

29 September 2022

Lisa Bahn
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ASX Compliance
Exchange Centre
20 Bridge Street
Sydney NSW 2000

Email: listingsComplianceSydney@asx.com.au; lisa.bahn@asx.com.au

Dear Lisa

PainChek Ltd (ASX Code: PCK) – Query Letter

PainChek Ltd ACN 146 035 127 (**PainChek**) responds to your query letter of 27 September by answering your request for information questions as follows:

- 1. Does PCK consider the contents of the Announcement to be information that a reasonable person would expect to have a material effect on the price or value of PCK's securities (paragraph F)? **Yes, we do as it is an important development for the Company in its international expansion objectives.***
- 2. If the answer to Question 1 is "yes", please explain why the Announcement was released on MAP on 26 September 2022 and not on or around 21 June 2022? Does PCK consider this to be in compliance with its obligations under the Listing Rules (paragraphs F and H)? **Because, we still had to finalise the terms and conditions of the programme and we were specifically asked by Jetro at the time to hold back on any announcements until they had finalised all the participants in the programme and so they could prepare their formal announcement. On 21 June the initial offer to PainChek was made to join the program however that was conditional on providing PainChek company information including the creation of a video, and the acceptance of Jetro terms and conditions. It also included a number of follow up meetings with Jetro. We were advised of formal acceptance to the program and were given the clearance by Jetro to release the PainChek announcement in the past week and to align with our first meetings with Japanese businesses which were facilitated by Jetro. Therefore, we made the announcement at that time.***
- 3. If the answer to Question 1 is "no", please explain the rationale for lodging the Announcement on MAP. Does PCK consider this to be in compliance with its obligations under the Listing Rules? Please provide the basis for this view, commenting specifically on why this does not contravene ASX's prohibitions against ramping announcements in Section 7.10 of Guidance Note 8 (paragraph I). **Not applicable***
- 4. Has PCK developed or commercialised any mobile medical device applications in Japan at the time of the Announcement? **No, because we did not have regulatory clearance in Japan***

which is a pre-requisite. The market was aware of that through our previous ASX communications.

5. *If the answer to Question 4 is “yes” please:*
 - 5.1 *Provide details of any application development work and/or sales of mobile applications made in Japan at the time of the Announcement. [Not applicable](#)*
 - 5.2 *Explain why PCK’s email responses indicate the program appears to describe a future strategy and intent to enter the Japanese market. [Because Jetro were offering and have now been providing PainChek with business contacts and resources in Japan who could provide, research, commercial and regulatory services to accelerate and enable our future market launch in Japan.](#)*
6. *If the answer to Question 4 is “no”, does PCK consider the words in the title or header of the Announcement appropriate (paragraph A)? Please provide the basis for this view commenting specifically on ASX’s guidance in Section 14 of Guidance Note 14 (paragraph J). [Yes, we do believe they are appropriate because with the support of Jetro Business Connect we are expanding activities in Japan. We have now had three virtual meetings with potential partner Japanese companies in the past week and have several other planned meetings in October. Jetro Business Connect 2022 programme provides PainChek with access to a range of potential Japanese business partners and regulatory specialists to help accelerate PainChek’s planned entry into the Japanese market. These are expanding our activities into Japan.](#)*
7. *ASX observes that PCK does not appear to have entered into any material agreements capable of generating revenue. Does PCK consider the contents in the Announcement, and specifically the first paragraph (paragraph B), to be in compliance with PCK’s obligations under the Listing Rules? Please provide the basis for this view, commenting specifically on ASX’s guidance in Section 14 of Guidance Note 14 (paragraph J). [Yes, because we do not claim to have any new contracts or revenues, we clearly state the Jetro Business Connect programme provides comprehensive support services to enter the Japanese market – including business matching events with local Japanese partners and guidance in relation to regulatory clearances.](#)*
8. *Please confirm that PCK is complying with the Listing Rules and, in particular, Listing Rule 3.1. [Yes, based on the information provided above.](#)*
9. *Please confirm that PCK’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 PCK with delegated authority from the board to respond to ASX on disclosure matters. [The responses have been approved by the CEO of PainChek.](#)*

Yours faithfully,

Sally McDow
Company Secretary

sally.mcdow@boardroomlimited.com.au



27 September 2022

Reference: 60160

Ms Sally McDow
Company Secretary
Boardroom Pty Limited
Suite 44, Level 5
320 Adelaide Street
Brisbane QLD 4000

By email:

Dear Ms McDow

PainChek Limited ('PCK'): Query Letter

ASX refers to the following:

- A. PCK's announcement (the '**Announcement**') released on the ASX Market Announcements Platform ('**MAP**') on 26 September 2022 titled:
*"PainChek **expands activities** to Japan with JETRO Business Connect (emphasis added)"*
- B. The aforementioned Announcement which disclosed (emphasis added):
*"[PCK] is pleased to announce that it **will expand** its activities to Japan after being accepted into the JETRO Business Connect program for 2022"*
- C. PCK's response to ASX's email queries dated 26 September 2022 which disclosed that (emphasis added):
*"[JETRO Business Connect] provides... [PCK] with resources and capabilities to **support their entry** into the Japanese market..."*

*[JETRO Business Connect] is clearly part of our **strategy to enter** the Japanese market...*

*We have already had two virtual meetings with prospective Japanese partners in the past week... We believe these **may lead to several agreements**"*
- D. The aforementioned response to ASX's queries that disclosed that PCK was notified of its successful entry into the JETRO Business Connect program on 21 June 2022.
- E. PCK's Appendix 4E for the financial year ending 30 June 2022 and released on MAP on 31 August 2022 states on page 2 of the directors' report that:
"The principal activity of [PCK] is the development and commercialisation of mobile medical device applications that automate intelligent pain assessment..."

Listing Rules

- F. 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.
- G. Section 4.14 of Guidance Note 8 which states:
"The header for an announcement should also convey a fair and balanced impression of what the announcement is about so as not to mislead readers as to its contents or significance."

H. Section 4.22 of Guidance Note 8 which states:

“An entity must comply with its disclosure obligations under Listing Rule 3.1 and section 674, even where it is party to a confidentiality or non-disclosure agreement that might otherwise require it to keep information confidential.”

I. Section 7.10 of Guidance Note 8, which cautions entities from making announcements with a view to “ramping up” the price of their securities, including through the release of updates “worded in an exuberant fashion but which on closer examination contains little in the way of substance”.

J. Section 14 of Guidance Note 14 which states:

“An announcement for release to the market must be accurate, complete and not misleading. To not be misleading, opinions expressed in an announcement should be honestly held and balanced and should be clearly identified as a statement of opinion rather than a statement of fact. Any forward looking statement in an announcement... must be based on reasonable grounds or else by law they will be deemed to be misleading”

Request for information

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

1. Does PCK consider the contents of the Announcement to be information that a reasonable person would expect to have a material effect on the price or value of PCK’s securities (paragraph F)?
2. If the answer to Question 1 is “yes”, please explain why the Announcement was released on MAP on 26 September 2022 and not on or around 21 June 2022? Does PCK consider this to be in compliance with its obligations under the Listing Rules (paragraphs F and H)?
3. If the answer to Question 1 is “no”, please explain the rationale for lodging the Announcement on MAP. Does PCK consider this to be in compliance with its obligations under the Listing Rules? Please provide the basis for this view, commenting specifically on why this does not contravene ASX’s prohibitions against ramping announcements in Section 7.10 of Guidance Note 8 (paragraph I).
4. Has PCK developed or commercialised any mobile medical device applications in Japan at the time of the Announcement?
5. If the answer to Question 4 is “yes” please:
 - 5.1 Provide details of any application development work and/or sales of mobile applications made in Japan at the time of the Announcement.
 - 5.2 Explain why PCK’s email responses indicate the program appears to describe a future strategy and intent to enter the Japanese market.
6. If the answer to Question 4 is “no”, does PCK consider the words in the title or header of the Announcement appropriate (paragraph A)? Please provide the basis for this view commenting specifically on ASX’s guidance in Section 14 of Guidance Note 14 (paragraph J).
7. ASX observes that PCK does not appear to have entered into any material agreements capable of generating revenue. Does PCK consider the contents in the Announcement, and specifically the first paragraph (paragraph B), to be in compliance with PCK’s obligations under the Listing Rules? Please provide the basis for this view, commenting specifically on ASX’s guidance in Section 14 of Guidance Note 14 (paragraph J).
8. Please confirm that PCK is complying with the Listing Rules and, in particular, Listing Rule 3.1.

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9. Please confirm that PCK'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 PCK 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 **9.30 AM AEST Friday, 30 September 2022**. 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, PCK'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 PCK to request a trading halt immediately.

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.

Trading halt

If you are unable to respond to this letter by the time specified above, you should discuss with us whether it is appropriate to request a trading halt in PCK's securities under Listing Rule 17.1. If you wish 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*.

Suspension

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

Listing Rules 3.1 and 3.1A

In responding to this letter, you should have regard to PCK'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 PCK'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.

Release of correspondence between ASX and entity

We reserve the right to release a copy of this letter, your reply and any other related correspondence between us to the market under listing rule 18.7A.

Questions

If you have any questions in relation to the above, please do not hesitate to contact me.

Kind regards

Lisa Banh

Senior Adviser, Listings Compliance (Sydney)