

Cheng Tang  
Senior Adviser, Listings Compliance  
ASX Limited  
Rialto Tower, 525 Collins Street  
Melbourne VIC 3000

11 June 2019

## **RESPONSE TO ASX APPENDIX 3Y CHANGE OF DIRECTOR'S INTEREST NOTICE QUERY**

Dear Ms Tang,

We refer to your request for information in your letter dated 5 June 2019. Please find below our responses to your queries:

### **1. Please explain why the Appendix 3Y was lodged late.**

The Director involved in the trades that are the subject of the Appendix 3Y, Samuel Xue Lee, had not informed Genetic Technologies Limited (**GTG** or **Company**) of his intention to trade, or of the occurrence of the trades on 13 May 2019, until the afternoon of 3 June 2019.

The trades were a sale of GTG Level II American Depositary Units (**ADRs**) on the Nasdaq Stock Market (NASDAQ: GENE). The Company has limited visibility of details of ADR trades. The Company had been monitoring daily trades of ASX securities during the Closed Period, but its monitoring systems do not report on ADR movements. Accordingly, the Company had no written evidence of the trades prior to Mr Lee's confirmation on 3 June 2019 that the trades had already occurred.

The Company lodged its Appendix 3Y with the ASX at 8.18am on 5 June 2019, within two days of the date it became aware of the trade.

### **2. What arrangements does GTG have in place under Listing Rule 3.19B with its directors to ensure that it is able to meet its disclosure obligations under Listing Rule 3.19A?**

Section 6.3 of the Company's Securities Trading Policy (**Policy**) requires Directors to notify the Chairman of their intention to trade at least two business days before trading and to obtain clearance in writing from the Company Secretary prior to trading. Section 6.5 of the Policy requires Directors to notify the Company Secretary of any dealings in GTG's securities immediately once any such dealings occur.

The Company also has in place signed Appendix 3.19B agreements with each Director. Mr Lee's agreement (**Agreement**) was executed on 27 February 2019. Section 3 of the Agreement provides that Lee has an ongoing disclosure obligation to GTG to provide details of changes in securities registered in his name, other than changes occurring as a result of corporate actions by GTG.

Finally, the Company has a standing agenda item in each monthly Board meeting to remind Directors to disclose and declare all interests to GTG.

**3. If the current arrangements are inadequate or not being enforced, what additional steps does GTG intend to take to ensure compliance with Listing Rule 3.19B?**

GTG does not consider the current arrangements to be inadequate.

However Mr Lee's failure to seek prior written clearance to trade in securities (as required under the Policy and Agreement) prior to the trades suggests that the Directors may require further training on corporate governance matters. The Chairman and Company Secretary will propose to the Board that Directors undertake such training.

**4. When did GTG first become aware of Mr. Lee's on-market trade?**

The Company was contacted on 29 May 2019 by an Australian based broker who queried why an Appendix 3Y had not been lodged in relation to a series of potential trades.

In response to the broker's query, the Company's Chairman asked GTG's Company Secretary if he was aware of any potential trades requiring an Appendix 3Y to be lodged, to which the Secretary responded "no". The Secretary made enquiries with BNY Mellon, GTG's ADR programme supervisor, and HSBC, GTG's ADR Custodian, as well as internal enquiries via GTG's online portals. These enquiries could not promptly identify any potential trades requiring an Appendix 3Y to be lodged.

The Chairman then made queries of a number of Board members. Mr Lee responded to those queries in writing on Monday, 3 June 2019 and confirmed in writing that trading of ADRs held in his name had taken place on 13 May 2019.

**5. Please confirm that the trade by Mr. Lee occurred during a closed period where prior written clearance was required (the "Closed Period").**

GTG confirms that the trades by Mr. Lee occurred during the Closed Period.

**6. Please confirm the time period that the Closed Period covers and explain the basis for determining that time period to be a Closed Period.**

The Closed Period commenced on 28 February 2019 and remains in place.

On 28 February 2019, GTG sent an email to Directors and employees of GTG confirming that GTG was in the Closed Period and, due to other significant operational activities occurring within GTG, will remain in the Closed Period until further notice.

**7. Why did the trade occur without prior written clearance when such clearance was required?**

The information submitted to the Chairman and Company Secretary by Mr Lee on Monday, 3 June 2019 indicates that it was not Mr Lee who placed the order to sell Mr Lee's ADRs. The Company is in the process of further investigating the circumstances in which these trades occurred.

**8. What disciplinary or remedial action is the board of GTG proposing to take in relation to this trade having taken place without the requisite approval?**

The GTG Chairman and Secretary will ask Directors to undertake training in relation to corporate governance matters, including the *Corporations Act 2001* (Cth) and other securities trading legal protocols.

As set out above, the Company is in the process of further investigating the circumstances of the trades and will reassess whether any further disciplinary or remedial action is required once its investigations are completed.

**9. Please confirm that GTG is complying with the Listing Rules and, in particular, Listing Rule 3.1.**

GTG is complying with the Listing Rules and, other than the subject of this enquiry, Listing Rule 3.1.

**10. Please confirm that GTG's responses to the above have been authorised and approved by its board.**

GTG's responses set out above have been authorised and approved by the Board of Directors of GTG.

Signed for and on behalf of Genetic Technologies Limited:



**Paul Viney**  
Company Secretary  
Genetic Technologies Limited



5 June 2019

Mr Paul Viney  
Company Secretary  
Genetic Technologies Limited

By email only

Dear Mr Viney

**Genetic Technologies Limited ('GTG'): Appendix 3Y – Change of Director's Interest Notice Query**

ASX refers to the following:

1. GTG's Appendix 3Y lodged and released on the ASX Market Announcements Platform ('MAP') on 5 June 2019 for Mr Samuel Xue Lee (the 'Notice');
2. Part 3 of the Notice discloses that the trade occurred during a closed period where prior written clearance was required but without written clearance being provided to allow the trade to proceed during the closed period.
3. Listing Rule 3.19A which requires an entity to tell ASX the following:

*3.19A.1 The notifiable interests of a director of the entity (or in the case of a trust, a director of the responsible entity of the trust) at the following times.*

- *On the date that the entity is admitted to the official list.*
- *On the date that a director is appointed.*

*The entity must complete Appendix 3X and give it to ASX no more than 5 business days after the entity's admission or a director's appointment.*

*3.19A.2 A change to a notifiable interest of a director of the entity (or in the case of a trust, a director of the responsible entity of the trust) including whether the change occurred during a closed period where prior written clearance was required and, if so, whether prior written clearance was provided. The entity must complete Appendix 3Y and give it to ASX no more than 5 business days after the change occurs.*

*3.19A.3 The notifiable interests of a director of the entity (or in the case of a trust, a director of the responsible entity of the trust) at the date that the director ceases to be a director. The entity must complete Appendix 3Z and give it to ASX no more than 5 business days after the director ceases to be a director.'*

4. Listing rule 3.19B which states that:

*'An entity must make such arrangements as are necessary with a director of the entity (or in the case of a trust, a director of the responsible entity of the trust) to ensure that the director discloses to the entity all the information required by the entity to give ASX completed Appendices 3X, 3Y and 3Z within the time period allowed by listing rule 3.19.A. The entity must enforce the arrangements with the director.'*

The Notice indicates that a change in Mr Lee's notifiable interest occurred on 13 May 2019. It appears that the Notice should have been lodged with ASX by 20 May 2019. Consequently, GTG may have breached Listing Rules 3.19A and/or 3.19B. It also appears that Mr Lee may have breached section 205G of the *Corporations Act 2001* (Cth).

Please note that ASX is required to record details of breaches of the Listing Rules by listed entities for its reporting requirements.

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ASX reminds GTG of its contract with ASX to comply with the Listing Rules. In the circumstances, GTG should make necessary arrangements to ensure it does not continue to breach the Listing Rules.

### **Request for Information**

Under Listing Rule 18.7, we ask that you answer each of the following questions having regard to Listing Rules 3.19A and 3.19B and *Guidance Note 22: Director Disclosure of Interests and Transactions in Securities - Obligations of Listed Entities*.

1. Please explain why the Appendix 3Y was lodged late.
2. What arrangements does GTG have in place under Listing Rule 3.19B with its directors to ensure that it is able to meet its disclosure obligations under Listing Rule 3.19A?
3. If the current arrangements are inadequate or not being enforced, what additional steps does GTG intend to take to ensure compliance with Listing Rule 3.19B?
4. When did GTG first become aware of Mr. Lee's on-market trade?
5. Please confirm that the trade by Mr. Lee occurred during a closed period where prior written clearance was required (the "Closed Period").
6. Please confirm the time period that the Closed Period covers and explain the basis for determining that time period to be a Closed Period.
7. Why did the trade occur without prior written clearance when such clearance was required?
8. What disciplinary or remedial action is the board of GTG proposing to take in relation to this trade having taken place without the requisite approval?
9. Please confirm that GTG is complying with the Listing Rules and, in particular, Listing Rule 3.1.
10. Please confirm that GTG's responses to the above have been authorised and approved by its board.

### **When and where to send your response**

Your response should be sent to me by e-mail at [ListingsComplianceMelbourne@asx.com.au](mailto:ListingsComplianceMelbourne@asx.com.au). It should not be sent to the ASX Market Announcements Office.

A response is requested as soon as possible and, in any event, no later than half an hour before the start of trading (i.e. before 9:30 am AEST) on Tuesday, 11 June 2019.

Under Listing Rule 18.7A, a copy of this letter and your response will be released to the market, so your response should be in a form suitable for release and must separately address each of the questions asked.

### **Enquiries**

If you have any queries or concerns about any of the above, please contact me immediately.

Yours sincerely

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**Cheng Tang**  
Senior Adviser, Listings Compliance (Melbourne)