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24 September 2024

To Creditors as addressed

Dear Sir/Madam

**Nuheara Limited ACN 057 140 922 (NUH)
And its subsidiaries set out in Annexure A
(All Administrators Appointed) (Collectively referred to as 'the Companies')**

**Realtek Semiconductor Corporation (Realtek)
and Federal Court of Australia proceeding WAD 254 of 2024**

We refer to the above matter and our previous correspondence in relation to the Companies.

We write to advise that on 16 September 2024, we were served with a notice that Realtek made an application to the Federal Court of Australia (WAD 254 of 2024) on 12 September 2024 for orders that pursuant to Section 588FM of the *Corporations Act 2001* (Cth) ("the Act") that 15 March 2024 be fixed as the time for Realtek to register their security interest and any further and other orders as the Court thinks fit.

If the orders sought by Realtek are made by the Federal Court of Australia, you will or may be prejudiced. Accordingly, this update is provided to make you aware of the application and to give you the opportunity (if you wish) to put forward your views on the application as to why you think you might be specifically prejudiced if the orders sought by Realtek are made.

Background

Realtek is a supplier of electronic microchips which are used in NUH's earbuds. In addition, Realtek and NUH are parties to a Convertible Note Subscription Agreement dated 7 September 2022 ("the Agreement"). Pursuant to the Agreement, Realtek lent NUH the sum of AU\$2.5million and the obligation to repay that loan could be converted, at Realtek's option, to equity in NUH.

If not converted to equity, the loan becomes repayable two years after the date the Convertible Notes were issued pursuant to the Agreement (two years after the Convertible Notes were issued was 7 September 2024). We also understand from the review of the Agreement that it provided that Realtek would have security over all of NUH's assets. An ASX announcement dated 29 November 2022 following NUH's annual general meeting held earlier that day records that NUH's shareholders approved the grant of security to Realtek in accordance with the Agreement.

Based on our investigations, Realtek did not register its security on the Personal Property Securities Register until 15 March 2024, which was less than six (6) months before our appointment as Administrators. By way of summary, it is the Administrators' view that, pursuant

to section 588FL of the Act, by not registering its security more than six (6) months before the appointment of Administrators, any security interest held by Realtek vested in the Administrators, unless a Court agrees to extend time for the registration of any interest by Realtek pursuant to section 588FM of the Act. Unless that order is made, it is the Administrators' view that Realtek is not a secured creditor of the Company.

On 20 August 2024, the Administrators solicitors wrote to Realtek's Australian solicitors regarding their security position outlining that:

- based on the information available, the security interest conferred by the Agreement vested in the Administrators immediately before our appointment on 7 August 2024; and
- accordingly Realtek is:
 - (a) an unsecured creditor of the Company; and
 - (b) unable to exercise any of the rights which the Agreement purported to grant in its favour in respect of the enforcement of any security, which Realtek might consider it held under the Agreement.

Realtek responded that they intend to make an application to Court pursuant to section 588FM on the basis that the company was not aware of the Australian requirements to register the security interest as they were a foreign entity domiciled in Taiwan.

Application to extend time

On 12 September 2024, Realtek made an application to the Federal Court of Australia (WAD 254 of 2024) to extend time to register its security. The application was originally listed on an urgent basis for hearing on 20 September 2024.

At the Administrators' request, and with Realtek's agreement, the parties asked for that hearing to be adjourned (postponed) on the basis that NUH's other creditors should be given an opportunity to consider, make submissions to the Administrators and potentially be heard in connection with the application. This is because, if successful, the effect of the application is that:

- Realtek's security will not vest in the Administrators;
- Realtek will be a secured creditor of NUH; and
- Realtek will be entitled to a priority from the ultimate realisation of the assets subject to its security which in turn will reduce the amount which would otherwise be available to pay unsecured creditors as a dividend.

The Court agreed to adjourn the hearing until 10:15am AWST on 22 October 2024, as explained further below.

Subject to anything you might say, or any information or documents you might provide, the Administrators have determined not to oppose Realtek's application. That is because, following investigations, the Administrators are of the view that:

- the Agreement conferred on Realtek a security interest within the meaning of the *Personal Property Securities Act 2009* (Cth);
- it was the mutual intention of Realtek and NUH that Realtek's security interest was intended to be secured by way of registration on the Personal Properties Securities Register. The grant of that interest was specifically approved by the Company's members at an annual general meeting held 29 November 2022, the results of which were published that day;
- no party has, at least to date, asserted any claim as a secured creditor of the Company which might be prejudiced by the orders sought; and
- Realtek's explanation for the delay in registering its security, which is that it was inadvertent due to a lack of understanding of Australian requirements, appears credible.

However, the Administrators are required to act in the best interests of creditors generally, and not only particular creditors, and this circular is provided to make you aware of these matters and to give you the opportunity to put any information or documents to the Administrators as to why you think you might be specifically prejudiced if the orders sought by Realtek are made.

Alternatively, creditors may be entitled to appear at the hearing to put forward their views to the Court. The Administrators have no control over whether or not the Court might allow you to do so. If you intend to do so (in which case you should seek your own legal advice), please let us know as soon as possible.

The hearing of the application

Realtek's application has been listed for hearing at 10:15am AWST on 22 October 2024 at:

Federal Court of Australia
Peter Durack Commonwealth Law Courts Building
1 Victoria Avenue
Perth WA 6000

A copy of Realtek's originating process in relation to the application, including the supporting affidavits relevant to the application, may be accessed on KPMG's website at kpmg.com/au/en/home/creditors/nuheara

Under timetabling orders made by the Court, the Administrators or any interested parties are required to file any affidavits or submissions in opposition to the application by 4:00pm on 8 October 2024.

You are not required to take any action in relation to this update. However, if you either support, do not object to, or alternatively oppose Realtek's application set out above, please inform us via email at nuheara@kpmg.com.au, as soon as possible but before any affidavits are required to be filed on 8 October 2024 and these responses will be brought to the Court's attention.

If you do wish to provide any documents or information to the Administrators in connection with Realtek's application, please do so well in advance of 8 October 2024 in order for us to be able to comply with the Court's orders.

If you have any questions, please contact either Bohan Teakle or Kieran Chu of this office at nuheara@kpmg.com.au

Yours faithfully



Martin Jones
Administrator

Annexure A

Entity	ACN
Nuheara IP Pty Ltd (Administrators Appointed)	605 704 096
Terrace Gold Pty Ltd (Administrators Appointed)	072 608 952