

8 August 2008

Dear Shareholder

Most shareholders, I am sure, will be aware that Biota has resolved its outstanding issues with GSK over Relenza. We are now in a position to accelerate the development of our pipeline and consider other initiatives to increase shareholder returns.

Biota's case was high profile and the settlement has attracted considerable media attention, some of it ill-informed. The purpose of this letter is to provide Biota's shareholders directly with factual information on how the settlement of the case came about and what it means for the company.

The settlement took place during a mediation between Biota and GSK scheduled this July in compliance with Victorian Supreme Court orders. Representatives of Biota's Board, including myself, senior management, senior members of the legal team from Maurice Blackburn Commercial and counsel, and our corporate advisors, Caliburn Partnership, were in attendance. Biota's full Board met a number of times during the mediation proceedings.

The broad terms of the settlement were these:

- Biota will discontinue the action it commenced in 2004 in return for a payment of \$20 million from GSK. This payment will be received on 18 August 2008;
- Each party will bear its own litigation costs; and
- Biota will continue to receive royalties from Relenza sales in the future, as the existing agreement remains.

Additionally, GSK agreed to establish senior executive liaison arrangements with Biota, to better support the Relenza franchise.

Why did the company agree this settlement? The broad answer is that it best met our objectives of balancing the risks the litigation posed, with the rewards we could reasonably expect. In doing so, we needed to recognise that the outlook for Relenza had improved markedly over the four year course of the litigation.

It is appropriate to reflect upon the objectives of the Board when it first decided to initiate legal proceedings against GSK.

In 2004, Relenza royalties were some \$600,000 pa. The prospects for a revival in sales appeared dim and from our perspective, our commercial concerns were not being addressed by GSK. Biota's Board, on behalf of shareholders, were questioning the value of the licensing agreement with GSK.

The Board's objectives in commencing the litigation were to:

- have GSK restore Relenza to an acceptable position in world markets; and
- seek compensation for shareholders for what Biota considered to be a breach of GSK's contractual obligations.

The litigation process involved a number of stages: initial pleadings (details of claims by Biota and defences by GSK), discovery (identification and supply) of relevant documents predominantly held by GSK, provision of detailed expert and lay (employee) witness statements, mediation and ultimately, in the case that mediation failed, a trial. The litigation covered events back to 1999, the year of Relenza's global launch. The discovery process was protracted and very complex. In the course of discovery, GSK provided our lawyers with over 3 million pages of documents.

During this process, settlement proposals emerged with the last in 2006 and still in the early in the discovery stage of the proceedings. Those proposals and other developments strengthened Biota's view of its case and encouraged the company to continue with further discovery of GSK's documents. Biota's position at that time was that its case was tracking positively.

More recently, the market performance of Relenza improved significantly. The emergence of pre-pandemic Government stockpiling markets for avian flu antiviral drugs increased global demand for antivirals considerably. As well, it appeared that Relenza's share of the stockpiling market would grow to at least 20 per cent from its very low starting point. This change in performance was significant in relation to the case because it led to increased royalties from Relenza sales, which would have to be offset against any compensation Biota could expect the court to otherwise award against GSK.

As discovery neared completion, we had secured a trial commencement date of 4 August 2008. Throughout, it had been essential that the matter be scheduled for trial as early as practical, given the relative financial strength of the parties. On 27 May, the Supreme Court vacated the trial date as more time was required to complete pre-trial preparatory work.

After the loss of the trial date, the updated view of our legal advisors was that a trial was potentially 12 to 18 months away, perhaps even as late as 2010. Such likely delay would necessitate further costs, potentially well in excess of the total incurred to date. Costs in 2008 were in excess of \$21 million, far greater than the previous year. Furthermore, the trial proceedings could be expected to run for 6 to 9 months, also incurring significant additional costs. To see the process through, Biota was looking at a funding level of up to \$100 million.

On the other hand, royalties from Relenza had increased from less than \$600,000 in 2004, to \$40 million in 2007 and \$20 million in 2008. Relenza has a six year patent life ahead. On the basis of Relenza's recent performance in the market, total future royalties could be expected to be in the range of \$120 to \$240 million. With \$65 million in royalties received since Biota launched the litigation, the drug could have a total earnings potential of up to \$300 million, or beyond. The improving position of Relenza was significantly reducing the size of the damages we could expect to receive.

After extensive consultation with its advisors, the Board addressed these changing circumstances objectively and the settlement decision was taken on logical commercial grounds. In the Board's view, a key objective of the litigation – the revival of Relenza – was underway. The second objective - compensation - would have to be offset against the uncertainties, risks and improving performance of Relenza.

The litigation is now behind the company. The settlement enables Biota to redirect further resources into its strong research and development pipeline, which has advanced significantly in recent years. It is our pipeline that underpins the long term potential income and value of Biota beyond Relenza.

Importantly, existing shareholders and potential investors can now recognise the full value of Relenza royalties and Biota's extensive portfolio and their potential to enhance shareholder returns.



John Grant  
Chairman