSTRAC been engaged in dialogue regarding APT’s compliance with AML/CTF laws, as referred to in the Business Update?
3. What was the nature of the “dialogue” between APT and AUSTRAC? For example, did AUSTRAC conduct any investigation into APT processes and procedures in relation to AML/CTF compliance? Did AUSTRAC issue any notices to APT to produce documents to AUSTRAC or to require staff to answer questions from AUSTRAC?
4. Was APT aware at the time it announced the Investor Presentation that the AUSTRAC Notice was imminent and/or that the outcome of its dialogue with AUSTRAC would be that AUSTRAC would require it to appoint an external auditor (as approved by AUSTRAC) to carry out an audit in respect of APT’s AML/CTF compliance?
5. Is the Independent Review APT intends to conduct into its AML/CTF program in addition to the review to be conducted by the external auditor approved by AUSTRAC in accordance with the AUSTRAC Notice or are they one and the same?
6. Does APT intend to release the findings of the Independent Review to the market?

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7. If the review to be conducted by the external auditor approved by AUSTRAC in accordance with the AUSTRAC Notice is a separate review to the Independent Review, does APT intend to release the findings of the external auditor's review to the market?
  8. In relation to the Briefing, please respond to the following:
    - 8.1 What was discussed?
    - 8.2 Who attended on behalf of APT?
    - 8.3 Were there any new presentation or other printed materials provided to attendees? If so, please provide copies.
    - 8.4 Were the discussions, including responses provided to any questions asked, reviewed by APT to verify that no market sensitive information had been inadvertently disclosed?
  9. Please confirm that APT is in compliance with the Listing Rules and, in particular, Listing Rule 3.1.
  10. Please confirm that APT'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 APT 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 **9:30 AM AEST Monday, 17 June 2019**. 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, APT'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 APT to request a trading halt immediately.

#### **Trading Halt**

If you wish to request 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*.

ASX reserves the right to release a copy of this letter and your response on the ASX Market Announcements Platform under Listing Rule 18.7A. Accordingly, your response should be in a form suitable for release to the market.

Your response should be sent to me by e-mail at **ListingsComplianceMelbourne@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

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that it is in a form appropriate for release to the market, before it is published on the ASX Market Announcements Platform.

**Listing Rules 3.1 and 3.1A**

In responding to this letter, you should have regard to APT'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 APT'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.

**Suspension**

Please note that if APT fails to provide a satisfactory response to this letter by the time specified above, ASX will likely suspend trading in APT's securities under Listing Rule 17.3 until it has received a satisfactory response.

**Enquiries**

If you have any queries or concerns about any of the above, please contact me immediately.

Yours sincerely

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**James Gerraty**  
Manager, Listings Compliance (Melbourne)