

16 June 2016

Ivan Tatkovich, Adviser, Listings Compliance  
ASX Limited  
20 Bridge Street  
SYDNEY NSW 2000

Dear Mr Tatkovich

**ASX aware query**

We refer to your letter dated 10 June 2016 (copy attached).

As requested, please find below the Company's response to the questions from the ASX, using the terms defined in the ASX letter:

- 1 Yes.
- 2 Not applicable.
- 3 Late on 8 June 2016. See further our response to question 4 below.
- 4 Late on 6 June 2016, the Company became aware of certain information that suggested that the Company should make further enquiries to assess whether it was appropriate to publish a further trading update.

In light of that information, the Company requested a trading halt (this took effect from open of trading on 7 June 2016). It was not appropriate to make an ASX announcement (as opposed to requesting a trading halt) at that time as the Company needed to establish all the relevant information.

Over the course of the 2 days following the release of the trading halt, the Company made further enquiries to determine whether it was, in fact, appropriate for the Company to publish a further trading update. Those enquiries were completed late on 8 June 2016. In other words, the Company first became aware of the information that meant that a trading update was appropriate at that time and the Company published a further trading update on the morning of 9 June 2016.

The Company had not heard any rumours or seen any evidence that confidentiality in relation to the relevant information, or the Company's assessment of that information, had been lost. The Company is not aware why the Share Trading occurred.

- 5 No.

- 6 The financial impact of the licence agreement did not alter the earnings guidance previously given by the Company.
- 7 Not applicable.
- 8 Not applicable.
- 9 Not applicable.
- 10 Not applicable.
- 11 Once all the relevant information was to hand late on 8 June 2016, the Company considered the impact of the information on its earnings guidance for FY16 to be material information.
- 12 Not applicable.
- 13 As outlined in the Company's ASX announcement dated 9 June 2016, an in-depth review of the business has been undertaken, this included a review and assessment of the substance and value of the licence agreement. Having considered that information and all the relevant circumstances, the Company concluded that it should revise the earnings guidance previously provided to the market regarding FY16.
- 14 Confirmed.

Yours sincerely



**Karen Birner**

Chief Financial Officer and Company Secretary  
Surfstitch Group Limited



10 June 2016

Karen Birner  
Group Chief Financial Officer and Company Secretary  
SurfStitch Group Limited  
225 Burleigh Connection Road,  
Burleigh Heads, QLD 4220

By email: [kbirner@surfstitch.com](mailto:kbirner@surfstitch.com)

Dear Ms Birner,

**SurfStitch Group Limited (the "Entity"): ASX aware query**

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

1. The Entity's announcement titled "Company Update" lodged with ASX Market Announcements Platform ("MAP") and released at 8.38AM Thursday, 9 June 2016 (the "Update"), disclosing, amongst other things, the following statements:

***"Update on Trading***

- *As a result of events in 2H FY2016, SurfStitch Group Limited ("SurfStitch" or the "Company") (ASX: SRF) has formed the view that it should record an amendment in 2H FY2016 to its treatment of a transaction that occurred in 1H FY2016. The transaction related to the grant of a perpetual licence to a third party to use the Company's content contained in its subsidiaries – SurfStitch, Garage Entertainment, Rolling Youth and MagicSeaweed.*
- *In 2H FY2016, the Company entered into a set of agreements with the same party effective 15 March 2016 for the provision of various services including access to software and hosting the SurfStitch online store, and which extended the payment terms of the perpetual licence agreement*
- *An in-depth review of the business has been undertaken including these subsequent contracts. As a result of this review and recent information that has come to hand, the Company believes in substance an amendment to the original contact has occurred in 2H FY2016.*
- *The effect of this is that \$20.3 million of revenue will be reversed and reflected in the full year results"*

2. The change in share price of the Entity from \$0.46 at the close of trading on Thursday, 2 June 2016 to \$0.405 at the close of trading on Monday, 6 June 2016, and the increased trading volume over this period (the "Share Trading").



3. The entity's announcements titled "SRF 2016 Interim Financial Report", "SRF 1H FY2016 Results Announcement" and "SRF 1H FY2016 Results Presentation" lodged with MAP and released on Thursday, 25 February 2016 ("1H FY2016 Results"), disclosing, amongst other things, the following statements:

- "Revenue - \$144,886,000"

**Under "Notes to the condensed consolidated financial statements"**

- 4. Significant accounting policies

*(a) Licence revenue generated from granting third parties access to the Group's digital content is recognised in profit or loss on a straight line basis over the licence term. Where the licence term is perpetual, the revenue is recognised in full once access has been granted to the content."*

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:

*"An entity which is relying on Listing Rule 3.1A not to disclose information about a market sensitive transaction it is negotiating should as a matter of course be monitoring, either itself or through its advisers:*

- *the market price of its securities and of the securities of any other listed entity involved in the transaction;*

*for signs that information about the transaction may no longer be confidential and have a draft letter to ASX requesting a trading halt and a draft announcement about the negotiations ready to send to ASX to cater for that eventuality. The closer the transaction gets to being concluded, the higher the risk of leaks and the more diligent that monitoring should be.*

*In relation to the second component of Listing Rule 3.1A.2, ASX may form the view that information about a matter involving an entity has ceased to be confidential if:*

- *there is a sudden and significant movement in the market price or traded volumes of the entity's securities that cannot be explained by other events or circumstances.*

*Each of these is an indication that the matter is no longer confidential and therefore Listing Rule 3.1A.2 no longer applies."*

8. Listing Rule 18.7, which provides:

*"An entity must give ASX any information, document or explanation that ASX asks for to enable it to be satisfied that the entity has, and has been, complying with the listing rules. The entity must do so within the time specified by ASX. ASX may submit, or require the entity to submit, any information given to ASX to the scrutiny of an expert selected by ASX. The entity must pay for the expert"*

9. Listing rule 18.7A, which provides:



*"ASX may publish correspondence between it and an entity if ASX has reserved the right to do so and considers that it is necessary for an informed market."*

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 Update 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 information?
4. If the answer to question 1 is "yes" and the Entity first became aware of the information before 9 June 2016, did the Entity make any announcement prior to this 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. Reference should also be made to the Share Trading and whether or not this may have indicated that confidentiality had been lost.
5. Does the Entity consider that the grant of a perpetual licence to a third party, as referenced in the Update, which occurred in 1H FY2016 and amended effective 15 March 2016, to be material information requiring disclosure under listing rule 3.1, given the information contained within the Update, particularly the reversal of \$20.3 million in revenue from the 1H FY 2016 Results?
6. If the answer to question 5 is "no", please advise the basis for that view.
7. If the answer to question 5 is "yes", when did the Entity first enter into an agreement to grant a perpetual licence to a third party?
8. If the answer to question 5 is "yes", please advise the value and terms of the agreement, including the original payment terms and the extended payment terms as referenced in the Update. If the Entity holds the view that it cannot advise the original payment terms and the extended payment terms as referenced in the Update, please advise the basis for that view
9. If the answer to question 5 is "yes", please advise the identity of the third party with whom the Entity entered into the agreement with. If the Entity holds the view that it cannot advise of the identity of the third party, please advise the basis for that view.
10. If the answer to question 5 is "yes" 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.

11. Does the Entity consider that, as referenced in the Update, the “recent information that has come to hand” to be material information which resulted in the Entity considering the agreement to be amended, resulting in the reversal of \$20.3 million in revenue from the 1H FY2016 Results?
12. If the answer to question 11 is “no”, please advise the basis for that view.
13. If the answer to question 11 is “yes”, please advise of the nature of the information referenced in the Update. If the Entity holds the view that it cannot advise of the nature of the information, please advise the basis for that view.
14. 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 no later than **9:30 AM Thursday, 16 June 2016**. 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. 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]

Ivan Tatkovich  
**Adviser, Listings Compliance**