

22 March 2024

ASX Reference: 89795

Melissa Kostopoulos
Senior Adviser
Listings Compliance

Cc: James Gerraty

Via email: listingscompliancemelbourne@asx.com.au

Dear Melissa,

RE: Response to Cann Group Limited (CAN) Half-year report (reviewed financial report) – Query, dated 6 March 2024

1. *Is CAN able to confirm that in the Directors' Opinion the Half-Year Report:*
 - (a) *complies with Accounting Standard AASB 134 Interim Financial Reporting and the Corporations Regulations 2001; and*
 - (b) *gives a true and fair view of CAN's financial performance and position for the half year ended 31 December 2023?*

Response:

- a) Confirmed, noting the disclosures around Going Concern contained in Note 1 to the financial statements.
- b) Confirmed

2. *Is CAN able to confirm that as at the date of this letter the Directors consider CAN solvent and have reasonable grounds to believe that CAN will be able to discharge its liabilities as and when they fall due?*

Response:

As at 6 March 2024, the Directors had reasonable grounds to believe CAN will be able to secure additional funding and have NAB facility repayment dates extended, which will allow CAN to discharge its liabilities as and when they fall due, and hence be solvent. The Directors' view has not changed to date.

As announced on 18 March 2024, Cann has executed the extension of the Company's debt facility agreement with National Australia Bank (NAB). Cann's Working Capital Facility, which amounts to \$15.6 million (which is fully drawn down), has been extended from 30 November 2024 to 31 March 2025. Further, the Company agreed with NAB to a deferral of the quarterly repayment of the principal loan amounts of the NAB Construction Facility (of \$49.4 million) for 12 months from May 2024 to May 2025.

Also announced on 18 March 2024, Cann Group has executed a sale and purchase agreement for \$1.7 million with Biortica Agrimed Ltd (Biortica) for the sale of a range of equipment surplus to Cann's needs. Pursuant to the Biortica will pay two deposits totalling \$200,000 by 19 April 2024, with the final balance of \$1.5 million at settlement, which is to occur on or before 30 June 2024.

As announced on 22 March 2024, CAN has received the final payment of \$1.9 million from SatiVite Pty Ltd (SatiVite) for the sale of business assets at its formerly owned Southern cultivation and manufacturing facility (Southern Facility).

CAN has received an indicative, non-binding, term sheet from Obsidian Global Partners, LLC ("Obsidian"), which provides terms for Obsidian to invest up to \$15M into Cann Group Limited as part of an equity placement facility.

CAN is also in active discussions with several interested parties to provide additional funding to the Company to fund its operations as it continues to scale up its facility and become a profitable business. These additional funding options currently being pursued include a convertible note issue, sale and leaseback of CAN's Mildura facility, and a refinancing of existing debt. If any of these options are successful, in particular the last two options, CAN has every reason to believe it will meet the gearing ratio covenant in the next 12-month period from 6 March 2024.

In addition to pursuing further funding, CAN is actively reviewing its commercial strategy with a view to maximising revenues, whilst simultaneously embarking on a cost efficiency program. Both activities are expected to increase EBITDA performance over the next 12-months.

3. *What period does the gearing ratio covenant waiver on the NAB construction facility cover?*

Response:

CAN received a letter from NAB dated 13 February 2024, confirming that the Company has "not complied with the following undertaking set out in clause 10.1 of the Agreement: • 10.1: Financial Covenants (specifically Gearing Ratio >50% as at 31 Dec 2023)" (**Breach**).

In that letter, NAB confirmed that despite the non-compliance with the gearing ratio financial covenant, they "will not be taking action at this time".

As such, it is not a waiver of future compliance with the covenant itself. The construction loan will continue to be subject to the gearing ratio covenant.

4. *If the gearing ratio covenant waiver does not cover future periods, please explain how CAN expects to meet the gearing ratio covenant in the next 12-month period from the date of this letter?*

Response:

Refer to the response at Question 4 which outlines funding initiatives achieved to date and those being pursued going forward.

5. Does CAN consider that the breaching of the gearing ratio covenant relating to the NAB construction facility agreement by CAN (the 'Breach Information'), to be information that a reasonable person would expect to have a material effect on the price or value of CAN's securities?

Response:

No.

CAN notes that the failure to meet the gearing covenant does not of itself go to solvency.

Further, CAN has discussed, and continues to discuss the same with NAB, and as indicated by the waiver, NAB does not intend to take any action on the historical breach at this time.

6. When did CAN first become aware of the Breach Information?

Response:

CAN became aware the Breach was likely (but not certain) to occur during the process of preparing its 31 December 2023 half year accounts. CAN advised NAB of this likelihood on 12 December 2023. There were several email exchanges on this topic with NAB in the ensuing days, mainly requests from NAB for more information and context. These conversations resulted in NAB confirming on 1 February 2024 that they would wait until the quarterly reporting date before officially responding. CAN was officially notified of the Breach by NAB on 13 February 2024 when they also advised that they would take no action.

7. If the answer to question 5 is 'no', please advise the basis for the view.

Response:

CAN gave due consideration to its disclosure obligations under ASX Listing Rule 3.1 and 3.1A initially at the time it first became aware of the likely breach (prior to 31 December 2023), and again at the point of receiving the letter from NAB confirming the Breach and no action. CAN discussed the matter as it related to ASX Listing Rule 3.1 with legal counsel. Given that the half year accounts were still in the process of being prepared and finalised when it first became aware of the likely Breach (as this occurred before half year ended on 31 December 2023), CAN relied on carve-outs to ASX Listing Rule 3.1, under ASX Listing Rule 3.1A, namely that the accounts were not yet finalised and incomplete at that point in time. It was also not aware at that time, what position NAB would take as a result of the Breach.

Upon receiving official notification from NAB of the Breach in February 2024, CAN considered that as NAB had confirmed they were taking no action as a result of the Breach, and therefore there was no material impact to CAN's financial position, CAN considered the Breach was NOT information that a reasonable person would expect to have a material effect on the price or value of CAN's securities.

8. If the answer to question 5 is 'yes' and CAN first became aware of the Breach Information before 29 February 2024, did CAN make any announcement prior to 29 February 2024 which disclosed the Breach Information? If so, please provide details. If not, please explain why the Breach Information was not released to the market at an earlier time, commenting specifically on when you believe CAN was obliged to release the Breach Information under Listing Rules 3.1 and 3.1A and what steps CAN took to ensure that the Breach Information was released promptly and without delay.

Response:

N/A

9. *Does CAN consider that the receipt of a loan covenant waiver from NAB in relation to the gearing ratio covenant not being met by CAN (the 'Waiver Information'), to be information that a reasonable person would expect to have a material effect on the price or value of CAN's securities?*

Response:

No. Refer to responses under Questions 3 and 7 above.

10. *When did CAN first become aware of the Waiver Information?*

Response:

Refer to the response under Question 3 above.

11. *If the answer to question 9 is 'no', please advise the basis for the view.*

Response:

Refer to response under Question 7 above.

12. *If the answer to question 9 is 'yes' and CAN first became aware of the Waiver Information before 29 February 2024, did CAN make any announcement prior to 29 February 2024 which disclosed the Waiver Information? If so, please provide details. If not, please explain why the Waiver Information was not released to the market at an earlier time, commenting specifically on when you believe CAN was obliged to release the Waiver Information under Listing Rules 3.1 and 3.1A and what steps CAN took to ensure that the Waiver Information was released promptly and without delay.*

Response:

N/A

13. *Does CAN consider that its level of operations is sufficient to warrant continued quotation of its securities on ASX as required under Listing Rule 12.1? In answering this question, please explain the basis for this conclusion and also comment on the nature of CAN's current business activities.*

Response:

Yes.

CAN is a commercial producer and seller of medicinal cannabis, predominantly in the Australian and European markets. The Company owns and operates an advanced growing facility in Victoria and is continuously developing an improved range of medicinal cannabis products. CAN currently services many customers including compound pharmacists, consignees, distributors etc who in turn service the growing medicinal cannabis market.

CAN is also actively conducting meaningful research and development at its Northern facility and has obtained select genetic materials to locally develop specific genetic strains by utilising advanced breeding programs.

The company generated sales of more than \$13M in FY23 and reported \$8.487 million of revenue for the six months ending 31 December 2023. This would equate to approximately \$17 million for the full year on a pro rata basis.

CAN currently employs 90 full/part time employees and approximately 33 casuals (which can vary from time to time depending on the level of activities at the Mildura facility).

14. Does CAN consider that the financial condition of CAN is sufficient to warrant continued listing on ASX as required under Listing Rule 12.2? In answering this question, please also explain the basis for this conclusion.

Response:

Yes.

CAN owns and operates a specialised medical cannabis facility in Victoria. This facility was most recently formally valued (November 2022) at \$120 million. CAN has granted NAB a mortgage over this facility of approximately \$65 million. CAN has reported net assets of \$50.3 million as at 31 December 2024.

CAN's activities are currently loss-making as it ramps up its operations, which are not yet at full scale. This means CAN requires additional capital to fund its operations until scale up can be completed. This is quite common with many start-up/growth companies listed on the ASX.

The Company is currently pursuing additional capital options, and at the date of this response, reasonably believes it can secure additional funding. CAN is also actively exploring a sale and leaseback of its facility which will free up a material amount of capital, however this process is expected to take at least six months.

On 18 March 2024, CAN announced that it had executed a sale of certain surplus fixed assets for \$1.7 million, and had obtained an extension to the expiry date of its working capital facility of \$15.6 million from 30 November 2024 to 31 March 2025.

15. If the answer to questions 13 or 14 is 'No', please explain what steps CAN has taken, or proposes to take, to warrant continued listing on ASX under the requirements of Listing Rules 12.1 and 12.2.

Response:

N/A

16. Please confirm that CAN is complying with the Listing Rules and, in particular, Listing Rule 3.1.

Response:

Confirmed.

17. Please confirm that CAN's responses to the questions above have been authorised and approved under its published continuous disclosure policy or otherwise by its board or an

officer of CAN with delegated authority from the board to respond to ASX on disclosure matters.

Response:

Confirmed.



Steven Notaro
Company Secretary
Cann Group Limited

For personal use only



6 March 2024

Reference: 89795

Mr Steven Notaro
Company Secretary
Cann Group Limited
262-276 Lorimer Street
Port Melbourne, Vic 3207

By email: Steven.Notaro@canngrouponlimited.com

Dear Mr Notaro

Cann Group Limited ('CAN'): Half-year report (reviewed financial report) - Query

ASX refers to the following:

- A. CAN's half-year report for the half-year ended 31 December 2023 lodged with ASX Market Announcements Platform ('MAP') and released on 29 February 2024 ('Half-Year Report').
- B. ASX notes that the Independent Auditor's Review Report attached to the Half-Year Report contains a disclaimer of conclusion:

"We draw attention to Note 1 in the half-year financial report, which indicates that the Group incurred a net loss of \$14,338,000 during the half year ended 31 December 2023, had a net current asset deficiency of \$54,163,000 and, for the period, the Group's net cash outflows used in operations was \$6,071,000.

The Group's ability to continue as a going concern is dependent on a number of factors including but not limited to enabling the continuity of normal business activities and the realisation of assets and discharge of liabilities in the normal course of business through an appropriate mix of working capital and longer-term funding of the business. As at the date of this report, the Group has been unable to confirm its ability to secure an appropriate mix of current and longer term external financial commitments to provide sufficient funding to support the Group as a going concern. As described in Note 1, the Directors believe that the Group will secure sufficient funding and continue to have the support of its creditors and external financiers, however at the date of this review report the Group and its Directors have been unable to provide sufficient appropriate evidence of sufficient committed funding for the cash requirements of the Group for twelve months from the date of this review report

We have been unable to obtain alternative evidence which would provide sufficient appropriate review evidence as to whether the Group may be able to obtain such financing, and hence remove significant doubt of its ability to continue as a going concern within twelve months of the date of this review report".

- C. Note 1 to the half year consolidated financial statements of CAN sets out the factors considered by the Directors in concluding that CAN will continue to operate as a going concern for the foreseeable future.
- D. Note 9 to the half year consolidated financial statements of CAN states:

"The NAB construction facility agreement requires compliance with an asset gearing ratio covenant and as at 31 December 2023, this covenant measure was not met. Subsequent to period end, a loan covenant waiver was received from National Australia Bank (as lender) which confirmed the lender will not take any further action. As at 31 December 2023, the outstanding loan liabilities have been classified as current as a result of the covenant breach."

- E. 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.
- F. 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."*
- G. 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."*
- H. 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."*
- I. Section 4.3 of section 5.8 of Guidance Note 8 Continuous Disclosure: Listing Rules 3.1 – 3.1B which states the following:
- "In assessing whether or not information is market sensitive and therefore needs to be disclosed under Listing Rule 3.1, the information needs to be looked at in context, rather than in isolation, against the backdrop of:*
- The circumstances affecting the entity at the time;*
 - Any external information that is publicly available at the time; and*
 - Any previous information the entity has provided to the market (eg, in a prospectus or PSD, under its continuous or periodic disclosure obligations or by way of earnings guidance).*

For example, a small drop in earnings, by itself, may not be considered market sensitive. However, if that small drop in earnings results in the entity breaching a financial covenant and committing an event of default under its banking facilities, the situation is quite different.”

J. Listing Rule 12.1 which states:

12.1 The level of an entity's operations must, in ASX's opinion, be sufficient to warrant the continued +quotation of the entity's +securities and its continued listing.

K. Listing Rule 12.2 which states:

12.2 An entity's financial condition (including operating results) must, in ASX's opinion, be adequate to warrant the continued +quotation of its +securities and its continued listing.

Request for information

In light of the information contained in the Half-Year Report, and the application of the Listing Rules stated above, please respond to each of the following questions:

1. Is CAN able to confirm that in the Directors' Opinion the Half-Year Report:
 - (a) complies with Accounting Standard AASB 134 *Interim Financial Reporting and the Corporations Regulations 2001*; and
 - (b) gives a true and fair view of CAN's financial performance and position for the half year ended 31 December 2023?
2. Is CAN able to confirm that as at the date of this letter the Directors consider CAN solvent and have reasonable grounds to believe that CAN will be able to discharge its liabilities as and when they fall due?
3. What period does the gearing ratio covenant waiver on the NAB construction facility cover?
4. If the gearing ratio covenant waiver does not cover future periods, please explain how CAN expects to meet the gearing ratio covenant in the next 12 month period from the date of this letter?
5. Does CAN consider that the breaching of the gearing ratio covenant relating to the NAB construction facility agreement by CAN (the 'Breach Information'), to be information that a reasonable person would expect to have a material effect on the price or value of CAN's securities?
6. When did CAN first become aware of the Breach Information?
7. If the answer to question 5 is 'no', please advise the basis for the view.
8. If the answer to question 5 is 'yes' and CAN first became aware of the Breach Information before 29 February 2024, did CAN make any announcement prior to 29 February 2024 which disclosed the Breach Information? If so, please provide details. If not, please explain why the Breach Information was not released to the market at an earlier time, commenting specifically on when you believe CAN was obliged to release the Breach Information under Listing Rules 3.1 and 3.1A and what steps CAN took to ensure that the Breach Information was released promptly and without delay.
9. Does CAN consider that the receipt of a loan covenant waiver from NAB in relation to the gearing ratio covenant not being met by CAN (the 'Waiver Information'), to be information that a reasonable person would expect to have a material effect on the price or value of CAN's securities?
10. When did CAN first become aware of the Waiver Information?
11. If the answer to question 9 is 'no', please advise the basis for the view.
12. If the answer to question 9 is 'yes' and CAN first became aware of the Waiver Information before 29 February 2024, did CAN make any announcement prior to 29 February 2024 which disclosed the Waiver Information?

If so, please provide details. If not, please explain why the Waiver Information was not released to the market at an earlier time, commenting specifically on when you believe CAN was obliged to release the Waiver Information under Listing Rules 3.1 and 3.1A and what steps CAN took to ensure that the Waiver Information was released promptly and without delay.

13. Does CAN consider that its level of operations is sufficient to warrant continued quotation of its securities on ASX as required under Listing Rule 12.1? In answering this question, please explain the basis for this conclusion and also comment on the nature of CAN's current business activities.
14. Does CAN consider that the financial condition of CAN is sufficient to warrant continued listing on ASX as required under Listing Rule 12.2? In answering this question, please also explain the basis for this conclusion.
15. If the answer to questions 6 or 7 is 'No', please explain what steps CAN has taken, or proposes to take, to warrant continued listing on ASX under the requirements of Listing Rules 12.1 and 12.2.
16. Please confirm that CAN is complying with the Listing Rules and, in particular, Listing Rule 3.1.
17. Please confirm that CAN's responses to the questions above have been authorised and approved under its published continuous disclosure policy or otherwise by its board or an officer of CAN 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 AEDT Wednesday, 13 March 2024**. 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, CAN'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 CAN to request a trading halt immediately.

Your response should be sent to me by e-mail at ListingsComplianceMelbourne@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 CAN'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 CAN'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

ASX reserves the right to release all or any part of this letter, your reply and any other related correspondence between us to the market under Listing Rule 18.7A.

Yours sincerely

ASX Compliance