

## Notice of annual meeting of shareholders

Notice is hereby given that the annual meeting of shareholders of Abano Healthcare Group Limited ("Abano" or "the Company") will be held in the Pakuranga Hunt Room, Ellerslie Convention Centre, 8-100 Ascot Avenue, Ellerslie, Auckland, New Zealand on Monday 29 November 2004 commencing at 2:00 pm.

### AGENDA

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#### Chairman and Chief Executive Officer

Presentations.

#### General Business

Presentation of the annual report for the year ended 31 May 2004 and the auditors' report.

#### Resolutions:

##### *Ordinary Business:*

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

##### **Resolution 1**

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

##### **Resolution 2**

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

##### **Resolution 3**

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

##### **Resolution 4**

To approve and ratify the issue and allotment of 22,012,116 shares in the Company to RECT Funds Management Limited at \$0.13 per share (see explanatory notes).

##### *Special Business:*

To consider and, if thought fit, pass the following special resolution:

##### **Resolution 5**

That the Company's existing constitution be revoked and a new constitution be adopted.

*By order of the Board*



Stephen St Paul  
Authorised Officer  
Abano Healthcare Group Limited

### EXPLANATORY NOTES

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#### **Resolution 2 – Re-election of Alan Clarke**

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

Alan is Managing Director of Abano and is a director of all Abano subsidiary companies. He is charged with formulation and implementation of the Group's strategic plan and performance. Alan has held a number of senior management roles and directorships for both public and private companies, in New Zealand and overseas, and he has extensive experience in the healthcare sector.

#### **Resolution 3 – Re-election of Jim Syme**

Mr Syme retires by rotation and, being eligible, has offered himself for re-election. Jim is a member of the audit and remuneration committee and has an extensive corporate and financial background. He has a wide knowledge of corporate governance in both small and large companies and has been involved in the strategic development and guidance of a number of new business initiatives. Jim is chairman of Waste Management NZ Ltd, chairman of Kiwi Income Properties Ltd (the manager for Kiwi Income Property Trust), and the chairman of

Software of Excellence International Ltd. In addition, he is the deputy chairman of ASB Bank Ltd, deputy chairman of ASB Group (Life) Ltd (Sovereign Assurance Group), and a director of Metro Water Ltd.

The Board has determined that Mr Syme is an independent director.

#### **Resolution 4 – Share placement**

The Listing Rules of the New Zealand Exchange ("Listing Rules") generally require shareholder approval by ordinary resolution of any issue of new Equity Securities in the Company. However, an exception to this requirement permits the Company to issue, in any 12 month period, not more than 10% of the total number of Equity Securities on issue at the commencement of that period, without the need for shareholder approval (this has been increased to 15% under the new Listing Rules). The ordinary share issue described in Resolution 4 was made pursuant to this exception. The Listing Rules also permit the Company to renew its capacity to issue Equity Securities under the 10% exception by obtaining subsequent shareholder ratification of issues made under that exception. This is the purpose of Resolution 4.

The shares were issued on 2 November 2004 and the proceeds from the issue will help fund Abano's acquisition and growth strategy.

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Any shareholder who has been issued shares which are the subject of ratification under Resolution 4 is disqualified under Listing Rule 9.3.1 from voting on Resolution 4.

### **Resolution 5 – New constitution**

Resolution 5 deals with the revocation of Abano's existing constitution and the adoption of a new constitution. Changes to the constitution are needed following recent amendments to New Zealand Exchange's NZSX Listing Rules (Listing Rules). These changes need to be adopted as part of the constitution in order for Abano to be able to rely upon them immediately. The Company could have opted to adopt these Listing Rules changes by way of a schedule of amendments to the existing constitution but has opted instead to adopt a completely new document on the basis that a single document is much more user-friendly.

The Board has also decided that this new constitution should incorporate the Listing Rules by reference only, rather than by including extracts from the Rules directly in the constitution (see clause 2.1 of the proposed constitution). The rationale for this approach is that subsequent amendments to the Listing Rules will not need to be formally incorporated into the constitution at shareholders' meetings but will instead be treated as forming part of the constitution as soon as they come into force. This will result in fewer shareholders' meetings and also ensure that the constitution remains a "live" document at all times. Shareholders will not be required to vote on changes to the constitution that happen by way of changes to the Listing Rules.

Other than the restructuring described in the previous paragraph, the proposed new constitution does not represent a substantial departure from the existing constitution.

In summary, the more significant of the Listing Rule changes that will apply to the Company from the date on which the proposed constitution is approved are:

- **Listing Rule 3.3.1:** The constitution now provides specifically that two independent directors are required (see clause 11.2 of the constitution). The board must determine who is independent and advise the market accordingly. This complies with the new NZX corporate governance rules. The Company already complies with this listing rule.
- **Listing Rule 3.5:** A requirement to obtain shareholder approval for director retirement packages is included in the amended Rules. The new rule provides that the Company may make a payment to a director or former director, or his or her dependents, by way of a lump sum or pension, on or in connection with his or her retirement or cessation of office, only if the amount of the payment, or the method of calculation of the amount of that payment, is authorised by an ordinary resolution of shareholders. However, the Company may make a payment to a director or former director that was in office on or before 1 May 2004 and has continued to hold office since that date, or to his or her dependents, by way of a lump sum or pension, on or in connection with his or her retirement or cessation of office, without such shareholder approval, provided that the total amount of that payment does not exceed the total remuneration of that director in any three years chosen by the Company. In addition, the provisions relating to shareholder approval of directors' remuneration have been clarified to make it clear that such approval is required for remuneration of directors of subsidiaries of the Company. The Board's policy is that directors do not receive retirement packages on retirement.
- **Listing Rule 3.6:** There is now a requirement for all listed companies to have an audit committee. The responsibilities of the audit committee include:
  - ensure that processes are in place and to monitor those processes so that the Board is properly and regularly informed and updated on corporate financial matters;

- recommend the appointment and removal of the independent auditor;
- meet regularly to monitor and review the independent and internal auditing practices;
- have direct communication with and unrestricted access to the independent and any internal auditors or accountants;
- review the financial reports and advise all directors whether they comply with the appropriate laws and regulations;
- ensure that the external auditor or lead audit partner is changed at least every five years.

The Company already complies with this listing rule.

- **Listing Rule 7.3.2:** The time limit during which share issues approved by shareholders must be effected has been increased. Shares issued to employees only must be issued within 36 months after the passing of the relevant resolution (previously 12 months) and any other shares issued pursuant to a shareholder resolution must be issued within 12 months after the passing of that resolution (previously 6 months).
- **Listing Rule 7.3.4:** The Company may now issue equity securities without shareholder approval if the consideration does not exceed \$5,000 per holder and the total number issued does not exceed 30% of the number of fully paid equity securities already on issue.
- **Listing Rule 7.3.5:** The limit on the number of equity securities the Company may issue (other than to employees and directors and associated persons of directors) in any 12 month period without Shareholder approval has been increased from 10% to 15%.
- **Listing Rule 7.3.6:** The limit on the number of equity securities the Company may issue to employees in any 12 month period has been increased from 2% to 3%, and the limit on the total number of equity securities the Company can issue to employees in any five year period has been increased from 5% to 7%, in both cases without shareholder approval.
- **Listing Rule 7.3.7A:** This is a new rule which provides that, with certain exceptions, the Company may not reprice or amend the terms of any securities issued with shareholders' approval to or for the benefit of employees or directors in their capacity as such without either the approval of the NZX or a further shareholder resolution.
- **Listing Rule 7.6.1:** The limit on the number of equity securities that the Company may repurchase under one of the approved repurchase regimes has been increased from 10% to 15%.
- **Listing Rule 9.1.1:** The Listing Rules amendments include the deletion of the reference to shareholders' funds in Listing Rule 9 (which deals with transactions with related parties and major transactions) in favour of the average market capitalisation test. This is now the test used for calculating whether a transaction is sufficiently large to require shareholder approval under Listing Rule 9.1 or 9.2. A new definition of the term "Average Market Capitalisation" provides for a calculation based on the closing prices for securities over the 20 Business Days prior to the relevant date.
- **Listing Rules 9.2.1(c) and (d):** There are two new exceptions to the Rules regarding transactions under Rule 9.2. Employment agreements entered into with individuals who are not directors of the Company or any subsidiary and which would otherwise constitute material transactions with a related party are no longer caught by Listing Rule 9.2.1. Similarly, transactions with related parties where the total value is less than \$250,000 are now excluded from the application of Listing Rule 9.2.1. In neither case is shareholder approval now required.

If you would like a copy of the proposed new constitution it can be obtained in electronic copy from the Company's website, [www.abanohealthcare.co.nz](http://www.abanohealthcare.co.nz). The Listing Rules can be found on NZX's website at [www.nzx.com](http://www.nzx.com)

### **NZX Approval**

NZX has approved the proposed constitution.