



20 October 2025

ASX Compliance  
525 Collins Street  
Melbourne VIC 3000

**Email:** ListingsComplianceMelbourne@asx.com.au

**Memphasys Limited (ASX Code: MEM) – Response to Aware Letter**

Memphasys Limited ACN 120 047 556 (**Memphasys** or **MEM**) responds to ASX’s aware letter dated 9 October 2025 (**ASX Letter**) relating to Memphasys’ announcement dated 30 September 2025 titled “LR4.3D – adjustment to financial statements” (the “**Announcement**”).

In response to each of the questions raised in the ASX Letter, Memphasys responds as follows:

1. Does MEM consider the information contained in the Announcement, to be information that a reasonable person would expect to have a material effect on the price or value of its securities?

Yes.

2. If the answer to question 1 is “no”, please advise the basis for that view.

Not applicable.

3. When did MEM first become aware of the information that the associated entity may be defined as a “connected entity” under the R&D tax legislation, so leading to the recognition of the liability of \$1,118,973 in the FY25 financial statements referred to in the Announcement? ASX notes the Announcement refers to this information being discovered during the 30 June 2025 financial year.

On 13 August 2025, during the audit of the financial statements for the year ended 30 June 2025, the Company became aware that the R&D tax rules relating to “connected entities” may apply to a substantial shareholder, Peters Investments Pty Ltd, which holds convertible notes. At that time the potential impact or application of these tax rules on the Company was unknown as the auditors recommended that the Company seek specialist tax legal advice on its position.

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Given the uncertainty in treatment, the auditors recommended the Company seek specialist tax legal advice which was promptly sought.

Following receipt of external professional advice, which was only received and confirmed on 26 September 2025, and the subsequent assessment of that advice by the auditors and the Company, the Company recognised a liability of \$1.118million in respect of the FY24 R&D tax rebate, while retaining the FY23 R&D tax rebate and recognising a receivable for the FY25 R&D tax rebate. These treatments are reflected in the Company's FY25 financial statements.

The Company is in the process of seeking a private tax ruling from the Australian Taxation Office to confirm its position with respect to the FY24 R&D tax rebate and confirm the methodologies of calculation applied by the specialist tax legal counsel.

The Company notes that the announcement released on 30 September 2025 contained a minor inadvertent error in the fact that the third paragraph of that announcement should have included the word "audit" in the paragraph commencing, "During the 30 June 2025 financial year audit". The same paragraph is also in the Company's Annual Report released on 30 September 2025 in Note 4 'Restatement of comparatives', paragraph two, which contained the same minor inadvertent error and should have included the word "audit".

4. If MEM first became aware of the information referred to in question 3 before the date of the Announcement, did MEM make any announcement prior to that date which disclosed the information? If not, please explain why the information was not released to the market at an earlier time, commenting specifically on when you believe MEM was obliged to release the information under Listing Rules 3.1 and 3.1A and what steps MEM took to ensure that the information was released promptly and without delay.

No, MEM did not make any announcement prior to the date of the Announcement, as the matter required external professional advice to confirm and clarify the potential impact on the Company, noting that this is a highly technical area with no precedent that MEM is aware of.

The professional advice was not received until close of business on 26 September 2025 and subsequently reviewed and considered by the Company and its auditors. The advice and its implications were finalised and confirmed by the Board on 30 September 2025, the date of the Announcement.

Prior to this time the information was insufficiently established to warrant disclosure as the legal and accounting aspects remained uncertain. Accordingly, the Company considered that the information fell within the carve-out in Listing Rule 3.1A, being information that:

- comprised matters of supposition or was insufficiently definite to warrant disclosure; and/or
- concerned an incomplete proposal or negotiation.

The Company ensured that, once the position was confirmed and the implications fully assessed, the information was released promptly and without delay.

5. ASX notes MEM's view in paragraph D above, that the adjustments disclosed in the Announcement do not affect cash flow from operations for the year ended 30 June 2025, as adjustments are non-cash nature. Notwithstanding this, please describe how this liability will be accounted for in terms of cash flow in future periods.

The adjustments reported in the Company's audited financial statements for the year ended 30 June 2025, are of a non-cash nature as there is no impact on the cash position of the Company.

The Company is in the processes of seeking a private tax ruling from the Australian Taxation Office to confirm its position with respect to the FY24 R&D tax rebate. If an adverse ruling were reserved, a repayment would represent a cash outflow.

The Company maintains that all R&D claims were made in good faith and in accordance with the program's guidelines but acknowledges that the ATO may take a different view.

6. Please confirm that MEM is in compliance with the Listing Rules and, in particular, Listing Rule 3.1.

Yes, MEM is in compliance with the Listing Rules and in particular Listing Rule 3.1.

7. Please confirm that MEM'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 MEM with delegated authority from the board to respond to ASX on disclosure matters.

Confirmed.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'S. Ross'.

Stefan Ross  
Company Secretary

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9 October 2025

Reference: 113347

Mr Stefan Ross  
Company Secretary  
Memphasys Limited  
Level 1, 34-36 Richmond Road  
HomeBush West, NSW 2140

By email: stefan.ross@vistra.com

Dear Mr Ross

### Memphasys Limited('MEM'): ASX Aware Letter

ASX refers to the following:

- A. MEM's preliminary final report for the financial period ended 30 June 2025, released on the ASX Markets Announcements Platform ('MAP') on 29 August 2025 ('Preliminary Final Report') including the statement under heading 'Status of Audit' on page 2, '*The financial statements are in the process of being audited*'.
- B. MEM's annual report which contained audited accounts for 30 June 2025 released on MAP on 30 September 2025 ('Audited Accounts').
- C. The announcement titled 'Adjustment to FY25 Results' (the 'Announcement') released on MAP on 30 September 2025 disclosing the following in relation to a 2024 R&D tax grant incentive (Emphasis added):

*'...in accordance with ASX Listing Rule 3.1 and listing rule 4.3A, and following the release of the company's audited financial statements for the year ended 30 June 2025, Memphasys advises of the following material adjustment compared to the preliminary results disclosed in the Company's Appendix 4E – Preliminary Financial Statements lodged with ASX on 29 August 2025, none of which impact operating revenue or cash flow from operations results.'*

*During the 30 June 2025 financial year, it was discovered that an associated entity may be defined as a "connected entity" with the company under the R&D tax legislation during the previous financial year. This discovery has caused uncertainty as to whether the company has complied with all conditions of the grant. This matter will be subject to a private tax ruling, which the company intends to seek.*

*In light of this uncertainty, the Company has applied judgment and determined that the 2024 R&D tax incentive income previously recognised in the comparative period does not meet the reasonable assurance income recognition requirements of AASB 120'.*

*A liability of \$1,118,973 has been recognised in the FY25 financial statements in respect of the FY24 R&D rebate, reflecting the Board's assessment of the uncertainty pending the outcome of the private ruling".*

- D. The Announcement describes under the heading 'Summary of impact and Commentary' that, "*The Changes reported above do not affect cash flow from operations as the adjustment is of a non-cash nature*".
- E. 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.
- 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."*

- G. Section 4.4 in *Guidance Note 8 Continuous Disclosure: Listing Rules 3.1 – 3.1B* titled “When does an entity become aware of information?”
- H. Listing Rule 3.1A, which sets out exceptions from the requirement to make immediate disclosure as follows.
- “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.”
- I. The concept of “confidentiality” 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 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 is no longer a secret and it ceases to be confidential information for the purposes of this rule.”
- J. Section 4.10 of ASX Guidance Note 8 which states (in part):
- “Entities should also be aware of Listing Rule 4.3D, which requires an entity to tell ASX immediately of any circumstances which are likely to affect the results or other information contained in its preliminary final report and to explain their effect on the entity’s current or future financial performance or financial position. This rule reflects the primacy of continuous disclosure obligations over periodic disclosure obligations. If particular information is market sensitive, it must be disclosed immediately and cannot be withheld until the scheduled release date for a periodic disclosure document.”

### Request for information

Having regard to the above, ASX asks MEM to respond separately to each of the following questions:

1. Does MEM consider the information contained in 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”, please advise the basis for that view.
3. When did MEM first become aware of the information that the associated entity may be defined as a “connected entity” under the R&D tax legislation, so leading to the recognition of the liability of \$1,118,973 in the FY25 financial statements referred to in the Announcement? ASX notes the Announcement refers to this information being discovered during the 30 June 2025 financial year.

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4. If MEM first became aware of the information referred to in question 3 before the date of the Announcement, did MEM make any announcement prior to that date which disclosed the information? If not, please explain why the information was not released to the market at an earlier time, commenting specifically on when you believe MEM was obliged to release the information under Listing Rules 3.1 and 3.1A and what steps MEM took to ensure that the information was released promptly and without delay.
  5. ASX notes MEM's view in paragraph D above, that the adjustments disclosed in the Announcement do not affect cash flow from operations for the year ended 30 June 2025, as adjustments are of a non-cash nature. Notwithstanding this, please describe how this liability will be accounted for in terms of cash flow in future periods.
  6. Please confirm that MEM is in compliance with the Listing Rules and, in particular, Listing Rule 3.1.
  7. Please confirm that MEM'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 MEM 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 **9:30 AM AEDT Thursday, 16 October 2025**.

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, MEM's obligation is to disclose the information 'immediately'. This may require the information to be disclosed before the deadline set out above and may require MEM to request a trading halt immediately if trading in MEM's securities is not already halted or suspended.

Your response should be sent by e-mail to **ListingsComplianceMelbourne@asx.com.au**. It should not be sent directly to the ASX Market Announcements Office. This is to allow us 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.

#### **Suspension**

If you are unable to respond to this letter by the time specified above, ASX will likely suspend trading in MEM's securities under Listing Rule 17.3.

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

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

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**Release of correspondence between ASX and entity**

We reserve 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. The usual course is for the correspondence to be released to the market.

Regards

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ASX Compliance