



28 November 2022

Sandra Wutete
Principal Adviser, Listing Compliance (Perth)
Australian Securities Exchange

By Email: ListingsCompliancePerth@asx.com.au

Dear Sandra

Creso Pharma Limited: Response to ASX Query Letter

Creso Pharma Limited (**CPH** or the **Company**) (ASX: CPH), provides the following responses to the ASX Query Letter dated 22 November 2022. Defined terms in this letter have the meaning ascribed to them in your letter unless stated otherwise.

- 1. Please describe what steps, if any, CPH took to ensure compliance with Listing Rule 10.11 in connection with the Placement, having regard to the following:**
 - 1.1 Everblu, an entity controlled by Adam Blumenthal (who was a director of CPH at the time of the Placement), was the lead manager to the Placement;**
 - 1.2 Everblu had been engaged to act as the exclusive corporate advisor and exclusive lead manager to CPH since 1 July 2017; and**
 - 1.3 Suburban had previously participated in a capital raising managed by EverBlu in November 2019, being the issue of the Debt Notes under the Debt Note Offer, for which CPH sought shareholder approval pursuant to Listing Rule 10.11 for the conversion of the Debt Notes issued to Suburban.**

Having regard to the above, the Company wishes to outline the process undertaken during the placement announced on 25 February 2022, which shows the Company's steps to ensure compliance with Listing Rule 10.11:

- The Company's management agreed indicative terms of the proposed offer, and it was then sent a 'deal sheet' from Everblu for its review.
- The Company's Board approved the terms as set out in the deal sheet and instructed Everblu to commence the marketing of the offer.
- The Company immediately entered a trading halt, while Everblu sought commitments for the offer.
- Upon receipt of firm commitments from investors, Everblu confirmed to the Company the nature and quantum of commitments.
- In reliance of the confirmation from Everblu, the Company then sought Board approval to complete the raising and prepare the relevant ASX releases and undertake the relevant administrative matters.

- It was not advised to management or the company secretaries that a related party was intending to participate in the placement, and therefore the full Board was also not aware.
- The Company released an ASX announcement concerning the outcome of the capital raising and lodged the relevant Appendices.
- Everblu collected funds from clients and maintained an allocation spreadsheet.
- When settling via DvP, as was the case in this placement, the allocation schedule was sent directly from brokers to the registry and the Company was then asked to provide a confirmation that funds have been received. Management and the company secretaries did not receive a copy of this allocation, as is customary during an allocation via DvP.
- Upon confirmation by the Company of the funds being received the DvP was processed by the share registry, the securities were allotted per the DvP allocation schedule and settlement occurred.

2. Please provide details of when and how CPH became aware that the Related Party Shares were issued in breach of Listing Rule 10.11 and an explanation for why the breach was not discovered earlier.

On the 20 June 2022, during the preparation of a notice of meeting to ratify the shares issued pursuant to the Placement, the Company was prompted to review the Placement's allocation spreadsheet (including the DVP component of the Placement) to determine whether holders have been issued more than 1% of the shares of the Company on issue. Once the review was completed the Company, in consultation with its legal advisers, identified that the Related Party Shares were issued without prior shareholder approval.

The breach was not uncovered earlier because Everblu had managed many placements for the Company prior to this, without concern or error, and therefore there was no reason for the Company to question the participants in this placement.

3. Please provide details of the controls that CPH has implemented to ensure such a breach does not occur in the future and why these controls were not implemented before the Placement.

Since the breach of Listing Rule 10.11 the Company has implemented the following controls to the steps noted above to ensure future breaches do not occur:

- (a) the company secretary and Board now ensure that the Company is given an opportunity to review a copy of the allotment schedule before a placement is completed by DvP; and
- (b) the Board will be specifically asked to confirm that none of the participants are related parties before any securities are issued.

4. Please confirm that CPH's responses to the questions above have been authorised and approved by its board.

The responses to the questions above have been authorised and approved by the Board.



22 November 2022

Ms Eryln Dawson and Mr Winton Willesee
Joint Company Secretaries
Creso Pharma Limited

By email

Dear Ms Dawson and Mr Willesee

Creso Pharma Limited ('CPH'): No shareholder approval for issue of securities Listing Rule 10.11 - Breach

ASX refers to the following:

- A. CPH's prospectus dated 27 November 2019 ('Prospectus') lodged on the ASX Market Announcements Platform ('MAP') on 28 November 2019 that included the offer of up to 6,111,111 debt notes each with a face value of \$1.00 at a subscription price of \$0.90 per debt note ('Debt Notes') ('Debt Note Offer'), which were to be issued as debt securities until such time as Shareholder approval is obtained for the Debt Notes to convert to convertible equity securities (being 6,111,111 convertible notes ('Tranche 1 Convertible Notes')).

The Prospectus disclosed the following information:

- (a) Suburban Holdings Pty Ltd ('Suburban') had agreed to participate in an initial convertible security facility by subscribing for 1,666,667 Debt Notes, together with 261,780 shares for nil cash consideration to be issued as part of the drawdown fee, 3,333,334 shares for nil cash consideration to be issued as collateral shares and 2,727,272 options exercisable at \$0.40 each on or before the date that is three years from the date of issue;
- (b) Suburban is an entity controlled by Alvin Blumenthal, the father of Adam Blumenthal. Adam Blumenthal was a director of CPH;
- (c) in Section 4.5 of the Prospectus, that CPH *"has agreed to obtain shareholder approval for the conversion of the Debt Notes into Tranche 1 Convertible Notes (including approval for the purpose of ASX Listing Rule 10.11 in respect of the Debt Notes which will be held by Suburban Holdings) on or before 25 January 2019 (sic)";* and
- (d) EverBlu Capital Pty Ltd ('EverBlu') had been appointed as lead manager to the Debt Note Offer.
- B. CPH's announcement entitled "Entry into Replacement Corporate Advisory and Transactional Mandates with EverBlu" lodged on MAP on 21 January 2020, disclosing the following information:
- (a) CPH had entered into a new corporate advisory mandate with EverBlu, whereby EverBlu was engaged to act as the exclusive corporate advisor and exclusive lead manager to CPH;
- (b) the new corporate advisory mandate replaced the previous mandates with EverBlu that were entered into on 1 July 2017;
- (c) EverBlu had been engaged as CPH's corporate advisor since its listing on the ASX in 2016; and
- (d) Adam Blumenthal is the Chairman of EverBlu and a major indirect shareholder and controller of EverBlu.
- C. CPH's announcement entitled "Notice of Breach of ASX Listing Rule 10.11" lodged on MAP on 25 October 2022 (the 'Announcement'), disclosing, amongst other things, that:
- (a) on 25 February 2022, CPH announced its intention to undertake a placement to raise a total of \$5 million (before costs) through the issue of shares to certain placement participants ('Placement');

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- (b) 14,492,755 shares were issued to Suburban ('Related Party Shares') in breach of Listing Rule 10.11, as prior shareholder approval was not obtained;
 - (c) Suburban had agreed to dispose of all the shares it received in the Placement within six weeks of the date of the Announcement. Any profit made on the disposal of the holding would be donated to an entity that is listed with the Australian Charities and Not-For-Profits Commission as a charity; and
 - (d) CPH had reviewed its internal processes around settlements of placements and had implemented appropriate controls to ensure such a breach did not happen in the future.

D. Listing Rule 10.11 which states:

10.11 Unless one of the exceptions in rule 10.12 applies, an entity must not issue or agree to issue +equity securities to any of the following +persons without the approval of holders of +ordinary securities.

10.11.1 A +related party.

10.11.2 A +person who is, or was at any time in the 6 months before the issue or agreement, a substantial (30%+) holder in the entity.

10.11.3 A +person who is, or was at any time in the 6 months before the issue or agreement, a +substantial (10%+) holder in the entity and who has nominated a director to the board of the entity (in the case of a trust, to the board of the +responsible entity of the trust) pursuant to a relevant agreement which gives them a right or expectation to do so.

10.11.4 An +associate of a +person referred to in rules 10.11.1 to 10.11.3.

10.11.5 A +person whose relationship with the entity or a +person referred to in rules 10.11.1 to 10.11.4 is such that, in ASX's opinion, the issue or agreement should be approved by +security holders.

Request for information

Having regard to the above, and pursuant to Listing Rule 18.7, ASX asks CPH to respond separately to each of the following questions and requests for information:

1. Please describe what steps, if any, CPH took to ensure compliance with Listing Rule 10.11 in connection with the Placement, having regard to the following:
 - 1.1 Everblu, an entity controlled by Adam Blumenthal (who was a director of CPH at the time of the Placement), was the lead manager to the Placement;
 - 1.2 Everblu had been engaged to act as the exclusive corporate advisor and exclusive lead manager to CPH since 1 July 2017; and
 - 1.3 Suburban had previously participated in a capital raising managed by EverBlu in November 2019, being the issue of the Debt Notes under the Debt Note Offer, for which CPH sought shareholder approval pursuant to Listing Rule 10.11 for the conversion of the Debt Notes issued to Suburban.
2. Please provide details of when and how CPH became aware that the Related Party Shares were issued in breach of Listing Rule 10.11 and an explanation for why the breach was not discovered earlier.
3. Please provide details of the controls that CPH has implemented to ensure such a breach does not occur in the future and why these controls were not implemented before the Placement.
4. Please confirm that CPH's responses to the questions above have been authorised and approved by its board.

When and where to send your response

Your response is required as soon as reasonably possible and, in any event, by no later than **3:00 PM AWST Friday, 25 November 2022**.

Your response should be sent to me by e-mail at ListingsCompliancePerth@asx.com.au. It should not be sent directly to the ASX Market Announcements Office.

Compliance with the Listing Rules

ASX reminds CPH of its contract to comply with the Listing Rules. Please note that ASX is required to record details of breaches of the Listing Rules by listed entities as part of its reporting obligations.

In the circumstances, ASX considers it appropriate that CPH reviews its compliance arrangements to ensure it does not continue to breach the Listing Rules.

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.

Yours sincerely

Sandra Wutete
Principal Adviser, Listings Compliance (Perth)