

22 December 2023

ASX Compliance Pty Ltd  
20 Bridge Street  
SYDNEY NSW 2000

Attention: Angel He, Senior Adviser, Listings Compliance

I refer to your letter dated 19 December 2023 and respond to your questions, using your numbering, as follows:

1. The Company, when releasing an announcement to the market, is required to make a decision as to whether to designate the announcement as market sensitive. When making this decision a number of factors are taken into consideration.

NIC is aware of the advice of the ASX in Guidance Note 8 that:

*A director or other officer of an entity who is faced with a decision on whether information needs to be disclosed under Listing Rule 3.1 may find it helpful to ask two questions: (1) "Would this information influence my decision to buy or sell securities in the entity at their current market price?" (2) "Would I feel exposed to an action for insider trading if I were to buy or sell securities in the entity at their current market price, knowing this information had not been disclosed to the market?"*

In relation to the 4 December 2023 announcement (Announcement), the answer to the second question is no. However, for some investors the Company's commitment to emission reduction targets of 50% in carbon intensity by 2035 and net zero emissions by 2050 may well influence their decision to invest in the Company. It was with these investors in mind the decision was made to mark the announcement market sensitive.

The Company also acknowledges advice from the ASX in Guidance Note 8, in which moves of 10% or more relative to the market generally of the entity's sector are seen as market sensitive, or closer to 5% for larger entities. Considering this, the Company acknowledges that the announcement should not have been marked as market sensitive, as a reasonable person would not expect the Announcement to have a material effect on the price or value of NIC's securities.

3.1 As detailed in the response to Q1, the Company's original view was that the Announcement was market sensitive but on further review of the advice on what constitutes 'market sensitive' in Guidance Note 8 the Company acknowledges that the Announcement was not market sensitive.

3.2 As detailed in the response to Q1, the Company believes that the Company's announcement of emission reduction targets could influence the decisions of some investors to buy or sell securities in the Company. However, the Company acknowledges that this in itself does not make the Announcement market sensitive.

3.3 The presentation at the COP28 Summit was made by the Company's Sustainability Manager on Saturday 3 December 2023. The Company's intention had been to release the announcement before the commencement of trading on Monday 5 December 2023. A draft cover page to the announcement had been prepared ahead of the presentation. A decision was made on the Sunday evening to include some photos of the Sustainability Manager presenting at the Summit. However, IT issues with parties who were preparing the update when travelling caused a delay in the release until just after the commencement of trading on 5 December 2023.

The Company has always sought to release presentations ahead of the actual presentation. The fact that the presentation was occurring on the weekend, an unusual occurrence, led to the decision to release the presentation on 5 December 2023. The Company acknowledges the requirements of ASX Listing Rule 15.7, and in similar circumstances will release the presentation prior to the presentation being given.

4.1 The baseline year chosen for measuring the Company's carbon intensity per unit of nickel production was 2022. At the end of 2022 each of the Company's four RKEF projects were in operation, with Oracle Nickel in the process of ramping up production levels. The Company published its total estimated Green House Gas (GHG) emissions, as well as its Emissions Intensity per tonne of nickel equivalent in its 2022 Sustainability Report released on 31 March 2023 (see page 3). Emissions were calculated using the GHG Protocols.

4.2 The Company will be measuring, reporting and publishing the results of Emission Intensity calculations in its Sustainability Reports which it will publish each year. In the past two years, the Company has engaged carbon consulting firms to prepare its GHG Inventory Reports and the Company intends to engage consultants for future GHG Inventory Reports. The results will be incorporated into the Company's Sustainability Reports.

4.3 The Company has undertaken decarbonisation studies and modelling which it will be releasing in its 2023 Sustainability Report. These models support the 50% reduction in carbon intensity commitment, supported by the Company's move into lower carbon intense nickel production through its acquisition of a 10% interest in the HNC HPAL Project and the development of the ENC HPAL Project. The Company also intends to include in the 2023 Sustainability Report its roadmap to a 50% reduction in carbon intensity.

5. The Company engaged Hatch to undertake a decarbonisation study in 2022, with a final report provided to the Company in April 2022. The report examined possible net-zero pathways and the Company is currently working with Hatch to update the research to reflect the latest developments in our operational portfolio. We expect to communicate the roadmap for our 2050 net zero commitment in the first half of 2024.

6. The Company confirms that it is in compliance with the ASX Listing Rules ASX Listing Rule 3.1.

7. The Company confirms that these responses have been authorised and approved in accordance with the published continuous disclosure policy.

Yours faithfully



Richard Edwards  
Company Secretary

pjn12011



19 December 2023

Reference: 85833

Mr Richard Edwards  
Company Secretary  
Nickel Industries Limited  
Level 2  
66 Hunter Street  
Sydney NSW 2000

By email only.

Dear Mr Edwards

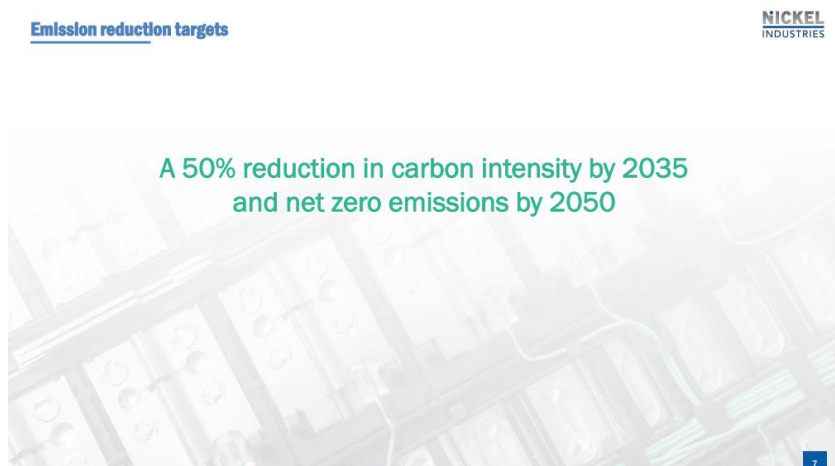
**Nickel Industries Limited ('NIC'): General – Aware Query**

ASX refers to the following:

- A. NIC's announcement entitled "Nickel Industries Limited" lodged on the ASX Market Announcements Platform, marked as market sensitive, and received by the Market Announcements Office at 10:09 AM on 4 December 2023 (the 'Announcement'), disclosing NIC's presentation to the 2023 United Nations Climate Change Conference ('COP28') and announcing its future emission targets ('Information').
- B. NIC's email dated 7 December 2023 in response to ASX queries, which confirmed the presentation was given to the COP28 on 2 December 2023 and included the following statement:

*"The information within the presentation that led the Company to deem the release as "market sensitive" was the Company's stated emission targets on slide 7. As the Company was one of only two Indonesian companies with mining operations invited to present at the conference, the Company chose to use this occasion to publicly announce these targets for the first time. Given our growing leadership status in promoting the sustainability of Indonesia's nickel industry and the importance of these commitments to our shareholders (particularly large-scale institutional investors) these newly announced commitments could reasonably have been expected to be price sensitive."*

- C. Slide 7 of the Announcement, which is reproduced below:



- D. 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.

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E. 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.”*

F. 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.”*

G. 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.”*

H. Listing Rule 15.7, which states:

*“An entity must not release information that is for release to the market to any person until it has given the information to ASX and has received an acknowledgment that ASX has released information to the market.”*

I. Section 14 of Guidance Note 14: ASX Market Announcements Platform which states:

*“An announcement for release to the market must be accurate, complete and not misleading.*

*To not be misleading, opinions expressed in an announcement should be honestly held and balanced and should be clearly identified as a statement of opinion rather than a statement of fact. Any forward looking statements in an announcement, such as earnings guidance or exploration or production targets, must be based on reasonable grounds or else by law they will be deemed to be misleading. Any material assumptions or qualifications that underpin those statements should also be stated in the announcement.*

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*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."*

J. ASIC Information Sheet 271,<sup>1</sup> which states:

*"Particular risks of breaching the misleading statement prohibitions arise in relation to representations made about future matters that are not supported with reasonable grounds. For example, if you stated that you will achieve a certain carbon emissions target (such as net zero carbon emissions) by a particular date, this may amount to a representation about a future matter. Such a representation may be deemed to be misleading if you do not have reasonable grounds for making the representation (see section 769C of the Corporations Act and section 12BB of the ASIC Act).*

### **Request for information**

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

1. Does NIC still consider the Information to be information that a reasonable person would expect to have a material effect on the price or value of NIC's securities, that is, information that should be given to ASX under Listing Rule 3.1?
2. If the answer to Question 1 is "yes":
  - 2.1 Please explain why NIC did not immediately give the Information to ASX as required by Listing Rule 3.1? In responding to this question, please comment specifically on when NIC believed it was obliged to release the Information under the Listing Rules 3.1 and 3.1A.
  - 2.2 Please explain why NIC did not give the Information to ASX prior to presenting the Information at COP28 as required by Listing Rule 15.7?
  - 2.3 How does NIC intend to address the apparent breaches of Listing Rules 3.1 and 15.7?
  - 2.4 Please detail what additional steps NIC is taking to ensure compliance with the ASX Listing Rules and, in particular, Listing Rules 3.1 and 15.7.
3. If the answer to Question 1 is "no":
  - 3.1 Please identify the Listing Rule or Corporations Act provision that necessitated the release of the Announcement on MAP on a market sensitive basis (paragraph I)? Please provide the basis for this view.
  - 3.2 Please clarify NIC's response to ASX (paragraph B) and, in particular, NIC's assertion that the "newly announced commitments could reasonably have been expected to be price sensitive".
  - 3.3 Please detail what additional steps NIC is taking to ensure compliance with the ASX Listing Rules and, in particular, Listing Rule 15.7.
4. In regards to NIC's commitment of a 50% reduction in carbon intensity by 2035, please:
  - 4.1 Provide the baseline year and level of intensity for the 50% reduction in carbon intensity, including how that figure was measured or otherwise determined.
  - 4.2 Explain how NIC intends to measure its progress on this commitment.

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<sup>1</sup> <https://asic.gov.au/regulatory-resources/financial-services/how-to-avoid-greenwashing-when-offering-or-promoting-sustainability-related-products/>

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- 4.3 Provide the grounds for NIC's 50% reduction in carbon intensity commitment, including details of any studies or modelling done specifically on all of NIC's projects. If NIC has not done any studies or modelling, specifically encompassing all of NIC's current operations, to underpin this reduction target please make that clear.
  5. Please provide grounds for NIC's net zero by 2050 commitment, including the details of any studies and modelling done specifically on all of NIC's projects to underpin NIC's net zero by 2050 commitment. If NIC has not done any studies or modelling, specifically encompassing all of NIC's current operations, please make that clear.
  6. Please confirm that NIC is complying with the Listing Rules and, in particular, Listing Rule 3.1.
  7. Please confirm that NIC'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 NIC 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 **9.00 AM AEDT Friday, 22 December 2023**. 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, NIC'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 NIC to request a trading halt immediately.

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

#### **Listing Rules 3.1 and 3.1A**

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

**Questions**

If you have any questions in relation to the above, please do not hesitate to contact me.

Yours sincerely

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**Angel He**  
Senior Adviser, Listings Compliance