

Biota Holdings Limited

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Melbourne, Australia — 10 August 2012

Release of Scheme Booklet

Biota Holdings Limited (ASX:BTA) today announced that the Australian Securities and Investments Commission ("**ASIC**") has registered the Scheme Booklet in relation to the previously announced scheme of arrangement ("**Scheme**") for the formation of Biota Pharmaceuticals by the merger of Biota with Nabi Biopharmaceuticals. Copies of the Scheme Booklet, including an independent expert's report, will be distributed to Biota shareholders in the week commencing 20 August 2012.

A copy of the Scheme Booklet, including the independent expert's report, appears with this announcement.

The Board of Biota unanimously recommends that Biota shareholders vote in favour of the Scheme at the meeting of Biota shareholders, in the absence of a superior proposal. Subject to the same qualification, each Director of Biota intends to vote all the Biota shares held or controlled by them in favour of the Scheme at the meeting of Biota shareholders.

About Biota

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

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

Relenza[™] is a registered trademark of the GlaxoSmithKline group of companies.

Inavir[®] is registered to Daiichi Sankyo.

Further information

Investor/Analyst Enquiries

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Shareholder Enquiries

Biota Shareholder Information Line

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Between 8.30am and 7.30pm

(Melbourne time)

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Explanatory Memorandum

For the scheme of arrangement in relation to the proposed merger of Biota Holdings Limited and Nabi Biopharmaceuticals

Your directors unanimously recommend that you *vote in favour* of the Scheme, in the absence of a Superior Proposal

This is an important document and requires your immediate attention. You should read this document in its entirety prior to deciding whether or not to vote in favour of the Scheme.

If you are in any doubt as to how to deal with this document, please consult your financial, legal, taxation or other professional adviser immediately.

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Corporate Directory

Important Notices

General

Biota Shareholders should read this Booklet in its entirety before making a decision as to how to vote on the resolution to be considered at the Scheme Meeting.

Purpose of this Booklet

The purpose of this Booklet is to explain the terms of the Scheme and the manner in which the Scheme will be considered and implemented (if approved), and to provide such information as is prescribed or otherwise material to the decision of Biota Shareholders whether or not to vote in favour of the Scheme. This Booklet includes the Explanatory Statement required by section 412(1) of the Corporations Act in relation to the Scheme.

Responsibility for information

The Nabi Information has been prepared by Nabi and its directors and is the responsibility of Nabi. Biota and its directors, officers, employees and advisers do not assume any responsibility for the accuracy or completeness of the Nabi Information.

Loneragan Edwards & Associates has prepared the Independent Expert's Report set out in Annexure A of this Booklet, and takes responsibility for that report.

Except for the Nabi Information and the Independent Expert's Report, the information contained in this Booklet has been prepared by Biota and its directors and is the responsibility of Biota. Nabi and its directors, officers, employees and advisers do not assume any responsibility for the accuracy or completeness of such information.

ASIC and ASX

A copy of this Booklet has been registered by ASIC for the purposes of section 412(6) of the Corporations Act. ASIC has been requested to provide a statement in accordance with section 411(17)(b) of the Corporations Act, that ASIC has no objection to the Scheme. If ASIC provides the statement, the statement will be produced to the Court at the time of the Second Court Hearing. Neither ASIC nor its officers take any responsibility for the contents of this Booklet.

A copy of this Booklet will be lodged with ASX. Neither ASX nor any of its officers takes any responsibility for the contents of this Booklet.

Important notes associated with Court order under section 411(1) of the Corporations Act

The fact that under section 411(1) of the Corporations Act the Court has ordered that a meeting be convened and has approved the explanatory statement required to accompany the notices of the meeting does not mean that the Court:

- (a) has formed any view as to the merits of the Scheme or as to how Biota Shareholders should vote on the Scheme Resolution (on this matter Biota Shareholders must reach their own decision); or
- (b) has prepared, or is responsible for, the content of the explanatory statement.

Investment decisions

This Booklet does not take into account the individual investment objectives, financial situation or needs of Biota Shareholders. The information in this Booklet should not be relied upon as the sole basis for any investment decision. Biota Shareholders should seek independent financial, taxation or other professional advice before making any decision regarding the Merger.

Forward looking statements

Certain statements in this Booklet relate to the future. These forward looking statements involve known and unknown risks, uncertainties, assumptions and other important factors that could cause the actual conduct, results, performance or achievements of Biota, Nabi or Biota Pharmaceuticals to be materially different from future conduct, results, performance or achievements expressed or implied by such statements or that could cause the future conduct to be materially different from historical conduct. Such forward looking statements are based on numerous assumptions regarding present and future business strategies and the environment in which Biota, Nabi and Biota Pharmaceuticals (as applicable) will operate in the future. Such risks, uncertainties, assumptions and other important factors include, among other things, the reasons set out in section 2.2 as to why Biota Shareholders may not want

to vote in favour of the Scheme. Deviations as to future conduct, results, performance and achievements are both normal and to be expected.

None of Biota or Nabi, the officers of those companies nor any person named in this Booklet with their consent nor any person involved in the preparation of this Booklet gives any representation, assurance or guarantee that the occurrence of the events expressed or implied in any forward looking statements in this Booklet will actually occur. Biota Shareholders are cautioned about relying on any such forward looking statements.

The forward looking statements in this Booklet reflect views held only as at the date of this Booklet. Additionally, statements of the intentions of Biota or Nabi reflect their present intentions as at the date of this Booklet and may be subject to change. Subject to the Corporations Act and any other applicable laws or regulations, Biota and Nabi disclaim any duty to update any forward looking statements other than with respect to information that they become aware of prior to the Scheme Meeting which is material to the making of a decision regarding whether or not to vote in favour of the Scheme.

Estimates

Unless otherwise indicated, all references to estimates and derivations of the same in this Booklet are references to estimates by Biota management and Nabi management (as applicable). Management estimates are based on views at the date of this Booklet, and actual facts or outcomes may be materially different from those estimates.

Effect of rounding

A number of figures, amounts, percentages, prices, estimates, calculations of value and fractions in this Booklet, including but not limited to those in respect of the Scheme Consideration (the "Figures"), are subject to the effect of rounding. Accordingly, the actual calculation of these Figures may differ from the Figures set out in this Booklet. For further information, refer to section 1.20 of this Booklet.

Notice to Biota Shareholders in jurisdictions outside Australia

This Booklet has been prepared having regard to Australian disclosure requirements, which may be different from those in other countries.

It is important that Biota Shareholders who are not Australian resident taxpayers or who are liable for tax outside Australia seek specific taxation advice in relation to the Australian and overseas tax consequences of the Scheme.

This Booklet does not constitute an offer to sell to Biota Shareholders or a solicitation of an offer to purchase from Biota Shareholders any securities in Biota or Nabi in any jurisdiction where such an offer or solicitation would be illegal. In particular, Biota Shareholders who are Ineligible Foreign Biota Shareholders (who are those Biota Shareholders with registered addresses in jurisdictions outside Australia and its external territories, New Zealand, the United States or the United Kingdom) will not be issued with Biota Pharmaceuticals Shares. Refer to section 1.17 of this Booklet for further details.

United States Federal Securities Laws: Stock Transfer Restrictions

The Biota Pharmaceuticals Shares to be issued in the Merger have not been, and are not expected to be, registered under the Securities Act, or the securities laws of any other jurisdiction. The Biota Pharmaceuticals Shares to be issued under the Merger will be issued pursuant to an exemption from the registration requirements provided by Section 3(a)(10) of the Securities Act based on the approval of the Merger by the Court. In the event that the exemption from the registration requirements provided by Section 3(a)(10) of the Securities Act is not available for any reason, Nabi has agreed to use its best endeavours (as such term is qualified in the Merger Implementation Agreement) to file a Registration Statement on Form S-4 (or on such other form that may be available to Nabi) in order to register the Biota Pharmaceuticals Shares under the United States federal securities laws and to use its best endeavours to cause such registration statement to become effective prior to the implementation of the Scheme.

Section 3(a)(10) of the Securities Act exempts securities issued in exchange for one or more bona fide outstanding securities from the general requirement of registration where the fairness of the terms and conditions of the issuance and exchange of the securities have been approved by any court or authorised governmental entity, after a hearing upon the fairness of the terms and conditions of exchange at which all persons to whom the securities will be issued have the right to appear and to whom adequate notice of the hearing has been given. If the Court approves the Scheme, its approval will constitute the basis for the Biota Pharmaceuticals Shares to be issued without registration under the Securities Act in reliance on the exemption from the registration requirements of the Securities Act provided by Section 3(a)(10) of the Securities Act.

The Biota Pharmaceuticals Shares issued in the Scheme to Biota Shareholders will be freely transferable under United States federal securities laws, except by persons who are deemed to be "affiliates" (as that term is defined under the Securities Act) of Nabi, including persons who are deemed to have been affiliates of Nabi within 90 days before the Implementation Date. In the event that the Biota Pharmaceuticals Shares are in fact held by affiliates of Nabi, those holders may resell the shares (1) in accordance with the provisions of Rule 144 promulgated under the Securities Act, or (2) as otherwise permitted under the Securities Act. Rule 144 generally provides that "affiliates" of Nabi may not sell securities of Nabi received in the Scheme unless the sale is effected in compliance with the volume, current public information, manner of sale and timing limitations set forth in such rule. These limitations generally permit sales made by an affiliate in any three-month period that do not exceed the greater of 1% of the outstanding Nabi Shares or the average weekly reported trading volume in such securities over the four calendar weeks preceding the placement of the sale order, provided that the sales are made in unsolicited, open market "broker transactions" and that current public information on Nabi is available. Persons who may be deemed to be affiliates of an issuer generally include individuals or entities that directly or indirectly control, are controlled by, or are under common control with, that issuer and may include officers and directors of the issuer as well as beneficial owners of 10% or more of any class of capital stock of the issuer.

Notice to Biota Shareholders in the United Kingdom

This Booklet is provided to Biota Shareholders resident in the United Kingdom in accordance with an exemption to the restriction on financial promotions in section 21 of the *Financial Services and Markets Act 2000* (United Kingdom) (the **FSMA**), which permits communications relating to the sale of that body corporate.

This Booklet does not constitute an offer to the public of Biota Pharmaceuticals Shares within the United Kingdom. No such offer to the public will be made in the United Kingdom other than pursuant to a prospectus prepared in accordance with the Prospectus Rules, which have been approved by the Financial Services Authority in accordance with the FSMA and made available to the public in accordance with Rule 3.2 of the Prospectus Rules made under the FSMA and implementing the EU Prospectus Directive (2003/71/EC).

Notice to Biota Shareholders in New Zealand

In offering Biota Pharmaceuticals Shares under the Scheme to Biota Shareholders in New Zealand, Nabi is relying on the Securities Act (Overseas Companies) Exemption Notice 2002. This document is not a prospectus or an investment statement under New Zealand law, and may not contain all the information that a prospectus or investment statement under New Zealand law is required to contain.

Interpretation

Capitalised terms and certain abbreviations used in this Booklet have the defined meanings set out in section 13 of this Booklet.

All references to \$, dollars, A\$, cents, are to Australian dollars, unless specified otherwise.

All dates and times are references to the time in Melbourne, Australia, unless specified otherwise. All dates following the date of the Scheme Meeting are indicative only and are subject to Court approval, Biota Shareholder approval, ASX approval and the satisfaction or, where applicable, waiver of the other Conditions Precedent.

Privacy and personal information

Biota and Nabi and their respective share registries may collect personal information in the process of implementing the Merger. The personal information may include the names, addresses, other contact details and details of the shareholdings of Biota Shareholders, and the names of individuals appointed by shareholders as proxies, corporate representatives or attorneys at the Scheme Meeting.

Biota Shareholders who are individuals and the other individuals in respect of whom personal information is collected as outlined above have certain rights to access the personal information collected in relation to them. Such individuals should contact Link Market Services Limited on 1300 554 474 (within Australia) or +61 2 8280 7111 (International) in the first instance if they wish to request access to that personal information.

The personal information is collected for the primary purpose of implementing the Merger. The personal information may be disclosed to Biota's and Nabi's share registries, to securities brokers and to print and mail service providers.

The main consequence of not collecting the personal information outlined above would be that Biota may be hindered in, or prevented from, conducting the Scheme Meeting and implementing the Merger.

Shareholders who appoint an individual as their proxy, corporate representative or attorney to vote at the Scheme Meeting should inform such an individual of the matters outlined above.

Date of this Booklet

This Booklet is dated 6 August 2012.

Supplementary information

Refer to section 12.13 for information about the steps that Biota will take if information about the Merger needs to be updated.

Biota Shareholders who have any questions or require further information should contact the Biota Shareholder Information Line on 1300 306 230 (within Australia) or +61 2 8280 7169 (international) on Business Days between 8.30 am and 7.30 pm (Melbourne time). Biota Shareholders should seek independent financial, taxation or other professional advice before making any decision regarding the Merger.

Key Dates

Last time and date by which the Proxy Form must be received by the Share Registry	2 pm on Sunday, 23 September 2012
Time and date for determining eligibility to vote at Scheme Meeting	7 pm on Sunday, 23 September 2012
Nabi Shareholder meeting	10.00 am on Monday, 24 September 2012 (Maryland, United States time)
Scheme Meeting to be held in Meeting Rooms 109 & 110, at The Melbourne Convention Centre, 1 Convention Centre Place, South Wharf, Melbourne, Australia	2 pm on Tuesday, 25 September 2012
<i>If the Scheme is approved by Biota Shareholders and Merger is approved by Nabi Shareholders</i>	
Court hearing for approval of the Scheme (Second Court Hearing)	Friday, 28 September 2012
Effective Date and last day of trading in Biota Shares on ASX	Tuesday, 2 October 2012
Record Date for determining entitlements to Scheme Consideration	7 pm on Tuesday, 9 October 2012
Election Date, being the last time and date by which an Election Form must be received from Electing Shareholders	5 pm on Tuesday, 9 October 2012
Implementation Date for the Scheme	Friday, 12 October 2012
Biota Pharmaceuticals Shares expected to commence trading on NASDAQ	Monday, 15 October 2012 (United States time)

All dates and times are references to the time in Melbourne, Australia unless specified otherwise.

All dates following the Scheme Meeting are indicative only. The actual timetable will depend on many factors outside the control of Biota, including approvals from the Court and other regulatory authorities. Any variation to the timetable set out above will be announced to ASX and published on Biota's website (www.biota.com.au).



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6 August 2012

Dear Biota Shareholder,

I am pleased to present to you this important proposal for the merger of Biota Holdings Limited (**Biota**) and Nabi Biopharmaceuticals (**Nabi**) to form Biota Pharmaceuticals, Inc. (**Biota Pharmaceuticals**). Under the proposal, Biota Shareholders will own approximately 74 per cent of Biota Pharmaceuticals and approximately 26 per cent will be owned by Nabi Shareholders. Biota Shareholders will hold shares in the NASDAQ listed Biota Pharmaceuticals and Biota will be delisted from the ASX.

Your Directors believe the proposal is a logical next step for Biota and has the potential to release value for shareholders and create a more sustainable business model for the commercialisation of Biota's important and valuable scientific portfolio. In the absence of a superior proposal, your Directors unanimously recommend and request that you vote in favour of the proposal at the meeting of Biota Shareholders to be held on Tuesday, 25 September 2012. Subject to the same qualification, each Director intends to vote all the Biota Shares held or controlled by them in favour of the proposed merger.

Your Directors believe the proposal is the best way to improve the value of your Biota Shares

Your Directors believe that Biota's assets are not being fully valued. The company's main commercial asset at this time is laninamivir, and the contract with the United States Biomedical Advanced Research and Development Authority (**BARDA**), a division of the United States Department of Health and Human Services, for its further late stage development. The contract provides for the reimbursement to Biota of approved costs for work undertaken, plus a fee. The contract is for an amount of up to US\$231 million if Biota meets key milestones over the contract term.

It is your Directors' view that the United States capital market, more than any other jurisdiction, will recognise and more aggressively reflect the value of the contract with BARDA. Reasons for this include that key milestones are to be delivered within the United States and the major potential end customer is the United States government. Not only are the United States investors, analysts and funds managers in a prime position to reflect developments in their own market, the United States health care capital market is significantly larger than the Australian equivalent with over 500 funds and more than 1,000 analysts focused on the microcap Life Sector alone. Over time, this is expected to deliver added depth and liquidity to trading in shares of the merged group. Under the proposal, the benefits derived from a NASDAQ listing will flow directly to Biota's Australian shareholders.

A NASDAQ listing will increase options to deliver significantly higher value from future programs

Biota's business model has been restricted to licensing out its products at a relatively early stage of development. Higher value is potentially available to shareholders when program development is funded to later stages of clinical development.

A NASDAQ listing will provide Biota with increased visibility in the largest health care capital market in the world. In 2011, over US\$10 billion was raised by life science companies in the United States, compared to approximately A\$600 million in Australia. Having a direct presence and profile in the United States market could improve Biota's options in the future should it need to raise additional capital to fund later stage clinical development of its product pipeline and create additional value for Biota Shareholders.

The United States is also a key location for Biota's major potential customers, including a number of major pharmaceutical companies and the United States government. A NASDAQ listing will further enhance Biota's exposure to these potential customers.

There are differences in the legal and regulatory landscape for Australian and United States companies and for holders of shares in those companies. Section 11 of this Booklet provides a summary of some of these material differences and question 10 in the Frequently Asked Questions section of this Booklet addresses how Australian resident shareholders can trade shares in a NASDAQ listed company.

The merger will strengthen Biota's cash position on competitive terms

The merger will provide an additional cash injection of US\$54 million, bringing Biota's estimated total cash position to US\$100 million upon completion of the transaction. The cash balance will ensure the merged company has sufficient funds for at least the next two years, based on Biota's current plans, and is considered an appropriate and advisable balance to achieve successful post-merger trading on NASDAQ.

The Independent Expert has concluded the transaction is in the best interests of Biota Shareholders

A copy of the report by the Independent Expert, Lonergan Edwards, is included in this booklet.

You should carefully read this Booklet in its entirety, including the reasons to vote in favour or against the Merger set out in section 2 of this Booklet, before making any decision on how to vote.

You can vote either by attending the Scheme Meeting, to be held on Tuesday, 25 September 2012 in Meeting Rooms 109 & 110, at The Melbourne Convention Centre, 1 Convention Centre Place, South Wharf, Melbourne, Australia at 2 pm, or by lodging a proxy vote. A proxy form is provided with this Booklet.

If you have any questions in relation to the Merger or this Booklet, please contact the Biota Shareholder Information Line on 1300 306 230 (within Australia) or +61 2 8280 7169 (international) on Business Days between 8.30 am and 7.30 pm (Melbourne time), or alternatively, please contact your professional taxation, legal, accounting or financial adviser.

This is an exciting opportunity for Biota and its shareholders and we look forward to your support.

Yours faithfully,



James Fox
Chairman
Biota Holdings Limited

Overview of this Booklet

What is the Merger?

The Merger will combine Biota's cash, its royalty generating products (Relenza™ and Inavir®), its BARDA Contract and its strong portfolio of clinical and preclinical assets, with Nabi's cash, Nabi's potential royalty generating product (Phoslyra®), an interest in NicVAX® (Nicotine Conjugate Vaccine) and its NASDAQ listing.

To implement the Merger, Nabi will acquire all Biota Shares by way of a scheme of arrangement and Eligible Biota Shareholders will be issued Biota Pharmaceuticals Shares as consideration. Biota Pharmaceuticals Shares will be listed on NASDAQ and Nabi will change its name to Biota Pharmaceuticals. Biota will be delisted from the ASX and become a wholly owned subsidiary of Nabi.

At completion of the Merger, Biota Shareholders will own approximately 74% of Biota Pharmaceuticals and approximately 26% will be owned by Nabi Shareholders. Each Biota Shareholder (other than Ineligible Foreign Biota Shareholders and Electing Shareholders) will receive 0.448722952 of a Biota Pharmaceuticals Share for each Biota Share held by them on the Record Date (as adjusted in accordance with the formula set out in section 1.2 of this Booklet).

Further information on the consideration to be issued to Biota Shareholders, including Ineligible Foreign Biota Shareholders and Electing Shareholders, is set out in sections 1.2 and 1.17 of this Booklet.

In order for the Merger to proceed, a resolution approving the Scheme must be passed by the requisite majorities of Biota Shareholders at the Scheme Meeting to be held on Tuesday, 25 September 2012. The Merger is also subject to the satisfaction or waiver of the Conditions Precedent (as applicable), which are summarised in section 10.2 of this Booklet.

What should I do?

You should read this Booklet carefully in its entirety, including the reasons to vote in favour or against the Merger set out in section 2 of this Booklet, before making any decision on how to vote on the Scheme Resolution.

Answers to various frequently asked questions about the Merger are set out in the Frequently Asked Questions section of this Booklet. If you have any additional questions in relation to this Booklet or the Merger you should call the Biota Shareholder Information Line on 1300 306 230 (within Australia) or +61 2 8280 7169 (international) on Business Days between 8.30 am and 7.30 pm (Melbourne time).

How do I vote on the Merger?

The Scheme Meeting is scheduled to be held at 2 pm on Tuesday, 25 September 2012 in Meeting Rooms 109 & 110, at The Melbourne Convention Centre, 1 Convention Centre Place, South Wharf, Melbourne, Australia.

For the Merger to proceed, the Scheme Resolution must be approved by a majority in number of Biota Shareholders present and voting at the Scheme Meeting (in person, by attorney, by proxy or, in the case of corporations, by corporate representative) (unless the Court orders otherwise) and at least 75% of the total number of Biota Shares voted at the Scheme Meeting.

Entitlement to vote

Biota Shareholders who are registered on the Biota Share Register at 7 pm on Sunday, 23 September 2012 may vote at the Scheme Meeting in person, by attorney, by proxy or, in the case of corporate shareholders, by corporate representative.

How to vote in person

Biota Shareholders who are entitled to vote and wish to do so in person should attend the Scheme Meeting.

Those Biota Shareholders voting in person should bring their meeting registration forms with them to facilitate admission to the meeting. The meeting registration form for the Scheme Meeting is the Proxy Form included with this Booklet. Persons who are attending as an attorney should bring the original power of attorney, unless Biota has already noted it. Persons who are attending as a corporate representative should bring evidence of their authority.

How to vote by proxy

A Proxy Form is included with this Booklet. Biota Shareholders who wish to appoint a proxy to attend and vote at the Scheme Meeting, complete the Proxy Form.

To be effective, completed Proxy Forms must be sent to the addresses or fax number listed on the form so that it is received by no later than 2 pm on Sunday, 23 September 2012.

If an attorney signs a Proxy Form on a Biota Shareholder's behalf, a copy of the authority under which the Proxy Form was signed must be received by the Biota Share Registry at the same time as the Proxy Form (unless a copy of the authority has already been provided to Biota).

Biota Shareholders who complete and return a Proxy Form may still attend the meeting in person, revoke the proxy and vote at the meeting.

What is the Biota Directors' recommendation?

The Biota Directors unanimously recommend that you vote in favour of the Scheme, in the absence of a Superior Proposal.

The Biota Directors intend to vote all of the Biota Shares held or controlled by them in favour of the Scheme Resolution, in the absence of a Superior Proposal.

The Biota Directors believe that the reasons for Biota Shareholders to vote in favour of the Scheme outweigh the reasons to vote against it, in the absence of a Superior Proposal. These reasons and other relevant considerations are set out in section 2 of this Booklet. Additionally, the Independent Expert has concluded that the Merger is in the best interests of Biota Shareholders. You should also read the Independent Expert's Report which is set out in Annexure A to this Booklet.

Frequently asked questions

Question	Answer
General frequently asked questions	
1. What are Biota Shareholders being asked to consider?	<p>On 23 April 2012, Biota and Nabi announced a proposal to merge their businesses to form Biota Pharmaceuticals. The Merger is proposed to be implemented by way of a scheme of arrangement between Biota and its shareholders. Under the proposal, Nabi will change its name to Biota Pharmaceuticals, Inc., Nabi will acquire all Biota Shares, Nabi will issue Biota Pharmaceuticals Shares to Biota Shareholders as consideration and Biota will be delisted from the ASX and become a wholly owned subsidiary of Nabi (which will be named Biota Pharmaceuticals).</p> <p>This will result in Biota Shareholders owning approximately 74% of Biota Pharmaceuticals and Nabi Shareholders owning approximately 26%.</p> <p>Biota Shareholders are being asked to consider this proposal and to vote on it at the Scheme Meeting.</p>
2. What consideration will I receive if I am a Biota Shareholder in Australia and its external territories, New Zealand, the United States or the United Kingdom (other than an Electing Shareholder)?	<p>You will receive 0.448722952 of a Biota Pharmaceuticals Share for each Biota Share you hold on the Record Date. The Biota Pharmaceuticals Shares will be listed on NASDAQ.</p> <p>This will result in Biota Shareholders owning approximately 74% of Biota Pharmaceuticals and Nabi Shareholders owning approximately 26%.</p> <p>If Nabi completes a share consolidation prior to the Implementation Date, then the fraction of a Biota Pharmaceuticals Share which you will receive for each Biota Share you hold on the Record Date will be adjusted to preserve the above percentages of shares in Biota Pharmaceuticals to be held by Biota Shareholders and Nabi Shareholders immediately after the Implementation Date.</p>
3. What if I am a Biota Shareholder resident outside of Australia and its external territories, New Zealand, the United States or the United Kingdom?	<p>The securities laws in your country of residence potentially prohibit your participation in the Scheme. As such, following the implementation of the Scheme, all of the Biota Pharmaceuticals Shares you are entitled to receive under the Scheme will instead be issued to the Nominee. The Nominee will sell those Biota Pharmaceuticals Shares on NASDAQ and remit the proceeds (net of any stamp duty or other applicable taxes and charges) to Biota. Biota will bear the cost of brokerage and any similar selling costs incurred. Biota will then remit to you your pro rata portion of the net proceeds from that sale.</p> <p>Refer to section 1.17 for further details.</p>
4. If I have a small holding of Biota Shares, am I able to elect to receive cash instead of Biota Pharmaceuticals Shares?	<p>If you are a Biota Shareholder with 2,000 Biota Shares or less as at the Record Date, you may elect to have Biota arrange for all the Biota Pharmaceuticals Shares which you are entitled to under the Scheme to be sold on your behalf. If you make such an election, you will be an Electing Shareholder and the Nominee will sell those Biota Pharmaceuticals Shares on NASDAQ and remit the proceeds (net of any stamp duty or other applicable taxes and charges) to Biota. Biota will bear the cost of brokerage and any similar selling costs incurred. Biota will then remit to you your pro rata portion of the net proceeds from that sale.</p> <p>Refer to section 1.17 for further details.</p>
5. What is Biota receiving in the Merger?	<p>Biota is receiving US\$54 million in cash, a listing on NASDAQ and an existing and meaningful United States shareholder base.</p> <p>Biota is also receiving:</p> <ul style="list-style-type: none"> ● a potential royalty generating product (Phoslyra®); and ● an interest in NicVAX® (Nicotine Conjugate Vaccine). <p>However, given the significant uncertainty associated with future cash flows from these assets (refer to section 5.1 of this Booklet for further details), no value has been ascribed to them in the pro forma financial information (refer to section 6.3 of this Booklet), or by the Independent Expert in its evaluation of the Scheme (refer to Appendix A of this Booklet).</p>
6. What alternatives were considered by the Biota Board?	<p>An alternative to Biota pursuing the Merger would be for the company to raise the funds by way of an initial public offering of shares on a major United States exchange. It would be highly likely that any such shares would have to be issued at a discount to the prevailing market price of Biota Shares and would therefore exert downward pressure on the market price of Biota Shares. Furthermore, fees associated with such a transaction would add substantially to the cost.</p> <p>The Merger is attractive relative to the expected discounts and fees which would otherwise be payable if Biota pursued such an alternative transaction.</p>
7. Will I have to pay brokerage fees or stamp duty in respect of the Scheme Consideration?	<p>No brokerage or stamp duty will be payable by Biota Shareholders as a result of the Scheme.</p>

Question	Answer
8. Can I sell my Biota Shares on the ASX?	<ul style="list-style-type: none"> ● You can sell your Biota Shares on the ASX prior to the close of trade on the Effective Date (expected to be Tuesday, 2 October 2012). However, you will not be able to do so after the Effective Date. ● If you sell your Biota Shares on the ASX, you will: <ul style="list-style-type: none"> • pay brokerage on the sale; • you will not share in any potential benefits of owning Biota Pharmaceuticals Shares; and • there may be different tax consequences from those that arise under the Merger.
9. Will I be able to trade Biota Pharmaceuticals Shares on the ASX?	<p>Biota Pharmaceuticals Shares will be traded on NASDAQ, and not on the ASX.</p> <p>It is expected that you will be able to trade Biota Pharmaceuticals Shares on NASDAQ from Tuesday, 16 October 2012 (Australian time), Monday 15 October 2012 (United States time), being the first Business Day after the Implementation Date (expected to be Friday, 12 October 2012).</p>
10. How do I trade shares in the United States from Australia?	<p>If you already have an Australian broker, you should contact them to confirm if they can facilitate NASDAQ trading for you.</p> <p>If you do not have an Australian broker or if your Australian broker does not have the facility that enables you to trade on NASDAQ, you will need to register with a new broker. A list of brokers which can provide facilities that enable you to trade shares on NASDAQ is available at Biota's website at www.biota.com.au.</p> <p>The procedure for trading shares on NASDAQ may vary from broker to broker, however generally you will be able to trade over the phone or online.</p>
11. What are the tax implications of the transaction?	<p>Section 8 of this Booklet provides a general guide on the tax implications of the Merger for Australian resident Biota Shareholders and section 9 of this Booklet provides a general guide on the United States tax implications of holding shares in Biota Pharmaceuticals.</p> <p>You are urged to seek professional taxation advice in relation to your own personal circumstances.</p>
12. Will shareholders be entitled to capital gains tax (CGT) roll-over relief as part of this transaction?	<p>If the Merger is implemented, the proposal entitles you to defer any capital gains tax until the date on which you sell your Biota Pharmaceuticals Shares (if CGT roll-over relief is available in your personal circumstances).</p> <p>You are urged to seek professional tax advice in relation to your own personal circumstances.</p>
13. Do I have to do anything to transfer my Biota Shares and receive Biota Pharmaceuticals Shares?	<p>No. If the Merger is approved and all the Conditions Precedent are satisfied, Biota will automatically have authority to sign a transfer on your behalf, and then the Scheme Consideration will be transferred to you. However, you should be aware that under the Scheme, you are deemed to have warranted to Biota that (except as otherwise set out in the Scheme):</p> <ul style="list-style-type: none"> ● all of your Biota Shares are fully paid and unencumbered; and ● you have full power and capacity to sell and transfer your Biota Shares. <p>You should ensure that these warranties can be given by you before the Implementation Date.</p>
14. What will happen if a Competing Proposal for Biota emerges?	<p>If a Competing Proposal for Biota emerges, the Biota Directors will carefully consider it and advise you of their recommendation.</p> <p>If the majority of Biota Directors publicly recommends, promotes or otherwise endorses the Competing Proposal, Biota will be required to pay a break fee of \$2 million to Nabi.</p> <p>Since the Merger was announced, no Competing Proposal has emerged. Given the time that has elapsed since the announcement of the Merger on 23 April 2012, the Biota Directors consider that a Competing Proposal is unlikely to emerge prior to the Scheme Meeting.</p>
Directors' recommendations and reasons to vote in favour or against the Scheme	
15. What is the recommendation of the Directors?	<p>The Biota Directors unanimously recommend that you vote in favour of the Scheme in the absence of a Superior Proposal.</p> <p>Each of the Directors intends to vote any Biota Shares held or controlled by them in favour of the Scheme in the absence of a Superior Proposal.</p>
16. What is the Independent Expert's opinion?	<p>The Independent Expert, Lonergan Edwards & Associates, was appointed by the Biota Directors to undertake an independent assessment of the Merger.</p> <p>The Independent Expert believes that the Scheme is in the best interests of Biota Shareholders. The Independent Expert's Report is set out in Annexure A of this Booklet.</p>
17. What are the reasons for voting in favour of the Scheme?	<p>Reasons to vote in favour of the Scheme are set out in section 2.1 of this Booklet.</p>
18. What are the reasons for voting against the Scheme?	<p>Reasons why you may consider to vote against the Scheme are set out in section 2.2 of this Booklet.</p>

Question	Answer
Transaction structure & details	
19. How will the Merger be implemented?	The Merger will be implemented by way of a Biota scheme of arrangement. Refer to section 3 of this Booklet for further information.
20. What is a scheme of arrangement?	<p>A scheme of arrangement is a legal arrangement between a company and its shareholders, and involves a company putting forward a proposal to its shareholders. Before a scheme of arrangement can come into effect, it must be approved by the shareholders at a meeting (usually referred to as a scheme meeting), by:</p> <ul style="list-style-type: none"> ● unless the court orders otherwise, a majority in number (more than 50%) of the shareholders present and voting at the scheme meeting (either in person or by proxy); and ● at least 75% of the total number of votes cast on the resolution at the scheme meeting by shareholders entitled to vote on the resolution. <p>The scheme of arrangement must then be approved by the Court after the scheme meeting. Once a scheme is approved by shareholders and the Court, it binds all shareholders to the proposal (including those who may have voted against it, or may not have voted at all).</p>
21. Why has the transaction been structured as a Biota scheme of arrangement?	The Scheme is the most efficient structure to implement the proposal. Many mergers involving Australian companies are undertaken by way of a scheme of arrangement. Both the Nabi Directors and the Biota Directors believe the transaction is in the best interests of their respective shareholders, in the absence of a Superior Proposal.
22. What is the timetable of the transaction?	The Scheme Meeting is currently scheduled to be held on Tuesday, 25 September 2012. If Biota Shareholders approve the Scheme, and the other Conditions Precedent are approved or waived (as applicable), the Scheme will be implemented on Friday, 12 October 2012.
23. What are the main approvals and conditions which are required in order to implement the Scheme?	<p>In order for the Scheme to be implemented, the Conditions Precedent must be satisfied or waived (as applicable). The Conditions Precedent include:</p> <ul style="list-style-type: none"> ● Biota Shareholder approval of the Scheme Resolution; ● Nabi Shareholder approval of the Nabi Transaction Proposals; ● Court approval of the Scheme; and ● receipt of all necessary approvals for the listing of the Biota Pharmaceuticals Shares on NASDAQ. <p>If the Conditions Precedent are not satisfied or waived (as applicable), the Merger will not proceed.</p>
24. Why is Nabi considering a share consolidation?	Nabi is considering a share consolidation prior to the implementation of the Merger to make the price of shares in Biota Pharmaceuticals more attractive to a broader range of institutional and other investors and to ensure that the shares in Biota Pharmaceuticals comply with NASDAQ listing requirements.
Voting	
25. Who gets to vote at the Scheme Meeting?	Biota Shareholders who are registered on the Biota Share Register at 7 pm (Melbourne time) on Sunday, 23 September 2012, may vote on the Scheme Resolution. This is based on the current scheduled timetable of key dates as set out under the heading "Key Dates" at the front of this Booklet, which is subject to possible change.
26. When and where will the Scheme Meeting be held?	The Scheme Meeting will be held at 2 pm (Melbourne time) on Tuesday, 25 September 2012 in Meeting Rooms 109 & 110, at The Melbourne Convention Centre, 1 Convention Centre Place, South Wharf, Melbourne, Australia.
27. How do I vote?	<p>If you are eligible to vote, you can vote:</p> <ul style="list-style-type: none"> ● in person, by attending the Scheme Meeting; ● by lodging a proxy online via Link Market Services Limited's website at www.linkmarketservices.com.au; ● by mailing the enclosed Proxy Form to Biota Holdings Limited, C/- Link Market Services Limited, Locked Bag A14, Sydney South, New South Wales, 1235 Australia (using the reply paid envelope provided) or the registered office of Biota; ● by faxing the enclosed Proxy Form to +61 2 9287 0309; or ● by hand delivering the enclosed Proxy Form to the Biota Share Registry at Link Market Services Limited, 1A Homebush Bay Drive, Rhodes, New South Wales, 2138 Australia, or Level 12, 680 George Street, Sydney, New South Wales, 2000 Australia. <p>To be valid, a duly completed Proxy Form must be received by the Biota Share Registry by 2 pm (Melbourne time) on Sunday, 23 September 2012.</p>
28. What happens if I don't vote on the Scheme or if I vote against the Scheme?	If the Scheme is approved by the requisite majorities of Biota Shareholders, then, subject to the other Conditions Precedent being satisfied or waived (as applicable), the Scheme will be implemented and binding on all holders of Biota Shares as at the Record Date including those who did not vote or voted against the Scheme.

Question	Answer
29. When will the voting result be known?	The result of the Scheme Resolution will be available shortly after the conclusion of the Scheme Meeting and will be announced to the ASX as soon as possible after it is available. The results of the vote will also be published on the Biota website at www.biota.com.au , on the Business Day following the Scheme Meeting.
30. What happens if the Merger does not proceed?	If the Scheme is not approved by Biota Shareholders, or if any Conditions Precedent are not satisfied (or waived, as applicable), the Scheme will not be implemented and the Merger will not proceed. In this case: <ul style="list-style-type: none"> ● you will retain your Biota Shares; ● Biota will retain its listing on the ASX; and ● you will not be issued with Biota Pharmaceuticals Shares.
Biota Pharmaceuticals	
31. What are the benefits of merging Biota and Nabi?	The benefits of merging Biota and Nabi include: <ol style="list-style-type: none"> a) the opportunity to create greater value from Biota’s strong portfolio of clinical and preclinical assets; b) underpinning the BARDA Contract for the further late stage development of laninamivir through a United States presence; c) the potential to access funds at a competitive rate should Biota need to raise additional capital in the future; d) the exposure to a significantly deeper global pharmaceutical sector; e) increased liquidity for shareholders in Biota Pharmaceuticals; and f) direct access to the United States capital market. Refer to section 2.1 of this Booklet for further details on the reasons why the Biota Directors recommend that you vote in favour of the Scheme (which includes the benefits of merging Biota and Nabi) and section 6 of this Booklet for a profile of Biota Pharmaceuticals.
32. What will the merged group be called?	If the Merger is implemented, Nabi (of which Biota will be a subsidiary) will be renamed Biota Pharmaceuticals, Inc..
33. Who will be Chief Executive Officer and Chief Financial Officer of Biota Pharmaceuticals?	The Chief Executive Officer of Biota, Mr Peter Cook, and the Chief Financial Officer of Biota, Mr Damian Lismore, will fill those roles within Biota Pharmaceuticals for an appropriate transition period until United States based executives are appointed and assume responsibility.
34. Who will be Chairman of Biota Pharmaceuticals?	Dr James Fox will be the inaugural Chairman of Biota Pharmaceuticals.
35. Who will be on the Board of Biota Pharmaceuticals?	The current Biota Board will be joined by two members of the current Nabi Board, Dr Geoffrey Cox and Dr Raafat Fahim, to form the inaugural Biota Pharmaceuticals Board. It is expected that a number of members of the Biota Pharmaceuticals Board will not stand for election at the first shareholders meeting following the Merger. Thereafter, it is expected that there will be a smaller number of members of the board and a majority of United States based directors.
36. What is the strategy for Biota Pharmaceuticals?	It is intended that Biota Pharmaceuticals will aim to commercialise Biota’s programs through licensing or advancing programs into later stage clinical studies prior to licensing or ultimately, marketing products in its own right. Refer to section 6.2(f) of this Booklet for further details.
37. How does Biota Pharmaceuticals intend to use the net cash balance?	Specific uses for the combined net cash balance have not been determined, however it is anticipated that the funds will be used for purposes such as: <ul style="list-style-type: none"> ● funding Biota’s existing and future programs to a higher value point than Biota would otherwise have taken those programs; and ● pursuing additional pipeline programs.
38. What are the CVRs?	CVRs are contingent value rights. Details of the CVRs are set out in section 1.7 of this Booklet.
Employees	
39. Do you expect any redundancies of current Biota employees as a result of the Merger?	Other than as set out in this Booklet, it is the current intention of the Biota Board and Nabi Board that Biota employees will continue to be employed by Biota on their current terms after the Implementation Date, from which time, Biota will be a wholly owned subsidiary of Biota Pharmaceuticals.
40. How will performance rights be treated under the Scheme?	Refer to section 12.4(f) of this Booklet for details on how Biota Share Rights will be treated under the Scheme.

1. Overview of the Merger and the Scheme

1.1 Background

On 23 April 2012, Biota and Nabi announced that they had entered into the Merger Implementation Agreement. Pursuant to the Merger Implementation Agreement, it is proposed that all of the Biota Shares will be transferred to Nabi by way of a scheme of arrangement (referred to in this Booklet as the Scheme), in consideration for the issue of Biota Pharmaceuticals Shares by Nabi to Biota Shareholders.

If the Scheme is approved, Nabi (of which Biota will be a subsidiary) will be renamed Biota Pharmaceuticals, and its board will be reconstituted to comprise six current Biota Directors and two current Nabi Directors.

It is intended that Biota Pharmaceuticals will be headquartered in the United States.

If the Scheme proceeds, Biota will be delisted from the ASX and become a wholly-owned subsidiary of Nabi. The Scheme Consideration is described in section 1.2.

This Booklet contains important information that the Biota Board believes Biota Shareholders should consider in deciding whether or not to vote in favour of the Scheme.

1.2 Scheme Consideration

Under the terms of the Scheme, Biota Shareholders (other than Ineligible Foreign Biota Shareholders and Electing Shareholders) will receive 0.448722952 of a Biota Pharmaceuticals Share for each Biota Share held by them on the Record Date. This will result in Biota Shareholders owning approximately 74% of Biota Pharmaceuticals, and Nabi Shareholders owning approximately 26%.

If Nabi implements a share consolidation prior to the Implementation Date, then the number of Biota Pharmaceuticals Shares to be issued to Biota Shareholders in respect of each Biota Share held by them on the Record Date will be adjusted according to the following formula:

$$0.448722952 \times \frac{N_N - N_{SC}}{N_N}$$

where:

N_N is the number of Nabi Shares outstanding immediately prior to the share consolidation.

N_{SC} is the reduction in the number of Nabi Shares outstanding as a result of the share consolidation.

The purpose of this adjustment is to preserve the percentage of shares in Biota Pharmaceuticals to be held immediately after the Implementation Date by Biota Shareholders (being approximately 74%) and Nabi Shareholders (being approximately 26%).

Ineligible Foreign Biota Shareholders and Electing Shareholders should refer to section 1.17 for further details about the consideration they will receive.

1.3 Unanimous recommendation of Biota Directors and reasons why you should vote in favour of the Scheme

The Biota Directors unanimously recommend that, in the absence of a Superior Proposal, Biota Shareholders vote in favour of the Scheme at the Scheme Meeting for the reasons set out in section 2.1 of this Booklet.

The Biota Directors believe that the reasons for Biota Shareholders to vote in favour of the Scheme clearly outweigh the reasons to vote against the Scheme.

Each Biota Director who holds Biota Shares, or on whose behalf Biota Shares are held, intends to vote in favour of the Scheme, in the absence of a Superior Proposal.

In making their recommendation and determining how to vote on the Scheme, the Biota Directors have considered the advantages and disadvantages of the Scheme and in particular, the following:

- the reasons for Biota Shareholders to vote in favour of the Scheme, as set out in section 2.1 of this Booklet;
- the potential disadvantages of the Scheme, as set out in section 2.2 of this Booklet;
- the risks associated with Biota, Nabi and Biota Pharmaceuticals' businesses, as set out in section 7 of this Booklet; and

(d) the report of the Independent Expert, a copy of which is set out in Annexure A of this Booklet.

The Biota Directors have also considered the other alternatives to the Scheme, as set out in section 1.4 of this Booklet.

In considering whether to vote in favour of the Scheme, the Biota Directors encourage you to:

- read this Booklet in its entirety;
- have regard to your individual risk profile, portfolio strategy, tax position and financial circumstances; and
- obtain financial advice from your broker or financial adviser on the Scheme and obtain taxation advice on the effect of the Scheme becoming Effective.

The interests of Biota Directors are disclosed in section 12.3 of this Booklet.

Biota Shareholders should seek professional advice on their particular circumstances, as appropriate.

1.4 Other alternatives considered

Last year the Biota Board appointed Piper Jaffray & Co to assist Biota to maximise the value of its programs and identify an appropriate pathway to pursue the direct commercialisation of laninamivir in the United States and other markets.

The securing of the contract with BARDA for the further late stage development of laninamivir has assisted this process and galvanised the Biota Board's view that Biota needs to be a United States entity to deliver the maximum value to its shareholders.

The major alternatives the Biota Board considered were:

- maintain the status quo and remain an Australian listed entity;
- actively seek a merger with relevant United States companies (such as NASDAQ or NYSE listed companies), delist from the ASX and conduct a capital raising;
- raise the funds by way of an initial public offering of shares on a major exchange in the United States; or
- seek to be acquired by a larger pharmaceutical company in the United States.

The Biota Board considered that the proposed Merger offered the best outcome available for Biota Shareholders. The Merger also allows current Biota Shareholders to retain (approximately 74%) equity in Biota Pharmaceuticals and share in the strategic and financial benefits from the Merger.

The Merger creates a well-balanced business that provides an immediate NASDAQ listing, combined cash estimated at US\$100 million, three products capable of generating royalties, a contract with BARDA of up to US\$231 million and a portfolio of clinical and preclinical assets.

The Biota Board notes that since the proposed Merger was announced on 23 April 2012, no other proposal for the Biota Group has emerged as at the date of this Booklet.

1.5 Potential disadvantages of the Scheme

The Scheme has a number of potential disadvantages and risks that Biota Shareholders should consider in deciding whether or not to vote in favour of the Scheme. While the Biota Directors are of the opinion that these disadvantages are outweighed by the Scheme's advantages and that the Scheme is in the best interests of Biota Shareholders in the absence of a Superior Proposal, each Biota Shareholder should consider their individual circumstances and make their own determination.

Please refer to section 2.2 of this Booklet for a summary of the potential disadvantages associated with the Scheme.

1.6 Independent Expert's conclusions

Biota commissioned the Independent Expert, Lonergan Edwards & Associates, to prepare a report on the Scheme to ascertain whether the transaction contemplated by the Scheme is in the best interests of Biota Shareholders.

The Independent Expert has concluded that the Scheme is in the best interests of Biota Shareholders in the absence of a Superior Proposal.

A copy of the complete Independent Expert's Report is contained in Annexure A of this Booklet.

1.7 Contingent Value Rights

Prior to the Implementation Date, Nabi may issue a Contingent Value Right (CVR) to each existing Nabi Shareholder in respect of each Nabi Share held by them. CVR holders may have rights to receive a portion of the cash proceeds actually received by Biota Pharmaceuticals in connection with a NicVAX® Transaction. A "NicVAX® Transaction" means a full or partial sale, license, transfer or any other similar transaction entered into by Biota Pharmaceuticals with respect to NicVAX® and/or Nabi intellectual property in relation to NicVAX®.

If Biota Pharmaceuticals consummates a NicVAX® Transaction within 18 months of the Implementation Date, CVR holders will be entitled to receive:

- (i) 75% of the cash proceeds in excess of US\$5 million actually received by Biota Pharmaceuticals in connection with such NicVAX® Transaction within that time (provided that such right is triggered only when Biota Pharmaceuticals actually receives US\$5.5 million or more in connection with such transaction); and
- (ii) 75% of the cash payments actually received by Biota Pharmaceuticals within the five year period commencing on the date that is 18 months after the Implementation Date (provided that such right is triggered only when Biota Pharmaceuticals actually receives at least US\$0.5 million or more and certain other thresholds have been met).

If Biota Pharmaceuticals does not consummate a NicVAX® Transaction within 18 months of the Implementation Date, or if the cash proceeds actually received by Biota Pharmaceuticals do not exceed the threshold amounts, no payment will be made to CVR holders.

Biota Pharmaceuticals does not have any obligation to pursue, engage in, negotiate, enter into or consummate an actual or potential NicVAX® Transaction or to research, develop or commercialise NicVAX®. However, if Biota Pharmaceuticals enters into a NicVAX® Transaction, it will use commercially reasonable efforts to obtain consideration in cash and within 18 months of the Implementation Date.

Nabi intends to enter into the CVR Agreement with a rights agent to establish the procedures by which payments, if any, will be made to the CVR holders. The CVRs will not be attached to the Nabi Shares or shares in Biota Pharmaceuticals, they will not represent an equity or ownership interest in Nabi or Biota Pharmaceuticals and they will not have any voting or dividend rights. The CVRs will be non-transferable, except in limited circumstances, and holders' rights will be limited to those expressly set out in the CVR Agreement.

1.8 Conditions of the Scheme, termination rights and other arrangements under the Merger Implementation Agreement

The Scheme is subject to a number of Conditions Precedent which must be satisfied or waived (as applicable) in order for the Scheme to be implemented. The Conditions Precedent are largely based on the conditions precedent in the Merger Implementation Agreement, which are summarised in section 10.2 of this Booklet.

Each of Biota and Nabi has termination rights under the Merger Implementation Agreement in certain circumstances. If a termination right is exercised, the Scheme will not proceed. Refer to section 10.10 of this Booklet for information regarding these termination rights.

Biota and Nabi each have other rights and obligations in connection with the Scheme under the Merger Implementation Agreement, including with respect to break fees, exclusivity arrangements and various other matters. The key terms of the Merger Implementation Agreement are summarised in section 10 of this Booklet, and a full copy of the agreement attached at Annexure B.

1.9 Deemed warranty

Attention is drawn to the warranties that Biota Shareholders will be deemed to have given, if the Scheme takes effect, in clause 9.4 of the Scheme (see Annexure C of this Booklet).

1.10 Tax consequences of the Scheme for Australian resident Biota Shareholders

A general guide to the Australian potential tax consequences of the Scheme for certain Biota Shareholders is set out in section 8 of this Booklet and a general guide to the United States potential tax consequences for holders of shares in Biota Pharmaceuticals is set out in section 9 of this Booklet. These guides are expressed in general terms and are not intended to provide taxation advice in respect of the particular circumstances of any shareholder. Biota Shareholders should seek their own taxation advice.

1.11 If the Scheme does not proceed

If the Scheme does not proceed, a break fee of \$2 million may be payable by Biota to Nabi, or by Nabi to Biota, depending on the reasons why the Scheme does not proceed. A break fee will not be payable by Nabi or Biota merely by reason that the Scheme is not approved by Biota Shareholders or Nabi Shareholders. Further information in relation to this break fee is set out in section 10.9 of this Booklet.

If the Scheme does not proceed, and no Superior Proposal for Biota is received, the Biota Directors will consider a number of alternative strategies for the operation and ownership of Biota's businesses. These alternatives would take time to implement.

In addition, if the Scheme does not proceed, Biota Shareholders will continue to be exposed to the risk factors relating to Biota described in section 7.3 of this Booklet. Furthermore, Biota Shares may trade above or below their current market price if the Merger is not implemented.

The Biota Directors believe that the Scheme is likely to deliver benefits to Biota Shareholders greater than other alternatives which have been considered, as described in section 1.4 of this Booklet.

1.12 Scheme approval

The Scheme will only become Effective if:

- the Scheme is approved by the requisite majorities of Biota Shareholders at the Scheme Meeting to be held on Tuesday, 25 September 2012 in Meeting Rooms 109 & 110, at The Melbourne Convention Centre, 1 Convention Centre Place, South Wharf, Melbourne, Australia commencing at 2 pm (Melbourne time);
- the Nabi Transaction Proposals are approved by Nabi Shareholders at the Nabi Shareholders' meeting;
- the Scheme is approved by the Court on the Second Court Date (expected to be on Friday, 28 September 2012); and
- the other Conditions Precedent are satisfied or waived in accordance with the Scheme.

Agreement by Biota Shareholders requires the Scheme Resolution to be passed at the Scheme Meeting by:

- a majority in number (more than 50%) of Biota Shareholders present and voting at the Scheme Meeting (either in person or by proxy) (unless the Court determines otherwise); and
- at least 75% of the total number of votes cast on the resolution at the Scheme Meeting by Biota Shareholders entitled to vote on the resolution.

1.13 Entitlement to vote

All Biota Shareholders who are registered on the Biota Share Register at 7 pm (Melbourne time) on Sunday, 23 September 2012 are entitled to vote at the Scheme Meeting. Further details on how to vote are provided in the section entitled 'Overview of this Booklet' under the heading 'How do I vote on the Merger?' and in the Notice of Meeting included as Annexure E of this Booklet.

1.14 Provision of Scheme Consideration

Biota Pharmaceuticals Shares to be issued as Scheme Consideration to Eligible Biota Shareholders, in respect of Biota Shares held by them, will be issued on the Implementation Date. Biota Pharmaceuticals Shares are currently expected to commence trading on NASDAQ on Tuesday, 16 October 2012 (Australian time), Monday 15 October 2012 (United States time), being the first Business Day after the Implementation Date.

It is the responsibility of each Biota Pharmaceuticals Shareholder to confirm their holding before trading in Biota Pharmaceuticals Shares.

Ineligible Foreign Biota Shareholders and Electing Shareholders will receive the cash proceeds of sale of the Biota Pharmaceuticals Shares attributable to them as Scheme Consideration instead of the Biota Pharmaceuticals Shares. Refer to section 1.17 for further information on Ineligible Foreign Biota Shareholders and Electing Shareholders.

1.15 Ownership and transfer of Biota Pharmaceuticals Shares

All Biota Pharmaceuticals Shares issued as a result of the Scheme will be issued in book-entry form in the names of the Eligible Biota Shareholders through the Direct Registration System (**DRS**) implemented by the Depository Trust Company (**DTC**). Under DRS, the Eligible Biota Shareholders' information will be registered on the books of Biota Pharmaceuticals and the ownership record will be held by American Stock Transfer & Trust Company (**AST**) as an agent of Biota Pharmaceuticals. Owners of shares under DRS do not receive physical share certificates as their ownership is recorded on the issuer's books, however they receive account information, dividends and communications directly from the issuer.

DRS will facilitate the sale of Biota Pharmaceuticals Shares by either (i) allowing the shares to be electronically transferred directly through AST, or (ii) allowing shares to be transferred to a broker for sale.

As soon as practicable after the Implementation Date, and in any event, within five Business Days after the Implementation Date, each Eligible Biota Shareholder will be sent by mail to its registered address information from AST that details the Eligible Biota Shareholder's account information and the number of Biota Pharmaceuticals Shares that are held in book-entry form at AST on their behalf. As the Biota Pharmaceuticals Shares issued under the Scheme will initially be placed in DRS, this information will also be contained in a separate statement from DRS (**DRS Statement**) which will also be sent to Eligible Biota Shareholders.

The information that holders of Biota Pharmaceuticals Shares will receive from AST, including the DRS Statement, are not negotiable instruments nor securities, and delivery of this information does not itself confer any rights upon the recipient. Nevertheless, this information should be kept as a record of ownership of the Biota Pharmaceuticals Shares.

Although the Eligible Biota Shareholders will initially be issued Biota Pharmaceuticals Shares under DRS, they may request that their Biota Pharmaceuticals Shares be held through physical share certificates or by their chosen broker, which is known as "street-name registration". Further details on these additional holding options is given below.

- **Physical share certificate** - If an Eligible Biota Shareholder opts to have a share certificate issued in respect of their Biota Pharmaceuticals Shares, Biota Pharmaceuticals will maintain a record of the ownership in its books and issue a share certificate to that shareholder in respect of those shares. The Eligible Biota Shareholder will receive all communications directly from Biota Pharmaceuticals or AST, including dividend or interest payments, annual reports and proxies. If a shareholder holding a share certificate wishes to sell their shares, they must send the share certificate to their broker, which may delay the sale process.
- **Street-name registration** - Under street-name registration, the record of ownership of Biota Pharmaceuticals Shares would be typically held in "book entry" form through the broker's participation with DTC, where DTC's nominee, Cede & Co., would be the record owner. Street-name owners would not be listed on Biota Pharmaceuticals' books; instead, Cede & Co. would appear as the owner and the broker would act as an intermediary between Biota Pharmaceuticals and the Eligible Biota Shareholder in respect of communications from Biota Pharmaceuticals.

1.16 Dividends

The Biota Pharmaceuticals Shares issued as Scheme Consideration will rank equally with all other Nabi Shares from the date of issue, except that they will not carry a right to receive any CVR. This means that they will carry an entitlement to receive any dividends declared by Biota Pharmaceuticals, however they will not carry an entitlement to receive any payments to be made with respect to the CVR.

The Biota Pharmaceuticals Shares will not carry any rights to receive any dividends declared by Nabi before the Implementation Date.

1.17 Treatment of Ineligible Foreign Biota Shareholders and Electing Shareholders

Ineligible Foreign Biota Shareholders and Electing Shareholders will not be issued Biota Pharmaceuticals Shares. Instead, the Biota Pharmaceuticals Shares that would otherwise have been issued to Ineligible Foreign Biota Shareholders and Electing Shareholders will be issued to the Nominee on the Implementation Date so that they may be sold on NASDAQ.

(a) Ineligible Foreign Biota Shareholders

A holder of Biota Shares on the Record Date whose address as shown in the Biota Share Registry is outside Australia and its external territories, New Zealand, the United Kingdom and the United States will be an "Ineligible Foreign Biota Shareholder" for the purposes of the Scheme.

Ineligible Foreign Biota Shareholders will not be issued with Biota Pharmaceuticals Shares under the Scheme. Instead, the Biota Pharmaceuticals Shares that would otherwise have been issued to them under the Scheme will be issued to the Nominee on the Implementation Date, to be sold on behalf of the Ineligible Foreign Biota Shareholders. The sale process is described in section 1.18 below.

(b) Electing Shareholders

Biota Shareholders who hold 2,000 Biota Shares or less as at the Record Date may elect to have all of the Biota Pharmaceuticals Shares that would otherwise have been issued to them under the Scheme on the Implementation Date sold on their behalf. The sale process is described in section 1.18 below.

Biota Shareholders who wish to make such an Election (**Electing Shareholders**) must do so by completing an Election Form and returning or submitting the completed Election Form in accordance with its instructions so that it is received no later than the Election Date, being 5 pm on Tuesday, 9 October 2012. A Biota Shareholder may withdraw their Election before the Election Date by lodging or submitting a withdrawal form in accordance with the instructions on that form. Biota Shareholders can obtain a withdrawal form by contacting Link Market Services Limited on 1300 554 474 (within Australia) or +61 2 8280 7111 (international).

Biota Shareholders who hold 2,000 Biota Shares or less as at 13 August 2012 will be sent an Election Form. As noted above, Biota Shareholders are eligible to make an Election if they hold 2,000 Biota Shares or less as at the Record Date. Biota Shareholders who are eligible to make an Election and who do not receive an Election Form can obtain an Election Form by contacting Link Market Services Limited on 1300 554 474 (within Australia) or +61 2 8280 7111 (international).

1.18 Nominee sale process

Ineligible Foreign Biota Shareholders and Electing Shareholders will not be issued with Biota Pharmaceuticals Shares under the Scheme. Instead, the Biota Pharmaceuticals Shares that would otherwise have been issued to them under the Scheme will be issued to the Nominee, who will, no more than 15 Business Days after the Implementation Date:

- sell those Biota Pharmaceuticals Shares on NASDAQ in such manner, at such price and on such other terms as the Nominee determines in good faith and at the risk of the Ineligible Foreign Biota Shareholder or the Electing Shareholder (as applicable); and
- remit those proceeds to Biota Pharmaceuticals net of any stamp duty or other applicable taxes and charges (Biota will bear the cost of brokerage and any similar selling costs incurred).

Each Ineligible Foreign Biota Shareholder and each Electing Shareholder will receive an amount equal to the average price per Biota Pharmaceuticals Share received by the Nominee (which may be more or less than the actual price that is received by the Nominee for that particular Biota Pharmaceuticals Share) converted to Australian currency.

Upon receiving all the net proceeds of sale from the Nominee, Biota Pharmaceuticals will promptly pay the relevant pro rata portion of those net proceeds to each of the Ineligible Foreign Biota Shareholders and Electing Shareholders by making a deposit into an account with an Australian bank nominated by that shareholder with the Biota Share Register as at the Record Date. If an Ineligible Foreign Biota Shareholder or Electing Shareholder does not have a nominated Australian bank account with the Biota Share Register as at the Record Date, the shareholder will be sent a cheque drawn on an Australian bank in Australian currency for the proceeds of sale.

It is intended that the proceeds of sale will be distributed to Electing Shareholders and Ineligible Foreign Biota Shareholders during the week commencing on 5 November 2012. As such, it may be up to 12 weeks from the date on which a shareholder makes an Election before they receive their proceeds of sale.

The market price of Biota Shares and Nabi Shares is subject to change from time to time and Biota, Nabi and the Nominee give no assurances as to the price that will be achieved for the sale of Biota Pharmaceuticals Shares as described above. The proceeds that Ineligible Foreign Biota Shareholders and Electing Shareholders receive may be more or less than the current market value of Nabi Shares as at the date of this Booklet.

Up to date information regarding the market price of Nabi Shares on NASDAQ is available from Nabi's website at www.nabi.com and NASDAQ's website at www.nasdaq.com. Full details of the nominee sale process are contained in clause 5.5 of the Scheme (which is set out as Annexure C to this Booklet).

1.19 Shareholder instructions to Biota

Except for a Biota Shareholder tax file number, all binding instructions or notifications between a Biota Shareholder and Biota relating to Biota Shares or a Biota Shareholder's status as a Biota Shareholder (including, without limitation, any instructions relating to communications from Biota, whether dividends are to be paid by cheque or into a specific bank account, and direct credit instructions and bank account details) will, to the extent permitted by law, from the Record Date be deemed to be new binding instructions or notifications to, and accepted by Biota Pharmaceuticals in respect of Biota Pharmaceuticals Shares.

1.20 Effects of rounding and warning against share splitting

All entitlements to Biota Pharmaceuticals Shares will be rounded up or down to the nearest whole number of Biota Pharmaceuticals Shares (with any fractional entitlement of 0.5 being rounded up) in order to avoid fractions of Biota Pharmaceuticals Shares. If either Biota or Nabi reasonably believes that a Biota Shareholder has been a party to the splitting or division of a shareholding in an attempt to obtain an advantage by reference to the rounding provided for in the calculation of each Biota Shareholder's entitlement to the Scheme Consideration, then Biota and Nabi reserve the right to round the entitlement of such holdings so as to provide only the number of Biota Pharmaceuticals Shares that would have been received but for the splitting or division.

1.21 Obtaining further information

Answers to various frequently asked questions in relation to the Scheme are set out in the Frequently Asked Questions section of this Booklet.

For further information you can call the Biota Shareholder Information Line on 1300 306 230 (within Australia) or +61 2 8280 7169 (international), on Business Days between 8.30 am and 7.30 pm (Melbourne time). If you are in any doubt about anything in this Booklet, contact your financial, legal, taxation or other professional adviser.

2. Matters relevant to your vote on the Scheme

2.1 Why you should vote in favour of the Scheme

1	Your Directors unanimously recommend you vote in favour of the Scheme, in the absence of a Superior Proposal	✓
2	Your Directors believe the proposal is the best way to improve the value of your Biota Shares	✓
3	The Merger will strengthen Biota's cash position on competitive terms	✓
4	A NASDAQ listing increases options to deliver significantly higher value from future programs	✓
5	Biota Pharmaceuticals will have an existing and meaningful United States shareholder base on implementation of the Merger	✓
6	Capital gains tax roll-over relief should be available to Australian Biota Shareholders	✓
7	The Independent Expert has concluded the Merger is in your best interests, in the absence of a Superior Proposal	✓

(a) Biota Directors' recommendation

The Biota Board believe that the Merger is in the best interests of Biota Shareholders and unanimously recommend that Biota Shareholders vote in favour of the Scheme, in the absence of a Superior Proposal. The Biota Board have formed their conclusion and made their recommendation based on the matters outlined in this section 2.1, section 2.2 (reasons why you may not vote in favour of the Scheme) and having regard to the various risks in section 7 of this Booklet.

Each Biota Director who holds Biota Shares, or on whose behalf Biota Shares are held, intends to vote in favour of the Scheme, in the absence of a Superior Proposal.

(b) Directors believe the proposal is the best way to improve the value of your Biota Shares

The Biota Directors believe that Biota's assets are not being fully valued. The company's main commercial asset at this time is laninamivir and a contract with the United States Biomedical Advanced Research and Development Authority (*BARDA*), a division of the United States Department of Health and Human Services, for its further late stage development. The contract provides for the reimbursement to Biota of approved costs for work undertaken, plus a fee. The contract is for an amount of up to US\$231 million if Biota meets key milestones over the contract term.

It is the Directors' view that the United States capital market, more than any other jurisdiction, will recognise and more aggressively reflect the value of the contract with BARDA. Reasons for this include that key milestones are to be delivered within the United States and the major potential end customer is the United States government. Not only are the United States investors, analysts and fund managers in a prime position to reflect developments in their own market, the United States health care capital market is significantly larger than the Australian equivalent, with over 500 funds and more than 1,000 analysts focused on the microcap Life Science sector alone. Over time, this is expected to deliver added depth and liquidity to trading in Biota Pharmaceuticals Shares. Under the proposal, the benefits derived from a NASDAQ listing will flow directly to Biota's Australian shareholders.

(c) The Merger will strengthen Biota's cash position on competitive terms

The Merger will provide an additional cash injection to Biota of US\$54 million, bringing Biota's estimated total cash position to US\$100 million upon completion of the Merger. The cash balance will ensure the merged company has sufficient funds for at least the next two years, based on Biota's current planned activities, and is considered an appropriate and advisable balance to achieve successful post-merger trading on NASDAQ. Following the implementation of the Merger, Biota Shareholders will hold approximately 74% of the shares in Biota Pharmaceuticals and Nabi Shareholders will hold the remaining approximately 26%. Nabi's cash contribution to Biota Pharmaceuticals is equivalent to Nabi Shareholders subscribing for Biota Shares at a discount of approximately 13.8% to the market price of Biota Shares (as at close of trade on 20 April 2012, the last trading date prior to the announcement of the Merger). This discount is considered competitive relative to the expected discount which would otherwise be payable if Biota pursued an alternative financing arrangement and transfer to NASDAQ.

(d) A NASDAQ listing increases options to deliver higher value from future programs

Biota's business model has been restricted to licensing out its products at a relatively early stage of development. Higher value is potentially available to shareholders when program development is funded to later stages of clinical development.

A NASDAQ listing will provide Biota with visibility in the largest health care capital market in the world. In 2011, over US\$10 billion was raised by life science companies in the United States compared to approximately A\$600 million in Australia. Having a direct presence and profile in the United States market could improve Biota's options in the future should it need to raise additional capital to fund later stage clinical development of its product pipeline and create additional value for Biota Shareholders.

The United States is also a key location for Biota's major potential customers, including a number of major pharmaceutical companies and the United States government. A NASDAQ listing will further enhance Biota's exposure to these potential customers.

(e) Biota Pharmaceuticals will have an existing and meaningful United States shareholder base on implementation of the Merger

A key attribute of the Merger, compared with an independent initial public offering on NASDAQ, is that the Merger will deliver an immediate United States shareholder base of scale which should assist share trading liquidity on and from implementation of the Merger.

(f) Capital gains tax (CGT) roll-over relief

If the Merger is implemented, Australian Biota Shareholders should be entitled to defer any capital gains tax until the date on which they sell their Biota Pharmaceuticals Shares (if CGT roll-over relief is available in their personal circumstances).

A general outline of the potential Australian tax consequences of the Merger is set out in section 8 of this Booklet. You should consult your personal taxation or financial adviser for advice in relation to your situation.

(g) Independent Expert's recommendation

The Independent Expert has concluded that the Scheme is in the best interests of Biota Shareholders, in the absence of a Superior Proposal.

The Independent Expert's Report is reproduced in full in Annexure A of this Booklet. Biota Shareholders are encouraged to read it carefully in its entirety, including the assumptions, qualifications and disclaimers on which the Independent Expert's conclusion is based.

2.2 Reasons why you may consider voting against the Scheme

1	You may believe that a Superior Proposal for Biota may otherwise emerge	X
2	You may disagree with the Biota Directors' recommendation and the Independent Expert's conclusion	X
3	Biota Pharmaceuticals, due to its listing on NASDAQ, will be subject to a different regulatory regime and currency exposure	X
4	Your ownership in Biota will be diluted if the Scheme is implemented	X
5	You may be an Ineligible Foreign Biota Shareholder and you may wish to retain your Biota Shares	X
6	You may be exposed to potential adverse tax consequences	X

(a) A Superior Proposal for Biota may yet emerge

You may believe that there is a possibility that a Superior Proposal could emerge in the foreseeable future. The implementation of the Merger would mean that Biota Shareholders would not obtain the benefit of any such proposal.

However, since the announcement of the Merger on 23 April 2012, no Superior Proposal has been received, and the Biota Board is not currently aware of any such proposal. Given the significant period of time and ample opportunity for an alternative proposal to arise, the Biota Directors consider that the possibility of a Superior Proposal emerging now is low.

(b) Disagreement with the Biota Directors' recommendation and the Independent Expert's conclusion

You may disagree with the recommendation of the Directors and the conclusion of the Independent Expert that the Merger is in the best interests of Biota Shareholders.

(c) Biota Pharmaceuticals, due to its listing on NASDAQ, will be subject to a different regulatory regime and currency exposure

If the Scheme is implemented, Eligible Biota Shareholders will receive as Scheme Consideration Biota Pharmaceuticals Shares which will be listed on NASDAQ and traded in US\$. The A\$ value of the Biota Pharmaceuticals Shares will be determined by a combination of the US\$ trading price on NASDAQ as well as the A\$/US\$ exchange rate.

As the Biota Pharmaceuticals Shares will be listed on NASDAQ they will be exposed to the United States equity markets.

As Biota Pharmaceuticals will have been incorporated in Delaware and Biota Pharmaceuticals Shares will be listed on NASDAQ, the Biota Pharmaceuticals Shares will be governed by Nabi's certificate of incorporation and by-laws, as amended and restated immediately prior to the Implementation Date, the General Corporation Law of the State of Delaware, the Securities Exchange Act of 1934, the NASDAQ Marketplace Rules and other applicable laws in the United States.

Refer to section 11 of this Booklet for a comparison of the laws that apply to the holders of Australian Biota Shares, and the laws that will apply to holders of United States Biota Pharmaceuticals Shares.

(d) Dilution of ownership

Biota views this transaction as a capital raising by way of an issue of new shares at a discount to the current market price and a move to the United States. Following the implementation of the Scheme, Biota Shareholders will hold approximately 74% of the shares in Biota Pharmaceuticals and Nabi Shareholders will hold the remaining approximately 26%. Nabi's cash contribution to Biota Pharmaceuticals is equivalent to Nabi Shareholders subscribing for Biota Shares at a discount of approximately 13.8% to the market price of Biota Shares (as

at close of trade on 20 April 2012, the last trading date prior to the announcement of the Merger).

It is normal in a capital raising for shares to be issued at a discount to the prevailing market price of the shares. However unlike a traditional entitlement offering, Biota Shareholders will be unable to acquire shares in Biota Pharmaceuticals at the discount being offered to Nabi Shareholders.

(e) Ineligible Foreign Biota Shareholders

Biota Shareholders who are Ineligible Foreign Biota Shareholders (who are those Biota Shareholders with registered addresses in jurisdictions outside Australia and its external territories, New Zealand, the United States and the United Kingdom) will not be issued with Biota Pharmaceuticals Shares. As at the date of this Booklet, there were approximately 90 Biota Shareholders who had a registered address in a jurisdiction outside Australia and its external territories, New Zealand, the United States and the United Kingdom.

The Nominee will be issued Biota Pharmaceuticals Shares attributable to Ineligible Foreign Biota Shareholders and Electing Shareholders and will sell them on NASDAQ as soon as reasonably practicable (and in any event no more than 15 Business Days) after the Implementation Date. Refer to section 1.17 of this Booklet for further details.

It is possible that any such on market sales may exert downward pressure on Biota Pharmaceuticals' share price during the applicable period. In any event, there is no guarantee regarding the prices that will be realised by the Nominee or the future market price of the Biota Pharmaceuticals Shares. Future market prices may be either above or below current or historical market prices.

(f) Potential adverse tax consequences

If the Merger is implemented, it may result in taxation consequences for Biota Shareholders earlier than may otherwise have been the case.

Section 8 provides a general outline of the main Australian taxation implications of the Merger for certain Biota Shareholders. All Biota Shareholders, particularly those Biota Shareholders not covered by the outline in section 8, should consult with their own independent taxation advisers regarding the Australian and, if applicable, foreign taxation implications of participating in the Merger given the particular circumstances which apply to them.

2.3 Other relevant considerations

(a) Transaction and other costs

Transaction and other costs incurred (or which are expected to be incurred) by Biota in relation to the implementation of the Merger are currently estimated at A\$6 million, comprising adviser, investment banker, legal, accounting and expert fees (including termination rights and long-term incentive options) and various other costs.

Approximately half of these costs have been or will be incurred regardless of whether the Merger is approved.

(b) Implications for Biota if the Merger is not implemented

If the Scheme does not proceed, a break fee of \$2 million may be payable by Biota to Nabi, or by Nabi to Biota, depending on the reasons why the Scheme does not proceed. A break fee will not be payable by Nabi or Biota merely by reason that the Scheme is not approved by Biota Shareholders or Nabi Shareholders. Further information in relation to this break fee is set out in section 10.9 of this Booklet.

If the Scheme does not proceed, and no Superior Proposal for Biota is received, the Biota Directors will consider a number of alternative strategies for the operation and ownership of Biota's businesses. These alternatives would take time to implement.

In addition, if the Scheme does not proceed, Biota Shareholders will continue to be exposed to the risk factors relating to Biota described in section 7.5 of this Booklet.

The Biota Directors believe that the Scheme is likely to deliver benefits to Biota Shareholders greater than other alternatives which have been considered, as described in section 1.4.

(c) Biota Shareholders may sell their Biota Shares on the ASX prior to the suspension of Biota Shares from trading

Biota Shareholders may sell their Biota Shares on the ASX at any time prior to the close of trading on the Effective Date (expected to be Tuesday, 2 October 2012) if they do not wish to hold them and participate in the Merger (normal brokerage expenses would be incurred on sale).

(d) The Merger may be implemented even if you do not vote at the Meeting or vote against the Scheme Resolution

If the Scheme Resolution is approved by the requisite majorities of Biota Shareholders, being:

- a majority in number (more than 50%) of Biota Shareholders present and voting at the Scheme Meeting (either in person or by proxy) (unless the Court determines otherwise); and
- at least 75% of the total number of votes cast on the resolution at the Scheme Meeting by Biota Shareholders entitled to vote on the resolution,

then, subject to the other Conditions Precedent being satisfied or waived (as applicable), the Merger will be implemented and binding on all Biota Shareholders in respect of Biota Shares held by them on the Record Date, including Biota Shareholders who did not vote or voted against the Scheme Resolution.

In those circumstances, your Biota Shares will be transferred to Nabi and you will receive the Scheme Consideration even though you voted against, or did not vote on, the Scheme Resolution.

3. Implementation of the Merger

3.1 Merger Implementation Agreement, Scheme of Arrangement and Nabi Deed Poll

On 23 April 2012, Biota and Nabi announced that they had entered into the Merger Implementation Agreement. A summary of key terms of the Merger Implementation Agreement is contained in section 10 of this Booklet and a full copy of the agreement is attached at Annexure B.

Under the Merger Implementation Agreement, the proposed merger of Biota and Nabi is to be implemented by way of a scheme of arrangement. A scheme of arrangement is a court administered legal procedure commonly used in Australia to implement mergers. In support of Nabi's obligation under the Merger Implementation Agreement, Nabi has executed the Nabi Deed Poll. Under the Nabi Deed Poll, Nabi agrees that subject to the Scheme becoming Effective, it will provide each Biota Shareholder participating in the Scheme with the Scheme Consideration to which it is entitled. A copy of the Nabi Deed Poll is attached as Annexure D to this Booklet.

3.2 Overview of implementation steps

The key steps to implement the Merger are set out below.

- (a) Biota Shareholders will vote on whether to approve the Scheme at the Scheme Meeting.
- (b) Nabi Shareholders will vote on whether to approve the Nabi Transaction Proposals.
- (c) If the Scheme is approved by the requisite majorities of Biota Shareholders, the Nabi Transaction Proposals are approved by the requisite majorities of Nabi Shareholders and all other conditions precedent set out in the Merger Implementation Agreement (other than approval by the Court) have been satisfied or waived, then Biota will apply to the Court for orders approving the Scheme.
- (d) If the Court approves the Scheme, Biota will lodge with ASIC a copy of the Court order approving the Scheme. This date will be the last day on which trading in Biota Shares on the ASX occurs.
- (e) Upon the Scheme becoming effective, Biota will provide notice of such to the ASX and apply to the ASX for trading in Biota Shares to be suspended from the close of trading on the Effective Date.
- (f) On the Implementation Date:
 - (i) Nabi must deliver to Biota a certificate confirming that Nabi has net cash of at least US\$54 million;
 - (ii) the Scheme Consideration must be provided by Nabi; and
 - (iii) all existing Biota Shares must be transferred to Nabi.
- (g) On the Business Day immediately after the Implementation Date, Biota will apply for termination of the official quotation of Biota Shares on the ASX and have itself removed from the official list of the ASX.

These steps are described in further detail below. The expected dates for the key steps are set out under the heading "Key Dates" at the front of this Booklet (but those dates are subject to possible change).

Biota and Nabi each have rights and obligations in connection with the implementation of the Scheme under the Merger Implementation Agreement. The Merger Implementation Agreement also includes conditions precedent to the Scheme, termination rights, break fee arrangements, exclusivity arrangements and various other matters.

3.3 Scheme Meeting

In accordance with an order of the Court dated 9 August 2012, Biota Shareholders will be asked to vote in favour of the Scheme at the Scheme Meeting. The applicable Notice of Meeting, which includes details of the time and place of the meeting, is set out in Annexure E of this Booklet.

At the Scheme Meeting, Biota Shareholders will be asked to consider and, if thought fit, to pass a resolution approving the Scheme. In order to be implemented, the Scheme must be approved by a majority in number of Biota Shareholders present and voting at the Scheme Meeting (in person, by attorney, by proxy or, in the case of corporations, by corporate representative), unless the Court determines otherwise, and at least 75% of the total number of Biota Shares voted at the Scheme Meeting. Voting at the Scheme Meeting will be by poll.

The fact that the Court has ordered the Scheme Meeting does not mean that the Court has formed any view as to the merits of the Scheme or as to how Biota Shareholders should vote on the resolution approving the Scheme. On these matters, Biota Shareholders must reach their own decision.

3.4 Nabi Shareholder meeting

It is a condition precedent to the implementation of the Scheme that the Nabi Shareholders approve the Nabi Transaction Proposals. Nabi Shareholders will be asked to consider the following Nabi Transaction Proposals:

- (i) Amend Nabi's certificate of incorporation to increase the authorised number of Nabi Shares to enable the issuance of the Biota Pharmaceuticals Shares under the Scheme. This proposal requires the approval of the holders of the majority of Nabi Shares issued and outstanding. An abstention from voting will have the same effect as a vote against the proposal.
- (ii) Amend Nabi's certificate of incorporation to change the name of Nabi to Biota Pharmaceuticals, Inc.. This proposal requires the approval of the holders of the majority of Nabi Shares issued and outstanding. An abstention from voting will have the same effect as a vote against the proposal.
- (iii) Issue Biota Pharmaceuticals' Shares to holders of Biota Shares in accordance with the Scheme. This proposal requires the approval of the holders of the majority of Nabi Shares properly voted at the Nabi Shareholder meeting. An abstention from voting will have no effect on the outcome of the vote on this proposal.

In addition to considering the above Nabi Transaction Proposals, Nabi Shareholders will also vote on the proposals below, however the approval by Nabi Shareholders of these proposals is not a condition precedent to the implementation of the Scheme:

- (iv) Amend Nabi's certificate of incorporation to effect a share consolidation whereby Nabi Shares ranging from four to eight would be consolidated to one Nabi Share.
- (v) Approve, on an advisory (non-binding) basis, the compensation payable to certain executive officers of Nabi under existing arrangements in connection with the proposed Merger.
- (vi) Approve one or more adjournments of the Nabi Shareholder meeting, if necessary or appropriate, including adjournments to permit further solicitation of proxies if there are insufficient votes at the time of the Nabi Shareholder meeting to approve any of the proposals under paragraphs (i) to (iv) above.

3.5 Court approval at Second Court Hearing

If the Scheme is approved by the requisite majorities of Biota Shareholders, the Nabi Shareholders approve the Nabi Transaction Proposals and all other conditions precedent set out in the Merger Implementation Agreement (other than approval by the Court) have been satisfied or waived, then Biota will apply to the Court for orders approving the Scheme.

Each Biota Shareholder has the right to appear at the Second Court Hearing. Any Biota Shareholder who wishes to oppose the approval of the Scheme at the Second Court Hearing may do so by filing with the Court and serving on Biota a notice of appearance in the prescribed form, together with any affidavit on which the shareholder will seek to rely at the Court hearing.

3.6 Effective Date (last date of trading of Biota Shares on the ASX)

If the Court approves the Scheme, Biota will lodge with ASIC an office copy of the Court order approving the Scheme. The Scheme becomes legally effective on the date that lodgement occurs. This date is referred to in this Booklet as the Effective Date.

Biota will, on the Scheme becoming Effective, give notice of that event to the ASX.

Biota intends to apply to the ASX for Biota Shares to be suspended from official quotation on the ASX from the close of trading on the Effective Date.

3.7 Commencement of trading of Biota Pharmaceuticals Shares

Biota Pharmaceuticals Shares are currently expected to trade on NASDAQ on the first Business Day after the Implementation Date, being Tuesday, 16 October 2012 (Australian time), Monday 15 October 2012 (United States time). It is the responsibility of each Biota Pharmaceuticals Shareholder to confirm their holding before trading in Biota Pharmaceuticals Shares to avoid the risk of selling shares that they do not own. As soon as practicable after the Implementation Date and, in any event, within five Business Days after the Implementation Date, each Eligible Biota Shareholder will be sent by mail to its registered address information from Biota Pharmaceuticals' agent, AST, that details the Eligible Biota Shareholder's account information and the number of Biota Pharmaceuticals Shares that are held in book-entry form at AST on their behalf.

Any Biota Pharmaceuticals Shareholder who sells Biota Pharmaceuticals Shares before receiving the above information from AST does so at their own risk.

3.8 Record Date

Biota Shareholders will be entitled to participate in the Scheme if they are registered as the holders of Biota Shares at 7 pm on the Record Date. The Record Date is the date which is five Business Days after the Effective Date, and is currently expected to be Tuesday, 9 October 2012.

3.9 Determination of persons entitled to Scheme Consideration

(a) Dealings on or prior to the Record Date

For the purposes of establishing who holds Biota Shares on the Record Date, dealings in Biota Shares will be recognised by Biota provided that:

- (i) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Biota Share Register as the holder of the relevant Biota Shares as at the Record Date; and
- (ii) in all other cases, registrable transfers or transmission applications in respect of those dealings are received by the Biota Share Registry before 5 pm on the Record Date (and the transferee remains registered as at the Record Date).

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

(b) Dealings in Biota Shares after the Record Date

As from the Record Date (and other than for Nabi following the Implementation Date):

- (i) all statements of holding in respect of Biota Shares cease to have effect as documents of title in respect of such Biota Shares; and
- (ii) each entry on the Biota Share Register at that date will cease to have any effect other than as evidence of entitlement to the Scheme Consideration.

3.10 Implementation Date

The Implementation Date is the date which is three Business Days after the Record Date, and is currently expected to be Friday, 12 October 2012. On the Implementation Date:

- (a) Nabi must deliver to Biota a certificate confirming that Nabi has net cash of at least US\$54 million;
- (b) following the issue of the certificate, Nabi will issue the Biota Pharmaceuticals Shares which constitute the Scheme Consideration; and
- (c) upon Nabi providing Biota with written confirmation that the Biota Pharmaceuticals Shares have been issued, all the Biota Shares on issue will be transferred to Nabi.

Ineligible Foreign Biota Shareholders and Electing Shareholders should refer to section 1.17 for further details about the consideration they will receive.

Once the Scheme Consideration has been issued, the Biota Shares will be transferred to Nabi without any need for further acts by any Biota Shareholders.

If Nabi does not deliver to Biota the certificate required under paragraph (a) above, Biota may by written notice, terminate the Scheme with immediate effect. In the event that Biota terminates the Scheme:

- (d) the Merger will not proceed;
- (e) Biota Shareholders will retain their Biota Shares;
- (f) Biota will retain its listing on ASX; and
- (g) Nabi will not issue Biota Pharmaceuticals Shares to Biota Shareholders or the Nominee.

3.11 Appointment of Biota Directors to the Biota Pharmaceuticals Board

If the Scheme is implemented, the current Biota Board will be joined by two members of the current Nabi Board, Dr Geoffrey Cox and Dr Raafat Fahim, to form the inaugural Biota Pharmaceuticals Board under the Chairmanship of Dr James Fox. The Chief Executive Officer of Biota, Mr Peter Cook, will fill that role within Biota Pharmaceuticals for an appropriate transition period until a United States based executive is appointed and assumes responsibility. It is expected that a number of members of the Biota Pharmaceuticals Board will not stand for election at the first shareholders meeting following the Merger. Thereafter, it is expected that there will be a smaller number of members of the board and a majority of United States based directors.

3.12 Commencement of normal trading of Biota Pharmaceuticals Shares on NASDAQ

Trading on NASDAQ of Biota Pharmaceuticals Shares is expected to commence on the first Business Day after the Implementation Date, being Tuesday, 16 October 2012 (Australian time), Monday 15 October 2012 (United States time).

3.13 Delisting Biota

On the Business Day immediately after the Implementation Date, Biota will apply for termination of the official quotation of Biota Shares on the ASX and to have itself removed from the official list of ASX.

4. Profile of Biota

4.1 Overview

Biota is an anti-infective drug development company, based in Melbourne, Australia. Since its initial public offering in 1985, Biota has evolved from a one program research company to a diversified drug discovery and development company with a portfolio of clinical and preclinical programs.

Significant events for Biota over the last three years are:

Mar 2012	Vapendavir (BTA798) successfully achieved the primary endpoints in a Phase IIb study in asthmatics
Jan 2012	Inavir® (laninamivir) Phase III prevention study underway in Japan
Apr 2011	Biota awarded a contract of up to US\$231 million for the advanced development of laninamivir in the United States
Oct 2010	Inavir® (laninamivir) was launched in Japan
Sep 2010	Inavir® (laninamivir) was approved for sale in Japan
Dec 2009	Biota returned A\$20 million to shareholders
Nov 2009	Biota acquired antibacterial program assets from Polylis Limited and MaxThera Inc.
July 2009	Biota and GSK concluded their litigation at mediation
June 2009	Phase IIa study of vapendavir (BTA798) achieved clinical proof-of-concept

Biota receives royalties from two marketed products, namely:

- Relenza™ (zanamivir)- partnered globally with GSK; and
- Inavir® (laninamivir) - a second generation influenza drug co-owned with Daiichi Sankyo and marketed by Daiichi Sankyo in Japan.

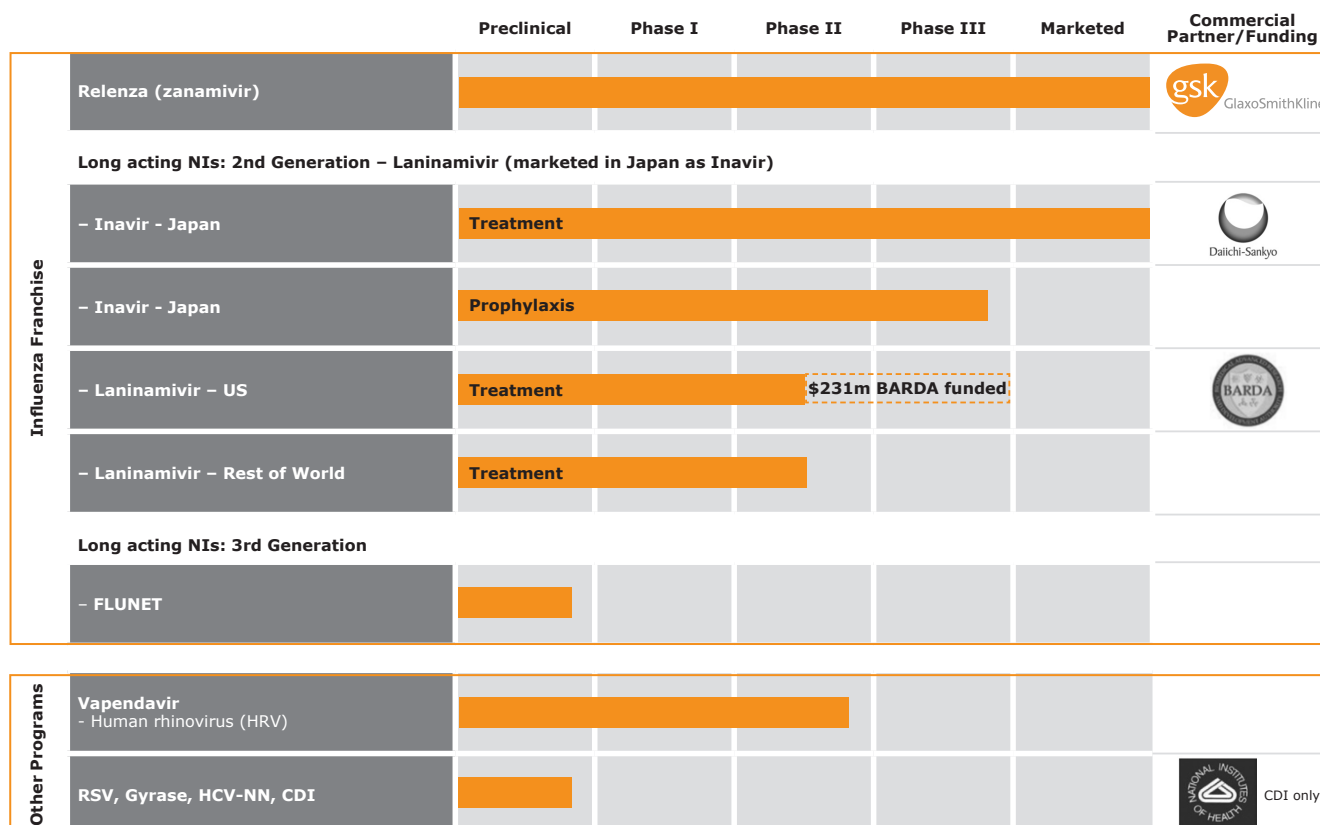
Other key products in development comprise:

- Laninamivir - is at an advanced stage of development under a contract with BARDA in the United States. The contract is worth up to US\$231 million and is intended to result in a New Drug Application in 2016 in the United States followed by other western markets;
- Vapendavir - has completed Phase IIb studies designed to establish the effect of the drug on cold symptoms in asthmatics, and which achieved the primary endpoint in March 2012; and
- RSV - a preclinical, small molecule antiviral intended to provide prophylaxis and treatment of respiratory syncytial virus (RSV) infection.

4.2 Overview of business

Biota's key programs are represented in the diagram below.

Broad infectious disease pipeline



biota

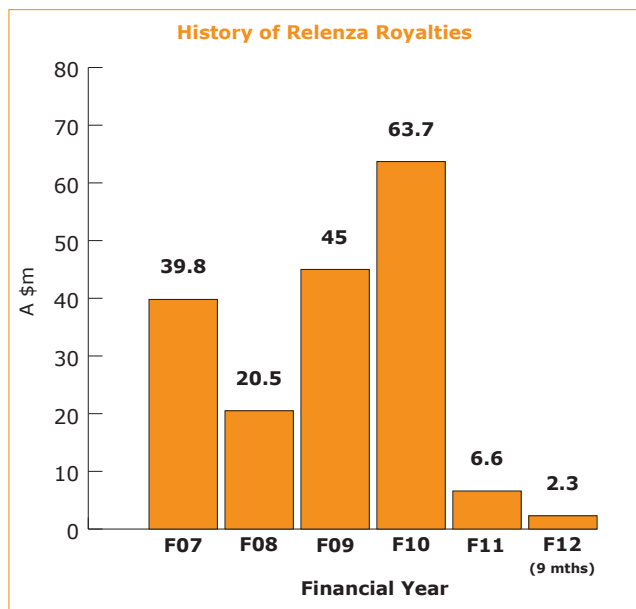
Note: Laninamivir and FLUNET benefited from NIH support
US Phase II and Phase III Laninamivir trials funded by BARDA

A short commentary on Biota's main programs is set out below.

Zanamivir

Biota licensed zanamivir, the world's first in class neuraminidase inhibitor (influenza antiviral), to GSK in 1990, which was subsequently marketed as Relenza™ in 1999. GSK holds exclusive rights to manufacture, market and sell zanamivir globally for which Biota receives royalties of 7% of net sales in major countries, and royalties of 10% of net sales in Australia, New Zealand, South Africa and Indonesia.

Royalties received by Biota from Relenza™ over the past five years and nine months up to 31 March 2012 are set out in the chart below.



In recent years, government purchases of Relenza™ for pandemic stockpiles have boosted royalties to Biota, particularly in the lead up to, and including, the 2009 H1N1 (swine flu) outbreak. The threat of another influenza pandemic remains ever present, and there are a number of countries that have aging stockpiles with inventory expiring from FY2012. Relenza™ royalties are expected to continue to provide an important revenue stream until key patents expire from December 2014 in the United States, May 2015 in the European Union and July 2019 in Japan.

Laninamivir

Collaboration and Licence Agreement

Laninamivir, Biota's second generation neuraminidase product (branded as Inavir®), is co-owned with Daiichi Sankyo, which markets Inavir® in Japan. Under a Collaboration and Licence Agreement entered into by Biota and Daiichi Sankyo, Biota receives a 4% royalty on those sales and may earn up to US\$18 million in sales milestone payments. The royalty rate can increase up to 6% of Daiichi Sankyo's net sales of Inavir® in Japan if laninamivir is licensed under suitable terms to a third party outside of Japan. The royalty may be reduced in the event that a generic equivalent to Inavir® is successfully launched in Japan.

Inavir® has been approved for the treatment of influenza in adults and children, and a Phase III prophylaxis study is underway. The product was first marketed in Japan for the 2010/2011 influenza season in which it generated royalties for Biota of A\$2.9 million. Royalties for the nine months to 31 March 2012 were A\$4.1 million. Under the Collaboration and Licence Agreement, Biota and Daiichi Sankyo have cross licensed to each other all patents and other information, including know-how, trade secrets, data and results relating to the LANI compound (which includes laninamivir).

Biota and Daiichi Sankyo are required to use their best efforts and work together to seek, on a world wide basis, third party licensees to develop a finished product that contains a LANI compound in order to maximise the commercial returns to the parties. Pursuant to the terms of the Collaboration and Licence Agreement, Biota and Daiichi Sankyo have formed a licensing committee to oversee the selection of third party licensees and the negotiation of license terms. All milestone, license, royalty, equity and other payments

received from third party licensees of a LANI compound outside of Japan are required to be divided equally between Biota and Daiichi Sankyo.

The Collaboration and Licence Agreement terminates upon the later of the expiration of all patents covering the product in Japan and 12 years from the launch of the product in Japan, unless terminated earlier for material breach.

BARDA Contract

Biota was awarded a contract with BARDA of up to US\$231 million, for the advanced development of laninamivir in the United States. The BARDA Contract provides for the completion of all manufacturing, technical and clinical work as well as the generation of all the necessary information required to file a United States New Drug Application which is expected to be lodged with the United States Food and Drug Administration (FDA) in 2016. If ultimate registration approval in the United States and other western markets is obtained, Biota would aim to become a significant supplier of neuraminidase inhibitors to the global stockpile market (excluding Japan).

The BARDA Contract is not a grant, and provides for the reimbursement to Biota of approved costs for work undertaken, plus a fee. Of the US\$231 million contract value, approximately US\$15 million represents the fixed fee component and approximately US\$216 million represents the estimated costs reimbursable by BARDA. Reimbursable costs include those costs incurred by Biota in respect of manufacturing, a pilot clinical evaluation, scale-up development and manufacturing facility design (but does not include facility construction).

The BARDA Contract is for 60 months commencing on 31 March 2011. Biota's entitlement to the approximately US\$15 million fixed fee component is contingent on it satisfying various "milestones" described below.

- Milestone 1: Within three months of the commencement of the BARDA Contract, Biota was required to provide to BARDA a comprehensive milestone-driven product development plan, inclusive of preclinical and clinical activities performed and completed prior to the commencement of the contract, and those clinical and manufacturing activities to be performed after the contract commenced. The product development plan has been submitted to BARDA.
- Milestone 2: Within six months of the commencement of the BARDA Contract, Biota was required to provide to BARDA a comprehensive clinical development and regulatory plan, including a summary of preclinical studies, and detailed descriptions of clinical evaluation and regulatory activities. The clinical development and regulatory plan has been submitted to BARDA.
- Milestone 3: Within nine months of the commencement of the BARDA Contract, Biota was required to provide to BARDA a manufacturing facility plan relating to a facility for the production of laninamivir, including pre-pandemic and pandemic facility management plans. The manufacturing facility plan has been submitted to BARDA.
- Milestone 4: Within 12 months of the commencement of the BARDA Contract, Biota was required to provide to BARDA a feasibility plan to manufacture, test and release product containing laninamivir. The feasibility plan has been submitted to BARDA.
- Milestone 5: Biota is required to provide to BARDA a work breakdown structure including comprehensive and integrated timelines and key objectives and its execution. This milestone is ongoing.

HRV

Human rhinovirus (HRV) infections are frequently associated with the common cold, a minor and mild disease in otherwise healthy individuals. However, there is a mounting body of medical evidence that links rhinovirus infection to exacerbations in patients with concurrent, underlying lung disease such as asthma or chronic obstructive pulmonary disease and which may require significant medical intervention to reinstate control of the underlying disease.

In June 2009 the lead candidate vapendavir (BTA798) was demonstrated to reduce the incidence and severity of an induced HRV infection in healthy subjects. In July 2010 Biota commenced a United States based Phase IIb study in subjects with chronic asthma, designed to establish the effect of vapendavir on cold symptoms in asthmatics when given shortly after the onset of an infection. On 28 March 2012, Biota announced that the primary endpoint of the Phase IIb study had been successfully achieved.

RSV

Respiratory syncytial virus (**RSV**) infection or bronchiolitis affects most children by the age of two; in certain children infection can be serious. Premature infants are particularly at risk of severe complications and there are no therapeutic treatments available. Biota has been active with its RSV program for a number of years and licensed an earlier lead compound to MedImmune/AstraZeneca. Development of that compound has ceased and all rights have reverted to Biota.

Since then, Biota has identified a new lead candidate which has an excellent pharmacokinetic profile. The new lead candidate is one of the few prospective antiviral drugs suitable for oral administration and that has demonstrated potent inhibition of RSV in both culture and animal models.

The product is at the preclinical stage of development.

4.3 Directors and management

This section 4.3 provides a short background of Biota Directors and management team members.

JAMES FOX (Chairman)

James Fox joined the Biota Board on 27 February 2009.

Dr Fox has extensive experience in global technology and healthcare businesses. He led the start up of Invetech, an Australian contract research and development company that specialised in healthcare products and complex instruments for international markets. Invetech merged with ASX listed Vision Systems Limited in 1993, and Dr Fox took over as Group Managing Director of the combined entity. In January 2007, Vision Systems Limited, then a leading global cancer diagnostics company, was acquired by Danaher Corporation. Prior to Invetech, Dr Fox spent seven years working as a consultant and director with PA Technology.

Dr Fox currently serves as Director of Genmark Diagnostics Inc., Air New Zealand Ltd, TTP Group plc and MS Research Australia (a not-for-profit organisation aimed at financing public multiple sclerosis research). Dr Fox received his Bachelor, Masters and PhD degrees in engineering from the University of Melbourne.

Dr Fox is a member of the Remuneration & Nominations Committee.

PETER COOK (Chief Executive Officer and Managing Director)

Peter Cook was appointed Chief Executive Officer and Managing Director of Biota on 9 December 2005.

Mr Cook has had extensive experience in restructures, mergers and acquisitions, innovation and innovation commercialisation with technology-based companies and has a strong manufacturing background. Mr Cook has extensive business experience within Australia, and has over 10 years of international commercial experience in Europe, the United States and Asia, where he has both lived and worked. Mr Cook holds a Masters Degree in Pharmacy and post graduate qualifications in Management from RMIT University. He is a Non-Executive Director of Quickstep Holdings Limited.

Prior to joining Biota, Mr Cook was the Chief Executive Officer and Managing Director of Orbital Corporation Limited, a powertrain engineering company with unique technologies in direct injection of internal combustion engines. Mr Cook previously held the positions of Chief Executive Officer of Faulding Pharmaceuticals, President of Ansell's Protective Products Division, Deputy Managing Director of Invetech and Director of Research and Development for Nicholas Kiwi.

PAUL BELL (Non-Executive Director)

Paul Bell was appointed a Director of Biota on 8 September 2006.

Mr Bell has extensive international business experience in the pharmaceutical, biotechnology and medical device industries. Most of his executive career was with Merck & Co Inc. including approximately 10 years as Managing Director of MSD Australia Pty Ltd from 1988 to 1997 and President of Merck & Co Inc.'s Asia Pacific Region from 1997 to 2002.

Mr Bell is currently a Non-Executive Director of Cochlear Limited and the Westmead Millennium Institute for Medical Research. He is a former director of Gropep Limited and Biolink Partners Limited, and a former member of the Business Development Advisory Board of the Garvan Institute of Medical Research and of the Australian Federal Government Pharmaceutical Partnerships Program Committee.

Mr Bell holds an MA (Hons) from the University of Canterbury, New Zealand and is Chairman of the Remuneration & Nominations Committee.

JEFF ERRINGTON (Non-Executive Director)

Jeff Errington was appointed a Director of Biota on 1 February 2010. Prof Errington is a renowned scientist in the field of microbial cell and molecular biology and is a Fellow of the Royal Society. Prof Errington is the Director of the Centre for Bacterial Cell Biology at Newcastle University. He is a world authority on the biochemical pathways responsible for bacterial replication, an essential pre-requisite to the successful development of novel antibacterial drugs.

Prof Errington holds a Bachelor of Science (BSc) from Newcastle University, a Doctorate (PhD) from the UK Centre for National Academic Awards and a Masters (MA) from the University of Oxford.

IAN GUST (Non-Executive Director)

Ian Gust was appointed a Director of Biota on 27 July 2001.

Prof Gust has had a long and distinguished career in medical research and has received wide international recognition for his contributions to the field of virology.

Prof Gust was the former Director of Research and Development at CSL Limited, a position he held for 10 years (1990-2000). During this period he was closely involved in CSL Limited's successful expansion in Australia and internationally. He currently serves as a Professorial Fellow, Department of Microbiology and Immunology, University of Melbourne; a consultant to several organisations funded by the Bill and Melinda Gates Foundation, UNICEF, the World Bank and the World Health Organisation.

Prof Gust holds an MD from the University of Melbourne and has post doctorate degrees in pathology and microbiology. He is a member of the Remuneration & Nominations Committee and the Audit & Risk Committee.

RICHARD HILL (Non-Executive Director)

Richard Hill was appointed a Director of Biota on 28 November 2008.

Mr Hill is currently Chairman of Sirtex Medical Limited, Calliden Group Limited and Blackwall Property Funds Limited, all ASX listed companies. Mr Hill is also Chairman of the Westmead Millennium Institute for Medical Research. He was a founding partner of Hill Young & Associates and formerly held a number of senior executive positions in Hong Kong and New York with Wardley Holdings Limited, a wholly owned subsidiary of Hong Kong & Shanghai Banking Corporation (**HSBC**). He is an Attorney in New York State, United States and holds a BA LLB (Sydney) and LLM (London).

Mr Hill is Chairman of the Audit & Risk Committee.

DAMIAN LISMORE (Chief Financial Officer and Company Secretary)

Damian Lismore was appointed Chief Financial Officer of Biota in 2005.

His commercial background includes 10 years with Price Waterhouse (now PwC) in Australia and six years with Deloitte Haskins & Sells in the United Kingdom. He has held several management roles including Group Financial Controller and General Manager Buying & Finance for the major Australian pharmaceutical company, Sigma.

Mr Lismore has extensive experience at all levels of the health care industry, particularly in acquisitions and restructures, commercialisation of new technologies and dealing with the investment community.

Mr Lismore holds a Bachelor of Arts (Honours) in Accountancy, is a member of the Institute of Chartered Accountants in Australia, a Fellow of the Institute of Chartered Accountants in Ireland and is a member of the Australian Institute of Company Directors.

JANE RYAN (Vice President, Product Development & Strategic Marketing)

Jane Ryan joined Biota in 1997.

Dr Ryan has many years of international experience in the pharmaceutical/biotechnology industry including 10 years experience gained overseas.

Dr Ryan has worked at Hoffman La Roche in the United States whilst a post doctoral fellow at Columbia University where she later joined as a faculty member, and Cambridge Antibody Technology in the UK which was owned 49% by Peptide Technology Ltd. Since returning to Australia, she has worked with Peptech Technology Ltd, before joining Biota where she has had roles in managing commercialisation of internal and external programs as well as business development, licensing and alliance management.

Dr Ryan is a member of the Board of Diabetes Australia Victoria and of the Board of Bio Innovation SA. Dr Ryan has a BSc (Hons) from Australian National University in Canberra and a PhD from Macquarie University in New South Wales.

LEIGH FARRELL (Vice President, Business Development)

Leigh Farrell was appointed Vice President, Business Development of Biota in 2006.

Prior to joining Biota, Dr Farrell spent approximately four years as an Associate Director at GBS Ventures Partners Limited, a specialist Life Sciences Venture Capital Fund. Dr Farrell previously held the positions of Research Manager at Johnson & Johnson Research Pty Ltd and Chief Executive Officer of Gene Shears Pty Limited.

Dr Farrell has extensive international experience in corporate finance, business development, licensing, relationship management and intellectual property portfolio management in the biotechnology and pharmaceutical industries. Dr Farrell was appointed to the inaugural Victorian Biotechnology Advisory Council (VBAC) in November 2011. The VBAC advises the Victorian State Government Minister for Technology on biotechnology strategy.

Dr Farrell holds a BSc (Hons) and PhD in Biochemistry.

SIMON TUCKER (Vice President, Research)

Simon Tucker joined Biota in 1997.

Dr Tucker has over 20 years of scientific and commercial experience in research and development. Prior to joining Biota in 1997, he held leadership positions in the United States pharmaceutical company, GD Searle, the University of Alabama (United States) and the University of Glasgow (United Kingdom). Dr Tucker has extensive international experience in biotechnology and pharmaceutical research and development, intellectual property management, research and development alliance management, licensing and related areas.

Dr Tucker holds a BSc (Hons) in Biochemistry from the University of Sussex, a PhD in Microbiology from the University of Reading and has completed post doctorate studies at the University of Alabama at Birmingham.

JOHN LAMBERT (Vice President, Product Development Operations)

John Lambert joined Biota in 2002 as Head of Chemistry and became Director of Research for the United States operation, Biota Inc., in 2004. On returning from the United States, Dr Lambert became Executive Director, Drug Discovery and in 2007 became Principal Director, Product Development Operations.

Prior to joining Biota, Dr Lambert was a Senior Lecturer at the University of Melbourne and is a co-founder of the biotechnology start-up company Cryptopharma Pty Ltd.

Dr Lambert graduated with a PhD from the University of Melbourne and undertook post-doctoral studies at Harvard University and the Australian National University, where he held a Queen Elizabeth II Fellowship. He has been the recipient of many other distinguished awards for his contributions to chemistry including the Royal Australian Chemical Institute's inaugural Cornforth Medal.

VIVIENNE GREEN (Vice President, Human Resources)

Vivienne Green was appointed as Vice President, Human Resources on 1 July 2011 after working with Biota as Human Resource Manager over the previous four years.

Ms Green has over 20 years experience in human resource management across a range of industry sectors including, manufacturing, information technology, electronic distribution and superannuation. The organisations she has worked with include multinationals, such as Kraft Foods, Ansell International and Hagemeyer, along with other smaller privately owned businesses.

Ms Green has experience as a human resource generalist covering areas such as, salary administration, recruitment and selection, people development, performance management, restructuring and acquisitions and expatriate relocations.

Ms Green holds a BA (Psych) and a Graduate Diploma in Applied Psychology. She is a registered psychologist and a member of the Australian Psychological Society.

4.4 Strategy

Biota has traditionally licensed its programs to pharmaceutical companies relatively early in the development process. Licenses have earned Biota important income in the form of upfront payments on signing the license; research and development fees in respect of ongoing work on the relevant licensed programs; payments on key clinical and other milestones; and royalties and milestone payments on sales. With the award of the BARDA Contract for the advanced development of laninamivir, the opportunity may arise to vary this traditional approach by means of direct sales to those countries that maintain stockpiles of influenza antivirals.

Biota currently intends to seek to identify suitable partners capable of selling laninamivir in the seasonal and/or prescription market. Biota expects these partners to be existing pharmaceutical companies that market other products and can leverage their existing sales forces.

In respect of clinical trials, Biota maintains a core expertise and uses contractors and clinical research organisations to conduct trials on an "as needs" basis.

4.5 Capital structure and ownership

As at the date of this Booklet, the total securities of Biota on issue were as follows:

- 182,350,316 ordinary shares; and
- 6,182,853 Biota Share Rights (being all Unvested Biota Share Rights).

Refer to section 12.4(f) of this Booklet for further information on the treatment of Biota Share Rights.

4.6 Historical financial information

Introduction

This section contains the following financial information in relation to Biota:

- the consolidated income statements for Biota for the last three financial years and interim consolidated income statements for Biota for the six months ended 31 December 2011 and for the nine months ended 31 March 2012; and
- the consolidated balance sheets for Biota as at 30 June 2011, 2010 and 2009 and interim consolidated balance sheets for Biota as at 31 December 2011 and 31 March 2012.

The interim financial statements for the nine months to 31 March 2012, including the consolidated income statements and balance sheets at that date were prepared for the purpose of the Nabi Proxy Statement and have also been provided to Australian shareholders. The above information is referred to collectively as the "Biota Financial Information".

The Biota Financial Information has been prepared in accordance with the recognition and measurement principles of Australian Accounting Standards and in accordance with Biota's accounting policies, as set out in the financial report of Biota for the year ended 30 June 2011. The Biota Financial Information also complies with International Financial Reporting Standards and interpretation adopted by the International Accounting Standards Board.

The Biota Financial Information has been derived from Biota's annual financial reports for the years ended 30 June 2009, 2010 and 2011, and the interim financial reports in respect of the six months ended 31 December 2011 and the nine months ended 31 March 2012. It therefore does not include all disclosures that are usually provided in an annual report prepared in accordance with the Corporations Act.

The Biota consolidated financial reports for the years ended 30 June 2009, 2010 and 2011, have been audited by PricewaterhouseCoopers in accordance with Australian Accounting Standards. The audit opinions issued to the members of Biota relating to those financial reports were unqualified.

The Biota consolidated interim financial report for the six months ended 31 December 2011 has been reviewed by PricewaterhouseCoopers in accordance with the Australian Auditing Standards applicable to review engagements. The review statement issued to the members of Biota relating to that financial report was unqualified. The Biota consolidated interim financial report for the nine months ended 31 March 2012 has no requirement to be subject to audit or review and has not been audited.

The following table sets out a summary of the audited income statements for Biota for the financial years ended 30 June 2011, 30 June 2010 and 30 June 2009.

Consolidated Income Statements Year ending 30 June	FY2011 A\$'000	FY2010 A\$'000	FY2009 A\$'000
Revenues from continuing operations	14,605	67,590	60,558
Other income	2,466	3,875	22,776
Expenses:			
Research and development	(20,682)	(21,749)	(13,332)
– Amortisation of antibacterial programs acquired	(2,894)	(8,777)	-
Product development	(15,569)	(11,245)	(11,300)
Business development	(834)	(995)	(982)
Sub-royalty amortisation	(1,213)	(4,096)	(4,222)
Corporate – head office	(5,044)	(4,319)	(4,436)
Corporate – Litigation	-	-	(7,244)
Profit/(Loss) before tax	(29,165)	20,284	41,817
Income tax (expense)/credit	1,075	(4,049)	(3,636)
Profit/(Loss) after tax	(28,090)	16,235	38,181
Profit/(Loss) attributable to members of Biota Holdings Limited	(28,090)	16,235	38,181

The following table sets out a summary of the audited balance sheets for Biota at 30 June 2011, 30 June 2010 and 30 June 2009.

Consolidated Balance Sheets 30 June	FY2011 A\$'000	FY2010 A\$'000	FY2009 A\$'000
ASSETS			
Current assets			
Cash and cash equivalents	70,011	104,867	86,704
Trade and other receivables	4,060	2,072	8,067
	74,071	106,939	94,771
Non-current assets			
Property, plant and equipment	5,457	6,761	6,924
Deferred tax asset	1,062	1,157	1,532
Intangible assets	2,971	7,310	8,402
Total non-current assets	9,490	15,228	16,858
Total assets	83,561	122,167	111,629
LIABILITIES			
Current liabilities			
Trade and other payables	4,090	9,427	5,631
Deferred revenue	143	2,610	5,262
Provisions	2,152	1,422	1,561
Current tax liability	-	3,674	-
Total current liabilities	6,385	17,133	12,454
Non-current liabilities			
Provisions	320	138	2,143
Total non-current liabilities	320	138	2,143
Total liabilities	6,705	17,271	14,597
Net assets	76,856	104,896	97,032
EQUITY			
Contributed equity	147,583	146,375	154,576
Reserves	208	1,366	1,536
Accumulated losses	(70,935)	(42,845)	(59,080)
Total equity	76,856	104,896	97,032

The following table sets out a summary of the interim income statements for Biota for the nine months ended 31 March 2012 and six months ended 31 December 2011.

Consolidated Income Statements	31 March	31 Dec
Period ending	2012	2011
	A\$'000	A\$'000
	(Unaudited)	(Reviewed)
Revenues from continuing operations	14,944	7,565
Other income	344	249
Expenses:		
Research and development	(11,887)	(8,124)
Product development	(11,065)	(7,769)
Business development	(710)	(489)
Sub-royalty amortisation	(1,061)	(606)
Corporate – head office	(3,851)	(2,452)
Loss before income tax	(13,286)	(11,626)
Income tax credit/(expense)	485	630
Loss for the period	(12,801)	(10,996)
Other comprehensive (expense)/income		
Exchange differences on translation of foreign operations	17	16
Other comprehensive income/(expense) for the period, net of tax	17	16
Total comprehensive (expense)/income for the period	(12,784)	(10,980)
Loss is attributable to:		
Owners of Biota Holdings Limited	(12,801)	(10,996)
Total comprehensive (expense)/income for the half-year is attributable to:		
Owners of Biota Holdings Limited	(12,784)	(10,980)

The following table sets out a summary of the interim balance sheets for Biota at 31 March 2012 and 31 December 2011.

Consolidated Balance Sheets	31 March	31 Dec
	2012	2011
	A\$'000	A\$'000
	(Unaudited)	(Reviewed)
ASSETS		
Current assets		
Cash and cash equivalents	51,361	56,540
Trade and other receivables	9,667	7,292
Total current assets	61,028	63,832
Non-current assets		
Plant and equipment	5,155	5,411
Deferred tax assets	1,547	1,692
Intangible assets	1,921	2,394
Total non-current assets	8,623	9,497
Total assets	69,651	73,329
LIABILITIES		
Current liabilities		
Trade and other payables	2,201	4,428
Deferred revenue	389	486
Provisions	2,018	1,710
Total current liabilities	4,608	6,624
Non-current liabilities		
Provisions	424	468
Total non-current liabilities	424	468
Total liabilities	5,032	7,092
Net assets	64,619	66,237
EQUITY		
Contributed equity	147,959	147,992
Reserves	396	246
Retained losses	(83,736)	(81,931)
Total equity	64,619	66,237

Further information

The Biota Financial Information does not, and cannot be expected to, provide as full an understanding of the financial performance, financial position and investing activities as the full consolidated financial reports. Copies of Biota's 2009, 2010 and 2011 financial reports, including consolidated financial reports, are available on the ASX website at www.asx.com.au.

4.7 Financial forecast

Biota has given careful consideration as to whether a reasonable basis exists to produce reliable and meaningful forecast financial information. Biota Directors have concluded that forecast financial information would be misleading to provide, as a reasonable basis does not exist for providing forecasts that would be sufficiently meaningful and reliable as required by applicable law, policy and market practice. The financial performance of Biota in any period will be influenced by various factors that are outside the Biota Directors' control and that cannot, at this time, be predicted with an adequate level of confidence. In particular, the financial performance of Biota will be materially affected by:

- the degree and severity of influenza outbreaks, which ultimately impacts income from the influenza products; and
- the ability of the company to secure licences from pharmaceutical companies for its programs.

4.8 Share price performance

The price for Biota Shares at close of trade on 3 August 2012, the last trading date prior to the date of this Booklet, was A\$0.67 per share.

Information on the Biota share price over the last five years is set out below in the following table:

Financial Year	Balance date	High	Low
FY2012	0.690	A\$1.070	A\$0.685
FY2011	A\$0.955	A\$1.530	A\$0.855
FY2010	A\$1.020	A\$3.410	A\$1.020
FY2009	A\$1.195	A\$1.580	A\$0.295
FY2008	A\$0.770	A\$1.840	A\$0.770

4.9 No material changes in the financial position of Biota

Within the knowledge of the Biota Directors and other than as disclosed in this Booklet, the financial position of Biota has not materially changed since 30 June 2011, being the date of the last audited balance sheet sent to Biota Shareholders. Refer to section 4.6 of this Booklet for Biota financial information for the nine months ended 31 March 2012 and a balance sheet on that date.

4.10 Additional information

Biota is a 'disclosing entity' for the purposes of s111AC(1) the Corporations Act and, as such, is subject to regular reporting and disclosing obligations.

Biota has an obligation under the Listing Rules (subject to some exceptions) to notify ASX immediately of any information concerning it of which it becomes aware that a reasonable person would expect to have a material effect on the price or value of Biota Shares.

Biota's recent announcements are available from ASX's website at www.asx.com.au and Biota's website at www.biota.com.au. Further announcements will continue to be made available at these websites after the date of this Booklet.

5. Profile of Nabi

5.1 Overview of Business

Nabi has been incorporated in Delaware since 1969. Nabi is a biopharmaceutical company focused on the development of vaccines addressing unmet medical needs, including nicotine addiction. The Company sought to leverage its experience and knowledge in powering the human immune system.

Nabi's remaining product currently in development is NicVAX[®] (Nicotine Conjugate Vaccine), an innovative and proprietary investigational vaccine for the treatment of nicotine addiction and prevention of smoking relapse based on patented technology. NicVAX[®] suffered a significant setback in 2011 when NicVAX[®] did not achieve the primary endpoint in two Phase III efficacy trials conducted in the United States.

In November of 2011, the Nabi Board retained Piper Jaffray & Co. (Piper Jaffray) to assist with the exploration of strategic alternatives available to the company.

As at 31 March 2012, Nabi's remaining assets included the following: (i) US\$94.9 million of cash and cash equivalents, (ii) the potential residual value of NicVAX[®] as well as any next generation nicotine vaccine which was licensed to GlaxoSmithKline (**GSK**) in 2010, (iii) the potential royalty from Phoslyra[®] which was sold to Fresenius USA Manufacturing, Inc. (**Fresenius**) in 2006, and (iv) the potential value of Nabi's net operating losses.

In 2006, Nabi sold the assets related to the PhosLo[®] operations. Under the sale agreement, US\$65 million was received in cash and Nabi remains entitled to milestone payments and royalties. The royalties relate to sales on Phoslyra[®] in excess of US\$32 million. In August of 2011, Nabi announced that Fresenius had successfully launched the new product formulation, Phoslyra[®], and a US\$5 million milestone payment was received. A further US\$18 million milestone was received by 31 December 2011. Nabi may also receive a further US\$67.5 million in additional milestone payments and royalties before the agreement expires in November 2016.

A short commentary on Nabi's main past and current programs is set out below.

NicVAX[®]

NicVAX is being studied in an ongoing investigator-initiated combination clinical trial in the Netherlands with Pfizer's varenicline (Chantix/Champix), the results of which are expected in the second half of 2012.

NicVAX Agreement with GSK

In March 2010, Nabi closed an exclusive worldwide option and licensing agreement for NicVAX[®] and NicVAX[®] related products, with GSK. Nabi received a US\$40 million initial payment and granted GSK (i) an option for an exclusive worldwide license to develop, commercialise and manufacture NicVAX[®], as well as certain alternate forms of NicVAX[®] including different presentations, dosage or routes of administration (**NicVAX[®] Alternatives**), and (ii) an exclusive worldwide license to develop, commercialise and manufacture future vaccines for the prevention or treatment of nicotine addiction based on Nabi's NicVAX[®] intellectual property (other than NicVAX[®] and NicVAX[®] Alternatives) using GSK proprietary adjuvants. During the quarter ended 31 March 2012, GSK informed Nabi that it does not intend to exercise the NicVAX[®] option due to the failure of the Phase III trials to achieve their primary endpoints. However, GSK has not indicated that it has terminated its development of other future generation nicotine vaccines.

Should any future generation nicotine vaccine be successfully developed by GSK, GSK may be required to pay (i) up to US\$47 million for Phase II and Phase III clinical trial-related milestones, (ii) up to US\$34 million on obtaining regulatory approval in certain major markets, and (iii) up to a total of US\$209 million on achieving certain annual sales targets plus royalty payments of between 5% and 7% based on annual net sales. Nabi is not aware of GSK's intentions for the further development of nicotine vaccines under that licence.

PentaStaph Sale to GSK

In November 2009, Nabi sold its PentaStaph product candidate and related assets to GSK under an Asset Purchase Agreement for a total consideration of US\$46 million including a US\$20 million up-front payment and US\$26 million payable upon achievement of certain milestones, all of which Nabi has received. During the second quarter of 2011, Nabi completed its work to help develop PentaStaph under contract with GSK.

PhosLo[®]

In 2006, Nabi sold the assets related to its PhosLo[®] operations to Fresenius. Under the sale agreement, Nabi is entitled to an additional milestone payment of US\$2.5 million on the approval of a new indication for PhosLo[®] and royalties of up to US\$65 million on annual sales of Phoslyra[®], a new formulation of PhosLo[®]. The agreement which expires in November 2016, provides for royalties on Phoslyra[®] in excess of US\$32 million. Phoslyra[®] was launched in late 2011 and has not yet achieved the sales threshold for royalties.

5.2 Directors and management

A short background of Nabi Directors and management team follows:

JASON ARYEH (Director)

Jason Aryeh has been a director of Nabi since late 2006. He is the Founder and Managing General Partner of JALAA Equities, LP, a private hedge fund focused on the Biotechnology and Specialty Pharmaceutical Sector. He has served in such capacity since 1997. Mr Aryeh currently serves on the board of directors of Ligand Pharmaceuticals, a public biotechnology company, CorMatrix Cardiovascular, Inc., a medical device company, Myrexix, Inc., a biotechnology company, and the Cystic Fibrosis Foundation's Therapeutics Board (CFFT).

DAVID L. CASTALDI (Director)

David L. Castaldi has been a director of Nabi since 1994. Since 1994 he has been an independent consultant to and an entrepreneur in the life science industry. Mr Castaldi founded Cadent Medical Corp., a medical device company that was sold to Cardiac Science, Inc. While at Cadent, Mr Castaldi served as Chairman of the Board from 1996 to 2001 and as Chief Executive Officer from 1998 to 1999. Previously, Mr Castaldi was founder and Chief Executive Officer of BioSurface Technology, Inc., a Nasdaq-listed biotechnology company sold to Genzyme Corporation, and President of the worldwide protein-based pharmaceuticals division of Baxter International. He is a graduate of the University of Notre Dame and Harvard Business School. Mr Castaldi serves on the boards of directors of three privately-held biopharmaceutical and medical device companies, and previously served on the board of directors of Embrex, Inc., an agricultural biotechnology company.

GEOFFREY F. COX (Chairman)

Geoffrey F. Cox has been a director of Nabi since 2000 and has served as non-executive Chairman of the Board of Directors of Nabi since February 2007. Dr Cox is a partner with Red Sky Partners LLC and a member of the board of directors of QLT Inc. Dr Cox served as Chairman of the Board, President and Chief Executive Officer of GTC Biotherapeutics, Inc., a biopharmaceutical company, from 2001 to 2010. From 1997 to 2001, he was Chairman of the Board and Chief Executive Officer of Aronex Pharmaceuticals, Inc., a biotechnology company. From 1984 to 1997, he was employed by Genzyme Corporation, a biotechnology company, last serving as its Executive Vice President, Operations. Dr Cox is Chairman of the Board of the Massachusetts Biotechnology Council (MassBio) and served for a number of years on the Board of the Biotechnology Industries Association (BIO), together with the Health Governing Sections and Emerging Companies Sections of BIO. Dr Cox received a BS in biochemistry from the University of Birmingham, United Kingdom, and a PhD in biochemistry from the University of East Anglia, United Kingdom.

PETER B. DAVIS (Director)

Peter B. Davis has been a director of Nabi since 2006. He is currently an independent consultant. He served as Vice President Finance and Chief Financial Officer of XOMA Ltd., a biotechnology company, from 1994 to his retirement in June 2005. From 1991 to 1994 he served as Vice President Financial Operations for the Ares Serono Group, a global pharmaceutical company. From 1988 to 1991, he was Vice President, Chief Financial Officer of Akzo America Inc., a subsidiary of a diversified Dutch chemical company. From 1985 to 1988, he was Controller-International Division of Stauffer Chemical Corporation, and from 1972 to 1985, he was employed by PepsiCo Inc., last serving as Division Finance Director of Pepsi-Cola International.

RICHARD A. HARVEY, Jr. (Director)

Richard A. Harvey, Jr. has been a director of Nabi since 1992. He has been President of Stonebridge Associates, LLC, an investment banking firm, since 1996. Mr Harvey has 35 years of experience advising mid-cap and small-cap companies on matters involving corporate finance and strategic transactions.

RAAFAT E.F. FAHIM (Director, President & Chief Executive Officer, Acting Chief Financial Officer)

Raafat Fahim has been President, Chief Executive Officer and a director of Nabi since January 2008 and acting Chief Financial Officer of Nabi since May 2008. From July 2007 to January 2008, Dr Fahim served as Senior Vice President, Research, Technical and Production Operations of Nabi and Chief Operating Officer and General Manager of its Biologics Strategic Business Unit. From March 2003 to July 2007, Dr Fahim served as Senior Vice President, Research, Technical and Production Operations of Nabi. Dr Fahim is also non-executive Chairman of the Board of VM Farms, a Toronto, Canada-based private equity web hosting technology company. From 2002 to 2003, Dr Fahim was an independent consultant, working with Aventis Pasteur, a pharmaceutical company, and other companies worldwide on projects that included manufacturing, process improvement, quality operations and regulatory issues. From 2001 to 2002, he served as President and Chief Operating Officer of Lorus Therapeutics, Inc., a biopharmaceutical company. From 1987 to 2001, Dr Fahim was employed by Aventis Pasteur where he was instrumental in developing several vaccines from early research to marketed products. During his employment with Aventis Pasteur, Dr Fahim held the positions of Vice President, Industrial Operations, Vice President, Development, Quality Operations and Manufacturing, Director of Product Development, and head of bacterial vaccines research/research scientist.

Paul Kessler (Senior Vice President, Clinical, Medical and Regulatory Affairs and Chief Medical Officer)

Paul Kessler has been the Senior Vice President, Clinical, Medical and Regulatory and Chief Medical Officer at Nabi since March 2007. He joined Nabi in March 2005 as Senior Director, Clinical Research, and in April 2006, he was promoted to Vice President, Clinical Research. From 1998 to 2005, he served in several positions at GenVec, Inc., a gene therapy company, including Program Director, Director Clinical Research, Senior Director Clinical Research, and Executive Director Clinical Research. From 1989 to 1998, he was an Assistant Professor and later Associate Professor of Medicine at the Johns Hopkins University School of Medicine, where he conducted gene and cell therapy research and where he was an attending cardiologist on the Heart Failure and Transplant Service. He earned a B.S. from the University of Pittsburgh, a MSc from the University of London, and an MD from Columbia University College of Physicians and Surgeons. He trained in Medicine and Cardiology at The Mount Sinai Hospital, New York, and Johns Hopkins.

Matthew W. Kalnik (Senior Vice President, Strategic Planning and Business Operations)

Matthew Kalnik was appointed to the role of Senior Vice President, Strategic Planning and Business Operations at Nabi in March 2009. He joined Nabi as Vice President, Business Development and Project Management in July 2007. Prior to joining Nabi, Dr Kalnik held senior management team positions at innovative biotechnology companies including Executive Vice President, Head of Business Development, at VistaGen Therapeutics and Senior Vice President, Business Development and Licensing, and corporate officer at Genaissance Pharmaceuticals. He has also served in an executive capacity in R&D and commercial development at global pharmaceutical companies Pfizer (Pharmacia) and Daiichi Medical Research including Executive Director, Commercial Development; Sr. Director, Development Technology, Medical Research; and Director, Technology Acquisitions, Discovery Research & Exploratory Development. Dr. Kalnik also founded Hedgerow Consulting and has authored more than a dozen primary research papers. He holds a Bachelor of Science in Chemistry from the University of North Carolina at Chapel Hill (1984) and an MA MSc & PhD in Molecular Biophysics from Columbia University (1989) and conducted his post-doctoral fellowship in Molecular Biology at The Scripps Research Institute in La Jolla, California.

5.3 Historical financial information*Introduction*

This section contains the following financial information in relation to Nabi:

- a summary of the audited consolidated statement of operations for Nabi for the years ended 31 December 2011, 25 December 2010 and 26 December 2009; and
- a summary of the audited consolidated balance sheets for Nabi for the years ended 31 December 2011, 25 December 2010 and 26 December 2009.

The above information is referred to collectively as the "Nabi Financial Information".

Nabi is a United States company and it therefore prepares its annual reports in US\$ in accordance with US GAAP. The Biota Directors believe that the presentation of the Nabi Financial Information in accordance with US GAAP is useful for Biota Shareholders, as the holders of Biota Pharmaceuticals Shares will receive financial information in respect of Biota Pharmaceuticals in US GAAP if the Scheme is implemented.

The Nabi Financial Information has been derived from Nabi's consolidated financial reports for the years ended 31 December 2011, 25 December 2010 and 26 December 2009 and does not include all disclosures that are usually provided in a financial report. The Nabi consolidated financial reports for the years ended 31 December 2011, 25 December 2010 and 26 December 2009 have been audited by Ernst & Young LLP in accordance with the standards of the Public Accounting Oversight Board (United States). The audit opinions issued to the members of Nabi relating to those financial reports were unqualified. Neither the Nabi consolidated financial reports for the years ended 31 December 2011, 25 December 2010 and 26 December 2009 nor the Nabi Financial Information has been audited or reviewed in accordance with Australian Auditing Standards.

Currency conversion

For the purposes of preparing the Nabi Financial Information in A\$, the amounts in the tables below have been converted on the following basis:

- items of income and expense and cash inflows and cash outflows have been converted based on the average exchange rate for the relevant period; and
- assets, liabilities and equity items have been converted based on the closing exchange rate at 31 December 2011, 25 December 2010 and 26 December 2009 (as applicable).

The following table sets out a summary of the consolidated statement of operations for Nabi for the financial years ended 31 December 2011, 25 December 2010 and 26 December 2009.

Consolidated statement of operations for Year ending	31 Dec 2011		25 Dec 2010		26 Dec 2009	
	US\$'000	A\$'000	US\$'000	A\$'000	US\$'000	A\$'000
Exchange rate (1.0000 US\$)*		1.0325		0.9176		0.7892
Revenue						
Revenue	14,838	14,371	35,005	38,148	10,489	13,291
Operating expenses						
Cost of services	1,463	1,417	3,951	4,306	1,988	2,519
Research and development expenses	17,765	17,206	26,078	28,420	16,490	20,895
General and administrative expenses	5,372	5,203	6,174	6,728	9,987	12,655
Total operating expenses	24,600	23,826	36,203	39,454	28,465	36,068
Operating loss	(9,762)	(9,455)	(1,198)	(1,306)	(17,976)	(22,777)
Interest income	194	188	230	251	368	466
Interest expense	-	-	(210)	(229)	(1,071)	(1,357)
Other income (expense), net	37	36	291	317	(48)	(61)
Loss from continuing operations before income taxes	(9,531)	(9,231)	(887)	(967)	(18,727)	(23,729)
Benefit from income taxes	2,018	1,954	1,765	1,923	-	-
Income (loss) from continuing operations	(7,513)	(7,277)	878	957	(18,727)	(23,729)
Income from discontinued operations, (net of tax provision of \$2,018 in 2011)	2,982	2,888	-	-	-	-
Net income (loss)	(4,531)	(4,388)	878	957	(18,727)	(23,729)

* Average exchange rate for the relevant period.

The following table sets out a summary of the consolidated balance sheets for Nabi at 31 December 2011, 25 December 2010 and 26 December 2009.

Consolidated statement of operations as at balance date	31 Dec 2011		25 Dec 2010		26 Dec 2009	
	US\$'000	A\$'000	US\$'000	A\$'000	US\$'000	A\$'000
Exchange rate (1.0000 US\$)*		1.0174		1.0037		0.8837
ASSETS						
Current assets						
Cash and cash equivalents	94,310	92,697	53,564	53,367	59,510	67,342
Marketable securities	2,079	2,043	54,603	54,402	59,489	67,318
Receivables	995	978	1,030	1,026	9,122	10,323
Prepaid expenses and other current assets	497	489	829	826	1,572	1,779
Total current assets	97,881	96,207	110,026	109,620	129,693	146,761
Marketable securities	-	-	2,500	2,491	-	-
Property and equipment, net	84	83	597	595	855	968
Other assets	-	-	748	745	769	870
Total assets	97,965	96,290	113,871	113,451	131,317	148,599
LIABILITIES AND STOCKHOLDERS' EQUITY						
Current liabilities						
Accounts payable	146	144	552	550	1,735	1,963
Accrued expenses and other current liabilities	1,918	1,885	7,377	7,350	4,961	5,614
Deferred revenue, current portion	2,526	2,483	7,797	7,768	18,447	20,875
2.875% convertible senior notes net	-	-	-	-	5,951	6,734
Current liabilities of discontinued operations	1,662	1,634	2,207	2,199	2,816	3,187
Total current liabilities	6,252	6,145	17,933	17,867	33,910	38,373
Deferred revenue	32,842	32,280	35,368	35,238	-	-
Total liabilities	39,094	38,425	53,301	53,105	33,910	38,373
Stockholders' equity						
Convertible preferred stock, par value \$0.10 per share; 5,000,000 shares authorised; no shares outstanding	-	-	-	-	-	-
Common stock, par value \$0.10 per share; 125,000,000 shares authorised; 63,588,882, 63,206,393 and 62,782,990 shares issued, respectively	6,359	6,250	6,321	6,298	6,278	7,104
Additional paid-in capital	373,157	366,775	370,366	369,001	365,841	413,988
Treasury stock, 20,696,277 for 2011 and 2010 and 12,930,460 for 2009 shares at cost	(92,567)	(90,984)	(92,567)	(92,226)	(50,267)	(56,882)
Other comprehensive loss	-	-	(3)	(3)	(20)	(23)
Accumulated deficit	(228,078)	(224,177)	(223,547)	(222,723)	(224,425)	(253,961)
Total stockholders' equity	58,871	57,864	60,570	60,347	97,407	110,226
Total liabilities and stockholders' equity	97,965	96,290	113,871	113,451	131,317	148,599

* Closing exchange rate on the relevant date.

Further Information

The Nabi Financial Information does not, and cannot be expected to, provide as full an understanding of the financial performance, financial position and financing and investing activities of Nabi as the full consolidated financial reports. Copies of Nabi's 2011, 2010 and 2009 annual reports including consolidated financial reports are available on the SEC website at www.sec.gov.

5.4 Share price performance

Nabi Shares are listed on NASDAQ. Information on the price of Nabi Shares over the last three months up to the date of this Booklet is set out in the following table:

Event	Date	Share Price
Closing price of Nabi Shares immediately prior to the lodgement of this Booklet with ASIC	3 August 2012 (United States time)	US\$1.58
Closing price of Nabi Shares immediately prior to the announcement of the proposed Merger	20 April 2012 (United States time)	US\$1.85
Highest recorded price of Nabi Shares within the last three months	8 May 2012 and 10 May 2012	US\$1.74
Lowest recorded price of Nabi Shares within the last three months	20 June 2012	US\$1.53

In addition, information on the price of Nabi Shares over the last five years is set out in the following table:

Year	Balance date	High	Low
Year 2012 to date	n/a	US\$2.03	US\$1.53
Year 2011	US\$1.88	US\$5.98	US\$1.50
Year 2010	US\$5.645	US\$6.42	US\$4.40
Year 2009	US\$4.82	US\$5.30	US\$2.15
Year 2008	US\$3.26	US\$6.16	US\$2.75
Year 2007	US\$3.77	US\$6.83	US\$3.01

5.5 No material changes in the financial position of Nabi

Within the knowledge of the Nabi Directors and other than as disclosed in this Booklet and in Nabi's Quarterly Report on Form 10-Q filed with the SEC for the quarter ended 31 March 2012, the financial position of Nabi has not materially changed since 31 December 2011, being the date of the last audited balance sheet of Nabi. See below at section 5.6 of this Booklet for information on how to access Nabi's SEC filings.

5.6 Additional information

Nabi files annual, quarterly and current reports, proxy statements and other information with the SEC. Nabi's SEC filings are available to the public at the SEC's website at www.sec.gov or at Nabi's website at www.nabi.com. Nabi will file a proxy statement with the SEC for a special meeting of Nabi Shareholders to consider and vote upon the Nabi Transaction Proposals. A preliminary proxy statement has been filed with the SEC but will not be sent to Nabi Shareholders. Only Nabi's definitive proxy statement, which will also be filed with the SEC, will be sent to Nabi Shareholders. The information provided in Nabi's SEC filings (or available on Nabi's website) is not part of this Scheme Booklet and is not incorporated by reference.

6. Profile of Biota Pharmaceuticals

6.1 Overview of Biota Pharmaceuticals

Biota Pharmaceuticals retains the current business of Biota and combines it with a potential income stream from Phoslyra® and cash of US\$54 million.

Therefore, Biota Pharmaceuticals will have:

- a United States NASDAQ listing;
- a meaningful United States shareholder base which should assist share trading liquidity;
- three products capable of generating royalties, namely Relenza™, Inavir® and Phoslyra®;
- a contract of up to US\$231 million with BARDA to develop a second generation influenza product (laninamivir) for the United States market;

- a clinical program for human rhinovirus (vapendavir) that successfully completed a Phase IIb study in asthmatics in March 2012;
- a number of preclinical programs in other infectious diseases, including respiratory syncytial virus (**RSV**), Hepatitis C and bacterial infections;
- a right to receive a portion of income generated from any NicVAX Transactions; and
- estimated cash of US\$100 million.

The combined key programs of Biota and Nabi are represented in the diagram below.

Pro Forma Nabi/Biota – combined pipeline

	Preclinical	Phase I	Phase II	Phase III	Marketed	Commercial Partner/Funding
Influenza Franchise						
Relenza (zanamivir)	[Progress bar across Preclinical to Marketed]					
Long acting NIs: 2nd Generation – Laninamivir (marketed in Japan as Inavir)						
– Inavir - Japan	[Progress bar across Preclinical to Marketed, labeled Treatment]					
– Inavir - Japan	[Progress bar across Preclinical to Phase III, labeled Prophylaxis]					
– Laninamivir – US	[Progress bar across Preclinical to Phase II, labeled Treatment, with \$231m BARDA funded highlighted]					
– Laninamivir – Rest of World	[Progress bar across Preclinical to Phase II, labeled Treatment]					
Long acting NIs: 3rd Generation						
– FLUNET	[Progress bar across Preclinical to Phase I]					
Other Programs						
Phoslyra – calcium acetate oral solution	[Progress bar across Preclinical to Marketed]					
Vapendavir – Human rhinovirus (HRV)	[Progress bar across Preclinical to Phase II]					
NicVAX – nicotine conjugate vaccine	[Progress bar across Preclinical to Phase II, labeled Smoking Cessation & Relapse Prevention (EU)]					
RSV	[Progress bar across Preclinical to Phase I]					
Gyrase, HCV-NN, CDI	[Progress bar across Preclinical to Phase I]					CDI only

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Refer to sections 4.1 and 5.1 of this Booklet for further information on the key programs.

6.2 Current intentions of the Biota Board and Nabi Board for Biota Pharmaceuticals

This section sets out the current intentions of the Biota Board and Nabi Board for Biota Pharmaceuticals if the Scheme becomes Effective.

These statements of intention are formed on the basis of publicly available information as at the date of this Booklet as well as information made available in the course of due diligence carried out by Biota on the businesses of Nabi and due diligence carried out by Nabi on the businesses of Biota.

The Biota Pharmaceuticals Board and senior management will be responsible for commercialising the programs to maximise value for Biota Pharmaceuticals Shareholders.

Accordingly, the statements set out in this section are statements of current intentions only which may vary as new information becomes available or circumstances change and the Biota Pharmaceuticals Board further develops its strategic focus and outlook.

(a) Removal of Biota from the official list of ASX

If the Scheme is implemented, Biota will be removed from the official list of ASX in accordance with the ASX Listing Rules. In exchange, Biota Shareholders will receive Biota Pharmaceuticals Shares which will be listed on NASDAQ.

(b) Ownership

Following implementation of the Scheme, Biota Shareholders will collectively own approximately 74% of Biota Pharmaceuticals. The remaining approximately 26% will be owned by Nabi Shareholders.

(c) Directors of Biota Pharmaceuticals

If the Scheme is implemented, it is intended that Biota Pharmaceuticals will reconstitute its board of directors, with effect on the Implementation Date, with the board to be comprised of the following persons:

- Dr James Fox (current Chairman and Non-Executive Director of Biota);
- Mr Peter Cook (current Chief Executive Officer and Managing Director of Biota);
- Mr Paul Bell (current Non-Executive Director of Biota);
- Prof Jeffrey Errington (current Non-Executive Director of Biota);
- Prof Ian Gust (current Non-Executive Director of Biota);
- Mr Richard Hill (current Non-Executive Director of Biota);
- Dr Geoffrey F. Cox (current Chairman and Non-Executive Director of Nabi); and
- Dr Raafat E. F. Fahim (current President, Chief Executive Officer, acting Chief Financial Officer and Director of Nabi).

If the Scheme is implemented the above appointments will take place on the Implementation Date. It is expected that a number of members of the Biota Pharmaceuticals Board will not stand for election at the first shareholders meeting following the Merger. Thereafter, it is expected that there will be a smaller number of members of the board and a majority of United States based directors.

(d) Senior management of Biota Pharmaceuticals

It is anticipated that senior management positions in Biota Pharmaceuticals will be filled principally from current members of the Biota management teams.

(e) Future employees

Other than as set out in this Booklet, it is the current intention of the Biota Board and Nabi Board that Biota employees will continue to be employed by Biota on their current terms after the Implementation Date, from which time, Biota will be a wholly owned subsidiary of Biota Pharmaceuticals.

The Chief Executive Officer of Biota, Mr Peter Cook, and the Chief Financial Officer of Biota, Mr Damian Lismore, will fill those roles within Biota Pharmaceuticals for an appropriate transition period until United States based executives are appointed and assume responsibility.

(f) Strategic direction and Continuation of Biota businesses

It is the current intention of Biota and Nabi that Biota Pharmaceuticals will aim to commercialise Biota's programs, whether through out-licensing or advancing programs further into clinic or ultimately to market.

It is also the current intention of Biota and Nabi that Biota Pharmaceuticals will continue to operate the business of Biota in substantially the same manner following implementation of the Merger as the manner in which it is currently conducted.

However, taking into account Biota Pharmaceuticals' enhanced financial strength, it will have the opportunity and resources to accelerate its projects if this is determined to be value enhancing to shareholders.

Furthermore, it is Biota's and Nabi's intention that Biota Pharmaceuticals will focus on the continued delivery of the BARDA Contract to advance the development of laninamivir in the United States. Full delivery under the contract could allow Biota Pharmaceuticals to evolve to an integrated pharmaceutical company, selling its own products.

(g) Name of the merged group

If the Scheme is approved, Nabi (of which Biota will be a subsidiary) will be re-named Biota Pharmaceuticals, Inc..

(h) Dividend policy

As Biota Pharmaceuticals will continue to focus on the development of its portfolio of late and early stage programs, it is unlikely that this strategy will generate recurring profits for distribution to shareholders in the near future.

6.3 Pro forma historical financial information

Introduction

This section contains the following financial information in relation to Biota Pharmaceuticals:

- Unaudited pro forma condensed consolidated statement of operations for Biota Pharmaceuticals for the 12 months ended 31 December 2011 and for the three months ended 31 March 2012. These have been prepared to illustrate the pro forma historical results of Biota Pharmaceuticals as if the Scheme had been implemented on 1 January 2011 and 1 January 2012 (respectively).
- Unaudited pro forma condensed consolidated balance sheet for Biota Pharmaceuticals as at 31 March 2012. This has been prepared to illustrate the pro forma balance sheet of Biota Pharmaceuticals as at 31 March 2012 as if the Scheme had been implemented on 31 March 2012.

The above information is collectively referred to as the "Biota Pharmaceuticals Financial Information".

The pro forma adjustments in the Biota Pharmaceuticals Financial Information reflecting the completion of the Merger are based upon the acquisition method of accounting in accordance with US GAAP. Under the acquisition method of accounting, the Merger will be accounted for as a reverse acquisition and Biota will be treated as the accounting "acquirer" and Nabi will be treated as the "acquired" company for financial reporting purposes. The reason for this is that upon completion of the Merger, Biota Shareholders will hold a majority of the voting interest of Biota Pharmaceuticals. In addition, the eight member board of directors of Biota Pharmaceuticals will be comprised of six of the current members of the Biota Board and therefore the Biota Board will possess majority control of the Biota Pharmaceuticals Board if the Merger is implemented. Members of the current management of Biota will be responsible for the management of the combined company and the majority of the combined company's activities will be activities related to Biota's current business.

The Biota Pharmaceuticals Financial Information has been prepared in accordance with US GAAP as this will be the reporting framework applied by the combined company. It is presented in abbreviated form in so far as it does not include all disclosures required by US GAAP applicable to annual financial statements prepared by reporting issuers in the United States, or by Australian Accounting Standards applicable to annual financial reports prepared in accordance with the Corporations Act.

The Biota Pharmaceuticals Financial Information should be read in conjunction with the rest of this Booklet, the consolidated financial statements and related notes of Biota (see section 4.6 of this Booklet), the consolidated financial statements and related notes of Nabi (see section 5.3 of this Booklet) and the notes below.

Basis of preparing Biota Pharmaceuticals Financial Information

The historical financial data has been adjusted to give pro forma effect to events that are (i) directly attributable to the Merger, (ii) factually supportable, and (iii) with respect to the income statements, expected to have a continuing impact on the combined results.

Nabi's main product NicVAX[®] suffered a significant setback in 2011 when it did not achieve the primary endpoint in two Phase III efficacy trials. Given this, the combined company's income statement going forward will be materially represented by the Biota income statement. The pro forma income statement for Biota Pharmaceuticals for the 12 months ended 31 December 2011 and for the 3 months ended 31 March 2012 has been prepared on this basis.

The Biota Pharmaceuticals Financial Information is presented for illustrative purposes only and is not necessarily indicative of the financial condition or results of operations of future periods or the financial condition or results of operations that actually would have been realised had the entities been combined during the periods presented. In addition, the preliminary acquisition-date fair value of the identifiable assets acquired and liabilities assumed reflected in the Biota Pharmaceuticals Financial Information is subject to adjustment and may vary from the actual amounts that will be recorded upon completion of the Merger. Refer to Note (iii) below for further detail.

Pro forma income statement for 12 months ended 31 December 2011

The unaudited pro forma condensed consolidated income statement for the 12 months ended 31 December 2011 has been prepared based on Biota's audited consolidated income statement for the year ended 30 June 2011 under Australian Accounting Standards (AAS) adjusted for the following to derive a comparable reporting period to the combined company:

- financial information for the six month period ended 31 December 2011 has been included in the pro forma financial information for Biota; and
- financial information for the six month period ended 31 December 2010 has not been included in the pro forma financial information for Biota,

and adjusted as necessary to present in accordance with US GAAP. The financial information for the six month periods ending on 31 December 2011 and 2010 have been prepared based on Biota's consolidated interim financial statements for the six months ended 31 December 2011 and 2010 under AAS. These are available on the ASX website at www.asx.com.au.

Pro forma income statement for 3 months ended 31 March 2012

The unaudited pro forma condensed consolidated income statement for the three months ended 31 March 2012 has been prepared based on Biota's unaudited income statement for the three months ended 31 March 2012 prepared in accordance with AAS and adjusted as necessary to present in accordance with US GAAP.

Pro forma balance sheet at 31 March 2012

The unaudited pro forma condensed consolidated balance sheet as at 31 March 2012 has been prepared based on Biota's unaudited consolidated balance sheet as at 31 March 2012 prepared in accordance with AAS and adjusted as necessary to present in accordance with US GAAP. It has also been adjusted to reflect the impact of the Merger as set out in note (ii) below.

Currency conversion

For the purposes of preparing the Biota financial information in US\$, the amounts in the tables below have been converted on the following basis:

- items of income and expense and cash inflows and cash outflows have been converted based on the average exchange rate for the relevant period;
- assets and liabilities have been converted based on the closing exchange rate at 31 March 2012; and
- equity items have been converted based on historical rates.

Pro forma 12 month Income Statement for Biota Pharmaceuticals to 31 December 2011	Biota AAS A\$'000	US GAAP Adjustments A\$'000	Note	Biota US GAAP A\$'000	Biota US GAAP US\$'000
Exchange rate (1.0000 A\$)*					0.9681
Revenue					
Revenues from trading operations, net	15,186	(3,697)	A	11,489	11,867
Grant income	1,637	-		1,637	1,691
Expenses					
Cost of services	-	(5,575)	B	(5,575)	(5,758)
Research and development	(18,679)	306	B,C	(18,373)	(18,977)
Product development	(14,996)	5,221	B,C	(9,775)	(10,097)
Business development	(2,123)	(1)	C	(2,124)	(2,194)
General, selling and administrative expenses	(5,093)	1	C	(5,092)	(5,260)
Operating (loss)/income	(24,068)	(3,745)		(27,813)	(28,728)
Interest income/(expense)	-	3,697	A	3,697	3,819
Other income/(expense)	-	-		-	-
(Loss)/profit before tax	(24,068)	(48)		(24,116)	(24,909)
Income tax credit	930	-		930	961
Net (loss)/income from continuing operations	(23,138)	(48)		(23,186)	(23,949)

* Average exchange rate for the 12 months ended 31 December 2011.

Pro forma 3 month Income Statement for Biota Pharmaceuticals to 31 March 2012	Biota AAS A\$'000	US GAAP Adjustments A\$'000	Note	Biota US GAAP A\$'000	Biota US GAAP US\$'000
Exchange rate (1.0000 A\$)*					0.9480
Revenue					
Revenues from trading operations, net	7,379	(698)	A	6,681	7,047
Grant income	95	-		95	100
Expenses					
Cost of services	-	(1,689)	B	(1,689)	(1,782)
Research and development	(3,763)	127	B,C	(3,636)	(3,835)
Product development	(3,296)	1,601	B,C	(1,695)	(1,788)
Business development	(676)	1	C	(675)	(712)
General, selling and administrative expenses	(1,399)	5	C	(1,394)	(1,470)
Operating (loss)/income	(1,660)	(653)		(2,313)	(2,440)
Interest income/(expense)	-	698	A	698	736
Other income/(expense)	-	-		-	-
(Loss)/profit before tax	(1,660)	45		(1,615)	(1,704)
Income tax credit/(expense)	(145)	-		(145)	(153)
Net (loss)/income from continuing operations	(1,805)	45		(1,760)	(1,856)

* Average exchange rate for the three months ended 31 March 2012.

Pro forma balance sheet for Biota Pharmaceuticals at 31 March 2012	Biota	US GAAP	Note	Biota	Biota	Pro forma	Note	Pro forma
	AAS A\$'000	Adjust- ments A\$'000		US GAAP A\$'000	US GAAP US\$'000	Impact of Merger US\$'000		Combined US\$'000
Exchange rate (A\$1.0000)*						0.9629		
ASSETS								
Current assets								
Cash & Equivalents	51,361	-		51,361	53,338	54,000	D	107,338
Accounts Receivable - Trade net	8,351	-		8,351	8,673		D	8,673
Prepaid expense	680	-		680	706		D	706
Deferred tax asset (a)	-	515	E	515	535			535
Other current assets	635	-		635	659			659
Total Current Assets	61,027	515		61,542	63,911	54,000		117,911
Non-current assets								
Property, plant and equipment	5,155	-		5,155	5,353	17		5,370
Intangible assets	1,921	-		1,921	1,995		D	1,995
Deferred tax asset	1,547	(515)	E	1,032	1,072			1,072
Total Non-current assets	8,623	(515)		8,108	8,420	17		8,437
Total Assets	69,650	-		69,650	72,332	54,017		126,348
LIABILITIES								
Current liabilities								
Accounts payable	1,148	-		1,148	1,192		D	1,192
Accrued expenses	1,053	-		1,053	1,094	2,000	D	3,094
Customer Advances	389	-		389	404		D	404
Other current liabilities - provisions	2,018	-		2,018	2,096			2,096
Total Current liabilities	4,608	-		4,608	4,785	2,000		6,785
Non-current liabilities								
Customer Advances	-	-		-	-		D	-
Other long term liabilities - provisions	424	-		424	440			440
Total Non-current liabilities	424	-		424	440			440
Total liabilities	5,032	-		5,032	5,226	2,000		7,226
EQUITY								
Common Stock (b)	148,992	-		148,992	100,196	46,324	D	146,521
Treasury Stock- Common (b)	(1,033)	-		(1,033)	(968)		D	(968)
Retained Earnings	(83,831)	-		(83,831)	(60,612)	5,693	D	(54,919)
Foreign currency translation reserve	(570)	-		(570)	27,716			27,716
Additional paid in capital	1,060	-		1,060	773		D	773
Stockholders' equity	64,618	-		64,618	67,106	52,017		119,122
Total liabilities and stockholders' equity	69,650	-		69,650	72,332	54,017		126,348

* Closing exchange rate on 31 March 2012.

Notes to the Biota Pharmaceuticals Financial Information

Note A. Represents the classification of interest income from 'Revenue' to 'Interest Income'.

Note B. Represents the reclassification of directly related costs associated with income to 'Cost of services', as described in note (i) below.

Note C. Represents the reversal of Share Payments under AAS and recognition under US GAAP, as described in note (i) below.

Note D. Reflects the acquisition method of accounting based on an appraisal of the assets and liabilities of Nabi as discussed in notes (iii) and (iv) below. This includes the elimination of Nabi's historical stockholder's equity accounts as Nabi is not considered the accounting acquirer. It also incorporates an accrual for acquisition costs contingent on the transaction.

Note E. Represents the reclassification of certain deferred tax assets as current assets, in accordance with US GAAP.

(i) Accounting policy adjustments

Biota prepares its consolidated financial statements in accordance with AAS. AAS differ in certain material respects from US GAAP. These differences (as they relate to Biota) and the adjustments necessary to present Biota's financial statements in accordance with Nabi's US GAAP accounting policies, are discussed below and the relevant adjustments are set out in notes A, B, C and E above.

Other than as set out in Notes A, B, C and E above, and as discussed below, there are no material differences in the accounting policies adopted by Biota under AAS and the accounting policies adopted by Nabi under US GAAP.

- **Share based payments:** Under Biota's accounting policy, awards to employees through the Biota ESP are expensed on a graded basis over the two year service life of the employee option, with each instalment of the award separately recognised over the relevant service period. Under US GAAP, the aggregate share based payment charges are recognised on a straight line basis over the two year life of the award.

- **Cost of services:** Under Biota's accounting policy, costs are classified with reference to the business function to which they relate. Under US GAAP, costs incurred directly in relation to income generating activities are required to be separately disclosed.

- **Classification differences:** There are differences in presentation between Biota and Nabi's accounts. These include the presentation of interest income and the classification of deferred tax assets between current and non-current.

(ii) Adjustments for the impact of the Merger

Under the acquisition method of accounting, the identifiable assets acquired and liabilities assumed of Nabi will be recorded at the acquisition date fair values and added to those of Biota. The pro forma adjustments are preliminary and based on Biota's estimates of the fair value and useful lives of the assets acquired and liabilities assumed and have been prepared to illustrate the estimated effect of the acquisition and certain other information. These estimates are based on the most recently available information. The final purchase price allocation will be based on the actual net tangible and intangible assets that exist as at the Implementation Date, and a final determination of these fair values will reflect Biota's consideration of relevant information including discounted cash flows analysis and its estimates and taking into account significant changes, if any, in long term assumptions. To the extent there are significant changes to the combined company's business following the completion of the Merger, the assumptions and estimates set out in the Biota Pharmaceuticals Financial Information could change significantly. The allocation is dependent upon certain valuations and other studies that will not be completed until after the Merger. Accordingly, the pro forma purchase price adjustments are subject to further adjustments as additional information becomes available and as additional analyses and final valuations are conducted following the completion of the Merger. There can be no assurances that these additional analyses and final valuations will not result in significant changes to the estimates of fair value set forth below under Note (iv).

The unaudited pro forma condensed combined financial statements assumes that on the implementation of the Scheme, 0.448722952 of a Biota Pharmaceuticals Share will be issued in respect of each Biota Share on issue as at the Record Date.

(iii) Calculation of estimated consideration transferred

The purchase consideration in a reverse acquisition is determined with reference to the value of equity that the accounting acquirer (Biota) would have had to issue to the owners of the accounting acquiree (Nabi) to give them the same percentage interest in the combined entity. A preliminary estimate of the purchase price is as follows:

Number of Biota shares deemed issued	65,980,514
Value per share	US\$0.70
Estimated purchase price (in thousands)	US\$46,324

For pro forma purposes, the fair value of Biota Shares used in determining the purchase price was US\$0.70 per share based on the closing price of Biota Shares on 3 August 2012 and the US\$/A\$ exchange rate of A\$1.0000 = US\$0.9543, being the exchange rate on that day.

The final purchase consideration could differ from the amounts presented in the unaudited pro forma condensed combined financial statements due to movements in Biota's share price and the US\$/A\$ exchange rate between 3 August 2012, and the Implementation Date. For example, if the Biota share price and the US\$/A\$ exchange rate on 22 April 2012 (the date of the MIA) were used, the value per share would have been US\$0.98 and the estimated purchase price calculated would be US\$62,506,000.

The impact of possible movements in the Biota share price and the US\$/A\$ exchange rate from those applied above is as follows:

Impact on estimated purchase price (in thousands)

Share price fluctuations of +/- A\$0.10	\$6,447
Exchange rate fluctuation of +/- US\$0.10	\$5,015

(iv) Preliminary allocation of consideration transferred to net assets acquired

The estimated acquired tangible and intangible assets and liabilities assumed based on their estimated fair values as at 31 March 2012 is set out below.

	US\$'000
Cash and cash equivalents	54,000
Property, plant and equipment	17
Discount on value of assets being acquired	(7,693)
Total	46,324

The allocation of the purchase price is preliminary. The final determination of the purchase price allocation will be based on the fair values of assets acquired, other identifiable intangibles and the fair values of liabilities assumed as of the date that the Merger is completed. The excess of the purchase price over the fair value of assets and liabilities acquired is allocated to goodwill whereas the excess of the fair value of the assets and liabilities over the purchase price is a discount. As noted at note (iii) above, the determination of purchase price is preliminary as of the date of this Booklet. If the Biota share price and US\$/A\$ exchange rate on 22 April 2012 (the date of the MIA) were used, the estimated purchase price calculated would be US\$62,506,000. Applying this estimated purchase price to the fair value of assets and liabilities indicated above would lead to an allocation to goodwill of US\$8,489,000.

The estimates of assets acquired and assumed liabilities will remain preliminary until the combined company completes a valuation of identifiable intangible assets acquired and determines the fair values of other assets and liabilities acquired. The final determination of the fair values is expected to be completed as soon as practicable after the completion of the Merger. The final amounts could differ from the amounts presented in the Biota Pharmaceuticals Financial Information, because the amounts allocated will not be determined until the date of the Merger.

Nabi's remaining assets include:

- some residual value of NicVAX which was licensed to GlaxoSmithKline in 2012, subject to the right of holders of CVRs to potentially receive certain cash payments in connection with a NicVAX Transaction (as discussed further at section 1.7 of this Booklet); and
- the potential royalty of Phoslyra® which was sold to a third party in 2006.

Given the significant uncertainty associated with future cash flows from these assets, no value has been ascribed to them in the preliminary allocation of the purchase price.

Cash and cash equivalents

On the Implementation Date, Nabi is required to have at least US\$54 million in cash, plus funds to enable it to meet any amounts which are payable or likely to become payable by it in respect of business activities carried out by Nabi on or prior to the Implementation Date. Such surplus amount is to be agreed upon by Biota and Nabi in accordance with the Merger Implementation Agreement.

It is expected that Nabi will return any funds, in excess of the amount required to meet its obligations under the Merger Implementation Agreement, to Nabi Shareholders by way of a dividend, capital distribution or a combination of the two.

The cash balance presented as part of the pro forma adjustments reflects the minimum cash balance which Nabi is required to have as at the Implementation Date, net of any amounts required by Nabi to meet its obligations as contemplated above, and settlement of Nabi's other obligations including severance obligations.

6.4 Financial forecast

Biota has given careful consideration as to whether a reasonable basis exists to produce reliable and meaningful forecast financial information. Biota directors have concluded that forecast financial information would be misleading to provide, as a reasonable basis does not exist for providing forecasts that would be sufficiently meaningful and reliable as required by applicable law, policy and market practice. The financial performance of Biota Pharmaceuticals in any period will be influenced by various factors that are outside the control of Biota Pharmaceuticals and that cannot, at this time, be predicted with an adequate level of confidence. In particular, the financial performance of Biota Pharmaceuticals will be materially affected by:

- the degree and severity of influenza outbreaks, which ultimately impacts income from the influenza products; and
- the ability of the company to secure licences from pharmaceutical companies for its programs.

6.5 Rights and liabilities attaching to Biota Pharmaceuticals Shares

The rights and liabilities attaching to ownership of the Biota Pharmaceuticals Shares will arise from a combination of Biota Pharmaceuticals' by-laws, its certificate of incorporation, the General Corporation Law of the State of Delaware, Delaware common law and the NASDAQ Stock Market Rules.

A copy of Nabi's current certificate of incorporation and by-laws, as well as the proposed amendments to Nabi's certificate of incorporation (with respect to the Transaction Proposals and the proposal described in section 3.4(iv)) are attached at Annexure F of this Booklet.

A summary of certain significant rights and liabilities which will attach to Biota Pharmaceuticals Shares as at the Implementation Date is set out below. This summary is not exhaustive nor does it constitute a definitive statement of the rights and liabilities of Biota Pharmaceuticals Shareholders. Further information on a comparison of relevant Australian and United States laws is set out in section 11 of this Booklet.

(a) Voting at a general meeting

Each Biota Pharmaceuticals Shareholder will be entitled to one vote for each Biota Pharmaceuticals Share held by them. This is subject to the certificate of incorporation of Biota Pharmaceuticals providing otherwise. The certificate of incorporation for Biota Pharmaceuticals, which will be in place on the Implementation Date, will not alter these voting rights.

(b) Meeting of Shareholders

Each Biota Pharmaceuticals Shareholder is entitled to receive notice of, and to attend, general meetings of Biota Pharmaceuticals and to receive all notices, accounts and other documents required to be sent to Biota Pharmaceuticals Shareholders.

(c) Dividends

The Biota Pharmaceuticals Board may declare and pay dividends to Biota Pharmaceuticals Shareholders. Any dividends to be paid by Biota Pharmaceuticals are payable either out of its surplus (which is defined as the excess of net assets over capital) or, if there is no surplus, then out of Biota Pharmaceuticals' net profits for the financial year. The Biota Pharmaceuticals Board may not declare or pay a dividend for such time as the corporation's capital is less than the aggregate amount of the capital represented by all shares which it has on issue which have a preference on the distribution of assets.

(d) Issue of further Biota Pharmaceuticals Shares

On the Implementation Date, the total number of shares which Biota Pharmaceuticals will be authorised to issue will be 200 million shares of common stock and 5 million shares of preferred stock. The Biota Pharmaceuticals Board will not be able to issue shares in excess of this number without amending Biota Pharmaceuticals' certificate of incorporation. As at the Implementation Date, there will be no preferred stock on issue in Biota Pharmaceuticals.

Under the NASDAQ Stock Market Rules, shareholder approval is required for certain significant issuances of Biota Pharmaceuticals Shares, including among other things:

- an issuance in connection with the acquisition of the stock or assets of another company, where the issuance exceeds 20% of the voting power or number of shares outstanding before the issuance (or 5% in the case of transactions involving certain related parties) unless the issuance is effected in a public offering for cash;
- an issuance of company securities that will result in a change in control; and
- an issuance in connection with a new or materially amended equity compensation arrangement for officers, directors, employees or consultants, subject to certain exceptions.

No shareholder approval is required for specific issuances under a previously approved plan.

(e) Winding Up

Biota Pharmaceuticals may be dissolved if:

- a majority of the directors in office adopt a resolution to approve dissolution at a meeting of the Biota Pharmaceuticals Board called for that purpose; and
- a notice of a meeting of shareholders to consider the dissolution of Biota Pharmaceuticals is mailed to each shareholder entitled to vote on the matter; and
- holders of a majority of the issued and outstanding shares entitled to vote on the matter adopt a resolution to approve the dissolution at the shareholders' meeting called for that purpose; and
- a certificate of dissolution is filed with the Delaware Secretary of State.

Biota Pharmaceuticals Shareholders are also permitted to authorise the dissolution of the corporation without board action if all of the shareholders entitled to vote on the matter provide written consent to the dissolution and a certificate of dissolution is filed with the Delaware Secretary of State.

(f) Variation of class rights

Any change to the rights of holders of Biota Pharmaceuticals Shares, or preferred stock if any were to be issued, would require an amendment to Biota Pharmaceuticals' certificate of incorporation. The holders of the outstanding shares of a class are entitled to vote as a class upon a proposed amendment to the certificate of incorporation if the amendment will:

- increase or decrease the authorised number of shares of the class;
- increase or decrease the par value of the shares of the class; or
- alter or change the powers, preferences or special rights of the shares of the class so as to affect them adversely.

A proposal to approve such amendments requires approval of a majority of the outstanding shares of each class entitled to vote on the resolution. On the Implementation Date, Biota Pharmaceuticals will have only one class of stock outstanding.

(g) Alteration of Biota Pharmaceuticals' by-laws and certificate of incorporation

Biota Pharmaceuticals' constituent documents will consist of its certificate of incorporation and its by-laws.

An amendment to Biota Pharmaceuticals' certificate of incorporation will require:

- the approval and recommendation of the Biota Pharmaceuticals Board;
- the approval of a majority of the outstanding shares entitled to vote on the amendment; and
- the approval of a majority of the outstanding shares of each class entitled to vote on the amendment as a class. On the Implementation Date, Biota Pharmaceuticals will have only one class of stock outstanding.

The Biota Pharmaceuticals' by-laws will provide that amendments to the by-laws will require either:

- the approval of the Biota Pharmaceuticals Board; or
- the approval of holders of at least 75% of the shares on issue entitled to vote.

7. Potential risk factors

7.1 Introduction

If the Scheme is implemented, there will be a change in the risk profile to which Biota Shareholders are exposed.

Biota Shareholders are currently exposed to various risks as a result of their investment in Biota. If the Scheme is approved, Biota will merge its businesses with those of Nabi and Biota Shareholders will receive Biota Pharmaceuticals Shares. As a consequence, Biota Shareholders would be exposed to risk factors relating to Nabi, and to certain additional risks relating to Biota Pharmaceuticals and the integration of Nabi and Biota.

This section 7 discusses the risk factors relating to Biota and Nabi and the risk factors which would therefore relate to Biota Pharmaceuticals if the Merger proceeds.

It is also important to note that certain risks will apply if the Merger does not proceed. These are discussed in section 7.7.

7.2 Important information about the risks identified in this Booklet

The risks identified in this Booklet are not exhaustive, and no assurances or guarantees of future performance of, profitability of, or payment of dividends by, Biota or Nabi (or Biota Pharmaceuticals if applicable) are given.

This Booklet does not take into account the investment objectives, financial situation, particular needs or risk profiles of individual Biota Shareholders. It is important that Biota Shareholders carefully read this Booklet in its entirety, consider their personal circumstances (including financial and taxation issues and their own risk profiles) and seek independent professional advice before deciding whether to vote in favour of the Scheme.

7.3 Risk factors relating to the businesses of Biota and Nabi, and which will therefore relate to the businesses of Biota Pharmaceuticals

The following risk factors are relevant to each of Biota and Nabi as stand alone entities. Accordingly, they will also be relevant to Biota Pharmaceuticals if the Merger proceeds.

(a) General risk factors

As with any entity whose securities are listed on a securities exchange (such as the ASX and NASDAQ), the operating and financial performance of Biota and Nabi (or Biota Pharmaceuticals if applicable) is (or will be) influenced by a variety of general business cycles and economic conditions in Australia, the United States and elsewhere overseas.

In addition, the price at which shares trade on the ASX or NASDAQ may be affected by a range of external factors over which Biota and Nabi (or Biota Pharmaceuticals if applicable) have no control. These risk factors include but are not limited to:

- the risk factors described in the paragraph above; and
- variations in global markets and relevant local markets for listed companies and for biopharmaceutical companies in particular.

These factors may cause the price of Biota Shares and Nabi Shares (or shares in Biota Pharmaceuticals if applicable) to fluctuate and trade above or below current or historical market prices.

Some of these risks are discussed in more detail below:

(i) Economic and share market conditions

There are risks associated with an investment in shares quoted on a stock exchange. Share price movements can affect the value of any investment in Biota and Nabi (or Biota Pharmaceuticals if applicable). The value of shares in these companies can be expected to fluctuate depending on a number of factors, including movements in international and relevant local stock markets, inflation, interest rates, exchange rates, general economic conditions, changes in government fiscal, monetary and regulatory policies, investor perceptions as well as the performance of Biota, Nabi or Biota Pharmaceuticals, including variations in their revenues and operating costs. These factors may cause Biota Shares and Nabi Shares (or Biota Pharmaceuticals Shares if applicable) to trade below the current or historical market prices and may affect the income and expenses of those companies.

(ii) General legal, accounting and taxation matters

Future earnings, asset values and the relative attractiveness of Biota Shares and Nabi Shares (or Biota Pharmaceuticals Shares if applicable) may be affected by changes in law and government policy in the jurisdictions in which those companies operate. This includes changes in taxation laws and changes to accounting or financial reporting standards.

(iii) Interest rate risk

As at the date of this Booklet, neither Biota nor Nabi have any borrowings. Biota and Nabi do however derive income from interest bearing investments. Biota and Nabi (or Biota Pharmaceuticals if applicable) are (or will be) therefore exposed to interest rate movements that will affect the interest which they earn on those investments.

(b) Regulatory approval risks

The earnings of Biota and Nabi (or Biota Pharmaceuticals if applicable), are (or will be) generated from the development and sale of pharmaceutical products. There is no guarantee that future pharmaceutical products developed by Biota or Nabi, (or Biota Pharmaceuticals if applicable) will achieve the desired test results, be granted relevant regulatory approvals or achieve the desired level of sales. These risks are inherent in the development and marketing of pharmaceutical products. See also section 7.5 for risks associated with the BARDA Contract.

(c) Competitor risks

The pharmaceutical industry is a competitive one, and there is no guarantee that a competitor of Biota or Nabi, (or Biota Pharmaceuticals if applicable) will not develop pharmaceutical products which supersede products which are under development or have been developed by those companies.

(d) Protection of patents

Biota and Nabi have rights, titles and interests in a number of patents, patent applications and intellectual property related to their compounds, products and technology. Biota and Nabi (or Biota Pharmaceuticals if applicable) cannot guarantee that any issued patents are valid or will be enforceable or will provide protection against competitors or will enable freedom to operate or that pending patent applications will result in issued patents. There is no guarantee that patents will be granted in respect of pharmaceutical products developed in the future by Biota or Nabi (or Biota Pharmaceuticals if applicable).

It is also important to each of Biota and Nabi (and it will be important to Biota Pharmaceuticals if applicable) that they do not knowingly infringe patents or the intellectual property rights of others. If either Biota or Nabi (or Biota Pharmaceuticals if applicable) does become aware of any potential infringement of patents or intellectual property rights, they may be required to obtain a license from certain third parties to allow them to use the third parties' technology. There is no guarantee however that, if required, Biota, Nabi or Biota Pharmaceuticals (as applicable) would be able to obtain a license to any third-party technology or that they could obtain one at a reasonable cost. If they were not able to obtain a license (if one was required) or access alternative technologies, Biota, Nabi or Biota Pharmaceuticals (as applicable) may be unable to develop or commercialise some or all of their products, and their business could be adversely affected.

(e) Exchange rate and currency risk

The assets, earnings and cash flows of Biota and Nabi (or Biota Pharmaceuticals if applicable) are (or will be) influenced by movements in exchange rates, including movements in the Australian dollar, the United States dollar, the Japanese yen, the English pound and the Euro.

(f) Financing risks

Securing funding for projects or other forms of financing for operations may depend on a number of factors, including share market conditions, country risk issues, economic conditions and interest rates. An inability to maintain sufficient funding could cause delays in developing Biota's and Nabi's (or Biota Pharmaceuticals' if applicable) portfolio of clinical and preclinical assets, and therefore adversely affect the financial condition and performance of those companies.

(g) Key personnel

A number of key management and personnel are important to attaining the business goals of Biota and Nabi (or Biota Pharmaceuticals if applicable). One or more of these key employees could leave their employment, and this may adversely affect the ability of Biota, Nabi or Biota Pharmaceuticals (if applicable) to conduct their business and, accordingly, affect their financial performance and share price.

(h) Clinical trial failure

Drug discovery and development is a risky business in that outcomes of trials can be binary. For example, as described in section 5.1 of this Booklet, Nabi's NicVAX[®] product suffered a significant setback in 2011 when NicVAX[®] did not achieve the primary endpoint in two Phase III efficacy trials conducted in the United States. Whilst Biota and Nabi (or Biota Pharmaceuticals if applicable) will attempt to mitigate risks in their planning of clinical trials, clinical trial results are by their nature unknown.

(i) Safety risks from marketed products or product candidates

The data supporting the marketing approvals for Biota's and Nabi's products, and forming the basis for the safety warnings in the product labels of such products, were obtained in controlled clinical trials of limited duration and, in some cases, from post-approval use. As these will be used over longer periods of time by many patients with underlying health problems, taking numerous other medicines, Biota and Nabi expect to continue to find new issues such as safety, resistance or drug interaction issues, which may require the relevant licensee to provide additional warnings or contraindications on its labels or narrow the approved indications, each of which could reduce the market acceptance of these products.

If serious safety, resistance or drug interaction issues arise with these marketed products, sales of the products could be limited or halted by the relevant licensee or regulatory authority and the results of operations for Biota, Nabi or Biota Pharmaceuticals (as applicable) would be adversely affected.

(j) Dividends

There can be no guarantee as to the likelihood, timing, franking or quantum of future dividends from Biota or Nabi (or Biota Pharmaceuticals if applicable).

(k) Litigation

As with any company, each of Biota and Nabi (or Biota Pharmaceuticals if applicable) is (or will be) exposed to risks of litigation which may have material adverse effects. Biota and Nabi (or Biota Pharmaceuticals if applicable) could become exposed to litigation from employees, regulators, shareholders or third parties (including arising out of contractual breaches of product liability claims). To the extent that such risks are not covered by insurance, an adverse outcome in litigation or the cost of responding to potential or actual litigation may have a material adverse impact on financial performance.

(l) Insurance risks

Each of Biota and Nabi currently has insurance coverage for certain operating risks which include all risk property damage (including certain aspects of business interruption), operational, clinical and product liability and directors' and officers' liability. However, either company may become subject to liability against which they have not insured or cannot insure, including in respect of past activities. Should a major uninsured loss be suffered, future earnings could be materially adversely affected. In addition, insurance may not continue to be available at economically acceptable premiums. As a result, the insurance coverage may not cover the full scope and extent of claims against them or losses that they incur. A successful claim against Biota or Nabi (or Biota Pharmaceuticals if applicable) may have a material adverse effect on their revenues.

7.4 Risk specifically related only to Nabi

The following risk factor is relevant to Nabi as a stand alone entity. Accordingly, it will also be relevant to Biota Pharmaceuticals if the Merger proceeds.

Unknown risks relating to Nabi

Biota and its advisors conducted due diligence on Nabi prior to signing the Merger Implementation Agreement. However, by its nature due diligence is limited in scope and its efficacy depends on respondents to enquiries being aware of relevant circumstances and comprehensive in their responses to those enquiries. As at the date of this Booklet, the Biota Directors are not aware of any circumstances that have arisen in the past that have given rise to, or may give rise to, a liability against Nabi which will not have been discharged by Nabi by the Implementation Date, or matched by cash held by Nabi additional to the US\$54 million required to be held by Nabi as a condition precedent to the scheme proceeding. The Biota Directors cannot, however, guarantee that such circumstances do not exist and there is a risk that such a liability may arise following the implementation of the Merger. Neither Nabi nor Biota Pharmaceuticals is likely to have recourse to any person in respect of such liability.

7.5 Risks specifically related only to Biota

The following risk factors are relevant to Biota as a stand alone entity. Accordingly, they will also be relevant to Biota Pharmaceuticals if the Merger proceeds.

(a) BARDA Contract

In 2011, BARDA awarded Biota a significant contract of up to US\$231 million for the advanced development of laninamivir in the United States. Whilst the funding has been approved by the United States Congress, should the project fail to achieve key milestones BARDA has the right to terminate the contract.

The BARDA contract incorporates by reference many Federal Acquisition Regulation clauses. Each of these clauses carries specific rights and obligations, many of which are unique to government contracting, including various procurement, socio-economic, ethics, import and export, security, pricing and cost accounting, contract termination, reporting and audit requirements. Biota's failure to comply with these regulations and requirements could result in reductions of the contract value, contract termination, the assessment of penalties and fines and/or suspension or debarment from government contracting or subcontracting for a period of time. Additionally, these clauses subject Biota to routine audits and investigations by United States federal government agencies. These agencies are tasked with reviewing Biota's performance, cost structure, and compliance with applicable laws, regulations and standards. BARDA also has the right to conduct site visits and audits and collect samples of product held by Biota and its subcontractors.

(b) Collaboration and Licence Agreement

The Collaboration and License Agreement between Biota and Daiichi Sankyo does not fully address the respective rights and obligations of Biota and Daiichi Sankyo with respect to how laninamivir may be developed and marketed outside of Japan or how the proceeds from any direct sales by Biota or Daiichi Sankyo of laninamivir outside of Japan would be shared. Also, the agreement includes a provision which restricts either Biota or Daiichi Sankyo from developing, commercialising or otherwise handling or dealing with laninamivir in any country (or entering into any license, collaboration or agreement with a third party to do any of the foregoing).

Unless Biota and Daiichi Sankyo come to an agreement with respect to the development and marketing of laninamivir outside of Japan, disputes between Biota and Daiichi Sankyo could result in litigation or arbitration, which can be expensive and time consuming. If any such dispute were to be resolved unfavourably to Biota, the amount of future revenue laninamivir generates could be reduced. This may have a material adverse effect on the business, results of operations or financial condition of Biota or Biota Pharmaceuticals (as applicable).

7.6 Biota Pharmaceuticals risks related to the implementation of the Merger

The following risk factors will apply to Biota Pharmaceuticals if the Merger proceeds. As they are related to the Merger, they do not currently apply to either Biota or Nabi as stand alone entities.

(a) Transition risk

The long term success of Biota Pharmaceuticals will depend, amongst other things, on the success of Biota Pharmaceuticals integrating the respective businesses of Nabi and Biota, and in particular, ensuring that the accredited systems are integrated into the merged group.

(b) Contract risk

The Scheme may be deemed under contracts to which members of Biota and Nabi are parties, to result in a change of control event in respect of Biota or Nabi that allows the counterparty to review or terminate the contract as a result of the change. Any such review or termination event may have a material adverse effect on the financial performance of Biota Pharmaceuticals, depending on the relevant contracts.

(c) Accounting risk

Following the Merger, Biota Pharmaceuticals will perform a fair value assessment of all of Nabi's assets, liabilities and contingent liabilities to determine whether the Merger gives rise to a goodwill amount.

To the extent goodwill is recognised in respect of accounting for the acquisition of Biota by Nabi, it will be subject to annual impairment testing. In the event that the recoverable amount of goodwill is impaired, this will result in a charge against future earnings.

7.7 Risks if the Scheme does not proceed

Biota Shareholders will also face risks if the Scheme is not implemented.

If the Scheme does not proceed, and no Superior Proposal for Biota is received, the Biota Directors will consider a number of alternative strategies for the operation and ownership of Biota's businesses. These alternatives would take time to implement.

In addition, if the Scheme does not proceed, Biota Shareholders will continue to be exposed to the risk factors relating to Biota described in sections 7.3 and 7.5 above. Biota Shares may trade below their current market price if the Merger is not implemented.

The Biota Directors believe that the Scheme is likely to deliver benefits to Biota Shareholders greater than other alternatives which have been considered, as described in section 1.4.

8. Australian taxation implications

8.1 Scope

This section provides general comments on the Australian tax consequences for Biota Shareholders arising from the disposal of their Biota Shares under the Scheme.

This section merely provides general comments on the taxation consequences of the Scheme for Biota Shareholders. Biota Shareholders should obtain, and only rely upon, their own professional taxation advice about the consequences of disposing of Biota Shares having regard to their own specific circumstances.

This section addresses the tax consequences only for Biota Shareholders who hold their shares as capital assets and does not address the tax consequences for Biota Shareholders who hold their shares as revenue assets or trading stock or as assets used in carrying on a business.

The comments below on income tax are based on the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth) (collectively referred to as the **Tax Act**) and relevant ATO pronouncements at the date of this booklet, except as otherwise indicated.

8.2 Australian resident Biota Shareholders

(a) Capital Gains Tax

Although the disposal of Biota Shares to Nabi will be a Capital Gains Tax (**CGT**) event for Biota Shareholders, Biota Shareholders should be able to defer any capital gain until the date on which they sell their Biota Pharmaceuticals Shares, (if CGT roll-over relief is available in their personal circumstances). This CGT event will occur on the Implementation Date. Biota Shareholders will derive a capital gain on the disposal of their Biota Shares to the extent that the market value of any Biota Pharmaceuticals Shares they receive (described below) exceeds the tax cost base of their Biota Shares. Conversely, Biota Shareholders will incur a capital loss on the disposal of their Biota Shares to the extent that that amount is less than the reduced tax cost base of their Biota Shares.

The market value of a Biota Pharmaceuticals Share should be calculated as the volume weighted average price of that share on the Implementation Date. As soon as practicable after the Implementation Date, Nabi will post that value on its website (www.nabi.com).

Generally the tax cost base of any Biota Shares will be equal to the consideration paid to acquire the Biota Shares. However where any Biota Shares were acquired by a Biota Shareholder before the 2009 capital return, the tax cost base of those Biota Shares will be reduced by 6.26 cents for each share (refer Class Ruling CR 2009/74). In addition, other incidental costs of acquiring the Biota Shares (such as brokerage fees and stamp duty) may be included in the tax cost base.

The sum of a Biota Shareholder's capital gains for an income year reduced by any capital loss incurred during the year, or carried forward from previous years, (known as the net capital gain) should be included in their assessable income.

Australian resident individual Biota Shareholders who have held their Biota Shares for greater than 12 months should be able to discount their capital gain by 50%. Similarly, an eligible superannuation entity that has held its Biota Shares for greater than 12 months should be able to discount its capital gain by 33.3%. The discount will be applied to a shareholder's capital gain for the period after the offset of any capital losses. Corporate Biota Shareholders are not entitled to discount their capital gain.

If a Biota Shareholder is unable or does not elect to obtain the CGT relief described under the section entitled '*Availability of CGT roll-over relief*' below, the tax cost base of any Biota Pharmaceuticals Shares received will be the market value of the Biota Shares exchanged on the Implementation Date. The date of acquisition for CGT purposes will be the Implementation Date. This date will be relevant for any future qualification for the CGT discount with respect to CGT events happening to the Biota Pharmaceuticals Shares.

(b) Availability of CGT roll-over relief

Biota Shareholders, who would make a capital gain on the disposal of their Biota Shares for Biota Pharmaceuticals Shares, should be eligible to make a choice whether or not to apply CGT roll-over relief.

If a Biota Shareholder elects to apply CGT roll-over relief, a capital gain that they would otherwise make on the disposal of their Biota Shares will be disregarded.

Where roll-over relief is elected, the tax cost base of the Biota Shares disposed of would become the tax cost base of the Biota Pharmaceuticals Shares. This tax cost base will be allocated on a proportionate basis across the Biota Pharmaceuticals Shares received. For any subsequent determination of the application of the CGT discount, the date on which the Biota Shareholders will be deemed to acquire the Biota Pharmaceuticals Shares will be the day they acquired their Biota Shares.

The benefit of choosing scrip-for-scrip roll-over relief will depend upon the individual circumstances of each Biota Shareholder.

8.3 Consequences of holding Biota Pharmaceuticals Shares

(a) Subsequent disposal of Biota Pharmaceuticals Shares

If an Australian resident Biota Shareholder sells their Biota Pharmaceuticals Shares after the Implementation Date, any gain or loss will be subject to CGT as the Biota Pharmaceuticals Shares will be an asset for CGT purposes.

(b) Dividend Income

Dividends received by Biota Shareholders with respect to Biota Pharmaceuticals Shares must be included in their assessable income, including any amount of United States withholding tax withheld with respect to those dividends.

Refer to section 9.2 for information regarding United States withholding tax on dividends paid to Australian residents. Where dividends are subject to United States withholding tax, the withholding tax should be creditable as a foreign income tax offset against the Biota Shareholder's Australian tax liability. The amount of the foreign income tax offset will be limited to the greater of A\$1,000 and the Australian tax payable on assessable foreign income for the year (less relevant deductions).

(c) Other matters

- No GST should be payable in Australia by Biota Shareholders on the disposal of Biota Shares or on the issue of Biota Pharmaceuticals Shares.
- No stamp duty should be payable in Australia by Biota Shareholders on the disposal of Biota Shares or on the issue of Biota Pharmaceuticals Shares.

8.4 Non-Australian resident Biota Shareholders

Non-Australian resident Biota Shareholders should seek their own independent tax advice on the tax consequences in their country of residence of the Scheme and the holding of Biota Pharmaceuticals Shares. The statements below are limited to the Australian tax consequences to those non-Australian resident Biota Shareholders and to those whose shares are held as capital assets.

(a) Disposal of Biota Shares

If under the criteria set out below the Biota Shares are not considered to be taxable Australian property at the Implementation Date, non-resident Biota Shareholders should not be subject to Australian CGT on disposal of their Biota Shares under the Scheme.

Non-resident Biota Shareholders that realise a capital gain on the disposal of Biota Shares under the Scheme would be subject to Australian CGT to the extent that the Biota Shares are taxable Australian property. Broadly, Biota Shares would be taxable Australian property of a non-resident Biota Shareholder if the shareholder, together with associates, holds 10% or more of the shares in Biota at the time of disposal or throughout a 12-month period during the two years before the disposal, and the majority of Biota's assets consist of real property situated in Australia.

(b) Consequences of holding Biota Pharmaceuticals Shares

- Non-resident Biota Shareholders should not be subject to Australian tax on the future disposal of their Biota Pharmaceuticals Shares, except if the Biota Pharmaceuticals Shares are effectively connected with a permanent establishment or fixed base which the non-resident has in Australia.
- Non-resident Biota Shareholders should not be subject to Australian tax on dividends received on Biota Pharmaceuticals Shares.

9. United States taxation implications

9.1 Scope

The following comments on United States federal income tax considerations are based on the current provisions of the Internal Revenue Code of 1986, as amended (the **Code**), applicable United States Treasury regulations promulgated thereunder and United States Internal Revenue Service (**IRS**) rulings and pronouncements and judicial decisions, all as in effect on the date of this Booklet and all of which are subject to change (possibly on a retroactive basis) or to differing interpretations so as to result in tax considerations different from those summarised below. Biota cannot guarantee that a change in law will not alter significantly the tax considerations described in this summary.

These comments are of a general nature and are not intended to be, and should not be construed to be, legal, business or tax advice to any particular Biota Shareholder. Biota Shareholders are urged to consult their tax advisers as to the taxation consequences of their particular circumstances.

To ensure compliance with United States Treasury Department Circular 230, Biota Shareholders are notified of the following:

- (a) any discussion of United States federal tax issues in this Booklet is not intended or written to be relied upon, and cannot be relied upon, for the purpose of avoiding penalties that may be imposed on such holders under United States federal tax law;
- (b) such discussion is included in this Booklet in connection with the description of the Scheme and cannot be used for the purpose of promoting, marketing or recommending to another person any matter addressed in this Booklet; and
- (c) Biota Shareholders should consult their own professional advisers to seek tax advice based on their particular circumstances.

9.2 Tax residence of Nabi and certain United States federal income tax considerations of holding Biota Pharmaceuticals Shares

Nabi is, and Biota Pharmaceuticals will be, a United States corporation and will be subject to United States federal income tax on its worldwide income. Certain United States federal income tax considerations to a non-United States holder of holding Biota Pharmaceuticals Shares as capital assets (within the meaning of Section 1221 of the Code) are discussed below. As used in this discussion, the term "non-United States holder" means a beneficial owner of Biota Pharmaceuticals Shares that is not, for United States federal income tax purposes:

- an individual who is a citizen or resident of the United States;
- a corporation (including any entity treated as a corporation for United States federal income tax purposes) created or organised in or under the laws of the United States or any political subdivision thereof;
- a partnership (including any entity treated as a partnership for United States federal income tax purposes);
- an estate the income of which is includible in gross income for United States federal income tax purposes regardless of its source; or
- a trust:
 - (1) if a United States court is able to exercise primary supervision over the administration of the trust and one or more United States persons have authority to control all substantial decisions of the trust; or
 - (2) that has made a valid election to be treated as a United States person for such purposes.

(a) Dividends on Biota Pharmaceuticals Shares

If dividends are paid on Biota Pharmaceuticals Shares, those payments will constitute dividends for United States federal income tax purposes to the extent paid from current or accumulated earnings and profits, as determined under United States federal income tax principles. To the extent those distributions exceed current and accumulated earnings and profits, the distributions will constitute a return of capital and first reduce the non-United States holder's adjusted tax basis, but not below zero, and then will be treated as gain from the sale of shares, as described below.

A dividend paid to a non-United States holder generally will be subject to withholding of United States federal income tax at a 30% rate, or a lower rate under an applicable income tax treaty, unless the dividend is effectively connected with the conduct of a trade or business of the non-United States holder within the United States (and, if an applicable income tax treaty so requires, is attributable to a permanent establishment of the non-United States holder within the United States). Non-United States holders (generally on a properly executed IRS Form W-8 BEN) will be required to satisfy certain certification and disclosure requirements in order to claim a reduced rate of withholding pursuant to an applicable income tax treaty. These forms must be periodically updated. Non-United States holders should consult their tax advisors regarding their entitlement to benefits under a relevant income tax treaty. Australia has an income tax treaty with the United States under which Australian residents can claim a reduction, from 30% to 15%, for withholding tax which might otherwise be payable in respect of any dividends paid on Biota Pharmaceuticals Shares. Special rules apply in the case of Biota Pharmaceuticals Shares held by certain non-United States holders that are entities rather than individuals.

Dividends that are effectively connected with a non-United States holder's conduct of a trade or business in the United States and, if an applicable income tax treaty so requires, attributable to a permanent establishment in the United States, will be taxed on a net income basis at the regular graduated United States federal income tax rates in the same manner as if the non-United States holder were a resident of the United States. In such cases, Biota Pharmaceuticals will not have to withhold United States federal income tax if the non-United States holder complies with applicable certification and disclosure requirements. In addition, a "branch profits tax" may be imposed at a 30% rate, or a lower rate under an applicable income tax treaty, on dividends received by a foreign corporation that are effectively connected with the conduct of a trade or business in the United States.

A non-United States holder may obtain a refund or credit of any excess amounts withheld by filing an appropriate claim for a refund together with the required information with the IRS.

(b) Gain on Disposition of Biota Pharmaceuticals Shares

A non-United States holder generally will not be subject to United States federal income tax with respect to a capital gain realised on a sale or other disposition of Biota Pharmaceuticals Shares unless one of the following applies:

- the gain is effectively connected with the non-United States holder's conduct of a trade or business in the United States or, if an applicable income tax treaty so requires, is attributable to a permanent establishment maintained by the non-United States holder in the United States; in these cases, the non-United States holder generally will be taxed on its net gain derived from the disposition at the regular graduated rates and in the manner applicable to United States persons and, if the non-United States holder is a foreign corporation, the "branch profits tax" described above may also apply;
- the non-United States holder is an individual present in the United States for 183 days or more in the taxable year of the disposition and certain other conditions are met; in this case, the non-United States holder will be subject to a 30% tax on the amount by which the gain derived from the sale or other disposition of the Biota Pharmaceuticals Shares and any other United States-source capital gains realised by the non-United States holder in the same taxable year exceed the United States-source capital losses realised by the non-United States holder in that taxable year unless an applicable income tax treaty provides an exemption or a lower rate; or

- Biota Pharmaceuticals (being Nabi in respect of the period prior to the Implementation Date) is or has been a “United States real property holding corporation” for United States federal income tax purposes at any time within the shorter of the five year period ending on the date of disposition of the Biota Pharmaceuticals Shares or the period that the non-United States holder held Biota Pharmaceuticals Shares. Biota does not believe that Nabi is, or will become, a United States real property holding corporation, although there can be no assurance in this regard. If Nabi were to become a United States real property holding corporation at any time during the applicable period, however, any gain recognised on a disposition of Biota Pharmaceuticals Shares by a non-United States holder that did not own (directly, indirectly or constructively) more than 5% of common stock of Biota Pharmaceuticals during the applicable period generally would not be subject to United States federal income tax, provided that the common stock is “regularly traded on an established securities market” (within the meaning of Section 897(c)(3) of the Code).

(c) Information Reporting and Backup Withholding Tax

Dividends and proceeds from the sale or other taxable disposition of Biota Pharmaceuticals Shares are potentially subject to backup withholding.

In general, backup withholding will not apply to dividends on Biota Pharmaceuticals Shares paid by Nabi or its paying agents to a non-United States holder if the holder has provided the required certification that it is a non-United States holder.

Generally, Nabi must report to the IRS the amount of dividends paid, the name and address of the recipient, and the amount, if any, of tax withheld. Pursuant to income tax treaties or some other agreements, the IRS may make its reports available to tax authorities in the recipient’s country of residence.

In general, backup withholding and information reporting will not apply to proceeds from the disposition of Biota Pharmaceuticals Shares paid to a non-United States holder within the United States or conducted through certain United States-related financial intermediaries if the holder has provided the required certification that it is a non-United States holder.

Backup withholding is not an additional tax. Any amount withheld may be refunded or credited against the holder’s United States federal income tax liability, if any, provided that the required information is furnished to the IRS in a timely manner. Non-United States holders should consult their tax advisors regarding the application of the information reporting and backup withholding rules to them.

Non-United States Biota Shareholders should consult their tax advisors with respect to the particular tax consequences to them of owning and disposing of Biota Pharmaceuticals Shares, including the consequences under the laws of any state, local or foreign jurisdiction or under any applicable tax treaty.

10. Key terms of the Merger Implementation Agreement

10.1 Overview

Biota and Nabi entered into a Merger Implementation Agreement on 22 April 2012. The Merger Implementation Agreement sets out each party's obligations in connection with the implementation of the Scheme.

The key terms of the Merger Implementation Agreement are summarised below. A full copy of the Merger Implementation Agreement is set out in Appendix B to this Booklet.

All capitalised terms in this section 10 have the meaning given to them in the Merger Implementation Agreement.

10.2 Conditions Precedent

Implementation of the Scheme is subject to the following Conditions Precedent set out in the Merger Implementation Agreement. Some of these Conditions Precedent are for the benefit of Biota and Nabi and others are for the benefit of Biota only or Nabi only.

- (a) The mandatory waiting periods applicable to the Transactions under the applicable Competition Law have expired or been terminated or, where applicable, obtained, before 8 am on the Second Court Date.
- (b) All Regulatory Approvals set out in the Merger Implementation Agreement have been granted or obtained and those Regulatory Approvals have not been withdrawn, cancelled or revoked before 8 am on the Second Court Date.
- (c) The Biota Pharmaceuticals Shares have been approved for listing on NASDAQ, subject to official notice of issuance, before 8 am on the Second Court Date.
- (d) The Independent Expert has provided the Independent Expert's Report to Biota, stating that in its opinion the Scheme is in the best interests of Biota Shareholders, and the Independent Expert has not changed its conclusion or withdrawn the Independent Expert's Report by notice in writing to Biota prior to 8 am on the Second Court Date.
- (e) The Scheme Resolution has been approved by the requisite majorities of Biota Shareholders.
- (f) The Scheme has been approved by the Court.
- (g) The Nabi Charter Amendment Proposal and the Nabi Share Issue Proposal have been approved by the requisite majorities of Nabi Stockholders.
- (h) Nabi has received from the SEC a written "no-action" response regarding the issuance of the Biota Pharmaceuticals Shares being exempt from the registration requirements of the 1933 Act.
- (i) The amendment to the certificate of incorporation of Nabi reflecting the increase in the authorised number of Nabi Shares to 200 million has been filed with the State of Delaware and become effective.
- (j) No order or legislative restraint issued by any court or other Governmental Agency of competent jurisdiction remains in effect as at 8 am on the Second Court Date that prohibits, materially restricts, makes illegal or restrains the completion of the Transactions or any related document.
- (k) Before 8 am on the Second Court Date, any change of control consents agreed upon by the parties have been granted or obtained and have not been withdrawn, cancelled or revoked.
- (l) No Governmental agency has commenced, or is threatening to commence, any legal proceeding seeking to obtain, pursuant to any Competition Law, an order or restraint that would prohibit, materially restrict, make illegal or restrain the completion of the Transactions.
- (m) No Biota Regulated Event or Nabi Regulated Event occurs or becomes known to Nabi or Biota between 22 April 2012 and 8 am on the Second Court Date.
- (n) No Biota Material Adverse Change or Nabi Material Adverse Change occurs, or is discovered, announced or disclosed or otherwise becomes known to Nabi, or Biota, between 22 April 2012 and 8 am on the Second Court Date.
- (o) The representations and warranties given by Biota and Nabi in the Merger Implementation Agreement are true and correct, or true and correct in all material respects (as applicable) at the relevant times.
- (p) Biota and Nabi have performed all obligations and complied with all covenants required by the Merger Implementation Agreement to be performed or complied with prior to 8 am on the Second Court Date.

(q) Nabi has made the appointments required by the Merger Implementation Agreement to the Nabi Board effective as of the Implementation Date.

(r) Nabi has provided to Biota at 8 am on the Second Court Date a Nabi Closing Net Cash Balance Certificate showing a Nabi Closing Net Cash Balance of no less than US\$54 million.

(s) Nabi has amended, or procured the amendment of, the Rights Agreement so that the rights issued under the Rights Agreement are inapplicable to the Merger.

As at the date of this Booklet, Biota is not aware of any reason why the Conditions Precedent will not be satisfied by 8 am on the Second Court Date.

10.3 No shop restriction

During the Exclusivity Period, Biota, Nabi and their respective subsidiaries must not, and must use best endeavours to ensure that each of their representatives do not, except with the prior written consent of the other party, directly or indirectly solicit, invite, encourage or initiate any Competing Proposal or any enquiries, negotiations or discussions with any third parties in relation to, or that may reasonably be expected to lead to, a Competing Proposal, or communicate any intention to do any of those things.

10.4 No talk restriction

During the Exclusivity Period, Biota, Nabi and their respective subsidiaries must not, and must use best endeavours to ensure that each of their Representatives do not, except with the prior written consent of the other party, enter into, continue or participate in negotiations or discussions with, or enter into any agreement, arrangement or understanding with, any third parties in relation to, or that may reasonably be expected to lead to, a Competing Proposal.

10.5 No due diligence

During the Exclusivity Period, Biota, Nabi and their respective subsidiaries must not, and must use best endeavours to ensure that each of their representatives do not, except with the prior written consent of the other party, make available to any third parties or permit any third parties to receive any non public information relating to any member of their group in connection with such third parties formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal.

10.6 Notification of approach

During the Exclusivity Period, each party must notify the other party if it is approached by any third party to take any action of a kind that would breach the obligations outlined in sections 10.3, 10.4 or 10.5 of this Booklet and provide all information required by the Merger Implementation Agreement.

10.7 Exceptions 'no talk', 'no due diligence' and notification obligations

Biota's and Nabi's obligations under sections 10.4, 10.5 and 10.6 above do not apply to the extent that they restrict Biota or Nabi (as applicable) from taking any action in respect of a bona fide written Competing Proposal for it which it did not encourage, solicit, invite, facilitate or initiate, provided that:

- the Biota Board or Nabi Board (as applicable), acting in good faith, and in order to satisfy what the Biota Board or Nabi Board (as applicable) considers to be its fiduciary or statutory duties, determines that the Competing Proposal is, or may reasonably be expected to lead to, a Superior Proposal; or
- the Biota Board or Nabi Board (as applicable), acting in good faith, determines that not undertaking that act would, or would be likely to, involve a breach of the fiduciary or statutory duties owed by any Biota Director or Nabi Director (as applicable), and Biota or Nabi provides such prior written notice and such information to the other party as is required by the Merger Implementation Agreement within two Business Days prior to taking any action in respect of the Competing Proposal.

10.8 Competing Proposal

During the two Business Day period referred to in section 10.7 above, the party that has not received the Competing Proposal may offer to amend the terms of the Scheme (**Counterproposal**) so as to provide an equivalent or superior outcome for the shareholders than the applicable Competing Proposal.

The party that has received the Competing Proposal will then consider any such Counterproposal and, if the Board of that party determines, acting in good faith that:

- the Counterproposal is capable of being completed, taking into account all aspects of the Counterproposal, including its conditions; and
- would, if completed substantially in accordance with its terms, be more favourable than the Competing Proposal viewed in aggregate, taking into account a qualitative assessment of the identity, reputation and financial standing of the party making the Competing Proposal,

then Biota and Nabi must use their best endeavours to implement the Counterproposal and the party that received the Counterproposal must use its best endeavours to procure that its Board continues to recommend the Counterproposal to its shareholders and not the applicable Competing Proposal.

10.9 Break fee

Biota break fee

Biota must pay Nabi the Biota Break Fee, without withholding or set off, if:

- (a) the Biota Board fails to state that it considers the Scheme to be in the best interests of Biota Shareholders or fails to recommend that Biota Shareholders approve the Scheme, or publicly changes (including by attaching qualifications to) or withdraws that statement or recommendation, other than where the Independent Expert has concluded in the Independent Expert's Report that the Scheme is not in the best interests of Biota Shareholders. However, the Biota Break Fee will not be payable to Nabi if the Scheme becomes Effective notwithstanding the occurrence of any of these events;
- (b) a Competing Proposal for Biota is announced or made and is publicly recommended, promoted or otherwise endorsed by the Biota Board or by a majority of the Biota Directors;
- (c) a Competing Proposal for Biota is announced or made prior to the End Date and is completed at any time prior to the first anniversary of the date of the Merger Implementation Agreement and, as a result, a third party acquires control of Biota or the Biota Group within the meaning of section 50AA of the Corporations Act (or acquires an equivalent shareholding or economic interest in Biota pursuant to the implementation of a dual-listed company structure or reverse takeover);
- (d) Nabi terminates the Merger Implementation Agreement because Biota is in material breach of the Merger Implementation Agreement; or
- (e) a Biota Material Adverse Change or a Biota Regulated Event occurs between the date of the Merger Implementation Agreement and 8 am on the Second Court Date and Nabi terminates the Merger Implementation Agreement prior to the Implementation Date.

However, the Biota Break Fee will not be payable to Nabi if:

- Biota is entitled to terminate the Merger Implementation Agreement because Nabi is in material breach of the Merger Implementation Agreement or if a Nabi Material Adverse Change or a Nabi Regulated Event occurs; or
- a court or the Takeovers Panel determines that any part of the Biota Break Fee amounts to a breach of the fiduciary or statutory duties of the Biota Board or unacceptable circumstances within the meaning of the Corporations Act or is unenforceable or would, if paid, be unlawful.

Nabi break fee

Nabi must pay Biota the Nabi Break Fee, without withholding or set off, if:

- (a) the Nabi Board fails to state that it considers the Merger to be in the best interests of Nabi Stockholders or fails to recommend the approval of the Nabi Merger Proposals, or publicly changes (including by attaching qualifications to) or withdraws that statement or recommendation. However, the Nabi Break Fee will not be payable to Biota if the Scheme becomes Effective notwithstanding the occurrence of any of these events;
- (b) a Competing Proposal for Nabi is announced or made and is publicly recommended, promoted or otherwise endorsed by the Nabi Board or by a majority of the Nabi Directors;
- (c) a Competing Proposal for Nabi is announced or made prior to the End Date and is completed at any time prior to the first anniversary of the date of the Merger Implementation Agreement and, as a result, a third party acquires control of Nabi or the Nabi Group within the meaning of section 405 of the Securities Act;

- (d) Biota terminates the Merger Implementation Agreement because Nabi is in material breach of the Merger Implementation Agreement;
- (e) a Nabi Material Adverse Change or a Nabi Regulated Event occurs between the date of the Merger Implementation Agreement and 8 am on the Second Court Date and Biota terminates the Merger Implementation Agreement prior to the Implementation Date; or
- (f) the Scheme is not completed on or before the date which is eight Business Days after the End Date due to Nabi failing to provide the Nabi Closing Net Cash Balance to Biota on the Implementation Date of no less than US \$54 million.

However, the Nabi Break Fee will not be payable to Biota if:

- Nabi is entitled to terminate the Merger Implementation Agreement because Biota is in material breach of the Merger Implementation Agreement or if a Biota Material Adverse Change or a Biota Regulated Event occurs; or
- a court determines that any part of the Nabi Break Fee amounts to a breach of the fiduciary or statutory duties of the Nabi Board or unacceptable circumstances within the meaning of the Corporations Act or is unenforceable or would, if paid, be unlawful.

10.10 Termination

Termination by either party

Either Biota or Nabi may terminate the Merger Implementation Agreement by notice to the other party:

- (a) if there is a breach or non-fulfilment of a Condition Precedent or a Condition Precedent becomes incapable of satisfaction and the parties are unable to resolve the matter;
- (b) at any time before 8 am on the Second Court Date if the non-terminating party is in material breach of any clause of the Merger Implementation Agreement, provided that the terminating party has given notice to the non-terminating party in accordance with the Merger Implementation Agreement and the breach has continued to exist for 15 Business Days (or any shorter period ending at 5 pm on the last Business Day before the Second Court Date) from the time such notice is given;
- (c) if mutually agreed upon by the other party; or
- (d) if the Scheme has not become Effective on or before the End Date.

Termination by Biota

Biota may terminate the Merger Implementation Agreement:

- (a) at any time before 8 am on the Second Court Date if the Nabi Board publicly changes (including by attaching qualifications to) or withdraws its statement that it considers the Merger to be in the best interests of Nabi Stockholders or its recommendation that Nabi Stockholders approve the Nabi Merger Resolutions (because the Nabi Board has determined in good faith that their fiduciary or statutory duties require them to change or withdraw their recommendation) or publicly recommends, promotes or otherwise endorses a Superior Proposal; or
- (b) if Nabi does not provide the Nabi Closing Net Cash Balance to Biota on the Implementation Date of no less than US\$54 million.

Termination by Nabi

Nabi may terminate the Merger Implementation Agreement at any time before 8 am on the Second Court Date if the Biota Board publicly changes (including by attaching qualifications to) or withdraws its statement that it considers the Scheme to be in the best interests of Biota Shareholders or its recommendation that Biota Shareholders approve the Scheme (because the Biota Board has determined in good faith that their fiduciary or statutory duties require them to change or withdraw their recommendation) or publicly recommends, promotes or otherwise endorses a Superior Proposal.

10.11 Representations and Warranties

Each of Biota and Nabi has given representations and warranties to the other which are considered to be normal for an agreement of this kind.

10.12 End Date

Biota and Nabi have committed to implement the Scheme by the End Date, being 31 October 2012, or such later date as the parties may agree in writing.

11. Comparison of relevant Australian and United States laws

11.1 Introduction

Biota is a public company limited by shares and registered in Victoria under Australian law. It is admitted to the official list of ASX.

Nabi is incorporated in the United States, under the laws of the State of Delaware. Nabi's shares are listed on NASDAQ.

If the Scheme is implemented, the rights of Biota Shareholders in respect of Biota Pharmaceuticals Shares issued under the Scheme will be primarily governed by the General Corporation Law of the State of Delaware, the United States federal securities laws, the NASDAQ Marketplace Rules and Biota Pharmaceuticals' certificate of incorporation and by-laws.

A comparison of some of the material provisions of Australian law and Delaware law as they relate to Biota and Biota Pharmaceuticals respectively is set out below, along with a description of certain securities laws and stock exchange rules where applicable. The summary of Biota Pharmaceuticals' governing instruments is a summary of Nabi's governing instruments currently in effect, and not as they may be amended and/or restated after the Implementation Date.

References to 'Australian law' where they appear in this section are references to the Corporations Act, ASX Listing Rules, ASC Settlement Rules and Australian common law, as applicable. References to 'Delaware law' or the 'DGCL' are references to Delaware common law and the General Corporation Law of the State of Delaware (respectively).

Since the terms of the certificate of incorporation, by-laws and Delaware law are more detailed than the general information provided below, you should rely on the actual provisions of those documents. If you would like to read Nabi's certificate of incorporation or by-laws, these documents are available for inspection at Nabi's principal executive office and are filed with the SEC. A copy of Nabi's current certificate of incorporation and by-laws, as well as the proposed amendments to Nabi's certificate of incorporation (with respect to the Transaction Proposals and the proposal described in section 3.4(iv)) are attached at Annexure F of this Booklet.

The comparison below is not an exhaustive statement of all relevant laws, rules and regulations and is intended as a general guide only. You should consult with your own legal adviser if you require further information.

11.2 Shareholder meeting

Requirement for annual meetings; ability to call special meetings

Biota

Under Australian law, the annual general meeting of Biota is required to be held within five months after the end of its financial year.

A general meeting of Biota Shareholders may be called from time to time by the Biota Board, individual directors or by shareholders in the circumstances set out below.

- When requested to do so by shareholders holding at least 5% of the votes that may be cast at the meeting or at least 100 shareholders who are entitled to vote at the meeting, directors must call a general meeting within 21 days after the request is given to the company, and the meeting must be held not later than two months after the request is given.
- Alternatively, shareholders holding at least 5% of the votes that may be cast at the meeting may themselves call, and arrange to hold, a general meeting of the company.

Biota Pharmaceuticals

Under NASDAQ listing rules, Biota Pharmaceuticals will be required to have an annual meeting of shareholders within one year after its financial year end.

Nabi's by-laws permit special meetings of shareholders for any purposes prescribed in the notice of meeting to be called at any time only by the board of directors, the chairman or the president. Under the DGCL, a director or shareholder may petition the Delaware Court of Chancery for an order compelling the holding of an annual meeting if no annual meeting has been held (or action by written consent to elect directors in lieu of an annual meeting has been taken) for a period of 30 days after the date designated for the annual meeting, or if no date for an annual meeting has been designated, for a period of 13 months after the latest to occur of the corporation's organisation or last annual meeting (or the last action by written consent to elect directors in lieu of an annual meeting).

Notice of meetings

Biota

As Biota is quoted on the ASX, notice of a general meeting of Biota must be given at least 28 days before the date of the meeting. Biota is required to give notice only to shareholders entitled to vote at the meeting as well as its directors and auditors.

Biota Pharmaceuticals

The DGCL and Nabi's by-laws provide that notice of a shareholders' meeting must be given not less than 10 days nor more than 60 days before the meeting to each shareholder of record entitled to vote at such meeting, except as otherwise provided in Nabi's certificate of incorporation or by-laws or as required by the DGCL. The notice shall state the place, date and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called.

Quorum requirements

Biota

The quorum for a meeting under the Biota Constitution is three shareholders. However, if within 30 minutes after the time for a meeting, a quorum is not present, the meeting is dissolved unless the Biota Board adjourns the meeting to a date, time and place determined by it. If no quorum is present at any adjourned meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

Biota Pharmaceuticals

Nabi's by-laws provide that the presence of the holders of issued and outstanding shares of capital stock representing a majority of the votes entitled to be cast at a shareholders' meeting, present in person or represented by proxy, constitutes a quorum for the transaction of business at a shareholders' meeting.

Voting requirements

Biota

Unless the Corporations Act or a company's constitution requires a special resolution, resolutions are passed by a simple majority of votes cast on the resolution. Under the Corporations Act, a special resolution may be passed by Biota if not less than 28 days notice of a general meeting is given, specifying the intention to propose the special resolution and stating the resolution. In order to pass, a special resolution requires approval of at least 75% of the votes cast by shareholders entitled to vote.

The Corporations Act requires certain matters to be resolved by a company by special resolution, including:

- the change of name of the company;
- a selective reduction of capital or selective share buy back;
- the conversion of the company from one type or form to another; and
- a decision to wind up the company voluntarily.

Under the Corporations Act, a special resolution is also required to modify or repeal the Biota Constitution.

The Biota Constitution does not stipulate any additional matters to be resolved by special resolution.

Each Biota Share confers a right to vote at all general meetings. On a show of hands, each Biota Shareholder present in person, or by proxy, attorney or body corporate representative, has one vote. If a poll is held, Biota Shareholders present in person or by their proxy, attorney or body corporate representative will have one vote for every Biota Share held at the record date for the meeting.

The Biota Constitution provides that a poll may be demanded by (i) the chairman of the general meeting, (ii) at least five shareholders entitled to vote on the resolution, or (iii) shareholders holding at least 5% of the votes that may be cast on the resolution on a poll. The percentage of votes that shareholders have is to be worked out as at the midnight before the poll is demanded.

A proxy's appointment must be signed and sent to Biota so as to be received at least 48 hours before a meeting.

Biota Pharmaceuticals

Under the DGCL, each shareholder is entitled to one vote for each share of capital stock held by the shareholder unless the certificate of incorporation provides otherwise. Nabi's certificate of incorporation does not alter the voting rights of holders of the shares in Biota Pharmaceuticals. Nabi's certificate of incorporation designates a series of preferred stock with special rights, including special voting rights, but currently there are no shares of the preferred stock outstanding.

The DGCL provides that certain corporate actions, including the dissolution of the corporation, amendments to the corporation's certificate of incorporation, and most mergers and consolidations, must be approved by a majority of all shares of stock outstanding and entitled to be voted thereon. The DGCL provides that, unless the certificate of incorporation or by-laws of a corporation sets out a different standard, directors shall be elected on a single winner or first past the post system (also called a 'simple plurality of votes', the single winner is the person with the most votes) by reference to the votes of shares present in person or represented by proxy and entitled to vote on the election of directors, and any other matter shall be determined by a majority of shares present in person or represented by proxy, and entitled to vote on the matter.

Under Nabi's certificate of incorporation and by-laws, when a quorum is present, any election of directors shall be determined by a plurality of the votes properly cast on the question.

On an election of a particular number of directors, the same number of nominees receiving the highest number of "for" votes will be elected and the "against" (or "withheld") votes will have no legal effect on the election.

Any other matter, shall be determined by a majority of the votes properly cast on the matter, unless a provision of the DGCL, certificate of incorporation or by-laws expressly requires a different vote.

Shareholders' rights to bring resolution before a meeting

Biota

Biota Shareholders holding at least 5% of the votes that may be cast at a general meeting or at least 100 shareholders who are entitled to vote at the meeting may, by written notice to Biota, propose a resolution for consideration at the next general meeting occurring more than two months after the date of the notice.

Biota Pharmaceuticals

Nabi's by-laws provide that in order for business to be properly brought before a shareholders' meeting by shareholders, the business must relate to a proper subject matter for shareholder action and the shareholder must have given timely notice thereof in writing to the Secretary of the corporation. To be timely, such notice must be delivered not less than 90 days before the meeting, except that if less than 100 days' notice or prior public disclosure of the date of the meeting is given or made to shareholders, then to be timely the notice must be received not later than the close of business on the 10th day following the day on which such notice of the date of the meeting or public disclosure is made. In addition, the notice must set forth certain required information, including the business to be conducted, the identity of the proposing shareholder, the class and number of shares owned by such shareholder and any material interest of the shareholder in such business. In addition, any proposal that a shareholder desires to be included in the proxy statement for the company's annual meeting must comply with the requirements of the US Securities Exchange Act of 1934, as amended, and the corresponding rules and regulations.

11.3 Directors

Directors' management of the business of the company

Biota

Under the Biota Constitution, the business of the company is to be managed by or under the direction of the Biota Board. The directors may exercise all the powers of the company except any powers that the Corporations Act, the ASX Listing Rules or the Biota Constitution requires the company to exercise in general meeting.

Biota Pharmaceuticals

Under the DGCL, a corporation's business and affairs are to be managed by or under the direction of the board of directors, which may exercise all such powers of the corporation except as otherwise provided in the DGCL or the certificate of incorporation.

Number and election of directors

Biota

Under the Biota Constitution, Biota must have no less than three nor more than nine directors.

Casual vacancies between annual general meetings may be filled by the Biota Board, and the Biota Board has the power to appoint additional directors, but so that the total number of directors does not at any time exceed nine.

A Biota Director may not hold office for a continuous period in excess of three years or past the third annual general meeting following the Director's appointment, whichever is the longer, without submitting for election or re-election. Up to one director appointed to the office of managing director may be exempt from retirement by rotation.

Biota Pharmaceuticals

Nabi's certificate of incorporation has fixed the number of directors at seven, or such number as may be designated by the board of directors.

Nabi's by-laws provide that the number of directors shall be determined from time to time by a vote of the majority of directors then in office. In connection with the Merger, the Nabi board plans to set the number of directors at eight. Each director shall hold office until his or her successor is elected and qualified.

Nabi's by-laws provide that directors may be nominated either by or at the direction of the board of directors or by a shareholder entitled to vote for the election of directors who complies timely with the notice procedures set forth in the by-laws. The by-laws contain detailed provisions regarding the timing and content of such notice. To be timely, a shareholder's notice shall be delivered to or mailed and received at the principal executive office of the corporation not less than 90 days prior to the meeting, except that if less than 100 days' notice or prior public disclosure of the date of the meeting is given or made to shareholders, then to be timely the notice must be received not later than the close of business on the 10th day following the day on which such notice of the date of the meeting or such public disclosure is made.

Each notice must include:

- as to each person whom the shareholder proposes to nominate, all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the US Securities Exchange Act of 1934, as amended; and
- as to the shareholder giving the notice, such shareholder's name and address and the class and number of shares which are beneficially owned by such shareholder.

Removal of directors

Biota

The Biota Shareholders may (without cause) remove a director before their period of office ends by passing a resolution to do so at a general meeting. The resolution must be passed by a majority of the votes cast by shareholders present and voting.

Biota directors cannot themselves remove a director from their office or require a director to vacate their office.

Biota Pharmaceuticals

Under the DGCL, any director, or the entire Nabi Board, may be removed, with or without cause, by holders of a majority of the shares then entitled to vote at an election of directors, unless the corporation has a classified board or cumulative voting, in which case there may be limitations on the ability of shareholders to remove directors. As Nabi does not currently have a classified board or cumulative voting, such exceptions do not apply.

11.4 Amendments to constituent documents

Biota

Any amendment to the Biota Constitution must be approved by a special resolution passed by shareholders present and voting on the resolution.

Biota Pharmaceuticals

Biota Pharmaceuticals' constituent documents will consist of its certificate of incorporation and by-laws. Under Delaware law, the certificate of incorporation is the base constituent document of a company and may set out details such as the company's name, the classes and number of shares the company is authorised to issue (and, where applicable, the rights, privileges, restrictions and conditions attaching to each class or series of shares), any restrictions on transfer of the company's shares and the minimum and maximum number of directors. Subject to Delaware law, the by-laws will regulate the business and affairs of Biota Pharmaceuticals and provide for matters including meetings, elections of the board of directors and appointment of officers, filling of vacancies, notices, types and duties of officers, committees and other routine conduct. Under the DGCL, unless the certificate of incorporation requires a greater vote, an amendment to the certificate of incorporation requires:

- the approval and recommendation of the board of directors;
- the affirmative vote of a majority of the outstanding shares entitled to vote on the amendment; and
- the affirmative vote of a majority of the outstanding shares of each class entitled to vote on the amendment as a class.

The by-laws of Nabi provide that the board of directors and the shareholders each have the power to adopt, alter, amend and repeal the by-laws; provided, however, that the by-laws cannot be altered, amended or repealed by action of the shareholders, and no by-law can be adopted by action of the shareholders, without the affirmative vote of the holders of at least 75% of the voting power of all the shares of the corporation entitled to vote generally in the election of directors, voting together as a single class.

11.5 Issue of Biota Pharmaceuticals Shares

Biota

Subject to specified exceptions (for pro rata issues etc.), the ASX Listing Rules apply to restrict Biota from issuing, or agreeing to issue, more equity securities (including shares and options), than the number calculated as follows in any 12 month period without the approval of Biota Shareholders:

15% of the total of:

- (a) the number of fully paid ordinary shares on issue 12 months before the date of the issue or agreement; plus
- (b) the number of fully paid ordinary shares issued in the 12 months under a specified exception; plus
- (c) the number of partly paid ordinary shares that became fully paid in the 12 months; plus
- (d) the number of fully paid ordinary shares issued in the 12 months with shareholder approval; less
- (e) the number of fully paid ordinary shares cancelled in the 12 months,

less the number of equity securities issued or agreed to be issued in the 12 months before the date of issue or agreement to issue but not under a specified exception or with shareholder approval.

Subject to certain exceptions, the ASX Listing Rules require the approval of shareholders by ordinary resolution in order for the company to issue shares or options to directors.

Under the Biota Constitution, the directors may issue shares on terms determined by the directors at such times as they think fit. This power is, however, subject to the Corporations Act, the ASX Listing Rules, and any special rights previously conferred on the holders of any existing shares or class of shares.

Biota Pharmaceuticals

According to Nabi's certificate of incorporation, Nabi is currently authorised to issue 130 million shares, consisting of 125 million shares of common stock and 5 million shares of preferred stock.

Before the Implementation Date, a proposal will be put to Nabi Shareholders to approve the increase in the authorised capital of Nabi to allow the issue of the Biota Pharmaceuticals Shares. If the relevant resolution is passed, Nabi's total authorised capital will be 205 million shares, consisting of 200 million shares of common stock and 5 million shares of preferred stock.

Shares may be issued for such consideration as the directors may determine.

Under NASDAQ listing rules, shareholder approval is required for certain significant issuances of Nabi's securities, including (1) an issuance in connection with the acquisition of the stock or assets of another company, where the issuance exceeds 20% of the voting power or number of shares outstanding before the issuance (or 5% in the case of transactions involving certain related parties) unless the issuance is effected in a public offering for cash, (2) an issuance of company securities that will result in a change in control, and (3) an issuance in connection with a new or materially amended equity compensation arrangement for officers, directors, employees or consultants, subject to certain exceptions. No shareholder approval is required for specific issuances under a previously-approved plan. Delaware law also recognises the concept of treasury stock. Treasury stock is stock that is reacquired by a corporation after it has been issued. Treasury shares are considered "issued" but not "outstanding" and are therefore not counted for a shareholder vote. If the shares are retired, then they cease to be treasury stock and resume the status of authorised but unissued stock. Treasury shares may be disposed of by the corporation for such consideration as the board determines.

11.6 Variation of class rights

Biota

Rights attaching to a class of shares in Biota may only be varied or cancelled by special resolution of Biota Shareholders, and either:

- a special resolution passed at a meeting of the shareholders holding shares in the class; or
- with the written consent of shareholders with at least 75% of the votes in the class.

Biota Pharmaceuticals

Under the DGCL, any change to the rights of holders of shares in Biota Pharmaceuticals or preferred stock, if any were to be issued, would require an amendment to the Nabi certificate of incorporation. The holders of the outstanding shares of a class are entitled to vote as a class upon a proposed amendment to the certificate of incorporation if the amendment will:

- increase or decrease the authorised number of shares of the class;
- increase or decrease the par value of the shares of the class; or
- alter or change the powers, preferences or special rights of the shares of the class so as to affect them adversely.

A proposal to approve such amendments requires approval of a majority of the outstanding shares of each class entitled to vote on the resolution. Currently, Nabi has only one class of stock outstanding – Nabi's common stock.

11.7 Protection of minority shareholders and the oppression remedy

Biota

Under the Corporations Act, any Biota Shareholder can bring an action in cases of conduct which is contrary to the interests of shareholders as a whole, or oppressive to, unfairly prejudicial to, or unfairly discriminatory against, any shareholder(s), whether in their capacity as a shareholder or in any other capacity. Former shareholders can also bring an action if it relates to the circumstances in which they ceased to be a shareholder.

A statutory derivative action may also be instituted by a shareholder, former shareholder or person entitled to be registered as a shareholder, of Biota. In all cases, leave of the court is required. Such leave will be granted if the court is satisfied that:

- it is probable that Biota will not itself bring the proceedings or properly take responsibility for them or for the steps in them;
- the applicant is acting in good faith;
- it is in the best interests of Biota that the applicant be granted leave;
- if the applicant is applying for leave to bring proceedings, there is a serious question to be tried; and
- either at least 14 days before making the application, the applicant gave written notice to Biota of the intention to apply for leave and the reasons for applying, or it is otherwise appropriate to grant leave.

Biota Pharmaceuticals

Under Delaware law, a shareholder may bring a derivative action on behalf of the corporation where those in control of the corporation have failed to assert a claim belonging to the corporation (and to the shareholders collectively).

Under Delaware law, a shareholder who wishes to bring a derivative action must meet certain eligibility and standing requirements, including (1) that the plaintiff was a shareholder of the corporation at the time of the act of which the plaintiff complains or that the plaintiff's shares there after devolved on the plaintiff by operation of law, and (2) that the plaintiff maintains their status as a shareholder throughout the course of the litigation. In addition, a derivative plaintiff must make a demand on the directors of the corporation to assert the corporate claim, unless that demand would be futile.

Settlement or dismissal of a derivative action requires the approval of the court and notice to shareholders of the proposed dismissal.

An individual may also commence a class action suit on their own behalf and on behalf of other similarly situated shareholders to enforce an obligation owed to the shareholders directly where the requirements for maintaining a class action under Delaware law have been met.

11.8 Source and payment of dividends

Biota

Under Australian law, the directors of Biota must not pay a dividend unless (i) the Company's assets exceed its liabilities immediately before the dividend is declared and the excess is sufficient for the payment of the dividend, (ii) the payment of the dividend is fair and reasonable to the company's shareholders as a whole, and (iii) the payment of the dividend does not materially prejudice the company's ability to pay creditors.

Under the Biota Constitution, the directors may determine that a dividend is payable and fix the amount, the time for payment and the method of payment. Dividends must be declared and paid (subject to the rights of, or any restrictions on, the holders of shares created or raised under any special arrangement as to dividends) according to the amounts paid or credited as paid on the shares in respect of which the dividend applies.

Biota Pharmaceuticals

Under the DGCL, the board of directors may declare and pay dividends to shareholders either out of the corporation's surplus (which is defined as the excess of net assets over amounts determined to be capital under the DGCL) or, if no surplus exists, then out of the net profits for the fiscal year in which the dividend is declared and/or the preceding fiscal year. If the capital of the corporation is less than the aggregate amount of the capital represented by the corporation's issued and outstanding shares of all classes having a preference on distribution of assets, the board of directors may not declare and pay any dividends until such deficiency is repaired.

11.9 Remuneration of directors and officers

Biota

Under the ASX Listing Rules, the maximum amount to be paid to directors for their services as directors (other than the salary of an executive director) is not to exceed the amount approved by shareholders in general meeting. The latest approval was at Biota's 2006 general meeting at which Biota Shareholders approved aggregate remuneration for directors of A\$600,000 per year.

The remuneration report is included in the directors' report and is required to include a discussion of the Board's policy in relation to remuneration of key management personnel of the company.

A listed company (such as Biota) must put its remuneration report to a shareholder vote at its annual general meeting. If in two consecutive annual general meetings, 25% or more of the votes cast on the resolution vote against adopting the remuneration report, a spill resolution must then be put to shareholders. A spill resolution is a resolution that a spill meeting be held and all directors (other than a managing director who is exempt from the retirement by rotation requirements) cease to hold office immediately before the end of the spill meeting. If the spill resolution is approved by the majority of votes cast on the resolution, a spill meeting will be held within 90 days at which directors wishing to remain directors must stand for re-election.

Biota Pharmaceuticals

Nabi's by-laws provide that by resolution of the board of directors, the directors, as such, may receive stated salaries for their services, and may be allowed a fixed sum and expenses for attendance at meetings.

11.10 Retirement benefits

Biota

The Corporations Act provides that, in respect of termination benefits payable to a company director, senior executive or key management personnel under employment contracts entered into, renewed or varied on or after 24 November 2009, shareholder approval is required if the total value of the benefits exceed one year of that person's base salary. For director employment contracts entered into, renewed or varied prior to 24 November 2009, shareholder approval is required if termination benefits payable to the director exceed an amount equal to the director's annual remuneration multiplied by the number of years in which the Director has held office (up to a maximum of seven years).

Biota Pharmaceuticals

Neither Delaware law, nor Nabi's certificate of incorporation or by-laws, nor the NASDAQ Marketplace Rules place a limit on, or require shareholder approval for, payment of any termination or retirement benefits to directors and officers.

11.11 Fiduciary duties of directors and officers

Biota

Under Australian law, the directors and officers of Biota are subject to a range of duties including duties to:

- act in good faith in the best interests of the company;
- act for a proper purpose;
- not fetter their discretion (in the case of directors only);
- exercise care and diligence in the performance of their duties;
- avoid conflicts of interest;
- not use their position to gain advantage for themselves or someone else, or to cause detriment to the company; and
- not misuse information which they have gained through their position to gain advantage for themselves or someone else, or to cause detriment to the company.

Biota Pharmaceuticals

Under Delaware law, directors have fiduciary obligations, including the duty of care and the duty of loyalty. The duty of care requires directors to inform themselves of all reasonably available information before making business decisions on behalf of the corporation and to act with requisite care in discharging their duties to the corporation. The duty of loyalty requires directors to act in good faith and in the corporation's best interests.

11.12 Release from liability and indemnification of directors and officers

Biota

Under Australian Law, Biota cannot:

- exempt an officer or auditor from liability to the company incurred in their capacity as an officer or auditor;
- indemnify an officer or auditor against a liability owed to the company or a related body corporate; or
- indemnify an officer or auditor against the legal costs incurred in defending certain legal proceedings, including proceedings in which the person is found liable to the company or a related body corporate.

The Biota Constitution contains provisions indemnifying the company's directors, secretaries and executive officers or employees, to the maximum extent permitted by law, against any liability incurred by that person in their capacity as an officer of Biota or of a subsidiary of Biota.

Biota Pharmaceuticals

The DGCL provides that a corporation may include, in its certificate of incorporation, a provision eliminating or limiting the personal liability of a director to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director. However, the provision may not eliminate or limit the liability of a director for:

- breach of the duty of loyalty;
- acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
- unlawful payments of dividends, or unlawful share repurchases or redemptions; or
- any transaction from which the director derived an improper personal benefit.

Nabi's certificate of incorporation contains a provision limiting the personal liability of a director for monetary damages for breach of fiduciary duty as a director, subject to the limitations described above.

The DGCL provides that a corporation may indemnify any person made a party, or threatened to be made a party, to an action, suit or proceeding by reason of the fact that such person was a director, officer, employee or agent of the corporation, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such individual. However, the individual must have acted in good faith and in a manner the individual reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal proceeding, had no reason to believe the conduct was unlawful.

For actions or suits brought by or in the name of the corporation, a corporation may indemnify a director, or officer, employee or agent against expenses incurred if the individual acted in good faith and in a manner the individual reasonably believed to be in, or not opposed to, the best interests of the corporation. However, if the individual is adjudged to be liable to the corporation, the individual

can be indemnified if and only to the extent that a court determines that despite the adjudication of liability, the individual is fairly and reasonably entitled to indemnity.

Nabi's certificate of incorporation provides that it will indemnify each director, officer, employee and agent to the fullest extent permitted by law, as more fully set out in the by-laws. Nabi's by-laws provide that it will indemnify, to the fullest extent permitted by the DGCL, any person made a party, or threatened to be made a party, to any action, suit or proceeding by reason of the fact that such person was a director or officer of Nabi, or serving as a director or officer of another entity at Nabi's request. The board of directors may, in its discretion, authorise the corporation to indemnify employees and agents of the corporation. In each case, the indemnified person must have acted in good faith and in a manner actually and reasonably believed to be in the best interests of the corporation.

The person asserting a right to indemnification must notify the corporation of the action, suit or proceeding as soon as practicable, after which the corporation will be entitled to participate in the action or assume the defence of the action. The corporation is not required to indemnify a person for amounts paid in settlement without its written consent.

11.13 Transactions involving directors, officers or other related parties

Biota

The Corporations Act prohibits a public company such as Biota from giving a related party a financial benefit unless it:

- obtains the approval of shareholders and gives the benefit within 15 months after approval; or
- the financial benefit is exempt.

A related party is defined to include any entity which controls the public company, directors of the public company, directors of any entity which controls the public company and, in each case, spouses and certain relatives of such persons. Exempt financial benefits include indemnities, insurance premiums and payments for legal costs which are not otherwise prohibited by the Corporations Act and benefits given on arm's length terms.

The ASX Listing Rules prohibit a listed entity such as Biota from acquiring a substantial asset (an asset the value or consideration for which is 5% or more of the entity's equity interests) from, or disposing of a substantial asset to certain related parties of the entity, unless it obtains the approval of shareholders. The related parties include directors, persons who have or have had (in aggregate with any of their associates) in the prior six month period an interest in 10% or more of the shares in the company and, in each case, any of their associates. The provisions apply even where the transaction may be on arm's-length terms.

The ASX Listing Rules also prohibit Biota from issuing or agreeing to issue shares to a director unless it obtains the approval of shareholders or the share issue is exempt. Exempt share issues include issues made pro rata to all shareholders, under an underwriting agreement in relation to a pro rata issue, under certain dividend or distribution plans or under an approved employee incentive plan.

The Corporations Act generally requires a Biota director who has a material personal interest in a matter that relates to the affairs of Biota to give the other directors notice of that interest. That director must not be present at a meeting where the matter is being considered or vote on the matter unless the other directors or ASIC approve, or the matter is not one which requires disclosure under the Corporations Act. Under the Corporations Act, failure of a director to disclose a material personal interest, or voting despite a material personal interest, does not affect the validity of a contract in which the director has an interest. Biota directors, when entering into transactions with Biota, are subject to the common law and statutory duties to avoid conflicts of interest.

Biota Pharmaceuticals

The DGCL provides that a contract or transaction between a corporation and one or more of its directors or officers will not be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the board of directors or committee which authorises the contract or transaction, or solely because that director's or officer's votes are counted for this purpose, if:

- the material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the board of directors or the committee, and the board or committee in good faith authorises the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors may be less than a quorum; or
- the material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the shareholders entitled to vote on the matter, and the contract or transaction is specifically approved in good faith by a vote of the shareholders; or
- the contract or transaction is fair as to the corporation as of the time it is authorised, approved or ratified, by the board of directors, a committee or the shareholders.

The DGCL further provides that interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or of a committee which authorised the contract or transaction.

11.14 Takeovers

Takeover requirements

Biota

Australian law places restrictions on a person acquiring interests in the voting shares of Biota where, as a result of the acquisition, that person's or someone else's voting power in the company increases from 20% or below to more than 20%, or from a starting point that is above 20% and below 90%. Exceptions to this restriction include an acquisition of less than 3% of the voting shares in the company within a six month period, an acquisition made with shareholder approval, an acquisition made under a takeover bid conducted in accordance with Australian law or an acquisition that results from a Court approved compromise or arrangement.

Biota Pharmaceuticals

The DGCL provides that, if a person acquires 15% or more of a corporation's voting shares, then the corporation may not engage in a broad range of business combinations with such interested shareholder for three years following the time the shareholder became an interested shareholder unless:

- the board of directors of the corporation has approved, prior to the acquisition date, either the business combination or the transaction that resulted in the person becoming an interested shareholder;
- upon consummation of the transaction that resulted in the shareholder becoming an interested shareholder, the interested shareholder owned at least 85% of the corporation's voting shares (excluding shares owned by directors who are officers and shares owned by employee share plans in which participants do not have the right to determine confidentially whether shares will be tendered in a tender or exchange offer); or
- the business combination is approved by the board of directors and authorised by the vote of at least two-thirds of the outstanding voting shares not owned by the interested shareholder.

These restrictions on interested shareholders do not apply under some circumstances, including if the corporation, by action of its shareholders, adopts an amendment to its certificate of incorporation or by-laws expressly electing not to be governed by these provisions of the DGCL. The amendment will be effective twelve months after its adoption.

The DGCL requires approval of mergers or consolidations by a majority of the shares issued and outstanding and entitled to vote on the matter, unless the corporation's certificate of incorporation specifies a greater percentage.

Nabi's certificate of incorporation provides, subject to the terms and conditions set forth therein, that the affirmative vote of the holders of (1) 75% of Nabi's common stock entitled to vote for the election of directors and (2) 50% of Nabi's Series A Convertible Preferred Stock voting separately as a class, shall be required to adopt a merger agreement, approve a sale of substantially all of Nabi's assets, or approve the issuance of a substantial amount of shares of Nabi stock in exchange for the securities or assets of another corporation. However, Nabi has no outstanding shares of preferred stock. In addition, the heightened shareholder approval requirements described above do not apply to transactions approved by the board of directors, subject to certain conditions, and they will not apply to the issuance of Biota Pharmaceuticals Shares in the Merger.

Certain other provisions of Nabi's certificate of incorporation and by-laws also may have the effect of restricting takeovers, such as those provisions (i) authorising the board of directors to issue from time to time any series of preferred stock and to fix the designations, powers, preferences and rights of the shares of such series of preferred stock, (ii) requiring advance notice of a shareholder's intention to nominate candidates to serve as directors or submit proposals for consideration at a shareholders' meeting and (iii) prohibiting shareholders from calling a special meeting of shareholders.

The certificate of incorporation and by-laws of Nabi may be amended in the future in accordance with their terms and Delaware law to authorise additional takeover defence mechanisms.

There are extensive disclosure requirements associated with takeover bids under United States securities laws.

Takeover defence mechanisms

Biota

Under Australian takeovers legislation and policy, boards of target companies are limited in the defensive mechanisms that they can put in place to discourage or defeat a takeover bid. For example, it is likely that the adoption of a shareholders' rights plan (or so-called 'poison pill') would give rise to a declaration of unacceptable circumstances by the Australian Takeovers Panel if it had that effect.

Biota Pharmaceuticals

Under Delaware law, there are a number of defensive mechanisms available to protect the corporation and its shareholders against hostile takeover bids. In particular, rights plans, which have been generally upheld by the Delaware courts, can protect a corporation and its shareholders from non-negotiated hostile takeover attempts made at unfair or inadequate prices or by coercive or unfair tactics. Unlike Australian law, Delaware law permits the accumulation of unlimited amounts of the corporation's shares. The limitation on such accumulations must be disclosed under United States federal securities laws.

11.15 Right to inspect corporate books and records

Biota

Under the Corporations Act, a shareholder must obtain a court order to obtain access to the corporate books. The applicant must be acting in good faith and be making the inspection for a proper purpose.

Biota Pharmaceuticals

Nabi's certificate of incorporation is on file with the Secretary of State of Delaware and the SEC. Nabi's by-laws are on file with the SEC.

The DGCL provides that any shareholder shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the corporation's share ledger, shareholder list and certain books and records, and to make copies or extracts of those documents. If the corporation refuses to permit the shareholder's inspection or does not reply to the shareholder's written demand within five business days, the shareholder may seek remedy in the Delaware Court of Chancery.

11.16 Right to inspect register of shareholders

Biota

Under Australian law, the register of shareholders of a company is usually kept at the registered office or principal place of business in Australia and must be available for inspection to shareholders free of charge at all times when the registered office is open to the public. If a person asks Biota for a copy of the register (or any part of the register) and pays the requested fee (up to a prescribed amount), Biota must give that person the copy within seven days of the date on which Biota receives such payment.

Biota Pharmaceuticals

Delaware law and Nabi's by-laws provide that, for at least ten days before every shareholder meeting, a complete list of the shareholders entitled to vote at the meeting must be made and be open to examination by any shareholder (1) on a reasonably accessible electronic network, provided that the information required to gain access to the list is provided with the notice of the meeting, or (2) during ordinary business hours at the principal place of business of the corporation.

The list must be produced at the meeting and be subject at all times during the meeting to the inspection of any shareholder present.

11.17 Winding-up

Biota

Under Australian law, an insolvent company may be wound up by a liquidator appointed either by creditors or the court. Directors cannot use their powers after a liquidator has been appointed. If there are funds left over after payment of the costs of the liquidation, and payments to other priority creditors, including employees, the liquidator will pay these to unsecured creditors as a dividend. The shareholders rank behind the creditors and are, therefore, unlikely to receive any dividend in an insolvent liquidation.

Under Australian law, shareholders of a solvent company may decide to wind up the company if the directors are able to form the view that the company will be able to pay its debts in full within 12 months after the commencement of the winding-up. A meeting at which a decision is made to wind up a solvent company requires at least 75% of votes cast by the shareholders present and voting.

The Biota Constitution provides that on winding-up, the liquidator may divide among Biota Shareholders in kind the whole or any part of Biota's property and may for that purpose set the value as the liquidator considers fair upon any property to be so divided and may determine how the division is to be carried out as between the shareholders or different classes of shareholders.

Biota Pharmaceuticals

Under the DGCL, a corporation may be dissolved if:

- a majority of the directors in office adopt a resolution to approve dissolution at a board meeting called for that purpose and thereafter a notice of a meeting of shareholders to take action on the matter is mailed to each shareholder entitled to vote thereon; and
- holders of a majority of the issued and outstanding shares entitled to vote on the matter adopt a resolution to approve dissolution at the shareholders' meeting called for that purpose, and a certificate of dissolution is thereafter filed with the Delaware Secretary of State.

The DGCL also permits shareholders to authorise the dissolution of the corporation without board action if all of the shareholders entitled to vote on the matter provide written consent to dissolution and a certificate of dissolution is filed with the Delaware Secretary of State.

12. Additional Information

12.1 Introduction

This section 12 sets out additional information required pursuant to the Corporations Act and the Corporations Regulations, but only to the extent that this information is not otherwise disclosed in other sections of this Booklet. This section also includes additional information that the Directors consider material to a decision on how to vote on the resolution to approve the Scheme.

12.2 Capital structure of Biota

As at the Date of this Booklet, there were 182,350,316 Biota Shares and 6,182,853 Biota Share Rights on issue (being all Unvested Biota Share Rights).

See section 12.4(f) below for further information on the Biota Share Rights.

As at the date of this Booklet, the following persons had notified Biota, through the lodgement of substantial holder notices with the ASX, that they hold a Relevant Interest in 5% or more of the Biota Shares:

Name	Number of Biota Shares	% of Biota Shares on issue as at the date of this Booklet
Hunter Hall Investment Management Limited (and its associates)	24,781,543	13.59
East Hill Holding Company, LLC, Landon T Clay (and its associates)	22,520,767	12.35

12.3 Interests of Biota and Biota Directors in Biota securities and Nabi securities

(a) Relevant Interests of Biota in Nabi

As at the date of this Booklet, Biota did not have a Relevant Interest in any Nabi Shares or any other marketable securities of Nabi.

(b) Relevant Interests of Biota Directors in Biota

As at the date of this Booklet, the Biota Directors held Relevant Interests in the number of Biota Shares set out below:

- (i) Dr James Fox: 110,000 Biota Shares.
- (ii) Mr Peter Cook: 713,531 Biota Shares.
- (iii) Mr Paul Bell: 50,000 Biota Shares.
- (iv) Prof Jeffery Errington: 20,000 Biota Shares.
- (v) Prof Ian Gust: 533,036 Biota Shares.
- (vi) Mr Richard Hill: 10,000 Biota Shares.

As at the date of this Booklet, Mr Peter Cook also held 2,003,378 Biota Share Rights. These Biota Share Rights will vest upon Court approval of the Scheme. Further information regarding the manner in which Biota Share Rights will be dealt with in connection with the Scheme is set out below at section 12.4(f). Each of the Biota Directors intends to vote any Biota Shares they own or control in favour of the Scheme, in the absence of a Superior Proposal.

As at the date of this Booklet, none of the Biota Directors intend to sell Biota Shares prior to the Scheme Meeting.

(c) Relevant Interests of Biota Directors in Nabi

As at the date of this Booklet, no Biota Director held a Relevant Interest in any Nabi Shares or any other marketable securities of Nabi.

12.4 Benefits and agreements of Biota Directors and employees

(a) Appointment of Biota Directors to the Board of Biota Pharmaceuticals

Nabi has agreed to appoint the following individuals, to the corresponding positions in Biota Pharmaceuticals, if the Scheme becomes Effective:

- Dr James Fox, Director and Chairman
- Mr Peter Cook, Director and Chief Executive Officer
- Mr Paul Bell, Director
- Prof Jeffery Errington, Director
- Prof Ian Gust, Director
- Mr Richard Hill, Director

Each of the above persons will be entitled to receive remuneration for their services as a director (other than Mr Peter Cook who will not receive remuneration for serving as a director for so long as he remains an executive), and will be covered by appropriate deeds of access, indemnity and insurance.

(b) Benefits in connection with retirement from office

Except as described in section 12.3, this section 12.4, or as set out elsewhere in this Booklet, there is no payment or other benefit that is proposed to be made or given to any director, secretary or executive officer of Biota (or any of its Related Bodies Corporate) as compensation for the loss of, or as consideration for or in connection with his or her retirement from, office in Biota or any of its Related Bodies Corporate.

Each of the employment agreements between Biota and its executive officers permits Biota to terminate the agreement with six months' notice or payment of six months' remuneration. In the case of Biota's Managing Director and Chief Executive Officer, Mr Peter Cook, the payment may be extended to 12 months in certain circumstances or if the termination is a consequence of an acquisition or merger. In addition, Biota has a redundancy policy applicable to all employees.

As described in this Booklet, it is the intention of the Biota Board and the Nabi Board that Mr Cook be the Chief Executive Officer of Biota Pharmaceuticals and Mr Lismore be the Chief Financial Officer of Biota Pharmaceuticals for an appropriate transition period until United States based executives are appointed and assume responsibility. At this stage, it is not intended that Biota Pharmaceuticals will enter into new employment agreements with Mr Cook and Mr Lismore. Under those circumstances, in accordance with the arrangements described in the preceding paragraph, Mr Cook and Mr Lismore would be entitled to a payment of 12 months' and six months' remuneration respectively, together with any other payments deriving from statutory obligations such as untaken leave and redundancy entitlements.

(c) Agreements or arrangements connected with or conditional on the Scheme

Except as described below, or elsewhere in this section 12.4 or as set out elsewhere in this Booklet, there are no agreements or arrangements made between any Biota Director and another person in connection with, or conditional on, the outcome of the Scheme other than in their capacity as a Biota Shareholder.

Under Biota's constitution and deeds of access, indemnity and insurance which Biota has entered into with each of its Directors, Biota has agreed to indemnify each Director against liabilities incurred by him or her in carrying out their duties as a Director (to the extent permitted by law). This may include liabilities incurred by the Director in connection with the Merger, and the Director's involvement in the process that resulted in the Merger.

Under the Merger Implementation Agreement, Nabi has agreed to indemnify and hold harmless each Biota Director, from the Implementation Date, to the same extent to which those persons are currently indemnified as set out above. Furthermore, for a period of six years after the Implementation Date, Nabi has agreed to maintain in effect directors and officers liability insurance cover for those persons who are currently covered by Nabi's and Biota's liability and insurance policies.

(d) Benefits under the Scheme

Except as described below, or elsewhere in this section 12.4 or as set out elsewhere in this Booklet, no director, secretary or executive officer of Biota (or any of its Related Bodies Corporate) has agreed to receive, or is entitled to receive, any payment or benefit from Nabi which is conditional on, or is related to, the Scheme, other than in their capacity as a Biota Shareholder.

(e) Interests of Biota Directors in Nabi contracts

Except as described elsewhere in this section 12.4 or as set out elsewhere in this Booklet, no Biota Director has any interest in any contract entered into by Nabi.

(f) Biota ESP and Deferred Bonus Plan

Information on the Biota ESP and the Deferred Bonus Plan

Biota operates the Biota ESP and the Deferred Bonus Plan to encourage employees and senior executives to work towards the growth of the company.

Under the Biota ESP and the Deferred Bonus Plan, employees and senior executives receive Biota Share Rights, which are rights to receive Biota Shares (by issue or transfer by Biota) at no cost to the holder and which vest on the achievement of pre-set performance targets. Biota Share Rights will also vest in certain other circumstances, including upon Court approval of the Scheme.

The Biota ESP consists of the Equity Retention Incentive program for Biota employees and the TSR Equity Incentive program for senior executives of Biota. The only Biota Share Rights issued under the Deferred Bonus Plan have been issued to the Chief Executive Officer of Biota, Mr Peter Cook. Mr Cook has also been allocated Biota Share Rights under the TSR Equity Incentive program.

Number of Biota Share Rights on issue or to be issued

The following table sets out details of the Biota Share Rights in relation to all Biota employees, executives and directors, which are expected to be on issue immediately prior to the Second Court Date.

Summary of Biota Share Rights for all staff			
	Shares vesting on Court approval	Shares held by Biota ESP trustee to meet Biota ESP obligations	New Shares to be issued by Biota to meet its obligations
Equity Retention Incentive	1,099,060	-	1,099,060
TSR Equity Incentive	3,950,385	410,341	3,540,044
Deferred Bonus Plan	1,405,837	1,405,837	-
Total	6,455,282	1,816,178	4,639,104

Biota's right to exercise certain Biota Share Rights on behalf of holders

Under the plan rules for the Biota ESP, Biota is authorised to exercise Biota Share Rights on behalf of holders upon the vesting of those rights, unless the holder of a Biota Share Right withdraws that authorisation. This authorisation only applies in respect of Biota Share Rights issued under the Biota ESP on or after 1 July 2009. If Biota exercises this right, it may also sell such number of Biota Shares on behalf of each holder as is necessary to meet that holder's estimated tax liability in respect of the vesting of that holder's Biota Share Rights, and remit the net cash proceeds to the ATO on account of the holder's tax liability.

If the Court approves the Scheme, Biota intends to use its rights to exercise those Biota Share Rights on behalf of the holders of those rights. Biota may also exercise its right to sell Biota Shares issued as a result of the exercise of those Biota Share Rights. However, there will only be a short period between Court approval and suspension of trading in Biota Shares. Accordingly, whether Biota uses its power to sell Biota Shares will depend on the extent to which it is practicable and commercially viable to do so having regard to market conditions and market demand in that period.

12.5 Capital structure of Nabi

As at the date of this Booklet, there were 28,328,034 issued and outstanding Nabi Shares and 3,562,006 stock options (comprising 3,250,889 vested stock options and 311,117 unvested stock options). Nabi also has 35,244,273 Treasury Stock. Refer to section 11.5 for further information on Treasury Stock.

12.6 Interests of Nabi and Nabi Directors in Nabi securities and Biota securities

(a) Relevant Interests of Nabi in Biota

As at the date of this Booklet, Nabi did not have a Relevant Interest in any Biota Shares or any other marketable securities of Biota.

(b) No dealings in Biota Shares in last four months

Except for the consideration to be provided under the Scheme, neither Nabi or any of its associates have provided, or agreed to provide, consideration for any Biota Shares under any purchase or agreement, during the period of four months before the date of this Booklet.

(c) No benefits to holders of Biota Shares in last four months

Neither Nabi or any of its associates have, during the period of four months before the date of this Booklet, given, offered or agreed to give a benefit to another person where the benefit was likely to induce the other person, or an associate of the other person, to:

- vote in favour of the Scheme; or

- dispose of Biota Shares,

which benefit was not offered to all Biota's Shareholders under the Scheme.

(d) Relevant Interests of Nabi Directors in Nabi

As at the date of this Booklet, the Nabi Directors held Relevant Interests in the number of Nabi Shares and Nabi stock options set out below:

(i) Mr Jason Aryeh: 131,783 Nabi Shares and 118,000 Nabi stock options.

(ii) Mr David Castaldi: 56,139 Nabi Shares and 134,000 Nabi stock options.

(iii) Dr Geoffrey Cox: 25,679 Nabi Shares and 234,000 Nabi stock options.

(iv) Mr Peter Davis: 14,630 Nabi Shares and 118,000 Nabi stock options.

(v) Dr Raafat Fahim: 373,474 Nabi Shares (which includes 73,750 shares of invested restricted shares) and 900,604 Nabi stock options.

(vi) Mr Richard Harvey Jr: 30,996 Nabi Shares and 134,000 Nabi stock options.

The 900,604 Nabi stock options held by Dr Fahim have a range of exercise prices from US\$3.78 to US\$16.65. The 234,000 Nabi stock options held by Dr Cox have a range of exercise prices from US\$2.66 to US\$16.65. See section 12.7(b) for further information on the range of exercise prices for all Nabi stock options on issue.

(e) Relevant Interests of Nabi Directors in Biota

As at the date of this Booklet, no Nabi Director held a Relevant Interest in any Biota Shares or any other marketable securities of Biota.

12.7 Benefits and agreements of Nabi Directors and employees

(a) Appointment of Nabi Directors to the Board of Biota Pharmaceuticals

The following Nabi Directors will be appointed as directors of Biota Pharmaceuticals, if the Scheme becomes Effective:

- Dr Geoffrey Cox; and

- Dr Raafat Fahim.

Each of the above persons will be entitled to receive remuneration for their services as a director and will be covered by appropriate deeds of access, indemnity and insurance.

(b) Agreements or arrangements connected with or conditional on the Scheme

With effect from 8 June 2012, the Nabi Board modified the terms of all outstanding Nabi stock options held by all current employees, officers and directors of Nabi to provide that the term of any Nabi stock option held by any person whose employment with or service to Nabi ends while the MIA is in effect or after completion of the Merger, other than as a result of such person's voluntary termination while the MIA is in effect or termination by Nabi for cause, shall be the full original term of such option.

Without the modification:

- the stock options held by Nabi employees who are not officers would terminate 90 days after the termination of their employment;

- the stock options held by Nabi executive officers would terminate two years after the termination of their employment (in connection with a change of control); and
- the stock options held by Nabi directors and the corporate secretary would terminate one year after their service to Nabi ends.

Nabi's outstanding stock options had a weighted average exercise price of US\$6.09 as of 31 December 2011. As at the date of this Booklet, the lowest exercise price of the outstanding Nabi stock options was US\$1.87 and the highest exercise price was US\$16.65. The outstanding Nabi stock options have expiry dates ranging from 2013 to 2019.

12.8 Disclosure of interests and fees of certain persons

(a) Disclosure of fees and other benefits to proposed Directors of Biota Pharmaceuticals

Other than as set out in this Booklet, no person has paid or agreed to pay any amount, or provided or agreed to provide any benefit to a Director of Nabi, or proposed Director of Biota Pharmaceuticals:

- to induce them to become, or to qualify as, a Director of Biota Pharmaceuticals; or
- for services provided by that person in connection with the formation or promotion of Biota Pharmaceuticals or the issue of Biota Pharmaceuticals Shares under the Scheme.

(b) Disclosure of interests and fees of directors and advisors

Other than as set out in this Booklet, no director of Nabi, proposed director of Biota Pharmaceuticals or person named in this Booklet as performing a function in a professional, advisory or other capacity in connection with the preparation or distribution of this Booklet, has, or has had in the two years before the date of lodgment of his Booklet with ASIC, an interest in:

- the formation or promotion of Biota Pharmaceuticals;
- any property acquired or proposed to be acquired by Nabi or Biota Pharmaceuticals (as applicable) in connection with the formation or the promotion of Biota Pharmaceuticals or the offer of Biota Pharmaceuticals Shares under the Scheme; or
- the issue of Biota Pharmaceuticals Shares under the Scheme, and no amounts (whether in cash or securities or otherwise) have been paid or agreed to be paid, and no one has given or agreed to give a benefit, to any person for services rendered in connection with the promotion or formation of Biota Pharmaceuticals or the offer of Biota Pharmaceuticals Shares under the Scheme.

12.9 Status of regulatory conditions

(a) Australian regulatory consents and approvals

As at the date of this Booklet, it is not anticipated that any ASX or ASIC consents, or any consent or approval from any other Governmental Agency, are necessary to implement the Scheme.

(b) United States regulatory consents and approvals

The HSR Act requires the parties to certain acquisitions and other transactions that meet specified minimum size requirements to file notifications with the Antitrust Division of the United States Department of Justice and the United States Federal Trade Commission and to observe a waiting period before such transaction completes, unless an exemption applies. Nabi and Biota believe that the Merger is exempt from the notification requirements based on the fair market value of Biota's non-exempt assets, namely its assets in the United States. Accordingly, neither Nabi nor Biota expect to make a notification under the HSR Act with respect to the Merger. If such exemption does not apply, the Merger would not be able to be consummated until the relevant notification and report forms have been filed and the applicable waiting period has expired or been terminated.

It is a Condition Precedent that Biota Pharmaceuticals Shares have been approved for listing on NASDAQ, subject to official notice of issuance.

Other than as described above, neither Biota or Nabi is aware of any regulatory approvals required to be obtained, or waiting periods required to expire, to complete the Merger.

12.10 Creditors of Biota

The Scheme, if implemented, should not materially prejudice Biota's ability to pay its creditors as it involves the acquisition of Biota Shares rather than Biota's underlying assets. No materially new liability (other than transaction costs) is expected to be incurred by Biota as a consequence of the implementation of the Scheme. Biota has paid and is paying all of its creditors within normal terms of trade. It is solvent and is trading in an ordinary commercial manner.

12.11 Consents and disclaimers

(a) Consent to be named

The following persons have given and have not, before the time of registration of this Booklet by ASIC, withdrawn their written consent to be named in this Booklet in the form and context in which they are named:

- Allens as legal adviser to Biota in respect of Australian law;
- DLA Piper as legal adviser to Biota in respect of United States law;
- PricewaterhouseCoopers as auditor to Biota;
- Ernst & Young as auditor of Nabi;
- Lonergan Edwards & Associates as the Independent Expert; and
- Link Market Services as Biota's share registry.

(b) Consent to the inclusion of statements

This Booklet contains statements made by, or statements said to be based on statements made by:

- Nabi, in respect of the Nabi Information only; and
- Lonergan Edwards & Associates as the Independent Expert.

Each of the persons named above has consented to the inclusion of each statement it has made in the form and context in which the statements appear in this Booklet and has not withdrawn that consent at the date of this Booklet.

(c) Disclaimers of responsibility

Each person named in sections 12.11(a) and 12.11(b):

- has not authorised or caused the issue of this Booklet;
- does not make, or purport to make, any statement in this Booklet or any statement on which a statement in this Booklet is based other than:
 - Nabi, in respect of the Nabi Information; and
 - Lonergan Edwards & Associates, in relation to its Independent Expert's Report; and
- to the maximum extent permitted by law, expressly disclaims all liability in respect of, makes no representation regarding, and takes no responsibility for, any part of this Booklet other than a reference to its name and the statement (if any) included in this Booklet with the consent of that party as specified in section 12.11(b).

12.12 Fees

Each of the persons named in sections 12.11(a) and 12.11(b) of this Booklet (except Nabi) as performing a function in a professional, advisory or other capacity in connection with the preparation or distribution of this Booklet will be entitled to receive professional fees charged in accordance with their normal basis of charging.

12.13 Supplementary disclosure

Biota will issue a supplementary document to this Booklet if it becomes aware of any of the following between the date of lodgment of this Booklet for registration by ASIC and the Scheme Meeting:

- a material statement in this Booklet being misleading or deceptive;
- a material omission from this Booklet;
- a significant change affecting a matter included in this Booklet; or
- a significant new matter arising which would have been required to be included in this Booklet.

The form which the supplementary document may take, and whether a copy will be sent to each shareholder, will depend on the nature and timing of the new or changed circumstances. Any such supplementary document will be made available on Biota's website (www.biota.com.au) and released to ASX (and accordingly, available from ASX's website (www.asx.com.au)).

13. Glossary

The meanings of the terms used in the document are set out below.

Term	Meaning
\$, A\$ or AUD	Australian dollars
AAS	Australian Accounting Standards
ASIC	the Australian Securities and Investments Commission
AST	the American Stock Transfer & Trust Company
ASTC Settlement Rules	the operating rules of the settlement facility provided by ASX Settlement and Transfer Corporation Pty Ltd (ABN 49 008 504 532)
ASX	ASX Limited (ACN 008 624 691) or, as the context requires, the financial market known as the ASX operated by it
ASX Listing Rules	the Listing Rules of ASX
ATO	the Australian Taxation Office
BARDA	Biomedical Advanced Research and Development Authority
BARDA Contract	the contract with BARDA within the United States Department of Health and Human Services, to complete the advanced development of Inaninamivir
Biota	Biota Holdings Limited (ABN 28 006 479 081) and, where the context requires, includes Biota Holdings Limited and the members of the Biota Group
Biota Board	the board of directors of Biota
Biota Constitution	the constitution of Biota from time to time
Biota Director	a member of the Biota Board
Biota ESP	the equity incentive programs conducted under the Biota employee option plan, being the Equity Retention Incentive program and the TSR Equity Incentive program
Biota Group	Biota and each of its subsidiaries
Biota Pharmaceuticals	Biota Pharmaceuticals, Inc., being the name of Nabi after the implementation of the Scheme, and of which Biota will be a subsidiary
Biota Pharmaceuticals Board	the board of directors of Biota Pharmaceuticals
Biota Pharmaceuticals Shareholder	a holder of a Biota Pharmaceuticals Share
Biota Pharmaceuticals Shares	the Nabi Shares to be issued to Biota Shareholders in respect of Biota Shares held by them on the Record Date as Scheme Consideration under the Scheme
Biota Share	a fully paid ordinary share in the capital of Biota
Biota Share Right	a right to receive a Biota Share at no cost (by issue or transfer) issued by Biota under the Biota ESP or the Deferred Bonus Plan
Biota Shareholder	a holder of a Biota Share
Biota Share Register	the register of members of Biota maintained by or on behalf of Biota in accordance with section 168(1) of the Corporations Act
Business Day	any day that is both a Business Day within the meaning given in the Listing Rules and a day that banks are open for business in Melbourne, Australia
CGT	Australian capital gains tax
CHESS	the clearing house electronic sub-register system of share transfers operated by ASX Settlement and Transfer Corporation Pty Limited
Code	the <i>United States Internal Revenue Code of 1986</i> , as amended
Competing Proposal	either a Competing Proposal for Nabi or a Competing Proposal for Biota, as the case requires
Competing Proposal for Biota	any proposed or possible transaction or arrangement pursuant to which, if ultimately completed, a Third Party would <ul style="list-style-type: none"> (a) directly or indirectly, acquire a Relevant Interest in or become the holder of: <ul style="list-style-type: none"> (i) more than 20% of the Biota Shares; or (ii) the whole or a substantial part or a material part of the business or property of Biota or the Biota Group; (b) acquire control of Biota, within the meaning of section 50AA of the Corporations Act; or (c) otherwise acquire or merge with Biota (including but not limited to by a reverse takeover bid, reverse scheme of arrangement or dual listed companies structure) or dual listed companies structure)

Term	Meaning
Competing Proposal for Nabi	any proposed or possible transaction or arrangement pursuant to which, if ultimately completed, a Third Party would <ul style="list-style-type: none"> (a) directly or indirectly, acquire a Relevant Interest in or become the holder of: <ul style="list-style-type: none"> (i) more than 20% of the Nabi Shares; or (ii) the whole or a substantial part or a material part of the business or property of Nabi or the Nabi Group; (b) acquire control of Nabi, within the meaning of section 50AA of the Corporations Act; or (c) otherwise acquire or merge with Nabi
Conditions Precedent	the conditions precedent to the Scheme as set out in clause 2.1 of the Scheme
Corporations Act	the <i>Corporations Act 2001</i> (Cth)
Corporations Regulations	the <i>Corporations Regulations 2001</i> (Cth)
Court	the Supreme Court of Victoria
CVR	the contingent value rights with respect to certain payment rights arising from the sale, transfer, license or a similar transaction of NicVAX®, which may be issued by Nabi, at its sole and absolute discretion, to the Nabi Shareholders prior to the Implementation Date, pursuant to the terms of the CVR Agreement
CVR Agreement	an agreement which may be entered into between Nabi and a rights agent in respect of CVRs, in such form agreed upon by Nabi and Biota
CVR Initial Term	the 18 month period commencing on the Implementation Date
Deferred Bonus Plan	the executive deferred bonus plan conducted by Biota
DGCL	the General Corporation Law of the State of Delaware in the United States
Daiichi Sankyo	Daiichi Sankyo Company Limited
DRS	the Direct Registration System operated by DTC in the United States
DTC	the Depository Trust Company
EBIT	earnings before interest and taxation
EBITDA	earnings before interest, taxation, depreciation and amortisation
Effective	when used in relation to the Scheme, the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act in relation to the Scheme
Effective Date	the date on which the Scheme becomes Effective
Electing Shareholder	a Biota Shareholder who holds 2,000 Biota Shares or less on the Record Date and who makes an Election
Election	an election made in accordance with clause 5.4(a) of the Scheme
Election Date	5.00 pm on the same date as the Record Date
Election Form	the form by which Biota Shareholders may elect to become an Electing Shareholder
Eligible Biota Shareholders	holders of Biota Shares on the Record Date who are not Ineligible Foreign Biota Shareholders or Electing Shareholders
Federal Acquisition Regulation	regulations issued by agencies of the United States federal government to govern the process through which the United States government purchases goods and services
FDA	the United States Food and Drug Administration
FIRB	the Australian Foreign Investment Review Board
GST	Australian Goods and Services Tax
GSK	GlaxoSmithKline
HCV	Hepatitis C
HRV	human rhinovirus
HSR Act	the <i>Hart-Scott-Rodino Antitrust Improvements Act of 1976</i> (United States) as amended, and the implementing regulations under that Act
Implementation Date	the date which is three Business Days after the Record Date or such other date as Biota and Nabi agree in writing
Independent Expert	Loneragan Edwards & Associates
Independent Expert's Report	the report from the Independent Expert, a full copy of which is set out in Annexure A of this Booklet, and any update to such report that the Independent Expert issues

Term	Meaning
Ineligible Foreign Biota Shareholder	a holder of Biota Shares on the Record Date whose address as shown in the Biota Share Register is in a place outside Australia and its external territories, New Zealand, the United States and the United Kingdom, unless Nabi and Biota are each satisfied, acting reasonably, that the laws of that place permit the allotment and issue of Biota Pharmaceuticals Shares to that Biota Shareholder pursuant to the Scheme, either unconditionally or after compliance with conditions that Nabi and Biota each regard as acceptable and not unduly onerous or impracticable
IRS	the United States Internal Revenue Service
LANI	long acting neuraminidase inhibitor
Listing Rules	the Listing Rules of ASX
Merger	the merger of Biota and Nabi pursuant to the Scheme
Merger Implementation Agreement (or MIA)	the Merger Implementation Agreement between Nabi and Biota dated 22 April 2012, a summary of which is set out in section 10 of this Booklet and a full copy of which is attached at Annexure B
Nabi	Nabi Biopharmaceuticals of 12270 Wilkins Avenue, Rockville, Maryland 20852, in the United States and, where the context requires, includes Nabi Biopharmaceuticals Limited and the members of the Nabi Group
Nabi Board	the board of directors of Nabi
Nabi Constitution	the constitution of Nabi from time to time
Nabi Deed Poll	the deed poll executed by Nabi in favour of the Biota Shareholders as at the Record Date, in the form set out in Annexure D
Nabi Director	a member of the Nabi Board
Nabi Equity Award	means a share option or restricted share award with respect to Nabi Shares issued by Nabi under the Nabi Stock Plans
Nabi Group	Nabi and each of its subsidiaries
Nabi Information	the information contained in sections 5, 12.5, 12.6 and 12.7 of this Booklet
Nabi Proxy Statement	a document containing the information that Nabi proposes to provide to Nabi Shareholders to enable Nabi Shareholders to make an informed decision about how to vote on the Nabi Transaction Proposals
Nabi Transaction Proposals	proposals to be considered by Nabi Shareholders in connection with the Merger, being a proposal to approve an amendment to Nabi's certificate of incorporation to increase the authorised number of Nabi Shares to enable the issuance of the Biota Pharmaceuticals Shares under the Scheme, a proposal to approve an amendment to Nabi's certificate of incorporation to change the name of Nabi to Biota Pharmaceuticals, Inc. and the proposal to approve the issuance of the Biota Pharmaceuticals Shares to Biota Shareholders as at the Record Date
Nabi Share	a share of common stock, par value US\$0.10 per share, in the capital of Nabi
Nabi Shareholder	a holder of a Nabi Share
Nabi Stock Plans	the Nabi equity incentive plans, including, without limitation, the Nabi Biopharmaceuticals 2007 Omnibus Equity and Incentive Plan
NASDAQ	the NASDAQ Global Select Stock Market, operated by NASDAQ OMX
NASDAQ Marketplace Rules	the rules and listing requirements concerning NASDAQ listed companies and trading on NASDAQ
NicVAX®	NicVAX® or Nicotine Conjugate Vaccine
NicVAX® Program	the assets of Nabi (including its intellectual property rights) that are or have been used in the research, development and manufacture of the prevention or treatment of nicotine addiction, its use as a non-smoking aid and/or its use to assist in the prevention or reduction of the toxic effects of nicotine
NicVAX® Transaction	the full or partial sale, licence, transfer or any other similar transaction entered into by Nabi or Biota Pharmaceuticals, with a third party in respect of the NicVAX Program, at any time prior to the end of the CVR Initial Term
Nominee	the person nominated by Biota to sell the Biota Pharmaceuticals Shares that are attributable to Ineligible Foreign Biota Shareholders and Electing Shareholders under the terms of the Scheme
NYSE	the New York Stock Exchange
Proxy Form	the proxy form for the Scheme Meeting accompanying this Booklet

Term	Meaning
Record Date	7 pm on the date which is five Business Days after the Effective Date, or such other date as may be agreed in writing between Nabi and Biota or as may be required by ASX
Related Body Corporate	the meaning given to that term in the Corporations Act
Relevant Interest	the meaning given to that term in the Corporations Act
RSV	respiratory syncytial virus
Scheme	a scheme of arrangement under Part 5.1 of the Corporations Act between Biota and the Biota Shareholders as at the Record Date substantially in the form set out in Annexure C or in such other form as Biota and Nabi agree in writing
Scheme Consideration	the consideration to be provided to Biota Shareholders as at the Record Date under the terms of the Scheme for the transfer to Nabi of their Biota Shares, ascertained in accordance with clause 5 of the Scheme
Scheme Meeting	the meeting of Biota Shareholders to be convened by the Court in relation to the Scheme pursuant to section 411(1) of the Corporations Act, and includes any adjournment of that meeting
Scheme Resolution	means the resolution to be put to Biota Shareholders to approve the Scheme (such resolution to be put to Biota Shareholders at the Scheme Meeting and that, to be passed, must be approved by the requisite majorities of Biota Shareholders under section 411(4)(a)(ii) of the Corporations Act)
SEC	the United States of America Securities and Exchange Commission
Second Court Date	the date on which the application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving this Scheme is first heard
Second Court Hearing	the hearing of the application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing
Securities Act	the <i>US Securities Act of 1933</i> , as amended
Superior Proposal	<p>means, in relation to either Biota or Nabi, an unsolicited, bona fide written Competing Proposal (except with respect to provision (a)(i) of the definition of Competing Proposal for Biota or Competing Proposal for Nabi, the percentage threshold shall be 50% and not 20%) for the party, which the board of directors of that party determines, acting in good faith and after having taken advice from its financial and legal advisers:</p> <p>(a) is capable of being valued and completed, taking into account all aspects of the Competing Proposal, including its conditions; and</p> <p>(b) would, if completed substantially in accordance with its terms, be more favourable to:</p> <p>(i) in the case of Biota – the Biota Shareholders than the Merger viewed in aggregate, taking into account all the terms and conditions of the Competing Proposal; or</p> <p>(ii) in the case of Nabi – the Nabi Shareholders than the Merger viewed in aggregate, taking into account all the terms and conditions of the Competing Proposal,</p> <p>after taking into account a qualitative assessment of the identity, reputation and financial standing of the party making the Competing Proposal</p>
Third Party	<p>when used in connection with Biota, means any of the following:</p> <p>(a) a person other than any Nabi Group Member; or</p> <p>(b) a consortium, partnership, limited partnership, syndicate or other group in which no Nabi Group Member has agreed in writing to be a participant; and</p> <p>when used in connection with Nabi, means any of the following:</p> <p>(c) a person other than any Biota Group Member; or</p> <p>(d) a consortium, partnership, limited partnership, syndicate or other group in which no Biota Group Member has agreed in writing to be a participant</p>
TSR	Total Shareholder Return
United States	the United States of America
Unvested Biota Share Right	a Biota Share Right other than a vested Biota Share Right
US GAAP	the United States Generally Accepted Accounting Principles
US\$, US dollars or USD	the currency of the United States

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4 August 2012

Subject: Proposed merger with Nabi Biopharmaceuticals

Dear Directors

Background

- 1 On 23 April 2012 Biota Holdings Limited (Biota) announced that it had entered into a merger agreement with Nabi Biopharmaceuticals (Nabi) which, when implemented, will result in Biota raising some US\$54 million in cash and listing the merged entity's shares on the NASDAQ securities exchange in the United States (the proposed Scheme).
- 2 In order to achieve the NASDAQ listing the merger will be achieved by Nabi acquiring all the shares in Biota pursuant to a Scheme of Arrangement between Biota and its shareholders. The consideration under the Scheme will comprise approximately 0.4487 shares in Nabi for each Biota share held as at the Scheme record date¹.
- 3 While Nabi is therefore the acquirer under the Scheme it should be noted that:
 - (a) Biota shareholders will own the majority (approximately 74%) of the shares in the merged entity, and will therefore retain voting control
 - (b) Biota's current management will be responsible for the day to day management of the merged entity
 - (c) Biota's directors will initially hold 75%² of the Board positions of the merged entity
 - (d) Nabi's main contribution to the merged entity is cash and its NASDAQ listing
 - (e) on completion of the merger no existing individual shareholder in Nabi is expected to own more than 5% of the shares in the merged entity³
 - (f) the merger proposal was submitted by Biota (not Nabi).
- 4 Given the above, in our opinion, the Scheme should be viewed as a capital raising (and related US listing) rather than a change of control transaction.

Scope

- 5 The Directors of Biota have requested that we provide our opinion on whether the Scheme is in the best interests of Biota shareholders. While there is no legal definition of the expression "*in the best interests*", Regulatory Guide 111 "*Content of Expert Reports*" (RG 111) states that a scheme may be in the best interests of the members of the company if there are sufficient reasons for securityholders to vote in favour of the scheme in the absence of a superior proposal.
- 6 Given the nature of the Scheme, in our opinion, the most appropriate basis on which to evaluate the Scheme is to assess the overall impact on Biota shareholders and to form an opinion as to whether, on balance, the advantages of the Scheme outweigh the disadvantages.
- 7 Accordingly we have considered:
 - (a) the price at which Nabi shareholders are effectively acquiring an interest in Biota (the Effective Issue Price), which is a function of the value of Nabi prior to completion and the exchange ratio
 - (b) the Effective Issue Price compared to the market prices of Biota shares prior to the announcement of the Scheme
 - (c) the likely price at which Biota could undertake a significant capital raising in the absence of the Scheme
 - (d) the advantages and disadvantages associated with the proposed US listing (which the Biota directors have separately determined to be an objective of the company)
 - (e) the time and costs likely to be incurred in order to achieve a US listing in the absence of the Scheme
 - (f) Biota's funding requirements in the medium term and its contract with the Biomedical Advanced Research & Development Authority (BARDA)⁴

¹ Subject to adjustment in the event of any share consolidation (refer Section I).

² Being six out of eight Board seats.

³ Based on the latest SEC filings Nabi's largest shareholder held 9.7% of Nabi. This holding will be diluted below 5% if the Scheme is implemented.

⁴ Biomedical Advance Research and Development Authority (BARDA) is part of the office of the Assistant Secretary for Preparedness and Response (ASPR) at the US Department of Health and Human Services (HHS).

- (g) the impact of the Scheme on the value of the shareholdings held by Biota shareholders
 - (h) the level of shareholder dilution as a result of the Scheme
 - (i) the advantages and disadvantages of the Scheme from the perspective of Biota shareholders; and
 - (j) other qualitative and strategic issues associated with the Scheme.
- 8 RG 111 states that, in analysing a control transaction, an expert should consider whether the offer is fair and reasonable. RG 111 states that an offer is fair if the value of the offer price is equal to or greater than the value of the securities the subject of the offer. As stated in paragraph 4, we consider that the Scheme should not be viewed as a control transaction. Accordingly, while this report addresses "fairness" by reference to RG 111 guidelines, in our opinion, it is more appropriate to consider whether the advantages of the Scheme outweigh the disadvantages.

Summary of opinion

- 9 The effect of the Scheme is that:
- (a) Biota will raise no less than US\$54 million in additional equity capital by merging with Nabi
 - (b) Nabi shareholders will acquire an interest of approximately 26% in Biota
 - (c) Nabi shareholders will acquire their interest in Biota at an Effective Issue Price of 84 cents to 87 cents per Biota share⁵; and
 - (d) Biota will achieve a listing on the NASDAQ, but will no longer be listed on the ASX.
- 10 The Scheme therefore achieves Biota's key objective of obtaining a US listing (and a related US shareholder base).

Comparison of Effective Issue Price and pre-announcement market price

- 11 On 28 March 2012 Biota announced that the Phase IIb clinical study for its HRV antiviral in asthmatics was successful, as it resulted in a statistically significant reduction in the severity of cold symptoms compared to a placebo. Given the significance of this announcement, we believe more regard should be had to the Biota share price subsequent to this announcement (up to and including 20 April 2012⁶) when considering the portfolio value of Biota shares prior to the announcement of the Scheme.
- 12 In the period from 28 March 2012⁷ up to the announcement of the Scheme on 23 April 2012 the volume weighted average price (VWAP) of Biota shares was 98.7 cents per share. Immediately prior to the announcement of the Scheme Biota shares last traded at 94.5 cents.
- 13 Based on the above we have adopted a trading range for Biota shares prior to the announcement of the Scheme of 94 cents to 99 cents per share.
- 14 On this basis the Effective Issue Price represents a discount of between 10.6% and 12.1% to the market price of Biota shares prior to the announcement of the Scheme, as shown below:

Implied placement discount to Biota share price prior to announcement of Scheme		
	Low cents	High cents
Market price prior to announcement of Scheme ⁽¹⁾	94.0	99.0
Effective Issue Price per Biota share	84.0	87.0
Discount to market price (%)	10.6%	12.1%

Note:

1 LEA assessed range reflecting closing share price prior to the announcement of Scheme of 94 cents (LEA low range) and VWAP from 28 March 2012 to 20 April 2012 of 98.7 cents (LEA high range).

- 15 In comparison, the average and median placement discounts in recent placements by ASX listed biotechnology companies were 16.8% and 15.0% respectively. Thus, the placement discounts implied by the terms of the Scheme are lower than the average and median discounts implicit in recent placements by ASX listed biotechnology companies.
- 16 In our opinion, the terms of the Scheme (in particular the implied placement discounts) also compare favourably with the likely costs of a US listing. This is because we estimate (based on our review of recent biotechnology company IPO's in the US) that such costs are likely to be in the range of 15% to 20% of the gross amount raised.
- 17 Further, following a decline in the Biota share price subsequent to the announcement of the Scheme, we note that the Effective Issue Price now represents a significant premium to the last traded price of Biota shares (67 cents per share) on 3 August 2012.

Value implications of the Scheme

- 18 As Nabi shareholders are acquiring an interest in Biota at a discount to the market price of Biota shares prior to the announcement of the Scheme it should be noted that:
- (a) the Scheme is not fair to Biota shareholders when assessed based on the guidelines set out in RG 111⁸; and
 - (b) the portfolio value of Biota shares will fall by around two to four cents per share as a result of the dilutionary effect of the Scheme.

⁵ Based on an AUD:USD exchange rate of 1 AUD = 0.98 to 1.02 USD, consistent with the exchange rate at the date of our analysis (15 June 2012). It should be noted that exchange rates are particularly volatile at the present time reflecting factors including on-going global uncertainty.

⁶ The last trading day prior to the announcement of the Scheme was 20 April 2012.

⁷ On 28 March 2012 Biota announced that the Phase IIb clinical study for its human rhinovirus (HRV) antiviral in asthmatics was successful, resulting in a significant increase in the Biota share price.

⁸ As mentioned in paragraph 8 above, in our opinion it is more appropriate to consider whether the advantages of the scheme outweigh the disadvantages, rather than whether the scheme is fair under RG 111 guidelines.

19 To quantify the dilutionary effect of the Scheme on the value of Biota shares we have calculated the theoretical market price of Biota shares assuming the Scheme is implemented⁹. As shown below this theoretical market price is some two to four cents per share less than the market price of Biota shares prior to the announcement of the Scheme:

		Low	High
Assessed market price prior to Scheme announcement	(cents)	94	99
Market capitalisation pre Scheme ⁽¹⁾	(A\$m)	176	185
Amount raised by Biota under Scheme ⁽²⁾	(A\$m)	54	54
Estimated market capitalisation post Scheme	(A\$m)	230	239
Biota shares on issue pre Scheme	(m)	187	187
Shares effectively being issued to Nabi ⁽⁴⁾	(m)	63	63
Enlarged Biota share capital (post Scheme)	(m)	250	250
Estimated market price post Scheme⁽³⁾	(cents)	92	95
Reduction in market price due to Scheme	(cents)	2	4

Note:

- 1 187 million fully diluted shares at 94 to 99 cents per share.
 - 2 US\$54 million at an AUD:USD exchange rate of 1 AUD = 1.00USD, being the rate at the date of our analysis (15 June 2012).
 - 3 Based on the dilutionary effect of the proposed Scheme only. This analysis therefore ignores movements in equity values generally since the date of the Scheme announcement.
 - 4 42.9 million Nabi shares at the Exchange Ratio of 0.4487.
- Rounding differences may exit.

20 That is, the dilutionary effect of the Scheme reduces the portfolio value of Biota shares by some two to four cents per share (being some 2% to 4% of the pre-announcement share price).

Post announcement share trading

21 We note that the Biota share price has fallen since the announcement of the Scheme and has traded in a range of 65 cents to 96.5 cents per share, compared to a price of 94.5 cents per share immediately prior to the announcement of the Scheme. The VWAP post announcement of the Scheme up to 1 August 2012 was 78.5 cents per share. In our view this fall in the Biota share price is likely to reflect:

- (a) the dilutionary effect of the Scheme on the portfolio value of Biota shares, which we have calculated at between two and four cents per share (as shown above)
- (b) the reduction in equity values generally which has occurred since the Scheme was announced on 23 April 2012
- (c) additional selling pressure from those Australian shareholders not wanting to hold US listed equities (due to the proposed delisting of Biota from the ASX following implementation of the Scheme).

Dilution

22 If the Scheme is implemented the interests of existing Biota shareholders will be diluted, as they will collectively hold only approximately 74% of Biota shares on issue after the Scheme is implemented (compared to their current collective interest of 100% of the issued capital).

23 As stated above the Scheme will raise some US\$54 million in new equity capital for Biota. Given that Biota already has some A\$51.3 million in net cash (as at 31 March 2012), arguably there is no apparent pressing need for such a large capital raising. Accordingly, the level of shareholder dilution at this time is prima facie greater than necessary. However:

- (a) the Scheme provides significant funding which is not dependent on future stock market conditions
- (b) by raising the level of funding proposed under the Scheme, it is Biota's current expectation that it will have sufficient funding for at least two years based on planned activities.

24 We understand that Biota considered undertaking a pro-rata rights issue. Such an issue would not have been dilutionary to existing Biota shareholders. However, this was not pursued as it would not achieve Biota's key objective of obtaining a US listing.

Biota's current OTC "listing"

25 Biota shareholders may be aware that Biota has American Depository Receipts (ADRs) which trade in the United States on the Over The Counter (OTC) "Pink Sheets" market. However, it should be noted that:

- (a) the "Pink Sheets" market is not a stock exchange
- (b) companies traded on this market often do not meet the minimum listing requirements for trading on a national securities exchange, and may not file periodic reports or audited financial statements.

⁹ This analysis ignores movements in equity values generally since the date of the Scheme announcement.

- 26 As a result the US Securities & Exchange Commission (SEC) states that companies traded on the OTC market “can be among the most risky investments”. Further, trading volumes on the OTC market tend to be low.
- 27 In order to attract significant US institutional investment interest in Biota (and enhance Biota’s profile in that country), in our view, it is therefore necessary to list Biota shares on a reputable US stock exchange (such as NASDAQ).

Benefits of listing Biota in the US

- 28 The US capital markets and biotechnology sector are substantially larger than in Australia. For example, the NASDAQ Biotechnology index comprises 117 biotechnology companies listed on the NASDAQ exchange, which (as at 30 April 2012) had a combined market capitalisation of over US\$446 billion. Further, in 2011 over US\$10 billion was raised by life sciences companies in the US compared to approximately A\$550 million on average over the 10 years to 2011 in Australia¹⁰.
- 29 In our view, listing Biota shares in the US will therefore potentially have the following benefits:
- (a) the ability to raise larger amounts of equity capital, and
 - (b) reductions in the overall cost of capital, which should result in improved share market ratings in the medium to long term.
- 30 Due to the high cost of drug development programs and the difficulty associated with raising large amounts of capital in Australia, Biota has been strategically obliged to licence its products at the pre-clinical or early clinical stage. As a result the terms of the licensing arrangements generally reflect the increased risks associated with such arrangements. For example, empirical evidence indicates that future milestone payments and royalty rates are generally lower in early stage licensing deals compared to those negotiated at later stages. By obtaining access to increased funding Biota is likely to be able to advance more projects to a later stage of development before licensing.
- 31 We also note that a US listing is consistent with Biota’s increasing focus on its US activities following the award of the US\$231 million BARDA contract in March 2011.

Summary of advantages and disadvantages

- 32 We summarise below the advantages and disadvantages associated with the Scheme for Biota shareholders:

Advantages and disadvantages of the Scheme

Advantages

- Biota will raise US\$54 million in further equity capital if the Scheme is implemented. Together with existing cash resources, Biota management expect that this will provide sufficient funding for the group for (at least) the next two years based on planned activities
- In the absence of the Scheme Biota’s ability to raise significant equity capital is primarily dependent on the vagaries of Australian institutional demand for such investments and stock market conditions. In contrast, the Scheme provides Biota with certainty regarding the level of capital raised
- The placement discount of 10.6% to 12.1% implicit in the terms of the Scheme is lower than the average and median placement discounts observed in recent capital raisings by ASX listed biotechnology companies (notwithstanding that the level of capital raised by Biota as a percentage of its pre-market capitalisation is generally higher than in other capital raisings)
- The price at which an interest in Biota is acquired by Nabi shareholders compares favourably to the likely costs associated with an IPO in the US
- Due to falls in the Biota share price since the Scheme was announced the Effective Issue Price now represents a premium to the last traded price of Biota shares (67 cents per share) on 3 August 2012.
- A US listing would also take longer to achieve than the proposed Scheme
- The proposed US listing of Biota shares is consistent with Biota’s increasing focus on its US activities (following the award of the US\$231 million BARDA contract in 2011)
- As the US capital markets and biotechnology sector are significantly larger than in Australia, prima facie, the Scheme should enable Biota to raise larger amounts of equity funding when required. This should enable Biota to advance more projects to a later stage of development before licensing
- Due to the greater liquidity of US capital markets and the size of the US biotechnology sector, Biota may achieve a lower cost of capital and therefore a higher relative valuation in the medium to long term

Disadvantages

- As Nabi shareholders are acquiring an interest in Biota at a discount to the market price of Biota shares prior to the announcement of the Scheme, the Scheme is not fair when assessed based on the guidelines set out in RG 111. Specifically we have calculated that the dilutionary effect of the Scheme reduces the portfolio value of Biota shares by some two to four cents per share
- Biota shareholders are unable to participate in the capital raising as it is being implemented by way of a merger with Nabi
- Biota shareholders collective interest in Biota’s assets will be diluted to approximately 74% due to the merger
- As Biota had net cash of A\$51.3 million as at 31 March 2012 arguably the level of shareholder dilution is potentially greater than necessary
- Biota shares will no longer be listed on the ASX
- Biota shareholders will lose access to dividend imputation benefits on any future dividends paid
- Transaction costs in terms of brokerage and foreign currency conversions are likely to be significantly higher for individual shareholders wishing to sell their shares on the NASDAQ exchange
- The announcement of the Scheme has resulted in an initial fall in the Biota share price. Further, those Biota shareholders who do not wish to own shares listed only on an overseas stock exchange are likely to sell their Biota shares in response to the proposed Scheme, potentially placing increased downward pressure on the share price in the short term

¹⁰ Source: Biota.

Conclusion

- 33 As indicated above there are both advantages and disadvantages associated with the Scheme. However, on balance, we believe the advantages outweigh the disadvantages. This is primarily because:
- (a) the Scheme achieves Biota management's key objective of obtaining a US listing (and a related US shareholder base)
 - (b) the terms of the Scheme (in particular the implied placement discounts) compare favourably with the likely costs associated with an IPO in the US
 - (c) the Effective Issue Price now represents a significant premium to the last traded price of Biota shares (67 cents per share) on 3 August 2012
 - (d) the US listing should provide advantages for Biota over the medium to long term, particularly given the increasing US focus of its activities
 - (e) the Scheme provides certainty for Biota regarding current capital raising initiatives.
- 34 We have therefore concluded that, whilst the Scheme is not fair pursuant to RG 111 (which focuses primarily on change of control transactions), it is reasonable and in the best interests of Biota shareholders given the company's objectives (in the absence of a superior proposal).
- 35 Our conclusion that the Scheme is "not fair" is based on the guidelines for determining "fairness" in RG 111. Those guidelines focus primarily on change of control transactions. We consider that the Scheme should be viewed as a capital raising (and related US listing), rather than a change of control transaction. Therefore, in assessing whether the Scheme is reasonable and in the best interests of Biota shareholders we considered it more appropriate to have regard to whether the advantages of the Scheme outweigh the disadvantages.

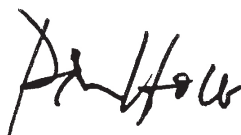
General

- 36 In preparing this report we have considered the interests of Biota shareholders as a whole. Accordingly, this report only contains general financial advice and does not consider the personal objectives, financial situations or requirements of individual shareholders.
- 37 The impact of approving the Scheme on the tax position of Biota shareholders depends on the individual circumstances of each investor. Biota shareholders should read Section 8 of the Scheme Booklet (Australian Taxation Implications for Biota Shareholders) and consult their own professional advisers if in doubt as to the taxation consequences of the Scheme.
- 38 The ultimate decision whether to approve the Scheme should be based on each Biota shareholder's assessment of their own circumstances. If Biota shareholders are in doubt about the action they should take in relation to the Scheme or matters dealt with in this report, shareholders should seek independent professional advice. For our full opinion on the Scheme and the reasoning behind our opinion, we recommend that Biota shareholders read the remainder of our report.

Yours faithfully



Craig Edwards
Authorised Representative



Martin Holt
Authorised Representative

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Appendices**A Financial Services Guide****B Qualifications, declarations and consents****C Glossary**

I Key terms of the Scheme

Terms

- 39 On 23 April 2012 Biota Holdings Limited (Biota) announced that it had entered into a merger agreement with Nabi Biopharmaceuticals (Nabi) which, when implemented, will result in Biota raising some US\$54 million in cash and listing the merged entity's shares on the NASDAQ securities exchange in the United States (the proposed Scheme).
- 40 In order to achieve the NASDAQ listing the merger will be achieved by Nabi acquiring all the shares in Biota pursuant to a Scheme of Arrangement between Biota and its shareholders. Following completion of the merger Nabi will be renamed "Biota Pharmaceuticals, Inc." and remain a NASDAQ listed company. Biota shares will be delisted from the ASX and Biota will be a subsidiary of Biota Pharmaceuticals, Inc.
- 41 Based on the number of securities currently on issue in both Biota and Nabi, if the Scheme is approved by Biota shareholders and the Court (and the other conditions precedent are satisfied or waived), Biota shareholders will receive approximately 0.4487 shares in Nabi for each Biota share held at the Scheme record date. To the extent that the number of Nabi shares outstanding at the Scheme implementation date differs from the number currently outstanding (e.g. due to share consolidations), we note that the Exchange Ratio will be adjusted in accordance with the formula set out in Section 1.2 of the Scheme Booklet in order to preserve the percentage of shares in Biota Pharmaceuticals to be held immediately after the implementation date by Biota shareholders (being approximately 74%) and Nabi shareholders (being approximately 26%).

Conditions

- 42 The Scheme is subject to the satisfaction of a number of conditions precedent which are set out in the Merger Implementation Agreement between Biota and Nabi dated 22 April 2012. These conditions precedent are summarised below:

Conditions precedent for the benefit of Nabi and Biota:

- (a) required regulatory approvals pursuant to the US Hart-Scott-Rodino Antitrust Improvements Act of 1976 (as amended)
- (b) NASDAQ approval for the listing of the new Nabi shares to be issued to Biota shareholders
- (c) an Independent Expert stating that, in its opinion, the Scheme is in the best interest of Biota shareholders
- (d) Biota shareholder approval by the requisite majorities at the Scheme meetings under the Corporations Act
- (e) approval of the Scheme by the Court in accordance with s411(4)(b) of the Corporations Act
- (f) Nabi stockholder approval of certain resolutions in relation to the merger
- (g) receipt by Nabi of a "no-action" letter from the US Securities and Exchange Commission regarding the issue of new Nabi shares under the Scheme
- (h) no legal, regulatory or other impediment to completion of the proposed transactions
- (i) receipt of any other approvals required by either party

Conditions precedent for benefit of Nabi only:

- (j) no prescribed circumstance or event occurs regarding Biota (as set out in the Merger Agreement)
- (k) no material adverse change occurs regarding the affairs of Biota (as set out in the Merger Implementation Agreement)
- (l) Biota's representations and warranties are true and correct in all material respects
- (m) Biota performs, in all material respects, its obligations in the Merger Implementation Agreement

Conditions precedent for the benefit of Biota only:

- (n) no prescribed circumstance or event occurs regarding Nabi (as set out in the Merger Implementation Agreement)
 - (o) no material adverse change occurs regarding the affairs of Nabi (as set out in the Merger Implementation Agreement)
 - (p) Nabi's representations and warranties are true and correct in all material respects
 - (q) Nabi performs, in all material respects, its obligations in the Merger Implementation Agreement
 - (r) on the Implementation Date Nabi's Board of Directors must comprise the Directors set out in Part A of Schedule 2 to the Merger Implementation Agreement (of which six out of the eight appointments are current Biota directors)
 - (s) Nabi must have a Closing Net Cash Balance at 8am on the Second Court Date (being the effective Implementation Date) of no less than US\$54 million. The Nabi Closing Net Cash Balance is defined in the Merger Implementation Agreement as:
 - (i) cash balances in a bank account; less
 - (ii) amounts payable or likely to become payable by Nabi in respect of any business activities carried out by Nabi on or prior to the Implementation Date of the Scheme; less
 - (iii) any cash payments owing to Nabi shareholders (in their capacity as shareholders) pursuant to a permitted dividend, buy-back or capital distribution by Nabi.
- 43 The above conditions are a summary of the material conditions. Biota shareholders should refer to the Scheme Booklet and the Merger Implementation Agreement (available on both the ASX and Biota's website) for full details of the conditions precedent to the Scheme.
- 44 A break fee of \$2 million is payable by either Biota to Nabi or Nabi to Biota in certain circumstances as specified in the Merger Implementation Agreement.

Resolution

- 45 Biota shareholders will be asked to vote on the Scheme in accordance with the resolution contained in the Notice of Meeting accompanying the Scheme Booklet.
- 46 If the resolution is passed by the requisite majorities and the other conditions precedent are satisfied or waived, Biota must apply to the Court for orders approving the Scheme, and if that approval is given, lodge the orders with ASIC and do all things necessary to give effect to the Scheme. Once the Court approves the Scheme it will become binding on all Biota shareholders who hold Biota shares as at the Scheme Record Date, whether or not they voted for the Scheme (and even if they voted against the Scheme).

II Scope of our report

Purpose

- 47 The Scheme is to be effected pursuant to Part 5.1 of the Corporations Act, which governs schemes of arrangement. Part 3 of Schedule 8 of the Corporations Regulations prescribes information to be sent to shareholders in relation to a members' scheme of arrangement pursuant to s411 of the Corporations Act.
- 48 While there is no regulatory requirement for Biota to commission an Independent Expert's Report (IER) in relation to the Scheme, the Scheme is conditional on, inter alia, an Independent Expert concluding that the Scheme is in the best interest of Biota shareholders. Accordingly the Directors of Biota have requested that we provide our opinion on whether the Scheme is in the best interests of Biota shareholders.
- 49 This report has been prepared by LEA for the benefit of Biota shareholders to assist them in considering the resolution to approve the Scheme. Our report will accompany the Notice of Meeting and Scheme Booklet to be sent to Biota shareholders. The sole purpose of our report is to determine whether, in our opinion, the Scheme is in the best interests of Biota shareholders.
- 50 The ultimate decision whether to approve the Scheme should be based on each shareholder's assessment of their own circumstances. If in doubt about the action they should take in relation to the Scheme or matters dealt with in this report, Biota shareholders should seek independent professional advice.

Basis of assessment

- 51 In preparing our report we have given due consideration to the Regulatory Guides issued by ASIC including, in particular, Regulatory Guide 111 – *Content of expert reports* (RG 111).
- 52 There is no legal definition of the expression "*in the best interests*". However, RG 111 states that a scheme may be "*in the best interests of the members of the company*" if there are sufficient reasons for securityholders to vote in favour of the scheme in the absence of a superior proposal.
- 53 Given the nature of the Scheme, in our opinion, the most appropriate basis on which to evaluate the Scheme is to assess the overall impact on Biota shareholders and to form an opinion as to whether, on balance, the advantages of the Scheme outweigh the disadvantages.
- 54 Accordingly we have considered:
- the price at which Nabi shareholders are effectively acquiring an interest in Biota (the Effective Issue Price), which is a function of the value of Nabi prior to completion and the exchange ratio
 - the Effective Issue Price compared to the market prices of Biota shares prior to the announcement of the Scheme
 - the likely price at which Biota could undertake a significant capital raising in the absence of the Scheme
 - the advantages and disadvantages associated with the proposed US listing (which the Biota directors have separately determined to be an objective of the company)
 - the time and costs likely to be incurred in order to achieve a US listing in the absence of the Scheme
 - Biota's funding requirements in the medium term and its contract with the Biomedical Advanced Research & Development Authority (BARDA)¹¹
 - the impact of the Scheme on the value of the shareholdings held by Biota shareholders
 - the level of shareholder dilution as a result of the Scheme
 - the advantages and disadvantages of the Scheme from the perspective of Biota shareholders; and
 - other qualitative and strategic issues associated with the Scheme.

Limitations and reliance on information

- 55 Our opinions are based on the economic, sharemarket, financial and other conditions and expectations prevailing at the date of this report. Such conditions can change significantly over relatively short periods of time.
- 56 Our report is also based upon financial and other information provided by Biota and Nabi (and their respective advisers). We have considered and relied upon this information and believe that the information provided is reliable, complete and not misleading and we have no reason to believe that material facts have been withheld.
- 57 The information provided was evaluated through analysis, enquiry and review to the extent considered appropriate for the purpose of forming an opinion on the Scheme from the perspective of Biota securityholders. However, we do not warrant that our enquiries have identified or verified all of the matters which an audit, extensive examination or "due diligence" investigation might disclose. Whilst LEA has made what it considers to be appropriate enquiries for the purpose of forming its opinion, "due diligence" of the type undertaken by companies and their advisers in relation to (for example) prospectuses or profit forecasts is beyond the scope of this IER.
- 58 Accordingly, this report and the opinions expressed therein should be considered more in the nature of an overall review of the anticipated commercial and financial implications of the proposed transaction, rather than a comprehensive audit or investigation of detailed matters.
- 59 An important part of the information base used in forming an opinion of the kind expressed in this report is comprised of the opinions and judgement of management of the relevant companies. This type of information has also been evaluated through analysis, enquiry and review to the extent practical. However, it must be recognised that such information is not always capable of external verification or validation.
- 60 In forming our opinion, we have also assumed that:
- the information set out in the Scheme Booklet is complete, accurate and fairly presented in all material respects
 - if the Scheme becomes legally effective, it will be implemented in accordance with the terms set out in this report.

¹¹ BARDA is part of the office of the Assistant Secretary for preparedness and Response (ASPR) at the US Department of Health and Human Services (HHS).

III Profile of Biota Holdings Limited

Overview

- 61 Biota is an anti-infective drug development company, based in Melbourne, Australia. Since its initial public offering in 1985, Biota has evolved from a one program research company to a diversified drug discovery and development company with a portfolio of clinical and preclinical programs.
- 62 Biota receives royalties from two marketed products, namely:
 - (a) Relenza (zanamivir) – partnered globally with GSK; and
 - (b) Inavir (laninamivir) – a second generation influenza drug co-owned with Daiichi Sankyo and marketed by Daiichi Sankyo in Japan.
- 63 Other key products in development comprise:
 - (a) Laninamivir – is at an advanced stage of development under a contract with BARDA in the United States. The contract is for up to US\$231 million and is intended to result in a New Drug Application in 2016 in the United States followed by other western markets;
 - (b) Vapendavir – which has completed Phase IIb studies designed to establish the effect of the drug on cold symptoms in asthmatics and which achieved the primary endpoint in March 2012; and
 - (c) RSV – a preclinical small molecule antiviral, intended to provide prophylaxis and treatment of respiratory syncytial virus (RSV) infection.

Recent achievements

- 64 Recent achievements in the history of Biota have included:
 - (a) Phase IIa clinical trials of its leading HRV drug achieving clinical proof-of-concept. The drug is aimed at prevention and treatment of rhinovirus infection, which is also thought to be a major cause of exacerbations in patients with chronic obstructive pulmonary disease and asthma
 - (b) Inavir (Laninamivir) was approved in 2010 for sale in Japan (marketed by Daiichi Sankyo)
 - (c) the expansion of its antibacterial interests following the asset acquisitions of Prolysis Limited and MaxThera, Inc. on 12 November 2009; and
 - (d) the awarding of a contract up to US\$231 million by BARDA for the advanced development of Laninamivir in the USA.

Current operations

65 Biota's head office and research laboratories are located in Melbourne, Victoria. As at 31 March 2012, the company employed 108 staff. Biota's key programs are represented in the diagram below:

Broad infectious disease pipeline



Note: Laninamivir and FLUNET benefited from NIH support
US Phase II and Phase III Laninamivir trials funded by BARDA

Independent Expert's Report

66 A short commentary on Biota's main programs is set out below.

Zanamivir (Relenza)

- 67 Biota licensed zanamivir, the world's first in class neuraminidase inhibitor (influenza antiviral), to Glaxo Group (now GSK) in 1990. This compound was subsequently marketed as Relenza in 1999. However, significant sales only commenced in 2007 upon the outbreak of global influenzas and subsequent government stockpiling initiatives.
- 68 Relenza is delivered directly to the primary site of infection on the lungs, using an inhaler. The drug works by destroying an enzyme, neuraminidase, on the surface of the virus that is essential for the multiplication and spread of influenza. It is approved in over 50 countries for the treatment of influenza, including in the US, the European Union, Japan and Australia. Relenza is also widely approved for use as a preventative (prophylactic) treatment against influenza.
- 69 GSK holds exclusive rights to manufacture, market and sell zanamivir globally for which Biota receives royalties of 7% of net sales in major countries, and royalties of 10% of net sales in Australia, New Zealand, South Africa and Indonesia. A summary of royalty income received by Biota for Relenza since the year ended 30 June 2006 (FY06) is set out below:

Biota – Relenza royalties	
	A\$m
9 months to 31 March 2012	2.2
Year to 30 June 2011	6.6
Year to 30 June 2010	63.7
Year to 30 June 2009	45.0
Year to 30 June 2008	20.5
Year to 30 June 2007	39.8
Year to 30 June 2006	5.2

- 70 Since 2006 there have been three major threats of pandemic respiratory infection and/or influenza outbreaks; severe acute respiratory syndrome (SARs), bird flu and swine flu. In each instance governments around the world built drug stockpiles in response and royalties reflective of this accrued to Biota. However, post FY10 Relenza royalties reduced significantly due to the relatively high levels of global stockpiles of neuraminidase inhibitors at the conclusion of the swine flu pandemic.
- 71 Influenza outbreaks are highly variable in terms of severity, frequency and morbidity. Despite the life saving nature of Relenza and its many clinical advantages, the market is expected to remain volatile, unpredictable and difficult to forecast. Notwithstanding this, the threat of future influenza pandemics remains and there are a number of countries that have aging stockpiles that will need to be replaced during and beyond 2012.
- 72 Relenza royalties are therefore expected to continue to provide an important revenue stream until key patents expire from December 2014 in the United States, May 2015 in major countries in the European Union and July 2019 in Japan.

Laninamivir

- 73 Laninamivir is an influenza antiviral, known as a long acting neuraminidase inhibitor (LANI) and a unique treatment for influenza. Unlike vaccines, neuraminidase inhibitors offer the ability to treat an influenza infection, but may also be used preventatively. Current or first-generation neuraminidase inhibitors require twice daily dosing. LANI compounds are more potent, have a longer residence time in the lung and a single dosage for treatment.
- 74 Laninamivir (branded as Inavir), is co-owned with Daiichi Sankyo, which markets Inavir in Japan. Under a Collaboration and Licence Agreement entered into by Biota and Daiichi Sankyo, Biota receives a 4% royalty on those sales and may earn up to US\$18 million in sales milestone payments. The royalty rate can increase up to 6% of Daiichi Sankyo's net sales of Inavir in Japan if laninamivir is licensed under suitable terms to a third party outside of Japan. The royalty may be reduced in the event that a generic equivalent to Inavir is successfully launched in Japan.
- 75 Inavir has been approved for the treatment of influenza in adults and children, and a Phase III prophylaxis study is underway. The product was first marketed in Japan for the 2010 / 2011 influenza season in which it generated royalties for Biota of A\$2.9 million. Royalties for the nine months to 31 March 2012 were A\$4.1 million.
- 76 Under the Collaboration and Licence Agreement, each of Biota and Daiichi Sankyo has cross licensed to each other all patents and other information, including know-how, trade secrets, data and results relating to the LANI compound (which includes laninamivir).
- 77 Biota and Daiichi Sankyo are required to use their best efforts and work together to seek, on a worldwide basis, third party licensees to develop a finished product that contains a LANI compound in order to maximise the commercial returns to the parties. Pursuant to the terms of the Collaboration and Licence Agreement, Biota and Daiichi Sankyo have formed a licensing committee to oversee the selection of third party licensees and the negotiation of license terms. All milestone, license, royalty, equity and other payments received from third party licensees of a LANI compound outside of Japan are required to be divided equally between Biota and Daiichi Sankyo.
- 78 The Collaboration and Licence Agreement terminates upon the later of the expiration of all patents covering the product in Japan and 12 years from the launch of the product in Japan, unless terminated earlier for material breach.

BARDA contract

- 79 Biota was awarded a contract with BARDA¹² of up to US\$231 million, for the advanced development of laninamivir in the United States. The BARDA Contract provides for the completion of all manufacturing, technical and clinical work as well as the generation of all the necessary information required to file a United States New Drug Application which is expected to be lodged with the United States Food and Drug Administration (FDA) in 2016. If ultimate registration approval in the United States and other western markets is obtained, Biota would aim to become a significant supplier of neuraminidase inhibitors to the global stockpile market (excluding Japan).
- 80 The BARDA Contract is not a grant, and provides for the reimbursement to Biota of approved costs for work undertaken, plus a fee. Of the US\$231 million contract value, approximately US\$15 million represents the fixed fee component and approximately US\$216 million represents the estimated costs reimbursable by BARDA. Reimbursable costs include those costs incurred by Biota in respect of manufacturing, a pilot clinical evaluation, scale-up development and manufacturing facility design (but does not facility construction).

¹² Biomedical Advanced Research and Development Authority (BARDA) is part of the Office of the Assistant Secretary for Preparedness and Response (ASPR) at the US Department of Health and Human Services (HHS).

- 81 The BARDA Contract is for 60 months commencing on 31 March 2011. Biota's entitlement to the approximately US\$15 million fixed fee component is contingent on it satisfying various "milestones" described below.
- milestone 1: within three months of the commencement of the BARDA Contract, Biota was required to provide to BARDA a comprehensive milestone-driven product development plan, inclusive of preclinical and clinical activities performed and completed prior to the commencement of the contract, and those clinical and manufacturing activities to be performed after the contract commenced. The product development plan has been submitted to BARDA
 - milestone 2: within six months of the commencement of the BARDA Contract, Biota was required to provide to BARDA a comprehensive clinical development and regulatory plan, including a summary of preclinical studies, and detailed descriptions of clinical evaluation and regulatory activities. The clinical development and regulatory plan has been submitted to BARDA
 - milestone 3: within nine months of the commencement of the BARDA Contract, Biota was required to provide to BARDA a manufacturing facility plan relating to a facility for the production of laninamivir, including pre-pandemic and pandemic facility management plans. The manufacturing facility plan has been submitted to BARDA.
 - milestone 4: within 12 months of the commencement of the BARDA Contract, Biota was required to provide to BARDA a feasibility plan to manufacture, test and release product containing laninamivir. The feasibility plan has been submitted to BARDA.
 - milestone 5: Biota is required to provide to BARDA a work breakdown structure including comprehensive and integrated timelines and key objectives and its execution. This milestone is ongoing.
- 82 Despite the earnings and margin advantages of retaining ownership of products into such late stage development, Biota has not in the past been able to secure from Australian investors the levels of funding needed to allow this to occur. Therefore Biota shareholders will benefit from this very significant level of funding to advance this project, without dilution.

Human rhinovirus (HRV)

- 83 Human rhinovirus (HRV) infections are frequently associated with the common cold, a minor and mild disease in otherwise healthy individuals. However, there is a mounting body of medical evidence that links rhinovirus infection to exacerbations in patients with concurrent, underlying lung disease such as asthma or chronic obstructive pulmonary disease and which may require significant medical intervention to reinstate control of the underlying disease.
- 84 In June 2009 the lead candidate vapendavir (BTA798) was demonstrated to reduce the incidence and severity of an induced HRV infection in healthy subjects. In July 2010 Biota commenced a United States based Phase IIb study in subjects with chronic asthma, designed to establish the effect of vapendavir on cold symptoms in asthmatics when given shortly after the onset of an infection. On 28 March 2012, Biota announced that the primary endpoint of the Phase IIb study had been successfully achieved.

Respiratory syncytial virus (RSV)

- 85 Respiratory syncytial virus (RSV) infection or bronchiolitis affects most children by the age of two; in certain children infection can be serious. Premature infants are particularly at risk of severe complications and there are no therapeutic treatments available. Biota has been active with its RSV program for a number of years and licensed an earlier lead compound to MedImmune / AstraZeneca. Development of that compound has ceased and all rights have reverted to Biota.
- 86 Since then, Biota has identified a new lead candidate which has an excellent pharmacokinetic profile. The new lead candidate is one of the few prospective antiviral drugs suitable for oral administration and that has demonstrated potent inhibition of RSV in both culture and animal models. The product is at the preclinical stage of development.

Other development programmes

- 87 Biota also has a number of other development programs (e.g. the HCV-NN and Gryrase programmes). However these are at a very early stage of development.

Financial performance

- 88 The financial performance of Biota for the three years ended 30 June 2011 (FY11), as well as for the nine month period to 31 March 2012, is set out below:

Biota – financial performance				
	FY09	FY10	FY11	9 mths to 31 Mar 12
	A\$m	A\$m	A\$m	A\$m
Royalties (primarily Relenza) ⁽¹⁾	45.0	63.7	9.6	6.4
Collaboration income	12.6	1.4	0.6	-
Revenue under BARDA contract	-	-	-	6.0
Grant and other revenue	2.8	3.9	2.5	0.4
Total revenue	60.4	68.9	12.6	12.8
Research and development costs	(13.3)	(21.7)	(20.7)	(11.9)
Product and clinical development costs	(11.3)	(11.2)	(15.6)	(11.1)
Amortisation of antibacterial programmes	-	(8.8)	(2.9)	-
Business development costs	(1.0)	(1.0)	(1.0)	(0.7)
Sub royalty expenses	(4.3)	(4.1)	(1.2)	(1.0)
Corporate costs	(4.3)	(4.3)	(5.0)	(3.9)
Total expenses	(34.2)	(51.2)	(46.2)	(28.6)
Earnings before interest, tax and net litigation costs	26.2	17.7	(33.6)	(15.8)
Net interest received	2.8	2.5	4.4	2.5
Net litigation income/(expense)	12.7 ⁽²⁾	-	-	-
Profit/(loss) before income tax	41.8	20.2	(29.2)	(13.3)
Income tax benefit/(expense)	(3.6)	(4.0)	1.1	0.5
Profit/(loss) after tax	38.2	16.2	(28.1)	(12.8)

Note:

- Inavir royalties were A\$2.9 million in FY11 and A\$4.1 million in the nine months to 31 March 2012.
- Litigation settlement proceeds of A\$20 million (with each party bearing their own litigation costs), net of expenses following conclusion of the litigation against GSK.
- Rounding may exist in the above.

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- 89 As noted above, royalties from Relenza, Biota's most successful product released to date, reduced significantly in FY11 and in the nine months to 31 March 2012 due to successive mild winters in the northern hemisphere, limited flu seasons and no major outbreaks of influenza, all of which limited government purchases. However Relenza has a five year shelf life and hence future sales to governments to replenish stockpiles are expected.
- 90 Royalties from Inavir in the nine months to 31 March 2012 were A\$4.1 million.
- 91 Revenue from the BARDA contract was A\$6.0 million in the nine months to 31 March 2012, with this expected to increase as the contract progresses.

Financial position

- 92 The financial position of Biota as at 30 June 2011 and 31 March 2012 is set out below:

Biota – financial position		
As at	30 Jun 11 A\$m	31 Mar 12 A\$m
Cash and cash equivalents	70.0	51.3
Trade and other receivables	4.1	9.7
Total current assets	74.1	61.0
Plant and equipment	5.5	5.2
Deferred tax assets	1.1	1.5
Intangible assets	3.0	1.9
Total non-current assets	9.5	8.6
Total assets	83.6	69.6
Trade and other payables	4.1	2.2
Deferred revenue	0.1	0.4
Provisions	2.2	2.0
Total current liabilities	6.4	4.6
Provisions	0.3	0.4
Total non-current liabilities	0.3	0.4
Total liabilities	6.7	5.0
Net assets	76.9	64.6

- 93 We note that the company's cash balance decreased some A\$18.7 million in the nine month period to 31 March 2012. This was primarily due to the timing of royalty income and the continuation of the company's research and development activities.

Share capital and performance

- 94 As at 1 August 2012 Biota had approximately 182.35 million fully paid ordinary shares on issue. In addition, if the Scheme is approved Biota will have to issue a further 4.64 million shares (for no additional consideration) in order to meet its obligations under its Employee Share Plan and Deferred Bonus Plan. Thus, on a fully diluted basis Biota has approximately 187 million shares on issue.

Share price performance

- 95 The price of Biota shares from 1 March 2009 to 20 April 2012 (being the last day of share trading prior to the announcement of the Scheme on 23 April 2012) is summarised below:

Biota – share price performance				
	High	Low	Close	Monthly volume ⁽¹⁾
	A\$	A\$	A\$	000
Month ended				
Quarter ended				
March 2009	0.63	0.34	0.60	5,705
June 2009	1.79	0.62	1.20	38,094
September 2009	2.73	1.25	2.73	23,755
December 2009	3.47	2.30	2.41	25,750
March 2010	2.42	2.00	2.27	21,400
June 2010	2.34	1.01	1.02	21,181
September 2010	1.11	0.85	0.96	20,873
December 2010	1.06	0.90	0.99	8,578
March 2011	1.54	0.89	1.05	23,373
June 2011	1.66	0.90	0.96	12,563
July 2011	1.07	0.95	0.97	4,025
August 2011	1.05	0.81	0.99	7,202
September 2011	1.01	0.80	0.81	4,862
October 2011	0.88	0.78	0.80	7,410
November 2011	0.80	0.69	0.72	6,452
December 2011	0.83	0.70	0.80	4,614
January 2012	0.87	0.80	0.82	3,288
February 2012	0.83	0.76	0.77	4,055
March 2012	1.04	0.76	1.00	7,617
April 2012 (up to 20 April 2012)	1.07	0.94	0.95	2,130

Note:

1 Monthly volumes for the quarter ended represent average monthly volumes.

Source: Bloomberg.

96 The following chart illustrates the movement in the share price of Biota from 1 March 2009 to 20 April 2012¹³:

Biota – share price history

1 March 2009 to 20 April 2012



Source: Bloomberg.

97 The significant increase in the Biota share price in 2009 coincided with the outbreak of the swine flu pandemic and the related response by governments around the world to stockpile agents for the management of pandemic treatments, such as Relenza. Relenza royalties peaked at A\$63.7 million in FY10 and subsequently declined to A\$6.6 million the following year.

Liquidity in Biota shares

98 The liquidity in Biota shares based on trading on the ASX over the 12 month period prior to 20 April 2012¹⁴ is set out below:

Biota – liquidity of shares

	Start date	End date	Value AS000	Volume 000	As a % of issued capital
1 month	21 Mar 12	20 Apr 12	6,195	6,382	3.5
3 months	21 Jan 12	20 Apr 12	12,963	14,730	8.1
6 months	21 Oct 11	20 Apr 12	25,565	31,013	17.1
1 year	21 Apr 11	20 Apr 12	66,051	71,631	39.4

Source: Bloomberg.

99 In the 12 month period prior to the announcement of the Scheme total share turnover equalled 39% of the issued shares in Biota, indicating a reasonable level of market liquidity.

IV The Effective Issue Price

Nabi Biopharmaceuticals

100 Nabi Biopharmaceuticals (Nabi) is a NASDAQ-listed company based in Rockville, Maryland in the United States. In July and November 2011 Nabi reported that its sole remaining product in development, NicVAX (Nicotine Conjugate Vaccine), a proprietary investigational vaccine for use in nicotine addiction, was safe and well tolerated by users but failed to demonstrate efficacy in two separate Phase III trials.

Financial position

101 Nabi's unaudited balance sheet as at 31 March 2012 is set out below:

Nabi – unaudited balance sheet as at 31 March 2012

	US\$000
Current Assets:	
Cash and cash equivalents	94,875
Marketable securities	-
Receivables	128
Prepaid expenses and other current assets	216
Total current assets	95,219
Property and equipment	17
Total assets	95,236
Current liabilities:	
Accounts payable	69
Accrued expenses and other current liabilities	1,020
Deferred revenue	2,526
Total current liabilities	3,615
Deferred revenue	32,211
Total liabilities	35,826
Net assets	59,410

13 Being the last day of share trading prior to the announcement of the Scheme on 23 April 2012.

14 Being the last day of share trading prior to the announcement of the Scheme on 23 April 2012.

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- 102 As at 31 March 2012 Nabi's remaining assets included:
- (a) US\$94.9 million in cash
 - (b) the potential residual value of NicVAX
 - (c) potential royalties from Phoslyra, which was sold to Fresenius USA Manufacturing, Inc in 2006.

NicVAX

- 103 In March 2010 Nabi entered into an exclusive option and licensing agreement with GlaxoSmithKline Biologicals S.A. (GSK) for NicVAX, as well as for the development of follow-on nicotine addiction vaccines.
- 104 NicVAX failed to demonstrate efficacy in two separate Phase III trials during 2011. During the quarter ended 31 March 2012, GSK informed Nabi that it does not intend to exercise the NicVAX option to develop, commercialise and manufacture NixVAX due to the failure of the Phase III trials to achieve their primary endpoints. However, GSK has not indicated that it has terminated its development of other future generation nicotine vaccines.
- 105 Nabi is also continuing with an investigator initiated Phase IIb trial in the Netherlands of NicVAX in combination with Varenicline (Champix), a Pfizer product. We are instructed that the cost of this trial will not be borne by Biota shareholders if the Scheme proceeds.
- 106 Further, as contemplated by the Merger Implementation Agreement, Nabi will issue a Contingent Value Right (CVR) to each existing Nabi shareholder in respect of each Nabi share held by them. If Biota enters into a sale, licence or transfer transaction for NicVAX within 18 months of the Implementation Date (the Initial CVR Term), Nabi stockholders will be entitled to receive cash payments (pursuant to the CVR) equal to their pro rata portion of:
- (a) 75% of the cash proceeds in excess of US\$5 million actually received by Biota in connection with the transaction during the Initial CVR Term (provided that such right is triggered only when Biota actually receives US\$5.5 million or more in connection with the transaction); and
 - (b) 75% of the first cash milestone payment actually received by Biota in connection with the transaction during a period of five years commencing at the end of the Initial CVR Term (provided that such a right is triggered only when Biota actually receives at least US\$0.5 million or more as such milestone payment and certain other thresholds are met).
- 107 If Biota does not enter into such a transaction during the Initial CVR Term, or if the cash proceeds actually received by Biota in connection with a transaction do not exceed certain thresholds, no cash payment will be payable to Nabi stockholders in relation to NicVAX.
- 108 However, given the results of the two separate Phase III trials for NicVAX and the inherent uncertainty regarding any future returns to the merged group from NicVAX and related intellectual property, in our opinion, it is appropriate to attribute a nominal value to this intellectual property for the purposes of our report.

Phoslyra

- 109 Phoslyra is a marketed product that reduces phosphate levels in dialysis patients. The product was launched in July 2011 and may result in the payment of future royalties to Nabi through to November 2016 of up to US\$65 million. Nabi is entitled to a 12% royalty on gross annual sales of Phoslyra over US\$32 million.
- 110 To date Nabi has not received any royalties in relation to Phoslyra, and it is inherently uncertain whether gross annual sales above US\$32 million will be achieved in any annual period to November 2016 in order to trigger future royalty payments to Nabi. Accordingly, for the purposes of our report we have also attributed a nominal value to this potential royalty stream.

Deferred revenue

- 111 Nabi's balance sheet as at 31 March 2012 reflects deferred revenue of US\$34.7million. This relates to up-front fees which have been received, are non-refundable and will be recognised as revenue for financial reporting purposes over the period of Nabi's participation on joint steering committees created under the licence agreements.

Net cash to be raised by Biota

- 112 A key condition of the Scheme is that, at 8am on the Second Court Date¹⁵, Nabi must have a Closing Net Cash Balance of no less than US\$54 million. The Nabi Closing Net Cash Balance is defined in the Merger Implementation Agreement as:
- (a) cash balances in a bank account; less
 - (b) amounts payable or likely to become payable by Nabi in respect of any business activities carried out by Nabi on or prior to the Implementation Date of the Scheme; less
 - (c) any cash payments owing to Nabi shareholders (in their capacity as shareholders) pursuant to a permitted dividend, buy-back or capital distribution by Nabi.
- 113 For the purposes of working out the Effective Issue Price, in our opinion, it should therefore be assumed that Nabi will distribute to its own shareholders all cash (net of payables etc.) in excess of the minimum amount agreed. This assumption is consistent with public statements made by Nabi in its US regulatory filings which state that "*Nabi intends to return to Nabi's stockholders excess cash above \$54 million*"¹⁶.
- 114 Further, pursuant to the terms of the Merger Implementation Agreement (MIA), Nabi shareholders do not obtain any benefit if the Nabi Closing Net Cash Balance exceeds US\$54 million. Accordingly, we believe it is appropriate to assume that Nabi's Closing Net Cash Balance at completion will be US\$54 million. As stated above, in our opinion, it should also be assumed that Nabi will have no other material assets or liabilities.

¹⁵ Effectively the Implementation Date.

¹⁶ Source: Page 6 of Nabi's 10-Q filed on 5 May 2012.

Shares on issue

- 115 Following a buy-back of Nabi shares to reduce its cash holdings in accordance with the merger terms, as at 3 August 2012 Nabi had 28.3 million shares on issue (net of treasury shares). In addition Nabi has approximately 3.6 million options on issue. However, only 3,000 of these options are either at or close to being in the money. Accordingly, for the purposes of our report we have adopted 28.3 million as the number of Nabi shares on issue¹⁷.
- 116 To the extent that the number of Nabi shares outstanding differs from this amount (e.g. due to share consolidations) we note that the Exchange Ratio will be adjusted in accordance with the formula set out in Section 1.2 of the Scheme Booklet in order to preserve the percentage of shares in Biota Pharmaceuticals to be held immediately after the implementation date by Biota shareholders (being approximately 74%) and Nabi shareholders (being approximately 26%).

Effective Issue Price

- 117 Based on the number of Nabi securities currently on issue, Biota shareholders will receive approximately 0.4487 shares in Nabi for each Biota share held under the Scheme¹⁸. This exchange ratio implies that each Nabi shareholder will acquire an interest in Biota at an Effective Issue Price per Biota share of around A\$0.84 to A\$0.87 based on a range of AUD:USD exchange rates at the date of our analysis¹⁹, as calculated below:

Effective issue price			
		Low	High
Minimum net cash at Nabi on completion	US\$m	54.0	54.0
Number of Nabi shares outstanding	Million	28.3	28.3
Value per Nabi share	US\$	1.91	1.91
AUD:USD exchange rate		1.02	0.98
Value per Nabi share	A\$	1.87	1.95
Exchange ratio		0.4487	0.4487
Effective Issue Price per Biota share	A\$	0.84	0.87

Note:

Rounding differences may exist.

V Evaluation of the Scheme**Background to the Scheme**

- 118 As noted in Section III, up until 30 June 2011 Biota's main revenue stream has been royalty income from Relenza. However, the key patents for Relenza expire from December 2014 in the United States, May 2015 in major countries in the European Union and July 2019 in Japan. Following the expiry of these patents Biota will no longer receive royalties for Relenza.
- 119 In March 2011 Biota was awarded a US\$231 million contract with BARDA for the advanced development of its "Laninamivir" influenza antiviral drug in the US. Specifically, the contract requires Biota over a five year period to:
- establish US manufacturing supply
 - ensure that it has the capability to manufacture sufficient product
 - conduct clinical trials for safety and efficacy in adult and paediatric populations; and
 - generate all the necessary information required to file a United States New Drug Application with the Food and Drug Administration.
- 120 While Laninamivir is already approved for sale in Japan (and was launched as Inavir by Daiichi Sankyo in October 2010), it is not currently approved for sale in other markets. Further, Inavir is primarily used to treat an influenza infection (but may also be used preventatively). Daiichi Sankyo have Phase III prophylaxis studies underway for Laninamivir in Japan²⁰.
- 121 Given the funding requirements associated with the above drug development programs, the US focus of the BARDA contract and the large size of the US capital markets (which should make it easier to raise funds for drug development) the Board of Biota submitted a proposal to merge with Nabi as it achieves their key objective of obtaining a US listing (and a related US shareholder base).

Basis of assessment

- 122 While the merger with Nabi will be achieved by Nabi acquiring all the shares in Biota pursuant to the Scheme, we note that:
- Biota shareholders will own the majority (approximately 74%) of the shares in the merged entity, and will therefore retain voting control
 - Biota's current management will be responsible for the day to day management of the merged entity
 - Nabi's main contribution to the merged entity is cash and its NASDAQ listing
 - on completion of the merger no existing individual shareholder in Nabi is expected to own more than 5% of the shares in the merged entity²¹
 - the merger proposal was submitted by Biota (not Nabi).
- 123 Given the above, in our opinion, the Scheme should be viewed as a capital raising (and related US listing) rather than a change of control transaction. Accordingly, we have considered:
- the price at which Nabi shareholders are effectively acquiring an interest in Biota (the Effective Issue Price), which is a function of the value of Nabi prior to completion and the exchange ratio

¹⁷ We note that the parties to the Merger Implementation Agreement allowed for approximately 1.3 million options to be exercised when negotiating the Exchange Ratio.

¹⁸ Subject to adjustment as discussed in Section II.

¹⁹ As at 15 June 2012 the AUD:USD exchange rate was 1 AUD = 1.00 USD. It should be noted that exchange rates are particularly volatile at the present time reflecting factors including on-going global uncertainty

²⁰ A prophylaxis study measures how well a drug protects a subject after they have been exposed to the disease.

²¹ Based on the latest SEC filings Nabi's largest shareholder held 9.7% of Nabi. This holding will be diluted below 5% if the Scheme is implemented.

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- (b) the Effective Issue Price compared to the market prices of Biota shares prior to the announcement of the Scheme
- (c) the likely price at which Biota could undertake a significant capital raising in the absence of the Scheme
- (d) the time and costs likely to be incurred in order to achieve a US listing in the absence of the Scheme
- (e) the advantages and disadvantages associated with the proposed US listing (which the Biota directors have separately determined to be an objective of the company)
- (f) the level of shareholder dilution as a result of the Scheme
- (g) Biota's funding requirements in the medium term and its contract with the Biomedical Advanced Research & Development Authority (BARDA)²²
- (h) the impact of the Scheme on the value of the shareholdings held by Biota shareholders
- (i) the loss of imputation credits for Australian investors
- (j) the advantages and disadvantages of the Scheme from the perspective of Biota shareholders; and
- (k) other qualitative and strategic issues associated with the Scheme.

124 RG 111 states that, in analysing a control transaction, an expert should consider whether the offer is fair and reasonable. RG 111 states that an offer is fair if the value of the offer price is equal to or greater than the value of the securities the subject of the offer. As stated in paragraph 123, we consider that the Scheme should not be viewed as a control transaction. Accordingly, while this report addresses "fairness" by reference to RG 111 guidelines, in our opinion, it is more appropriate to consider whether the advantages of the Scheme outweigh the disadvantages.

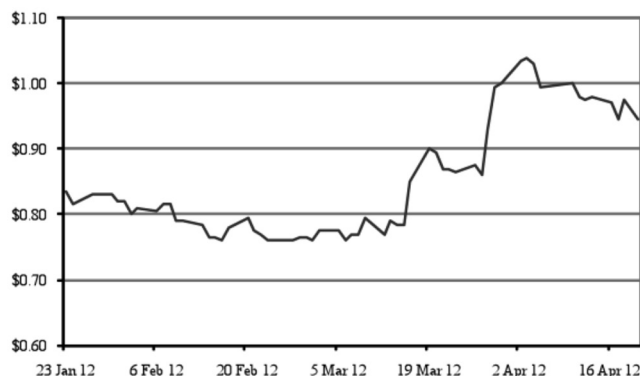
Effective Issue Price

125 If the Scheme is implemented, Biota shareholders will receive approximately 0.4487 shares in Nabi for each Biota share held. As set out in Section IV this exchange ratio implies that each Nabi shareholder will receive an interest in Biota at an Effective Issue Price of between 84 cents to 87 cents per Biota share (based on an exchange rate range of 1 AUD = 0.98 USD to 1.02 USD, being the recent range at the date of our analysis²³).

Market price of Biota shares prior to Scheme announcement

126 The Biota share price in the three months prior to the announcement of the Scheme on 23 April 2012 (the last trading day prior to the announcement was 20 April 2012) is shown below:

Biota – share price up to announcement of Scheme



Source: Bloomberg.

127 The trading range and volume weighted average price (VWAP) for Biota shares for selected periods prior to the announcement of the Scheme is summarised below:

Biota share prices				
Period	High Cents	Low Cents	VWAP Cents	Volume ⁽¹⁾ (m)
1 month to 20 April 2012	107.0	83.0	97.1	6.4
3 months to 20 April 2012	107.0	75.5	88.0	14.7
28 March 2012 to 20 April 2012	107.0	90.0	98.7	5.5

Note:

1 In our opinion, the level of share trading during the above periods is sufficient in order to rely on the trading data as an indication of the portfolio value of Biota shares.

²² BARDA is part of the office of the Assistant Secretary for Preparedness and Response (ASPR) at the US Department of Health and Human Services (HHS). Refer paragraphs 118 to 121.

²³ As at 15 June 2012 the AUD:USD exchange rate was 1 AUD = 1.00 USD. It should be noted that exchange rates are particularly volatile at the present time reflecting factors including on-going global uncertainty.

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- 128 As indicated above, the Biota share price increased significantly from mid March 2012. In this regard we note that:
- (a) on 21 March 2012 Biota responded to an ASX query following the increase in the Biota share price from 78.5 cents on 16 March 2012 to an intra-day high of 93 cents on 20 March 2012. In its response Biota stated that:
 - (i) Biota was considering a potential listing in the United States (as it had previously disclosed to the market)
 - (ii) it was expecting the results from its Phase IIb clinical study of HRV antiviral BTA 798 in asthmatic subjects to be available by early April
 - (iii) recent publicity had suggested that Japan had a late severe influenza season, with such outbreaks previously triggering speculative interest in Biota shares
 - (b) on 28 March 2012 Biota announced that the Phase IIb clinical study for its HRV antiviral in asthmatics was successful, as it resulted in a statistically significant reduction in the severity of cold symptoms compared to a placebo.
- 129 Given the significance of the ASX announcement on 28 March 2012, we believe more regard should be had to the Biota share price subsequent to this announcement (up to and including 20 April 2012) when considering the portfolio value of Biota shares prior to the announcement of the Scheme. During this period 5.5 million shares traded at a volume weighted average market price (VWAP) of 98.7 cents per share. However, as indicated in the graph above, the Biota share price declined subsequent to the initial re-rating and last traded at 94.5 cents prior to the announcement of the Scheme.
- 130 Accordingly, for the purposes of our report, we have adopted a share trading range of 94 cents to 99 cents for Biota shares prior to the announcement of the Scheme.

Discount to pre-announcement market price

- 131 On this basis the Effective Issue Price represents a discount of between 10.6% and 12.1% to the market price of Biota shares prior to the announcement of the Scheme, as calculated below:

Implied placement discount to Biota share price prior to announcement of Scheme		
	Low Cents	High Cents
Market price prior to announcement of Scheme	94.0	99.0
Effective Issue Price per Biota share	84.0	87.0
Discount to market price	10.6%	12.1%

Note:

- 1 LEA assessed range reflecting closing Biota share price prior to the announcement of Scheme of 94 cents (LEA low range) and VWAP from 28 March 2012 to 20 April 2012 of 98.7 cents (LEA high range).

- 132 Further, following a decline in the Biota share price subsequent to the announcement of the Scheme, we note that the Effective Issue Price now represents a significant premium to the last traded price of Biota shares (67 cents per share) on 3 August 2012.

Placement discounts

- 133 In comparison the discounts implied by placements made by ASX listed biotechnology companies raising more than A\$10 million over the 2009 to 2011 years are shown below:

Placement discounts for ASX listed biotechnology companies raising more than \$10 million				
Issuer	Announcement date	Amount raised A\$m	Discount to last traded market price ⁽¹⁾ %	Amount raised / market cap before announcement %
Mesoblast	30 March 2009	10.8	10.0	11.2
ChemGenex	8 April 2009	18.4	17.3	14.7
Pharmaxis	4 June 2009	54.3	10.6	10.6
Bionomics	3 September 2009	15.0	-	24.6
Probiotec	23 September 2009	12.0	5.2	9.4
QRxPharma	11 November 2009	17.0	33.3	18.8
Starpharma	16 November 2009	15.6	13.3	12.5
Avexa	30 November 2009	23.3	31.7	16.7
Mesoblast	12 May 2010	23.8	12.1	8.8
QRxPharma	29 September 2010	19.8	15.0	19.3
Bionomics	13 May 2011	14.3	20.8	6.2
Avita	17 May 2011	11.8	33.3	66.6
Prima Biomed	25 May 2011	41.4	16.4	15.1
QRxPharma	20 July 2011	26.5	9.9	13.1
Genetic Technologies	20 July 2011	11.7	40.0	8.9
Phosphagenics	21 October 2011	27.2	17.6	18.9
Alchemia	7 November 2011	21.1	12.7	40.1
Pharmaxis	16 November 2011	80.2	19.2	26.9
Starpharma	16 November 2011	32.0	-	12.0
Mean			16.8	
Median			15.0	

Note:

- 1 Discount calculated as a percentage of last traded market price prior to the announcement of the placement / capital raising.

Source: Company announcements and LEA analysis.

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- 134 As indicated above, the average and median placement discount in recent placements by ASX listed biotechnology companies was 16.8% and 15.0% respectively. The discounts implied by the terms of the Scheme are therefore lower than the average and median discounts based on recent comparative capital raisings.
- 135 Further, research conducted by LEA on placement discounts indicates that the size of the discount generally increases the larger the capital raising as a percentage of the market capitalisation prior to the announcement of the raising. In this regard we note that:
- the amount to be raised by Biota under the Scheme (approximately A\$54 million²⁴) represents some 31% of Biota's market capitalisation (A\$172 million²⁵) prior to the announcement of the Scheme
 - Biota's capital raising pursuant to the Scheme is therefore larger (as a percentage of the market capitalisation prior to the capital raising) than most of the capital raisings shown in the table above.

The costs of listing in the US

- 136 As the Scheme (if implemented) will result in Biota achieving its objective of obtaining a US listing it is also appropriate to compare the placement discounts implicit in the Scheme with the likely costs involved in obtaining a US listing.
- 137 In the absence of the Scheme (or a similar proposal), if Biota was to list in the US it would incur significant costs, including:
- underwriting costs associated with raising new equity capital in the US; and
 - legal, accounting and other initial public offering (IPO) related expenses.
- 138 In addition, consistent with observed pricing in IPOs generally, the new capital raised would need to be priced at a discount to the expected market price of the shares upon listing.
- 139 As indicated below, the total costs associated with recent IPO's by biotechnology companies in the US have been substantial:

IPO costs for biotechnology companies listing in the US							
Listing date	Company	Shares issued as a % of no. of shares pre IPO %	Underwriters fees ⁽¹⁾ %	Other expenses ⁽²⁾ %	Total "cash" costs of IPO ⁽³⁾ %	IPO price discount/ (premium) to 10 day VWAP %	Total "costs" of IPO ⁽⁴⁾ %
Feb 11	Pacira Pharmaceuticals Inc.	53.4	7.0	5.4	12.4	33.2	45.6
Feb 11	Tornier N.V.	29.6	6.5	3.6	10.1	(3.3)	6.8
Feb 11	BG Medicine, Inc.	37.3	7.0	6.7	13.7	12.1	25.8
Feb 11	Endocyte, Inc.	82.2	6.3	2.7	8.9	13.4	22.4
Feb 11	Fluidigm Corporation	41.1	7.0	3.0	10.0	3.3	13.3
Feb 11	AcelRx Pharmaceuticals, Inc.	70.3	2.8	5.2	8.0	(4.9)	3.1
Apr 11	Tranzyme, Inc.	132.2	7.0	3.7	10.7	0.3	11.0
Apr 11	Sagent Pharmaceuticals, Inc.	27.3	7.0	3.1	10.1	15.7	25.8
Jul 11	Horizon Pharma, Inc.	39.2	7.0	8.4	15.4	(0.1)	15.3
Oct 11	ZELTIQ Aesthetics, Inc.	26.1	7.0	4.7	11.7	13.8	25.6
Nov 11	NewLink Genetics Corp.	43.1	7.0	6.6	13.6	0.4	14.0
Nov 11	Clovis Oncology, Inc.	85.7	4.0	1.8	5.8	(1.0)	4.8
Jan 12	Verastem, Inc.	41.8	7.0	3.7	10.7	9.4	20.1
Feb 12	Greenway Medical Technologies, Inc. ^{(3) (4)}	29.7	7.0	3.3	10.3	17.7	28.0
Feb 12	Cempra, Inc.	75.5	3.5	2.9	6.4	3.1	9.5
Feb 12	ChemoCentryx, Inc.	14.6	7.0	5.4	12.4	8.9	21.4
Mean			6.3	4.4	10.6	7.6	18.3
Median			7.0	3.7	10.5	6.1	17.7

Note:

- As a percentage of the gross amount raised from new investors. In some cases existing shareholders also subscribed for the shares and lower underwriting fees were charged on these amounts.
- As a percentage of gross amount raised. Primarily legal, accounting and other expenses.
- Sum of underwriters' fees and other expenses.
- Represents total "cash" costs plus IPO price discount/ (premium) to VWAP.

Source: IPO prospectuses, Bloomberg and LEA analysis.

- 140 While the performance of the above securities on listing (relative to their IPO price) varied significantly based on market observation and experience, in our view, an IPO would generally need to be priced at a 5% to 10% discount to its expected listing price in order for the IPO to be successful. Together with underwriting fees and other expenses, the total costs associated with listing Biota in the US (based on the above evidence) would likely be around 15% to 20% of the amount raised, comprising:

Indicative IPO costs	%
Underwriting and other "cash" costs	10.0
IPO discount	5.0 – 10.0
Total "cost" of IPO	15.0 – 20.0

24 Being US\$54 million at an AUD:USD exchange rate of 1 AUD = 1.00 USD (being the rate on the date of our analysis of 15 June 2012).

25 181.8 million shares at 94.5 cents per share.

- 141 In comparison, the estimated costs of the Scheme, including the placement discount implied by the Scheme and transaction costs are as follows:

	Low % of market capitalisation ⁽¹⁾	High % of market capitalisation ⁽¹⁾
Transaction costs ⁽¹⁾	2.6	2.7
Placement discount implied by Scheme	10.6	12.1
Total costs of Scheme	13.2	14.8

Note:

- Based on LEA assessed range prior to announcement of Scheme.
- Comprising investment banking, legal, accounting and expert fees and other transaction costs. Represents \$4.8 million divided by market capitalisation range of \$176 million to \$185 million (refer paragraph 145 below). It should be noted the majority of these costs will have already been incurred prior to the shareholder meeting to vote on the Scheme.

- 142 That is, the total "costs" of a US IPO would likely be above the total costs of the Scheme.

- 143 Further, a separate listing in the US:

- is likely to take longer to achieve compared to the Scheme
- would require significant involvement from Biota's key management personnel; and
- would be dependent on future stockmarket conditions at the time of listing.

Value implications of the Scheme

- 144 As Nabi shareholders are acquiring an interest in Biota at a discount to the market price of Biota shares prior to the announcement of the Scheme it should be noted that:

- the Scheme is not fair to Biota shareholders when assessed based on the guidelines set out in RG 111²⁶; and
- the portfolio value of Biota shares will fall by around two to four cents per share as a result of the dilutionary effect of the Scheme.

- 145 To quantify the dilutionary effect of the Scheme on the value of Biota shares we have calculated the theoretical market price of Biota shares assuming the Scheme is implemented²⁷. As shown below this theoretical market price is some two to four cents per share less than the market price of Biota shares prior to the announcement of the Scheme:

		Low	High
Assessed market price prior to Scheme announcement	(cents)	94	99
Market capitalisation pre Scheme ⁽¹⁾	(A\$m)	176	185
Amount raised by Biota under Scheme ⁽²⁾	(A\$m)	54	54
Estimated market capitalisation post Scheme	(A\$m)	230	239
Biota shares on issue pre Scheme	(m)	187	187
Shares effectively being issued to Nabi ⁽⁴⁾	(m)	63	63
Enlarged Biota share capital (post Scheme)	(m)	250	250
Estimated market price post Scheme⁽³⁾	(cents)	92	95
Reduction in market price due to Scheme	(cents)	2	4

Note:

- 187 million fully diluted shares at 94 to 99 cents per share.
- US\$54 million at an AUD:USD exchange rate of 1 AUD = 1.00 USD (being the rate at the time of our analysis, being 15 June 2012).
- Based on the dilutionary effect of the proposed Scheme only. This analysis therefore ignores movements in equity values generally since the date of the Scheme announcement.
- 42.9 million Nabi shares at the Exchange Ratio of 0.4487. Rounding differences may exist.

- 146 That is, the dilutionary effect of the Scheme reduces the portfolio value of Biota shares by some two to four cents per share.

Advantages and disadvantages of a US listing

- 147 The US capital markets and biotechnology sector are substantially larger than in Australia. For example, the NASDAQ Biotechnology index comprises 117 biotechnology companies listed on the NASDAQ exchange, which (as at 30 April 2012) had a combined market capitalisation of over US\$446 billion. Further, in 2011 over US\$10 billion was raised by life sciences companies in the US compared to approximately A\$550 million on average over the 10 years to 2011 in Australia²⁸.

- 148 In our view, listing Biota shares in the US will therefore potentially have the following benefits:

- the ability to raise larger amounts of equity capital; and
- reductions in the overall cost of capital, which should result in improved share market ratings in the medium to long term.

²⁶ As mentioned in paragraph 124, in our opinion it is more appropriate to consider whether the advantages of the scheme outweigh the disadvantages, rather than whether the scheme is fair under RG 111 guidelines.

²⁷ This analysis ignores movements in equity values generally since the date of the Scheme announcement.

²⁸ Source: Biota.

- Annexure A
- 149 Due to the high cost of drug development programs and the difficulty associated with raising large amounts of capital in Australia, Biota has been strategically obliged to licence its products at the pre-clinical or early clinical stage. As a result the terms of the licensing arrangements generally reflect the increased risks associated with such arrangements. For example, empirical evidence indicates that future milestone payments and royalty rates are generally lower in early stage licensing deals compared to those negotiated at later stages. By obtaining access to increased funding Biota is likely to be able to advance more projects to a later stage of development before licensing.
- 150 We also note that a US listing is consistent with Biota's increasing focus on its US activities following the award of the US\$231 million BARDA contract in March 2011.
- 151 In contrast, however, Biota shareholders should also note that the company intends to delist from the ASX if the Scheme is approved. As a result:
- (a) those shareholders who wish to sell their Biota shares subsequent to implementation of the Scheme will need to do so on the NASDAQ exchange. While most Australian stockbroking firms should be able to facilitate such sales, the transaction costs in terms of brokerage and foreign currency conversions are likely to be significantly higher for individual shareholders
 - (b) as a result of (a) above, some Biota shareholders are likely to seek to sell their Biota shares prior to the de-listing²⁹, placing downward pressure on the Biota share price in the short term³⁰.

Dilution of existing shareholder interests

- 152 If the Scheme is implemented the interests of existing Biota shareholders will be diluted, as they will collectively hold only approximately 74% of Biota shares on issue after the Scheme is implemented (compared to their current collective interest of 100% of the issued capital).
- 153 As stated above the Scheme will raise some US\$54 million in new equity capital for Biota. Given that Biota already has some A\$51.3 million in net cash (as at 31 March 2012), arguably there is no apparent pressing need for such a large capital raising. Accordingly, the level of shareholder dilution at this time is prima facie greater than necessary. However:
- (a) the Scheme provides significant funding which is not dependent on future stock market conditions
 - (b) by raising the level of funding proposed under the Scheme, it is Biota's current expectation that it will have sufficient funding for at least two years based on planned activities.
- 154 We understand that Biota considered undertaking a pro-rata rights issue. Such a pro-rata rights issue would not be dilutionary to existing Biota shareholders. However, this was not pursued as it would not achieve Biota's key objective of obtaining a US listing.

Post announcement share trading

- 155 We note that the Biota share price has fallen since the announcement of the Scheme and has traded in a range of 65 cents to 96.5 cents per share, compared to a price of 94.5 cents per share immediately prior to the announcement of the Scheme. The VWAP post announcement of the Scheme up to 1 August 2012 was 78.5 cents per share. In our view this fall in the Biota share price is likely to reflect:
- (a) the dilutionary effect of the Scheme on the portfolio value of Biota shares, which we have calculated at between two and four cents per share (as above)
 - (b) the reduction in equity values generally which has occurred since the Scheme was announced on 23 April 2012
 - (c) additional selling pressure from those Australian shareholders not wanting to hold US listed equities (due to the proposed delisting of Biota from the ASX following implementation of the Scheme).

Tax implications

- 156 It should be noted that the disposal of Biota shares to Nabi under the Scheme will be a capital gains tax (CGT) event for Biota shareholders who hold their Biota shares on capital account. In order to defer any capital gain until the date on which they sell their Biota Pharmaceuticals³¹ shares, Biota shareholders will need to make a CGT roll-over relief election when submitting their tax returns. It is important therefore that Biota shareholders read Section 8 of the Scheme Booklet which comments on the tax implications of the Scheme and seek independent professional tax advice if required.
- 157 It should also be noted that, if the Scheme is implemented, Biota will be domiciled in the United States and Biota will not have the ability to distribute Australian imputation (franking) credits attaching to any future dividends.

²⁹ Biota shareholders holding 2,000 or less Biota shares will be able to sell the Nabi shares they receive under the Scheme free of commission through a sale facility to be set up by Biota subsequent to implementation of the Scheme.

³⁰ As noted in paragraph 155(c) it is likely that this selling pressure has already transpired.

³¹ Nabi will be named Biota Pharmaceuticals, Inc following completion of the merger.

Summary of advantages and disadvantages

158 We summarise below the advantages and disadvantages associated with the Scheme for Biota shareholders:

Advantages and disadvantages of the Scheme	
Advantages	Disadvantages
<ul style="list-style-type: none"> • Biota will raise US\$54 million in further equity capital if the Scheme is implemented. Together with existing cash resources, Biota management expect that this will provide sufficient funding for the group for (at least) the next 2 years based on planned activities • In the absence of the Scheme Biota's ability to raise significant equity capital is primarily dependent on the vagaries of Australian institutional demand for such investments and stock market conditions. In contrast, the Scheme provides Biota with certainty regarding the level of capital raised • The placement discount of 10.6% to 12.1% implicit in the terms of the Scheme is lower than the average and median placement discounts observed in recent capital raisings by ASX listed biotechnology companies (notwithstanding that the level of capital raised by Biota as a percentage of its pre-market capitalisation is generally higher than in other capital raisings) • The price at which an interest in Biota is acquired by Nabi shareholders compares favourably to the likely costs associated with an IPO in the US • Due to falls in the Biota share price since the Scheme was announced the Effective Issue Price now represents a premium to the last traded price of Biota shares (67 cents per share) on 3 August 2012. • A US listing would also take longer to achieve than the proposed Scheme • The proposed US listing of Biota shares is consistent with Biota's increasing focus on its US activities (following the award of the US\$231 million BARDA contract in 2011) • As the US capital markets and biotechnology sector are significantly larger than in Australia, prima facie, the Scheme should enable Biota to raise larger amounts of equity funding when required. This should enable Biota to advance more projects to a later stage of development before licensing • Due to the greater liquidity of US capital markets and the size of the US biotechnology sector, Biota may achieve a lower cost of capital and therefore a higher relative valuation in the medium to long term. 	<ul style="list-style-type: none"> • As Nabi shareholders are acquiring an interest in Biota at a discount to the pre-Scheme announcement market price of Biota shares the Scheme is not fair when assessed based on the guidelines set out in RG 111. Specifically we have calculated that the dilutionary effect of the Scheme reduces the portfolio value of Biota shares by some two to four cents per share • Biota shareholders are unable to participate in the capital raising as it is being implemented by way of a merger with Nabi • Biota shareholders collective interest in Biota's assets will be diluted to approximately 74% due to the merger • As Biota had net cash of A\$51.3 million as at 31 March 2012 arguably the level of shareholder dilution is potentially greater than necessary • Biota shareholders will lose access to dividend imputation benefits on any future dividends • Biota shares will no longer be listed on the ASX. • Transaction costs in terms of brokerage and foreign currency conversions are likely to be significantly higher for individual shareholders wishing to sell their shares on the NASDAQ exchange • The announcement of the Scheme has resulted in an initial fall in the Biota share price. Further, those Biota shareholders who do not wish to own shares listed only on an overseas stock exchange are likely to sell their Biota shares in response to the proposed Scheme, potentially placing increased downward pressure on the share price in the short term

Conclusion

- 159 As indicated above there are both advantages and disadvantages associated with the Scheme. However, on balance, we believe the advantages outweigh the disadvantages. This is primarily because:
- (a) the Scheme achieves Biota management's key objective of obtaining a US listing (and a related US shareholder base)
 - (b) the terms of the Scheme (in particular the implied placement discounts) compare favourably with the likely costs associated with an IPO in the US
 - (c) the Effective Issue Price now represents a significant premium to the last traded price of Biota shares (67 cents per share) on 3 August 2012
 - (d) the US listing should provide advantages for Biota over the medium to long term, particularly given the increasing US focus of its activities
 - (e) the Scheme provides certainty for Biota regarding current capital raising initiatives.
- 160 We have therefore concluded that, whilst the Scheme is not fair pursuant to RG111 (which focuses primarily on change of control transactions), it is reasonable and in the best interests of Biota shareholders given the company's objectives (in the absence of a superior proposal).
- 161 Our conclusion that the Scheme is "not fair" is based on the guidelines for determining "fairness" in RG 111. Those guidelines focus primarily on change of control transactions. We consider that the Scheme should be viewed as a capital raising (and related US listing), rather than a change of control transaction. Therefore, in assessing whether the Scheme is reasonable and in the best interests of Biota shareholders we considered it more appropriate to have regard to whether the advantages of the Scheme outweigh the disadvantages.

Appendix A**Financial Services Guide****LonerGAN Edwards & Associates Limited**

- 1 Lonergan Edwards & Associates Limited (ABN 53 095 445 560) (LEA) is a specialist valuation firm which provides valuation advice, valuation reports and independent expert's reports (IER) in relation to takeovers and mergers, commercial litigation, tax and stamp duty matters, assessments of economic loss, commercial and regulatory disputes.
- 2 LEA holds Australian Financial Services Licence No. 246532.

Financial Services Guide

- 3 The Corporations Act authorises LEA to provide this Financial Services Guide (FSG) in connection with its preparation of an IER to accompany the Scheme Booklet to be sent to Biota shareholders in connection with the Scheme.
- 4 This FSG is designed to assist retail clients in their use of any general financial product advice contained in the IER. This FSG contains information about LEA generally, the financial services we are licensed to provide, the remuneration we may receive in connection with the preparation of the IER, and if complaints against us ever arise how they will be dealt with.

Financial services we are licensed to provide

- 5 Our Australian Financial Services Licence allows us to provide a broad range of services to retail and wholesale clients, including providing financial product advice in relation to various financial products such as securities, derivatives, interests in managed investment Schemes, superannuation products, debentures, stocks and bonds.

General financial product advice

- 6 The IER contains only general financial product advice. It was prepared without taking into account your personal objectives, financial situation or needs.
- 7 You should consider your own objectives, financial situation and needs when assessing the suitability of the IER to your situation. You may wish to obtain personal financial product advice from the holder of an Australian Financial Services Licence to assist you in this assessment.

Fees, commissions and other benefits we may receive

- 8 LEA charges fees to produce reports, including this IER. These fees are negotiated and agreed with the entity who engages LEA to provide a report. Fees are charged on an hourly basis or as a fixed amount depending on the terms of the agreement with the entity who engages us. In the preparation of this IER, LEA is entitled to receive a fee estimated at \$100,000 plus GST.
- 9 Neither LEA nor its directors and officers receives any commissions or other benefits, except for the fees for services referred to above.
- 10 All of our employees receive a salary. Our employees are eligible for bonuses based on overall performance and the firm's profitability, and do not receive any commissions or other benefits arising directly from services provided to our clients. The remuneration paid to our directors reflects their individual contribution to the company and covers all aspects of performance. Our directors do not receive any commissions or other benefits arising directly from services provided to our clients.
- 11 We do not pay commissions or provide other benefits to other parties for referring prospective clients to us.

Complaints

- 12 If you have a complaint, please raise it with us first, using the contact details listed below. We will endeavour to satisfactorily resolve your complaint in a timely manner.
- 13 If we are not able to resolve your complaint to your satisfaction within 45 days of your written notification, you are entitled to have your matter referred to the Financial Ombudsman Services Limited (FOS), an external complaints resolution service. You will not be charged for using the FOS service.

Contact details

- 14 LEA can be contacted by sending a letter to the following address:
Level 27
363 George Street
Sydney NSW 2000
(or GPO Box 1640, Sydney NSW 2001)

Appendix B

Qualifications, declarations and consents

Qualifications

- 1 LEA is a licensed investment adviser under the Corporations Act. LEA's authorised representatives have extensive experience in the field of corporate finance, particularly in relation to the valuation of shares and businesses and have prepared many hundred independent expert's reports.
- 2 This report was prepared by Mr Craig Edwards and Mr Martin Holt, who are each authorised representatives of LEA. Mr Edwards and Mr Holt have over 18 years and 26 years experience respectively in the provision of valuation advice.

Declarations

- 3 This report has been prepared at the request of the Directors of Biota to accompany the Scheme Booklet to be sent to Biota shareholders. It is not intended that this report should serve any purpose other than as an expression of our opinion as to whether or not the Scheme is in the best interests of Biota shareholders.

Interests

- 4 At the date of this report, neither LEA, Mr Edwards nor Mr Holt have any interest in the outcome of the Scheme. With the exception of the fee shown in Appendix A, LEA will not receive any other benefits, either directly or indirectly, for or in connection with the preparation of this report.
- 5 LEA has had no business or professional relationship with Biota or Nabi prior to the preparation of this report in the last three years.

Indemnification

- 6 As a condition of LEA's agreement to prepare this report, Biota agrees to indemnify LEA in relation to any claim arising from or in connection with its reliance on information or documentation provided by or on behalf of Biota which is false or misleading or omits material particulars or arising from any failure to supply relevant documents or information.

Consents

- 7 LEA consents to the inclusion of this report in the form and context in which it is included in the Scheme Booklet.

Appendix C

Glossary

Term	Meaning
ACCC	Australian Competition and Consumer Commission
ADRs	American Depositing Receipts
AIFRS	Australian equivalents to International Financial Reporting Standards
ASIC	Australian Securities & Investments Commission
ASX	Australian Securities Exchange
ATO	Australian Taxation Office
BARDA	Biomedical Advanced Research & Development Authority
Biota	Biota Holdings Limited
Corporations Act	Corporations Act 2001 (Cth)
Corporations Regulations	Corporations Regulations 2001
DCF	Discounted cash flow
EBIT	Earnings before interest and tax
EBITA	Earnings before interest, tax and amortisation
EBITDA	Earnings before interest, tax, depreciation and amortisation
Effective Issue Price	The price at which Nabi shareholders are effectively acquiring an interest in Biota
FOS	Financial Ombudsman Services Limited
FSG	Financial Services Guide
FY	Financial year
GSK	GlaxoSmithKline
HRV	Human rhinovirus
IER	Independent expert's report
LEA	LonerGAN Edwards & Associates Limited
Nabi	Nabi Biopharmaceuticals
NPV	Net present value
OTC	Over The Counter
PE	Price earnings
RG 111	Regulatory Guide 111 – Content of expert reports
Scheme	The proposed merger of Biota and Nabi
SEC	Securities & Exchange Commission
VWAP	Volume weighted average price

Merger Implementation Agreement

Biota Holdings Limited
Nabi Biopharmaceuticals

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Date	22 April 2012
Parties	<ol style="list-style-type: none"> 1. Biota Holdings Limited ACN 006 479 081 of Unit 10, 585 Blackburn Road, Notting Hill, Victoria 3168 (<i>Biota</i>). 2. Nabi Biopharmaceuticals of 12270 Wilkins Avenue, Rockville, Maryland 20852 (<i>Nabi</i>).
Recitals	<p>A Biota and Nabi propose to undertake a merger by means of Nabi acquiring all of Biota's issued shares pursuant to a scheme of arrangement in consideration for Nabi issuing Nabi shares to Biota shareholders.</p> <p>B Biota and Nabi have agreed to implement the merger, upon and subject to the terms and conditions of this Agreement.</p>

It is agreed as follows.

1 Definitions and Interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise.

1933 Act means the United States Securities Act of 1933, as amended.

1934 Act means the United States Securities Exchange Act of 1934, as amended.

ACCC means the Australian Competition and Consumer Commission.

Accounting Principles means the generally accepted accounting principles in the United States consistently applied.

Accounting Standards means:

- (a) the accounting standards made by the Australian Accounting Standards Board from time to time for the purposes of the Corporations Act;
- (b) the requirements of the Corporations Act in relation to the preparation and content of accounts; and
- (c) generally accepted accounting principles and practices in Australia consistently applied, except those principles and practices which are inconsistent with the standards or requirements referred to in paragraph (a) or (b).

Adviser means, in relation to an entity, a financier, financial adviser, corporate adviser, legal adviser, or technical or other expert adviser or consultant who provides advisory services in a professional capacity to the market in general and who has been engaged by that entity.

Agreed Termination Payments means payments to employees of Nabi Group Members, other than those employees notified by Biota to Nabi prior to the Implementation Date, which;

- (a) the parties agree may be made in respect of the termination of the employment of such employees; and
- (b) have been quantified on the basis of the advice of Nabi's outside tax advisers.

Announcement Date means:

- (a) the date on which this Agreement is executed; or
- (b) if this Agreement is executed on a day that is not a Trading Day, the first Trading Day immediately following the day of execution.

ASIC means the Australian Securities and Investments Commission.

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

ASX Listing Rules means the official listing rules of ASX.

ATO means the Australian Taxation Office.

Biota Board means the board of directors of Biota (as constituted from time to time), and includes any authorised committee of directors.

Biota Break Fee means an amount equal to \$2 million (exclusive of GST).

Biota Director means a director of Biota.

Biota Disclosed Information means all information (in whatever form) provided by Biota and its Representatives to Nabi and its Representatives either:

- (a) in the on-line data room established (including management presentations and in response to requests for information provided in the on-line data room); or
 - (b) in writing to the Chief Executive Officer of Nabi,
- in connection with the Transactions before entry into this Agreement.

Biota ESP means:

- (a) the equity incentive programs conducted under the Biota employee option plan, being the Equity Retention Incentive program and the TSR Equity Incentive program; and
- (b) the Biota Executive Deferred Bonus Plan.

Biota Group means Biota and its Related Bodies Corporate.

Biota Group Member means a member of the Biota Group.

Biota Properties means all real property owned, leased, licensed or otherwise occupied by Biota.

Biota Public Announcement means the public announcement to be made by Biota in the form of annexure B.

Biota Material Adverse Change means any effect, event, occurrence or matter that individually or when aggregated with all such effects, events, occurrences or matters:

- (a) diminishes, or is reasonably likely to diminish, (whether now or in the future) the consolidated net assets of the Biota Group by an amount equal to \$5 million or more, as compared to the consolidated net assets of the Biota Group as at 31 December 2011 reported in Biota's financial statements for the financial half-year ended 31 December 2011; or
- (b) has the result that the Biota Group is unable to carry on its business in substantially the same manner as carried on as at the date of this Agreement, or that otherwise materially and adversely affects the prospects of the Biota Group, other than an effect, event, occurrence or matter:
- (c) required to be undertaken or procured by the Biota Group pursuant to the Transaction Documents;
- (d) to the extent that effect, event, occurrence or matter is fairly disclosed in the Biota Disclosed Information;
- (e) resulting from or arising in connection with any change affecting the financial or securities markets in the United States of America or Australia or changes affecting the United States of America economy generally or the Australian economy generally or the economy of any region in which the Biota Group conducts business, unless such effect, event, occurrence or matter has had or would reasonably be expected to have a materially disproportionate adverse impact on the financial condition, properties, business or results of operations of the Biota Group, taken as a whole, relative to other persons operating in the same industries as the Biota Group;
- (f) resulting from changes that affect the industry in which Biota conducts business, unless such effect, event, occurrence or matter has had or would reasonably be expected to have a materially disproportionate adverse impact on the financial condition, properties, business or results of operations of the Biota Group, taken as a whole, relative to other persons operating in the same industries as the Biota Group;
- (g) resulting from changes in the market price or trading volume of Biota shares (it being understood that the facts or occurrences giving rise to or contributing to such change in the market price or trading volume may be deemed to constitute, or be taken into account in determining whether there has been, or would reasonably be expected to be, a Biota Material Adverse Change);
- (h) resulting from the failure of Biota to meet any operating projections or forecasts, or published revenue or earnings projections (it being understood that the facts or occurrences giving rise to or contributing to such failure to meet operating projections or forecasts, or published revenue or earnings projections may be deemed to constitute, or be taken into account in determining whether there has been, or would reasonably be expected to be, a Biota Material Adverse Change);
- (i) resulting from or arising in connection with the announcement, existence or performance (in accordance with its terms) of this Agreement, the Scheme, or the Transactions; or
- (j) resulting from or arising in connection any suit, investigation, proceeding, action or claim or threatened suit, investigation, proceeding, action or claim involving the Biota Group relating to this Agreement, the Merger or any other transaction contemplated by this Agreement, including without limitation, any such suit, investigation, proceeding, action or claim or threatened suit, investigation, proceeding, action or claim arising from allegations of breach of fiduciary duty or other violation of applicable law.

Biota Provided Proxy Statement Information means all information regarding the Biota Group and the Merged Group (except to the extent the information in relation to the Merged Group is derived from information regarding the Nabi Group) that is provided by or on behalf of Biota to Nabi or any of its Representatives to enable the Nabi Proxy Statement to be prepared and completed in accordance with clause 6.2 and any updates to that information prepared by or on behalf of Biota in accordance with clause 6.1(x).

Biota Provided Scheme Booklet Information means all information included in the Scheme Booklet, and any updates to that information prepared by or on behalf of Biota in accordance with clause 6.1(k), other than:

- (a) the Nabi Provided Scheme Booklet Information and any information solely derived from, or prepared solely in reliance on, the Nabi Provided Scheme Booklet Information; and
- (b) the Independent Expert's Report and any Investigating Accountant's Report.

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

Biota Regulated Event means the occurrence of any of the following events (other than as required to be undertaken or procured by the Biota Group pursuant to, or otherwise as contemplated by, the Transaction Documents, or to the extent fairly disclosed in writing by Biota to Nabi prior to the date of this Agreement for the purpose of being an exception to a "Biota Regulated Event", or as otherwise agreed to in writing by Nabi, which agreement shall not be unreasonably withheld by Nabi):

- (a) Biota or any Subsidiary of Biota converts all or any of its securities into a larger or smaller number of securities;
- (b) Biota or any Subsidiary of Biota reduces, or resolves to reduce, its capital stock in any way;
- (c) Biota or any Subsidiary of Biota materially reduces its insurance coverage that results in a material increase in exposure to risk;
- (d) Biota or any Subsidiary of Biota:
 - (i) enters into a buy-back agreement; or
 - (ii) resolves to approve the terms of a buy-back agreement;
- (e) Biota or any of its Subsidiaries issues securities, or grants an option over or to subscribe for its securities, or agrees to make such an issue or grant such an option, other than to a Wholly-Owned Subsidiary of Biota or in connection with a dividend reinvestment plan (including pursuant to any underwriting of that plan) or any security issued upon conversion or exercise of rights attaching to any security issued as at the date of this Agreement under an employee incentive arrangement), and excluding any Biota Shares issued by Biota as a result of the exercise of Biota Share Rights in existence as at the date of this Agreement;
- (f) Biota or any of its Subsidiaries issues, or agrees to issue, convertible notes or any other security or instrument convertible into shares, other than an issue by a Subsidiary of Biota to Biota or another Subsidiary of Biota;
- (g) Biota or any of its Subsidiaries issues, or agrees to issue, or grants an option to subscribe for, debentures (as defined in section 9 of the Corporations Act), other than to a Wholly-Owned Subsidiary of Biota;
- (h) Biota or any Subsidiary of Biota agrees to pay, declares, pays or makes, or incurs a liability to pay or make, a dividend or any other form of distribution of profits or capital, other than the declaration and payment by any Subsidiary of Biota of a dividend, where the recipient of that dividend is Biota or a Wholly-Owned Subsidiary of Biota;
- (i) Biota or any Subsidiary of Biota makes any material change to its constitution;
- (j) Biota or any Subsidiary of Biota disposes, or agrees to dispose, of shares in a Related Body Corporate of Biota;

- (k) Biota or any of its Subsidiaries:
- (i) acquires, leases or disposes of;
 - (ii) agrees to acquire, lease or dispose of; or
 - (iii) offers, proposes or announces a bid or tenders for, any entity, business or assets, other than:
 - (iv) trading inventories and consumables in the ordinary and usual course of business; or
 - (v) where the value of such entity, business or assets, or the amount involved in the relevant transaction, exceeds \$1 million (either individually or, in the case of related businesses or classes of assets or a series of related transactions, collectively);
- (l) Biota or any Subsidiary of Biota creates, or agrees to create, any mortgage, charge, lien or other encumbrance over the whole, or a substantial part, of its business or assets;
- (m) Biota or any Subsidiary of Biota enters into any contract or commitment (or any series of related contracts or commitments) that:
- (i) is for a period of 3 years or more; or
 - (ii) requires or may result in expenditure by Biota (either alone or together with any Subsidiary of Biota) of \$1 million or more in any year,
- or Biota or any Subsidiary of Biota undertakes or agrees or commits to undertake capital expenditure in excess of \$1 million, except for any contract or commitment (or any series of related contracts or commitments) where any expenditure by Biota may be reimbursable;
- (n) Biota or any Subsidiary of Biota incurs any financial indebtedness or issues any indebtedness or debt securities, other than in the ordinary course of business or pursuant to advances under its credit facilities in existence as at the date of this Agreement where the funds drawn pursuant to those advances are used in the ordinary course of business or in connection with a purpose that is contemplated and permitted in paragraph (j) of this definition;
- (o) Biota or any Subsidiary of Biota makes any loans, advances or capital contributions to, or investments in, any other person, other than to or in Biota or any Wholly-Owned Subsidiary of Biota in the ordinary course of business, or otherwise in the ordinary course of business;
- (p) Biota or any Subsidiary of Biota:
- (i) increases the remuneration or compensation of any executive director or executive of Biota or any Subsidiary of Biota other than in accordance with Biota's normal salary review procedure conducted in good faith and in the ordinary and usual course of business on the basis of principles consistent with those applied for Biota's normal salary review procedure in 30 June 2012; or
 - (ii) makes or agrees to make any material change to the terms of, or waives any claims or rights under, or waives the benefit of any provisions of, any contract of employment with any executive of Biota or of any Subsidiary of Biota;
- (q) Biota or any Subsidiary of Biota:
- (i) changes the terms of any Material Contract;
 - (ii) pays, discharges or satisfies any claims, liabilities or obligations under any Material Contract other than the payment, discharge or satisfaction consistent with past practice and in accordance with its terms and not exceeding \$250,000; or
 - (iii) waives any material claims or rights under, or waives the benefit of any provision of, any Material Contract, where the consequences of such action are material to Biota or the relevant Subsidiary of Biota;
- (r) Biota or any of its material Subsidiaries resolves that it be wound up or an application or order is made for the winding up or dissolution of Biota or any of its material Subsidiaries other than where the application or order (as the case may be) is set aside within 14 days;
- (s) a liquidator or provisional liquidator of Biota or any of its material Subsidiaries is appointed;
- (t) a court makes an order for the winding up of Biota or any of its material Subsidiaries;
- (u) an administrator of Biota or of any of its material Subsidiaries is appointed under the Corporations Act;
- (v) Biota or any of its material Subsidiaries ceases, or threatens to cease, to carry on business;
- (w) Biota or any of its material Subsidiaries executes a deed of company arrangement;
- (x) a receiver, or a receiver and manager, is appointed in relation to the whole, or a substantial part, of the property of Biota or any of its material Subsidiaries;
- (y) Biota or any of its material Subsidiaries is deregistered as a company or otherwise dissolved;
- (z) Biota or any of its material Subsidiaries is or becomes unable to pay its debts when they fall due; or
- (aa) the trustee of any trust in which Biota or any Subsidiary of Biota has an interest of more than 50% and that would, if it were a company, be a material Subsidiary of Biota undertaking an action in respect of that trust if the corresponding action, in the case of Biota and its material Subsidiaries, would (mutatis mutandis) constitute a Biota Regulated Event.

Biota Share means a fully paid ordinary share in Biota.

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

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

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

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

Cash means money standing to the credit of Nabi or any Nabi Group Member in a bank account.

Code means the United States of America Internal Revenue Code of 1986, as amended.

Communications means all forms of communications, whether written, oral, in electronic format or otherwise, and whether direct or indirect via agents or Representatives.

Competition Law means the HSR Act, the Sherman Antitrust Act of 1890, as amended, the Clayton Antitrust Act of 1914, as amended, the FTC Act, as amended, and any other state, federal, national, international, or supra-national law, statute, ordinance, rule, regulation, judgment, order, decree, or other legal provision that is designed to prohibit, restrict or regulate actions having the purpose or effect of monopolisation, abuse of dominance, restraint of trade, or substantial lessening of competition.

Competing Proposal means either a Competing Proposal for Nabi or a Competing Proposal for Biota, as the case requires.

Competing Proposal for Biota means any proposed or possible transaction or arrangement pursuant to which, if ultimately completed, a Third Party would

- (a) directly or indirectly, acquire a Relevant Interest in or become the holder of:
 - (i) more than 20% of the Biota Shares;
 - (ii) the whole or a substantial part or a material part of the business or property of Biota or the Biota Group;
- (b) acquire control of Biota, within the meaning of section 50AA of the Corporations Act; or
- (c) otherwise acquire or merge with Biota (including but not limited to by a reverse takeover bid, reverse scheme of arrangement or dual listed companies structure).

Competing Proposal for Nabi means any proposed or possible transaction or arrangement pursuant to which, if ultimately completed, a Third Party would

- (a) directly or indirectly, acquire a Relevant Interest in or become the holder of:
 - (i) more than 20% of the Nabi Shares;
 - (ii) the whole or a substantial part or a material part of the business or property of Nabi or the Nabi Group;
- (b) acquire control of Nabi, within the meaning of section 50AA of the Corporations Act; or
- (c) otherwise acquire or merge with Nabi.

Conditions Precedent means the conditions precedent set out in clause 3.1.

Confidentiality Agreement means the agreement of that name between Nabi and Biota dated 18 November 2011.

Contingent Value Right means contingent value rights with respect to certain payment rights arising from the sale, transfer, license or a similar transaction of NicVAX, which may be issued by Nabi, at its sole and absolute discretion, to the Nabi Stockholders prior to the Implementation Date, pursuant to the terms of the CVR Agreement.

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

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

CVR Agreement means an agreement with respect to the Contingent Value Right, the form of which has been agreed to by Nabi and Biota prior to the date of this Agreement.

Delaware Law means the General Corporation Law of the State of Delaware.

DOJ means the Department of Justice of the United States of America.

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

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

Encumbrance means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset; provided, however, that the term "Encumbrance" shall not include (i) statutory liens for Taxes, which are not yet due and payable, (ii) statutory or common law liens to secure landlords, lessors or renters under leases or rental agreements confined to the premises rented, (iii) deposits or pledges made in connection with, or to secure payment of, workers' compensation, unemployment insurance, old age pension or other social security programs mandated under applicable laws, (iv) statutory or common law liens in favour of carriers, warehousemen, mechanics and materialmen, to secure claims for labour, materials or supplies and other like liens, and (v) restrictions on transfer of securities imposed by applicable state and federal securities laws.

End Date means 31 October 2012, or such later date as Nabi and Biota may agree in writing.

Enterprise Agreement has the meaning given in section 12 of the *Fair Work Act 2009* (Cth).

Exclusivity Period means the period commencing on the date of this Agreement and ending on the earlier of:

- (a) the termination of this Agreement in accordance with its terms;
- (b) the Implementation Date; and
- (c) the End Date.

First Court Date means the first day of hearing of an application made to the Court by Biota for orders, pursuant to section 411(1) of the Corporations Act, convening the Scheme Meeting or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

FTC means the Federal Trade Commission of the United States of America.

Fund means each superannuation fund or equivalent arrangement to which Biota contributes, or is required to contribute, in respect of any employee or any consultant engaged by Biota.

Governmental Agency means any government or representative of a government or any governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity and includes any minister (including, for the avoidance of doubt, the Commonwealth Treasurer), ASIC, the ACCC, the ATO, ASX, the Australian Takeovers Panel, SEC, NASDAQ, the FTC, the Antitrust Division of the DOJ and any regulatory organisation established under statute or any stock exchange.

GST has the meaning given in the GST Act.

GST Act means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

GST Law has the meaning given in the GST Act.

HSR Act means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

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

Independent Expert means an independent expert to be engaged by Biota to express an opinion on whether the Scheme is in the best interests of Biota Shareholders.

Independent Expert's Report means the report from the Independent Expert commissioned by Biota for inclusion in the Scheme Booklet, and any update to such report that the Independent Expert issues prior to the Scheme Meeting.

Ineligible Foreign Biota Shareholder means a Scheme Shareholder whose address as shown in the Biota Register (as at the Record Date) is in a place outside Australia and its external territories, New Zealand, the United States of America and the United Kingdom, unless Nabi is satisfied, acting reasonably, that the laws of that place permit the allotment and issue of New Nabi Shares to that Scheme Shareholder pursuant to the Scheme, either

unconditionally or after compliance with conditions that Nabi in its sole discretion regards as acceptable and not unduly onerous or impracticable.

Investigating Accountant's Report means any accountant's report commissioned for the purposes of inclusion in the Scheme Booklet.

Knowledge, known, aware or awareness (or any variation thereof) means, with respect to Biota, the actual knowledge after reasonable inquiry of the persons listed in Part A of Schedule 4 attached hereto, and with respect to Nabi, the actual knowledge after reasonable inquiry of the persons listed in Part B of Schedule 2 attached hereto but only to the extent that such persons are employees of Nabi or Biota at the time knowledge is deemed to have been imparted in this Agreement.

Last Balance Date means 31 December 2011.

Material Contract means any agreement, arrangement or understanding to which:

- (a) with respect to a Biota Material Contract – any Biota Group Member is party, that:
 - (i) has a term of 3 years or more from the date of this Agreement, and requires or may result in expenditure by any Biota Group Member (either alone or together with any other Biota Group Member) of \$250,000 or more in total;
 - (ii) requires or may result in expenditure by any Biota Group Member (either alone or together with any other Biota Group Member) of \$1 million or more in any year; or
 - (iii) is otherwise material to the business or operations of any Biota Group Member;
- (b) with respect to a Nabi Material Contract – any Nabi Group Member is party, that:
 - (i) has a term of 3 years or more from the date of this Agreement, and requires or may result in expenditure by any Nabi Group Member (either alone or together with any other Nabi Group Member) of \$250,000 or more in total;
 - (ii) requires or may result in expenditure by any Nabi Group Member (either alone or together with any other Nabi Group Member) of \$1 million or more in any year; or
 - (iii) is otherwise material to the business or operations of any Nabi Group Member.

Merger means the merger of Biota and Nabi as contemplated by this Agreement.

Merged Group means Nabi and its Related Bodies Corporate, immediately after implementation of the Transactions.

Modern Award has the meaning given in section 12 of the *Fair Work Act 2009* (Cth).

Nabi Auditor means Ernst & Young.

Nabi Board means the board of directors of Nabi.

Nabi Break Fee means an amount equal to \$2 million (exclusive of GST).

Nabi Cash Balance Offsets means amounts payable or likely to become payable by the Nabi Group in respect of any business activities carried out by Nabi on or prior to the Implementation Date, including the matters agreed upon by Biota and Nabi prior to the date of this Agreement, and as otherwise determined in accordance with clause 5.

Nabi Charter Amendment means the amendment to the certificate of incorporation of Nabi, reflecting: (i) the increase in the authorised number of Nabi Shares to 200 million, to allow for additional issuances, including the issuance of the New Nabi Shares; (ii) the reverse stock split whereby each eight, seven, six, five or four Nabi Shares (the final number to be determined by the Nabi Board in its sole discretion) would be consolidated into one Nabi Share after the Implementation Date; (iii) the change in the name of Nabi to Biota Pharmaceuticals, Inc.; provided that the amendment relating to (ii) and (iii) will be filed with the State of Delaware and become effective immediately after the Implementation Date.

Nabi Charter Amendment Proposal means the proposals to be voted upon by Nabi Stockholders to approve the amendments contemplated in the Nabi Charter Amendment (such proposals to be voted upon by Nabi Stockholders at the Nabi Merger Approval Meeting and that, to be approved, require the affirmative vote of holders of a majority of the issued and outstanding Nabi Shares on the record date for the Nabi Merger Approval Meeting).

Nabi Closing Net Cash Balance means the amount shown against that line item in a Nabi Closing Net Cash Balance Certificate.

Nabi Closing Net Cash Balance Certificate means a certificate prepared in accordance with the Accounting Principles and signed and dated by the Chief Executive Officer and Chief Financial Officer of Nabi, and the Chief Accounting Officer and Controller of Nabi, in the form set out in Schedule 3 (including the attachment referred to therein).

Nabi Deed Poll means a deed poll to be executed by Nabi in favour of the Scheme Shareholders, substantially in the form agreed by Nabi and Biota prior to the date of this Agreement.

Nabi Disclosed Information means all information (in whatever form) provided by Nabi or any of its Representatives to Biota or any of its Representatives either:

- (a) in the on-line data room established (including management presentations and in response to requests for information provided in the on-line data room); or
- (b) in writing to the Chief Executive Officer or Chief Financial Officer of Biota, in connection with the Transactions before entry into this Agreement.

Nabi Equity Award means a stock option or restricted stock award with respect to Nabi Shares issued by Nabi under the Nabi Stock Plans.

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

Nabi Group Member means a member of the Nabi Group.

Nabi Material Adverse Change means any effect, event, occurrence or matter that individually or when aggregated with all such effect, events, occurrences or matters:

- (a) is reasonably likely to diminish (whether now or through the Implementation Date), the Nabi Closing Net Cash Balance as shown in the Nabi Closing Net Cash Balance Certificate to be provided by Nabi on the Implementation Date to below US \$54 million; or
- (b) has the result that the Nabi Group is unable to carry on its business in substantially the same manner as carried on as at the date of this Agreement, or that otherwise materially and adversely affects the prospects of the Nabi Group, other than an effect, event, occurrence or matter:
 - (c) required to be undertaken or procured by the Nabi Group pursuant to the Transaction Documents;
 - (d) which is a Permissible Nabi Stockholder Cash Transaction;
 - (e) to the extent that effect, event, occurrence or matter is fairly disclosed in the Nabi Disclosed Information;

- (f) resulting from or arising in connection with any change affecting the financial or securities markets in the United States of America or Australia or changes affecting the United States of America economy generally or the Australian economy generally or the economy of any region in which the Nabi Group conducts business, unless such effect, event, occurrence or matter has had or would reasonably be expected to have a materially disproportionate adverse impact on the financial condition, properties, business or results of operations of the Nabi Group, taken as a whole, relative to other persons operating in the same industries as the Nabi Group;
- (g) resulting from changes that affect the industry in which Nabi conducts business, unless such effect, event, occurrence or matter has had or would reasonably be expected to have a materially disproportionate adverse impact on the financial condition, properties, business or results of operations of the Nabi Group, taken as a whole, relative to other persons operating in the same industries as the Nabi Group;
- (h) resulting from changes in the market price or trading volume of Nabi shares (it being understood that the facts or occurrences giving rise to or contributing to such change in the market price or trading volume may be deemed to constitute, or be taken into account in determining whether there has been, or would reasonably be expected to be, a Nabi Material Adverse Change);
- (i) resulting from the failure of Nabi to meet any operating projections or forecasts, or published revenue or earnings projections (it being understood that the facts or occurrences giving rise to or contributing to such failure to meet operating projections or forecasts, or published revenue or earnings projections may be deemed to constitute, or be taken into account in determining whether there has been, or would reasonably be expected to be, a Nabi Material Adverse Change);
- (j) resulting from or arising in connection with the termination of employees;
- (k) resulting from or arising in connection with the announcement, existence or performance (in accordance with its terms) of this Agreement, the Scheme, or the Transactions; or
- (l) resulting from or arising in connection any suit, investigation, proceeding, action or claim or threatened suit, investigation, proceeding, action or claim involving the Nabi Group relating to this Agreement, the Merger or any other transaction contemplated by this Agreement, including without limitation, any such suit, investigation, proceeding, action or claim or threatened suit, investigation, proceeding, action or claim arising from allegations of breach of fiduciary duty or other violation of applicable law.

Nabi Merger Approval Meeting means a meeting of Nabi Stockholders convened to vote on the Nabi Merger Proposals, including any adjournment or postponement thereof.

Nabi Merger Proposals means the Nabi Charter Amendment Proposal and the Nabi Share Issue Proposal.

Nabi Provided Proxy Statement Information means all information included in the Nabi Proxy Statement and any updates to that information prepared by or on behalf of Nabi in accordance with clause 6.2(c), other than the Biota Provided Proxy Statement Information and any information solely derived from, or prepared solely in reliance on, the Biota Provided Proxy Statement Information.

Nabi Provided Scheme Booklet Information means all information regarding the Nabi Group, the Merged Group (but only to the extent the information in relation to the Merged Group is derived from information regarding the Nabi Group), the New Nabi Shares and the Nabi Shares that is provided by or on behalf of Nabi to Biota or any of its Representatives to enable the Scheme Booklet to be prepared and completed in accordance with clause 6.1, and any updates to that information provided by or on behalf of Nabi to Biota or any its Representatives in accordance with clause 6.2(j).

Nabi Properties means all real property owned, leased, licensed or otherwise occupied by Nabi.

Nabi Proxy Statement means the proxy statement relating to the Nabi Merger Approval Meeting, as amended or supplemented from time to time and including all letters to stockholders, notices of meeting and forms of proxies to be distributed to Nabi Stockholders in connection with the Nabi Merger Proposals) and any schedules required to be filed with the SEC in connection therewith.

Nabi Public Announcement means the public announcement to be made by Nabi in the form of annexure A.

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

Nabi Regulated Event means the occurrence of any of the following events (other than as required to be undertaken or procured by the Nabi Group pursuant to, or otherwise as contemplated by, the Transaction Documents, a Permissible Nabi Stockholder Cash Transaction, Permitted Pre-Implementation Payments or to the extent fairly disclosed in writing by Nabi to Biota prior to the date of this Agreement for the purpose of being an exception to a "Nabi Regulated Event", or as otherwise agreed to in writing by Biota, which agreement shall not be unreasonably withheld by Biota):

- (a) Nabi or any Subsidiary of Nabi converts all or any of its securities into a larger or smaller number of securities;
- (b) Nabi or any Subsidiary of Nabi reduces, or resolves to reduce its capital stock in any way;
- (c) Nabi or any Subsidiary of Nabi materially reduces its insurance coverage that results in a material increase in exposure to risk;
- (d) Nabi or any Subsidiary of Nabi:
 - (i) enters into a buy-back agreement; or
 - (ii) resolves to approve the terms of a buy-back agreement.
- (e) Nabi or any Subsidiary of Nabi issues securities, or grants an option over or to subscribe for its securities, or agrees to make such an issue or grant such an option, other than:
 - (i) to Nabi Stockholders in connection with the Contingent Value Rights, which may be issued at the sole and absolute discretion of Nabi;
 - (ii) amendments to existing options held by employees that are being terminated by Nabi in order to accelerate the vesting of such options; or
 - (iii) to a Wholly-Owned Subsidiary of Nabi or in connection with a dividend reinvestment plan (including pursuant to any underwriting of that plan) or any security issued upon conversion or exercise of rights attaching to any security issued under an employee incentive arrangement, and excluding any Nabi Shares issued by Nabi as a result of the exercise of Nabi Equity Awards in existence as at the date of this Agreement;
- (f) Nabi or any Subsidiary of Nabi issues, or agrees to issue, convertible notes or any other security or instrument convertible into shares, other than an issue by a Subsidiary of Nabi to Nabi or another Subsidiary of Nabi;
- (g) Nabi or any of its Subsidiaries issues, or agrees to issue, or grants an option to subscribe for, indebtedness for borrowed money, other than to a Wholly-Owned Subsidiary of Nabi;
- (h) Nabi or any Subsidiary of Nabi agrees to pay, declares, pays or makes, or incurs a liability to pay or make, a dividend or any other form of distribution of profits or capital, other than:
 - (i) the declaration and issuance by Nabi of the Contingent Value Right; or
 - (ii) the declaration and payment by any Subsidiary of Nabi of a dividend, where the recipient of that dividend is Nabi or a Wholly-Owned Subsidiary of Nabi;
- (i) Nabi or any Subsidiary of Nabi makes any material change to its certificate of incorporation or its bylaws, other than:
 - (i) any change to its authorised capital envisaged by the Nabi Charter Amendment Proposal; or

- (ii) any change to its name envisaged by the Nabi Charter Amendment Proposal;
- (j) Nabi or any Subsidiary of Nabi disposes, or agrees to dispose, of shares in a Related Body Corporate of Nabi;
- (k) Nabi or any of its Subsidiaries:
 - (i) acquires, leases or disposes of;
 - (ii) agrees to acquire, lease or dispose of; or
 - (iii) offers, proposes or announces a bid or tenders for, any entity, business or assets, other than:
 - (iv) trading inventories and consumables in the ordinary and usual course of business; or
 - (v) where the value of such entity, business or assets, or the amount involved in the relevant transaction, exceeds \$250,000 (either individually or, in the case of related businesses or classes of assets or a series of related transactions, collectively);
- (l) Nabi or any Subsidiary of Nabi creates, or agrees to create, any mortgage, charge, lien or other encumbrance over the whole, or a substantial part of its business or assets;
- (m) Nabi or any Subsidiary of Nabi enters into any contract or commitment (or any series of related contracts or commitments) that:
 - (i) is for a period of 12 months or more; or
 - (ii) requires or may result in expenditure by Nabi (either alone or together with any Subsidiary of Nabi) of \$250,000 or more in any year, or Nabi or any Subsidiary of Nabi undertakes capital expenditure in excess of \$250,000;
- (n) Nabi or any Subsidiary of Nabi incurs any financial indebtedness or issues any indebtedness or debt securities, other than in the ordinary course of business or pursuant to advances under its credit facilities in existence as at the date of this Agreement where the funds drawn pursuant to those advances are used in the ordinary course of business or in connection with a purpose that is contemplated and permitted in paragraph (j) of this definition;
- (o) Nabi or any Subsidiary of Nabi makes any loans, advances or capital contributions to, or investments in any other person, other than to or in Nabi or any Wholly-Owned Subsidiary of Nabi in the ordinary course of business, or otherwise in the ordinary course of business;
- (p) Nabi or any Subsidiary of Nabi:
 - (i) increases the remuneration or compensation of any employee, officer or director of Nabi or any Subsidiary of Nabi other than in accordance with Nabi's normal salary review procedure conducted in good faith and in the ordinary and usual course of business on the basis of principles consistent with those applied for Nabi's normal salary review procedure in 2011; or
 - (ii) makes or agrees to make any material change to the terms of, or waives any claims or rights under, or waives the benefit of any provisions of, any contract of employment with any executive of Nabi or of any Subsidiary of Nabi, other than amendments to existing options held by employees being terminated by Nabi in order to accelerate the vesting of such options;
- (q) Nabi or any Subsidiary of Nabi:
 - (i) changes the terms of any Material Contract;
 - (ii) pays, discharges or satisfies any claims, liabilities or obligations under any Material Contract other than the payment, discharge or satisfaction consistent with past practice and in accordance with its terms and not exceeding \$250,000; or
 - (iii) waives any material claims or rights under, or waives the benefit of any provision of, any Material Contract, where the consequences of such action are material to Nabi or the relevant Subsidiary of Nabi;
- (r) Nabi or any of its material Subsidiaries resolves that it be wound up or an application or order is made for the winding up or dissolution of Nabi or any of its material Subsidiaries other than where the application or order (as the case may be) is set aside within 14 days;
- (s) a liquidator or provisional liquidator of Nabi or any of its material Subsidiaries is appointed;
- (t) a court makes an order for the winding up of Nabi or any of its material Subsidiaries;
- (u) an administrator of Nabi or of any of its material Subsidiaries is appointed;
- (v) Nabi or any of its material Subsidiaries ceases, or threatens to cease, to carry on business;
- (w) Nabi or any of its material Subsidiaries executes a deed of company arrangement;
- (x) a receiver, or a receiver and manager, is appointed in relation to the whole, or a substantial part, of the property of Nabi or any of its material Subsidiaries;
- (y) Nabi or any of its material Subsidiaries is deregistered as a company or otherwise dissolved;
- (z) Nabi or any of its material Subsidiaries is or becomes unable to pay its debts when they fall due; or
- (aa) the trustee of any trust in which Nabi or any Subsidiary of Nabi has an interest of more than 50% and that would, if it were a company, be a material Subsidiary of Nabi, undertaking an action in respect of that trust if the corresponding action, in the case of Nabi and its material Subsidiaries, would (mutatis mutandis) constitute a Nabi Regulated Event.

Nabi Share means a share of common stock, par value US \$10 per share, of Nabi.

Nabi Share Issue Proposal means the proposal to be voted upon by Nabi Stockholders pursuant to the NASDAQ Marketplace Rules to authorise the issuance of the New Nabi Shares to Scheme Shareholders as Scheme Consideration under the Scheme (such proposal to be voted upon by Nabi Stockholders at the Nabi Merger Approval Meeting and that, to be approved, requires the affirmative vote of the majority of the votes cast at the Nabi Merger Approval Meeting).

Nabi Stock Plans means the Nabi equity incentive plans, including, without limitation, the Nabi Biopharmaceuticals 2007 Omnibus Equity and Incentive Plan.

Nabi Stockholder means a person who is registered in the Nabi Register as a holder of Nabi Shares from time to time.

Named Biota Employees means the persons set out in Part B of Schedule 2.

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

NASDAQ Marketplace Rules means the rules and listing requirements concerning NASDAQ listed companies and trading in NASDAQ.

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

NicVAX means NicVAX® or Nicotine Conjugate Vaccine.

Notice of Meeting means the notice convening the Scheme Meeting, together with the proxy form for the Scheme Meeting.

Officer means, in relation to an entity, any of its directors, officers and employees.

Permissible Nabi Stockholder Cash Transaction means one or more of an issuer tender offer, a dividend or a capital distribution by Nabi to Nabi Stockholders, to be launched or declared at Nabi's sole and absolute discretion, provided that the applicable Nabi Closing Net Cash Balance Certificate provided by Nabi under clause 5.2(a)(ii) shows a Nabi Closing Net Cash Balance of no less than US \$54 million.

Permitted Pre-Implementation Payments means:

- (a) the Agreed Termination Payments; and
- (b) any other Nabi Cash Balance Offsets that Biota agrees (agreement not to be unreasonably withheld) may be paid by Nabi between the Effective Date and the Implementation Date (both inclusive).

Proxy Statement Filing Date means the date on which the Nabi Proxy Statement (either in preliminary or definitive form) is filed with the SEC.

Proxy Statement Mailing Date means the date on which the Nabi Proxy Statement is first mailed to Nabi Stockholders.

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

Regulatory Approval means:

- (a) any approval, consent, authorisation, registration, filing, lodgment, permit, franchise, agreement, notarisation, certificate, permission, licence, direction, declaration, authority, waiver, modification or exemption from, by or with a Governmental Agency; or
- (b) in relation to anything that would be fully or partly prohibited or restricted by law if a Governmental Agency intervened or acted in any way within a specified period after lodgment, filing, registration or notification, the expiry of that period without intervention or action; and

it includes the matters referred to in Schedule 1.

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

Relevant Interest has the meaning given in sections 608 and 609 of the Corporations Act in the case of a Competing Proposal for Biota or Nabi.

Representative means, in relation to a person:

- (a) a Related Body Corporate of the person; or
- (b) an Officer of the person or any of the person's Related Bodies Corporate; or
- (c) an Adviser to the person or any of the person's Related Bodies Corporate.

Review Certificate has the meaning given in clause 5.2(a)(i).

Review Period has the meaning given in clause 5.3.

Rights Agreement means the Rights Agreement between Nabi and American Stock Transfer and Trust Company LLC (as rights agent), dated 25 August 2011.

Scheme means a scheme of arrangement under Part 5.1 of the Corporations Act between Biota and Biota Shareholders substantially in the form agreed by Nabi and Biota prior to the date of this Agreement.

Scheme Booklet means the explanatory memorandum to be prepared in respect of the Scheme in accordance with the terms of this Agreement and to be despatched by Biota to Biota Shareholders, including the Independent Expert's Report, any Investigating Accountant's Report, the Scheme, the Nabi Deed Poll and the Notice of Meeting.

Scheme Consideration means the consideration to be provided to Scheme Shareholders under the terms of the Scheme for the transfer to Nabi of their Scheme Shares, as described in clause 4.

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

Scheme Resolution means the resolution to be put to Biota Shareholders to approve the Scheme (such resolution to be put to Biota Shareholders at the Scheme Meeting and that, to be passed, must be approved by the requisite majorities of Biota Shareholders under section 411(4)(a)(ii) of the Corporations Act).

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

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

SEC means the United States of America Securities and Exchange Commission.

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

Subsidiary has the meaning given in the Corporations Act.

Superior Proposal means, in relation to any party, an unsolicited, bona fide written Competing Proposal (except with respect to provision (a)(i) of the definition of Competing Proposal for Biota or Competing Proposal for Nabi, the percentage threshold shall be 50% and not 20%) for the party, which the board of directors of that party determines, acting in good faith and after having taken advice from its financial and legal advisers:

- (a) is capable of being valued and completed, taking into account all aspects of the Competing Proposal, including its conditions; and
- (b) would, if completed substantially in accordance with its terms, be more favourable to:
 - (i) in the case of Biota – the Biota Shareholders than the Merger viewed in aggregate, taking into account all the terms and conditions of the Competing Proposal; or
 - (ii) in the case of Nabi – the Nabi Stockholders than the Merger viewed in aggregate, taking into account all the terms and conditions of the Competing Proposal,

after taking into account a qualitative assessment of the identity, reputation and financial standing of the party making the Competing Proposal.

Tax Act means the Income Tax Assessment Act 1936 (Cth) and the Income Tax Assessment Act 1997 (Cth) or either of them.

Taxes (including, with correlative meaning, the word **Tax**) includes any and all federal, state, county, local, foreign or other taxes, charges, duties, levies or other assessments imposed by any Tax authority, including all net income, alternative minimum, gross income, sales and use, ad valorem, transfer, gains, profits, excise, franchise, real and personal property, gross receipts, capital stock, business and occupation, disability, employment, payroll, production, value added, GST, license, estimated, stamp, mortgage or recording, custom duties, severance, withholding or other taxes or any obligation to deduct or withhold fees, or assessments, together with any interest and penalties on or additions to any such Taxes.

Tax Returns (including, with correlative meaning, **Tax Return**) means federal, state, local and foreign returns (including elections, declarations, disclosures, schedules, estimates, and information returns), required to be filed with any Tax authority relating to Taxes.

Third Party when used in connection with Biota, means any of the following:

- (a) a person other than any Nabi Group Member; or
- (b) a consortium, partnership, limited partnership, syndicate or other group in which no Nabi Group Member has agreed in writing to be a participant; and

when used in connection with Nabi, means any of the following:

- (c) a person other than any Biota Group Member; or
- (d) a consortium, partnership, limited partnership, syndicate or other group in which no Biota Group Member has agreed in writing to be a participant.

Timetable means the indicative timetable in relation to the Merger, as agreed to by Nabi and Biota prior to the date of this Agreement, or such other indicative timetable as Nabi and Biota may agree in writing or as may be required by ASX or NASDAQ.

Trading Day has the meaning given in the ASX Listing Rules.

Transaction Documents means:

- (a) this Agreement;
- (b) the Scheme; and
- (c) the Nabi Deed Poll.

Transactions mean all of the transactions contemplated by this Agreement, including without limitation, the Scheme.

Transitional Instrument has the meaning given in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth).

Unvested Biota Share Right means a Biota Share Right other than a Vested Biota Share Right.

Vested Biota Share Right means a Biota Share Right that has vested under the rules of the Biota ESP.

Wholly-Owned Subsidiary means, in relation to a party, a body corporate, all of the issued shares of which are or will be directly or indirectly owned by that party.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation.

- (a) Nothing in this Agreement is to be interpreted against a party solely on the ground that the party put forward this Agreement or a relevant part of it.

The following rules apply unless the context requires otherwise.

- (b) The singular includes the plural and conversely.
- (c) A gender includes all genders.
- (d) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (e) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (f) A reference to a clause, schedule or annexure is a reference to a clause of, or schedule or annexure to, this Agreement.
- (g) A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document.
- (h) A reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
- (i) A reference to legislation or to a provision of legislation includes a modification or re enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (j) A reference to \$ is to the lawful currency of Australia.
- (k) A reference to time is a reference to time in Melbourne.
- (l) If the day on which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing must be done on the immediately succeeding Business Day.
- (m) The meaning of general words is not limited by specific examples introduced by **including**, or **for example**, or similar expressions.
- (n) A reference to a **liability** incurred by any person includes any liability of that person arising from or in connection with any obligation (including indemnities and all other obligations owed as principal or guarantor) whether liquidated or not, whether present, prospective or contingent and whether owed, incurred or imposed by or to or on account of or for the account of that person alone, severally or jointly or jointly and severally with any other person.
- (o) A reference to a **loss** incurred by any person includes any loss, liability, damage, cost, charge or expense that the person pays, incurs or is liable for and any other diminution of value of any description that the person suffers, including all liabilities on account of taxes or duties, all interest, penalties, fines and other amounts payable to third parties and all reasonable legal expenses and other expenses in connection with investigating or defending any claim, action, demand or proceeding, whether or not resulting in any liability, and all amounts paid in settlement of any such claims.

1.3 Best endeavours

A reference to a party using or obligation on a party to use its best endeavours does not oblige that party to:

- (a) pay money:
 - (i) in the form of an inducement or consideration to a third party to procure something (other than the payment of immaterial expenses or costs, including costs of advisers, to procure the relevant thing); or
 - (ii) in circumstances that are commercially onerous or unreasonable in the context of this Agreement;
- (b) provide other valuable consideration to or for the benefit of any person; or
- (c) agree to commercially onerous or unreasonable conditions.

2. Agreement to Proceed with Merger

Biota and Nabi agree to propose and implement the Merger upon and subject to the terms and conditions of this Agreement, and to use their best endeavours to do so as soon as is reasonably practicable and otherwise in accordance with the Timetable.

3. Conditions Precedent and Pre-Implementation Steps

3.1 Conditions Precedent

Subject to this clause 3, the obligations of Biota under clause 6.1(o) and Nabi's obligation to provide the Scheme Consideration in accordance with the Nabi Deed Poll and clause 6.2(n) are subject to the satisfaction (or waiver in accordance with clause 3.2) of each of the following Conditions Precedent:

Conditions Precedent for the benefit of Nabi and Biota

- (a) **(Regulatory Approvals)**
- (i) **(merger control)** before 8am on the Second Court Date, the mandatory waiting periods applicable to the Transactions under the HSR Act and all other Competition Laws identified in Schedule 1 hereto will have expired or been terminated or, where applicable, obtained; and
 - (ii) **(other Regulatory Approvals)** before 8am on the Second Court Date, all the Regulatory Approvals set forth in Schedule 1 attached hereto have been granted or obtained and those Regulatory Approvals have not been withdrawn, cancelled or revoked;
- (b) **(listing approval for New Nabi Shares)** before 8am on the Second Court Date, the New Nabi Shares shall have been approved for listing on NASDAQ, subject to official notice of issuance;
- (c) **(Independent Expert's Report)** the Independent Expert provides the Independent Expert's Report to Biota, stating that in its opinion the Scheme is in the best interests of Biota Shareholders, and the Independent Expert does not change its conclusion or withdraw the Independent Expert's Report by notice in writing to Biota prior to 8am on the Second Court Date;
- (d) **(Biota Shareholder approval)** the Scheme Resolution is approved by the requisite majorities of Biota Shareholders under section 411(4)(a)(ii) of the Corporations Act;
- (e) **(Court approval of Scheme)** the Scheme is approved by the Court in accordance with section 411(4)(b) of the Corporations Act;
- (f) **(Nabi Stockholder approval)** the Nabi Charter Amendment Proposal (with or without the proposal relating to the amendment of the certificate of incorporation of Nabi regarding the reverse stock split, whereby each eight, seven, six, five or four Nabi Shares (the final number to be determined by the Nabi Board in its sole discretion) would be consolidated into one Nabi Share after the Implementation Date) and the Nabi Share Issue Proposal are approved by the requisite majorities of Nabi Stockholders in accordance with the Delaware Law; for the avoidance of doubt, approval by Nabi Stockholders of the Nabi Charter Amendment Proposal regarding the reverse stock split shall not be a Condition Precedent for purposes of this clause 3.1;
- (g) **(SEC No-Action Letter regarding registration exemption)** Nabi shall have received from the SEC a written "no-action" response regarding the issuance of the New Nabi Shares being exempt from the registration requirements of the 1933 Act pursuant to section 3(a)(10) of the 1933 Act;
- (h) **(Nabi Charter Amendment)** The amendment to the certificate of incorporation of Nabi reflecting the increase in the authorised number of Nabi Shares to 200 million shall have been filed with the State of Delaware and become effective;
- (i) **(no restraints)** no judgment, order, decree, statute, law, ordinance, rule or regulation, or other temporary restraining order, preliminary or permanent injunction, restraint or prohibition, entered, enacted, promulgated, enforced or issued by any court or other Governmental Agency of competent jurisdiction, remains in effect as at 8am on the Second Court Date that prohibits, materially restricts, makes illegal or restrains the completion of the Transactions or any Transaction Document;
- (j) **(change of control consents)** before 8am on the Second Court Date, any change of control consents agreed upon by the parties have been granted or obtained and have not been withdrawn, cancelled or revoked;
- (k) **(no regulatory challenge)** no Governmental agency shall have commenced, or shall be threatening to commence, any action, lawsuit, or other legal proceeding seeking to obtain, pursuant to any Competition Law, a judgment, order, decree, temporary restraining order, preliminary or permanent injunction, restraint or prohibition, that would prohibit, materially restrict, make illegal or restrain the completion of the Transactions;

Conditions Precedent for the benefit of Nabi only

- (l) **(no Biota Regulated Events)** no Biota Regulated Event occurs or becomes known to Nabi or Biota between the date of this Agreement and 8am on the Second Court Date;
- (m) **(no Biota Material Adverse Change)** no Biota Material Adverse Change occurs, or is discovered, announced or disclosed or otherwise becomes known to Nabi, or Biota, between the date of this Agreement and 8am on the Second Court Date;
- (n) **(Biota representations and warranties)** the representations and warranties of Biota set out in clause 10.2:
- (i) that are qualified as to materiality, are true and correct; and
 - (ii) that are not so qualified, are true and correct in all material respects,
- as at the date of this Agreement and as at 8am on the Second Court Date as though made on and as of that time, except that the accuracy of the representations and warranties of Biota that by their terms speak as of the date of this Agreement or some other date will be determined as of such date and not as at 8am on the Second Court Date;
- (o) **(Biota obligations)** Biota shall have performed in all material respects all obligations and complied in all material respects with all covenants required by this Agreement to be performed or complied with by it prior to 8am on the Second Court Date;

Conditions Precedent for the benefit of Biota only

- (p) **(no Nabi Regulated Events)** no Nabi Regulated Event occurs or becomes known to Biota or Nabi between the date of this Agreement and 8am on the Second Court Date;
- (q) **(no Nabi Material Adverse Change)** no Nabi Material Adverse Change occurs, or is discovered, announced or disclosed or otherwise becomes known to Biota, or Nabi, between the date of this Agreement and 8am on the Second Court Date;
- (r) **(Nabi representations and warranties)** the representations and warranties of Nabi set out in clause 10.1:
- (i) that are qualified as to materiality, are true and correct; and
 - (ii) that are not so qualified, are true and correct in all material respects,
- as at the date of this Agreement and as at 8am on the Second Court Date as though made on and as of that time, except that the accuracy of the

representations and warranties of Nabi that by their terms speak as of the date of this Agreement or some other date will be determined as of such date and not as at 8am on the Second Court Date;

- (s) **(Nabi obligations)** Nabi shall have performed in all material respects all obligations and complied in all material respects with all covenants required by this Agreement to be performed or complied with by it prior to 8am on the Second Court Date;
- (t) **(appointment of directors)** the persons set forth on Part A of Schedule 2 shall have been appointed to the Nabi board of directors effective as of the Implementation Date and, after such appointments and the resignation of various former Nabi directors, the total number of directors on the Nabi board of directors effective as of the Implementation Date shall be eight;
- (u) **(closing net cash balance)** Nabi shall have provided to Biota at 8 am on the Second Court Date a Nabi Closing Net Cash Balance Certificate showing a Nabi Closing Net Cash Balance of no less than US \$54 million; and
- (v) **(Rights Agreement)** Nabi shall have amended, or procured the amendment of, the Rights Agreement so that the rights issued under the Rights Agreement are inapplicable to the Merger.

3.2 Benefit and waiver of Conditions Precedent

- (a) The Conditions Precedent in clauses 3.1(a) to 3.1(k) are for the benefit of each party, and (except in the cases of the Conditions Precedent in clauses 3.1(d), 3.1(e), 3.1(f), 3.1(g) and 3.1(h), which cannot be waived) any breach or non-fulfilment of any of those Conditions Precedent may only be waived with the written consent of both parties.
- (b) The Conditions Precedent in clauses 3.1(l) to 3.1(o) are for the sole benefit of Nabi, and any breach or non-fulfilment of any of those Conditions Precedent may only be waived by Nabi giving its written consent.
- (c) The Conditions Precedent in clauses 3.1(p) to 3.1(v) are for the sole benefit of Biota, and any breach or non-fulfilment of any of those Conditions Precedent may only be waived by Biota giving its written consent.
- (d) A party entitled to waive the breach or non-fulfilment of a Condition Precedent pursuant to this clause 3.2 may do so in its absolute discretion.
- (e) If a waiver by a party of a Condition Precedent is itself expressed to be conditional and the other party accepts the conditions, the terms of the conditions apply accordingly. If the other party does not accept the conditions, the relevant Condition Precedent has not been waived.
- (f) If a party waives the breach or non-fulfilment of a Condition Precedent, that waiver will not preclude it from suing the other party for any breach of this Agreement constituted by the same event that gave rise to the breach or non-fulfilment of the Condition Precedent.
- (g) Waiver of a breach or non-fulfilment in respect of one Condition Precedent does not constitute:
 - (i) a waiver of breach or non-fulfilment of any other Condition Precedent resulting from the same events or circumstances; or
 - (ii) a waiver of breach or non-fulfilment of that Condition Precedent resulting from any other event or circumstance.

3.3 Best endeavours and co-operation

Without prejudice to any other obligations of the parties under this Agreement:

- (a) Nabi must use its best endeavours to satisfy, or procure the satisfaction of, the Conditions Precedent in clauses 3.1(b), 3.1(f), 3.1(g), 3.1(h), 3.1(p), 3.1(q), 3.1(r), 3.1(s), 3.1(t), 3.1(u) and 3.1(v);
- (b) Biota must use its best endeavours to satisfy, or procure the satisfaction of, the Conditions Precedent in clauses 3.1(c), 3.1(d), 3.1(l), 3.1(m), 3.1(n) and 3.1(o);
- (c) each of Biota and Nabi must use their respective best endeavours to satisfy, or procure the satisfaction of, the Conditions Precedent in clauses 3.1(a), 3.1(e), 3.1(i), 3.1(j) and 3.1(k), to the extent that it is within their respective control; and
- (d) neither party will take any action that will or is likely to hinder or prevent the satisfaction of any Condition Precedent, except to the extent that such action is required to be done or procured pursuant to, or is otherwise permitted by, the Transaction Documents, or is required by law.

For the purposes of paragraphs (a), (b) and (c), the 'best endeavours' of a party will require that party to (among other things):

- (e) observe and comply with clause 9.2; and
- (f) co-operate with the other party or a Governmental Agency or third party in good faith with a view to satisfying the Conditions Precedent, including providing all information reasonably required by the other party in relation to the Nabi Group or Biota Group (as applicable) in order to satisfy the Conditions Precedent and providing all information reasonably required by any Governmental Agency or other third party to such Governmental Agency or third party as appropriate.

3.4 Notifications

Each party must:

- (a) keep the other party promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions Precedent;
- (b) promptly notify the other party in writing if it becomes aware that any Condition Precedent has been satisfied, in which case the notifying party must also provide reasonable evidence that the Condition Precedent has been satisfied; and
- (c) promptly notify the other party in writing of a failure to satisfy a Condition Precedent or of any fact or circumstance that results in that Condition Precedent becoming incapable of being satisfied or that may result in that Condition Precedent not being satisfied in accordance with its terms (having regard to the obligations of the parties under clause 3.3).

3.5 Failure of Conditions Precedent

- (a) If:
 - (i) there is a breach or non-fulfilment of a Condition Precedent that is not waived in accordance with clause 3.2 before the End Date; or
 - (ii) a Condition Precedent becomes incapable of satisfaction, having regard to the obligations of the parties under clause 3.3 and the terms of clause 3.6 (and the breach or non-fulfilment of the Condition Precedent that would otherwise occur has not already been waived), either party may serve notice on the other party, and the parties must then consult in good faith with a view to determining whether:
 - (iii) the Transactions may proceed by way of alternative means or methods;
 - (iv) to extend the relevant time or date for satisfaction of the Condition Precedent;
 - (v) to change the date of the application to be made to the Court for orders under the Corporations Act approving the Scheme or to adjourn that application (as applicable) to another date agreed by the parties; or
 - (vi) to extend the End Date.



- (b) If Nabi and Biota are unable to reach agreement under clauses 3.5(a)(iii), 3.5(a)(iv), 3.5(a)(v) or 3.5(a)(vi) within 15 Business Days after the delivery of the notice under that clause or any shorter period ending at 5pm on the day before the Second Court Date, either party may terminate this Agreement by notice in writing to the other party, provided that:
 - (i) the Condition Precedent to which the notice relates is for the benefit of that party (whether or not the Condition Precedent is also for the benefit of the other party); and
 - (ii) there has been no failure by that party to comply with its obligations under this Agreement, where that failure directly and materially contributed to the Condition Precedent to which the notice relates becoming incapable of satisfaction, or being breached or not fulfilled before the End Date,
 in which case clause 13.4 will have effect.

3.6 Certificates in relation to Conditions Precedent

On the Second Court Date:

- (a) Biota must provide to the Court a certificate (or such other evidence as the Court may request) confirming (in respect of matters within its knowledge) whether or not as at 8am on the Second Court Date:
 - (i) the conditions precedent set out in clauses 3.1(a), 3.1(c), 3.1(d), 3.1(j), 3.1(l), 3.1(m), 3.1(n) and 3.1(o) have been satisfied or waived in accordance with this Agreement; and
 - (ii) to the best of Biota’s knowledge whether the conditions precedent set out in clauses 3.1(i) and 3.1(k) have been satisfied or waived in accordance with this Agreement;
- (b) Nabi must provide to the Court a certificate (or such other evidence as the Court may request) confirming (in respect of matters within its knowledge) whether or not as at 8am on the Second Court Date:
 - (i) the conditions precedent set out in clauses 3.1(a), 3.1(b), 3.1(f), 3.1(g), 3.1(h), 3.1(j), 3.1(p), 3.1(q), 3.1(r), 3.1(s), 3.1(t), 3.1(u) and 3.1(v) have been satisfied or waived in accordance with this Agreement; and
 - (ii) to the best of Nabi’s knowledge whether the conditions precedent set out in clauses 3.1(i) and 3.1(k) have been satisfied or waived in accordance with this Agreement.

Each party must provide to the other party a draft of the relevant certificate to be provided by it pursuant to this clause 3.6 by 5pm on the day that is two Business Days prior to the Second Court Date, and must provide to the other party on the Second Court Date a copy of the final certificate or other evidence provided to the Court.

4 Scheme

4.1 Outline of Scheme

- (a) The parties agree that:
 - (i) Biota will propose the Scheme; and
 - (ii) the Scheme, if approved by the Court, will be subject to any alterations or conditions that are made or required by the Court and approved in writing by each party.
- (b) Subject to the Scheme becoming Effective, on the Implementation Date the general effect of the Scheme will be as follows:
 - (i) all of the Scheme Shares will be transferred to Nabi in accordance with the terms of the Scheme; and
 - (ii) in consideration for the transfer to Nabi of all Scheme Shares held by the Scheme Shareholders, the Scheme Shareholders will receive the Scheme Consideration in accordance with clause 4.2 and the terms of the Scheme.

4.2 Scheme Consideration

- (a) Subject to the Scheme becoming Effective and clauses 4.2(b), 4.2(c) and 4.3, Nabi agrees in favour of Biota that, in consideration of the transfer to Nabi of each Scheme Share under the Scheme, Nabi accepts such transfer, and provides to each Scheme Shareholder 0.669212231 New Nabi Shares for each Scheme Share held by them; provided, however, that if Nabi completes an issuer tender offer that is a Permissible Nabi Stockholder Cash Transaction, then the number of New Nabi Shares for each Scheme Share shall be a number determined in accordance with the following formula:

$$0.669212231 \times \frac{N_N - N_{TO}}{N_N}$$

Where:

N_N is the number of Nabi Shares outstanding as at the date of this Agreement (42,877,581) plus 1,277,386 (being one-third of the number of Nabi stock options on issue as at the date of this Agreement).

N_{TO} is the number of Nabi Shares acquired by Nabi in the issuer tender offer.

(It is noted that the purpose of this formula is to preserve the respective percentage shares of Nabi’s issued stock to be held immediately after the Implementation Date by Scheme Shareholders (collectively) on the one hand (being 73.9603%) and Nabi Stockholders immediately prior to the Implementation Date (collectively) on the other hand (being 26.0397%) (subject in each case to rounding) following the issuer tender offer).

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

(c) If Nabi is of the opinion (acting reasonably) that two or more Scheme Shareholders (each of whom holds a number of Scheme Shares that results in rounding in accordance with clause 4.2(b)) have, before the Record Date, been party to shareholding splitting or division in an attempt to obtain unfair advantage by reference to such rounding, Nabi may give notice to those Scheme Shareholders:

- (i) setting out their names and registered addresses as shown in the Biota Register;
- (ii) stating that opinion; and
- (iii) attributing to one of them specifically identified in the notice the Scheme Shares held by all of them,

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

4.3 Treatment of Ineligible Foreign Biota Shareholders

- (a) Nabi will be under no obligation under the Scheme to issue, and will not issue, any New Nabi Shares to any Ineligible Foreign Biota Shareholder, and instead Nabi will issue on the Implementation Date the New Nabi Shares to which that Ineligible Foreign Biota Shareholder would otherwise have been entitled (if they were a Scheme Shareholder who was not an Ineligible Foreign Biota Shareholder) to a nominee appointed by Biota.
- (b) Biota will procure that, as soon as reasonably practicable and in any event not more than 15 Business Days after the Implementation Date, the nominee:
 - (i) sells on NASDAQ all of the New Nabi Shares issued to the nominee in accordance with clause 4.3(a) in such manner, at such price and on such other terms as the nominee determines in good faith, and at the risk of the Ineligible Foreign Biota Shareholders; and
 - (ii) remits to Biota the proceeds of sale (after deducting any reasonable applicable brokerage, stamp duty and other selling costs, taxes and charges).
- (c) Promptly after the last remittance in accordance with clause 4.3(b), Biota will pay to each Ineligible Foreign Biota Shareholder the proportion of the net proceeds of sale received by Biota pursuant to clause 4.3(b)(ii) to which that Ineligible Foreign Biota Shareholder is entitled.

4.4 Status of New Nabi Shares

- (a) The New Nabi Shares to be issued pursuant to the Scheme must, upon issue, rank equally in all respects with all other Nabi Shares then on issue, except that they will not carry a right to receive any payments from any Contingent Value Right issued and outstanding on the Implementation Date or from any dividends declared prior to but remaining unpaid on the Implementation Date, and will be fully paid and issued free from any mortgage, charge, lien, encumbrance or other security interest; and
- (b) The New Nabi Shares will be issued pursuant to an exemption from registration under the 1933 Act pursuant to section 3(a)(10) of the 1933 Act. In the event that the exemption from registration under section 3(a)(10) of the 1933 Act is not available for any reason to exempt the issuance of the New Nabi Shares in accordance with the Scheme from the registration requirements of the 1933 Act, then Nabi shall use its best endeavours to file a registration statement on Form S-4 (or on such other form that may be available to Nabi) in order to register such New Nabi Shares and shall use its best endeavours to cause such registration statement to become effective at or prior to the Implementation Date.

5 Nabi Closing Net Cash Balance

5.1 Cash offsets

- (a) Subject to clause 5.4, as soon as practicable after the date of this Agreement, the parties must use their best endeavours to agree in good faith on any matters that, in addition to the matters agreed upon by Biota and Nabi prior to the date of this Agreement, comprise Nabi Cash Balance Offsets (including any matters based on any unforeseen events or circumstances).

5.2 Nabi Closing Net Cash Balance Certificate

- (a) Nabi must deliver to Biota a Nabi Closing Net Cash Balance Certificate:
 - (i) at 8am on the day that is seven Business Days prior to the date of the Scheme Meeting (the *Review Certificate*);
 - (ii) prior to the announcement of any Permissible Nabi Stockholder Cash Transaction;
 - (iii) at 8am on the Second Court Date; and
 - (iv) at 8am on the Implementation Date.
- (b) Any Nabi Closing Net Cash Balance Certificate delivered after the Review Period is to be derived from the information set forth in the Review Certificate (including its attachment), subject to any determination by the Expert in accordance with clause 5.4).
- (c) Biota may perform a review of the Review Certificate (including its attachment) during the Review Period.

5.3 Access to information

Nabi must:

- (a) provide, or ensure the provision of:
 - (i) the working papers of the Nabi Auditor that were produced in connection with the review of Nabi's first quarter financial information for the 2012 financial year; and
 - (ii) reasonable access, at the expense of Biota, to the Nabi Auditor for the purpose of Biota's review of such working papers;
- (b) provide, or ensure the provision of, all of Nabi's working papers, and all information and assistance which may be reasonably requested by Biota, in connection with Biota's review of the Review Certificate; and
- (c) at all reasonable times, permit Biota and its Representatives to have reasonable access to and take extracts from or copies of all books of account, accounts, records and data of whatever kind and all other documents relating to the matters set out in the Review Certificate, during the period from 8am on the day that is seven Business Days prior to the date of the Scheme Meeting and the day that is two Business Days prior to the date of the Scheme Meeting (the *Review Period*).

5.4 Dispute resolution procedure

- (a) If there is any difference of opinion or dispute between Nabi and Biota as to:
 - (i) whether any matters (additional to those agreed by the parties prior to the date of this Agreement) should comprise Nabi Cash Balance Offsets (including any matters based on any unforeseen events or circumstances); or
 - (ii) any of the specific dollar amounts included in the Review Certificate during the Review Period,
 - (iii) Nabi and Biota must work together in good faith to resolve such disagreement and, if such disagreement is not resolved, then Nabi or Biota must promptly refer the dispute to a practitioner in the internal audit division of Bethesda Financial Group LLC (or such other party as Nabi and Biota may agree) (the **Expert**) for it to resolve the dispute. Notwithstanding the foregoing, Biota can only dispute specific dollar amounts under clause 5.4(a)(ii) above if the aggregate of the difference between:
 - (iv) each amount set out in the Review Certificate which is disputed by Biota; and
 - (v) Biota's opinion as to what each such amount should be,
 is not less than US \$200,000.
- (b) The Expert must be instructed to decide the matters of disagreement and finish its determination and provide a final Review Certificate (if applicable) to Nabi and Biota:
 - (i) in the case of a disagreement as to any matters that comprise the Nabi Cash Balance Offsets – no later than 7 Business Days after the dispute was referred to the Expert (but in any event, 5 Business Days before a Nabi Closing Net Cash Balance Certificate is required to be provided by Nabi to Biota in accordance with clause 5.2); and
 - (ii) in the case of a disagreement as to the specific dollar amounts stated on the Review Certificate - before the end of the Review Period.
- (c) Nabi and Biota must co-operate with the Expert and promptly supply the Expert with any information and assistance requested by the Expert in connection with its determination.
- (d) For the purpose of this clause 5.4, all correspondence between the Expert and a party must be copied to the other party, or otherwise immediately provided to that other party.
- (e) The Expert must apply the Accounting Principles.
- (f) Any determination by the Expert will be final and binding on Nabi and Biota in the absence of manifest error.
- (g) The cost of a determination by the Expert must be borne by Nabi and Biota in such manner as the Expert determines (having regard to the merits of the dispute).

6 Steps for Implementation**6.1 Biota's obligations in respect of the Transactions**

Biota must use its best endeavours to propose and implement the Transactions as soon as is reasonably practicable after the date of this Agreement and otherwise substantially in accordance with the Timetable, and in particular Biota must:

Steps relating to Scheme

- (a) (**preparation of Scheme Booklet**) as soon as reasonably practicable after the date of this Agreement, prepare the Scheme Booklet in accordance with clause 6.3;
- (b) (**Independent Expert**) promptly appoint the Independent Expert (if the Independent Expert has not been appointed prior to the date of this Agreement), and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (c) (**Investigating Accountant's Report**) if the Biota Board determines to appoint an accountant to prepare an Investigating Accountant's Report, then as soon as reasonably practicable after the date of this Agreement, appoint such an accountant, and provide all assistance and information reasonably requested by the accountant to enable it to prepare the Investigating Accountant's Report;
- (d) (**liaison with ASIC**) as soon as reasonably practicable after the date of this Agreement but no later than 14 days before the First Court Date, provide an advanced draft of the Scheme Booklet to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act, and to Nabi, and keep Nabi reasonably informed of any matters raised by ASIC in relation to the Scheme Booklet (and of any resolution of those matters), and use its best endeavours, in co-operation with Nabi, to resolve any such matters (which will include allowing Nabi to participate in Biota's meetings and discussions with ASIC);
- (e) (**indication of intent**) apply to ASIC for a letter indicating whether ASIC proposes to make submissions to the Court, or intervene to oppose the Scheme, on the First Court Date;
- (f) (**approval of Scheme Booklet**) as soon as practicable after ASIC has provided its indication of intent in accordance with clause 6.1(e), procure that a meeting of the Biota Board is convened to approve the Scheme Booklet for despatch to Biota Shareholders (and provide Nabi with a copy of an extract of the applicable resolutions from the applicable minutes of meeting, as soon as practicable after those minutes have been prepared and signed);
- (g) (**Court documents**) prepare all documents necessary for the Court proceedings (including any appeals) relating to the Scheme (including originating process, affidavits, submissions and draft minutes of Court orders) in accordance with all applicable laws, and provide Nabi in advance with drafts of those documents for review and (acting reasonably and in good faith) take into account, for the purpose of amending those drafts, any comments from Nabi and its Representatives on those drafts;
- (h) (**first Court hearing**) lodge all documents with the Court and use its best endeavours to ensure that an application is heard by the Court for orders under section 411(1) of the Corporations Act directing Biota to convene the Scheme Meeting;
- (i) (**registration of Scheme Booklet**) if the Court directs Biota to convene the Scheme Meeting, as soon as practicable after such orders are made, request ASIC to register the explanatory statement included in the Scheme Booklet in relation to the Scheme in accordance with section 412(6) of the Corporations Act;
- (j) (**Scheme Meeting**) use its best endeavours to comply with the orders of the Court, including, as required, despatching the Scheme Booklet to Biota Shareholders, convening and holding the Scheme Meeting in accordance with the Court orders, and putting the Scheme Resolution to Biota Shareholders at the Scheme Meeting, provided that if this Agreement is terminated under clause 13 it may take use its best endeavours to ensure the Scheme Meeting is not held;
- (k) (**update Scheme Booklet**) if it becomes aware of information after the date of despatch of the Scheme Booklet, that is material for disclosure to Biota Shareholders in deciding whether to approve the Scheme Resolution or that is required to be disclosed to Biota Shareholders under

any applicable law, as expeditiously as practicable inform Biota Shareholders of the information in an appropriate and timely manner, and in accordance with applicable law;

- (l) **(section 411(17)(b) statement)** apply to ASIC for the production of statements in writing pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (m) **(Court approval)** if the Scheme Resolution is passed by the requisite majorities of Biota Shareholders under section 411(4)(a)(ii) of the Corporations Act, as soon as practicable after such time apply to the Court for orders approving the Scheme;
- (n) **(provision of Biota Register information)** as soon as practicable after the Record Date, give to Nabi (or as it directs) details of the names, registered addresses and holdings of Biota Shares of every Scheme Shareholder as shown in the Biota Register as at the Record Date, in such form as Nabi may reasonably require;
- (o) **(implementation of the Scheme)** if the Court approves the Scheme:
 - (i) lodge with ASIC an office copy of the orders approving the Scheme in accordance with section 411(10) of the Corporations Act, as soon as practicable after the Court makes those orders;
 - (ii) use best endeavours to ensure that ASX suspends trading in Biota Shares with effect from the close of trading on the Effective Date;
 - (iii) close the Biota Register as at the Record Date to determine the identity of Scheme Shareholders and to determine their entitlements to the Scheme Consideration in accordance with the Scheme;
 - (iv) promptly execute proper instruments of transfer of, and register all transfers of, the Scheme Shares to Nabi in accordance with the Scheme; and
 - (v) promptly do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court approving the Scheme and to effect the transfer of the Scheme Shares to Nabi;
- (p) **(keep Nabi informed)** from the First Court Date until the Implementation Date, promptly inform Nabi if it becomes aware (or ought reasonably to have become aware, after making all reasonable and diligent enquiries) that the Scheme Booklet contains a statement that, in the form and context in which it appears in the Scheme Booklet, is or has become misleading or deceptive in a material respect or that contains a material omission;
- (q) **(Nabi Provided Scheme Booklet Information)** at any time (even after the Nabi Provided Scheme Booklet Information becomes publicly available) only use that information with the prior written consent of Nabi (not to be unreasonably withheld);
- (r) **(securities laws)** use its best endeavours to assist Nabi as may be necessary to comply with the securities laws of all jurisdictions which are applicable in connection with the issuance of the New Nabi Shares pursuant to the Scheme;
- (s) **(regulatory filings)** as promptly as practicable after execution of this Agreement, Biota shall take use its best endeavours to make, or cause to be made, all appropriate filings required from it in connection with the Transactions under the HSR Act and the Competition Laws identified in Schedule 1 hereto;

Steps relating to Nabi Proxy Statement and the Scheme Consideration

- (t) **(provide information)** provide to Nabi the information referred to in clause 6.4(d);
- (u) **(preparation of Nabi Proxy Statement)** provide assistance with the preparation of the Nabi Proxy Statement in accordance with clause 6.4;
- (v) **(liaison with SEC)** provide reasonable assistance to Nabi to resolve any matter raised by the SEC regarding the Nabi Proxy Statement or exemption from registration under the 1933 Act pursuant to section 3(a)(10) of the 1933 Act;
- (w) **(approval of Nabi Proxy Statement)** if requested by Nabi, procure that a meeting of the Biota Board is convened to approve those sections of the Nabi Proxy Statement that comprise the Biota Provided Proxy Statement Information as being in a form appropriate for mailing to Nabi Stockholders (and provide Nabi with a copy of an extract of the applicable resolutions from the applicable minutes of meeting, as soon as practicable after those minutes have been prepared and signed);
- (x) **(keep Nabi informed)** from the First Court Date until the Implementation Date, promptly (in any event within one Business Day) inform Nabi if it becomes aware (or ought reasonably to have become aware, after making all reasonable and diligent enquiries) that the Biota Provided Proxy Statement Information contains a statement that, in the form and context in which it appears in the Nabi Proxy Statement, is or has become misleading or deceptive in any material respect or that contains any material omission, and provide such further or new information as is required to ensure that such information is no longer misleading or deceptive in any material respect or does not contain any material omission;

Other steps

- (y) **(compliance with laws)** use its best endeavours to ensure that all transactions contemplated by this Agreement are effected in all material respects in accordance with all applicable laws and regulations;
- (z) **(response to regulatory inquiry)** in connection with the regulatory filings required by clause 6.1(s) hereto, Biota shall keep Nabi promptly (in any event within one Business Day) apprised of any inquiries or requests for additional information from any Governmental Agency pursuant to any Competition Law, and shall respond promptly to all such inquiries or requests;
- (aa) **(cooperation in regulatory process)** use its best endeavours to cooperate with Nabi in obtaining all consents, authorisations and clearances. Biota shall provide Nabi promptly with all information and documents reasonably requested by Nabi for the purpose of obtaining Competition Approvals. Biota shall notify Nabi promptly of all communications of any kind received from a Governmental Agency under any Competition Law, including without limitation the FTC and DOJ, relating to the Transactions; shall provide Nabi advance copies, with a reasonable opportunity for review and comment, of any communication by Biota to any such Governmental Agency relating to the Transactions; shall give Nabi advance notice of all planned meetings, conferences, or other communications with such a Governmental Agency relating to the Transactions and, subject to the Governmental Agency's consent, shall permit representatives of Nabi to attend and participate in such meetings, conferences, and other communications. Biota shall keep Nabi apprised of the progress of any investigation conducted by a Governmental Agency under any Competition Law, including without limitation the FTC and DOJ, relating to the Transactions; and
- (bb) **(all things necessary)** use its best endeavours to lawfully give effect to the Scheme and the orders of the Court approving the Scheme.

6.2 Nabi's obligations in respect of the Transactions

Nabi must use its best endeavours to propose and implement the Transactions as soon as is reasonably practicable after the date of this Agreement and otherwise substantially in accordance with the Timetable, and in particular Nabi must:

Steps relating to the Nabi Proxy Statement and the Scheme Consideration

- (a) **(preparation of Nabi Proxy Statement)** as soon as reasonably practicable after the date of this Agreement, prepare the Nabi Proxy Statement in accordance with clause 6.4;

- (b) **(Nabi Merger Approval Meeting)** use its best endeavours in accordance with applicable law and its certificate of incorporation and bylaws to convene and hold the Nabi Merger Approval Meeting, including, as required, mailing the Nabi Proxy Statement to Nabi Stockholders, and submitting the Nabi Merger Proposals to Nabi Stockholders at the Nabi Merger Approval Meeting, provided that if this Agreement is terminated under clause 13 it will use its best endeavours to ensure the Nabi Merger Approval Meeting is not held;
- (c) **(update Nabi Proxy Statement)** if it becomes aware of information after the date of despatch of the Nabi Proxy Statement, that is material for disclosure to Nabi Stockholders in deciding whether to approve the Nabi Merger Proposals or that is required to be disclosed to Nabi Stockholders under any applicable law, as expeditiously as practicable inform Nabi Stockholders of the information in an appropriate and timely manner, and in accordance with applicable law;

Steps relating to the Scheme

- (d) **(provide information)** provide to Biota the information referred to in clause 6.3(d);
- (e) **(preparation of Scheme Booklet)** provide assistance reasonably requested by Biota with the preparation of the Scheme Booklet in accordance with clause 6.3;
- (f) **(Independent Expert information)** provide assistance and information reasonably requested by Biota or by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (g) **(Investigating Accountant's Report)** if the Biota Board determines to appoint an accountant to prepare an Investigating Accountant's Report, then provide assistance and information reasonably requested by Biota or by the accountant to enable the accountant to prepare the Investigating Accountant's Report;
- (h) **(liaison with ASIC)** provide assistance reasonably requested by Biota to assist Biota to resolve any matter raised by ASIC regarding the Scheme Booklet or the Scheme during its review of the Scheme Booklet;
- (i) **(approval of Scheme Booklet)** as soon as practicable after ASIC has provided its indication of intent in accordance with clause 6.1(e), procure that a meeting of the Nabi Board (or of a committee of the Nabi Board appointed for the purpose) is convened to approve those sections of the Scheme Booklet that comprise the Nabi Provided Scheme Booklet Information as being in a form appropriate for despatch to Biota Shareholders (and provide Biota with a copy of an extract of the applicable resolutions from the applicable minutes of meeting, as soon as practicable after those minutes have been prepared and signed);
- (j) **(keep Biota informed)** from the First Court Date until the Implementation Date, promptly (in any event within one Business Day) inform Biota if it becomes aware (or ought reasonably to have become aware, after making all reasonable and diligent enquiries) that the Nabi Provided Scheme Booklet Information contains a statement that, in the form and context in which it appears in the Scheme Booklet, is or has become misleading or deceptive in any material respect or that contains any material omission, and provide such further or new information as is required to ensure that such information is no longer misleading or deceptive in any material respect or does not contain any material omission;
- (k) **(Court representation)** procure that, if requested by Biota and reasonably considered necessary by Nabi, it is represented by counsel at the Court hearings convened in connection with the Scheme, at which, through its counsel and if requested by the Court, Nabi will undertake to do all such things and use its best endeavours in order to ensure the fulfilment of its obligations under this Agreement and the Scheme;
- (l) **(Nabi Deed Poll)** prior to the First Court Date, execute the Nabi Deed Poll;
- (m) **(listing)** apply for listing on NASDAQ of the New Nabi Shares to be issued pursuant to the Scheme;
- (n) **(Scheme Consideration)** if the Scheme becomes Effective, provide the Scheme Consideration in accordance with the Scheme and the Nabi Deed Poll on the Implementation Date;
- (o) **(Nabi Closing Net Cash Balance)** if the Scheme becomes Effective, provide the Nabi Closing Net Cash Balance Certificate to Biota on the Implementation Date showing a Nabi Closing Net Cash Balance of no less than US \$54 million in accordance with the Scheme;
- (p) **(New Nabi Share trading)** use best endeavours to ensure that trading in the New Scheme Shares commences on NASDAQ no later than the first Business Day after the Implementation Date;
- (q) **(New Nabi Shares)** ensure that on issue, each New Nabi Share will be fully paid and free from any mortgage, charge, lien, encumbrance or other security interest;
- (r) **(Biota Provided Scheme Booklet Information)** at any time (even after the Biota Provided Scheme Booklet Information becomes publicly available) only use the Biota Provided Scheme Booklet Information with the prior written consent of Biota (not to be unreasonably withheld);
- (s) **(securities laws)** use its best endeavours to comply in all material respects with the securities laws of all jurisdictions which are applicable to the issuance of the New Nabi Shares pursuant to the Scheme;
- (t) **(regulatory filings)** as promptly as practicable after execution of this Agreement, Nabi shall use its best endeavours to make, or cause to be made, all appropriate filings required from it in connection with the Transactions under the HSR Act and the Competition Laws identified in Schedule 1 hereto;
- (u) **(compliance with laws)** use its best endeavours to ensure that all Transactions are effected in all material respects in accordance with all applicable laws and regulations;
- (v) **(response to regulatory inquiry)** in connection with the regulatory filings required by clause 6.1(s) hereto, Nabi shall keep Biota promptly (in any event within one Business Day) apprised of any inquiries or requests for additional information from any Governmental Agency pursuant to any Competition Law, and shall respond promptly to all such inquiries or requests;
- (w) **(cooperation in regulatory process)** use its best endeavours to cooperate with Biota in obtaining all consents, authorisations, clearances, approvals, waivers, actions, or non-actions required, in order to complete the Transactions, from a Governmental Agency under the HSR Act and all other Competition Laws identified in Schedule 1 (the **Competition Approvals**). Subject to applicable law, Nabi shall provide Biota promptly with all information and documents reasonably requested by Biota for the purpose of obtaining Competition Approvals. Nabi shall notify Biota promptly of all communications of any kind received from a Governmental Agency under any Competition Law, including without limitation the FTC and DOJ, relating to the Transactions; shall provide Biota advance copies, with a reasonable opportunity for review and comment, of any communication by Nabi to any such Governmental Agency relating to the Transactions; shall give Biota advance notice of all planned meetings, conferences, or other communications with such a Governmental Agency relating to the Transactions and, subject to the Governmental Agency's consent, shall permit representatives of Biota to attend and participate in such meetings, conferences, and other communications. Nabi shall keep Biota apprised of the progress of any investigation conducted by a Governmental Agency under any Competition Law, including without limitation the FTC and DOJ, relating to the Transactions; and
- (x) **(all things necessary)** use its best endeavours to lawfully give effect to the Scheme and the orders of the Court approving the Scheme.

6.3 Preparation of Scheme Booklet

- (a) **(Biota to prepare)** Subject to Nabi complying with its obligations under clause 6.3(d), Biota must prepare the Scheme Booklet as soon as is reasonably practicable after the date of this Agreement and otherwise substantially in accordance with the Timetable.

- (b) **(Compliance requirements)** Biota must use its best endeavours to ensure that the Scheme Booklet complies in all material respects with the requirements of the Corporations Act, the ASX Listing Rules and all ASIC Regulatory Guides applicable to members' schemes of arrangement under Part 5.1 of the Corporations Act, except that the obligation to do so in respect of the Nabi Provided Scheme Booklet Information is subject to Nabi complying with its obligations under clauses 6.3(d) and 10.1(e).
- (c) **(Content of Scheme Booklet)** Without limiting clause 6.3(b), the Scheme Booklet will include or be accompanied by:
- (i) the Scheme;
 - (ii) the Notice of Meeting;
 - (iii) a copy of this Agreement (without the schedules and annexures) or a summary of it;
 - (iv) a copy of the executed Nabi Deed Poll;
 - (v) the Independent Expert's Report; and
 - (vi) a statement that the Biota Board considers the Scheme to be in the best interests of Biota Shareholders and a recommendation that Biota Shareholders approve the Scheme Resolution, in the absence of a Superior Proposal, unless the Biota Board has changed or withdrawn that statement and recommendation in accordance with clause 8.1.
- (d) **(Nabi Provided Scheme Booklet Information)** Nabi must provide the Nabi Provided Scheme Booklet Information to Biota as soon as is reasonably practicable after the date of this Agreement and otherwise substantially in accordance with the Timetable, in a form that, together with the Biota Provided Scheme Booklet Information, includes in all material respects the information regarding the Nabi Group, New Nabi Shares and the Nabi Shares that is required by the Corporations Act, the ASX Listing Rules and all ASIC Regulatory Guides applicable to members' schemes of arrangement under Part 5.1 of the Corporations Act, including the information that would be required under sections 636(1)(c), (g), (h), (i), (j), (k), (l) and (m) of the Corporations Act to be included in a Nabi bidder's statement if Nabi were offering the Scheme Consideration as consideration under a takeover bid, and must provide to Biota such assistance as Biota may reasonably request in order to adapt such information for inclusion in the Scheme Booklet.
- (e) **(Review by Nabi)** Biota must make available in advance to Nabi drafts of the Scheme Booklet (including any draft of the Independent Expert's Report, but excluding those sections containing the Independent Expert's opinions or conclusions), consult with Nabi in relation to the content of those drafts (including the inclusion of any Nabi Provided Scheme Booklet Information and any information solely derived from, or prepared solely in reliance on, the Nabi Provided Scheme Booklet Information), and (acting reasonably and in good faith) take into account, for the purpose of amending those drafts, any comments from Nabi and its Representatives on those drafts.
- (f) **(Dispute as to Scheme Booklet)** If, after a reasonable period of consultation and compliance by Biota with its obligations under clause 6.3(e), Nabi and Biota, acting reasonably and in good faith, are unable to agree on the form or content of the Scheme Booklet, then, subject to applicable law:
- (i) if the disagreement relates to the form or content of the Nabi Provided Scheme Booklet Information (or any information solely derived from, or prepared solely in reliance on, the Nabi Provided Scheme Booklet Information), Biota will, acting in good faith, make such amendments to that information in the Scheme Booklet as Nabi may reasonably require; and
 - (ii) if the disagreement relates to the form or content of the Biota Provided Scheme Booklet Information, Biota will, acting in good faith, decide the final form of that information in the Scheme Booklet.
- (g) **(Consent of Nabi)** Without limiting clause 6.3(f), Biota must obtain written consent from Nabi in relation to the form and context in which any Nabi Provided Scheme Booklet Information (and any information solely derived from, or prepared solely in reliance on, the Nabi Provided Scheme Booklet Information) is used, such consent not to be unreasonably withheld by Nabi.
- (h) **(Verification)** Biota must undertake appropriate verification processes in relation to the Biota Provided Scheme Booklet Information included in the Scheme Booklet, and Nabi must undertake appropriate verification processes in relation to the Nabi Provided Scheme Booklet Information included in the Scheme Booklet.

6.4 Preparation of Nabi Proxy Statement

- (a) **(Nabi to prepare)** Subject to Biota complying with its obligations under clause 6.4(d), Nabi must prepare the Nabi Proxy Statement as soon as is reasonably practicable after the date of this Agreement and otherwise substantially in accordance with the Timetable.
- (b) **(Compliance requirements)** Nabi must use its best endeavours to ensure that the Nabi Proxy Statement complies in all material respects with the requirements of the 1934 Act, rules promulgated under the 1934 Act and the NASDAQ Marketplace Rules, except that the obligation to do so in respect of the Biota Provided Proxy Statement Information is subject to Biota complying with its obligations under clauses 6.4(d) and 10.2(d).
- (c) **(Content of Nabi Proxy Statement)** Without limiting clause 6.4(b), the Nabi Proxy Statement will include or be accompanied by a statement that the Nabi Board has determined that this Agreement, the Merger and the other transactions contemplated herein, including the Charter Amendment and the issuance of New Nabi Shares, are advisable to and in the best interests of Nabi and Nabi Stockholders and a recommendation that Nabi Stockholders vote in favour of the Nabi Merger Proposals, unless the Nabi Board has changed or withdrawn that statement and recommendation in accordance with clause 8.1(b)(v)(C).
- (d) **(Biota Provided Proxy Statement Information)** Biota must provide to Nabi the Biota Provided Proxy Statement Information to Nabi as soon as is reasonably practicable after the date of this Agreement and otherwise substantially in accordance with the Timetable, in a form that includes in all material respects the information regarding the Biota Group and the Merged Group (other than to the extent the information in relation to the Merged Group is derived from information regarding the Nabi Group) that is required by the 1934 Act, rules promulgated under the 1934 Act and NASDAQ Marketplace Rules, and must provide to Nabi such assistance as Nabi may reasonably require in order to adapt such information for inclusion in the Nabi Proxy Statement.
- (e) **(Review by Biota)** Nabi must make available in advance to Biota drafts of the Nabi Proxy Statement, consult with Biota in relation to the content of those drafts (including the inclusion of any Biota Provided Proxy Statement Information and any information solely derived from, or prepared solely in reliance on, the Biota Provided Proxy Statement Information), and (acting reasonably and in good faith) take into account, for the purpose of amending those drafts, any comments from Biota and its Representatives on those drafts.
- (f) **(Dispute as to Nabi Proxy Statement)** If, after a reasonable period of consultation and compliance by Nabi with its obligations under clause 6.4(e), Biota and Nabi, acting reasonably and in good faith, are unable to agree on the form or content of the Nabi Proxy Statement, then, subject to applicable law:
- (i) if the disagreement relates to the form or content of the Biota Provided Proxy Statement Information (or any information solely derived from, or prepared solely in reliance on, the Biota Provided Proxy Statement Information), Nabi will, acting in good faith, make such amendments to that information in the Nabi Proxy Statement as Biota may reasonably require; and
 - (ii) if the disagreement relates to the form or content of the Nabi Provided Proxy Statement Information, Nabi will, acting in good faith, decide the final form of that information in the Nabi Proxy Statement.

- (g) **(Consent of Biota)** Without limiting clause 6.4(f), Nabi must obtain written consent from Biota in relation to the form and context in which any Biota Provided Proxy Statement Information (and any information solely derived from, or prepared solely in reliance on, the Biota Provided Proxy Statement Information) is used, such consent not to be unreasonably withheld by Biota.
- (h) **(Verification)** Nabi must undertake appropriate verification processes in relation to the Nabi Provided Proxy Statement Information included in the Nabi Proxy Statement and Biota must undertake appropriate verification processed in relation to the Biota Provided Proxy Statement Information included in the Nabi Proxy Statement.

6.5 Nabi Board as of Implementation Date

As of the Implementation Date, Nabi must have reconstituted the Nabi Board so that it consists of the persons set out in Part A of Schedule 2, subject to the relevant persons agreeing to become the directors of the relevant Nabi Board and meeting the regulatory requirements for a director set out in any applicable laws and the rules of NASDAQ.

6.6 Nabi Management as of Implementation Date

- (a) As of the Implementation Date, Nabi's senior management shall be constituted as set out in Part B of Schedule 2.
- (b) Following the Implementation Date, the Nabi Board will seek to identify and appoint a management team based in the United States of America.

6.7 Indemnification

- (a) From the Implementation Date, Nabi shall indemnify and hold harmless each person who has at any time prior to the Implementation Date been an officer, director or employee of Biota or any of its Subsidiaries or other person entitled to be indemnified by Biota or any of its Subsidiaries pursuant to their respective constitutions or relevant deed(s) of indemnity as they are currently in effect on the date of this Agreement to the same extent as provided in such constitution or deed of indemnity; provided that it is understood that the foregoing undertaking shall not grant to any such officers, directors or employees or other person rights of indemnity against Nabi more extensive than those such persons may currently have against Biota.
- (b) For a period of six years after the Implementation Date, Nabi shall maintain in effect directors' and officers' liability insurance covering those persons who are currently covered by Nabi's and Biota's directors' and officers' liability insurance policy (a copy of which has been heretofore delivered to each other party) on terms no less favourable to those applicable to the then current directors and officers of Nabi; provided, that in no event shall Nabi be required to expend in excess of 300% of the annual premium currently paid by Nabi for such coverage or such coverage as is available for 300% of the annual premium.
- (c) This clause 6.7 shall survive the Implementation Date, is intended to benefit those persons who are currently covered by Nabi's and Biota's directors' and officers' liability insurance policy, who shall have the direct right to enforce this clause 6.7 as intended third party beneficiaries and shall be binding on all successors and assigns of Nabi.

7 Conduct of Business and Requests for Access

7.1 Conduct of business

During the period from the date of this Agreement up to and including the Implementation Date, each of Biota and Nabi (as the case may be) must:

- (a) procure that each of the Biota Group or the Nabi Group conducts its business and operations in the ordinary course and substantially consistent (subject to any applicable laws, regulations and Regulatory Approvals) with the manner in which each such business and operation has been conducted in the 12 month period prior to the date of this Agreement (including, in particular (but subject to clause 7.4) the making of all payments in accordance with the group's normal payment cycle, and the maintenance of all existing insurance policies) and in compliance in all material respects with all applicable laws, regulations and Regulatory Approvals; and
 - (b) in the case of Biota, to the extent consistent with that obligation, use its best endeavours to preserve intact each of the Biota Group's current business organisation, to keep available the services of the current Officers of it and the other Biota Group Members, and to preserve the Biota Group's relationship with Governmental Agencies, customers, suppliers, licensors, licensees and others having business dealings with it;
 - (c) in the case of Nabi, to the extent consistent with that obligation, use its best endeavours to preserve intact each of the Nabi Group's current business organisation, to keep available the services of its current Chief Executive Officer and certain other of its officers agreed in writing by the parties, and to preserve the Nabi Group's relationship with Governmental Agencies, customers, suppliers, licensors, licensees and others having business dealings with it,
- except:
- (d) that Nabi may conduct any Permissible Nabi Stockholder Cash Transaction; or
 - (e) to the extent required to be done or procured by Biota or Nabi pursuant to, or that is otherwise expressly permitted by, the Transaction Documents, or the undertaking of which the other party (being either Biota or Nabi) has approved in writing, such approval not to be unreasonably withheld or delayed.

7.2 Access to information and co-operation

- (a) During the period from the date of this Agreement up to and including the Implementation Date, each party must, and must procure each of their respective Subsidiaries to, respond to reasonable requests from the other party and its Representatives for information concerning the Biota Group or Nabi Group (as the case may be) businesses and operations, and give that other party and its Representatives reasonable access to its Officers and records, and otherwise provide reasonable co-operation to that other party and its Representatives, in each case for the purposes of:
 - (i) the implementation of the Transactions;
 - (ii) the integration of the Biota Group and the Nabi Group following the implementation of the Merger; or
 - (iii) any other purpose that is agreed in writing between the parties,
 subject to the terms of the Confidentiality Agreement and proper performance by the directors and officers of each party and its Subsidiaries of their fiduciary duties.
- (b) Each party must ensure its then current Officers are available at all reasonable times to give access to, and provide assistance to, the other party for the purposes of clause 7.2(a).
- (c) During the period from the date of this Agreement up to and including the Implementation Date, each party must permit the then current Officers of the other party to have access to the premises from which that party conducts its business for the purpose of the requesting party becoming familiar with the business of the other party.

7.3 No Regulated Events

- (a) During the period from the date of this Agreement up to and including the Implementation Date, Biota must ensure, to the extent within the control of any Biota Group Member (or two or more of them), that no Biota Regulated Event occurs, without the prior written consent of Nabi (such consent not to be unreasonably withheld or delayed).
- (b) During the period from the date of this Agreement up to and including the Implementation Date, Nabi must ensure, to the extent within the control of any Nabi Group Member (or two or more of them), that no Nabi Regulated Event occurs, without the prior written consent of Biota (such consent not to be unreasonably withheld or delayed).

7.4 Restriction on Cash payments

Nabi agrees that between the Effective Date and the Implementation Date (both inclusive) it will not make any cash payments other than any Permitted Pre-Implementation Payments and Permissible Stockholder Cash Transactions.

7.5 Amendment of CVR Agreement

Nabi agrees that, on or before the Implementation Date, it will not change the form of the CVR Agreement or amend the CVR Agreement after it is entered into by Nabi (which shall be at the sole and absolute discretion of Nabi) without the prior written consent of Biota (such consent not to be unreasonably withheld or delayed).

8 Board Recommendations**8.1 Biota Board recommendation**

- (a) The Biota Public Announcement to be issued by Biota immediately after execution of this Agreement must state that the Biota Board considers the Merger to be in the best interests of Biota Shareholders and recommends that Biota Shareholders approve the Scheme Resolution, in the absence of a Superior Proposal and subject to the Independent Expert concluding that the Scheme is in the best interests of Biota Shareholders.
- (b) Biota must use its best endeavours to procure that the Biota Board:
 - (i) does not change or withdraw the statements and recommendations set out in the Biota Public Announcement;
 - (ii) in the Scheme Booklet, states that the Biota Board considers the Scheme to be in the best interests of Biota Shareholders and recommends that Biota Shareholders approve the Scheme Resolution, in the absence of a Superior Proposal, and does not change or withdraw those statements or recommendations once made; and
 - (iii) does not make any public statement or any statement to brokers, analysts, journalists, Biota Shareholders or professional or institutional investors to the effect, or take any other action that suggests, that the Scheme is no longer so considered or recommended, unless:
 - (iv) the Biota Board determines, after considering the matter in good faith, that their fiduciary or statutory duties require them to change or withdraw their recommendation after having taken advice from their legal and external financial advisers; and
 - (v) prior to any such change or withdraw in the Biota Board's recommendation:
 - (A) in the case of a Competing Proposal, Biota has complied with the requirements set forth in clause 11.6(a), 11.6(c), 11.6(d) and 11.6(e);
 - (B) Biota has provided a written notice to Nabi at least five Business Days before taking such action, which written notice will include:
 - (1) the decision of the Biota Board to take such action and the reasons therefore; and
 - (2) in the event the decision relates to a Competing Proposal, a summary of the material terms and conditions of the Competing Proposal (which summary is not required to include the identity of the party making the Competing Proposal); and
 - (C) during the five Business Day period after giving such written notice to Nabi, if requested by Nabi, Biota has and has directed its outside legal counsel and financial advisors to, (i) in the case of a Competing Proposal, where the parties have not taken the actions contemplated by clauses 11.6(a), 11.6(c), 11.6(d) and 11.6(e), comply with such clauses and negotiate with Nabi in good faith to make such adjustments to the terms and conditions of this Agreement so that such Competing Proposal ceases to constitute (in the good faith judgment of the Biota Board, after consultation with its outside legal counsel and financial advisors) a Superior Proposal or, (ii) if such change or withdraw in the recommendation does not involve a Competing Proposal, to negotiate in good faith to make such adjustments in the terms and conditions of this Agreement so that such change or withdraw in the recommendation is otherwise not necessary.

8.2 Nabi Board recommendation

- (a) The Nabi Public Announcement to be issued by Nabi immediately after execution of this Agreement must state that the Nabi Board unanimously considers this Agreement, the Merger and the other transactions contemplated herein, including the Charter Amendment and the issuance of New Nabi Shares, to be advisable and fair to and in the best interests of Nabi and Nabi Stockholders and unanimously recommends that Nabi Stockholders approve the Nabi Merger Proposals.
- (b) Nabi must use its best endeavours to procure that the Nabi Board:
 - (i) does not change or withdraw the statements and recommendations set out in the Nabi Public Announcement;
 - (ii) in the Nabi Proxy Statement, states that the Nabi Board unanimously considers this Agreement, the Merger and the other transactions contemplated herein, including the Nabi Merger Proposals, to be advisable and fair to and in the best interests of Nabi and Nabi Stockholders and unanimously recommends that Nabi Stockholders approve the Nabi Merger Proposals, and does not change or withdraw those statements or recommendations once made; and
 - (iii) does not make any public statement or any statement to brokers, analysts, journalists, Nabi Stockholders or professional or institutional investors to the effect, or take any other action that suggests, that the Merger is no longer so considered or recommended, unless:
 - (iv) the Nabi Board determines, after considering the matter in good faith, that their fiduciary or statutory duties require them to change or withdraw their recommendation after having taken advice from their outside legal counsel and financial advisers; and
 - (v) prior to any such change or withdraw in the Nabi Board's recommendation:
 - (A) in the case of a Competing Proposal, Nabi has complied with the requirements set forth in clause 11.6(b), 11.6(c), 11.6(d) and 11.6(e);
 - (B) Nabi has provided a written notice to Biota at least five Business Days before taking such action, which written notice will include:
 - (1) the decision of the Nabi Board to take such action and the reasons therefore; and

- (2) in the event the decision relates to a Competing Proposal, a summary of the material terms and conditions of the Competing Proposal (which summary is not required to include the identity of the party making the Competing Proposal); and
- (C) during the five Business Day period after giving such written notice to Biota, if requested by Biota, Nabi has and has directed its outside legal counsel and financial advisors to, (i) in the case of a Competing Proposal, where the parties have not taken the actions contemplated by clauses 11.6(b), 11.6(c), 11.6(d) and 11.6(e), comply with such clauses and negotiate with Biota in good faith to make such adjustments to the terms and conditions of this Agreement so that such Competing Proposal ceases to constitute (in the good faith judgment of the Nabi Board, after consultation with its outside legal counsel and financial advisors) a Superior Proposal or, (ii) if such change or withdraw in the recommendation does not involve a Competing Proposal, to negotiate in good faith to make such adjustments in the terms and conditions of this Agreement so that such change or withdraw in the recommendation is otherwise not necessary.

9 Public Announcements, Communications and Confidentiality

9.1 Required announcements

- (a) On the Announcement Date, Nabi must release the Nabi Public Announcement, and Biota must release the Biota Public Announcement, which directs shareholders as to how they may obtain a copy of this Agreement.
- (b) Subject to clause 9.3, where a party is required by applicable law, the ASX Listing Rules, the NASDAQ Marketplace Rules or any other applicable stock exchange regulation to make any announcement or to make any disclosure in connection with this Agreement (including its termination) or the Transactions, it may do so only after it has given the other party as much notice as is reasonably practicable in the context of any deadlines imposed by law or applicable requirement, but in any event prior notice, and has consulted with the other party as to (and has given the other party a reasonable opportunity to comment on) the form and content of that announcement or disclosure and used its best endeavours to restrict that disclosure to the greatest extent possible. Nothing in this clause requires the giving of prior notice or the taking of any action if doing so would lead to a party breaching an applicable law, the ASX Listing Rules, NASDAQ Marketplace Rules or any other stock exchange regulation.

9.2 Agreement on other Communications

Except in relation to Communications regulated by clause 9.1 and to the extent permitted by applicable law:

- (a) Nabi and Biota must in good faith and on a timely and pragmatic basis consult with each other and agree in advance on all aspects (including the timing, form, content and manner) of:
- (i) any Communications with any Governmental Agency in relation to the implementation of the Transactions, whether or not such Communications are for the purposes of satisfying a Condition Precedent; and
 - (ii) any public announcement or disclosure in connection with this Agreement (including its termination) or the Transactions;
- (b) each of Nabi and Biota is entitled to be represented and to make submissions in any meeting with any Governmental Agency relating to any Regulatory Approval;
- (c) each of Nabi and Biota must ensure that any other Communications with third parties in relation to the Transactions (such as with employees or shareholders or with the media other than by way of public announcement or disclosure) must be in accordance with the communication protocols and messages agreed between the parties (and if branded with the name or logo of the other party, must be consented to by that party);
- (d) each party must provide copies to the other party of any written Communications sent to or received from a person referred to in clause 9.2(a) promptly upon despatch or receipt (as the case may be); and
- (e) each party will have the right to be present and make submissions at or in relation to any proposed meeting with any Governmental Agency in relation to the Transactions.

9.3 Disclosure on termination of this Agreement

The parties agree that, if this Agreement is terminated under clause 13, either party may disclose by way of announcement to ASX or NASDAQ the fact that this Agreement has been terminated, where such disclosure is in the reasonable opinion of that party required to ensure that the market in its securities is properly informed, and provided, where reasonably practicable, that party consults with the other party as to (and gives the other party a reasonable opportunity to comment on) the form and content of the announcement prior to its disclosure.

9.4 Confidentiality Agreement

Except as set out in clause 9.3, the parties acknowledge and agree that:

- (a) they continue to be bound by the Confidentiality Agreement after the date of this Agreement; and
- (b) the rights and obligations of the parties under the Confidentiality Agreement survive termination of this Agreement.

10 Representations and Warranties

10.1 Nabi representations and warranties

Nabi represents and warrants to Biota that, except as consented to in writing by Biota:

- (a) as at the date of this Agreement:
- (i) the total securities of Nabi on issue that are shares in Nabi or are convertible into shares in Nabi are as follows; and

Type	Quantity
Nabi Shares	
Issued and Outstanding	63,573,858
Treasury Stock	(20,696,277)
Total	42,877,581
Nabi Restricted Stock	
Total Outstanding	223,776
Stock Options	
Vested	3,145,331
Unvested	686,828
Total Outstanding	3,832,159

(ii) other than the stock options referred to in clause 10.1(a)(i) and rights issued pursuant to a Rights Agreement, no Nabi Group Member has issued (or is actually or contingently required to issue) any other securities or instruments that are still outstanding (or may become outstanding) and that may convert into Nabi securities;

(b) on the date of this Agreement and on the Second Court Date:

- (i) Nabi and each other Nabi Group Member is a corporation validly existing and in good standing under the laws of its place of incorporation and is duly qualified to do business and, except as fairly disclosed in the Nabi Disclosed Information, is in good standing in each jurisdiction in which the failure to be so qualified would be a Nabi Material Adverse Change;
- (ii) Nabi has the power to enter into and perform its obligations under this Agreement and to carry out the Transactions;
- (iii) Nabi has taken all necessary corporate action to authorise the entry into this Agreement and has taken or will take all necessary corporate action to authorise the performance of this Agreement;
- (iv) this Agreement has been duly and validly executed and delivered by Nabi and is Nabi's valid and binding obligation enforceable in accordance with its terms, subject to: (i) the effects of bankruptcy, insolvency, fraudulent conveyance, reorganisation, moratorium or other similar laws affecting creditors' rights generally; and (ii) general equitable principles (whether considered in a proceeding in equity or at law);
- (v) the execution and performance by Nabi of this Agreement and each Transaction did not and will not violate:
 - (A) a law or treaty or a judgment, ruling, order or decree binding on it or any of its Related Bodies Corporate;
 - (B) its certificate of incorporation or bylaws; or
 - (C) in any material respect any other material document or material agreement that is binding on it or its assets or any of its Related Bodies Corporate or their assets;
 except for any such violations in the case of clauses (A) and (C) that is not or would not reasonably be expected to have, individually or in the aggregate, a Nabi Material Adverse Change;
- (vi) Except as fairly disclosed in the Nabi Disclosed Information, each Nabi Group Member is solvent and no resolutions have been passed nor has any other step been taken or legal proceedings commenced or, to the knowledge of Nabi, threatened against any Nabi Group Member for the winding up, dissolution or termination of that Nabi Group Member or for the appointment of a liquidator, receiver, administrator, or similar officer over any or all of any Nabi Group Member's assets;
- (vii) Nabi is not aware of any material breach of law by any Nabi Group Member of any laws of the United States of America or laws of any other country applicable to it or orders of Governmental Agencies having jurisdiction over it;
- (viii) the Nabi Group has all material Regulatory Approvals necessary for it to conduct its activities as presently being conducted and is not in any material breach of any such Regulatory Approvals; and
- (ix) as at the date of this Agreement, neither the SEC nor NASDAQ (as applicable) has notified Nabi in writing of a determination against any Nabi Group Member for any contravention of the requirements of the 1933 Act, the 1934 Act or the NASDAQ Marketplace Rules or any rules or regulations under the 1933 Act, the 1934 Act or the NASDAQ Marketplace Rules;
- (x) Nabi has available for future grants under its 2007 Omnibus Equity and Incentive Plan (2007 Stock Plan), 2,316,428 Nabi Shares;
- (xi) Nabi has no outstanding shares of its preferred stock;
- (xii) Nabi has no Nabi Shares outstanding under any stockholder rights plan of Nabi;
- (xiii) as far as Nabi is aware each Nabi Material Contract is valid, binding and enforceable and:
 - (A) as far as Nabi is aware Nabi is not in material breach of, or liable to make material payment under any warranty or indemnity given in, any Nabi Material Contract;
 - (B) as far as Nabi is aware no other party is in material breach of, or liable to make payment under any warranty or indemnity given in, any Nabi Material Contract and no circumstance exists which is likely to give rise to a material breach by any party of, or a liability for payment by any party under any warranty or indemnity given in, any Nabi Material Contract; and

- (C) except as fairly disclosed in the Nabi Disclosed Information, no party to any Nabi Material Contract has given any notice terminating or purporting to or advising of an intention to terminate that Nabi Material Contract and as far as Nabi is aware no circumstance exists that may entitle any person to do so;
- (xiv) as far as Nabi is aware, the Nabi Group does not have any material liability or obligation of any nature (whether accrued, absolute, contingent or otherwise), except:
- (A) as reflected, reserved for or disclosed in the most recent Nabi Financials lodged with the SEC;
- (B) as incurred in the ordinary course of business consistent with past practice since December 31, 2011;
- (C) as a result of the execution of this Agreement; or
- (D) as has not had and would not reasonably be expected to have, individually or in the aggregate, a Nabi Material Adverse Change;
- (xv) all right, title and interest of any Nabi Group Member in each of the Nabi Properties is held free and clear of any material Encumbrance and none of the Nabi Properties is subject to any lease, licence, option, material caveat, material covenant, material easement, overriding interest, material restriction, material condition, or other material right in favour of any third party;
- (xvi) no Nabi Group Member is involved in any material dispute with any landlord, tenant, neighbour or other person or with any Governmental Agency in relation to the Nabi Properties and as far as Nabi is aware no circumstance exists that is likely to give rise to any dispute of this type;
- (xvii) no Nabi Group Member is a claimant or defendant in, or otherwise a party to, any material litigation, arbitration or mediation proceedings, there are no proceedings of this type pending or, to the knowledge of Nabi, threatened against Nabi and as far as Nabi is aware no circumstance exists that is likely to give rise to any proceedings of this type;
- (xviii) except as fairly disclosed in the Nabi Disclosed Information, as far as Nabi is aware, no Nabi Group Member is the subject of any investigation, inquiry, prosecution or enforcement proceedings by any Governmental Agency and, as far as Nabi is aware, there are no investigations, inquiries, prosecutions or proceedings of this type pending or threatened against Nabi and as far as Nabi is aware no circumstance exists that is likely to give rise to any investigation inquiry, prosecution or proceedings of this type;
- (xix) as far as Nabi is aware, no Nabi Group Member has any material liability by reason of any allegation that any products it has developed or supplied in the conduct of business failed to meet a specification or were otherwise defective or deficient or that Nabi was negligent in relation to the development or supply of those products;
- (xx) except as fairly disclosed in documents filed or furnished with the SEC or the Nabi Disclosed Information, since 31 December 2011:
- (A) there has been no material change in the financial condition, assets, liabilities, results of operations, profitability or prospects of the Nabi Group; and
- (B) the Nabi group has carried on business in the ordinary and usual course consistent with its usual business practices and has not made any significant change to the nature or scale of any activity;
- (xxi) Nabi has not entered into any transactions with a related party (as defined in section 228 of the Corporations Act) other than a Nabi Group Member that is a wholly owned subsidiary of Nabi;
- (xxii) no circumstance exists that might render any insurance policy currently held by any Nabi Group Member void or unenforceable or otherwise limit, prejudice or reduce recovery under the insurance policy;
- (xxiii) there is no claim outstanding under any policy of insurance held by or for the benefit of any Nabi Group Member and as far as Nabi is aware no circumstance exists that may give rise to a claim of this type;
- (xxiv) no Nabi Group Member has a relevant interest (as defined in s 608 of the Corporations Act) in any securities of Biota;
- (xxv) except as fairly disclosed in the Nabi Disclosed Information, no broker, investment banker, financial advisor or other person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the Transactions based upon arrangements made by or on behalf of Nabi;
- (c) on the date on which the Scheme Booklet (either in preliminary or definitive form) is filed with ASIC, the First Court Date and the Second Court Date:
- (i) the Nabi Provided Scheme Booklet Information has been prepared and provided in good faith and on the understanding that Biota and each of its Officers have relied on that information for the purposes of preparing the Scheme Booklet and proposing the Scheme, and that the Independent Expert and any accountant engaged for the purpose of preparing any Investigating Accountant's Report have relied on the information for the purposes of preparing the Independent Expert's Report and any Investigating Accountant's Report, respectively;
- (ii) the Nabi Provided Scheme Booklet Information complies in all material respects with the requirements referred to in clause 6.2(d);
- (iii) the Nabi Provided Scheme Booklet Information in the form and context in which it appears in the Scheme Booklet (as consented to by Nabi in accordance with clause 6.3(g)) does not contain, as at that date, any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading;
- (iv) all information provided by or on behalf of Nabi to the Independent Expert or any accountant engaged to prepare any Investigating Accountant's Report to enable the Independent Expert's Report and any Investigating Accountant's Report, respectively, to be prepared has been prepared and provided in good faith and on the understanding that the Independent Expert and any such accountant have relied on the information for the purposes of preparing the Independent Expert's Report and any Investigating Accountant's Report, respectively;
- (d) on the date of this Agreement, the First Court Date, the date of the Scheme Meeting and the Second Court Date:
- (i) following the making by Nabi of the Nabi Public Announcement, Nabi is not in material breach of its disclosure obligations under 1933 Act, the 1934 Act or the NASDAQ Marketplace Rules;
- (ii) the Nabi Disclosed Information has been disclosed fairly and in good faith;
- (iii) Nabi has filed or furnished all forms, reports and documents (together with any amendments required to be made with respect thereto) required to be filed or furnished by it prior to the date hereof with the SEC since January 1, 2009. All such required forms, reports and documents are referred to herein as the **Nabi SEC Reports**. As of their respective dates, or if amended, as of the date of the last such amendment, the Nabi SEC Reports (A) were prepared in all material respects in accordance with the requirements of the 1933 Act or the 1934 Act, as the case may be, and the rules and regulations of the SEC thereunder applicable to such Nabi SEC Reports and (B) did not at the time they were filed (or if amended as of the date of such amendment) contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. None of Nabi's Subsidiaries is required to file any form, reports or other documents with the SEC;
- (iv) each of the consolidated financial statements (including, in each case, any related notes thereto) of Nabi contained in the Nabi SEC

Reports (the *Nabi Financials*), including any Nabi SEC Reports filed after the date of this Agreement until the Implementation Date, (A) complies or will comply as to form in all material respects with the published rules and regulations of the SEC with respect thereto, (B) was or will be prepared in conformity with United States generally accepted accounting principles applied on a consistent basis throughout the periods involved (except as may be indicated in the notes thereto) and (C) fairly presented or will fairly present in all material respects the consolidated financial position of Nabi and its consolidated Subsidiaries as at the respective dates thereof and the consolidated results of their operations and their consolidated cash flows for the respective periods then ended, except that in the case of the unaudited interim financial statements were or will be subject to normal and recurring year-end adjustments and to any other adjustments described therein, including notes thereto);

- (v) Nabi Disclosed Information sets forth the terms pursuant to which all amounts may become payable (whether currently or in the future) to current or former officers, directors or employees of Nabi as a result of or in connection with the Transactions;
- (vi) Nabi is not a “shell company” as that term is defined in Rule 405 promulgated under the 1933 Act;
- (vii) notwithstanding anything to the contrary herein:
 - (A) Nabi and each of its Subsidiaries have timely filed all material Tax Returns required to be filed by it, or requests for extensions to file such Tax Returns have been timely filed or granted and have not expired, and all such Tax Returns are complete and accurate in all material respects;
 - (B) Nabi and each of its Subsidiaries have timely paid all Taxes shown as due on the Tax Returns referred to in clause 10.1(d)(vii)(A);
 - (C) Nabi and each of its Subsidiaries have withheld and timely paid to the applicable Tax authority or Governmental Agency all Taxes required to have been paid in connection with amounts paid or owing to any employee except with respect to matters contested in good faith and except such failures to withhold and timely pay as are not, individually or in the aggregate, reasonably likely to be a Nabi Material Adverse Change;
 - (D) neither Nabi nor any of its Subsidiaries have any material liability for any unpaid Taxes which has not been accrued for or reserved in the financial statements included in the most recent Nabi SEC Reports;
 - (E) no requests for waivers of the time to assess any Taxes against Nabi or any of its Subsidiaries have been granted or are pending;
 - (F) no audits or other proceedings by any Governmental Agency or Tax authority are presently pending or, to the knowledge of Nabi, threatened with regard to any Taxes or Tax Returns of Nabi or its Subsidiaries;
 - (G) Nabi has made available to Biota complete and accurate copies in all material respects of all material Tax Returns filed by or on behalf of Nabi or its Subsidiaries for all years for which the applicable statute of limitations has not expired, and any amendments thereto;
 - (H) there are no liens for Taxes upon the assets of Nabi or its Subsidiaries, other than liens for current Taxes not yet due and payable;
 - (I) neither Nabi nor any of its Subsidiaries is or has been a “United States Real Property Holding Corporation” within the meaning of section 897(c)(2) of the Code during the applicable period specified in section 897(c)(1)(A)(ii) of the Code;
 - (J) neither Nabi nor any of its Subsidiaries is required to include any adjustment in taxable income for any tax period (or portion thereof) pursuant to Section 481 or 263A of the Code or any comparable provision under state or foreign tax Laws as a result of transactions or events occurring prior to the Effective Date;
 - (K) neither Nabi nor any of its Subsidiaries is party to a contract or agreement relating to allocating or sharing of Taxes;
 - (L) neither Nabi nor any of its Subsidiaries has any material deferred or unearned income that will be reportable in a taxable period beginning after the Effective Date that is attributable to a transaction that occurred prior to the Effective Date, including but not limited to, any (x) instalment sale or open transaction disposition made on or prior to the Effective Date, or (y) prepaid amount received on or prior to the Effective Date;
 - (M) no material unresolved claim has ever been made by a Tax authority or Governmental Agency in a jurisdiction where Nabi or any of its Subsidiaries does not file Tax Returns that such entity is or may be subject to taxation by that jurisdiction. Except as fairly disclosed in Nabi Disclosed Information, Nabi does not have and has not had a permanent establishment in any foreign country, as defined in any applicable Tax treaty or convention between the United States and such foreign country;
 - (N) neither Nabi nor any of its Subsidiaries (i) has been a member of an “affiliated group” within the meaning of Code Section 1504(a) filing a consolidated federal income Tax Return (other than a group the common parent of which was Nabi) or (ii) has any liability for the Taxes of any person or entity (other than Nabi and its Subsidiaries) under U.S. Treasury Regulations Section 1.1502-6 (or any similar provision of state, local, or foreign law), as a transferee or successor, by contract, or otherwise;
 - (O) neither Nabi nor any of its Subsidiaries has distributed stock of another person or entity, or has had its stock distributed by another person or entity, in a transaction that was purported or intended to be governed in whole or in part by Code Sections 355 or 361; and
 - (P) no Nabi Tax Returns contain any position which is or would give rise to substantial understatement penalties under Section 6662 of the Code (or any corresponding provision of state, local or foreign Tax law).
- (viii) all material plans, contracts, policies or arrangements established or maintained by Nabi or any of its Subsidiaries to provide benefits or other compensation to current or former employees of Nabi and its Subsidiaries (the *Employees*) and current or former directors of Nabi, including “employee benefit plans” within the meaning of section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (*ERISA*), and deferred compensation, severance, stock option, stock purchase, stock appreciation rights, Nabi stock based, incentive and bonus plans (the *Nabi Benefit Plans*) other than Nabi Benefit Plans maintained outside of the United States (such plans hereinafter referred to as *Nabi Non-U.S. Benefit Plans*) are listed on the Nabi Disclosed Information. True and complete copies of all Nabi Benefit Plans listed on the Nabi Disclosed Information have been made available to Biota;
- (ix) all Nabi Benefit Plans, other than “multiemployer plans” within the meaning of section 3(37) of ERISA (each, a *Multiemployer Plan*) and Nabi Non-U.S. Benefit Plans (collectively, *Nabi U.S. Benefit Plans*) are in compliance with ERISA, the Code and other applicable laws, except such failures to comply as are not, individually or in the aggregate, reasonably likely to be a Nabi Material Adverse Change. Each Nabi U.S. Benefit Plan which is subject to ERISA (a *Nabi ERISA Plan*) that is an “employee pension benefit plan” within the meaning of section 3(2) of ERISA (a *Nabi Pension Plan*) intended to be qualified under section 401(a) of the Code, has received or is covered by a favourable determination, opinion or advisory letter from the U.S. Internal Revenue Service (the *IRS*), and no circumstances exist that are likely to result in the loss of the qualification of such Plan under section 401(a) of the Code, which could not be remedied in a manner that would not result in a Nabi Material Adverse Change. Neither Nabi nor any of its Subsidiaries has engaged in a transaction with respect to any ERISA Plan that could subject Nabi or any Subsidiary to a tax or penalty imposed by either section 4975 of the Code or section 502(i) of ERISA, except for such taxes or penalties as are not, individually or in the aggregate, reasonably likely to be a Nabi Material Adverse Change. Neither Nabi nor any of its Subsidiaries has incurred or reasonably expects to incur a tax or penalty imposed by section 4980F of the Code or section 502 of ERISA or any liability under section 4071 of ERISA,

- except for such taxes or penalties as are not, individually or in the aggregate, reasonably likely to be a Nabi Material Adverse Change;
- (x) no liability under Subtitle C or D of Title IV of ERISA has been or is expected to be incurred by Nabi or any of its Subsidiaries with respect to any ongoing, frozen or terminated “single-employer plan”, within the meaning of section 4001(a)(15) of ERISA, currently or formerly maintained by any of them, or the single-employer plan of any entity which is considered one employer with Nabi under section 4001(b)(1) of ERISA or section 414(b) or (c) of the Code (a *Nabi ERISA Affiliate*);
 - (xi) all contributions required to be made on or prior to the date of this Agreement under each Nabi Benefit Plan have been timely made or accrued and, to the extent required by applicable law, all obligations in respect of each Nabi Benefit Plan have been properly accrued and reflected in the most recent consolidated balance sheet filed or incorporated by reference in Nabi SEC Reports prior to the date of this Agreement;
 - (xii) there is no pending or, to the knowledge of Nabi threatened, litigation relating to Nabi Benefit Plans. Except as fairly disclosed in the Nabi Disclosed Information, neither Nabi nor any of its Subsidiaries has any obligations for retiree health and life benefits under any Nabi ERISA Plan or collective bargaining agreement, except for health continuation coverage as required by Section 4980B of the Code or Part 6 of Title I of ERISA;
 - (xiii) except as fairly disclosed in the Nabi Disclosed Information, neither Nabi nor any Nabi ERISA Affiliate maintains, contributes to, or has any liability or potential liability under (or with respect to) any Nabi Benefit Plan that is a (a) plan or arrangement which is subject to (i) the minimum funding requirements of Code Section 412, (ii) Part 3 of Title I of ERISA, or (iii) Title IV of ERISA, (b) “multiemployer plan” (as defined in Section 3(37) of ERISA), (c) multiple employer plan, including any multiple employer welfare arrangement (as defined in Section 3(40) of ERISA), (d) voluntary employees’ beneficiary association (within the meaning of Code Section 501(c)(9)) or (e) welfare benefit fund (within the meaning of Code Section 419), (f) nonqualified deferred compensation plan as described in Code Section 409A, or (g) self-funded group health plan;
 - (xiv) no Nabi Group Member is involved in any material industrial dispute or other material dispute with any trade or industrial union or an association, group of employees or individual employee and, as far as Nabi is aware, no dispute of this type has been threatened;
 - (xv) except as fairly disclosed in the Nabi Disclosed Information, there is no agreement, plan, arrangement or other contract covering any current or former employee or other service provider of Nabi or any of its Subsidiaries that, considered individually or considered collectively with any other such agreements, plans, arrangements or other contracts, will, or could reasonably be expected to, as a result of the transactions and agreements contemplated hereby, give rise directly or indirectly to the payment of any amount that could reasonably be expected to be non-deductible by operation of Section 162(m) of the Code (or any corresponding provision of state or local law) or characterised as an “excess parachute payment” within the meaning of Section 280G of the Code (or any corresponding provision of state or local law). Except as set forth in the Nabi Disclosed Information, there is no agreement, plan, arrangement or other contract which provides for the gross-up of any taxes imposed on an individual as a result of Section 4999 of the Code.
 - (xvi) all Nabi Non-U.S. Benefit Plans comply in all material respects with applicable laws except for such failures or omissions as are not, individually or in the aggregate, reasonably likely to be a Nabi Material Adverse Change. All Nabi Non-U.S. Benefit Plans are listed in the Nabi Disclosed Information. Nabi and its Subsidiaries have no material unfunded liabilities with respect to any such Nabi Non-U.S. Benefit Plan;
 - (xvii) each nonqualified deferred compensation plan subject to Section 409A of the Code to which Nabi is a party complies with the requirements of paragraphs (2), (3) and (4) of Section 409A(a) of the Code by its terms and has been operated in accordance with such requirements. After December 31, 2004, all options granted by Nabi after December 31, 2004 have been granted with an exercise price at least equal to the fair market value of Nabi’s common stock (as determined pursuant to the applicable provisions of Section 409A and 422 of the Code and the regulations promulgated thereunder) on the date such options were granted or re-priced, and Nabi has incurred or would not reasonably be expected to incur any liability or obligation to withhold taxes under Section 409A of the Code upon the vesting of any options. In addition, except as disclosed on Nabi Disclosed Information, there is no agreement, plan, arrangement or other contract which provides for the gross-up of any taxes imposed on an individual as a result of Section 409A(a)(1)(B)(i)(ii) of the Code; and
 - (xviii) assuming that the representations of Biota set forth in clause 10.2(e)(vii) are true and correct, the Nabi Board has taken all necessary actions such that the restrictions on business combinations set forth in Section 203 of the DGCL and any other similar applicable “anti-takeover” law and the antitakeover provisions in Nabi’s certificate of incorporation will not be applicable to this Agreement, the Merger, the Nabi Shares or the Transactions.

10.2 Biota representations and warranties

Biota represents and warrants to Nabi that, except as consented to in writing by Nabi:

- (a) as at the date of this Agreement:
 - (i) the total securities of Biota on issue that are shares in Biota or are convertible into shares in Biota are as follows:
 - (ii) 181,853,957 Biota Shares; and
 - (iii) 4,863,034 Biota Share Rights (comprising 4,336,675 Unvested Biota Share Rights and 496,359 Vested Biota Share Rights),
 and no Biota Group Member has issued (or is actually or contingently required to issue) any other securities or instruments that are still outstanding (or may become outstanding) and that may convert into Biota securities, other than as otherwise fairly disclosed in writing by Biota to Nabi prior to the date of this Agreement;
 - (iv) No Biota Group Member has entered into a buy-back agreement nor has the Biota Board approved any terms of a buy-back agreement under which Biota has any obligation to buy back any Biota Shares which has not been completed.
- (b) on the date of this Agreement and on the Second Court Date:
 - (i) Biota and each other Biota Group Member is a corporation validly existing and in good standing under the laws of its place of incorporation and is duly qualified to do business and is in good standing in each jurisdiction in which the failure to be so qualified would be a Biota Material Adverse Change;
 - (ii) Biota has the power to enter into and perform its obligations under this Agreement and to carry out the Transactions;
 - (iii) Biota has taken all necessary corporate action to authorise the entry into this Agreement and has taken or will take all necessary corporate action to authorise the performance of this Agreement;

- (iv) this Agreement has been duly and validly executed and delivered by Biota and is Biota's valid and binding obligation enforceable in accordance with its terms, subject to: (i) the effects of bankruptcy, insolvency, fraudulent conveyance, reorganisation, moratorium or other similar laws affecting creditors' rights generally; and (ii) general equitable principles (whether considered in a proceeding in equity or at law);
- (v) the execution and performance by Biota of this Agreement and each transaction contemplated by this Agreement did not and will not violate:
 - (A) a law or treaty or a judgment, ruling, order or decree binding on it or any of its Related Bodies Corporate;
 - (B) its constitution; or
 - (C) in any material respect any other material document or agreement that is binding on it or its assets, or any of its Related Bodies Corporate or their assets,
 except for any such violations in the case of clauses (A) and (C) that is not or would not reasonably be expected to be expected to have, individually or in the aggregate, a Biota Material Adverse Change.
- (vi) each Biota Group Member is solvent and no resolutions have been passed nor has any other step been taken or legal proceedings commenced or, to the knowledge of Biota, threatened against any Biota Group Member for the winding up, dissolution or termination of that Biota Group Member or for the appointment of a liquidator, receiver, administrator, or similar officer over any or all of any Biota Group Member's assets;
- (vii) Biota is not aware of any material breach of law by any Biota Group Member of any Australian or foreign laws applicable to it or orders of Governmental Agencies having jurisdiction over it;
- (viii) the Biota Group has all material Regulatory Approvals necessary for it to conduct its activities as presently being conducted and is not aware of any material breach of any such Regulatory Approval;
- (ix) neither ASIC nor ASX (as applicable) has made a determination against any Biota Group Member for any contravention of the requirements of the Corporations Act or the ASX Listing Rules or any rules, regulations or regulatory guides under the Corporations Act or the ASX Listing Rules;
- (x) so far as Biota is aware, there has not been any event, change, effect or development that would require Biota to restate Biota's financial statements as disclosed to ASX;
- (xi) no Biota Group Member is involved in any material industrial dispute or other material dispute with any trade or industrial union or an association, group of employees or individual employee and, as far as Biota is aware, no dispute of this type has been threatened;
- (xii) as far as Biota is aware each Biota Material Contract is valid, binding and enforceable and:
 - (A) as far as Biota is aware no Biota Group Member is in material breach of, or liable to make material payment under any warranty or indemnity given in, any Biota Material Contract;
 - (B) as far as Biota is aware no other party is in material breach of, or liable to make payment under any warranty or indemnity given in, any Biota Material Contract and no circumstance exists which is likely to give rise to a material breach by any party of, or a liability for payment by any party under any warranty or indemnity given in, any Biota Material Contract; and
 - (C) no party to any Biota Material Contract has given any notice terminating or purporting to or advising of an intention to terminate that Biota Material Contract and as far as Biota is aware no circumstance exists that may entitle any person to do so;
- (xiii) as far as Biota is aware, the Biota Group does not have any material liability or obligation of any nature (whether accrued, absolute, contingent or otherwise), except:
 - (A) as reflected, reserved for or disclosed in the most recent Biota Financials lodged with the ASX;
 - (B) as incurred in the ordinary course of business consistent with past practice since December 31, 2011;
 - (C) as a result of the execution of this Agreement; or
 - (D) as has not had and would not reasonably be expected to have, individually or in the aggregate, a Biota Material Adverse Change;
- (xiv) all right, title and interest of any Biota Group Member in each of the Biota Properties is held free and clear of any material Encumbrance and none of the Biota Properties is subject to any lease, licence, option, material caveat, material covenant, material easement, overriding interest, material restriction, material condition, or other material right in favour of any third party;
- (xv) no Biota Group Member is involved in any material dispute with any landlord, tenant, neighbour or other person or with any Governmental Agency in relation to the Biota Properties and as far as Biota is aware no circumstance exists that is likely to give rise to any dispute of this type;
- (xvi) no Biota Group Member is a claimant or defendant in, or otherwise a party to, any material litigation, arbitration or mediation proceedings, there are no proceedings of this type pending or to the knowledge of Biota threatened against Biota and as far as Biota is aware no circumstance exists that is likely to give rise to any proceedings of this type;
- (xvii) as far as Biota is aware, no Biota Group Member is the subject of any investigation, inquiry, prosecution or enforcement proceedings by any Governmental Agency and, as far as Biota is aware, there are no investigations, inquiries, prosecutions or proceedings of this type pending or threatened against Biota and as far as Biota is aware no circumstance exists that is likely to give rise to any investigation inquiry, prosecution or proceedings of this type;
- (xviii) as far as Biota is aware, no Biota Group Member has any liability by reason of any allegation that any products it has developed or supplied in the conduct of business failed to meet a specification or were otherwise defective or deficient or that Biota was negligent in relation to the development or supply of those products;
- (xix) except as fairly disclosed in documents lodged with the ASX, since 31 December 2011:
 - (A) there has been no material change in the financial condition, assets, liabilities, results of operations, profitability or prospects of the Biota Group; and
 - (B) the Biota Group has carried on business in the ordinary and usual course consistent with its usual business practices and has not made any significant change to the nature or scale of any activity;
- (xx) Biota has not entered into any transactions with a related party (as defined in section 228 of the Corporations Act) other than a Biota Group Member that is a wholly owned subsidiary of Biota;
- (xxi) no circumstance exists that might render any insurance policy currently held by any Biota Group Member void or unenforceable or otherwise limit, prejudice or reduce recovery under the insurance policy;
- (xxii) there is no claim outstanding under any policy of insurance held by or for the benefit of any Biota Group Member and as far as Biota is aware no circumstance exists that may give rise to a claim of this type;

- (xxiii) no Biota Group Member has a relevant interest (as defined in s 608 of the Corporations Act) in any securities of Nabi; and
- (xxiv) no broker, investment banker, financial advisor or other person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the Transactions based upon arrangements made by or on behalf of Biota;
- (c) on the Record Date there will be no outstanding Biota Share Rights;
- (d) on the Proxy Statement Filing Date, the Proxy Statement Mailing Date and the date of the Nabi Merger Approval Meeting:
 - (i) the Biota Provided Proxy Statement Information has been provided in good faith and on the understanding that Nabi and each of its Officers have relied on that information for the purposes of preparing the Nabi Proxy Statement and proposing the Nabi Merger Proposals;
 - (ii) the Biota Provided Proxy Statement Information complies in all material respects with the requirements referred to in clause 6.4(d);
 - (iii) the Biota Provided Proxy Statement Information in the form and context in which it appears in the Nabi Proxy Statement (as consented to by Biota in accordance with clause 6.4(g)) does not contain, as at that date, any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading; and
 - (iv) all information provided by or on behalf of Biota to Nabi's financial advisors engaged to provide a fairness opinion to the Nabi Board, which fairness opinion and a description thereof is included in the Nabi Proxy Statement, has been prepared and provided in good faith and on the understanding that such financial advisors have relied on the information for the purposes of preparing the fairness opinion and a description thereof included in the Nabi Proxy Statement;
- (e) on the date of this Agreement, the First Court Date, the date of the Scheme Meeting and the Second Court Date:
 - (i) following the making by Biota of the Biota Public Announcement, Biota is not in breach of its continuous disclosure obligations under ASX Listing Rule 3.1 and is not withholding any information from Nabi that is being withheld from public disclosure in reliance on ASX Listing Rule 3.1A;
 - (ii) the Biota Disclosed Information has been disclosed fairly and in good faith;
 - (iii) each of the consolidated financial statements (including, in each case, any related notes thereto) which Biota has lodged with ASIC and announced to ASX, (the **Biota Financials**), including any financial statements lodged with ASIC after the date of this Agreement until the Implementation Date, (A) complies with the Corporations Act, the Accounting Standards and all other applicable laws and regulations and (B) gives a true and fair view of the financial position of Biota and its Subsidiaries at the respective dates thereof and the income, expenses and operational results of Biota and its Subsidiaries for the periods indicated;
 - (iv) complete and accurate details of the following have been disclosed to Nabi in the Biota Disclosed Information or, in the case of any material changes to those details after the date of this Agreement and before the Second Court Date, by notice to Nabi no later than five Business Days before the Second Court Date:
 - (A) the material terms of employment of or offered to each key employee of the Biota Group including all remuneration and other benefits payable during or upon termination of that employment or engagement; and
 - (B) any material arrangement under which any key employee or former key employee of the Biota Group has received in the 12 months before the date of this agreement or may be entitled to receive any bonus or other payment or benefit (whether contractual or discretionary) that is calculated by reference to the performance of the Biota Group, the performance of the key employee or former key employee and any combination of these,
 and no Biota Group Member has made any material commitment, offer or proposal that if implemented or accepted would result in any of those details being inaccurate in any material respect.
 - (v) Each Biota Group Member has:
 - (A) paid all amounts due to each employee and former employee other than in respect of remuneration accrued for the current salary payment period and current expense claims;
 - (B) otherwise complied in all material respects with all of its obligations in relation to the employment of its employees including all obligations arising under any Transitional Instrument, Modern Award or Enterprise Agreement and all obligations in relation to occupational health and safety and workers' compensation; and
 - (C) made appropriate provision in its accounting records as at the Last Balance Date for all annual leave and long service leave entitlements then due to all employees.
 - (vi) Biota is not a "shell company" as that term is defined in Rule 405 promulgated under the 1933 Act;
 - (vii) Neither Biota nor any Biota Group Member (a) beneficially owns, directly or indirectly, any Nabi Shares or other securities convertible into, exchangeable into or exercisable for Nabi Shares, or (b) is a party to any voting trusts or other agreements or understandings with respect to the voting of the capital stock or other equity interests of Nabi or any of its Subsidiaries. Neither Biota nor any of its "Affiliates" or "Associates" is, and at no time during the last three (3) years has been, an "Interested Stockholder" of Nabi, in each case as defined in Section 203 of Delaware Law.
 - (viii) notwithstanding anything to the contrary herein:
 - (A) Biota and each of its Subsidiaries have timely filed all material Tax Returns required to be filed by it, or requests for extensions to file such Tax Returns have been timely filed or granted and have not expired, and all such Tax Returns are complete and accurate in all material respects;
 - (B) Biota and each of its Subsidiaries have timely paid all Taxes shown as due on the Tax Returns referred to in clause 10.1(d)(vii)(A) except with respect to matters contested in good faith;
 - (C) Biota and each of its Subsidiaries have withheld and timely paid to the applicable Tax authority or Governmental Agency all Taxes required to have been paid in connection with amounts paid or owing to any employee except with respect to matters contested in good faith and except such failures to withhold and timely pay as are not, individually or in the aggregate, reasonably likely to be a Biota Material Adverse Change;
 - (D) neither Biota nor any of its Subsidiaries have any material liability for any unpaid Taxes as of the date of the most recent Biota Financials which has not been accrued for or reserved in the financial statements included in such Biota Financials;
 - (E) no requests for waivers of the time to assess any Taxes against Biota or any of its Subsidiaries have been granted or are pending;
 - (F) no audits or other proceedings by any Governmental Agency or Tax authority are presently pending or, to the knowledge of Biota, threatened with regard to any Taxes or Tax Returns of Biota or its Subsidiaries;
 - (G) Biota has made available to Nabi complete and accurate copies in all material respects of all material Tax Returns filed by or on behalf of Biota or its Subsidiaries for all years for which the applicable statute of limitations has not expired, and any amendments thereto;

- (H) Biota has accurately maintained a franking account in accordance with the Tax Act at all relevant times and:
- (1) complete and accurate details of the balance of Biota's franking account and any existing or pending franking debits have been provided to Nabi;
 - (2) Biota franked all dividends in accordance with the benchmark franking rule; and
 - (3) Biota will not have a franking deficit at the date of this Agreement;
- (I) Biota and each of its Subsidiaries has not:
- (1) paid or credited an amount, transferred any property, made any distribution or loan or forgiven any debt which may be deemed to give rise to a dividend under the Tax Act; or
 - (2) streamed any distribution or non-share dividends for the purposes of Division 204 of the Tax Act;
- (J) there are no liens for Taxes upon the assets of Biota or its Subsidiaries, other than liens for current Taxes not yet due and payable;
- (K) neither Biota nor any of its Subsidiaries is party to a contract or agreement with any person other than a Biota Group Member relating to allocating or sharing of Taxes;
- (L) neither Biota nor any of its Subsidiaries has any material deferred or unearned income that will be reportable in a taxable period beginning after the Effective Date that is attributable to a transaction that occurred prior to the Effective Date, including but not limited to, any: (x) instalment sale or open transaction disposition made on or prior to the Effective Date; or (y) prepaid amount received on or prior to the Effective Date;
- (M) no claim has ever been made by a Tax authority or Governmental Agency in a jurisdiction where Biota or any of its Subsidiaries does not file Tax Returns that such entity is or may be subject to taxation by that jurisdiction;
- (N) neither Biota nor any of its Subsidiaries has any liability for the Taxes of any person or entity (other than Biota and its Subsidiaries) as a transferee or successor, by contract, or otherwise;
- (O) Biota and each of its Subsidiaries has not paid or credited remuneration or an allowance, gratuity or compensation on retirement to an associated person in excess of a reasonable amount allowable as a deduction in computing the taxable income of Biota or the relevant subsidiary as a result of which deductions claimed or claimable by Biota or the relevant subsidiary may be denied;
- (P) no amount has been waived, released, extinguished, forgiven or otherwise abandoned by any person in respect of debts owed by Biota or its Subsidiaries to any other person which would give rise to a net forgiven amount;
- (Q) Biota and its Subsidiaries has not sought capital gains tax roll-over relief under the Tax Act with respect to any asset which it has acquired and owns at the date of this Agreement;
- (R) to the best of Biota's knowledge and awareness, Biota and its Subsidiaries have not participated in any transaction that could be affected by the exercise of discretionary powers of any Governmental Agency or Tax authority including transactions relating to trading stock, plant and equipment, securities or assets subject to the capital gains tax provisions of the Tax Act and schemes to which any general anti-avoidance provisions might apply;
- (S) other than the Transactions, no fact, matter or circumstances exist which has prevented or might prevent Biota or any of its Subsidiaries from obtaining any future income tax benefit provided for in the most recent Biota Financials. In the absence of the Transactions, all tax losses and capital losses recorded in any tax working papers made available to Nabi would be available to Biota and its Subsidiaries to use to reduce assessable income or capital gains at the date of this Agreement if the current tax year for Biota or the relevant subsidiary had sufficient income or capital gains for that tax year;
- (T) Biota and each of its Subsidiaries that is required to be registered for GST is so registered. In the event that Biota or any of its Subsidiaries is or has been a member of a GST group, the relevant entity is or was eligible to be a member of that GST group for the relevant periods, and no entity has or will have any liability or be required to pay any amount in respect of any GST group of which it was a member prior to the date of this Agreement;
- (ix) no employee of the Biota Group accrues benefits which are, or will be, determined by reference to a formula based on the employee's length of service and/or superannuation salary under any Fund and no promise, assurance or representation has been made to any employee of Biota that their accumulation benefits under any Fund will at any point in the future equate (approximately or exactly) to or not be less than any particular amount however calculated; and
- (x) each Biota Group Member:
- (A) has made due all contributions to each Fund that the Biota Group Member is obliged to make or has voluntarily committed to make;
 - (B) has not increased the amount of the contributions to any Fund that the Biota Group Member is obliged to make or has voluntarily committed to make; and
 - (C) has made all superannuation contributions required to avoid any liability for a superannuation guarantee charge under the Superannuation Guarantee Charge Act 1992 (Cth).

10.3 Reliance by parties

Each party (**Representor**) acknowledges that:

- (a) in entering into this Agreement the other party has relied on the representations and warranties provided by the Representor under this clause 10;
- (b) any breach of the representations and warranties provided by the Representor under this clause 10 after the Scheme becomes Effective cannot result in a termination of this Agreement;
- (c) it has not entered into this Agreement in reliance on any warranty or representation made by or on behalf of the other party except those warranties and representations set out in this Agreement. This acknowledgment does not prejudice the rights any party may have in relation to the Biota Provided Scheme Booklet Information, the Biota Provided Proxy Statement Information, the Biota Disclosed Information, the Nabi Provided Scheme Booklet Information, the Nabi Provided Proxy Statement Information, the Nabi Disclosed Information or any information filed by the other party with ASX or ASIC; and
- (d) neither Biota nor Nabi, nor their Representatives, nor any other person acting on behalf of or associated with them, has made any representation, given any advice or given any warranty or undertaking, promise or forecast of any kind in relation to the business of either the Biota Group or the Nabi Group, including in relation to future matters, including future or forecast costs, prices, revenues or profits.

10.4 Notifications

Each party will promptly advise the other party in writing if it becomes aware of any fact, matter or circumstance that constitutes or may constitute a breach of any of the representations or warranties given by it under this clause 10.

10.5 Status of representations and warranties

Each representation and warranty in this clause 10:

- (a) is severable;
- (b) will survive the termination of this Agreement; and
- (c) is given with the intent that liability under it will not be confined to breaches that are discovered prior to the date of termination of this Agreement.

10.6 Disclosures

Each of the warranties provided by each party is subject to matters fairly and accurately disclosed in the Biota Disclosed Information or the Nabi Disclosed Information (as the case may be).

11 Exclusivity

11.1 Termination of existing discussions

- (a) Each party represents and warrants that, as at the time of execution of this Agreement, it is not in any negotiations or discussions, and has ceased any existing negotiations or discussions, in respect of any Competing Proposal with any person (other than, for the avoidance of doubt, the discussions with the other party and its Representatives in respect of the Transactions).
- (b) Each party agrees that if it has provided any confidential information on or after the date of this Agreement to a Third Party pursuant to a confidentiality agreement and in connection with such Third Party's consideration of a possible Competing Proposal, it has requested or will promptly request in writing the immediate return or destruction by the Third Party of such confidential information.

11.2 No shop restriction

During the Exclusivity Period:

- (a) Biota and its Subsidiaries must not, and must use best endeavours to ensure that each of their Representatives do not, except with the prior written consent of Nabi, directly or indirectly solicit, invite, encourage or initiate any Competing Proposal or any enquiries, negotiations or discussions with any Third Party in relation to, or that may reasonably be expected to lead to, a Competing Proposal, or communicate any intention to do any of those things; and
- (b) Nabi and its Subsidiaries must not, and must use best endeavours to ensure that each of their Representatives do not, except with the prior written consent of Biota, directly or indirectly solicit, invite, encourage or initiate any Competing Proposal or any enquiries, negotiations or discussions with any Third Party in relation to, or that may reasonably be expected to lead to, a Competing Proposal, or communicate any intention to do any of those things.

11.3 No talk restriction

Subject to clause 11.6, during the Exclusivity Period:

- (a) Biota and its Subsidiaries must not, and must use best endeavours to ensure that each of their Representatives do not, except with the prior written consent of Nabi, enter into, continue or participate in negotiations or discussions with, or enter into any agreement, arrangement or understanding with, any Third Party in relation to, or that may reasonably be expected to lead to, a Competing Proposal, even if:
 - (i) the Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by Biota, its Subsidiaries or any of its or their Representatives; or
 - (ii) the Competing Proposal has been publicly announced; and
- (b) Nabi and its Subsidiaries must not, and must use best endeavours to ensure that each of their Representatives do not, except with the prior written consent of Biota, enter into, continue or participate in negotiations or discussions with, or enter into any agreement, arrangement or understanding with, any Third Party in relation to, or that may reasonably be expected to lead to, a Competing Proposal, even if:
 - (i) the Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by Nabi, its Subsidiaries or any of their Representatives; or
 - (ii) the Competing Proposal has been publicly announced.

11.4 No due diligence

Without limiting the general nature of clause 11.3, but subject to clause 11.6, during the Exclusivity Period:

- (a) Biota and its Subsidiaries must not, and must use best endeavours to ensure that each of their Representatives do not except with the prior written consent of Nabi, make available to any Third Party or permit any Third Party to receive any non-public information relating to any Biota Group Member in connection with such Third Party formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal; and
- (b) Nabi and its Subsidiaries must not, and must use best endeavours to ensure that each of their Representatives do not, except with the prior written consent of Biota, make available to any Third Party or permit any Third Party to receive any non-public information relating to any Nabi Group Member in connection with such Third Party formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal.

11.5 Notification of approach

Subject to clause 11.6, during the Exclusivity Period, each party must promptly (but in any event within two Business Days) notify the other party if:

- (a) it is approached by any Third Party to take any action of a kind that would breach its obligations under clause 11.2, 11.3 or 11.4 (or that would breach its obligations under clause 11.2, 11.3 or 11.4 if it were not for clause 11.6; provided that the party providing notice must:
 - (i) provide the other party with information in all material respects of oral and written communication with the Third Party, and a description of the material terms and conditions of any Competing Proposal; and
 - (ii) promptly (but in any event within two (2) Business Days) provide all information as is reasonably necessary to keep the other party informed in all material respects of all oral or written communications with the Third Party regarding, and the status and material details of, any Competing Proposal as set forth in clause 11.6.

11.6 Exceptions

- (a) The obligations in clause 11.3(a), clause 11.4(a) and clause 11.5(a) do not apply to the extent that they restrict Biota, the Biota Board or any of its Representatives from taking any action in respect of a bona fide written Competing Proposal for Biota which was not encouraged, solicited, invited, facilitated or initiated by Biota in contravention of clause 11.2, or to the extent that they require Biota to provide the notification referred to in clause 11.5, provided that:
- (i) the Biota Board, acting in good faith, after consulting with its outside legal counsel and financial advisers, and in order to satisfy what the Biota Board considers to be its fiduciary or statutory duties, determines that the Competing Proposal is, or may reasonably be expected to lead to, a Superior Proposal; or
 - (ii) the Biota Board, acting in good faith, after consulting with its outside legal counsel and financial advisers, determines that not undertaking that act would, or would be likely to, involve a breach of the fiduciary or statutory duties owed by any Biota Director,
- and a prior written notice is sent promptly (and in any event within two Business Days prior to taking any action) from Biota to Nabi of its intention to take such proposed actions and the reasons therefor, that it is relying on the carve out in this clause 11.6(a) and a summary of material terms and conditions of such Competing Proposal. Biota must ask the person who has made the applicable Competing Proposal (the **Competing Party**) for their consent to their name and other identifying details which may identify the Competing Party (**Identifying Details**) being provided by Biota to Nabi on a confidential basis. If consent is refused, Biota may only withhold the Identifying Details from Nabi if the Biota Board, acting in good faith and after having taken advice from its legal advisers, determines that failing to do so would be likely to involve a breach of the fiduciary or statutory duties owed by any Biota director. If information is withheld pursuant to this clause 11.6(a), Biota must immediately notify Nabi. Any information provided pursuant to this clause 11.6(a) will be provided subject to the terms of the Confidentiality Agreement.
- (b) The obligations in clause 11.3(b), clause 11.4(b) and clause 11.5 do not apply to the extent that they restrict Nabi, the Nabi Board or any of its Representatives from taking any action in respect of a bona fide Competing Proposal for Nabi which was not encouraged, solicited, invited, facilitated or initiated by Nabi in contravention of clause 11.2, or to the extent that they require Nabi to provide the notification referred to in clause 11.5, provided that:
- (i) the Nabi Board, acting in good faith, after consulting with its outside legal counsel and financial advisers, and in order to satisfy what the Nabi Board considers to be its fiduciary or statutory duties, determines that, the Competing Proposal is, or may reasonably be expected to lead to, a Superior Proposal; or
 - (ii) the Nabi Board, acting in good faith, after consulting with its outside legal counsel and financial advisers, determines that not undertaking that act would, or would be likely to, involve a breach of the fiduciary or statutory duties owed by any Nabi Director,
- and a prior written notice is sent promptly (and in any event within two Business Days prior to taking any action) from Nabi to Biota of its intention to take such proposed actions and the reasons therefor, that it is relying on the carve out in this clause 11.6(a) and a summary of material terms and conditions of such Competing Proposal. Nabi must ask the Competing Party for their consent to their name and the Identifying Details being provided by Nabi to Biota on a confidential basis. If consent is refused, Nabi may only withhold the Identifying Details from Biota if the Nabi Board, acting in good faith and after having taken advice from its legal advisers, determines that failing to do so would be likely to involve a breach of the fiduciary or statutory duties owed by any Nabi director. If information is withheld pursuant to this clause 11.6(a), Nabi must immediately notify Biota. Any information provided pursuant to this clause 11.6(a) will be provided subject to the terms of the Confidentiality Agreement.
- (c) If clauses 11.6(a) or 11.6(b) override the restrictions in clauses 11.4(a) or 11.4(b) (as applicable), the relevant party must not provide any confidential information to a Third Party, before the Third Party has entered into a written agreement in favour of the relevant party regarding the use and disclosure of the confidential information by the Third Party and that restricts the Third Party's ability to solicit the employees of that party and its Related Bodies Corporate (**Third Party Confidentiality Agreement**).
- (d) During the period of two clear Business Days referred to in clause 11.6(a) (in the event of a Competing Proposal for Biota) or clause 11.6(b) (in the event of a Competing Proposal for Nabi), the party that has not received the Competing Proposal will have the right to offer to amend the terms of the Scheme (a **Counterproposal**) so that the terms of the Scheme (as amended) would provide an equivalent or superior outcome for the shareholders than the applicable Competing Proposal.
- (e) The party that has received the Competing Proposal must procure its Board to consider any such Counterproposal and, if the Board determines, acting in good faith and after having taken advice from its legal and financial advisers:
- (i) the Counterproposal is capable of being completed, taking into account all aspects of the Counterproposal, including its conditions; and
 - (ii) would, if completed substantially in accordance with its terms, be more favourable to the Biota Shareholders than the Competing Proposal viewed in aggregate, taking into account a qualitative assessment of the identity, reputation and financial standing of the party making the Competing Proposal,
- then Biota and Nabi must use their best endeavours to agree the amendments to the Transaction Documents that are reasonably necessary to reflect the Counterproposal (including any amendments to the Scheme Consideration that are reasonably necessary to reflect the Counterproposal), and to enter into one or more appropriate amended agreements to give effect to those amendments and to implement the Counterproposal, in each case as soon as reasonably practicable, and the party that received the Counterproposal must use its best endeavours to procure that its Board continues to recommend the Counterproposal to its shareholders and not the applicable Competing Proposal.
- (f) Any material modification to any Competing Proposal (which will include any material modification relating to the price or value of any Competing Proposal) will be taken to make that proposal a new Competing Proposal in respect of which the parties must comply with their obligations under this clause 11.6.

11.7 Normal provision of information

Nothing in this clause 11 prevents a party from:

- (a) providing information to its Representatives;
- (b) providing information to any Governmental Agency;
- (c) providing information to its auditors, Advisers, customers, joint venturers and suppliers acting in that capacity in the ordinary course of business;
- (d) providing information required to be provided by law or any Governmental Agency; or
- (e) making presentations to brokers, portfolio investors, analysts and other third parties in the ordinary course of business.

12 Break Fees**12.1 Payment of costs**

- (a) Biota and Nabi believe that the Transactions will provide benefits to Biota, Nabi and their respective shareholders, and acknowledge that if they enter into this Agreement and the Merger is subsequently not implemented, both parties will incur significant costs.
- (b) In the circumstances referred to in clause 12.1(a):
 - (i) both parties requested that provision be made for the payments referred to in clauses 12.2 and 12.3, without which neither party would have entered into this Agreement; and
 - (ii) the Biota Board and the Nabi Board believe that it is appropriate for both parties to agree to the payments referred to in clauses 12.2 and 12.3 in order to secure each other's participation.
- (c) Biota and Nabi acknowledge that the Biota Break Fee and the Nabi Break Fee represent a reasonable amount to compensate the other for the following:
 - (i) all advisory costs (including costs of Advisers other than success fees);
 - (ii) costs of management and directors' time;
 - (iii) all out of pocket expenses; and
 - (iv) all commitment fees and other financing costs (whether associated with debt or equity finance);
- (d) The parties agree that clauses 12.2 and 12.3 do not limit the rights of Biota or Nabi in respect of any other claims that they may have against each other, whether under this Agreement or otherwise.

12.2 Biota Break Fee

- (a) Subject to clauses 12.2(b), 12.2(c) and 12.4(a), Biota must pay Nabi the Biota Break Fee in accordance with clause 12.5(a), without withholding or set off, if:
 - (i) the Biota Board fails to state that they consider the Scheme to be in the best interests of Biota Shareholders or fails to recommend that Biota Shareholders approve the Scheme, or publicly changes (including by attaching qualifications to) or withdraws that statement or recommendation, other than where the Independent Expert has concluded in the Independent Expert's Report that the Scheme is not in the best interests of Biota Shareholders (including any update to its report);
 - (ii) a Competing Proposal for Biota is announced or made and is publicly recommended, promoted or otherwise endorsed by the Biota Board or by a majority of the Biota Directors;
 - (iii) a Competing Proposal for Biota is announced or made prior to the End Date and is completed at any time prior to the first anniversary of the date of this Agreement and, as a result, a Third Party acquires control of Biota or the Biota Group within the meaning of section 50AA of the Corporations Act (or acquires an equivalent shareholding or economic interest in Biota pursuant to the implementation of a dual-listed company structure or reverse takeover);
 - (iv) Nabi terminates this Agreement in accordance with clause 13.1(b); or
 - (v) a Biota Material Adverse Change or a Biota Regulated Event occurs between the date of this Agreement and 8am on the Second Court Date and Nabi terminates this Agreement in accordance with its terms prior to the Implementation Date.
- (b) Despite any other term of this Agreement, the Biota Break Fee is only payable once.
- (c) Despite any other term of this Agreement, the Biota Break Fee will not be payable to Nabi if:
 - (i) the Scheme becomes Effective notwithstanding the occurrence of any event in clause 12.2(a); or
 - (ii) Biota is entitled to terminate this Agreement under clause 13.1(b), or if a Nabi Material Adverse Change Event or a Nabi Regulated Event occurs.
- (d) For the avoidance of doubt, the Biota Break Fee will not be payable merely by reason that the Scheme is not approved by Biota Shareholders at the Scheme Meeting.

12.3 Nabi Break Fee

- (a) Subject to clauses 12.3(b), 12.3(c) and 12.4(b), Nabi must pay Biota the Nabi Break Fee in accordance with clause 12.5(b), without withholding or set-off, if:
 - (i) the Nabi Board fails to state that they consider the Merger to be in the best interests of Nabi Stockholders or fails to recommend the approval of the Nabi Merger Proposals, or publicly changes (including by attaching qualifications to) or withdraws that statement or recommendation;
 - (ii) a Competing Proposal for Nabi is announced or made and is publicly recommended, promoted or otherwise endorsed by the Nabi Board or by a majority of the Nabi Directors;
 - (iii) a Competing Proposal for Nabi is announced or made prior to the End Date and is completed at any time prior to the first anniversary of the date of this Agreement and, as a result, a Third Party acquires control of Nabi or the Nabi Group within the meaning of section 405 of the 1933 Act;
 - (iv) Biota terminates this Agreement in accordance with clause 13.1(b);
 - (v) a Nabi Material Adverse Change or a Nabi Regulated Event occurs between the date of this Agreement and 8am on the Second Court Date and Biota terminates this Agreement in accordance with its terms prior to the Implementation Date; or
 - (vi) the Scheme is not completed on or before the date which is eight Business Days after the End Date due to Nabi failing to comply with its obligations under clause 6.2(o).
- (b) Despite any other term of this Agreement, the Nabi Break Fee is only payable once.
- (c) Despite any other term of this Agreement, the Nabi Break Fee will not be payable to Biota if:
 - (i) the Scheme becomes Effective notwithstanding the occurrence of any event in clause 12.3(a); or
 - (ii) Nabi is entitled to terminate this Agreement under clause 13.1(b), or if a Biota Material Adverse Change or Biota Regulated Event occurs.
- (d) For the avoidance of doubt, the Nabi Break Fee will not be payable merely by reason that the Nabi Merger Proposals are not approved by Nabi Stockholders at the Nabi Merger Approval Meeting.

12.4 Compliance with law

- (a) If a court or the Takeovers Panel determines that any part of the Biota Break Fee:
- (i) constitutes or would, if performed, constitute:
 - (A) a breach of the fiduciary or statutory duties of the Biota Board; or
 - (B) unacceptable circumstances within the meaning of the Corporations Act; or
 - (ii) is unenforceable or would, if paid, be unlawful for any reason,
- then Biota will not be obliged to pay such part of the Biota Break Fee and, if such fee has already been paid, then Nabi must within five Business Days after receiving written demand from Biota refund that part of the Biota Break Fee to Biota.
- (b) If a court determines that any part of the Nabi Break Fee:
- (i) constitutes or would, if performed, constitute:
 - (A) a breach of the fiduciary or statutory duties of the Nabi Board; or
 - (B) unacceptable circumstances within the meaning of the Corporations Act; or
 - (ii) is unenforceable or would, if paid, be unlawful for any reason,
- then Nabi will not be obliged to pay such part of the Nabi Break Fee and, if such fee has already been paid, then Biota must within five Business Days after receiving written demand from Nabi refund that part of the Nabi Break Fee to Nabi.

12.5 Time for payment

- (a) Biota must pay Nabi the Biota Break Fee, if it is payable pursuant to clause 12.2(a), within five Business Days after receiving a written notice from Nabi setting out the relevant circumstances and requiring payment of the Biota Break Fee.
- (b) Nabi must pay Biota the Nabi Break Fee, if it is payable pursuant to clause 12.3(a), within five Business Days after receiving a written notice from Biota setting out the relevant circumstances and requiring payment of the Nabi Break Fee.
- (c) A written notice requiring payment of the Biota Break Fee or the Nabi Break Fee, as applicable, may only be made after the Scheme fails to become Effective by the End Date or this Agreement is terminated in accordance with its terms.

13 Termination**13.1 Termination by either party**

Either party (*terminating party*) may terminate this Agreement by notice to the other:

- (a) in accordance with clause 3.5;
- (b) at any time before 8am on the Second Court Date if the other party is in material breach of any clause of this Agreement (including a material breach of a representation or warranty given by the other party under clause 10), provided that the terminating party has given notice to the other party setting out the relevant circumstances and stating an intention to terminate this Agreement, and the relevant circumstances have continued to exist for 15 Business Days (or any shorter period ending at 5pm on the last Business Day before the Second Court Date) from the time such notice is given;
- (c) if mutually agreed upon by the other party; or
- (d) if the Scheme has not become Effective on or before the End Date.

13.2 Termination by Nabi

Nabi may terminate this Agreement at any time before 8am on the Second Court Date by notice in writing to Biota if the Biota Board publicly changes (including by attaching qualifications to) or withdraws its statement that it considers the Scheme to be in the best interests of Biota Shareholders or its recommendation that Biota Shareholders approve the Scheme, in either case in accordance with clause 8.1(b), or publicly recommends, promotes or otherwise endorses a Superior Proposal.

13.3 Termination by Biota

Biota may terminate this Agreement:

- (a) at any time before 8am on the Second Court Date by notice in writing to Nabi if the Nabi Board publicly changes (including by attaching qualifications to) or withdraws its statement that it considers the Merger to be in the best interests of Nabi Stockholders or its recommendation that Nabi Stockholders approve the Nabi Merger Resolutions, in either case in accordance with clause 8.2(a), or publicly recommends, promotes or otherwise endorses a Superior Proposal; or
- (b) if Nabi does not comply with its obligations under clause 6.2(o).

13.4 Effect of termination

In the event of termination of this Agreement, by either Nabi or Biota pursuant to clause 13.1, 13.2 or 13.3 this Agreement will have no further force or effect and the parties will have no further obligations under this Agreement, provided that:

- (a) this clause 13 and clauses 1, 9.3, 9.4, 12, 14 and 15 will survive termination; and
- (b) each party will retain any accrued rights and remedies, including any rights and remedies it has or may have against the other party in respect of any past breach of this Agreement.

14 GST

14.1 Recovery of GST

If GST is payable, or notionally payable, on a supply made under or in connection with this Agreement, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable, or notionally payable, on that supply (the **GST Amount**). Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time that the other consideration for the supply is provided. This clause does not apply to the extent that the consideration for the supply is expressly stated to be GST inclusive or the supply is subject to reverse charge.

14.2 Liability net of GST

Where any reimbursement or similar payment under this Agreement is based on any cost, expense or other liability, it must be reduced by any input tax credit entitlement, or notional input tax credit entitlement, in relation to the relevant cost, expense or other liability.

14.3 Adjustment events

If an adjustment event occurs in relation to a supply made under or in connection with this Agreement, the GST Amount will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties.

14.4 Cost exclusive of GST

Any reference in this Agreement to a cost, expense or other similar amount (**Cost**) is a reference to that Cost exclusive of GST.

14.5 Survival

This clause will continue to apply after expiration or termination of this Agreement.

14.6 Definitions

Unless the context requires otherwise, words and phrases used in this clause that have a specific meaning in the GST law (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) will have the same meaning in this clause.

15 Miscellaneous

15.1 Notices

Any notice, demand, consent or other communication (a **Notice**) given or made under this Agreement:

- (a) must be in writing and signed by the sender or a person duly authorised by the sender;
- (b) must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand or fax to the address or fax number below or the address or fax number last notified by the intended recipient to the sender:

(i) Biota:

To:

Address: Unit 10, 585 Blackburn road, Notting Hill, 3168, Victoria, Australia
Attention: Company Secretary
Fax No: +61 3 9915 3702

Copy to:

Allens Arthur Robinson
Address: 530 Collins Street, Melbourne, 3000, Victoria, Australia
Attention: Craig Henderson
Fax No: +61 3 9614 4661

Copy to:

DLA Piper LLP (US)
Address: 4365 Executive Drive, Suite 1100, San Diego, 92121-2133, California, the United States of America
Attention: Michael Kagnoff
Fax No: +1 858 638 5122

(ii) Nabi: **To:**
 Address: 12270 Wilkins Avenue, Rockville, Maryland, 20852, the United States of America
 Attention: Raafat E. F. Fahim
 Fax No: +1 301 770 3097

Copy to:
 Clayton Utz
 Address: 1 Bligh Street, Sydney, New South Wales, Australia
 Attention: Karen Evans-Cullen
 Fax No: +61 2 8220 6700

Copy to:
 Hogan Lovells US LLP
 Address: Columbia Square, 555 Thirteenth Street, NW, Washington, District of Columbia, 20004, United States of America
 Attention: Joseph E. Gilligan
 Fax No: +1 202 637 5910

(c) will be conclusively taken to be duly given or made:

- (i) in the case of delivery in person, when delivered;
- (ii) in the case of delivery by post, two Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
- (iii) in the case of fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax number or name of recipient and indicating that the transmission has been made without error, but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent or is later than 4pm (local time) it will be conclusively taken to have been duly given or made at the start of business on the next Business Day in that place.

15.2 No waiver

A failure to exercise or a delay in exercising any right, power or remedy under this Agreement does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing. For the avoidance of doubt, the doctrine of affirmation by election will not apply to any failure by a party to exercise, or delay by a party in exercising, any right, power or remedy under this Agreement.

15.3 Remedies cumulative

The rights, powers and remedies provided to each party in this Agreement are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or by any agreement.

15.4 Entire agreement

This Agreement and the Confidentiality Agreement contain the entire agreement between the parties with respect to their subject matter. They set out the only conduct, representations, warranties, covenants, conditions, agreements or understandings (collectively **Conduct**) relied on by the parties and supersede all earlier Conduct by or between the parties in connection with their subject matter. Neither party has relied on or is relying on any other Conduct in entering into this Agreement and completing the Transactions. If there is any inconsistency between the provisions of this Agreement and the provisions of the Confidentiality Agreement, the provisions of this Agreement will prevail to the extent of any inconsistency and the provisions of the Confidentiality Agreement will be construed accordingly.

15.5 Amendment

This Agreement may be amended only by another agreement executed by all the parties.

15.6 Assignment

Neither party can assign, charge, encumber or otherwise deal with any of its rights or obligations under this Agreement, or attempt or purport to do so, without the prior written consent of the other party.

15.7 No merger

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this Agreement. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

15.8 Further assurances

Each party must use its best endeavours (including executing agreements and documents) to give full effect to this Agreement and the Transactions.

15.9 Costs and duty

(a) Subject to clause 12, each party must bear its own costs arising out of the negotiation, preparation and execution of this Agreement. All duty (including stamp duty and any fines, penalties and interest) payable on or in connection with this Agreement and any instrument executed under or any transaction evidenced by this Agreement must be borne by the party incurring such duty.

Biota shall reimburse Nabi for its costs in connection with one issuer tender offer, comprising a Permitted Nabi Stockholder Cash Transaction (which costs will include not only the costs arising out of the issuer tender offer but also the additional operational costs incurred by Nabi due to the extension of the Implementation Date resulting from Nabi conducting such issuer tender offer) in the amount that is the lesser of:

- (i) US \$400,000; and
- (ii) 50% of Nabi's costs.

15.10 Severability of provisions

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

15.11 Governing law and jurisdiction

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

15.12 Counterparts

This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

Schedule 1

Regulatory Approvals

Filings required under the United States Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, unless and exemption is available thereunder.

Schedule 2

Merged Group Board and Senior Management

Part A: Board Composition

- Dr James Fox (Chairman)
- Mr Peter Cook
- Mr Paul Bell
- Prof Jeffery Errington
- Prof Ian Gust
- Mr Richard Hill
- Dr Raafat E. F. Fahim*
- Dr Geoffrey F. Cox*

*Prior to the Implementation Date, if Nabi becomes aware that this director designee is unable or unwilling to serve as a director, then the Nabi Board (existing prior to the Implementation Date) shall have the sole right to replace this director designee with a new director designee, with the prior written consent of Biota (not to be unreasonably withheld).

Part B: Senior Management from Implementation Date

- Chief Executive Officer Mr Peter Cook
- Chief Financial Officer Mr Damian Lismore

Schedule 3

Form of Nabi Closing Net Cash Balance Certificate

	US \$
Cash as at the date of this certificate:	[*]
<u>Less</u> any outstanding Nabi Cash Balance Offsets as at the date of this certificate, as set out and quantified in the attachment to this certificate (which attachment must take the form agreed to by the parties prior to the date of the Agreement)	[*]
<u>Less</u> any anticipated remaining distributions through Permissible Nabi Stockholder Cash Transactions	[*]
Nabi Closing Net Cash Balance	[*]

Signed by:

[Insert name and signature of Chief Executive Officer and Chief Financial Officer of Nabi]
 [Insert date and place]

[Insert name and signature of Chief Accounting Officer and Controller of Nabi]
 [Insert date and place]

Schedule 4

Knowledge

Part A

- Mr Peter Cook – Chief Executive Officer, Managing Director and Executive Director.
- Mr Damian Lismore – Chief Financial Officer and Company Secretary.
- Mr Leigh Farrell – Vice President, Business Development.
- Mr Simon Tucker – Vice President, Research.
- Ms Jane Ryan – Vice President, Product Development and Strategic Marketing.
- Mr John Lambert – Vice President, Product Development Operations.

Part B

- Dr Raafat E. F. Fahim – President, Chief Executive Officer and Chief Financial Officer.
- Mr Paul Kessler – Senior Vice President, Clinical, Medical and Regulatory Affairs.
- Mr Matthew Kalnik – Strategic Planning and Business Operations.
- Mr Ronald Kocak – Chief Accounting Officer and Controller.
- Steve Fuller – Vice President, Development and Quality.
- Darlene Flaim – Director of Legal Operations.

Executed as set out below.

Executed in accordance with section 127 of the *Corporations Act 2001* by **Biota Holdings Limited**:

/s/ Peter Cook
Director Signature
Peter Cook
Print Name

/s/ Damian Lismore
Director/Secretary Signature
Damian Lismore
Print Name

Executed by Nabi Biopharmaceuticals

By: /s/ Raafat Fahim
Name: **Raafat Fahim**
Title: President and CEO

Annexure A

Nabi Public Announcement



Investor Relations
301-770-3099 | www.nabi.com

NEWS RELEASE

Nabi Biopharmaceuticals Announces Definitive Merger Agreement With Biota Holdings Limited

ROCKVILLE, Maryland, April 23, 2012 – Nabi Biopharmaceuticals (NASDAQ:NABI) today announced plans to merge with Biota Holdings Limited (ASX:BTA), a Melbourne, Australia company. The execution of the merger implementation agreement will form a combined company to be named Biota Pharmaceuticals, Inc. Biota Pharmaceuticals will be listed on NASDAQ and headquartered in the United States. The merger will provide to Nabi's shareholders the opportunity to participate in the potential growth of the combined company, return of significant cash, as well as a contingent value right providing payment rights arising from future sale, transfer, license or similar transactions involving NicVAX. Biota's move to the United States is designed to achieve better value recognition and liquidity through a stronger U.S. biotechnology shareholder base.

Following the closing of the merger, Biota Pharmaceuticals, Inc. will have three royalty generating products, Relenza, Inavir and potentially PhosLyra; two clinical programs, vapendavir (a phase III-ready human rhinovirus program), as well as a US\$231 million contract with BARDA for the advanced development, in the US, of laninamivir (a long acting anti-influenza neuraminidase inhibitor). In addition, the combined company will have an interest in NicVAX and several pre-clinical programs, including respiratory syncytial virus (RSV), hepatitis C (HCV-NN), broad spectrum antibiotic targeting gyrase (GYR), as well as over US\$100 million in cash with which to develop its program pipeline.

"This merger is an exciting opportunity for Nabi's shareholders," said Dr. Raafat Fahim, President and CEO of Nabi. "It will trigger the distribution of significant cash to current Nabi shareholders, as well as enable their participation in the growth opportunity of the combined company, which includes royalty generating products and a rich pipeline. In addition, it preserves for Nabi's current shareholders the possibility of realizing potential future value from NicVAX."

Biota Chairman, Jim Fox, commented, "A NASDAQ listing provides Biota with access to the largest healthcare capital market in the world and will enable us to transform our business model to one which can deliver significantly higher value than the royalty-only model we have historically pursued. We believe this is a necessary step to increase our options for the development and commercialization of our product portfolio, ultimately generating significantly greater value recognition of our product portfolio for our shareholders."

The merger and related matters will require approval of the Biota and Nabi shareholders.

Certain key elements of the merger implementation agreement are:

- Nabi will acquire all of the outstanding ordinary shares in Biota in exchange for newly issued shares of Nabi common stock.
- After the merger, Nabi will be renamed, "Biota Pharmaceuticals, Inc." and remain a NASDAQ listed company, while Biota will be de-listed from the ASX.
- Nabi's assets at the closing of the merger will include US\$54 million in cash, a right to receive royalties from a marketed product (PhosLyra) and an interest in NicVAX vaccines.
- Nabi plans to return to its stockholders its remaining cash in excess of the US\$54 million required to be held by Nabi at closing after satisfying outstanding liabilities. Such distribution is expected to take the form of a dividend, return of capital and/or a repurchase of outstanding shares of Nabi common stock through an issuer tender offer, or a combination. Nabi's board of directors has not made a determination at this time regarding the form or timing of such distribution but expects to make these determinations prior to the public distribution to the Nabi shareholders of its proxy statement for the Nabi shareholders meeting at which certain matters related to the merger will be considered.
- Nabi's Board also intends to distribute contingent value right providing payment rights arising from future sale, transfer, license or similar transactions involving NicVAX.
- Immediately following the closing of the merger, the shares of Nabi common stock issued to former Biota shareholders will represent approximately 74% of the outstanding common stock of the combined company and shares of Nabi common stock held by current Nabi shareholders will represent approximately 26% of the outstanding common stock of the combined company.
- Immediately following the closing of the merger, the board of directors of the combined company will consist of six current Biota Directors and two current Nabi Directors. Also, Biota's current CEO and CFO will serve as the CEO and CFO, respectively, of the combined company and additional US-based executives will be appointed.

In conjunction with the merger, Nabi plans to seek shareholder approval of:

- (1) certain amendments to its certificate of incorporation to increase the authorized number of shares of common stock to 200,000,000 principally to allow for the issuance of new shares in the merger and to change the name of the company to "Biota Pharmaceuticals, Inc.";
- (2) the issuance of new shares of Nabi common stock to the Biota shareholders in connection with the merger as required by NASDAQ; and
- (3) a reverse stock split for ratios ranging from four-to-one to eight-to-one, although a final decision has not been made on whether to implement the reverse split or the exact split ratio (collectively, the "shareholder proposals").

The Board of Directors of both Nabi and Biota consider the merger and the related transactions to be advisable and fair to, and in the best interests of, their respective shareholders. Nabi's Board of Directors unanimously recommends that Nabi's shareholders approve the shareholder proposals at the shareholders meeting at which such matters will be considered.

Nabi expects to close the merger in the third quarter of 2012 after receipt of approval by both Nabi's and Biota's shareholders and satisfaction of customary closing conditions and regulatory approvals, including Australian courts.

Piper Jaffray & Co. and Houlihan Lokey are acting as financial advisers, Hogan Lovells US LLP is acting as US legal adviser and Clayton Utz is acting as Australia legal advisor to Nabi in the transaction.

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Merger Announcement Conference Call and Webcast Information

The Company will host a live webcast at 8:30 am EST on Monday, April 23, 2012 to discuss the merger.

The webcast can be accessed at:

<http://phoenix.corporate-ir.net/phoenix.zhtml?p=ir-eventDetails&c=100445&eventID=4762826>.

(Due to the length of this URL, it may be necessary to copy and paste this hyperlink into your browser. Remove the space if one exists.) or via the Nabi Biopharmaceuticals website at <http://www.nabi.com>.

If you do not have Internet access, the U.S./Canada call-in number is 866-770-7120 and the international call-in number is 617-213-8065. The passcode is 12700822. An audio replay will be available for U.S./Canada callers at 888-286-8010 and for international callers at 617-801-6888. The replay passcode is 94859261. An audio replay of this call will be available through April 30, 2012.

The press release and an archived version of the webcast will be available on the company's website at <http://www.nabi.com>.

About Nabi Biopharmaceuticals

Nabi Biopharmaceuticals leverages its experience and knowledge in powering the immune system to develop products that target serious medical conditions in the areas of nicotine addiction. Nabi Biopharmaceuticals is currently developing NicVAX® (Nicotine Conjugate Vaccine), an innovative and proprietary investigational vaccine for treatment of nicotine addiction and prevention of smoking relapse. The company is headquartered in Rockville, Maryland. For additional information about Nabi Biopharmaceuticals, please visit www.nabi.com.

About Biota

Biota is a leading anti-infective drug development company based in Melbourne Australia, with key expertise in respiratory diseases, particularly influenza. Biota developed the first-in-class neuraminidase inhibitor, zanamivir, subsequently marketed by GlaxoSmithKline as Relenza. Biota research breakthroughs include a series of candidate drugs aimed at treatment of respiratory syncytial virus (RSV) disease and Hepatitis C (HCV) virus infections. Biota has clinical trials underway with its lead compound for human rhinovirus (HRV) infection in patients with compromised respiration or immune systems.

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

Relenza™ is a registered trademark of the GlaxoSmithKline group of companies.

Inavir® is registered to Daiichi Sankyo.

Further information at www.biota.com.au

Additional Information About the Merger and Where to Find It

This communication is being made in respect of the proposed merger involving Nabi and Biota and the shareholder proposals described above. In connection with the proposed transactions, Nabi will file with the Securities and Exchange Commission ("SEC") a proxy statement and will mail or otherwise disseminate the proxy statement and a form of proxy to its shareholders when it becomes available. **SHAREHOLDERS AND INVESTORS ARE ENCOURAGED TO READ THE PROXY STATEMENT (AND OTHER RELEVANT MATERIALS) REGARDING THE PROPOSED TRANSACTIONS CAREFULLY AND IN ITS ENTIRETY WHEN IT BECOMES AVAILABLE, AND BEFORE MAKING ANY VOTING DECISION, AS IT WILL CONTAIN IMPORTANT INFORMATION ABOUT THE TRANSACTIONS.** Shareholders and investors will be able to obtain a free copy of the proxy statement (when available), as well as other filings made by Nabi regarding Nabi Biopharmaceuticals, Biota Holdings Limited and the proposed transactions, without charge, at the SEC website (<http://www.sec.gov>). In addition, documents filed with the SEC by Nabi will be available free of charge on the investor relations portion of the Nabi website at www.nabi.com.

Participants in the Merger Solicitation

Nabi and certain of its directors and executive officers may be deemed to be participants in the solicitation of proxies from its shareholders in connection with the merger and the shareholder proposals described above. The names of Nabi's directors and executive officers and a description of their interests in Nabi are set forth in Nabi's Annual Report on Form 10-K for the fiscal year ended December 31, 2011, which was filed with the SEC on March 14, 2012 and Nabi's Proxy Statement dated April 20, 2011 which was filed with the SEC on the same date. Additional information about the interests of potential participants will be contained in the proxy statement (when filed) and other relevant materials to be filed with the SEC in connection with the proposed transactions. These documents may be obtained from the SEC website and from Nabi in the manner noted above.

Forward-Looking Statements

Statements in this release that are not strictly historical are forward-looking statements and include statements about the merger and related transactions, Nabi's plans to distribute cash or other rights to its shareholders, expected timing and completion of the proposed transactions, products in development, results and analyses of clinical trials and studies, research and development expenses, cash expenditures, licensure applications and approvals, and alliances and partnerships, among other matters. You can identify these forward-looking statements because they involve our expectations, intentions, beliefs, plans, projections, anticipations, or other characterizations of future events or circumstances. These forward-looking statements are not guarantees of future performance and are subject to risks and uncertainties that may cause actual results to differ materially from those in the forward-looking statements as a result of any number of factors. These factors include, but are not limited to, risks relating to our ability to obtain the approval of the shareholder proposals by Nabi's shareholders; our ability to satisfy the conditions to the merger and related transactions on the terms and expected timeframe or at all; the outcome of any legal proceedings that may be instituted related to the merger agreement; transaction costs; our ability to conduct and obtain successful results from the remaining NicVAX study; GSK's failure to successfully develop and commercialize any future generation candidate nicotine vaccine; our ability to collect any further milestones and royalty payments under the PhosLo agreement; the ability to obtain regulatory approval for NicVAX and any future generation candidate nicotine vaccine in the U.S. or other markets; our ability to comply with reporting and payment obligations under government rebate and pricing programs; and loss of full use of our net operating loss carry forwards. Some of these factors are more fully discussed, as are other factors, in our Annual Report on Form 10-K for the fiscal year ended December 31, 2011 filed with the SEC. We do not undertake to update any of these forward-looking statements or to announce the results of any revisions to these forward-looking statements except as required by law.

Annexure B

Biota Public Announcement



Biota Holdings Limited
ACN 006 479 081
10/585 Blackburn Road
Notting Hill VIC 3168
Australia
T +61 3 9915 3700
F +61 3 9915 3702
E info@biota.com.au
W www.biota.com.au

For Immediate Release

Melbourne, Australia and Rockville, Maryland, US — 23 April 2012

Biota and Nabi Announce Proposed Merger

Biota Holdings Limited (ASX:BTA) and Nabi Biopharmaceuticals (NASDAQ:NABI) today announced the signing of a Merger Implementation Agreement to form a combined company Biota Pharmaceuticals, listed on NASDAQ and headquartered in the USA.

The Biota move to the US is designed to achieve better value recognition and liquidity through a stronger US shareholder base. Following the merger, Biota Pharmaceuticals will have three royalty generating products, Relenza, Inavir and potentially PhosLyra; a US\$231 million contract with BARDA for the advanced development of laninamivir; a portfolio of clinical and pre-clinical programs comprising vapendavir (HRV), and programs for respiratory syncytial virus (RSV), hepatitis C (HCV-NN), broad spectrum antibiotic targeting gyrase (GYR); an interest in NicVAX and over US\$100 million in cash.

The merger will require approval from both Biota and Nabi shareholders and Independent Reports confirming that the merger will be in the best interest of the shareholders and is subject to a number of other conditions set out in the Merger Implementation Agreement (a copy of which is attached to this announcement).

Key elements of the Agreement are:

- Nabi will acquire all of the shares in BTA for new shares in the name of Biota Pharmaceuticals, a NASDAQ listed company. BTA will be de-listed from the ASX;
- Nabi's assets at merger will include US\$54 million in cash, a right to receive royalties from a marketed product (PhosLyra) and an interest in NicVAX;
- After the completion of the merger, current Biota shareholders will own approximately 74% of Biota Pharmaceuticals and Nabi shareholders will own approximately 26% of Biota Pharmaceuticals;
- Nabi plans to return to its existing shareholders cash in excess of the US\$54 million required to be held by Nabi at closing, after satisfying certain obligations;
- Nabi intends to distribute contingent value rights providing payout rights from future sale, transfer, license or similar transactions involving NicVAX; and
- The Board will consist of six ex Biota Directors including the Chairman and two ex Nabi Directors. Biota's current CEO and CFO will continue in their roles.

Biota Chairman, Jim Fox, commented, "A NASDAQ listing provides Biota with access to the largest healthcare capital market in the world and will enable us to transform our business model to one which can deliver significantly higher value than the royalty-only model we have historically pursued. We believe this is a necessary step to increase our options for the development and commercialisation of our product portfolio and will ultimately improve the recognition of the underlying value of our product portfolio for our shareholders".

Both Boards consider the merger proposal as being in the best interests of their respective shareholders in the absence of a superior proposal.

The move underpins the established and successful scientific operations in Melbourne (Australia) and Oxford (United Kingdom) with secure funding and the benefits of a broader shareholder base.

Other points of note:

- The Companies would expect the transaction to close by 30 September after satisfaction of customary closing conditions and regulatory approvals;
- The Australian aspects of the transaction will be completed through a Scheme of Arrangement; and
- It is intended that after an effective transition, the Board will adopt a greater US focus and that the CEO and CFO positions will relocate to the US.

Page 1 of 3

biota

Biota Holdings and Nabi shareholders are not required to take any action now. Further information will be provided to all shareholders in documentation to be provided within the course of the next few weeks.

For further Information in relation to the Merger

Webcast:

To listen to the webcast of the teleconference live, use www.biota.com.au and follow the link:

- Melbourne, Australia: Monday 23 April at 3.00pm.

Biota Chairman, Jim Fox, and Biota CFO, Damian Lismore, will host an information session for Australian audiences at AEST 3pm on Monday 23 April 2012.

The Company's Website:

www.biota.com.au

- ASX Release
- Merger Implementation Agreement
- Company presentation
- Indicative timeline
- Webcast details
- Shareholder briefing details

Company Email enquiries:

merger@biota.com.au

For shareholding and share trading information:

Link Market Services Limited Merger Hotline

T: 1300 306 230 (within Australia)

T: +61 2 8280 7169 (outside Australia)

About Biota

Biota is a leading anti-infective drug development company based in Melbourne Australia, with key expertise in respiratory diseases, particularly influenza. Biota developed the first-in-class neuraminidase inhibitor, zanamivir, subsequently marketed by GlaxoSmithKline as Relenza. Biota research breakthroughs include a series of candidate drugs aimed at treatment of respiratory syncytial virus (RSV) disease and Hepatitis C (HCV) virus infections. Biota has clinical trials underway with its lead compound for human rhinovirus (HRV) infection in patients with compromised respiration or immune systems.

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

Relenza[™] is a registered trademark of the GlaxoSmithKline group of companies.

Inavir[®] is registered to Daiichi Sankyo.

Further information at www.biota.com.au

About Nabi Biopharmaceuticals

Nabi Biopharmaceuticals leverages its experience and knowledge in powering the immune system to develop products that target serious medical conditions in the areas of nicotine addiction and gram-positive bacterial infections. Nabi Biopharmaceuticals sole remaining product currently in development is NicVAX[®] (Nicotine Conjugate Vaccine), an innovative and proprietary investigational vaccine for treatment of nicotine addiction and prevention of smoking relapse. The company is headquartered in Rockville, Maryland. Further information at www.nabi.com

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biota

Additional information

This communication does not constitute an offer to sell or the solicitation of an offer to buy any securities or a solicitation of any vote or approval, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction. No offer of securities shall be made except in accordance with the Securities Act of 1933, as amended.

In connection with the proposed transaction, Nabi will file a proxy statement with the US Securities and Exchange Commission ("SEC"). Nabi will mail the proxy statement to its stockholders. BEFORE MAKING ANY VOTING DECISION, NABI SECURITY HOLDERS ARE URGED TO READ THE PROXY STATEMENT (INCLUDING ANY AMENDMENTS OR SUPPLEMENTS THERETO) AND ALL OTHER RELEVANT DOCUMENTS FILED OR THAT WILL BE FILED WITH THE SEC IN CONNECTION WITH THE PROPOSED TRANSACTION AS THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT THE PROPOSED TRANSACTION.

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

Between	Biota Holdings Limited ACN 006 479 081 of Unit 10, 585 Blackburn Road, Notting Hill, Victoria 3168, Australia (Biota).
And	The holders of fully paid ordinary shares in the capital of Biota.
Recitals	
A	Biota is a public company limited by shares incorporated in Victoria, Australia, and has been admitted to the official list of ASX.
B	Nabi is a public company limited by shares and incorporated in Delaware, the United States of America, and is listed on NASDAQ.
C	Biota and Nabi have entered into a merger implementation agreement, pursuant to which Biota and Nabi propose to undertake a merger by means of Nabi acquiring all Biota's issued shares pursuant to a scheme of arrangement in consideration for Nabi issuing shares of common stock in Nabi to Biota shareholders.
D	If the scheme of arrangement becomes effective, then: <ul style="list-style-type: none"> (a) all shares in Biota will be transferred to Nabi and shares of common stock in Nabi will be issued to eligible Biota shareholders, or to a nominee in respect of ineligible Biota shareholders, in accordance with the terms of the scheme of arrangement; and (b) Biota will enter the name and address of Nabi in the Biota register of members as the holder of all shares in Biota.
E	Nabi has entered into a deed poll for the purpose of covenanting in favour of Biota shareholders that it will observe and perform the obligations contemplated of it under the scheme of arrangement.

1. Definitions and Interpretation

1.1 Definitions

In this document, unless the context requires otherwise:

AST means the American Stock Transfer & Trust Company.

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

ASX Listing Rules means the official listing rules of ASX.

Biota Group means Biota and its Related Bodies Corporate.

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

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

Biota Share Registry means Link Market Services.

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

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

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

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

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

Corporations Act means the Corporations Act 2001 (Cth).

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

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

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

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

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

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

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

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

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

Implementation Agreement means the Merger Implementation Agreement dated 22 April 2012 between Nabi and Biota, as amended on or around 31 July 2012.

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

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

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

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

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

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

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

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

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

Nabi Share Registry means American Stock Transfer & Trust Company.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.2 Interpretation

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

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

2. Conditions to implementation of the Scheme

2.1 Conditions precedent to the Scheme

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

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

2.2 Nabi Closing Net Cash Balance Certificate

If Nabi does not deliver to Biota on the Implementation Date the Nabi Closing Net Cash Balance Certificate that shows the Nabi Closing Net Cash Balance as no less than US \$54 million, Biota may, by written notice to Nabi, terminate the Scheme with immediate effect.

2.3 Termination of Implementation Agreement

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

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

3. Scheme Becoming Effective

3.1 Effective Date of the Scheme

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

3.2 End Date

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

4. Implementation of Scheme

4.1 Scheme Consideration

On the Implementation Date:

- (a) Nabi must deliver to Biota a Nabi Closing Net Cash Balance Certificate that shows the Nabi Closing Net Cash Balance as no less than US \$54 million; and
- (b) on satisfaction of paragraph (a), Nabi must provide the Scheme Consideration in the manner contemplated by clauses 4.3, 5 and 6, and Nabi must provide Biota with written confirmation of that having occurred.

4.2 Transfer of Scheme Shares

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

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

4.3 Provision of Scheme Consideration

On the Implementation Date, in consideration for, and prior to, the transfer to Nabi of the Scheme Shares, subject to Nabi delivering to Biota on the Implementation Date the Nabi Closing Net Cash Balance Certificate that shows the Nabi Closing Net Cash Balance as no less than US \$54 million:

- (a) Nabi will provide to each Eligible Scheme Shareholder the total number of New Nabi Shares to which that Eligible Scheme Shareholder is entitled under clause 5 as Scheme Consideration, in accordance with clause 6; and
- (b) Nabi will issue to the Nominee in accordance with clause 5.5(a) the total number of New Nabi Shares to which Ineligible Foreign Biota Shareholders and Electing Shareholders would otherwise have been entitled under clause 5 as Scheme Consideration (if they were Eligible Scheme Shareholders).

5. Scheme Consideration

5.1 Entitlement to Scheme Consideration

Subject to clauses 5.2, 5.3, 5.4 and 5.5, the Scheme Consideration in respect of the Scheme Shares for which a Scheme Shareholder is registered in the Biota Register as the holder as at the Record Date comprises, 0.448722952 New Nabi Shares for each Scheme Share held by them; provided, however, that if Nabi completes a reverse stock split prior to the Implementation Date, then the number of New Nabi Shares for each Scheme Share shall be a number determined in accordance with the following formula:

$$0.448722952 \times \frac{N_N - N_{SC}}{N_N}$$

Where:

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

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

5.2 Fractional entitlements

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

5.3 Shareholding splitting or division

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

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

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

5.4 Shareholders with Small Parcels of Scheme Shares

- (a) A Scheme Shareholder that holds 2,000 Scheme Shares or less may, in accordance with clause 5.4(b), make an election that the New Nabi Shares that such Scheme Shareholder would otherwise receive under the Scheme instead be issued to the Nominee in accordance with clause 5.5.
- (b) Any election by a Scheme Shareholder under clause 5.4(a) must be made by the Scheme Shareholder completing, in accordance with the instructions on it, the election form (which will be made available by Biota for the purposes of this clause 5.4) (the **Election Form**) and returning or submitting the completed Election Form to the address or via the method set out in the Election Form so that it is received by no later than the Election Date.
- (c) Any Election will apply to all the Scheme Shares of the Electing Shareholder as at the Record Date.
- (d) Once validly made, an Election by a Scheme Shareholder may be withdrawn before the Election Date by lodging or submitting a withdrawal form in accordance with the instructions on the Election Form.
- (e) Any purported Election not made in accordance with this clause 5.4 will not be valid and will not be recognised by Biota or Nabi.

5.5 Ineligible Foreign Biota Shareholders and Electing Shareholders

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

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

5.6 Ranking of New Nabi Shares

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

6. Provision of Scheme Consideration

6.1 Provision of Scheme Consideration

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

6.2 Joint holders

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

6.3 Binding instruction or notifications

Except for a Scheme Shareholder's tax file number, any binding instruction or notification between a Scheme Shareholder and Biota relating to Scheme Shares as at the Record Date (including, without limitation, any instructions relating to payment of dividends or to communications from Biota) will, from the Record Date, be deemed (except to the extent determined otherwise by Nabi in its sole discretion) to be a similarly binding instruction or notification to, and accepted by, Nabi in respect of the New Nabi Shares issued to the Scheme Shareholder pursuant to the Scheme, until that instruction or notification is revoked or amended in writing addressed to Nabi through the Nabi Share Registry, provided that any such instructions or notifications accepted by Nabi will apply to and in respect of the issue of New Nabi Shares as part of the Scheme Consideration only to the extent that they are not inconsistent with the other provisions of the Scheme.

7. Dealings in Biota Shares

7.1 Dealings in Biota Shares by Scheme Shareholders

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

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

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

7.2 Biota Register

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

7.3 Effect of share certificates and holding statements

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

7.4 Information to be given to Nabi

Biota must procure that, as soon as practicable after the Record Date, and in any event within two Business Day after the Record Date, details of the names, Registered Addresses and holdings of Biota Shares of every Scheme Shareholder as shown in the Biota Register as at the Record Date and details of all Electing Shareholders are given to Nabi (or as it directs) in such form as Nabi may reasonably require.

7.5 No disposals after Record Date

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

8. Suspension and Termination of Quotation of Biota Shares

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

9. General Provisions

9.1 Further assurances

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

9.2 Scheme Shareholders' agreements and consents

Each Scheme Shareholder:

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

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

9.3 Appointment of Biota as attorney for implementation of Scheme

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

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

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

9.4 Warranty by Scheme Shareholders

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

9.5 Title to Scheme Shares

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

9.6 Appointment of Nabi as attorney for Scheme Shares

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

9.7 Alterations and conditions to Scheme

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

9.8 Binding effect of Scheme

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

9.9 Enforcement of Nabi Deed Poll

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

9.10 Notices

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

9.11 Costs and duty

- (a) Subject to clause 9.11(b), each of Nabi and Biota will pay their share of the costs of the Scheme in accordance with the Implementation Agreement.
- (b) Nabi will pay all duty (including stamp duty and any related fines, penalties and interest) payable on or in connection with the transfer by Scheme Shareholders of the Scheme Shares to Nabi pursuant to the Scheme.

9.12 Governing law and jurisdiction

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

Deed Poll

Nabi Biopharmaceuticals

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www.allens.com.au

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Date	6 August 2012
By	Nabi Biopharmaceuticals of 12270 Wilkins Avenue, Rockville, Maryland 20852 (Nabi).
In favour of	Each Scheme Shareholder
Recitals	
A	Nabi and Biota Holdings Limited ACN 006 479 081 of Unit 10, 585 Blackburn Road, Notting Hill, Victoria 3168, Australia (Biota) have entered into a merger implementation agreement dated 22 April 2012, as amended on or around 31 July 2012 (the Implementation Agreement).
B	Pursuant to the Implementation Agreement, Biota and Nabi propose to undertake a merger by means of Nabi acquiring all of Biota's issued shares pursuant to a scheme of arrangement in consideration for Nabi issuing shares of common stock in Nabi to Biota shareholders.
C	In accordance with the Implementation Agreement, Nabi is entering into this Deed Poll for the purpose of covenanting in favour of Biota shareholders that it will observe and perform the obligations contemplated of it under the scheme of arrangement.

It is declared as follows.

1. Definitions and Interpretation

1.1 Definitions

Terms defined in the Scheme, a copy of which is set out in the annexure to this Deed Poll, have the same meaning in this Deed Poll, unless the context requires otherwise.

1.2 Interpretation

The provisions of clause 1.2 of the Scheme form part of this Deed Poll as if set out in full in this Deed Poll, and on the basis that references to 'this document' in that clause are references to 'this Deed Poll'.

2. Nature of Deed Poll

Nabi acknowledges that:

- (a) this Deed Poll may be relied on and enforced by any Scheme Shareholder in accordance with its terms, even though the Scheme Shareholders are not party to it; and
- (b) under the Scheme, each Scheme Shareholder appoints Biota as its agent and attorney to enforce this Deed Poll against Nabi on behalf of that Scheme Shareholder.

3. Conditions Precedent and Termination

3.1 Conditions precedent

Nabi's obligations under this Deed Poll are subject to the Scheme becoming Effective.

3.2 Termination

If the Implementation Agreement is terminated or the Scheme does not become Effective on or before the End Date, the obligations of Nabi under this Deed Poll will automatically terminate and the terms of this Deed Poll will be of no further force or effect, unless Biota and Nabi otherwise agree in accordance with the Implementation Agreement.

3.3 Consequences of termination

If this Deed Poll is terminated under clause 3.2, then, in addition and without prejudice to any other rights, powers or remedies available to it:

- (a) Nabi is released from its obligations under this Deed Poll, except those obligations under clause 8.6; and
- (b) each Scheme Shareholder retains any rights, powers or remedies that Scheme Shareholder has against Nabi in respect of any breach of its obligations under this Deed Poll that occurred before termination of this Deed Poll.

4. Compliance with Scheme Obligations

4.1 Obligations of Nabi

Subject to clause 3, in consideration for the transfer to Nabi of the Scheme Shares in accordance with the Scheme, Nabi covenants in favour of each Scheme Shareholder that it will observe and perform all obligations contemplated of it under the Scheme, including the relevant obligations relating to the provision of the Scheme Consideration in accordance with the terms of the Scheme.

4.2 Listing of New Nabi Shares

Subject to clause 3, Nabi will use its best endeavours to procure that the New Nabi Shares to be issued pursuant to the Scheme will be approved for listing on NASDAQ, and commence trading on NASDAQ on the first Business Day after the Implementation Date.

5. Representations and Warranties

Nabi makes the following representations and warranties.

- (a) **(Status)** It is a corporation validly existing under the laws of the place of its incorporation.
- (b) **(Power)** Subject to the satisfaction of the condition set out in clause 3.1(f) of the Implementation Agreement, it has the power to enter into and perform its obligations under this Deed Poll and to carry out the transactions contemplated by this Deed Poll.
- (c) **(Corporate authorisations)** Subject to the satisfaction of the condition set out in clause 3.1(f) of the Implementation Agreement, it has taken all necessary corporate action to authorise the entry into this Deed Poll and has taken or will take all necessary corporate action to authorise the performance of this Deed Poll and to carry out the transactions contemplated by this Deed Poll.
- (d) **(Document binding)** This Deed Poll is its valid and binding obligation enforceable in accordance with its terms, subject to any necessary stamping and registration.
- (e) **(Transactions permitted)** The execution and performance by it of this Deed Poll and each transaction contemplated by this Deed Poll did not and will not violate:
 - (i) a law, judgment, ruling, order or decree binding on it; or
 - (ii) its constitution or other constituent documents.

6. Continuing Obligations

This Deed Poll is irrevocable and, subject to clause 3, remains in full force and effect until the earlier of:

- (a) Nabi having fully performed its obligations under this Deed Poll; and
- (b) termination of this Deed Poll under clause 3.

7. Further Assurances

Nabi will, on its own behalf and, to the extent authorised by the Scheme, on behalf of each Scheme Shareholder, do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Deed Poll and the transactions contemplated by it.

8. General

8.1 Notices

Any notice, demand, consent or other communication (a **Notice**) given or made to Nabi under or in connection with this Deed Poll:

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be delivered to Nabi by pre-paid post (if posted to an address in another country, by registered airmail) or by hand or fax to the address or fax number below or the address or fax number last requested by Nabi in writing:

To:

Address: 12270 Wilkins Avenue, Rockville, Maryland, 20852, the United States of America
 Attention: Raafat E. F. Fahim
 Fax No: +1 301 770 3097

Copy to:

Clayton Utz
 Address: 1 Bligh Street, Sydney, New South Wales, Australia
 Attention: Karen Evans-Cullen
 Fax No: +61 2 8220 6700

Copy to:

Hogan Lovells US LLP
 Address: Columbia Square, 555 Thirteenth Street, NW, Washington, District of Columbia, 20004, United States of America
 Attention: Joseph E. Gilligan
 Fax No: +1 202 637 5910; and

(c) will be taken to be duly given or made:

- (i) in the case of delivery in person, when delivered;
- (ii) in the case of delivery by post, two Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
- (iii) in the case of fax, on receipt by the sender of a transmission control report from the dispatching machine showing the relevant number of pages and the correct destination fax machine number or name of recipient and indicating that the transmission has been made without error,

but if the result is that a Notice would be taken to be given or made on a day that is not a business day in the place to which the Notice is sent or is later than 4pm (local time) it will be taken to have been duly given or made at the commencement of business on the next business day in that place.

8.2 No waiver

No failure to exercise nor any delay in exercising any right, power or remedy by Nabi or by any Scheme Shareholder operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver of any right, power or remedy on one or more occasions does not operate as a waiver of that right, power or remedy on any other occasion, or of any other right, power or remedy. A waiver is not valid or binding on the person granting that waiver unless made in writing.

8.3 Remedies cumulative

The rights, powers and remedies of Nabi and of each Scheme Shareholder under this Deed Poll are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or by any agreement.

8.4 Amendment

No amendment or variation of this Deed Poll is valid or binding unless:

- (a) either:
 - (i) before the Second Court Date, the amendment or variation is agreed to in writing by Biota and Nabi (which such agreement may be given or withheld without reference to or approval by any Biota Shareholder); or
 - (ii) on or after the Second Court Date, the amendment or variation is agreed to in writing by Biota and Nabi (which such agreement may be given or withheld without reference to or approval by any Biota Shareholder), and is approved by the Court; and
- (b) Nabi enters into a further deed poll in favour of the Scheme Shareholders giving effect to that amendment or variation.

8.5 Assignment

The rights and obligations of Nabi and of each Scheme Shareholder under this Deed Poll are personal. They cannot be assigned, encumbered or otherwise dealt with and no person may attempt, or purport, to do so without the prior consent of Nabi and Biota.

8.6 Costs and duty

Nabi must bear its own costs arising out of the negotiation, preparation and execution of this Deed Poll. All duty (including stamp duty and any fines, penalties and interest) payable on or in connection with this Deed Poll and any instrument executed under or any transaction evidenced by this Deed Poll must be borne by Nabi. Nabi must indemnify each Scheme Shareholder on demand against any liability for that duty (including any related fines, penalties and interest).

8.7 Governing law and jurisdiction

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

Executed and delivered as a Deed

Executed by Nabi Biopharmaceuticals

By: /s/ Raafat Fahim

Name: **Raafat Fahim**

Title: President and CEO

Annexure

Scheme

[Copy of Scheme not reproduced here]

Biota Holdings Limited (ABN 28 006 479 081)**Notice of Court ordered meeting of holders of Biota Shares**

Notice is hereby given that, by an order of the Court made on 9 August 2012 pursuant to section 411(1) of the Corporations Act, a meeting of Biota Shareholders will be held in Meeting Rooms 109 & 110, at The Melbourne Convention Centre, 1 Convention Centre Place, South Wharf, Melbourne, Australia on 25 September 2012 at 2pm (Melbourne time).

The Court has also directed that James Fox act as chairman of the meeting or failing him Paul Bell, and has directed the chairman to report the result of the meeting to the Court.

Purpose of the meeting

The purpose of the meeting is to consider and if thought fit, to agree to a scheme of arrangement proposed to be made between Biota and the holders of its ordinary shares.

A copy of the Scheme and a copy of the explanatory statement required by section 412 of the Corporations Act in relation to the Scheme are contained in the Booklet of which this notice forms part.

Resolution

The meeting will be asked to consider and, if thought fit, to pass the following resolution:

"That, pursuant to and in accordance with section 411 of the Corporations Act, the scheme of arrangement proposed between Biota Holdings Limited and the holders of its ordinary shares, as contained in and more particularly described in the document of which the notice convening this meeting forms part, is approved (with or without modification as approved by the Supreme Court of Victoria)."

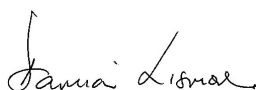
Required voting majority

In accordance with section 411(4)(a) of the Corporations Act, the resolution to approve the Scheme must be approved by a majority in number of the holders of ordinary shares in Biota, present and voting at the meeting (whether in person or by corporate representative, proxy or attorney), being a majority whose ordinary shares in aggregate are at least 75% of the total of all ordinary shares voted at the meeting.

Court approval

In accordance with section 411(4)(b) of the Corporations Act, the Scheme (with or without modification) is subject to the approval of the Court. If the resolution set out in this notice is approved by the requisite majority, and the other conditions precedent to the Scheme are satisfied or waived by the time required under the Scheme, Biota intends to apply to the Court for the necessary orders to give effect to the scheme.

By order of the board

**Damian Lismore**

Company Secretary
Dated 9 August 2012

Explanatory notes

Terms used in this Notice of Meeting (including in these explanatory notes) have the same meaning as set out in the glossary contained in section 13 of the Booklet of which this Notice of Meeting forms part.

This Notice of Meeting should be read in conjunction with the entire Booklet of which it forms part. The Booklet contains important information to assist you in determining how to vote on the resolution, including factors for and against the Scheme (see section 2). The Booklet also contains a copy of the Scheme (see Annexure C) and a copy of the explanatory statement required by section 412 of the Corporations Act.

Entitlement to vote

Pursuant to section 411 of the Corporations Act and all other enabling powers, the Court has determined that the time for determining eligibility to vote at the Scheme Meeting is 7pm on Sunday, 23 September 2012. Only those shareholders entered on the Biota Share Register at that time will be entitled to attend and vote at the Scheme Meeting.

Voting

Voting will be by poll. If you are a Biota Shareholder entitled to attend and vote at the Scheme Meeting, you may vote by:

- attending the meeting and voting in person or, in the case of corporate shareholders, by corporate representative;
- appointing an attorney to attend and vote on your behalf; or
- appointing one or two proxies to attend and vote on your behalf, using the proxy form accompanying the Booklet of which this notice forms part.

Biota Shareholders or their representatives who plan to attend the Scheme Meeting are asked to arrive at the venue at approximately 1.30 pm (that is, 30 minutes prior to the time designated for the commencement of the Scheme Meeting), so that either their shareholding may be checked against the Biota Share Register, their power of attorney or appointment as corporate representative can be verified (as the case may be), and their attendance noted.

Jointly held securities

If the Biota Shares are jointly held, only one of the joint shareholders is entitled to vote. If more than one shareholder votes in respect of jointly held Biota Shares, only the vote of the shareholder whose name appears first on the Biota Share Register will be counted.

Voting in person

To vote in person at the Scheme Meeting, you must attend the Scheme Meeting to be held in Meeting Rooms 109 & 110, at The Melbourne Convention Centre, 1 Convention Centre Place, South Wharf, Melbourne, Australia on Tuesday, 25 September 2012. The meeting will commence at 2pm.

An eligible Biota Shareholder who wishes to attend and vote at the Scheme Meeting in person will be admitted to the Scheme Meeting and given a voting card on disclosure at the point of entry to the Scheme Meeting of their name and address.

Voting by corporate representative

In order to vote in person at the Scheme Meeting, an eligible Biota Shareholder that is a corporation may appoint an individual to act as its representative. The appointment must comply with the requirements of section 250D of the Corporations Act, meaning that Biota will require a Certificate of Appointment of Corporate Representative executed in accordance with the Corporations Act. A copy of such a Certificate may be obtained from the Biota Share Registry. The Certificate should be lodged with Biota before the Scheme Meeting or at the registration desk on the day of the meeting. The Certificate will be retained by Biota.

If a Certificate is completed by an individual or a corporation under power of attorney, the power of attorney under which the Certificate is signed, or a certified copy of that power of attorney, must accompany the completed Certificate unless the power of attorney has previously been noted by Biota.

Voting by attorney

An eligible Biota Shareholder is entitled to appoint an attorney to attend the Scheme Meeting on the shareholder's behalf. An attorney need not be a member of Biota. Each attorney will have the right to vote on the poll and also to speak at the Scheme Meeting.

The power of attorney appointing the attorney in respect of the Scheme Meeting must be duly executed and specify the name of the applicable Biota Shareholder, the company (that is, Biota) and the attorney, and also specify the meetings at which the appointment may be used. The appointment may be a standing one.

To be effective, the power of attorney must be received at Biota's registered office or the Biota Share Registry in the same manner, and by the same time, as outlined below for proxy forms.

An attorney will be admitted to the Scheme Meeting and given a voting card on providing at the point of entry of the Scheme Meeting written evidence of their appointment, their name and address and the identity of their appointer.

The appointment of an attorney will not preclude any eligible Biota Shareholder from attending the Scheme Meeting in person and voting at the Scheme Meeting.

Voting by proxy

An eligible Biota Shareholder is entitled to appoint one or two proxies. A proxy need not be a member of Biota. Each proxy will have the right to vote on a poll and also to speak at the Scheme Meeting.

To appoint a proxy, the Biota Shareholder should complete, sign and deliver the proxy form accompanying this Booklet. If a Biota Shareholder wishes to appoint two proxies, a separate proxy form should be used for each. A request should be made to the Biota Share Registry for an additional proxy form. Replacement proxy forms can also be requested from the Biota Share Registry.

Where two proxies are appointed, neither proxy may vote on a show of hands and each proxy should be appointed to represent a specified proportion of the Biota Shareholder's voting rights. If the proxy appointments do not specify the proportion of the Biota Shareholder's voting rights that each proxy may exercise, each proxy may exercise half of the Biota Shareholder's votes.

Biota Shareholders should consider how they wish the proxy to vote. That is, whether the Biota Shareholder wishes the proxy to vote 'For' or 'Against', or abstain from voting on, the resolution, or whether to leave the decision to the appointed proxy after discussion at the Scheme Meeting.

If a proxy is not directed how to vote on an item of business, the proxy may vote, or abstain from voting, as that person thinks fit. If a proxy is instructed to abstain from voting on an item of business, that person is directed not to vote on the Biota Shareholder's behalf on a show of hands or on a poll, and the shares the subject of the proxy appointment will not be counted in computing the required majority.

Eligible shareholders who return their proxy forms but do not nominate the identity of their proxy will be taken to have appointed the chairman of the meeting as their proxy to vote on their behalf. If a proxy form is returned but the nominated proxy does not attend the meeting, the chairman of the meeting will act in place of the nominated proxy and vote in accordance with the directions on the proxy form. Proxy appointments in favour of the chairman of the Scheme Meeting, the company secretary of Biota, or any Biota director which do not contain a direction will be used to support the resolution to approve the Scheme.

A proxy will be admitted to the Scheme Meeting and given a voting card on providing at the point of entry to the Scheme Meeting written evidence of their name and address.

The appointment of a proxy will not preclude any eligible Biota Shareholder from attending in person, revoking a proxy or voting at the Scheme Meeting.

The instrument appointing a proxy is required to be in writing under the hand of the appointor or of that person's attorney and, if the appointor is a corporation, in accordance with the Corporations Act or under the hand of an authorised officer or attorney. Where two or more persons are registered as a member, each person must sign the proxy form.

If a proxy form is completed by an individual or a corporation under power of attorney, the power of attorney under which the form is signed, or a certified copy of that power of attorney, must accompany the completed proxy form unless the power of attorney has previously been noted by Biota.

Completed proxy forms can be returned using the return addressed envelope provided with the Booklet of which this notice forms part. To be effective, proxy forms must be received by post or by facsimile, at either Biota's registered office or at the Biota Share Registry in accordance with the directions on the back of the enclosed proxy form by no later than 2pm on 23 September 2012. Proxy forms received after this time will be invalid.

Nabi Certificate of Incorporation

RESTATED CERTIFICATE OF INCORPORATION OF NABI

NABI (formerly North American Biologicals, Inc., and hereinafter referred to as the "Corporation") filed its original certificate of incorporation with the Secretary of State of the State of Delaware on March 14, 1969. This Restated Certificate of Incorporation was duly adopted by the Board of Directors of the Corporation on December 5, 1995, in accordance with the provisions of Section 245 of the General Corporation Law of the State of Delaware. This Restated Certificate of Incorporation only restates and integrates and does not further amend the provisions of the Corporation's certificate of incorporation as heretofore amended or supplemented, and there are no discrepancies between those provisions and the provisions of this restated certificate.

FIRST: The name of the Corporation is NABI.

SECOND: The address of the Corporation's registered office in the State of Delaware is 1013 Centre Road, City of Wilmington, County of New Castle. The name of the Corporation's registered agent at such address is United States Corporation Company.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

FOURTH: The total number of shares of all classes of stock which the Corporation shall have authority to issue is 80,000,000 shares consisting of

- a) 5,000,000 shares of Preferred Stock, par value \$.10 per share and
- b) 75,000,000 shares of Common Stock, par value \$.10 per share.

Except as otherwise provided by law, the shares of stock of the Corporation, regardless of class, may be issued by the Corporation from time to time in such amounts, for such consideration and for such corporate purposes as the Board of Directors may from time to time determine.

Shares of Preferred Stock may be issued from time to time in one or more series of any number of shares as may be determined from time to time by the Board of Directors, provided that the aggregate number of shares issued and not cancelled of any and all such series shall not exceed the total number of shares of Preferred Stock authorized by this Certificate of Incorporation. Each series of Preferred Stock shall be distinctly designated. Except in respect of the particulars fixed for series by the Board of Directors as permitted hereby, all shares of Preferred Stock shall be of equal rank and shall be identical. All shares of any one series of Preferred Stock shall be alike in every particular, except that shares of any one series issued at different times may differ as to the dates from which dividends thereon shall be cumulative. The voting powers, if any, of each such series and the preferences and relative, participating, optional and other special rights of each such series and the qualifications, limitations and restrictions thereof, if any, may differ from those of any and all other series at any time outstanding; and the Board of Directors is hereby expressly granted authority to fix, in the resolution or resolutions providing for the issue of stock of a particular series of Preferred Stock, the voting powers, if any, of each such series and the designations, preferences and relative, participating, optional and other special rights of each such series and the qualifications, limitations and restrictions thereof to the full extent now or hereafter permitted by this Certificate of Incorporation and the laws of the State of Delaware.

Subject to the provisions of any applicable law, this Restated Certificate of Incorporation or of the By-Laws with respect to the closing of the transfer books or the fixing of a record date for the determination of stockholders entitled to vote, and except as otherwise provided by law or herein or by the resolution or resolutions providing for the issue of any series of Preferred Stock, the holders of outstanding shares of Common Stock shall exclusively possess the voting power for the election of directors and for all other purposes, each holder of record of shares of Common Stock being entitled to one vote for each share of Common Stock standing in his name on the books of the Corporation.

There is hereby established a series of the authorized preferred shares of this corporation having a par value of \$.10 per share and a stated value of \$.65 per share, which series shall be designated as "Series A Convertible Preferred Stock," shall consist of 1,538,462 shares, which number of shares may not be increased, and shall have the following rights, preferences and limitations:

a) Conversion Rights. At any time subsequent to the Issue Date, the holders of any one or more shares of the Series A Convertible Preferred Stock may, at their option, convert such share or shares, on the terms and conditions set forth in this Paragraph a), into fully paid and non-assessable common shares of this Corporation as such common shares shall be constituted at the Issue Date. Each share of Series A Convertible Preferred Stock shall be convertible into one common share, \$.10 par value per share; provided, however, that the number of common shares issuable on conversion of each share of Series A Convertible Preferred Stock (the "Conversion Amount") shall be subject to adjustment as follows:

(1) In case this Corporation shall at any time (i) subdivide its outstanding common shares of the class issuable upon conversion of the Series A Convertible Preferred Stock into a greater number of shares, or (ii) pay a dividend to holders of its securities in common shares of the class issuable upon the conversion of the Series A Convertible Preferred Stock, the Conversion Amount shall be proportionately increased. In case this Corporation shall at any time combine its outstanding common shares of the Class issuable upon conversion of the Series A Convertible Preferred Stock, the Conversion Amount shall be proportionately decreased. Any such adjustment shall become effective retroactively immediately after the record date in the case of a dividend and shall become effective immediately after the effective date in the case of a subdivision or combination.

(2) In case of any reclassification or change of the common shares of the class issuable upon conversion of the Series A Convertible Preferred Stock (other than a change from no par value to par value, or from par value to no par value, or a change in par value, or as a result of a subdivision or combination of shares) into a lesser number of shares, or in case of any consolidation or merger of this Corporation with or into another corporation (other than a merger with a subsidiary in which merger this Corporation is the continuing corporation and which does not result in any reclassification or change of outstanding common shares of the class issuable upon conversion of the Series A Convertible Preferred Stock), or in case of any sale or substantially all of the property of this Corporation, the holder of each share of the Series A Convertible Preferred Stock then outstanding shall have the right thereafter, subject to the terms and conditions of this Paragraph a), to convert such share into the kind and amount of shares of stock and other securities and property receivable upon such reclassification, change, consolidation, merger, or sale by a holder of the number of common shares of this Corporation into which such share of Series A Convertible Preferred Stock might have been converted immediately prior to such reclassification, change, consolidation, merger, or sale, and shall have no other conversion rights under these provisions; and effective provision shall be made in the Articles of Incorporation of the resulting or surviving corporation or otherwise, so that the provisions set forth herein for the protection of the conversion rights of the Series A Convertible Preferred Stock shall thereafter be applicable, as nearly as reasonably may be, to any such other shares of stock and other securities and property deliverable upon conversion of the Series A Convertible Preferred Stock remaining outstanding or other convertible

Nabi's Certificate of Incorporation, Proposed Charter Amendments and By-laws

preferred stock received by the holders in place thereof; and any such resulting or surviving corporation shall expressly assume the obligation to deliver, upon the exercise of the conversion privilege, such shares, securities or property as the holders of the Series A Convertible Preferred Stock remaining outstanding, or other convertible preferred stock received by the holders in place thereof, and to make provisions for the protection of the conversion right as above provided. In case securities or property other than common shares shall be issuable or deliverable upon conversion as aforesaid, then all reference in this Subparagraph (2) shall be deemed to apply so far as appropriate and as nearly as may be, to such other securities or property.

(3) No fractional common shares shall be issued on any conversion, but in lieu thereof, this Corporation shall, at its option, either (a) pay therefor in cash in an amount equal to the current market value of such fractional interest computed on the basis of the last reported sale of common shares on any national securities exchange on which the common shares may then be listed prior to the date upon which conversion is deemed to have been effected, or, if such shares are not then so listed, at the average of the bid and asked prices of such common shares in the over-the-counter market on the three (3) business days prior to the date upon which conversion is deemed to have been effected, as shown by the National Association of Securities Dealers, Inc., Automated Quotation System Level I, or the nearest comparable system, or in the absence of either, the fair market value as determined by the Board of Directors (whose determination shall be conclusive), or (b) make such arrangements as the Board of Directors shall approve to enable the holder of a fractional interest to sell such interest or buy an additional fractional interest sufficient to make one whole share of common stock.

Whenever there is a subdivision or combination of, or a dividend payable in, common shares requiring a change in the Conversion Amount, this Corporation shall file with the Transfer Agent for its common shares in the City of New York, New York, and at its principal office in the City of Miami, Florida, a statement signed by the President or a Vice President and by the Treasurer or the Secretary of this Corporation, describing specifically such subdivision or combination of or dividend payable in common shares and stating the adjustments which shall be made to the Conversion Amount and the Conversion Amount as so adjusted. The statement so filed shall be open to inspection by any holder of record of shares of Series A Convertible Preferred Stock. This Corporation shall at the time of filing any such statement mail notice to the same effect to the holders of shares of Series A Convertible Preferred Stock at their addresses appearing on the books of this Corporation or supplied by them to this Corporation for the purpose of notice.

Upon surrender to this Corporation at the office of the Corporation in Miami, Florida, or at such other place or places, if any, as the Board of Directors of this Corporation may determine, of certificates, duly endorsed to this Corporation or in blank, for shares of Series A Convertible Preferred Stock to be converted, together with directions in writing to this Corporation to convert such shares specifying the name and address of the person, corporation, firm or other entity to whom such shares are to be issued, this Corporation will issue as of the time of such surrender the number of full common shares issuable on conversion thereof and as promptly as practicable thereafter will deliver certificates for such common shares and either cash for any remaining fraction of a share or order forms entitling holders to sell fractional interests or purchase additional fractional interests necessary to make a full share, as provided in Subparagraph (2) above.

Shares of Series A Convertible Preferred Stock converted into common shares as hereinbefore provided shall be retired and restored to the status of authorized and unissued preferred shares. Shares so converted shall not be reissued as Series A Convertible Preferred Stock.

This Corporation shall at all times after the Issue Date reserve for issuance upon conversion of Series A Convertible Preferred Stock a sufficient number of full common shares for the conversion of each outstanding share of Series A Convertible Preferred Stock at the current Conversion Amount.

b) Rights Upon Liquidation or Dissolution. The amounts payable to holders of Series A Convertible Preferred Stock in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, shall be equal to the amounts set apart or payable on account of the shares of common stock in the same amount, as if such Series A Convertible Preferred Stock had been fully converted into Common Stock. The holders of Series A Convertible Preferred Stock shall be entitled to no further participation in any remaining assets of this Corporation after payment of the foregoing amounts. Neither the consolidation or merger of this Corporation with or into any other corporation or corporations, nor the sale or lease of all or substantially all the assets of this Corporation shall be deemed to be a liquidation, dissolution or winding up of this Corporation within the meaning of any of the provisions of this Paragraph b).

c) Voting Rights.

(1) The holders of Series A Convertible Preferred Stock shall have one vote per share on all matters to come before the shareholders of this Corporation and shall vote together with the Common Stock and not as a separate class except as otherwise herein specifically provided and except that the holders of the Series A Convertible Preferred Stock shall be entitled to vote as a class for the approval or rejection of those matters which under the provisions of the laws of the State of Delaware require approval of a designated portion of the shares of such class or series.

So long as 769,231 or more of the shares of Series A Convertible Preferred Stock shall be outstanding, or, if there have been share adjustments as described in Section a) above, so long as there are outstanding the number of shares which equals fifty percent or more of the shares outstanding from time to time after giving effect to said share adjustments, if any, the holders thereof, voting as a separate class, shall be entitled to elect a majority of the whole Board of Directors of the Corporation. The holders of the Common Stock shall be entitled to elect a minority of the Board of Directors of the Corporation voting as a separate class.

No director elected by the holders of the Series A Convertible Preferred Stock, voting as a class, shall during his or her term of office be removed from office except upon the vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the number of shares of Series A Convertible Preferred Stock at the time outstanding, given in person or by proxy, either in writing or by vote at a meeting called for that purpose, and any vacancy caused by the death, resignation, inability to serve, or removal of any director elected by the holders of the Series A Convertible Preferred Stock, voting as a separate class, shall be filled only by a vote of the remaining directors elected by the Series A Convertible Preferred Stock voting as a separate class.

In case the special voting rights of the holders of the Series A Convertible Preferred Stock for the election of a majority of the Corporation's Board of Directors shall cease in accordance with the provisions of the Section, the terms of office of the directors so elected shall cease at the next annual meeting of stockholders.

(2) Unless the vote or consent of the holders of a greater number of shares of Series A Convertible Preferred Stock shall at the time be required by law the consent of the holders of at least a majority of the number of shares of Series A Convertible Preferred Stock at the time outstanding, given in person or by proxy, either in writing or by vote at a meeting called for the purpose at which the holders of Series A Convertible Preferred Stock shall vote separately as a class, shall be necessary for authorizing, effecting or validating the sale, lease, exchange, transfer or conveyance of all or substantially all of the property or business of the Corporation, or the parting with control thereof, or the merger or consolidation of the Corporation into or with any other corporation or the merger or consolidation of any other corporation into or with the Corporation; provided, however, that the provisions of this Subsection (2) shall not apply to, nor shall any consent of the holders of the Series A Convertible Preferred Stock be required for, the merger or consolidation of the Corporation, into or with another corporation, or the merger or consolidation of another corporation into or with the Corporation, if none of the preferences, rights, powers or

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privileges of the Series A Convertible Stock or the holders thereof will be adversely affected thereby, and if the Corporation resulting from such merger or consolidation shall be bound by the provisions hereof as fully and to the same extent as if it were the Corporation.

(3) The consent of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the number of shares of Series A Convertible Preferred Stock at the time outstanding, given in person or by proxy, either in writing or by vote at a meeting called for that purpose at which the holders of Series A Convertible Preferred Stock shall vote separately as a class, shall be necessary for authorizing, effecting or validating any amendment, alteration, or repeal of any of the provisions of the Restated Certificate of Incorporation of the Corporation, or any certificate amendatory thereof or supplemental thereto, so as to affect adversely any of the rights, powers, preferences or privileges of the Series A Convertible Preferred Stock or the holders thereof.

(4) If at any time dividends are declared on the Corporation's common shares, the Series A Convertible Preferred Stock shall have a right pari passu with the common shares as to the distribution of dividends.

FIFTH: The Board of Directors of the Corporation shall consist of seven members or such other number as shall be designated by the Board of Directors. The Board of Directors is expressly authorized and empowered to adopt, amend and repeal By-Laws, subject to the power of the stockholders to amend or repeal any By-Law made by the Board of Directors.

SIXTH: Unless and except to the extent that the By-Laws shall so require, the election of the directors need not be by written ballot.

SEVENTH: (i) Except as set forth in Part (ii) of this Article Seventh the affirmative vote or consent of the holders of (x) 75% of the shares of Common Stock of the Corporation entitled to vote for the election of directors and (y) 50% of the Series A Convertible Preferred Stock (so long as they have right to elect a majority of the Corporation's directors as provided for herein), voting as a separate class, shall be required (a) for the adoption of any agreement for the merger or consolidation of the Corporation with or into any Other Corporation (as hereinafter defined), or (b) to authorize any sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all of the assets of the Corporation or any Subsidiary (as hereinafter defined) having a then net worth in excess of \$250,000 (as hereinafter defined) to any Other Corporation, or (c) to authorize the issuance or transfer by the Corporation of any Substantial Amount (as hereinafter defined) of securities of the Corporation in exchange for the securities or assets of any Other Corporation. Such affirmative vote or consent shall be in addition to the vote or consent of the holders of the stock of the Corporation otherwise required by law, the Certificate of Incorporation of the corporation or any agreement or contract to which the Corporation is a party.

(ii) The provisions of Part (i) of this Article Seventh shall not be applicable to any transaction described therein if such transaction is approved by resolution of the Board of Directors of the Corporation, provided that a majority of the members of the Board of Directors voting for the approval of such transaction were duly elected and acting members of the Board of Directors prior to the time any such Other Corporation may have become a Beneficial Owner (as hereinafter defined) of 5% or more of the shares of the stock of the Corporation entitled to vote for the election of directors.

(iii) For the purposes of Part (ii) of this Article Seventh, the Board of Directors shall have the power and duty to determine for the purposes of this Article Seventh, on the basis of information known to such Board, if and when any Other Corporation is the Beneficial Owner of 5% or more of the outstanding shares of stock of the Corporation entitled to vote for the election of directors. Any such determination shall be conclusive and binding for all purposes of this Article Seventh.

(iv) As used in this Article Seventh the following terms shall have the meanings indicated:

"Other Corporation" means any person, firm, corporation, or other entity, other than a Subsidiary of the Corporation.

"Subsidiary" means any corporation in which the Corporation owns, directly or indirectly, more than 50% of the voting securities.

"Substantial Amount" means any securities of the Corporation having a then fair market value of more than \$250,000.

An Other Corporation (as defined above) shall be deemed to be the "Beneficial Owner" of stock if such Other Corporation or "affiliate" or "associate" of such Other Corporation (as those terms are defined in Rule 12b-2 promulgated under the Securities Exchange Act of 1934 (15 U.S.C. 78 aaa et seq.)), as amended from time to time, directly or indirectly, controls the voting of conversion or other rights to acquire such stock.

(v) This Article Seventh may not be amended, revised or revoked, in whole or in part, except by the affirmative vote or consent of the holders of (x) 75% of the shares of Common Stock of the Corporation entitled to vote for the election of directors and (y) 50% of the shares of the Series A Convertible Preferred Stock (so long as they have right to elect a majority of the Corporation's directors as provided herein), voting as a separate class, each series of which shall be considered for the purposes of this Article Seventh as one class of stock.

EIGHTH: a) The Corporation shall indemnify its officers, directors, employees and agents against liabilities, damages, settlements and expenses (including attorneys' fees) incurred in connection with the Corporation's affairs to the full extent permitted by law, and as more particularly set forth in the Corporation's By-laws. Such indemnification provisions of the Corporation's By-laws may be enacted and modified from time to time by resolution of the Corporation's Board of Directors.

b) Notwithstanding any other provision of this Article Eighth, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived any improper personal benefit. If the Delaware General Corporation Law is amended after approval by the stockholders of this provision to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended.

c) Any repeal or modification of any provision of this Article Eighth by the stockholders of the Corporation shall not adversely affect any right to protection of a director of the Corporation existing at the time of such repeal or modification.

NINTH: From time to time any of the provisions of this Certificate of Incorporation may be amended, altered or repealed, and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted in the manner and at the time prescribed or permitted by said laws and by this Certificate of Incorporation; and all rights at any time conferred upon the stockholders of the Corporation by this Certificate of Incorporation are granted subject to the provisions of this Article Ninth.

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IN WITNESS WHEREOF, this Certificate has been signed by the Senior Vice President and Chief Financial Officer of NABI and said Corporation has caused its corporate seal to be hereunto affixed and attested to by the Secretary of said Corporation, all as of the 22nd day of March, 1996.

NABI

By: /s/ Alfred J. Fernandez

Alfred J. Fernandez, Senior Vice President
and Chief Financial Officer

Attest:

/s/ Constantine Alexander

Secretary

CERTIFICATE OF DESIGNATIONS

of

SERIES ONE PREFERRED STOCK

of

NABI

(Pursuant to Section 151 of the
Delaware General Corporation Law)

NABI (hereinafter called the "Corporation"), a corporation organized and existing under the General Corporation Law of the State of Delaware (the "DGCL"), hereby certifies that the following resolutions were adopted by the Board of Directors of the Corporation as required by Section 151 of the DGCL at a meeting duly called and held on July 25, 1997:

WHEREAS, Article Four of the Company's Amended and Restated Certificate of Incorporation (hereinafter called the "Certificate of Incorporation") authorizes eighty million (80,000,000) shares of capital stock, consisting of five million (5,000,000) shares of preferred stock, \$.10 par value per share (the "Preferred Stock") issuable from time to time in one or more series, and seventy-five million (75,000,000) shares of common stock, \$.10 par value per share (the "Common Stock").

NOW, THEREFORE, BE IT RESOLVED, in accordance with Section 151 of the DGCL and pursuant to the authority granted to and vested in the Board of Directors of this Corporation (hereinafter called the "Board of Directors" or the "Board") pursuant to Article Four of the Certificate of Incorporation whereby the Board of Directors is authorized to fix the designations, powers, preferences and relative, participating, optional or other special rights, if any, and qualifications, limitations or restrictions thereof, of any wholly unissued series of Preferred Stock, and to fix the number of shares constituting such series, and to increase or decrease the number of shares of any such series (but not below the number of shares thereof then outstanding), the Board of Directors hereby creates a series of Preferred Stock and hereby states the designation and number of shares, and fixes the relative rights, preferences, and limitations thereof as follows:

Section 1. Designation and Amount. The shares of such series shall be designated as "Series One Preferred Stock" (the "Series One Preferred Stock") and the number of shares constituting the Series One Preferred Stock shall be 750,000. Such number of shares may be increased or decreased by resolution of the Board of Directors; provided, that no decrease shall reduce the number of shares of Series One Preferred Stock to a number less than the number of shares then outstanding plus the number of shares reserved for issuance upon the exercise of outstanding options, rights or warrants or upon the conversion of any outstanding securities issued by the Corporation convertible into Series One Preferred Stock.

Section 2. Dividends and Distributions.

(A) Subject to the prior and superior rights of the holders of any shares of any series of Preferred Stock ranking prior and superior to the shares of Series One Preferred Stock with respect to dividends, the holders of shares of Series One Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for the purpose, quarterly dividends payable in cash on the first day of March, June, September and December in each year (each such date being referred to herein as a "Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series One Preferred Stock, in an amount (if any) per share (rounded to the nearest cent) equal to the greater of (a) \$1.00 or (b) subject to the provision for adjustment hereinafter set forth, 100 times the aggregate per share amount of all cash dividends, and 100 times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions, other than a dividend payable in shares of Common Stock of the Company or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the Common Stock since the immediately preceding Quarterly Dividend Payment Date or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Series One Preferred Stock. In the event the Corporation shall at any time after the issuance of any share or fraction of a share of Series One Preferred Stock declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the amount to which holders of shares of Series One Preferred Stock were entitled immediately prior to such event under clause (b) of the preceding sentence shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) The Corporation shall declare a dividend or distribution on the Series One Preferred Stock as provided in paragraph (A) of this Section at the same time it declares a dividend or distribution on the Common Stock (other than a dividend payable in shares of Common Stock); provided that, in the event no dividend or distribution shall have been declared on the Common Stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, a dividend of \$1.00 per share on the Series One Preferred Stock shall nevertheless be payable on such subsequent Quarterly Dividend Payment Date. No dividend or distribution (other than a dividend payable in shares of Common Stock) on the Common Stock shall be paid or set aside for payment on the Common Stock unless the dividend or distribution required as a result thereof to be paid on the Series One Preferred Stock shall be simultaneously paid or set aside for payment on the Series One Preferred Stock.

(C) Dividends shall begin to accrue and be cumulative on outstanding shares of Series One Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series One Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Series One Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board of Directors may fix a record date for the determination of holders of shares of Series One Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be not more than 60 days prior to the date fixed for the payment thereof.

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Section 3. Voting Rights. The holders of shares of Series One Preferred Stock shall have the following voting rights:

(A) Subject to the provision for adjustment hereinafter set forth, each share of Series One Preferred Stock shall entitle the holder thereof to 100 votes on all matters submitted to a vote of the stockholders of the Corporation. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the number of votes per share to which holders of shares of Series One Preferred Stock were entitled immediately prior to such event shall be adjusted by multiplying such number by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) Except as otherwise provided herein, in any other Certificate of Designations creating a series of Preferred Stock or any similar stock, or by law, the holders of shares of Series One Preferred Stock and the holders of shares of Common Stock and any other capital stock of the Corporation having general voting rights shall vote together as one class on all matters submitted to a vote of stockholders of the Corporation.

(C) Except as set forth herein, or as otherwise provided by law, holders of Series One Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Common Stock as set forth herein) for taking any corporate action.

Section 4. Certain Restrictions.

(A) Whenever quarterly dividends or other dividends or distributions payable on the Series One Preferred Stock as provided in Section 2 are in arrears, and until all accrued and unpaid dividends and distributions, whether or not declared, on outstanding shares of Series One Preferred Stock shall have been paid in full, the Corporation shall not:

(i) declare or pay dividends, or make any other distributions, on any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series One Preferred Stock;

(ii) declare or pay dividends, or make any other distributions, on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series One Preferred Stock, except dividends paid ratably on the Series One Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;

(iii) redeem or purchase or otherwise acquire for consideration shares of any stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series One Preferred Stock; provided, that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such junior stock in exchange for shares of any stock of the Corporation ranking junior (as to dividends and upon dissolution, liquidation or winding up) to the Series One Preferred Stock.

(iv) except as permitted by subclause (v) of this Section 4(A), redeem or purchase or otherwise acquire for consideration shares of any stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series One Preferred Stock, provided that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such parity stock in exchange for shares of any stock of the Corporation ranking junior (as to dividends and upon dissolution, liquidation or winding up) to the Series One Preferred Stock; or

(v) purchase or otherwise acquire for consideration any shares of Series One Preferred Stock, or any shares of stock ranking on a parity with the Series One Preferred Stock (either as to dividends or upon liquidation, dissolution or winding up), except in accordance with a purchase offer made in writing or by publication (as determined by the Board of Directors) to all holders of such shares upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(B) The Corporation shall not permit any subsidiary of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, under paragraph (A) of this Section 4, purchase or otherwise acquire such shares at such time and in such manner.

Section 5. Reacquired Shares. Any shares of Series One Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and cancelled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock to be created by resolution or resolutions of the Board of Directors.

Section 6. Liquidation, Dissolution or Winding Up. (A) Upon any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, no distribution shall be made to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series One Preferred Stock unless, prior thereto, the holders of shares of Series One Preferred Stock shall have received the greater of (i) \$1.00 per share plus an amount equal to any accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment, and (ii) an aggregate amount per share, subject to the provision for adjustment hereinafter set forth, equal to 100 times the aggregate amount to be distributed per share to holders of shares of Common Stock. The amount to which holders of Series One Preferred Stock may be entitled upon liquidation, dissolution or winding up of the Corporation pursuant hereto is hereinafter referred to as the "Series One Preferred Liquidation Preference." In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the aggregate amount to which holders of shares of Series One Preferred Stock were entitled immediately prior to such event under clause (ii) above shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) In the event that there are not sufficient assets available to permit payment in full of the Series One Preferred Liquidation Preference and the liquidation preferences of all other series of Preferred Stock, if any, which rank on a parity with the Series One Preferred Stock, then such remaining assets shall be distributed ratably to the holders of such parity shares in proportion to their respective liquidation preferences.

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Section 7. Consolidation, Merger, etc. In case the Corporation shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property, then in any such case each share of Series One Preferred Stock shall at the same time be similarly exchanged or changed into an amount per share, subject to the provision for adjustment hereinafter set forth, equal to 100 times the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is changed or exchanged. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the amount set forth in the preceding sentence with respect to the exchange or change of shares of Series One Preferred Stock shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 8. No Redemption. The shares of Series One Preferred Stock shall not be redeemable.

Section 9. Amendment. The Certificate of Incorporation of the Corporation shall not be amended in any manner which would materially alter or change the powers, preferences or special rights of the Series One Preferred Stock so as to affect them adversely without the affirmative vote of the holders of at least two-thirds of the outstanding shares of Series One Preferred Stock, voting together as a single class.

Section 10. Ranking. The Series One Preferred Stock shall rank (i) junior to all other series of the Corporation's Preferred Stock as to the payment of dividends and the distribution of assets on liquidation unless the terms of any such series of Preferred Stock shall provide otherwise, and (ii) senior to the Common Stock.

IN WITNESS WHEREOF, this Certificate of Designations is executed on behalf of the Corporation by its Senior Vice President and Chief Financial Officer, and attested by its Secretary, this 27th day of August 1997.

/s/ Alfred J. Fernandez

Alfred J. Fernandez,
Senior Vice President
and Chief Financial Officer

Attest:

/s/ Constantine Alexander

Secretary

CERTIFICATE OF OWNERSHIP
MERGING
IBAN Corp.
INTO
NABI

NABI, a corporation organized and existing under the laws of Delaware,
DOES HEREBY CERTIFY:

FIRST: That this corporation was incorporated on the 14th day of March, 1969, pursuant to the General Corporation Law of the State of Delaware.

SECOND: That this corporation owns all of the outstanding shares of the capital stock of IBAN Corp., a corporation incorporated on the 29th day of April, 1997, pursuant to the General Corporation Law of the State of Delaware.

THIRD: That this corporation, by the following resolutions of its Board of Directors, duly adopted at a meeting held on the 24th day of November, 1997, determined to and did merge into itself said IBAN Corp.:

RESOLVED, that NABI merge, and it hereby does merge into itself, IBAN Corp. and assumes all its obligations;

FURTHER RESOLVED, that the merger shall be effective upon the date of filing with the Secretary of State of Delaware; and

FURTHER RESOLVED, that this corporation change its corporate name by changing Article First of the Certificate of Incorporation of this corporation to read as follows:

“Article First. The name of the corporation is Nabi.”

IN WITNESS WHEREOF, said NABI has caused this Certificate to be signed by Constantine Alexander, its Secretary, this 26th day of November, 1997.

NABI

By: /s/ Constantine Alexander

Constantine Alexander
Its Secretary

CERTIFICATE OF OWNERSHIP AND MERGER

MERGING

NABI SUBSIDIARY CORP.

WITH AND INTO

NABI

(Pursuant to Section 253 of the General Corporation Law of Delaware)

Nabi, a Delaware corporation (the "Corporation"), does hereby certify:

1. That the Corporation is incorporated pursuant to the General Corporation Law of Delaware.
2. That the Corporation owns all of the outstanding shares of each class of capital stock of Nabi Subsidiary Corp., a Delaware corporation.
3. That the Corporation, by the following resolutions of its board of directors, duly adopted on the 1st day of March, 2002, determined to merge into itself Nabi Subsidiary Corporation on the conditions set forth in such resolutions:

RESOLVED: That the Corporation merge into itself its subsidiary, Nabi Subsidiary Corp., and assume all of said subsidiary's liabilities and obligations (the "Merger"); that the Corporation shall be the surviving corporation in the Merger; that the Merger shall be effective at 5:00 PM EST on March 4, 2002; that Article First of the Corporation's Restated Certificate of Incorporation shall be amended by deleting said article in its entirety and inserting in lieu thereof the following: "The name of the Corporation is Nabi Biopharmaceuticals."; and

RESOLVED: That any and all officers of the Corporation be and they hereby are directed to make, execute and acknowledge a Certificate of Ownership and Merger setting forth a copy of the resolution to merge said Nabi Subsidiary Corp. into the Corporation and to assume said subsidiary's liabilities and obligations and the date of adoption thereof and to file the same in the office of the Secretary of State of Delaware.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Ownership and Merger this 1st day of March, 2002.

NABI

By: /s/ Mark L. Smith

Name: Mark L. Smith

Title: Chief Financial Officer, Senior Vice
President of Finance, and Treasurer

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CERTIFICATE OF AMENDMENT OF CERTIFICATE OF INCORPORATION OF NABI BIOPHARMACEUTICALS

Nabi Biopharmaceuticals, a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify as follows:

1. That at a meeting of the Board of Directors of the Corporation resolutions were duly adopted setting forth a proposed amendment of the Restated Certificate of Incorporation of the Corporation, declaring said amendment to be advisable and calling a meeting of the stockholders of the Corporation for consideration thereof. The resolution setting forth the proposed amendment is as follows:

RESOLVED: That the Restated Certificate of Incorporation of the Corporation be amended by changing the first paragraph of Article Fourth so that, as amended, said paragraph shall be and read as follows:

"The total number of shares of all classes of stock which the Corporation shall have authority to issue is 130,000,000 shares consisting of

- a) 5,000,000 shares of Preferred Stock, par value \$.10 per share, and
- b) 125,000,000 shares of Common Stock, par value \$.10 per share."

2. That thereafter, pursuant to resolution of its Board of Directors, an annual meeting of the stockholders of said corporation was duly called and held, upon notice in accordance with Section 222 of the General Corporation Law of the State of Delaware at which meeting the necessary number of shares as required by statute were voted in favor of the amendment.

3. That said amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, the Corporation has caused this certificate to be signed by its authorized officer as of May 14, 2004.

NABI BIOPHARMACEUTICALS

By: /s/ Mark L. Smith

Name: Mark L. Smith

Title: Senior Vice President, Finance, Chief
Financial Officer, Chief Accounting
Officer, and Treasurer

Proposed Charter Amendments

**FORM OF
CERTIFICATE OF AMENDMENT OF
RESTATED CERTIFICATE OF INCORPORATION OF
NABI BIOPHARMACEUTICALS**

Nabi Biopharmaceuticals, a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify as follows:

1. That the Board of Directors of the Corporation duly adopted resolutions setting forth a proposed amendment of the Restated Certificate of Incorporation, as amended, of the Corporation, declaring said amendment to be advisable and calling a special meeting of the stockholders of the Corporation for consideration thereof. The resolution setting forth the proposed amendment is as follows:

The Restated Certificate of Incorporation, as amended, of the Corporation be amended by deleting the first paragraph of Article "FOURTH" thereof and substituting the following in lieu thereof:

"FOURTH: The total number of shares of all classes of stock which the Corporation shall have authority to issue is 205,000,000 shares consisting of

- a) 5,000,000 shares of Preferred Stock, par value \$.10 per share, and
- b) 200,000,000 shares of Common Stock, par value \$.10 per share."

2. That thereafter, pursuant to a resolution of its Board of Directors, a special meeting of the stockholders of the Corporation was duly called and held, upon notice in accordance with Section 222 of the General Corporation Law of the State of Delaware, at which meeting the necessary number of shares as required by statute were voted in favor of the amendment.
3. That said amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, the Corporation has caused this certificate to be signed by its authorized officer as of [*****], 2012.

NABI BIOPHARMACEUTICALS

By: _____

Name:

Title:

**FORM OF
CERTIFICATE OF AMENDMENT OF
RESTATED CERTIFICATE OF INCORPORATION OF
NABI BIOPHARMACEUTICALS**

Nabi Biopharmaceuticals, a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify as follows:

1. That the Board of Directors of the Corporation duly adopted resolutions setting forth a proposed amendment of the Restated Certificate of Incorporation, as amended, of the Corporation, declaring said amendment to be advisable and calling a special meeting of the stockholders of the Corporation for consideration thereof. The resolution setting forth the proposed amendment is as follows:

The Restated Certificate of Incorporation, as amended, of the Corporation be amended by deleting Article "FIRST" thereof and substituting the following in lieu thereof:

"FIRST: The name of the Corporation is Biota Pharmaceuticals, Inc."

2. That thereafter, pursuant to a resolution of its Board of Directors, a special meeting of the stockholders of the Corporation was duly called and held, upon notice in accordance with Section 222 of the General Corporation Law of the State of Delaware, at which meeting the necessary number of shares as required by statute were voted in favor of the amendment.
3. That said amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, the Corporation has caused this certificate to be signed by its authorized officer as of [*****], 2012.

NABI BIOPHARMACEUTICALS

By: _____

Name:

Title:

**FORM OF
CERTIFICATE OF AMENDMENT OF
RESTATED CERTIFICATE OF INCORPORATION OF
NABI BIOPHARMACEUTICALS**

Nabi Biopharmaceuticals, a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify as follows:

1. That the Board of Directors of the Corporation duly adopted resolutions setting forth a proposed amendment of the Restated Certificate of Incorporation, as amended, of the Corporation, declaring said amendment to be advisable and calling a special meeting of the stockholders of the Corporation for consideration thereof. The resolution setting forth the proposed amendment is as follows:

The Restated Certificate of Incorporation, as amended, of the Corporation be amended by inserting, after the second paragraph of Article "FOURTH" thereof, a new paragraph stating the following:

"Upon the filing and effectiveness of this Certificate of Amendment to the Restated Certificate of Incorporation pursuant to the General Corporation Law of the State of Delaware (the "Effective Time"), each [the final number to be in the range of four to eight] shares of the Corporation's Common Stock issued and outstanding or held in treasury immediately prior to the Effective Time (the "Old Common Stock") shall be reclassified and combined into one (1) validly issued, fully paid and non-assessable share of Common Stock, par value \$0.10 per share (the "New Common Stock"), without any further action by the Corporation or the holder thereof. The Corporation shall not issue fractions of shares of New Common Stock in connection with such reclassification and combination. Stockholders who otherwise would be entitled to receive fractional shares of New Common Stock shall be entitled to receive, in lieu of such fractional shares, cash (without interest) determined by multiplying (a) the fractional share interest to which the stockholder would otherwise be entitled, after taking into account all shares of Old Common Stock then held by the stockholder immediately prior to the Effective Time, and (b) the average closing sale price of shares of Old Common Stock for the 10 trading days immediately prior to the Effective Time as officially reported by NASDAQ. Each certificate that, immediately prior to the Effective Time, represented shares of Old Common Stock shall thereafter represent that number of shares of New Common Stock into which such shares of Old Common Stock shall have been reclassified and combined, subject to the disposition of fractional interests described above; provided, that each person holding of record a stock certificate or certificates that represented shares of Old Common Stock shall receive, upon surrender of such certificate or certificates, a new certificate or certificates evidencing and representing the number of shares of New Common Stock to which such person is entitled under the foregoing reclassification and combination."

2. That thereafter, pursuant to a resolution of its Board of Directors, a special meeting of the stockholders of the Corporation was duly called and held, upon notice in accordance with Section 222 of the General Corporation Law of the State of Delaware, at which meeting the necessary number of shares as required by statute were voted in favor of the amendment.
3. That said amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, the Corporation has caused this certificate to be signed by its authorized officer as of [*****], 2012.

NABI BIOPHARMACEUTICALS

By: _____

Name:

Title:

Nabi By-laws

BY-LAWS OF NABI BIOPHARMACEUTICALS

ARTICLE I

Offices

The registered office shall be in the City of Wilmington, County of New Castle, State of Delaware, and the name of the resident agent in charge thereof is The Corporation Trust Company.

The corporation may also have offices at such other places within or without the State of Delaware as the Board of Directors may from time to time appoint or the business of the corporation may require.

ARTICLE II

Meetings of Stockholders

Section 1. Place of Meetings. All meetings of stockholders for any purpose shall be held at such place, within or without the State of Delaware, as shall be designated by the Board of Directors or the Chairman of the Board or the President and stated in the notice of the meeting. The Board of Directors may, in its sole discretion, determine that a meeting of stockholders shall not be held in any place but shall instead be held solely by means of remote communication. If authorized by the Board of Directors in its sole discretion, and subject to such guidelines and procedures as the Board of Directors may adopt, stockholders not physically present at a meeting of stockholders may, by means of remote communication, participate in a meeting of stockholders and be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (a) the Board of Directors shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder, (b) the Board of Directors shall implement reasonable measures to provide such stockholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (c) if any stockholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the corporation.

Section 2. Annual Meeting. An annual meeting of the stockholders of the corporation, for the election of Directors to succeed those whose terms expire and for the transaction of such other business as may properly come before the meeting, shall be held on such date and at such time as shall be fixed from time to time by the Board of Directors and stated in the notice of the meeting.

Section 3. Special Meetings. Special meetings of the stockholders may be called by the Chairman of the Board, the President or by order of the Board of Directors. Business transacted at any special meeting shall be confined to the purpose or purposes stated in the notice of such meeting.

Section 4. Notice of Meeting. Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders may be deemed to be present in person and vote at such meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise required by law, the certificate of incorporation or these by-laws, notice of the time and place of holding each annual meeting and each special meeting of stockholders shall be given by the Secretary, not less than ten nor more than sixty days before the meeting, to each stockholder of record entitled to vote at such meeting.

When a meeting is adjourned to another place, date or time, unless the adjournment is for more than thirty days or a new record date is fixed for the adjourned meeting, notice of the adjourned meeting need not be given if the time, place, if any, thereof, and the means of remote communication, if any, by which stockholders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At such adjourned meeting at which a quorum shall be present or represented any business may be transacted which might have been transacted at the meeting as originally called.

Section 5. List of Stockholders. At least ten days before every meeting of stockholders a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder, shall be prepared by the Secretary, who shall have charge of the stock ledger. Nothing contained in this Section 5 shall require the corporation to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, for a period of at least ten days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the corporation. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list of stockholders or the books of the corporation, or to vote in person or by proxy at any meeting of stockholders.

Section 6. Quorum. At any meeting of stockholders, the holders of issued and outstanding shares of capital stock which represent a majority of the votes entitled to be cast thereat, present in person or represented by proxy, shall constitute a quorum for the transaction of business. If, however, such quorum shall not be present or represented at any meeting of the stockholders, then either the person presiding over the meeting or the stockholders entitled to vote thereat, present in person or represented by proxy, shall have the power to adjourn the meeting from time to time until a quorum shall be present or represented.

Section 7. Voting. At any meeting of the stockholders, every stockholder having the right to vote shall be entitled to vote in person or may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after 11 months from its date. When a quorum is present at any meeting, a plurality of the votes properly cast for election to the Board of Directors and a majority of the votes properly cast on any question other than election to the Board of Directors shall decide the question unless the question is one upon which by express provision of law or of the certificate of incorporation or of these by-laws a different vote is required, in which case such express provision shall govern and control the decision of such question.

Section 8. Fixing of Record Date.

(a) In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action other than stockholder action by written consent, the Board of Directors may fix a record date, which shall not precede the date such record date is fixed and shall not be more than sixty nor less than ten days before the date of such meeting, nor more than sixty days prior to any such other action. If no record date is fixed, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given. The record date for any other purpose other than stockholder action by written consent shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which date shall not be more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. Any stockholder of record seeking to have the stockholders authorize or take corporate action by written consent shall, by written notice to the Secretary, request the Board of Directors to fix a record date. The Board of Directors shall promptly, but in all events within 10 days after the date on which such a request is received, adopt a resolution fixing the record date. If no record date has been fixed by the Board of Directors within 10 days of the date on which such a request is received, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by applicable law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to its registered office in the State of Delaware, its principal place of business, or any officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by applicable law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the date on which the Board of Directors adopts the resolution taking such prior action.

Section 9. Nomination of Directors. Only persons who are nominated in accordance with the procedures set forth in the By-laws shall be eligible to serve as Directors. Nominations of persons for election to the Board of Directors of the corporation may be made at a meeting of stockholders (a) by or at the direction of the Board of Directors or (b) by any stockholder of the corporation who is a stockholder of record at the time of giving of notice provided for in this Section 9, who shall be entitled to vote for the election of Directors at the meeting and who complies with the notice procedures set forth in this Section 9. Such nominations, other than those made by or at the direction of the Board of Directors, shall be made pursuant to timely notice in writing to the Secretary of the corporation. To be timely, a stockholder's notice shall be delivered to or mailed and received at the principal executive offices of the corporation not less than 90 days prior to the meeting; provided, however, that in the event that less than 100 days' notice or prior public disclosure of the date of the meeting is given or made to stockholders, notice by the stockholder to be timely must be so received not later than the close of business on the 10th day following the day on which such notice of the date of the meeting or such public disclosure was made. Such stockholder's notice shall set forth (a) as to each person whom the stockholder proposes to nominate for election or reelection as a Director all information relating to such person that is required to be disclosed in solicitations of proxies for election of Directors, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (including such person's written consent to being named in the proxy statement as a nominee and to serving as a Director if elected); and (b) as to the stockholder giving the notice (i) the name and address, as they appear on the corporation's books, of such stockholder and (ii) the class and number of shares of the corporation which are beneficially owned by such stockholder. At the request of the Board of Directors, any person nominated by the Board of Directors for election as a Director shall furnish to the Secretary of the corporation that information required to be set forth in a stockholder's notice of nomination which pertains to the nominee. No person shall be eligible to serve as a Director of the corporation unless nominated in accordance with the procedures set forth in this By-law. The person presiding over the meeting shall, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the procedures prescribed by the By-laws, and if he or she should so determine, he or she shall so declare to the meeting and the defective nomination shall be disregarded. Notwithstanding the foregoing provisions of this Section 9, a stockholder shall also comply with all applicable requirements of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder with respect to the matters set forth in this Section.

Section 10. Notice of Business. At any meeting of the stockholders, only such business shall be conducted as shall have been brought before the meeting (a) by or at the direction of the Board of Directors or (b) by any stockholder of the corporation who is a stockholder of record at the time of giving of the notice provided for in this Section 10, who shall be entitled to vote at such meeting and who complies with the notice procedures set forth in this Section 10. For business to be properly brought before a stockholder meeting by a stockholder, the business must relate to a proper subject matter for stockholder action and the stockholder must have given timely notice thereof in writing to the Secretary of the corporation. To be timely, a stockholder's notice must be delivered to or mailed and received at the principal executive offices of the corporation not less than 90 days prior to the meeting; provided, however, that in the event that less than 100 days' notice or prior public disclosure of the date of the meeting is given or made to stockholders, notice by the stockholder, to be timely must be received no later than the close of business on the 10th day following the day on which such notice of the date of the meeting was mailed or such public disclosure was made. A stockholder's notice to the Secretary shall set forth as to each matter the stockholder proposes to bring before the meeting (a) a brief description of the business desired to be brought before the meeting and the reasons for conducting such business at the meeting, (b) the name and address, as they appear on the corporation's books, of the stockholder proposing such business, (c) the class and number of shares of the corporation which are beneficially owned by the stockholder and (d) any material interest in the stockholder in such business. Notwithstanding anything in the By-laws to the contrary, no business shall be conducted at a stockholder meeting except in accordance with the procedures set forth in this Section 10. The person presiding over the meeting shall, if the facts warrant, determine and declare to the meeting that business was not properly brought before the meeting and in accordance with the provisions of the By-laws, and if he or she should so determine, he or she shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted. Notwithstanding the foregoing provisions of this Section 10, a stockholder shall also comply with all applicable requirements of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder with respect to the matters set forth in this Section.

Nabi's Certificate of Incorporation, Proposed Charter Amendments and By-laws

Section 11. Conduct of Meeting. The Board of Directors shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem appropriate. Subject to such rules and regulations of the Board of Directors, if any, the person presiding over the meeting shall have the right and authority to convene and adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of the person presiding over the meeting, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to stockholders of record of the corporation and their duly authorized and constituted proxies and such other persons as the person presiding over the meeting shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulations of the opening and closing of the polls for balloting and matters which are to be voted on by ballot. The person presiding over the meeting, in addition to making any other determinations that may be appropriate to the conduct of the meeting shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting and if the person presiding over the meeting should so determine and declare, any such matter or business shall not be transacted or considered. Unless and to the extent determined by the Board of Directors or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

ARTICLE III

Directors

Section 1. Directors and Their Terms of Office. The corporation shall have one or more Directors, the number of Directors to be determined from time to time by vote of a majority of Directors then in office. Each Director shall hold office until his or her successor is elected and qualified. A Director need not be a stockholder. No decrease in the number of Directors shall affect the term of any Director in office.

Section 2. Powers of Directors. The affairs, property and business of the corporation shall be managed by the Board of Directors which may exercise all such powers of the corporation and do all such lawful acts and things as are not by law or by the certificate of incorporation or these by-laws directed or required to be exercised or done by the stockholders.

Section 3. Vacancies. If any vacancies occur in the Board of Directors caused by death, resignation, retirement, disqualification or removal from office of any Directors or otherwise, or any new Directorship is created by any increase in the authorized number of Directors, Directors to fill the vacancy or vacancies or to fill the newly created Directorship shall be filled solely by a majority vote of the Directors then in office, whether or not a quorum, at any meeting of the Board and the Directors so chosen shall hold office until their successors are duly elected and qualified.

Section 4. Annual Meeting of Directors. The first meeting of each newly elected Board of Directors may be held without notice immediately after an annual meeting of stockholders (or a special meeting of stockholders held in lieu of an annual meeting) at the same place as that at which such meeting of stockholders was held, or such first meeting may be held at such place (within or without the State of Delaware) and time as shall be fixed by the consent in writing of all the Directors or as may be called in the manner hereinafter provided with respect to the call of special meetings.

Section 5. Regular Meetings of Directors. Regular meetings of the Board of Directors may be held at such times and at such place or places (within or without the State of Delaware) as the Board of Directors may from time to time prescribe. No notice need be given of any regular meeting and a notice, if given, need not specify the purposes thereof.

Section 6. Special Meetings of Directors. Special meetings of the Board of Directors may be called at any time by or under the authority of the Chairman of the Board or the President and shall be called by him or her or by the Secretary on written request of any two Directors or, if they fail to do so, by two Directors in the name of the Secretary, to be held in each instance at such place (within or without the State of Delaware) as the person calling the meeting may designate in the call thereof. Notice of each special meeting of the Board of Directors, stating the time and place thereof, shall be given to each Director by the Secretary, not less than twenty-four hours before the meeting. Such notice need not specify the purposes of the meeting.

Section 7. Quorum; Voting. At any meeting of the Board of Directors a majority of the Directors then in office shall constitute a quorum for the transaction of business, but if a quorum shall not be present at any meeting of Directors, the Directors present thereat may adjourn the meeting from time to time without notice other than announcement at the meeting, until a quorum shall be present. Except as otherwise provided by law or by the certificate of incorporation or by these by-laws, the affirmative vote of a majority of the Directors present at a meeting at which there is a quorum shall be the act of the Board of Directors.

Section 8. Meetings by Telephone. Members of the Board of Directors or of any committee thereof may participate in meetings of the Board of Directors or of such committee by means of conference telephone or other communications equipment by means of which all person participating in the meeting can hear each other, and such participation shall constitute presence in person at such meeting.

Section 9. Action Without Meeting. Unless otherwise restricted by the certificate of incorporation, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting if all members of the Board of Directors or of such committee, as the case may be, consent thereto in writing or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or of such committee. Such filings shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 10. Compensation. By resolution of the Board of Directors, the Directors, as such, may receive stated salaries for their services, and may be allowed a fixed sum and expenses of attendance, if any, for attendance at each regular or special meeting of the Board. Members of committees may also be allowed a fixed sum and expenses of attendance, if any, for attending committee meetings. Nothing herein contained shall preclude any Director from serving the corporation in any other capacity and receiving compensation for such services.

Section 11. Chairman of the Board. The Board of Directors shall select from its members a Chairman of the Board who shall preside at all meetings of the Board of Directors.

ARTICLE IV

Committees

The Board of Directors may: (a) designate, change the membership of or terminate the existence of any committee or committees, each committee to consist of one or more Directors; (b) designate one or more Directors as alternate members of any such committee who may replace any absent or disqualified member at any meeting of the committee; and (c) determine the extent to which each such committee shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the corporation, including the power to authorize the seal of the corporation to be affixed to all papers which require it and the power and authority to declare dividends or to authorize the issuance of stock, excepting, however, such powers which by law, by the certificate of incorporation or by these by-laws the Board of Directors is prohibited from so delegating. In the absence or disqualification of any member of such committee and his or her alternative, if any, the member or members thereof present at any meeting and not disqualified from voting, whether or not constituting a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Except as the Board of Directors may otherwise determine, any committee may make rules for the conduct of its business, but unless otherwise provided by the Board or such rules, its business shall be conducted as nearly as may be in the same manner as is provided by these by-laws for the conduct of business by the Board of Directors. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors upon request.

ARTICLE V

Officers

Section 1. Officers and Their Election, Term of Office and Vacancies. The officers of the corporation shall be a President, a Secretary, a Treasurer and such Vice Presidents, Assistant Secretaries, Assistant Treasurers and other officers as the Board of Directors may from time to time determine and elect or appoint. All officers shall be elected annually by the Board of Directors at their first meeting following the annual meeting of stockholders or any special meeting held in lieu thereof and shall hold office until their successors are duly elected and qualified. All officers may, but need not be, members of the Board of Directors. Two or more offices may be held by the same person. Any officer elected by the Board of Directors may be removed at any time by the Board of Directors. If any vacancy shall occur among the officers, it shall be filled by the Board of Directors.

Section 2. President. The President shall be the chief executive officer of the corporation with full control and responsibility for management decisions, subject to the supervision and control of the Board of Directors and such limitations as the Board of Directors may from time to time impose. The President when present shall preside at all meetings of the stockholders. It shall be his duty and he shall have the power to see that all orders and resolutions of the Board are carried into effect. Subject to the direction of the Board of Directors, the President shall have power to sign all stock certificates, contracts and other instruments of the corporation which are authorized and shall have general supervision of all of the other officers.

Section 3. Vice Presidents. In the absence or disability of the President, his or her powers and duties shall be performed by the Vice President, if only one, or, if more than one, by the one designated for the purpose by the Board. Each Vice President shall have such other powers and perform such other duties as the Board shall from time to time designate.

Section 4. Treasurer. The Treasurer shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the corporation in such depositories as shall be designated by the Board or in the absence of such designation in such depositories as he or she shall from time to time deem proper. He or she shall disburse the funds of the corporation as shall be ordered by the Board, taking proper vouchers for such disbursements. He or she shall promptly render to the President and to the Board such statements of his or her transactions and accounts as the President and Board respectively may from time to time require. The Treasurer shall perform such duties and have such powers additional to the foregoing as the Board may designate.

Section 5. Assistant Treasurers. In the absence or disability of the Treasurer, his or her powers and duties shall be performed by the Assistant Treasurer, if only one, or, if more than one, by the one designated for the purpose by the Board. Each Assistant Treasurer shall have such other powers and perform such other duties as the Board shall from time to time designate.

Section 6. The Secretary. The Secretary shall issue notices of all meetings of stockholders and Directors and of the executive and other committees where notices of such meetings are required by law or these by-laws. He or she shall keep the minutes of meetings of stockholders and of the Board of Directors and of the executive and other committees, respectively, unless such committees appoint their own respective secretaries and be responsible for the custody thereof. Unless the Board shall appoint a transfer agent and/or registrar, the Secretary shall be charged with the duty of keeping, or causing to be kept, accurate records of all stock outstanding, stock certificates issued and stock transfers. He or she shall sign such instruments as require his or her signature and shall perform such other duties and shall have such powers as the Board of Directors shall designate from time to time, in all cases subject to the control of the Board of Directors. The Secretary shall have custody of the corporate seal, shall affix and attest such seal on all documents whose execution under seal is duly authorized. In his or her absence at any meeting, an Assistant Secretary or the Secretary pro tempore shall perform his or her duties thereat.

Section 7. Assistant Secretaries. In the absence or disability of the Secretary, his or her powers and duties shall be performed by the Assistant Secretary, if only one, or, if more than one, by the one designated for the purpose by the Board. Each Assistant Secretary shall have such powers and perform such other duties as the Board shall from time to time designate.

Section 8. Salaries. The salaries of officers, agents and employees shall be fixed from time to time by or under authority from the Board of Directors.

ARTICLE VI

Resignations and Removals

Section 1. Officers, Agents, Employees and Members of Committees. Any officer of the corporation may resign at any time upon notice given in writing or by electronic transmission given to the Board of Directors or to the Chairman of the Board or to the President or to the Secretary of the corporation; and any member of any committee may resign upon notice given in writing or by electronic transmission given either as aforesaid or to the committee of which he or she is a member or to the chairman thereof. Any such resignation shall take effect at the time specified therein, or if the time be not specified, upon receipt thereof, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The Board of Directors may at any time, with or without cause, remove from office or discharge or terminate the employment of any officer, agent, employee or member of any committee.

Nabi's Certificate of Incorporation, Proposed Charter Amendments and By-laws

Section 2. Directors. Any Director of the corporation may resign at any time upon notice given in writing or by electronic transmission given to the Board of Directors or to the Chairman of the Board or to the President or the Secretary of the corporation. Any such resignation shall take effect at the time specified therein, or if the time be not specified, upon receipt thereof; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any Director, or the entire Board of Directors, may be removed from office at any time, but only for cause and only by the affirmative vote of the holders of at least seventy-five (75%) of the voting power of all of the then-outstanding shares of capital stock of the corporation entitled to vote generally in the election of Directors, and his or her successor or their successors shall be elected by the remaining Directors as provided in these By-laws in the filling of other vacancies. A Director may be removed for cause only after reasonable notice and opportunity to be heard before the body proposing to remove him or her.

ARTICLE VII

Indemnification of Directors, Officers and Others

Section 1. Directors and Officers. Subject to the provisions of Section 5, the corporation shall indemnify, to the fullest extent permitted by the General Corporation Law of the State of Delaware as presently in effect or as hereafter amended:

(a) Any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether external or internal to the corporation (other than by action by or in the right of the corporation) by reason of the fact that he or she is or was a Director or officer of the corporation, or is or was serving at the request of the corporation as a Director or officer of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such suit, action or proceeding if he or she acted in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was lawful.

(b) Any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he or she is or was a Director or officer of the corporation, or is or was serving at the request of the corporation as a Director or officer of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) and, to the extent permitted by law, amounts paid in settlement actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery of the State of Delaware or such other court shall deem proper.

(c) In addition to and without limiting the foregoing provisions of this Article VII and except to the extent otherwise required by law, any person seeking indemnification under or pursuant to this Section 1 shall be deemed and presumed to have met the applicable standard of conduct set forth in this Section 1 unless the contrary shall be established, and the corporation shall have the burden of proof to overcome such prescription in connection with the making by any person or entity of any determination contrary to that presumption.

Section 2. Employees and Agents. Subject to the provisions of Section 5, the Board of Directors, in its discretion, may authorize the corporation to indemnify to the fullest extent permitted by the General Corporation Law of the State of Delaware (as presently in effect or as hereafter amended):

(a) Any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he or she is or was an employee or agent of the corporation, or is or was serving at the request of the corporation as an employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such suit, action or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interest of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

(b) Any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he or she is or was an employee or agent of the corporation, or is or was serving at the request of the corporation as an employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) and amounts, to the extent permitted by law, paid in settlement actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery of the State of Delaware or such other court shall deem proper.

Section 3. Indemnification for Expenses of Successful Party. Notwithstanding the other provisions of this Article, to the extent that a present or former Director or officer of the corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 1 or in Section 2 of this Article, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith. Without limiting the foregoing, if any action, suit or proceeding is disposed of, on the merits or otherwise (including a disposition without prejudice), without (i) the disposition being adverse to such person, (ii) an adjudication that such person was liable to the corporation, (iii) a plea of guilty or nolo contendere by such person, (iv) an adjudication that such person did not act in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, and (v) with respect to any criminal proceeding, an adjudication that such person had reasonable cause to believe his or her conduct was unlawful, such person shall be considered for the purposes hereof to have been wholly successful with respect thereto.

Nabi's Certificate of Incorporation, Proposed Charter Amendments and By-laws

Section 4. Procedure. Any indemnification under this Article VII (unless required by law or ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the present or former Director, officer, employee or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in Sections 1 and 2 of this Article VII. Such determination shall be made, with respect to a person who is a Director or officer at the time of such determination, (i) by a majority vote of the Directors who are not parties to such action, suit or proceeding, even though less than a quorum or (ii) by a committee of such Directors designated by majority vote of such Directors, even though less than a quorum or (iii) if there are no such Directors, or if such Directors so direct, by independent legal counsel in a written opinion, or (iv) by the stockholders of the corporation.

Section 5. Notification and Defense of Claim; Right to Institute Suit.

(a) In addition to and without limiting the foregoing provisions of this Article VII and except to the extent otherwise required by law, it shall be a condition of the corporation's obligation to indemnify under Sections 1 and 2 of this Article VII (in addition to any other condition in these by-laws or by law provided or imposed) that the person asserting, or proposing to assert, the right to be indemnified, must notify the corporation in writing as soon as practicable of any action, suit, proceeding or investigation involving such person for which indemnity will or could be sought, but the failure to so notify shall not affect the corporation's objection to indemnify except to the extent the corporation is adversely affected thereby. With respect to any action, suit, proceeding or investigation of which the corporation is so notified, the corporation will be entitled to participate therein at its own expense and/or to assume the defense thereof at its own expense, with legal counsel reasonably acceptable to such person. After notice from the corporation to such person of its election so to assume such defense, the corporation shall not be liable to such person for any legal or other expenses subsequently incurred by such person in connection with such action, suit, proceeding or investigation other than as provided below in this subsection (a). Such person shall have the right to employ his or her own counsel in connection with such action, suit, proceeding or investigation, but the fees and expenses of such counsel incurred after notice from the corporation of its assumption of the defense thereof shall be at the expense of such person unless (i) the employment of counsel by such person has been authorized by the corporation, (ii) counsel to such person shall have reasonably concluded that there may be a conflict of interest or position on any significant issue between the corporation and such person in the conduct of the defense of such action, suit, proceeding or investigation or (iii) the corporation shall not in fact have employed counsel to assume the defense of such action, suit, proceeding or investigation, in each of which cases the fees and expenses of counsel for such person shall be at the expenses of the corporation, except as otherwise expressly provided by this Article VII. The corporation shall not be entitled, without the consent of such person, to assume the defense of any claim brought by or in the right of the corporation or as to which counsel for such person shall have reasonably made the conclusion provided for in clause (ii) above. The corporation shall not be required to indemnify such person under this Article VII for any amounts paid in settlement of any action, suit, proceeding or investigation effected without its written consent. The corporation shall not settle any action, suit, proceeding or investigation in any manner which would impose any penalty or limitation on such person without such person's written consent. Neither the corporation nor such person will unreasonably withhold their consent to any proposed settlement.

(b) If a claim for indemnification or advancement of expenses under this Article VII is not paid in full by the corporation within 90 days after a written claim therefor has been received by the corporation, the claimant may at any time thereafter bring suit against the corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expenses of prosecuting such claim.

Section 6. Reduction and Reimbursement. The corporation's indemnification under Sections 1 and 2 of this Article VII of any person who is or was a Director, officer, employee or agent of the corporation, or is or was serving, at the request of the corporation as a Director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall be reduced by any amounts such person receives as indemnification (i) under any policy of insurance purchased and maintained on his or her behalf by the corporation, (ii) from such other corporation, partnership, joint venture, trust or other enterprise, or (iii) under any other applicable indemnification provision. In the event the corporation makes an indemnification payment under this Article VII and the person receiving such payment is subsequently reimbursed from the proceeds of insurance or by such other corporation, partnership, joint venture, trust or other enterprise, such person shall promptly refund such indemnification payments to the corporation to the extent of such reimbursement.

Section 7. Advance of Expenses. In the event that the corporation does not assume the defense pursuant to Section 5, any expenses (including attorneys' fees) incurred by a Director or officer in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such Director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the corporation as authorized in this Article VII. Any advance under this Section 4 shall be made promptly, and in any event within ninety days, upon the written request of the person seeking the advance.

Section 8. Insurance. The corporation may purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a Director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the corporation would have the power to indemnify such person against such liability under the provisions of the General Corporation Law of the State of Delaware (as presently in effect or hereafter amended), the certificate of incorporation of the corporation or these by-laws.

Section 9. Consolidation or Merger. In the discretion of the Board of Directors of the corporation, for the purposes of this Article VII, references to "the corporation" may also include any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its Directors or officers, so that any person who is or was a Director or officer of such constituent corporation, or is or was serving at the request of such constituent corporation as a Director or officer of another corporation, partnership, joint venture, trust or other enterprise, would stand in the same position under the provisions of this Article VII with respect to the resulting or surviving corporation as he or she would have with respect to such other constituent corporation if its separate existence had continued.

Section 10. Non-Exclusive; Savings Clause. The indemnification and advancement of expenses provided by, or granted pursuant to, the other Sections of this Article VII shall not be deemed exclusive of any other rights to which any person, whether or not entitled to be indemnified under this Article VII, may be entitled under any statute, by-law, agreement, vote of stockholders or disinterested Directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office. Each person who is or becomes a Director or officer as described in Section 1 shall be deemed to have served or to have continued to serve in such capacity in reliance upon the indemnity provided for in this Article VII. All rights to indemnification under this Article VII shall be deemed to be provided by a contract between the corporation and the person who serves as a Director or officer of the corporation at any time while these by-laws and other relevant provisions of the General Corporation Law of the State of Delaware and other applicable law, if any, are in effect. Any repeal or modification thereof shall not affect any rights or obligations then existing.

Nabi's Certificate of Incorporation, Proposed Charter Amendments and By-laws

Section 11. Inurement. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VII shall continue as to a person who has ceased to be a Director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 12. Definitional Matters. For purposes of this Article VII, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to "serving at the request of the corporation" shall include any service by a Director or officer of the corporation which imposes duties on, or involves services by, such person with respect to any employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he or she reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this Article VII.

ARTICLE VIII

Capital Stock

Section 1. Stock Certificates. Each stockholder shall be entitled to a certificate or certificates representing in the aggregate the share owned by him or her and certifying the number and class thereof, which shall be in such form as this Board shall adopt. Each certificate of stock shall be signed by the Chairman of the Board or the President or a Vice President, and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary. Any of or all the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before the certificate is issued, such certificate may nevertheless be issued by the corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

Section 2. Transfer of Stock. Shares of stock shall be transferable on the books of the corporation pursuant to applicable law and such rules and regulations as the Board of Directors shall from time to time prescribe.

Section 3. Holders of Record. Prior to due presentment for registration of transfer the corporation may treat the holder of record of a share of its stock as the complete owner thereof exclusively entitled to vote, to receive notifications and otherwise entitled to all the rights and powers of a complete owner thereof, notwithstanding notice to the contrary.

Section 4. Transfer Agent and Registrar. The Board of Directors may at any time appoint a transfer agent or agents and/or registrar or registrars for the transfer and/or registration of shares of stock.

Section 5. Lost, Stolen, Destroyed or Mutilated Stock Certificates. The Board of Directors may direct a new stock certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen, destroyed or mutilated, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, destroyed or mutilated. When authorizing such issue of a new certificate or certificates, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen, destroyed or mutilated certificate or certificates, or his or her legal representative, to (a) advertise the same in such manner as it shall require and/or (b) give the corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen, destroyed or mutilated and/or (c) comply with any other reasonable requirements prescribed by the Board.

ARTICLE IX

Securities of Other Corporations

Subject to any limitations that may be imposed by the Board of Directors, the Chairman of the Board, the President or any person or persons authorized by the Board may in the name and on behalf of the corporation (i) act, or appoint any other person or persons (with or without powers of substitution) to act in the name and on behalf of the corporation (as proxy or otherwise), at any meeting of the holders of stock or other securities of any corporation or other organization, securities of which shall be held by this corporation, or (ii) express consent or dissent, as a holder of such securities, to corporate or other action by such other corporation or organization.

ARTICLE X

Checks, Notes, Drafts and Other Instruments

Checks, notes, drafts and other instruments for the payment of money drawn or endorsed in the name of the corporation may be signed by any officer or officers or person or persons authorized by the Board of Directors to sign the same. No officer or person shall sign any such instrument as aforesaid unless authorized by the Board to do so.

ARTICLE XI

Dividends and Reserves

Section 1. Dividends. Dividends upon the capital stock of the corporation may, subject to any provisions of the certificate of incorporation, be declared pursuant to law by the Board of Directors. Dividends may be paid in cash, in property or in shares of the capital stock.

Section 2. Reserves. Before payment of any dividend there may be set aside out of any funds of the corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, thinks proper as a reserve fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the Directors shall think conducive to the interest of the corporation, and the Directors may modify or abolish any such reserve in the manner in which it was created.

ARTICLE XII

Corporate Seal

The corporate seal shall be in such form as the Board of Directors may from time to time prescribe and the same may be used by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

ARTICLE XIII

Fiscal Year

The fiscal year of the corporation shall end on December 31 of each year.

ARTICLE XIV

Books and Records

The books, accounts and records of the corporation, except as may be otherwise required by the laws of the State of Delaware, may be kept outside of the State of Delaware, at such place or places as the Board of Directors may from time to time appoint. Except as may otherwise be provided by law, the Board of Directors shall determine whether and to what extent the books, accounts, records and documents of the corporation, or any of them, shall be open to the inspection of the stockholders, and no stockholder shall have any right to inspect any book, account, record or document of the corporation, except as conferred by law or by resolution of the stockholders or Board of Directors.

ARTICLE XV

Notices

Section 1. Electronic Transmission. Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the corporation under any provision of law, the certificate of incorporation, or these by-laws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the corporation. Any such consent shall be deemed revoked if (a) the corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with such consent and (b) such inability becomes known to the Secretary or an Assistant Secretary of the corporation or to the transfer agent, or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

Notice given pursuant to the immediately preceding paragraph shall be deemed given: (a) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice; (b) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice; (c) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (i) such posting and (ii) the giving of such separate notice; and (d) if by any other form of electronic transmission, when directed to the stockholder. An affidavit of the Secretary or any Assistant Secretary or of the transfer agent or other agent of the corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

For purposes of these by-laws, "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

Section 2. Waiver of Notice. Whenever notice is required, the certificate of incorporation, these by-laws or as otherwise provided by law, a written waiver thereof, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, Directors or members of a committee of directors need be specified in any written waiver of notice or any waiver by electronic transmission.

ARTICLE XVI

Severability

If any term or provision of the by-laws, or the application thereof to any person or circumstance or period of time, shall to any extent be invalid or unenforceable, the remainder of the by-laws, or the application of such term or provision to persons or circumstances or periods of time other than those as to which it is invalid or unenforceable, shall not be affected thereby and each term and provision of the by-laws shall be valid and enforced to the fullest extent permitted by law. All restrictions, limitations, requirements and other provisions of these by-laws shall be construed, insofar as possible, as supplemental and additional to all provisions of law applicable to the subject matter thereof and shall be fully complied with in addition to the said provisions of law unless such compliance shall be contrary to law.

ARTICLE XVII

Amendments

The Board of Directors and the stockholders shall each have the power to adopt, alter, amend and repeal these by-laws, and any by-laws adopted by the Directors or the stockholders under the powers conferred hereby may be altered, amended or repealed by the Directors or by the stockholders; provided, however, that these by-laws shall not be altered, amended or repealed by action of the stockholders, and no by-law shall be adopted by action of the stockholders, without the affirmative vote of the holders of at least seventy-five percent (75%) of the voting power of all the shares of the corporation entitled to vote generally in the election of Directors, voting together as a single class.

Corporate Directory

Biota Holdings Limited

ABN 28 006 479 081

Website: <http://www.biota.com.au>

Email: info@biota.com.au

Registered Office

Unit 10

585 Blackburn Road

Notting Hill Victoria 3168

Australia

Information Line

(Australia) 1300 306 230

(Overseas) +61 (2) 8280 7169

Biota Share Registry

Link Market Services Limited

Locked Bag A14

Sydney South NSW 1235

Australia

Phone: 1300 554 474 (toll-free within Australia)

Phone: +61 (2) 8280 7111

Fax: +61 (2) 9287 0309

Website: <http://www.linkmarketservices.com.au>

Email: registrars@linkmarketservices.com.au

Legal Advisers

Australia

Allens

Level 37

101 Collins Street

Melbourne Victoria 3000

Australia

United States of America

DLA Piper LLP (U.S.)

Suite 1100

4365 Executive Drive

San Diego California 92121-2133

United States of America

Independent Expert

Lonergan Edwards & Associates

Level 27

363 George Street

Sydney NSW 2001

Australia

Phone: +61 (2) 8235 7500

Fax: +61 (2) 8235 7550

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By mail:
Biota Holdings Limited
C/- Link Market Services Limited
Locked Bag A14
Sydney South NSW 1235 Australia



By fax: +61 2 9287 0309



All enquiries to: Telephone: 1300 554 474 Overseas: +61 2 8280 7111

SAMPLE NAME 1
SAMPLE NAME 2
<SAMPLE A/C>
SAMPLE ADDRESS 1
SAMPLE ADDRESS 2



X99999999999

SHAREHOLDER VOTING FORM

I/We being a member(s) of Biota Holdings Limited and entitled to attend and vote hereby appoint:

STEP 1

APPOINT A PROXY

the Chairman
of the Meeting
(mark box)

OR if you are NOT appointing the Chairman of the Meeting as your proxy, please write the name of the person or body corporate (excluding the registered shareholder) you are appointing as your proxy

or failing the person/body corporate named, or if no person/body corporate is named, the Chairman of the Meeting, as my/our proxy and to vote for me/us on my/our behalf at the General Meeting of the Company to be held at 2:00pm on Tuesday, 25 September 2012, in Meeting Rooms 109 and 110 at The Melbourne Convention Centre, 1 Convention Centre Place, South Wharf, Melbourne, Australia and at any adjournment or postponement of the meeting.

The Chairman of the Meeting intends to vote undirected proxies in favour of all items of business.

Proxies will only be valid and accepted by the Company if they are signed and received no later than 48 hours before the meeting.

Please read the voting instructions overleaf before marking any boxes with an

STEP 2

VOTING DIRECTIONS

Resolution

That, pursuant to and in accordance with section 411 of the Corporations Act, the scheme of arrangement proposed between Biota Holdings Limited and the holders of its ordinary shares, as contained in and more particularly described in the document of which the notice convening this meeting forms part, is approved (with or without modification as approved by the Supreme Court of Victoria).

For Against Abstain*

* If you mark the Abstain box for a particular Item, you are directing your proxy not to vote on your behalf on a show of hands or on a poll and your votes will not be counted in computing the required majority on a poll.

STEP 3

SIGNATURE OF SHAREHOLDERS - THIS MUST BE COMPLETED

Shareholder 1 (Individual)

Sole Director and Sole Company Secretary

Joint Shareholder 2 (Individual)

Director/Company Secretary (Delete one)

Joint Shareholder 3 (Individual)

Director

This form should be signed by the shareholder. If a joint holding, either shareholder may sign. If signed by the shareholder's attorney, the power of attorney must have been previously noted by the registry or a certified copy attached to this form. If executed by a company, the form must be executed in accordance with the company's constitution and the Corporations Act 2001 (Cth).



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 in **STEP 2**. 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 by inserting the percentage or number of shares you wish to vote in the appropriate box. If you do not mark any of the boxes on the item 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 **2:00pm on Sunday, 23 September 2012**, 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

Login to the Link website using the holding details as shown on the proxy form. Select 'Voting' 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:

Biota 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, 1A Homebush Bay Drive, Rhodes NSW 2138, or Level 12, 680 George Street, Sydney NSW 2000.

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

SAMPLE NAME 1
 SAMPLE NAME 2
 <SAMPLE A/C>
 SAMPLE ADDRESS 1
 SAMPLE ADDRESS 2



X999999999

Biota Shares held at 16 August 2012

**ELECTION FORM
 (SHARE SALE FACILITY FOR SHAREHOLDERS WITH UP TO 2,000 BIOTA SHARES)**

PLEASE COMPLETE THIS FORM ONLY IF YOU WANT TO USE THE SHARE SALE FACILITY TO SELL THE BIOTA PHARMACEUTICALS SHARES THAT YOU OTHERWISE WOULD BE ENTITLED TO RECEIVE UNDER THE SCHEME OF ARRANGEMENT (SCHEME).

This Election Form (Form) relates to the Scheme Booklet and Notice of Meeting dated 6 August 2012 (Scheme Booklet) issued by Biota Holdings Limited (Biota) and should be read in conjunction with these documents. Biota Shareholders who hold up to 2,000 Biota Shares with a registered address in Australia, New Zealand, USA and UK as at 5:00pm (AEDT) on the Record Date, have the opportunity to sell their Biota Pharmaceuticals Shares that they would otherwise be entitled to receive under the Scheme, free of brokerage and other transaction costs.

If you wish to use this facility, please complete the Form below and return it to the Biota share registry.

THIS FORM IS IMPORTANT. If you are in any doubt as to how to deal with it, please contact your accountant, financial advisor, stockbroker or other professional advisor without delay.

Notes:

- You should not return this Form if you do not wish to sell your Biota Pharmaceuticals Shares.
- In accordance with the Scheme Booklet:
 - Biota Pharmaceuticals Shares will be sold on the NASDAQ exchange by a person nominated by Biota (Nominee).
 - Proceeds will be converted to AUD and remitted to Biota Shareholders as soon as practical after completion of all sales.
- If you have not already provided your bank account details, you may wish to do so by completing the relevant section on the reverse of this Form. This will allow your sales proceeds to be banked directly into your account.
- If the number of Biota Shares you hold increases to over 2,000 as at 5:00pm (AEDT) on the Record Date, you will be unable to use the Share Share Facility and you will be transferred Biota Pharmaceuticals Shares.

A Sale of Shares

I elect to sell all my Record Date entitlement of Biota Pharmaceuticals Shares.

B Contact Details

Please provide a daytime telephone number where we can contact you if we have any questions about this Form.

Daytime telephone number

Contact name (PRINT)

C Shareholder Signature(s)

By signing and returning this Form you agree to all of the matters set out in this Form (including those matters shown overleaf).

Shareholder 1 (Individual)

Sole Director and Sole Company Secretary

Joint Shareholder 2 (Individual)

Director/Company Secretary (Delete one)

Joint Shareholder 3 (Individual)

Director

Date

TO BE A VALID INSTRUCTION, THIS FORM MUST BE RECEIVED AT ONE OF THE ADDRESSES LISTED OVERLEAF BY NO LATER THAN 5:00PM (AEDT) ON 9 OCTOBER 2012



HOW TO COMPLETE THE ELECTION FORM

Please read this Form carefully. If you do not understand this Form or if you have any doubts about what to do, please consult your appropriate professional adviser. Terms defined in the Scheme Booklet have the same meaning as in this Form (unless the context otherwise requires).

Operation of the Share Sale Facility

Biota Pharmaceuticals Shares that would otherwise have been issued to the Electing Shareholders and Ineligible Foreign Biota Shareholders referred to in Section 1.17 of the Scheme Booklet will be sold on their behalf.

The Nominee will sell those Biota Pharmaceuticals Shares on Nasdaq during the 15 Business days after the Implementation Date.

As the market price of Biota Pharmaceuticals Shares will be subject to change from time to time, the sale price of those Biota Pharmaceuticals Shares and the proceeds of that sale cannot be guaranteed. You will be able to obtain information on the market price of Biota Pharmaceuticals Shares from Nasdaq's website at www.nasdaq.com.

The amount of money received by each Electing Shareholder will be calculated on an averaged basis so that all Electing Shareholders and Ineligible Foreign Biota Shareholders will receive the same price per Biota Pharmaceuticals Share. Consequently, the amount received by Electing Shareholders for each Biota Pharmaceuticals Share may be more or less than the actual price that is received by the Nominee for any particular Biota Pharmaceuticals Share.

Under the Scheme, each Electing Shareholder appoints Biota as its agent to receive on its behalf any financial services guide or other notices which may be issued by the Nominee.

Payment of Proceeds

The proceeds received will, as soon as practicable, be distributed to Electing Shareholders by making a deposit into an account with an Australian bank nominated by the Electing Shareholder with the Biota Share Registry as at the Record Date. If the Electing Shareholder does not have a nominated Australian bank account with the Biota Share Registry as at the Record Date, the Electing Shareholder will be sent a cheque drawn on an Australian bank in Australian currency for the proceeds of sale.

Nominated Account Details

Complete this section if you want to update or inform the Biota Share Registry of your nominated bank account. Payments to Shareholders will only be made by direct credit to an account with a financial institution in Australia.

Account Name

Financial Institution

Branch

BSB Number (*must be 6 digits*)

Account Number

Signing Instructions

This Form must be signed by the Shareholder.

Joint holders – all holders must sign.

Power of Attorney – if not already noted by the Biota Share Registry, a certified copy of the Power of Attorney must accompany this Form.

Deceased Estate – all executors must sign and, if not already noted by the Biota Share Registry, a certified copy of Probate or Letters of Administration must accompany this Form.

Company – this Form must be signed in accordance with the company's constitution and the *Corporation Act 2001 (Cth)*. Titles of all signatories should be indicated and inapplicable titles should be deleted.

Lodgement Instructions

The completed Form must be forwarded to the Biota Share Registry by 5:00pm (AEDT) on 9 October 2012. A reply paid envelope has been provided to you for these purposes. If you are returning your Form by post, you must allow sufficient time for collection and delivery by postal services. The postal acceptance rule does not apply.

POSTAL DELIVERY

Biota Holdings Limited
Link Market Services Limited
Locked Bag A14
Sydney South NSW 1235
Australia

OR

HAND DELIVERY

Biota Holdings Limited
Link Market Services Limited
1A Homebush Bay Drive
Rhodes NSW 2138

Please do not use this address for postal delivery.

If you require information on how to complete this Form please contact the Biota Shareholder Information Line on 1300 306 230 (within Australia) or +61 2 8280 7169 (outside Australia).

Privacy Clause

Link Market Services Limited advises that Chapter 2C of the *Corporations Act 2001* requires information about you as a Shareholder (including your name, address and details of the Shares you hold) to be included in the public register of the entity in which you hold Shares. Information is collected to administer your Shareholding and if some or all of the information is not collected then it might not be possible to administer your Shareholding. Your personal information may be disclosed to the entity in which you hold Shares. You can obtain access to your personal information by contacting us at the address or telephone number shown on this Form. Our privacy policy is available on our website (www.linkmarketservices.com.au).