

# ASX Release

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## SETTLEMENT WITH HC BERLIN PHARMA & RENOUNCEABLE RIGHTS ISSUE

- SUDA reaches settlement with HC Berlin Pharma Receiver
- Liability is capped at €1.4m plus court/legal costs to be paid in instalments over 3.5 years
- 1 for 1 Renounceable rights issue to raise up to \$6.1 million with minimum subscription of \$4 million
- Attractively priced at 0.5 cents per share (45% discount to the 30-day VWAP)
- For every 2 new shares issued, shareholders will receive attaching 2 year listed option with exercise price of 1.5 cent
- Shareholders can sell their rights or apply for additional shares and attaching options
- Rights to commence trading from 6 July 2018
- Commitments in place for \$2.14 million of any shortfall
- All borrowings to be paid out
- Directors to take up their entitlements.

PERTH, AUSTRALIA – 2 JULY 2018:

### SETTLEMENT WITH HC BERLIN PHARMA RECEIVER

SUDA Pharmaceuticals Ltd (ASX: SUD), a leader in oro-mucosal drug delivery is pleased to advise that it has successfully reached an unconditional settlement with the Receiver of HC Berlin Pharma. The Settlement caps SUDA's liability at €1.4 million plus legal costs (or a total of circa. AU\$2.5m million) payable in a series of instalments over 3.5 years. SUDA is pleased with this outcome as it removes all uncertainty in relation to the claim and allows SUDA to focus on its core business activities.

SUDA's previous announcement on 29<sup>th</sup> March 2018 related to a judgement handed down by a German Court in which the Court dismissed an appeal lodged by SUDA against the Receiver of HC Berlin Pharma (HCBP) with respect to a failed in-kind capital contribution in June 2008. SUDA was

found liable for the payment of €4.0 million plus interest and costs and the Receiver had reserved his rights to apply to the Courts to have the liability increased to €8.0 million plus interest and costs (quantum of the failed in-kind contribution).

The claim related to an alleged failed in-kind capital contribution in 2008 when SUDA's former Directors licensed manufacturing rights for SUDA's anti-malarial spray ArTiMist® to HCBP in return for €8 million in HCBP shares.

The judgement against SUDA was made for half of the failed in-kind contribution or €4 million plus 5% interest dating back from August 2008, as reported by SUDA on 27 February 2017. The estimated total of this claim amounted to approximately €6 million (A\$9.3 million) plus legal costs. Upon the judgement being made final the HCBP Receiver reserved his right to assert claim over the full €8 million plus costs (approx. €12 million).

The Directors of SUDA having taken extensive legal advice and spent the past 8 years trying to resolve this legacy legal case and believed that a commercial settlement to resolve this 10 year old matter is in the best interests of the Company and its shareholders.

As previously reported on 4 May 2018, SUDA's Chief Executive Officer, Mr Stephen Carter, and former Chairman, Mr Michael Stewart, acting as a consultant to SUDA, met with the Receiver in Berlin on 16 and 17 May 2018, with negotiations continuing until 27th June 2018.

The outcome of these negotiations is a settlement agreed with HCBP for SUDA to pay €1.4 million in respect of the claim, plus legal costs of €0.22m, being a total of €1.62 million (circa A\$2.5m). The directors of SUDA believe that this is a very good outcome for the Company and its shareholders. The settlement quantifies the liability and removes uncertainty.

The settlement will be paid over the next 3½ years in instalments, primarily from SUDA's revenue, as follows:

- i. € 540,000 by 30 September 2018; *(Paid from rights issue)*
- ii. € 250,000 by 28 February 2019; *(Paid from R&D Tax refund)*
- iii. € 250,000 by 31 December 2019; *(Paid from R&D Tax refund)*
- iv. € 250,000 by 31 December 2020; and *(Paid from R&D Tax refund)*
- v. € 330,000 by 31 December 2021. *(Paid from R&D Tax refund)*

Payments (iii) through (v) have a 5% interest rate attached from 30 September 2018.

SUDA has the right to pay out early should circumstances allow.

## **RECAPITALISATION**

### **Renounceable Rights Issue**

SUDA is pleased to announce a renounceable rights issue offered on a one for one basis at 0.5 cents per share to raise up to \$6.1 million with one free attaching listed option (exercise price of \$0.015 and expiry date of 31 July 2020) for every two new shares subscribed for under the Rights Issue. The Rights Issue is subject to a minimum subscription of \$4 million, with commitments of approximately \$2 million received from Noteholders (see below). The key terms are:

1. A 1 for 1 renounceable rights issue;
2. Attractively priced at 0.5 cents per share;
3. Discount to the 1 month VWAP of 45%;
4. For every 2 new shares, Eligible Shareholders will receive 1 attaching option with exercise price of 1.5 cent and term of two years;

5. New options are to be listed;
6. Shareholders can renounce (sell) their rights or apply for additional shares and attaching options;
7. Rights to start trading from 6 July 2018;
8. Commitments are in place for up to \$2.14 million of the shortfall (subject to scale back); and
9. Directors to take up their entitlements

CPS Capital Group Pty Limited is lead manager to the Rights Issue. Shares not taken up by Eligible Shareholders will be offered under a shortfall offer (Shortfall Offer). Eligible shareholders can apply for shortfall in excess of their entitlement

Funds raised will be used:

1. to fund the initial tranche of €540,000 in the settlement with HCBP;
2. for the early redemption of the Company's entire Convertible Notes on issue of \$2.14 million so all borrowings will be paid out;
3. to strengthen the Company's balance sheet; and
4. to address general working capital requirements (including repayment of interim funding as set out below).

The Rights Issue provides shareholders with the opportunity to take up shares proportional to their shareholding and avoid dilution. The Company has received commitments for up to \$2.14 million of the shortfall from the Note holders (see below). Shareholders can renounce their rights or apply for additional shares.

SUDA currently has 2,002,500 convertible notes, maturing on 31 March 2019 and converting at \$0.0238 per share, on issue. All note holders have agreed to:

1. allow the Company to redeem their Convertible Notes early, with the redemption amount determined in accordance with the Note terms (being equal to 105% of the face value of the Notes plus accrued and unpaid interest); and
2. subscribe for that number of shortfall shares under the Shortfall Offer equal to the amount to be paid from redeeming the Convertible Notes and accrued interest, with the Noteholder's subscription obligation set off against the Company's redemption obligation.

To facilitate the Rights Issue, the Company has obtained commitments for up to \$200,000 interim funding through the issue of up to 200,000 Convertible Notes to directors Stephen Carter and Joseph Ohayon, and former director Michael Stewart and his two sons. The Notes are on the same terms as notes approved by shareholders on 28 November 2017, save that conversion and grant of security is subject to prior shareholder approval or waiver, and the Noteholder consents to the early redemption (with any premium) in the event the Rights Issue successfully closes.

As a result of the Rights Issue and early redemption of Notes on issue, the Company will have no borrowings and sufficient working capital.

**Indicative timetable for the Rights Issue is as follows:**

Ex date – Shares trade ex Entitlement (Ex Date)	6 July 2018
Rights trading starts on a deferred settlement basis	
Record date to determine Entitlement (Record Date)	9 July 2018
Prospectus with Entitlement and Acceptance Form dispatched	11 July 2018
Offer opens for receipt of Applications	
Rights trading ends	19 July 2018
Closing date for acceptances	26 July 2018
Notify ASX of under-subscriptions	31 July 2018
Issue of New Shares	2 August 2018
Dispatch of shareholding statements	
Normal trading of New Shares expected to commence	3 August 2018

\*The above timetable is indicative and may change, subject to the Corporations Act and Listing Rules.

A prospectus for the offer and a personalised entitlement and acceptance form will be sent to eligible shareholders in accordance with the above timetable. Shareholders should consider the disclosure document in deciding whether to acquire the securities. Anybody wanting to acquire securities will need to complete the application form that will be in or will accompany the disclosure document.

Mr Stephen Carter, SUDA’s CEO, commented: “We are pleased that we have settled this long-standing litigation. We can now move forward with certainty regarding the scale of our liability and our unencumbered ownership of ArTiMist. This settlement finalises the litany of legacy legal issues that the company has faced over the past 8 years. We now look forward to moving the company forward without these distractions.”

Mr Carter further commented that “To pay the initial settlement payment and strengthen the Company’s balance sheet, the Board has determined that it is appropriate at this juncture to raise capital via a renounceable Rights Issue. This structure provides the most equitable mechanism for all shareholders to participate and, thus, avoid dilution.”

**STRATEGIC REVIEW**

The Directors of SUDA have been carrying out a detailed review of our operations and have identified the following key areas for improvement: Business Development, Investor Communications and new asset generation. The Directors look forward to sharing our strategy with you. In the meantime, we are continuing working towards key milestones in the second half of CY2018 as we work on finalising negotiations with multiple partners within the pharmaceutical

industry.

The funds raised via the Rights Issue will strengthen the balance sheet and help ensure that we are in a strong position to achieve our goals and advance our pipeline.



**Further information:**

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**NOTES TO EDITORS:**

**About SUDA Pharmaceuticals Ltd**

SUDA Pharmaceuticals Ltd (ASX: SUD) is a drug delivery company focused on oro-mucosal administration, headquartered in Perth, Western Australia. The Company is developing low-risk oral sprays using its OroMist® technology to reformulate existing pharmaceuticals. The many potential benefits of administering drugs through the oral mucosa (i.e.: cheeks, tongue, gums and palate) include ease of use, lower dosage, reduced side effects and faster response time. SUDA's product pipeline includes ZolpiMist™, a first-in-class oral spray of zolpidem for insomnia. ZolpiMist is marketed in the USA and SUDA has rights to the product outside of the US and Canada. ZolpiMist is partnered with Eddingpharm in China and Teva Pharmaceuticals in Latin America. SUDA has submitted a Marketing Authorisation Application to the Australian Therapeutic Goods Administration for ArTiMist®, its novel sublingual malaria treatment for children. In a Phase III trial, ArTiMist was shown to be superior to intravenous quinine. Other products in development include oral sprays for the treatment of migraine headache, chemotherapy-induced nausea and vomiting, erectile dysfunction, PAH, epileptic seizures and pre-procedural anxiety. For more information, visit [www.sudapharma.com](http://www.sudapharma.com)