

# Notice of annual shareholders' meeting

Notice is hereby given that the **Annual Meeting of Shareholders** will be held at the Guineas Lounge, Ellerslie Convention Centre, Auckland, New Zealand on Thursday, 12 August 2004 commencing at 3.00 pm.

## ORDINARY BUSINESS

### 1. FINANCIAL STATEMENTS

To receive and consider the financial statements and the auditor's report for the year ended 31 March 2004 as contained in the Company's annual report.

### 2. ELECTION OF DIRECTORS

In accordance with the Company's constitution, the following Directors retire by rotation and, being eligible, offer themselves for re-election;

- (a) Adrienne Clarke; and
- (b) Nigel Evans

(See Explanatory Note 1)

### 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. DIRECTORS' REMUNERATION

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

"That the maximum monetary sum per annum payable by the Company by way of Directors' fees to all the non-executive Directors of the Company taken together be increased by \$200,000 per annum, being an increase from \$400,000 per annum to \$600,000 per annum, such sum to be divided amongst the Directors as the Directors from time to time deem appropriate."

(See Explanatory Note 2)

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### 5. **ADOPTION OF A NEW CONSTITUTION**

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

"That the existing Constitution of the Company be revoked and the Company adopt the new Constitution in the form tabled at the meeting and signed by the Chairman for the purpose of identification."

(See Explanatory Note 3)

### 6. **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 55,000 options under the Fisher & Paykel Healthcare 2003 Share Option Plan to Mr Michael Daniell, Managing Director and Chief Executive Officer of the Company."

(See Explanatory Note 4)

### 7. **FISHER & PAYKEL HEALTHCARE SHARE OPTION PLANS – CANCELLATION OF OPTIONS IN CONSIDERATION FOR THE ISSUE OF SHARES**

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

"That shareholders approve the offer to optionholders to cancel any vested options issued under the Fisher & Paykel Healthcare Share Option Plan, the Fisher & Paykel Healthcare (North American) Share Option Plan, the Fisher & Paykel Healthcare 2003 Share Option Plan and the Fisher & Paykel Healthcare 2003 (North American) Share Option Plan (whether issued before or after the date of this resolution) in consideration for the issue of shares in the Company in accordance with the Cancellation Offer described in Explanatory Note 5 set out in this Notice of Annual Shareholders' Meeting, including in relation to options issued to Mr Michael Daniell, Managing Director and Chief Executive Officer of the Company."

(See Explanatory Note 5)

## PROCEDURAL NOTES

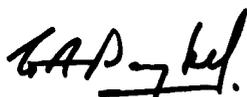
- (i) The persons who will be entitled to vote on the resolutions at this Annual Shareholders' Meeting are those persons who will be the shareholders of the Company at 3.00 pm on Tuesday 10 August 2004.
- (ii) You can participate by proxy or by casting your vote in person at the Annual Shareholders' 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. A proxy form is enclosed and, if used, must be lodged at the office of the share registry, Computershare Investor Services Limited, at either Private Bag 92119, Auckland 1020 or at 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 3.00 pm 10 August 2004).
- (iv) The Company will disregard any votes cast on the resolutions set out in Agenda Items 4, 6 and 7 by Directors of the Company (except any Director who is ineligible to participate in any employee incentive scheme of the Company in relation to Agenda Items 6 and 7) or any of their associates. The Company will also disregard any votes cast on the resolution set out in Agenda Item 7 by any persons who currently hold options issued under any of the Share Option Plans referred to in that resolution or any of their associates. The Company need not disregard a vote cast on those resolutions if it is cast by a person as proxy for a person who is entitled to vote in accordance with the directions on the proxy form; or it is cast by the person chairing the meeting as a proxy for a person who is entitled to vote in accordance with a direction on the proxy form to vote as the proxy decides.
- (v) Agenda Items 4, 6 and 7 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. Agenda item 5 must be passed by a special resolution of shareholders, i.e. by a majority of 75% of the votes of those shareholders entitled to vote and voting on the resolution.

## 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

28 June 2004

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## EXPLANATORY NOTES

### EXPLANATORY NOTE 1 – ELECTION OF DIRECTORS

In accordance with the Company's Constitution, one third of the Company's Directors must retire by rotation at the Annual Meeting of Shareholders. If the Directors are eligible, they may offer themselves for re-election by shareholders at the meeting. In this case Adrienne Clarke and Nigel Evans retire and, being eligible, offer themselves for re-election by shareholders at this annual meeting.

The Directors consider Adrienne Clark and Nigel Evans to be Independent Directors as that capacity is described in the NZX Listing Rules.

### EXPLANATORY NOTE 2 – DIRECTORS' REMUNERATION

In accordance with the Company's Constitution, the New Zealand Exchange (NZX) Listing Rules and the Australian Stock Exchange (ASX) Listing Rules, the power of the Board of Directors to authorise payment of remuneration to each Director for services as a Director (except as Executive Director) is subject to shareholder approval.

The existing fee limit of \$400,000 was set in 2001.

The Company has sought independent advice from Egan Associates in proposing the new fee limit and the recommended increase in the new fee limit is in line with Egan Associates' recommendations. Egan Associates is an Australian based consultancy service that specialises in providing advice to listed companies, major private and international corporations and government on executive and non-executive director rewards, service agreements, incentive and share plans and corporate governance issues.

The proposed increase in the level of Directors' fees is \$200,000 per annum (being an increase from the current level of Directors' fees of \$400,000 per annum to \$600,000 per annum). Although shareholder approval is sought for a maximum sum of Directors' fees of \$600,000 per annum, the Company's intention is that the increase in Directors' fees actually paid will occur on an annual incremental basis over the next three years up to that maximum amount. The proposed increase takes into account:

- (a) the Company's intention that, subject to shareholder approval, the new Directors' fee level will apply as a maximum for the next three years;
- (b) the level of fees paid to directors of comparable companies in New Zealand and Australia, based on independent advice obtained from Egan Associates;
- (c) the increased responsibility of Directors through their involvement in subcommittees of the Board, including, but not limited to, the Audit Committee and the Remuneration Committee; and
- (d) the Board's decision not to authorise any future retirement allowances (other than the allowances approved by shareholders or within the limits permitted by the NZX Listing Rules<sup>1</sup>).

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<sup>1</sup> The Board is permitted under NZX Listing Rule 3.5.2 to authorise the payment of retirement allowances to any Director who was in office before 1 May 2004 and has continued to hold office since that date, where such payments do not exceed the total remuneration of a Director in any three years of office. The Board has resolved that it will not pay any future retirement benefits to non-executive Directors other than, at the Board's discretion, a retirement allowance of one year's Directors fees to each existing non-executive Director (except for Sir Colin Maiden), such amount being equal to the average of the annual fees paid to that Director in any three years prior to that Director's retirement or cessation of office, and payable on retirement or cessation of office. In addition, at the time of separation of the Company in 2001, shareholders approved a retirement payment of \$170,000 to Sir Colin Maiden on his retirement.

## **EXPLANATORY NOTE 3 – ADOPTION OF A NEW CONSTITUTION**

### ***INTRODUCTION***

Item 5 on the Notice of Meeting is a proposal that the Company revokes its existing constitution and adopts a new constitution.

A copy of the proposed new constitution and the existing constitution may be viewed on the Company's website [www.fphcare.com](http://www.fphcare.com). Copies of those documents are also available on request from the Company at P O Box 14-348, Panmure, Auckland, New Zealand, Attention: Tony Barclay, Company Secretary. You may also inspect copies of these documents at the registered office of the Company, 15 Maurice Paykel Place, East Tamaki, Auckland, New Zealand.

### ***MAIN REASONS FOR THE CHANGES REFLECTED IN THE NEW CONSTITUTION***

Most of the changes to be made by the adoption of the proposed new constitution are required as a result of the following developments since the Company last adopted a new constitution in 2002:

- The NZX Listing Rules (the Listing Rules) were amended in December 2002, October 2003 and May 2004. Many of those changes must be reflected in the Company's constitution.
- Some of the provisions in the Company's constitution repeat Companies Act requirements, which have since been amended.
- A number of provisions have become obsolete.

The amendments to the Listing Rules which came into effect in May 2003 permit a company to incorporate the relevant Listing Rules by reference. The proposed new constitution of the Company adopts this approach. Previously certain of the Listing Rules were required to be replicated in the constitution. The approach followed in the proposed new constitution has a number of advantages, including:

- removing the need for the Company to update its constitution each time the Listing Rules change, thereby saving the Company both time and money;
- permitting the Company to take advantage of any favourable Listing Rule amendments from the date that those amendments become effective without the need to first either incorporate them in the constitution or obtain specific waivers or rulings in each case; and
- shortening and simplifying the constitution.

If there is any provision in the constitution that is inconsistent with the Listing Rules relevant to the Company, the Listing Rules (as amended by any waiver or ruling relevant to the Company) will prevail.

### ***EXPLANATION OF MAJOR DIFFERENCES***

The adoption of the proposed new constitution does not materially change any shareholder rights unless such change was effected by virtue of a change to the Listing Rules. The adoption of the proposed new constitution will, however, allow the Company to operate immediately within the full parameters permitted by the Listing Rules. Set out below is an explanation of the various material amendments to the Listing Rules which will apply immediately to the Company upon adoption of the proposed new constitution, as well as an explanation of the material differences between the existing constitution and the proposed new constitution. As a dual listed entity (and as previously applied under the existing constitution), the Company is also required to comply with the requirements of the ASX Listing Rules. To the extent that the ASX Listing Rules impose additional requirements,

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## **EXPLANATORY NOTE 3 (cont)**

then the Company is also required to comply with those additional requirements in undertaking or complying with any of the matters set out below.

References to clause numbers below are references to clause numbers in the proposed new constitution.

### **1. Clause 4.1 - Issue of new equity securities**

#### **1.1 Time limit**

The proposed new constitution extends the time within which an issue of new equity securities can be made because it incorporates by reference amendments to Listing Rule 7.3.1. If the proposed new constitution is adopted, the timeframe within which the Company must complete an issue is extended:

- \* in the case of an issue made solely to employees, from within 12 months to within 36 months; and
- \* in all other cases from within 6 months to within 12 months.

#### **1.2 \$5,000 offers to holders of existing securities**

Listing Rule 7.3.4 allows the Board of a listed company to issue equity securities to holders of existing securities for a consideration not exceeding \$5,000 per existing security holder without shareholder approval. This provision is incorporated by reference into the proposed new constitution. This provision provides the Company with more flexibility to raise capital without seeking specific shareholder approval, on the basis that the capital is obtained in relatively small sums from existing security holders.

#### **1.3 Issues within 15% limit**

Listing Rule 7.3.5(a) has been amended to increase the maximum number of equity securities that can be issued in a 12 month period, without the need to obtain shareholder approval, from 10% to 15% of the total number of equity securities on issue. That increased maximum number is incorporated by reference into the proposed new constitution.

#### **1.4 Employee share issues**

As the proposed new constitution automatically incorporates amendments to the Listing Rules, the thresholds for issues of new securities to employees without the need to first obtain shareholder approval will be increased from the current levels of:

- \* 2% to 3% of the total number of equity securities on issue in a 12 month period; and
- \* 5% to 7% of the total number of equity securities on issue in the 5 year period immediately preceding the date of issue.

The amendments to the Listing Rules also provide that if securities have been issued to Directors or employees with shareholder approval, those securities cannot be repriced or their terms amended except in accordance with the relevant Listing Rules or with the approval of the NZX or with further shareholder approval. This restriction will apply to the Company.

**EXPLANATORY NOTE 3 (cont)****2. Clause 4.2 - Consolidation and subdivision of shares**

The proposed new constitution provides greater flexibility in respect of the Board's power to consolidate or subdivide shares on a pro rata basis. It eliminates the need to obtain shareholder approval for a share consolidation or subdivision. The Board's power to consolidate or subdivide shares is restricted by any relevant Listing Rule. This is typical of listed company constitutions and reflects the fact that a consolidation or subdivision of shares would not ordinarily result in a loss of value to shareholders. This is not a Listing Rule change.

**3. Clause 5.1 - Buybacks and redemptions of equity securities**

The proposed new constitution incorporates amendments to the Listing Rules which increase the limit imposed on the Company when it acquires its own shares during any 12 month period from 10% to 15% of the total number of equity securities of the same class.

**4. Clause 13.3 - Regulation of procedure and Clauses 19.4 and 19.5 - Adjournment of disorderly meetings**

Clause 13.3 allows the chairperson to regulate the proceedings at meetings of shareholders and make all rulings necessary to give effect to this power. This amendment has been made to provide the chairperson with greater ability to determine matters of procedure at meetings.

The chairperson may adjourn a meeting where any meeting becomes so unruly, disorderly or inordinately protracted that in the opinion of the chairperson the business of the meeting cannot be conducted in a proper and orderly manner.

If any meeting is dissolved by the chairperson under this provision, and a resolution had not yet been voted on in respect of a proposed distribution or authorisation of the remuneration of auditors, the Board may authorise the distribution and fix the remuneration of the auditors. The chairperson may direct that any other resolution be put to the vote by a poll without further discussion.

Under the existing constitution, these matters were not specifically dealt with.

This is not a Listing Rule change.

**5. Clause 20.1 - Board composition**

Clause 20.1 reflects the new Listing Rule requirements which require a minimum number of Independent Directors on the Board. The effect of the Listing Rule amendment is that, because the Company has less than eight Directors, the constitution will require the Company to have at least two Independent Directors (which it has). If at any time the Company has eight or more Directors, the constitution will require the minimum number of Independent Directors to be the greater of three or one-third of the total number of Directors (rounded down to the nearest whole number).

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## EXPLANATORY NOTE 3 (cont)

### 6. **Clause 20.2 - Independent Directors**

The proposed new constitution incorporates by reference the new Listing Rule requirements in relation to Independent Directors. The effect of these requirements is:

- the Board must determine which of its Directors are Independent Directors before publication of the annual report each year and after the annual meeting each year;
- if a Director is appointed by the Board, the Board must determine whether the Director is an Independent Director;
- each time the Board makes such a determination the Company must announce the outcome to the NZX; and
- the Company must make the necessary arrangements to require Directors to provide sufficient information to the Board to enable it to make those determinations.

### 7. **Clause 20.6 - Nominations**

The proposed new constitution incorporates the new Listing Rule requirement in relation to the nomination of Directors that the Company will make an announcement to the market no less than three months prior to the date of the proposed annual meeting advising of the opening date and closing date for Directors' nominations. This clause also requires the Company to specify in any notice of meeting in which a person is nominated for election as a Director, whether or not the nominee would qualify as an Independent Director. This change reflects a corresponding change to the Listing Rules.

### 8. **Director age restrictions**

The requirement that a Director retire at the annual shareholders meeting following their 70th birthday has been removed. This is consistent with the Human Rights Act 1993, which prohibits discrimination on the basis of age. This is not a Listing Rule change.

### 9. **Clause 23.5 – Quorum**

The quorum for a meeting of Directors has been amended from four to a majority. This is a more generic provision which will accommodate any future change in the number of Directors on the Board. This is not a Listing Rule change.

### 10. **Payments upon cessation of office**

The proposed new constitution does not include any provision regarding retirement allowances to Directors upon cessation of office. Any such payment will be governed by the Listing Rules. Under the amended Listing Rules, an ordinary resolution of shareholders is required to make a payment to a Director on cessation of office, unless the Director was in office on or before 1 May 2004 and has continued to hold office since that date, in which case a payment of up to three years' remuneration may be made by the Company without the need to have that payment approved by ordinary resolution of shareholders.

Under the existing constitution, a payment could be made to a Director on cessation of office without shareholder approval, provided that the payment did not exceed three years' remuneration.

**EXPLANATORY NOTE 3 (cont)****11. Clause 24 – Directors’ Remuneration**

Clause 24 reflects the new Listing Rule requirement that no remuneration will be paid to a non-executive Director in his or her capacity as a Director of the Company or any subsidiary, other than a subsidiary which is listed (including any remuneration paid to that Director by a subsidiary, other than a subsidiary which is listed) unless that remuneration has been authorised by an ordinary resolution of shareholders of the Company.

**12. Disposal/or acquisition of Assets**

The proposed new constitution incorporates by reference the amended Listing Rule requirements in relation to the disposal or acquisition of assets. The threshold for determining whether shareholder approval is required for the disposal or acquisition of assets now applies to transactions which are in excess of 50% of the Company’s average market capitalisation.

**13. Transactions with related parties**

The proposed new constitution incorporates by reference the amended Listing Rule threshold of 5% of the average market capitalisation of the Company for determining whether a transaction (or a related series of transactions) with a related party is to be considered as a related party transaction under the Listing Rules which require shareholder approval to be obtained. In accordance with the amendments to the Listing Rules, what constitutes a related party transaction now excludes employment contracts with natural persons who are not Directors of the Company nor of its subsidiaries and related party material transactions, the total value which is less than \$250,000.

**14. Audit Committee**

The proposed new constitution incorporates by reference the amended Listing Rule requirements that the Company establish an audit committee consisting of a minimum of three Directors of the Company, a majority of whom are to be Independent Directors and at least one of whom is required to have an accounting or financial background (as defined by the Listing Rules). As a matter of policy, the Company has had an audit committee in place for a number of years.

**15. Joint Shareholders**

The proposed new constitution provides that where joint shareholders hold shares, the Company will be entitled to recognise the instructions (e.g. voting) of the joint shareholder first named in the share register. This is not a Listing Rule change.

**16. Takeover restrictions**

The takeover restrictions which were included in the existing constitution to comply with the Listing Rules are not included in the proposed new constitution. Takeovers are now governed by the Takeovers Code. This is not a Listing Rule change.

**NZX APPROVAL**

The NZX has approved the proposed new constitution.

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## **EXPLANATORY NOTE 4 – FISHER & PAYKEL HEALTHCARE 2003 SHARE OPTION PLAN - ISSUE OF OPTIONS TO THE MANAGING DIRECTOR AND CHIEF EXECUTIVE OFFICER**

### *Introduction*

Shareholder approval is being sought for the grant of up to 55,000 options under the Fisher & Paykel Healthcare 2003 Share Option Plan (the Plan) to Mr 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. The Company intends to also issue up to 945,000 options to selected executives, managers and other employees of the Company and its subsidiaries (within 2 months of the Annual Shareholders' Meeting). Therefore the proposed grant of up to 55,000 options to Mr Daniell represents 5.5% of the options intended to be granted at that time.

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. In the light of the financial performance of the Company for the year ended 31 March 2004, and the general commercial environment in which the Company currently operates, it is proposed, subject to obtaining shareholder approval to do so, that a grant of up to 55,000 options be made to Mr 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*

NZX Listing Rule 7.3.6, the 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 share incentive scheme.

Shareholder approval is therefore being sought to issue options under the Plan to the Managing Director and Chief Executive Officer of the Company, Mr Michael Daniell. If approved, the options will be issued to Mr Daniell within 2 months of the Annual Shareholders' Meeting.

No Director or associate has received options granted under the Plan (or any predecessor plan) except Mr Daniell. As at 31 May 2004, Mr Daniell holds 320,000 options under the Plan and its predecessor plan. 70,000 options were granted to Mr Daniell under the Plan on 15 August 2003. 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 relevant exercise conditions).

**EXPLANATORY NOTE 4 (cont)**

- 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 will be calculated using a base share price, adjusted to take into account the Company's cost of capital and deducting net cash dividends paid.
- The Board may also determine that the options will have a deemed grant date earlier or later than the date on which the grant is actually made.
- 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.
- 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.
- 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.
- Options are not transferable and do not participate in dividends or other distributions of the Company.
- Options will not be listed on either the NZSX or the ASX. So long as the Company remains listed on the NZSX and/or the ASX it is intended that the shares issued under the Plan will be listed on the NZSX and/or the ASX (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.

*Exercise Price Calculation*

The exercise price for options granted under the Plan following the Annual Shareholders' Meeting shall be calculated as set out below.

On 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 issues, capital reconstruction or any other adjustments to the shares or share structure of the Company.

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## **EXPLANATORY NOTE 4 (cont)**

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

- (a) multiplying the last calculated base price by a percentage amount determined by the Board as 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 10% and 12% 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 is 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.

## **EXPLANATORY NOTE 5 – FISHER & PAYKEL HEALTHCARE SHARE OPTION PLANS - CANCELLATION OF OPTIONS IN CONSIDERATION FOR THE ISSUE OF SHARES**

### *Introduction*

The Fisher & Paykel Healthcare Share Option Plan, the Fisher & Paykel Healthcare (North American) Share Option Plan, the Fisher & Paykel Healthcare 2003 Share Option Plan and the Fisher & Paykel 2003 (North American) Share Option Plan were established by the Company in 2001 and 2003 respectively (together the Plans). 2,504,400 options have been issued to selected executives, managers and other employees under the Plans, of which 2,408,168 options remained outstanding as at 31 May 2004. As mentioned in Explanatory Note 4, the Company intends to issue up to 1,000,000 further options following the Annual Shareholders' Meeting. Further issues of options may take place in the future under the Plans in accordance with applicable Listing Rules.

In all material respects the terms applicable to options granted under the Plans are as set out for the Fisher & Paykel Healthcare 2003 Share Option Plan described in Explanatory Note 4 (except that the exercise price for the options previously issued under the Plans differs from the exercise price that will apply to the proposed issues). Copies of the rules for the Plans are available on request from the Company at PO Box 14-348, Panmure, Auckland, New Zealand, Attention: Tony Barclay, Company Secretary. You may also inspect copies of these documents at the registered office of the Company, 15 Maurice Paykel Place, East Tamaki, Auckland, New Zealand.

## EXPLANATORY NOTE 5 (cont)

### *Key terms of the Cancellation Offer*

It is proposed that the Cancellation Offer would operate as follows:

- Unless otherwise determined by the Board, the Cancellation Offer would apply to the 2,408,168 options outstanding under the Plans and up to 1,000,000 options granted following the Annual Shareholders' Meeting and any other options issued in the future under the Plans in accordance with applicable Listing Rules.
- The Cancellation Offer would only be available in respect of options that the optionholder is entitled to exercise under the rules of the Plans i.e. options that are fully vested or become fully vested.
- Optionholders accepting the Cancellation Offer would not exercise the relevant options. Rather, those options would, at the optionholders' notice be cancelled in return for the issue of ordinary shares in the Company.
- The number of shares issued would be calculated as follows:

$$S = \frac{O \times [SP - EP]}{SP}$$

Where:

S = the number of shares to be issued

O = the number of options cancelled

SP = the volume weighted average price for a share on the NZX on the date on which the optionholder accepts the Cancellation Offer

EP = the exercise price of the options

- Ordinary shares issued under the Cancellation Offer will rank equally with all other ordinary shares in the Company except for dividends disclosed or payable in respect of any period prior to the issue of the relevant shares.
- So long as the Company remains listed on the NZSX and/or the ASX it is intended that the shares issued under the Cancellation Offer will be listed on the NZSX and/or the ASX (as applicable).

### *Purpose of the Cancellation Offer*

The Company wishes to make the Cancellation Offer to optionholders in order to simplify the delivery of option benefits and thus enhance the value of the Plans to the Company and optionholders. In addition, to the extent it is accepted, the Cancellation Offer is designed to reduce the number of shares that the Company is required to issue in relation to options granted under the Plans, thus reducing the dilution effect to existing shareholders resulting from the exercise of options. Features of the Cancellation Offer are as follows:

- Some optionholders wishing to exercise their options need to borrow money to fund the exercise price and then sell some of the shares issued on-market to repay that borrowing. The Cancellation Offer is designed to remove the inconvenience and cost associated with doing so.

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## **EXPLANATORY NOTE 5 (cont)**

- The Cancellation Offer is designed to reduce the number of shares that the Company is required to issue in relation to options granted under the Plans, thus reducing the dilution effect to existing shareholders resulting from the exercise of options.
- Optionholders wishing to purchase the full number of shares under their options will continue to be able to do so by exercising the options rather than accepting the Cancellation Offer.
- The Cancellation Offer is not expected to materially alter the economic position of either the Company or optionholders.

### *Shareholder approval required*

ASX Listing Rule 6.23.2 requires shareholder approval for any cancellation of an option for consideration. Shareholder approval is therefore being sought to approve the cancellation of options already issued under the Plans in accordance with the Cancellation Offer. In the case of future issues of options under the Plans which are eligible to participate in the Cancellation Offer, the right to cancel those options will be considered to be an inherent term of those options at the time of issue for ASX Listing Rule purposes, and further approval under ASX Listing Rule 6.23.2 will not therefore be required at the time of any future cancellation of those options.

In conjunction with obtaining the shareholder approval required under ASX Listing Rule 6.23.2, shareholder approval for the issue of shares under the Cancellation Offer is also being sought for the purposes of NZX Listing Rule 7.3.1 and ASX Listing Rule 10.14. This includes approval to issue shares under the Cancellation Offer to the Managing Director and Chief Executive Officer of the Company, Mr Michael Daniell. This is to ensure that the options issued to Mr Michael Daniell under the Plans are subject to identical terms and conditions as those options issued and to be issued to other selected employees under the Plans. Mr Daniell holds 320,000 options under the Plans as at 31 May 2004 and, subject to shareholder approval, is expected to be granted up to 55,000 further options under the Plans following the Annual Shareholders' Meeting.

The NZX has granted a waiver, subject to shareholder approval of the Resolution in Agenda Item 7 and to certain conditions (including the review of the waiver in respect of any options issued after the 3rd anniversary of the date of the waiver), from compliance with NZX Listing Rule 7.3.2(a) which provides that an issue of securities which has been approved by shareholders must be made within 36 months of the approval. The Company sought this waiver in order to be able to issue shares under the Cancellation Offer outside the timeframe set out in the NZX Listing Rules as some of the options issued under the Plans may be exercisable outside this timeframe. Shareholders should be aware that, if the proposed share issues under the Cancellation Offer are approved, those issues may take place outside of the 36 month timeframe normally applicable under Listing Rule 7.3.2(a).



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