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CEO on Nabi Merger

Open Briefing interview with CEO Peter Cook

Biota Holdings Limited
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In this Open Briefing®, Peter discusses:

- How Nabi merger scheme likely to increase Biota share value
- Reasons scheme in best interests of Biota's shareholders
- Strong funding profile post scheme completion

Record of interview:

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Biota Holdings Limited (ASX: BTA) recently released the scheme booklet for its proposed merger with US-based Nabi Biopharmaceuticals. According to this document, Biota directors believe the proposal is the best way to improve the value of Biota's shares. How is the merger expected to achieve this and what alternatives did you consider?

CEO Peter Cook
Biota's largest near-term asset is laninamivir, our long acting neuraminidase inhibitor, and we need to acknowledge that the future of laninamivir is in the US given we've secured US$231 million from the US Office of Biomedical Advanced Research and Development Authority (BARDA) to take the compound through the clinical trials required to submit a new drug application to the US Food and Drug Administration (FDA). Once that development program is completed, Biota will have full ownership of a marketable drug, including the ability to meet US government and other countries' stockpile requirements directly.

Because laninamivir is a highly US-focused project, our board believes the most likely place for the value of that program to be fully recognised is in the US market. In simple terms, the board saw a merger with Nabi as a cost-effective way of achieving a US presence and quickly establishing a reasonably sized US shareholder base.

Some of the alternatives we considered included the outright sale of Biota to a US company or merger with a similar US business to achieve some economies of scale. We also looked at an initial public offering on either NASDAQ or the New York Stock Exchange, but primarily due to cost and timing we considered all of these alternatives were inferior to the proposed merger with Nabi given its residual cash and its shareholder base.

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The independent expert has concluded that, whilst the scheme is *not* fair under regulatory guidelines focused on change of control transactions, it *is* reasonable and in the best interests of Biota shareholders given the company's objectives. The expert says the scheme is not fair based on Nabi's effective issue price per Biota share, which represents a discount of between 10.6 and 12.1 percent to Biota's price prior to the announcement of the scheme. How can shareholders reconcile this with the aim of improving the value of Biota's shares?

CEO Peter Cook
The independent expert was required to apply a fairness concept under Regulatory Guide 111 (RG 111), one that's usually associated with acquisitions, because in strict legal terms the scheme will result in Nabi acquiring Biota. However, as the independent expert has stated, the transaction should not be treated as an acquisition given Biota shareholders will remain in control, with 74 percent of the merged entity and a majority of board seats. Rather, the expert has indicated that it's more appropriate to consider the transaction as a capital raising and related US listing. In those terms, the expert has concluded that the scheme is reasonable and in the best interests of shareholders. The expert's reasoning on this can be found in sections 19 and 145 of the report in the scheme booklet.

We expect the improvement in the value of Biota shares to come not from the transaction itself, which is what you'd expect in an acquisition, but from the future benefits the merger offers in terms of value recognition, for example, as we deliver key milestones on laninamivir in the US. The board believes the US market will place a higher value on our laninamivir program, including our ability to take the drug into the stockpile market ourselves.

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Viewed as a capital raising, the merger will bring cash of US$54 million from Nabi. But given Biota had cash of A$51.3 million as at 31 March 2012, the independent expert suggests the level of Biota shareholder dilution (i.e. to 74 percent of the merged entity) is potentially greater than necessary. Can you comment?

CEO Peter Cook
On its formation, Biota Pharmaceuticals will have a cash reserve of slightly over US$100 million. However it's worth bearing in mind that Nabi had approximately US$80 million available to invest in Biota after allowing for its own project facilities and staff close-down costs. We saw that amount as being unreasonably dilutive to our existing shareholders but we also needed to make certain we had sufficient funds to weather almost any contingency for three years or so, given we're taking the organisation through a high degree of change. We thought it was prudent to have such a buffer before there was any need to raise further capital; such as for any of our early stage projects, which incidentally are tracking well.

Our current plan is to focus on laninamivir, which is of course fully funded, and license our other projects. Based on that plan, yes we have excess funds, however, in an ever-changing economic environment, licensing may not be the best or only way forward, particularly in light of big pharma's current strategic turmoil. We think the merger strikes a balance: it's not excessively dilutive to our shareholders yet allows us considerable flexibility in the advancement of our projects.

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Under the scheme, Nabi will acquire all Biota shares and eligible Biota shareholders will be issued shares in Nabi, which will be renamed Biota Pharmaceuticals and remain listed on NASDAQ. Biota will be delisted from the ASX. Many Australian shareholders can't or are reluctant to own shares in other jurisdictions. Have you considered retaining an Australian listing for the merged company?

CEO Peter Cook
We believe we're acting in the overall best interests of the company. Our major asset, laninamivir, which is in development principally in the US, has the potential to be marketed directly by Biota into the world's largest influenza stockpile operator, BARDA. This is a game changing opportunity for Biota and maximising that opportunity requires relocation to the US in the near future.

We accept that there are some shareholders for whom this decision may be a negative, for example, funds whose investment mandates restrict them to ASX-listed stocks, and it will be unfortunate to lose them from our register. However, while this is often raised as a negative for the scheme, there are relatively few Biota shareholders with these types of restrictions.

No doubt there will be some shareholders whose current share trading arrangements will be inadequate to handle trading in the US, but our view is that this will dissipate with time. Almost all brokers can execute US trades without undue cost or difficulty, and even the major online brokers such as Commsec and Etrade offer international trading options: shareholders simply have to provide additional supporting documentation. We believe these are small inconveniences against the bigger picture of laninamivir and BARDA.

I should also point out that we're in the late stage of negotiation with a cost-effective broker based in Melbourne that shareholders can use if other options prove too difficult. We will provide details of that service on our website as soon as it's established.

There are a number of reasons we're not supportive of a dual listing of the company. One is the difference in governance approaches between the US and Australia, which are difficult to reconcile in practice. I recently experienced one such example with disclosures involving clinical trial announcements. There is also the relatively high expense of operating under two regimes. The board has communicated since our AGM in November 2010 our intention to relocate the business to the US, so there has been a notice period of nearly two years – adequate time for shareholders to make whatever adjustments they felt were necessary.

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Will the implementation of the scheme have any potential impact on the terms of the BARDA contract or on your ability to successfully deliver under the contract?

CEO Peter Cook
No. BARDA is fully supportive of our proposed changes although I should stress that our move to the US is not a requirement of our contract with BARDA, but rather reflects the board's view that it is in our shareholders' interests to be based in the US, where we expect to see the value of the company reflected earlier and more fully.

It's worth highlighting that key scientific members of staff are recognised by name in our BARDA contract, and while our corporate activities will relocate to the US, the technical powerhouse of drug discovery and product development that is at the core of Biota's value will continue at Notting Hill, just as it's done for the last decade or so. The brand that is Biota and the core team that is Biota are our most valuable assets and will remain unchanged.

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Biota will hold a meeting on 25 September where shareholders will vote on the scheme. To be approved, a majority in number (more than 50 percent) of Biota shareholders present and voting at the meeting (either in person or by proxy) must vote in favour of the scheme, and at least 75 percent of the total number of votes cast on the resolution at the meeting must be in favour. What indications do you have in relation to shareholder support for the scheme?

CEO Peter Cook
It's hard to give a conclusive answer, but our largest shareholder, Hunter Hall, has made its support of the scheme a matter of public record. Our second largest shareholder, East Hill Holding Company, has disclosed further increases in its Biota shareholding since the announcement of the merger implementation agreement in late April. Meanwhile, feedback from our other larger shareholders has also been very supportive, and most shareholders I've had contact with recognise the change as positive and in the company's overall best interests.

Even our smaller shareholders seem to be supportive of the scheme despite some claims of inconvenient share trading arrangements. At almost every Biota AGM I've attended over the last seven years we've at least one shareholder question whether we would, or suggest we should, list in the US. Perhaps they saw it as inevitable!

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Thank you Peter.

For more information about Biota Holdings Limited, visit www.biota.com.au or call CEO Peter Cook on (+61 3) 9915 3720 or CFO Damian Lismore on (+61 3 9915 3721)

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