

Biota Holdings Limited

ACN 006 479 081

10/585 Blackburn Road
Notting Hill VIC 3168
Australia**T** +61 3 9915 3700**F** +61 3 9915 3702**E** info@biota.com.au**W** www.biota.com.au*For Immediate Release*

Melbourne, Australia — 30 October 2012

Merger update, lodgement of Court orders with ASIC

Further to the announcement by Biota Holdings Limited (ASX:BTA) on 26 October 2012 regarding the approval by the Supreme Court of Victoria (**Court**) of the scheme of arrangement between Biota and the holders of its ordinary shares, Biota confirms that a copy of the Court's orders have been lodged with the Australia Securities and Investments Commission today and the scheme has become legally effective. A copy of the Court's orders is attached.

Biota will be applying for its shares to be suspended from trading at the close of trade on the ASX today.

About Biota

Biota is a leading anti-infective drug development company based in Melbourne Australia, with key expertise in respiratory diseases, particularly influenza. Biota developed the first-in-class neuraminidase inhibitor, zanamivir, subsequently marketed by GlaxoSmithKline as Relenza. Biota research breakthroughs include a series of candidate drugs aimed at treatment of respiratory syncytial virus (RSV) disease and Hepatitis C (HCV) virus infections. Biota has a well advanced program for human rhinovirus (HRV) infection with a completed Phase IIb study in asthmatic subjects.

In addition, Biota and Daiichi Sankyo co-own a range of second generation influenza antivirals, of which the lead product Inavir[®], is marketed in Japan. Biota holds a contract from the US Office of Biomedical Advanced Research and Development Authority (BARDA) for the advanced development of laninamivir in the USA.

Relenza[™] is a registered trademark of the GlaxoSmithKline group of companies.
Inavir[®] is registered to Daiichi Sankyo.

For personal use only

Further information

Investor/Analyst Enquiries

Biota Holdings Limited

Peter Cook

T: +61 3 9915 3720

Damian Lismore

T: +61 3 9915 3721

Shareholder Enquiries

Biota Shareholder Information Line

T: 1300 306 230 (within Australia)

T: +61 2 8280 7169 (International)

Between 8.30am and 7.30pm

(Melbourne time)

Media Enquiries

Nerida Mossop, Hinton & Associates

T: +61 3 9600 1979 / M: +61 437 361 433

Felicity Williams, Hinton & Associates

T: +61 3 9600 1979 / M: +61 416 770 012

US Enquiries

Hershel Berry, Blueprint Life Science Group

M: +1 415 505 3749

For personal use only

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMERCIAL AND EQUITY DIVISION
COMMERCIAL COURT
CORPORATIONS LIST

No SCI 2012 4251



IN THE MATTER OF BIOTA HOLDINGS LIMITED
ABN 28 006 479 081

BIOTA HOLDINGS LIMITED
ABN 28 006 479 081

Plaintiff

GENERAL FORM OF ORDER

JUDGE: The Honourable Justice Robson

DATE MADE: 26 October 2012

ORIGINATING PROCESS: Originating Process filed 25 July 2012

HOW OBTAINED: On return of the Originating Process

ATTENDANCE: Mr J G Santamaria, one of Her Majesty's Counsel and
M J A Redwood of Counsel for the Plaintiff

OTHER MATTERS:

- A. The Court read the affidavit of Mr Craig Ronald Henderson sworn on 26 October 2012 and the exhibits to that affidavit.
- B. It was noted that a statement dated 25 October 2012 had been given by the Australian Securities and Investments Commission in accordance with section 411(17)(b) of the *Corporations Act 2001 (Cth)*.
- C. The Court noted further that the Plaintiff will rely on the Court's approval of the Scheme for the purpose of qualifying for exemption from the requirements of the U.S Securities Act of 1933, provided for section 3(a)(10) of that Act, in connection with the implementation of, and provision of consideration under the Scheme.

Ah

For personal use only

For personal use only

THE COURT ORDERS THAT:

1. The scheme of arrangement in this proceeding, the terms of which are set out in the document scheduled to this Order, be and is hereby approved pursuant to section 411(4)(b) of the *Corporations Act 2001 (Cth)*.
2. The Plaintiff be exempted pursuant to subsection 411(12) of the *Corporations Act 2001 (Cth)* from compliance with subsection 411(11) of the *Corporations Act 2001 (Cth)* in relation to the scheme of arrangement.

AND THE COURT DIRECTS THAT:

3. The solicitors for the Plaintiff draw up this Order and that it be signed by the Honourable Justice Robson pursuant to rule 60.02(2) of the *Supreme Court (General Civil Procedure) Rules 2005*.

DATE MADE: 26 October 2012

AME



The Honourable Justice Robson



Scheme of Arrangement

Pursuant to section 411 of the *Corporations Act 2001* (Cth)

Between

Biota Holdings Limited ACN 006 479 081 of Unit 10, 585 Blackburn Road, Notting Hill, Victoria 3168, Australia (*Biota*).

And

The holders of fully paid ordinary shares in the capital of Biota.

Recitals

- A Biota is a public company limited by shares incorporated in Victoria, Australia, and has been admitted to the official list of ASX.
- B Nabi is a public company limited by shares and incorporated in Delaware, the United States of America, and is listed on NASDAQ.
- C Biota and Nabi have entered into a merger implementation agreement, pursuant to which Biota and Nabi propose to undertake a merger by means of Nabi acquiring all Biota's issued shares pursuant to a scheme of arrangement in consideration for Nabi issuing shares of common stock in Nabi to Biota shareholders.
- D If the scheme of arrangement becomes effective, then:
- (a) all shares in Biota will be transferred to Nabi and shares of common stock in Nabi will be issued to eligible Biota shareholders, or to a nominee in respect of ineligible Biota shareholders, in accordance with the terms of the scheme of arrangement; and
 - (b) Biota will enter the name and address of Nabi in the Biota register of members as the holder of all shares in Biota.
- E Nabi has entered into a deed poll for the purpose of covenanting in favour of Biota shareholders that it will observe and perform the obligations contemplated of it under the scheme of arrangement.

For personal use only

1. Definitions and Interpretation

1.1 Definitions

In this document, unless the context requires otherwise:

AST means the American Stock Transfer & Trust Company.

ASX means ASX Limited (ABN 98 008 624 691) or, as the context requires, the financial market known as the ASX operated by it.

ASX Listing Rules means the official listing rules of ASX.

ASX Market Rules means the market rules of ASX.

Biota ESP has the meaning given to it in the Implementation Agreement.

Biota Group means Biota and its Related Bodies Corporate.

Biota Register means the register of members of Biota maintained by or on behalf of Biota in accordance with section 168(1) of the Corporations Act.

Biota Share means a fully paid ordinary share in the capital of Biota.

Biota Share Registry means Link Market Services.

Biota Share Right means a right to receive a Biota Share (by issue or transfer) issued by Biota under the Biota ESP.

Biota Shareholder means a person who is registered in the Biota Register as a holder of Biota Shares.

Business Day means any day that is each of the following:

- (a) a Business Day within the meaning given in the ASX Listing Rules; and
- (b) a day that banks are open for business in both Melbourne and Rockville.

CHES means the Clearing House Electronic Subregister System for the electronic transfer of securities, operated by ASX Settlement and Transfer Corporation Pty Limited (ABN 49 008 504 532).

Contingent Value Right has the meaning given to that term in the Implementation Agreement.

Corporations Act means the *Corporations Act 2001* (Cth).

Court means the Supreme Court of Victoria or such other court of competent jurisdiction as Nabi and Biota may agree in writing.

Effective means, when used in relation to the Scheme, the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act in relation to the Scheme.

Effective Date means the date on which the Scheme becomes Effective.

Electing Shareholder means a Scheme Shareholder that holds 2,000 Scheme Shares or less and who makes an Election.

Election means an election made in accordance with clause 5.4(a).

For personal use only

Allens > < Linklaters

Election Date means 5.00 pm on the same date as the Record Date.

Election Form has the meaning given in clause 5.4(b).

Eligible Scheme Shareholder means a Scheme Shareholder other than an Ineligible Foreign Biota Shareholder or an Electing Shareholder.

End Date means 30 November 2012, or such later date as Nabi and Biota may agree in writing.

First Meeting means the earlier of the Scheme Meeting and the Nabi Merger Approval Meeting.

Implementation Agreement means the Merger Implementation Agreement dated 22 April 2012 between Nabi and Biota (as amended).

Implementation Date means the date that is 3 Business Days after the Record Date, or such other date as may be agreed in writing between Nabi and Biota or as may be required by ASX.

Ineligible Foreign Biota Shareholder means a Scheme Shareholder whose Registered Address (as at the Record Date) is in a place outside Australia and its external territories, New Zealand, the United States of America and the United Kingdom, unless Nabi is satisfied, acting reasonably, that the laws of that place permit the allotment and issue of New Nabi Shares to that Scheme Shareholder pursuant to the Scheme, either unconditionally or after compliance with conditions that Nabi in its sole discretion regards as acceptable and not unduly onerous or impracticable.

Nabi means Nabi Biopharmaceuticals of 12270 Wilkins Avenue, Rockville, Maryland 20852.

Nabi Closing Net Cash Balance has the meaning given to that term in the Implementation Agreement.

Nabi Closing Net Cash Balance Certificate has the meaning given to that term in the Implementation Agreement.

Nabi Deed Poll has the meaning given to that term in the Implementation Agreement.

Nabi Group means Nabi and its Related Bodies Corporate prior to implementation of the Transactions.

Nabi Merger Approval Meeting has the meaning given to it in the Implementation Agreement.

Nabi Register means the register of stockholders of Nabi maintained by or on behalf of Nabi.

Nabi Share means a share of common stock, par value US \$0.10 per share, of Nabi.

Nabi Share Registry means American Stock Transfer & Trust Company.

NASDAQ means the NASDAQ Global Select Stock Market, operated by NASDAQ OMX.

New Nabi Share means a Nabi Share to be issued to Scheme Shareholders as Scheme Consideration under the Scheme.

For personal use only

Allens > < Linklaters

Nominee means the person nominated by Biota to sell the New Nabi Shares that are attributable to Ineligible Foreign Biota Shareholders and Electing Shareholders under the terms of the Scheme (and/or a nominee of that person that is a subsidiary of that person).

Permissible Nabi Stockholder Cash Transaction has the meaning given to that term in the Implementation Agreement.

Record Date means 7pm on the date that is 5 Business Days after the Effective Date, or such other date as may be agreed in writing between Nabi and Biota or as may be required by ASX.

Registered Address means, in relation to a Biota Shareholder, the address of that Biota Shareholder shown in the Biota Register.

Related Body Corporate when used in connection with the Biota Group, has the meaning given in the Corporations Act, and when used in connection with the Nabi Group means those companies controlled by and under common control of Nabi.

Scheme means the scheme of arrangement under Part 5.1 of the Corporations Act between Biota and Biota Shareholders as set out in this document, subject to any alterations or conditions made or required by the Court and agreed to by Nabi and Biota.

Scheme Consideration means the consideration to be provided to Scheme Shareholders under the terms of the Scheme for the transfer to Nabi of their Scheme Shares, as ascertained in accordance with clause 5.

Scheme Meeting means the meeting of Biota Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act in relation to the Scheme, and includes any adjournment of that meeting.

Scheme Shareholder means each person who is registered in the Biota Register as a holder of Scheme Shares as at the Record Date.

Scheme Shares means the Biota Shares on issue as at the Record Date.

Scheme Transfer means, in relation to each Scheme Shareholder, a proper instrument of transfer of their Scheme Shares for the purpose of section 1071B of the Corporations Act, which may be a master transfer of all or part of all of the Scheme Shares.

Second Court Date means the first day of hearing of an application made to the Court for orders pursuant to section 411(4)(b) of the Corporations Act approving the Scheme or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

Ten Day VWAP means:

- (i) subject to paragraphs (ii) and (iii) below, the volume-weighted average sale price of Biota Shares on the ASX (excluding (1) a transaction classified under the ASX Market Rules as a "Special Crossing" (as defined in the ASX Market Rules) and (2) a "Crossing" (as defined in the ASX Market Rules) outside the "Open Session State" (as defined in the ASX Market Rules)) during the last ten Trading Days up to and including the Trading Day that is immediately prior to the First Meeting;

- (ii) if the Ten Day VWAP determined under paragraph (i) is greater than \$0.86, the parties agree that the Ten Day VWAP will be taken to be \$0.86; and
- (iii) if the Ten Day VWAP determined under paragraph (i) is less than \$0.62, the parties agree that the Ten Day VWAP will be taken to be \$0.62.

Transactions means all of the transactions contemplated by the Implementation Agreement, including without limitation, the Scheme.

US\$ Ten Day VWAP means the Ten Day VWAP converted into US dollars using the historical daily exchange rate of the Australian dollar against the US dollar on each corresponding day of the Ten Day VWAP, as published by the Reserve Bank of Australia.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and conversely.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) A reference to a clause is a reference to a clause of this document.
- (f) A reference to an agreement or document (including a reference to this document) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this document or that other agreement or document.
- (g) A reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
- (h) A reference to legislation or to a provision of legislation includes a modification or re enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (i) A reference to \$ is to the lawful currency of Australia.
- (j) A reference to time is a reference to time in Melbourne.
- (k) If the day on which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing must be done on the immediately succeeding Business Day.
- (l) The meaning of general words is not limited by specific examples introduced by **including**, or **for example**, or similar expressions.
- (m) Words and phrases not specifically defined in this document have the same meanings (if any) given to them in the Corporations Act.

For personal use only

2. Conditions to implementation of the Scheme

2.1 Conditions precedent to the Scheme

The Scheme is conditional upon, and will have no force or effect until, the satisfaction of each of the following conditions precedent:

- (a) as at 8am on the Second Court Date each of the conditions precedent set out in clause 3.1 of the Implementation Agreement (other than the condition precedent relating to the approval of the Court set out in clause 3.1(e) of the Implementation Agreement) has been satisfied or waived in accordance with the Implementation Agreement;
- (b) as at 8am on the Second Court Date, the Implementation Agreement has not been terminated;
- (c) the Court makes orders approving the Scheme under section 411(4)(b) of the Corporations Act, including with such alterations made or required by the Court under section 411(6) of the Corporations Act as are acceptable to Nabi and Biota;
- (d) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to the Scheme as are acceptable to Nabi and Biota have been satisfied; and
- (e) the orders of the Court made under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act approving the Scheme come into effect, pursuant to section 411(10) of the Corporations Act.

2.2 Nabi Closing Net Cash Balance Certificate

If Nabi does not deliver to Biota on the Implementation Date the Nabi Closing Net Cash Balance Certificate that shows the Nabi Closing Net Cash Balance as no less than US\$27 million, Biota may, by written notice to Nabi, terminate the Scheme with immediate effect.

2.3 Termination of Implementation Agreement

Without limiting any rights under the Implementation Agreement, in the event that the Implementation Agreement is terminated in accordance with its terms, Biota and Nabi are each released from:

- (a) any further obligation to take steps to implement the Scheme; and
- (b) any liability with respect to the Scheme.

3. Scheme Becoming Effective

3.1 Effective Date of the Scheme

Subject to clause 3.2, the Scheme will take effect on and from the Effective Date.

For personal use only

3.2 End Date

The Scheme will lapse and be of no further force or effect if the Effective Date has not occurred on or before the End Date.

4. Implementation of Scheme

4.1 Scheme Consideration

On the Implementation Date:

- (a) Nabi must deliver to Biota a Nabi Closing Net Cash Balance Certificate that shows the Nabi Closing Net Cash Balance as no less than US \$27 million; and
- (b) on satisfaction of paragraph (a), Nabi must provide the Scheme Consideration in the manner contemplated by clauses 4.3, 5 and 6, and Nabi must provide Biota with written confirmation of that having occurred.

4.2 Transfer of Scheme Shares

Upon Nabi providing Biota with written confirmation under clause 4.1(b), all of the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, will be transferred to Nabi, without the need for any further act by any Scheme Shareholder (other than acts performed by Biota or any of its directors and officers as attorney and agent for Scheme Shareholders under the Scheme), by Biota effecting a valid transfer or transfers of the Scheme Shares to Nabi under section 1074D of the Corporations Act or, if that procedure is not available for any reason, by:

- (a) Biota delivering to Nabi for execution duly completed and, if necessary, stamped Scheme Transfers to transfer all of the Scheme Shares to Nabi, duly executed by Biota (or any of its directors and officers) as the attorney and agent of each Scheme Shareholder as transferor under clause 9.3;
- (b) Nabi executing the Scheme Transfers as transferee and delivering them to Biota for registration; and
- (c) Biota, immediately after receipt of the Scheme Transfers under clause 4.2(b), entering, or procuring the entry of, the name and address of Nabi in the Biota Register as the holder of all of the Scheme Shares.

4.3 Provision of Scheme Consideration

On the Implementation Date, in consideration for, and prior to, the transfer to Nabi of the Scheme Shares, subject to Nabi delivering to Biota on the Implementation Date the Nabi Closing Net Cash Balance Certificate that shows the Nabi Closing Net Cash Balance as no less than US \$27 million:

- (a) Nabi will provide to each Eligible Scheme Shareholder the total number of New Nabi Shares to which that Eligible Scheme Shareholder is entitled under clause 5 as Scheme Consideration, in accordance with clause 6; and

For personal use only

- (b) Nabi will issue to the Nominee in accordance with clause 5.5(a) the total number of New Nabi Shares to which Ineligible Foreign Biota Shareholders and Electing Shareholders would otherwise have been entitled under clause 5 as Scheme Consideration (if they were Eligible Scheme Shareholders).

5. Scheme Consideration

5.1 Entitlement to Scheme Consideration

Subject to clauses 5.2, 5.3, 5.4 and 5.5, the Scheme Consideration in respect of the Scheme Shares for which a Scheme Shareholder is registered in the Biota Register as the holder as at the Record Date comprises such number of New Nabi Shares determined in accordance with paragraph (a) below, provided, however, that if Nabi completes a reverse stock split prior to the Implementation Date, then the number of New Nabi Shares for each Scheme Share calculated in accordance with paragraph (a) below will be adjusted in accordance with paragraph (b) below.

- (a) The number of New Nabi Shares to be issued by Nabi to each Scheme Shareholder for each Scheme Share held by them, is equal to:

$$\frac{N_N \times (1 - \text{Cash Ratio})}{N_{BD} \times \text{Cash Ratio}}$$

where:

N_N is the number of Nabi Shares outstanding as at 17 September 2012 (28,328,034) plus 1,187,335 (being one third of the number of Nabi stock options on issue as at 17 September 2012).

N_{BD} is the number of Biota Shares outstanding as at 17 September 2012 calculated on a fully diluted basis, being 187,402,665 (comprising 182,763,561 Biota Shares and 4,639,104 Biota Share Rights which will vest on Court approval of the Scheme).

Cash Ratio is the ratio determined in accordance with the following formula:

$$\text{Cash Ratio} = \frac{\text{US\$27 million}}{\text{US\$27 million} + \text{BMC}}$$

where:

BMC is Biota's market capitalisation calculated by multiplying the US\$ Ten Day VWAP by N_{BN} .

N_{BN} is the number of Biota Shares outstanding as at 17 September 2012 on a non diluted basis, being 182,763,561.

- (b) In the event that Nabi completes a reverse stock split prior to the Implementation Date, then the number of New Nabi Shares for each Scheme Share calculated in accordance with paragraph (a) above is adjusted in accordance with the following formula:

$$\text{NNS} \times \frac{N_N - N_{sc}}{N_N}$$

For personal use only

where:

NNS is the number of New Nabi Shares calculated in accordance with paragraph (a) above.

N_N is the number of Nabi Shares outstanding immediately prior to the reverse stock split.

N_{SC} is the reduction in the number of Nabi Shares outstanding as a result of the reverse stock split.

5.2 Fractional entitlements

If the number of Scheme Shares held by a Scheme Shareholder is such that the aggregate entitlement of that Scheme Shareholder to Scheme Consideration includes a fractional entitlement to a New Nabi Share, then the entitlement of that Scheme Shareholder must be rounded up or down, with any fractional entitlement of less than 0.5 being rounded down to the nearest whole number of New Nabi Shares, and any fractional entitlement of 0.5 or more being rounded up to the nearest whole number of New Nabi Shares.

5.3 Shareholding splitting or division

If Nabi is of the opinion (acting reasonably) that two or more Scheme Shareholders (each of whom holds a number of Scheme Shares that results in rounding in accordance with clause 5.2) have, before the Record Date, been party to shareholding splitting or division in an attempt to obtain unfair advantage by reference to such rounding, Nabi may give notice to those Scheme Shareholders:

- (a) setting out their names (as shown in the Biota Register) and Registered Addresses;
- (b) stating that opinion; and
- (c) attributing to one of them specifically identified in the notice the Scheme Shares held by all of them,

and, after such notice has been given, the Scheme Shareholder specifically identified in the notice as the deemed holder of all the specified Scheme Shares will, for the purposes of the other provisions of the Scheme, be taken to hold all of those Scheme Shares and each of the other Scheme Shareholders whose names and Registered Addresses are set out in the notice will, for the purposes of the other provisions of the Scheme, be taken to hold no Scheme Shares. Nabi, in complying with the other provisions of the Scheme relating to it in respect of the Scheme Shareholder specifically identified in the notice as the deemed holder of all the specified Scheme Shares, will be taken to have satisfied and discharged its obligations to the other Scheme Shareholders named in the notice under the terms of the Scheme.

5.4 Shareholders with Small Parcels of Scheme Shares

- (a) A Scheme Shareholder that holds 2,000 Scheme Shares or less may, in accordance with clause 5.4(b), make an election that the New Nabi Shares that such Scheme Shareholder would otherwise receive under the Scheme instead be issued to the Nominee in accordance with clause 5.5.

For personal use only

- (b) Any election by a Scheme Shareholder under clause 5.4(a) must be made by the Scheme Shareholder completing, in accordance with the instructions on it, the election form (which will be made available by Biota for the purposes of this clause 5.4) (the **Election Form**) and returning or submitting the completed Election Form to the address or via the method set out in the Election Form so that it is received by no later than the Election Date.
- (c) Any Election will apply to all the Scheme Shares of the Electing Shareholder as at the Record Date.
- (d) Once validly made, an Election by a Scheme Shareholder may be withdrawn before the Election Date by lodging or submitting a withdrawal form in accordance with the instructions on the Election Form.
- (e) Any purported Election not made in accordance with this clause 5.4 will not be valid and will not be recognised by Biota or Nabi.

5.5 Ineligible Foreign Biota Shareholders and Electing Shareholders

- (a) Nabi will be under no obligation under the Scheme to issue, and will not issue, any New Nabi Shares to any Ineligible Foreign Biota Shareholder or Electing Shareholder, and instead Nabi will issue on the Implementation Date the New Nabi Shares to which that Ineligible Foreign Biota Shareholder or Electing Shareholder would otherwise have been entitled (if they were an Eligible Scheme Shareholder) to the Nominee. On the Implementation Date, Nabi will procure the entry in the Nabi Register of the name and address of the Nominee in respect of the New Nabi Shares that are attributable to each Ineligible Foreign Biota Shareholder and Electing Shareholder.
- (b) Biota will procure that, as soon as reasonably practicable and in any event not more than 15 Business Days after the Implementation Date, the Nominee:
 - (i) sells on NASDAQ all of the New Nabi Shares issued to the Nominee pursuant to clause 5.5(a) in such manner, at such price and on such other terms as the Nominee determines in good faith, and at the risk of the Ineligible Foreign Biota Shareholders and Electing Shareholders; and
 - (ii) remits to Biota the proceeds of sale (after deducting any applicable brokerage, stamp duty and other selling costs, taxes and charges).
- (c) Promptly after the last remittance in accordance with clause 5.5(b), Biota will pay to each Ineligible Foreign Biota Shareholder and Electing Shareholder such proportion of the net proceeds of sale received by Biota pursuant to clause 5.5(b)(ii) as is equal to the number of New Nabi Shares that would have been issued pursuant to the Scheme to that Ineligible Foreign Biota Shareholder or Electing Shareholder (if they were an Eligible Scheme Shareholder) divided by the total number of New Nabi Shares issued to the Nominee pursuant to clause 5.5(a), in full satisfaction of Nabi's obligations to that Ineligible Foreign Biota Shareholder or Electing Shareholder (as applicable) under the terms of the Scheme in respect of the Scheme Consideration.

For personal use only

- (d) Each Ineligible Foreign Biota Shareholder and Electing Shareholder appoints Biota as its agent to receive on its behalf any financial services guide or other notices (including any updates of those documents) that the Nominee is required to provide to Ineligible Foreign Biota Shareholders and Electing Shareholders under the Corporations Act.

5.6 Ranking of New Nabi Shares

The New Nabi Shares issued pursuant to the Scheme must, upon issue, rank equally in all respects with all other Nabi Shares then on issue, except that they will not carry a right to receive any Contingent Value Right issued and outstanding on the Implementation Date or any dividends declared prior to but remaining unpaid on the Implementation Date.

6. Provision of Scheme Consideration

6.1 Provision of Scheme Consideration

- (a) The obligation of Nabi to provide the Scheme Consideration to an Eligible Scheme Shareholder will be satisfied by Nabi, on the Implementation Date:
- (i) issuing to that Eligible Scheme Shareholder such number of New Nabi Shares to which that Eligible Scheme Shareholder is entitled as Scheme Consideration; and
 - (ii) procuring the entry in the Nabi Register of the name and Registered Address (as at the Record Date) of that Eligible Scheme Shareholder in respect of the New Nabi Shares issued to them.
- (b) Subject to clause 6.2, within 5 Business Days after the Implementation Date, Nabi will despatch, or procure the despatch, to each Eligible Scheme Shareholder information from AST that details the Eligible Scheme Shareholder's account information and the number of New Nabi Shares issued to that Eligible Scheme Shareholder pursuant to the Scheme, with such despatch to be made by pre-paid post to that Eligible Scheme Shareholder's Registered Address (as at the Record Date).

6.2 Joint holders

In the case of Scheme Shares held in joint names, the information required to be issued to Eligible Scheme Shareholders under clause 6.1 will be issued in the names of the joint holders, and will be forwarded to the holder whose name appears first in the Biota Register as at the Record Date.

6.3 Binding instruction or notifications

Except for a Scheme Shareholder's tax file number, any binding instruction or notification between a Scheme Shareholder and Biota relating to Scheme Shares as at the Record Date (including, without limitation, any instructions relating to payment of dividends or to communications from Biota) will, from the Record Date, be deemed (except to the extent determined otherwise by Nabi in its sole discretion) to be a similarly binding instruction or

For personal use only

notification to, and accepted by, Nabi in respect of the New Nabi Shares issued to the Scheme Shareholder pursuant to the Scheme, until that instruction or notification is revoked or amended in writing addressed to Nabi through the Nabi Share Registry, provided that any such instructions or notifications accepted by Nabi will apply to and in respect of the issue of New Nabi Shares as part of the Scheme Consideration only to the extent that they are not inconsistent with the other provisions of the Scheme.

7. Dealings in Biota Shares

7.1 Dealings in Biota Shares by Scheme Shareholders

For the purpose of establishing the persons who are Scheme Shareholders, dealings in Biota Shares will be recognised by Biota provided that:

- (a) in the case of dealings of the type to be effected using CHESSE, the transferee is registered in the Biota Register as the holder of the relevant Biota Shares by the Record Date; and
- (b) in all other cases, registrable transfers or transmission applications in respect of those dealings are received by the Biota Share Registry by 5pm on the day which is the Record Date (in which case Biota must register such transfers or transmission applications before 7pm on that day),

and Biota will not accept for registration, nor recognise for the purpose of establishing the persons who are Scheme Shareholders, any transfer or transmission application in respect of Biota Shares received after such times, or received prior to such times but not in registrable form.

7.2 Biota Register

Biota will, until the Scheme Consideration has been provided and the name and address of Nabi has been entered in the Biota Register as the holder of all of the Scheme Shares, maintain, or procure the maintenance of, the Biota Register in accordance with this clause 7, and the Biota Register in this form and the terms of the Scheme will solely determine entitlements to the Scheme Consideration. As from the Record Date (and other than for Nabi following the Implementation Date), each entry in the Biota Register as at the Record Date relating to Scheme Shares will cease to have any effect other than as evidence of the entitlements of Scheme Shareholders to the Scheme Consideration in respect of those Scheme Shares.

7.3 Effect of share certificates and holding statements

As from the Record Date (and other than for Nabi following the Implementation Date), all share certificates and holding statements for Scheme Shares will cease to have effect as documents of title in respect of those Scheme Shares.

7.4 Information to be given to Nabi

Biota must procure that, as soon as practicable after the Record Date, and in any event within two Business Day after the Record Date, details of the names, Registered

For personal use only

Addresses and holdings of Biota Shares of every Scheme Shareholder as shown in the Biota Register as at the Record Date and details of all Electing Shareholders are given to Nabi (or as it directs) in such form as Nabi may reasonably require.

7.5 No disposals after Record Date

If the Scheme becomes Effective, each Scheme Shareholder, and any person claiming through that Scheme Shareholder, must not dispose of or purport or agree to dispose of any Scheme Shares or any interest in them after the Record Date otherwise than pursuant to the Scheme, and any attempt to do so will have no effect.

8. Suspension and Termination of Quotation of Biota Shares

- (a) Biota must apply to ASX for suspension of trading of the Biota Shares on ASX with effect from the close of business on the Effective Date.
- (b) Biota must apply to ASX for termination of official quotation of the Biota Shares on ASX and the removal of Biota from the official list of ASX with effect from the Business Day immediately following the Implementation Date.

9. General Provisions

9.1 Further assurances

- (a) Each Scheme Shareholder and Biota will do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of the Scheme and the transactions contemplated by it.
- (b) Without limiting Biota's other powers under the Scheme, Biota has power to do all things that it considers necessary or desirable to give effect to the Scheme and the Implementation Agreement.

9.2 Scheme Shareholders' agreements and consents

Each Scheme Shareholder:

- (a) irrevocably agrees to the transfer of their Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares, to Nabi in accordance with the terms of the Scheme;
- (b) irrevocably consents to Biota and Nabi doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of the Scheme and the transactions contemplated by it; and
- (c) to whom New Nabi Shares are to be issued pursuant to the Scheme:
 - (i) irrevocably agrees to become a member of Nabi for the purposes of clause 6.1 and the General Corporation Law of the State of Delaware, and to have their name and address entered in the Nabi Register; and

For personal use only

- (ii) irrevocably accepts the New Nabi Shares issued pursuant to the Scheme on the terms and conditions of the constitution of Nabi and agrees to be bound by the constitution of Nabi as in force from time to time in respect of the New Nabi Shares,

without the need for any further act by that Scheme Shareholder.

9.3 Appointment of Biota as attorney for implementation of Scheme

Each Scheme Shareholder, without the need for any further act by that Scheme Shareholder, irrevocably appoints Biota as that Scheme Shareholder's agent and attorney for the purpose of:

- (a) doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of the Scheme and the transactions contemplated by it, including the effecting of a valid transfer or transfers (or the execution and delivery of any Scheme Transfers) under clause 4.2(a), the communication of that Scheme Shareholder's instructions and notifications under clause 6.3, and the execution of any form of application required for New Nabi Shares to be issued to that Scheme Shareholder under clause 4.3; and
- (b) enforcing the Nabi Deed Poll against Nabi,

and Biota accepts such appointment. Biota, as agent and attorney of each Scheme Shareholder, may sub delegate its functions, authorities or powers under this clause 9.3 to all or any of its directors and officers (jointly, severally, or jointly and severally).

9.4 Warranty by Scheme Shareholders

Each Scheme Shareholder is deemed to have warranted to Nabi, and, to the extent enforceable, to have appointed and authorised Biota as that Scheme Shareholder's agent and attorney to warrant to Nabi, that all of their Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) will, at the time of the transfer of them to Nabi pursuant to the Scheme, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests and other interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind, and that they have full power and capacity to sell and to transfer their Scheme Shares (together with any rights and entitlements attaching to those Scheme Shares) to Nabi pursuant to the Scheme. Biota undertakes in favour of each Scheme Shareholder that it will provide such warranty, to the extent enforceable, to Nabi on behalf of that Scheme Shareholder.

9.5 Title to Scheme Shares

Nabi will be beneficially entitled to the Scheme Shares transferred to it under the Scheme pending registration by Biota of the name and address of Nabi in the Biota Register as the holder of the Scheme Shares.

9.6 Appointment of Nabi as attorney for Scheme Shares

- (a) From the Effective Date until Nabi is registered in the Biota Register as the holder of all Scheme Shares, each Biota Shareholder:
- (i) without the need for any further act by that Biota Shareholder, irrevocably appoints Nabi as its sole proxy to (and irrevocably appoints Nabi as its agent and attorney for the purpose of appointing any director or officer of Nabi as that Biota Shareholder's proxy and, where appropriate, its corporate representative to):
 - (A) attend shareholders' meetings of Biota;
 - (B) exercise the votes attaching to the Biota Shares registered in the name of the Biota Shareholder; and
 - (C) sign any Biota Shareholders' resolution; and
 - (ii) must take all other action in the capacity of a Biota Shareholder as Nabi reasonably directs.
- (b) From the Effective Date until Nabi is registered in the Biota Register as the holder of all Scheme Shares, no Biota Shareholder may attend or vote at any meetings of Biota Shareholders or sign any Biota Shareholders' resolution (whether in person, by proxy or by corporate representative) other than under this clause 9.6.

9.7 Alterations and conditions to Scheme

If the Court proposes to approve the Scheme subject to any alterations or conditions, Biota may, by its counsel or solicitors, and with the prior consent of Nabi, consent on behalf of all persons concerned, including each Biota Shareholder, to those alterations or conditions.

9.8 Binding effect of Scheme

The Scheme binds Biota and all of the Biota Shareholders from time to time (including those who did not attend the Scheme Meeting, did not vote at that meeting or voted against the Scheme) and, to the extent of any inconsistency, overrides the constitution of Biota.

9.9 Enforcement of Nabi Deed Poll

Biota undertakes in favour of each Scheme Shareholder that it will enforce the Nabi Deed Poll against Nabi on behalf of and as agent and attorney for the Scheme Shareholders.

9.10 Notices

Where a notice, transfer, transmission application, direction or other communication referred to in the Scheme is sent by post to Biota, it will not be deemed to be received in the ordinary course of post or on a date other than the date (if any) on which it is actually received at Biota's registered office or by the Biota Share Registry, as the case may be.

9.11 Costs and duty

- (a) Subject to clause 9.11(b), each of Nabi and Biota will pay their share of the costs of the Scheme in accordance with the Implementation Agreement.

For personal use only

- (b) Nabi will pay all duty (including stamp duty and any related fines, penalties and interest) payable on or in connection with the transfer by Scheme Shareholders of the Scheme Shares to Nabi pursuant to the Scheme.

9.12 Governing law and jurisdiction

- (a) This Scheme is governed by the laws of Victoria, Australia.
- (b) Each of the parties irrevocably consents to the non-exclusive jurisdiction and venue of the state and federal courts located within Delaware, the United States of America and of Victoria, Australia in connection with any matter based upon or arising out of this Scheme or the transactions contemplated by this Scheme.
- (c) Each party agrees that process may be served upon it in any manner authorised by the laws of Delaware or Victoria, as the case may be, for such persons and waives and covenants not to assert or plead any objection which it might otherwise have to such jurisdiction and such process.
- (d) Each of the parties waives any right to trial by jury with respect to any action, suit, or proceeding in connection with any dispute, claim, or controversy arising out of or relating to this Scheme.

For personal use only