

FISHER & PAYKEL HEALTHCARE CORPORATION LIMITED

# Notice of Annual Shareholders' Meeting 2009

**Fisher & Paykel**  

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HEALTHCARE

## Notice of Annual Shareholders' Meeting

Notice is hereby given that the Annual Shareholders' Meeting will be held at the **Guineas Ballroom, Ellerslie Convention Centre**, Auckland, New Zealand on Friday, 21 August 2009 commencing at 3:00pm.

### **ORDINARY BUSINESS**

#### **1. Financial Statements**

To receive and consider the financial statements and the auditor's report for the year ended 31 March 2009 as contained in the Company's annual report 2009.

#### **2. Election of Directors**

- (a) In accordance with the Company's constitution, Lindsay Gillanders retires by rotation and, being eligible, offers himself for re-election.

(See Explanatory Note 1)

- (b) In accordance with the Company's constitution, Sir Colin Maiden retires by rotation and, being eligible, offers himself for re-election.

(See Explanatory Note 1)

- (c) In accordance with the Company's constitution, Roger France retires and, being eligible, offers himself for election.

(See Explanatory Note 2)

#### **3. Authorise the Directors to fix fees and expenses of auditor**

To authorise the Directors to fix the fees and expenses of PricewaterhouseCoopers as the Company's auditor.

## **SPECIAL BUSINESS**

### **4. Fisher & Paykel Healthcare 2003 Share Option Plan – Issue of Options to the Managing Director and Chief Executive Officer**

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

“That shareholders approve the issue of up to 160,000 options under the Fisher & Paykel Healthcare 2003 Share Option Plan to Michael Daniell, Managing Director and Chief Executive Officer of the Company.”

(See Explanatory Note 3)

## **PROCEDURAL NOTES**

- (i) The persons who will be entitled to vote on the resolutions at the Annual Shareholders’ Meeting are those persons who will be the shareholders of the Company at 3:00pm on Wednesday, 19 August 2009.
- (ii) You can participate by proxy or by casting your vote in person at the Annual Shareholders’ Meeting.
- (iii) All shareholders entitled to attend and vote at the Annual Shareholders’ Meeting are entitled to appoint a proxy to attend and vote for them in their place. The proxy need not be a shareholder of the Company. If they wish, shareholders may appoint the Chairman of the Meeting to act as their proxy. A proxy form is enclosed and, if used, must be lodged at the office of the share registry, Computershare Investor Services Limited, either by mail to Private Bag 92119, Auckland 1142 or by delivery to Level 2, 159 Hurstmere Road, Takapuna, North Shore City, Auckland, New Zealand not less than 48 hours before the time of the holding of the meeting (i.e. before 3:00pm on Wednesday, 19 August 2009).
- (iv) The Company will disregard any votes cast on the resolution set out in Agenda Item 4 by Michael Daniell or any of his associates (as defined in the Australian Corporations Act 2001).

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- (v) The Company need not disregard a vote cast on Agenda Item 4 if it is cast by a person as proxy for a person who is entitled to vote, in accordance with the directions on the proxy form, or if it is cast by the person chairing the meeting as proxy for a person who is entitled to vote, in accordance with a direction on the proxy form to vote as the proxy decides.
- (vi) The matters set out in Agenda Items 2, 3 and 4 must be passed by an ordinary resolution of shareholders, i.e., by a simple majority of the votes of those shareholders entitled to vote and voting on the resolution.
- (vii) This Notice of Meeting has been approved by NZX Limited (NZX) in accordance with NZSX Listing Rule 6.1.1. ASX Limited (ASX) has issued a "no-objection" letter in relation to this Notice of Meeting in accordance with ASX Listing Rules 15.1.4 and 15.1.7.

### **EXPLANATORY NOTES**

Explanatory notes in respect of the resolutions are set out on the following pages.

By Order of the Board of Directors



**Gary Paykel**

Chairman

26 June 2009

## **EXPLANATORY NOTES**

### **EXPLANATORY NOTE 1 – RE-ELECTION OF DIRECTORS**

Under Listing Rule 3.3.11 of the NZSX Listing Rules, and in accordance with the Company's constitution, one third of the Company's Directors must retire by rotation at the Annual Shareholders' Meeting. If the Directors are eligible, they may offer themselves for re-election by shareholders at the meeting. In this case, Lindsay Gillanders and Sir Colin Maiden retire and, being eligible, offer themselves for re-election by shareholders at the Annual Shareholders' Meeting.

Lindsay Gillanders and Sir Colin Maiden are non-executive Directors and are considered by the Board to be Independent Directors, as that capacity is described in the NZSX Listing Rules. Brief biographies outlining the qualifications, history and experience of Lindsay Gillanders and Sir Colin Maiden as Directors are set out below. At the Annual Shareholders' Meeting a resolution to re-elect each of Lindsay Gillanders and Sir Colin Maiden will be put to shareholders.

#### **Lindsay Gillanders**

Lindsay Gillanders, 59, has served as a director of Fisher & Paykel Healthcare Corporation Limited (previously known as Fisher & Paykel Industries Limited) since May 1992. Mr Gillanders has also served as a director of Fisher & Paykel Appliances Holdings Limited since November 2001, Rangatira Limited since October 2002, Auckland Packaging Company Limited since October 2002, Vita New Zealand Limited since November 2004 and as Chairman of Auckland Packaging Company Limited since September 2003. Until completion of the reorganisation in November 2001, Mr Gillanders was responsible for Fisher & Paykel Industries' legal, regulatory, compliance and intellectual property rights, and worked on major commercial agreements including acquisitions and divestments by both the appliances and healthcare businesses. Mr Gillanders received his Bachelor of Law degree with honours from the University of Auckland, New Zealand.

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### **Sir Colin Maiden**

Sir Colin Maiden, 76, has served as a director of Fisher & Paykel Healthcare Corporation Limited (previously known as Fisher & Paykel Industries Limited) since May 1978 and as Chairman from 1989 until the reorganisation in November 2001. Sir Colin served as the Vice Chancellor of the University of Auckland from January 1971 to November 1994. He has also held a number of other directorships in New Zealand and Australia and managerial positions with General Motors Corporation in the U.S. Sir Colin received his undergraduate degrees in engineering from the University of New Zealand, a doctoral degree from Oxford University and an honorary LL.D. from the University of Auckland, New Zealand.

### **EXPLANATORY NOTE 2 – ELECTION OF DIRECTOR**

Roger France was appointed by the Board on 24 February 2009 to fill a casual vacancy. Under NZSX Listing Rule 3.3.6 and ASX Listing Rule 14.4, and in accordance with the Company's constitution, any director appointed by the Board to fill a casual vacancy may hold office until the next Annual Shareholders' Meeting of the Company. If the Director is eligible, they may offer themselves for election by shareholders at that meeting. Accordingly, Mr France retires and, being eligible, offers himself for election by shareholders at the Annual Shareholders' Meeting.

Roger France is a non-executive Director and is considered by the Board to be an Independent Director, as that capacity is described in the NZSX Listing Rules. A brief biography outlining Mr France's qualifications, history and experience is set out below. At the Annual Shareholders' Meeting a resolution to elect Mr France will be put to shareholders.

### **Roger France**

Roger France, 64, is Chancellor of the University of Auckland, Chairman of Tappenden Holdings Limited, Deputy Chairman of Air New Zealand Limited, a director of Sirius NZ Holdco Limited (the parent company of the Blue Star Print Group) and, until

recently, a director of Fonterra Co-operative Group Limited. He was a partner at PricewaterhouseCoopers and one of its predecessor firms, Coopers & Lybrand, for over 15 years and was the Chief Financial Officer of Allied Farmers Co-operative Limited and Freightways Holdings Limited for ten years. He was the Managing Partner of Coopers & Lybrand in Auckland for five years. Following the merger with PricewaterhouseCoopers, he led the firm's Corporate Value consulting practice in the Asia Pacific region and served as a member of its Governance Board. Mr France received his Bachelor of Commerce degree from the University of Canterbury and is a Chartered Accountant.

### **EXPLANATORY NOTE 3 – FISHER & PAYKEL HEALTHCARE 2003 SHARE OPTION PLAN – ISSUE OF OPTIONS TO THE MANAGING DIRECTOR AND CHIEF EXECUTIVE OFFICER**

#### *Introduction*

Shareholder approval is required by the ASX Listing Rules and the Company's constitution, and is being sought for, the grant of up to 160,000 options under the Fisher & Paykel Healthcare 2003 Share Option Plan (the Plan) to Michael Daniell, the Managing Director and Chief Executive Officer of the Company. The Plan was established by the Company in 2003 in accordance with the Plan rules dated 7 March 2003 and amended on 12 August 2004 and 22 November 2006. The Company intends to also issue, pursuant to NZSX Listing Rule 7.3.6(a), up to 3,840,000 options to selected executives, managers and other employees of the Company and its subsidiaries within 5 months of the Annual Shareholders' Meeting. The proposed grant of up to 160,000 options to Mr Daniell represents approximately 4% of the total options intended to be granted at that time to selected executives, managers and other employees of the Company and its subsidiaries. The Company estimates that following this issue, the total number of securities issued to executives, managers and other employees of the Company and its subsidiaries both under the issue and during the five year period preceding the date of the issue will be approximately 4.2% of the total securities on issue.

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The Board believes that the Plan fulfils an important role in creating an identity of interest between the Company's senior employees and its shareholders, through incentivising such employees to grow the share price of the Company. The Plan also assists the Company to attract, motivate and retain key employees in an environment where such employees are in high demand both within New Zealand and internationally.

As with previous option plans, the Board will regularly review the operation of the Plan and consider whether it is in the Company's interest to make further grants of options. It is proposed, subject to obtaining shareholder approval to do so, that a grant of up to 160,000 options be made to Michael Daniell under the Plan using criteria applying generally to all employees and on identical terms and conditions as those options to be issued to other selected employees.

### *Shareholder approval required*

ASX Listing Rule 10.14 and the Company's constitution require that shareholder approval be obtained where options and other equity securities are to be issued to a Director under an employee incentive scheme. Shareholder approval is not required for the purposes of the NZSX Listing Rules because of a recent Listing Rule change made by NZX which allows executive directors to participate in employee share issues where the participation is determined by criteria applying to employees generally. Mr Daniell's participation has been determined by criteria applying to employees generally.

Shareholder approval is therefore being sought to issue options under the Plan to the Managing Director and Chief Executive Officer of the Company, Michael Daniell. If approved, the options will be issued to Mr Daniell within 5 months of the Annual Shareholders' Meeting. The Company intends to issue options to selected executives, managers and other employees of the Company and its subsidiaries on or about the same date.

No Director or associate has received options granted under the Plan (or any predecessor plan) except Mr Daniell. As at 31 March 2009, Mr Daniell held 975,000 options under the Plan. 160,000 options were granted to Mr Daniell under the Plan on



3 September 2008, following the approval of the issue of those options at the 2008 Annual Shareholders' Meeting. Mr Daniell is the only Director eligible to participate in the Plan.

### ***Key Terms of the Plan***

The key terms of the Plan are:

- No amount is payable for the grant of options.
- One option gives the participant the right to subscribe for one ordinary share in the Company subject to meeting the following vesting conditions:
  - (a) One third of the options granted under the Plan to an employee on a particular grant date become exercisable on each of the second, third and fourth anniversaries of the grant date and all unexercised options expire on the fifth anniversary of the grant date.
  - (b) Options also become exercisable if a person (or group of persons acting in concert) acquires more than half of the ordinary shares of the Company.
  - (c) On leaving employment due to serious illness, accident, permanent disablement, redundancy or other circumstances as determined by the Board, the participant will have one month to exercise all outstanding options. In the event of the participant's death, the participant's executor will have three months to exercise all outstanding options. Unless otherwise determined by the Board, on termination of employment for any other reason all outstanding options held by the participant will expire.
- Subject to any applicable Listing Rules, the Board is given a discretion to adjust options to achieve equivalent treatment as between the participants in the Plan and the shareholders in the event of a reconstruction in the share capital of the Company.
- The Company may amend the terms of the Plan, subject to the consent of any adversely affected participant.

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- Options are not transferable and do not participate in dividends or other distributions of the Company.
- The Board may determine the exercise price of an option on or around the date the options are granted.
- The Board has agreed that the exercise price for the options granted under the Plan following the Annual Shareholders' Meeting will be calculated as follows:

On or around the grant date a "base price" will be determined by the Board. This will be the volume weighted average price for a share on the NZSX for the 5 business days prior to the grant date. The base price will be adjusted to take into account any consolidation or subdivision of shares, bonus issue, capital reconstruction or any other adjustments to the shares or share structure of the Company.

As at each anniversary of the grant date a new base price will be calculated by:

- (a) increasing the last calculated base price by a percentage amount determined by the Board to represent the Company's cost of capital, after taking into account independent advice (subject always to independent advice at the relevant time, it is currently anticipated that the Company's cost of capital will be between 9% and 11% per annum); and
- (b) reducing the resulting figure by the amount of any net cash dividends paid by the Company in respect of a share in the 12 month period immediately preceding that anniversary.

However, to ensure that the base price does not decrease, if there were circumstances where the base price was less than the last calculated base price, the new base price shall be the last calculated base price.

The exercise price for the one-third of options that become exercisable on the second anniversary of the grant date shall be the base price calculated as at the second anniversary of the grant date.

The exercise price for the one-third of options that become exercisable on the third anniversary of the grant date shall be the base price calculated as at the third anniversary of the grant date.

The exercise price for the one-third of options that become exercisable on the fourth anniversary of the grant date shall be the base price calculated as at the fourth anniversary of the grant date.

In circumstances where, in accordance with the Plan, exercise occurs prior to the date the options normally become exercisable, the exercise price for such options shall be the last base price calculated prior to the date of exercise.

- Options will not be listed on either the NZSX or the ASX markets. So long as the Company remains listed on the NZSX and/or the ASX markets it is intended that the shares issued under the Plan will be listed on the NZSX and/or the ASX markets (as applicable).
- Ordinary shares issued on the exercise of options will rank equally with all other ordinary shares in the Company except for dividends declared or payable in respect of any period prior to the issue of the relevant shares.
- The Cancellation Offer facility approved by shareholders at the 2004 Annual Shareholders' Meeting (which allows optionholders to cancel vested options in consideration for shares of a value equal to the gain that the optionholders would receive if they exercised their options) applies to the options granted under the Plan.
- A Prospectus relating to the Plan is available for review at the New Zealand Companies Office ([www.companies.govt.nz](http://www.companies.govt.nz)).

**Fisher & Paykel**  

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