

**Noxopharm Limited**

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# Noxopharm Limited

## **Addendum to Notice of Extraordinary General Meeting**

Explanatory Statement

***Monday, 16 September***

***2019, commencing at***

***10.00am***

**Address**

**Level 5, 126 Philip Street, Sydney, NSW 2000**

# Addendum to Notice of EGM

Noxopharm Limited (Noxopharm) gives notice to its shareholders that, in relation to the Notice of Extraordinary General Meeting dated 9 August 2019 (**Notice of EGM**) in respect of the proposed EGM detailed below, the Directors have determined to issue this addendum to the Notice of EGM (**Addendum to Notice of EGM**).

*Time and date of EGM:*

Monday, 16 September 2019, commencing at 10.00am (Sydney time)

*Location of EGM:*

Level 5, 126 Phillip Street, Sydney NSW 2000

*Reasons for this Addendum to Notice of EGM*

Defined terms in the Notice of EGM have the same meaning in this Addendum to Notice of EGM.

This Addendum to the Notice of EGM is issued in respect of Resolutions 4 - 9:

## **Resolution 4** (Subsequent approval of Prior Issue of First Tranche Shares) is revised as follows:

- (a) The purchase prices of the for the First Tranche Shares issued are \$0.372 for 268,818 Shares and \$0.368 for 271,740 Shares (which are both below the stated minimum floor price of \$0.40 referred to in the relevant explanatory memorandum to Resolution 4); and
- (b) due to the lower purchase prices (below the stated minimum floor price), the statement in Resolution 4 and its relevant explanatory memorandum that the issue will not exceed 500,000 Shares is amended to 540,558 Shares. Accordingly subsequent approval is for the issue of the increased number of shares at the lower issue prices.

The revised Resolution 4 is amended to read.

*"Subject to the issue of First Tranche Shares completing prior to the day of the Meeting, that, for the purposes of ASX Listing Rule 7.1 and for all other purposes, subsequent approval is given under Listing Rule 7.4 to the allotment and issue 540,558 First Tranche Shares to the Investors issued in accordance with the First Tranche Shares Notice and otherwise on the terms and conditions set out in the Explanatory Statement which accompanies and forms part of this Notice of Meeting."*

Below is the information required by ASX Listing Rules 7.1 and 7.5 to take into account the changes noted above:

- (a) No more than 540,558 First Tranche Shares will be issued by the Company on or around 23 August 2019.
- (b) The prices for which the securities will be acquired are:  
\$0.372 for 268,818 Shares and \$0.368 for 271,740 Shares

## **Resolution 6 is withdrawn**

This is due to the waiver requested not being granted by ASX.

## **Consequential amendments to the explanatory memorandum for Resolutions 5, 7, 8 and 9**

Resolutions 5, 7, 8 and 9 are not changing but various calculations in the explanatory memorandum for Resolutions 5-9 have been made on the basis of a minimum floor price of \$0.40. The minimum floor price is a level below which the Company can choose under the Share Purchase and Convertible Security Agreement not to issue Shares. There may be occasions however where notwithstanding the

right not to issue the Shares, the Company will want to issue Shares at less than \$0.40 (as was the case in the relation to the First Tranche Shares referred to in the revision to Resolution 4). The revisions to Resolutions 5-9 are to ensure approval is for issues of Shares at a price no less than \$0.35. The maximum number of Shares sought to be issued has not increased from 5,000,000 a Tranche.

**The Explanatory Memorandum so far as it relates to Resolutions 5, 7, 8, and 9 is amended as shown in the mark-up below:**

## Resolution 5 – Approval of Issue of Replacement Convertible Securities

### Background

Under the terms of the Facility Agreements, the Company is required to seek Shareholder approval to issue the Replacement Convertible Securities to the Investors which will be on the same terms as the Convertible Securities (issued on 25 July 2019) but will not be subject to a maximum shares limit.

Shareholder approval to issue the Replacement Convertible Securities is being sought under this Resolution.

If Shareholder approval is obtained, the Company will issue the Replacement Convertible Securities to the Investors and in doing so, the outstanding Convertible Securities will be redeemed in consideration for the issue of the Replacement Convertible Securities.

The material terms of the Replacement Convertible Securities (which are on the same terms as the Convertible Securities) are set out in Annexure B of this Notice.

Securities	Number on issue immediately prior to the entry into the Facility Agreements	Number on issue on the date of the Cleansing Notice announced on 25 July 2019 <sup>1</sup>	Number on issue assuming full conversion of the Replacement Convertible Securities <sup>2</sup>
Shares	122,601,393	<del>126,101,393</del> 126,141,951	<del>137,501,393</del> 139,170,522
Options	25,696,611	30,418, <del>833</del> 733	30,418, <del>833</del> 733
Convertible Securities (which are then redeemed, for Replacement Convertible Securities)	Nil	2 (face value of \$4,560,000)	Nil

The effect of this Resolution is for Shareholders to approve the issue of these Replacement Convertible Securities (and the Shares to which they may convert to) to fall within an exception to ASX Listing Rule 7.1, which will allow the Company to issue these without using the Company's 15% capacity under Listing Rule 7.1.

### Information Required by Listing Rule 7.3

The following information is provided to Shareholders for the purposes of Listing Rule 7.3:

- (a) The maximum number of Replacement Convertible Securities to be issued is 2.

<sup>1</sup> This can be calculated on the basis that the following securities have been issued pursuant to the Facility Agreements: 4,722,222 Unlisted Options (issued on 23 July 2019), 3,000,000 Collateral Shares (issued on 23 July 2019), ~~maximum number of 500,000~~540,558 First Tranche Shares under the First Tranche ~~(as if issued at the floor price of \$0.40)~~ and 2 Convertible Securities (with a total face value of \$4,560,000) (issued on 25 July 2019).

<sup>2</sup> This can be calculated on the basis that the following securities have been issued pursuant to the Facility Agreements in addition to those in footnote 1: Shares resulting from the conversion of 2 Convertible Securities (with a total face value of \$4,560,000) at ~~the minimum floor price of \$0.40~~35, being ~~11,400,000~~13,028,571 ordinary shares.

- (b) These Replacement Convertible Securities will be issued ~~by~~ within 3 months of Shareholder approval being obtained by the Company (or otherwise, as determined by the ASX in the exercise of its discretion).
- (c) The face value of each Replacement Convertible Security is \$2,280,000 (therefore, both of the Replacement Convertible Securities will have a combined face value of \$4,560,000). The Replacement Convertible Securities can be converted to Shares. The mechanism to calculate the Conversion Price is set out in the summary in Annexure B of this Notice. The minimum floor price for the Conversion Price is AU\$0.40 per Share. Therefore, the combined face value of the 2 Convertible Securities (\$4,560,000) could convert to a maximum number of 11,400,000 Shares. [However, approval is sought to issue Shares at no less than \\$0.35 per Shares should the directors choose to issue at below the floor price. At \\$0.35 the maximum number of Shares into which the Convertible Securities would convert is 13,028,571.](#)
- (d) A Replacement Convertible Security will be issued to each of the Investors (Lind and CST).
- (e) The material terms of the Replacement Convertible Securities (which are on the same terms as the Convertible Securities) are set out in Annexure B of this Notice. Shares issued on conversion of the Replacement Convertible Securities will be fully paid on issue and rank equally in all aspects with all existing fully paid ordinary shares previously issued by the Company.
- (f) Funds raised from the issue of the Replacement Convertible Securities (which are directly connected to the funds already raised from the issue of Convertible Securities, which will be redeemed on issue of the Replacement Convertible Securities) will be used by the Company as announced by the Company, as set out in the Chair's letter attached and in particular:
  - (i) To secure sufficient funding to meet ongoing working capital needs;
  - (ii) To permit the Company to plan to expand and accelerate its Veyonda clinical program into CEP-2, DARRT-2 and immuno-oncology clinical trials;
  - (iii) To minimise dilution to existing NOX Shareholders; and
  - (iv) To obtain a source of funding that would allow the Company to take advantage of an anticipated clinical program news flow over the coming 9 months as its DARRT-1 and LuPIN programs read-out.

## **Resolutions 7 to 9 – Approval of Issue of Additional Tranche Shares (if Waiver Application fails or has not been granted prior to the meeting)**

### **Background**

Under the terms of the Facility Agreements, each subsequent Tranche will result in the Company raising between AU\$200,000 and AU\$2,000,000.

If the Waiver Application fails or has not been granted prior to the meeting, the Company notes that if Shareholder approval is obtained under Listing Rule 7.1 to issue new equity securities, the securities must be issued within 3 months from the date of Shareholder approval.

### **If the Waiver Application is successful and granted prior to the meeting and Resolution 6 was approved then Resolutions 7 to 9 will be unnecessary and therefore withdrawn,**

In anticipation of the Company receiving the Second Tranche Notice, Third Tranche Notice and Fourth Tranche Notice within this period, the Company is seeking Shareholder approval to issue the maximum possible number of Second Tranche Shares, Third Tranche Shares and, if it is within the 3 month period, the Fourth Tranche Shares under Resolutions 7, 8 and 9 of this Notice.

The effect of Resolutions 7, 8 and 9 is for Shareholders to approve the issue of the maximum possible number of Second Tranche Shares, Third Tranche Shares and Fourth Tranche Shares to fall within an exception to ASX Listing Rule 7.1, which will allow the Company to issue these without using the Company's 15% capacity under Listing Rule 7.1.

### Information Required by Listing Rule 7.3

The following information is provided to Shareholders for the purposes of Listing Rule 7.3:

- (a) The maximum number of Tranche Shares to be issued under each of the Second Tranche, Third Tranche and Fourth Tranche is 5,000,000 (with 2,500,000 Tranche Shares issued to each Investor). This assumes that the maximum AU\$2,000,000 has been subscribed at minimum floor price of AU\$0.40 per Share by the Investors under the relevant Tranche. [Approval is sought to enable the Company to elect to issue the Shares at no less than \\$0.35 per Share provided that the Company will not in respect of any Tranche seek to issue more than 5,000,000 Shares.](#)
- (b) Subject to the Company having received the requisite pre-payment and notice under the Facility Agreements, the Tranche Shares under each of the Second Tranche, Third Tranche and Fourth Tranche will be issued within 3 months of Shareholder approval being obtained by the Company (or otherwise, as determined by the ASX in the exercise of its discretion).
- (c) The issue price of the Tranche Shares will be calculated in accordance with the Facility Agreements, being a price per Share equal to 90% of the average of the five (5) lowest daily VWAPs during the twenty (20) Trading Days prior to the relevant Tranche Shares Issue Dates (provided that if the resultant average VWAP number contains four or more decimal places, such number will be rounded down to the next lowest number containing three decimal places). [Tranche Shares will not be issued at less than \\$0.35 per Share. The minimum floor price of the Tranche Shares will be AU\\$0.40 per Share.](#)
- (d) The allottees are the Investors Lind and CST), who will be issued the Tranche Shares in equal portions as required under the Facility Agreements.
- (e) The Tranche Shares will be fully paid on issue and rank equally in all aspects with all existing fully paid ordinary shares previously issued by the Company.
- (f) Funds raised from the issue of the Tranches Shares will be used by the Company as announced by the Company, as set out in the Chair's letter attached and in particular:
  - (i) To secure sufficient funding to meet ongoing working capital needs;
  - (ii) To permit the Company to plan to expand and accelerate its Veyonda clinical program into CEP-2, DARRT-2 and immuno-oncology clinical trials;
  - (iii) To minimise dilution to existing NOX Shareholders; and
  - (iv) To obtain a source of funding that would allow the Company to take advantage of an anticipated clinical program news flow over the coming 9 months as its DARRT-1 and LuPIN programs read-out.

### Directors' Recommendation

The Board of Directors recommend Shareholders vote in favour of all Resolutions.

### Voting by proxy

Any shareholder who has already submitted a proxy form for Resolutions 4, 5, 7, 8 or 9 is not required to resubmit a proxy form as a result of the amendments to the Notice of EGM, unless any shareholder wishes to lodge a revised proxy form.

Any shareholder wishing to lodge a revised proxy form may obtain another proxy form by contacting the Company Secretary on +61 2 8098 1169. All proxy forms received to date by the Company will be treated as valid unless a revised proxy form is received after 10.00am (Sydney time) on 14 September 2019.

### Enquiries

Shareholders are asked to contact the Company Secretary on +61 2 8098 1169 if they have any queries in respect of the matters set out in these documents.