



**Oliver's Real Food Ltd**  
**ABN 33 166 495 441**

**PO Box 3678**  
**TUGGERAH NSW 2259**  
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4 August 2017

Violetta Codreanu  
Senior Adviser, Listings Compliance (Sydney)  
ASX Compliance Pty Ltd  
20 Bridge Street  
Sydney, NSW 2000

By email: Violetta.Codreanu@asx.com.au

Dear Ms Codreanu

I refer to your letter dated 1 August 2017 in relation to the Oliver's Real Food Limited (**Oliver's** or the **Company**) announcement entitled "FY2017 & FY2018 Earnings Guidance Update" lodged on the ASX Market Announcements Platform and released at 9:58am on 31 July 2017 (the **Announcement**) providing updated information in respect of the year ended 30 June 2017 (**Revised Guidance**).

Our responses to each of your queries are set out below, adopting the numbering used in your letter:

1. When did OLI first become aware of the Revised Guidance?
  - 1.1. The Company's financial year ended on 30 June 2017 (**FY2017**). Since that date the Company has been working on finalising its management accounts for the month ended 30 June 2017, which on average takes 2-3 weeks, as well as conducting the process to prepare its year-end financial results for FY2017. During this period the Company's Chief Financial Officer, Alan Lee (**AL**), was working with other members of management to compile the relevant financial information required to complete this process.

At the scheduled July Board meeting on 21 July 2017, AL provided the Board with an update on the progress of the preparation of the financial results for FY2017, including areas that still needed to be finalised. At the meeting the Board considered the potential for a variance against prospectus forecast but noted

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that the financial review process was still ongoing and that a number of items were still to be finalised to complete the FY2017 financial results. These matters needed to be completed before any meaningful comparison of forecasts could be made and so as to ensure that any revised forecast had a reasonable basis. The Board requested AL to finalise the variable items (in consultation with the auditor, where required) as soon as possible, so that the Chair of the Audit & Risk Committee could review the results.

During the period 21 July 2017 to 30 July 2017 the Company undertook further works to complete the FY2017 financial information and to finalise the variable items that remained outstanding and that impacted the financial information. As soon as the financial information was in a reasonably final and definite form (albeit some items remained subject to further auditor review), on Sunday 30 July 2017, AL provided a summary of the FY2017 financial results, including a report on current forecast vs prospectus forecast, to the Chair of the Audit & Risk Committee, John Diddams (**JD**), CEO Jason Gunn (**JG**) and Chairman Mark Richardson (**MR**) for review.

- 1.2. Following the review of the information on 30 July 2017, it was agreed by JD, JG and MR to call a Board meeting to be held at 9.30am on Monday, 31 July 2017 to discuss the variance that had arisen in the financial information, which was considered to be potentially material. Based on the information to hand, a draft ASX announcement was prepared and the summary financial results and draft announcement were circulated for review by the Board.
- 1.3 The Board met at 9.30am on 31 July 2017 and agreed that while the financial results are preliminary and continued to be subject to audit review, the expected variance to prospectus forecast was material (based on the guidance set out in ASX Guidance Note 8) and accordingly the market should be updated immediately to comply with ASX continuous disclosure rules.
- 1.4 The announcement containing Revised Guidance was lodged with ASX pre-market opening on 31 July 2017.
2. Does OLI consider the Revised Guidance to be information that a reasonable person would expect to have a material effect on the price or value of its securities?
  - 2.1 Yes, however noting that the variance has arisen as a consequence of the accumulation of a number of elements where if each of the elements that comprise the aggregate variance were to be considered individually, a reasonable person would not have expected the variance to have a material effect on the price or value of Oliver's' securities.
3. If the answer to question 2 is "yes" and OLI first became aware of the information before the relevant date, did OLI 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

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specifically on when you believe OLI was obliged to release the information under Listing Rules 3.1 and 3.1A and what steps OLI took to ensure that the information was released promptly and without delay.

3.1 Please see the response to question 1 above. The Company is of the firm belief that the process followed was undertaken in accordance with Listing Rules 3.1 and 3.1A and with reference to the guidance provided by ASX in Guidance Note 8. Specifically:

- the Revised Guidance needed to indicate the order of potential variance between the prospectus forecast and the current forecast;
- the Revised Guidance needed to have a reasonable basis in fact prior to being disclosed;
- the Revised Guidance needed to be discussed at an appropriate level and after an appropriate degree of due diligence, accepted and approved by the Board; and
- an announcement was made as soon as practicable after the above matters were completed to a level that the Board considered appropriate so as to avoid any announcement being misleading and deceptive in itself.

4. If the answer to question 2 is “no”, please advise the basis for that view.

4.1 Not applicable.

5. Please provide better and further particulars explaining:

(a) the expected impact of each of the events referred to in the Announcement on the Forecast Results;

The expected impact of the events referred to in the Announcement is a reduction in forecast EBITDA (before normalisations) of \$403k excluding \$210k of one-off items, further details of which are set out in paragraph 5(d) below. Of this amount, \$46k relates to the under-performance of the Red Dragon division in Q4 FY2017, \$133k relates to the delay in store openings and the balance is principally due to the planned improvements in margin contribution taking longer than originally expected to materialise. The issues relating to margin contribution are being addressed, and the Company has seen an improvement in the performance of the stores for both COGS and labour cost in July.

(b) why the intercompany eliminations for the supply chain divisions were not adequately considered during the preparation of the Forecast Results;

The intercompany eliminations which were considered in the prospectus forecast were based upon the historical intercompany sales information available up to the time of preparation of the prospectus forecast and expected future intercompany sales at that time. The Board considered that the intercompany eliminations for the



supply chain divisions had been adequately considered during the preparation of the prospectus forecasts. It should be noted that the intercompany eliminations are a non-cash, accounting entry and have no impact on EDITDA.

(c) when OLI became aware of the delays in the opening of the new stores at Aratula and Bulahdelah; and

The Board first became aware of potential delays to the opening of Aratula and Bulahdelah in early June, however the Board determined at that time that the potential exposure to forecast EBITDA for FY2017 was below the materiality threshold that would require a separate announcement. At the time it was contemplated that the reduction should be capable of being offset through performance in the remaining store network. However, subsequently, further ongoing costs were incurred in relation to the businesses acquired, including additional staff training and retention costs, that resulted in the loss from the delayed opening being greater than initially expected.

(d) in detail, the nature of the one-off cost items that have arisen and when OLI became aware of these items.

The one-off cost items are as follows:

- **FBT provision** – the Company made an additional \$30k provision for Fringe Benefits Tax as part of the preparation of the year end accounts.
- **Turnover rent** – the Company pays turnover rent on its premises at Wyong. The Company had taken a provision for turnover rent for the previous two years based on the information available at the time. The Company did not receive any invoice from the landlords for the turnover rent until late June and during July 2017, and the amount claimed by the landlord exceeded the provision by \$55k. The Company is currently reviewing the accuracy of the amount charged by the landlord.
- **Loss on disposal of fixed assets** – being losses of \$86k on disposals of fixed assets arising from (1) the closure/relocation of the Red Dragon facility at Goonellabah that the Company decided to close in June 2017; and (2) the sale of assets in some of the corporate stores during June 2017, which were only finalised as part of the preparation of the year end accounts.
- **Accounting treatment of acquisition of Coffs Harbour store** – an issue arose with respect to the accounting treatment of the acquisition of the Coffs Harbour store during FY2017 which may have a financial impact of \$39k. This issue remains under review between the Company and its auditor, but the Company considered it prudent to allow for it.



6. Please confirm that OLI is in compliance with the Listing Rules and, in particular, Listing Rule 3.1.
  - 6.1 The Company confirms that it is in compliance with the ASX Listing Rules and, in particular, ASX Listing Rule 3.1.
  
7. Please outline what arrangements OLI has in place to ensure that its internal processes are adequate to meet its continuous disclosure obligations under listing rule 3.1. If the current arrangements are inadequate or not being enforced, what additional steps does OLI intend to take to ensure compliance?
  - 7.1 Oliver's has a Continuous Disclosure Policy, which the Company considers to be adequate and the processes included with the Continuous Disclosure Policy were complied with in this instance.
  - 7.2 As stated above, the Company is of the firm belief that the process followed was undertaken in accordance with Listing Rules 3.1 and 3.1A and with reference to the guidance provided by ASX in Guidance Note 8.
  
8. Please confirm that OLI'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 OLI with delegated authority from the board to respond to ASX on disclosure matters.
  - 8.1 Responses to these questions have been authorised and approved in accordance with Oliver's' Continuous Disclosure Policy which requires approval by any 2 of the Chairman, the Chief Executive Officer and the Company Secretary.

Yours sincerely

A handwritten signature in black ink that reads "Emma Lawler".

**Emma Lawler**  
Company Secretary



1 August 2017

Ms Emma Lawler  
Company Secretary  
Oliver's Real Food Limited  
10 Amsterdam Circuit  
Wyong NSW 2000

By email: [lawler@companymatters.com.au](mailto:lawler@companymatters.com.au)

Dear Ms Lawler

**Oliver's Real Food Limited ("OLI"): aware query**

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

A. OLI's replacement prospectus dated 17 May 2017, which outlined forecast results for the full year ending 30 June 2017 as follows:

- Revenue - \$21,087,000
- EBITDA – loss of \$1,939,000
- EBITDA (Normalised) – loss of \$1,262,000
- NPAT – loss of \$2,385,000

(together, the "Forecast Results").

B. OLI's supplementary prospectus dated 2 June 2017, which states at section 6.6.4:

*"The Directors have reviewed the Forecast Financial Information in the Prospectus in light of the extension of the Offer Period and the variation of the Offer Price and they have determined that there is no material change to the Forecast Financial Information disclosed in the Prospectus."*

C. OLI's announcement entitled "FY2017 & FY2018 Earnings Guidance Update" lodged on the ASX Market Announcements Platform and released at 9:58am on 31 July 2017 (the "Announcement"), disclosing the following information in respect of the year ended 30 June 2017:

*"While Oliver's financial results remain subject to audit, it has become evident during that process that the forecast loss for FY2017 will be exceeded, such that EBITDA (before normalisations) is expected to be a loss of approximately \$2.552m compared to a forecast loss of \$1.939m..."*

*"NPAT is expected to be a loss of approximately \$3.182m compared to the forecast loss of \$2.385m."*

*"Revenue for FY2017 is expected to be \$20.436m compared to the forecast of \$21.087m."*

(together, the "Revised Guidance").

D. The decrease in the price of OLI's securities after the release of the Announcement as follows:

Time and Date	Price
Close – Friday, 28 July 2017	\$0.33
Open – Monday, 31 July 2017	\$0.31
Intra-day low – Monday, 31 July 2017	\$0.27
Close – Monday, 31 July 2017	\$0.28

E. 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.

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”*.

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.”*

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

1. When did OLI first become aware of the Revised Guidance?

2. Does OLI consider the Revised Guidance to be information that a reasonable person would expect to have a material effect on the price or value of its securities?
3. If the answer to question 2 is “yes” and OLI first became aware of the information before the relevant date, did OLI 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 OLI was obliged to release the information under Listing Rules 3.1 and 3.1A and what steps OLI took to ensure that the information was released promptly and without delay.
4. If the answer to question 2 is “no”, please advise the basis for that view.
5. Please provide better and further particulars explaining:
  - (a) the expected impact of each of the events referred to in the Announcement on the Forecast Results;
  - (b) why the intercompany eliminations for the supply chain divisions were not adequately considered during the preparation of the Forecast Results;
  - (c) when OLI became aware of the delays in the opening of the new stores at Aratula and Bulahdelah; and
  - (d) in detail, the nature of the one-off cost items that have arisen and when OLI became aware of these items.
6. Please confirm that OLI is in compliance with the Listing Rules and, in particular, Listing Rule 3.1.
7. Please outline what arrangements OLI has in place to ensure that its internal processes are adequate to meet its continuous disclosure obligations under listing rule 3.1. If the current arrangements are inadequate or not being enforced, what additional steps does OLI intend to take to ensure compliance?
8. Please confirm that OLI’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 OLI 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, 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 half an hour before the start of trading (**i.e., before 9.30 a.m. AEST) on Friday, 4 August 2017**). If we do not have your response by then, ASX will have no choice but to consider suspending trading in OLI’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, OLI’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 Rules 3.1 and 3.1A**

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

### **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 OLI's securities under Listing Rule 17.1.

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 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]*

Violetta Codreanu

**Senior Adviser, Listings Compliance (Sydney)**