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## ASX Announcement

17 April 2009

### **Polartech and Fermiscan propose merger to create Australia's largest women's health diagnostics business**

Polartech Limited (Polartech, ASX:PLT) and Fermiscan Holdings Limited (Fermiscan, ASX:FER) today announced that they have agreed to a proposed merger.

The boards of both companies have agreed to take advantage of the unique opportunity to create a merger to commercialise the companies' combined diagnostic screening tests for the detection of breast cancer, cervical cancer and sexually transmitted diseases for women world-wide.

#### **Transaction terms**

The merger will be effected by Polartech making an off-market takeover offer (the 'Offer') for all the issued ordinary shares in Fermiscan. Polartech has also agreed to make individual offers to holders of Fermiscan options if certain conditions are met.

Under the Offer, Polartech will offer three of its ordinary shares for every two Fermiscan ordinary shares. The individual offers to be made to holders of Fermiscan options will be on corresponding terms.

The Offer will be subject to a number of conditions, including the requirement that Polartech acquires a relevant interest in at least 90% of Fermiscan's ordinary shares on issue by the end of the Offer period. A full list of the conditions of the Offer are attached – Attachment 1.

Polartech and Fermiscan have agreed to co-operate on an exclusive basis (see Attachment 2) in relation to the implementation of the Offer and have entered into an Implementation Agreement.

#### **Fermiscan Directors intend to recommend that Fermiscan shareholders accept the Offer**

The Directors of Fermiscan intend to unanimously recommend that Fermiscan shareholders accept the Offer, subject to their appointed Independent Expert concluding that the Offer is both fair and reasonable and in the absence of a superior proposal.

The Directors of Fermiscan have obtained independent advice in relation to their responsibilities for governance, tax, audit, finance and legal due diligence which has formed the basis of this recommendation.

The Fermiscan Directors and their associates intend to accept the Offer in respect of their own shares and options in the absence of a superior proposal and subject to the Independent Expert concluding that the Offer is both fair and reasonable.

Polartech has also entered into a pre-bid acceptance agreement with Rellcain Pty Limited (ACN 077 711 605) under which it has agreed to accept the Offer with respect to that part of the Fermiscan shares held by it representing approximately 19.9% of Fermiscan's issued capital. Rellcain's obligation under the agreement to accept the Offer is subject to Polartech having acquired a relevant interest in 50.1% of Fermiscan's issued shares, including the shares that are the subject of the pre-bid acceptance agreement.

### **Commentary**

Polartech and Fermiscan together are both specialist women's health diagnostic companies that develop, manufacture and market world leading diagnostic products for the detection of breast cancer, cervical cancer and sexually transmitted diseases.

The two businesses are highly complementary. Polartech has international distribution agreements for the delivery of leading screening technology for the real-time detection of cervical cancer and other gynaecological diseases. Fermiscan is commercialising an innovative non-invasive diagnostic test for the detection of breast cancer with international patents and distribution opportunities.

Both businesses are focused on improving outcomes for women's health and the merger provides significant synergistic benefits as the businesses concentrate on the international commercialisation of their respective diagnostic tests.

The merged group will benefit from combined sales and supply channel opportunities which have been developed in Australia and overseas.

Polartech Chairman, Mr Robert Hunter, said "this positive development will position the merged group as Australia's largest women's health diagnostic business, which will market its women's health screening products on a global scale."

Fermiscan Chairman, Mr Gary Garton said "This is an exciting opportunity for a single Australian company to be at the forefront of early detection technologies in two of the most common diseases afflicting women across the world – breast and cervical cancers - together with sexually transmitted diseases."

The merger would result in significant and immediate cost savings. Upon merger, Fermiscan will re-locate to Polartech's head office and manufacturing facility in Erskineville.

### **Board and management structure**

Upon merger the boards will combine and comprise, Mr Robert Hunter as Chairman, Mr Gary Garton as Deputy Chairman, Mr Ben Dillon and Mr David Young as Executive Directors, Professor Neville Hacker and Dr Ronald Shnier as Non-Executive Directors. Mr Ben Dillon and Mr David Young will together be focused on delivering shareholder value through the management of the merged group to secure growth, integration and synergistic benefits.

To reflect the merged group's objective to champion new and innovative technologies for improving women's health outcomes world-wide, the merged group will on shareholder approval change its name to **Novus Diagnostics Limited**.

### **Timing**

Polartechnics and Fermiscan intend to despatch the Bidder's Statement and the Target Statement by mid May 2009, with the Offer expected to be open for approximately one month from that date.

Fermiscan's Target Statement will contain the Directors' formal recommendations based on Independent Advice to directors and an Independent Expert's Report. Fermiscan Shareholders are advised to read these documents carefully before accepting Polartechnics' offer.

For further information, please contact:

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### **About Polartech**

Established 21 years ago, Polartech has developed proprietary screening devices specialising in the detection of gynaecological cancers and disease - TruScreen and CerviScreen.

Polartech's prime focus is TruScreen, a real-time point of care device for screening cervical cancer, and the newly developed self-sampling product, CerviScreen, that allows women to access primary screening for sexually transmitted diseases and Human Papilloma Virus without undergoing pelvic examinations.

Polartech has a significant portfolio of intellectual property that supports the integrity of TruScreen and CerviScreen, which are accredited with a range of regulatory approvals for relevant markets, including TGA (Australia) and CE (Europe) approvals.

Polartech has successfully established market entry into 17 countries, including into China, Korea, India, Pakistan and the Asean market creating a network of medical product distributors. Further global market development is underway in Eastern Europe and USA.

Polartech has also established a network of manufacturing relationships, including in China, Malaysia, Italy, Poland and Australia, to ensure supply of TruScreen and CerviScreen as the businesses grow.

### **About Fermiscan**

Fermiscan's principal activity is the commercialisation of an innovative non-invasive diagnostic test for the detection of breast cancer.

The Fermiscan Breast Cancer Test is based on the discovery by an Australian scientist that a change can be detected in the molecular structure of hair from women with breast cancer and this change can be identified by using diffraction of X-rays generated in a synchrotron.

Fermiscan is developing opportunities to licence and sell the Fermiscan Test internationally, particularly in Australia, Europe, Japan, South East Asia, and the United States.

Fermiscan has recently granted an exclusive option agreement to licence the Fermiscan Test to Hitachi Chemical in Japan and Korea.

Fermiscan owns and operates the Sydney Breast Clinic, one of the largest diagnostic breast clinics in Australia that for more than 30 years has been caring for over 10,000 women annually.

With successful clinical trials concluded, commercialisation of the Fermiscan Test is progressing to plan in 2009.

Visit Polartech's website at [www.polartech.com](http://www.polartech.com)

Visit Fermiscan's website at [www.fermiscan.com.au](http://www.fermiscan.com.au)

Visit Sydney Breast Clinic's website at [www.sydneybreastclinic.com.au](http://www.sydneybreastclinic.com.au)

## **Attachment 1 -**

### **Offer Conditions**

The Offer and any contract arising from the acceptance of the Offer is subject to fulfilment of the following Conditions:

#### **Minimum acceptance condition**

That by the end of the Offer Period, Polartech has a relevant interest (as defined in the Corporations Act) in at least 90% of the Shares.

#### **Regulatory Approvals**

That, before the end of the Offer Period, all approvals or consents that are required by law, or by any Government Agency, as are necessary to permit:

- (1) the Offer to be lawfully made to and accepted by the Shareholders; and
- (2) the acquisition of the Shares by Polartech to be completed,

are granted, given, made or obtained on an unconditional basis, remain in full force and effect in all respects, and do not become subject to any notice, intimation or indication of intention to revoke, suspend, restrict, modify or not renew them.

#### **No threatened action**

That before the end of the Offer Period:

- (1) there is not in effect any preliminary or final decision, order or decree issued by a Government Authority;
- (2) no action or investigation is announced, threatened or commenced by a Government Authority; and
- (3) no application is made to any Government Authority (other than by Polartech or any of its Associates),

in consequence of or in connection with the Offer (other than an application to or a determination by ASIC or the Takeovers Panel in the exercise of the powers and discretions conferred by the Corporations Act), which restrains, impedes, prohibits or delays (or if granted could restrain, impede, prohibit or delay) or otherwise materially adversely impacts upon the making of the Offer or any transaction contemplated by the Agreement, the Offer or the rights of Polartech in respect of the Company or otherwise.

#### **Material Adverse Change**

That before the end of the Offer Period, no Material Adverse Change occurs, is discovered, announced, disclosed or otherwise becomes known to Polartech or the Company (whether or not becoming public).

#### **Prescribed Occurrences**

That before the end of the Offer Period, no Prescribed Occurrence, as set out in section 652C of the Corporations Act, occurs.

#### **Change of control**

If any member of the Group is a party to, or is bound by, or is subject to, an agreement, arrangement or understanding which as a result of the acquisition of Shares by Polartech under the Offer or a change in control of the Company as a result of the

Offer entitles a third party to exercise any rights (including termination rights or pre-emptive rights), and the exercise of such rights would have a material adverse impact on the business, assets, liabilities, financial or trading position, profitability or prospects of the Group (taken as whole), then before the end of the Offer Period the third party:

- (1) does not exercise, or purport to exercise, or state an intention or claim a right to exercise, those rights; and
- (2) gives its consent or waiver in a form reasonably acceptable to Polartech to the acquisition of Shares by Polartech.

### **Absence of new litigation**

That before the end of the Offer Period, no entity which is a member of the Group is or has become the subject of any litigation which is commenced, is threatened to be commenced, is announced, or is made known to Polartech (whether or not becoming public) or the Company which may reasonably be expected to result in a judgement against a member of the Group of \$250,000 or more (after taking into account any reduction of the judgment which may reasonably be expected by way of set-off or cross claim), other than that which has been announced to ASX prior to the date of the Agreement, or which was disclosed in writing by the Company or its advisers to any member of Polartech Group or its advisers prior to the date of the Agreement.

### **No restricted transactions**

That before the end of the Offer Period, no member of the Group does any of the following:

- (1) debt: enters into any new financing arrangements or agrees to extend, repay or materially amend any existing financing arrangements in excess of \$50,000 individually, or \$250,000 in aggregate; or
- (2) material commitments: enters into, or materially amends, any material agreement, arrangement, commitment or understanding (including any agreement, arrangement, commitment or understanding with third parties) which increases by more than \$250,000 the aggregate level of capital commitments of the Group above those disclosed to Polartech in writing prior to the date of the Agreement;
- (3) material disposals: disposes of, agrees to dispose of or offers, proposes or announces a tender process for the sale of any securities, businesses, assets, interests in joint ventures, entity or undertaking the consideration (including the value of assumed liabilities) for which exceeds \$50,000 individually, or \$250,000 in aggregate;
- (4) constitutions: makes any material changes to the terms of the constitutions of any entity within the Group;
- (5) distributions: declares, pays or distributes any dividend, distribution, bonus or other share of its profits or assets or agrees to return any capital to its members; or
- (6) remuneration: other than in the ordinary course of business:
  - a. materially increases the remuneration of, or pays any bonus or issues any securities to, or otherwise varies;
  - b. accelerates any rights to benefits of any kind in a material manner;

- c. pays or agrees to pay a termination payment (including a 'golden parachute'); or
- d. materially amends any employment, consulting, board appointment, severance or similar arrangement,  
with any of its directors, officers or employees, in each case, except in relation to action undertaken by a member of the Group which is:
  - e. required to be done or procured by the Company pursuant to, or which is otherwise permitted by, the implementation agreement;
  - f. done in accordance with contractual obligations that exist at the date of the Agreement, or proposed actions, disclosed to any member of Polartech Group or its advisers in writing prior to the date of the implementation agreement;
  - g. announced to ASX by the Company prior to the date of the implementation agreement; or
  - h. approved by Polartech in writing.



## **Attachment 2 -**

### **Exclusivity**

Fermiscalan and Polartechinics have entered into a confidentiality and exclusivity agreement, which provides that:

Subject to the provisions detailed below, during the exclusivity period (detailed below), Fermiscalan and Polartechinics must not, and must use their best endeavours to ensure that their respective representatives do not, except with the prior consent of the other party:

- (1) solicit, initiate or invite any enquiries, discussions or proposals in relation to, or which may reasonably be expected to lead to, a third party proposal for that party;
- (2) participate in any discussions or negotiations in relation to, or which may reasonably be expected to lead to, a third party proposal for that party; or
- (3) communicate to any person an intention to do any of the things referred to in subclauses (1) or (2).

#### *Notification of approaches*

Subject to the remainder of this clause, during the exclusivity period, each party must notify the other party of:

- (1) any approach, inquiry or proposal made to, and any attempt or any intention on the part of any person to initiate or continue any negotiations or discussions with, Fermiscalan or Polartechinics or any of their respective Representatives with respect to, or that could reasonably be expected to lead to, any third party proposal, whether unsolicited or otherwise;
- (2) any request for information relating to Fermiscalan or Polartechinics or any of their businesses or operations or any request for access to the books or records of Fermiscalan or Polartechinics, which Fermiscalan or Polartechinics (as applicable) has reasonable grounds to suspect may relate to a current or future third party proposal;
- (3) any breach of this clause; and
- (4) any provision by Fermiscalan or Polartechinics or any of their respective Representatives of any information relating to Fermiscalan or Polartechinics (as applicable) or any of their businesses or operations to any person in connection with or for the purposes of a current or future third party proposal by providing in writing to the other party details of the expression of interest, offer or proposal or proposed third party proposal made by the person making the approach and details of any material discussions between such person and Fermiscalan or Polartechinics (as applicable) (or their respective representatives).

A notice given under this clause must be accompanied by all relevant details of the relevant event, including the identity of the person or persons taking any action referred to in paragraphs (1) or (2) above, and the terms and conditions of any third party proposal or any proposed third party proposal (to the extent known).



*Normal provision of information*

Nothing in the exclusivity provisions prevent a party or its representatives from:

- (1) providing information to its representatives;
- (2) providing information required to be provided by law, a court or any authority; or
- (3) making presentations to brokers, portfolio investors and analysts in the ordinary and usual course of business.

*Fiduciary carve-out*

The exclusivity provisions do not require Fermiscalan or Polartechinics or any of their respective directors to do or refrain from doing any thing with respect to a bona fide third party proposal (which was not solicited by the party in breach of the exclusivity provisions), provided that the Fermiscalan Board or Polartechinics Board (as applicable) has determined in good faith and acting reasonably after consultation with its financial advisers and receiving written legal advice by external legal advisers, that failing to respond to such third party proposal would likely constitute a breach of the directors' fiduciary or statutory obligations.

*Exclusivity Period*

The exclusivity period is the period commencing on the date of this announcement and ending on the earlier of:

- (1) 6 months from the date of this announcement;
- (2) the termination of the Implementation Agreement in accordance with its terms; or
- (3) the last day of the Offer period.