

4 March 2019

Ms Lisa Banh
Senior Adviser, Listings Compliance (Sydney)
ASX

via email: ListingsComplianceSydney@asx.com.au

Dear Ms Banh

Factor Therapeutics Limited (ASX:FTT) (Company or Factor)

We refer to your letter on 28 February 2019. The Company's responses to each of ASX's queries are set out below. Capitalised terms not defined in this letter have the meaning given to them in your letter.

Question 1: Please explain how the estimated amount of \$1.2 million to be received pursuant to the R&D Tax Incentive Scheme announced to the market on 31 January 2019 was calculated.

The estimated amount of \$1.2 million to be received pursuant to the R&D Tax Incentive Scheme announced to the market on 31 January 2019 was the amount which had been included in the Company's cashflow forecast, for the purpose of management accounts and reports to the Board, since approximately May/June 2018. That figure was representative of management's estimate of the R&D tax rebate based on its understanding of eligible R&D activities being undertaken by the Company in FY18, determined in the context of the AusIndustry advanced overseas finding which the Company reports against each year.

Management's approach to estimating R&D rebates has been consistently conservative each year, with only direct R&D activities considered. Management has consistently not included non-direct R&D activities or potential overhead apportionment in the Company's forecasts. These determinations are complex and are arrived at in consultation with the Company's R&D tax advisor, Deloitte.

Further, and as noted in the Company's financial report for the six months to 30 June 2018, the nature of the R&D tax rebate ruling is complex, particularly for overseas activities, and more so in light of the Company approaching the end of the advanced overseas finding in relation to its Phase 2 clinical trial. At that time the Company noted that it would undertake a detailed review of R&D activities at 31 December 2018 for the anticipated R&D tax rebate for eligible R&D activities undertaken in the year to 31 December 2018.

During January 2019, the Company provided information to Deloitte to enable the income tax and R&D tax rebate process to be progressed. For the purpose of preparations for audit and statutory reporting, on a number of occasions during January 2019 the Company requested from Deloitte updates on the process and an indicative final R&D tax rebate number. An indicative final number was never provided by Deloitte.

On 31 January 2019 the Appendix 4C was released. While the Company had not previously included R&D rebate figures in its reporting until they were finalised, on this occasion, given the current

circumstances of the Company and the projected cash balance at 31 March 2019, the Board considered it important to be transparent about the potential receipt of funds in 1H19. As the advice from Deloitte had not been received at the time the Appendix 4C was released, and as the Company did not know when the advice would be received, the Company included its forecast figure in a covering note to the Appendix 4C.

Management had no reason to believe at that time that the final R&D tax rebate number would be materially different to the number in its forecasts. The cover note to the Appendix 4C however makes clear that the amount noted was not final, was in process and was subject to usual review. In particular, it states:

“Projected expenditure for the coming quarter is \$2.057 million, with the majority comprising contractual commitments with respect to this trial. The projected cash balance following these payments is \$0.541 million. The Company’s future cash position may also be impacted by receipt of a payment in April/May 2019 of approximately \$1.2 million under the federal government’s Research and Development (R&D) Tax Incentive Scheme. The Company is in the process of preparing a claim for this payment as part of its annual tax return submission; however, receipt of these funds is subject to the usual review processes, particularly in relation to the Company’s Overseas Finding.”

Question 2: Please explain how the revised estimate announced to the market on 4 February 2019 was calculated, including a timeline of events and details of any new information used to revise the estimate.

Eligible R&D activities for the year ended 31 December 2018 were identified through discussions between Deloitte and management in the last week of November 2018. Documentation was collated which evidenced the occurrence of the eligible R&D activities, and this was used to prepare a technical document which described the eligible R&D activities. The R&D activities were reviewed and approved by management on 2 January 2019. Deloitte then commenced the process of calculating the expenditure incurred in FY18 which was related and attributable to the identified R&D activities.

The final R&D deliverables including the draft ATO R&D schedule, the registration application and R&D report were provided to the Company by Deloitte on the afternoon of Friday, 1 February 2019 for review. This was the first time the quantum of the actual R&D expenditure was shared with the Company. Management review commenced promptly. The information was also sent to the Board.

A Board Meeting was called to be held on Sunday, 3 February 2019, at which the revision in the anticipated R&D rebate was discussed. It was noted that, given the significant increase in the proposed R&D rebate claim, management was required to carefully review and clarify the deliverables with Deloitte to determine whether the information reported back to the Company by Deloitte was materially correct. The Board agreed that the information was, at that time, confidential and incomplete but resolved that if/when the Deloitte number was confirmed as materially correct, a market update would be made. A request to Deloitte for further information on how the deliverables were determined was made by management that day.

On Monday, 4 February 2019 the Company followed up with Deloitte for the additional requested information, noting to Deloitte the urgency of the task. The additional supporting information was provided during the morning. The additional information was reviewed and agreed by management as being materially correct. The announcement was then drafted for Board approval and released.

In that announcement the Company noted that receipt of any R&D rebate remains subject to the usual submission activities and processes.

“(The Company)... advises that it has now received results of the full review of the Company’s R&D activities and expenditure for the financial year ended 31 December 2018. In the year, approximately \$5.7 million of eligible R&D expenditure was incurred, primarily in relation to the Phase 2 clinical trial conducted in the US for which the Company has received an Advanced Overseas Finding. As a result, a rebate of up to approximately \$2.5 million may be received by the Company under the federal government’s Research and Development (R&D) Tax Incentive Scheme. Receipt of these funds, expected in May 2019, remains subject to the usual submission activities and processes.”

Question 3: When did FTT first become aware of the revised estimate?

As described above, the Company first became aware of the final revised estimate on Monday, 4 February 2019.

Question 4: If FTT first became aware of the revised estimate prior to the announcement on 4 February 2019, please explain why this information was not released to the market at an earlier time, commenting specifically on when you believe FTT was obliged to release the information under Listing Rules 3.1 and 3.1A and what steps FTT took to ensure that the information was released promptly and without delay.

The information was released to the market upon FTT becoming aware of it (that is, once the final estimated amount had been verified and confirmed by management) and consequently could not have been released at an earlier time.

FTT considers that it was obliged to release the information under Listing Rules 3.1 and 3.1A at the time that it became aware of the information, which was on the relevant date, and at which time FTT ensured that the information was released promptly and without delay.

FTT considers that, before the relevant date when the information was released, the information had been generated for the internal management purposes of FTT and was insufficiently definite to warrant disclosure.

Accordingly, the information did not require disclosure in reliance on the applicable carve out under Listing Rule 3.1A.

Question 5: Please confirm that FTT is complying with the Listing Rules and, in particular, Listing Rule 3.1.

FTT confirms that it is in compliance with the Listing Rules and, in particular, the Company confirms that it is in compliance with Listing Rule 3.1 by virtue of the information and reasons set out above.

The Company is aware of its obligations and will inform shareholders and ASX of significant matters affecting the Company in compliance with its continuous disclosure obligations.

Question 6: Please confirm that FTT’s responses to the questions above have been authorised and approved in accordance with its published continuous disclosure policy or otherwise by its board or an officer of FTT with delegated authority from the board to respond to ASX on disclosure matters.

The Company’s responses to the questions above have been duly authorised and approved by the board of directors of Factor.

We trust that our responses sufficiently address your queries, but please do not hesitate to contact us if you have any further queries or comments.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Melanie Farris', with a stylized flourish at the end.

Melanie Farris

For and on behalf of the Board of Factor Therapeutics Limited



28 February 2019

Ms Melanie Farris
Company Secretary
Factor Therapeutics Limited

By email:

Dear Ms Farris

Factor Therapeutics Limited ('FTT'): Aware Query

ASX refers to the following:

- A. FTT's announcement entitled "Appendix 4C" lodged on the ASX Market Announcements Platform on 31 January 2019 (the 'Initial Announcement'), disclosing an approximate receipt of approximately \$1.2 million under the federal government's Research and Development (R&D) Tax Incentive Scheme.
- B. FTT's announcement entitled "Update regarding anticipated R&D tax incentive rebate" lodged on the ASX Market Announcements Platform on 4 February 2019.
- C. Listing Rule 3.1, which requires a listed entity to immediately give ASX any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities.
- D. The definition of "aware" in Chapter 19 of the Listing Rules, which states that:

"an entity becomes aware of information if, and as soon as, an officer of the entity (or, in the case of a trust, an officer of the responsible entity) has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as an officer of that entity" and section 4.4 in Guidance Note 8 Continuous Disclosure: Listing Rules 3.1 – 3.1B "When does an entity become aware of information."

- E. Listing Rule 3.1A, which sets out exceptions from the requirement to make immediate disclosure, provided that each of the following are satisfied.

"3.1A Listing rule 3.1 does not apply to particular information while each of the following is satisfied in relation to the information:

3.1A.1 One or more of the following applies:

- It would be a breach of a law to disclose the information;*
- The information concerns an incomplete proposal or negotiation;*
- The information comprises matters of supposition or is insufficiently definite to warrant disclosure;*
- The information is generated for the internal management purposes of the entity; or*
- The information is a trade secret; and*

3.1A.2 The information is confidential and ASX has not formed the view that the information has ceased to be confidential; and

3.1A.3 A reasonable person would not expect the information to be disclosed."

- F. ASX's policy position on the concept of "confidentiality", which is detailed in section 5.8 of Guidance Note 8 Continuous Disclosure: Listing Rules 3.1 – 3.1B. In particular, the Guidance Note states that:

“Whether information has the quality of being confidential is a question of fact, not one of the intention or desire of the listed entity. Accordingly, even though an entity may consider information to be confidential and its disclosure to be a breach of confidence, if it is in fact disclosed by those who know it, then it ceases to be confidential information for the purposes of this rule.”

Request for Information

Having regard to the above, ASX asks FTT to respond separately to each of the following questions and requests for information:

Having regard to the above, ASX asks FTT to respond separately to each of the following questions and requests for information:

1. Please explain how the estimated amount of \$1.2 million to be received pursuant to the R&D Tax Incentive Scheme announced to the market on 31 January 2019 was calculated.
2. Please explain how the revised estimate announced to the market on 4 February 2019 was calculated, including a timeline of events and details of any new information used to revise the estimate.
3. When did FTT first become aware of the revised estimate?
4. If FTT first became aware of the revised estimate prior to the announcement on 4 February 2019, please explain why this information was not released to the market at an earlier time, commenting specifically on when you believe FTT was obliged to release the information under Listing Rules 3.1 and 3.1A and what steps FTT took to ensure that the information was released promptly and without delay.
5. Please confirm that FTT is complying with the Listing Rules and, in particular, Listing Rule 3.1.
6. Please confirm that FTT’s responses to the questions above have been authorised and approved in accordance with its published continuous disclosure policy or otherwise by its board or an officer of FTT with delegated authority from the board to respond to ASX on disclosure matters.

When and where to send your response

This request is made under Listing Rule 18.7. Your response is required as soon as reasonably possible and, in any event, by no later than 9.30AM **AEDT Monday, 4 March 2019**.

You should note that if the information requested by this letter is information required to be given to ASX under Listing Rule 3.1 and it does not fall within the exceptions mentioned in Listing Rule 3.1A, FTT’s obligation is to disclose the information “immediately”. This may require the information to be disclosed before the deadline set out in the previous paragraph and may require FTT to request a trading halt immediately.

If you wish to request a trading halt, you must tell us:

- the reasons for the trading halt;
- how long you want the trading halt to last;
- the event you expect to happen that will end the trading halt;
- that you are not aware of any reason why the trading halt should not be granted; and
- any other information necessary to inform the market about the trading halt, or that we ask for.

We require the request for a trading halt to be in writing. The trading halt cannot extend past the commencement of normal trading on the second day after the day on which it is granted.

You can find further information about trading halts in Guidance Note 16 *Trading Halts & Voluntary Suspensions*.

ASX reserves the right to release a copy of this letter and your response on the ASX Market Announcements Platform under Listing Rule 18.7A. Accordingly, your response should be in a form suitable for release to the market.

Your response should be sent to me by e-mail at ListingsComplianceSydney@asx.com.au. It should not be sent directly to the ASX Market Announcements Office. This is to allow me to review your response to confirm that it is in a form appropriate for release to the market, before it is published on the ASX Market Announcements Platform.

Listing Rules 3.1 and 3.1A

In responding to this letter, you should have regard to FTT's obligations under Listing Rules 3.1 and 3.1A and also to Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*. It should be noted that FTT's obligation to disclose information under Listing Rule 3.1 is not confined to, nor is it necessarily satisfied by, answering the questions set out in this letter.

Suspension

If you are unable to respond to this letter by the time specified above ASX will likely suspend trading in FTT's securities under Listing Rule 17.3.

Enquiries

If you have any queries or concerns about any of the above, please contact me immediately.

Regards

Lisa Banh
Senior Adviser, Listings Compliance (Sydney)