

In the High Court of New Zealand
Auckland Registry
I Te Kōti Matua o Aotearoa
Tāmaki Makaurau Rohe

CIV-2020-404-1915

Under Part 19 of the High Court Rules

In the matter of a scheme of arrangement under Part 15 of the Companies Act 1993

And in the matter of:

Abano Healthcare Group Limited, a duly incorporated company, having its registered office at Level 11, AMP Centre, 29 Customs Street West, Auckland, 1010, New Zealand

Applicant

Initial orders under section 236 of the Companies Act 1993 relating to an originating application for orders approving an arrangement under Part 15 of the Companies Act 1993

19 October 2020



Harmos Horton Lusk Limited
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BEFORE THE HONOURABLE JUSTICE FITZGERALD

To: Abano Healthcare Group Limited; all Scheme Shareholders in terms of the Scheme Plan; Adams NZ Bidco Limited; and the Takeovers Panel

The interlocutory application by Abano Healthcare Group Limited ("**Abano**") for initial orders relating to an originating application for approval of a scheme of arrangement under Part 15 of the Companies Act 1993, dated 14 October 2020, was determined by the Honourable Justice Fitzgerald on 19 October 2020. The determination was made following a hearing held on 19 October 2020 at which D J Cooper and N W Starrenburg appeared as counsel for the applicant and J Q Wilson and J P Cooney appeared as counsel for Adams NZ Bidco Limited.

The following orders were made:

Timetable

1. Confirming that unless otherwise advised by the Court, the Application for Final Orders will be heard at Auckland on 2 December 2020 at 10.00 am.

Service and representation

2. Directing that formal service of the originating application for orders approving a scheme of arrangement under Part 15 of the Companies Act 1993 (the "**Act**") (the "**Application for Final Orders**") and this application without notice for initial orders (the "**Application for Initial Orders**") be dispensed with.
3. Directing Abano to serve all documents filed in this proceeding on the Takeovers Panel.
4. Directing that, except as provided in these orders or required by s 236A of the Act:
 - (a) Abano is not required to serve any other documents, including any sealed order in this proceeding, on the persons specified in these orders; and
 - (b) if hearing of the Application for Final Orders is adjourned for any reason, Abano is required to serve only those persons who are entitled to appear and be heard under paragraph 25 below with notice of the new hearing date.

Confidentiality and orders that the Court File not be searched

5. That the originating application, all interlocutory applications, affidavits, and all other documents related the proposed scheme of arrangement (the



“**Scheme**”) on the Court File shall not be searched, inspected or copied until such time as the Scheme Booklet (as defined in paragraph 14 below) has been distributed to Abano shareholders in accordance with the orders at paragraph 15 below.

Scheme Meeting

6. Directing that:

- (a) Subject to subparagraph (b) below, all shareholders of Abano are in a single interest class for the purposes of voting at the Scheme Meeting (as defined in paragraph 7(a) below);
- (b) Notwithstanding subparagraph (a) above, if Adams NZ Bidco Limited (“**Bidco**”), BGH Capital Pty Ltd (“**BGH Capital**”) or Ontario Teachers’ Pension Plan Board (“**OTPP**”) or any of their related companies are shareholders of Abano on the Shareholder Voting Record Date (as defined in paragraph 11(b) below) then the two interest classes of shareholders for the purpose of voting at the Scheme Meeting are:
 - (i) Bidco, BGH Capital, OTPP and/or any of their related companies; and
 - (ii) all other shareholders.

7. Directing Abano to:

- (a) subject to paragraph 8 below, hold a special meeting of each interest class of Abano shareholders on 18 November 2020 at 11.00am online and at Pakuranga Hunt Room, Ellerslie Event Centre, 80-100 Ascot Avenue, Ellerslie, Auckland, New Zealand;
- (b) if there is more than one interest class, conduct the special meetings contemporaneously (the “**Scheme Meeting**”);
- (c) at the Scheme Meeting, put the Scheme (as amended by Abano before the Scheme Meeting in a manner consistent with these orders, if necessary) to the Abano shareholders for consideration and approval in the manner specified in these orders (the “**Resolution**”);
- (d) Abano may, in its sole discretion, refuse to permit any shareholder, proxy, representative or other person to physically attend the Scheme Meeting if Abano considers it necessary or desirable to do so



to comply with any applicable legal restrictions, or for health and safety reasons, associated with the COVID-19 pandemic.

8. Directing that:
 - (a) Abano may hold the Scheme Meeting as an online-only meeting if Abano considers (at its sole discretion) it necessary or desirable to do so to comply with any applicable legal restrictions, or for health and safety reasons, associated with the COVID-19 pandemic; and
 - (b) If Abano exercises its discretion to hold an online-only meeting, Abano will provide shareholders with as much notice as is reasonably practicable by way of an announcement to NZX and on Abano's website and by notice in electronic format to all shareholders who have elected to receive documents from Abano in electronic form.
9. Except as otherwise provided in these orders, and subject to paragraph 8 above, directing that the Scheme Meeting be conducted in accordance with Abano's constitution and ss 121 – 125 and Schedule 1 of the Act (including in respect of the chair's power to adjourn the Scheme Meeting).
10. Directing that Abano's Chair, Philippa Dunphy, or her nominee, act as the chair of the Scheme Meeting.
11. Directing that only holders of Abano shares whose names appear in the register of shareholders as at:
 - (a) 5.00pm on 19 October 2020 ("**Scheme Booklet Record Date**") are entitled to receive a Scheme Booklet (as defined at paragraph 14 below); and
 - (b) 5.00pm on 16 November 2020 ("**Shareholder Voting Record Date**") are entitled to be represented and vote at the Scheme Meeting or any adjournment or postponement thereof.
12. Directing that:
 - (a) to be valid, all completed proxy votes must be received by Computershare Investor Services Limited ("**Computershare**") by no later than 11.00am on 16 November 2020 (New Zealand time) ("**Proxy Deadline**") and can be submitted:
 - (i) online: at Computershare's website and following the instructions (on the website www.investorvote.co.nz);



- (ii) by mail: by sending to Computershare at Private Bag 92119, Auckland, 1142; or
 - (iii) by email: by sending to corporateactions@computershare.co.nz
- (b) Abano is entitled to disregard any proxy votes received after the Proxy Deadline; but
 - (c) Abano may waive, in its discretion, the Proxy Deadline if it considers such waiver to be in its best interests and in the best interests of Abano shareholders as a whole.
13. Directing that voting is to be by way of a poll, rather than by a show of hands.

Notice of Scheme Meeting and information for shareholders

Notice of Meeting and Scheme Booklet

14. Directing Abano to give notice of the Scheme, Scheme Meeting, and Application for Final Orders by distributing a booklet including the following sections, a draft of which is at page 394 of the Bundle of Documents referred to in the affidavit of Richard Keys (the “**Scheme Booklet**”), which collectively will constitute part (though not necessarily all) of the materials to be sent to Abano shareholders, in accordance with paragraph 15 below:
- (a) key points for shareholders;
 - (b) a letter from Philippa Dunphy as chair of Abano’s board of directors addressed to Abano shareholders;
 - (c) a summary of the key times and dates relevant to the Scheme;
 - (d) a notice of meeting including or accompanied by:
 - (i) the formal notice of meeting;
 - (ii) explanatory notes providing procedural details; and
 - (iii) a proxy form for use by shareholders for appointment of a proxy to vote at the Scheme Meeting;
 - (e) a section highlighting the action required by shareholders in respect of the Scheme;



- (f) a section setting out key considerations relating to shareholders' votes;
- (g) a more detailed explanation of how the Scheme will be implemented (including a statement to the effect that Abano has applied for, and has been granted, initial orders);
- (h) information about Bidco, BGH Capital and OTPP;
- (i) further information about Bidco. This is intended to be the equivalent to the information shareholders would receive under Schedule 1 of the Takeovers Code had Bidco made a takeover offer under the Takeovers Code instead of proceeding by a scheme of arrangement;
- (j) further information about Abano. This is intended to be the equivalent to the information shareholders would receive under Schedule 2 of the Takeovers Code, if Bidco had made a takeover offer under the Takeovers Code, instead of proceeding by a scheme of arrangement;
- (k) a summary of the scheme implementation agreement entered into by Bidco and Abano on 31 August 2020, as amended on 12 October 2020 (the "**Scheme Implementation Agreement**");
- (l) a glossary;
- (m) an independent adviser's report prepared by Calibre Partners and addressed to Abano shareholders regarding the Scheme;
- (n) a copy of the scheme plan, the form of which is attached to the Scheme Implementation Agreement;
- (o) a copy of the Deed Poll, the form of which is attached to the Scheme Implementation Agreement;
- (p) notice that copies of the orders made by the Court following the hearing of this interlocutory application for initial orders will be available for inspection on the NZX market announcements platform; and
- (q) notice that copies of the originating application will be provided on request.



Distribution of Notice of Scheme Meeting and Scheme Booklet

15. Directing Abano to:
- (a) distribute the approved Scheme Booklet at least 15 working days before the Scheme Meeting by sending it in accordance with paragraph 15(b) below to:
 - (i) all Abano directors;
 - (ii) Abano's auditors;
 - (iii) all Abano shareholders listed on Abano's share register as at the Scheme Booklet Record Date;
 - (b) send the approved Scheme Booklet to Abano's shareholders in terms of the preceding paragraph by sending it to the shareholders' addresses as recorded on Abano's share register at 5:00pm on the Scheme Booklet Record Date in:
 - (i) electronic format to all shareholders who have elected to receive documents from Abano in electronic form; and
 - (ii) by ordinary mail in hardcopy format to all other shareholders;
 - (c) provide, on request, a copy of the approved Scheme Booklet to any other person who becomes a Abano shareholder and is entitled to vote on the Resolution after the Scheme Booklet Record Date but before the Shareholder Voting Record Date;
 - (d) make hard copies of the approved Scheme Booklet available for inspection and removal from Abano's offices at Level 11, AMP Centre, 29 Customs Street West, Auckland, New Zealand from no later than 23 October 2020; and
 - (e) make electronic copies of the approved Scheme Booklet available for inspection and download from Abano's website, from no later than 23 October 2020.
16. Directing that the Scheme Booklet be deemed to have been received by all those to whom it was sent in accordance with paragraph 15(b) above.
17. Granting leave to Abano to effect service outside the jurisdiction in the manner referred to in paragraph 15(b) above.
18. Directing that the approved Scheme Booklet be lodged on the NZX market announcement platform prior to its distribution to shareholders.



19. Directing that if Abano accidentally fails or omits to send a Scheme Booklet to any person specified in paragraph 15(a) above or the Scheme Booklet is not received by any such person:
- (a) any such failure or omission does not constitute a breach of the orders made in relation to the Scheme or invalidate any Resolution passed or proceedings taken at the Scheme Meeting; but
 - (b) where any such failure or omission is brought to Abano's attention, Abano shall endeavour to rectify it by the method and in the time most reasonably practicable in the circumstances.

Amendment of Scheme Plan or Notice of Scheme Meeting and Scheme Booklet

20. Directing that Abano may make such amendments to materials contained in the Scheme Booklet as it may determine are in its best interests or the best interests of its shareholders (or other affected or properly interested persons). If the Scheme Plan or Resolution are amended, it will be the Scheme Plan or Resolution as amended that are put to shareholders for consideration and approval. Where possible, any such amendments to materials in the Scheme Booklet will be:
- (a) made before Abano distributes the Scheme Booklet to shareholders and any other person identified in paragraph 15(a) or directed to be served with this application; but
 - (b) if any material amendment to a document contained in the Scheme Booklet is made after the Scheme Booklet is distributed to Abano shareholders and any other person directed to be served with this application and more than 72 hours before the Scheme Meeting (including any adjournment of the Scheme Meeting), Abano will notify those persons of such amendment by lodging a notice on the NZX market announcement platform, or other means that it considers will ensure timely notification and receipt.

Reporting of the results of the Scheme Meeting

21. Directing Abano to notify the outcome of the Scheme Meeting by:
- (a) lodging the results on the NZX market announcement platform as soon as practicable after voting at the Scheme Meeting is complete; and



- (b) serving written notice on persons entitled under paragraph 26 below to appear and be heard at the hearing of the Application for Final Orders. Such notice is to be served as soon as is practicable after voting at the Scheme Meeting is complete.
22. Requiring Abano, as soon as reasonably practicable after 18 November 2020, and in any event prior to the Court's consideration of the Application for Final Orders, to file with the Court, and serve on any party who has filed a notice or an application for leave under the orders at paragraphs 23 or 24 (as applicable) at the relevant address for service, an affidavit or affidavits:
- (a) verifying compliance with the requirements of the orders made following hearing of this Application for Initial Orders;
 - (b) including confirmation of:
 - (i) the Resolution voted on at the Scheme Meeting;
 - (ii) in respect of each interest class of shareholders, the number of votes cast for and against the Resolution;
 - (iii) the number of shareholders voting in favour of the Resolution; and
 - (iv) the proportion of the total number of voting rights that were voted in favour of the Resolution.

Rights of opposition

23. Directing that any shareholder who wishes to appear and be heard on the Application for Final Orders must, by 5.00pm on 23 November 2020, file with the High Court at Auckland at 24 Waterloo Quadrant, Auckland and serve on Abano at C/- Harnos Horton Lusk Limited, Level 33, Vero Centre, 48 Shortland Street, Auckland 1010, or by email at nathanael.starrenburg@hhl.co.nz:
- (a) a notice of appearance (containing an address for service including an email address at which service will be accepted if service at the shareholder's physical address is not permitted or practicable by reason of restrictions associated with the COVID-19 pandemic); or
 - (b) if they oppose the Application for Final Orders:
 - (i) a notice of opposition (containing an address for service including an email address at which service will be accepted if



service at the shareholder's physical address is not permitted or practicable by reason of restrictions associated with the COVID-19 pandemic), any affidavit(s); and

(ii) a memorandum of submissions on which they intend to rely.

24. Directing that any other person who considers that they have a proper interest in the Scheme and who wishes to appear and be heard on the Application for Final Orders to file with the High Court at Auckland at 24 Waterloo Quadrant, Auckland and serve on Abano at C/- Harnos Horton Lusk Limited, Level 33, Vero Centre, 48 Shortland Street, Auckland 1010, or by email at nathanael.starrenburg@hhl.co.nz by 5.00pm on 23 November 2020 an application for leave to be heard on the Application for Final Orders (containing an address for service including an email address at which service will be accepted if service at the person's physical address is not permitted or practicable by reason of restrictions associated with the COVID-19 pandemic), a notice of opposition, any affidavit(s) and a memorandum of submissions.
25. If physical service on Abano at the address specified in paragraphs 23 and 24 above is not permitted or practicable by reason of restrictions associated with the COVID-19 pandemic, the relevant documents are to be served by email at nathanael.starrenburg@hhl.co.nz.
26. Directing that, subject to any other order of the Court, the only persons entitled to appear and be heard at the Application for Final Orders are:
- (a) Abano;
 - (b) the Takeovers Panel;
 - (c) those persons who file a notice of appearance or opposition in accordance with paragraph 23 above;
 - (d) those persons who are granted leave pursuant to an application made in accordance with paragraph 24 above; and
 - (e) Bidco.
27. Requiring Abano by 5.00pm on 24 November 2020 to serve (at the stated address for service) a copy of all documents filed in support of the Application for Final Orders upon any person entitled or seeking under paragraphs 23 and 24 to appear and be heard at the Application for Final Orders and to file and serve any papers in reply.



Leave to return to Court at short notice

28. Granting leave to Abano or any other person entitled under paragraph 26 above to appear and be heard at the Application for Final Orders to apply for further orders on 24 hours' notice.

Dated: 19 October 2020



Registrar/Deputy Registrar

**R KUMAR
DEPUTY REGISTRAR**