

8 June 2015

Jeremy Newman  
ASX Limited  
Level 40, Central Park  
152-158 St George's Terrace  
Perth WA 6000

via e-mail: [Jeremy.newman@asx.com.au](mailto:Jeremy.newman@asx.com.au)

Dear Jeremy,

## Kogi Iron Limited (the Company) – Response to ASX Aware Letter

We refer to your letter dated 4 June 2015 and respond to your questions as follows:

1. The Company considers that, when it became apparent that confidentiality of the Agbaja Offer may have been breached (via the unexplained increase in the price of the Company's securities as traded on the ASX, and the increased volume of shares traded) only then did the Agbaja Offer (as defined in your letter) become information that a reasonable person would expect to have a material effect on the price or value of the Company's securities.
2. Not applicable
3. Awareness of the Agbaja Offer by the Company increased over a period of time commencing Friday 29 May 2015, with the Company becoming fully aware of the Agbaja offer on Tuesday 2 June 2015.
4. The Company did not make an announcement about the Agbaja Offer prior to Wednesday 3 June 2015 as it relied on the exceptions to ASX Listing Rule 3.1A, specifically that:
  - a. The Company was of the view that the Agbaja Offer remained confidential; and
  - b. The Agbaja Offer was incomplete and subject to further negotiation.

The Agbaja Offer, which takes the form of a letter addressed to the Chairman of the Company, comprises "proposed terms" for the acquisition of the Company's wholly owned Nigerian subsidiary KCM Mining Limited. The composition of the letter is incomplete, in terms of a formal offer to purchase, and is highly conditional.

The letter was received by the Company, via e-mail on the evening of Thursday 28 May 2015 (Nigerian time) and forwarded to Perth, via e-mail where it was received on Friday morning, 29 May 2015. An initial review of the letter revealed some typographical errors; these were relayed to the originator during Friday 29 May 2015. A corrected letter was received by the Company on the afternoon of Friday 29 May (Nigerian time) and forwarded to Perth, via e-mail, where the letter was received late evening, Friday 29 May 2015.

The letter was distributed to the full Board of Directors of the Company at 10:30 on Tuesday 2 June 2015, via e-mail (Monday 1 June 2015 was a public holiday in Perth, Western Australia). A Board meeting was scheduled for 3pm WST on Wednesday 3 June 2015, where the letter and a proposed ASX announcement in relation to the letter were to be discussed. A draft of the proposed ASX announcement was prepared during in the afternoon of Tuesday 2 June 2015, for distribution to the Board on the morning of Wednesday 3 June 2015.

On the morning of Wednesday 3 June 2015, the Company became aware of an increase in its share price, from a closing price of \$0.052 on Tuesday 2 June 2015, to trading at \$0.073, with an increase in volume. With the possibility that confidentiality may have been lost in relation to the Agbaja Offer, at 9:27am WST the Company lodged an ASX Announcement titled **Company Update**, advising that it was in receipt of proposed terms for the purchase of its wholly owned Nigerian subsidiary, KCM Mining Limited.

Prior to the release of the Company Update, the Company was relying on Listing Rule 3.1A not to announce the information under listing rule 3.1, noting in particular, that there was nothing to suggest that confidentiality had been lost.

5. The Company Confirms that it is in compliance with the Listing Rules, and specifically, Listing Rule 3.1

Yours sincerely,



Shane Volk  
Company Secretary

Yours sincerely,

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Dr Ian Burston  
Chairman  
Kogi Iron Limited



4 June 2015

Shane Volk  
Company Secretary  
Kogi Iron Limited

By Email: [Shane.Volk@kogiiron.com](mailto:Shane.Volk@kogiiron.com)

Dear Shane

### **Kogi Iron Limited (the “Entity”) - ASX aware query**

ASX Limited (“ASX”) refers to the following:

1. The increase in the Entity’s share price from a low of \$0.031 on Friday, 29 May 2015 to an intraday high of \$0.073 on Wednesday, 3 June 2015.
2. The Entity’s announcement titled “Company Update” (the “Announcement”) lodged with the ASX Market Announcements Platform and released at 11:26 am (EST) on Wednesday, 3 June 2015 disclosing details of the proposed terms from a group that had expressed interest in the Agbaja iron ore project in Nigeria (“Agbaja Project”) for the outright acquisition of KCM, being the 100% owned Nigerian entity that holds the Agbaja Project (“Agbaja Offer”).
3. The Entity’s announcement titled “Response to ASX price query” lodged with ASX Market Announcements Platform and released at 2:16 pm (EST) on Wednesday, 3 June 2015 answering ‘yes’ to question 1, being whether the Entity was aware of any information concerning it that had not been announced which, if known by someone, could explain the recent trading in the Entity’s securities.
4. Listing Rule 3.1, which requires a listed entity to give ASX immediately 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.
5. The definition of “aware” in Chapter 19 of the Listing Rules. This definition 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.”*

Additionally, you should refer to section 4.4 in Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B “When does an entity become aware of information”*.

6. 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 requirements 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.”*

7. 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* “Listing Rule 3.1A.2 – the requirement for information to be confidential”. 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.”*

Having regard to the above, we ask that you answer the following questions in a format suitable for release to the market in accordance with Listing Rule 18.7A:

1. Does the Entity consider the Agbaja Offer 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. If the answer to question 1 is “yes”, when did the Entity first become aware of the Agbaja Offer?
4. If the answer to question 1 is “yes” and the Entity first became aware of the Agbaja Offer before the release of the Announcement, did the Entity 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 the entity was obliged to release the information under Listing Rules 3.1 and 3.1A and what steps the Entity took to ensure that the information was released promptly and without delay.
5. Please confirm that the Entity is in compliance with the Listing Rules and, in particular, Listing Rule 3.1.

#### **When and where to send your response**

This request is made under, and in accordance with, Listing Rule 18.7. Your response is required as soon as reasonably possible and, in any event, by not later than **9.00 am (WST) on Tuesday, 9 June 2015**. If we do not have your response by then, ASX will have no choice but to consider suspending trading in the Entity’s securities under Listing Rule 17.3.

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, the Entity’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.

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 [jeremy.newman@asx.com.au](mailto:jeremy.newman@asx.com.au) and [tradinghaltspert@asx.com.au](mailto:tradinghaltspert@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.

### **Listing Rule 3.1**

Listing Rule 3.1 requires a listed entity to give ASX immediately 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. Exceptions to this requirement are set out in Listing Rule 3.1A.

The obligation of the Entity to disclose information under Listing Rules 3.1 and 3.1A is not confined to, nor is it necessarily satisfied by, answering the questions set out in this letter.

In responding to this letter, you should have regard to the Entity's obligations under Listing Rules 3.1 and 3.1A and also to Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*.

### **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 the Entity'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 may 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*.

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

Yours sincerely

*[Sent electronically without signature]*

Jeremy Newman  
**Adviser, Listings Compliance (Perth)**