

FINANCIAL MARKETS AUTHORITY

PACIFIC EDGE LIMITED

SETTLEMENT DEED

HARMOS ■ HORTON ■ LUSK

CORPORATE LAWYERS

DEED dated May 2015

PARTIES

FINANCIAL MARKETS AUTHORITY ("FMA")

PACIFIC EDGE LIMITED ("PEB")

INTRODUCTION

- A. In October 2013, Pacific Edge Diagnostics USA, a subsidiary of PEB, entered into agreements with three organisations based in the United States of America, FedMed, American's Choice Provider Network ("**ACPN**") and Stratose, under which each of those organisations agreed to provide access to their respective national provider network in the United States of America for PEB's CxBladder product (the "**Relevant Agreements**").
- B. PEB disclosed to NZX Limited ("**NZX**") the signing of each Relevant Agreement some days after that Relevant Agreement was signed.
- C. FMA considers that the failure to immediately disclose to NZX the signing of each Relevant Agreement contravened, or may have contravened, NZX Main Board Listing Rule 10.1.1(a) and, accordingly, section 19B of the Securities Markets Act 1988 ("**SMA**").
- D. The FMA and PEB have agreed to resolve FMA's allegations in respect of the disclosure of the Relevant Agreements on the terms set out in this Deed.

OPERATIVE PROVISIONS

1. **FMA warning:**
 - (a) On or about the date of this Deed, the FMA will issue a public warning, in the form set out in Schedule 1 to this Deed, under which the FMA will state that it considers that PEB contravened section 19B of the SMA by failing to immediately disclose to NZX the signing of the Relevant Agreements with FedMed and ACPN.
 - (b) Subject to sub-clause (c), PEB may disclose the signing of this Deed and its contents to NZX or any other person.
 - (c) FMA and PEB will not make any statement in relation to this Deed which is inconsistent with this Deed.
 - (d) The FMA will publish the public warning on its website.
2. **Compensation:**
 - (a) For the purposes of this Deed, a "**Relevant Shareholder**" is a person who:
 - (i) either:
 - (A) was recorded as a registered shareholder in PEB during a Relevant Period (as defined in sub-clause (ii)); or
 - (B) is confirmed by a Custodian (as defined in sub-clause (e)(v)) to have been a Beneficial Owner (as defined in sub-clause (e)(v)) of PEB shares during a Relevant Period; and

(ii) sold PEB shares in either or both of the following periods (the “**Relevant Periods**”):

(A) starting at 10.00 am on 11 October 2013 and ending at 10:20.27 am on 16 October 2013; and

(B) starting at 10.00 am on 18 October 2013 and ending at 10:34.35 am on 22 October 2013,

with all references to time being to New Zealand Standard Time. For the purposes of this sub-clause (ii), the sale of PEB shares must have been effected or reported through the NZX Main Board and must have resulted in a change in the ultimate beneficial ownership or ultimate control of the PEB shares.

(b) PEB agrees to make available the amount of NZ\$500,000 (“**Compensation Amount**”) to be used to make compensation payments in accordance with this Deed to Relevant Shareholders who sold PEB shares during either or both of the Relevant Periods.

(c) PEB must offer to each Relevant Shareholder a cash pro-rata share of the Compensation Amount (“**Relevant Share**”), being an amount calculated as follows:

$$(NZ\$500,000 \div A) \times B$$

where:

A is the total number of PEB shares sold, by way of transactions effected or reported through the NZX Main Board, during the Relevant Periods.

B is the number of PEB shares sold by the Relevant Shareholder during the Relevant Periods minus the number of PEB shares purchased by the Relevant Shareholder during the Relevant Periods. In calculating B, only sales or purchases of PEB shares that were effected or reported through the NZX Main Board during the Relevant Periods and which resulted in a change in the ultimate beneficial ownership or ultimate control of the PEB shares will be counted.

(d) PEB may, at its discretion, offer to each Relevant Shareholder whose Relevant Share exceeds NZ\$500 the option to receive its Relevant Share in new, fully paid, ordinary shares in PEB or a mixture of cash and new PEB shares. If PEB elects to offer new PEB shares as a compensation option, then:

(i) the price of those shares must be volume weighted average price for trades in PEB shares effected or reported through the NZX Main Board over the 10 trading day period starting on the day on which FMA issues its warning under clause 1(a); and

(ii) the new PEB shares must be offered and issued strictly in compliance with PEB’s constitution, the NZX Main Board Listing Rules and the Financial Markets Conduct Act 2013.

PEB may, but is not required to, offer PEB shares as compensation to Relevant Shareholders outside of New Zealand.

- (e) PEB must, within 30 Working Days after the date of this Deed, send to each Relevant Shareholder a compensation offer in accordance with the following ("**Compensation Offer**"):
- (i) the Compensation Offer must be in a form agreed with FMA;
 - (ii) the Compensation Offer must comply with sub-clause (c) and, if PEB chooses to offer new PEB shares as compensation, sub-clause (d);
 - (iii) the Compensation Offer must be sent by post to each Relevant Shareholder who was a registered shareholder during a Relevant Period to the Relevant Shareholder's current address (or most recent address, in the case of Relevant Shareholders who no longer hold PEB shares) on PEB's share register;
 - (iv) if PEB chooses to offer new shares as compensation, the Compensation Offer must include a disclosure statement that uses the following wording (or any similar statement approved by FMA):
 - (A) The market for Pacific Edge shares may not be liquid. If liquidity is low, you may be unable to sell Pacific Edge shares at an acceptable price or at all; and
 - (B) The FMA has not endorsed and does not recommend the option for Investors to receive their share of the compensation amount in shares in Pacific Edge or the process to be followed with respect to this share offer. Investors who are offered the option to receive their relevant share in Pacific Edge shares should seek independent financial and legal advice before making their decision.
 - (v) the Compensation Offer must include a mechanism for Relevant Shareholders which held PEB shares as custodians or nominees ("**Custodians**") for persons which were the beneficial owners of those PEB shares during a Relevant Period ("**Beneficial Owners**") to accept the Compensation Offer on behalf of each Beneficial Owner in respect of each Beneficial Owner's Relevant Share, rather than the Custodian's Relevant Share, provided that the Custodian provides to PEB:
 - (A) details of the number of PEB shares purchased and sold on behalf of each Beneficial Owner during the Relevant Periods;
 - (B) details of the net number of sales of PEB shares on behalf of each Beneficial Owner during the Relevant Periods;
 - (C) a full and final settlement and release of claims form, which must be consistent with sub-clause (ix) and clause 3(a), signed by each Beneficial Owner;
 - (D) confirmation from the Custodian that in respect of the transactions referred to in sub-clauses (A) and (B) that the Custodian disposed of and purchased (as applicable) the relevant PEB shares for the Beneficial Owner;
 - (E) confirmation from the Custodian that the transactions referred to in sub-clauses (A) and (B) resulted in a change in the ultimate beneficial ownership or ultimate control of the relevant PEB shares; and

- (F) confirmation that the Custodian has no personal entitlement to the compensation and that it is responsible for the distribution of the compensation provided by PEB to the Custodian for the benefit of Beneficial Owners;
 - (vi) for the avoidance of doubt, the provision of compensation to the Custodian for the benefit of a Beneficial Owner satisfies PEB's compensation obligations to the Beneficial Owner;
 - (vii) the Compensation Offer must remain open for acceptance for at least 20 Working Days;
 - (viii) PEB must make payment and, if applicable, issue new PEB shares to each Relevant Shareholder who accepts the Compensation Offer within 20 Working Days after the closing date for the Compensation Offer, provided that PEB is not required to provide any compensation to a Custodian on behalf of Beneficial Owners until PEB has received the information contemplated by sub-clause (v) to PEB's satisfaction; and
 - (ix) acceptance of the Compensation Offer by a Relevant Shareholder will be full and final settlement by that Relevant Shareholder of all past, present and future claims against PEB and any related company of PEB and any of their respective past, present and future directors, officers, employees, shareholders, advisers and representatives in relation to or in connection with the timing of the disclosure of the Relevant Agreements to NZX.
- (f) If a Relevant Shareholder does not accept the Compensation Offer by the closing date, the Compensation Offer lapses and PEB is entitled to keep the Relevant Shareholder's Relevant Share.
 - (g) PEB may rely on the accuracy of its share register to determine the identity of Relevant Shareholders and to calculate each Relevant Shareholder's Relevant Share under sub-clause (c).
 - (h) As soon as reasonably practicable after PEB has complied with sub-clause (e)(viii), PEB must notify the FMA of the total amount cash paid and, if applicable, the total number of new PEB shares issued to Relevant Shareholders who accepted the Compensation Offer ("**Accepting Shareholders**") and provide FMA with a table setting out the name of each Accepting Shareholder and the compensation provided to that Accepting Shareholder.
 - (i) PEB is entitled to keep all interest earned on the Compensation Amount pending payment to Accepting Shareholders and no Accepting Shareholder will have any entitlement or claim to that interest.
 - (j) If it becomes impracticable for PEB to implement the Compensation Offer process set out in this clause 2, PEB and the FMA will endeavour in good faith to agree on a variation to this Deed so as to give effect to the intended outcome.

3. **Relevant Shareholder full and final settlement:**

- (a) FMA acknowledges clause 2(e)(ix) and that Accepting Shareholders will be required to waive any legal claim that they may have in relation to or in connection with the timing of the disclosure of the Relevant Agreements to NZX.
- (b) Nothing in this Deed affects, compromises or excludes any legal claim of a Relevant Shareholder who does not accept the Compensation Offer.

4. **Compliance Process Improvements**

- (a) The FMA acknowledges that as a condition to settlement, PEB has implemented a programme of improvement to its compliance policies to ensure that PEB and its directors are familiar with, and compliant with, PEB's secondary market compliance obligations, including:
 - (i) A compliance audit in respect of continuous disclosure, insider trading, and the disclosure of relevant interests by directors;
 - (ii) Implementation of the audit recommendations including:
 - (A) The appointment of a staff member with specific compliance duties and responsibilities;
 - (B) Implementation of a training programme for Directors and senior staff members on continuous disclosure obligations;
 - (C) Publishing revised continuous disclosure and insider trading policies.

5. **FMA full and final settlement:**

- (a) The FMA irrevocably and unconditionally agrees that this Deed fully and finally settles all past, present and future claims by FMA, including claims on behalf of any other person, in relation to or in connection with the timing of the disclosure of the Relevant Agreements to NZX, including:
 - (i) all claims against PEB and any related company of PEB and any of their respective past, present and future directors, officers, employees, shareholders, advisers and representatives;
 - (ii) all claims against any other person, whether or not that person is a party to this Deed; and
 - (iii) all claims arising under or in connection with the NZX Main Board Listing Rules and the SMA and also all claims arising under or in connection with any other enactment, at law or in equity.
- (b) The FMA irrevocably and unconditionally agrees that it will not, directly or indirectly:
 - (i) investigate, issue, assist, encourage, or support (including by granting any assistance, encouragement, support or consent to any other person, body or organisation with regulatory or investigative functions or responsibilities); or
 - (ii) exercise any other person's right of action to investigate or bring, any civil, criminal or other proceedings against any person specified in or contemplated by sub-clauses (a)(i) and (a)(ii) (each, a "**Relevant Person**") in relation to or in connection with the timing of the disclosure of the Relevant Agreements to NZX.
- (c) This clause 5 is for the benefit of, and may be enforced in terms of the Contracts (Privity) Act 1982 by, each Relevant Person.

- (d) FMA may investigate, take regulatory action, or issue proceedings in relation to any matter and in respect of any person, except where that investigation, action or proceeding is expressly prohibited by this clause 5.
6. **No admission of liability:** Nothing in this Deed constitutes an admission of legal liability by any Relevant Person or an admission by any Relevant Person that the timing of disclosure of the Relevant Agreements caused loss to any person or prevents any Relevant Person from defending any claim or proceedings made or brought against the Relevant Person. The FMA considers that it is likely PEB was in breach of its continuous disclosure obligations but PEB denies this.
7. **Working Days:** In this Deed, "**Working Days**" has the meaning in the Companies Act 1993.
8. **Notices:** Any notice or other communication to be given under this Deed by a party to the other party:
- (i) may be given by personal service or email;
 - (ii) must be in writing, legible and addressed as shown below:
 - (A) if to FMA:

Address: Level 5, Ernst & Young Building
2 Takutai Square
Britomart, Auckland

Attention: Belinda Moffat

Email: belinda.moffat@fma.govt.nz
 - (B) if to PEB:

Address: Pacific Edge Ltd
Centre for Innovation
87 St David's Street,
Dunedin 9016

Attention: David Darling

Email: dave.darling@pelnz.com
- with a copy to (which will not constitute notice):
- (A) if delivered in person, when delivered to the addressee; or
 - (B) if sent by email, on the date and time at which it enters the addressee's information system (as shown in a confirmation of delivery report from the
- or to such other address (if any) as the addressee may notify to the sender by notice given in accordance with this clause;
- (iii) must be signed by the sender or an officer or authorised representative of the sender; and
 - (iv) will be deemed to be given by the sender and received by the addressee:
 - (A) if delivered in person, when delivered to the addressee; or
 - (B) if sent by email, on the date and time at which it enters the addressee's information system (as shown in a confirmation of delivery report from the

sender's information system, which indicates that the email was sent to the email address of the addressee notified for the purpose of this clause 8),

but if the delivery or receipt is on a day which is not a Working Day in the place of intended receipt or is after 5.00 pm (addressee's time), it is deemed to have been received at 9.00 am on the next Working Day in that place.

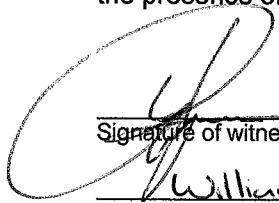
9. **Variation and waiver:** This Deed may only be varied in writing signed by the parties. No waiver of any breach, or failure to enforce any provision, of this Deed at any time by either party will in any way affect, limit or waive that party's right thereafter to enforce and compel strict compliance with the provisions of this Deed.
10. **Further assurances:** Each party will from time to time on request by the other party execute and deliver all documents and do all other acts and things, which are necessary or reasonably required to give full force and effect to the provisions of, and arrangements contemplated by, this Deed.
11. **Costs:** The parties will each bear their own costs and expenses incurred in connection with the preparation, negotiation and implementation of this Deed and any documentation contemplated by this Deed.
12. **Counterparts:** This Deed may be signed in any number of counterparts, including facsimile or scanned copies, all of which will together constitute one and the same instrument and a binding and enforceable agreement between the parties. Either party may execute this Deed by signing any such counterpart.

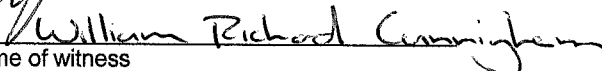
EXECUTED AS A DEED

SIGNED by and under the name of the
FINANCIAL MARKETS AUTHORITY in
the presence of:



R Everett
Chief Executive




Signature of witness


Name of witness



Occupation



City/town of residence

PACIFIC EDGE LIMITED by:

Signature of director

Name of director

Signature of director

Name of director

sender's information system, which indicates that the email was sent to the email address of the addressee notified for the purpose of this clause 8),

but if the delivery or receipt is on a day which is not a Working Day in the place of intended receipt or is after 5.00 pm (addressee's time), it is deemed to have been received at 9.00 am on the next Working Day in that place.

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EXECUTED AS A DEED

SIGNED by and under the name of the **FINANCIAL MARKETS AUTHORITY** in the presence of:

R Everett
Chief Executive

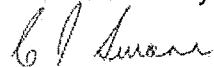
Signature of witness

Name of witness

Occupation


City/town of residence

PACIFIC EDGE LIMITED by:



Signature of director

Chris Swann
Name of director



Signature of director

David Bond
Name of director

SCHEDULE 1

FMA Warning

The Financial Markets Authority (**FMA**) has issued a warning to Pacific Edge Limited (**Pacific Edge**) in relation to alleged breaches of continuous disclosure obligations. Following an investigation by the FMA, it is the FMA's view that it is likely Pacific Edge contravened NZX Main Board Listing Rule 10.1.1(a) (**the Listing Rule**) and, accordingly, section 19B of the Securities Markets Act 1988 (**the Act**). The relevant facts are as follows:

- In October 2013, Pacific Edge Diagnostics USA, a subsidiary of Pacific Edge, entered into agreements with two organisations based in the United States of America, FedMed and American's Choice Provider Network (**ACPN**) under which those organisations agreed to provide access to their respective national provider network in the United States of America for PEB's CxBladder product.
- PEB disclosed to NZX Limited (**NZX**) the signing of each agreement some days after the relevant agreement was signed. In the period between signing and disclosure to NZX, PEB was seeking approval from the contractual counterparty to announce the signing of the agreement.
- Following the announcement of each agreement the price in PEB's shares increased.

The FMA considers that the execution of the ACPN and FedMed agreements amounted to material information and that consequently Pacific Edge ought to have disclosed the signing of each agreement to the NZX immediately upon execution of the agreements.

The FMA considers that the failure to immediately disclose to the NZX the signing of the agreements with FedMed and ACPN is likely to have contravened the Listing Rule and s19B of the Act. Failure to make the disclosure in a timely way means that shareholders who traded in shares may have done so without having available to them all material information regarding the company and without the market price of the shares when sold reflecting that price impact of that material information.

FMA further considers that any investor that sold Pacific Edge shares after the agreements were signed but before the announcements were made may be eligible for compensation pursuant to the compensation provisions in the Act.

Following engagement with the FMA with respect to the matter PEB has:

- undertaken a compliance audit and has implemented the audit recommendations;
- agreed to make a compensation payment of \$500,000 to be distributed to shareholders who sold PEB shares during the period of delay between signing of the agreements and

the announcement to the NZX. The process for payment of compensation is set out in a Settlement Deed which has been agreed between the FMA and PEB. PEB has indicated that it may offer eligible shareholders the option of a cash payment or for those who may be entitled to a payment of \$500 or more, to receive new PEB shares, in lieu of cash. The FMA does not endorse the share offer and expressly encourages any eligible shareholder to seek independent financial and legal advice with respect to the PEB offer. A copy of the Settlement Deed can be found **here**.

Having assessed the conduct involved and notwithstanding its conclusion that the Listing Rule and the Act have likely been breached, the FMA has determined that the appropriate and proportionate enforcement response is to accept PEB's offer to make compensation to affected shareholders and to issue this warning.

Compliance with secondary markets disclosure obligations is a key strategic priority for the FMA and is critical for ensuring that investors are able to participate in a fully informed market.