

19 September 2023

Senate Economics References Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Attention: Alan Raine – Committee Secretary

By email

Dear Committee Secretary

Senate Economics References Committee – Inquiry into ASIC investigation and enforcement

- 1 We refer to your email dated 4 September 2023 and to the public hearing held by the Senate Economic References Committee on 23 August 2023 regarding its inquiry into ASIC investigation and enforcement (the **Hearing**).

Introduction

- 2 Nuix Limited (**Nuix**) is aware of the comments made by Rolf Krolke (**Mr Krolke**) at the Hearing. Nuix does not accept these comments and disagrees with much of what was said by Mr Krolke, particularly in relation to his comments regarding:
 - (a) Nuix’s prospectus released to the market on 18 November 2020 (**Prospectus**);
 - (b) the adequacy of ASIC’s investigations into Nuix; and
 - (c) Nuix’s compliance with its continuous disclosure obligations following its initial public offering on 4 December 2020 (**IPO**).
- 3 As a preliminary matter, Nuix strongly rejects Mr Krolke’s comments regarding Nuix’s culture and its corporate governance practices and compliance.

Comments regarding the Prospectus

- 4 Nuix does not accept that there was any impropriety in the manner in which the Prospectus was prepared. Nuix further denies that any information contained in the Prospectus, including Nuix’s forecast of statutory revenue for the financial year ending 30 June 2021 (**FY21 Statutory Revenue Forecast**), was without a reasonable basis.
- 5 The FY21 Statutory Revenue Forecast was approved, as part of the Prospectus, by:
 - (a) Nuix’s then Board;

- (b) members of Nuix's then senior management;
- (c) the Due Diligence Committee that was established by Nuix for the purpose of the IPO (and included members from Macquarie Capital (Australia) Limited (**Macquarie Capital**) and Morgan Stanley Australia Securities Limited, who were the joint lead managers for the IPO)

and was subject to external independent review by PwC as Investigating Accountants for the IPO (who, in their role as Investigating Accountants, also reviewed and approved the FY21 Statutory Revenue Forecast within the context of the change to Nuix's revenue recognition policy identified by Mr Krolke at the Hearing).

Comments regarding ASIC's investigations of Nuix

- 6 Nuix fundamentally disagrees with any proposition that ASIC's investigations into Nuix have been anything other than comprehensive. Nuix has at all times sought to co-operate fully with ASIC's investigations and has done so at great financial expense. Nuix also notes the significant reputational impact that has resulted from coverage of ASIC's investigations into its activities.
- 7 Following the IPO, ASIC has conducted three investigations into Nuix and its officers, summarised generally as ASIC's investigation into:
 - (a) Nuix's Prospectus and IPO;
 - (b) Nuix's compliance with its continuous disclosure obligations and potential misleading and deceptive conduct in the period post the IPO; and
 - (c) Jonathan Rubinsztein's share trading activity (which commenced initially as a request that Nuix provide ASIC with voluntary assistance).
- 8 In addition, ASIC has conducted an investigation into the share trading activity of Nuix's former CFO, Stephen Doyle, which has included Nuix providing documents and assistance to ASIC.
- 9 We also note that ASIC conducted an investigation into Macquarie Capital regarding its role as joint lead manager and underwriter of the IPO.
- 10 In the context of ASIC's investigations referred to at paragraphs 7(a) and 7(b) above, Nuix has produced approximately 25,100 documents to ASIC in response to four notices for the compulsory production of documents. This is in addition to the approximately 4.05 million documents that were seized by ASIC pursuant to the search warrants that were executed at Nuix's office on 24 June 2021.
- 11 Further, Mr Krolke's statement at the Hearing that ASIC only examined Nuix's then CEO, Paul Muller and 'some of the finance team and the corporate development team' is not correct and speaks to the unreliability of Mr Krolke's evidence to the Senate. Mr Krolke was not involved in any of the abovementioned investigations or their underlying subject matter. In relation to the investigations referred to at paragraphs 7(a) and 7(b) above ASIC has conducted at least one compulsory examination with each of:
 - (a) Nuix's CEO, CFO, and Company Secretary, at the time of the IPO;
 - (b) each of Nuix's four other directors, at the time of the IPO;

- (c) five of Nuix's current and former senior employees, including Nuix's Head of Financial Planning and Analysis; and
 - (d) a former consultant.
- 12 In the context of ASIC's investigation (and preliminary request for voluntary assistance) referred to at paragraph 7(c) above, Nuix has produced approximately 1,100 documents to ASIC and provided comprehensive written responses to ASIC on two occasions. Further, Nuix's CEO and Company Secretary, as well as two of Nuix's directors have each attended compulsory examinations with ASIC. Nuix continues to co-operate fully with ASIC in relation to this investigation and expects it to be resolved in the short term.
- 13 In addition, Nuix is currently defending enforcement proceedings in the Federal Court of Australia (**ASIC Proceedings**) in which ASIC alleges, inter alia, that Nuix breached its continuous disclosure obligations and that it engaged in misleading and deceptive conduct in the period shortly after its 2020 IPO. Nuix denies each of the allegations made against it in the ASIC Proceedings and is currently defending the proceedings. The ASIC Proceedings are listed for a four-week final hearing commencing on 20 November 2023.

Comments regarding Nuix's compliance with its continuous disclosure obligations

- 14 Nuix rejects Mr Krolke's comments at the Hearing regarding Nuix's compliance with its continuous disclosure obligations following the IPO. Mr Krolke had no involvement in Nuix's IPO or ASIC's investigation of that matter. As the issue is the subject of ASIC's enforcement proceeding, to be heard by the Federal Court of Australia later this year, Nuix is limited in what it can say on the matter other than to confirm, as identified above, that Nuix denies the allegations and is vigorously defending those proceedings.

Yours sincerely



General Counsel & Company Secretary
Nuix Limited