

# Notice of annual meeting of shareholders

Notice is hereby given that the annual meeting of shareholders of Abano Healthcare Group Limited (“Abano” or “the Company”) will be held in the Pakuranga Hunt Room, Ellerslie Convention Centre, 8-100 Ascot Avenue, Ellerslie, Auckland, New Zealand on Friday 23 September 2005 commencing at 10:30 am.

# Agenda

## CHAIRMAN AND CHIEF EXECUTIVE OFFICER

Presentations

## GENERAL BUSINESS

Presentation of the annual report for the year ended 31 May 2005 and the auditors' report.

## RESOLUTIONS

### Ordinary Business

To consider and, if thought fit, pass the following ordinary resolutions:

#### RESOLUTION 1

To record the reappointment of PricewaterhouseCoopers as auditors of the Company and to authorise the directors to fix the auditors' remuneration.

#### RESOLUTION 2

To re-elect Mr Philip Newland as a director of the Company in accordance with the Company's constitution (see explanatory notes).

#### RESOLUTION 3

To elect Mrs Susan Paterson as a director of the Company in accordance with the Company's constitution (see explanatory notes).

#### RESOLUTION 4

To elect Mr Trevor Janes as a director of the Company in accordance with the Company's constitution (see explanatory notes).

#### RESOLUTION 5

To authorise, for the purpose of NZSX Listing Rule ("**Listing Rule**") 3.5.1 and by way of an ordinary resolution, an increase in the total directors' remuneration per annum, for each financial year, from \$150,000 to \$223,000.

#### RESOLUTION 6

That the acquisition by the Company of up to 100% of the shares in Bay Audiology (70% of which will be acquired for cash consideration of approximately \$21 million on 3 October 2005 and the balance of which may be acquired pursuant to a put and call option exercisable at any time between 1 June 2010 and 31 October 2012 for consideration based on a performance-related formula with a minimum price of \$9 million) on the terms and conditions set out in the conditional agreement for sale and purchase dated 6 July 2005 between Bay Audiology and the Company and otherwise as described in the explanatory notes forming part of the notice of this meeting, be approved pursuant to Listing Rule 9.1.1 (which governs major transactions).

#### RESOLUTION 7

That the Company be authorised to implement an executive share scheme on the following terms:

1. The Company will provide financial assistance to Mr Alan Clarke, Managing Director, Mr Richard Keys, Chief Financial Officer, and Mr Andrew Tapper, Business Development Manager, and in particular to:
  - (a) provide Mr Clarke an interest free loan of \$240,000 for the purpose of enabling Mr Clarke to subscribe for shares under the Company's share scheme;
  - (b) provide Mr Keys an interest free loan of \$121,000 for the purpose of enabling Mr Keys to subscribe for shares under the Company's share scheme; and
  - (c) provide Mr Tapper an interest free loan of \$121,000 for the purpose of enabling Mr Tapper to subscribe for shares under the Company's share scheme,

on the terms set out in the explanatory notes below.

2. The Company may buy back shares issued to Mr Clarke, Mr Keys and Mr Tapper under the Company's share scheme:
  - (a) on the third anniversary of the issue date of those shares if required to do so in accordance with the put options granted to Mr Clarke, Mr Keys and Mr Tapper, under the share scheme; or
  - (b) on each of the first, second and third anniversaries of the issue date of those shares if the performance criteria for the most recently completed financial year as set out in the share scheme are not met, on the terms set out in the explanatory notes below.
3. The Company issue shares to the following persons:
  - (a) Mr Clarke, Managing Director - \$240,000 of shares;
  - (b) Mr Keys, Chief Financial Officer - \$121,000 of shares; and
  - (c) Mr Tapper, Business Development Manager - \$121,000 of shares.

All shares to be issued under this resolution will be ordinary shares in the Company that rank equally with all existing shares on issue.

4. The Company enter into a Material Transaction with Related Parties (as those terms are defined in Listing Rules 9.2.2 and 9.2.3 respectively comprising the amendment of Mr Keys' employment agreement and the inclusion of a provision in Mr Clarke's new employment agreement, which would increase their remuneration to include a cash bonus (of up to \$240,000 and \$121,000 respectively) payable if the relevant Executive exercises his put option and if the performance criteria are met (or the call option is not exercised by the Board).

#### RESOLUTION 8

That a new employment agreement for Alan Clarke, the Managing Director of the Company, on the terms set out in the Explanatory Notes to the notice of this meeting, be approved pursuant to Listing Rule 9.2.1 (which governs material transactions with related parties).

#### RESOLUTION 9

That the shareholders ratify the following increases to Alan Clarke's salary under his existing employment agreement:

June 2002 - increase from \$250,000 to \$268,750

June 2004 - increase from \$268,750 to \$275,468

#### By order of the Board



**Richard Keys**  
**Authorised Officer**  
**Abano Healthcare Group Limited**

#### Notes

1. The resolutions will be voted on by shareholders of the Company.
2. The only persons entitled to vote at the annual meeting are registered shareholders as at 5.00pm on Wednesday, 21 September 2005 and only the shares registered in those shareholders' names may be voted at the annual meeting.
3. Any shareholder who is entitled to vote at the annual meeting may appoint a proxy to attend and vote on their behalf. A shareholder wishing to appoint a proxy should complete the enclosed Voting/Proxy form and send it to Computershare Investor Services Ltd, Private Bag 92119, Auckland, or by fax on 09-4888787 so as to ensure that it is received at least 48 hours before the time for holding the meeting. A proxy does not have to be a shareholder in the Company. A shareholder may appoint the Chairman of the annual meeting, or another person, to act as a proxy.
4. Any corporation that is a shareholder may appoint a person as its representative to attend the annual meeting and vote on its behalf, in the same manner as that in which it could appoint a proxy.
5. This notice of annual meeting has been approved by the New Zealand Exchange Limited (NZX) in accordance with Listing Rule 6.1.1.

The Listing Rules can be viewed on the NZX's website at [www.nzx.com](http://www.nzx.com).

# Explanatory notes

## DIRECTOR NOMINATIONS

Current Abano directors, Mr Maurice Kidd and Dr Clint Teague, have both announced their retirement from the board as at 23 September 2005. The board has received no director nominations from shareholders, and has therefore nominated two candidates as independent directors on the Abano board. Their details are as follows:

### RESOLUTION 2 – RE-ELECTION OF PHILIP NEWLAND BCA, LLB, MS (NYU)

Mr Newland retires by rotation and, being eligible, has offered himself for re-election.

Phil is an experienced director having held board positions with a range of both private and public directorships both in New Zealand and Australia. He is an Executive Director of St Laurence, and an independent director for Abano Healthcare Group. In his previous role with Cullen Group, Phil held directorships including Pacific Retail Group, Gen-I Limited and The New Zealand Warriors.

A New Zealander by birth, Phil was formerly based in New York where he worked for a Manhattan development and investment company. He previously held senior legal positions in New Zealand with Russell McVeagh. In addition to his business and law degrees from Victoria University, he also holds a Masters Degree in finance and investment from New York University.

### RESOLUTION 3 – ELECTION OF SUSAN PATERSON BPHARM, MBA (LONDON)

An MBA graduate from London Business School, Susan has experience as a general manager and with senior management in a number of companies in New Zealand, the USA and Europe. Previously she was a strategy consultant in Europe and USA. Susan has nine years' Board experience and is on the Boards of Ports of Auckland, Auckland Regional Holdings, Transpower New Zealand Ltd, Americas Cup Village Limited, NZ Eco-Labeling Trust, and St Cuthbert's College. She runs her own pharmacy business and has also been a Director of Tower Health and Life (1996-2002), and the Energy Efficiency and Conservation Authority (1996-2000).

### RESOLUTION 4 – ELECTION OF TREVOR JANES BCA (ECONOMICS), CA

Trevor Janes is an investment banker and financial analyst. He is an experienced director and currently holds board positions with Mighty River Power, Capital+Merchant Finance Ltd, and Watercare Services Limited. He also sits on the Investment Committee of the Board of Accident Compensation Commission and is chairman of Trinity Hill Limited.

Previously, Trevor has held directorships with Accident Compensation Corporation, Catalyst Injury Management Limited, Auckland District Health Board and Housing New Zealand.

Trevor is a Chartered Accountant, and a Fellow of the Institute of Financial Professionals New Zealand Inc. Previously, he was a Fellow and past chair of the New Zealand Society of Investment Analysts. He is also a Member of the Chartered Financial Analysts Institute (USA), an affiliate of the United Kingdom Society of Investment Professionals and a Fellow of the Institute of Directors.

## RESOLUTION 5 – INCREASE IN DIRECTOR FEES

The board is recommending to shareholders that total director fees are increased from \$150,000 to \$223,000 (ie an increase of \$73,000 in the total pool of fees available to be paid to directors).

This represents an increase in fees of \$7,000 per non-executive director (other than the Chairman) and an increase in fees of \$15,000 for the Chairman. The increased pool of fees also reflects the fact that the board will, subject to Resolutions 3 and 4 being passed, have one additional independent non-executive director after the meeting.

Total director fees of \$150,000 were last approved by shareholders at the 1999 annual meeting with all non-executive directors currently receiving \$30,000 and the chairman receiving \$60,000. Executive directors do not receive directors' fees.

Since 1999, executive directors have been gradually replaced with non-executive and independent directors. In line with international corporate governance guidelines, the Abano board is now also moving to a fully independent board of directors, and its policy is that independent directors will be appointed to fill any casual or board vacancies. The board's intention is to have five independent directors and the managing director sitting on the Abano board.

Advice has been sought from Hay Group Limited, independent remuneration consultant specialists, who have recommended an increase in director fees to meet current market standards.

"In the past five years since director fees for Abano were last approved by shareholders, the average increase in Chairs' remuneration has been 24.7% and 22.7% for Non-Executive Directors. If applied to current Directors' fees, this would have the effect of lifting the Chair's Remuneration to approximately \$75,000 and Non-Executive Directors to \$37,000. We would not consider these levels of fees inappropriate for the size and nature of the Company." Peter Cornish, Director – Executive Reward, Hay Group Limited.

Therefore, the board is recommending that total annual directors' fees are increased from \$150,000 to \$223,000 to allow for fee increases in the marketplace and for a board of five independent directors. As an executive director, the managing director will not receive director fees.

## RESOLUTION 6 – ACQUISITION OF 100 PERCENT OF BAY AUDIOLOGY

Resolution 6 deals with the proposed acquisition by the

Company of up to 100% of the shares in Bay Audiology Limited, a company currently owned by its three founding clinical directors, Peter Hutson, Anya Andrews and Scott Wright (the “Vendors”). The Company’s entry into a conditional agreement for sale and purchase of these shares was announced on 6 July 2005.

Shareholder approval of the acquisition is required under Listing Rule 9.1.1 because the total value of the acquisition will exceed 50% of the value of the Company’s average market capitalisation.

### Bay Audiology’s Business

Established in 1993, Bay Audiology now represents the largest and only national audiology service provider. Bay Audiology’s national network of 12 fulltime clinics and 17 satellite clinics employs around 65 staff, more than 20 of whom are qualified audiologists.

For its current financial year, Bay Audiology has projected revenues exceeding \$21 million, with an EBITDA contribution greater than 26 percent of revenue.

Abano’s investment is expected to yield a return on investment at EBITDA of over 20 percent and at NPAT of over 15 percent over the next two years as Bay Audiology is projected to expand its network and continue growing.

The Audiology business derives its revenues from the provision of professional clinical audiology services, particularly hearing tests, the supply and fitting of hearing aid devices, and follow up consultations, all of which are provided to both private patients as well as patients funded by ACC, War Pensions, and local DHBs.

The Group will continue its model of establishing partnerships with the clinical management teams it invests in, meaning that Bay Audiology will retain all the energy, passion and clinical expertise of its current principals and Abano will have committed long-term partners who will share in the future of the business.

The investment in Bay Audiology provides Abano with entry into a new part of the healthcare sector, and it will operate alongside Abano’s other businesses in the dental, diagnostics and rehabilitation sectors.

### Key Terms of Agreement for Sale and Purchase

#### Shares and Consideration

If shareholders approve Resolution 6, the acquisition will comprise the following two parts:

- the acquisition of 70% of the shares in Bay Audiology on 3 October 2005 from the Vendors for cash consideration of approximately \$21 million (being \$21 million, plus or minus an adjustment to reflect the actual value of Bay Audiology’s net tangible assets at settlement. The Agreement requires completion accounts to be prepared in respect of Bay Audiology following settlement. The purchase price may be adjusted (either up or down) in the event the amount of the net tangible assets (as disclosed in the completion accounts) is greater than or less than the amount projected by Bay Audiology as at settlement date).
- an option to acquire the remaining 30% of the shares in Bay Audiology pursuant to a put and call option, exercisable by either the Company or by the Vendors, at any time between 1 June 2010 and 31 October 2012. Under the call option, the Company has the right to require the Vendors to transfer the remaining shares to it, and under the put option, the Vendors can require the Company to acquire those shares. The consideration for these shares will be determined in accordance with a formula based on Bay Audiology’s performance prior to the exercise of the option, but shall be no less than \$9 million.

The acquisition is subject to shareholder approval at the Annual Meeting on 23 September 2005.

If shareholders do not approve resolution 6, the purchase of Bay Audiology will not proceed. If the acquisition does not proceed, Abano will be required to pay a break fee of NZ\$1 million to the Vendors.

#### Pre-completion obligations

The Vendors have obligations under the Agreement to conduct the business of Bay Audiology, pending settlement, in accordance with past practice. As is customary, until settlement, the Vendors must ensure that Bay Audiology adheres to certain restrictions on its business operations, which can only be circumvented with the consent of Abano.

#### Employees

As Abano is acquiring shares in Bay Audiology, employees of Bay Audiology will not be affected by the acquisition, and they will continue to be employed by Bay Audiology on their existing terms.

#### Vendor warranties

The Vendors have provided Abano with appropriate representations and warranties (and a supporting indemnity) in relation to the business, its assets and liabilities. These warranties (with some exceptions) are subject to a 2 year time limit for any claim (other than in relation to tax warranties, where the time limit for claims is 4 years after Bay Audiology has filed all returns for the 2006 financial year), and to limitations as to quantum.

### RESOLUTION 7 – EXECUTIVE SHARE SCHEME

- Subject to shareholder approval, the Board has approved a share scheme (the “Scheme”) pursuant to which shares in the Company (“Shares”) are to be offered to Mr Alan Clarke, Managing Director, Mr Richard Keys, Chief Financial Officer, and Mr Andrew Tapper, Business Development Manager (each, an “Executive”).
- The Scheme is intended to better align the Executives’ and shareholders’ interests in regards to improving the profitability of the Company, as well as the retention of key executives. The Board believes the Scheme will strengthen the incentives of the Executives to ensure the Company performs to agreed standards as the Executives will have the opportunity to share in any improvements in the Company’s financial position. The Scheme, together with proposed amendments to the Executives’ employment agreements, also provides an

incentive to the Executives to reach performance criteria set by the Board with potential bonuses.

3. Alan Clarke, the Managing Director of the Company, is a related party of the Company for the purposes of the Listing Rules by virtue of the fact that he is a director of Abano. Richard Keys is a related party of the Company because he is a director of a number of subsidiary companies of Abano. The proposed Scheme will necessitate amendments to Mr Keys' employment agreement with the Company and the inclusion of a provision in Mr Clarke's new employment agreement in relation to the payment of these potential bonuses. The Listing Rules require shareholder approval of employment agreements where the cost of those employment agreements in a financial year will or will be likely to exceed 0.5% of the Company's average market capitalisation. The amendments to Mr Keys' employment agreement and the bonus to be provided for in Mr Clarke's new employment agreement could result in a cost to the Company exceeding this amount. Mr Clarke's new agreement is to be considered separately in Resolution 8.
4. The proposed amendment to Mr Keys' employment agreement will mean that his total remuneration package in 2008, being the year in which the bonuses under the Scheme will be payable, could exceed 0.5% of the Company's average market capitalisation (based on the level of the average market capitalisation of the Company at the date of this notice). This amendment requires the approval of shareholders and shareholders must receive an independent appraisal report to enable them to assess the merits of the proposed provisions.
5. The proposed provisions to be included in Mr Clarke's and Mr Keys' employment agreements have been considered by Grant Samuel, which has prepared an independent appraisal report on the fairness to shareholders of the Company of these provisions. A copy of the report from Grant Samuel, as provided to the Board is attached to this notice.
6. Set out below is an outline of how the Scheme will operate:
7. When an offer to acquire Shares is accepted by an Executive under the Scheme:
  - (a) the Company will advance to each Executive an amount of money equal to the subscription price of those Shares ("**Loan**") which will be solely applied by the Executive in respect of the acquisition of the Shares. The Loan will be advanced in three equal tranches at the same time;
  - (b) the subscription price will be the then market price of the Shares calculated with reference to the volume weighted average market price of Shares on the NZSX over the five trading days prior to the advance of the Loan and issue of the Shares (including the date of issue) ("**Original Purchase Price**");
  - (c) each Executive will subscribe for, and the Company will issue, the Shares;
  - (d) each Executive will agree to beneficially own the Shares for a period of three years from the date of issue (the "**Restricted Period**"), and the terms of the Loans to each relevant Executive will restrict the disposal of the newly issued shares by the relevant Executive during the Restricted Period, with the relevant Executive being required to repay the portion of the Loan in relation to the shares of which that Executive ceases to be the beneficial owner.
  - (e) the Company will grant a put option in respect of the Shares to the relevant Executive (enabling the Executive to require the Company to acquire the Shares from him), which is exercisable by the Executive at the end of the Restricted Period;
  - (f) each Executive will grant a call option in respect of the Shares to the Company (enabling the Company to require the Executive to transfer the Shares to it), which is exercisable by the Company on the first, second and third anniversaries of the issue date if the certain performance criteria set by the Board are not met. The call option will be granted in three tranches, each tranche exercisable over a third of the Shares if the performance criteria are not met in each of the three years of the Restricted Period;
  - (g) if either of the call or put options is exercised, the Company will be obliged to buy back the Shares at the Original Purchase Price;
  - (h) if the put option is exercised, the Executive will be obliged to apply the proceeds of the Share buy back (referred to in paragraph (g) above) to repay the Loans. If one tranche of the call option is exercised, the Executive will be obliged to apply the proceeds of the Share buy back (referred to in paragraph (g) above) to repay one tranche of the Loan; and
  - (i) if the put option is exercised by an Executive at the end of the Restricted Period, that Executive will, pursuant to the terms of his employment agreement, receive a cash bonus. The amount of the bonus will vary depending on whether the performance criteria have been met. If the performance criteria are met (or the call option is not exercised by the Board) in each of the three years of the Restricted Period, the bonus will be equal to the amount of the Loan (gross of any applicable taxes). If the performance criteria are not met and the call option is exercised by the Board in each of the three years of the Restricted Period, no bonus is payable; and
  - (j) the Loan will be provided on an interest free basis on the following terms:
    - (i) the Company's enforcement rights under the Loan shall be limited to its enforcement rights under a share mortgage over the relevant Shares ("**Share Mortgage**") except in circumstances where an Executive is in breach of the terms of the Loan;

- (ii) any proceeds received by the Company as a result of enforcing its rights under the Share Mortgage shall be applied by the Company against any outstanding amounts due under the Loan; and
  - (iii) once the Company has enforced the Share Mortgage and applied the proceeds to the repayment of the Loan, any amounts outstanding under the Loan will be extinguished and the Company shall have no further rights of recourse under the Loan.
- (k) Any dividends paid by the Company in relation to an Executive's Shares will accrue to the benefit of that Executive during the Restricted Period but will only be paid out by the Company to that Executive at the end of the Restricted Period. If the Company exercises its call option in relation to any of an Executive's Shares, that Executive shall not be entitled to receive the accrued dividend on those Shares at the end of the Restricted Period.

#### Financial Assistance

8. The Loan detailed in paragraph 7(a) above amounts to financial assistance being provided by the Company to the Executives for the purpose of acquiring the Shares.
9. Such financial assistance is required to be approved by shareholders of the Company under Listing Rule 7.6.6.
10. The financial assistance will be given in accordance with section 80 of the Companies Act 1993. Accordingly, a notice will be sent to each shareholder of the Company confirming that financial assistance has been given and the details of that assistance within 10 working days of the assistance being provided.
11. The Listing Rules require that financial assistance approved by shareholders must be given within six months of the passing of the relevant resolution. Accordingly, if approved by shareholders, the financial assistance will be given and the shares will be issued by 23 March 2006.

#### Future Share buy back

12. The exercise of the call and put options discussed in paragraphs 7(e) to (g) above amounts to a share buy back by the Company.
13. Such a share buy back is required to be approved by shareholders of the Company under Listing Rules 7.6.1(d) and 7.6.6.
14. Any share buy back will be undertaken in accordance with sections 60(1)(b)(ii) and 61 of the Companies Act 1993. A disclosure document will be sent to each shareholder of the Company before such a buy back is undertaken.
15. The Company has been granted a waiver by New Zealand Exchange Limited so that a buy back conducted by the Company in accordance with the Scheme will not breach Listing Rule 7.6.6 even if that buy back occurs more than 12 months after the passing of the shareholders' resolution authorising such buy back.

#### Issue of new Shares

16. The Scheme provides that, on the same day and immediately following the giving of the financial assistance described above, the Executives will subscribe and pay for, and the Company will issue, ordinary shares at the Original Purchase Price.
17. The market value of shares issued to the Executives will equal the amount of the Loan made to each of them respectively. For example:
  - (a) \$240,000 of Shares, at the current market price, equates to approximately 109,000 Shares; and
  - (b) \$121,000 of Shares, at the current market price, equates to approximately 55,000 Shares.
18. Although the Shares are issued for cash, because the subscription price is provided by way of the Loans, no actual cash is received by the Company on subscription.
19. The Listing Rules require that the issue, once approved by shareholders, shall be made within twelve months of the passing of the relevant resolution. However, as noted in paragraph 11 above, the Listing Rules require that financial assistance is provided within six months of a resolution being passed. Accordingly, the issue of the Shares will also be made within six months of the passing of the resolution.

#### New Employment Agreement Provisions

20. As part of the Scheme, a mechanism for the payment of cash bonuses to Executives in certain circumstances will be incorporated in each of the Executives' employment agreements. As Mr Clarke is both a director of the Company, as well as an Executive for the purposes of the Scheme, and Mr Keys is a director of various subsidiary companies and an Executive, this will constitute a material transaction (as the value of the two employment agreements once these provisions have been incorporated will be more than 0.5% of the Average Market Capitalisation of the Company) with a related party (being, respectively, a director of the Company and a director of subsidiaries of the Company) and will accordingly require the approval of shareholders by ordinary resolution in accordance with Listing Rule 9.2.1. Mr Clarke is being offered a new employment agreement containing provision for the payment of this cash bonus, and this is being approved separately under Resolution 8.
21. The terms of the cash bonuses are such that they will only be paid in full to the relevant Executive in the event that the Executive meets the performance criteria set for each year of the Restricted Period (or the call option is not exercised by the Board) and the Executive chooses to exercise his put option at the end of the Restricted Period. If an Executive does not meet the performance criteria set out for any year and the Board exercises the call option the possible amount payable as a bonus will be reduced by one-third for each year he fails to fulfil the relevant performance criteria and the call option is exercised. Accordingly, if he fails to meet the performance criteria during any of the three years

of the Restricted Period and the Board exercises the call option, the bonus payable under his employment agreement on the exercise of the put option will be zero.

22. It is anticipated that as part of the Scheme, each Executive's employment agreement will incorporate a cash bonus (up to the amount of the Loan to that Executive) if performance criteria are met (or the call option is not exercised by the Board) and the shares are put back to the Company.

#### RESOLUTION 8

The new employment agreement proposed for Mr Alan Clarke includes the following key terms:

- a base salary of \$300,000 per annum.
- provision for payment of an annual bonus of up to 25% of the base salary, which will be payable having regard to financial performance criteria, with the possibility for this to increase to 50% of base salary for performance over budget.
- the new salary to be back-dated to 1 July 2005.
- a one-off payment of \$82,000 in consideration of Mr Clarke's achievement in effecting the recent sale of ElderCare New Zealand Limited, the Company's aged care business, for cash consideration of \$63.5 million, resulting in a capital gain of approximately \$10 million.
- The bonus structure described in paragraphs 20-22 above.

As mentioned above, Alan Clarke is a related party of the Company for the purposes of the Listing Rules by virtue of the fact that he is a director of Abano. The proposed employment agreement constitutes a material transaction with a related party because the likely cost to the Company of that contract in each financial year in which it is in place exceeds 0.5% of the Company's average market capitalisation. Listing Rule 9.2.1 requires shareholder approval of employment agreements with related parties where the cost of those agreements to the Company in a financial year will or will be likely to exceed this level, unless NZX confirms its satisfaction, through the granting of a waiver or ruling, that it is satisfied that the agreement has been entered into on an arm's length commercial basis.

We are now seeking shareholder approval to enter into this new proposed employment agreement.

Advice on Mr Clarke's proposed employment agreement has been provided by independent remuneration consultant Hay Group Limited which has advised that the proposed remuneration is within the benchmarks for comparable positions.

The remuneration payable under the proposed employment agreement has been considered by Grant Samuel and the fairness to shareholders of the Company of that remuneration is addressed in the appraisal report referred to above in the notes on Resolution 7. A copy of the report from Grant Samuel is attached to this notice.

#### RESOLUTION 9

Alan Clarke's existing employment agreement was entered into at the time of Mr Clarke's appointment as chief executive officer in February 2000 and before he became a director of the Company and did not require shareholder approval at that time. It provided for a salary of \$250,000 plus an annual bonus of an amount up to 25% of the current salary at the relevant time.

The agreement permitted annual increases in salary. In the intervening five year period, the board has twice increased Mr Clarke's salary to keep it in line with increases in the consumer price index and the salary now stands at \$275,468. Mr Clarke was elected a director on 31 October 2001. In June 2002 an increase in Mr Clarke's salary was made to \$268,750 reflecting the approximate increase of the CPI over the previous two years. In June 2004 another CPI increase was given, resulting in the current salary of \$275,468.

The Company should have provided information to NZX at the time of each of the two salary increases to satisfy it that those increases were set on arm's length commercial terms and were therefore not caught by Listing Rule 9.2.1. Inadvertently, this did not occur. The Company is seeking ratification of these two salary increases to ensure compliance with Listing Rule 9.2.1, which, unless NZX confirms by way of a ruling or waiver that it is satisfied that the transaction is at arm's length and on commercial terms, requires the approval of shareholders where the Company proposes to enter into a material transaction (including an employment agreement) with a related party and the value of that transaction exceeds 0.5% of the Company's average market capitalisation. NZX does not require appraisal reports to be prepared in respect of this resolution.

#### VOTING

The directors of the Company and their associated persons may not vote on Resolution 5.

Alan Clarke, Richard Keys and Andrew Tapper and their respective associated persons may not vote on Resolution 7.

Alan Clarke and his associated persons may not vote on Resolutions 8 or 9.

These voting prohibitions will not prevent a person who is disqualified from voting, who has been appointed as a proxy or voting representative by another person who is not disqualified from voting under the Listing Rules, from voting in respect of the securities held by that other person in accordance with the express instructions of that other person.

**Ordinary resolution** means a resolution approved by a simple majority of the votes of those shareholders entitled to vote and voting on the resolution.