

Fermiscan Holdings Limited  
ACN 000 689 725

# Notice of Annual General Meeting

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An Annual General Meeting of Shareholders of Fermiscan Holdings Limited will be held at 3pm (Sydney time) on Wednesday, 1 December 2010 at William Buck, Level 29, 66 Goulburn Street, Sydney NSW 2000

**This Notice of Meeting is dated 29 October 2010.**

Enclosed with this Notice of Meeting is an Explanatory Memorandum. The Explanatory Memorandum has been prepared to assist Shareholders in determining whether or not to vote in favour of the resolutions set out in this Notice of Meeting. The Explanatory Memorandum forms part of and should be read in conjunction with this Notice of Meeting.

[www.fermiscan.com](http://www.fermiscan.com)

## CONTENTS

Company Directory.....	3
Notice of the 2009 Annual General Meeting .....	4
1. Ordinary Business .....	4
Financial Statements and Reports.....	4
Resolution 1: Adoption of Remuneration Report.....	4
Resolutions 2(a), (b) and (c): Election of Directors.....	4
2. Special Business .....	5
Resolution 3: Share Issue to Professional Adviser.....	5
Resolution 4: Issue of Convertible Notes .....	5
Resolution 5: Approval of Placement .....	5
Resolution 6: Change to Constitution .....	5
3. Entitlement to Vote .....	6
4. Proxies .....	6
5. Explanatory Memorandum.....	8
Explanatory Memorandum.....	9
1. Overview.....	9
1.1 BACKGROUND TO THE PROPOSALS .....	9
1.2 INDICATIVE TIMETABLE .....	12
1.3 REINSTATEMENT CONDITION.....	12
1.4 DIRECTORS' INTERESTS IN THE RESOLUTIONS .....	12
2. Advantages and Disadvantages of the Proposals.....	12
2.1 DIRECTORS' RECOMMENDATIONS.....	12
2.2 ADVANTAGES.....	12
2.3 DISADVANTAGES .....	13
3. Changes to Capital Structure and Pro Forma Balance Sheet.....	13
3.1 CHANGES TO CAPITAL STRUCTURE .....	13
3.2 PRO FORMA BALANCE SHEET .....	13
4. Detailed Explanation of the Resolutions.....	15
4.1 ORDINARY BUSINESS.....	15
4.2 CONSIDERATION OF FINANCIAL STATEMENTS AND REPORTS.....	15
4.3 RESOLUTION 1: ADOPTION OF REMUNERATION REPORT (NON-BINDING) .....	15

4.4	RESOLUTIONS 2 (A) TO (C): ELECTION OF DIRECTORS.....	16
4.5	RESOLUTION 3: SHARE ISSUE UNDER MANDATE LETTER .....	17
4.6	RESOLUTION 4: ISSUE OF CONVERTIBLE NOTES.....	18
4.7	RESOLUTION 5: APPROVAL OF PLACEMENT .....	19
4.8	RESOLUTION 6: CHANGE TO DIVIDEND PROVISIONS IN CONSTITUTION.....	20
<b>5.</b>	<b>Risks Associated with the Transaction.....</b>	<b>21</b>
	Risks Associated with Reputational.....	21
	Risks Associated with Key Personnel.....	21
	Risks Associated with Dividends .....	21
	Risks Associated with Intellectual Property .....	22
	Risks Associated with Funding .....	22
	Risks Associated with Capital Markets and Liquidity.....	22
	Risks Associated with Economic and Political Circumstances .....	22
	Risks Associated with Legislation .....	22
<b>6.</b>	<b>Glossary .....</b>	<b>23</b>

## COMPANY DIRECTORY

### DIRECTORS

Robert William Whitton (Executive Chairman)

Ian Mar Chalmers (Director)

Benjamin Robert Dillon (Director)

### SECRETARY

John Patrick Rainbow

### REGISTERED OFFICE

Level 29, 66 Goulburn Street,  
SYDNEY NSW 2000

### AUDITOR

Pitcher Partners  
Level 22, MLC Centre  
19 Martin Place  
SYDNEY NSW 2000

### LAWYERS

Herceg Lawyers  
Level 33, 264 George Street  
SYDNEY NSW 2000

### SHARE REGISTRY

Link Market Services Limited  
Level 12, 680 George Street  
SYDNEY NSW 2000

### ASX CODE

FER

## NOTICE OF THE 2009 ANNUAL GENERAL MEETING

Notice is hereby given that the 2009 Annual General Meeting of Fermiscan Holdings Limited ACN 000 689 725 ("FER" or "Company") will be held at 3pm (Sydney time) on Wednesday, 1 December 2010 at William Buck, Level 29, 66 Goulburn Street, Sydney NSW 2000.

If you are unable to attend the Meeting, you are encouraged to complete and return the enclosed proxy form. The completed proxy form must be received by no later than 3pm (Sydney time) on Monday, 29 November 2010 at the addresses or facsimile number set out in section 4.3 below.

Shareholders should read the Explanatory Memorandum in full and in conjunction with this Notice of Meeting. Capitalised terms used in this Notice of Meeting are defined in the Glossary in section 6 of the Explanatory Memorandum.

### 1. ORDINARY BUSINESS

The following resolutions are to be considered at the Meeting and are further explained in the Explanatory Memorandum.

#### FINANCIAL STATEMENTS AND REPORTS

To receive and consider the Financial Reports of the Company, together with the Reports of the Directors and Auditor for the financial year ended 31 December, 2009.

#### RESOLUTION 1: ADOPTION OF REMUNERATION REPORT

To consider and, if thought fit, pass the following resolution as a **non binding ordinary resolution** of the Company:

*"That, for the purposes of section 250R of the Corporations Act and for all other purposes, the Remuneration Report as set out in the Directors' Report for the financial year ended 31 December 2009 be adopted."*

**Note:** The vote on this Resolution is advisory only and does not bind the Directors or the Company.

#### RESOLUTIONS 2(A), (B) AND (C): ELECTION OF DIRECTORS

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

- (a) *"That Mr Ian Mar Chalmers, having filled a casual vacancy retires under clause 47.1(a) of the Constitution, and being eligible, be elected as a Director."*
- (b) *"That Mr Benjamin Robert Dillon, having filled a casual vacancy retires under clause 47.1(a) of the Constitution, and being eligible, be elected as a Director."*

- (c) *“That Mr Robert William Whitton, having filled a casual vacancy retires under clause 47.1(a) of the Constitution, and being eligible, be elected as a Director.”*

## **2. SPECIAL BUSINESS**

### **RESOLUTION 3: SHARE ISSUE TO PROFESSIONAL ADVISER**

To consider and, if thought fit, pass the following resolution as **ordinary resolution** of the Company:

*“That, for the purposes of ASX Listing Rule 7.1 and for all other purposes, Shareholders approve the issue and allotment of 150,000,000 Shares to Autus Capital Pty Ltd (or its nominee) in accordance with the Mandate Letter and otherwise on the terms set out in section 4.5 of the Explanatory Memorandum.”*

**Voting Exclusion:** A voting exclusion applies to this Resolution. Please refer to section 3.3 of this Notice of Meeting for details.

### **RESOLUTION 4: ISSUE OF CONVERTIBLE NOTES**

To consider and, if thought fit, pass the following resolution as an **ordinary resolution** of the Company:

*“That, for the purposes of ASX Listing Rule 7.1 and for all other purposes, Shareholders approve the issue and allotment of Convertible Notes with an aggregate face value of \$300,000 on the terms set out in section 4.6 of the Explanatory Memorandum.”*

**Voting Exclusion:** A voting exclusion applies to this Resolution. Please refer to section 3.3 of this Notice of Meeting for details.

### **RESOLUTION 5: APPROVAL OF PLACEMENT**

To consider and, if thought fit, pass the following resolution as an **ordinary resolution** of the Company:

*“That, for the purposes of ASX Listing Rule 7.1 and for all other purposes, Shareholders approve the issue and allotment of up to 100,000,000 Shares to raise up to \$1 million at an issue price of \$0.01 under a proposed placement and otherwise on the terms set out in section 4.7 of the Explanatory Memorandum.”*

**Voting Exclusion:** A voting exclusion applies to this Resolution. Please refer to section 3.3 of this Notice of Meeting for details.

### **RESOLUTION 6: CHANGE TO CONSTITUTION**

To consider and, if thought fit, pass the following resolution as a **special resolution** of the Company:

*"That, for the purposes of section 136(3) of the Corporations Act, and for all other purposes, the Company's Constitution be amended in the manner set out in section 4.8 of the Explanatory Memorandum."*

### **3. ENTITLEMENT TO VOTE**

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#### **3.1 ELIGIBILITY TO VOTE**

Individual Shareholders may vote in person or by proxy. A corporate Shareholder may vote by proxy or through a corporate representative.

If you hold your Shares jointly with another, please note that the Shareholder appearing first in the share register is entitled to attend and vote the Shares to the exclusion of the other Shareholders.

#### **3.2 SNAPSHOT DATE**

Pursuant to regulation 7.11.37 of the Corporations Regulations 2001 (Cth), the Directors have determined that all persons who hold Shares at 3pm (Sydney time) on Monday, 29 November 2010 shall, for the purposes of determining voting entitlements at the Meeting, be taken to be held by the persons registered as holding the Shares at that time.

#### **3.3 VOTING EXCLUSION STATEMENTS**

The Company will disregard any votes cast on Resolutions 3, 4 and 5, by a person who may participate in the proposed issue and a person who might obtain a benefit except a benefit solely in the capacity as a Shareholder and any of their Associates.

However, the Company will not disregard a vote cast on the above Resolutions if:

- it is cast by a person as proxy for a person who is entitled to vote, in accordance with the directions on the proxy form; or
- it is cast by the Chairman of the Meeting as proxy for a person who is entitled to vote, in accordance with a direction on the proxy form to vote as the proxy decides.

### **4. PROXIES**

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A Shareholder entitled to attend and vote at the Meeting may appoint a proxy to attend and vote for the Shareholder. Please note that:

- (a) a proxy does not have to be a member of the Company;
- (b) a proxy may be an individual or a body corporate; and
- (c) a Shareholder entitled to cast two or more votes may appoint two proxies and may specify the proportion or number of votes each proxy is appointed to exercise but where the proportion or number is not specified, each proxy may exercise half of the votes.

A proxy appointed to attend and vote for a Shareholder has the same rights as the Shareholder to:

- (a) speak at the Meeting;
- (b) vote (only to the extent allowed by the appointment); and
- (c) join in a demand for a poll.

If you wish to appoint a proxy, you should:

- (a) complete the enclosed proxy form;
- (b) sign and date the proxy form; and
- (c) return the proxy form to the Company's share registry, Link Market Services Limited, by no later than 3pm (Sydney time) on Monday, 29 November 2010 at the addresses or facsimile number set out in section 4.3 below.

The enclosed proxy form provides further details on appointing proxies and lodging proxy forms. If you have appointed a proxy for this Meeting and you later decide to attend the Meeting, please note that your attendance at the Meeting will result in the proxy's appointment being suspended while you are present at the Meeting.

#### **4.1 POWER OF ATTORNEY**

If a Shareholder has appointed an attorney to attend and vote at the Meeting or if the proxy form has been signed under power of attorney or other authority, the original or a certified copy of the power of attorney or authority must also be received by the Company's share registry, Link Market Services Limited, by no later than 3pm (Sydney time) on Monday, 29 November 2010 at the addresses or facsimile number set out in section 4.3 below, unless the original or a certified copy has been previously lodged with the Company's share registry for notation.

#### **4.2 CORPORATE REPRESENTATIVE**

A corporate Shareholder who wishes to appoint a person to act as its representative at the Meeting should provide that person with a certificate or letter, authorising him or her to act as that company's representative or with a copy of the resolution appointing the representative, certified by a secretary or director of the company

The authority may be sent to the Company and/or the Company's share registry, Link Market Services Limited, in advance of the Meeting (in which case the document should be received by no later than 3pm (Sydney time) on Monday, 29 November 2010 at the addresses or facsimile in set out in section 4.3 below or handed in at the Meeting when registering as a corporate representative.

A form of appointment of corporate representative may be obtained from the Company's share registry.



**4.3 DELIVERY OF PROXY FORMS**

Proxy forms must be received by the Company's share registry, Link Market Services Limited by no later than 3pm (Sydney time) on Monday, 29 November 2010:

**by mail to:** Fermiscan Holdings Limited  
C/- Link Market Services Limited  
Locked Bag A14  
Sydney South NSW 1235 Australia

**by delivery to:** Link Market Services Limited  
Level 12, 680 George Street  
Sydney NSW 2000

**by facsimile to:** +61 2 9287 0309

**5. EXPLANATORY MEMORANDUM**

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The Explanatory Memorandum accompanying this Notice of Meeting is incorporated into and forms part of this Notice of Meeting.

**By Order of the Board of Directors**

**John Patrick Rainbow**  
**Company Secretary**  
**Fermiscan Holdings Limited**

29 October 2010

## EXPLANATORY MEMORANDUM

This Explanatory Memorandum has been prepared for the information of Shareholders in connection with the business to be conducted at the 2009 Annual General Meeting to be held at 3pm (Sydney time) on Wednesday, 1 December 2010 at William Buck, Level 29, 66 Goulburn Street, Sydney NSW 2000.

The purpose of this Explanatory Memorandum is to provide Shareholders with information which the Directors believe to be material to Shareholders in deciding whether or not to pass the Resolutions in the Notice of Meeting.

This Explanatory Memorandum should be read in conjunction with the Notice of Meeting.

Capitalised terms in this Explanatory Memorandum are defined in the Glossary.

### 1. OVERVIEW

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#### 1.1 BACKGROUND TO THE PROPOSALS

##### *Former business*

FER has been suspended from trading on ASX since 28 October 2009. The suspension stems from a request from Directors and the subsequent entry by the Company into a Deed of Company Arrangement (DOCA), details of which are part of the public record and have been ventilated in the 2009 Annual Report.

##### *Current and Proposed Operations*

During the period up until the Company had a Voluntary Administrator appointed and had its securities suspended from trading, its principal activity was the pre-commercialisation of an innovative, non-invasive diagnostic test for the detection of breast cancer (the **Technology**).

The DOCA was wholly effectuated on 11 June 2010 and the Company was at this date returned to the control of its Directors.

To rebuild the value in the Company's Shares, the Board has been seeking to:

- have the Shares reinstated to trading on ASX; and
- recommence commercialisation of the **Technology**.

The Company has been negotiating opportunities to complete the trials of the **Technology**. It is the Board's objective in the short term to complete the French and Italian trials of the **Technology** (**Trials**).

During the conduct of the **Trials**, the Board also intends to commence negotiations with a synchrotron provider to commercialise the **Technology**.

The Company requires funding to achieve these objectives and, to date, has secured \$300,000 under the proposed Convertible Note issue (see Resolution 4) and received commitments for a proposed placement of up to \$1 million (see Resolution 5).

If the Reinstatement Resolutions are approved and the Company's Shares are successfully reinstated to official quotation, the Company is expected to be in a position to complete the **Trials** so that it can assess, plan and negotiate key commercial relationships so as to commercialise the **Technology** in all legally available jurisdictions, including, China, India, Russia, Israel, Egypt and Thailand.

*Requirements for Lifting of Suspension*

The ASX has set certain requirements for lifting the suspension on trading of the Company's Shares. Those requirements are set out below including a statement as to the Company's progress (at the date of this Notice of Meeting) in meeting those requirements.

1. The Company must lodge with ASIC and release to the market a copy of a Prospectus (approved by ASX) in respect of the Company's proposed Fundraising.	Expected to be lodged before the AGM.
2. The Company must provide the following documents, in a form suitable for release to the market.	
<ul style="list-style-type: none"> <li>• A reviewed pro-forma balance sheet to 30 June 2010 taking into account the impact of the proposed Fundraising by the Company.</li> </ul>	See section 3.2.
<ul style="list-style-type: none"> <li>• The Company must demonstrate that after completion of the Fundraising and payment of costs of the Fundraising and issue of the Prospectus it will have working capital of at least A\$1,000,000 net of all debt.</li> </ul>	The Company is conducting the Fundraising (Convertible Notes and Placement) to satisfy this condition.
<ul style="list-style-type: none"> <li>• A list of commitments consistent with the Company's business objectives to spend at least half of its cash and assets in a form readily convertible to cash.</li> </ul>	This will be set out in the proposed Prospectus which is expected to be released shortly before the AGM.
<ul style="list-style-type: none"> <li>• A statement setting out the names of the 20 largest holders of each class of securities to be quoted, including the number and percentage of each class of securities held by those holders.</li> </ul>	To be provided shortly after completion of the Fundraising.
<ul style="list-style-type: none"> <li>• A distribution schedule of the numbers of holders in each class of security to be quoted in the form contained in Appendix 1A, paragraph 48.</li> </ul>	To be provided shortly after completion of the Fundraising.
3. Confirmation that the Company has completed its Fundraising, and has received in cash the full amount of all securities issued and that it has completed the allotment of those securities and the despatch of holding statements in respect of those securities.	To be confirmed shortly after completion of the Fundraising.
4. Confirmation that the Company will have at least 300 shareholders holding a marketable parcel (i.e., a parcel of shares with a value of at least \$500).	To be confirmed shortly after completion of the Fundraising.

5. A copy of the Company's complete share register, following completion of the Fundraising.	To be provided shortly after completion of the Fundraising.
6. Lodgement of any outstanding periodic reports with ASX, including:	
<ul style="list-style-type: none"> <li>• Annual Accounts and Annual Report for the year ended 31 December 2009.</li> </ul>	Lodged.
<ul style="list-style-type: none"> <li>• Quarterly cash flow reports in the form of Appendix 4C for the periods ended 31 March 2010 and 30 June 2010.</li> </ul>	To be provided shortly before the date of the AGM.
<ul style="list-style-type: none"> <li>• Half-Year Report and Financial Statements for the year ended 30 June 2010.</li> </ul>	To be provided shortly before the date of the AGM.
7. Lodgement of applications for quotation in the form of Appendix 3B for any new securities issued.	To be provided shortly after completion of the Fundraising.
8. Payment of any outstanding ASX invoices including subsequent quotation fees for Shares issued under the Fundraising and any other securities for which the Company applies for quotation.	All amounts have been paid as at the date of this Notice of Meeting.
9. Obtaining approval for the Company's securities to participate in CHESS from ASX Settlement and Transfer Corporation Pty Limited.	To be obtained shortly after the date of the AGM.
10. Obtaining shareholder approval for any other issues or actions that require shareholder approval.	This Notice of Meeting seeks the relevant shareholder approvals.

*Prospectus*

The Company will also be issuing a Prospectus to update the market on the Company's objectives and business plan following Reinstatement. A prospectus is also required because the Company will, subject to Shareholder approval, be issuing Shares without disclosure to sophisticated and/or professional investors under Resolutions 3, 4 and 5. These Shares cannot be on-sold to persons that would require disclosure under Chapter 6D of the Corporations Act. The Company expects to issue the Prospectus shortly before the Meeting.

## **1.2 INDICATIVE TIMETABLE**

The indicative timetable for the proposed Reinstatement is set out below.

<b>Event</b>	<b>Target Date/Month</b>
2009 Annual General Meeting	Wednesday, 1 December 2010
Lodgement of Prospectus	Mid to Late November 2010
Allotment of Shares under Resolutions 3, 4 and 5.	Early December 2010
Reinstatement of trading of Shares to commence on ASX (anticipated)	Early December 2010
Commencement of continuation of Trials	First Half 2011

## **1.3 REINSTATEMENT CONDITION**

Each of Resolutions 3 (Share Issue to Professional Advisers) and 5 (Approval of Placement), is conditional upon obtaining ASX approval for the Company's securities to be reinstated to official quotation on ASX.

## **1.4 DIRECTORS' INTERESTS IN THE RESOLUTIONS**

None of the Directors have an interest in the Resolutions except their election as a Director under Resolutions 2(a) to (c) (as applicable).

## **2. ADVANTAGES AND DISADVANTAGES OF THE PROPOSALS**

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### **2.1 DIRECTORS' RECOMMENDATIONS**

Having regard to the advantages and disadvantages of the Proposals below, the Directors **unanimously** recommend that Shareholders vote **in favour** of the Resolutions.

### **2.2 ADVANTAGES**

- The proposed Fundraising will put the Company in a more stable financial position.
- The Company will have an opportunity to reinstate trading of its Shares on ASX which will be the first time in approximately a year and progress the business.
- Shares will have more liquidity when the suspension from trading is lifted.

- The completion of the Trials, if successful, will enable the Company to assess, plan and negotiate key commercial relationships so as to commercialise the Technology in all legally available jurisdictions including China, India, Russia, Israel, Egypt and Thailand.

### **2.3 DISADVANTAGES**

- The volume of Shares to be issued will have a substantial dilutive effect on current Shareholders.

## **3. CHANGES TO CAPITAL STRUCTURE AND PRO FORMA BALANCE SHEET**

### **3.1 CHANGES TO CAPITAL STRUCTURE**

	<b>Number of Shares on a fully diluted basis<sup>1</sup></b>
Shares currently on issue	154,000,000
Shares to be issued to Professional Advisers (Resolution 3)	150,000,000
Shares available to be issued to Convertible Noteholders (Resolution 4)	150,000,000
Shares to be issued under placement (Resolution 5)	100,000,000
<b>Total Shares on Issue after Proposals</b>	<b>554,000,000</b>

<sup>1</sup> This assumes that all Convertible Notes have been converted into Shares.

### **3.2 PRO FORMA BALANCE SHEET**

Set below is a consolidated pro-forma statement of financial position of the Company assuming completion of all transactions contemplated by the Reinstatement Resolutions.

**FERMISCAN HOLDINGS LIMITED AND CONTROLLED ENTITIES  
PRO FORMA CONSOLIDATED STATEMENT OF FINANCIAL POSITION  
AS AT 29 OCTOBER 2010**

	2010 \$
<b>CURRENT ASSETS</b>	
Other debtors	16,118
Cash and cash equivalents	<u>1,119,886</u>
<b>TOTAL CURRENT ASSETS</b>	<u><b>1,136,004</b></u>
Investment in subsidiaries	-
Scientific equipment and website development	<u>57,500</u>
<b>TOTAL NON CURRENT ASSETS</b>	<u><b>57,500</b></u>
<b>TOTAL ASSETS</b>	<u><b>1,193,504</b></u>
<b>CURRENT LIABILITIES</b>	
Payables	<u>-</u>
<b>TOTAL CURRENT LIABILITIES</b>	<u><b>-</b></u>
<b>NON-CURRENT LIABILITIES</b>	
Payables	<u>-</u>
<b>TOTAL LIABILITIES</b>	<u><b>-</b></u>
<b>NET ASSETS</b>	<u><b>1,193,504</b></u>
<b>EQUITY</b>	
Contributed equity	60,408,000
Accumulated losses	<u>(59,214,496)</u>
<b>TOTAL EQUITY</b>	<u><b>1,193,504</b></u>

## 4. DETAILED EXPLANATION OF THE RESOLUTIONS

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### 4.1 ORDINARY BUSINESS

Due to the limited funding of the Company and its voluntary suspension from trading on ASX since 28 October 2009, the Company has had limited resources to comply with its reporting requirements. The Company is actively taking steps to lift the suspension from trading before the end of 2010. In an effort to properly comply with its reporting requirements, the Company is holding a “catch-up” AGM to allow Shareholders to consider the Company’s accounts for the 2009 financial year.

### 4.2 CONSIDERATION OF FINANCIAL STATEMENTS AND REPORTS

As required by the Corporations Act, the financial reports of the Company for the year ended 31 December 2009 (including the Financial Statements, Directors’ Report and Auditors’ Report) have been provided to you in the Company’s 2009 Annual Report.

A copy of the Company’s 2009 Annual Report is available for download at [www.asx.com.au](http://www.asx.com.au) or [www.fermiscan.com](http://www.fermiscan.com).

There is no requirement for Shareholders to approve these reports. However, time will be allowed during the AGM for consideration by Shareholders of the financial statements and the associated Directors’ and Auditors’ Reports.

In addition to asking questions at the Meeting, Shareholders may address written questions to the Chairman about the management of the Company, or to the Company’s Auditor which are relevant to:

- (a) the content of the Independent Audit Report to be considered at the Meeting; or
- (b) the conduct of the audit of the annual financial report to be considered at the Meeting.

Any written questions must be submitted to the Company on or before Wednesday, 24 November 2010 by fax or post.

Fax: +612 8263 4111 to the Attention of Mr Robert Whitton

Mailing Address: Fermiscan Holdings Limited, C/- William Buck, Level 29, 66 Goulburn Street, Sydney NSW 2000

### 4.3 RESOLUTION 1: ADOPTION OF REMUNERATION REPORT (NON-BINDING)

The Remuneration Report for 2009 is contained in the Directors’ Report section of the Company’s 2009 Annual Report. The Remuneration Report describes the underlying policies and structure of the remuneration arrangements of the Company and sets out the remuneration arrangements in place for Directors and senior executives of the Company.

Section 250R(2) of the Corporations Act requires that a resolution to adopt the Remuneration Report be put to the vote of Shareholders and Shareholders will have the opportunity to discuss the Remuneration Report at the Meeting. However, under section 250R(2) of the Corporations Act, the vote on Resolution 1 is advisory only and is not binding on the Company or its Directors.



#### 4.4 RESOLUTIONS 2 (A) TO (C): ELECTION OF DIRECTORS

In accordance with rule 47.1(a) of the Constitution, which provides that, any Director appointed by the Directors since the last AGM automatically retires at the next annual general meeting. Because each of Robert Whitton, Ian Chalmers and Benjamin Dillon were appointed by the Board, each of them retire, and, being eligible, seek election as a Director of FER.

##### *Resolution 2(a) - Election of Mr Ian Mar Chalmers*

Mr Ian Chalmers was appointed to the Board on 17 September 2010. Mr Ian Chalmers has extensive experience in health related policy and regulatory affairs issues at the national level. His career encompasses almost two decades as chief executive of a number of significant national industry organisations, including Medicines Australia and the Australian Private Hospitals Association, together with previous appointments as a federal ministerial adviser, a parliamentary policy and research adviser, a strategy and public affairs consultant, and several non executive directorships. Formerly an army officer, he is a graduate of the Royal Military College, Duntroon and the University of New South Wales.

**Directors' Recommendation:** The other Directors unanimously recommend that Shareholders vote in favour of Resolution 2(a) to elect Ian Chalmers as a Director.

##### *Resolution 2(b) - Election of Mr Benjamin Robert Dillon*

Mr Benjamin Dillon was appointed to the Board on 2 June 2010. In life sciences Benjamin is currently advising to healthcare service providers including Macquarie Health Corporation and Independent Private Hospitals of Australia. Benjamin has previously served as a Managing Director and CEO of Polartech Limited, a medical devices company that specialised in cervical cancer and melanoma screening systems. Before the above role in life sciences, Benjamin had an extensive and broad range of commercial experience including roles as a partner in KPMG Sydney specialising in corporate advisory services, senior management roles in hospitality management, property investment banking with Macquarie Bank Limited and institutional property banking with Westpac Bank Limited.

**Directors' Recommendation:** The other Directors unanimously recommend that Shareholders vote in favour of Resolution 2(b) to elect Benjamin Dillon as a Director.

##### *Resolution 2(c) - Election of Mr Robert William Whitton*

Mr Robert Whitton was appointed to the Board on 20 August 2010. Robert Whitton is a director at William Buck, Chartered Accountants & Advisors where he is head of their Business Recovery team. He has in excess of 25 years insolvency, reconstruction and business advisory experience gained across a range of accounting firms. He is a fellow of the institute of Chartered Accountants, an Official Liquidator, Trustee in Bankruptcy and a Certified Fraud Examiner. Robert is currently the Chairman of the Australian Wine Consumers Co-operative Society Ltd ("The Wine Society") where he has been a Director for 8 years. The Wine Society is Australia's oldest not for profit wine club having been established in 1946 with around 50,000 members nationally. Mr Whitton is also a director of ASX-listed Nexbis Limited.

**Directors' Recommendation:** The other Directors unanimously recommend that Shareholders vote in favour of Resolution 2(c) to elect Robert Whitton as a Director.

#### 4.5 RESOLUTION 3: SHARE ISSUE UNDER MANDATE LETTER

(a) **Introduction**

Resolution 3 seeks Shareholder approval to issue Shares to Autus Capital (or its nominee) pursuant to a Mandate Letter, the terms of which are summarised below.

(b) **Listing Rule 7.1**

Under ASX Listing Rule 7.1, the Company is prohibited, without shareholder approval, from issuing equity securities (including Shares), if the equity securities will in themselves or when aggregated with the securities issued by the Company during the previous 12 months, exceed 15% of the number of fully paid ordinary shares on issue at the commencement of that 12 month period (with certain exceptions). As none of the exceptions in Listing Rule 7.2 apply, the Company is seeking Shareholder approval for the purposes of Listing Rule 7.1 to ensure that the Company does not exceed the 15% threshold.

The effect of approving Resolution 3 will be that the issue of Shares to Autus Capital or its nominee will not count towards the Company's 15% threshold.

(c) **Summary of Mandate Letter**

The Mandate Letter dated 1 September 2010 is between the Company and Autus Capital (as Investment Banker) under which Autus Capital will:

- project manage the Fundraising (Convertible Notes and Placement);
- identify appropriate key investors and preparing presentations for investor roadshows; and
- provide initial and ongoing advice and assistance in establishing and maintaining an appropriate investor relations program, including introduction to professional PR consultants.

In return for this assistance Autus Capital will be entitled to a management fee of \$150,000 which will be paid by the issue of 150,000,000 Shares based on an issue price of \$0.001 per Share.

Should the Company withdraw from the Fundraising for any reason (other than the wilful misconduct/fraud of Autus Capital) or Autus Capital withdraws from the Fundraising at any stage for reasons including non-disclosure of information before the date of the Mandate Letter which, in Autus Capital's view, is prejudicial to the success of the Fundraising then Autus Capital will be entitled to an abort fee in the amount of \$50,000.

(d) **Information required by Listing Rule 7.3**

In accordance with the notice requirements in Listing Rule 7.3, the following information is provided:

- (i) the maximum number of Shares to be issued to Autus Capital (or its nominee) is 150,000,000 Shares;
- (ii) the Shares are expected to be issued upon or shortly before Reinstatement in accordance with the indicative timetable set out in section 1.2 of this Explanatory Memorandum but, in any case, not later than three months after the date of this Meeting (or such later date as permitted by any ASX waiver or modification of the Listing Rules);
- (iii) the Shares will be issued at an issue price of \$0.001 per Share;
- (iv) the Shares will be allotted to Autus Capital or its nominee;
- (v) the Shares are fully paid ordinary shares issued in the capital of the Company and will rank equally with all existing Shares on issue;

- (vi) no funds will be raised from the issue as the Shares are being issued as consideration for the services provided by the allottee to the Company under the Mandate Letter; and
- (vii) the Shares are expected to be allotted shortly before Reinstatement as set out in the indicative timetable in section 1.2 of this Explanatory Memorandum.

**Directors' Recommendation:** The Directors **unanimously** recommend that Shareholders vote **in favour** of Resolution 3.

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#### **4.6 RESOLUTION 4: ISSUE OF CONVERTIBLE NOTES**

##### **(a) Introduction**

The Company proposes to issue Convertible Notes with an aggregate face value of \$300,000 on the terms summarised in paragraph (c) below which will be used for working capital pending Reinstatement.

##### **(b) Listing Rule 7.1**

Approval is being sought for the purposes of ASX Listing Rule 7.1, which is explained in section 4.5(b)

The effect of Resolution 4, if approved, will be that the holders of the Convertible Notes will be entitled to convert the face value of the Convertible Notes into Shares at any time during the term of the Convertible Note without further approval required from Shareholders.

##### **(c) Summary of Convertible Note Subscription Deed**

- (i) **Interest Rate:** the Notes have an interest rate of 8% per annum, compounded and accrues monthly. Interest is payable at the election of the Noteholder on the anniversary of the date of the Convertible Note Subscription Deed and on conversion of the Note;
- (ii) **Conditions precedent:** the Notes cannot be converted into FER Shares until:
  - (1) The Company obtains Shareholder approval for conversion of the Notes into Shares; and
  - (2) the Company issues a Prospectus relating to the Fundraising; and
  - (3) ASX grants approval subject only to the usual conditions for the lifting of the trading suspension on the Company's securities;
- (iii) **Maturity:** the Notes mature 1 year from the date of the Convertible Note Subscription Deed, after which the Noteholder may elect to have the face value repaid within 30 days of such election;
- (iv) **Conversion by Company:** at any time before the Maturity Date the Company may convert the Note into Shares (subject to the conditions precedent in sub-paragraph (ii) above);
- (v) **Conversion Rate:** the conversion rate is 1 Share for each \$0.002 of the face value of the Note;
- (vi) **Redemption Events:** The Company must redeem the Note and repay the face value of the Note to the Noteholder plus accrued and unpaid interest within 7 days of the occurrence of a Redemption Event which includes:
  - (1) if an order is made for the winding up or dissolution of the Company;
  - (2) if a receiver, receiver and manager, trustee, administrator or other controller (as defined in the Corporations Act) is appointed over any of the assets or undertaking of the Company;

- (3) if the Company enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
  - (4) if the Company becomes unable to pay its debts when they are due, or becomes unable to pay its debts within the meaning of the Corporations Act or is presumed to be insolvent under the Corporations Act; and
  - (5) if the Noteholder has not given the Company a written notice of election which obliges the Company to convert the Note in accordance with these terms on or before the day which is 3 months after the Maturity Date;
- (vii) **Reconstructions:** If Ordinary Shares in the Company are reconstructed, consolidated or divided while any Note remains capable of being converted, the Note must be reconstructed, consolidated or divided on the same basis so that the Noteholder is not disadvantaged relative to holders of Ordinary Shares.
- (d) **Information required by Listing Rule 7.3**
- Listing Rule 7.3 requires the following information to be provided to approve the issue of Convertible Notes:
- (i) the maximum number of Shares to be issued under the Convertible Notes is 150,000,000;
  - (ii) the Convertible Notes will be issued within 3 months of the date of the Meeting;
  - (iii) the issue price of each Convertible Note will be equal to the face value of that Note. On conversion of the Notes, Noteholders will receive 1 Share for every \$0.002 of the face value of the note;
  - (iv) the Company has entered into agreements to issue the Convertible Notes (subject to shareholder approval). The Company will issue Notes to sophisticated investors or persons that do not require a disclosure document to be issued for the offer of Notes in accordance with section 708 or 708AA of the Corporations Act and who are not related parties;
  - (v) the terms of the Convertible Notes are set out in section 4.6(c) above;
  - (vi) the funds raised from the issue of the Convertible Notes will be applied towards working capital pending Reinstatement; and
  - (vii) the Convertible Notes are expected to be allotted shortly after the date of the Meeting and the converted into Shares shortly before Reinstatement in accordance with the proposed timetable set out in section 1.2 of this Explanatory Memorandum.

**Directors' Recommendation:** The Directors **unanimously** recommend that Shareholders vote in favour of Resolution 3.

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#### **4.7 RESOLUTION 5: APPROVAL OF PLACEMENT**

(a) **Introduction**

Resolution 5 seeks Shareholder approval for the issue of up to 100,000,000 Shares to raise up to \$1 million under a placement prior to Reinstatement. The Placement is necessary to meet ASX's reinstatement condition to have working capital of at least \$1 million net of debt. The funds raised are intended to be used for the Company's stated objectives of completing the Trials with a view to commercialising the Technology abroad.

(b) **Listing Rule 7.1**

The proposed issue requires approval under ASX Listing Rule 7.1 which is explained in section 4.5(b) above.

The effect of approving Resolution 5 will be that the issue of Shares under the Placement will not count towards the Company's 15% threshold.

(c) **Information required by Listing Rule 7.3**

In accordance with the notice requirements in Listing Rule 7.3, the following information is provided:

- (i) the maximum number of Shares to be issued is 100,000,000 Shares;
- (ii) the Shares are expected to be issued shortly before Reinstatement but in any event within three months after the date of this Meeting (or such later date as permitted by any ASX waiver or modification of the Listing Rules);
- (iii) the issue price of Shares will be not less than \$0.01 per Share;
- (iv) the proposed allottees will be sophisticated investors or persons that do not require a disclosure document to be issued for the offer in accordance with section 708 or 708AA of the Corporations Act and who are not related parties;
- (v) the Shares will be fully paid ordinary shares issued in the capital of the Company and will rank equally with all existing Shares on issue;
- (vi) the funds will be used for working capital and conduct of the Trials; and
- (vii) the Shares are expected to be allotted shortly before Reinstatement in accordance with the proposed timetable set out in section 1.2 of this Explanatory Memorandum.

**Directors' Recommendation:** The Directors **unanimously** recommend that Shareholders vote in favour of Resolution 5.

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#### 4.8 RESOLUTION 6: CHANGE TO DIVIDEND PROVISIONS IN CONSTITUTION

(a) **Changes to the dividend provisions under the Corporations Act**

Amendments are proposed to the Company's Constitution to reflect changes made to the Corporations Act which change the circumstances in which companies are able to pay dividends to shareholders. Previously a company could only pay a dividend out of profits. Under the new provisions, a company may pay a dividend where:

- (i) the company's assets exceed its liabilities immediately before the dividend is declared and the excess is sufficient for the payment of the proposed dividend;
- (ii) the payment of the dividend is fair and reasonable to shareholders as a whole; and
- (iii) the payment of the dividend will not materially prejudice the company's ability to pay its creditors.

As the Constitution currently only allows dividends to be paid out of profits, the Board proposes that amendments be made to the Constitution to provide future flexibility to the Board to pay dividends in the circumstances permitted by law.

(b) **Proposed Amendments to Constitution**

- Rule 69.1 of the Constitution is amended as follows:

*"Subject to any special rights or restrictions attached to a share, the Directors may pay Dividends as they decide ~~but only out of profits~~ in accordance with the law."*

- Rule 80(a)(1) of the Constitution is amended as follows:

*“The Directors may:*

*(a) implement a dividend selection plan on any terms, under which participants may choose:*

*(1) to receive a Dividend from the Company ~~out of profits~~ derived from a particular source; or”*

**Directors’ Recommendation:** The Directors **unanimously** recommend that Shareholders vote in favour of Resolution 6.

## 5. RISKS ASSOCIATED WITH THE TRANSACTION

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Shareholders should consider the risk factors described below, together with information contained elsewhere in this Explanatory Memorandum. The following is not intended to be an exhaustive list of the risk factors which relate to the Company and the proposed transactions pending relisting. The risk factors that Shareholders should specifically consider include, but are not limited to, the following:

### **Risks Associated with Re quotation**

If the Resolutions in this meeting are approved, there is a risk that the Company Shares may not be reinstated to official quotation if it does not raise the maximum amount under the Fundraising or does not meet the other ASX conditions set out in section 1.1 of this Explanatory Memorandum.

### **Risks Associated with Key Personnel**

The Company intends to appoint a new management team. Growth of the Company's operations may place a significant strain on the Company's resources. Inability to manage growth or integration could have a material adverse effect on the Company. The Company is dependent on its management, the loss of whose services could materially and adversely affect the Company and impede the achievement of its objectives. Because of the specialised nature of the Company's businesses, the ability to develop the Company's businesses will depend in part upon its ability to attract and retain suitable management, however there can be no assurance that the Company will be able to retain such personnel in future.

### **Risks Associated with Dividends**

The quantum of dividends is dependent on net profit after tax available after taking into consideration the cash requirements of the Company. Payment of dividends and the level of franking of dividends will be dependent upon a range of factors, including these risk factors, government legislation and the tax position of the Company. The Company can give no assurance about the future level of dividends or the franking of those dividends.

### **Risks Associated with Intellectual Property**

The Company's intellectual property rights include the trade marks of each of its businesses, domain names and business names. The Company's intellectual property rights may be infringed, or the Company may infringe the intellectual property rights of other entities, resulting in loss of competitive advantage or significant costs in pursuing or defending legal and commercial action.

### **Risks Associated with Funding**

The Directors expect that the Company will have adequate working capital to carry out its stated objectives if the Reinstatement Resolutions are passed, however, there is the risk that additional funds may be required to fund the Company's long term objectives, which include the acquisition of complementary businesses. Future business acquisitions may require funding by raising debt and equity finance in future.

### **Risks Associated with Capital Markets and Liquidity**

When the Company's Shares are reinstated to official quotation, the market price of the Company's Shares can fall as well as rise and may be subject to varied and unpredictable influences on the market for equities. The trading price of Shares at any given time may be higher or lower than the price you paid for your Shares. There is potential risk that an investor will be unable to exit or realise their investment because the market for the Company's securities is illiquid, because of the terms of the security or because the Company cannot meet its obligations under the Shares. Neither the Company nor the Directors warrant the future performance of the Company or any return on an investment in the Company.

### **Risks Associated with Economic and Political Circumstances**

General economic conditions, movements in interest and inflation rates in the Company's markets and currency exchange rates may have an adverse effect on the Company's activities. The Company may be exposed to risks such as unexpected changes in regulatory requirements, longer payment cycles, problems in collecting debts, fluctuations in currency rates, foreign exchange controls which restrict or prohibit repatriation of funds and potentially adverse tax consequences. The Company's operations, business and profitability can be affected by these factors, which are beyond the control of the Company. The Company may be subject to political and other uncertainties, including risk of civil rebellion, expropriation, nationalisation, renegotiation or nullification of contracts, assets or other agreements in each of its markets.

### **Risks Associated with Legislation**

New legislation and changes to existing legislation and government policy may impact upon the Company and affect its operating performance. Taxation rates and other fiscal regulation in the Company's regions of operations may change significantly in the future. Future expansion of the Company's range of products and services may be governed by Government regulatory controls in each target market and it is not possible for the Company to guarantee that approvals in all target markets will be obtained and maintained in future.

## 6. GLOSSARY

<b>\$</b>	means Australian dollars.
<b>ASIC</b>	means the Australian Securities and Investments Commission.
<b>ASX</b>	means ASX Limited ACN 008 624 691, or as the context requires, the financial market operated by it.
<b>ASX Listing Rules or Listing Rules</b>	means the Listing Rules of the ASX and any other rules of the ASX which are applicable to the Company.
<b>Associate</b>	means an “associate” as defined in the Corporations Act.
<b>Autus Capital</b>	means Autus Capital Pty Ltd ACN 142 535 331.
<b>Board</b>	means the board of directors of the Company.
<b>Company or FER</b>	means Fermiscan Holdings Limited ACN 000 689 725.
<b>Constitution</b>	means the Company’s constitution.
<b>Convertible Note Subscription Deed</b>	means the Convertible Note Subscription Deed dated 1 September 2010 and summarised in section 4.6(c) of this Explanatory Memorandum.
<b>Convertible Note or Note</b>	means a convertible note issued by the Company on the terms set out in section 4.6(c) of this Explanatory Memorandum.
<b>Convertible Noteholder or Noteholder</b>	means a holder of a Convertible Note.
<b>Corporations Act</b>	means the Corporations Act 2001 (Cth).
<b>Director</b>	means a director of the Company.
<b>Explanatory Memorandum</b>	means this explanatory memorandum accompanying and forming part of the Notice of Meeting.
<b>Fundraising</b>	means the funds raised or to be raised under the Convertible Notes (Resolution 4) and Placement (Resolution 5).
<b>General Meeting, Meeting or AGM</b>	means this 2009 Annual General Meeting of the Shareholders held at 3pm (Sydney time) on Wednesday, 1 December 2010 at William Buck, Level 29, 66 Goulburn Street, Sydney NSW 2000 and any adjournment of it.
<b>Mandate Letter</b>	means the mandate letter between the Company and Autus Capital described in section 4.5(c) of this Explanatory Memorandum.
<b>Notice of Meeting or</b>	means this notice of meeting for the AGM.



<b>Notice</b>	
<b>Placement</b>	means the proposed placement of 100,000,000 Shares at \$0.01 to raise \$1 million, the subject of Resolution 5.
<b>Proposals</b>	means the proposed issue of securities under Resolutions 3 (Mandate Letter), 4 (Convertible Notes) and 5 (Placement) to assist the Company in meeting the requirements to achieve Reinstatement.
<b>Reinstatement</b>	means reinstatement of the Company's shares to official quotation on ASX.
<b>Reinstatement Resolutions</b>	means the Resolutions relevant to having the Company's Shares reinstated to official quotation, namely, Resolutions 3, 4 and 5.
<b>Resolution</b>	means a resolution set out in the Notice of Meeting.
<b>Share</b>	means a fully paid ordinary share in the capital of the Company.
<b>Shareholder</b>	means a holder of a Share.
<b>Trials</b>	means the French and Italian clinical trials of the Technology.
<b>Technology</b>	means the non-invasive diagnostic test for the detection of breast cancer utilising a technique that detects changes in the molecular structure of hair from women with breast cancer using diffraction of X-rays generated in a synchrotron.



## HOW TO COMPLETE THIS PROXY FORM

### Your Name and Address

This is your name and address as it appears on the company's share register. If this information is incorrect, please make the correction on the form. Shareholders sponsored by a broker should advise their broker of any changes. Please note: you cannot change ownership of your shares using this form.

### Appointment of a Proxy

If you wish to appoint the Chairman of the Meeting as your proxy, mark the box in Step 1. If the person you wish to appoint as your proxy is someone other than the Chairman of the Meeting please write the name of that person in Step 1. If you leave this section blank, or your named proxy does not attend the meeting, the Chairman of the Meeting will be your proxy. A proxy need not be a shareholder of the company. A proxy may be an individual or a body corporate.

### Votes on Items of Business - Proxy Appointment

You may direct your proxy how to vote by placing a mark in one of the boxes opposite each item of business. All your shares will be voted in accordance with such a direction unless you indicate only a portion of voting rights are to be voted on any item by inserting the percentage or number of shares you wish to vote in the appropriate box or boxes. If you do not mark any of the boxes on the items of business, your proxy may vote as he or she chooses. If you mark more than one box on an item your vote on that item will be invalid.

### Appointment of a Second Proxy

You are entitled to appoint up to two persons as proxies to attend the meeting and vote on a poll. If you wish to appoint a second proxy, an additional Proxy Form may be obtained by telephoning the company's share registry or you may copy this form and return them both together.

To appoint a second proxy you must:

- on each of the first Proxy Form and the second Proxy Form state the percentage of your voting rights or number of shares applicable to that form. If the appointments do not specify the percentage or number of votes that each proxy may exercise, each proxy may exercise half your votes. Fractions of votes will be disregarded.
- return both forms together.

### Signing Instructions

You must sign this form as follows in the spaces provided:

**Individual:** where the holding is in one name, the holder must sign.

**Joint Holding:** where the holding is in more than one name, either shareholder may sign.

**Power of Attorney:** to sign under Power of Attorney, you must lodge the Power of Attorney with the registry. If you have not previously lodged this document for notation, please attach a certified photocopy of the Power of Attorney to this form when you return it.

**Companies:** where the company has a Sole Director who is also the Sole Company Secretary, this form must be signed by that person. If the company (pursuant to section 204A of the *Corporations Act 2001*) does not have a Company Secretary, a Sole Director can also sign alone. Otherwise this form must be signed by a Director jointly with either another Director or a Company Secretary. Please indicate the office held by signing in the appropriate place.

### Corporate Representatives

If a representative of the corporation is to attend the meeting the appropriate "Certificate of Appointment of Corporate Representative" should be produced prior to admission in accordance with the Notice of Meeting. A form of the certificate may be obtained from the company's share registry.

### Lodgement of a Proxy Form

This Proxy Form (and any Power of Attorney under which it is signed) must be received at an address given below by 3:00pm on Sunday, 28 November 2010, being not later than 48 hours before the commencement of the meeting. Any Proxy Form received after that time will not be valid for the scheduled meeting.

Proxy Forms may be lodged using the reply paid envelope or:



**ONLINE**

[www.linkmarketservices.com.au](http://www.linkmarketservices.com.au)

Select the 'Proxy Voting' option on the top right of the home page. Choose the company you wish to lodge your vote for from the drop down menu, enter your holding details as shown on this form, and follow the prompts to lodge your vote. To use the online lodgement facility, shareholders will need their "Holder Identifier" (Securityholder Reference Number (SRN) or Holder Identification Number (HIN) as shown on the front of the proxy form).



by mail:

Fermiscan Holdings Limited  
C/- Link Market Services Limited  
Locked Bag A14  
Sydney South NSW 1235  
Australia



by fax:

+61 2 9287 0309



by hand:

delivering it to Link Market Services Limited, Level 12, 680 George Street, Sydney NSW 2000.

If you would like to attend and vote at the Annual General Meeting, please bring this form with you.  
This will assist in registering your attendance.