

ENFORCEABLE UNDERTAKINGS TO THE FINANCIAL MARKETS AUTHORITY

Pursuant to s 46 of the Financial Markets Authority Act 2011

Medical Kiwi Limited

1 Parties

- 1.1 These undertakings are given to the Financial Markets Authority (**FMA**) – Te Mana Tātai Hokohoko, an independent Crown entity established under s 6 of the Financial Markets Authority Act 2011 (**FMAA**) by Medical Kiwi Limited (**Medical Kiwi**), a company incorporated in New Zealand which has its registered address at MMP Lawyers, Level 2, 241 Hardy Street, Nelson, 7010.

2 Background and admissions

- 2.1 The FMA has regulatory oversight in relation to the Financial Markets Conduct Act 2013 (**FMCA**).
- 2.2 Medical Kiwi was incorporated on 14 December 2018. It is a medicinal cannabis start-up business. Medical Kiwi states its main business is to cultivate, produce and sell medicinal cannabis and cannabidiol wellness products.
- 2.3 In August 2020, Medical Kiwi offered shares to potential investors via the online crowd funding platform PledgeMe Limited (**PledgeMe** and the **Offer**).
- 2.4 These undertakings relate to misleading statements Medical Kiwi made in August 2020 in relation to the Offer:
- (a) in an information memorandum dated August 2020 it provided in support of the Offer (**IM**); and
 - (b) on the associated Q&A page on the PledgeMe website.
- 2.5 The statements contravened the fair dealing provisions in Part 2 FMCA, specifically sections 19, 22(e) and 22(h) FMCA.

Admissions

Licences

- 2.6 Medical Kiwi stated in various places in the IM that it had a “cannabis licence”. Medical Kiwi had one licence to cultivate a prohibited plant for medical or scientific research. However, this licence was due to expire and did expire during the offer period. The offer period was from 17 to 28 August 2020, and the relevant licence expired on 22 August 2020. From 23 August, during the Offer, Medical Kiwi held no relevant licences.
- 2.7 The statements were initially misleading as they omitted the material fact that the licence was due to expire, and the statements became false from 22 August when the licence in fact expired. The statements were also misleading in that they omitted any explanation of other licences required, but not yet obtained, in order to lawfully produce medicinal cannabis.
- 2.8 By virtue of the above, Medical Kiwi admits that it breached sections 19 and 22(e) FMCA.

Contractual arrangements

- 2.9 Medical Kiwi stated throughout the IM that it had “pre-sold” its first two years of cultivated production to “Hektares”. Medical Kiwi referred to Hektares as a “a global player in the medicinal cannabis industry.”
- 2.10 On the Q&A page of the PledgeMe website, in response to a question as to whether the “Hektares” purchase agreement was binding, Medical Kiwi stated that there was “always a risk that a client might not be able to perform their contractual obligations ...”.
- 2.11 However, Medical Kiwi’s agreement with Hektares was non-binding and, in mid-November 2020, the agreement was terminated. Medical Kiwi did not have a binding contract with Hektares for the sale of its future production and, accordingly, its cultivated product was not “pre-sold”.
- 2.12 By virtue of the above, Medical Kiwi admits that it breached sections 19 and 22(h) of the FMCA.

3 Purpose and Effect of the Undertakings

- 3.1 Having regard to the conduct described above, Medical Kiwi offers the undertakings set out in paragraph 4 below to the FMA (**Undertakings**).
- 3.2 The Undertakings are offered to the FMA:
- (a) in relation to the identified contraventions of the FMCA referred to in paragraphs 2.6 to 2.12 above; and
 - (b) to remedy or mitigate any actual or likely adverse effects arising from the contraventions.
- 3.3 The Undertakings:
- (a) are accepted by the FMA as court enforceable undertakings in terms of sections 46, 46A and 47 of the FMAA; and
 - (b) come into effect when executed by Medical Kiwi and signed as accepted by the FMA.

4 Undertakings

- 4.1 Medical Kiwi undertakes to pay the FMA \$250,000 in lieu of a pecuniary penalty. Medical Kiwi is to make this payment within 25 working days of the Undertakings coming into effect, and in any case not later than 1 February 2022.
- 4.2 Medical Kiwi undertakes to issue a correction of the misleading statements by way of a public statement setting out the terms and appending a copy of the Undertakings, to be published on its website www.medicalkiwi.com, on the Medical Kiwi PledgeMe campaign page, and by letter or email to all investors who participated in the Offer. Medical Kiwi is to make this correction within 25 working days of the Undertakings coming into effect (and in any case not later than 1 February 2022), and must promptly notify the FMA when it has been completed. The correction is to be in the form in the **Appendix** to these Undertakings.

- 4.3 Medical Kiwi undertakes to offer to all shareholders who participated in the Offer the opportunity to exit their investment at the purchase price of their shares (ie a refund). In this respect, Medical Kiwi will:
- (a) Make the offer contemporaneously with and in the same method as the correction at 4.2 above.
 - (b) Provide for each relevant investor to have 3 weeks from receipt to accept the offer, should they wish to do so.
 - (c) Complete each payment within 4 weeks from receipt of acceptance.
 - (d) Report to the FMA when the process is complete, not later than 31 March 2022, confirming the process is complete and including the number of investors who accepted, and the total amount refunded.
- 4.4 Medical Kiwi undertakes to:
- (a) Create policies and practices that provide proper governance of disclosure (whether it be for an offer or continuous disclosure) to be reviewed for compliance by an independent consulting firm approved by the FMA.
 - (b) Complete this process within 4 months of the Undertakings coming into effect.
 - (c) Supply the FMA with documentation to verify this process has been completed (upon request).
- 4.5 Medical Kiwi undertakes that it will not, for a 9 month period from the date of its financial products being first quoted on any licensed market by way of direct or compliance listing, seek to undertake an offer of financial products in reliance on clause 19 of Schedule 1 of the FMCA. This undertaking:
- (a) is in effect for a period of 4 years from the date of the Undertakings coming into effect; and
 - (b) for the avoidance of any doubt, is not a bar to Medical Kiwi undertaking an initial public offering without a standdown period on the NZX or any licensed market during this period.

5 Miscellaneous

- 5.1 No amendment to the Undertakings will be effective unless in writing, executed by Medical Kiwi and signed as accepted by the FMA.
- 5.2 These Undertakings are properly executed if Medical Kiwi and the FMA sign the same copy, or separate identical copies of the execution page. Where separate copies are signed by Medical Kiwi or by the FMA, the signed copy can be the original document or an emailed copy.
- 5.3 Medical Kiwi:
- (a) acknowledges that the FMA:
 - i. may make these Undertakings publicly available by publishing them on the FMA's website;

- ii. will also publish on its website a brief description of the circumstances and nature of the alleged contravention to which the Undertakings relate;
 - iii. may make public reference to the Undertakings including in media statements or other publications;
- (b) will ensure that any public statements made by it (or its related parties) relating to these Undertakings are consistent with Parts 2-4 above; and
- (c) acknowledges that, in accepting the Undertakings, the FMA is not prevented from exercising its rights and powers under the relevant legislation to any contravention of the Undertakings or in relation to any other matter not the subject of these Undertakings.

Execution

**Signed by and on behalf of
Medical Kiwi Limited**

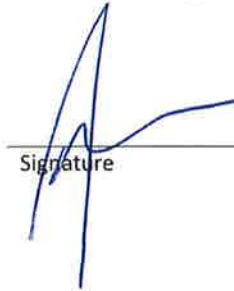


Cataldo Miccio - Chairmen



Peter Lin - Director

In the presence of:



Signature

Witness name

**Alexander Alan Reith
Solicitor
Nelson**

Witness address

Witness occupation

Date *21 December 2021*

Acceptance

Accepted by
the Financial Markets Authority
by:



Authorised signatory

Karen Chang - Acting General Counsel

Name



Signature

In the presence of:

Witness name	Margot Gatland
Witness address	Devonport, Auckland
Witness occupation	Acting Head of Enforcement, Financial Markets Authority
Date	21 December 2021

APPENDIX – CORRECTIONS OF STATEMENTS

Medical Kiwi made certain statements at the time of its crowdfunding offer on the PledgeMe website (August/September 2020) that have been the subject of inquiries by the Financial Markets Authority (FMA). The outcome of those inquiries is that that Medical Kiwi has admitted those statements were incorrect or misleading and therefore breached Part 2 of the Financial Markets Conduct Act 2013. Medical Kiwi and the FMA have agreed that Medical Kiwi gives enforceable undertakings in order to address those breaches. The enforceable undertakings are **attached** in full.

As part of the enforceable undertakings, Medical Kiwi has agreed to issue a correction of the statements in question. The statements and corrections are set out below.

Representation as to licences

In its Information Memorandum (IM) issued as part of the crowdfunding offer, Medical Kiwi made various disclosures in relation to medicinal cannabis licences held, or applied for including:

- (a) “Medical Kiwi is in a unique position as one of a few licensed New Zealand companies...”
- (b) “Since 2018 we have... been granted a licence to cultivate from the Ministry of Health with further licenses pending”
- (c) “Medical Kiwi is positioning itself to manufacture and supply high-quality medicinal cannabis and CBD products for both the local and international markets once the licenses are granted.”
- (d) “In August 2019, just eight months after being established, we became the first South Island based medicinal cannabis company to be granted a licence to cultivate for research. We’re an applicant for licenses to cover the full range of our activities and anticipate these being granted very soon, now that the Medicinal Cannabis Scheme is operational.”

Medical Kiwi should have but did not qualify the above by noting that the licence that it held at the time: (i) was due to expire on 22 August 2020; (ii) could not be renewed or extended; (iii) was specifically associated with Medical Kiwi’s Brightwater Facility in Nelson and did not apply to operations at its Christchurch Facility; and (iv) was never active as it was conditional on a site inspection which was never completed.

At the time of the IM, Medical Kiwi planned to let the Brightwater licence lapse as that site was no longer part of Medical Kiwi’s immediate plans. Medical Kiwi was in the process of obtaining a new licence in order to retrofit a Christchurch facility. Medical Kiwi’s application was being assessed by the Ministry of Health, and it did not anticipate any issues based on the exchanges with the Ministry to date. The Ministry of Health granted the licence for the Christchurch facility on 3 December 2020.

Medical Kiwi should have made it clear in the IM that its current licence was not yet active and was about to expire, and that its plans were based on the Ministry of Health granting a licence for the Christchurch facility (which had not yet happened). The statement at (a) to (d) above ought to have been amended accordingly:

- ~~(a) “Medical Kiwi is in a unique position as one of a few licensed New Zealand companies...”~~
- ~~(b) “Since 2018-2019, we have held an inactive... been granted a licence to cultivate (including a research component) from the Ministry of Health, but we have a further application for a licence in place and are awaiting Ministry approval with further licenses pending”~~
- ~~(c) “Medical Kiwi is positioning itself to manufacture and supply high-quality medicinal cannabis and CBD products for both the local and international markets once the licenses are granted pending confirmation of a licence to cultivate from the Ministry of Health.”~~

(d) "In July-August 2019, just eight months after being established, we became the first South Island based medicinal cannabis company to be granted a licence to cultivate for research. That licence (associated with our Nelson facility) has never been active and we are intending to let that lapse given our plans have shifted away from operating in Nelson. Instead, we are focussed on our facility in Christchurch and have applied for a licence from the Ministry of Health for that facility, which we are hopeful will be granted soon. We're an applicant for licenses to cover the full range of our activities and anticipate these being granted very soon, now that the Medicinal Cannabis Scheme is operational."

Representations regarding contractual arrangements

Medical Kiwi made statements in its IM about its supply arrangements including that it had "signed partnership agreements... including pre-selling our entire first two years production worth \$90 million to Hektare, a global player in the cannabis industry". Medical Kiwi repeated the statement about having presold the first two years production throughout the IM.

The arrangement that Medical Kiwi had in place with Hektare was a letter of intention to supply. It was able to be terminated by Hektare. Although Medical Kiwi did not anticipate this at the time of the IM, the parties ended up mutually withdrawing from this arrangement. Medical Kiwi accepts that it ought to have made that risk clearer. For example, rather than stating it had pre-sold production to Hektare, stating that:

"We have strong interest from a global player in the cannabis industry, Hektare, to pre-purchase approximately \$90 million worth of product. Hektare has signed a letter of intention to purchase, although we note that arrangement is not binding and may be terminated by Hektare".

Q&A on PledgeMe Campaign Page

On 2 August 2020, Medical Kiwi was asked a question on the PledgeMe Campaign Page:

"Is your purchase agreement binding? I ask this question due to the fact PURO NZ claimed they had purchase agreements and when they came to sell, their agreements were non binding".

Medical Kiwi responded:

"There's always a risk that a client will not be able to perform their contractual obligations whether it's a binding or nonbinding MOU, contract or agreement of any nature. Our team is confident that Hektare have the ability and resources as well as intent to fulfill [sic] their contractual obligations. ... More the issue is that Medical Kiwi may not be able to satisfy the demand from Hektare, as reflected in the risk section of our IM. Our IM financials reflect what we believe we can satisfy while also diversifying with other clients to try and mitigate any risk from a single client."

Medical Kiwi accepts that it should have clearly conveyed that the agreement with Hektare was a letter of intention to supply and was able to be terminated. The answer should have said, for example:

"The purchase agreement is a letter of intention to supply and may be terminated by Hektare. Although we are not aware of anything to suggest that Hektare will not proceed with this order, it is possible that it may decide not to do so."

Conclusion

Medical Kiwi unreservedly apologises for the misstatements outlined above.