



28 February 2024

ASX Compliance  
ASX Limited  
Level 40  
152 St Georges Terrace  
Perth WA 6000

**RESPONSE TO ASX QUERY LETTER DATED 26 FEBRUARY 2024**

I refer to your letter dated 26 February 2024 to Invictus Energy Limited (**Company** or **IVZ**).

Defined terms used in this letter and not otherwise defined have the same meaning given to those terms in your letter.

In response to the questions outlined in your letter, I confirm the Company's responses as follows:

1. The Company does not consider that the Information was information that a reasonable person would expect, on its own, to have a material effect on the price or value of its securities. However, the Information was an independent report, to which the Company had no involvement and engagement with the author, Wood McKenzie, on an overview of the status of exploration in the Sub-Saharan Africa in 2023 and provided context to the activities of the Company in the wider region.
2. The Announcement was inadvertently lodged as 'market sensitive' when it was not intended for it to be so. However, the intention was not to mislead the market on the Company's activities, and the Board does not consider that it was misleading for the Announcement to be marked as 'market sensitive' as it is independent information in the public domain relating to the relevance of the Company's activities in the region prepared by a credible independent third party who assessed the activities of various companies in the region.

The Board is of the view that the error in this case was a one-off error that occurred during the lodgement of the Announcement and was not evidence of a systemic issue with the consideration of compliance with the Listing Rules around these matters. In addition, for the reasons outlined above, the Board does not consider that the error in this case caused the market to be misled because of the nature of the content of the Announcement.

3. Not applicable.
4. Having considered the question, the Board confirms that it is complying with the Listing Rules, and in particular, Listing Rule 3.1.
5. This response has been authorised and approved by the Board.

Yours Sincerely

*Gabriel Chiappini*

Gabriel Chiappini  
Director & Company Secretary



26 February 2024

Mr Gabriel Chiappini  
Company Secretary  
Invictus Energy Ltd

By email: gabriel@laurus.net.au

Dear Mr Chiappini

### **Invictus Energy Ltd ('IVZ'): Query Letter**

ASX refers to the following:

- A. IVZ's announcement titled 'Mukuyu recognised 2nd largest Sub-Saharan Africa discovery' lodged on the ASX Market Announcements Platform ('MAP') on 21 February 2024 (the 'Announcement'), which disclosed (relevantly) that IVZ's Mukuyu project had been identified as the second largest discovery in Sub-Saharan Africa in a review published by Wood Mackenzie on 16 January 2024 ('Information').

ASX notes the Announcement was indicated by IVZ to be 'market-sensitive' when it was lodged on MAP.

- B. IVZ's quarterly activities report, lodged on MAP on 31 January 2024, which stated in the highlights section:

*'Mukuyu estimated to be second largest discovery made in Sub-Saharan Africa in 2023 by Wood Mackenzie'*

- 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"*

Additionally, ASX refers to 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 5 situations 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."*

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."*

G. Section 7.10 of Guidance Note 8 which states (relevantly):

*"ASX is alive to listed entities making market announcements with a view to "ramping up" the price of their securities.<sup>293</sup> Ramping announcements come in many forms, including:*

- *the release of a "business update" or something similar, which will typically be worded in an exuberant fashion but which on closer examination contains little in the way of substance that has not already been disclosed to the market;" ...*

Footnote 293 provides (relevantly):

*"ASX has observed instances of ramping announcements being made: (a) just before a capital raising, with the apparent intent of boosting the price for the capital raising; ..."*

H. Section 14 of Guidance Note 14 which states (relevantly):

*"MAP should only be used to publish information that is appropriately given to ASX under the Listing Rules or the Corporations Act for publication to the market. It should not be used as a guise to publish material that is really promotional, political or tendentious in nature."*

### **Request for information**

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

1. Does IVZ consider the Information, or any other part of the Announcement, 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":
  - 2.1 Please explain why IVZ lodged the Announcement as 'market-sensitive' on MAP, commenting specifically on whether IVZ considers this to be misleading.
  - 2.2 Please explain the Listing Rule or Corporations Act basis necessitating the disclosure of the Announcement on MAP.
  - 2.3 Please outline any steps IVZ intends to take to prevent the lodgement of non-material information as 'market-sensitive' in future.
3. If the answer to question 2 is "yes":
  - 3.1 ASX observes that IVZ referenced the report by Wood Mackenzie in its quarterly activities report. Noting this, when does IVZ consider it became 'aware' of the Information, or any other part of the Announcement IVZ considers to be material to it?

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- 3.2 Why was this information not released to the market at an earlier time? In answering this question, please comment specifically on when IVZ considers it was obliged to release the information under Listing Rules 3.1 and 3.1A and what steps IVZ took to ensure that the information was released promptly and without delay.
  - 3.3 Does IVZ consider that it complied with Listing Rule 3.1 with respect to the Announcement? If so, please explain the basis for that view. If not, please outline what remedial action IVZ intends to take to ensure future compliance with Listing Rule 3.1.
4. Please confirm that IVZ is complying with the Listing Rules and, in particular, Listing Rule 3.1.
  5. Please confirm that IVZ'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 IVZ 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 **12:00 PM AWST Wednesday, 28 February 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, IVZ'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 IVZ to request a trading halt immediately.

Your response should be sent to me by e-mail at [ListingsCompliancePerth@asx.com.au](mailto: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 IVZ'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 IVZ's securities under Listing Rule 17.3.

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**Listing Rules 3.1 and 3.1A**

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

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ASX Compliance