

Response to SGX Queries::

Issuer & Securities

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Announcement Details

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Attachments	KSE- Response to SGX..pdf Total size =166K

RESPONSE TO SGX-ST'S QUERIES

The Board of Directors (the “**Board**”) of KS Energy Limited (the “**Company**”, together with its subsidiaries, the “**Group**”) would like to respond to the questions raised by the Singapore Exchange Securities Trading Limited (the “**SGX-ST**”) on 24 October 2018, 2 November 2018 and 15 November 2018, in relation to the Company’s announcements released to the SGX-ST on 19 October 2019 (the “**Announcements**”) as follows:

- (a) the announcement entitled “Proposed Transactions” (the “[Internal Reorganisation Announcement](#)”)
- (b) the announcement entitled “Proposed Disposal of the Entire Issued Share Capital of KS Resources Pte Ltd” (the “[Disposal Announcement](#)”); and
- (c) the announcement entitled “Entry into Mutual Release Deed” (the “[Mutual Release Deed Announcement](#)”).

All capitalised terms used herein shall have the definitions ascribed to them in the Announcements, unless otherwise stated or the context otherwise requires.

The Company is currently consulting with the SGX-ST as to whether shareholder approval is required for the transactions.

SGX-ST'S QUESTIONS ON 24 OCTOBER 2018:

- (a) With regard to the Disposal Announcement,:-
 - (i) Listing Rule 1007 states that if any of the relative figures pursuant to Listing Rule 1006 is a negative figure, Chapter 10 may still be applicable to the transaction at the discretion of the Exchange and the issuer should consult the Exchange. We note that the Company has not done so even though the relative figure under Listing Rule 1006(a) is (2.1)%. Please explain why the Company did not consult the Exchange in this regard.
 - (ii) Please provide us with specific figures used in the calculation for the relative figures for the bases set out in Listing Rule 1006;
 - (iii) We note in the Announcement that the Participating Note will allow the Company to participate in any sales proceeds should the purchaser receive sales proceeds above \$79.5 million. In view that this implies that the pre-determined valuation of the KSR Group, agreed between the Purchaser and the Company, is \$79.5 million, please provide the following information:-
 - (1) The calculation of Listing Rule 1006 (a) and (c) ratios, taking into account the agreed valuation of \$79.5 million;
 - (2) The amount of compensation determined under the settlement which gave rise to the Company receiving only \$1.63 million for the disposal of the KSR Group, which has an agreed valuation of \$79.5 million;
 - (3) The valuation report for the valuation of KSR Group;

- (4) As the settlement of the derivative action involves private entities outside of the Group (e.g. certain companies connected to the Wiluans), please set out the reason why the Company did not announce details of the IPT involved. Please also clarify how much of the settlement relates to private entities of the Company's controlling shareholders / directors and provide details of the quantification.
 - (5) Whether the amount involving the settlement for interested parties exceeds 3% or 5%. If so, please comply with the relevant rules under Chapter 9 of the Listing Manual. If the Company is of the view that the settlement does not involve the companies of the controlling shareholders / directors, please provide specific information, quantifying the amounts settled for each of the directors, the Group entities and private entities for our consideration.
- (iv) Paragraph 7.2 of Practice Note 10.1 states that issuers should consult the Exchange as early as possible about whether further amounts relating to the transaction are part of "consideration". For example, loans or guarantees extended by purchaser, the discharge of any liabilities (whether actual or contingent), or the provision of other forms of security, may be deemed to be part of "consideration". Please clarify if the transactions announced in the Internal Reorganisation Announcement are accounted for in the aforesaid calculation and if not, the Company's basis for not doing so;
 - (v) Please provide us with the information required under Listing Rule 1010(5), (6), (7), (8), (9), (10) and (13) for our consideration of the transaction;
 - (vi) Please explain the factors taken into account in arriving at the consideration of \$1,643,000.
- (b) With regard to the Mutual Release Deed Announcement, please provide us with the context for the legal proceedings.

Company Response to (a) (i):

We note Listing Rule 1007. We would like to highlight that the relative figure under Listing Rule 1006(a) is not significantly negative and only became negative as at 30 June 2018 after being positive previously. It became a negative value only because of the applicable accounting treatment arising from our intended disposal as we are disposing of a loss-making entity. The disposal of the loss-making entity is beneficial to the Group.

Note also that the net asset value of KSD is positive but the net asset value of KSR (which holds 55.35% of KSD) is only negative due to subtracting the value of the liabilities that will also be disposed.

Company Response to (a) (ii):

Net Asset Value:

$$\$ (537) / \$ 25,338 = -2.1\%$$

Net Profits:

$$\$ (4,374) / \$ (33,605) = 13.0\%$$

Consideration:

$$\$1,643 / \$18,561.6 = 8.9\%$$

Where market capitalisation is calculated using 515,601,215 shares x 3.6 cents = \$18,561,600

Company Response to (a) (iii):

- (1) The Purchaser will acquire the KSR Group from the Company. The main asset within the KSR Group is the 55.35% stake of KSD but the KSR Group also has debt liabilities.

The Purchaser will acquire the remaining 44.65% stake of KSD from Actis such that KSR will hold 100% of KSD moving forward. The amount paid to Actis by the Purchaser was separately negotiated and agreed by them. The Company is not involved in relation to this.

Hence, the agreed valuation of KSR Group is not S\$79.5 million, as the KSR Group only holds a 55.35% stake of KSD as mentioned above. In addition, this value does not take into account KSR's debt liabilities or the fact that the Purchaser is separately acquiring the remaining 44.65% stake from Actis as well.

The Participating Note allows ***both*** the Company and Actis to benefit from any realised gains achieved by the Purchaser over the next 3-years, over and above the agreed threshold of \$79.5 million. This threshold is commercially agreed between the parties, not taking into account any particular valuation that was conducted.

If, however, we assume, \$39.5 million represents an agreed valuation for 55.35% of KSD, the KSR Group therefore has an implied net asset value of \$3,106,000 being \$39,500,000 less the value of the liabilities of \$36,394,000 as at 30 June 2018.

The implied calculation of Listing Rule 1006 (a) ratio would therefore be:

Net Asset Value:
 $\$3,106 / \$25,338 = 12.3\%$

Likewise, if we assume the implied consideration is the same amount of \$3,106,000, the implied calculation of Listing Rule 1006 (c) ratio would be:

Net Asset Value:
 $\$3,106 / \$18,562 = 16.7\%$

- (2) No amount of compensation was paid or received by the Company or any other party in relation to the deed of mutual release. Please refer to our response to (vi) to see how the consideration was arrived at. The consideration is obtained independently of the mutual release by the parties to the Proceedings.
- (3) No valuation report for the valuation of KSR Group has been prepared. The main asset within the KSR Group is the 55.35% stake of KSD which has a carrying value in the Group accounts based on management's assessment of the recoverable amount which is arrived at based on the expected fair value less costs to sell.
- (4) The Company has been constrained in announcing details in relation to the ongoing legal proceedings. As explained in our response below, neither the Company nor any private entity outside the Group is directly a party in any of the ongoing legal proceedings. Please also see our response in (2) above stating that no amount of compensation was paid or received by the Company or any other party in relation to the Deed of Mutual Release ("Deed"). Therefore, there is no quantification pursuant to the Deed. As previously stated, the Company is prepared to furnish SGX, as well as shareholders, with information on the legal

proceedings, including any IPTs, when the ongoing legal proceedings have been formally withdrawn pursuant to the Deed.

- (5) As stated above, no amount of compensation (i.e. settlement amount) was paid or received by the Company or any other party in relation to the Deed. In addition, the potential exposure/liability that has been waived and released pursuant to the Deed cannot be quantified at this point in time, hence the Company is unable to determine whether the value of the “settlement” exceeds 3% or 5%, or if there is even a value attached to the “settlement” at all.

Company Response to (a) (iv):

The “further amounts relating to the transaction” should not be considered a part of the “consideration” as the purchase of the KSE bonds, and the issuance of the KSR bonds are relating to the refinancing of the bonds with the same lender, OCBC, and not the “discharge of liabilities”.

Company Response to (a) (v):

Rule 1010(5): Refer to Section 7.2 – Note (1) of the Disposal Announcement. The net asset value attributable to the assets disposed of under the Proposed Disposal is S\$(537,000).

Rule 1010(6): Refer to Section 1 of the Disposal Announcement for the Consideration and Section 4 of the Disposal Announcement for the use of proceeds. The net asset value as at 30 June 2018 is disclosed in Note 1 in Section 7.2. The excess of the proceeds over the book value is S\$2,180,000. However, note that the Proposed Transaction will be captured in the Q4 2018 financials of the Group, so the actual amount of any gain or loss on disposal will be based on the 30 September 2018 closing balances which are due to be announced in November 2018.

Rule 1010(7): Refer to Section 7.2 – Note (2) of the Disposal Announcement. The net loss attributable to the assets disposed of under the Proposed Disposal is S\$4,374,000. The gain on disposal is S\$2,180,000 as stated above.

Rule 1010(8): Refer to Section 8.1 of the Disposal Announcement.

Rule 1010(9): Refer to Section 8.2 of the Disposal Announcement.

Rule 1010(10): Refer to Section 3 of the Disposal Announcement.

Rule 1010(13): Refer to Section 7 of the Disposal Announcement.

Company Response to (a) (vi):

As at 31 December 2017, in the last audited accounts for the Group, the carrying value of KSD was \$38.7 million

As at 30 September 2018, the carrying value of the OCBC Bonds and OCBC Loan was \$37.0 million

Therefore, the Company considers the fair value of the assets and liabilities, and therefore the shares of KSR, to be around \$1.7 million

The consideration of S\$1,643,000 was agreed.

Company Response to (b):

Kris Wiluan (“**KW**”), Richard Wiluan (“**RW**”), KS Distribution Pte. Ltd. (“**KSD**”), SSH Corporation Limited (“**SSH**”), Aqua-Terra Oilfield Equipment & Services Pte. Ltd. (“**ATOES**”) and Actis Excalibur Limited (“**Actis**”) are currently involved in the following legal proceedings:

- a) HC/OS 788/2016, which is an application by Actis for leave to bring actions in the name and on behalf of KSD, ATOES and SSH against KW and RW for alleged breaches of fiduciary and directors’ duties. On 26 January 2018, the Court granted leave to Actis. Both KW/RW, and KSD/SSH/ATOES have appealed against the Court’s decision via CA/CA 25/2018 and CA/CA 30/2018 respectively.
- b) HC/OS 829/2017, which involves claims by Actis against KSD for inter alia declarations that a directors’ resolution passed on 29 March 2017 and that any adoption and approval of accounts at the Annual General Meeting on 21 July 2017, are void and ultra vires. On 25 August 2017, KSD filed an application in HC/SUM 3664/2017 to inter alia stay all proceedings in this action. On 27 October 2017, the Court dismissed KSD’s application in HC/SUM 3664/2017. Leave to appeal was granted to KSD in HC/SUM 5056/2017 on 21 November 2017, and the Court ordered that HC/OS 829/2017 be stayed pending the hearing of the appeal. KSD’s appeal is CA/CA 222/2017.
- c) HC/S 102/2017, which was brought pursuant to the leave of Court granted in HC/OS 788/2016, involves a derivative action brought by Actis on behalf KSD, ATOES and SSH against Kris Wiluan and Richard Wiluan for alleged breaches of fiduciary duties and directors’ duties.
- d) ARB 141/16/JC, which involves claims by Actis against KSD to exercise its alleged informational rights under the Investment Agreement and counterclaims against Actis for alleged breach of the duty of good faith and withholding consent to related party transactions unreasonably,

(collectively, the “**Legal Proceedings**”).

Parties now wish to enter into this Deed to set out the terms and conditions of the full and final settlement, waiver and release of all disputes inter se arising out of and/or relating to the Legal Proceedings, the Investment Agreement and the dealings with KSD and/or its subsidiaries (the “**Disputes**”).

The Company is not directly a party in any of the Legal Proceedings.

Since (b) and (d) are substantively actions brought by Actis against KSD, it is their prerogative not to continue with the proceedings, more so as they are disposing of their 44.65% stake.

Both (a) and (b) involve appeals, which are at a preliminary stage, which parties are agreeable to withdraw.

The Company (KS Energy Limited), its management, directors and controlling shareholders are not related in any way to the Purchaser or Actis.

To the best of our knowledge, we are not aware of any relations between the Purchaser and Actis.

Additional Statement:

The Company (KS Energy Limited), its management, directors and controlling shareholders are not related in any way to the Purchaser or Actis.

To the best of our knowledge, we are not aware of any relations between the Purchaser and Actis.

FURTHER SGX-ST'S QUESTIONS ON 2 NOVEMBER 2018:

- (a) With regard to the Company's response to query of our e-mail dated 24 October 2018, please clarify the following:-
 - (i) what were the proceeds of KSE Bonds used for; and
 - (ii) how the transfer of the Company's entire 55.35% shareholdings in the KSD Group to KSR will be/is recorded in the Company's books.
- (b) With regard to the Company's response to query (a)(i) of our e-mail dated 24 October 2018, please clarify what the first paragraph means.
- (c) With regard to the Company's response to query of our e-mail dated 24 October 2018, please:-
 - (i) provide us with the key financial information of KSR and KSD; and
 - (ii) clarify if the net asset value figure of \$(537k) of KSR includes the bonds issued/to be issued by KSR.
- (d) With regard to the Company's response to query (a)(iii)(4), please let us have the Audit Committee's and Board of Directors' confirmation that Chapter 9 of the Listing Manual has been complied with and their bases for the same.
- (e) With regard to the Company's response to query (a)(vi) of our e-mail dated 24 October 2018, please let us have the Board's explanation as to why it considers the consideration of \$1,643,000 for KSR Group without an independent valuation of KSR and/or KSD to be in the best interest of the Company.
- (f) Please state:-
 - (i) how sale of KSD and/or KSR Group to ACH was initiated and who initiated it;
 - (ii) whether the sale of KSR, and Actis' stake in KSD to ACH are inter-conditional;
 - (iii) whether the bond transactions with OCBC and the disposal of KSR and/or KSD to ACH are inter-conditional.
- (g) Please clarify whether the Proposed Disposal has been completed and if not, when will it be completed.

Company Responses

- (a) Please see below:
- (i) The proceeds of the KSE Bonds were used to refinance the convertible bonds in December last year; and
 - (ii) The transfer of the 55.35% shareholding of KSD to KSR will be recorded as an internal transfer with a value equal to the Company's book value at the time of the transfer. In any event, had the transfer been made at any other value, any resulting gains or losses would have been eliminated on consolidation of accounts at the group level.

- (b) We refer to our previous response. The reason why the NAV became increasingly negative was due to the accrualment of interest payments in connection with the bonds with the passage of time.

In addition, we would like to highlight that the Company's disposal of a loss-making entity is beneficial for the Group.

- (c) The key financial information of KSR Group per the KS Energy Group accounts as at 30 June 2018 was:

\$(537,000) net assets as at 30 June 2018
\$(4,374,000) net profits for the 6-months ended 30 June 2018

The key financial information of KSD per the KS Energy Group accounts as at 30 June 2018 was:

\$35,857,000 net assets as at 30 June 2018
\$(2,889,000) net profits for the 6-months ended 30 June 2018

The above figures for KSR Group include KSD and the bonds and the loan to be exchanged for the bonds to be issued by KSR.

- (d) The Audit Committee and Board of Directors confirm that Chapter 9 of the Listing Manual has been complied with regarding the Deed as no amount of compensation or settlement was paid or received by the Company or any other party in relation to the Deed. Hence, there is no "value at risk", and there is no requirement in this situation for the Company to make any disclosure under Chapter 9 of the Listing Manual.

- (e) While we were in discussions with the Purchaser, the Purchaser was mindful about the total upfront cost for them to effectively own 100% of KSD with certain debt obligations.

The Purchaser separately agreed a transaction with each party as follows:

- To purchase 44.35% of KSD from Actis; and
- To purchase 100% of KSR from the Company, which owns the remaining 55.35% of KSD together with debt obligations

The discussions between the Purchaser and Actis were private and the terms for the sale by Actis to the Purchaser were commercially agreed between them. The Company was not involved in the process whatsoever.

The Board considers the consideration of \$1,643,000 for KSR Group which includes the 55.35% stake of KSD and certain debt obligations owed to OCBC to be sufficient and adequate for the following reasons:

- (i) KSD has been loss making in recent years;
- (ii) The Company has not received a dividend from KSD since 2015;
- (iii) The disposal of the joint venture will be at a similar value to the most recent audited carrying value of \$38.7 million as at 31 December 2017;
- (iv) Since 31 December 2017, the Company's share of losses from KSD for the six months to 30 June 2018 was \$2.9 million;
- (v) The disposal of KSR will not have a significant impact on the operations of the rest of the Group as their operations are independent;
- (vi) The Company has worked closely with our debt providers and obtained the necessary consents from bondholders for the proposed transactions; and
- (vii) Although the total share capital is split 55.35% and 44.65% between the Company and Actis, the Investment Agreement between the parties governs the rights and obligations between the parties, including the share capital. It is worth noting that Actis holds preference shares in KSD while the Company holds ordinary shares in KSD; and
- (viii) In the most recent Independent Auditors' Report which is found in the annual report 2017, KPMG LLP, the independent auditor of the Company, has flagged out conditions which indicate the existence of a material uncertainty that may cast significant doubt on the Group's ability to continue as a going concern. In addition, the Company is also placed on the minimum trading price entry criterion watch-list under Rule 1311(2) and the financial entry criteria watch-list under Rule 1311(1) of the Listing Manual. The purchase of the KSE bonds and issuance of the KSR bonds, together with the disposal of KSR to the Purchaser, would enable the Group to reduce its debt obligations significantly and extinguish significant liabilities.

The Board took all the above key factors into account when deliberating on the decision.

- (f) The sale was initiated by a bondholder, OCBC, who introduced us to ACH. The sale of KSR by the Company is conditional on the sale of the KSD stake by Actis. The bond transactions with OCBC are concurrent with but not inter-conditional on the sale of KSR by the Company.
- (g) The Proposed Disposal has not yet been completed but is expected to be completed before the Long Stop Date of 30 November 2018. The Company will keep shareholders updated.

FURTHER SGX-ST'S QUESTIONS ON 15 NOVEMBER 2018:

- (a) With regard to the Company's response to query (a)(i) of our e-mail dated 2 November 2018, please clarify what the proceeds of the convertible bonds issued in December 2017 were used for.
- (b) With regard to the Company's response to query (f) of our e-mail dated 2 November 2018, please clarify whether the sale of KSR by the Company is inter-conditional on the sale of KSD to KSR.
- (c) Please explain why the Company chose to structure the deal in this manner (i.e. the purchase and redemption of the KSE Bonds, the issuance of the KSR Bonds, the internal reorganization of the Group and the proposed disposal of the KSR Group).

Company Responses

- (a) To clarify the use of proceeds for the bonds issued in December 2017, we extract sections 1.1 and 1.2 from the circular to shareholders dated 12 October 2017:

“Oversea-Chinese Banking Corporation Limited (“OCBC”), Pacific One Energy Limited (“POEL”) and Ms Hedy Wiluan (“HW”) are existing holders of an aggregate principal amount of S\$45.0 million 6.00 per cent convertible bonds due 2016 a redemption price of 124.45 per cent. of the principal. While TAEI One Partners Ltd (acting in its capacity as General Partner of The Asian Entrepreneur Legacy One, L.P.) (“TAEI”) is an existing holder of an aggregate principal amount of S\$7.5 million 6.00 per cent convertible bonds due 2016 at a redemption price of 104.19 per cent. of the principal amount (collectively, the “Existing Convertible Bonds”). As at the Latest Practicable Date, an aggregate principal amount of US\$3,287,500 and S\$8,623,917 (the “Existing Loans”) is owed by the Company to POEL.”

“On 26 May 2017, the Company announced that it had on 26 May 2017 entered into separate bond purchase agreements and warrant subscription agreements with each of OCBC, TAEI, POEL, HW (collectively, the “Lenders”, each a “Lender”). As a condition for the Proposed Bonds Issue, the Company had on 26 May 2017 entered into bond repurchase agreements with each of the Lenders, pursuant to which the Existing Convertible Bonds will be purchased by the Company for cancellation. The aggregate consideration under the Proposed Bonds Issue shall be satisfied by the repurchase of the relevant Existing Convertible Bonds by the Company from each of the Lenders (the “Proposed Bonds Repurchase”). In addition, the Company shall also convert the Existing Loans into Bonds that shall be issued to POEL.”

- (b) The sale of KS Distribution Pte. Ltd. (“KSD”) to KS Resources Pte. Ltd. (“KSR”) by the Company is a prerequisite to the sale to KSR to ACH Distribution Pte. Ltd. (“Purchaser”). The Internal Reorganisation is undertaken in connection with the Proposed KSE Bond Purchase and the Proposed KSR Bond Issuance, as well as the subsequent disposal of KSR to the Purchaser, which allows the Company to restructure and reduce its liabilities and dispose of a loss-making business concurrently.
- (c) The structure was created to meet the differing requests and needs of the four bondholders. With respect to the purchase/redemption of the bonds, two of the bondholders were willing to take equity in the Company. One bondholder was willing to defer payment in relation to the purchase/redemption of the bonds or have its debts assigned if it could be secured over the Company's stake in KSD. The final bondholder elected to receive only cash.

By capitalizing a portion of the bonds, the Company would be able to satisfy the bondholders who are willing to take equity in the Company. By reorganizing its shareholdings in KSD such that KSR holds all the Company's interest in KSD, and by refinancing the Existing KSE Bonds held by one bondholder by purchasing the Existing KSE Bonds and issuing KSR Bonds whereby KSR holds the Company's interest in KSD, the Company can satisfy that bondholder. The Proposed Disposal in relation to KSR is in line with the Company's intention to dispose the loss-making distribution business. The Proposed Disposal would raise cash that could be used to purchase the bonds held by the final bondholder.

As mentioned above, the structure is driven by the cash needs of one bondholder, the willingness to capitalize by two bondholders and the additional security needs of the remaining bondholder. The timing with respect to simultaneous completion of the various transactions is approved by all bondholders and allows for the simultaneous reduction of the proportion of the existing security in shares over KS Drilling Pte. Ltd. at the instance whereby the various transactions are completed. The deal structure was reviewed and approved by all bondholders as the structure of the deal allows the Company to find a solution for the requirements of each bondholder. The Board of the Company has reviewed the structure and approved it as it allows for the Group to restructure its liabilities, as well as allows the Company to dispose of its loss-making distribution business.

The Proposed Disposal is very much in the interest of the Company. KSD is a joint venture which has been suffering a string of losses. The Company has recorded losses from its share of results from KSD of \$2.9 million for the six-months ended 30 June 2018 and \$14.0 million for the 12-months ended 31 December 2017. The Proposed Disposal not only stems the losses but greatly strengthens the financial position of the Company. Therefore, the Proposed Disposal is an important and highly advantageous development for shareholders and shareholder value.

BY ORDER OF THE BOARD
KS ENERGY LIMITED

Victor Lai Kuan Loong
Company Secretary

16 November 2018

For more information on KS Energy Limited, please visit our website at www.ksenergy.com.sg