

**NOTICE OF ORDERS CANCELLING REGISTRATION OF PROSPECTUS AND PROHIBITING
DISTRIBUTION OF INVESTMENT STATEMENT**

(given under section 43G and section 43F of the Securities Act 1978)

TO: FMP Medical Services Limited
Unit J, 18-20 Tamariki Avenue,
Orewa
Auckland 0946

Take notice that on 15 October 2013 the Financial Markets Authority made orders under section 43G(1)(c) and section 43F(1)(a) of the Securities Act 1978, cancelling registration of the registered combined prospectus and investment statement for an issue of equity securities of FMP Medical Services Limited dated and registered 26 August 2013 (as amended on 3 October 2013) (the "Offer Document") and prohibiting the distribution of the Offer Document.

The Financial Markets Authority has exercised its powers under section 43G and section 43F of the Securities Act 1978 to cancel the registered prospectus and prohibit the investment statement, on the grounds that the Offer Document:

- (a) as a registered prospectus, is false or misleading as to a material particular or omits material particulars; and
- (b) as an investment statement, is likely to deceive, mislead, or confuse with regard to particulars that are material to the offer of securities to which it relates.

This notice, and the Financial Markets Authority's reasons will be notified to the Registrar of Financial Service Providers and on the Financial Markets Authority's website, as required by section 43J(2) of the Securities Act 1978.

The Financial Markets Authority considers it is desirable in the public interest to make the orders cancelling registration of the prospectus and prohibiting distribution of the investment statement.

The order prohibiting distribution of the Offer Document takes effect immediately. The order cancelling the registration of the Offer Document takes effect from the time the Registrar is notified of the cancellation.

Notice of the right to make written submissions and to be heard on this matter was given under section 43J of the Securities Act 1978 pursuant to the Notice of Interim Order and the accompanying letter dated 24 September 2013.

Dated at Auckland this 15th day of October 2013



Head of Primary Regulatory Operations

Financial Markets Authority

Ref: CAS-18317-P7P6S8

15 October 2013

FMP Medical Services Limited
Unit J, 18-20 Tamariki Avenue
Orewa
Auckland 0964

Attention: Antone Thomas Pedras

Dear Mr Pedras,

ORDERS CANCELLING REGISTRATION OF PROSPECTUS AND PROHIBITING DISTRIBUTION OF INVESTMENT STATEMENT – FMP MEDICAL SERVICES LIMITED

1. The Financial Markets Authority (**FMA**) has issued the **attached** orders pursuant to sections 43G(1)(c) and 43F(1)(a) of the Securities Act 1978 (the **Act**). The orders cancel the registration of FMP Medical Services Limited's (**FMP**) registered combined prospectus and investment statement for an offer of equity securities dated and registered 26 August 2013 (as amended on 3 October 2013) (**Offer Document**) and prohibit the distribution of the Offer Document. The order to prohibit distribution of the Offer Document takes effect immediately. The order to cancel the registration of the Offer Document takes effect from the time the Registrar is notified of the cancellation. We will notify the Registrar of the cancellation at the same time this letter is sent.
2. Under sections 43G and 43F of the Act, FMA can issue an order that cancels the registration of a prospectus and prohibits the distribution of the investment statement if:
 - a. FMA is of the opinion that a registered prospectus is false or misleading as to a material particular or omits any material particular (whether or not it was so false or misleading or the omission was material, at the time the prospectus was registered);
 - b. FMA is of the opinion that the investment statement is likely to deceive, mislead or confuse with regard to any particular that is material to the offer of securities to which it relates; and
 - c. FMA considers the making of these orders desirable in the public interest.

Matters of concern

3. As previously notified to you, we had a number of concerns about disclosures made in the Offer Document. We do not consider that our principal grounds of concerns have been appropriately addressed and following the responses received in relation to the notice of

interim order dated 24 September 2013 made under section 43K of the Act (**Interim Order**) and the notice to require the supply of information and production of documents made under section 25 of the Financial Markets Authority Act 2011 (**S 25 Notice Response**), we continue to have material concerns in respect of disclosures made in the Offer Document. We have a number of concerns about disclosures made in the Offer Document. Based on the information provided by you and our review of the Offer Document, we are of the opinion that the Offer Document is:

- (a) As a registered prospectus, false or misleading as to material particulars and omits material particulars that relate to the offer of "B" class equity securities; and
 - (b) As an investment statement, is likely to deceive, mislead, or confuse with regard to material particulars that relate to the offer of "B" class equity securities
4. Our principal reasons, in respect of which FMA has made orders under sections 43G and 43F of the Act are set out in full in the Appendix to this letter.

Materiality and Public Interest

5. We consider that a matter is "material" in terms of the Act if it is likely to influence an investor's decision. The target audience is the "prudent but non-expert investor". In our assessment the matters set out in the Appendix are critical to an understanding of the nature and risks of the venture that is presented in the Offer Document.
6. We are of the view that the Offer Document is misleading and omits material information for an investor considering whether or not to invest in FMP.
7. We also note that there are a number of other concerns and inconsistencies in the various versions of the Offer Document that have been received by FMA, specifically:
- (a) As set out above, a request for information to verify the sufficiency of the minimum subscription level was met simply by amendment of those statements, indicating in our opinion that there was no basis for the statement made.
 - (b) Similar responses were made when we asked for details of the investors who were allegedly paid back after losing money associated with the Tongan company referred to in the Offer Document (you simply removed the reference, saying the events were too long ago to remember).
 - (c) The initial registered Offer Document stated that the director obtained a commercial banking license to operate a banking business in Tonga and moves were made by certain individuals to remove that license. The amendment to the Offer Document removes the reference to a commercial banking license being obtained and states that moves were made by certain individuals to take over the business instead of removing the license. We see a material distinction between these two versions.
8. Given the significance of our concerns, we are of the view that it is in the public interest to ensure that the Offer Document is cancelled and its distribution is prohibited.

Yours sincerely,



Simone Robbers
Head of Primary Regulatory Operations

Appendix

Misleading statements

a. **Statements on the issue of further shares**

- i. On page 29 of the Offer Document, under "Other Material Matters", it is stated that, as at 3 October 2013, it is "highly likely" that the director will make further private placements of shares for a price of one cent per share for up to 8 million further new shares to be issued by the company. This would have a further and material dilutionary effect on the value of "B" class shares for any persons who subscribe for new "B" class shares under the offer. The director's reasons for issuing more than twice the previous amount of private placement shares of 7 million existing "B" class shares issued at a discount of 99 cents is unknown and is not explained in the Offer Document. As the shares are intended to be issued at one cent each, the placement would not provide meaningful capital for the company, so does not appear to be linked to the stated intention that the venture be funded by further private investment.
- ii. We had previously raised concerns about the lack of disclosure concerning the dilutionary effect of the sale of the 7 million existing "B" class shares. The further proposed private placement of 8 million shares was added in the amended Offer Document dated 3 October 2013 pursuant to a memorandum of amendments dated 3 October 2013 (**MOA**) and is disclosed at the back of the Offer Document. We consider that this matter would be material to investors and should have been given greater prominence in the amended Offer Document. We consider that the degree of potential dilution should have been subject to a sensitivity analysis to provide investors with all material information on the possible dilution. If the maximum amount were to be raised under the offer and a further 8 million existing "B" class shares are issued by the private placement, those who subscribe for \$1 shares will immediately see the Net Tangible Assets (**NTA**) per share drop to approximately 41 cents (we understand that FMP has no existing assets stated other than a \$100 debt owed by the director). The effect becomes greater if the offer raises less than the maximum amount (as the relative dilutionary effect per share is greater). We note that there is a statement on dilution risk at page 8 of the Offer Document, but this refers only to the dilutionary effect of the sale of the 7 million existing "B" class equity securities. It states that the "B" class shares will, after the offer, have a NTA backing of between 1 cent (if no \$1.00 shares are taken up) and 59c (if all the \$1.00 shares on offer are taken up). The impact on potential NTA of the additional 8 million shares now intended to be placed is material. If the intended further 8 million shares are sold at one cent each the company will have a total of 15 million "B" class shares sold to associates of the director and private investors and a maximum of 10 million "B" class shares allotted to members of the public. If the public offer were taken up in full the company would have 25 million "B" class shares with a net asset backing per share of 40 cents. If only 5 million \$1.00 shares are issued, the NTA per share will be 25 cents. If 1 million \$1.00 shares are taken up, the NTA per share will be 7 cents.
- iii. Given the stated intention of the director to now procure the issue of a further 8 million "B" class shares and to sell these at one cent each (which intention was not disclosed until the filing of the MOA) we consider the description of dilution risk on

page 7 of the Offer Document is misleading in omitting to disclose the dilutionary effect should these further shares be sold.

- iv. In our view, the Offer Document is also misleading in a material particular and omits material information by failing to provide disclosure as to the rationale of the intended additional private placement of "B" class shares, in terms of the interests of the company and existing shareholders (including members of the public who purchase shares at \$1.00 each), given it is intended that these be sold for nominal consideration. We note that the company's constitution purports to permit the company to issue any number of "B" class shares to any person at any time and at any price. We acknowledge that this is disclosed in the Offer Document. However, any new issue of shares would need to comply with the Companies Act 1993 (**Companies Act**). In particular, the director would need to be able to certify under section 47(2) of the Companies Act, that in his opinion the consideration for the new shares was reasonable to the company and all existing shareholders. This certification would need to be provided with the care, skill, and diligence expected of a reasonable director (under section 137 of the Companies Act). To the extent that the provision in the constitution regarding price is inconsistent with section 47 it is void (under section 31 of the Companies Act). We note shares could be issued without such certification if the consent of all existing shareholders were obtained (under section 107 of the Companies Act), but this does not appear to be contemplated. Given the stated intention of the director, we consider that the prospectus is misleading in its description of the effect of the constitution and is misleading in its failure to set out how the intended issue of a further 8 million "B" class shares for consideration of one cent each would be fair and reasonable to any shareholders who subscribe for shares at \$1.00 each.

b. **Statements on business planning**

- i. There is very little information in the Offer Document about how the director intends to establish the dialysis project. The Offer Document does (as amended) state that no business plan has been prepared. It states that the concept is in the mind of the director and that investors are taking the risk that his concept may not work and investors could lose any money invested. The Offer Document also states that the director "has commenced planning for the dialysis project including researching the market and costing exercises." As most recently amended, it states that "none of these exercises were formally documented...it follows that there are no specific plans and the project will develop as time goes on." However, it also states:

...the director has spent the last 18 months investigating the feasibility and viability of the proposed scheme. This has included identifying suitable sites, negotiating for the supply of equipment, identifying suitable management staff and identifying funding needs. There is currently no business activity and no contracts have been signed.

- ii. After the Interim Order was made FMA requested copies of all documents relating to the claimed 18 month investigation. In the S 25 Notice Response, FMA was advised that there is no documentation to support the investigations. We were told that the reference to identifying suitable sites is "referring to sites as a class and in particular, the characteristics a site would require such as car parking, staff amenity, accessibility, and nearness to any particular market". We were informed that

telephone inquiries have been made as to the availability of possible sites, but that “no serious negotiations have taken place as they would be premature at this juncture”.

- iii. No documents were provided to evidence market research or costing exercises conducted. In relation to our request for itemised funding needs predicted, the S 25 Response states that the director “has made some informal, non-written estimation of cost and quality, but none of which have been determinative. At the moment the estimates are believed to be on the high side”.
- iv. We requested documents to support the statement regarding negotiations undertaken for the supply of equipment. The s 25 Notice Response claims that these negotiations have been done over the telephone or over the internet and as such there is no correspondence to produce.
- v. In our opinion the positive statements about work undertaken to investigate this venture are misleading by omitting to include the information provided to FMA, namely that the research resides only in the director’s head, that there is no retrievable correspondence or documentation to show for the claimed 18 months of feasibility planning, site identification has not been undertaken, and the claimed negotiations have not been documented. Even taking into account the statements to the effect that the business venture is only a concept in the mind of the director, in the absence of further detail we consider that the positive statements about work undertaken to date are likely to be misleading.

c. Statements on the viability of the business

- i. Despite the fact that the venture is stated to be at the conceptual stage, the Offer Document estimates that the first centre will open in approximately 12 months. In response to our request for documents providing a basis for this estimate we were told that this is a “common sense estimation based on the time it would take to import equipment and renovate a centre after negotiating a contract for the supply of services”. In view of the apparent lack of any serious planning, and the fact that the Offer Document states that no property is to be acquired with the proceeds of this offer, we do not consider there is any reasonable basis to estimate that operations can commence within 12 months, making this statement likely to mislead investors.
- ii. There is very little information in the Offer Document about the industry in which FMP intends to operate and the business model under which the proposed dialysis scheme will make money within this industry. The Offer Document states that renal dialysis “is the type of activity normally the domain of the public health system. Its viability will depend upon the success of several factors, including having to complete and maintain contracts with the public health system and private insurers. The director has discussed the project with participants in the health system. However there is no guarantee contracts can be obtained.” This statement gives a positive impression that the director had taken steps, through discussion with participants in the health system, to ascertain the viability of the business. Without further details, the reference to participants could be the subject of many interpretations which can range from senior personnel of the public health system to a patient undergoing dialysis treatment. This is directly relevant to the weight attributed to the statement relating to the viability of the scheme.

iii. The S 25 Notice Response states that the director “has made some contacts with some people in the health system”, however, it goes on to say “the identity of these individuals are not even remembered”. No documents supporting the fact that the discussions had taken place or details about the nature of the discussions that took place have been given. There are no references to the relevant public authorities such as the District Health Board in the Offer Document. It remains unclear whether FMP is seeking to derive profit from private patient facilities (and what the value proposition for this would be in the face of publicly available dialysis) or whether FMP is seeking to derive a profit solely from contracts from the public health system or private insurers. The Offer Document at page 9 does disclose a risk that “contracts required to [be] obtain[ed] from the public health system or private insurers from which to generate services, may not occur”. There is no assessment of the likely demand for private dialysis. The Offer Document refers to the importance of contracts with private insurers without disclosing that at present the two largest health insurers, Southern Cross and Tower (which between them account for over 75% of New Zealand’s health insurance market), expressly exclude renal dialysis from cover under their policies. In the context of the New Zealand market we are of the opinion that without a full description of the existing industry, insurance position, existing competition, and assessed demand for further dialysis centres, the offer document omits material particulars necessary to enable investors to make an informed assessment of the investment being offered.

d. **Statements on the use of funds raised**

i. The Offer Document states that the minimum amount to be raised through the offer is \$70,000. After FMA sought information as to how the stated minimum of \$70,000 would be sufficient to purchase the property and equipment needed for the venture, the director amended the Offer Document to state that this minimum amount will not be used to purchase any property and will be used to develop the concept and advance the proposed business plans which include trying to attract further investment. The Offer Document further states that this sum will be entirely expended on working capital. The maximum amount to be raised under the offer is \$10,070,000. The Offer Document does not address the use of funds if the maximum amount is received i.e. whether any property will be purchased and how much of that amount will be used for working capital and the use of the surplus funds. Given the range between the minimum necessary subscription and the maximum that can be raised under the offer, we are of the opinion that the Offer Document omits material information in that it does not set out how any amount over and above the minimum would be applied.