

*For Immediate Release*

Melbourne Australia—30 June 2006.

## **Progress on GSK Litigation – Letter to Shareholders**

Biota Holdings Limited (ASX:BTA) today announced that the following letter is being despatched to shareholders.

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Dear Shareholder

### **Progress on GSK Litigation**

Following the recent Court hearing, I wanted to take the opportunity to bring you up to date on the progress of Biota's legal action against GlaxoSmithKline (GSK), in which we are seeking damages for GSK's failure to use their best endeavours to develop and market Relenza. Biota contends that had GSK properly supported the product, as they are obligated to do under the licence agreement, Relenza would now hold a much stronger position in the global market for influenza antivirals and consequently, Biota would be receiving substantially greater royalties from Relenza sales.

The action is being conducted in the Commercial List of the Supreme Court of Victoria. The Judge overseeing the case is Justice Whelan.

At the most recent Court hearing on 16 June 2006, GSK was ordered to provide a further 35,000 documents in relation to the case, during July and August. These documents are to include all of the documents that remain to be produced from the UK and USA that existed prior to the commencement of proceedings, effectively completing the major portion of discovery from these important locations. These two regions are central to the issues in the case, with Justice Whelan acknowledging that:

*"..the plaintiffs are entitled to know that they have got to the end of the discovery from the USA and the United Kingdom."*

The Court scheduled a further hearing on 18 August, which will continue on 24 August, if necessary.

The Court also nominated 1 February 2008 as "*practically speaking, both the earliest and the most likely date*" for the commencement of the trial. Justice Whelan went on to say:

*"Today I have suggested to the parties a trial date of 1 February 2008 and when the matter does return in August I will expect the parties to be in a position to make submissions as to how a trial can practically be managed so that it will commence on or around that date."*

I appreciate that to an outside observer, or shareholder, the Court process may appear to be somewhat opaque - and protracted. To provide additional clarity it may be helpful to view the litigation, from its commencement through to completion, as occurring in four major phases as follows:

- **Pleadings:**

The phase in which Biota detailed its case, in a "Statement of Claim" and GSK responded with its "Defence". This phase was completed in May 2005.

- **Discovery:**

"Discovery" is the process in which each party is required to identify the documents it has in its possession that relate to the issues in the case. The documents are to be provided to the other party in electronic form. This was expected to be a lengthy process because of the large number of documents likely to be involved but in our view, has been aggravated by the manner in which GSK has been and is going about the review process of its own documents. Nevertheless, significant progress has been made and Judge Whelan's recent instructions with respect to the discovery of USA and UK documents, will further help.

- **Witness Statements:**

The third phase will be the preparation of statements from the witnesses that each party intends to call on during the trial, including those from the expert witnesses - specifically retained for the purpose of the case. The statements are prepared in writing and are available to both parties and the Court.

- **Trial:**

The final phase is the trial itself and the Court has indicated that the trial is likely to commence in a little over 18 months.

As part of the Court process, we expect the Judge will continue with "directions hearings" every two to three months, to consider the progress the parties are making towards the trial. At each hearing, he provides specific "directions" to the parties to be completed before the next hearing.

The Court may also order a "mediation hearing", a hearing, in which an independent person endeavours to assist the parties to reach a settlement. Shareholders may recall that there was an unsuccessful Court directed mediation hearing in November 2005. Mediation hearings are confidential and unfortunately cannot be disclosed to outside parties, including shareholders.

For our part, you have my assurance that Biota and its legal team are doing all we can to progress the litigation as efficiently and economically as possible. Our key advisors have entered risk sharing arrangements with Biota, thus aligning the advisors' interests with ours, in a successful outcome. Additionally, you have my assurance that you will continue to be kept as fully informed as practical as the case unfolds and that the Board remains committed to protecting the interests of the Company and our shareholders. In making this undertaking, it can only be matters of significance that are advised and from time to time there will be confidential matters that cannot be disclosed.

Notwithstanding the legal action, Biota continues to maintain a practical operating relationship with GSK. GSK paid royalties of \$2.2 million from Relenza sales for the year ended 30 April 2006, on time, by 30 June. In the 2007 year, we expect to receive a significantly greater royalty stream, based on announcements made by GSK of its planned global production capabilities of 15 million courses by 31 December, 2006.

I strongly believe that GSK has disadvantaged our shareholders through its failure to meet its obligations under our licensing agreement. Biota has the resolve, the resources and the expertise to see this matter through to completion and our shareholders have every right to expect recompense for their loss from GSK's underperformance with Relenza.

Yours sincerely



Peter Cook  
Managing Director

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### **About Biota**

Biota is a world-leading antiviral drug development company based in Melbourne, with key expertise in respiratory diseases, particularly influenza. Biota developed the first-in-class neuraminidase inhibitor drug, zanamivir, and subsequently marketed by GlaxoSmithKline (GSK) as Relenza. Relenza is currently being stockpiled by a number of national governments for defense against avian influenza.

Work has been underway at Biota for some time to develop a new generation of neuraminidase inhibitors designed to be more active and longer acting than the first generation products.

Biota also collaborated with Inverness Medical to develop rapid detection tests for influenza and the FLU OIA and FLU OIA A/B influenza diagnostics range has been marketed since 1999.

<sup>TM</sup>Relenza is a registered trademark of the GlaxoSmithKline group of companies.

®FLU OIA & FLU OIA A/B are registered trademarks of Thermo Electron Corporation.

*\*Further information available at [www.biota.com.au](http://www.biota.com.au).*

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