

**A V E X A**

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ASX Release

AVEXA ANNOUNCES DESPATCH OF SCHEME BOOKLET

Melbourne, Australia, February 18, 2009, Australian biotechnology company Avexa (ASX: AVX) today despatched to Avexa shareholders the attached Scheme Booklet in respect of the scheme of arrangement to implement the proposed merger between Avexa Limited and Progen Pharmaceuticals Limited

About Avexa

Avexa Limited is a Melbourne-based biotechnology company with a focus on discovery, development and commercialization of small molecules for the treatment of infectious diseases. Avexa has dedicated resources and funding for key projects including ATC, its HIV integrase program, its HCV program and an antibiotic program for antibiotic-resistant bacterial infections. The Company's lead program is apricitabine (ATC), an anti-HIV drug, that has successfully completed the 48 week dosing of its Phase IIb trial and is currently in Phase III trials worldwide.

www.avexa.com.au

About Progen

Progen Pharmaceuticals Limited is a globally focused biotechnology company committed to the discovery, development and commercialization of small molecule pharmaceuticals primarily for the treatment of cancer. Progen has built a focus and strength in anti-cancer drug discovery and development. Progen targets the multiple mechanisms of cancer across its three technology platforms, angiogenesis, epigenetics and cell proliferation. Progen has operations in Australia and the United States of America. www.progen-pharma.com

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A V E X A

Scheme Booklet

for a Scheme of Arrangement between

Avexa Limited

(ACN 108 150 750)

and

the holders of Shares in Avexa

in relation to the proposed merger of Avexa with

Progen Pharmaceuticals Limited (ACN 010 975 612)

(which is proposed to be renamed Avexa Pharmaceuticals Limited)

Your Directors unanimously recommend that you

VOTE IN FAVOUR

of the Scheme, in the absence of a Superior Proposal

THIS DOCUMENT IS IMPORTANT AND REQUIRES YOUR IMMEDIATE ATTENTION. YOU SHOULD READ IT IN ITS ENTIRETY BEFORE YOU DECIDE WHETHER OR NOT TO VOTE IN FAVOUR OF THE SCHEME.

IF YOU ARE IN DOUBT AS TO HOW TO DEAL WITH THIS DOCUMENT, YOU SHOULD CONSULT YOUR LEGAL, FINANCIAL OR OTHER PROFESSIONAL ADVISER IMMEDIATELY.



GRESHAM
INVESTMENT HOUSE

MALLESONS STEPHEN JAQUES

Important Notices

Purpose of Scheme Booklet

This Scheme Booklet is the explanatory statement required to be sent to Shareholders under Part 5.1 of the Corporations Act in relation to the Scheme. The purpose of this Scheme Booklet is to explain the terms of the Scheme and the manner in which it will be implemented (if approved) and to provide information as is prescribed or otherwise material to the decision of Shareholders whether to approve the Scheme.

Read entire Scheme Booklet

Shareholders are encouraged to read this Scheme Booklet in its entirety before making a decision on whether or not to vote in favour of the Scheme.

Glossary and defined terms

Capitalised terms used in this Scheme Booklet have special meanings. These are listed in the Glossary in section 10. The reports and documents reproduced in Annexures A, B, C, D, E and G to this Scheme Booklet each have their own defined terms which are sometimes different from those in the Glossary. Unless otherwise stated, all data contained in charts, graphs and tables is based on information available at the date of this Scheme Booklet. All references to time are references to the time in Melbourne, Australia. All references to \$, A\$ or AUD are to Australian dollars, unless otherwise specified.

Investment decisions

This Scheme Booklet is intended for all Shareholders collectively and does not take into account the individual investment objectives, financial situation or particular needs of each security holder or any other particular person. This Scheme Booklet should not be relied upon as the sole basis for any investment decision in relation to the Scheme or Shares. Before making any investment decision in relation to the Scheme or your Shares, including any decision to vote in favour of or against the Scheme, you should consider, with or without the assistance of a securities adviser, whether that decision is appropriate in the light of your particular investment needs, objectives and financial circumstances. If you are in any doubt about what you should do, you should seek independent financial and taxation advice before making any investment decision in relation to the Scheme or your Shares.

Future matters and intentions

Certain statements in this Scheme Booklet relate to the future. These forward looking statements involve known and unknown risks, uncertainties, assumptions and other important factors that could cause the actual results, performance or achievements to be materially different from expected future results, performance or achievements expressed or implied by those statements. These statements reflect only views held at the date of this Scheme Booklet.

Other than as required by law, none of Avexa or Progen, any directors of those companies nor any other person gives any representation, assurance or guarantee that the events expressed or implied in any forward looking statements in this Scheme Booklet will actually occur and you are cautioned not to place undue reliance on such future statements.

Estimates

Unless otherwise indicated, all references to estimates and derivations of the same in section 4 of this Scheme Booklet are references to estimates by Avexa management, and all references to estimates and derivations of the same in section 5 of this Scheme Booklet are references to estimates by Progen management. All references to estimates and derivations of the same in section 6 of this Scheme Booklet are references to estimates by Avexa management acting in reliance on information provided by Progen management insofar as they rely on information relating to Progen.

Management estimates are based on views at the date of this Scheme Booklet, and actual facts or outcomes may be materially different from those estimates.

Effect of rounding

A number of figures, amounts, percentages, prices, estimates, calculations of value and fractions in this Scheme Booklet, including but not limited to those in respect of the Scheme Consideration, are subject to the effect of rounding. Accordingly, the actual calculation of these figures may differ from the figures set out in this Scheme Booklet.

Responsibility for information

The information concerning Avexa contained in this Scheme Booklet, including financial information and information as to the views of Avexa and its Directors (**Avexa Information**), has been prepared by Avexa and its Directors and is solely the responsibility of Avexa. The information concerning Progen contained in this Scheme Booklet (in Section 5) (**Progen Information**) has been provided by Progen and is solely the responsibility of Progen. Neither Avexa nor its related bodies corporate or advisers assume any responsibility for the accuracy or completeness of the Progen Information. Neither Progen, nor its related bodies corporate or advisers assume any responsibility for the accuracy or completeness of the Avexa Information.

Loneragan Edwards & Associates (**Loneragan Edwards**) has prepared an Independent Expert's Report set out in Annexure A and takes responsibility for that Report.

Deloitte Touche Tohmatsu (**Deloitte**) has prepared an Investigating Accountants' Report set out in Annexure E and takes responsibility for that Report.

In respect of each report, also refer to sections 9.13 and 9.14 of this Scheme Booklet.

ASIC and ASX

ASIC has reviewed a copy of this Scheme Booklet. Avexa has asked ASIC to provide a statement, in accordance with section 411(17)(b) of the Corporations Act, that ASIC has no objection to the Scheme. ASIC's policy in relation to statements under section 411(17)(b) of the Corporations Act is that it will not provide such a statement until the Second Court Date. This is because ASIC will not be in a position to advise the Court until it has had an opportunity to observe the entire scheme process. If ASIC provides that statement, then it will be produced to the Court on the Second Court Date. Neither ASIC nor any of its officers take any responsibility for the contents of this Scheme Booklet.

A copy of this Scheme Booklet has been lodged with ASX. Neither ASX nor its officers take any responsibility for the contents of this Scheme Booklet.

Court

The Court is not responsible for the contents of this Scheme Booklet and, in ordering that the Scheme Meeting be held, the Court does not in any way indicate that the Court has approved or will approve the terms of the Scheme. An order of the Court under section 411(1) or (1A) of the Corporations Act is not an endorsement of, or any other expression of opinion on, the Scheme.

Financial Information

Financial information in this Scheme Booklet has been extracted from the previously issued and audited financial reports of Avexa and Progen for the years ended 30 June 2007 and 2008, which have been prepared in accordance with AIFRS and can be accessed from the companies' websites. The financial information does not contain all the disclosures that are usually provided in an annual report prepared in accordance with the Corporations Act. The Merged Entity Financial Information should be read in conjunction with the basis of preparation and assumptions at section 6.11 of this Scheme Booklet.

Shareholders outside Australia

This Scheme Booklet is subject to Australian disclosure requirements. Australian disclosure requirements and AIFRS may be different from those applicable in other jurisdictions. Shareholders who are subject to taxation outside Australia should consult their tax adviser as to the applicable tax consequences of the Scheme.

This Scheme Booklet does not in any way constitute an offer of securities in any place in which, or to any person to whom, it would not be lawful to make such an offer. Refer to section 3.7 for specific information on certain foreign jurisdictions.

Notice to Avexa Shareholders in New Zealand

The offer to any Avexa Shareholders in New Zealand of New Progen Shares under the Scheme is made in reliance of the *Securities Act (Overseas Companies) Exemption Notice 2002*.

This Scheme Booklet is not a prospectus or investment statement under New Zealand law and may not contain all the information that a prospectus or investment statement under New Zealand law is required to contain. Avexa Shareholders living in New Zealand should seek their own advice and satisfy themselves as to the Australian and New Zealand tax consequences of participating in the Scheme.

Notice to Avexa Shareholders in Indonesia

This Scheme Booklet is not an offering document for the purposes of Indonesian law and may not contain all the information that an offering document under Indonesian law is required to contain.

This Scheme Booklet should not be distributed to any persons in Indonesia, other than Avexa Shareholders living in Indonesia. Avexa Shareholders living in Indonesia should seek their own advice as to the Australian and Indonesian tax consequences of participating in the Scheme.

Material changes to information

If material changes to the information in this Scheme Booklet occur before the date of the Scheme Meeting, updated information will be made to Avexa Shareholders as described in section 9.

Privacy

Avexa and its Share Registry may collect personal information in the process of implementing the Scheme. This personal information may include the names, contact details and security holdings of Shareholders and the names of persons appointed by Shareholders to act as proxy, corporate representative or attorney at the Scheme Meeting. The primary purpose of collecting this personal information is to assist Avexa in the conduct of the Scheme Meeting and to enable the Scheme to be implemented by Avexa in the manner described in this Scheme Booklet. The collection of this personal information is authorised by the Corporations Act.

Personal information may be disclosed to Avexa's Share Registry, to print and mail service providers, to authorised securities brokers, Progen and to related bodies corporate of Avexa and Progen, and in any case, where disclosure is required by law or where you have consented.

Shareholders have the right to access personal information that has been collected. They should contact Avexa's Share Registry in the first instance if they wish to exercise this right.

Shareholders who appoint a named person to act as their proxy, corporate representative or attorney at the Scheme Meeting should ensure that they inform that person of the matters outlined above.

Disclosure of Shareholder tax file number and Australian Business Number

Governing legislation does not automatically transfer an Australian Tax File Number ("TFN") or Australian Business Number ("ABN") (as appropriate) quotation by Shareholders in relation to Avexa Shares to Progen in relation to New Progen Shares.

In connection with the Scheme, and if the Scheme becomes Effective, Avexa will provide details of Shareholders' existing TFN notification or details of any exemption previously notified.

If you do not want your previous TFN, ABN or exemption to be transferred to Progen, you can advise Avexa in writing addressed to the Company Secretary, Avexa Limited, 576 Swan Street, Richmond, Victoria, 3121, that:

- (a) you do not wish your previous TFN, ABN or exemption notification to be provided by Avexa to Progen; or
- (b) you want to update your previous TFN, ABN or exemption notification with a new notification before it is transferred to Progen; or
- (c) you do not wish your previous TFN, ABN or exemption notification to be provided by Avexa to Progen and you do not wish to provide an updated notification.

Avexa website

The content of Avexa's website does not form part of this Scheme Booklet and investors should not rely on any such content.

Date of Scheme Booklet

This Scheme Booklet is dated 13 February 2009.

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Important Dates

Time and date by which proxies must be received from Shareholders	11.00am on 18 March 2009
Time and date for determining eligibility to vote at the Scheme Meeting	7.00pm on 18 March 2009
Shareholders' meeting to approve the Scheme	11.00am on 20 March 2009
If the Scheme is approved by Shareholders:	
Court hearing to approve the Scheme (<i>Second Court Date</i>)	30 March 2009
Court order is lodged with ASIC and Scheme takes effect (<i>Effective Date</i>)	31 March 2009
Suspension of Shares from ASX trading	1 April 2009
New Progen Shares commence trading on ASX on a deferred settlement basis	1 April 2009
Time and date for determination of entitlements to receive Scheme Consideration (<i>Record Date</i>)	7.00pm on 7 April 2009
Implementation of the Scheme, including issue of Scheme Consideration (<i>Implementation Date</i>)	14 April 2009
ASX notified of dispatch of holding statements to Scheme Participants and last day of deferred settlement trading on ASX of New Progen Shares	16 April 2009
New Progen Shares commence trading on a normal settlement basis	17 April 2009

NOTE

Unless otherwise stated, all times referred to in this Scheme Booklet are references to time in Melbourne, Australia. All dates following the date of the Scheme Meeting are indicative only and, among other things, are subject to all necessary approvals from the Court, ASX and other governmental agencies. Any changes to the above timetable will be announced through ASX and notified on Avexa's website www.avexa.com.au.

A toll-free Shareholder Information Helpline has been established to enable Shareholders to obtain information regarding the Scheme. If you have any questions in relation to the Scheme, please contact the Avexa Shareholder Information Helpline on 1300 738 548 (within Australia) or +61 3 9415 4393 (outside Australia), between AEST 9am – 5pm, Monday to Friday. Calls outside of these hours will be captured by message-bank and return calls will be made the following Business Day wherever possible.

Chairman's letter

13 February 2009

Dear Shareholder,

I am pleased to present you with the proposal to merge Avexa Limited ("Avexa") and Progen Pharmaceuticals Limited ("Progen") to create one of Australia's leading biotechnology companies. The Merger has been unanimously supported by the Board of Directors of both Avexa and Progen.

Offer Details

On 22 December 2008, the Boards of Avexa and Progen announced a proposal to merge the two companies ("Merger") by way of a Scheme of Arrangement ("Scheme"). Progen is a biotechnology company whose main assets comprise a cash balance of around \$50 million¹ and early stage oncology and anti-inflammatory programs.

Under the Scheme, Avexa Shareholders will receive one Progen Share in exchange for every 12.857 Avexa Shares which they hold at the Record Date.² Based on Progen's expected net cash backing per share at transaction closing of \$1.15 per share,³ this ratio implies an offer price of 9 cents per Avexa share. Based on these terms, Avexa Shareholders will own around 44% of the Merged Entity.

Substantial benefits of a combination

Avexa's Directors believe that the Merger is an exciting opportunity for Shareholders. Importantly, the Merger should alleviate the funding uncertainty associated with the Phase III program for Avexa's lead compound, apricitabine ("ATC"). Over the past few years, the results of ATC's ongoing clinical trials have surpassed Avexa's expectations and the Directors and management remain confident of ATC's long term commercial potential as a treatment for HIV patients. After the Merger, the Merged Entity is expected to have substantial net cash of over \$60 million⁴ at transaction closing, which is expected to be sufficient to fully fund the clinical trials of ATC through to the week 24 primary end point of the first Phase III study in late 2010. This milestone represents an important value inflection point in the development of ATC, as some regulatory authorities have agreed to review the ATC data after 24 weeks of dosing. On the basis of historical precedents in which relevant regulatory authorities have permitted a limited market approval for a new drug with positive Phase IIb and Phase III week 24 data, a positive outcome in the week 24 phase III data for ATC may allow the Merged Entity to apply for a New Drug Application filing in early 2011, a necessary requisite for the commercialisation of ATC.

In addition, the Merged Entity will focus on small molecule drug development and will be well placed to exploit the many anticipated benefits of combining oncology and anti-viral programs. The two therapeutic areas of oncology and anti-viral share many similar characteristics, including clinical development, regulatory pathways and marketing approaches. Avexa therefore believes that Progen's existing early stage oncology programs and Avexa's attractive portfolio of later stage anti-viral assets will be complementary and enhance the prospects of future successful development of the respective pre-clinical programs of each company.

The Merged Entity will be called Avexa Pharmaceuticals Limited⁵ and will be headquartered in Avexa's current head office in Melbourne, Australia. The Merged Entity's Board of Directors will comprise four representatives from the current Board of Avexa and three representatives from the current board of Progen. I will be chairman of the Merged Entity and its managing director will be Dr Julian Chick, Avexa's

¹ Progen has announced a share buyback of up to \$20 million to be completed prior to the proposed Merger. The cash balance of around \$50 million assumes the \$20 million buyback is fully subscribed.

² Assuming Progen liquid assets are at least \$67.5 million on the date which is two Business Days prior to the Second Court Date. If liquid assets are lower than this amount, the Scheme Consideration will be adjusted as set out in section 3.4.

³ Assuming the Progen Share Buyback is fully subscribed.

⁴ Represents sum of estimated Progen cash (assuming its share buyback is fully subscribed) and Avexa cash at transaction closing.

⁵ Subject to approval by the Progen Shareholders.

current managing director. Dr Jonathan Coates, Avexa's current chief scientific officer, will be the Merged Entity's chief scientific officer. Accordingly, you can be confident that the Merged Entity will remain focused on developing and maximising the potential of ATC with the same strategy and key personnel currently employed by Avexa.

Shareholders are strongly encouraged to support the Merger

On behalf of the Board of Avexa, I strongly encourage you to support the Merger by voting in favour of the Scheme. At present, Avexa has the financial resources to achieve the week 16 Phase III data for ATC, but does not have the financial resources to fund the development of ATC through to the week 24 milestone event. As Shareholders would be aware, capital market conditions have been severely and dramatically impacted by the global financial crisis and it is currently extremely difficult for biotechnology companies to raise capital on acceptable terms. Without the access to funds that the Merger would provide, Avexa may have to consider raising capital on unattractive terms, consider partnership agreements for ATC on potentially materially less advantageous terms to Avexa (and hence its Shareholders), or scale back the Phase III program for ATC. Avexa considers all of these options are significantly less attractive than, and would not deliver the same potential shareholder value as, the Merger.

The Merger will, apart from adding further prospective early stage oncology programs, inject an additional \$50 million into the Merged Entity,⁶ equivalent to over 100% of Avexa's pre announcement market capitalisation. The terms of the Merger imply a discount of around 15% to Avexa's share price immediately prior to the announcement of the Merger.⁷ However, this discount is very attractive relative to the potential issue price discount if Avexa were to seek to raise an equivalent amount of capital from currently depressed equity markets (the raising of which would be inherently uncertain whatever the issue price discount).

Included in this document is an Independent Expert Report from Lonergan Edwards & Associates Limited, commissioned by Avexa to consider the terms of the Scheme. At this time, I would like to highlight some of the key findings of this report that are the most important for Avexa Shareholders:

- there is significant market potential for ATC (see paragraphs 77 to 81 of the Independent Expert's Report);
- the assessed current value of ATC is estimated between \$151.4 million to \$225.8 million. This value is not reflected in the Company's overall share price (see paragraph 5 of the Independent Expert's Report);
- ATC and Avexa would benefit from additional funding made available through the Merger to continue to leverage the existing value in ATC and the ability to add further value to the program (see paragraph 226 of the Independent Expert's Report);
- the removal of the need for an equity raising in the short term is likely to result in the Merged Entity's share price being re-rated (assuming comparable share market conditions) post completion of the transaction, so that the Merged Entity's share price, expressed in Avexa terms, is likely to trade at a higher price than Avexa's share price prior to the announcement of the Scheme (see paragraph 221 of the Independent Expert's Report);
- as the week 24 Phase III data is a critical technical milestone, successful completion of this milestone is likely to lead to a further material increase in the value of Avexa shares (see paragraph 224 of the Independent Expert's Report); and
- Avexa believes that the valuation calculations of the Independent Expert have only included nominal amounts with respect to Avexa's other early programs. However, Avexa considers these programs to show significant potential and accordingly these may provide additional longer term value upside (see paragraph 153 of the Independent Expert's Report).

⁶ Assuming a 100% take up of the Progen Share Buyback.

⁷ Discount of 15% is based on Avexa's closing price on 19 December 2008 of 10.5c (the last price before the announcement of the Merger) and the implied offer price of 8.94c (rounded to 9c throughout this Scheme Booklet), which is based on Progen's net cash backing per share of \$1.15 and the exchange ratio of 1 Progen share for every 12.857 Avexa shares.

Having considered the terms of the Merger, the Independent Expert has concluded that, in the absence of a Superior Proposal, the Scheme is in the best interests of Avexa Shareholders (being technically not fair when assessed based on ASIC Regulatory Guide 111, but being reasonable).⁸

After the dilutionary impact of assumed future capital raising to fund ATC's development costs up to the week 24 milestone, the Independent Expert values Avexa Shares in the range of 21 cents to 41 cents (see paragraph 6 of the Independent Expert's Report). The Independent Expert also concluded that the effective price at which Progen Shareholders are acquiring an interest in Avexa (the "Effective Issue Price") is 9.2 cents to 9.7 cents per Avexa Share (see paragraph 20 of the Independent Expert's Report).

As the Effective Issue Price is not equal to or greater than the assessed value of the Avexa Shares the subject of the Scheme, the Independent Expert formed the view that the Scheme is technically not fair when assessed based on ASIC Regulatory Guide 111. However, in light of the reasons explained in its report, the Independent Expert is of the opinion that the Scheme is reasonable and in the best interests of Avexa Shareholders in the absence of a Superior Proposal. In concluding that the Scheme is not fair but reasonable, the Independent Expert considered that there are sufficient reasons for Avexa Shareholders to vote in favour of the Scheme in the absence of a Superior Proposal (see paragraphs 26 and 227 of the Independent Expert's Report). Further details of the Independent Expert's Report is included in section 3.11 of this Scheme Booklet and it is set out in full in Annexure A.

Accordingly, and in the absence of a Superior Proposal, your Directors unanimously support the Merger, intend to vote in favour of the Scheme in respect of their own shares and recommend that you vote in favour of it at the meeting of Avexa Shareholders to be held on Friday, 20 March 2009. The Merger is also supported by Avexa's management, all of whom have indicated, in the absence of a Superior Proposal, an intention to vote in favour of the Scheme in respect of the Avexa Shares they hold.

I encourage you to read carefully the details of the Merger in this Scheme Booklet, in particular sections 1 and 2 relating to advantages, disadvantages and risks of the Merger and implications if it does not proceed.

If you have any questions in relation to the Merger, please consult your own independent adviser or contact the Merger Information Line on 1300 738 548 (within Australia) or +61 3 9415 4393 (outside Australia).

Yours sincerely,

Nathan Drona
Chairman
Avexa Limited

⁸ See paragraphs 23 and 227 of the Independent Expert's Report.

Scheme highlights

Scheme Consideration	If the Scheme is approved, Shareholders will receive one Progen share for every 12.857 Avexa Shares held on the Record Date. ⁹
Directors' recommendation	The Directors unanimously recommend that, in the absence of a Superior Proposal, you vote in favour of the Scheme.
Independent Expert's conclusion	• The Independent Expert has concluded that, in the absence of a Superior Proposal, the Scheme is in the best interests of Shareholders (being technically not fair when assessed based on ASIC Regulatory Guide 111, but being reasonable) (see paragraphs 23 and 24 of the Independent Expert's Report). • The Independent Expert has assessed the current value of ATC to be between \$151.4 million to \$225.8 million (see paragraph 5 of the Independent Expert's Report). • The Independent Expert considers that the Merged Entity's share price, expressed in Avexa terms, is likely to trade at a higher price than the Avexa Share price prior to the announcement of the Scheme. Further, the Independent Expert considers that successful completion of the week 24 Phase III data milestone is likely to lead to a further material increase in the value of Avexa Shares (see paragraphs 222 and 224 of the Independent Expert's Report). • After the dilutionary impact of assumed future capital raising to fund ATC's development costs up to the week 24 milestone, the Independent Expert values Avexa Shares in the range of 21 cents to 41 cents (see paragraph 6 of the Independent Expert's Report). The Independent Expert also concluded that the effective price at which Progen Shareholders are acquiring an interest in Avexa (the "Effective Issue Price") is 9.2 cents to 9.7 cents per Avexa Share (see paragraph 20 of the Independent Expert's Report). • As the Effective Issue Price is not equal to or greater than the assessed value of the Avexa Shares the subject of the Scheme, the Independent Expert formed the view that the Scheme is technically not fair when assessed based on ASIC Regulatory Guide 111. However, in light of the reasons explained in its report, the Independent Expert was of the opinion that the Scheme is reasonable and in the best interests of Avexa Shareholders in the absence of a Superior Proposal. • The Independent Expert considers that there are sufficient reasons for Avexa Shareholders to vote in favour of the

⁹ Subject to adjustment under the MIA if Progen liquid assets are less than \$67.5 million on the date which is two Business Days prior to the Second Court Date.

Scheme in the absence of a Superior Proposal, and recommends that Avexa Shareholders approve the Scheme in the absence of a Superior Proposal (see paragraph 227 of the Independent Expert's Report).

Advantages of the Scheme include...

- The Merger provides greater certainty of funding for Avexa's lead compound ATC.
- The Merger may lead to a re-rating of the Merged Entity's share price (as noted in the Independent Expert's Report).
- The Merger provides funding on attractive terms.
- The Merger allows Avexa to continue to progress the development of ATC, which it considers to be one of the most exciting compounds currently being developed in the Australian biotechnology industry.
- The Merged Entity will have an exciting and well balanced portfolio of early and late stage programs.
- The Merged Entity should be well placed to exploit the benefits of combining oncology and anti-viral programs.
- The Merged Entity will be one of Australia's leading biotechnology companies with a strong balance sheet and an exciting portfolio of programs.
- The Merged Entity is to be named Avexa Pharmaceuticals Limited (subject to Progen shareholder approval) and will have four directors from Avexa's existing Board and management and three directors from Progen's existing board.

Refer to Section 1 of this Scheme Booklet for further details of the advantages of the Scheme.

Disadvantages of the Scheme include...

- Existing Avexa Shareholders will have their interest in Avexa's assets diluted.
- After the Scheme becomes Effective, the value attributable to the Scheme Consideration will fluctuate with the Progen Share price.
- The Scheme Consideration is at a discount to the assessed fair value range of Avexa Shares.
- Avexa Shareholders may believe Avexa will deliver greater returns as an independent company.
- Avexa Shareholders will become exposed to Progen's business risks.
- It is possible that a more attractive proposal could materialise in the future.

Refer to section 2 of this Scheme Booklet for further details of the disadvantages of the Scheme.

Risks of the Scheme include...

- Risks relating to the Merger process, including integration risk, fluctuations in the value of the Scheme Consideration

(being Progen Shares), and potential loss of key personnel. These risks are described in section 2.2.1.

- Risks relating to both the Avexa and Progen businesses and which will continue to be relevant to those businesses after the Merger. These risks are described in section 2.2.2.
- General investment risks associated with an investment in shares in the Merged Entity. These are described in section 2.2.3.

Avexa Shareholders should read section 2 and consider these risks carefully before deciding how to vote on the Scheme.

Questions and Answers

This Scheme Booklet contains detailed information about the Scheme. The following section provides summary answers to some questions you may have and will assist you to locate further detailed information in this Scheme Booklet.

The Scheme at a glance

What is the Scheme?

The Scheme involves Progen acquiring all of the issued Shares in Avexa in exchange for the issue to Scheme Participants of one New Progen Share for every 12.857 Avexa Shares held by a Scheme Participant on the Record Date.¹⁰

On 22 December 2008, Avexa entered into a Merger Implementation Agreement with Progen governing how the Scheme will proceed. A copy of the Merger Implementation Agreement is included in Annexure D of this Scheme Booklet.

What is a "Scheme of Arrangement"?

A "scheme of arrangement" is a means of implementing an acquisition of shares using a prescriptive process set out in the Corporations Act. It requires a vote in favour of the Scheme by certain majorities of shareholders at a meeting of shareholders and also requires Court approval.

If the Scheme proceeds, Avexa will be delisted from ASX and become a wholly-owned Subsidiary of Progen (which will be renamed Avexa Pharmaceuticals Limited¹¹).

A detailed description of the Scheme is set out in section 3 of this Scheme Booklet. The terms of the Scheme are set out in full in Annexure B.

When and where will the Scheme Meeting be held?

The Scheme Meeting will be held at 11.00am on 20 March 2009 at Leonda by the Yarra at 2 Wallen Road, Hawthorn, Victoria, 3122, Australia.

Can the Scheme Consideration vary?

Yes. If Progen's calculated liquid asset balance is below \$67.5 million on the date which is two Business Days prior to the Second Court Date, then the Scheme Consideration will increase according to a formula. This formula is described in section 3.4. If Progen's calculated liquid asset balance is below \$66 million before the second Business Day prior to the Second Court Date, Avexa will also have the right to withdraw from the Merger.

What do the Directors recommend?

The Directors consider that the Scheme is in the best interests of Avexa and its Shareholders. The Directors unanimously recommend that, in the absence of a Superior Proposal, you vote in favour of the Scheme. The basis for this recommendation is set out in this Scheme Booklet.

¹⁰ Subject to adjustment under the MIA if Progen liquid assets are less than \$67.5 million on the date which is two Business Days prior to the Second Court Date.

¹¹ Subject to approval by Progen Shareholders.

What is the Independent Expert's conclusion?

The Directors engaged Lonergan Edwards as Independent Expert to provide a report. The Independent Expert has concluded that, in the absence of a Superior Proposal, the Scheme is in the best interests of Shareholders (being technically not fair when assessed based on ASIC Regulatory Guide 1.1.1, but being reasonable) (see paragraph 227 of the Independent Expert's Report).

Further details of the Independent Expert's Report is included in section 3.1.1 of this Scheme Booklet and is set out in full in Annexure A.

What should I do?

You should read this Scheme Booklet carefully in its entirety and then vote by attending the Scheme Meeting, or by appointing a proxy to vote on your behalf. Full details of who is eligible to vote and how to vote are set out in section 7 of this Scheme Booklet.

The Merged Entity

What will be the strategy of the Merged Entity?

The primary strategy of the Merged Entity will be to continue Phase III trials of ATC in accordance with the current timetable while progressing commercialisation opportunities and pursuing a balanced approach to the earlier programs through progressing these programs alone or in partnership.

In addition, Progen and Avexa recognise the importance of developing a broad portfolio of attractive assets behind ATC. To this end, the Merged Entity will review the portfolio of early stage programs currently being conducted by both Avexa and Progen, with the prioritisation of the development and progression of those programs after the Merger to be based on an assessment of which are most likely to contribute to shareholder value over the longer term and existing contractual obligations that the entities may have in respect of such development or progression. As a result, the Merged Entity may be expected to have a higher quality portfolio of opportunities than either company individually.

What will be the name of the Merged Entity?

The Merged Entity will be called Avexa Pharmaceuticals Limited (subject to approval by Progen Shareholders).

Who will be the directors of the Merged Entity?

Immediately after the implementation of the Scheme, the board of directors of the Merged Entity will comprise Nathan Drona (Chairman), Dr Julian Chick, David Bottomley and Dr John Sime from Avexa, and Dr. Mal Eutick, John Lee and Justus Homburg from Progen. Avexa's CEO, Dr. Julian Chick, will be Chief Executive Officer and Managing Director.

What will be the pro-forma ownership of the Merged Entity if the Scheme proceeds?

The Merged Entity will be owned 56 percent by Progen Shareholders and 44 percent by Avexa Shareholders (assuming the Progen Share Buyback is fully subscribed and Progen's liquid asset balance is greater than \$67.5 million on the date which is two Business Days prior to the Second Court Date).

What you will receive under the Scheme

What will I receive if the Scheme proceeds?

You will receive one Progen Share for every 12.857 Avexa Shares held as at the Record Date.

If Progen's liquid asset balance is less than \$67.5 million on the date which is two Business Days prior to the Second Court Date, the Scheme Consideration will be adjusted according to the formula set out in section 3.4.

Will I have to pay brokerage fees?

No, you will not have to pay any brokerage fees in connection with the Scheme.

When will I receive the Scheme Consideration?

If the Scheme becomes Effective, New Progen Shares will be issued on the Implementation Date, which is currently expected to be 14 April 2009.

Statements confirming the allotment of New Progen Shares to Scheme Participants are expected to be dispatched as soon as practicable following the Implementation Date.

Please refer to section 3 for further details.

Avexa Shareholders with registered addresses outside Australia, New Zealand, Indonesia and Canada should refer to section 3.7 for details about the treatment of Ineligible Foreign Shareholders under the Scheme.

When can I start trading my New Progen Shares?

New Progen Shares are expected to trade on a deferred settlement basis at the commencement of trading on 1 April 2009. It is the responsibility of each New Progen Shareholder to confirm their holding before trading in New Progen Shares to avoid the risk of selling shares that they do not own. Normal trading of New Progen Shares is expected to commence on 17 April 2009.

Please refer to section 3 for further details.

What are the tax consequences of the Scheme for me?

Section 8 of this Scheme Booklet provides a description of the general tax implications of the Scheme. You should consult with your own tax adviser regarding the consequences of acquiring, holding or disposing of Shares in light of current tax laws and your particular investment circumstances.

Voting to approve the Scheme

What vote is required to approve the Scheme?

For the Scheme to proceed, votes "in favour" must be received from:

- a majority in number of Shareholders who vote at the Scheme Meeting (in person or by proxy); and
- at least 75% of the total number of Shares voted on the resolution to approve the Scheme.

It is also necessary for the Court to approve the Scheme before it can become Effective.

What choices do I have as a Shareholder?

As a Shareholder you have the following choices:

- you can vote in person or by proxy at the Scheme Meeting; or
- you can elect not to vote at the Scheme Meeting (in which case you do not have to do anything).

In either case, you can sell your Shares on ASX at any time before the close of trading on the day that the Scheme becomes Effective. If you sell your Shares on ASX you may incur brokerage costs. If the Scheme becomes Effective, Avexa Shares will cease trading on ASX at close of trading on the Effective Date.

Who is entitled to vote at the Scheme Meeting?

If you are registered as a Shareholder on the Share Register at 7.00pm on 18 March 2009 then you will be entitled to vote at the Scheme Meeting.

Is voting compulsory?

Voting is not compulsory. However, the Directors believe that the Scheme is important to all Shareholders and the Directors unanimously recommend that, in the absence of a Superior Proposal, you vote in favour of the Scheme.

How do I vote?

You may vote in person by attending the Scheme Meeting to be held on 20 March 2009 commencing at 11.00am. Alternatively, you may vote by completing and lodging a proxy form that is enclosed with this Scheme Booklet. The proxy form can be lodged by mail or by fax.

You can also vote by appointing a body corporate representative (if you are a body corporate) or an attorney.

Full details of how to vote and how to lodge a proxy form, body corporate representative appointment or power of attorney are set out in section 7 of this Scheme Booklet.

What happens if I do not vote, or I vote against the Scheme?

If you are a Shareholder on the Record Date and the Scheme is approved and proceeds, your Shares will be transferred to Progen under the Scheme and you will receive the Scheme Consideration for your Shares. This will occur even if you did not vote at all or you voted against the Scheme. If the Scheme is not approved or the Conditions Precedent are not satisfied or waived, you will remain a Shareholder of Avexa.

What happens if the Scheme is not approved?

If the Scheme is not approved:

- Avexa will remain an ASX listed company;
- Shareholders will retain their Shares;
- Shareholders will not receive the Scheme Consideration; and
- Avexa will continue to progress ATC towards the week 16 data.

In this event, Avexa may seek to raise equity capital from existing Shareholders and possibly new investors in order to continue the funding of ATC's Phase III trials, seek to enter into a partnership agreement covering ATC with another pharmaceutical company or scale back the development of ATC and other programs. The Company currently expects to have sufficient funds to reach the week 16 data but not the week 24 data of the Phase III trial.

Refer section 2.3 for further details of the implications for Avexa Shareholders if the Scheme is not approved.

When will the results of the Scheme Meeting be available?

The results of the Scheme Meeting will be available shortly after the conclusion of the Scheme Meeting and will be announced to ASX once available. The results will also be published on Avexa's website (www.avexa.com.au) soon after the Scheme Meeting.

Other questions

Will Progen Shareholders vote on the Merger?

Progen Shareholders are scheduled to vote to approve the Merger by ordinary resolution at a Progen Shareholders meeting in early March 2009. If Progen Shareholders fail to approve the Merger, then the Merger will not proceed.

At the same meeting, Progen Shareholders will also vote to approve the change of name of Progen to Avexa Pharmaceuticals Limited and to approve the Progen Share Buyback (both conditional upon the Merger being approved).

Are any other approvals required?

The Scheme must be approved by the Court in addition to being approved by Shareholders. If the Scheme is approved by Shareholders at the Scheme Meeting, Avexa will apply to the Court for approval of the Scheme as soon as practicable. The Court hearing for approval of the Scheme is expected to be held on 30 March 2009 (although this may change). Further details of the approval process are set out in section 9 of this Scheme Booklet.

Is the Scheme subject to any conditions?

Implementation of the Scheme is subject to a number of Conditions Precedent. These Conditions Precedent are summarised in section 3.6 of this Scheme Booklet and set out in full in the Merger Implementation Agreement (a copy of which is included in Annexure D).

Do I give any warranties under the Scheme?

Yes. Under the terms of the Scheme, Scheme Participants will be deemed (if the Scheme becomes Effective) to have warranted that:

- all their Shares (including any rights attaching to those shares) that are transferred to Progen under the Scheme are, at the date of transfer, fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests and other interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind; and
- they have full power and capacity to sell and to transfer to Progen their Shares together with any rights attaching to those Shares.

What happens if a Superior Proposal emerges?

If a Superior Proposal emerges, the Directors will reconsider their recommendation in respect of the Scheme.

1. Why you should vote in favour of the Scheme - advantages of the Merger

This section should be read in conjunction with Section 2 which sets out a summary of the potential disadvantages and risks associated with voting in favour of the Scheme.

- ✓ The Merger provides greater certainty of funding for Avexa's lead compound ATC
- ✓ The Merger may lead to a re-rating of the Merged Entity's share price, as noted in the Independent Expert's Report
- ✓ The Merger provides funding on attractive terms
- ✓ The Merger allows Avexa to continue to progress the development of ATC, which it considers to be one of the most exciting compounds currently being developed in the Australian biotechnology industry
- ✓ The Merged Entity will have an exciting and well balanced portfolio of early and late stage programs
- ✓ The Merged Entity will be well placed to exploit the numerous benefits of combining oncology and anti-viral programs
- ✓ The Merged Entity will be one of Australia's leading biotechnology companies
- ✓ The Merged Entity is to be named Avexa Pharmaceuticals Limited¹² and, immediately after the implementation of the Scheme, will consist of four directors from Avexa's existing Board and three directors from Progen's existing board

The Independent Expert has also concluded that, in the absence of a Superior Proposal, the Scheme is in the best interests of Avexa Shareholders (being technically not fair when assessed based on ASIC Regulatory Guide 111, but being reasonable).

The Independent Expert also concluded that the effective price at which Progen Shareholders are acquiring an interest in Avexa (the "Effective Issue Price") is 9.2 cents to 9.7 cents per Avexa Share (see paragraph 20 of the Independent Expert's Report). As the Effective Issue Price is not equal to or greater than the assessed value of the Avexa Shares the subject of the Scheme, the Independent Expert formed the view that the Scheme is technically not fair when assessed based on ASIC Regulatory Guide 111, but is still reasonable and in the best interests of Avexa Shareholders in the absence of a Superior Proposal. The Independent Expert considers that there are sufficient reasons for Avexa Shareholders to vote in favour of the Scheme in the absence of a Superior Proposal, and therefore recommends that Avexa Shareholders vote in favour of the Scheme in the absence of a Superior Proposal (see paragraphs 24 and 227 of the Independent Expert's Report).

1.1 Directors' recommendation

The Directors consider, for the reasons set out in this section, that, in the absence of a Superior Proposal, the Scheme is in the best interests of Shareholders and unanimously recommend

¹² Subject to Progen shareholder approval.

that, in the absence of a Superior Proposal, you vote in favour of the Scheme at the Scheme Meeting.

In the absence of a Superior Proposal, all Directors intend to vote their respective shareholdings in Avexa in favour of the Scheme and will vote any Shareholder proxies placed at their discretion in favour of the Scheme.

In carrying out their assessment of the Scheme, each of the Directors has drawn on their experience of public company management and the biotechnology sector. In forming their recommendation, the Directors have considered:

- the results of their own due diligence and analysis of the Merger;
- their analysis of the commercial advantages, disadvantages and risks associated with the Scheme and the Merger; and
- the alternative strategies available to Avexa to pursue its corporate objectives and the relative risks involved with those strategies.

1.2 Key advantages of the Scheme

(a) The Merger provides greater certainty of funding for Avexa's lead compound ATC

Avexa's lead compound, ATC, is currently undergoing clinical Phase III trials. However, Avexa presently does not have sufficient funds to progress ATC's Phase III program to achieve week 24 data or beyond.

Your Directors consider that the Merger will provide additional funding for the ongoing development of ATC and other early stage programs. Following the Merger and assuming the Progen Share Buyback is fully subscribed, the Merged Entity is expected to have a cash balance of over \$60 million. The Directors of Avexa consider that this should provide sufficient funding to complete the very significant week 24 Phase III milestone for ATC in the second half of 2010 and to progress selected other programs as appropriate.

The ATC week 24 Phase III milestone represents an important value inflection point in the development of ATC, as some regulatory authorities have agreed to review the ATC data after 24 weeks of dosing. On the basis of historical precedents in which relevant regulatory authorities have permitted a limited market approval for a new drug with positive Phase IIb and Phase III week 24 data, a positive outcome could provide an opportunity for a New Drug Application (NDA) filing in early 2011. Therefore the Merger should alleviate Avexa's funding risk in respect of progressing the development of ATC to the week 24 Phase III milestone, which should underpin the medium term financial future for Avexa Shareholders and which should enhance the potential for the Merged Entity to create value for all its shareholders.

(b) The Merger may lead to a re-rating of the Merged Entity's share price

Your Directors believe Avexa's share price prior to the announcement of the Merger has suffered from a perceived risk that it would be unable to raise funds to continue the development of ATC. As explained above, the Merger should address Avexa's funding requirements in respect of the development of ATC to the week 24 Phase III milestone.

As a result of this Merger, your Directors believe that there is a prospect that following the Merger, the share price of the Merged Entity may be re-rated upwards.

This view is consistent with the conclusions of the Independent Expert, who notes that:

".., in our opinion, the removal of this short-term funding requirement is likely to result in the merged entity's shares being re-rated (assuming comparable share market conditions) post completion of this transaction. On this basis, we believe that the merged entity's share price, expressed in Avexa terms, is likely to trade at

a higher price than the Avexa share price prior to the announcement of the Scheme.¹³

(c) **The Merger provides funding on attractive terms**

In the absence of the Merger, Avexa may have to consider a capital raising as one alternative to funding the ongoing development of ATC and Avexa's other programs. Given the depressed state of global equity and credit markets, there can be no certainty that Avexa could raise an equivalent amount of capital from investors on acceptable terms.

Your Directors consider that the issue price discount implied by the terms of the Merger of 15% to Avexa's share price immediately prior to the announcement of the Merger compares very favourably to the terms of other capital raisings undertaken by Australian companies over the past three months.¹⁴ As shown in the table below, the average issue price discount of selected capital raisings between July 2008 and January 2009 where the size of the capital raising has been greater than 30% of the company's market capitalisation has been considerably greater than the discount implied by the terms of the Merger.

Recent capital raisings by ASX listed companies				
Company	Announcement date	Amount raised \$m	Amount raised/market capitalisation before announcement %	Discount %
GPT	23 Oct 08	1,350	53	48
Australand	28 Jul 08	461	40	38
Goodman	24 Oct 08	956	36	42
Mirvac	30 Oct 08	500	34	30
Gunns	11 Sep 08	334	32	35
Transfield Services	11 Nov 08	204	29	64
ING Office Fund	3 Dec 08	350	27	22
ConnectEast	24 Nov 08	294	26	19
CSR	14 Nov 08	350	19	22
PaperLinx	29 Sep 08	185	19	29
Alumina	26 Aug 08	910	18	31
Bluescope Steel	9 Dec 08	550	18	23
Incitec Pivot	12 Nov 08	819	16	40
Bradken	29 Jul 08	141	13	9
QBE Insurance	26 Nov 08	2,000	10	11
Orica	22 Jul 08	898	10	18
Sonic Healthcare	12 Nov 08	425	10	11
CSL	13 Aug 08	1,891	9	6
National Australia Bank	10 Nov 08	3,000	8	10

¹³ See paragraphs 221 and 222 of the Independent Expert's Report.

¹⁴ Discount of 15% is based on Avexa's closing price on 19 December 2008 of 10.5c (the last price before the announcement of the Merger) and the implied offer price of 8.94c (rounded to 9c throughout this Scheme Booklet) based on Progen's net cash backing per share of \$1.15 and the exchange ratio of 1 Progen share for every 12.857 Avexa shares.

Recent capital raisings by ASX listed companies				
Company	Announcement date	Amount raised \$m	Amount raised/market capitalisation before announcement %	Discount %
CFS Retail Property Trust	8 Oct 08	329	6	13
Leighton	14 Aug 08	703	6	17
Westpac	9 Dec 08	2,500	5	11
AMP	5 Nov 08	450	4	11
Commonwealth Bank	17 Dec 08	1,650	4	11
Commonwealth Bank	8 Oct 08	2,000	3	16

Source: Extract from Independent Expert's Report

- (d) **The Merger allows Avexa to continue to progress development of ATC, which it considers to be one of the most exciting compounds currently being developed in the Australian biotechnology industry**

ATC is a new antiretroviral drug for the treatment of HIV-infected patients who have drug-resistant HIV infections. Avexa considers that ATC is one of the most exciting compounds currently being developed within the Australian biotechnology industry and that its prospects of successful commercialisation are strong:

- ATC has successfully completed the 48 week dosing period of its Phase IIb trials, and a Phase III trial program is now underway.
- The Phase IIb trial results were highly successful – analysis demonstrated that the activity of ATC was maintained for up to 48 weeks of therapy with patients who were resistant to currently used drugs, and there were no serious side effects.
- Avexa recently completed recruitment of the first 160 patients for the two-dose component of its Phase III trial for ATC, with currently 219 patients in the screening or dosing stages of the trial. Avexa expects the results from this component of the trial to be available in the second quarter of 2009.
- Avexa is due to release week 96 Phase IIb data in the first quarter of 2009. While there can never be any guarantee of success, Avexa notes that some patients have been safely treated with ATC for over 3 years.
- The US regulators (FDA) have granted ATC accelerated review and fast track status – demonstrating that ATC has shown both clear clinical efficacy and safety, with significant commercial potential.
- ATC is one of only two new HIV therapies currently in Phase III clinical trials globally, and every previous HIV therapy that has commenced Phase III testing has successfully completed these trials and ultimately been approved in major markets.
- The market for HIV drugs is in excess of US\$8 billion per annum and is growing strongly. ATC is targeted to capture a particular but significant segment of this market.

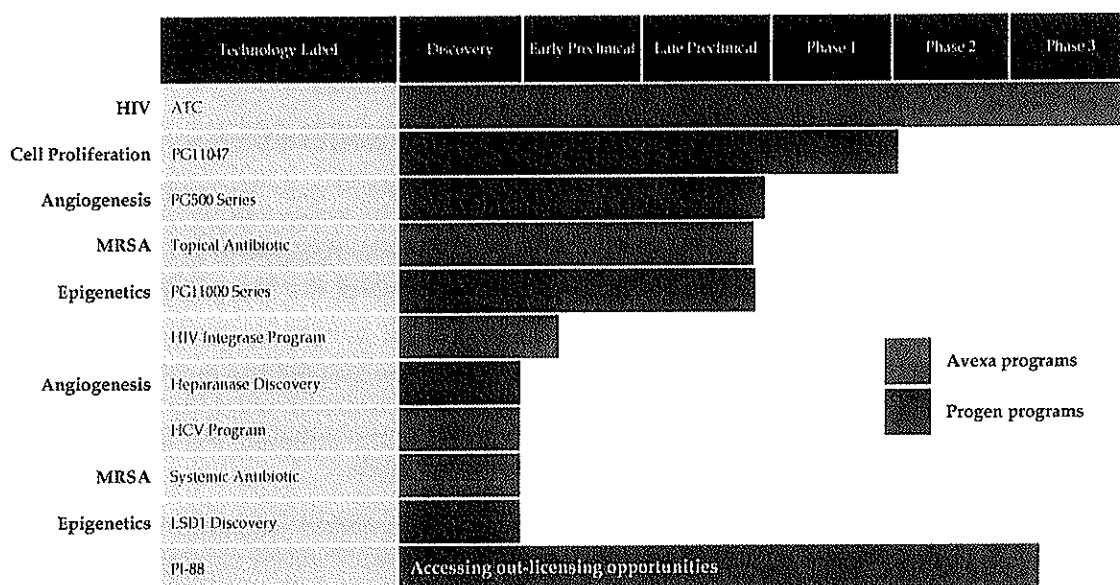
- The Independent Expert, based on an assessment of the commercial prospects of ATC, attributes a value of \$151.4 to 225.8 million to ATC at this point in time.

Further information on ATC is set out in section 4.

(e) **The Merged Entity will have an exciting and well balanced portfolio of early stage and late stage programs**

The Merged Entity will become a small molecule development company with a balanced portfolio of infectious diseases programs and oncology programs in various stages of development. In addition to ATC, the Merged Entity will have a number of exciting early stage research opportunities.

The programs of the Merged Entity will include:



It is intended that the Merged Entity will undertake a review of each of Progen's and Avexa's current portfolio of early stage programs, with the prioritisation of the development of those programs to be based on an assessment of which are most likely to contribute to shareholder value over the longer term and other contractual obligations that the entities may have to progress them. As a result, the Merged Entity may be expected to have a higher quality portfolio of opportunities than either company has, or would have, individually, together with an enhanced ability to create sustainable value for shareholders.

(f) **The Merged Entity will be well placed to exploit the benefits of combining oncology and infectious diseases programs**

Avexa believes that Progen's early stage oncology and anti-inflammatory programs and Avexa's attractive portfolio of infectious disease assets will be complementary. This should enhance the prospects for future successful development of the respective pre-clinical programs of each company as the two therapeutic areas share many similarities in respect of drug discovery and development. These similarities include:

- both areas involve research focussed on small molecules, providing complementarities for both oncology and anti-viral drugs;
- marketing to specialist treatment centres is common in respect of both areas;
- each area often uses combinations of drugs and treatments;
- both areas present market opportunities to differentiate and address the need for new treatments to overcome resistance and unmet medical needs;
- in both areas, reoccurrence of the relevant diseases and their symptoms are common;

- development of drugs in both areas involve well defined (and similar) regulatory pathways;
- identification of target proteins and genes is an important element of new product discovery in both areas; and
- both areas involve synthetic chemistry and manufacture of small molecule projects.

Further, it should also be noted that a number of oncology diseases are also associated with viral infections.

As a result, the Merged Entity should be much better placed to progress drugs more expeditiously through pre-clinical and clinical development at a lower cost.

There are numerous examples of biotechnology groups that have exploited these overlaps between oncology and anti-viral drug development, most notably Gilead Sciences, Ardea Biosciences and Anadys Pharmaceuticals.

(g) The Merged Entity will be one of Australia's leading biotechnology companies

The Merged Entity is expected to have cash resources of over \$60 million and a market capitalisation of around \$100 million.¹⁵ This should make the Merged Entity one of the most diversified, dynamic, and strategically placed participants in the Australian biotechnology industry. The increased size and scope of the Merged Entity is expected to offer numerous advantages:

- *Potential for improved access to capital:* Diversifying the portfolio into two different but related scientific areas of anti-viral and oncology has benefits in terms of reducing single product risk. This may enhance the ability to raise capital when equity capital markets improve;
- *Potential for enhanced investor interest:* Increased stock market analyst coverage is expected to follow from the greater market capitalisation of the Merged Entity compared to either company alone. This may further facilitate interest in the Merged Entity from local and international institutional investors, as well as from the investment community more broadly. There are expected to be few biotechnology peers of the Merged Entity that can offer a high quality, late stage clinical asset such as ATC, along with the likely ability to adequately fund its development to its next expected value inflection point;
- *Potential for increased share trading liquidity:* Both Avexa and Progen Shareholders will have shares in a significantly larger entity following the Merger, which is expected to have enhanced share trading liquidity and attract greater investor interest;
- *Potential for improved ability to out-licence or partner existing drug programs:* A strong balance sheet will enable the Merged Entity to seek out new, or progress existing, licensing and partnership opportunities; and
- *Potential for greater additional program opportunities if appropriate to the combined pipeline.*

(h) The Merged Entity is to be named Avexa Pharmaceuticals Limited¹⁶ and, immediately after the Implementation of the Scheme, will consist of four directors from Avexa's existing Board and three directors from Progen's existing board

¹⁵ The Merged Entity's market capitalisation is based on the Merged Entity's new number of shares assuming the Progen Share Buyback is fully subscribed and the implied Progen price of \$1.35 equal to the product of Avexa's price one day prior to the announcement and the exchange ratio restated into Progen shares.

¹⁶ Subject to approval by Progen Shareholders.

While Progen is technically acquiring Avexa as a result of the Scheme, the Merger has a number of attributes consistent with an acquisition of Progen by Avexa.

Importantly, members of the current Board and management of Avexa will hold prominent roles in the Merged Entity, providing greater assurance to Avexa Shareholders regarding the strategic direction and focus of the Merged Entity on maximising the value of ATC. In particular, immediately after the implementation of the Scheme, the board of the Merged Entity will comprise four existing Board members of Avexa (and three directors from Progen's existing board) and the Merged Entity will have the same Chairman and Managing Director as Avexa.

Loneragan Edwards & Associates, the Independent Expert appointed by Avexa to assess the Scheme on behalf of Avexa Shareholders, has concluded that, in the absence of a Superior Proposal, the Merger is in the best interests of Avexa Shareholders (being technically not fair when assessed based on ASIC Regulatory Guide 111, but being reasonable). Further information in relation to the Independent Expert's conclusions and analysis is set out in Section 3.11. You are also encouraged to read the Independent Expert's Report, which is included as Annexure A, in full.

1.3 No Superior Proposal

Since the Merger was announced on 22 December 2008, and as at the date of this Scheme Booklet, no Superior Proposal has emerged. The Merger Implementation Agreement restricts the Directors from seeking third party proposals by way of "no-shop" and "no-talk" restrictions (see section 3.6 of this Scheme Booklet for further details). Notwithstanding these restrictions on the Directors, the Merger Implementation Agreement in no way prevents a third party from making an alternative proposal.

2. Disadvantages and risks associated with the Merger

2.1 Potential disadvantages of the Merger

The proposed Merger has a number of potential disadvantages which Avexa Shareholders should consider when deciding whether or not to vote in favour of the Scheme.

While the Avexa Directors are of the opinion that these disadvantages are outweighed by the advantages of the Merger (as set out in section 1) and that the Scheme is in the best interests of Avexa Shareholders in the absence of a Superior Proposal, Avexa Shareholders should consider their individual circumstances and make their own determination on the Scheme.

Importantly, you should note that if Shareholders vote in favour of the Scheme by the necessary majorities and the Court approves the Scheme, your Shares will be acquired by Progen and you will receive the Scheme Consideration even if you voted against the Merger.

(a) Dilution of existing Shareholders

At present, Avexa Shareholders have a 100% interest in Avexa's assets. However, as a result of the Merger, Avexa Shareholders will own 44% of the Merged Entity (based on the proposed terms and assuming a 100% take-up of the Progen Share Buyback) and hence their interests in Avexa's assets (including any future benefits from partnering or commercialisation of ATC) will be diluted (although they will have an interest in Progen's current assets, including cash and early-stage oncology programs).

However, one of the key rationales for Avexa in proposing the Scheme to Shareholders is to provide sufficient funding to continue to progress the Phase III trials for ATC, thereby avoiding the need for an immediate capital raising. As such, Avexa considers that Shareholders should view the Merger and the consequent dilution as similar to a capital raising.

Based on Progen's projected cash balance at transaction closing of \$1.15 per share (assuming the \$20 million Progen Share Buyback is fully subscribed), the merger ratio can be characterised as a capital raising at 9 cents per Avexa Share. This implies a 15% discount to the last trading price of Avexa Shares prior to announcement of the Merger and an approximately 13% discount to the volume weighted average price of Avexa Shares in the one month prior to announcement of the Merger.¹⁷

Avexa considers that the degree of dilution is acceptable when considered with the significant potential benefits of the Merger, in particular, the greater certainty of funding provided for the development of ATC. In any event, if Avexa were to continue on a stand alone basis, partnering the program or further equity capital raisings may be required to take ATC to the week 24 data point for the Phase III study. In the current uncertain equity market conditions, there is no certainty that Avexa could successfully undertake a capital raising and, if it could, Avexa considers that it would most likely be at a much larger discount than the 15% implied by the Merger. Similarly, whilst it is still possible that the Merged Entity could enter into partnering arrangements in respect of ATC prior to the week 24 data point, the terms of such partnering for Avexa on a stand alone basis could be expected to be materially less advantageous for Avexa Shareholders.

(b) The value of the Scheme Consideration will fluctuate with the Progen share price

The Scheme Consideration being offered to Avexa Shareholders is in the form of Progen Shares. Accordingly, the implied value of the Scheme Consideration will depend on the market price for Progen Shares. Progen Shares will be exposed to the normal risks of

¹⁷ Discount of 13% is based on the volume weighted average price of Avexa Shares in the one month prior to announcement of the Merger, being 10.32 cents per share and the implied offer price of 8.94c (rounded to 9c throughout this Scheme Booklet), which is based on Progen's net cash backing per share of \$1.15 and the exchange ratio of 1 Progen share for every 12.857 Avexa shares.

share ownership and in the future the price of Progen Shares could fluctuate up or down depending on numerous factors.

Whilst this is a relevant consideration for Avexa Shareholders, the Board of Avexa considers that a more relevant measure of the value of Progen Shares is Progen's projected cash balance per share at transaction closing. The merger ratio has been set based on a projected cash balance of \$1.15 per Progen Share. Under the terms of the Merger Implementation Agreement, the Scheme Consideration will be adjusted at transaction closing if the actual liquid asset balance (of which the cash balance is the major part) of Progen is lower than \$67.5 million on the date which is two Business Days prior to the Second Court Date.

(c) Discount to assessed fair value

The Independent Expert has concluded that, while the Scheme is in the best interests of Avexa in the absence of a Superior Proposal, it is technically not fair when assessed based on ASIC Regulatory Guide 111, but it is reasonable (see paragraphs 23, 24 and 227 of the Independent Expert's Report).

That is, the Independent Expert concluded that the effective price at which Progen Shareholders are acquiring an interest in Avexa (the "Effective Issue Price") is 9.2 cents to 9.7 cents per Avexa Share.¹⁸ As the Effective Issue Price is not equal to or greater than the assessed value of the Avexa Shares the subject of the Scheme, the Independent Expert formed the view that the Scheme is technically not fair when assessed based on ASIC Regulatory Guide 111. ASIC Regulatory Guide 111 (at paragraph 111.18) requires an independent expert who concludes that the consideration offered to shareholders is not equal to or greater than the value of the securities, but who for sufficient other reasons considers the transaction to be in the best interests of shareholders, to make a finding that the proposal is "not fair but reasonable".

In light of the reasons explained in its report, the Independent Expert was of the opinion that the Scheme is reasonable and in the best interests of Avexa Shareholders in the absence of a Superior Proposal. In concluding that the Scheme is not fair but reasonable, the Independent Expert considered that there are sufficient reasons for Avexa Shareholders to vote in favour of the Scheme in the absence of a Superior Proposal (see paragraph 24 of the Independent Expert's Report).

This also suggests that Avexa Shareholders are not receiving a full premium for control under the Merger. However, Avexa Shareholders should also note that the Merger has a number of attributes consistent with an acquisition of Progen by Avexa, in that the Merged Entity's board would be comprised of a majority of Avexa Board members and will be led by Avexa's current Managing Director and Chief Scientific Officer.

(d) Independent company

Shareholders may believe that Avexa will deliver greater returns to Shareholders over the longer term by remaining as an independent company, notwithstanding the challenges the Directors believe that Avexa is currently facing given the need to access funding for the continued Phase III trial of ATC. Avexa intends to remain listed on ASX in the event that the Scheme is not implemented and Shareholders may be of the view that there are opportunities which Avexa should pursue on a stand alone basis (including partnering or commercialisation of ATC) and which may add value to its businesses.

(e) Exposure to Progen's business risks

While Avexa and Progen are both biotechnology companies, they are also different in a number of areas, in particular in their therapeutic specialisations. Progen's focus is on oncology and anti-inflammatory compounds compared to Avexa's focus on anti-viral

¹⁸See paragraph 20 of the Independent Expert's Report.

compounds. Shares in Progen may not be attractive to some Avexa Shareholders due to the differences between the two companies and their respective assets and programs.

The Merged Entity will undertake a review of each of Progen's and Avexa's portfolio of early stage programs and prioritise the development of those programs based on an assessment of which are most likely to contribute to shareholder value over the longer term and obligations that the entities may have to progress them. As a result, the Merged Entity may be expected to have a higher quality portfolio of opportunities than either company has, or would have, individually. In addition, Avexa considers that Progen's early stage programs provide important diversification benefits.

Further, and as discussed in section 1, your Directors believe the two therapeutic areas of oncology and infectious diseases share many similarities in respect of drug development. The Merged Entity will be well placed to exploit these similarities.

(f) It is possible that a more attractive proposal could materialise in the future

The Directors of Avexa consider that ATC is one of the most attractive opportunities in the Australian biotechnology market and it is possible that a third party bid for Avexa could emerge in the future. However, the Avexa Board has not been notified by any third party of any intention to submit a Superior Proposal. The Avexa Board will keep Shareholders informed of any material developments in relation to competing proposals that may emerge.

(g) Disagreement with recommendation of the Directors and conclusions of the Independent Expert

You may disagree with the recommendation of the Directors and the conclusions of the Independent Expert and believe that the Scheme is not in your best interests or not reasonable.

2.2 Potential risks of the Scheme

If the proposed Merger proceeds, New Progen Shares will be issued to Scheme Participants as the Scheme Consideration. The value of the Scheme Consideration which Scheme Participants receive under the Scheme will therefore depend on the value of Progen Shares (including New Progen Shares).

The financial performance and operations of the Merged Entity and the value of New Progen Shares will be influenced by a range of factors including those that relate specifically to the Merger, those that are common to both Progen and Avexa's respective businesses and those that relate to business and investment risk generally. Many of these factors will be beyond the control of the Merged Entity.

Avexa Shareholders should be aware of the risks described in this section 2.2 that may affect the performance of the Merged Entity and the value of Progen Shares (including New Progen Shares). In addition, Avexa Shareholders should be aware that the general business risks described below already apply to Avexa and Progen's existing businesses. Some of these risks may be mitigated by the use of appropriate risk management strategies. However, many will be outside the control of the Merged Entity and cannot be mitigated. There are also general risks associated with any investment in securities.

The risk factors described in this section 2.2 outline some of the key, but not all, risks associated with an investment in the Merged Entity and New Progen Shares. This section 2.2 does not take into account the investment objectives, financial situation, taxation position or particular needs of Avexa Shareholders and is not an exhaustive list.

While the Avexa Directors are of the opinion that these risks are outweighed by the advantages of the Merger (as set out in section 1) and that the Scheme is in the best interests of Avexa Shareholders in the absence of a Superior Proposal, Avexa Shareholders should consider their individual circumstances and make their own determination on the Scheme.

2.2.1 Risks specific to the Merger

(a) Integration risks

The Merger will entail the integration of various functions and departments of Avexa and Progen, including research and development functions. There is a risk that integration of Avexa and Progen is more difficult or takes more time than is currently expected. This may have an adverse impact on the performance of the Merged Entity.

(b) Realisation of benefits

The Avexa Board expects that the Merger will create significant benefits in terms of expanding the Merged Entity's drug development pipeline, generating scale in research and development activities and integrating the two companies' technology platforms and management teams. There is a risk that the expected benefits of the Merger will not be realised to their full extent within the targeted time frame or at all. Failure to achieve targeted benefits may have an adverse impact on the performance of the Merged Entity.

(c) No guarantee of share price re-rating and increased share trading liquidity

There can be no guarantee that the market in Progen Shares (which, after the Merger, would include New Progen Shares) will be liquid or that the price of the Progen Shares will increase after the Merger. The price of Progen Shares may decrease after the Merger. There may also be relatively few, or many, potential buyers or sellers of Progen Shares at any time. This may increase the volatility of the market price of Progen Shares. It may also affect the prevailing market price at which Progen Shareholders are able to sell their Progen Shares.

(d) Loss of key personnel

The Merger may lead to a loss of key personnel following implementation. This may have an adverse impact on the performance of the Merged Entity through loss of specialised skills, knowledge or business relationships.

2.2.2 Risks for the Merged Entity which are also common to the Avexa and Progen businesses

The risk factors described in this section are common to Avexa and Progen, and will continue to be risks associated with an investment in the Merged Entity.

(a) Technology risk

The Merged Entity's future success will depend on the ability to develop products that are competitive in a global market place. There is no guarantee that any of the products currently being developed by Avexa or Progen will achieve the desired plans of either entering into licensing agreements or achieving sales or marketing approval. Similarly, there can be no guarantee that the successful result data received to date in respect of ATC will continue (including in respect of the week 96 Phase IIb data, the week 16 Phase III data or the week 24 Phase III data).

There are many risks inherent in the development of medical and biotechnology products, including that they may fail during clinical trials or may fail to gain regulatory authorities' approval.

More specifically in respect of ATC, some key risks in the development of ATC include the following:

- the Phase III primary clinical endpoint for ATC will not be met;
- adverse effects could be associated with ATC;
- government or regulatory delays; and
- other delays are encountered or other unforeseen events occur.

If such risks, delays or other unforeseen events occur (for example, if sufficient patients for the Phase III trials cannot be recruited efficiently), the funding of the Merged Entity may not be sufficient to progress the Phase III trial to the week 24 data milestone, and additional funding may need to be raised.

(b) Biotechnology industry and competition

While the biotechnology sector in which Avexa and Progen are operating is a growth sector, it remains highly competitive and subject to change. There is no assurance that competitors will not succeed in developing systems and products that are more effective and economic than those produced by the Merged Entity. The Merged Entity's potential competitors include major pharmaceutical and biotechnology companies from around the world with considerably greater resources. Competitive pressure could result in loss of market share, price reductions or reduced margins, any of which could adversely affect the business of the Merged Entity.

(c) Risk of legal action

Both Avexa and Progen perform a range of research and development activities. There is a risk that failure to carry out research and development in accordance with the contractual obligations, including maintenance of confidentiality and intellectual property requirements, could expose the Merged Entity to legal action. This could have a material adverse impact on the Merged Entity.

(d) Early stage of development of the Merged Entity's product portfolio

The development of further products will require additional research and development, and there can be no assurance that any of the Avexa or Progen product candidates will be successfully developed after the proposed Merger. The Merged Entity may encounter delays and incur additional research and development as well as production costs and expenses in order to produce products sufficient for commercial distribution.

Furthermore, there can be no assurance that any of the developed products will meet the regulatory and production requirements necessary for commercial distribution.

(e) Reliance on third parties

The success of the Merged Entity will be dependent, in part, upon the maintenance of its relationships and further establishment of relationships and partnerships with third parties concerning supply, development, manufacture, marketing and servicing of its products. There can be no assurance that these relationships will satisfactorily continue or will be entered into.

(f) Protection of patents and proprietary rights

Patent protection of the Merged Entity's technologies and products is critical to its business prospects. However, there can be no assurance that patents will be issued in connection with any of the Merged Entity's applications, future or pending, or that the lack of any such patents will not have a material adverse effect on the Merged Entity's ability to develop and market its proposed products. Furthermore, no assurance can be given that the Merged Entity will develop products which are patentable or that patents will be sufficiently broad in their scope to provide protection for the Merged Entity's intellectual property rights against third parties. There can be no assurance as to the ownership, validity or scope of any patents which have been, or may in the future be, issued to the Merged Entity or that claims with respect thereto would not be asserted by other parties.

Substantial costs may be incurred if the Merged Entity challenges the proprietary rights of others or if it is required to defend its proprietary rights.

(g) Product testing and regulatory authority approvals

The evaluation, manufacture and marketing of the Merged Entity's products are subject to regulation by government and regulatory agencies in all countries. Failure to secure

the required regulatory permissions could preclude the sale and distribution of the Merged Entity's products in its target markets.

There can be no assurance that the Merged Entity will obtain the necessary regulatory approvals for its products as it develops them, and this may result in the Merged Entity being unable to market its products or obtain licensing deals. This could materially affect the cash flow and future prospects of the Merged Entity.

(h) Product liability

The business of the Merged Entity will expose its products to potential product liability and professional indemnity risks which are inherent in the research, development, manufacturing, marketing and use of its products. In particular, in the case of biotechnology products, there is a risk that their use in field trials and commercialisation may result in adverse effects.

There can be no assurance that the Merged Entity will be able to secure the necessary product liability insurance cover at an acceptable cost, if at all. If the Merged Entity cannot adequately protect against potential liability claims, it may find it difficult or impossible to commercialise its products. There can also be no assurance that the level and/or terms of insurance carried, now or in the future, will be adequate to cover the financial damages resulting from a product liability claim or judgement. Any product liability claim or judgement which exceeds the Merged Entity's insurance coverage limits could have a substantial adverse effect on the business, financial condition, results of operations and cash flows of the Merged Entity.

(i) Uncertainty of achieving the business plan, future revenue and operating results

The Merged Entity plans to expand its business activities by investing in several new and emerging products and markets for which little historical trading information exists. As a consequence, the Merged Entity's future revenue is difficult to forecast. If the Merged Entity does not achieve its expected revenue and/or does not manage to contain expenses at reasonable levels, the Merged Entity's results of operations may fall below expectations. As a result of the rapidly evolving nature of the Merged Entity's business, any period-to-period comparisons of financial results are not necessarily meaningful and should not be relied upon as an indication of future performance. The Merged Entity does not expect to pay dividends for the foreseeable future. The Merged Entity's results of operations may not meet the future expectations of public market analysts or investors and the market price of the Merged Entity's shares may be adversely affected.

(j) Additional funding for future research and development activities

The Merged Entity may require access to further equity capital in the future to fund its research and development activities beyond that which are currently envisaged, depending upon the outcome of its programs. There is no assurance as to whether future funding will be available to the Merged Entity and the terms at which that funding can be raised.

(k) Marketing risks

The Merged Entity may not have sufficient skills or capacity to independently market and sell the products that it develops through to commercialisation. The Merged Entity may seek to partner with other companies to assist with the commercialisation and marketing of its products, but there is no guarantee that the Merged Entity will be able to enter into any partnership agreements for its products.

2.2.3 General risks

(a) Equity market conditions and share ownership

There are general risks associated with an investment in the share market which may affect the value of Progen Shares (including New Progen Shares) and in turn the value of the Scheme Consideration received by Shareholders. Broader market factors affecting

the price of Progen Shares are unpredictable and may be unrelated or disproportionate to the financial or operating performance of the Merged Entity. The price at which shares trade on ASX may fluctuate as a result of a similarly wide variety of factors. An investment in the Merged Entity will be subject to such fluctuations and risk factors, some of which the Merged Entity will seek to mitigate while others are outside the control of the Merged Entity. Such factors may include the domestic and international economic outlook, global political and economic stability, interest and inflation rates, foreign exchange rates and investor sentiment.

(b) Economic and financial conditions

Changes in the economic climate in which the Merged Entity will operate may adversely impact the financial performance of the Merged Entity. The performance of the Merged Entity may be influenced by various general economic factors including, but not limited to:

- (i) economic growth;
- (ii) interest rates;
- (iii) the rate of inflation;
- (iv) employment levels;
- (v) general prosperity of the population;
- (vi) market volatility; and
- (vii) monetary policy.

Material adverse changes to these general economic factors may have an adverse impact on the performance of the Merged Entity.

(c) Regulatory and legislative changes

Changes in laws, regulations and government policy may affect the Merged Entity and the attractiveness of an investment in the Merged Entity positively or negatively.

(d) Exchange rate fluctuation

As a consequence of the international nature of its business (in that much of ATC's trials are being conducted outside of Australia), the Merged Entity will incur costs in foreign currency and hence will be exposed to risks associated with changes in foreign currency exchange rates. The Merged Entity will be based in Australia and will present its financial statements in Australian dollars and the majority of the Merged Entity's cash resources are to be held in Australian dollars. In addition, most of the Merged Entity's future revenues are expected to be denominated in currencies other than Australian dollars, in particular US dollars. Therefore, movements in foreign currency exchange rates may have an impact on the Merged Entity's reported results of operations, financial position and cash flows.

2.3 If the Scheme does not proceed

In summary, if the Scheme does not proceed:

- the Merger will not occur;
- Avexa Shareholders will not receive the Scheme Consideration;
- Avexa Shareholders will continue to hold Avexa Shares and Avexa will continue to be listed on ASX, and the rights of Avexa Shareholders will be unchanged;
- Avexa will continue to operate under its existing corporate structure with its current Directors and management in place; and
- the Directors will continue to operate Avexa in a manner that aims to maximise value for Avexa Shareholders.

Further, if the Scheme does not proceed:

- Avexa may need to pursue and obtain additional funding if it is to continue to develop ATC beyond the week 16 data point and a partnership has not been entered into. Avexa presently has limited financial resources, with cash reserves of approximately \$20.5 million as at 31 December 2008. These cash reserves would not be sufficient to fully fund the Phase III program for ATC over the medium and long term, or to fund Avexa's other promising early stage programs;
- the price of Avexa Shares may fall beneath the implied value of the Scheme Consideration in the absence of a competing transaction;
- material transaction costs and expenses will be incurred by Avexa (estimated at \$0.5 million);
- the benefits of the Merger will not be realised; and
- depending on the reason the Merger does not proceed, Avexa or Progen may also be liable to pay a break fee to the other (see section 3.6).

If the proposed Merger is not implemented, the Directors believe Avexa will, in general, have three alternatives to continue to address its funding constraints.

(a) Scale back current programs

Without additional capital, Avexa may consider scaling back or halting programs, including ATC, until capital markets improve, partnerships are entered into or other access to capital is secured.

(b) Raising equity capital

If Avexa were to continue to operate on a stand alone basis without scaling back existing programs, it could consider raising equity to secure additional funding.

As Shareholders would be aware, capital market conditions have been impacted by the global financial crisis. It is currently extremely difficult for biotechnology companies to raise capital on acceptable terms, if at all.

In the event Avexa were to pursue a major capital raising, the Directors believe that such a capital raising in this environment is likely to be priced significantly below the 9 cent per share implied by the Merger assuming that the Avexa share price is trading at similar levels at that time. Hence, any major equity issue by Avexa in the near future is likely to significantly dilute Avexa Shareholders who do not participate in the issue.

(c) Securing a partnership arrangement

Absent a capital raising, Avexa could enter into a partnering arrangement for ATC. As previously announced to the market, over the past 12 months Avexa has received a high level of interest in potential partnering for ATC, but at this stage has not received any proposals capable of acceptance which it believes to be in the best interests of Avexa Shareholders.

Avexa is currently in discussions with various parties in respect of potential partnering and commercialisation opportunities, both in the short and longer terms. Avexa will continue to pursue these and other partnering discussions during the course of the Phase III trial (both if the Merger is implemented or otherwise) with a view to maximising Shareholder value. For these reasons, and in the context of positive Phase IIb week 48 data, promising progress in the Phase III trials, and the perceived market potential of ATC if the Phase III trial results are positive, the Directors of Avexa remain confident in respect of the prospects of being able to enter into a value creating partnership agreement for ATC in the future, subject to its continued successful development.

It should be noted that the Merged Entity intends to continue to pursue value enhancing partnering opportunities for all its programs (including ATC) and assess capital raising opportunities as appropriate.

3. Overview of the Scheme

On 22 December 2008, Avexa and Progen announced a proposal for Progen to acquire all of the issued Shares in Avexa by way of a scheme of arrangement in accordance with the Merger Implementation Agreement. A copy of the Merger Implementation Agreement is included in Annexure D.

3.1 Overview of Scheme implementation steps

Under the Scheme, Shareholders (other than Progen) will receive one Progen Share in exchange for every 12.857 Avexa Shares held by them on the Record Date (subject to adjustment as described in section 3.4 below). The key steps to implement the Scheme are:

- Shareholders will vote on whether to approve the Scheme at the Scheme Meeting.
- If the required majority of Shareholders approve the Scheme, and the Conditions Precedent have been satisfied or waived, then Avexa will apply to the Court to approve the Scheme at the Second Court Hearing.
- If the Court approves the Scheme, Avexa will lodge with ASIC a copy of the Court orders approving the Scheme. This date will be the last day on which trading in Shares on ASX occurs (*Effective Date*).
- On the Implementation Date, Progen will acquire all of the issued Shares (other than those already held by Progen) and Shareholders (other than Progen) will be issued the Scheme Consideration.
- With effect from the Business Day following the Implementation Date, Avexa will apply for termination of the official quotation of Shares on ASX and to have itself removed from the official list of ASX.

These steps are described in further detail below. The expected dates for the key steps are set out on page 1 of this Scheme Booklet (but those dates are subject to change).

In addition to these steps, Progen Shareholders will hold a general meeting to consider the following resolutions:

- an ordinary resolution to approve the Merger. If the Progen Shareholders do not approve this ordinary resolution, the Merger will not proceed and a break fee will be payable under the Merger Implementation Agreement by Progen to Avexa (see section 3.6);
- a special resolution, conditional upon the passing of the resolution described above to approve the Merger and the Scheme becoming Effective, to change the name of Progen from "Progen Pharmaceuticals Limited" to "Avexa Pharmaceuticals Limited". The Scheme is not conditional on this resolution being approved; and
- an ordinary resolution, conditional upon the passing of the resolution described above to approve the Merger, to approve the Progen Share Buyback. The Scheme is not conditional on this resolution being approved.

Avexa and Progen each have rights and obligations in connection with the implementation of the Scheme under the Merger Implementation Agreement. The Merger Implementation Agreement also includes the Conditions Precedent, termination rights, 'break fee' arrangements, exclusivity arrangements and various other matters.

The terms of the Scheme are included in Annexure B and the key terms of the Merger Implementation Agreement are summarised in section 3.6 of this Scheme Booklet and the Merger Implementation Agreement is set out in full in Annexure D.

Avexa Shareholders should note that on 28 January 2009 it was announced that a number of Progen Shareholders had called a general meeting of Progen to replace the existing Progen Board, pursue a merger with Cytopia Ltd and enable a full share buy-back offer to Progen Shareholders. The requisitioning Progen shareholders have requested that the relevant resolutions be put at the same meeting as the resolutions to approve the Merger, the change of

name to "Avexa Pharmaceuticals Limited" and the Progen Share Buyback. If the resolutions proposed by the requisitioning shareholders are passed, it is probable that the Merger Implementation Agreement will be terminated, the Merger will not proceed and the break fee will be payable under the Merger Implementation Agreement from Progen to Avexa. Section 2.3 of this Scheme Booklet sets out information in respect of the circumstance where the Scheme does not proceed.

3.2 Approvals required from Shareholders and the Court

Shareholders will be asked to vote in favour of the Scheme at the Scheme Meeting to be held at 11.00am on 20 March 2009.

For the Scheme to take effect, section 411(4) of the Corporations Act requires that the Scheme must be agreed to by a resolution passed by a majority in number of Shareholders present and voting (either in person or by proxy) at the Scheme Meeting and representing in aggregate not less than 75% of the votes cast on the resolution at the Scheme Meeting. The result of the Scheme Meeting must then be provided to the Court which will consider whether or not to approve the Scheme.

If the Scheme is approved by the requisite majorities of Avexa Shareholders and all other Conditions Precedent (other than approval by the Court) have been satisfied or waived, Avexa will apply to the Court for orders approving the Scheme. This application will be heard at the Second Court Hearing on the Second Court Date. Each Avexa Shareholder has the right to appear at the Second Court Hearing. Any Avexa Shareholder who wishes to oppose approval of the Scheme at the Second Court Hearing may do so by filing with the Court and serving on Avexa a notice of appearance in the prescribed form, together with an affidavit on which that person will seek to rely at the Second Court Hearing.

Any order made by the Court convening the Scheme Meeting will not constitute an endorsement of, or any other expression of opinion on, the Scheme or this Scheme Booklet.

3.3 What will happen under the Scheme?

If approved by Shareholders and the Court (as discussed in section 3.2 of this Scheme Booklet), and subject to the Conditions Precedent set out in section 3.6 of this Scheme Booklet, all Shareholders who hold Shares (**Scheme Shares**) on issue on the Record Date (**Scheme Participants**) will participate in the Scheme, whether or not they voted for the Scheme (and even if they voted against the Scheme).

If approved and implemented, the Scheme will result in:

- each Scheme Participant receiving one Progen Share in exchange for every 12.857 Scheme Shares held by them. The issue of the relevant number of Progen Shares to each Scheme Participant is currently expected to occur on 14 April 2009;
- the transfer of all Scheme Shares to Progen; and
- Avexa being delisted from ASX and becoming a wholly-owned Subsidiary of Progen.

In support of its obligations under the Merger Implementation Agreement, Progen has executed the Deed Poll in favour of the Scheme Participants. A copy of the Deed Poll is included in Annexure C.

3.4 Scheme Consideration

The Scheme Consideration is one Progen Share in exchange for every 12.857 Avexa Shares held by Avexa Shareholders on the Record Date. However, if the Progen liquid asset balance is below \$67.5 million on the date which is two Business Days prior to the Second Court Date, then the Scheme consideration will change according to the following formula:

Adjusted Scheme Consideration Ratio = Adjusted Progen Share Price divided by Avexa Share Price

where:

Avexa Share Price = 10.5 cents

$$\text{Adjusted Progen Share Price}^* = \frac{81,536,715 - (67,500,000 - \text{Progen liquid assets})}{60,570,131}$$

*The Adjusted Progen Share Price that is derived from the above formula will be rounded to the nearest cent.

For the purposes of this formula, Progen liquid assets will consist of cash; plus trade and other receivables, prepayments and deposits; less trade payables, provisions and debt.

If Progen liquid assets are below \$66 million, Avexa also has the right to withdraw from the Merger.

3.5 Record Date

Shareholders will be entitled to receive the Scheme Consideration if they are registered as the holders of Shares at 7.00pm on the Record Date. The Record Date is the date which is five Business Days after the Second Court Date, and is currently expected to be 7 April 2009.

3.6 Merger Implementation Agreement

The key terms of the Merger Implementation Agreement are as follows:

(a) Conditions Precedent

The Scheme is subject to a number of Conditions Precedent. In summary, these include:

- that the Scheme receives any necessary consents or approvals by ASIC, ASX and any other applicable regulatory bodies;
- that the Avexa Shareholders approve the Scheme in the requisite majorities under the Corporations Act;
- that the Progen Shareholders approve the Merger by ordinary resolution;
- that Progen has received irrevocable resignations of its outgoing directors (accepted by the Progen Board) and irrevocable consents from the incoming Avexa Directors (appointed by the Progen Board);
- the Court approves the Scheme;
- ASX has not refused to quote New Progen Shares;
- the Independent Expert issues a report recommending that Shareholders vote in favour of the Scheme;
- no Prescribed Event has occurred for Progen or Avexa (including conversion of shares, reduction of share capital, entering into a buyback arrangement, Progen's liquid assets falling below \$66 million (other than outside Progen's control), material changes to employment arrangements or a material adverse outcome from Phase III or extension of Phase IIb trials);
- Progen signs and delivers the Deed Poll;
- the representations and warranties given by the parties remain true and correct as at 8.00am on the Second Court Date; and
- there is no exercise of adverse rights under any agreement as a result of the change of control in Avexa.

Please refer to clause 3.1 of Annexure D for further details.

(b) Representations and warranties

Under the Merger Implementation Agreement, both Avexa and Progen have given certain representations and warranties which are considered to be normal for an agreement of this kind. Please refer to clause 13 of Annexure D for further details.

(c) Exclusivity with Progen

Both Avexa and Progen have accepted mutual restrictions in relation to competing proposals. Avexa and Progen have agreed that, subject to various exceptions, neither party will:

- solicit or encourage competing proposals;
- negotiate or enter into discussions with any person in relation to a competing proposal; or
- communicate to any person an intention to do any of these things.

Please refer to clause 11 of Annexure D for further details.

(d) Break Fee

The parties have agreed to pay one another a break fee of \$500,000 in certain circumstances if the Scheme is not implemented.

The break fee would be payable by either Avexa or Progen (as appropriate) if the Merger does not proceed because of one or more of the following circumstances occurring:

- on or before the End Date, a Competing Transaction (in the case of Avexa) or a Defeating Transaction (in the case of Progen) completes, or is recommended by the Avexa Board or the Progen Board respectively and has been publicly announced;
- one or more of the directors of either Avexa or Progen fails to recommend the Scheme or withdraws their recommendation (other than where this is following the receipt of an Independent Expert's report which states that the Scheme is not in the best interests of shareholders);
- the board of either Avexa or Progen as a whole fails to recommend the Scheme, or withdraws its recommendation prior to the Implementation Date;
- an Avexa Director fails to exercise his voting rights in favour of the Scheme or a Progen director fails to exercise his voting rights in favour of the Merger at the Progen general meeting;
- the other party validly terminates the Merger Implementation Agreement because of a material breach; or
- a Prescribed Event occurs (as defined in the Merger Implementation Agreement).

The break fee will also be payable by Avexa where the Merger does not proceed because a Superior Proposal is received.

In addition to the circumstances outlined above, Progen must pay the break fee to Avexa where:

- the outgoing Progen directors have not provided irrevocable resignations by the Second Court Date;
- the Progen Board has not resolved to appoint each incoming Avexa Director to the Progen Board by the Second Court Date; or
- the Progen Shareholders do not approve the Merger by ordinary resolution at the Progen Shareholder meeting.

Please refer to clause 12 of Annexure D for further details.

(e) Termination

Each of Avexa and Progen have termination rights under the Merger Implementation Agreement in certain circumstances. If a termination right is exercised, the Scheme will not proceed.

The circumstances in which either party can terminate include where:

- at any time prior to the Second Court Date, the board of either party changes its recommendation to its shareholders to vote in favour of the Merger;
- the Scheme does not become Effective by the End Date;
- either party has committed a material breach of the Merger Implementation Agreement prior to the Second Court Date;
- the resolution proposed to the Avexa Shareholders at the Scheme Meeting to approve the Scheme is not approved;
- the other party becomes insolvent;
- at any time prior to the Second Court Date, a competing transaction is publicly announced and supported by the directors of the other party; or
- the parties agree (in writing) to terminate.

In addition to these circumstances, Avexa can terminate the Merger Implementation Agreement where Progen's liquid assets fall below \$66 million at any time prior to the second Business Day before the Second Court Date.

Progen may also terminate the Merger Implementation Agreement where:

- the ordinary resolution proposed at the Progen shareholder meeting to approve the Merger is not passed;
- a person (other than Progen) has a Relevant Interest of more than 18% of Avexa, and that person has publicly announced or notified that it intends to vote against the Scheme.

Please refer to clause 14 of Annexure D for further details.

3.7 Ineligible Foreign Shareholders

A Scheme Participant whose address is shown on the Share Register on the Record Date to be a place outside of Australia and its external territories, New Zealand, Canada or Indonesia will be an Ineligible Foreign Shareholder for the purposes of the Scheme.

Ineligible Foreign Shareholders will not be issued with New Progen Shares under the Scheme. Instead, these New Progen Shares will be issued to a nominee on the Implementation Date.

As soon as practicable after the Implementation Date (and no more than 20 Business Days after the Implementation Date), the nominee must:

- sell those New Progen Shares on ASX in such a manner and at such a price as the nominee determines in good faith; and
- pay the sale proceeds (less any brokerage, stamp duty, or other applicable selling cost) to the Ineligible Foreign Shareholders according to the number of New Progen Shares that each Ineligible Foreign Shareholder would otherwise have been entitled to (the **Net Scrip Proceeds**).

Avexa, Progen and the nominee give no assurances as to the price that will be achieved for the sale of New Progen Shares as described above. The terms of the Scheme contain an acknowledgment of this from each Ineligible Foreign Shareholder (see clause 4.4 of the Scheme of Arrangement set out in Annexure B). The Net Scrip Proceeds that Ineligible Foreign Shareholders receive may be more or less than the current market value of Progen Shares as at the date of this Scheme Booklet.

The Net Scrip Proceeds will be paid by making a deposit into the bank accounts of the relevant Ineligible Foreign Shareholders which have been previously notified to the Share Registry. If no such bank account has been previously notified to the Share Registry or you would like to change your existing nominated bank account, you should contact the Share Registry on 1300 850 505 (within Australia) or +61 3 9415 4000 (outside Australia) prior to the Record Date. If

no bank account has been nominated to the Share Registry by the Record Date, the relevant Ineligible Foreign Shareholder will be sent a cheque for the Net Scrip Proceeds. If any Ineligible Foreign Shareholder's whereabouts are unknown as at the Record Date, the Net Scrip Proceeds will be paid into a separate bank account and held until claimed or applied under laws dealing with the unclaimed moneys.

Details of this process are contained in clause 4.4 of the Scheme of Arrangement (which is set out as Annexure B). As at the date of this Scheme Booklet, Avexa and Progen expect that all Avexa Shareholders whose addresses on the Share Register at the Record Date are in jurisdictions outside Australia and its external territories, New Zealand, Canada or Indonesia will be Ineligible Foreign Shareholders.

3.8 Option holders

The intention of the Directors of Avexa is, to the extent possible, to enter into Deeds of Cancellation with the holders of Options prior to the Implementation Date. It is intended that any Options outstanding after the Scheme is implemented will be subject to compulsory acquisition or cancellation procedures under the Corporations Act (if available).

In relation to Employee Optionholders, the intention of the Directors of Avexa is to offer Employee Optionholders a number of new options to subscribe for shares in the Merged Entity so that the assessed total market value of the new options is equal to the assessed total market value of their current Avexa Options (as valued under the Black Scholes option valuation model).

In relation to Shire, the intention of the Directors of Avexa is to enter into a cancellation deed with Shire in which Shire is granted new options to acquire shares in the Merged Entity in a manner consistent with the Merger ratio (being one Progen Share for every 12.857 Avexa Shares), as consideration for the cancellation of its existing Avexa Options. The exercise price of each Merged Entity option granted to Shire will be similarly adjusted in a manner consistent with the Merger ratio.

If any Avexa Options are still on issue after the Implementation Date, it is proposed that Avexa will compulsorily acquire those Options if entitled under, and in accordance with, the Corporations Act.

3.9 Participants in Employee share plans

There are no employee equity participation schemes in existence other than the Avexa Employee Share Option Plan.

3.10 Progen Share Buyback

On 22 December 2008, as part of the announcement of the Merger, Progen announced its intention to undertake an off-market buy back of \$20 million of Progen Shares at a price of \$1.10 per share, being 18,181,818 Progen Shares representing approximately 30% of Progen's issued shares. This is a maximum number and not necessarily the number which will be bought back.

Progen Shares which are bought back will be cancelled, thereby reducing the number of Progen Shares on issue.

The Progen Share Buyback must be approved by Progen Shareholders. A resolution will be proposed at a general meeting of Progen Shareholders to be held in early March 2009. If the Progen Share Buyback is not approved, this will not affect the Merger. The Merger is not conditional on the Progen Share Buyback being approved or implemented. The Progen Share Buyback is conditional on the Merger being approved and the Scheme becoming Effective.

The Progen Share Buyback is scheduled to be completed before the Implementation Date. New Progen Shareholders will not be eligible to participate in the Progen Share Buyback.

3.11 Independent Expert's Report

(a) Independent Expert's appointment

The Directors appointed Lonergan Edwards & Associates Limited as Independent Expert to assess the Scheme on behalf of the Shareholders and opine whether it is in the best interests of Shareholders.

A summary of the Independent Expert's conclusions is set out below and the full version of their report is included in Annexure A of this Scheme Booklet.

(b) Summary of opinion

The Independent Expert has concluded that, in the absence of a Superior Proposal, the acquisition of Avexa Shares by Progen under the Scheme is in the best interests of Avexa Shareholders (see paragraphs 24 and 227 of the Independent Expert's Report).

The Independent Expert also concluded that the effective price at which Progen Shareholders are acquiring an interest in Avexa (the "Effective Issue Price") is 9.2 cents to 9.7 cents per Avexa Share (see paragraph 20 of the Independent Expert's Report). As the Effective Issue Price is not equal to or greater than the assessed value of the Avexa Shares the subject of the Scheme, the Independent Expert formed the view that the Scheme is technically not fair when assessed based on ASIC Regulatory Guide 111. However, in light of the reasons explained in its report, the Independent Expert was of the opinion that the Scheme is reasonable and in the best interests of Avexa Shareholders in the absence of a Superior Proposal. In concluding that the Scheme is not fair but reasonable, the Independent Expert considered that there are sufficient reasons for Avexa Shareholders to vote in favour of the Scheme in the absence of a Superior Proposal (see paragraphs 26 and 227 of the Independent Expert's Report).

The Independent Expert therefore recommends that Avexa Shareholders approve the Scheme in the absence of a Superior Proposal (see paragraphs 27 and 228 of the Independent Expert's Report).

(c) **Assessment of value**

The Independent Expert has assessed the value of ATC at \$151.4 million to \$225.8 million and assessed the value of 100% of the Shares in Avexa in the range of 44.4 cents to 58.6 cents prior to taking into account financing risks, dilution and "in-the-money" options (see paragraph 155 of the Independent Expert's Report). After the dilutionary impact of assumed future capital raising to fund ATC's development costs up to the week 24 milestone, the Independent Expert values Avexa Shares in the range of 21 cents to 41 cents (see paragraph 6 of the Independent Expert's Report). This valuation range is based on a number of assumptions adopted by the Independent Expert. The management of Avexa believe that this valuation range is potentially conservative for a number of reasons, including:

- the valuation of ATC is based on a discounted cash flow methodology adopting certain assumptions. Avexa management consider that some assumptions (such as those relating to the probability of commercialisation, the sales price for ATC, the market potential, the terms of a partnership agreement (in particular the royalty rate), the amount of capital to be raised to reach the week 24 milestone and the discount rate adopted by the Independent Expert) are potentially conservative and reduce the valuation; and
- the valuation only includes a nominal value for Avexa's other programs. Avexa management considers these programs to show significant potential and accordingly these may provide longer term value upside.

(d) **Impact of the Merger on the Merged Entity's share price**

The Independent Expert has considered the impact of the Merger on the share price of the Merged Entity and concludes that:

"In our opinion, one of the key factors contributing to the size of the discount at which Avexa shares have been trading compared to our assessed value is Avexa's perceived need to raise significant additional equity capital.

However, if the Scheme is approved and implemented the merged entity expects to have sufficient cash resources to enable it to complete the critical week 24 Phase III trial for ATC and fund other selected programs up to late 2010. Following the completion of this milestone for ATC, there is a prospect, based on precedents in which regulatory authorities have permitted a limited market approval for a new drug with positive Phase IIb data and Phase III week 24 data, that a market launch of ATC may be permitted in late 2011 if the week 24 data is positive. In addition, the prospects of entering into a partnership agreement would be enhanced.

Accordingly, in our opinion, the removal of this short-term funding requirement is likely to result in the merged entity's shares being re-rated (assuming comparable share market conditions) post completion of this transaction.

On this basis, we believe that the Merged Entity's share price, expressed in Avexa terms, is likely to trade over time at a higher price than the Avexa's share price pre-announcement of the Scheme."¹⁹

The Independent Expert notes that the increased size of the Merged Entity is also likely to improve the liquidity of the company's shares and therefore their attractiveness to institutional investors in the sector (see paragraph 223 of the Independent Expert's Report).

Further the Independent Expert notes that as the week 24 Phase III data is a critical technical milestone (which may allow regulatory approval to be fast-tracked), successful

¹⁹ See paragraphs 219 to 224 of the Independent Expert's Report.

completion of this milestone is likely to lead to a further material increase in the value of Avexa Shares (see paragraph 224 of the Independent Expert's Report).

(e) Advantages and disadvantages

The Independent Expert describes the likely advantages and disadvantages for Avexa Shareholders if the Scheme is agreed to.

Advantages

The Independent Expert identifies that the Scheme has the following benefits for Avexa's Shareholders:

- the effective price at which shares are being issued to Progen Shareholders exceeds the price at which Avexa could raise capital in the absence of the Scheme (see paragraph 226(a) of the Independent Expert's Report);
- the Scheme provides the Merged Entity with approximately A\$60 million in cash which is expected to be sufficient to enable the critical week 24 Phase IIIa trial for ATC to be completed (see paragraph 226(b) of the Independent Expert's Report);
- implementation of the Scheme is expected to remove the need for an equity raising in the short term and is therefore likely to result in the Merged Entity's shares being re-rated. Under the scenario where a partnership agreement incorporates an upfront payment and costs being borne by the partner, no further equity capital may be required (see paragraph 226(c) of the Independent Expert's Report);
- the increased size of the Merged Entity is likely to improve the liquidity of the company's shares and their attractiveness to institutional investors in the sector (see paragraph 226(d) of the Independent Expert's Report); and
- in the opinion of the Independent Expert, the Scheme is superior to the alternatives given current stock market conditions and should lead to the Merged Entity's share price, expressed in Avexa terms, to trade at a higher price than Avexa's share price pre-announcement of the Scheme (see paragraph 226(e) of the Independent Expert's Report).

Disadvantages

The Independent Expert identifies that the Scheme has the following disadvantage for Avexa's Shareholders:

- the Scheme is dilutionary to Avexa Shareholders (see paragraph 226(f) of the Independent Expert's Report).

(f) Conclusion

The Independent Expert concludes that, on balance and given their analysis and in the absence of a Superior Proposal, the acquisition of Avexa Shares by Progen under the Scheme is in the best interests of Avexa Shareholders (being technically not fair when assessed based on ASIC Regulatory Guide 111, but being reasonable) (see paragraphs 23, 24 and 227 of the Independent Expert's Report).

In concluding that the Scheme is in the best interests of Avexa Shareholders (being technically not fair when assessed based on ASIC Regulatory Guide 111, but being reasonable), the Independent Expert:

- considers that there are sufficient reasons for Avexa Shareholders to vote in favour of the Scheme in the absence of a Superior Proposal (see paragraph 227 of the Independent Expert's Report); and

- recommends that Avexa Shareholders approve the Scheme in the absence of a Superior Proposal (see paragraphs 26 and 228 of the Independent Expert's Report).

3.12 Warranties given by Scheme Participants

In order to give effect to the Scheme, each Scheme Participant will be deemed to warrant to Progen that:

- all their Shares (including any rights attaching to those shares) that are transferred to Progen under the Scheme are, at the date of transfer, fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests and other interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind; and
- they have full power and capacity to sell and to transfer to Progen their Shares together with any rights attaching to those Shares.

4. Information on Avexa and its securities

4.1 Overview of Avexa and its principal activities

Avexa is a biotechnology company focused on the research and development of medicines for infectious disease. Avexa's primary focus is on developing innovative treatments for infectious diseases. Avexa is headquartered in Melbourne, Victoria, Australia. The Company currently has 31 employees. Avexa is publicly traded on ASX under the symbol "AVX".

Avexa's lead compound is apricitabine (ATC), a new antiretroviral drug for the treatment of HIV-infected patients who have drug-resistant HIV infections and whose current treatments are no longer effective as a result. ATC has successfully completed the 48 week dosing period of its Phase IIb trials, and a Phase III trial program is now underway. The results of the Phase IIb trial at 48 weeks surpassed the outstanding findings of potent activity, excellent safety and tolerability and lack of ATC-resistance seen at week 24 of the Phase IIb trial. As a result of working closely with the regulatory authorities to incorporate their feedback into trial design, the FDA has granted ATC accelerated review and fast track status. Further information on ATC is set out in section 4.3 below.

In addition to ATC, Avexa has a number of promising early stage programs.

- Avexa maintains active research programs targeting HIV Integrase, each with the ultimate aim of identifying novel viral inhibitors of the key viral process of integration. Avexa is well placed with this program targeted to compete with the only marketed integrase inhibitor and its closest rival in terms of dosing and resistance. Further information on the HIV Integrase program is set out in section 4.4.
- Avexa has an early-stage anti-infective research and development effort which is focused in the pre-clinical antibacterial area, targeting the large and growing MRSA (methicillin-resistant *Staphylococcus aureus*) infections market. Thus far, Avexa's work has demonstrated activity against a broad range of antibiotic-resistant genotypes including methicillin-, vancomycin-, linezolid-, and Synercid®-resistance. Further information on Avexa's antibiotic program is set out in section 4.4.
- Avexa has entered into collaboration with TargetDrug of Shanghai to develop small molecule inhibitors of Hepatitis C Virus. The current standard treatment of pegylated interferon and ribavirin is ineffective in nearly 50 per cent of HCV infected patients and is accompanied by serious side-effects. No small molecule inhibitors that specifically target HCV gene-products are currently on the market and there is a major unmet medical need for more effective, better tolerated treatment options. Further information on Avexa's HCV Inhibitors program is set out in section 4.4.

The clinical status of Avexa's programs is summarised in the table below.

	Technology Label	Discovery	Early Preclinical	Late Preclinical	Phase 1	Phase 2	Phase 3
HIV	ATC						
MRSA	Topical Antibiotic						
	HIV Integrase Program						
	HCV Program						
MRSA	Systemic Antibiotic						

4.2 Company history

Avexa was formed in 2004 after Zenyth Therapeutics Limited (then Amrad Corporation Limited) undertook a strategic review of its portfolio and concluded that it should focus on its core business of protein and antibody based therapies for inflammatory diseases and cancer. As a result, Amrad's anti-infectives drug portfolio was demerged into Avexa.

In January 2005, the Company licensed the rights to ATC, a new anti-HIV drug in Phase II development from Shire Pharmaceuticals Group plc (Shire).

In April 2006 and April 2007, Avexa undertook a capital raising to accelerate preparations for the Phase III development of ATC, the company's most advanced project. The license arrangements were renegotiated in January 2007 and August 2008, in part to reduce Shire's entitlement to future sales royalties of ATC and cancel its entitlement to future milestone payments.

4.3 Apricitabine (ATC)

(a) Overview

ATC is a new antiretroviral drug for the treatment of HIV-infected patients who have drug-resistant HIV infections and whose current treatments are no longer effective as a result. An overview of ATC is set out in figure 1 below.

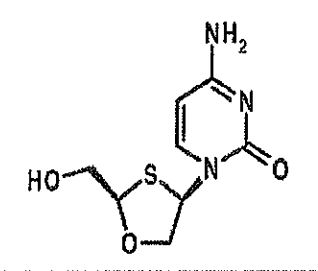
Product type:	Nucleoside analogue	<u>Apricitabine (ATC)</u> 
Indication:	Treatment of drug resistant HIV	
Development status:	With extensions, potential protection in the EU and the United States exists until 2027	
Project Status:	IND and fast track approval and accelerated approval	

Figure 1: Overview of ATC

ATC is a cytidine analogue belonging to the class of drugs known as NRTIs (nucleoside reverse transcriptase inhibitors). These drugs inhibit the HIV reverse transcriptase (RT) and because the RT is essential for replication they stop replication of the virus in the patient. The particular advantage of ATC is that it retains potent activity against strains of virus which have developed resistance to the commonly used drugs. These resistant viruses have mutations in the HIV RT such as the M184V mutation, thymidine analogue mutations (TAMs) and other nucleoside analogue mutations (NAMs) which make many of the currently used drugs ineffective.

In addition to its activity against resistant HIV, ATC has also been shown to be very safe and well tolerated in clinical studies, in contrast to some currently used therapies which produce unpleasant and sometimes dangerous side effects. The side effects that are associated with other NRTIs are myelotoxicity resulting in anaemia, hyperlipasemia resulting in pancreatitis and mitochondrial toxicities resulting in peripheral neuropathies. None of these NRTI-associated side effects have been associated with ATC in any of the trials undertaken so far. In fact, all the preclinical data derived to date indicate an absence of any of the underlying activities that can give rise to these side effects. ATC is also very easy to dose: it can be taken with or without food, and can be taken with other HIV drugs or other medications without concerns over possible drug interactions. This is a further advantage of ATC, as some other HIV drugs have restrictions upon which other drugs can be taken at the same time, which creates difficulties for the clinical management of patients. It also means that a larger number of potential candidates for combination therapy with ATC are possible. Taken together, these properties suggest that ATC will be an attractive addition to the currently available HIV treatments, particularly for patients with drug resistant virus and also for those patients who find that side effects to their current NRTIs prohibit good compliance.

ATC entered its first preclinical trial in November of 2000 in Canada. Since then, ATC has successfully completed six Phase I trials throughout the US and UK, a Phase IIa trial in Argentina, Thailand and South Africa and a Phase IIb trial in drug-resistant HIV patients in Argentina and Australia.

ATC has strong intellectual property protection, with claims in six families of patents, filed extensively in all the major jurisdictions as well as significant emerging markets.

(b) Phase IIb extension study

Data from 48 weeks of treatment with ATC in the Phase IIb trial were reported in March 2008. The analysis showed that the activity and safety of ATC was maintained, and in fact continued to improve, for up to 48 weeks of therapy in these patients, who were resistant to currently used drugs. No evidence of patients developing resistance to ATC itself was seen. Patients who initially received the competitor drug lamivudine for the first 24 weeks, but then switched to ATC, showed particular improvements after switching to ATC. Over 85% of patients on ATC achieved virus levels in their blood that were so low as to be undetectable. This outstanding decrease in viral levels in the blood was associated with an equally outstanding increase in these patients CD4 cell levels. The CD4 cell level is a direct marker of an individual's immune system, and these studies demonstrate that ATC can, by lowering virus levels in the blood, allow the body to recover its immune system. The lack of resistance is clear evidence that the virus is not being allowed to replicate and this in turn allows the CD4 cell level to return back towards more normal and appropriately functioning levels.

Furthermore, no patients withdrew because of side effects related to ATC, and there were no serious side effects that were related to treatment with ATC. These excellent results indicate that patients may be able to continue to take ATC long term without any loss of activity due to resistance or diminished compliance due to safety or tolerability. This is important, since patients must continue to take their HIV medication for the rest of their lives.

Avexa is due to release week 96 Phase IIb data in the first quarter of 2009. While there can never be any guarantee of success, Avexa notes that some patients have been safely treated with ATC for over 3 years.

(c) Phase III trials

Following successful discussions with both US (FDA) and European (EMA) regulatory authorities, after the Phase I and Phase II trials, a pivotal Phase III trial for ATC was initiated at the end of 2007 as scheduled. This was a major achievement for both the ATC project and for Avexa, and represents the final stage of development for ATC.

Phase III trials for ATC are progressing well. The Company has been granted a priority review (designation given to drugs that offer major advances in treatment, or provide a treatment where no adequate therapy exists) from the FDA and has initiated sites for the initial pivotal study and an extension study. The Phase III trial is being conducted in over 130 specialist HIV centres in 15 countries. The countries participating in the study, to date, are Argentina, Australia, Belgium, Canada, France, Germany, Guatemala, Israel, Italy, Peru, Puerto Rico, South Africa, Thailand, the United Kingdom and the United States. Recruitment of 160 patients for the first component of the Phase III trial of ATC has now been successfully completed ahead of schedule.

The current Phase III study has been designed to explore both an 800mg and 1200mg twice daily dose. The Company is confident that the 800mg dose will be adopted for Phase III studies. Avexa has a collaborative dialogue with the FDA and has received clear guidance to examine the high dose (1200 mg) to obtain a larger and longer safety database for ATC at higher than expected therapeutic levels of the drug and also to further confirm the optimal dosing strategy indicated from the Phase IIb trial.

The Phase III program will have two studies, the first of which will have two doses of ATC initially and then drop a dose in week 16. The second study will have a single dose of ATC. Both trials will compare ATC to one of two existing drugs currently on the market, either 3TC or FTC with a week 24 primary endpoint. The studies will be investigating activity in resistant patients (similar to the Phase IIb 48 week trial population). It is expected that approximately 900 patients are required for each study, with the trial powered to 85% to show a difference between the ATC and control arms in patients reaching undetectable viral loads.

There are two key near and medium term milestone events:

- week 16 data expected to be available in the second quarter of 2009. This milestone will provide the first indication of safety and activity results associated with each of the two dose components of the Phase III trial and allow the cessation of one arm of the study; and
- week 24 data expected to be available in the second half of 2010. This milestone represents an important value inflection point in the development of ATC, as some regulatory authorities have agreed to review the ATC data after 24 weeks of dosing. On the basis of historical precedents in which relevant regulatory authorities have permitted a limited market approval for a new drug with positive Phase IIb and Phase III week 24 data, a positive outcome in the week 24 phase III data for ATC may allow the Merged Entity to apply for a New Drug Application in early 2011, a necessary requisite for the commercialisation of ATC.

The cost of the Phase III trial first study from January 2009 to the end of the week 24 milestone point in late 2010 is estimated at approximately A\$45 million, based on a range of assumptions regarding patient recruitment, longevity, exchange rates and outcome of tests. The additional cost to complete the Phase III program including initial Phase III study beyond the week 24 primary endpoints, extension studies post regulatory approval, a second study and launch preparations, is estimated at up to \$110 million based on the same assumptions. These estimates also assume that a partnership agreement in which some of these costs would be shared with the partner is not finalised.

While there can never be any guarantees of success (including in respect of the outcome of the week 16 data and the week 24 data) the Directors consider that with adequate funding, the probability of ATC successfully completing its clinical trial end-point is high. Based on publicly available information, management believes that every HIV drug that has entered Phase III development has subsequently received regulatory approval and reached the market.²⁰ Moreover, Avexa has made every effort to design the Phase III trial to be as similar to the design of the Phase IIb study as possible. Given the clear and exciting results obtained from that study, the Phase III study would be expected to have mitigated many of the inherent design risks and have a high probability of clinical end-point success. Recent entrants into the HIV market have consistently generated increasing sales revenue owing to the expanding and changing market for HIV drugs, particularly where such entrants have advantages over existing drugs in terms of safety, efficacy and resistance, as is the clear case for ATC.

(d) Intended market

From statistics collected by the World Health Organisation in 2008, there are approximately 2 million people infected with HIV in North America (1.2 million people) and Western Europe (730,000 people). An additional 1.5 million people in Eastern Europe and Central Asia are infected with HIV.²¹ Of those people infected by HIV in North America, about 500,000 are receiving treatment. The intended market for ATC is HIV patients who have the M184V resistant strain, often found in patients with resistance to 3TC or FTC²². However, ATC has also shown good activity against wild-type HIV, and HIV patients with TAMS resistance.

This positions ATC ideally as a second, third and fourth line therapy for the ongoing treatment of HIV for patients who are no longer benefiting from the 3TC or FTC treatment

²⁰ This belief is based on (a) a July 2003 report by C.P. Adams and V.V. Brantner entitled "New Drug Development Estimating entry from human clinical trials" which shows the number of HIV drugs that have entered Phase III and which have subsequently reached market launch in either the US or worldwide; and (b) Avexa management's knowledge of publicly disclosed Phase III HIV clinical trials since the Adams and Brantner report's release. The Adams and Brantner report (available at <http://www.ftc.gov/be/workpapers/wp262.pdf>) details a study on drugs in human clinical trials worldwide between 1989 and 2002 in regard to the probabilities with which drugs successfully complete phases of trials and the durations of such trials. Avexa management acknowledge that a Phase III trial of a HIV drug may have been conducted without any information being made to the public, but considers that to be unlikely.

²¹ Reference: <http://www.globalhealthreporting.org/diseaseinfo.asp?id=23>.

²² Around 50% of patients in second and third line therapy have the M184V mutation (Source: Datamonitor report).

regimen. The market potential for this is significant. An estimated 60% of treated patients are in second, third or fourth line therapy as a result of resistance arising to first line treatments.

The Directors of Avexa are confident that ATC has the potential to capture a significant share of the market for treatment of these patients.

(e) Partnering discussions

Avexa remains open to partnering the development of ATC (and its other programs) in order to expedite program development, commercialization and marketing. However, to date, no proposal capable of acceptance has emerged that has been considered by the Directors of Avexa to be in the best interests of Avexa Shareholders.

Avexa is currently in discussions with various parties in respect of potential partnering and commercialisation opportunities, both in the short and longer terms. Avexa will continue to pursue these and other partnering discussions during the course of the Phase III trial (both if the Merger is implemented or otherwise) with a view to maximising Shareholder value. For these reasons, and in the context of positive Phase IIb week 48 data, promising progress in the Phase III trials, and the perceived market potential of ATC if the Phase III trial results are positive, the Directors of Avexa remain confident in respect of the prospects of being able to enter into a value creating partnership arrangement for ATC in the future, subject to its continued successful development.

4.4 Other Avexa programs

(a) HIV Integrase

HIV encodes three major enzymes which are required for the replication of the virus; Avexa is targeting the HIV integrase enzyme. Given that there is currently only one marketed drug that is targeted against the HIV integrase enzyme and only one HIV integrase inhibitor in Phase III clinical trials (Merck's Isentress and Gilead's elvitegravir, respectively), Avexa has a window of opportunity to position its integrase inhibitor in the newly developing integrase inhibitor market.

This molecule and its back-up were discovered by traditional screening and SAR medicinal chemistry. The molecules have activity against the raltegravir-resistant enzyme, resistant virus in the Monogram Bioscience assays and are orally bioavailable. In parallel, Avexa is using a fragment based drug discovery platform to discover new HIV-integrase inhibitors which act by different mechanisms to raltegravir and therefore have different resistance profiles and superior biological properties. This work is at an early stage but has yielded encouraging data on which to base several new series of molecules.

Key features of the HIV integrase lead compound include:

- potency similar in-vitro to clinically relevant comparators;
- potency in-vitro against clinically relevant integrase-inhibitor resistant enzyme and virus;
- potential to increase potency and obtain a QD dosed drug; and
- patent protection filed worldwide (2007) with an independent international search report indicating no prior art.

The Company expects to file for an IND (Investigational New Drug Application through the FDA) for HIV Integrase in 2009.

(b) Antibacterial project

The occurrence of hospital-acquired infections is very common, with one in four patients admitted to hospital in the US developing some level of infection. Of these, approximately 5% die from bacterial infection and associated complications. Vancomycin is a drug used to overcome bacterial infections, but the prevalence of vancomycin resistance continues to increase. Moreover, there are currently few satisfactory treatments for vancomycin-

resistant infections (VRI). Avexa is pursuing what it believes to be a unique approach to overcoming the problem of vancomycin resistance.

The Company is synthesizing compounds that target the altered part of the vancomycin resistant strain of bacteria which gives rise to resistance. This series of compounds was discovered from computer modelling of the bacterial cell wall peptidoglycan interactions with vancomycin and the rational design of molecules to mimic that interaction. The compounds show anti-bacterial activity that is equal, or close to that of vancomycin in *Staphylococcus aureus* and slightly less active in *Enterococcus faecium*. An important observation on the lead compound is its high genetic barrier to selection for resistance in *Staphylococcus aureus*. While resistant strains have been isolated from in-vitro selection experiments, resistance to the Avexa compounds was selected only after more than 40 growth cycles of the bacteria in the presence of the lead drug candidate. In parallel control experiments, resistance to other antibiotics was selected much more quickly.

Key features of the MRSA antibacterial compounds include:

- entirely novel class of compounds with Avexa owning the entire patent estate;
- initial activity indicating bactericidal activity;
- comparable activity to Bactroban in animal model after a single administration compared to two times daily administration for 5 days (for Bactroban);
- high barrier to resistance, resistance only seen after more than 40 passages in the presence of compound;
- activity against MRSA and numerous other drug-resistant strains of *S. aureus*;
- exciting preclinical topical data; and
- follow on compound for systemic indications identified.

The Company expects to file an IND for its Antibiotic programs at the end of 2009.

(c) HCV inhibitors

Avexa has a program to develop small molecule inhibitors of Hepatitis C Virus (HCV). The program brings together a number of aspects of HCV technology that Avexa brought with it at its foundation. It also uses expertise and novel lead inhibitors of virus replication inherent in the Company. This program is being undertaken in collaboration with TargetDrug of Shanghai, China, and with the Shanghai Institute for Organic Chemistry.

Key features of the HCV inhibitors program include:

- targeting HCV polymerase;
- evaluating a series of novel targets; and
- leveraging relationships with Target Drug and academic collaborators.

4.5 Key alliances

(a) Shire Pharmaceuticals Group

In January 2005, Avexa entered into an extensive license agreement with Shire covering ATC. The license arrangements were renegotiated in January 2007 and August 2008. As part of the new arrangements, Shire increased its shareholding in Avexa to 11.1%. The other terms and conditions of the license remain confidential, but Avexa believes as a result of this latest renegotiation a substantially greater proportion of the future commercial value of ATC could accrue for the benefit of Avexa Shareholders.

(b) Groupe Novasep

Avexa has a manufacturing agreement with Groupe Novasep. The agreement covers the continued production, process optimization, and further scale-up of the active pharmaceutical ingredient of ATC based upon the Varicol continuous chromatography

system for use in Phase III clinical trials and in preparation for the commercial launch of the product.

(c) Monogram Biosciences Inc

In March 2008, Avexa announced an exclusive collaboration with Monogram Biosciences Inc, a San Francisco-based world leader in testing resistance to drug therapies. Monogram has agreed to be the exclusive provider of HIV resistance and tropism testing technology in support of Avexa's drug discovery and development programs. Monogram has an impressive portfolio of tests which Avexa believes will provide the accuracy and reliability that are necessary for studies that are intended to be submitted to the FDA and other regulatory agencies.

As discussed above, the Monogram collaboration has assisted in the initiation of the Phase III program for ATC. In addition, the collaboration with Monogram is expected to make a valuable contribution to Avexa's other discovery and development programs, including the HCV program.

(d) TargetDrug of Shanghai

As discussed in section 4.4(c), Avexa is collaborating with TargetDrug of Shanghai to develop small molecule inhibitors of Hepatitis C Virus (HCV).

4.6 Strategy

The Company's overall long term strategy is to have a portfolio of marketed pharmaceutical products that fulfil an unmet medical need, have significant worldwide commercial markets and have appropriate patent protection to generate significant economic returns for Avexa Shareholders.

The Company intends to achieve its strategy by building an anti-viral project portfolio of exciting new products capable of being developed through clinical trials and the regulatory and marketing approvals necessary to launch a product on the market but would consider discussions with potential partners for collaborations in specific areas to expedite project progress and increase market returns.

4.7 Avexa Financial Information

The following financial information has been extracted from the previously issued and audited financial reports of Avexa for the years ended 30 June 2007 and 2008.

(a) Summary Financial Statements

Audited Consolidated Income Statements for the financial years ended 30 June 2008 and 30 June 2007

For the year ended 30 June	2008	2007
	A\$'000	A\$'000
Licence fee and royalty revenue	-	-
Total revenue	-	-
Other operating income	5,707	1,876
Contract research and development costs	(30,039)	(7,708)
Employee expenses	(5,936)	(3,755)
Share-based payment expense	(535)	(558)
Depreciation and loss on disposal of plant and equipment	(187)	(79)
Occupancy costs	(1,111)	(576)
Consulting costs	(382)	(944)
Professional services	(269)	(508)
Travel and accommodation	(895)	(595)
Raw materials and consumables used	(488)	(498)
Asset management expenses	(299)	(220)
Insurance	(238)	(142)
Corporate administration	(256)	(424)
Intellectual property	(558)	(641)
Other expenses	(607)	(446)
Loss before related income tax	(36,093)	(15,218)
Income tax expense	-	-
Net loss for the year attributable to members of Avexa	(36,093)	(15,218)
Basic and diluted earnings per share (cent)	(8.9)	(5.8)

Audited Consolidated Balance Sheets as at 30 June 2008 and 30 June 2007

Balance sheet

as at 30 June	2008	2007
	A\$'000	A\$'000
Current assets		
Cash assets	43,411	76,874
Receivables	353	148
Other	80	76
Total current assets	43,844	77,098
Non-current assets		
Intangibles	20,013	16,535
Property, plant and equipment	926	345
Total non-current assets	20,939	16,880
Total assets	64,783	93,978
Current liabilities		
Payables	8,449	2,212
Employee benefits	515	347
Deferred income	-	90
Total current liabilities	8,964	2,649
Non-current liabilities		
Employee benefits	43	39
Total non-current liabilities	43	39
Total liabilities	9,007	2,688
Net assets	55,776	91,290
Equity		
Issued capital	137,238	137,194
Accumulated losses	(81,462)	(45,904)
Total equity	55,776	91,290

Audited Consolidated Cash Flow Statements for the financial years ended 30 June 2008 and 30 June 2007

Statement of cash flows

For the year ended 30 June	2008	2007
	A\$'000	A\$'000
Cash flows from operating activities		
Cash receipts in the course of operations	1,770	861
Cash payments in the course of operations	(35,693)	(18,072)
Interest received	4,661	1,588
Income taxes paid	-	-
Net cash used in operating activities	(29,262)	(15,623)
Cash flows from investing activities		
Payments for intangibles – marketing licence	(3,478)	(12,895)
Payments for property, plant and equipment	(767)	(207)
Net cash used in investing activities	(4,245)	(13,102)
Cash flows from financing activities		
Proceeds from issue of share capital	48	89,198
Costs of raising share capital	(4)	(3,827)
Net cash provided by financing activities	44	85,371
Net (decrease) / increase in cash held	(33,463)	56,646
Cash at the beginning of the financial year	76,874	20,228
Cash at the end of the financial year	43,411	76,874

(b) Discussion and analysis of FY08 financial results

Avexa's consolidated net loss after income tax (*NPAT*) for the 2008 financial year (*FY08*) was \$36,093,000 and for the 2007 financial year (*FY07*) was \$15,218,000. Earnings per share was negative 8.9 cents, a decrease of 3.1 cents from the prior year which was negative 5.8 cents.

The increase in loss from FY07 to FY08 is primarily attributable to the scale up of activities associated with the commencement of the Phase III studies for ATC in FY08. In FY07 the ATC clinical trials were only in Phase IIb.

Included within results and movements in balances for FY08 were the following significant items:

(i) Other operating income

Avexa's revenue for FY08 comprised bank interest of \$4,348,000 (2007: \$1,589,000) generated from the operating account and from investment of

surplus funds in capital stable, bank term deposits. FY08 Lease income of \$468,000 (2007: \$151,000) from sub-lease rental arrangements was generated and grant funding of \$891,000 (2007: \$136,000) was also received during the year under the Commercial Ready scheme.

(ii) Contract research and development costs

The increase in costs incurred for FY08 to \$30.0 million (2007: \$7.7 million) reflects the extent of the scale up from Phase IIb to Phase III trials for Avexa's anti-HIV drug apricitabine (ATC), including manufacture of ATC and purchase of Phase III comparator product.

(iii) Employee expenses

The increase in employee expenses from FY07 \$3.7 million to FY08 \$5.9 million (excluding share-based payments) reflects the effective increase in staff numbers as Avexa has sought to recruit internal capabilities to assist with the management and direction of the Phase III trials for ATC. Additional resources were also recruited to bolster the in-house chemistry and biology teams as Avexa's early stage projects entered formal pre-clinical activities.

(iv) Cash position

The movement in Avexa's closing cash position from FY07 \$76.9 million to FY08 \$43.4 million reflects the scale up in operations for FY08 and progression of ATC into Phase III studies, with operational cash outflows increasing from \$15.6 million to \$29.3 million as a result. A \$3.5 million cash outlay was required during FY08 to secure the worldwide rights to ATC from Shire as detailed below.

(v) Contributed equity

170,000 shares were issued during FY08 upon conversion of Employee Options to raise proceeds of \$48,000. There were no other movements in issued capital during FY08 however 210,000 new Employee Options were issued and 635,000 cancelled during that year.

(vi) Tax benefits

Given the uncertainties associated with their recovery, Avexa has not recognised any tax benefits relating to income tax losses recorded for either FY08 or FY07.

(vii) Intangibles

During the second half of FY08 Avexa made a milestone payment of \$3.5 million to Shire in accordance with its 22 January 2007 amending agreement for Avexa to exclusively licence North American (U.S. and Canada) rights to apricitabine (ATC) from Shire. Avexa brought this consideration to account as an additional cost of acquiring the separately identifiable 22 January 2007 intangible asset and there has been no impairment or amortisation of that asset during or subsequent to FY08.

(c) Material movements in half year to 31 December 2008

(i) Cash

Movements in cash balances for the half year ended 31 December 2008 are reported in section 6.11(f).

(ii) Marketing licence

As announced on 26 August, 2008, during the half year Avexa renegotiated its licence arrangements with Shire for its apricitabine (ATC) program and

consequently issued Shire with \$5 million USD worth of new equity (equal to 18.6 million shares) which equated to AUD\$5,748,500. This amount has been accounted for as both an increase in the intangible asset and issued capital of Avexa.

There are no other movements in balance sheet accounts for the half year that are considered material by Avexa.

4.8 Directors and senior management

(a) Directors

The current Directors of Avexa are:

- Dr Julian Chick;
- Mr Nathan Drona;
- Dr John Sime;
- Mr David Bottomley; and
- Mr Alan Boyd.

If the Scheme does not proceed, the current Directors of Avexa will remain Directors of Avexa.

Dr Julian Chick, Chief Executive Officer and Executive Director *BSc (Hons), PhD (La Trobe)*

Dr Chick was appointed as Chief Executive Officer and Executive Director of Avexa on 7 September 2004. He graduated with a PhD in Muscle Physiology from La Trobe University in 1998 and joined Amrad Corporation Limited as a Senior Business Development Manager in April 2002. Prior to joining Amrad Corporation Limited, Dr Chick had five years experience as an investment adviser and financial consultant with Prudential-Bache Securities, BNP Paribas and Salomon Smith Barney. Dr Chick also spent time working for Foursight Associates as the 'principal analyst' reviewing investment opportunities for private equity investors and venture capitalists.

Mr Nathan Drona, Non-Executive Director

Nathan Drona joined Avexa as a Non-Executive Director on 17 April 2008. Mr Drona is an experienced international investment banker in the life sciences industry and has successfully advised numerous companies in the US, Europe and Australia in mergers and acquisitions strategy. He has held a variety of senior positions at several investment banks in the US, most recently as Managing Director of Challiss, based in New York.

Mr Drona holds a Master of Business Administration in Finance from the University of Victoria (Canada) and a Bachelor of Arts in Philosophy from the University of Western Ontario.

Dr John Sime, Non-Executive Director *MSc (Physical Chemistry), PhD (Biochemistry), FRSC, CChem*

Dr Sime joined Avexa as a Non-Executive Director on 8 June 2007.

Dr Sime is a former Director of Mayne Pharmaceuticals Limited (formerly Mayne Group Limited) and former Chief Executive Officer of the BioIndustry Association (UK). Dr Sime has more than 25 years' experience in research and development at Beecham Pharmaceuticals and in general management in SmithKline Beecham Pharmaceuticals (now GlaxoSmithKline plc), having worked in the United Kingdom, Japan, Indonesia, USA and Australia, and including nine years as Managing Director of Beecham Australia and New Zealand and SmithKline Beecham Australia and New Zealand.

Mr David Bottomley, Non-Executive Director

BA, LLB (Hons), F Fin

Mr Bottomley is currently a principal and founder of Ryder Capital, an independent Australian corporate advisory firm. Mr. Bottomley has significant experience in originating and executing M&A advisory and capital markets transactions in Australia, the US, U.K and Europe. He has held executive positions with Kleinwort Benson, Merrill Lynch's investment banking division and was Managing Director, Australia of specialist life science investment banking firm Global Markets Capital Group from 2004 until June 2008.

Mr Bottomley holds a Bachelor of Arts in Economic History, a graduate degree in Applied Finance, is a qualified corporate lawyer and is a registered securities representative and supervisor in the US and Australia.

Mr Alan Boyd, Chief Financial Officer and Company Secretary

BA (Hons), ICAEW, ICAA, CICA

Mr Boyd has had over 24 years experience in finance, commencing his career and qualifying as a Chartered Accountant in the UK before emigrating to Australia in 1988. Mr Boyd is also a qualified member of the ICAA and fellow of the CICA. After thirteen years in the accounting profession, Mr Boyd became CFO and Company Secretary of an unlisted public company, later joining high profile listed dotcom Sausage Software Ltd in the same capacity. Mr Boyd joined Amrad Corporation Ltd in November 2002 and under a service agreement provided financial and administrative services to Avexa from 1 July 2004 and company secretarial services from 1 July 2006 under a service agreement. Mr Boyd joined Avexa on 1 April 2007. Recently Avexa announced that Mr Boyd had tendered his resignation (to take up a position as CFO with a large Australian industrials company). Mr Boyd is scheduled to leave Avexa in the second quarter of 2009 after completion of the Merger.

(b) Senior management

The current senior managers of Avexa are:

Dr Julian Chick, Chief Executive Officer and Executive Director

BSc (Hons), PhD (La Trobe)

Dr Chick was appointed as Chief Executive Officer and Executive Director of Avexa on 7 September 2004. Refer to section 4.8(a) for his qualifications and experience.

Mr Alan Boyd, Chief Financial Officer and Company Secretary

BA (Hons), ICAEW, ICAA, CICA

Mr Boyd formally joined Avexa on 1 April 2007. Refer to section 4.8(a) for his qualifications and experience.

Dr Jonathan Coates, Chief Scientific Officer

BSc (Hons), PhD (Glasgow)

Dr Coates obtained his PhD from Glasgow University and has more than 24 years experience in antiviral drug discovery in the pharmaceutical industry. He spent 15 years in the UK at Glaxo Group Research and later Glaxo-Wellcome, where he filled various senior research roles and was one of the inventors of the anti-viral drug 3TC (Epivir for HIV and Zeffix for HBV). Dr Coates has extensive experience in leading program teams towards successful milestones, including clinical trials and three marketed drugs. Dr Coates joined Amrad Corporation in 1996 to establish a team to develop treatments for infectious diseases. Dr Coates now holds the position of Avexa's Chief Scientific Officer.

Dr Susan Cox, Senior Vice President Drug Development

BSc (Hons), PhD (Stockholm), GAICD

Dr Cox graduated with a PhD in Virology from the Karolinska Institute in 1991, and became an associate professor in 1994. She has 15 years experience in antiviral drug discovery. Dr Cox worked on the anti-CMV drug Foscavir® at Astra, and was previously Program Director at Medivir, where she led antiviral research programs from discovery up

to and including Phase II studies. Dr Cox joined Amrad Corporation Limited in 1998 and helped establish Avexa, where she currently holds the position of Senior Vice President Drug Development and is responsible for later stage projects. She has recently been appointed to the Board of the International Society for Antiviral Research (ISAR) and is a graduate of the Australian Institute of Company Directors.

Dr John Deadman, Senior Vice President Chemistry
BSc, PhD (London)

Dr Deadman obtained his PhD in 1989 from the Institute of Cancer Research, London. Dr Deadman has more than 12 years experience in medicinal chemistry, drug design, and formulation/manufacturing aspects, first at the Thrombosis Research Institute and then as Head of Chemistry at Trigen, where he directed a program from discovery through to Phase II clinical trials. He is the author of more than 30 research papers and five patents. Dr Deadman moved to Amrad as Head of Chemistry in 2003 and now holds the position of Senior Vice President Chemistry at Avexa.

Dr David Rhodes, Senior Vice President Biology
BSc (Hons), PhD (La Trobe)

Dr Rhodes graduated with a PhD in Biochemistry from La Trobe University in 1994 and has more than 10 years experience in HIV research. Dr Rhodes took up a post doctoral fellowship at the Fox Chase Cancer Centre in the US from 1994 to 1995. In 1995, he returned to Australia to the Macfarlane Burnett Centre for Medical Research where he was previously Senior Research Officer. Dr Rhodes joined the Amrad Corporation Limited in 2000 and presently holds the position of Senior Vice President Biology at Avexa.

4.9 Capital Structure

As at 31 December 2008, there were 424,675,014 shares on issue held as follows:

Size of Holding	No. of Shareholders	No. of shares	% of Issued Capital
0 - 1,000	1,323	879,340	0.20
1,001 - 10,000	5,215	24,995,647	5.89
10,001 - 100,000	4,331	150,452,144	35.43
100,000 - and over	517	248,347,883	58.48
Total	11,386	424,675,014	100.00

4.10 Substantial Shareholders

As at 15 January 2009, the following entities were substantial shareholders in Avexa:

Shareholder Name	Number of ordinary Shares	% of Shares held
Shire Blochem Inc	47,341,839	11.15

4.11 Recent share price history

The latest recorded share price of Avexa Shares on ASX on 19 December 2008 (being the last trading day before the Announcement Date) was \$0.105.

The latest recorded share price of Avexa Shares on ASX on 28 January 2009 (being the last practical trading date before this Scheme Booklet was lodged for registration with ASIC) was \$0.07.

The highest and lowest recorded share price of Avexa Shares on ASX during the 3 months prior to the date on which this Scheme Booklet was lodged for registration with ASIC were \$0.195 and \$0.062, respectively.

The 3 month VWAP prior to the date on which this Scheme Booklet was lodged was \$0.109.

4.12 Availability of documents relating to Avexa

Avexa has been listed on ASX since 2004. As an ASX listed company and a "disclosing entity" under the Corporations Act, Avexa is subject to regular reporting and disclosure obligations. Broadly, these require Avexa to announce price sensitive information to ASX as soon as it becomes aware of the information, subject to exceptions for certain confidential information. This information can be obtained through Avexa's announcement platform on the ASX website (www.asx.com.au).

Additionally, copies of documents lodged with ASIC in relation to Avexa may be obtained from, or inspected at, an ASIC office.

5. Profile of Progen

The information in this section has been prepared and provided by Progen.

5.1 Overview of Progen

Progen is a globally focused biotechnology company committed to the discovery, development and commercialization of small molecule pharmaceuticals primarily for the treatment of cancer. Progen has built a focus and strength in anti-cancer drug discovery and development. Progen targets the multiple mechanisms of cancer across its three technology platforms, angiogenesis, epigenetics and cell proliferation. Progen has operations in Australia and the United States of America.

Progen is headquartered in Brisbane, Queensland. Progen is publicly traded on ASX under the symbol "PGL" and on NASDAQ under the symbol PGLA.

5.2 Company history

In 1991, Progen became a public company and introduced its first life sciences products to the Australian market for use in DNA recombinant research.

In March 2007 Progen changed its name to Progen Pharmaceuticals Limited to better reflect the company's focus on the discovery and development of novel cancer therapies.

Since October 1993, Progen has been engaged in the research and development of small molecule pharmaceuticals, including heparanase inhibitors, that are potent and selective inhibitors of carbohydrate-protein interactions implicated in a range of disease states. Progen's research and development activities are conducted in collaboration with private industry and academic and research institutions in Australia, the United States and elsewhere.

As part of Progen's focused strategy towards drug discovery and development, it sold the Life Sciences division in November 2003 and intended to pursue selective strategic alliances to complete product development and move its product candidates into the market place.

In February 2008, Progen acquired the privately held US oncology company CellGate, Inc. The CellGate acquisition expanded Progen's oncology portfolio adding platform technologies in the areas of epigenetics and polyamines, including ten pre-clinical compounds.

In July 2008, Progen discontinued the Phase 3 Pathway trial of its leading compound PI-88 due to a number of factors that impacted the forecasted commercial return of PI-88. Progen confirmed its strategic direction to develop its existing portfolio of compounds and planned to actively seek to acquire additional compounds and opportunities through merger and acquisition activity.

5.3 Principal activities

Progen's three cancer platforms target different aspects of the biology of cancer, specifically:

- Angiogenesis;
- Cell proliferation; and
- Epigenetics.

(a) Angiogenesis

Angiogenesis is the process by which new blood vessels grow. Targeting the process of angiogenesis is a newly validated approach to cancer treatment.

Progen's angiogenesis products have been developed to target a number of proteins including vascular endothelial growth factor (VEGF) and fibroblast growth factor 2 (FGF-2), which bind to a complex sugar called heparan sulfate. Progen's products stop the cell signalling involved in angiogenesis by mimicking heparan sulfate and inhibiting more than one growth factor at once.

In addition to the growth factor activity, Progen's products inhibit the enzyme heparanase, that breaks down heparan sulfate. This is important as this process is critical to the spread of the cancer throughout the body (metastasis).

It is the dual mechanism of Progen's products that differentiates Progen's angiogenesis platform from others in development.

A lead preclinical candidate has been chosen from Progen's 500 series (PG545). PG545 has strong anti-angiogenesis activity and has activity in animal models.

(b) Cell proliferation

Cell proliferation is the uncontrolled cell reproduction when a cell accumulates enough mutations to activate certain growth promoting genes (oncogenes). Progen's cell proliferation platform is centred on the role of polyamines in cellular function and targets hyper-proliferating cells resulting in the cessation of the natural cascade of events involved in cell division and can induce cell death.

Progen's polyamine analogs are compounds with unique modes of action that have the potential of adding new first-in-class drugs to the cancer therapeutics that exist at present.

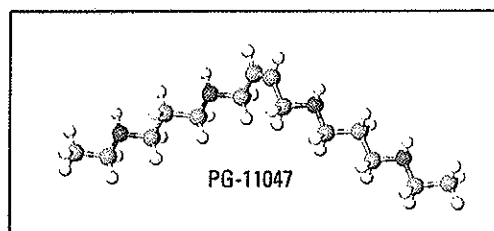
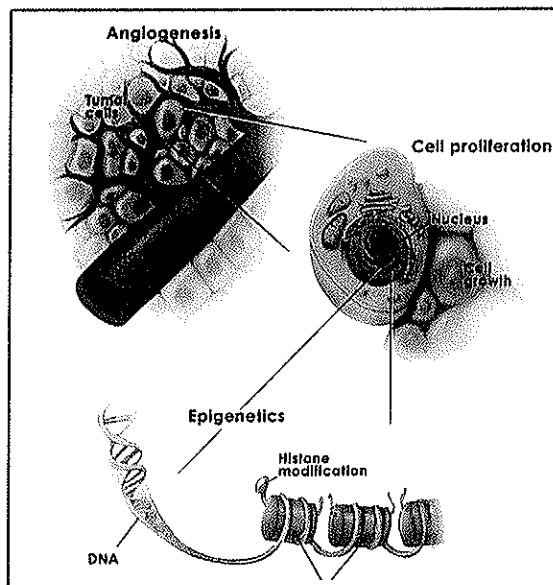
Progen's first generation polyamine analogues were selected based on their ability to compete with natural polyamine and inhibit proliferation. Polyamines are overproduced in many cancers, and Progen's products reduce natural polyamine production. Progen's lead polyamine product is called PG-11047 and is a synthetic polyamine which appears to down regulate endogenous polyamines through a negative feedback mechanism.

A phase 1 monotherapy trial of PG11047 has been re-instated and is recruiting well.

In vitro and preclinical data suggests that PG-11047 inhibits tumour growths by 1) inhibiting polyamine biosynthesis and 2) by induction of polyamine catabolism.

(c) Epigenetics

Epigenetics refers to a number of processes that



control gene expression (ie switching genes on or off) other than by mutation.

Epigenetic processes are responsible for many of the differences in, for example, identical twins, which are genetically the same. The term gene silencing is generally used to describe the "switching off" of a gene. That is, a gene which would be expressed (turned on) under normal circumstances is switched off.

One enzyme that is responsible for epigenetic silencing of genes is lysine specific demethylase 1 (LSD1). LSD1 functions by removing methyl groups from specific histone sites that are needed for genes to be active. Thus in cancer, like Histone Deacetylases (HDACs), LSD1 contributes to the turning off of important tumor suppressor genes. Progen have the first LSD1 inhibitors.

Progen has recently discovered a new class of compounds that inhibit the activity of LSD1, resulting in the re-expression of silenced genes whose inactivation is important in the genesis of cancer. The latest data shows these inhibitors have a strong effect on gene expression.

(d) **PI-88**

PI-88 is a multi-targeted cytostatic cancer therapy with a heparan sulfate mimetic mechanism. Its anti-tumour activity is based on inhibition of two biological processes - angiogenesis (the growth of new blood vessels) and metastasis (the spread of cancer to other sites) - critical to the growth and progression of cancer.

The Progen Board and management made the commercial decision to discontinue the Phase 3 PATHWAY clinical trial of PI-88 in July 2008. This decision was made based on a number of factors including slower than expected recruitment and a lack of commercially viable development partner. Without these aspects Progen were not convinced that the drug would make it efficiently through to market launch in a time frame that would create a meaningful and positive return on investment.

By making this decision early rather than closer to the end of the Phase 3 trial, it enabled Progen to focus its resources on its earlier stage pipeline of drug candidates which are believed to have greater value to Progen Shareholders. In particular, this includes, the PI-88 franchise extension program, the 500 series, which is focused on the same mechanism as PI-88 but with substantial improvements in efficacy and manufacturability.

(e) **Development Pipeline**

Technology Label		Early Discovery	Late Discovery	Early Preclinical	Late Preclinical	Phase 1	Phase 2	Phase 3	NDA
Angiogenesis	PG500 Series								
	Heparanase Program								
Cell Proliferation	PG11047								
	PG11400 Series								
Epigenetics	PG11100 Series								
	LSD-1 Series								
	Epigenetics Discovery								
	PI-88								

5.4 Strategy

Progen's vision is to continuously create improved outcomes for cancer patients by driving the development of novel cancer treatments.

Prior to the proposed Merger with Avexa, Progen has been actively developing products in its three biological platforms. The strategies for these platforms are outline below. The future focus and prioritisation for the Progen products will be subject to a review by the Board of the merged group.

In relation to the Angiogenesis platform, Progen's strategy is to:

- conduct IND enabling studies including safety studies to determine the safety profile and future human dosing of PG545, scale-up manufacture and bioassay development;
- progress back-up compounds to PG545; and
- continue heparanase hit confirmation studies with the aim of commencing chemistry in 2009 to develop a range of potential drug candidates.

In relation to the cell proliferation platform, Progen's strategy is to:

- complete Phase 1 programs and subset cancer cell line analysis for PG11047;
- assess data from the two phase 1 trials as data becomes available; and
- actively plan a phase 2 development program, and progress next generation polyamine analogues in preclinical development.

In relation to the epigenetics platform, Progen's strategy is to:

- continue to screen new compounds against LSD1 and expand the chemical series in development;
- progress representative compounds of each series through early animal studies to determine the anti-tumour activity; and
- maintain competitive leadership position in the field of epigenetics.

In addition to development the products in its three biological platforms, Progen will continue to pursue partnering opportunities for PI-88.

Progen owns a biopharmaceutical manufacturing facility called PharmaSynth, which has been put up for sale in November 2008.

5.5 Progen Financial Information

(a) Audited Consolidated Income Statements

The following income statement information has been extracted from the previously issued and audited financial reports of Progen for the years ended 30 June 2007 and 2008.

	2008	2007
	A\$'000	A\$'000
Revenue from continuing operations	6,478	2,666
Other income	1,370	1,113
Research & Development expenses	(16,145)	(6,992)
Manufacturing facility expenses	(2,721)	(2,373)
Administrative and corporate costs	(11,082)	(5,438)
Other costs	(4,029)	(11,415)
Loss before gross interest expense	(26,129)	(22,439)
Gross finance costs	(19)	(15)
Loss before income tax	(26,148)	(22,454)
Income tax expense	-	-
Net Loss for the year attributable to members of Progen	(26,148)	(22,454)
Basic and diluted earnings per share (cents)	(43.3)	(50.2)

(b) Audited Consolidated Balance Sheets

The following balance sheet information has been extracted from the previously issued and audited financial reports of Progen for the years ended 30 June 2007 and 2008.

	2008 A\$'000	2007 A\$'000
ASSETS		
Current assets		
Cash and cash equivalents	76,748	98,223
Trade and other receivables	722	1,025
Other current assets	489	92
Total current assets	77,959	99,340
Non current assets		
Investments	98	87
Property, plant and equipment	1,170	1,213
Intangible assets	3,364	-
Other	-	-
Total non current assets	4,632	1,300
Total assets	82,591	100,640
LIABILITIES		
Current liabilities		
Trade and other payable	6,525	2,096
Provisions	312	266
Other liabilities	258	49
Total current liabilities	7,095	2,411
Non current liabilities		
Trade and other payables	-	-
Provisions	237	252
Other liabilities	-	-
Total non current liabilities	237	252
Total liabilities	7,332	2,663
Net assets	75,259	97,977
EQUITY		
Issued capital	191,357	189,194
Reserves	3,162	1,895
Accumulated losses	(119,260)	(93,112)
Total equity	75,259	97,977

(c) Audited Consolidated Cash Flow Statements

The following cash flow statement information has been extracted from the previously issued and audited financial reports of Progen for the years ended 30 June 2007 and 2008.

	2008	2007
	A\$'000	A\$'000
Cash flow from operating activities		
Receipts from customers and other revenue	1,629	179
Payments from suppliers, employees and others	(23,315)	(11,806)
Interest revenue	5,048	1,447
Other	954	1,082
Net cash outflows from operating activities	(15,684)	(9,098)
Cash flow from investing activities		
Payments for purchases of businesses	570	-
Payments for property, plant and equipment (net)	(354)	(254)
Other	(1,148)	-
Net cash outflows from investing activities	(932)	(254)
Cash flow from financing activities		
Proceeds from exercise of options	-	227
Proceeds from capital issues	-	99,054
Repayment of loans	(275)	(6,878)
Other	(803)	-
Net cash inflows/(outflows) from financing activities	(1,078)	92,403
Net increase/(decrease) in cash held	(17,694)	83,051
Net foreign exchange differences	(3,781)	(700)
Cash and cash equivalents at beginning of year	98,223	15,872
Cash and cash equivalents at end of year	76,748	98,223

(d) Discussion and analysis of FY08 financial results

Progen's consolidated net loss after income tax (NPAT) for the 2008 financial year (FY08) was \$26.1 million and for the 2007 financial year (FY07) was \$22.5 million. Earnings per share was negative 43.3 cents, an increase of 6.9 cents from the prior year negative 50.2 cents.

The increase in loss from FY07 to FY08 is primarily attributable to the increased expenditure associated with the PI-88 Phase III trial and payments to Medigen Biotechnology Corporation in relation to terminating a strategic alliance agreement. These increases in costs were partially offset by an increase in interest income.

Included within results and movements in balances for FY08 were the following significant items:

(i) Revenue from continuing operations

Progen's revenue for the FY08 comprised bank interest of \$5.4 million (2007: \$1.7 million) generated from the operating account and from investment of surplus funds in capital stable, bank term deposits. Interest revenue increased significantly in FY08 due to more funds on deposit for the entire reporting period following the capital raising in the latter part of FY07. FY08 manufacturing income was \$1.1 million (2007: \$0.9 million) and grant funding of \$1.3 million (2007: \$1.1 million).

(ii) Total research and development costs

The increase in total costs incurred for FY08 to \$34.0 million (2007: \$26.2 million) reflects the extent of the increased expenditure associated with the PI-88 Phase III trial and the payments to Medigen.

(iii) Employee expenses

The increase in employee expenses from FY07 \$4.2 million to FY08 \$4.9 million (excluding share-based payments) reflects the effective increase in staff numbers as Progen has sought to recruit internal capabilities to assist with the management and direction of the Phase III trial for PI-88. Additional staff were also employed through the February 2008 acquisition of the US based biotechnology company CellGate, Inc.

(iv) Cash position

The movement in Progen's closing cash position from FY07 \$98.2 million to FY08 \$76.7 million reflects the increased expenditure for the PI-88 Phase III trial, and the payments to Medigen, with operational cash outflows increasing from \$9.1 million to \$15.7 million as a result. In addition there was a net cash outlay of \$0.6 million for the CellGate acquisition.

(v) Contributed equity

977,464 shares were issued during FY08. 806,224 shares were issued as part of the consideration for the acquisition of CellGate, and 171,240 shares were issued to Medigen as part consideration for the termination of the strategic alliance agreement. There were no other movements in issued capital during FY08; however, 1,317,250 new employee options were issued and 285,250 were forfeited or expired during that year.

(vi) Tax benefits

Given the uncertainties associated with their recovery, Progen has not recognised any tax benefits relating to income tax losses recorded for either FY08 or FY07.

(vii) Intangibles

On 4 February 2008 Progen acquired CellGate, Inc, a privately held biotechnology company based in the US with oncology assets based on epigenetic and polyamine inhibition. The value of the intellectual property rights for CellGate was \$3.5 million and this value is being amortised over its useful life until 15 October 2017.

5.6 Directors and senior management of Progen

(a) Directors

The current directors of Progen are:

- Dr Malvin Eutick;
- Mr T Justus Homburg;
- Mr John Lee;

- Mr Stephen Chang;
- Mr Patrick Burns; and
- Mr Robert Williamson.

Dr Malvin Eutick, Independent Non-Executive Chairman

B.Sc. (Hons) Ph.D. OAM

Dr Eutick joined Progen's board on 10 March 1999. Dr Eutick has 25 years experience in the medical and pharmaceutical industry including with companies such as Pfizer and Pharmacia.

In 1993, Dr Eutick founded and developed the pharmaceutical company, Phebra (formerly Pharnalab Pty Ltd), which supplies primarily hospitals in Australia and worldwide with critical drugs used in accident and emergency situations and the ICU. In 2000, he acquired the sterile medical device company, TUTA Laboratories Pty Ltd, from a Japanese multinational and recently coordinated its sale to the safety medical and collections solutions company BMDI International (ASX:BMI).

Dr Eutick was awarded the Medal of the Order of Australia for services to biotechnology in 1995. He has previously served as Chairman of the Australian biotechnology company, BioQuest Ltd and was Deputy Chairman of the Australian Museum Trust.

Dr Eutick is also currently a director of a number of private companies involved with drug innovation and development.

Mr T Justus Homburg, Managing Director and Chief Executive Officer

BA, MA, DRS, MBA

Mr Homburg was appointed Managing Director and CEO in March 2006 having joined Progen as COO January 2006. Mr Homburg has had an international career working in the pharmaceutical and life sciences industries in the US, Australia, Europe and Asia. His experience ranges from the multi-national biotechnology giant Monsanto Company through to start up organisations such as Chirogen.

Mr Homburg spent more than a decade at Monsanto Company (1990 – 2001) and during his senior management time there he focused on new technology and business commercialisation, technology in and out-licensing, mergers and acquisitions, joint ventures, capital raisings, and the development of international markets. His roles included Regional Business Management (Monsanto Chemicals), Division Management (Growth Enterprises), and Strategic Planning (Monsanto Agricultural Products).

Prior to his business career, Mr Homburg held a faculty position at the University of Michigan and was a Fulbright Scholar. He holds an MBA from the University of Washington and degrees from Iowa State University, Southern Illinois University and The University of Utrecht.

John Lee, Independent Non-Executive Director

BCom, BEdu, MBA, FAICD

Mr Lee joined Progen as a non-executive director in March 2008. In 1987, Mr Lee founded Stockholder Relations, an Australian-based management consultancy specializing in corporate advisory, investor relations and corporate governance. Currently, Mr. Lee is non-executive chairman of Portland Orthopedics Limited (ASX:PLD) (appointed in October 2005), non-executive chairman of Milvella Limited (appointed in October 2007) and a non-executive director of TMG International Pty Ltd (appointed in May 2008).

Prior to founding Stockholder Relations, Mr. Lee served Woolworths Limited (ASX:WOW), as Chief General Manager Corporate Services and was a member of Woolworth's executive committee. Mr Lee received his MBA from the University of Melbourne, in addition to a B Com and post-graduate degree in Education. He is a Senior Associate of the Financial Services Institute of Australia (FINSIA) and a Foundation Fellow of the Australian Institute of Company Directors.

Stephen Chang, Non-Executive Director

B.Eng

Mr Chang is a founding director of Progen and has served as chairman in the period from 1990 to 1994 and 1999 until March 2008. He served as chairman of Taiwan-based Medigen Biotechnology Corporation during its inauguration. Mr Chang was general manager and director of Australia Pacific Electric Cables Pty Ltd and is currently director of Capac International Pty Ltd. Prior to 1987, he was Technical Manager and Senior Engineer with Taiwan Pacific Group, a large Taiwanese conglomerate specialising in the IT industry.

Patrick Burns, Independent Non-Executive Director

B.A. LLB (Hons)

Mr Burns was appointed a non-executive director of Progen in March 1999. At the time he was also a Senior Consultant to Early Stage Enterprises, a New Jersey venture capital fund investing primarily in developing technology growth companies.

From 1997, Mr Burns has been a member of the Board of Directors of Synbiotics Corp, which specialises in animal health care, and Annovis Inc, a specialty chemicals company, and a Senior Advisor to Across Frontiers International, Inc.

From 1986 – 1991 he was a Vice President/Principal of R&D Funding Corp, the General Partner of four research and development funds of Prudential Securities, Inc., from 1991 – 1997 he served as the Senior Vice President of Prudential Securities, Inc. and from 2005 – 2007 he was a non-executive director of ChenGenex Pharmaceuticals Ltd (ASX: CSX).

In 1971, Mr Burns arranged Minority Equity Capital Company, Inc, a multi-million dollar Venture Capital Fund, where he was President, Chief Executive Officer and a Director until 1985. Mr Burns also previously practiced law in New York with Milbank, Tweed, Hadley & McCloy. He holds a BA from Dartmouth College and an LLB (Honours) from Harvard Law School. He is currently vice chairman of Euclid Systems Corp, an eye care company; chairman of StableEyes, Inc a biotechnology company also in the eye care field, and an advisor to a number of early stage biotechnology companies.

Robert Williamson, Independent Non-Executive Director

B.A. Economics, MBA

Mr Williamson joined Progen's board as a non-executive director in March 2008. Mr Williamson is the founder of LaSalle Venture Advisors, a consultancy serving venture-backed and public life science companies and their investors on strategic and operational issues. He currently serves as a non-executive director of Pharmasset, Inc. (NASDAQ:VRUS) (appointed in August 2004), an anti-viral therapeutics company. Prior to founding LaSalle Venture Advisors, Mr Williamson served as President and CEO of Arriva Pharmaceuticals, Inc., and helped the company raise \$27 million in venture capital. Previously, Mr Williamson was President and Chief Operating Officer of EOS Biotechnology, Inc., (purchased by PDL BioPharma (NASDAQ:PDLI)). Prior to this, Mr Williamson was President and Chief Operating Officer of DoubleTwist, Inc. (formerly Pangea Systems), a genomics start-up. Mr Williamson began his career at The Boston Consulting Group, Inc., a global business consulting firm, where he was named a Partner, and led the firm's west coast health care practice. Mr Williamson received a MBA from the Stanford Graduate School of Business in Stanford, CA. He obtained a B.A. in Economics from Pomona College in Claremont, CA.

(b) Senior management

Mr T Justus Homburg, Managing Director and Chief Executive Officer

BA, MA, DRS, MBA

Mr Homburg was appointed Managing Director and CEO in March 2006 having joined Progen as COO January 2006. Refer to section 5.6(a) for his qualifications and experience.

Sarah Meibusch, Vice President, Business Development

B. Agr. Sc. (Hons), M.P.S. (Cornell)

Sarah Meibusch joined Progen in 2003 as Business Development Manager and was responsible for investor and public relations of the company along with assisting in business development efforts before her appointment to Director, Business Development in 2005 and Vice President of Business Development in 2006.

As Vice President, Business Development she heads up Progen's business development efforts covering both licensing and commercialization of the Progen's research.

Prior to joining Progen Ms Meibusch was employed by Pyxis Genomics (a private genomics company based in Chicago, USA, funded by Burrill and Co.) as Business Development Manager. In this role she was responsible for the company's marketing, public relations and licensing initiatives.

She completed a Bachelor degree with first class honours in 1998 from the University of Queensland in Agricultural Science focused on Animal Science and Biochemistry. In 2000, she completed a Master of Professional Studies degree specialising on commercialization of biotechnology from Cornell University, USA, under an International Rotary Ambassadorial Scholarship.

Dr Laurence Marton, Chief Scientific Officer (USA based)

MD

Prior to joining Progen in early 2008, Dr Laurence Marton was the Chief Scientific Officer of Cellgate, Inc and before that Chief Scientific and Medical Officer of SLIL Biomedical Corporation. Both of these companies focused on the discovery and development of novel polyamine analogs and other compounds for the treatment of cancer and other serious diseases. Dr Marton co-founded SLIL and served as a director.

Prior to SLIL, Dr Marton was Dean of the University of Wisconsin-Madison Medical School and before that Chaired the Department of Laboratory Medicine at the University of California, San Francisco. He is a leading expert with extensive experience in the fields of cell growth and drug development. His work is focused on the use of polyamines in treating human diseases related to aberrant cell growth, including cancer and infectious diseases. His research has resulted in more than 180 original publications, 60 scientific reviews and chapters, four books, numerous patents, and his work has been acknowledged internationally.

Dr Marton serves as a consultant for industry and for governmental and academic institutions. He serves on the Board of the Foundation for the California Heart Center and was previously appointed by the Governor of Wisconsin to the Wisconsin Technology Council. Dr Marton received his BA from Yeshiva University and his MD from the Albert Einstein College of Medicine.

5.7 Capital structure

As at 20 January 2009 (the last practical trading date before this Scheme Booklet was lodged for registration with ASIC), there were 60,469,511 Shares on issue held as follows:

Size of Holding	No. of Shareholders	No. of shares	% of Issued Capital
0 – 1,000	1,514	795,033	1.31
1,001 – 10,000	1,926	7,002,559	11.58
10,001 – 100,000	427	11,191,226	18.51
100,000 – and over	61	41,480,693	68.60
Total	3,928	60,469,511	100.00

5.8 Substantial Shareholders

As at 23 January 2009, the following entities have lodged substantial shareholding notices in respect of Progen:

Shareholder Name	Number of ordinary Shares	% of Shares held
Northcape Capital Pty Limited	4,979,043	8.23
Manifest Capital Management Pty Limited	3,538,260	5.85
Entrust Funds Management Limited	3,053,871	5.05

5.9 Share price history

The latest recorded share price of Progen Shares on ASX on 19 December 2008 (being the last trading day before the Announcement Date) was \$0.90.

The latest recorded share price of Progen Shares on ASX on 27 January 2009 (being the last practical trading date before this Scheme Booklet was lodged for registration with ASIC) was \$0.85.

The highest and lowest recorded share price of Progen Shares on ASX during the 3 months prior to the date on which this Scheme Booklet was lodged for registration with ASIC were \$0.915 and \$0.595, respectively.

The 3 month VWAP prior to the date on which this Scheme Booklet was lodged was \$0.7575 per share.

5.10 No dealings in Avexa Shares

Except as disclosed in this Scheme Booklet, during the period of four months before the date of this Scheme Booklet, neither Progen, its directors, nor any associate of Progen:

- (a) has provided or agreed to provide consideration for Avexa Shares under a purchase agreement; or
- (b) gave, or offered to give or agreed to give a benefit to another person which was likely to induce the other person or an associate of the other person to:
 - (i) vote in favour of the Scheme; or
 - (ii) dispose of any Avexa Shares,which benefit was not offered to all Avexa Shareholders.

5.11 Quotation of New Progen Shares

Within 7 days after the date of this document, Progen will make an application for the admission to quotation on ASX of New Progen Shares to be issued pursuant to the Scheme. Progen has no reason to believe that the New Progen Shares will not be admitted to quotation by ASX.

5.12 Availability of documents relating to Progen

Progen is an ASX listed company and a "disclosing entity" under the Corporations Act, and is subject to regular reporting and disclosure obligations. Broadly, these require Progen to announce price sensitive information to ASX as soon as it becomes aware of the information, subject to exceptions for certain confidential information. This information can be obtained through Progen's announcement platform on the ASX website (www.asx.com.au).

Additionally, copies of documents lodged with ASIC in relation to Progen may be obtained from, or inspected at, an ASIC office.

6. Profile of the Merged Entity

6.1 Overview of intentions

This section sets out Progen's intentions in relation to Avexa and the Merged Entity if the Scheme becomes Effective, including:

- ASX listing of Avexa;
- the continuation of the business of Avexa;
- any major changes to the business of Avexa and any redeployment of the fixed assets of Avexa;
- the future employment of the present employees of Avexa and Progen; and
- the intentions of the Merged Entity.

Section 6 contains statements of the expected intentions of the board of the Merged Entity. The expected intentions have been compiled by Avexa's current Board, as members of the Avexa Board will represent a majority of the board of the Merged Entity, including the Managing Director. Progen's current Board have confirmed that it does not disagree with the stated intentions.

These statements of intention are based on the information concerning Avexa and Progen, their businesses and the general business environment which is known to Progen and Avexa at the time of preparation of this Scheme Booklet. Final decisions will be reached in light of increased knowledge through exposure to the business and material information and circumstances at the relevant time. Accordingly, the statements set out in section 6 are statements of the current intention only which may change as new information becomes available or circumstances change.

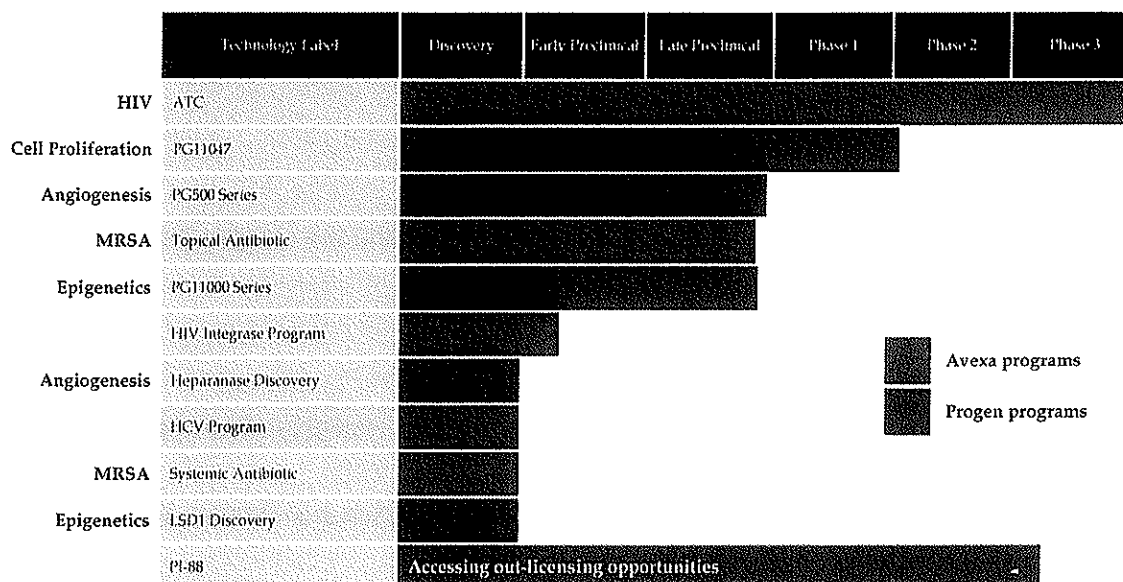
The following intentions have been formulated based on information about the two companies that is publicly available and which has been made available in the course of due diligence in connection with the Merger. Accordingly, the specific intentions of the Merger are subject to the outcome of investigations when additional information becomes available after completion of the Merger.

If the Merger takes effect, the Merged Entity will maintain and enhance Avexa's and Progen's existing businesses to maximise their operating performance and so maximise value for Shareholders. This will involve the integration of key elements of their businesses and some centralisation and rationalisation of business functions. While the integration process will be conducted within a reasonable time frame, management has significant experience integrating businesses and is cognisant of the need to minimise disruption.

6.2 Overview of the Merged Entity

The Merged Entity will form one of the leading biotechnology companies in Australia, with a strong balance sheet to fund its research and development activities.

The primary focus of the Merged Entity will be the continued Phase III trials of ATC. In addition, the Merged Entity will have a portfolio of early stage programs drawn from the existing early stage programs of Avexa and Progen. These programs are shown in the table below.



6.3 Corporate matters

If the Scheme is implemented, and subject to matters set out below, the Merged Entity will:

- arrange for the quotation on ASX of all Avexa Shares to be discontinued and for Avexa to be delisted;
- arrange for the name of Progen to be changed to Avexa Pharmaceuticals Limited²³;
- appoint nominees to the board of the Merged Entity; and
- adopt a similar corporate governance framework as that currently adopted by Avexa, adjusted to reflect any particular needs of the Merged Entity.

6.4 Continuation of Business

It is the present intention that the Merged Entity will:

- continue to operate the business of Avexa in substantially the same manner as it is currently being conducted. The continuing Phase III clinical trials of ATC will continue to be a key focus of the Merged Entity;
- undertake a review of each of Progen's and Avexa's early stage portfolio of programs and prioritise them according to potential for value creation with the objective of creating a balanced portfolio of late stage and early stage programs and seek to monetise and partner all programs where appropriate;
- consolidate the head offices of Avexa and Progen into Avexa's present head office in Melbourne, with the Brisbane sites consolidated into one site. The companies' respective US sites would be consolidated into Progen's Redwood City site, outside San Francisco;
- seek to take maximum advantage of the broader employee talent available from both companies. This would be assessed post Merger on a merits basis. This process may entail some redundancies from the employees of both Avexa and Progen; and
- seek to realise cost savings from rationalizing listing costs, governance costs and certain head office functions as a result of combining two listed companies into one listed company.

6.5 Outlook

The key focus of the Merged Entity will be continuing the Phase III trials of ATC and progressing a number of the Merged Entity's earlier stage programs. In relation to ATC, the Merged Entity expects to announce a number of encouraging results from week 16 data in the second quarter of 2009, with the longer term objective of releasing week 24 data in late 2010. This is the

²³ Subject to approval by Progen Shareholders.

preliminary end point of the Phase III trial and is expected to be a major value inflection point for Merged Entity.

At the same time, the Merged Entity will continue to explore value enhancing partnering opportunities for ATC, PI-88 and a number of other early stage programs.

6.6 Management and employees

It is intended that the Managing Director of Avexa, Dr Julian Chick, will join Progen's executive team and will become Managing Director of the Merged Entity. Avexa and Progen have significant management depth and talent. The Merged Entity expects that all other positions would be selected on merit from the two companies to maximise management and research talent available in the Merged Entity, having regard to skills and the portfolio going forward.

6.7 Board of directors

If the proposed Merger takes effect, the board of directors of the Merged Entity will be

- Nathan Drona (currently non-executive Chairman of Avexa), Non-executive Chairman
- Dr Julian Chick (currently CEO of Avexa), Managing Director
- Dr John Sime (currently non-executive director of Avexa), Non-executive Director
- David Bottomley (currently non-executive director of Avexa), Non-executive Director
- Dr Mal Eutick (currently non-executive Chairman of Progen), Non-executive Director
- Justus Homburg (currently managing director of Progen), Non-executive Director
- John Lee (currently non executive director of Progen), Non-executive Director

Brief biographies of the Merged Entity's board are set out in section 4.8 and section 5.6.

6.8 Merged Entity name

It is proposed that the Merged Entity will be called Avexa Pharmaceuticals Limited. Progen Shareholders are scheduled to vote on this name change, conditional upon approval of this Scheme at a meeting of Progen Shareholders on in early March 2009.

6.9 Ownership

The following table sets out the number of Progen Shares on issue at 23 January 2009 assuming the Progen Share Buyback is fully subscribed and the number of New Progen Shares expected to be issued to Avexa Shareholders assuming that Progen's liquid assets are greater than \$67.5 million two Business Days prior to the Second Court Date and their consequent percentage holding in the Merged Entity, if the Merger proceeds.

Progen Shares on issue at 28 January 2009 ⁽¹⁾	New Progen Shares to be issued ⁽¹⁾	Merged Entity total ⁽¹⁾	% Merged Entity held by Avexa Shareholders ⁽¹⁾
42,287,693	33,030,646	75,318,339	44%

1. Assumes Progen Share Buyback of \$20 million is fully subscribed

If Progen's Share Buyback is not fully subscribed then Avexa Shareholders would own less than 44% of the shares in the Merged Entity as shown in table 6.11(g). If Progen's liquid assets are less than \$67.5 million but equal to or more than \$66 million, then Avexa Shareholders would own more than 44% of the shares in the Merged Entity.

Should the proposed Merger be approved, it is expected that the Merged Entity will not have any substantial shareholders under the Corporations Act, having voting power of 5% or more in Progen.

6.10 Dividend policy of the Merged Entity

The Merged Entity will continue to focus on the development of its portfolio of late and early stage programs. It is unlikely that this strategy will generate recurring profits for distribution to shareholders in the near future. The intention of the board of the Merged Entity is not to pay a dividend until a product developed by the Merged Entity has been commercialised and is delivering substantial recurring profits to shareholders.

6.11 Merged Entity Financial Information

(a) Basis of preparation

This section contains the following unaudited information in relation to the Merged Entity:

- pro forma combined income statement for the Merged Entity for the year ended 30 June 2008 (Table A);
- pro forma combined balance sheet for the Merged Entity as at 30 June 2008 (Table B);
- pro forma combined statement of cash flows for the Merged Entity for the year ended 30 June 2008 (Table C);
- pro forma combined cash and cash equivalent balances for the Merged Entity as at 31 December 2008 and movements in cash balances for the six months then ended (Table D); and
- sensitivities of Progen Share Buyback (Table E).

The above information is referred to collectively as the ***Merged Entity Financial Information***.

The Merged Entity Financial Information has been prepared on the basis of:

- the audited Progen Financial Information (set out in section 5.5);
- the audited Avexa Financial Information (set out in section 4.7) ; and
- the unaudited Merged Entity assumptions set out in (b) below.

The Merged Entity Financial Information has been prepared to illustrate:

- the pro forma combined income statement for the Merged Entity as if the Scheme had been implemented on 1 July 2007;
- the pro forma combined balance sheet for the Merged Entity as if the Scheme had been implemented on 30 June 2008;
- the pro forma combined statement of cash flows for the Merged Entity as if the Scheme had been implemented on 1 July 2007;
- the pro forma combined cash and cash equivalent balances for the Merged Entity as if the Scheme had been implemented on 31 December 2008; and
- the sensitivities associated with less than 100% participation in the Progen Share Buyback.

The unaudited Merged Entity Financial Information set out below has been compiled by Avexa's Directors. The Avexa Directors have utilised the Progen Financial Information (set out in section 5.5) in preparing the Merged Entity Financial Information. The Avexa Directors have relied on the Progen Financial Information. Avexa has not audited, reviewed, or independently verified the Progen Financial Information and disclaims any responsibility for it. Progen is responsible for ensuring that the Progen Financial Information is not misleading or deceptive in any material respect (whether by omission or otherwise) and is responsible for the Progen Financial Information.

The Merged Entity Financial Information has been extracted from the audited financial statements of Avexa and Progen for the year ended 30 June 2008. The Merged Entity

Financial Information is presented in an amended form for consistency of information and does not contain all of the disclosures that are usually provided in an annual report prepared in accordance with the Corporations Act and other financial reporting requirements. In particular, they do not include any notes to and forming part of the financial statements of Avexa or Progen.

The Merged Entity Financial Information in this section should be read in conjunction with the risk factors set out in section 2, other information contained in this Scheme Booklet, and the annual financial reports issued by the respective entities for the year ended 30 June 2008.

Deloitte has prepared an Investigating Accountants' Report relating to the Merged Entity Financial Information contained in this section, which is included in Annexure E to this Scheme Booklet.

(b) Key assumptions

The following key assumptions have been adopted in the preparation of Tables A to E.

- The pro forma combined income statement represents an aggregation of Avexa's and Progen's audited results reclassified wherever relevant for consistency.
- There has been no normalisation of the financial results or position to reflect unusual or non-recurring transactions that may have been reflected in either Avexa's or Progen's financial statements for the year ended 30 June 2008.
- There has been no adjustment in the Merged Entity Financial Information for provisions or expenses relating to post-Merger integration costs.
- Prior to entering into the Merger Implementation Agreement and other agreements relating to the Merger, neither Avexa or Progen had any transactions with the other. Therefore no elimination adjustments for intra-entity transactions or balances have been required in the preparation of the Merged Entity Financial Information.
- The accounting policies used to prepare the Merged Entity Financial Information are based on the accounting policies disclosed in Avexa's and Progen's audited financial statements for the year ended 30 June 2008. Based on this publicly available information, the accounting policies are not considered to be materially different and accordingly no adjustments have been made to the Merged Entity Financial Information to align accounting policies. A detailed review of all accounting policies will be undertaken and the outcome reflected in the Merged Entity's 30 June 2009 financial statements.
- In accordance with Accounting Standard AASB 3 "Business Combinations" (2008), whilst the legal substance of the transaction is that Progen is the purchaser of the share capital of Avexa, this relationship is reversed for accounting purposes such that Avexa is the deemed acquirer based on the overall indicators of control, including board composition, head office location and company name of the Merged Entity.
- Avexa is not a Subsidiary of Progen and accordingly the Merged Entity Financial Information has not been consolidated in accordance with Accounting Standard AASB 127 "Consolidated and Separate Financial Statements". However, the pro forma combined balance sheet eliminates the contributed equity, reserves and accumulated losses of Progen which will be assumed to be acquired by Avexa in accordance with Accounting Standard AASB 3 "Business Combinations" (2008).
- The pro forma combined balance sheet assumes that the excess of the Scheme Consideration over the Progen net assets at the implementation date will be reflected as goodwill in the balance sheet of the Merged Entity. The Merged Entity will conduct an assessment of the fair value of the net assets acquired at the date the Scheme is implemented. This assessment will separately determine the actual amounts of identifiable intangible assets and the goodwill on consolidation. Any identifiable

intangibles will be progressively amortised over their estimated useful lives. Goodwill on consolidation will not be amortised, but will be subjected to an annual impairment test.

- Avexa will only be able to undertake a detailed assessment of the fair value of Progen's assets, liabilities and contingent liabilities after the Implementation Date. Once the fair value assessment is completed adjustments may need to be made to the fair value of the assets and liabilities disclosed in the pro forma combined balance sheet of the Merged Entity.
- The composition of the pro forma combined balance sheet and cash flow statement will vary depending upon the outcome of the Progen Share Buyback offer. The pro forma combined balance sheet presented assumes a 100%, \$20 million participation in the Progen Share Buyback and the cancellation of Progen Shares to the value of \$20 million. Partially subscribed Progen Share Buyback scenarios have been presented in Table E together with the relative Avexa Shareholder ownership share of the Merged Entity and attributable goodwill value.

Shareholders should also note that the balance sheet and final cost of the business combination that arises following the Scheme implementation will be based on the actual share prices of the entities, their assets and their liabilities at the date the Scheme is implemented. Accordingly the actual balance sheet will differ to the position set out in Table B.

- The pro forma combined balance sheet assumes that the Progen and Avexa share prices used to reflect the Merger are those adopted in the Merger Implementation Agreement, namely \$1.35 per share for Progen and \$0.105 per share for Avexa. The value attributed to the issue is \$57.088 million assuming that the Progen Share Buyback is fully subscribed and 42,287,693 Progen Shares remain on issue after the maximum share buyback. A partially subscribed Progen Share Buyback will deliver a pro rata consideration value as presented in Table E.
- No adjustment has been made for any share-based payment accounting entries that may be required as a result of the cancellation of Avexa Options or issue of options or performance rights in the Merged Entity.
- Aggregate estimated transaction costs of \$3.2 million have been incorporated into the pro forma combined balance sheet at 30 June 2008.
- The pro forma combined statement of cash and cash equivalents at 31 December 2008 has been derived from the audited balance sheets of Avexa and Progen at 30 June 2008 adjusted for estimated transaction costs of \$3.2 million, the maximum potential Progen share buy back of \$20 million, cash utilised by Avexa and Progen during the six month period ended 31 December 2008 and the impact on cash balances of cash denominated in foreign currencies translated into Australian dollars at the exchange rates ruling at close of business on 31 December 2008.
- No provision has been raised in respect of additional milestone payments of up to \$19.5 million, payable by Progen to the Cellgate shareholders in Progen Shares (to the extent permissible without shareholder approval) and/or cash upon the achievement of certain clinical and regulatory milestones in respect of the assets of Cellgate because the achievement of the milestone is not currently considered probable.

(c) **Pro forma combined income statement – TABLE A**

Set out below is the pro forma combined income statement for the Merged Entity as if the Merger had occurred on 1 July 2007.

Pro forma combined income statement for the year ended 30 June 2008

	AVEXA \$'000	PROGEN \$'000	PRO FORMA COMBINED \$'000
REVENUE & OTHER INCOME:			
Manufacturing services	-	1,086	1,086
Interest	4,348	5,392	9,740
Government grants	891	1,316	2,207
Sub- Lease	468	-	468
Other	-	54	54
TOTAL REVENUE & OTHER INCOME	5,707	7,848	13,555
EXPENSES:			
Contract research and development	(30,039)	(16,145)	(46,184)
Manufacturing facility	-	(2,721)	(2,721)
Finance	(20)	(19)	(39)
Employee	(5,936)	(4,930)	(10,866)
Share-based payment	(535)	(1,328)	(1,863)
Depreciation	(187)	(423)	(610)
Amortisation of intellectual property rights	-	(151)	(151)
Administrative and corporate	(5,083)	(4,250)	(9,333)
Fair value of Progen Shares issued and purchased on-market (1)	-	(2,029)	(2,029)
Medigen termination agreement (1)	-	(2,000)	(2,000)
LOSS BEFORE INCOME TAX EXPENSE	(36,093)	(26,148)	(62,241)
Income tax expense	-	-	-
NET LOSS FOR THE YEAR	(36,093)	(26,148)	(62,241)

- (1) Comprises the financial impact of payments to Medigen upon completion of clinical milestones in accordance with the termination of the Alliance Agreement with that entity.

(d) Pro forma combined balance sheet as at 30 June 2008 – TABLE B

Set out below is the pro forma combined balance sheet for the Merged Entity as if the Merger had occurred on 30 June 2008. The pro forma balance sheet assumes a full \$20 million subscription in respect of the Progen Share Buyback and estimated transaction costs of \$3.2 million.

Pro forma combined balance sheet as at 30 June 2008							
	AVEXA \$'000	PROGEN \$'000	COMBINED \$'000	PROGEN BUYBACK \$'000	TRANS- ACTION COSTS \$'000	MERGER ADJUSTMENT ENTRIES \$'000	PRO FORMA COMBINED \$'000
Current assets							
Cash & cash equivalents	43,411	76,748	120,159	(20,000)	(3,200)	-	96,959
Trade and other receivables	353	722	1,075	-	-	-	1,075
Prepayments	80	187	267	-	-	-	267
Government grants receivable	-	302	302	-	-	-	302
Total current assets	43,844	77,959	121,803	(20,000)	(3,200)	-	98,603
Non-current assets							
Deposits	-	98	98	-	-	-	98
Plant and equipment	926	1,170	2,096	-	-	-	2,096
Goodwill	-	-	-	-	-	3,029	3,029
Intellectual property rights	-	3,364	3,364	-	-	-	3,364
Marketing Licence	20,013	-	20,013	-	-	-	20,013
Total non-current assets	20,939	4,632	25,571	-	-	3,029	28,600
Total assets	64,783	82,591	147,374	(20,000)	(3,200)	3,029	127,203
Current liabilities							
Accounts payable	8,449	6,525	14,974	-	-	-	14,974
Employee and other provisions	515	312	827	-	-	-	827
Derivative financial instruments	-	249	249	-	-	-	249
Government grants	-	9	9	-	-	-	9
Total current liabilities	8,964	7,095	16,059	-	-	-	16,059
Non-current liabilities							
Employee provisions	43	237	280	-	-	-	280
Total non-current liabilities	43	237	280	-	-	-	280
Total liabilities	9,007	7,332	16,339	-	-	-	16,339
Net assets	55,776	75,259	131,035	(20,000)	(3,200)	3,029	110,864
Equity							
Issued Capital	137,238	191,357	328,595	(20,000)	-	(171,357)	137,238
Cost of the Business Combination	-	-	-	-	-	57,088	57,088
Transaction costs - Progen	-	-	-	-	(1,200)	1,200	-
Total Issued Capital	137,238	191,357	328,595	(20,000)	(1,200)	(113,069)	194,326
Reserves	-	3,162	3,162	-	-	(3,162)	-
Accumulated losses	(81,462)	(119,260)	(200,722)	-	(2,000)	119,260	(83,462)
Total equity	55,776	75,259	131,035	(20,000)	(3,200)	3,029	110,864

(e) **Pro forma combined statement of cash flows for the year ended 30 June 2008 – TABLE C**

Set out below is the pro forma combined statement of cash flows for the Merged Entity as if the Merger had occurred on 1 July 2007.

Pro forma combined statement of cash flows for the year ended 30 June 2008			
	AVEXA \$'000	PROGEN \$'000	PRO FORMA COMBINED \$'000
Cash flows from operating activities			
Cash receipts in the course of operations	879	1,629	2,508
Cash payments in the course of operations	(35,673)	(23,315)	(58,988)
Receipt of Government grants	891	973	1,864
Interest received	4,661	5,048	9,709
Income taxes paid	-	-	-
Finance costs	(20)	(19)	(39)
Net cash used in operating activities	(29,262)	(15,684)	(44,946)
Cash flows from investing activities			
Payments for intangibles – marketing licence	(3,478)	-	(3,478)
Payments for property, plant and equipment	(767)	(354)	(1,121)
Acquisition of net assets	-	570	570
Costs incurred on acquisition of net assets	-	(1,148)	(1,148)
Net cash used in investing activities	(4,245)	(932)	(5,177)
Cash flows from financing activities			
Proceeds from issue of share capital	48	-	48
Costs of raising share capital	(4)	(275)	(279)
Repayment of loan	-	(803)	(803)
Net cash provided by / (used in) financing activities	44	(1,078)	(1,034)
Net decrease in cash held	(33,463)	(17,694)	(51,157)
Net foreign exchange differences	-	(3,781)	(3,781)
Cash at the beginning of the financial year	76,874	98,223	175,097
Cash at the end of the financial year	43,411	76,748	120,159

(f) **Pro forma combined cash and cash equivalent balances as at 31 December 2008 – TABLE D**

Set out below is the pro forma combined unaudited cash and cash equivalent balances of the Merged Entity as if the Merger had occurred on 31 December 2008 after allowing for the full, \$20 million, subscription in respect of the Progen Share Buyback and estimated transaction costs of \$3.2 million.

Pro forma combined statement of cash and cash equivalent balances as at 31 December 2008			
	AVEXA \$'000	PROGEN \$'000	PRO FORMA COMBINED \$'000
Cash & cash equivalents at 30 June 2008	43,411	76,748	120,159
Estimated transaction costs	(2,000)	(1,200)	(3,200)
Maximum potential share buy back	-	(20,000)	(20,000)
Pro forma combined balance as at 30 June 2008	41,411	55,548	96,959
Less cash outflows for six months ended 31 December 2008	(22,935)	(11,780)	(34,715)
Increase in cash balances arising from foreign currency gains	-	7,998	7,998
Cash & cash equivalents at 31 December 2008 net of maximum share buyback and estimated transaction costs	18,476	51,766	70,242

(g) **Sensitivities of the Progen Share Buyback – TABLE E**

The following table illustrates the sensitivities associated with less than 100% participation in the Progen Share Buyback, including the financial impact in terms of the Merged Entity cash and cash equivalent balances, attributable goodwill, and the relative ownership in the Merged Entity for existing Avexa Shareholders.

Buyback Percentage	Buyback Amount \$'000	Number of Progen shares post buyback	Consideration for Progen shares \$'000	Merged Entity cash balance⁽¹⁾ \$'000	Goodwill attributable \$'000	Total number of Merged Entity shares	Avexa % of Merged Entity	Progen % of Merged Entity
100%	20,000	42,287,692	57,088	96,959	3,029	75,318,338	44%	56%
75%	15,000	46,833,147	63,225	101,959	4,166	79,863,793	41%	59%
50%	10,000	51,378,602	69,361	106,959	5,302	84,409,248	39%	61%
25%	5,000	55,924,056	75,497	111,959	6,438	88,954,702	37%	63%
0%	-	60,469,511	81,634	116,959	7,575	93,500,157	35%	65%

(1) Pro forma combined cash and cash equivalents balance as at 30 June 2008, net of Progen Share Buyback and estimated transaction costs

7. Voting information

7.1 Shareholder meeting

The Scheme Meeting will be held at 11.00am on 20 March 2009 at:

Leonda by the Yarra
2 Wallen Road
Hawthorn
Victoria, 3122 Australia

Avexa Shareholders are entitled to attend (either in person or by proxy) the Scheme Meeting and vote on the resolution proposed (subject to the voting restrictions noted below).

This Scheme Booklet includes the Notice of Meeting (set out in Annexure G) and encloses a proxy form for the Scheme Meeting.

7.2 Who is entitled to vote at the Meeting

Avexa has determined, for the purposes of the Corporations Act, that each Avexa Shareholder who is registered in the Share Register at 7.00pm (Melbourne time) on 18 March 2009 is entitled to vote at the Scheme Meeting.

You can vote at the Scheme Meeting:

- in person;
- by proxy;
- by corporate representative (if you are a corporate Shareholder); or
- by attorney.

You will be counted as being present at the Scheme Meeting if you vote in any of the ways outlined above.

7.3 Voting exclusion

Progen and its associates are restricted from voting on the Scheme.

However, Progen will hold a general meeting of its shareholders in early March 2009, at which it will voluntarily put a resolution to Progen Shareholders to approve the proposed transaction with Avexa. Under the terms of the Merger Implementation Agreement, if this resolution is not approved by 50 per cent or more of Progen Shareholders present and voting (including by proxy), then Progen could terminate the Merger Implementation Agreement, in which case the Scheme would not be implemented. If Progen Shareholders do not pass this resolution, Progen must pay Avexa the Break Fee.

7.4 Voting in person

If you wish to vote in person at the Scheme Meeting, please attend the Scheme Meeting.

Where the proxy form is executed under a power of attorney, the power of attorney or a certified copy of the power of attorney must be lodged with the proxy form.

Corporate Shareholders may appoint a proxy or alternatively appoint a corporate representative. In order to appoint a corporate representative, corporate Shareholders will be required to complete a "Certificate of Appointment of Representative" form to enable a natural person to attend on its behalf. Please contact the Share Registry, Computershare Investor Services Pty Ltd, on 1300 850 505 (within Australia) or +61 3 9415 4000 (outside Australia) for this form.

7.5 Voting by proxy

If you wish to appoint a proxy for the Scheme Meeting, you should complete the proxy form and lodge it with Computershare Investor Services Pty Ltd, in accordance with the instructions set out in the Notice of Scheme Meeting included at Annexure G and on the proxy form accompanying

this Scheme Booklet. Shareholder proxy forms **MUST** be received at Computershare Investor Services Pty Ltd no later than **11.00am** on **18 March 2009**.

Lodging a proxy form will not preclude personal attendance and voting at the Scheme Meeting.

A Shareholder may appoint a non shareholder to attend on their behalf. In selecting a proxy a Shareholder may, provided they can cast two (2) or more votes, appoint two (2) proxies and may specify the proportion or number of votes each proxy is appointed to exercise. Where a Shareholder has appointed two proxies, on a show of hands, only the first person named in the proxy form (or if two (2) forms have been completed, the person whose name is earlier in alphabetical sequence) may vote.

You can return the completed proxy form in the reply paid envelope, or by delivering the proxy form to Computershare Investor Services Pty Ltd at the address below, or by faxing it to Computershare Investor Services Pty Ltd at 1800 783 447 (within Australia) or +61 3 9473 2555 (outside Australia).

By mail:

Avexa Limited share registry
Computershare Investor Services Pty Ltd
GPO Box 242
Melbourne Victoria 3001
Australia

In person:

Computershare Investor Services Pty Ltd
Yarra Falls
452 Johnston Street
Abbottsford Victoria 3067
Australia

8. Australian taxation implications for Shareholders

Shareholders will need to consult their own tax advisors regarding the consequences of acquiring, holding or disposing of their Shares in light of their particular investment circumstances.

8.1 Introduction

This section provides a summary of the Australian income tax implications for Avexa Shareholders arising from the proposed Merger of Avexa with Progen.

The tax implications for Avexa Optionholders arising from the merger are not addressed in this section. Avexa Optionholders should seek their own independent tax advice.

The comments below are relevant only to Avexa Shareholders who hold their Avexa Shares as capital assets for the purpose of investment. The comments do not apply to Avexa Shareholders who hold their Avexa Shares in connection with the conduct of a business or who acquired Avexa Shares for the purpose of resale at a profit rather than investment. Furthermore, the comments do not apply to Avexa Shareholders who are taxed outside the capital gains tax (CGT) provisions or where the CGT provisions may apply in a modified manner. Such Shareholders may include banks, insurance companies, superannuation funds or persons who acquired their Avexa Shares under an employee share or option plan.

The following summary is intended only for Australian resident Avexa Shareholders. Avexa Shareholders who are not resident in Australia for income tax purposes should consider tax consequences under the laws of their country of residence, as well as under Australian law, arising from the Scheme.

The discussion contained in this summary is of a general nature only and does not take into account the specific circumstances of any Avexa Shareholder. The comments are based on the Australian tax laws in force at the date of this Scheme Booklet.

Avexa Shareholders should seek their own independent advice regarding the tax implications arising from participation in the Scheme in light of current tax laws and their particular circumstances.

8.2 Key elements of the Scheme

As set out in Section 3 of this Scheme Booklet, Progen proposes to acquire all of the Avexa Shares on issue through a scheme of arrangement between Avexa and its Shareholders (i.e. the Scheme). As consideration for the acquisition of Avexa Shares, Progen proposes to issue Avexa Shareholders one Progen Share for every 12.857 Avexa Shares held.

8.3 Australian income tax implications of the Share Scheme

(a) General CGT consequences for participating Avexa Shareholders

The Scheme involves the disposal to Progen of Avexa Shares by Avexa Shareholders. This disposal will constitute a CGT event for Australian CGT purposes.

The general CGT consequences associated with the disposal of the shares will be that:

- An Avexa Shareholder will make a capital gain from the disposal of Avexa Shares under the Scheme if the capital proceeds for the disposal of the Avexa Shares exceed the cost base of those Avexa Shares. However, an Avexa Shareholder may be entitled to disregard any capital gain they realise on disposal of the Avexa Shares by choosing CGT scrip-for-scrip roll-over relief. This relief is discussed further below.
- An Avexa Shareholder will make a capital loss from the disposal of Avexa Shares under the Scheme if the capital proceeds for the disposal of the Avexa Shares are less than the reduced cost base of those Avexa Shares.

- An Avexa Shareholder will not make a capital gain or a capital loss from the disposal of Avexa Shares under the Scheme if the capital proceeds for the disposal of the Avexa Shares exceed the reduced cost base of those Avexa Shares but are less than the cost base of those Avexa Shares.

(i) Capital proceeds

The capital proceeds from the disposal of the Avexa Shares by an Avexa Shareholder under the Scheme will be the market value of the Progen Shares received in exchange for their Avexa Shares on the Implementation Date. The Merged Entity will need to calculate and advise Avexa Shareholders of the relevant market value following the Implementation Date.

(ii) Calculation of net capital gain or capital loss

Capital gains and capital losses of a taxpayer in a year of income are aggregated to determine whether the taxpayer has made a net capital gain. Any net capital gain is included in assessable income and subject to income tax. However, a CGT discount may be available to reduce the taxable capital gain (refer discussion below). Capital losses may not be applied against other income for income tax purposes but may be carried forward and offset against future capital gains.

(iii) CGT discount

In general, if the Avexa Shares have been held for less than 12 months before the disposal, the capital gain or loss on the disposal of the Avexa Shares will be calculated as the difference between the capital proceeds received for the Avexa Shares and the cost base of the Avexa Shares.

However, individuals and trusts that have held the Avexa Shares for at least 12 months prior to the disposal of the Avexa Shares, should be eligible to claim the CGT discount when calculating the capital gain on disposal of their Avexa Shares. Individuals and trusts will be entitled to a CGT discount of 50%, meaning that only half of any net capital gain on the disposal of the Avexa Shares would be included in that individual's or trust's assessable income.

Superannuation funds should be entitled to a CGT discount of 33 ¹/₃%. Companies are not eligible for the CGT discount.

(iv) CGT cost base and acquisition date – New Progen Shares

The cost base of New Progen Shares received by an Avexa Shareholder in exchange for Avexa Shares, where the Avexa Shareholder does not choose CGT roll-over relief, will be the market value of the Avexa Shares, on the Implementation Date, disposed under the Scheme.

The New Progen Shares received in exchange for the Avexa Shares should be taken to be acquired for CGT purposes on the Implementation Date.

(b) CGT rollover relief

Avexa Shareholders who would otherwise realise a capital gain in respect of the transfer of their Avexa Shares should be eligible to choose CGT scrip-for-scrip roll-over.

(i) Effect of roll-over relief

Where an Avexa Shareholder chooses to obtain CGT roll-over relief in respect of the disposal of their Avexa Shares under the Scheme, any capital gain arising in respect of the disposal of those Avexa Shares should be disregarded.

(ii) Choosing CGT roll-over

An Avexa Shareholder will generally need to choose CGT roll-over relief before lodgement of their income tax return for the income year in which the

Implementation Date occurs. For individuals this is expected to be the year ending 30 June 2009. Choosing CGT roll-over relief can be evidenced by excluding the relevant capital gain arising on disposal of the Avexa Shares from the tax return of the Shareholder.

(iii) CGT cost base and acquisition date – New Progen Shares

Where an Avexa Shareholder chooses CGT roll-over relief in respect of the disposal of their Avexa Shares, the CGT cost base of the New Progen Shares will be equal to the CGT cost base of the Avexa Shares exchanged for those New Progen Shares. An Avexa Shareholder will be required to allocate their CGT cost base previously held in the Avexa Shares over the Progen Shares acquired under the Scheme.

Where an Avexa Shareholder chooses to obtain CGT roll-over relief in respect of the disposal of their Avexa Shares, the acquisition date of the New Progen Shares is taken, for CGT purposes, to be the same date the Avexa Shares for which they were exchanged were originally acquired.

8.4 Stamp Duty

Avexa Shareholders will not be required to pay any stamp duty on the disposal of their Avexa Shares under the Scheme.

8.5 Goods and Services Tax (GST)

GST will not apply to the transfer of the Avexa Shares under the Scheme.

8.6 General tax reform

This section is based on current taxation law as at the date of this Scheme Booklet. The tax law is frequently being changed, both prospectively and retrospectively. A number of key tax reform measures have been implemented, a number of other key reforms have been deferred and the status of some key reforms remains unclear at this stage.

Avexa's tax advisors are unable to give any guarantee that the above interpretation will ultimately be sustained in the event of challenge by the Australian Commissioner of Taxation.

9. Additional Information

This section sets out the additional information required by section 412(1) of the Corporations Act and Part 3 of Schedule 8 of the Corporations Regulations, as well as additional information that may be of interest to Shareholders.

9.1 Dealings in Shares and New Progen Shares

To enable the Scheme to be implemented, Avexa will apply to ASX for suspension of trading in its Shares as from the close of trading on the Effective Date. Shares will not be able to be traded beyond the close of trading on the Effective Date.

For the purposes of implementing the Scheme, Avexa will, between the Effective Date and the Record Date, determine who are the Shareholders as at the Record Date, and those Shareholders will be entitled to receive the Scheme Consideration. Any dealing in Shares received by the Share Registry before the Record Date will be recognised, but no dealing in Shares (whenever effected) will be recognised if received by the Share Registry after the Record Date.

New Progen Shares are expected to trade on a deferred settlement basis on the Business Day after the Effective Date (which is expected to be 31 March 2009). It is the responsibility of each New Progen Shareholder to confirm their holding before trading in New Progen Shares to avoid the risk of selling shares they do not own. New Progen Shareholders who sell New Progen Shares before they receive their holding statement or confirm their uncertificated holdings of New Progen Shares do so at their own risk. Avexa, Progen and the Share Registry disclaim all liability (to the maximum extent permitted by law) to persons who trade New Progen Shares before receiving their holding statements, whether or not on the basis of confirmation of the allocation provided by Avexa, Progen or the Share Registry.

Normal trading of New Progen Shares is expected after dispatch of holding statements (which is currently expected to be 17 April 2009).

9.2 Removal of Avexa from the Official List

Following implementation of the Scheme, Avexa will become a wholly-owned Subsidiary of the Merged Entity, and an application will be made to ASX for removal of Avexa from the official list of ASX.

9.3 No relevant restrictions in the constitution of Avexa

There are no restrictions on the right to transfer Shares in Avexa's constitution.

9.4 Effect on Avexa creditors

Avexa has paid and is paying all its creditors within normal terms of trade. It is solvent and is trading in an ordinary commercial manner. The Scheme will not adversely affect the interests of Avexa's creditors.

9.5 Relevant Interests of Avexa Directors in Avexa and Progen

(a) Relevant Interests of Avexa Directors in Avexa securities

As at the date of this Scheme Booklet, the Relevant Interest of each Avexa Director in Avexa Shares and Avexa Options is as follows:

Director	Number of Avexa Shares	Number of Avexa Options
Mr N Drona	-	-
Dr J Chick	996,657	1,400,000
Dr J Sime	65,000	-
Mr D Bottomley	-	-
Mr A Boyd	-	2,300,000

The effect of the Scheme on those interests is the same as its effect on the like interests of other holders of those securities.

Details of Avexa Options held by Mr A Boyd and Mr J Chick, Avexa Directors, are provided in the following tables.

Number of Options : J Chick	Grant date	Expiry date	Fair value per option	Exercise price	Price of shares on value date	Risk free interest rate	Estimated volatility	Number vested at 31 December 2008
600,000	5 Oct 2005	30 June 2010	\$0.108	\$0.40	\$0.21	5.38%	76.78%	600,000
500,000	5 Oct 2005	30 June 2010	\$0.140	\$0.19	\$0.21	5.38%	76.78%	500,000
300,000	1 Nov 2006	30 June 2011	\$0.1395	\$0.30	\$0.235	5.88%	76.07%	300,000
Total Options 1,400,000								

Number of Options : A Boyd	Grant date	Expiry date	Fair value per option	Exercise price	Price of shares on value date	Risk free interest rate	Estimated volatility	Number vested at 31 December 2008
800,000	25 May 2007	30 April 2012	\$0.2387	\$0.63	\$0.635	6.16%	30.91%	320,000
1,100,000	10 Sept 2008	30 June 2013	\$0.1504	\$0.31	\$0.275	5.55%	63.70%	-
200,000	10 Sept 2008	30 June 2013	\$0.1140	\$0.54	\$0.275	5.55%	63.70%	-
200,000	10 Sept 2008	30 June 2013	\$0.1047	\$0.62	\$0.275	5.55%	63.70%	-
Total Options 2,300,000								

(b) Relevant Interests of Avexa and its Directors in Progen Shares

As at the date of this Scheme Booklet, neither Avexa, nor any Director of Avexa, has a Relevant Interest in Progen Shares.

(c) Relevant Interests of Progen and its directors in Avexa

As at the date of this Scheme Booklet neither Progen, nor any director of Progen, has a Relevant Interest in Avexa Shares.

9.6 Payments or other benefits to Avexa Directors, secretary or executive officers

Progen and Avexa have agreed that the current CEO of Avexa, Dr Julian Chick, will be entitled to a bonus payment and bonus issue of shares in the Merged Entity in certain circumstances (the "CEO Payment").

In summary, the arrangements are as follows:

- (a) The Merged Entity will pay an amount of \$250,000 to Dr Chick on 30 June 2009 provided that:
 - (i) Dr Chick is employed by the Merged Entity (or a related entity of the Merged Entity) at that date; and
 - (ii) there are no negative results from the data for the week 16 testing of the ATC development program such that the Board of Avexa resolves not to continue the development program for ATC.

- (b) The Merged Entity will issue 500,000 shares in the Merged Entity²⁴ to Dr Chick on the following basis:
 - (i) the issue of such shares will be subject to obtaining shareholder approval to that issue at a resolution to be put to Merged Entity shareholders at its Annual General Meeting to be held in 2009;
 - (ii) 250,000 shares will be held in escrow for 6 months (such period commencing on the Implementation Date) and released to Dr Chick free from any encumbrance if he is still employed by the Merged Entity on that date;
 - (iii) 250,000 shares to be held in escrow for 12 months (such period commencing on the Implementation Date) and released to Dr Chick free from any encumbrance if he is still employed by the Merged Entity at that date; and
 - (iv) in the event that shareholder approval to this issue of shares is not obtained, Dr Chick will be paid as soon as practicable after the relevant Annual General Meeting an amount of \$675,000.
- (c) In the event that the employment of Dr Chick is terminated at any time prior to 30 June 2009, he will be entitled to the \$250,000 referred to in paragraph (a) above, regardless of the satisfaction or otherwise of any conditions set out in that paragraph.

9.7 Agreements or arrangements with Directors

Except as described in section 9.6 above or elsewhere in this Scheme Booklet, there is no other agreement, arrangement, payment or other benefit that is proposed to be made or given to any Director, secretary or executive officer of Avexa (or any of its Related Bodies Corporate) in connection with the Scheme:

- (a) as compensation for the loss of, or as consideration for or in connection with the retirement from the office of, or the forfeiture of existing benefits by, any such person;
- (b) to induce them to become or qualify as Director of Avexa or Progen; or
- (c) for services provided by that person in connection with the formation or promotion of Avexa or the issue of New Progen Shares under the Scheme,

9.8 Directors' interests in contracts entered into by Progen

No Director has any interest in any contract entered into by Progen or any of its Related Bodies Corporate, other than the interests set out elsewhere in this Scheme Booklet.

9.9 Interests of Directors in the Scheme

No Director has any interest in the Scheme, other than the interests set out elsewhere in this Scheme Booklet.

9.10 Deeds of Cancellation

The intention of the Directors of Avexa is, to the extent possible, to enter into deeds of cancellation with the holders of Options prior to the Implementation Date. It is intended that any Options outstanding after the Scheme is implemented will be subject to compulsory acquisition or cancellation procedures under the Corporations Act (if available).

In relation to Employee Optionholders, the intention of the Directors of Avexa is to offer Employee Optionholders a number of new options to subscribe for shares in the Merged Entity so that the assessed total market value of the new options is equal to the assessed total market value of their current Avexa Options (as valued under the Black Scholes option valuation model).

In relation to Shire, the intention of the Directors of Avexa is to enter into a cancellation deed with Shire in which Shire is granted new options to acquire shares in the Merged Entity in a manner consistent with the Merger ratio (being one Progen Share for every 12.857 Avexa Shares), as

²⁴ The number of shares to be issued to Dr Chick will be adjusted in accordance with the same ratio applying to any consolidation or subdivision of the shares in the Merged Entity which occurs before the date of issue of those shares.

consideration for the cancellation of its existing Avexa Options. The exercise price of each Merged Entity option granted to Shire will be similarly adjusted in a manner consistent with the Merger ratio.

If any Avexa Options are still on issue after the Implementation Date, it is proposed that Avexa will compulsorily acquire those Options if entitled under, and in accordance with, the Corporations Act.

9.11 ASIC and ASX relief

Avexa has applied to ASX for a waiver of Listing Rule 6.23.2 to permit the cancellation of Options for consideration (as proposed under the Deeds of Cancellation and as disclosed in this Scheme Booklet in sections 3.8 and 9.10) without obtaining the approval of Avexa Shareholders. The waiver will be conditional upon the Scheme being approved by Avexa Shareholders and the Court.

9.12 Material changes in the financial position of Avexa

To the knowledge of the Directors, and except as disclosed elsewhere in this Scheme Booklet, the financial position of Avexa has not materially changed since 30 June 2008 other than as disclosed to ASX. Further information on Avexa ASX announcements is contained in Annexure F.

9.13 Consents

Consent to be named

The following persons have given and have not, before the time of registration of this Scheme Booklet by ASIC, withdrawn their written consent to be named in this Scheme Booklet in the form and context in which they are named:

- Mallesons Stephen Jaques as legal advisor to Avexa;
- Gresham Advisory Partners Limited as financial adviser to Avexa;
- Lonergan Edwards & Associates Limited as Independent Expert engaged by Avexa;
- Deloitte Touche Tohmatsu as Investigating Accountant engaged by Avexa;
- KPMG as tax advisor to Avexa;
- Computershare Investor Services Pty Limited as the Avexa Share Registry; and
- Progen.

Consent to the inclusion of statements

Lonergan Edwards has also given and has not, before the time of registration of this Scheme Booklet by ASIC, withdrawn its written consent to the inclusion of its Independent Expert's Report in this Scheme Booklet in the form and context in which it is included and to all references in this Scheme Booklet to that report in the form and context in which they appear.

Deloitte Touche Tohmatsu has given and has not, before the time of registration of this Scheme Booklet by ASIC, withdrawn its written consent to the inclusion of its Investigating Accountants' Report in this Scheme Booklet in the form and context in which it is included and to all references in this Scheme Booklet to that report in the form and context in which they appear.

KPMG has given and has not, before the time of registration of this Scheme Booklet by ASIC, withdrawn its written consent to the inclusion in this Scheme Booklet of references (implied and express) to its taxation advice in section 8 of the Scheme Booklet entitled "Australian taxation implications for Shareholders" in the form and context in which it is included and to all references in this Scheme Booklet to that advice in the form and context in which they appear.

Progen has given and has not, before the time of registration of this Scheme Booklet by ASIC, withdrawn its written consent to the inclusion in this Scheme Booklet of the Progen Information in the form and context in which it is included and to all references in this Scheme Booklet to that information in the form and context in which they appear.

9.14 Disclaimers

Each person referred to in section 9.13 of this Scheme Booklet:

- does not make, or purport to make, any statement in this Scheme Booklet other than those statements made in the capacity and to the extent the person has provided its consent, as referred to above; and
- to the maximum extent permitted by law, expressly disclaims all liability in respect of, and takes no responsibility for, any part of this Scheme Booklet other than a reference to its name and any statement made by it and included in this Scheme Booklet, with that person's consent.

9.15 Fees

Each of the persons named in section 9.13 of this Scheme Booklet (except Progen) as performing a function in a professional, advisory or other capacity in connection with the preparation or distribution of this Scheme Booklet will be entitled to receive professional fees charged in accordance with their normal basis of charging.

9.16 Other information material to the making of a decision in relation to the Scheme

The Directors believe that there is no information material to the making of a decision in relation to the Scheme, or a decision by a Shareholder whether or not to agree to the Scheme (being information that is within the knowledge of any Director or of a related company) that has not previously been disclosed to Shareholders, other than as set out in this Scheme Booklet and the Annexures.

9.17 Copy of Avexa's Share Register

Under section 173(1) of the Corporations Act, any Shareholder has a right to inspect and to ask for a copy of the Share Register, which contains details of the name and address of each Shareholder and other details regarding the terms of the Shares. A copy of the Share Register will be made available to any Shareholder on payment of the prescribed fee (if applicable) under the Corporations Act.

9.18 Rights and liabilities attaching the New Progen Shares

(a) Voting

At meetings of shareholders, every Progen shareholder present in person or by proxy, attorney or representative has one vote on a vote taken by a show of hands, and on a poll has one vote for every fully paid share held by him or her, and a proportionate vote for every partly paid share.

A poll may be demanded by the chairperson of the meeting, by any five shareholders present in person or by proxy, attorney or representative or by any one or more shareholders who are together entitled to not less than 5% of the votes that may be cast on the resolution on a poll.

(b) Dividends

Dividends are payable out of Progen's profits and are declared or determined to be payable by the directors of Progen.

(c) Transfer of Progen shares

A Progen shareholder may transfer all or any of its shares by:

- (i) in the case of an ASTC-regulated transfer, in any manner required or permitted by the ASX Listing Rules or ASTC Settlement Rules; and
- (ii) by instrument in writing in any usual or common form or in any other form that the Progen directors approve.

The directors of Progen may decline to register any transfer where permitted to do so by the ASX Listing Rules and must decline to register a transfer of:

- (iii) shares where required by the ASX Listing Rules; or

- (iv) restricted securities which may be in breach of the ASX Listing Rules or any escrow arrangement entered into by Progen.
- (d) **Issue of further Progen shares or other securities**
- The directors of Progen may allot, grant options for, or otherwise dispose of shares in Progen and decide the terms on which shares are issued or options are granted, and the rights and restrictions attached to those shares or options.
- Subject to the ASX Listing Rules, the directors of Progen may not, without the prior approval of a resolution of Progen in general meeting (including annual general meeting), allot any shares to any person where the allotment would have the effect of transferring controlling interest in Progen (subject to exceptions).
- Subject to the Corporations Act and the ASX Listing Rules, Progen may issue preference shares including preference shares which are, or at Progen's option are liable to be redeemed.
- (e) **Winding up**
- Subject to the rights of holders of shares, a liquidator of Progen may, with the sanction of a special resolution, divide among shareholders, the assets in kind in such proportion as the liquidator may determine.
- (f) **Share buybacks**
- Progen may reduce its capital or otherwise alter its capital including buying back its shares in any manner authorised or permitted by the Corporations Act and the ASX Listing Rules.
- (g) **Variation of class rights**
- Subject to the ASX Listing Rules, the rights attached to the Progen shares may be varied with the consent in writing of shareholders holding three-quarters of the shares or by a special resolution passed at a separate meeting of the holders of the shares in accordance with the Corporations Act.
- The directors of Progen may, subject to the restrictions on allotment of shares imposed by Progen's constitution, the Corporations Act and the ASX Listing Rules, from time to time issue and allot further shares on such terms and conditions as they see fit.
- (h) **Alteration of Progen constitution**
- Progen's constitution can only be amended by a special resolution passed by at least three-quarters of the votes cast by shareholders entitled to vote on the resolution. While Progen is listed, at least 28 days written notice of the special resolution must be given.

9.19 Supplementary information

If, between the date of lodgement of this Scheme Booklet for registration by ASIC and the Effective Date, Avexa and Progen become aware that:

- a material statement in this Scheme Booklet is false or misleading;
- there is a material omission from this Scheme Booklet;
- a significant change affecting a matter included in this Scheme Booklet has occurred; or
- a significant new matter has arisen which would have been required to be included in this Scheme Booklet if it had arisen before the date of lodgement of this Scheme Booklet for registration by ASIC,

then Avexa will prepare a supplementary document to this Scheme Booklet.

The form which the supplementary document may take, and whether a copy will be sent to each Shareholder, will depend on the nature and timing of the new or changed circumstances. Any

such supplementary document will be made available on Avexa's website (www.avexa.com.au) and released to ASX (and accordingly available from ASX's website at www.asx.com.au).

9.20 Further information

Further information on Avexa can be found on Avexa's website:

www.avexa.com.au

10. Glossary and Interpretation

10.1 Glossary

The following is a glossary of certain terms used in this Scheme Booklet.

\$ or \$A means Australian dollars.

AIFRS means Australian Equivalents to International Financial Reporting Standards.

Announcement Date means the date on which the Merger Implementation Agreement between Avexa and Progen was executed and announced to ASX, being 22 December 2008.

ASIC means the Australian Securities and Investments Commission.

ASTC means ASX Settlement and Transfer Corporation Pty Limited (ACN 008 504 532).

ASTC Settlement Rules means the operating rules of the settlement facility operated by ASTC, as amended from time to time.

ASX means ASX Limited (ABN 98 008 624 691), or the Australian Securities Exchange, as the context requires.

ASX Listing Rules or **Listing Rules** means the official listing rules of ASX.

ATC means apricitabine, Avexa's lead compound.

Avexa or Company means Avexa Limited (ACN 108 150 750).

Avexa Financial Information means the means the financial information in section 4 of this Scheme Booklet prepared by Avexa and its advisers.

Avexa Information means the information contained in this Scheme Booklet, other than Section 5 and all of the Annexures, prepared and provided by Avexa as referred to in the section entitled 'Important Notices' of this Scheme Booklet.

Avexa Optionholders means holders of the Avexa Options.

Board or **Avexa Board** means the board of directors of Avexa.

Business Day means a day that is not a Saturday, Sunday or public holiday in Melbourne, Australia.

CGT means capital gains tax.

Competing Transaction has the same meaning as under the Merger Implementation Agreement.

Conditions Precedent mean the conditions precedent set out in clause 3 of the Merger Implementation Agreement.

Corporations Act means the Corporations Act 2001 (Cth).

Corporations Regulations means the Corporations Regulations 2001 (Cth).

Court means the Supreme Court of Victoria.

Deed Poll means the document executed by Progen set out in Annexure C.

Defeating Transaction has the same meaning as under the Merger Implementation Agreement.

Deloitte means Deloitte Touche Tohmatsu (ABN 74 490 121 060).

Directors or Avexa Directors means directors of Avexa as at the date of this Scheme Booklet.

Effective when used in relation to a Scheme means the coming into effect, pursuant to section 411(10) of the Corporations Act, of the order of the Court made under sections 411(4)(b) and 411(6) in relation to the Scheme.

Effective Date means the date upon which the Scheme becomes Effective.

Employee Options means Avexa Options issued pursuant to the Avexa Employee Share Option Plan.

Employee Optionholders means holders of Employee Options.

End Date means 30 April 2009.

FDA means the US Food and Drug Administration, an agency within the US Department of Health and Human Services.

Gresham means Gresham Advisory Partners Limited (ABN 88 093 611 413).

GST has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Implementation Date means the day which is three Business Days after the Record Date.

Ineligible Foreign Shareholder means a Scheme Participant whose address as shown in the Share Register as at the Record Date is in a place other than Australia or its external territories or New Zealand, Canada and Indonesia, unless Avexa and Progen each agree otherwise in writing.

Independent Expert or Lonergan Edwards means Lonergan Edwards & Associates Limited (ACN 095 445 560).

Independent Expert's Report means the report prepared by the Independent Expert as set out in Annexure A to this Scheme Booklet.

Investigating Accountant means Deloitte.

Investigating Accountants' Report means the report prepared by the Investigating Accountant as set out in Annexure E to this Scheme Booklet.

Merged Entity means Progen after completion of the Scheme representing the combination of Progen and Avexa (and which will be renamed Avexa Pharmaceuticals Limited²⁵).

Merged Entity Financial Information means the financial information in section 6 of this Scheme Booklet prepared by Avexa and its advisers.

Merger means the proposed merger between Progen and Avexa under the Scheme.

Merger Implementation Agreement or MIA means the Merger Implementation Agreement between Avexa and Progen dated 22 December 2008 (as amended), a copy of which is included in Annexure D.

New Progen Shares means the Progen shares that will be issued under the Scheme as Scheme Consideration.

New Progen Shareholder means a holder of New Progen Shares.

Options or Avexa Options means options over Avexa ordinary shares issued by Avexa.

Progen means Progen Pharmaceuticals Limited (ACN 010 975 612).

Progen Board means the board of directors of Progen.

Progen Financial Information means the financial information in section 5 of this Scheme Booklet prepared by Progen and its advisers.

Progen Information means the information in section 5 of this Scheme Booklet prepared and provided by Progen and its advisers as referred to in the section entitled 'Important Notices' of this Scheme Booklet, and includes the Progen Financial Information and information about Progen in other parts of this Scheme Booklet that is based on the information in section 5.

Progen Share Buyback means the proposed buy back offer by Progen under the Corporations Act to buy back up to \$20 million of Progen Shares at a price of \$1.10 per Progen Share.

Progen Shareholder means a registered holder of Progen Shares.

Progen Shares means fully paid ordinary shares of Progen.

Record Date means 7.00pm on the date that is five Business Days after the Effective Date or any other date agreed with ASX to be the record date to determine entitlements to receive the Scheme Consideration pursuant to the Scheme.

²⁵ Subject to approval by Progen Shareholders.

Relevant Interest has the meaning given to that term in the Corporations Act.

Scheme Booklet means this scheme booklet.

Scheme Consideration means the consideration of one Progen Share for every 12.857 Avexa Shares to be provided by Progen to Shareholders for the transfer of each Share under the terms of the Scheme (and as may be adjusted in accordance with the MIA).

Scheme Meeting means the meeting of Shareholders ordered by the Court under section 411(1) of the Corporations Act, to be convened for the purposes of the Scheme on 20 March 2009 at Leonda by the Yarra, 2 Wallen Road, Hawthorn, Victoria, 3122, Australia.

Scheme of Arrangement or **Scheme** means the proposed scheme of arrangement between Avexa and its Shareholders, as set out in Annexure B, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and approved in writing by Avexa and Progen.

Scheme Participants means the holders of Shares as at the Record Date.

Scheme Shares means Shares on issue as at the Record Date.

Second Court Date means the day on which an application is made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme.

Second Court Hearing means the hearing at which an application is made to the Court, by Avexa, for an order under section 411(4)(b) of the Corporations Act approving the Scheme.

Share Register means the register of Shareholders maintained by the Share Registry.

Share Registry means Computershare Investor Services Pty Limited.

Shareholders or Avexa Shareholders means registered holders of Shares.

Shares or Avexa Shares means fully paid ordinary shares of Avexa.

Shire means Shire Pharmaceuticals Group plc and its Subsidiaries and controlled entities.

Shire Options means Avexa Options held by Shire pursuant to the Share Option Deed entered into between Shire and Avexa dated 17 January 2005.

Subsidiary has the meaning given to it in the Corporations Act.

Superior Proposal has the meaning given to that term in the Merger Implementation Agreement.

10.2 Interpretation

In this Scheme Booklet (other than the Appendices):

- Except as otherwise provided, all words and phrases used in this Scheme Booklet have the meanings (if any) given to them by the Corporations Act.
- Headings are for ease of reference only and will not affect the interpretation of this Scheme Booklet.
- Words importing the singular, where the context requires, include the plural and vice versa and words importing any gender include all genders. A reference to a person includes a reference to a corporation.
- All dates and times are Melbourne, Australia times.
- A reference to a section or Annexure is to a section or Annexure in this Scheme Booklet, unless stated otherwise.

Annexure A - Independent Expert's Report

LONERGAN EDWARDS & ASSOCIATES LIMITED

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28 January 2009

Subject: Proposed merger with Progen Pharmaceuticals Limited

Dear Directors

Introduction

- 1 On 22 December 2008 Avexa Limited (Avexa) and Progen Pharmaceuticals Limited (Progen) announced a merger proposal under which Progen will acquire all the issued shares in Avexa (the Proposal). The proposed transaction, which is subject to a number of conditions (refer paragraph 39), is to be implemented by way of a Scheme of Arrangement between Avexa and its shareholders (the Scheme).
- 2 If the Scheme is approved Avexa shareholders will receive 1 Progen share for every 12.857 Avexa shares¹. Progen will therefore own 100% of the issued shares in Avexa. As part of the Proposal, Progen will also change its name to Avexa Pharmaceuticals Limited.
- 3 Avexa is an Australian Securities Exchange (ASX) listed biotechnology company focused on the research and development of medicines for infectious diseases. Avexa's main focus is on developing its lead compound, apricitabine (ATC), for the treatment of HIV-infected patients who have drug resistant HIV infections. ATC is currently in Phase III trials.
- 4 Progen is an ASX listed biotechnology company focused on the discovery, development and commercialisation of small molecule pharmaceuticals primarily for the treatment of cancer. Following the termination of its Phase III trial for its PI-88 compound, Progen's main assets comprise approximately \$70 million in cash² and a number of early stage compounds aimed at the treatment of cancer.

¹ This ratio may be adjusted under the terms of the MIA depending on the level of liquid assets of Progen.

² Net of trade and other payables. Cash balance is before proposed share buy back of up to \$20 million.

Summary of opinion

Current ATC Valuation

- 5 We have assessed the pre-merger value of ATC at A\$151.4 million to A\$225.8 million prior to taking into account finance risks and the dilution likely to arise in order to raise the additional equity capital required to fund future development costs. This calculation takes no account of any aspect of the Merger, including any injection of funds.

Value of Avexa prior to implementing the Scheme

- 6 After taking into account financing risks and dilution we have assessed the value of 100% of the shares in Avexa prior to implementing the Scheme at 21.0 cents to 41.0 cents per share. This valuation range was calculated as follows:

Value of Avexa on a 100% controlling interest basis		
	Low A\$m	High A\$m
Value of ATC prior to taking into account financing risks and dilution ⁽¹⁾	151.4	225.8
Value attributed to other drug programs	-	3.0
Net cash as at 31 December 2008	20.0	20.0
Value of Avexa prior to impact of financing risks / dilution	171.4	248.8
Cash to be raised ⁽²⁾	70.0	70.0
Value after assumed capital raising	241.4	318.8
Shares on issue post assumed capital raising ⁽³⁾	1,124.7	774.7
Value of 100% of Avexa per share ⁽⁵⁾	\$0.21	\$0.41

Note:

- 1 Refer paragraph 155
2 This assumes no merger with Progen or similar transaction is completed. The funding requirement assumes potential delays in partnering, regulatory approval and achievement in milestones as well as the requirement to fund corporate costs.

- 3 Calculated as follows on the basis that all funding is raised on these terms:

Current shares on issue	424.7	424.7
Impact of dilution:		
Amount raised	70.0	70.0
Assumed issue price ⁽⁴⁾	\$0.10	\$0.20
Shares to be issued	700.0	350.0
Shares on issue post capital raising	1,124.7	774.7

- 4 Being a 65% to 75% discount to theoretical value per share. In our opinion a purchaser of 100% of Avexa would have regard to the underlying value of Avexa shares rather than the listed market price. Consequently, when adjusting for the impact of dilution, in our opinion, such a purchaser would assume that additional capital required was raised at a discount to the underlying value rather than at a discount to the listed market price (which reflects the price of a portfolio interest rather than the underlying value).
- 5 In the money options have been ignored as their impact is not considered material.

- 7 The above range reflects the value of 100% of the equity in Avexa on a controlling interest basis (prior to implementing the Proposal) and implicitly includes a premium for control. Accordingly, the above values exceed the price at which we would expect portfolio interests to trade on the ASX in the absence of a takeover offer or similar proposal.
- 8 If a control premium is excluded (estimated at 30% to 35%³), the resulting portfolio value of Avexa shares is 16 cents to 31 cents per share.
- 9 The valuation of Avexa has been made on the basis of market value as a going concern. We have adopted the probability adjusted discounted cash flow (DCF) method as our principal methodology to determine the value of the ATC drug development program. Under this methodology the value of the ATC drug development program is equal to the probability adjusted net present value of the expected future cash flows. These cash flows are adjusted to reflect the probability of achieving technical success based on empirical studies on the success rates for antiviral and anti-HIV drugs.
- 10 The probability adjusted cash flows have then been discounted back to present value using a discount rate which reflects the uncertainty associated with estimating the future returns from the drug development program.
- 11 While the terms of licensing agreements can vary widely, the composition of licensing payments we adopted for valuation purposes are summarised below:

Licensing arrangements adopted for valuation purposes	
	Range US\$m
Upfront licence fee	25.0
Development milestones:	
FDA approval	25.0 – 50.0
First sales	25.0
Payments to cover future development and commercialisation costs related to ATC	45.0 – 80.0
Total excluding royalties	120.0 – 180.0

³ Based on empirical studies undertaken by LEA on the average premiums for control paid in successful public company takeovers.

Royalty rate on net sales ⁽¹⁾

12.0% – 15.0%

Note:

1 The range for royalty rates based on historical precedents are wide, ranging from 10% to 26% (refer paragraph 125). Management has advised that royalty rates for late stage anti-viral drugs tend to be at the higher end of the range.

- 12 Including payments for future trial costs we have assumed total licensing payments (excluding royalties) of US\$120.0 million to US\$180.0 million. The range adopted is broadly consistent with other licensing deals involving pharmaceutical products.
- 13 After deducting the royalty payable by Avexa on ATC sales to Shire⁴, we have adopted a net royalty rate range of 12% to 15% of sales revenue. The range of royalty rates adopted prior to taking into account the royalty payable to Shire is consistent with empirical evidence on the royalty rates negotiated for other drugs in Phase III trials. However, it is possible that Avexa could enter into an agreement that would deliver a higher royalty rate than the range assumed in this valuation. A higher royalty rate would increase the valuation, all other things being equal.
- 14 Taking into account the possibility of delays in partnering and the receipt of regulatory approvals, factoring in some level of uncertainty associated with the achievement of these milestones and allowing for corporate costs, we have assumed that Avexa will require up to A\$70 million in additional equity capital. This represents 28% to 41% of our theoretical value⁵. Accordingly, in our opinion, Avexa would need to raise the required capital at a large discount to our assessed theoretical value of the company, although this will depend upon the timing of the equity capital raisings and the amount being raised at each time.
- 15 While the above valuation range is wide, this is considered appropriate as the value is very sensitive to the price at which additional equity capital could potentially be raised, the impact of early commercialisation approval (which may or may not be received) and the range of possible licensing arrangements.
- 16 For the purposes of our valuation assessment it should also be noted that:
 - (a) we have used initial marketing pricing estimates for ATC that are consistent with the pricing of other NRTI's, but have ignored potential opportunities for premium pricing given the advantages of ATC over current treatments (HIV drugs typically demand a higher price upon launch if they provide significant additional benefits to patients). Using higher ATC pricing estimates would result in a higher valuation

⁴ The royalty payments to Shire are subject to confidentiality restrictions and cannot be disclosed.

⁵ It should be noted that Avexa had approximately A\$20 million in cash as at 31 December 2008.

calculation

- (b) we have assumed that there is a 75% to 80% probability (based on empirical evidence) of Avexa's ATC drug achieving regulatory approval for marketing. However, Avexa management have advised that they believe the probability of ATC receiving approval is much higher given that every HIV drug that has reached Phase III trials has been ultimately approved in major markets. Accordingly, Avexa considers that the valuation calculations contained in this report are inherently conservative
- (c) Avexa management have stated that they believe the appropriate discount rate for the company should be lower (implying a higher valuation) since ATC is a late stage drug with a high probability of technical success.

- 17 Further, as the 16 week and 24 week Phase III data which are expected to be released in April 2009 and late 2010 respectively are critical technical milestones (with the 24 week data potentially allowing regulatory approvals to be accelerated), successful completion of these milestones are likely to lead to an increase in the value of Avexa shares at that time.

Effective Issue Price

- 18 As set out in Section V we have assessed the value of 100% of Progen shares at \$1.18 to \$1.25 per Progen share.
- 19 Under the Scheme Avexa shareholders will receive one Progen share for every 12.857 Avexa shares⁶.
- 20 Consequently, the effective price at which Progen shareholders are acquiring an interest in Avexa (the Effective Issue Price) is 9.2 cents to 9.7 cents per Avexa share, as calculated below:

Effective Issue Price		
	Low	High
	\$	\$
Value of Progen shares prior to merger	1.18	1.25
Exchange ratio	12.857	12.857
Effective Issue Price per Avexa share ⁽¹⁾	0.092	0.097

Note:

- 1 Being \$1.18 to \$1.25 divided by 12.857.

⁶ This ratio may be adjusted under the terms of the MIA depending on the level of liquid assets of Progen.

Opinion on the Scheme

- 21 Under ASIC Regulatory Guide 111, for the Scheme to be “fair”, the Effective Issue Price must be equal to or exceed the value of the shares in Avexa on a 100% controlling interest basis.
- 22 This comparison is set out below:

	Low Cents	High Cents	Mid- point Cents
Effective Issue Price per share	9.2	9.7	9.45
Value of 100% of Avexa per share ⁽¹⁾	21.0	41.0	31.0
Extent to which Effective Issue Price is less than the value of Avexa on a 100% controlling interest basis	11.8	31.3	21.55

Note:

1 Prior to implementing the Proposal.

- 23 As the Effective Issue Price is not equal to or greater than the value of the Avexa shares the subject of the Scheme, we have formed the view that the Scheme is technically not fair when assessed based on ASIC Regulatory Guide 111.
- 24 However, in light of the reasons summarised below and explained further in this report, we are of the opinion that the Scheme is reasonable and in the best interests of Avexa shareholders in the absence of a superior proposal.
- 25 We have formed this view because:
- (a) Avexa requires additional equity capital in order complete the Phase III trial for ATC. This capital will allow the value of ATC to be realised
 - (b) if the Scheme is implemented the Merged Entity is expected to have approximately \$60 million in cash in early April 2009⁷ which will be sufficient to enable the Merged Entity to complete the critical week 24 Phase III trial for ATC, expected late 2010 and also fund other selected Merged Entity programs up until this time. Following the completion of this milestone for ATC, there is a prospect based on precedents that ATC may be able to file a successful new drug application for marketing in some jurisdictions.

⁷ Approximately \$50 million in cash from Progen assuming the buy-back is fully subscribed and \$10m in cash from Avexa.

- (c) in our opinion, one of the key factors contributing to the size of the discount at which Avexa shares have been trading compared to our assessed value is Avexa's perceived need to raise significant additional equity capital. Implementation of the Scheme is expected to remove the need for an equity capital raising in the short term and is therefore likely to result in the Merged Entity's shares being re-rated, given that it would now be able to proceed to the significant week 24 data point milestone without the need for further equity capital. The attainment of this milestone would significantly improve the prospects of commercial success and completion of a partnering agreement
- (d) whilst the effective price at which Progen shareholders are acquiring an interest in Avexa⁸ (the Effective Issue Price) of 9.2 cents to 9.7 cents per Avexa share represents a discount of 39.4% to 70.3% based on our assessed portfolio value of Avexa shares of 16 cents to 31 cents per share (and is therefore dilutionary to existing Avexa shareholders) it represents a discount of only 5.8% to 10.7% to the VWAP of Avexa shares over the one month period prior to the announcement of the Scheme (discounts for recent comparably sized capital raisings by other listed entities have been significantly higher)
- (e) if Avexa was to undertake a \$50 million capital raising⁹ rather than implement the Scheme, in our opinion, the price at which it could do so would be significantly below the Effective Issue Price of 9.2 cents to 9.7 cents per Avexa share
- (f) in our opinion, such a capital raising (if undertaken) is likely to be more dilutionary to Avexa shareholders than the Scheme. This is because, in our opinion, Avexa is likely to be able to raise \$50 million in the absence of the Scheme only if the capital raising includes a large placement component to investors other than existing shareholders
- (g) as sources of equity capital for biotechnology companies are limited given current market conditions, if the Scheme is not implemented there is a significant risk that Avexa will not be able to raise the \$50 million being raised under the Scheme in the short-term (which may prevent Avexa being able to complete the critical week 24 Phase III trial for ATC on a timely basis), and may have to consider other alternatives such as raising a smaller amount of equity capital, scaling back programs or entering into partnering arrangements on potentially disadvantageous and sub-optimal terms

⁸ While the merger is to be implemented by Progen acquiring all the shares in Avexa, Progen's main contribution to the merged entity is cash. Accordingly, in our opinion, the Scheme should be viewed by Avexa shareholders from a commercial perspective as a capital raising.

⁹ Being the approximate cash holding to be contributed by Progen to the merged entity. This differs from the \$70 million in capital we have assumed (for the reasons set out in paragraphs 155 to 164) for valuation purposes that Avexa will need to raise. As noted in paragraph 164(e) we have assumed the amount of \$70 million would be raised over time to coincide with key milestones.

- (h) as the 24 week Phase III data is a critical technical milestone (which may allow regulatory approvals to be fast-tracked), successful completion of this milestone is likely to lead to a further increase in the value of Avexa shares (assuming similar stock market conditions)
 - (i) the increased size of the Merged Entity is also likely to improve the liquidity of the company's shares and their attractiveness to institutional investors in the sector
 - (j) in our opinion, the Merged Entity's share price, expressed in Avexa terms, should trade at a higher price than Avexa's share price prior to the announcement of the Scheme for the reasons outline above
 - (k) Accordingly, in our opinion, the advantages of the Scheme outweigh the disadvantages from the perspective of Avexa shareholders.
- 26 However, it is noted that as the Effective Issue Price is not equal to or greater than the value of the Avexa shares the subject of the Scheme, we have formed the view that the Scheme is technically not fair when assessed based on ASIC Regulatory Guide 111. However, in light of the reasons summarised above and explained further in this report, we are of the opinion that the Scheme is reasonable and in the best interests of Avexa shareholders in the absence of a superior proposal. In concluding that the Scheme is not fair but reasonable, we consider that there are sufficient reasons for Avexa shareholders to vote in favour of the Scheme in the absence of a superior proposal.
- 27 We therefore recommend that Avexa shareholders approve the Scheme in the absence of a superior proposal.

Purpose of report

- 28 There is no regulatory requirement for Avexa to commission an independent expert's report (IER) in relation to the Scheme. However, the Scheme is conditional upon, amongst other things, an independent expert concluding that the Scheme is in the best interests of Avexa shareholders. Accordingly, the directors of Avexa have requested that Lonergan Edwards & Associates Limited (LEA) prepare an IER setting out whether, in LEA's opinion, the Scheme is in the best interests of Avexa shareholders.
- 29 Our report will accompany the Scheme Booklet to be sent by Avexa to its shareholders.
- 30 LEA is independent of Avexa and Progen and has no interest in the Scheme other than the preparation of this report.

General

- 31 The impact of approving the Scheme on the tax position of Avexa shareholders depends on the individual circumstances of each investor. Avexa shareholders should read the taxation advice set out in the Scheme Booklet and consult their own professional advisers if in doubt as to the taxation consequences of the Scheme.
- 32 The ultimate decision whether to approve the Scheme should be based on each Avexa shareholder's assessment of their own circumstances. If Avexa shareholders are in doubt about the action they should take in relation to the Scheme or matters dealt with in this report, shareholders should seek independent professional advice. For our full opinion on the Scheme and the reasoning behind our opinion, we recommend that Avexa shareholders read the remainder of our report.

Yours faithfully



Craig Edwards
Authorised Representative



Martin Holt
Authorised Representative

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I Key terms of the Scheme

Terms

- 33 On 22 December 2008 Avexa and Progen announced a merger proposal under which Progen will acquire all the issued shares in Avexa (the Proposal). The proposed transaction is to be implemented by way of a Scheme of Arrangement between Avexa and its shareholders (the Scheme).
- 34 Prior to the merger Progen will return up to \$20 million in cash to its shareholders through a share buy-back at \$1.10 per share (the Buy-Back).
- 35 If the Scheme is approved, Avexa shareholders will receive 1 Progen share for every 12.857 Avexa shares¹⁰. Progen will therefore own 100% of the issued shares in Avexa.
- 36 Assuming the Buy-Back is fully subscribed the merged entity will be owned approximately 56% by Progen shareholders and 44% by Avexa shareholders. Progen will also change its name to Avexa Pharmaceuticals Limited.
- 37 The Proposal is subject to a number of conditions including regulatory approvals, court approvals, Avexa and Progen shareholder approvals and other conditions as set out in the MIA. The Proposal is unanimously recommended by the Boards of both Avexa and Progen, subject to no superior proposals being tabled and an independent expert concluding that the transaction is in the best interests of Avexa shareholders. The MIA includes a commitment by each party not to solicit alternative transactions to the merger. Each party has agreed to pay a break fee of A\$500,000 under certain circumstances.
- 38 Under the Corporations Act, the Scheme is approved by shareholders if a resolution in favour of the Proposal is passed by a majority of shareholders present and voting at the Scheme meeting, and by 75% of the votes cast on the resolution.

¹⁰ This ratio may be adjusted under the terms of the MIA depending on the level of liquid assets of Progen.

Conditions

39 The Scheme is subject to the satisfaction of a number of conditions, including the following which are outlined in the MIA between the parties dated 22 December 2008:

- (a) various regulatory approvals being obtained before 8.00am on the Second Court Date¹¹
- (b) Avexa shareholders approve the Scheme by the requisite majorities in accordance with the Corporations Act
- (c) Progen's shareholders approve the proposed transaction by ordinary resolution at the Progen General Meeting
- (d) before 8.00am on the Second Court Date, Progen has received irrevocable resignations from each of the Progen Outgoing Directors, and the Progen Board has resolved to accept those resignations, both conditional only on Scheme Implementation occurring
- (e) before 8.00am on the Second Court Date, Progen has received irrevocable consents to act from each of the Avexa Incoming Directors, and the Progen Board has resolved to accept the Avexa Incoming Directors to the Progen Board, both conditional only on Scheme Implementation occurring
- (f) the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act
- (g) ASX has not indicated to either party that it will not approve for official quotation the shares which are to be issued to Avexa shareholders under the Scheme
- (h) the independent expert issues a report which concludes that the Scheme is in the best interests of Avexa shareholders before the date on which the Scheme Booklet is lodged with the Australian Securities & Investments Commission (ASIC)
- (i) between the date of the MIA and 8.00am on the Second Court Date:
 - (i) no Prescribed Event in respect of Progen occurs or becomes apparent; and

¹¹ Expected to be early April 2009.

- (ii) no Prescribed Event in respect of Avexa occurs or becomes apparent
- (j) the representations and warranties of Avexa under the MIA are true and correct in all material respects on the date of the MIA and as at 8.00am on the Second Court Date
- (k) the representations and warranties of Progen under this agreement are true and correct in all material respects on the date of the MIA and as at 8.00am on the Second Court Date
- (l) between the date of the MIA and the date of sending the Scheme Booklet to Avexa shareholders, Progen signs and delivers the Deed Poll; and
- (m) prior to 8.00am on the Second Court Date, no person exercises or purports to exercise, or states an intention to exercise, any rights under any provision of any agreement or other instrument (other than an agreement or instrument the material terms of which were disclosed to Progen in the Avexa Data Room) to which Avexa or any subsidiary of Avexa is a party, or by or to which Avexa or any subsidiary of Avexa or any of its assets may be bound or be subject, which results, or could result, to an extent which is material in the context of Avexa and its subsidiaries taken as a whole, in:
 - (i) any monies borrowed by Avexa or any subsidiary of Avexa being or becoming payable or being capable of being declared repayable immediately or earlier than the repayment date stated in such agreement or other instrument
 - (ii) any such agreement or other instrument being terminated or modified or any action being taken or arising thereunder
 - (iii) the interest of Avexa or any subsidiary of Avexa in any firm, joint venture, trust, corporation or other entity or asset (or any arrangements relating to such interest) being terminated or modified; or
 - (iv) the business of Avexa or any subsidiary of Avexa with any other person being adversely affected,

as a result of the acquisition of Avexa shares by Progen.

40 It should be noted that the above is only a summary of the conditions. The conditions are set out in full in the Scheme booklet and MIA.

Resolutions

- 41 Avexa shareholders will be asked to vote on the Scheme in accordance with the resolutions contained in the Notice of Scheme Meeting accompanying the Scheme Booklet.
- 42 If the resolution is passed by the requisite majority, Avexa must apply to the Court for orders approving the Scheme, and if that approval is given, lodge the orders with the Australian Securities & Investments Commission (ASIC) and do all things necessary to give effect to the Scheme.

II Scope of our report

Purpose

- 43 The Scheme is subject to the Corporations Act and has to be effected pursuant to section 411 of the Corporations Act, which governs schemes of arrangement. Parts 2 and 3 of Schedule 8 of the Corporations Regulations 2001 (Corporations Regulations) prescribe information to be sent to shareholders and creditors in relation to members' and creditors' schemes of arrangement pursuant to section 411 of the Corporations Act.
- 44 Part 3 of Schedule 8 of the Corporations Regulations requires an IER in relation to a members' scheme to be prepared when a party to that scheme has a prescribed shareholding in the company subject to the scheme, or where any of its directors are also directors of the company subject to the scheme. In those circumstances, the IER must state whether a scheme is in the best interests of shareholders and state reasons for that opinion.
- 45 Progen does not hold any shares in Avexa and there are no common directors. Accordingly, there is no regulatory requirement for an IER to be prepared for Avexa shareholders pursuant to section 411 of the Corporations Act. We understand that there is no other regulatory requirement for an IER to be prepared.
- 46 However, as the Scheme is conditional upon, amongst other things, an independent expert concluding that the Scheme is in the best interests of Avexa shareholders, the directors of Avexa have requested that LEA prepare an IER stating whether the Scheme is in the best interests of Avexa shareholders and the reasons for that opinion.
- 47 This report has been prepared by LEA for the benefit of Avexa shareholders to assist them in considering the resolutions to approve the Scheme. Our report will accompany the Notice of Scheme Meeting and Scheme Booklet to be sent to Avexa shareholders. The sole purpose of our report is to determine whether, in our opinion, the Scheme is in the best interests of Avexa shareholders.
- 48 The ultimate decision whether to approve the Scheme should be based on each Avexa shareholder's assessment of their own circumstances. If in doubt about the Scheme or matters dealt with in this report, shareholders should seek independent professional advice.

Basis of assessment

- 49 There is no legal definition of the expression "in the best interests". However, ASIC Regulatory Guide 111 states that a Scheme may be "*in the best interests of the members of the company*" if there are sufficient reasons for security holders to vote in favour of the Scheme in the absence of a better alternative. Should there be a paragraph considering the interplay of fairness and reasonableness
- 50 Consequently, in our opinion, it is appropriate to consider the advantages and disadvantages of the Scheme and conclude whether, on balance, the advantages outweigh the disadvantages from the perspective of Avexa shareholders.
- 51 Pursuant to Regulatory Guide 111 we have also considered whether the Scheme is fair and reasonable to Avexa shareholders. Under Regulatory Guide 111 the Scheme is fair if the effective issue price of the shares being issued to Progen shareholders is equal to or greater than the controlling interest value of 100% of the shares in Avexa prior to implementing the Scheme. The Scheme is reasonable if it is fair or if there are sufficient reasons for security holders to vote in favour of the Scheme in the absence of a better alternative.
- 52 The following matters, inter alia, have been considered when determining whether the Scheme is in the best interests of Avexa shareholders:
- (a) the value of 100% of the shares in Avexa, taking into account the financing risks and potential future dilution
 - (b) the value of Progen shares after implementing the off-market buy-back
 - (c) the relative value contribution by each of Avexa and Progen to the merged entity
 - (d) the capital raising alternatives to the Scheme considered by Avexa
 - (e) the discount to the market price at which recent capital raisings by ASX listed companies have taken place
 - (f) the likely share price at which Avexa could raise the equity capital required to complete the week 24 Phase III trials in the absence of the Scheme, given the recent price of Avexa's shares and current market conditions
 - (g) the impact of the Scheme on the listed market price of Avexa shares (and those of the merged entity)
 - (h) other advantages and disadvantages of the Scheme.

Limitations and reliance on information

- 53 Our opinions are based on the economic, market and other conditions prevailing at the date of this report. Such conditions can change significantly over relatively short periods and are particularly volatile at the present time.
- 54 Our report is also based upon financial and other information provided by Avexa and Progen. We have considered and relied upon this information and believe that the information provided is reliable, complete and not misleading and we have no reason to believe that material facts have been withheld. The information provided was evaluated through analysis, enquiry and review for the purpose of forming an opinion on the Proposal from the perspective of Avexa shareholders. However, in assignments such as this, time is limited and we do not warrant that our enquiries have identified or verified all of the matters which an audit, extensive examination or "due diligence" investigation might disclose. None of these additional tasks have been undertaken.
- 55 We understand the accounting and other financial information that was provided to us has been prepared in accordance with the Australian equivalent to International Financial Reporting Standards (AIFRS).
- 56 An important part of the information base used in forming an opinion of the kind expressed in this report are the opinions and judgement of management of the relevant companies. This type of information has also been evaluated through analysis, enquiry and review to the extent practical. However, it must be recognised that such information is not always capable of external verification or validation.
- 57 We in no way guarantee the achievability of budgets or forecasts of future profits. Budgets and forecasts are inherently uncertain. They are predictions by management of future events which cannot be assured and are necessarily based on assumptions of future events, many of which are beyond the control of management. Actual results may vary significantly from forecasts and budgets with consequential valuation impacts.
- 58 In forming our opinion, we have also assumed that:
- (a) the information set out in the Scheme Booklet is complete, accurate and fairly presented in all material respects
 - (b) if the Scheme becomes legally effective, it will be implemented in accordance with the terms set out in this report.

III Profile of Avexa

Avexa

- 59 Avexa is an ASX listed biotechnology company focused on the research and development of medicines for infectious diseases. Avexa's main focus is on developing its lead compound, apricitabine (ATC), an anti-HIV nucleoside reverse transcriptase inhibitor (NRTI) which is currently in Phase III trials. The company also has three other drug development programs at an early stage of development.

Apricitabine

- 60 Apricitabine (ATC) is a new antiretroviral drug in development for the treatment of HIV-infected patients who have drug-resistant HIV infections and whose current treatments are no longer effective as a result. ATC is a cytidine analogue belonging to the class of drugs known as NRTIs (nucleoside reverse transcriptase inhibitors). These drugs inhibit the HIV reverse transcriptase (RT) and therefore stop replication of the viral genome.
- 61 The particular advantage of ATC is that it retains activity against strains of virus which have developed resistance to the commonly used drugs. These resistant viruses have mutations in the HIV RT such as the M184V mutation, thymidine analogue mutations (TAMs) and other nucleoside analogue mutations (NAMs) which make many of the currently used drugs ineffective.
- 62 In addition to its activity against resistant HIV, ATC has also been shown to be very safe and well tolerated in clinical studies, in contrast to some currently used therapies which produce unpleasant and sometimes dangerous side effects.
- 63 ATC is also very easy to dose: it is an oral formulation that can be taken with or without food, and can be taken with other HIV drugs or other medications without concerns over possible drug interactions. This is a further advantage of ATC, as some other HIV drugs have restrictions as to which other drugs can be taken at the same time, which creates difficulties for the clinical management of patients.

Phase II results

- 64 Data from 48 weeks of treatment with ATC in the Phase IIb trial were reported in March 2008. The analysis showed that the activity and safety of ATC was maintained, and in fact continued to improve, up to 48 weeks of therapy in these patients, who were resistant to currently used drugs. No evidence of patients developing resistance to ATC itself was seen. Patients who initially received the competitor drug lamivudine for the first 24 weeks, but then switched to ATC, showed particular improvements after switching to ATC.

- 65 Furthermore, no patients withdrew because of side effects related to ATC, and there were no serious side effects that were related to treatment with ATC. These encouraging results indicate that patients may be able to continue to take ATC long term without any loss of activity or diminished safety or tolerability. This is important, since patients must continue to take their HIV medication over the course of their lives.

Phase III trial

- 66 Following successful discussions with both the US (FDA) and European (EMA) regulatory authorities a Phase III trial (AVX-301) for ATC was initiated in January 2008.
- 67 Importantly, all HIV drugs which have reached this stage of development have gone on to be marketed and commercialised¹².
- 68 The Phase III program has two studies, the first of which will have two doses of ATC initially and then drop a dose in week 16. The second study will have a single dose of ATC and is proposed to commence following the week 24 data point milestone of the first study, but could start earlier subject to partnering. Both trials will compare ATC to either lamivudine (3TC) or emtricitabine (FTC) with a week 24 primary endpoint. The studies will be investigating activity in resistant patients (similar to the Phase IIb week 48 trial population). The studies will also take into consideration the recent introduction of several new HIV agents, such as Merck's Isentress® and protease and non-nucleoside reverse transcriptase inhibitors from Tibotec. It is expected that approximately 900 patients will be required for each study.
- 69 Regulatory authorities in the US have agreed to review the ATC data after 24 weeks of dosing. In this regard, the Company notes that there are precedents in which regulatory authorities have permitted a limited market approval for a new drug with positive Phase IIb and Phase III week 24 data (under this situation, further data from continuing studies must be released to the regulatory authorities as they become available). Accordingly, if ATC's week 24 data is positive, a market launch may be permitted in late 2011. The current Phase III study has been designed to explore both an 800mg and 1200mg dose. The company expects that the 800mg dose will be adopted for Phase III studies. Avexa has a collaborative dialogue with the FDA and has received clear guidance to examine the high dose (1200 mg) for safety reasons and to confirm optimal dosing.

¹² Source: Avexa 2008 Annual Report.

Key milestone timeline

- 70 The timeline for key ATC trial milestones is shown in the table below

Upcoming Milestones	
1Q2009	Phase IIb extension study – 96 week interim analysis
2Q2009	Phase III – Week 16 data point
4Q2009	Phase IIb extension study – Week 144 Final analysis
2Q2010	Complete enrolment of Phase III Study
4Q2010	Phase III – Week 24 data available

- 71 For biotechnology companies, value is created progressively through achievement of milestone events. In addition, the prospects of entering into a partnership agreement with a large pharmaceutical company for the continued development and commercialisation of ATC on more favourable terms is, in general, increased as these milestones are achieved.

Manufacturing agreement

- 72 Avexa has a manufacturing agreement with Groupe Novasep. The agreement covers the continued production, process optimisation, and further scale-up of the active pharmaceutical ingredient (API) of ATC based upon the Varicol continuous chromatography system for use in Phase III clinical trials and in preparation for the commercial launch of the product.

Intellectual property protection

- 73 Apricitabine has strong intellectual property protection, with claims in six families of patents filed extensively in all the major jurisdictions as well as significant emerging markets.
- 74 In the EU, patent protection for ATC extends through to 2021 from granted claims to composition of matter until November 2011 and a method of use patent expiring in April 2015. Additionally, formal opinions from European patent attorneys have confirmed that ATC is eligible under EEC council regulation 1768 to receive both the full 5-year supplementary protection extension and also a six month paediatric exclusivity extension, which results in exclusivity through to 2021.
- 75 In the US, ATC is protected through to 2020 based on issued composition of matter claims until December 2013, with 5-year exclusivity extension and six month paediatric extension under 35 USC §156 since the duration between IND filing date and launch is already greater than five years.

- 76 Avexa also has filed patents to protect the ATC manufacturing process globally which provides additional IP protection until 2027.

Potential markets

- 77 There are an estimated 30 million people with HIV worldwide, with approximately 2 million in the United States and Western Europe.
- 78 The intended market for ATC is patients who have shown the M184V resistant strain, often found in patients with resistance to 3TC or FTC¹³. However, ATC has also shown good activity against wild-type HIV, and HIV patients with TAMS and/or K103N (NNRTI) resistance.
- 79 This positions ATC as a second, third and fourth (salvage) line therapy for the ongoing treatment of HIV for patients who are no longer benefiting from the 3TC or FTC treatment regimen. The market potential for this is significant. An estimated 60% of treated patients are in second, third or fourth line therapy as a result of resistance arising to first line treatments.
- 80 As approximately 45% of the HIV population receive treatment¹⁴ the target market in the US and Western Europe is as follows:

	Thousands
Estimated number of patients with HIV	2,000
Proportion receiving treatment	45%
Estimated number of patients receiving treatment	900
Proportion of patients received 2 nd , 3 rd and 4 th line therapy	60%
Target market for ATC in US and Western Europe	540

- 81 Based on initial primary market research with leading US HIV clinicians (using only the week 24 data from the Phase II trials), it was estimated by Avexa management that ATC could take the following market shares:

	%
2 nd line	20
3 rd line	30
4 th line	50

¹³ Around 50% of patients in second, third and fourth line therapy have the M184V mutation.

¹⁴ Based on US statistics.

Other drug programs

HIV Integrase

- 82 Avexa's HIV integrase program targets the HIV integrase enzyme, which is one of the three major enzymes which are required for replication of the virus. Currently, there is only one marketed drug that is targeted against the HIV integrase enzyme and only one HIV integrase inhibitor in Phase III clinical trials¹⁵.
- 83 While at the early "discovery" stage, Avexa's HIV integrase inhibitor programs have identified a number of novel compounds with potent activity against HIV virus resistance to Isentress®, the integrase inhibitor marketed by Merck.

VRI, Antibacterial project

- 84 In the US approximately one in four patients admitted to hospital develop some level of infection. Vancomycin is a drug commonly used to overcome bacterial infections, however the prevalence of vancomycin resistance is increasing. Further, there is currently no satisfactory treatment for vancomycin-resistant infections (VRI).
- 85 While at an early stage, Avexa is synthesizing compounds that target the altered part of the vancomycin-resistant strain of bacteria which gives rise to resistance.

HCV inhibitors

- 86 Avexa has entered into a collaboration with TargetDrug of Shanghai to develop small molecule inhibitors of Hepatitis C Virus (HCV). The current standard treatment of pegylated interferon and ribavirin is ineffective in nearly 50% of HCV infected patients and is accompanied by serious side-effects.
- 87 Avexa has identified unexplored targets known to be essential for successful HCV replication for which there are no candidates in clinical trials. It is hoped that inhibition of these targets will lead to novel antiviral compounds that will not display cross-resistance to candidates currently in clinical studies.

¹⁵ Merck's Isentress and Gilead's elvitegravir respectively.

Financial position

88 Avexa's financial position as at 30 June 2008 is summarised below:

Financial position as at 30 June 2008	
	\$000
Current assets	
Cash assets	43,411
Receivables	353
Other	80
Total current assets	<u>43,844</u>
Non-current assets	
Intangibles	20,013
Property, plant and equipment	926
Total non-current assets	<u>20,939</u>
Total assets	<u>64,783</u>
Current liabilities	
Payables	8,449
Employee benefits	515
Deferred income	-
Total current liabilities	<u>8,964</u>
Non-current liabilities	
Employee benefits	43
Total non-current liabilities	<u>43</u>
Total liabilities	<u>9,007</u>
Net assets	<u>55,776</u>

89 Avexa had cash of approximately A\$20 million as at 31 December 2008¹⁶. However, management estimates that the company requires approximately A\$45m from January 2009 in order to reach the week 24 data milestone as part of the Phase III trial's first study¹⁷. Following the completion of this milestone, there is a prospect, based on precedents, that if the data is positive, market launch in late calendar 2011 may be permitted.

¹⁶ We understand that Avexa has no debt.

¹⁷ Cost estimates are before corporate costs.

Share capital

- 90 As at 15 January 2009 Avexa had 424.675 million shares and 21.39 million options on issue. The options have exercise prices ranging between 19.0 cents and 64.2 cents per share.
- 91 Recent share issues made by Avexa are summarised below:
- (a) in August 2008 Avexa announced the issue of 18.6 million shares to Shire Pharmaceuticals Group plc (Shire) (increasing Shire's shareholding to 11.1%) for US\$5 million as a result of renegotiating a licence agreement for ATC. Based on the AUD:USD exchange rate at the time the effective issue price was approximately 31 cents per share. The restructuring of the license agreement lowered future royalty and other obligations to Shire improving its attractiveness to potential partners / acquirers
 - (b) in March 2007 Avexa announced that it had completed a \$15 million placement to US investors and that it would raise a further \$60 million through a fully underwritten rights issue. Both share issues occurred at 53 cents per share. We understand that the institutional investors involved were sophisticated institutional investors (including domestic and international institutional biotechnology funds).

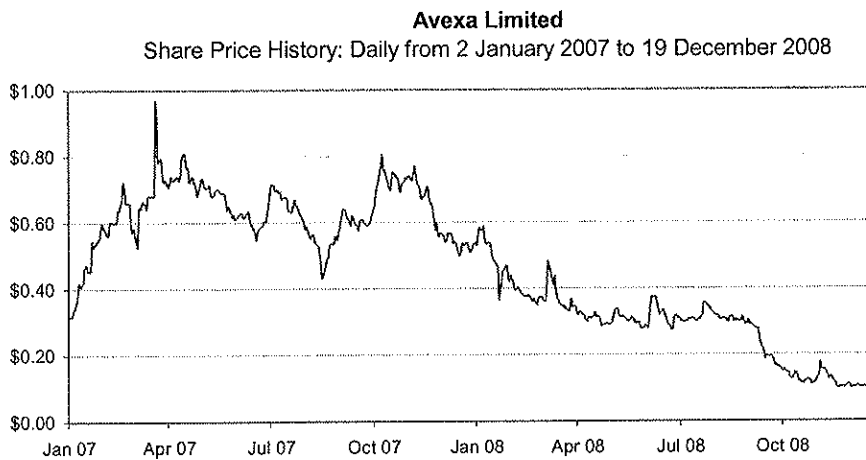
Major shareholders

- 92 As at 15 January 2009 the only substantial shareholder¹⁸ in Avexa was Shire Canada Inc (a wholly owned subsidiary of Shire) which held a relevant interest in Avexa of 11.1%.

Share price performance

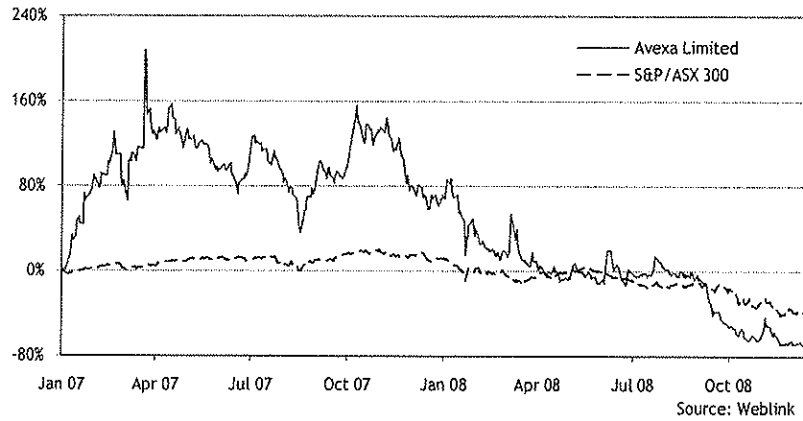
- 93 The following graph shows the price of Avexa shares as traded on the ASX since 2 January 2007 up to 19 December 2008 (being the last trading day prior to the announcement of the Proposal):

¹⁸ Being those shareholders with a relevant interest in Avexa shares of 5% or more.



- 94 A summary of announcements which appear to have impacted on the share price are discussed below:
- (a) 19 March 2007 – announced positive ATC Phase IIb results
 - (b) 21 March 2007 – announced \$75 million capital raising to partially fund the ATC drug program. Avexa shares increased from 68 cents (prior to the announcement) to 97 cents on 21 March 2007, before retreating in subsequent months
 - (c) 4 September 2007 – announcement of positive results from week 24 data from ATC Phase II clinical trials
 - (d) 3 January 2008 – announced initiation of ATC Phase III trials
 - (e) 12 March 2008 – announced positive week 48 data from ATC Phase IIb update clinical trials.
- 95 The following graph illustrates the performance of Avexa's share price relative to the S&P/ASX 300 Index over the same period:

Avexa Limited vs S&P/ASX 300 Index
Common base: 2 January 2007 to 19 December 2008



- 96 The S&P/ASX 300 Index has fallen 36.6% from 2 January 2007 to 19 December 2008, with large falls in December 2007 to January 2008 and from September 2008. Reflecting the risk adverse market conditions the share prices of companies with high debt levels or needing to raise capital have generally fallen more than the levels indicated by share market indices.

IV Valuation of 100% of Avexa prior to implementing Scheme

Methodology

- 97 We have assessed the market value of Avexa by determining the market value of its drug development programs and adding its net cash.
- 98 The valuation of Avexa has been made on the basis of market value as a going concern. We have adopted the probability adjusted discounted cash flow (DCF) method as our principal methodology to determine the value of the ATC drug development program. Under this methodology the value of the ATC drug development program is equal to the probability adjusted net present value of the expected future cash flows. These cash flows are adjusted to reflect the probability of achieving technical success based on empirical studies on the success rates for antiviral and anti-HIV drugs.
- 99 The probability adjusted cash flows have then been discounted back to present value using a discount rate which reflects the uncertainty associated with estimating the future returns from the drug development program.
- 100 The value of the ATC drug development program has been assessed net of future development costs (eg the cost of the Phase III trial). Initially the value has been assessed prior to taking into account financing risks and the likely dilution resulting from the issue of additional equity to fund these costs. A separate adjustment has then been made to reflect the financing risks and impact of dilution.
- 101 A separate value has also been assigned to Avexa's other drug development programs, which are at an early stage of development.
- 102 We note that there are other valuation methodologies that could be used to value Avexa, including relative value methods whereby the value of Avexa is compared against the values attributed to other listed biotechnology companies and transactions involving companies with potential new drugs in a late stage of development. The relative valuation method was not relied upon in this report. However we note that such methods may result in higher valuation outcomes.

Value of ATC

- 103 Our DCF valuation of ATC has been assessed using cash flow projections. While these projections have been based on information provided by Avexa management, they are our projections and not the projections of Avexa. The cash flow projections have also been risk adjusted to reflect the probability of achieving regulatory approvals. Similarly, these adjustments reflect our assessment of these probabilities and risks, and not the assessment of Avexa. It should be noted that actual results may vary significantly from those

projected. Consequently, neither Avexa nor LEA in any way guarantee the achievability of the cash flow projections.

- 104 The major assumptions underlying the cash flow projections for the ATC drug development program are discussed below.

Phase III costs

- 105 The Phase III program comprises two studies and is expected to take up to four years to complete if the two studies are undertaken one at a time (as currently planned) rather than in parallel.
- 106 Avexa management's estimated cost of the first study of the Phase III trial from January 2009 to the week 24 data point in late 2010 is approximately A\$45 million. A further approximate A\$49 million would be incurred over late 2010 to 2012 to extend the first study to week 48. The cost of the second study, which is expected to commence in late 2010 or early 2011 up to the week 48 data milestone ending in 2012 is estimated at approximately A\$61 million¹⁹. However, Avexa management does not contemplate that it would fund all of the costs beyond the week 24 milestone without a partnership agreement.
- 107 Allowance has also been made for US\$3.0 million (A\$4.4 million²⁰) in annual corporate costs²¹ and future obligations to Shire²².

Timeframe to market

- 108 The entire Phase III program is expected to take up to four years to complete. However, regulatory authorities in the US have granted ATC fast track and accelerated review status and have agreed to review the ATC Phase III trial data after 24 weeks of dosing. In this regard, the Company notes that there are precedents in which regulatory authorities in the US have permitted a market launch of a new drug upon release of week 24 data in a Phase III trial. This may permit a market launch in late calendar 2011, with sales generated in calendar year 2012.
- 109 If early regulatory approval is not received, revenues are expected to be generated from calendar 2013. This assumes regulatory approval is received at the end of the four year Phase III trial, after the completion of the second study.

¹⁹ All cost estimates are before corporate costs.

²⁰ Based on an AUD:USD exchange rate of A\$1.00:US\$0.68.

²¹ Actual corporate costs are around A\$5.0 million. The lower number adopted for valuation purposes takes into account a share of the savings available to a purchaser of 100% of the company.

²² The royalty payments to Shire are subject to confidentiality restrictions and cannot be disclosed.

- 110 However, given the number of HIV cases and the US regulatory authority's agreement to fast track approval, in our opinion, it is more likely that revenues could be generated from 2012, subject to achieving positive week 24 Phase III results.
- 111 Accordingly for valuation purposes, we have assumed two scenarios. The first scenario with a 60% probability assumes Avexa obtains early regulatory approval, resulting in revenue accruing from 2012. The second scenario with a 40% probability assumes Avexa does not obtain early regulatory approval, resulting in revenues from 2013.

Patient numbers

- 112 As set out in Section II the target market for ATC in the US and Western Europe is estimated at 540,000 patients in 2009.
- 113 Preliminary market estimations based on the 24 week data alone indicate that if ATC was available for sale in 2009 it would achieve sales to approximately 157,000 patients once peak sales are achieved (refer below). While this represents 29.0% of the target market (being 157,000 divided by 540,000 patients) we note that:
- (a) the market size for HIV drugs is approximately US\$8 billion, of which NRTI's have a share of around 56%.²³
 - (b) as ATC will largely be used in combination with other HIV drugs, the actual market share assumed based on revenue in the target market is significantly lower than 29%.
 - (c) ATC is positioned to replace primarily 3TC and FTC drugs in resistant patients in 2nd line therapy and beyond (as strains of the HIV virus have developed resistance to these commonly used drugs). These two drugs represent one of the two main types of NRTI used by patients in HIV treatment. 3TC and FTC, as standalone or combination drugs are projected to generate sales of over US\$3.2 billion in 2009²⁴.
 - (d) In contrast, 157,000 patients at a cost of US\$72 per week (which we understand is consistent with the price of other HIV drugs) represents sales revenue of US\$588 million for ATC.

²³ Source: The Global HIV/AIDS Market Outlook to 2012, Melissa Zebrowski (2007).

²⁴ Source: Avexa management.

- 114 The DCF projections also assume that:
- (a) it takes three years before peak sales are achieved
 - (b) after seven years patient numbers decline (reflecting the likely development of new alternative drugs)
 - (c) sales are generated for a period of 10 years only.
- 115 While we have assumed that sales are generated for a 10 year period only, we note that sales may occur well beyond 10 years, particularly if further IP protection is obtained (as a result of further development) or ATC is developed into a co-formulated combination with other drugs. For example 3TC has been used for around 13 years and is now sold as both a standalone product and in combination.

Growth in market

- 116 For valuation purposes we have assumed that ATC's potential market increases by 4% per annum, having regard to:
- (a) the level of population growth in the US and Western Europe markets of around 1.0% per annum
 - (b) the prevalence of HIV / Acquired Immune Deficiency Syndrome (AIDS) in these markets, which is expected to remain relatively stable
 - (c) the estimated 30% of the HIV population in these markets which are unaware of their HIV status²⁵, and therefore represent considerable untapped market potential
 - (d) current projections which indicate that an additional 45 million people will become infected with HIV by 2015 (with 40% of these expected to occur in Asia and the Pacific, in countries including India, China and Papua New Guinea)²⁶
 - (e) the significant proportion of the HIV population outside the US and Western Europe²⁷
 - (f) the growth in revenue of the HIV market from 2002 to 2006 of some 14.1% per annum (compound), and forecast growth of some 10.3% per annum (compound) over the period 2006 to 2012²⁸.

²⁵ Source: The Global HIV/AIDS Market Outlook to 2012, Melissa Zebrowski (2007).

²⁶ Source: The Global HIV/AIDS Market Outlook to 2012, Melissa Zebrowski (2007).

²⁷ In 2005 approximately 85% of all HIV / AIDS cases were in Sub-Sahara Africa and Asia.

²⁸ These growth rates reflect the higher prevalence of diagnosis and price increases.

Pricing

- 117 For the purposes of this valuation, we have estimated that ATC will achieve a price of US\$72 per patient per week, implying annual sales of US\$3,744 per patient. We understand that this pricing is consistent with the pricing of other NRTI's. However, this ignores any opportunity for premium pricing given the advantages of ATC over current treatments. As evident from the introduction of Merck's new HIV agent Isentress®, HIV drugs typically achieve a higher price upon launch if they provide significant additional benefits to patients.

Licensing income

- 118 Rather than assume that Avexa manufactures and markets ATC we have assumed that the product is licensed to a third party, consistent with management's expectations.
- 119 Licensing deals relating to pharmaceutical products are complex and often involve payments such as milestones and upfront licence fees, trial cost sharing (where the partner may fund up to a 100% of all future trial costs) as well as royalties. Generally the majority of payments, both in terms of the number of payments and the amount of those payments, are contingent on some measure of future success and only become payable in the future if certain milestones have been reached²⁹.
- 120 While the terms of licensing agreements can vary widely, the composition of licensing payments we adopted for valuation purposes are summarised below:

Licensing arrangements adopted for valuation purposes	
	Range US\$m
Upfront licence fee	25.0
Development milestones:	
FDA approval	25.0 – 50.0
First sales	25.0
Payments to cover future development and commercialisation costs related to ATC	45.0 – 80.0
Total excluding royalties	120.0 – 180.0
Royalty rate on net sales ⁽¹⁾	12.0% – 15.0%

Note:

- 1 The range for royalty rates based on historical precedents are wide, ranging from 10% to 26% (refer paragraph 125). Management has advised that royalty rates for late stage anti-viral drugs tend to be at the higher end of the range.

²⁹ Source: PharmaVentures, A Guide to Royalty Rates in Pharmaceutical Licensing Deals, 2006.

Licensing payments

- 121 Including payments for future trial costs we have assumed total licensing payments (excluding royalties) of US\$120.0 million to US\$180.0 million.³⁰
- 122 In contrast, total licence payments (excluding royalties) reported by Deloitte Recap LLC³¹ over 1998 to 2007 were as follows:

Payments under other licensing deals involving pharmaceutical products			
Stage of development	Number of deals	Median US\$m	Average US\$m
Early	123	195.0	330.4
Mid	82	200.0	280.4
Late	178	215.0 ⁽¹⁾	327.7

Note:

1 The median payment reported in Phase III stage deals was also US\$215.0 million.

- 123 Further, we note that the following upfront and milestone payments were agreed in connection with the licensing of other HIV drugs:

Payments under licensing deals involving HIV drug programs					
Date	Licensee	Licensor	Drug compound	Stage of development	Payments ⁽¹⁾ US\$m
Oct 2006	Merck & Co	Ambrilia	PPL-100	Pre-clinical	229.0
Sep 2006	Bristol-Myers Squibb	Medivir AB	MIV-170	Pre-clinical	104.5
Mar 2005	Gilead Sciences	Japan Tobacco	JTK-303	Phase I	115.0

Note:

1 Upfront and milestone payments only. Excludes royalty payments.

Royalty rate

- 124 While we note that the royalty rate (as a percentage of sales) is subjective, it generally varies depending on the level of drug development. In this regard:
- (a) early-stage drugs that have yet to be fully investigated are usually assigned a low royalty rate

³⁰ Our valuation calculations also assume that licensing does not occur until receipt of positive results from the week 24 Phase III trial and have been probability adjusted to reflect the likelihood of a successful outcome.

³¹ Analysis of alliances involving total payments exceeding US\$100 million only.

- (b) late-stage drugs which have undergone greater clinical development at a cost to the licensor, and have proven safety and efficacy (and are therefore less risky) usually receive significantly higher royalty rates.

- 125 This is consistent with the results of empirical studies, including the following studies by Aghazadeh and others, and PharmaVentures³²:

General industry royalty rates by Phase			
Study	Phase I	Phase II	Phase III
Aghazadeh et al., 2005	10%	17%	26%
PharmaVentures	5% to 10%	6% to 15%	10% to 20%

- 126 Having regard primarily to the PharmaVentures data and after deducting the royalty payable by Avexa on ATC sales to Shire³³, we have therefore adopted a net royalty rate range of 12% to 15% of sales revenue. However, it is possible that Avexa could enter into an agreement that would deliver a higher royalty rate than the range assumed in this valuation. A higher royalty rate would increase the valuation, all other things being equal.

The likelihood of achieving technical success

- 127 As indicated above the cash flow projections include future royalty income which will only be received if Phase III testing is successfully completed and regulatory approval for marketing is received.
- 128 As there are numerous studies on the probability of success for drug development programs, in our opinion, the most appropriate way to capture the likelihood of achieving technical success in the valuation is by probability adjusting the cash flow. Under this approach the cash flow projections (which assume technical success is achieved) are probability adjusted to reflect the likelihood of achieving key milestones (such as regulatory approval).

³² Source: A Guide to Royalty Rates in Pharmaceutical Licensing Deals, 2006.

³³ The royalty payments to Shire are subject to confidentiality restrictions and cannot be disclosed.

- 129 For the purposes of our valuation, we have relied on the following success rates for antiviral and anti-HIV drugs in development as reported in Parexel's "Bio / Pharmaceutical R&D Statistical Sourcebook 2007/2008", as shown in the table below:

Success rates for antiviral and anti-HIV drugs in development	
Development stage	Cumulative probability of reaching market by current Phase %
Pre-clinical	3.0
Phase I	19.0
Phase II	30.0
Phase III	75.0
Regulatory approval being sought	95.0
Approved for marketing	100.0

- 130 The cumulative probabilities reflect the likelihood of each drug reaching the market by current phase. For example, the above table indicates that the probability of drugs currently in Phase III testing being approved for marketing is 75.0%. However, we understand that Avexa management believes all HIV drugs that have entered Phase III testing have ultimately been approved for marketing, indicating a much higher success rate.
- 131 Accordingly, for valuation purposes we have assumed that there is a 75% to 80% probability of Avexa's ATC drug achieving regulatory approval for marketing³⁴. Avexa management has advised that they believe the probability of ATC receiving approval is much higher given that every HIV drug that has reached Phase III trials has been ultimately approved in major markets. Accordingly, Avexa considers that the valuation calculations contained in this report are inherently conservative.
- 132 Our valuation also assumes that there is a 20% to 25% probability that ATC will not achieve regulatory approval. Under this scenario we have adopted a net present value (NPV) of negative A\$70 million. That is, it is assumed that Avexa spends its current cash holding of A\$20 million plus a further A\$70 million that is raised after taking into account the possibility of delays in partnering and the receipt of regulatory approvals, factoring in some level of uncertainty associated with the achievement of these milestones and allowing for corporate costs before terminating the program. In contrast, Avexa management estimates that the cost of the critical week 24 Phase IIIa trial (before corporate costs) is approximately A\$45 million.

³⁴ Our valuation calculations also assume a 75% to 80% probability of receiving the assumed licensing payments.

Discount rates

- 133 While the above probabilities reflect the likelihood of achieving technical success, allowance also needs to be made for the uncertainty associated with the level of commercial success which may be achieved, as well as the time value of money. Consequently, in our opinion, the discount rates applied are likely to be high (notwithstanding that the probabilities associated with achieving technical success are reflected in the cash flows).
- 134 Consistent with Avexa's current capital structure, most listed drug development companies are funded predominantly by way of equity capital. Consequently, we have assessed the appropriate discount rates assuming the ATC drug development program is funded by equity only.
- 135 The capital asset pricing model (CAPM) is generally used to assess the appropriate discount rate for equity investments. Under CAPM the cost of equity / discount rate is calculated using the following formula:

Cost of equity

$$COE = R_f + (MRP \times B_e)$$

Where:

COE	is the cost of equity (discount rate)
R_f	is the risk-free rate
MRP	is the market risk premium
B_e	is the equity beta

- 136 As the cash flow model is denominated in United States dollars and the US is the largest target market for ATC we have assessed the appropriate discount rate using inputs appropriate for the US market.
- 137 Having regard to the yield on 30 year US treasury bonds (which is widely regarded as the proxy for the long term risk-free rate of return in the US) and measures undertaken by the Federal Reserve to reduce funding costs (which has seen US interest rates fall to historic lows) we have adopted a risk-free rate of 3.25% per annum.
- 138 A market risk premium (MRP) of 6.5% per annum has been applied. This represents a 1% premium to the MRP normally applied in the US to reflect the current aversion to risk as a result of the current credit crisis and uncertain outlook for the world economy.

- 139 Avexa's beta has varied significantly between 0.73 and 1.88 since September 2006³⁵. The most current beta estimate was 1.84³⁶. However, the reliability of these beta estimates and the beta estimates for other biotechnology companies with products in development is very low³⁷.
- 140 Consequently, we have placed greater reliance on share price volatility as a measure of risk. In the absence of reliable beta estimates, in our view share price volatility is likely to be a better indication of the relative risks associated with investment in biotechnology companies. As shown below the volatility rates are high relative to the market average confirming our view that a high beta is appropriate for biotechnology companies with products in Phase III trials:

Company	Enterprise Value US\$m	Share price volatility %	Current equity beta
Avexa Limited	n/a	64.8	1.84
Other late stage biotechnology companies:			
Theravance Inc	500	60.2	1.62
Pharmasset Inc	289	88.8	-
Optimer Pharmaceuticals	195	74.6	-
Human Genome Sciences	942	74.7	2.75
S&P 500 Index (market average)	n/a	26.5	1.00

n/a – not available.

- 141 Based on our review of the beta and volatility estimates, and taking in account the fact that we have risk adjusted future royalty income to reflect a 75% to 80% likelihood of achieving regulatory approval, we believe a beta of 2.0 is appropriate. The selection of the beta in this context is subjective. Avexa management have stated that they believe the appropriate beta for the company should be lower (implying a higher valuation) since ATC is a late stage drug with a high probability of technical success.
- 142 Based on the above we consider the appropriate (nominal) discount rate to be 16.3% per annum (after tax). As the cash flows are in real terms a real discount rate of 15.1% per annum (after tax) has been applied, reflecting a long term projected inflation rate of approximately 1.0% per annum.

³⁵ Based on OLS beta estimate, as the LM estimate indicates that the OLS beta was not distorted by thin trading.

³⁶ Source: AGSM as at 30 September 2008.

³⁷ In Avexa's case the more reliable beta estimates were those at the upper end of the range (ie towards 1.88).

Tax losses and R&D tax credits

- 143 As at 30 June 2008 Avexa had income tax losses of A\$76.7 million which can be used to offset future taxable income.
- 144 In addition we understand from Avexa management that some of the Phase III trial costs will receive 125% research and development (R&D) tax deductions.
- 145 These tax losses and R&D tax credits have been reflected in our DCF valuation.

Exchange rate

- 146 As the cash flows are projected in US dollars our assessed value of ATC has been determined in US dollars and has then been converted to Australian dollars based on an AUD:USD exchange rate of A\$1.00 : US\$0.68. This is consistent with the average AUD:USD exchange rate over the one month period ended 22 January 2009.

Value of ATC

- 147 Based on the above the net present value of the ATC drug is as follows:

Value of ATC			
	Probability weighting %	Low A\$m	High A\$m
Scenario:			
First sales are made in 2012 ⁽¹⁾	60	173.1	252.4
First sales are made in 2013 ⁽¹⁾	40	118.8	185.9
Adopted value		151.4	225.8

Note:

- 1 The valuation under each scenario takes into account the probability of failure (which we have assumed is 20% to 25%) and the significant losses which would be generated in the event that the Phase III trial is not successful or regulatory approval for marketing is not received.

- 148 For the reasons outlined in paragraph 110 we have assumed a 60% probability that early regulatory approval will be received to allow sales to occur in calendar 2012, one year earlier than otherwise expected.
- 149 Accordingly, we have adopted a value for ATC of A\$151.4 million to A\$225.8 million. This valuation is net of future development costs (eg the cost of the Phase III trial) but does not take into account financing risks and likely dilution resulting from the issue of additional equity to fund these costs. Allowance for these factors is discussed below.

Value attributed to other drug programs

- 150 As discussed in Section III Avexa has three other drug development programs which are at an early stage (eg discovery or pre-clinical).
- 151 To date over A\$9 million has been spent on these programs and Avexa management believes the company's HIV Integrase and HCV programs have significant potential for early stage partnering deals.
- 152 However, in the current risk-adverse stock market conditions, in our opinion, these drug programs are likely to have a value substantially less than expenditure incurred on them to date. In fact, at the low end we believe a nominal value only is appropriate given current stock market conditions, their very early stage and the need for significant future funding in order to prove and commercialise the intellectual property.
- 153 For the purposes of this report we have therefore valued Avexa's other three drug programs at nil to A\$3 million. Avexa management believes these programs, while early stage, show considerable promise and have significant long term market potential. Accordingly, Avexa considers that the valuation calculations contained in this report are inherently conservative.

Net cash

- 154 As at 31 December 2008 Avexa had net cash of approximately A\$20 million. We understand that the company has no debt.

Financing risks / impact of dilution

- 155 Based on the above, the theoretical value of Avexa shares prior to taking into account financing risks and likely dilution resulting from the issue of additional equity to fund future development costs is as follows:

	Low A\$m	High A\$m
Value of ATC	151.4	225.8
Value of other drug programs	-	3.0
Net cash	20.0	20.0
	171.4	248.8
Shares on issue	424.7	424.7
Theoretical value per share (cents) ⁽¹⁾	40.4	58.6

Note:

1 Prior to taking into account financing risks, dilution and in the money options.

- 156 However, Avexa's current cash resources are substantially less than the estimated A\$45 million cost (before corporate costs) to complete the critical week 24 Phase III trial and further costs beyond week 24 data.
- 157 These cost estimates do not reflect the benefit of any future partnership agreement which may result in Avexa receiving a significant upfront payment as well as other milestone payments and/or contributions towards development costs.
- 158 As stated earlier, Avexa management intends to seek a partnering agreement to reduce the extent to which Avexa has to raise additional capital to fund these costs. For the purposes of this valuation, we have assumed that a partnership agreement is finalised after the receipt of results from the week 24 Phase III trial (in late 2010). However, Avexa management believes that there are other opportune times to enter into a partnership agreement in order to maximise shareholder value, such as between 16 week data and 24 week data.
- 159 Nonetheless, Avexa may need to raise additional capital if it does not enter into a partnership agreement. Given ATC's stage of development, we believe such capital would largely need to be in the form of additional equity.
- 160 Further, such equity would need to be raised at a discount to the prevailing market value and would therefore be dilutionary to existing Avexa shareholders. As shown below recent capital raisings by ASX listed companies have been priced at large discounts to the listed market price of the company's shares prior to the announcement of the capital raisings:

Recent capital raisings by ASX listed companies				
Company	Announcement date	Amount raised \$m	Amount raised/market capitalisation before announcement %	Discount %
GPT	23 Oct 08	1,350	53	48
Australand	28 Jul 08	461	40	38
Goodman	24 Oct 08	956	36	42
Mirvac	30 Oct 08	500	34	30
Gunns	11 Sep 08	334	32	35
Transfield Services	11 Nov 08	204	29	64
ING Office Fund	3 Dec 08	350	27	22
ConnectEast	24 Nov 08	294	26	19
CSR	14 Nov 08	350	19	22
PaperLinx	29 Sep 08	185	19	29
Alumina	26 Aug 08	910	18	31
Bluescope Steel	9 Dec 08	550	18	23
Incitec Pivot	12 Nov 08	819	16	40
Bradken	29 Jul 08	141	13	9
QBE Insurance	26 Nov 08	2,000	10	11

Recent capital raisings by ASX listed companies				
Company	Announcement date	Amount raised \$m	Amount raised/market capitalisation before announcement %	Discount %
Orica	22 Jul 08	898	10	18
Sonic Healthcare	12 Nov 08	425	10	11
CSL	13 Aug 08	1,891	9	6
National Australia Bank	10 Nov 08	3,000	8	10
CFS Retail Property Trust	8 Oct 08	329	6	13
Leighton	14 Aug 08	703	6	17
Westpac	9 Dec 08	2,500	5	11
AMP	5 Nov 08	450	4	11
Commonwealth Bank	17 Dec 08	1,650	4	11
Commonwealth Bank	8 Oct 08	2,000	3	16

- 161 It should also be noted that the above statistics confirm the general proposition that the discount at which capital raisings are priced (relative to the pre-announcement market price) increases the larger the capital raising as a percentage of the pre-announcement market capitalisation.
- 162 Taking into account the possibility of delays in partnering and the receipt of regulatory approvals, factoring in some level of uncertainty associated with the achievement of these milestones and allowing for corporate costs, we have assumed that Avexa will require up to A\$70 million in additional equity capital. This represents 28% to 41% of our theoretical value³⁸. Accordingly, in our opinion, Avexa would need to raise the required capital at a large discount to our assessed theoretical value of the company, although this will depend upon the timing of the equity capital raisings and the amount being raised at each time.
- 163 Further, in our opinion, a potential purchaser of 100% of Avexa would also make a similar adjustment, in that the price offered would be reduced to reflect the fact that Avexa's development program is not fully funded.
- 164 While the extent to which a potential purchaser of Avexa would lower the price offered will depend on the specific circumstances (including a purchaser's negotiating ability and desire to acquire the company etc), in our opinion a potential purchaser may apply a 65% to 75% discount to our assessed theoretical market value in arriving at an offer price for Avexa because of the need to potentially raise up to A\$70 million (refer paragraph

³⁸ It should be noted that Avexa had approximately A\$20 million in cash as at 31 December 2008.

162) over the course of the Phase III trials. While subjective this level of discount has been adopted on the basis that:

- (a) the discounts set out in paragraph 160 were for larger companies with established businesses and underlying asset backing
- (b) the level of capital required by Avexa to complete the ATC Phase III trial may be high depending on the timing of a partnership agreement
- (c) sources of equity capital of this magnitude for biotechnology companies are limited given current market conditions
- (d) the effective price at which Avexa is raising additional equity capital under the Proposal (which Avexa management believe is the best funding option) represents a very large discount to the underlying value of Avexa prior to the Proposal
- (e) in the absence of the Proposal it is likely to be difficult at the present time for Avexa to raise the large amount of funds required to pursue its business objectives without materially diluting existing shareholder interests. While the large proportion of the A\$70 million is required to be raised in the short-term, it is assumed that the balance would be raised at a later date to coincide with key milestones (refer paragraph 70) with the objective of minimising dilution to existing shareholders.

165 On this basis our assessed value of 100% of the shares in Avexa ranges from 21 cents to 41 cents per share, as calculated below:

Value of Avexa on a 100% controlling interest basis		
	Low A\$m	High A\$m
Theoretical DCF value ⁽¹⁾	171.4	248.8
Cash required to be raised ⁽²⁾	70.0	70.0
Value after assumed capital raising	241.4	318.8
Shares on issue post assumed capital raising ⁽³⁾	1,124.7	774.7
Value of 100% of Avexa per share⁽⁵⁾	\$0.21	\$0.41

Note:

- 1 Refer paragraph 155.
- 2 This assumes no merger with Progen or similar transaction is completed. The funding requirement assumes potential delays in partnering, regulatory approval and achievement in milestones as well as the requirement to fund corporate costs.

3 Calculated as follows on the basis that all funding is raised on these terms:		
Current shares on issue	424.7	424.7
Impact on dilution:		
Amount raised	70.0	70.0
Assumed issue price ⁽⁴⁾	\$0.10	\$0.20
Shares to be issued	700.0	350.0
Shares on issue post capital raising	1,124.7	774.7

4 Being a 65% to 75% discount to theoretical value per share. In our opinion a purchaser of 100% of Avexa would have regard to the underlying value of Avexa shares rather than the listed market price. Consequently, when adjusting for the impact of dilution, in our opinion, such a purchaser would assume that additional capital required was raised at a discount to the underlying value rather than at a discount to the listed market price (which reflects the price of a portfolio interest rather than the underlying value).

5 In the money options have been ignored as their impact is not considered material.

- 166 The above range reflects the value of 100% of the equity in Avexa on a controlling interest basis (prior to implementing the Proposal) and implicitly includes a premium for control. Accordingly, the above values exceed the price at which we would expect portfolio interests to trade on the ASX in the absence of a takeover offer or similar proposal.
- 167 If a control premium is excluded (estimated at 30% to 35%³⁹), the resulting portfolio value of Avexa shares is 16 cents to 31 cents per share.
- 168 While we note that the above valuation range is wide, this is considered appropriate as the value is very sensitive to the price at which additional equity capital could potentially be raised, the impact of early commercialisation approval (which may or may not be received) and the range of possible licensing arrangements.

³⁹ Based on empirical studies undertaken by LEA on the average premiums for control paid in successful public company takeovers.

V Profile and valuation of Progen

Overview

- 169 Progen is an ASX listed biotechnology company focused on the discovery, development and commercialisation of small molecule pharmaceuticals primarily for the treatment of cancer.
- 170 Progen's most advanced drug in development was its PI-88 compound for the treatment of liver cancer. Progen raised almost \$100 million for the development of PI-88 and its Phase III trial.
- 171 However on 23 July 2008 Progen announced that it had terminated the PI-88 Phase III trial due to:
- (a) slower than expected regulatory processes in China, Korea and Vietnam
 - (b) slower than expected initiation of clinical sites
 - (c) slower than expected recruitment of patients into active sites
 - (d) the launch of a competitive Phase III trial, assessing Bayer / Onyx Nexavar® in the same indication
 - (e) the lack of a global partner to meaningfully develop and commercialise PI-88⁴⁰.
- 172 As a result of the termination of the PI-88 Phase III trial Progen announced on 23 July 2008 that it would "*develop its existing portfolio of compounds*" and would "*actively seek to acquire additional compounds and opportunities through Merger and Acquisition activity*". However, Progen continues to seek partnering alliances for PI-88.
- 173 Progen also announced on 23 July 2008 that the Phase 2b melanoma trial would be completed but that no further development in melanoma by Progen was anticipated.

Other drug programs

- 174 Progen's other anti-cancer drug discovery and development programs target the multiple mechanisms of cancer across three platforms: angiogenesis, cell proliferation and epigenetics.

⁴⁰ In Progen's ASX announcement dated 23 July 2008 it stated that it would be less able to expand into additional indications and exploit all potential PI-88 commercial opportunities without a significant global partner.

Angiogenesis

- 175 Once a tumour reaches a certain size it requires blood vessels to supply it with nutrients and oxygen. Angiogenesis is the process by which new blood vessels grow.
- 176 Progen's angiogenesis product candidates have been developed to target a number of proteins, including vascular endothelial growth factor (VEGF) and fibroblast growth factors (FGF-1 and FGF-2), which bind to a complex sugar called heparan sulfate to trigger cell signalling.
- 177 Progen's products are the first in development that can stop the cell signalling involved in angiogenesis by mimicking heparan sulfate and inhibiting more than one growth factor. In addition to the growth factor activity, Progen's products inhibit the enzyme heparanase, which breaks down heparan sulfate. This is important as this process is critical to the spread of the cancer throughout the body (metastasis).
- 178 It is the dual mechanism of Progen's products that management believe differentiates Progen's angiogenesis platform from others in development.
- 179 The most advanced angiogenesis product, PG545, shows promising preclinical anti-tumour activity and is currently being developed towards human clinical trials. At an earlier stage of discovery, Progen has a program to design small molecule inhibitors of heparanase. This enzyme plays an important role in angiogenesis and its inhibition is important to the halting of cancer progression.

Cell Proliferation

- 180 Uncontrolled cell reproduction begins when a cell accumulates enough mutations to activate certain growth promoting genes (oncogenes) and deactivate certain protection genes (suppressor genes) that are built into the genetic fingerprint of a person. The mutated cell seems to ignore the instructions to limit its self replication and soon it becomes many cells and continues to grow.
- 181 Cell proliferation is at the crux of cancer and Progen's cell proliferation candidates target hyper-proliferating cells. Treatment with these compounds results in cessation of the natural cascade of events involved in cell division and can potentially induce cell death.
- 182 Progen's cell proliferation platform is centred around the role of polyamines in cellular function. Polyamines are a group of chemical components in the cell that are essential for cell growth. Polyamine metabolism is dysregulated in cancers. PG11047, which is currently in Phase I clinical trials, is Progen's first produced candidate from this research platform. It is hoped treatment with PG11047 results in alterations to the natural cascade of events involved in cell division and induces cell death in tumours.

- 183 To date, PG11047 has been shown to have anti-tumour activity in animal models, combined with a good safety profile. Progen is taking PG11047 through early clinical development in parallel to conducting additional translational studies to determine the most promising cancer indications for Phase 2 development and beyond.

Epigenetics

- 184 Epigenetics is a new area of gene expression research focused on the modulation of the expression of genes, and in particular those associated with cancer. This process is mediated by enzymes such as Histones Deacetylases (HDACs) and Lysine Specific Demethylase (LSD1).
- 185 Progen has rights to epigenetic compounds in preclinical and discovery stages of development. Many of Progen's polyamine platform products have demonstrated that they can inhibit HDAC and LSD1, leading to re-expression of 'silenced' tumour suppressor genes. This in turn has been demonstrated to lead to inhibition of tumour growth in a number of pre-clinical studies. Progen is working actively to determine which of these product series has the best commercial profile for further development and is moving these assets towards clinical development.
- 186 The stage of development of each of Progen's current programs are summarised below:

Progen's current drug programs				
Technology label	Platform area	Patent life	Current status	Next stage gate
PG11047	Cell Proliferation	2017	Phase 1a and 1b	Safety data and LBNL therapeutic targets
PG11400 Series	Cell Proliferation / epigenetics	2027	Preclinical	Toxicity and safety data
PG11100 Series	Epigenetics / cell proliferation	2020	Late preclinical	Toxicity and safety data
LSD-1 Series	Epigenetics	2027	Early discovery	Lead series development
Epigenetics Discovery	Epigenetics	Not yet patented	Early discovery	Define targets
PG500 Series	Antiangiogenesis Extension of PI-88 series	2027	Late preclinical	Toxicity and safety data and bioassay development
Heparanase Program	Antiangiogenesis	Not yet patented	Early discovery	Lead series development

Financial position

- 187 Progen's consolidated financial position as at 30 June 2008 is summarised below:

Financial position as at 30 June 2008	
	\$000
Assets	
Cash	76,748
Short-term deposits	98
Trade and other receivables	722
Prepayments	187
Government grants	302
Plant and equipment	1,170
Intangible assets	3,364
Total assets	82,591
Liabilities	
Trade and other payables	6,525
Provisions	549
Derivative financial instruments	249
Government grants	9
Total liabilities	7,332
Net assets	75,259

- 188 Intangible assets comprise the intellectual property rights acquired through the acquisition of CellGate, Inc. CellGate was acquired in February 2008 and focused on cell proliferation and epigenetic technologies.
- 189 The net tangible asset backing per share as at 30 June 2008 was \$1.19 per share. However, as stated in the Chairman's address to the Progen Annual General Meeting on 24 November 2008, Progen estimated capital backing per share by February 2009 to be approximately \$70 million or about \$1.10 per share if the entire capital of Progen (less liabilities and allowances for continuing statutory and other costs) was returned to Progen shareholders.

Share capital

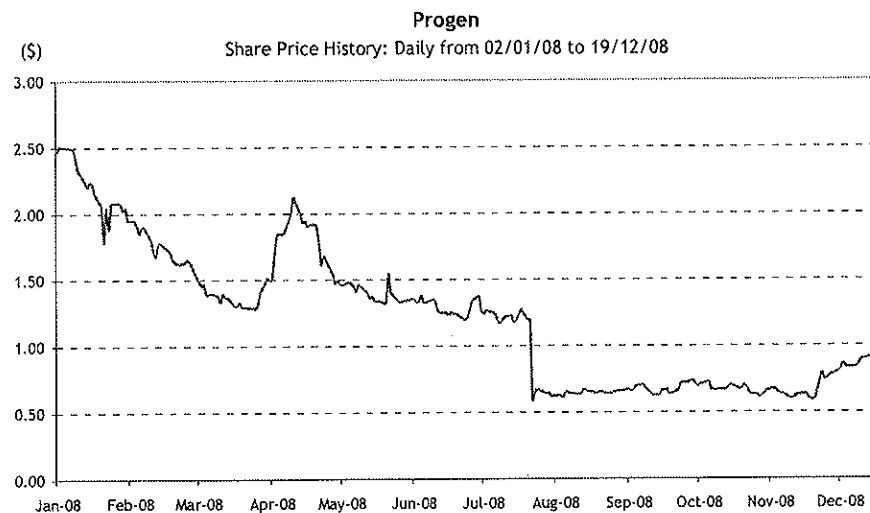
- 190 As at 15 January 2009 Progen had 60,469,511 shares on issue.
- 191 Progen also has 2,970,538 listed options on issue exercisable over ordinary shares at A\$8.40 per share. These options expire on 28 May 2010.
- 192 Progen also has 2,639,000 unlisted employee options on issue exercisable over ordinary shares. Details of the expiry dates and exercise prices of these options are set out below:

Major shareholders

- 193 As at 18 December 2008 the substantial shareholders⁴¹ in Progen were Northcape Capital Pty Limited (8.23%), Manifest Capital Management Pty Limited (7.97%) and Entrust Funds Management Limited (5.05%).

Share price

- 194 Progen's share price from 2 January 2008 to 19 December 2008 (being the last trading day prior to the announcement of the Proposal) is shown below:



- 195 The large fall in the share price in July 2008 reflects Progen's announcement that it had terminated the PI-88 Phase III trial.
- 196 In the period since the announcement on 23 July 2008 of the termination of the PI-88 Phase III trial to 19 December 2008, Progen shares have traded between \$0.58 and \$0.925. The VWAP during this period was \$0.69 per share.

Valuation of Progen shares

- 197 As indicated above, since 23 July 2008 Progen shares have traded significantly below the \$1.10 per share which Progen management have estimated as the capital backing per share by February 2009 if the entire capital of Progen (less liabilities and allowances for continuing statutory and other costs) was returned to Progen shareholders.

⁴¹ Being those shareholders with a relevant interest in Progen shares of 5% or more.

198 While this discount has in part reflected the perceived risks associated with reinvesting Progen's substantial cash holdings, in our opinion, it also indicates that share market investors are not placing any significant value on Progen's other drug programs. This conclusion is consistent with:

- (a) the early stage of Progen's other drug discovery and development programs.

In summary these programs:

- (i) involve substantial future research and development expenditure before technical success can be achieved
- (ii) involve regulatory trials which are likely to take many years to complete
- (iii) have an implicit low probability of achieving regulatory approval (based on empirical evidence on the proportion of drugs in development achieving regulatory approval)
- (iv) are high risk investments due to the above and the high level of uncertainty regarding the level of commercial success which may be achieved even if regulatory approval is obtained.

Further, the oncology assets based on epigenetic and polyamine inhibition (which were acquired in February 2008 from CellGate, Inc for \$2.1 million⁴²) are subject to additional milestone payments (payable by Progen to CellGate) of up to US\$19.5 million subject to the achievement of certain clinical and regulatory milestones

- (b) the current risk-adverse stock market conditions.

199 For the purposes of this report we have therefore adopted a value of nil to \$3 million for these other drug programs.

⁴² Prior to direct costs associated with the acquisition.

200 On this basis we have assessed the value of Progen shares on a 100% controlling interest basis at \$1.18 to \$1.25 per share, as follows:

Value of Progen on a 100% controlling interest basis		
	Low	High
	\$m	\$m
Net cash as at 31 December 2008 ⁽¹⁾	70.0	70.0
Value of other drug programs	-	3.0
Less impact of Share Buy-Back ⁽²⁾	(20.0)	(20.0)
Value of equity	50.0	53.0
Number of shares on issue post Buy-Back ⁽³⁾	42.3	42.3
Value per share	\$1.18	\$1.25

Note:

- 1 Net of trade payables and other liabilities.
- 2 Assuming the maximum amount of \$20 million is returned to Progen shareholders under the Buy-Back as Progen shares continue to trade at a discount to the Buy-Back price of \$1.10 per share.
- 3 Being 60.5 million shares currently on issue less 18.2 million shares assumed to be bought back at \$1.10 per share.

VI Evaluation of the Scheme

- 201 While the merger is to be implemented by Progen acquiring all the shares in Avexa, Progen's main contribution to the merged entity is cash. Accordingly, in our opinion, the Scheme should be viewed by Avexa shareholders from a commercial perspective as a capital raising. Also, it should be noted that while Progen is technically acquiring Avexa, the transaction is more akin to a merger because of the significant influence of Avexa Board and management, which reduces the need for a control premium to be paid to Avexa shareholders. In our opinion, it is therefore appropriate to consider:
- (a) the effective price per Avexa share at which Progen shareholders are acquiring an interest in Avexa
 - (b) the standalone market value of Avexa on both a 100% controlling interest basis and a listed market (minority interest) value basis
 - (c) the price at which Avexa could raise the same level of funding in the absence of the Scheme
 - (d) the advantages and disadvantages of the Scheme from the perspective of the Avexa shareholders
 - (e) the position of Avexa shareholders if the Scheme is not implemented
 - (f) alternatives to the Scheme.

The Effective Issue Price

- 202 As set out in Section V we have assessed the value of 100% of Progen shares at \$1.18 to \$1.25 per Progen share. This valuation largely reflects Progen's cash holdings following its proposed share buy-back.
- 203 Under the Scheme Avexa shareholders will receive one Progen share for every 12.857 Avexa shares⁴³.

⁴³ This ratio may be adjusted under the terms of the MIA depending on the level of liquid assets of Progen.

- 204 Consequently, the effective price at which Progen shareholders are acquiring an interest in Avexa (the Effective Issue Price) is 9.2 cents to 9.7 cents per Avexa share, as calculated below:

Effective Issue Price		
	Low	High
	\$	\$
Value of Progen shares prior to merger	1.18	1.25
Exchange ratio	12.857	12.857
Effective Issue Price per Avexa share ⁽¹⁾	0.092	0.097

Note:

- 1 Being \$1.18 to \$1.25 divided by 12.857.

Comparison with listed market price

- 205 The recent listed market prices of Avexa shares prior to the announcement of the proposed Scheme on 22 December 2008 are summarised below:

Recent market prices of Avexa shares				
	Low	High	VWAP ⁽¹⁾	Volume
	\$	\$	Cents	000
1 month prior to announcement of Scheme ⁽²⁾	9.5	11.5	10.3	23,853
3 months prior to announcement of Scheme ⁽³⁾	9.5	21.5	13.2	83,868

Note:

- 1 VWAP refers to volume weighted average market price.
2 Being period 20 November 2008 to 19 December 2008.
3 Being period 22 September 2008 to 19 December 2008.

- 206 As indicated above the volume weighted average price (VWAP) of Avexa shares in the one month period prior to the announcement of the Scheme was 10.3 cents per share.
- 207 The Effective Issue Price of 9.2 cents to 9.7 cents per Avexa share therefore represents a discount of 5.8% to 10.7% to the VWAP of Avexa shares for the one month period prior to the announcement of the Scheme.
- 208 In contrast, recent equity capital raisings by large ASX listed companies have taken place at discounts to the pre-announcement market price in a wide range of between 6% and 64% (as set out in paragraph 160).

209 Further:

- (a) the size of the discount generally depends on factors such as the amount being raised, the purpose of the issue and the size of the issue in percentage terms. Empirical evidence on capital raisings (including the evidence set out in paragraph 160) also indicates that the discount at which capital raisings are priced (relative to the pre-announcement market price) increases the larger the capital raising as a percentage of the pre-announcement market capitalisation
- (b) the equity capital raisings by the companies listed in paragraph 160 were significantly smaller as a percentage of their pre-announcement market capitalisation than the amount being raised by Avexa under the Scheme (as a percentage of Avexa's market capitalisation prior to the announcement of the Scheme). In this regard, the amount being raised under the Scheme of approximately \$50 million significantly exceeds the market capitalisation of Avexa of some \$44 million based on the VWAP of its shares in the one month period prior to the announcement of the Scheme)
- (c) the companies listed in paragraph 160 who have recently undertaken equity capital raisings have significantly higher market capitalisations than Avexa and have established businesses.

210 Accordingly, if Avexa was to undertake a \$50 million capital raising rather than implement the Scheme, in our opinion, the price at which it could do so would be significantly below the Effective Issue Price of 9.2 cents to 9.7 cents per Avexa share.

211 In addition, given the amount to be raised, in our opinion, Avexa would be unlikely to raise \$50 million in the absence of the Scheme unless the capital raising included a large placement component to investors other than existing shareholders (which is likely to have additional dilutionary effects for Avexa shareholders).

212 The \$50 million that would become available under the Scheme along with Avexa's existing cash resources at Scheme completion are expected by Avexa management to be sufficient to fund ATC's Phase III trial up to the week 24 data point, which is expected to be a major value inflection point. It is expected that at this point the Merged Entity would be in a better position to raise funds to finance the remaining costs of the Phase III trial if a partnership agreement has not already been entered into and a second study is required.

Comparison with underlying value

- 213 As set out in Section IV we have assessed the value of Avexa on a 100% controlling interest basis (and prior to implementation of the Proposal) at 21 cents to 41 cents per share. This valuation includes a (takeover) control premium.
- 214 After backing out the control premium⁴⁴ the above controlling interest value implies a listed market (or minority interest) value of 16 cents to 31 cents per Avexa share.
- 215 As the Effective Issue Price is 9.2 cents to 9.7 cents per Avexa share, the Scheme is therefore dilutionary to existing Avexa shareholders. However, given the current market conditions and Avexa's need to raise additional funds in order to complete its critical ATC week 24 Phase IIIa trial, in our opinion, any alternative capital raising (if available) is likely to be more dilutionary.

Alternatives to the Scheme

- 216 In our opinion, if the Scheme is not implemented, Avexa is likely to have to undertake a discounted rights issue or placement, potentially scale back the ATC Phase III trial and other programs, or enter into a partnership agreement on potentially disadvantageous and sub-optimal terms. In such circumstances Avexa shareholders are likely to be worse off (compared to implementing the Scheme) for the above reasons.
- 217 Further, if the Scheme is not implemented, we consider there is significant uncertainty as to the success of a potential rights issue and/or willingness of potential investors to undertake a placement of A\$50 million (being the level of cash being raised under the Scheme from Avexa shareholder's perspective) if it were to raise capital in the short term. Accordingly, there is a high risk that Avexa will not be able to raise the \$50 million being raised under the Scheme in the short-term. As a result, if the Scheme is not approved and implemented Avexa is likely to raise funds progressively over the course of the Phase III trial and seek to enter into partnership agreements to coincide with key milestone events (refer paragraph 70) rather than seek to raise the equivalent amount of capital in one raising in order to fund the Phase III trial. However, we consider that there are advantages in having sufficient equity capital to proceed to week 24 data in place without relying on future equity raisings, the nature of which are currently uncertain.
- 218 Accordingly, the Scheme is considered to be superior to these other alternatives.

⁴⁴ Empirical evidence on control premiums undertaken by LEA indicates that average control premiums range from 30% to 35% above the pre-bid market price (assuming no speculation of the bid is reflected in the pre-bid market price).

Potential for re-rating

- 219 In our opinion, one of the key factors contributing to the size of the discount at which Avexa shares have been trading compared to our assessed value is Avexa's perceived need to raise significant additional equity capital.
- 220 However, if the Scheme is approved and implemented the merged entity expects to have sufficient cash resources to enable it to complete the critical week 24 Phase IIIa trial for ATC and fund other selected programs up to late 2010. Following the completion of this milestone for ATC, there is a prospect, based on precedents in which regulatory authorities have permitted a limited market approval for a new drug with positive Phase IIb data and Phase III week 24 data, that a market launch of ATC may be permitted in late 2011 if the week 24 data is positive. In addition, the prospects of entering into a partnership agreement would be enhanced.
- 221 Accordingly, in our opinion, the removal of this short-term funding requirement is likely to result in the merged entity's shares being re-rated (assuming comparable share market conditions) post completion of this transaction.
- 222 On this basis, we believe that the Merged Entity's share price, expressed in Avexa terms, is likely to trade at a higher price than the Avexa share price prior to the announcement of the Scheme.
- 223 The increased size of the merged entity is also likely to improve the liquidity of the company's shares and therefore their attractiveness to institutional investors in the sector.
- 224 Further, as the 24 week Phase III data is a critical technical milestone (which may allow regulatory approvals to be fast-tracked), successful completion of this milestone is likely to lead to a further material increase in the value of Avexa shares.

Impact on ownership

- 225 If the Scheme is implemented the Merged Entity will be owned approximately 56% by Progen shareholders and 44% by Avexa shareholders. Further, based on shareholdings in Avexa and Progen as at 15 January 2009, no individual shareholder will have a relevant interest of 5% or more in the Merged Entity's shares.

Summary of advantages and disadvantages

226 Based on the above we summarise below the advantages and disadvantages of the Scheme:

Advantages

- (a) the effective price at which shares are being issued to Progen shareholders exceeds the price at which Avexa could raise capital in the absence of the Scheme
- (b) the Scheme provides the Merged Entity with approximately A\$60 million in cash which is expected to be sufficient to enable the critical week 24 Phase IIIa trial for ATC to be completed
- (c) implementation of the Scheme is expected to remove the need for an equity raising in the short term and is therefore likely to result in the Merged Entity's shares being re-rated. Under the scenario where a partnership agreement incorporates an upfront payment and costs being borne by the partner, no further equity capital may be required
- (d) the increased size of the Merged Entity is likely to improve the liquidity of the company's shares and their attractiveness to institutional investors in the sector
- (e) in our opinion, the Scheme is superior to the alternatives given current stock market conditions and should lead to the Merged Entity's share price, expressed in Avexa terms, to trade over time at a higher price than Avexa's share price prior to the announcement of the Scheme.

Disadvantages

- (f) the Scheme is dilutionary to Avexa shareholders.

Conclusion

227 As the Effective Issue Price is not equal to or greater than the value of the Avexa shares the subject of the Scheme, we have formed the view that the Scheme is technically not fair when assessed based on ASIC Regulatory Guide 111. However, in light of the reasons summarised above and explained further in this report, we are of the opinion that the Scheme is reasonable and in the best interests of Avexa shareholders in the absence of a superior proposal. In concluding that the scheme is not fair but reasonable, we consider that there are sufficient reasons for Avexa shareholders to vote in favour of the Scheme in the absence of a superior proposal.

- 228 We therefore recommend that Avexa shareholders approve the Scheme in the absence of a superior proposal.

General

- 229 The impact of approving the Scheme on the tax position of Avexa shareholders depends on the individual circumstances of each investor. Avexa shareholders should read the taxation advice set out in the Scheme Booklet and consult their own professional advisers if in doubt as to the taxation consequences of the Scheme.
- 230 The ultimate decision whether to approve the Scheme should be based on each Avexa shareholder's assessment of their own circumstances. If Avexa shareholders are in doubt about the action they should take in relation to the Scheme or matters dealt with in this report, shareholders should seek independent professional advice.

Appendix A

Financial Services Guide

Lonergan Edwards & Associates Limited

- 1 Lonergan Edwards & Associates Limited (ABN53 095 445 560) (LEA) is a specialist valuation firm which provides valuation advice, valuation reports and Independent Expert's Reports (IER) in relation to takeovers and mergers, commercial litigation, tax and stamp duty matters, assessments of economic loss, commercial and regulatory disputes.
- 2 LEA holds Australian Financial Services Licence No 246532.

Financial Services Guide

- 3 The Corporations Act 2001 authorises LEA to provide this Financial Services Guide (FSG) in connection with its provision of an IER to accompany the Scheme Booklet to be sent to Avexa shareholders in connection with the Scheme.
- 4 This FSG is designed to assist retail clients in their use of any general financial product advice contained in the IER. This FSG contains information about LEA generally, the financial services we are licensed to provide, the remuneration we may receive in connection with the preparation of the IER, and if complaints against us ever arise how they will be dealt with.

Financial services we are licensed to provide

- 5 Our Australian financial services licence allows us to provide a broad range of services to retail and wholesale clients, including providing financial product advice in relation to various financial products such as securities, derivatives, interests in managed investment schemes, superannuation products, debentures, stocks and bonds.

General financial product advice

- 6 The IER contains only general financial product advice. It was prepared without taking into account your personal objectives, financial situation or needs.
- 7 You should consider your own objectives, financial situation and needs when assessing the suitability of the IER to your situation. You may wish to obtain personal financial product advice from the holder of an Australian Financial Services Licence to assist you in this assessment.

Appendix A

Fees, commissions and other benefits we may receive

- 8 LEA charges fees to produce reports, including this IER. These fees are negotiated and agreed with the entity who engages LEA to provide a report. Fees are charged on an hourly basis or as a fixed amount depending on the terms of the agreement with the person who engages us. In the preparation of this IER our fees are based on a time cost basis using agreed hourly rates.
- 9 Neither LEA nor its directors and officers receives any commissions or other benefits, except for the fees for services referred to above.
- 10 All of our employees receive a salary. Our employees are eligible for bonuses based on overall performance and the firm's profitability, and do not receive any commissions or other benefits arising directly from services provided to our clients. The remuneration paid to our directors reflects their individual contribution to the company and covers all aspects of performance. Our directors do not receive any commissions or other benefits arising directly from services provided to our clients.
- 11 We do not pay commissions or provide other benefits to other parties for referring prospective clients to us.

Complaints

- 12 If you have a complaint, please raise it with us first, using the contact details listed below. We will endeavour to satisfactorily resolve your complaint in a timely manner.
- 13 If we are not able to resolve your complaint to your satisfaction within 45 days of your written notification, you are entitled to have your matter referred to the Financial Industry Complaints Services (FICS), an external complaints resolution service. You will not be charged for using the FICS service.

Contact details

- 14 LEA can be contacted by sending a letter to the following address:

Level 27
363 George Street
Sydney NSW 2000
(or GPO Box 1640, Sydney NSW 2001)

Appendix B

Qualifications, declarations and consents

Qualifications

- 1 LEA is a licensed investment adviser under the Corporations Act. LEA's authorised representatives have extensive experience in the field of corporate finance, particularly in relation to the valuation of shares and businesses and have prepared more than 100 Independent Expert's Reports.
- 2 This report was prepared by Mr Craig Edwards (BCom, CA, SF Fin) and Mr Martin Holt (BA (Econ), FCA, SA Fin), who are each authorised representatives of LEA. Mr Edwards and Mr Holt have over 15 years and 20 years experience respectively in the provision of valuation advice.

Declarations

- 3 This report has been prepared at the request of the Directors of Avexa to accompany the Scheme Booklet to be sent to Avexa shareholders. It is not intended that this report should serve any purpose other than as an expression of our opinion as to whether or not the Scheme is in the best interests of the shareholders of Avexa.

Interests

- 4 At the date of this report, neither LEA, Mr Edwards nor Mr Holt have any interest in the outcome of the Scheme. LEA is entitled to receive a fee of \$60,000 plus GST for the preparation of this report. With the exception of the above fee, LEA will not receive any other benefits, either directly or indirectly, for or in connection with the preparation of this report.
- 5 Prior to preparing this IER LEA prepared an independent valuation of Avexa for the benefit of Avexa's directors. This valuation was consistent with the value of Avexa set out in this report.

Indemnification

- 6 As a condition of LEA's agreement to prepare this report, Avexa agrees to indemnify LEA in relation to any claim arising from or in connection with its reliance on information or documentation provided by or on behalf of Avexa which is false or misleading or omits material particulars or arising from any failure to supply relevant documents or information.

Consents

- 7 LEA consents to the inclusion of this report in the form and context in which it is included in Avexa's Scheme Booklet.

Appendix C

Glossary	
Abbreviation	Definition
AIFRS	Australian equivalent to International Financial Reporting Standards
ASIC	Australian Securities & Investments Commission
ASX	Australian Securities Exchange
Avexa	Avexa Limited
Corporations Act	Corporations Act 2001 (Cth)
DCF	Discounted cash flow
EPS	Earnings per share
FICS	Financial Industry Complaints Services
FSG	Financial Services Guide
FY	Financial year
IER	Independent expert's report
LEA	Lonerган Edwards & Associates Limited
MIA	Merger Implementation Agreement
NPAT	Net profit after tax
NPV	Net present value
NTA	Net tangible assets
PE	Price earnings
Progen	Progen Pharmaceuticals Limited
Proposal	The merger proposal under which Progen is to acquire all the shares and options in Avexa
Scheme	The scheme of arrangement between Avexa and its shareholders
VWAP	Volume weighted average price

Annexure B - Scheme of Arrangement

Scheme of Arrangement

pursuant to section 411 of the Corporations Act 2001 (Cwlth)

between

AVEXA LIMITED (ABN 53 108 150 750) of 576 Swan Street, Richmond, Victoria 3121 ("**Avexa**")

and

EACH HOLDER OF AVEXA SHARES AS AT THE SCHEME RECORD DATE

1 Definitions and Interpretation

1.1 Definitions

In this Scheme, unless the contrary intention appears or the context requires otherwise:

ASIC means the Australian Securities and Investments Commission.

ASX means ASX Limited (ABN 98 008 624 691) or, as the context requires, the market known as the Australian Securities Exchange operated by it.

Avexa Register means Avexa's register of shareholders.

Avexa Share means a fully paid ordinary share in the capital of Avexa.

Avexa Shareholder means a person who is registered in the Avexa Register from time to time as the holder of one or more Avexa Shares from time to time.

Business Day means a day other than a Saturday, Sunday or public holiday in Victoria.

CHESS has the same meaning as in the Listing Rules.

Corporations Act means the Corporations Act 2001 (Cwlth).

Court means the Supreme Court of Victoria or such other court of competent jurisdiction that Progen and Avexa agree in writing.

Deed Poll means the deed poll dated on or about 13 February 2009 executed by Progen in favour of Scheme Participants, undertaking to perform certain obligations under this Scheme.

Effective Date means the date on which an office copy of the Scheme Order is lodged with ASIC.

End Date means 30 April 2009 (or such later date as Avexa and Progen agree in accordance with the Merger Implementation Agreement).

Implementation Date means the day which is three Business Days after the Scheme Record Date.

Ineligible Foreign Shareholder means a Scheme Participant whose address as shown in the Avexa Register as at the Scheme Record Date is in a place other than Australia or its external territories or New Zealand, Canada and Indonesia, unless Avexa and Progen each agree otherwise in writing.

Listing Rules means the official listing rules of ASX.

Merger Implementation Agreement means the agreement dated 22 December 2008 (as amended) and entitled "Merger Implementation Agreement" between Avexa and Progen relating to the implementation of this Scheme.

Progen means Progen Pharmaceuticals Limited (ABN 82 010 975 612).

Progen Register means Progen's register of shareholders.

Progen Share means a fully paid ordinary share in the capital of Progen.

Registered Address means, in relation to a Avexa Shareholder, the address of that Avexa Shareholder shown in the Avexa Register.

Scheme means this scheme under Part 5.1 of the Corporations Act made between Avexa and Scheme Participants, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and approved in writing by Avexa and Progen.

Scheme Booklet means the booklet containing the explanatory statement relating to this Scheme as required by Part 5.1 of the Corporations Act, the notice of meeting in relation to this Scheme and other information (including any supplementary information) relating to any or all of the above matters and distributed to Avexa Shareholders.

Scheme Consideration has the same meaning as in the Merger Implementation Agreement, as further described in the Scheme Booklet.

Scheme Meeting means the meeting of Avexa Shareholders convened pursuant to section 411(1) of the Corporations Act to consider and, if thought fit, to approve this Scheme.

Scheme Order means the order of the Court under section 411(4)(b) of the Corporations Act approving this Scheme, with or without modification.

Scheme Participant means each person who is entered in the Avexa Register as the holder of one or more Avexa Shares on the Scheme Record Date.

Scheme Record Date means the 5.00 p.m. on the fifth Business Day after the Effective Date (or such other date as may be agreed in writing by Avexa and Progen).

Scheme Share means an Avexa Share on issue at the Scheme Record Date.

Second Court Hearing means the hearing of the application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act to approve this Scheme.

1.2 Interpretation

In this Scheme, unless the contrary intention appears or the context requires otherwise:

- (a) words and phrases (other than those defined in clause 1.1) have the same meaning given to them in the Corporations Act;
- (b) the singular includes the plural and vice versa;
- (c) each gender includes every other gender;
- (d) a reference to a clause is a reference to a clause of this Scheme;
- (e) a reference to a statute, ordinance, code or other law or rule includes regulations and other instruments under it and consolidation, amendments, re-enactments or replacement;
- (f) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (g) the word "person" includes a firm, body corporate, a partnership, a joint venture, an unincorporated body or association, or any government agency;
- (h) a reference to a person includes a reference to a person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (i) the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (j) a reference to time is a reference to the time in Melbourne, Victoria;
- (k) a reference to a holder includes a joint holder; and
- (l) headings are only for convenience and are to be disregarded in the interpretation of substantive provisions.

2 Preliminary

2.1 Avexa

- (a) Avexa is a public company incorporated in Australia and is a company limited by shares. It has its registered office at 576 Swan Street, Richmond, Victoria 3121.
- (b) At 13 February 2009, there were 424,675,014 Avexa Shares on issue.
- (c) Avexa is a company admitted to the ASX official list and Avexa Shares are quoted on ASX.

2.2 Progen

- (a) Progen is a public company incorporated in Australia and is a company limited by shares. It has its registered office at 16 Benson Street, Toowong Qld 4066.
- (b) Progen is a company admitted to the ASX official list and Progen Shares are quoted on ASX.

2.3 Effect of Scheme

If the Scheme becomes effective:

- (a) the Scheme Shares, together with all rights and entitlements attaching to them as at the Implementation Date, will be transferred to Progen;
- (b) Progen will provide the Scheme Consideration to each Scheme Participant in accordance with the terms of the Scheme, the Merger Implementation Agreement and the Deed Poll; and
- (c) Progen will enter the name and address of each Scheme Participant in the Progen Register as the holder of those Progen Shares comprised in the Scheme Consideration to be provided to each Scheme Participant.

2.4 Merger Implementation Agreement

Avexa and Progen have entered into the Merger Implementation Agreement to facilitate, among other things, the implementation of this Scheme. In particular, under the Merger Implementation Agreement, Avexa and Progen have agreed to implement this Scheme on the terms of the Merger Implementation Agreement.

2.5 Deed Poll

Progen has entered into the Deed Poll in favour of Scheme Participants pursuant to which Progen has covenanted to perform its obligations under the Scheme, including to provide the Scheme Consideration to Scheme Participants in accordance with this Scheme, subject to this Scheme becoming binding on the Scheme Participants in accordance with sections 411(4), 411(6) and 411(10) of the Corporations Act.

3 Conditions precedent to this Scheme

3.1 Conditions precedent

This Scheme is conditional upon, and will have no force or effect until, the satisfaction of each of the following conditions precedent:

- (a) **(no termination of Merger Implementation Agreement or Deed Poll)** neither the Merger Implementation Agreement nor the Deed Poll is terminated before the Court makes the Scheme Order;
- (b) **(conditions precedent under the Merger Implementation Agreement)** all of the conditions precedent set out in clause 3.1 of the Merger Implementation Agreement are satisfied or waived in accordance with the Merger Implementation Agreement by the times set out in the Merger Implementation Agreement;
- (c) **(approval of this Scheme)** this Scheme is approved by Avexa Shareholders in accordance with section 411 of the Corporations Act at the Scheme Meeting;
- (d) **(Court approval of this Scheme)** the Court makes the Scheme Order and any other conditions made or required by the Court under Section 411(6) of the Corporations Act, in relation to the Scheme, and which are acceptable to Avexa, having been satisfied; and
- (e) **(lodgement with ASIC)** the Scheme Order is lodged with ASIC,

and the provisions of clauses 4 and 5 will not come into effect unless and until each of these conditions have been satisfied.

3.2 Effect of conditions precedent

The satisfaction or waiver of each condition precedent in clause 3.1 of this Scheme (other than the condition precedent in clause 3.1(e)) (and in accordance with the Merger Implementation Agreement in respect of the condition precedent in clause 3.1(b) of this Scheme) at the same time as, or before, the Court making the Scheme Order is a condition precedent to this Scheme having effect.

3.3 Certificate

Avexa must provide to the Court at the Second Court Hearing a certificate, or such other evidence as the Court requests, confirming whether or not all of the conditions precedent to this Scheme set out in clause 3.1 of this Scheme (other than the conditions precedent in clauses 3.1(d) and (e) of this Scheme and in clause 3.1(f) and (g) of the Merger Implementation Agreement) are satisfied. The certificate constitutes conclusive evidence that those conditions precedent have been satisfied or waived (in accordance with the terms of the Merger Implementation Agreement).

3.4 Effective Date

Subject to clause 3.5, this Scheme takes effect for all purposes on the Effective Date.

3.5 End date

This Scheme lapses and has no further force or effect if the Effective Date is not on or before 30 April 2009 (or such later date as Avexa and Progen agree in accordance with the Merger Implementation Agreement).

4 Implementation of this Scheme

4.1 Transfer of and consideration for Avexa Shares

- (a) On the Implementation Date:
 - (i) subject to the provision of the Scheme Consideration in accordance with clause 4.2 and written confirmation of that provision of the Scheme Consideration being given to Avexa, all of the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, must be transferred to Progen without the need for any further act by any Scheme Participant (other than any acts performed by Avexa or its directors or officers as attorney or agent for Scheme Participants under clause 7.6); and
 - (ii) Avexa must deliver to Progen duly completed and executed share transfer forms (or a master share transfer form) to transfer all of the Scheme Shares to Progen.
- (b) On the Implementation Date, in consideration for the transfer of the Scheme Shares to Progen, subject to clauses 4.4, 4.6 and 4.8, Avexa must procure Progen to provide the Scheme Consideration to each Scheme Participant.

4.2 Satisfaction of obligation to provide the Scheme Consideration

The obligations of Progen to provide the Scheme Consideration must be satisfied by Progen:

- (a) on the Implementation Date and before noon, entering the name of each Scheme Participant (subject, in the case of Ineligible Overseas Shareholders, to clause 4.4) on the Progen Register in respect of those Progen Shares comprised in the Scheme Consideration to be provided to that Scheme Participant in respect of their Scheme Shares in accordance with this Scheme and the Merger Implementation Agreement; and
- (b) as soon as practicable after the Implementation Date, dispatching to each Scheme Participant (other than Ineligible Overseas Shareholders) by prepaid post to the Scheme Participant at their Registered Address (subject to clause 4.7(a)), a CHES holding statement in the name of that Scheme Participant representing the total number of Progen Shares issued to that Scheme Participant in accordance with this Scheme and the Merger Implementation Agreement.

4.3 Issue of Progen Shares

The Progen Shares comprising the Scheme Consideration must be:

- (a) duly and validly issued;
- (b) fully paid; and
- (c) ranked pari passu in all respects with all other Progen Shares then issued and outstanding.

4.4 Ineligible Overseas Shareholders

- (a) Progen is under no obligation to issue and allot the Progen Shares comprising the Scheme Consideration to any Ineligible Overseas Shareholder.
- (b) In the case of each Ineligible Overseas Shareholder, Progen must issue and allot to a nominee appointed by Progen those Progen Shares that, but for this clause 4.4, would have been required to be issued and allotted to that Ineligible Overseas Shareholder pursuant to this Scheme.
- (c) That nominee must as soon as practicable (and in any event within 20 Business Days after the Implementation Date) sell those Progen Shares on ASX and pay, subject to clause 4.7, each of the Ineligible Overseas Shareholders an amount equal to the average net proceeds of sale (after deduction of any applicable brokerage, taxes and charges) of all Progen Shares sold under this clause multiplied by the number of Progen Shares to which that Ineligible Overseas Shareholder would have been entitled but for this clause 4.4. Payment is to be made by cheque in Australian currency drawn on an Australian bank and is to be sent by post to (subject to clause 4.7(a)) the Ineligible Overseas Shareholder within 25 Business Days after the Implementation Date.
- (d) None of Avexa, Progen or the nominee gives any assurance as to the price that will be achieved for the sale of the Progen Shares under this clause 4.4.
- (e) Each Ineligible Overseas Holder appoints Progen as its agent to receive on its behalf any financial services guide or other notices which may be given by the nominee to Ineligible Overseas Holders.
- (f) Payment in accordance with this clause 4.4 fully satisfies and discharges Progen's obligations to Ineligible Overseas Shareholders in relation to this Scheme.

4.5 Registration of Avexa transfers

On the Implementation Date:

- (a) Progen must execute as transferee the share transfer forms (or master share transfer form) referred to in clause 4.1(a)(ii) and must deliver

the share transfer forms (or master share transfer form) to Avexa for registration; and

- (b) subject to Progen complying with its obligations under clause 4.2 of this Scheme, Avexa must enter the name of Progen in the Avexa Register in respect of the Scheme Shares.

4.6 Provision of Scheme Consideration to related bodies corporate

Nothing in this Scheme requires Progen to provide the Scheme Consideration to a Scheme Participant that is:

- (a) Progen;
- (b) a related body corporate of Progen; or
- (c) a person who holds Scheme Shares on behalf of or for the benefit of Progen or a related body corporate of Progen.

4.7 Joint holders

In the case of Scheme Shares held in joint names:

- (a) CHESS holding statements for Progen Shares issued to Scheme Participants must be issued in the names of the joint holders and sent to the holder whose name appears first in the Avexa Register at the Scheme Record Date; and
- (b) any cheque required to be paid to Scheme Participants by the nominee appointed under clause 4.4 of the Merger Implementation Agreement must be in Australian dollars drawn on an Australian bank and must be payable to the joint holders and be forwarded to the holder whose name appears first in the Avexa Register at the Scheme Record Date.

4.8 Fractional entitlements

- (a) Subject to clause 4.8(b), any entitlement of a Scheme Participant to a fraction of a Progen Share:
 - (i) which is 0.5 or greater will be rounded up to the nearest whole number of Progen Shares; and
 - (ii) which is less than 0.5 will be rounded down to the nearest whole number of Progen Shares.
- (b) If Avexa or Progen reasonably believes that a Scheme Participant has, on or before the Scheme Record Date, dealt with Avexa Shares (including splitting or dividing a holding) since the date of the Merger Implementation Agreement in an attempt to obtain an advantage by reference to the rounding which would, but for this clause, apply in the calculation of that Scheme Participant's entitlement to Progen Shares, then any resulting fractional entitlement will be aggregated and such aggregate entitlement rounded in accordance with clause 4.8(a).

5 Dealings in Avexa Shares

5.1 Entitlement to participate

Every Avexa Shareholder entered on the Avexa Register as the holder of one or more Avexa Shares on the Scheme Record Date is entitled to participate in this Scheme.

5.2 Recognised dealings

For the purposes of determining who is a Scheme Participant, dealings in Avexa Shares will only be recognised if:

- (a) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Avexa Register as the holder of the relevant Avexa Shares on or before the Scheme Record Date; and
- (b) in all other cases, registrable transmission applications or transfers in registrable form in respect of those dealings are received on or before the Scheme Record Date at the place where the Avexa Register is kept.

5.3 Avexa's obligation to register

Avexa must register any registrable transmission application or transfer received in accordance with clause 5.2(b) on or before the Scheme Record Date.

5.4 Shareholder must not dispose

A holder of Scheme Shares (and any person claiming through that holder) must not dispose of or purport or agree to dispose of any Scheme Shares or any interest in them after the Effective Date.

5.5 Transfer requests received after Scheme Record Date

Avexa must not accept for registration or recognise for any purpose any transmission, application or transfer in respect of Avexa Shares received after the Scheme Record Date, other than a transfer to Progen in accordance with this Scheme.

5.6 Maintaining the Avexa Register

For the purpose of determining entitlements to participate in this Scheme, Avexa must, until the Scheme Consideration has been provided to Scheme Participants and Progen has been entered in the Avexa Register as holder of all of the Scheme Shares, maintain the Avexa Register in accordance with the provisions of this clause 5 and the Avexa Register in this form solely determines entitlements to the Scheme Consideration.

5.7 Statements of holding cease to have any effect

All statements of holding for Avexa Shares cease to have any effect from the Scheme Record Date as documents relating to title in respect of those shares (other than statements in respect of Progen following the Scheme Record

Date). As from the Scheme Record Date, each entry current at that date on the Avexa Register ceases to be of any effect other than as evidence of entitlement to the Scheme Consideration in respect of the Scheme Shares relating to that entry.

5.8 Provision of information

As soon as practicable after the Scheme Record Date, and in any event no later than noon on the second Business Day following the Scheme Record Date, Avexa must procure that details of the names, registered addresses and holdings of Avexa Shares of every Avexa Shareholder as shown in the Avexa Register at the Scheme Record Date are available to Progen in such form as Progen may reasonably require.

6 Actions regarding quotation of Avexa Shares and Progen Shares

6.1 Suspension of trading of Avexa Shares

It is expected that trading in Avexa Shares on ASX will be suspended no later than the Business Day following the day on which Avexa notifies ASX of the granting of the Scheme Order.

6.2 Quotation of Avexa Shares

On the first Business Day after the Implementation Date, Avexa will apply for termination of the official quotation of Avexa Shares on ASX.

6.3 Quotation of Progen Shares

Progen must use its best endeavours to procure that the Progen Shares comprising the Scheme Consideration are listed for quotation on the ASX on a deferred settlement basis on and from the Implementation Date and are subsequently quoted on a normal trading basis.

7 General provisions

7.1 Lodgement of the Scheme Order with ASIC

Avexa must lodge with ASIC, pursuant to section 411(10) of the Corporations Act, an office copy of the Scheme Order by 5.00 p.m. on the first Business Day after the day on which the Court approves this Scheme at the Second Court Hearing.

7.2 Alterations or conditions

If the Court proposes to approve this Scheme subject to any alterations or conditions, Avexa may by its counsel or solicitors, and with the consent of Progen, consent on behalf of all persons concerned to any alterations or conditions.

7.3 Agreement to transfer Scheme Shares and acceptance of Progen Shares

- (a) The Scheme Participants agree to the transfer of their Scheme Shares to Progen in accordance with the terms of this Scheme.
- (b) Each Scheme Participant must accept the Progen Shares comprising the Scheme Consideration and agrees to become a member of Progen and be bound by the constitution of Progen as in force from time to time. This clause does not apply to Ineligible Overseas Shareholders.

7.4 Scheme Shares - Free of encumbrances

- (a) To the extent permitted by law, the Scheme Shares transferred to Progen under this Scheme must be transferred free from all mortgages, charges, liens, encumbrances and interests of third parties of any kind, whether legal or otherwise.
- (b) Each Scheme Participant is deemed to have warranted to Progen that all their Scheme Shares (including any rights attaching to those shares) that are transferred to Progen under this Scheme are, at the date of transfer, fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests and other interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind, and that they have full power and capacity to sell and to transfer to Progen their Scheme Shares together with any rights attaching to those shares.

7.5 Beneficial ownership pending registration

Progen is beneficially entitled to the Scheme Shares transferred to it under this Scheme pending registration by Avexa of Progen in the Avexa Register as the holder of the Scheme Shares.

7.6 Avexa to act on behalf of Scheme Participants

Each Scheme Participant, without the need for any further act, appoints Avexa and each of its directors or officers (jointly and severally) as its attorney and agent for the purpose of executing any document necessary or desirable to give effect to this Scheme or taking any other act necessary to give effect to this Scheme, including a proper instrument of transfer of their Scheme Shares for the purposes of section 1071B of the Corporations Act, which may be a master transfer of all of the shares.

7.7 Further assurances

Avexa must execute documents and do all things and acts necessary or expedient in order to implement this Scheme.

7.8 Authority of Avexa

Each of the Scheme Participants consents to Avexa doing all things necessary for or incidental to the implementation of this Scheme.

7.9 Scheme binding

This Scheme binds Avexa and all Scheme Participants from time to time (including those who do not attend the Scheme Meeting to approve this Scheme or do not vote at the Scheme Meeting or vote against this Scheme at the Scheme Meeting). To the extent of inconsistency between this Scheme and Avexa's constitution, this Scheme overrides Avexa's constitution.

7.10 Notices

Where a notice, transfer, transmission application or other communication referred to in this Scheme is sent by post to Avexa, it is not deemed to be received in the ordinary course of post or on a date other than the date (if any) on which it is actually received at Avexa's registered office or at Avexa's share registry.

7.11 Governing Law

The governing law of this Scheme is the law in force in Victoria.

7.12 Fees and charges

Avexa must pay all filing, application or similar fees due in relation to this Scheme.

7.13 No liability when acting in good faith

Neither Avexa nor Progen nor any officer of any of those companies is liable for anything done or omitted to be done in the performance of this Scheme in good faith.

Annexure C - Deed Poll

Deed Poll

Dated 12 February 2009

Given by Progen Pharmaceuticals Limited (ACN 010 975 612) ("**Progen**")

In favour of each holder of ordinary shares in Avexa Limited (ACN 108 150 750) ("**Avexa**") on issue as at the Record Date (other than Progen or any subsidiary or related body corporate of Progen) ("**Scheme Participants**")

Mallesons Stephen Jaques
Level 50
Bourke Place
600 Bourke Street
Melbourne Vic 3000
Australia
T +61 3 9643 4000
F +61 3 9643 5999
DX 101 Melbourne
www.mallesons.com

Deed Poll

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Deed Poll

Details

By:	Progen Pharmaceuticals Limited (ACN 010 975 612) of 16 Benson Street, Toowong, Qld, 4066 (" Progen ")
In favour of:	Each holder of ordinary shares in Avexa Limited (ACN 108 150 750) (" Avexa ") on issue as at the Record Date (other than Progen or any subsidiary or related body corporate of Progen) (" Scheme Participants ")
Recitals	A Avexa and Progen are parties to a merger implementation agreement dated 22 December 2008 (as amended) ("Merger Implementation Agreement"). B The directors of Avexa have resolved that Avexa should propose the Scheme. C The effect of the Scheme will be that all Scheme Shares will be transferred to Progen. D In the Merger Implementation Agreement, Progen agreed (amongst other things) to pay the Scheme Consideration to Avexa on behalf of the Scheme Participants, subject to the satisfaction of certain conditions. E Progen is entering into this deed poll for the purpose of covenanting in favour of Scheme Participants to perform its obligations under the Merger Implementation Agreement and the Scheme ("Deed Poll").
Governing law	Victoria
Date of deed	See Signing page

Deed Poll

General terms

1 Definitions and interpretation

1.1 Definitions

In this Deed Poll (unless the context otherwise requires):

- (a) **Avexa** means Avexa Limited (ACN 108 150 750);
- (b) **Progen** means Progen Pharmaceuticals Limited (ACN 010 975 612);
- (c) **Scheme** means the proposed scheme of arrangement between Avexa and Scheme Participants substantially in the form of Annexure A to this Deed Poll together with any amendment or modification made pursuant to section 411(6) of the Corporations Act; and
- (d) other words and phrases used in this Deed Poll have the same meaning as given to them in the Scheme or the Merger Implementation Agreement (as the case may be).

1.2 Interpretation

The rules specified in clause 1.2 of the Scheme apply in interpreting this Deed Poll, unless the contrary intention appears or the context requires otherwise.

1.3 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

1.4 Nature of Deed Poll

Progen acknowledges that this Deed Poll may be relied on and enforced by any Scheme Participant in accordance with its terms even though they are not a party to it.

2 Conditions

2.1 Conditions

Progen's obligations under clause 4 are subject to the Scheme becoming Effective.

2.2 Termination

Progen's obligations under this Deed Poll automatically terminate:

- (a) if the condition in clause 2.1 of this Deed Poll is not satisfied or waived in writing by Progen on or before the End Date; or
- (b) if the Merger Implementation Agreement is terminated in accordance with its terms,

unless Avexa and Progen otherwise agree in writing.

2.3 Consequences of termination

If this Deed Poll is terminated under clause 2.2, then in addition and without prejudice to any other rights (including in respect of any breach of this Deed Poll which occurs before it is terminated), powers or remedies available to Scheme Participants, Progen is released from its obligations to further perform this Deed Poll except those obligations under clause 8.1 and any other obligations which by their nature survive termination.

3 Performance of obligations generally

Progen will comply with its obligations under the Merger Implementation Agreement and do all things necessary or expedient on its part to implement the Merger Implementation Agreement and give full effect to the Scheme.

4 Scheme Consideration

Subject to clause 2.1, in consideration for the transfer to Progen of each Avexa Share held by a Scheme Participant on the Record Date, Progen will provide the Scheme Consideration to be provided to Scheme Participants in accordance with the Scheme.

5 Warranties

Progen represents and warrants that:

- (a) it is a corporation validly existing under the laws of its place of registration;
- (b) it has the corporate power to enter into and perform its obligations under this Deed Poll and to carry out the transactions contemplated by this Deed Poll;
- (c) it has taken all necessary corporate action to authorise its entry into this Deed Poll and has taken or will take all necessary corporate action to authorise the performance of this Deed Poll and to carry out the transactions contemplated by this Deed Poll;
- (d) this Deed Poll is valid and binding on it and enforceable against it in accordance with its terms; and
- (e) the Progen Shares which are issued to Scheme Participants as Scheme Consideration in accordance with the Scheme will:
 - (i) be duly and validly issued and be fully paid; and

- (ii) rank equally in all respects with all other Progen Shares then on issue.

6 Continuing obligations

This Deed Poll is irrevocable and, subject to clause 2, remains in full force and effect until:

- (a) Progen has fully performed its obligations under this Deed Poll; or
- (b) the earlier termination of this Deed Poll under clause 2.2.

7 Notices

7.1 Form

All notices or other communication ("**Communications**") to Progen in respect of this Deed Poll must be:

- (a) in writing;
- (b) signed by the sender or by a person duly authorised by the sender;
- (c) marked for the attention of Mr Justus Homburg, Progen CEO, or, if the recipient has notified otherwise, then marked for attention in the way last notified;
- (d) must be delivered or sent by prepaid ordinary post to the address, or sent by fax to the fax number, of Progen set out in the Details; or
- (e) given in any other way permitted by law.

8 General

8.1 Stamp duty

Progen will:

- (a) pay all stamp duties and any related fines, penalties and other costs in respect of the Scheme (including, without limitation, in connection with the transfer of Avexa Shares to Progen in accordance with the terms of the Scheme) and this Deed Poll, the performance of this Deed Poll and each transaction effected by or made under the Scheme and this Deed Poll; and
- (b) indemnify each Scheme Participant against any liability arising from failure to comply with clause 8.1(a).

8.2 Governing law and jurisdiction

This Deed Poll is governed by the laws of Victoria. Progen irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria and the Commonwealth of Australia.

8.3 Waiver

- (a) A waiver of any right arising from a breach of this Deed Poll or of any right, power, authority, discretion or remedy arising upon default under this Deed Poll must be in writing and signed by the party granting the waiver.
- (b) A failure or delay in exercise, or partial exercise, of:
 - (i) a right arising from a breach of this Deed Poll; or
 - (ii) a right, power, authority, discretion or remedy created or arising upon default under this Deed Poll,does not result in a waiver of that right, power, authority, discretion or remedy.
- (c) A party is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this Deed Poll or on a default under this Deed Poll as constituting a waiver of that right, power, authority, discretion or remedy.
- (d) A party may not rely on any conduct of another party as a defence to exercise of a right, power, authority, discretion or remedy by that other party.

8.4 Variation

A provision of this Deed Poll or any right created under it may not be varied, altered or otherwise amended unless the variation is agreed to by Avexa and Progen in writing and the Court indicates that the variation, alteration or amendment would not itself preclude approval of the Scheme, in which event Progen will enter into a further Deed Poll in favour of the Scheme Participants giving effect to the variation, alteration or amendment.

8.5 Remedies cumulative

The rights and remedies of Progen and the Scheme Participants under this Deed Poll are in addition to other rights and remedies given by law independently of this Deed Poll.

8.6 Assignment

The rights and obligations of Progen and each Scheme Participant under this Deed Poll are personal and must not be assigned or otherwise dealt with at law or in equity.

8.7 Further action

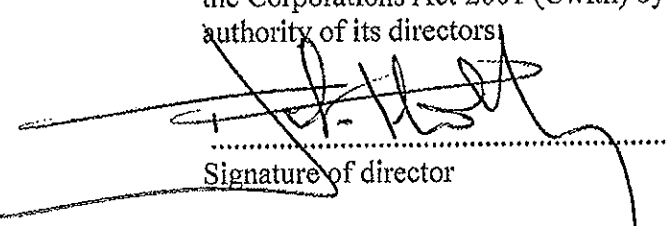
Progen will promptly do all things and execute and deliver all further documents necessary or expedient to give effect to this Deed Poll and the transactions contemplated by it.

EXECUTED as a Deed Poll

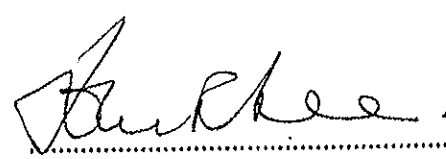
Signing page

DATED: 12 Feb 2009

EXECUTED by PROGEN
PHARMACEUTICALS LIMITED
in accordance with section 127(1) of
the Corporations Act 2001 (Cwlth) by
authority of its directors


.....
Signature of director

T. JUSTUS HOMBURG
.....
Name of director (block letters)


.....
Signature of director/company
secretary

BHW ROBERT LEE
.....
Name of director/company secretary
(block letters)

Deed Poll

Annexure A - Scheme

[See Annexure B to the Scheme Booklet]

Annexure D - Merger Implementation Agreement

Merger Implementation Agreement

Dated 22 December 2008 (as amended)

Mallesons Stephen Jaques

Level 50
Bourke Place
600 Bourke Street
Melbourne Vic 3000
Australia
T +61 3 9643 4000
F +61 3 9643 5999
DX 101 Melbourne
www.mallesons.com

Merger Implementation Agreement

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Details

Parties	Progen and Avexa	
Progen	Name	Progen Pharmaceuticals Limited
	ABN	82 010 975 612
	Incorporated in	Commonwealth of Australia
	Address	16 Benson Street, Toowong Qld 4066
	Telephone	07 3842 3333
	Fax	07 3720 9624
	Attention	Mr Justus Homburg
Avexa	Name	Avexa Limited
	ABN	53 108 150 750
	Incorporated in	Commonwealth of Australia
	Address	576 Swan Street, Richmond Vic 3121
	Telephone	03 9208 4300
	Fax	03 9208 4004
	Attention	Dr Julian Chick
Recitals	A	Avexa and Progen have agreed to merge by means of a members' scheme of arrangement under Part 5.1 of the Corporations Act.
	B	At the request of Progen, Avexa intends to propose the Scheme and issue the Scheme Booklet.
	C	Avexa and Progen have agreed to implement the Scheme on the terms and conditions of this agreement.
Governing law	Victoria	
Date of agreement	See Signing page	

Merger Implementation Agreement

General terms

1 Definitions and interpretation

1.1 Definitions

These meanings apply unless the contrary intention appears.

Announcement Date means the date on which the joint public announcement contained in Schedule 1 is made to ASX.

ASIC means the Australian Securities & Investments Commission.

ASX means ASX Limited or the stock market operated by it, as the context requires.

Authorised Officer means, in respect of a party, a director or secretary of the party or any other person appointed by a party to act as an Authorised Officer under this agreement.

Avexa means Avexa Limited (ABN 53 108 150 750).

Avexa Board means the board of directors of Avexa, however constituted from time to time.

Avexa Data Room means the physical data room provided to Progen and its advisers at Avexa's premises in Melbourne, which contained the documents listed in Annexure A.

Avexa Employee or Executive Equity Plan means any plan put in place by Avexa to enable participation by its employees and executives in equity ownership of Avexa.

Avexa Group means Avexa and its Subsidiaries.

Avexa Incoming Directors means Mr Nathan Drona, Dr Julian Chick, Mr David Bottomley and Mr John Sime.

Avexa Indemnified Parties means Avexa, its officers, employees, and advisers and its Related Bodies Corporate and the officers, employees and advisers of each of its Related Bodies Corporate.

Avexa Information means all information contained in the Scheme Booklet other than the Progen Information and the Independent Expert's report.

Avexa Options mean options issued by Avexa.

Avexa Outgoing Director means Mr Alan Boyd.

Avexa Share means an ordinary fully paid share in the capital of Avexa.

Avexa Shareholder means, at any particular date, each person registered in the Register as a holder of Avexa Shares.

Business Day means a business day as defined in the Listing Rules.

Buy Back Consideration means the amount of cash required by Progen to pay the consideration in respect of accepted offers under the Progen Buy Back, but which will not exceed \$20 million.

Competing Transaction means a transaction, or proposed transaction, which, if completed, would mean a person (other than Progen or its Related Bodies Corporate or Representatives) would:

- (a) directly or indirectly, acquire an interest or relevant interest in or become the holder of:
 - (i) 20% or more of Avexa Shares; or
 - (ii) all or a substantial part or a material part of the business or property of Avexa or any of its Subsidiaries,

including by way of takeover bid, scheme of arrangement, capital reduction, sale of assets, sale of shares or joint venture, but not as a custodian, nominee or bare trustee;
- (b) acquire control of Avexa, within the meaning of section 50AA of the Corporations Act; or
- (c) otherwise acquire or merge (including by a reverse takeover bid or dual listed company structure) with Avexa.

For the purposes of paragraph (a)(ii) above, the acquisition of an interest in the business or property of Avexa or any of its Subsidiaries will be material if the business or property represented 20% or more of the total consolidated assets of Avexa reported in the financial statements for the year ended 30 June 2008.

Conditions Precedent means the conditions precedent set out in clause 3.1.

Confidentiality Agreement means the Confidentiality Agreement between the parties dated 27 March 2008.

Controller has the meaning it has in the Corporations Act.

Corporations Act means the Corporations Act 2001 (Cwlth).

Corporations Regulations means the Corporations Regulations 2001 (Cwlth).

Court means a court of competent jurisdiction under the Corporations Act.

Deed Poll means a deed poll in terms which are usual for a transaction of the nature of the Proposed Transaction and which are reasonably agreed by the parties under which Progen covenants for the benefit of the Scheme Participants, conditional on the Scheme becoming Effective, to provide the

Scheme Consideration to the Scheme Participants in accordance with the Scheme and this agreement.

Defeating Transaction means a transaction, or proposed transaction, which, if completed, would mean a person or persons (other than Avexa Shareholders under the Scheme) would:

- (a) directly or indirectly, acquire an interest or relevant interest in or become the holder of:
 - (i) 20% or more of Progen Shares; or
 - (ii) all or a substantial part or a material part of the business or property of Progen or any of its Subsidiaries,

including by way of takeover bid, scheme of arrangement, capital reduction, sale of assets, sale of shares or joint venture, but not as a custodian, nominee or bare trustee;
- (b) acquire control of Progen, within the meaning of section 50AA of the Corporations Act; or
- (c) otherwise acquire or merge (including by a reverse takeover bid or dual listed company structure) with Progen.

For the purposes of paragraph (a)(ii) above, the acquisition of an interest in the business or property of Progen or any of its Subsidiaries will be material if the business or property represented 20% or more of the total consolidated assets of Progen reported in the financial statements for the year ended 30 June 2008.

Details means the section of this agreement headed "Details".

Effective, when used in relation to the Scheme, means the coming into effect, pursuant to section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) in relation to the Scheme, but in any event at no time before an office copy of the order of the Court is lodged with ASIC.

Effective Date means the date on which the Scheme becomes Effective.

Encumbrance means any:

- (a) security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power, title retention, or flawed deposit arrangement; or
- (b) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off; or
- (c) right that a person (other than the owner) has to remove something from land (known as a profit à pendre), easement, public right of way, restrictive or positive covenant, lease, or licence to use or occupy; or

- (d) third party right or interest or any right arising as a consequence of the enforcement of a judgment,

or any agreement to create any of them or allow them to exist.

End Date means 30 April 2009, or such other date as is agreed in writing by Progen and Avexa.

Exclusivity Period means the period from and including the date of this agreement to the earlier of:

- (a) the termination of this agreement in accordance with its terms; and
- (b) the End Date.

First Court Date means the first day on which an application made to the Court, in accordance with clause 6.1(n), for orders under section 411(1) of the Corporations Act convening the Scheme Meeting to consider the Scheme is heard.

GST means a goods and services or similar tax imposed in Australia.

GST Act means the A New Tax System (Goods and Services Tax) Act 1999 (Cwlth).

Implementation Date means the third Business Day following the Record Date.

Independent Expert means the independent expert appointed by Avexa under clause 6.1(e).

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to any part of its property; or
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this agreement); or
- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or

- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this agreement reasonably deduces it is so subject); or
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

Input Tax Credit has the meaning it has in the GST Act.

Liquid Assets means:

- (a) actual cash held by a party (AU/US exchange rate to be taken to be USD0.67 per AUD1); plus
- (b) trade and other receivables; plus
- (c) prepayments and deposits; less
- (d) trade payables; less
- (e) provisions calculated in accordance with applicable accounting standards; less
- (f) debt.

Listing Rules means the Listing Rules of ASX Limited.

Losses means all claims, demands, damages, losses, costs, expenses and liabilities.

Optionholder means each person who is registered in the register of Optionholders as a holder of a Avexa Option.

Prescribed Event means, except to the extent contemplated by this agreement or the Scheme, any of the following events occurring in relation to Progen or Avexa, as the context requires:

- (a) **(conversion)** Avexa or Progen converts all or any of its shares into a larger or smaller number of shares;
- (b) **(reduction of share capital)** Avexa or Progen resolves to reduce its share capital in any way or reclassifies, combines, splits or redeems or repurchases directly or indirectly any of its shares;
- (c) **(buy-back)** Avexa or Progen:
 - (i) enters into a buy-back agreement; or
 - (ii) resolves to approve the terms of a buy-back agreement under the Corporations Act;

- (d) **(Liquid Assets)** if, at any time after the date of this agreement (but before the second Business Day before the Second Court Date), Progen Liquid Assets fall below \$66 million, except that in relation to clause 12.3, such event will not apply to the extent that any such fall in Progen Liquid Assets occurs due to factors solely outside of Progen's control;
- (e) **(distribution)** Avexa or Progen makes or declares, or announces an intention to make or declare, any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie);
- (f) **(issuing or granting shares or options)** Avexa or Progen or any of its Subsidiaries:
 - (i) issues shares, except upon exercise of an Avexa Option or Progen Option or other agreement for the issue of shares which exists at the date of this agreement;
 - (ii) grants an option over its shares; or
 - (iii) agrees to make such an issue or grant such an option,
 in each case to a person outside the Avexa Group or the Progen Group (as appropriate);
- (g) **(securities or other instruments)** Avexa, Progen or any of their respective Subsidiaries:
 - (i) issues securities or other instruments convertible into shares or debt securities; or
 - (ii) agrees to issue securities or other instruments convertible into shares or debt securities,
 in each case to a person outside the Avexa Group or the Progen Group (as appropriate);
- (h) **(constitution)** Avexa or Progen adopts a new constitution or modifies or repeals its constitution or a provision of it;
- (i) **(disposals)** Avexa or Progen or any of their respective Subsidiaries disposes, or agrees to dispose of the whole or a substantial part of the business or property of the Avexa Group or the Progen Group (as appropriate), including by way of assignment or licensing of intellectual property;
- (j) **(acquisitions, disposals or tenders)** Avexa, Progen or any of their respective Subsidiaries:
 - (i) acquires or disposes of;
 - (ii) agrees to acquire or dispose of;
 - (iii) offers, proposes, announces a bid or tenders for,

any business undertaking, assets (including intellectual property) or entity the value of which exceeds \$100,000;

- (k) **(Encumbrances)** Avexa, Progen or any of their respective Subsidiaries creates, or agrees to create, any Encumbrance over the whole or a substantial part of its business or property;
- (l) **(employment arrangements)** other than in the ordinary course of business and consistent with past practice, Avexa, Progen or any of their respective Subsidiaries:
 - (i) materially increases the remuneration of, or otherwise varies the employment arrangements with, any of its directors or senior executives who report directly to the Chief Executive Officer;
 - (ii) accelerates the rights of any of its directors or senior executives who report directly to the Chief Executive Officer to compensation or benefits or any kind (including under any executive or employee share plans); or
 - (iii) pays any of its directors or senior executives who report directly to the Chief Executive Officer a termination or retention payment (otherwise than in accordance with an existing contract in place at the date of this agreement);
- (m) **(commitments and settlements)** other than in the ordinary course of business and consistent with past practice, Avexa, Progen or any of their respective Subsidiaries:
 - (i) enters into or agrees to enter into any contract or commitment involving revenue or expenditure of more than \$100,000 over the term of the contract or commitment;
 - (ii) terminates or amends in a material manner any contract material to the conduct of the Avexa Group's or the Progen Group's business (as appropriate) or which involves revenue or expenditure of more than \$100,000 over the term of the contract (for the avoidance of doubt, the Shire Agreement is material to the conduct of the Avexa Group's business);
 - (iii) waives any material third party default; or
 - (iv) accepts as a settlement or compromise of a material matter (relating to an amount in excess of \$100,000) less than the full compensation due to Avexa, Progen or their respective Subsidiaries;
- (n) **(Insolvency)** Avexa, Progen or any of their respective Related Bodies Corporate becomes Insolvent;
- (o) **(Clinical trial)** in the case of Avexa, there is a materially adverse outcome from its Phase III trial for apricitabine (ATC) or the ATC extension study associated with its Phase IIb trial;

- (p) **(Program cancellation)** in the case of Avexa, Avexa cancels or postpones for greater than 3 months its lead development program for ATC or announces an intention to do so,

provided that a Prescribed Event listed in paragraphs (a) to (p) above will not occur where:

- (a) such action or intended action is a current commitment or specific future plan of Avexa or Progen, in either case announced to ASX or disclosed to the other party, before the date of this agreement, including:
- (i) the Progen Buy Back; and
 - (ii) the Progen Capital Consolidation;
- (b) Avexa or Progen has first consulted with the other party in relation to the event and the other party has approved the proposed event;
- (c) the conduct is undertaken in accordance with the obligations of Avexa or Progen (or their respective Subsidiaries) under this agreement; or
- (d) Avexa or Progen (or their respective Subsidiaries) enters into or renews a customer contract in the ordinary course of business on commercial terms.

Progen means Progen Pharmaceuticals Limited (ABN 82 010 975 612).

Progen Board means the board of directors of Progen, however constituted from time to time.

Progen Buy Back means a buy back of ordinary shares by Progen in accordance with the Corporations Act on or before the Implementation Date pursuant to offers made to all of Progen's shareholders to buy back shares at a price not exceeding \$1.10 per share (on a pre-consolidation basis) and up to a maximum aggregate consideration of \$20,000,000.

Progen Capital Consolidation means a consolidation of the capital of Progen implemented in accordance with the Corporations Act under which the number of ordinary shares on issue in Progen are converted to a smaller number on the basis of 1 share for every 3 shares on issue with effect on or after the Implementation Date (and is in no case prior to the issue of the Scheme Consideration to Scheme Participants).

Progen EGM means the general meeting of Progen's shareholders of which notice has been given in response to a requisition for the meeting by certain shareholders and which is scheduled for 9 January 2009, at which resolutions will be considered for the removal from office of certain directors of Progen, being Dr Mal Eutick, Mr Patrick Burns, Mr Stephen Chang, Mr Robert Williamson and Mr Justus Homburg, and for the appointment of Mr Robert Moses, Ms Alison Coutts and Dr Woei-Jia Jiang as directors.

Progen General Meeting means the general meeting of Progen's shareholders to be convened to consider:

- (a) a resolution to approve the Progen Buy Back;
- (b) at the option of Progen, a resolution to approve the Progen Capital Consolidation;
- (c) a special resolution to approve (subject to the Scheme Implementation) the change of Progen's name to "Avexa Pharmaceuticals Limited"; and
- (d) at the option of Progen, an ordinary resolution to approve the Proposed Transaction.

Progen Group means Progen and its Subsidiaries.

Progen Indemnified Parties means Progen, its officers, employees and advisers, its Related Bodies Corporate and the officers, employees and advisers of each of its Related Bodies Corporate.

Progen Incoming Directors means Dr Mal Eutick, Mr John Lee and Mr Justus Homburg.

Progen Information means the information regarding Progen as is required to be included in the Scheme Booklet under the Corporations Act, Corporations Regulations or ASIC Regulatory Guides 60 or 142. For the avoidance of doubt, Progen Information does not include information about the Avexa Group (except to the extent it relates to any statement of intention relating to the Avexa Group following the Effective Date).

Progen Liquid Assets on a particular date means the Liquid Assets held by Progen on that date.

Progen Notice of Meeting means the notice of meeting and accompanying explanatory material relating to the Progen General Meeting.

Progen Options mean options issued by Progen.

Progen Outgoing Directors means Mr Patrick Burns, Mr Stephen Chang and Mr Robert Williamson.

Progen Share means a fully paid ordinary share in the capital of Progen.

Proposed Transaction means the combination of Avexa and Progen through the implementation of the Scheme.

Record Date means 5.00pm on the fifth Business Day following the Second Court Date or such other date as Avexa and Progen agree.

Register means the share register of Avexa and **Registry** has a corresponding meaning.

Regulator's Draft means the draft of the Scheme Booklet in a form acceptable to both parties which is provided to ASIC for approval pursuant to section 411(2) of the Corporations Act.

Regulatory Approval means any approval of a Regulatory Authority of the Proposed Transaction or any aspect of it which Progen, acting reasonably, determines is necessary or desirable to implement the Proposed Transaction or any aspect of it.

Regulatory Authority includes:

- (a) ASX;
- (b) ASIC;
- (c) a government or governmental, semi-governmental or judicial entity or authority;
- (d) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; and
- (e) any regulatory organisation established under statute.

Regulatory Review Period means the period from the date on which the Regulator's Draft is submitted to ASIC to the date on which ASIC confirms that it does not intend to make any submissions at the Court hearing on the First Court Date or otherwise object to the Scheme.

Related Body Corporate has the meaning it has in the Corporations Act.

Relevant Interest has the same meaning as given by sections 608 and 609 of the Corporations Act.

Representative means any person acting for or on behalf of a party including any director, officer, employee, agent, contractor or professional advisor of a party.

Scheme means the scheme of arrangement under part 5.1 of the Corporations Act under which all the Avexa Shares will be transferred to Progen for the Scheme Consideration and otherwise on terms consistent with this agreement and reasonably agreed by the parties, together with any amendment or modification made pursuant to section 411(6) of the Corporations Act.

Scheme Booklet means, in respect of the Scheme, the information booklet to be approved by the Court and despatched to Avexa Shareholders and which must:

- (a) include the Scheme, an explanatory statement complying with the requirements of the Corporations Act and notice(s) of meeting and proxy form(s); and
- (b) comply with the Corporations Act, Corporations Regulations, ASIC Regulatory Guides 60 and 142 and the Listing Rules.

Scheme Consideration means the consideration payable by Progen for the Avexa Shares under the Scheme and in accordance with clause 4.

Scheme Consideration Ratio means the ratio of Progen Shares to be issued in exchange for each Avexa Share as Scheme Consideration, as determined under clause 4.2.

Scheme Implementation means the issue by Progen of the Scheme Consideration to the Scheme Participants and the transfer by the Scheme Participants of their Avexa Shares to Progen.

Scheme Meeting means the meeting to be convened by the Court at which Avexa Shareholders will vote on the Scheme.

Scheme Participants means each person who is an Avexa Shareholder at the Record Date, other than Progen.

Second Court Date means the day on which the Court makes an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme.

Shire Agreement means a licence agreement between Shire Pharmaceuticals Group Plc ("Shire") and Avexa dated 17 January 2005 as amended and restated by agreement on 22 January 2007 and further amended by a letter from Avexa and signed by Shire dated 18 August 2008.

Subsidiaries has the meaning it has in the Corporations Act.

Superior Proposal means a bona fide Competing Transaction which the Avexa Board, acting in good faith, and after taking advice from its legal and financial advisers, determines:

- (a) may be reasonably capable of being completed taking into account all aspects of the Competing Transaction; and
- (b) is superior to the Proposed Transaction, taking into account all terms and conditions of the Competing Transaction, in particular:
 - (i) the consideration offered, or proposed to be offered;
 - (ii) the conditions attached to the Competing Transaction; and
 - (iii) the likelihood of the Competing Transaction being successfully completed.

Tax Invoice has the meaning it has in the GST Act.

Timetable means the timetable set out in schedule 2.

1.2 References to certain general terms

Unless the contrary intention appears, a reference in this agreement to:

- (a) **(variations or replacement)** a document (including this agreement) includes any variation or replacement of it;
- (b) **(clauses, annexures and schedules)** a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this agreement;

- (c) **(reference to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) **(law)** law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (e) **(singular includes plural)** the singular includes the plural and vice versa;
- (f) **(person)** the word "person" includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any Regulatory Authority;
- (g) **(executors, administrators, successors)** a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (h) **(reference to a group of persons)** a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (i) **(dollars)** Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia, unless otherwise indicated;
- (j) **(Calculation of time)** a period of time dating from a given day or the day of an act or event, is to be calculated exclusive of that day;
- (k) **(reference to a day)** a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (l) **(accounting terms)** an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;
- (m) **(meaning not limited)** the words "include", "including", "for example" or "such as" when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (n) **(time of day)** time is a reference to Sydney time;
- (o) **(Avexa Board)** a reference to the board or the directors of Avexa is a reference to that board or those directors from time to time; and
- (p) **(Progen Board)** a reference to the board or the directors of Progen is a reference to that board or those directors from time to time.

1.3 Next day

If an act under this agreement to be done by a party on or by a given day is done after 5.30 pm on that day, it is taken to be done on the next day.

1.4 Next Business Day

If an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.

1.5 Headings

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this agreement.

2 Agreement to propose and implement Scheme

2.1 Avexa to propose Scheme

Avexa agrees to propose the Scheme on and subject to the terms and conditions of this agreement and the Corporations Act.

2.2 Agreement to implement Proposed Transaction

The parties agree to implement the Proposed Transaction on the terms and conditions of this agreement.

2.3 Progen to assist

Progen agrees to comply with its obligations under the Scheme and the Deed Poll, and provide reasonable assistance to Avexa in proposing and implementing the Scheme in accordance with this agreement.

3 Conditions precedent

3.1 Conditions precedent

Subject to this clause 3, the obligations of Progen under clause 4.2 and the obligations of Avexa under clause 2.1 and clause 2.2 are conditional on the satisfaction of each of the following conditions precedent to the extent and in the manner set out in clauses 3.2 and 3.4.

- (a) **(Regulatory Approvals)** before 8.00am on the Second Court Date:
 - (i) **(ASIC and ASX)** ASIC and ASX have issued or provided such consents or approvals or have done such other acts which the parties agree are reasonably necessary or desirable to implement the Proposed Transaction;
 - (ii) **(Regulatory Authority)** all other approvals of a Regulatory Authority which Progen and Avexa agree are necessary or desirable to implement the Proposed Transaction are obtained;
 - (iii) **(Court orders)** no Court or Regulatory Authority has issued or taken steps to issue an order, temporary restraining order,

preliminary or permanent injunction, decree or ruling or taken any action enjoining, restraining or otherwise imposing a legal restraint or prohibition preventing the Proposed Transaction and no such order, decree, ruling, other action or refusal is in effect, and (in each case) the circumstances remain in effect at 8:00am on the Second Court Date;

- (b) **(Avexa Scheme approval)** Avexa Shareholders approve the Scheme by the requisite majorities in accordance with the Corporations Act;
- (c) **(Progen Proposed Transaction approval)** Progen's shareholders approve the Proposed Transaction by ordinary resolution at the Progen General Meeting;
- (d) **(Progen Outgoing Directors)** before 8.00am on the Second Court Date, Progen has received irrevocable resignations from each of the Progen Outgoing Directors, and the Progen Board has resolved to accept those resignations, both conditional only on Scheme Implementation occurring;
- (e) **(Avexa Incoming Directors)** before 8.00am on the Second Court Date, Progen has received irrevocable consents to act from each of the Avexa Incoming Directors, and the Progen Board has resolved to appoint the Avexa Incoming Directors to the Progen Board, both conditional only on the Scheme Implementation occurring;
- (f) **(Court approval)** the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act;
- (g) **(quotation)** ASX has not indicated to either party that it will not approve for official quotation the shares which are to be issued to Scheme Participants under the Scheme;
- (h) **(Independent Expert)** the Independent Expert issues a report which concludes that the Scheme is in the best interests of Scheme Participants before the date on which the Scheme Booklet is lodged with ASIC;
- (i) **(no Prescribed Event)** between the date of this agreement and 8.00am on the Second Court Date:
 - (i) no Prescribed Event in respect of Progen occurs or becomes apparent; and
 - (ii) no Prescribed Event in respect of Avexa occurs or becomes apparent;
- (j) **(Avexa representations and warranties)** the representations and warranties of Avexa under this agreement are true and correct in all material respects on the date of this deed and as at 8.00am on the Second Court Date;
- (k) **(Progen representations and warranties)** the representations and warranties of Progen under this agreement are true and correct in all

material respects on the date of this deed and as at 8.00am on the Second Court Date;

- (l) **(Deed Poll)** between the date of this agreement and the date of sending the Scheme Booklet to Avexa Shareholders, Progen signs and delivers the Deed Poll; and
- (m) **(change of control)** prior to 8.00am on the Second Court Date, no person exercises or purports to exercise, or states an intention to exercise, any rights under any provision of any agreement or other instrument (other than an agreement or instrument the material terms of which were disclosed to Progen in the Avexa Data Room, before the date of this agreement) to which Avexa or any Subsidiary of Avexa is a party, or by or to which Avexa or any Subsidiary of Avexa or any of its assets may be bound or be subject, which results, or could result, to an extent which is material in the context of Avexa and its Subsidiaries taken as a whole, in:
 - (i) any monies borrowed by Avexa or any Subsidiary of Avexa being or becoming repayable or being capable of being declared repayable immediately or earlier than the repayment date stated in such agreement or other instrument;
 - (ii) any such agreement or other instrument being terminated or modified or any action being taken or arising thereunder;
 - (iii) the interest of Avexa or any subsidiary of Avexa in any firm, joint venture, trust, corporation or other entity or asset (or any arrangements relating to such interest) being terminated or modified; or
 - (iv) the business of Avexa or any Subsidiary of Avexa with any other person being adversely affected,

as a result of the acquisition of Avexa Shares by Progen.

3.2 Benefit of certain Conditions Precedent

A breach or non-fulfilment of Conditions Precedent may be waived:

- (a) **(Progen's benefit)** in respect of the Conditions Precedent in clauses 3.1(c), (i)(ii), (j) and (m) which are for the sole benefit of Progen, by Progen giving its written consent;
- (b) **(Avexa's benefit)** in respect of the Conditions Precedent in clauses 3.1(d), (e), (h), (i)(i), (k) and (l) which are for the sole benefit of Avexa, by Avexa giving its written consent; and
- (c) **(both parties' benefit)** in respect of each other Condition Precedent in clause 3.1 (other than those in clauses 3.1(b) and (d) which cannot be waived) which are for the benefit of both parties, with the written consent of both parties.

A party entitled to waive the breach or non-fulfilment of a Condition Precedent under this clause 3.2 may do so in its absolute discretion, but a waiver may only occur before 8:00am on the Second Court Date.

3.3 Waiver of Conditions Precedent

If either Avexa or Progen waives the breach or non-fulfilment of a Condition Precedent in accordance with this clause, then:

- (a) subject to subclause 3.3(b), that waiver precludes that party from suing the other for any breach of this agreement arising as a result of the breach or non-fulfilment of that Condition Precedent or arising from the same event which gave rise to the breach or non-fulfilment of that Condition Precedent; but
- (b) if the waiver of the Condition Precedent is itself conditional and the other party:
 - (i) accepts the condition, the terms of that condition apply notwithstanding any inconsistency with subclause 3.3(a); or
 - (ii) does not accept the condition, the Condition Precedent has not been waived.

3.4 Reasonable endeavours

Each of Avexa and Progen agree to use reasonable endeavours to procure that:

- (a) each of the Conditions Precedent in clause 3.1:
 - (i) is satisfied as soon as practicable after the date of this agreement; and
 - (ii) continues to be satisfied at all times until the last time it is to be satisfied (as the case may require); and
- (b) there is no occurrence that would prevent the Conditions Precedent in clause 3.1 being satisfied.

3.5 Regulatory matters

Without limiting clause 3.4, each party:

- (a) **(Regulatory Approvals)** must promptly apply for all relevant Regulatory Approvals and take all steps it is responsible for as part of the approval process, including responding to requests for information at the earliest practicable time;
- (b) **(representation)** has the right to be represented and make submissions at any proposed meeting with any Regulatory Authority relating to any Regulatory Approval; and
- (c) **(consultation)** must consult with the other party in advance in relation to all communications (whether written or oral, and whether direct or

via a Representative) with any Regulatory Authority relating to any Regulatory Approval (**Communications**) and, without limitation:

- (i) provide the other party with drafts of any material written Communications to be sent to a Regulatory Authority and make such amendments as the other party reasonably requires; and
- (ii) provide copies of any material written Communications sent to or received from a Regulatory Authority to the other party promptly upon despatch or receipt (as the case may be),

in each case to the extent it is reasonable to do so.

3.6 Notices in relation to Conditions Precedent

Each party must:

- (a) **(notice of satisfaction)** promptly notify the other of satisfaction of a Condition Precedent and must keep the other informed of any material development of which it becomes aware that may lead to the breach or non-fulfilment of a Condition Precedent;
- (b) **(notice of failure)** immediately give written notice to the other of a breach or non-fulfilment of a Condition Precedent, or of any event which will prevent a Condition Precedent being satisfied; and
- (c) **(notice of waiver)** upon receipt of a notice given under paragraph (b), give written notice to the other party as soon as possible (and in any event before 5.00pm on the day before the Second Court Date) as to whether or not it waives the breach or non-fulfilment of any Condition Precedent resulting from the occurrence of that event, specifying the Condition Precedent in question.

3.7 Effect of waiver or non-fulfilment

A waiver of such breach or non-fulfilment in respect of one Condition Precedent does not constitute:

- (a) a waiver of the breach or non-fulfilment of any other Condition Precedent resulting from the same event; or
- (b) a waiver of the breach or non-fulfilment of that Condition Precedent resulting from any other event.

3.8 Consultation on failure of Condition Precedents

If:

- (a) there is a breach or non-fulfilment of a Condition Precedent which is not waived in accordance with this agreement by the time or date specified in this agreement for the satisfaction of the Condition Precedent;

- (b) there is an act, failure to act or occurrence which will prevent a Condition Precedent being satisfied by the time or date specified in this agreement for the satisfaction of the Condition Precedent (and the breach or non-fulfilment which would otherwise occur has not already been waived in accordance with this agreement); or
 - (c) if the Scheme has not become Effective by the End Date,
- then the parties must consult in good faith with a view to determining whether:
- (d) the Scheme may proceed by way of alternative means or methods;
 - (e) to extend the relevant time for satisfaction of the Condition Precedent or to adjourn or change the date of an application to the Court; or
 - (f) to extend the End Date.

3.9 Failure to agree

If the parties are unable to reach agreement under clause 3.8 within 5 Business Days (or any shorter period ending at 5.00pm on the day before the Second Court Date):

- (a) subject to subclause (b), either party may terminate this agreement (and such termination is deemed to be made under clause 14.1(g)(i) and must be made in accordance with clause 14.2); or
- (b) if a Condition Precedent contained in clause 3.1 may be waived and exists for the benefit of one party only, that party only may waive that Condition Precedent or terminate this agreement (and such termination is deemed to be made under clause 14.1(g)(ii) and must be made in accordance with clause 14.2),

in each case before 8.00am on the Second Court Date. A party will not be entitled to terminate this agreement pursuant to this clause 3.9 if the relevant Condition Precedent has not been satisfied or agreement cannot be reached as a result of a breach of this agreement by that party.

3.10 Regulatory Approval

A Regulatory Approval will be regarded as having been obtained notwithstanding that a condition or conditions may have been attached to that Regulatory Approval if the Regulatory Approval is for the benefit of:

- (a) both parties and that condition is reasonably satisfactory to Avexa and Progen; or
- (b) Progen and that condition is reasonably satisfactory to Progen.

4 Outline of Scheme

4.1 Scheme

Subject to clause 3.1, on the Implementation Date:

- (a) all of the Avexa Shares held by Scheme Participants will be transferred to Progen; and
- (b) each Scheme Participant will be entitled to receive the Scheme Consideration.

4.2 Scheme Consideration

- (a) Progen covenants in favour of Avexa (in its own right and on behalf of each Scheme Participant) that in consideration of the transfer to Progen of each Avexa Share held by a Scheme Participant, Progen will, on the Implementation Date, issue to each Scheme Participant a number of Progen Shares for each Avexa Share held by a Scheme Participant at the Record Date calculated by applying the Scheme Consideration Ratio.
- (b) Subject to paragraph (c), the Scheme Consideration Ratio is one Progen Share (calculated prior to the Progen Capital Consolidation) for every 12.857 Avexa Shares.
- (c) If, on the second Business Day before the Second Court Date, the Progen Liquid Assets (plus the actual Buy Back Consideration if it is an outflow or a payable by that date) is less than \$67.5 million, then the Scheme Consideration Ratio will be adjusted in accordance with Schedule 3.
- (d) If the Progen Capital Consolidation has been approved by Progen's shareholders, Progen may implement the Progen Capital Consolidation on the Implementation Date (but not before the Scheme Consideration is paid to Scheme Participants), such that the Scheme Consideration Ratio as determined under paragraphs (b) and (c) will be adjusted in the same ratio as the Progen Capital Consolidation.
- (e) The number of Progen Shares to which a Scheme Participant is entitled will be rounded up or down to the nearest whole number of Progen Shares. Fractional entitlements of less than 0.5 will be rounded down and fractional entitlements of 0.5 or more will be rounded up.

4.3 Undertakings held as agent

Avexa acknowledges that the undertaking by Progen in clause 4.2 is given to Avexa in its capacity as agent for each Scheme Participant.

4.4 Foreign Shareholders

Notwithstanding anything else in this Deed, Progen is not required to issue Progen Shares to any holders of Avexa Shares with registered addresses outside of:

- (a) Australia and New Zealand; or
- (b) any other jurisdiction in respect of which Progen agrees in its absolute discretion that it is lawful and reasonable to issue Progen Shares

having regard to the regulatory and compliance obligations in that jurisdiction (noting that reasonable endeavours will be taken by Progen to include Canada subject to the parties agreeing any reasonable adjustment to provisions of this agreement relating to Progen Liquid Assets that are affected by the cost of compliance),

(together, **Foreign Holders**). As part of the Scheme, the parties will agree and seek to have the Court approve arrangements for dealing with the Progen Shares that would otherwise be issued to Foreign Holders which will include those Progen Shares being issued to a nominee, the Progen Shares being sold and the proceeds less costs of sale being distributed pro rata to Foreign Holders.

4.5 Avexa Options – offer by Progen

- (a) Avexa and Progen must use reasonable endeavours to ensure that, as soon as reasonably practicable, each Optionholder enters into a deed with Avexa and Progen in a form reasonably acceptable to Avexa and Progen ("**Optionholder Deed**"), under which the Optionholder agrees to cancel or transfer to Progen all of its Options, with effect from a date no later than the Effective Date, for the consideration set out in such Optionholder Deed (which may include the issue of a number of Progen options).
- (b) Avexa and Progen acknowledge that if Optionholders do not agree to enter into Optionholder deeds in respect of their options, then, subject to Scheme Implementation occurring, they intend to use the compulsory acquisition processes available under the Corporations Act to acquire any outstanding options.

4.6 Avexa Options – Board approval

Avexa will procure that the Avexa Board gives all necessary approvals under the Avexa Employee or Executive Equity Plan for the transfer or cancellation of Avexa Options issued under that plan required under any Optionholder Deeds entered into pursuant to clause 4.5 and does all things and takes all actions requested by Progen in respect of the Avexa Options to give effect to the transfer or cancellation of those options in accordance with the terms of the relevant Optionholder Deed.

5 Co-operation and timing

5.1 General obligations

Avexa and Progen must each:

- (a) use all reasonable endeavours and commit necessary resources (including management and the resources of external advisers); and
- (b) procure that its officers and advisers work in good faith and in a timely and co-operative fashion with the other party (including by attending meetings and by providing information) as required by this agreement,

to produce the Scheme Booklet and implement the Scheme as soon as reasonably practicable and, to the extent practicable, in accordance with the Timetable.

5.2 Access to people and information

Between the date of this agreement and the earlier of the Implementation Date and the date this agreement is terminated, both Progen and Avexa must:

- (a) from 2 January 2009, provide to the other fortnightly cashflow reports showing all cash inflows and outflows and updated anticipated cashflows to the Implementation Date;
- (b) as soon as reasonably practicable provide each other, and respective officers and advisers with any documents, records, and other information (subject to any existing confidentiality obligations owed to third parties, or applicable privacy laws) reasonably requested by the other party; and
- (c) provide each other, and respective officers and advisers with reasonable access to their officers and advisers which the other party reasonably requires,

in each case, for the purposes of:

- (i) understanding the other party's financial position (including its cashflow and working capital position) and trading performance since 1 July 2008;
- (ii) understanding the other party's current management control systems;
- (iii) implementing the Scheme;
- (iv) preparing for carrying on the business of Avexa following implementation of the Proposed Transaction; and
- (v) any other purpose which is agreed in writing between the parties,

provided in every case that such access is reasonably necessary to Progen or Avexa, as relevant, and does not place an unreasonable burden on the ability of Avexa or Progen to run its business.

5.3 Progen's right to separate representation

Progen is entitled to separate representation at all Court proceedings relating to the Scheme. Nothing in this agreement is to be taken to give Avexa any right or power to make or give undertakings to the Court for or on behalf of Progen.

6 Implementation obligations of the parties

6.1 Avexa's obligations

Avexa must take all reasonable steps to implement the Scheme as soon as is reasonably practicable and must:

- (a) **(Scheme Booklet)** subject to compliance by Progen with its obligations under clause 6.2, prepare a Scheme Booklet in accordance with clause 7.1;
- (b) **(Avexa Information)** ensure that the Avexa Information included in the Scheme Booklet complies with applicable law, the Listing Rules and applicable ASIC Regulatory Guides;
- (c) **(Avexa Information for Progen)** provide to Progen for inclusion in the Progen Notice of Meeting such of the Avexa Information as Progen reasonably requires to prepare and issue that notice of meeting, including information that may be required by any expert which may be appointed by Progen to give an opinion on the Bidder Buy Back;
- (d) **(further Avexa Information)** provide to Progen and Scheme Participants such further or new Avexa Information as may arise after the Scheme Booklet and the Progen Notice of Meeting has been sent until the date of the Scheme Meeting as may be necessary to ensure that the Avexa Information contained in the Scheme Booklet or the Progen Notice of Meeting is not, having regard to applicable disclosure requirements, false, misleading or deceptive in any material respect (including because of any material omission);
- (e) **(Independent Expert)** promptly appoint the Independent Expert and provide any assistance and information reasonably requested by the Independent Expert to enable it to prepare its report for the Scheme Booklet;
- (f) **(information to Independent Expert)** promptly provide Progen with a complete copy of any information which it provides to the Independent Expert, unless that information was already made available to Progen, in which case Avexa will provide Progen with a list that specifically identifies the information provided to the Independent Expert;
- (g) **(provide a copy of the report)** on receipt, provide Progen with a copy of any draft or final report received from the Independent Expert;
- (h) **(directors' recommendation)** state in the Scheme Booklet and the public announcement contemplated by clause 9.1 (on the basis of statements made to Avexa by each member of the Avexa Board) that each of the directors of the Avexa Board recommends to Scheme Participants that the Scheme be approved in the absence of a Superior Proposal and not make any public statement or take any other action which would suggest that the Scheme is not unanimously recommended by the Avexa Board, unless:

- (i) the Independent Expert opines that the Scheme is not in the best interest of Avexa Shareholders; or
- (ii) in relation to matters occurring after the date of this agreement, the Avexa Board obtains written advice from external legal advisers that compliance or continued compliance with this clause would involve a material risk of breach of their fiduciary duties or would be unlawful on any other basis (including because of a Superior Proposal);
- (i) **(directors' shareholding)** state in the Scheme Booklet and the public announcement contemplated by clause 9.1 (on the basis of statements made to Avexa by each member of the Avexa Board) that each of the directors of the Avexa Board who hold Avexa Shares intend to vote to approve the Scheme in respect of the Avexa Shares they hold;
- (j) **(Avexa funding)** use reasonable endeavours to maintain its existing funding arrangements with financiers and to facilitate discussions between Progen and the financiers;
- (k) **(directors' voting)** use its reasonable endeavours to procure that:
 - (i) each member of the Avexa Board votes any Avexa Shares in which they have a Relevant Interest in favour of the Scheme and any other resolution submitted to Avexa Shareholders for their approval in connection with the Scheme; and
 - (ii) each member of the Avexa Board does not change that voting intention,
 unless:
 - (iii) a Superior Proposal arises; or
 - (iv) the Independent Expert opines that the Scheme is not in the best interests of Avexa Shareholders; or
 - (v) in relation to matters occurring after the date of this agreement, the Avexa Board obtains written advice from external legal advisers that compliance or continued compliance with this clause would involve a breach of their fiduciary duties; or
 - (vi) it would be unlawful on any other basis;
- (l) **(Registry details)** subject to the terms of the Scheme:
 - (i) provide to Progen a copy of the Register, any substantial holder notices and responses to any tracing notices which it has received in order to assist Progen to solicit votes at the Scheme Meeting; and
 - (ii) provide all necessary directions to the Registry to promptly provide any information that Progen reasonably and lawfully requests in relation to the Register, including any sub-register,

and, where requested by Progen, Avexa must procure such information to be provided to Progen in such electronic form as is reasonably requested by Progen;

- (m) **(section 411(17)(b) statement)** apply to ASIC for the production of a statement pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (n) **(Court application)** apply to the Court for an order under section 411(1) of the Corporations Act directing Avexa to convene the Scheme Meeting;
- (o) **(registration of explanatory statement)** request ASIC to register the explanatory statement included in the Scheme Booklet in relation to the Scheme in accordance with section 412(6) of the Corporations Act;
- (p) **(send Scheme Booklet)** send the Scheme Booklet to Avexa Shareholders as soon as practicable after the Court orders Avexa to convene the Scheme Meeting;
- (q) **(Scheme Meeting)** convene the Scheme Meeting in accordance with any such orders made by the Court and seek the approval of Avexa Shareholders for the Scheme and, for this purpose, the Managing Director and Chairman of Avexa must participate in reasonable efforts to promote the merits of the Scheme, including meeting with key Scheme Participants at the reasonable request of Progen;
- (r) **(Certificate)** provide the Court on the Second Court Date with a certificate confirming:
 - (i) whether all the conditions in clause 3.1 have been satisfied or waived in accordance with the terms of this Agreement;
 - (ii) whether between the date of this Agreement and the Second Court Date anything has occurred which would, or would be likely to, prevent any condition in clause 3.1 being satisfied by the Implementation Date;
 - (iii) whether it is aware of any matter, circumstance or event which would prevent or would be reasonably likely to prevent any condition in clause 3.1 being satisfied by the Implementation Date; and
 - (iv) that it will return to the Court for further orders if it appears likely that any condition in clause 3.1 may not be satisfied by the Implementation Date.
- (s) **(Court order)** apply to the Court for an order approving the Scheme in accordance with sections 411(4)(b) and 411(6) of the Corporations Act;
- (t) **(lodge)** lodge with ASIC an office copy of any such Court order approving the Scheme as approved by the Avexa Shareholders at the

Scheme Meeting in accordance with section 411(10) of the Corporations Act;

- (u) **(registration)** register all transfers of Avexa Shares to Progen on the Implementation Date, subject to Progen first complying with its obligations in clause 4.2;
- (v) **(listing)** take all reasonable steps to maintain Avexa's listing on ASX, notwithstanding any suspension of the quotation of Avexa Shares, up to and including the Implementation Date, including making appropriate applications to ASX and ASIC;
- (w) **(other steps)** do all other things necessary to give effect to the Scheme and the orders of the Court approving the Scheme.

6.2 Progen's obligations

Progen must take all reasonable steps to assist Avexa to implement the Scheme as soon as reasonably practicable and in any event prior to the End Date, and must:

- (a) **(Progen Information)** provide to Avexa for inclusion in the Scheme Booklet such Progen Information as Avexa reasonably requires to prepare and issue the Scheme Booklet (including any information regarding Progen and its intentions required under the Corporations Act, Corporations Regulations, or ASIC Regulatory Guides 60 or 142);
- (b) **(further Progen Information)** provide to Avexa such further or new Progen Information as may arise after the Scheme Booklet has been sent until the date of the Scheme Meeting as may be necessary to ensure that the Progen Information contained in the Scheme Booklet is not, having regard to applicable disclosure requirements, false, misleading or deceptive in any material respect (including because of any material omission);
- (c) **(Independent Expert information)** provide any assistance or information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's report to be included in the Scheme Booklet;
- (d) **(director's recommendation)** state in the public announcement contemplated by clause 9.1 (and as set out in Schedule 1) and in all other public statements or announcements that each of the directors of the Progen Board consider that the Proposed Transaction is in the best interests of Progen Shareholders unless in relation to matters occurring after the date of this agreement, the Progen Board obtains written advice from external legal advisers that compliance or continued compliance with this clause would involve a material risk of breach of their fiduciary duties or would be unlawful on any other basis;
- (e) **(directors' shareholding)** state in the public announcement contemplated by clause 9.1 (and as set out in Schedule 1) and in all other public statements or announcements that each of the directors of

the Progen Board intend to vote at the Progen General Meeting to approve the Proposed Transaction in respect of the Progen Shares they hold (unless the Progen Board obtains written advice from external legal advisers that compliance or continued compliance with this clause would involve a breach of their fiduciary duties or would be unlawful on any other basis);

- (f) **(Progen funding)** use reasonable endeavours to maintain its existing funding arrangements with financiers;
- (g) **(not appoint expert)** not appoint its own expert to give an opinion on the Proposed Transaction (other than in respect of a Defeating Transaction), without the prior consent of Avexa, which consent will not be unreasonably withheld if the appointment is to satisfy the requirements of a Regulatory Authority, a court of competent jurisdiction or the Takeovers Panel;
- (h) **(Deed Poll)** prior to the Scheme Booklet being sent to Avexa Shareholders, sign and deliver the Deed Poll; and
- (i) **(send notice of meeting)** send the Progen Notice of Meeting and any other information required to be sent to Progen's shareholders to convene the Progen General Meeting;
- (j) **(Progen General Meeting)** convene the Progen General Meeting in accordance with the Corporations Act and Progen's constitution and seek the approval of Progen's shareholders for the Proposed Transaction by ordinary resolution and, for this purpose, the Managing Director and Chairman of Progen must participate in reasonable efforts to promote the merits of the Proposed Transaction, including meeting with key Progen shareholders at the reasonable request of Avexa;
- (k) **(Certificate)** provide the Court on the Second Court Date with a certificate confirming:
 - (i) whether all the conditions in clause 3.1 have been satisfied or waived in accordance with the terms of this Agreement;
 - (ii) whether between the date of this Agreement and the Second Court Date anything has occurred which would, or would be likely to, prevent any condition in clause 3.1 being satisfied by the Implementation Date;
 - (iii) whether it is aware of any matter, circumstance or event which would prevent or would be reasonably likely to prevent any condition in clause 3.1 being satisfied by the Implementation Date; and
 - (iv) that it will return to the Court for further orders if it appears likely that any condition in clause 3.1 may not be satisfied by the Implementation Date.

6.3 Appointment/retirement of Avexa directors and Progen directors

As soon as practicable after the Second Court Date and on a date or dates to be agreed by Progen but no later than the Implementation Date, each party must use their respective reasonable endeavours and exercise their respective powers to:

- (a) cause the appointment of the Avexa Incoming Directors to the Progen Board;
- (b) subject to there being the minimum number of directors required for a public company, procure that each of the Avexa Outgoing Directors retire from the Avexa Board and provide written notice to the effect that they have no claim outstanding for loss of office, remuneration or otherwise against Avexa;
- (c) cause the appointment of the Progen Incoming Directors to the Avexa Board;
- (d) procure that each of the Progen Outgoing Directors retire from the Progen Board and provide written notice to the effect they have no claim outstanding for loss of office, remuneration or otherwise against Progen.

6.4 Progen EGM and changes of directors

Avexa acknowledges that the Progen EGM may result in changes to the Progen Board. If before the Implementation Date changes occur in the Progen Board or the Avexa Board for any reason other than performance of clause 6.3, then Progen and Avexa must discuss in good faith any adjustment required to:

- (a) the identity of the Progen Incoming Directors and the Progen Outgoing Directors, but for the avoidance of doubt the relative number of directors of the Progen Board after the Implementation Date who were not directors of Avexa will be no more than three; and
- (b) the identity of the Avexa Incoming Directors and the Avexa Outgoing Directors, but for the avoidance of doubt the relative number of directors of the Avexa Board after the Implementation Date who were not directors of Progen will be no less than four.

7 Scheme Booklet

7.1 Preparation

Without limiting clauses 6.1 or 6.2:

- (a) **(preparation):** Avexa is generally responsible for the preparation of the Scheme Booklet but will provide drafts to and consult with Progen in accordance with clause 7.2;
- (b) **(compliance)** Avexa must take all reasonable steps to endeavour to ensure that the Scheme Booklet:

- (i) complies with the requirements of:
 - (A) the Corporations Act and Corporations Regulations;
 - (B) ASIC Regulatory Guide 60;
 - (C) ASIC Regulatory Guide 142;
 - (D) the Listing Rules; and
- (ii) is not, having regard to applicable disclosure requirements, misleading or deceptive in any material respect (including because of any material omission);
- (c) **(Progen to cooperate)** Progen must take all reasonable steps to cooperate with Avexa to assist and ensure that Avexa can comply with clause 7.1(b).

7.2 Content of Scheme Booklet

Avexa must:

- (a) **(consult Progen):**
 - (i) provide to Progen a draft of the Scheme Booklet for the purpose of enabling Progen to review and comment on that draft document and which allows Progen to have a reasonable amount of time to so review and comment;
 - (ii) take the comments made by Progen into account in good faith when producing a revised draft of the Scheme Booklet; and
 - (iii) provide to Progen a revised draft of the Scheme Booklet within a reasonable time before the Regulator's Draft is finalised and to enable Progen to review the Regulator's Draft at least 1 Business Day before its submission;
- (b) **(amend Scheme Booklet)** implement such changes to those parts of the Scheme Booklet relating to Progen which are provided in accordance with clause 7.2(a) as reasonably requested by Progen and prior to finalising the Regulator's Draft;
- (c) **(Regulatory Review Period)** during the Regulatory Review Period:
 - (i) promptly provide to Progen, and include in a revised draft of the Scheme Booklet, any new information not included in the Regulator's Draft which is required by the Corporations Act, Corporations Regulations, ASIC Regulatory Guides 60 or 142 or the Listing Rules to be included in the Scheme Booklet; and
 - (ii) keep Progen informed of any matters raised by ASIC in relation to the Scheme Booklet and use all reasonable endeavours, in co-operation with Progen, to resolve any such matters; and

- (d) **(Progen Information)** obtain approval from Progen for the form and context in which the Progen Information appears in the Scheme Booklet.

Progen must consult with Avexa as to the content of the Progen Information.

7.3 Progen information

Progen:

- (a) acting reasonably, will provide its consent to the inclusion of the Progen Information in the Scheme Booklet; and
- (b) acknowledges that:
 - (i) it is responsible for ensuring that the Progen Information is not misleading or deceptive in any material respect (whether by omission or otherwise) and that Avexa will not verify or edit that information in the Scheme Booklet; and
 - (ii) the Scheme Booklet will state that Progen is responsible for the Progen Information.

7.4 Content of Progen Notice of Meeting

Progen must:

- (a) **(consult Avexa):**
 - (i) provide to Avexa a draft of the Progen Notice of Meeting for the purpose of enabling Avexa to review and comment on that draft document and which allows Avexa to have a reasonable amount of time to so review and comment;
 - (ii) take the comments made by Avexa into account in good faith when producing a revised draft of the Progen Notice of Meeting; and
- (b) **(amend Progen Notice of Meeting)** implement such changes to those parts of the Progen Notice of Meeting relating to Avexa which are provided in accordance with clause 7.4(a) as reasonably requested by Avexa and prior to finalising the Progen Notice of Meeting;
- (c) **(Avexa Information)** obtain approval from Avexa for the form and context in which the Avexa Information appears in the Progen Notice of Meeting.

7.5 Avexa information

Avexa:

- (a) acting reasonably, will provide its consent to the inclusion of the Avexa Information in the Progen Notice of Meeting; and
- (b) acknowledges that:

- (i) it is responsible for ensuring that the Avexa Information is not misleading or deceptive in any material respect (whether by omission or otherwise) and that Progen will not verify or edit that information in the Progen Notice of Meeting; and
- (ii) the Progen Notice of Meeting will state that Avexa is responsible for the Avexa Information.

7.6 Disagreement on content

If Progen and Avexa disagree on the form or content of the Scheme Booklet or the Progen Notice of Meeting, they must consult in good faith to try to settle an agreed form of the Scheme Booklet or Progen Notice of Meeting. If complete agreement is not reached after reasonable consultation, then:

- (a) if the disagreement relates to the form or content of the Progen Information contained in the Scheme Booklet or Progen Notice of Meeting, Avexa or Progen, as the case may be, will make such amendments as Progen acting in good faith reasonably requires;
- (b) if the disagreement relates to the form or content of information relating to Avexa in the Scheme Booklet or Progen Notice of Meeting, Avexa or Progen, as the case may be, will make such amendments as Avexa acting in good faith reasonably requires; and
- (c) if the dispute relates to any other matter it shall be referred to senior counsel (such counsel to be acceptable to both parties or, failing such acceptance, as nominated by the President of the Victorian Bar Association). The opinion of that senior counsel will be final and binding on the parties. The senior counsel will act as an expert and not as an arbitrator. The parties will share equally the costs of the senior counsel including any amount on account of GST.

7.7 Verification

Each party must undertake appropriate verification processes for the information supplied by that party for the Scheme Booklet or Progen Notice of Meeting.

8 Conduct of business

8.1 Overview

From the date of this agreement up to and including the Implementation Date, each of Avexa and Progen must conduct their respective businesses in the ordinary and proper course, materially consistent with the intent of the business plans and budgets made public or disclosed to each other prior to the date of this agreement and in substantially the same manner as previously conducted.

8.2 Specific obligations

Without limiting clause 8.1 and other than with the prior approval of the other party (which approval must not be unreasonably withheld or delayed) or as

required by this agreement, Avexa and Progen must, during the period contemplated by clause 8.1, use all reasonable endeavours to:

- (a) **(business and assets)** maintain the condition of its business and assets;
- (b) **(officers and employees)** keep available the services of its officers and employees;
- (c) **(relationships)** preserve its relationships with customers, suppliers, licensors, licensees, joint venturers and others with whom it has business dealings; and
- (d) **(change of control provisions)** identify any change of control or similar provisions in any significant contracts or any joint venture documentation and obtain the consents of relevant persons who have rights in respect of those contracts to the transactions contemplated by the Proposed Transaction,

and Avexa must use all reasonable endeavours to not expend funds during the period contemplated by clause 8.1 other than in accordance with its operating budget provided to Progen in the Avexa Data Room (and excluding the impact on that budget of exchange rate movements and costs associated with the apricitabine (ATC) trials or the ATC extension study associated with the ATC Phase IIb trial, which were not known at the time of the agreement or at the time of preparation of that budget).

8.3 Prohibited actions

Other than with the prior approval of the other party (which approval must not be unreasonably withheld or delayed) or as required by this agreement, each of Avexa and Progen must not, during the period referred to in clause 8.1:

- (a) **(employment agreements)** increase the remuneration of or pay any bonus (other than in accordance with existing arrangements and in the ordinary course) or issue any securities, options or rights to, or otherwise vary the employment agreements with, any of its directors or employees;
- (b) **(accelerate rights)** accelerate the rights of any of its directors or employees to benefits of any kind, other than as provided for in an existing contract or the terms of issue of Avexa Options or Progen Options in place as at the date of this agreement which has been disclosed to the other party;
- (c) **(termination payments)** pay a director, executive or employee a termination or retention payment, other than as provided for in an existing contract in place as at the date of this agreement which has been disclosed to the other party;
- (d) **(financial arrangements)** amend in any material respect any arrangement with its financial advisers in respect of the transactions contemplated by this agreement;

- (e) **(dividends)** announce, declare or pay any dividends;
- (f) **(Prescribed Event)** take any action which would be reasonably expected to give rise to a Prescribed Event in respect of itself;
- (g) **(information technology)** take any action in respect of its information technology systems which would have a materially adverse impact on those systems;
- (h) **(commitments and settlements)** ensure that neither it or any of its Subsidiaries:
 - (i) enters into any contract or commitment involving revenue or expenditure of more than \$100,000 over the term of the contract or commitment;
 - (ii) terminates or amends in a material manner any contract material to the conduct of its business or which involves revenue or expenditure of more than \$100,000 over the term of the contract (for the avoidance of doubt, the Shire Agreement is material to the conduct of the Avexa Group's business)];
 - (iii) waives any material third party default; or
 - (iv) accepts as a settlement or compromise of a material matter (relating to an amount in excess of \$100,000) less than the full compensation due to it or a Subsidiary of it; or
- (i) **(agreement)** agree to do any of the matters set out above.

8.4 Permitted actions

Any restriction on conduct which is imposed in clause 8.3 does not apply to the extent that:

- (a) the conduct, or the intention to carry out the conduct, was announced to ASX or fully and fairly disclosed to the other party prior to the date of this agreement;
- (b) the conduct is undertaken in accordance with any obligations of Avexa or the Progen under this agreement;
- (c) Avexa or Progen enters into or renews a customer contract in the ordinary course of business on commercial terms; or
- (d) the conduct relates to the Progen Buy Back or the Progen Capital Consolidation.

9 Public announcements

9.1 Public announcement of Scheme

Immediately after signing this agreement, Avexa and Progen will issue a joint public announcement of the Proposed Transaction in the form contained in Schedule 1.

9.2 Required disclosure

Where a party is required by law, the Listing Rules or a memorandum of understanding with a Regulatory Authority to make any announcement or make any disclosure relating to a matter the subject of the Proposed Transaction, it may do so only after it has given the other party as much notice as possible and has consulted to the fullest extent possible in the circumstances with the other party and its legal advisers, in each case subject to Avexa's legal disclosure obligations.

9.3 Other announcements

Subject to clauses 9.1 and 9.2, no party may make any public announcement or disclosure in connection with the Proposed Transaction (including disclosure to a Regulatory Authority) other than in a form approved by each party (acting reasonably). Each party will use all reasonable endeavours to provide such approval as soon as practicable.

10 Court proceedings

10.1 Appeal process

If the Court refuses to make orders convening the Scheme Meeting or approving the Scheme, Progen and Avexa must consult with each other in good faith to consider whether to appeal the Court's decision. Avexa will not have any obligation to appeal the Court's decision:

- (a) unless the parties agree (acting reasonably) and Queen's Counsel or Senior Counsel representing that party in relation to the Scheme indicates that, in their opinion, an appeal would likely have more than a 50% prospect of success; or
- (b) if there is, in the bona-fide view of the Avexa Board, a Superior Proposal which should be recommended in preference to the Scheme,

in which case either party may terminate this agreement in accordance with clause 14.1(f)(iii).

10.2 Defence of proceedings

Each of Progen and Avexa must vigorously defend, or must cause to be vigorously defended, any lawsuits or other legal proceeding brought against it (or any of its Subsidiaries) challenging this agreement or the completion of the Proposed Transaction. Neither Progen nor Avexa will settle or compromise (or permit any of its Subsidiaries to settle or compromise) any claim brought in connection with this agreement without the prior written consent of the other, such consent not to be unreasonably withheld.

10.3 Costs

Any costs incurred as a result of the operation of this clause 10 will be borne equally by each party.

11 Exclusivity obligation

11.1 Avexa - no solicitation and no talk

During the Exclusivity Period, Avexa must ensure that neither it nor any of its employees, officers, advisers or agents directly or indirectly:

- (a) solicit or initiate or invite or encourage any discussions, enquiries, negotiations, proposals or offers from any person concerning or in connection with or which may reasonably be expected to lead to a Competing Transaction;
- (b) participate in any discussions, enquiries, negotiations, proposals or offers from any person concerning or in connection with or which may reasonably be expected to lead to a Competing Transaction, whether or not solicited, initiated, invited or encouraged by Avexa; or
- (c) communicate to any person an intention to do any of those things.

11.2 Avexa - warranty and representation

Avexa represents and warrants to Progen that Avexa has ceased or will cease any negotiations or discussions which it has, before the date of this agreement, been holding in respect of any Competing Transaction.

11.3 Avexa - notification of approaches

During the Exclusivity Period, Avexa must notify Progen promptly if Avexa becomes aware of:

- (a) any Competing Transaction;
- (b) any approach, inquiry or proposal made to, and any attempt or any intention on the part of any person to continue any negotiations or discussions with Avexa or any of its employees, officers, advisers or agents with respect to, or that could reasonably be expected to lead to, any Competing Transaction, whether unsolicited or otherwise;
- (c) any request for information (or any attempt or intention on the part of any person to request information) relating to Avexa or any of its related entities or any of their businesses or operations or any request for access to the books or records of Avexa or its related entities which Avexa has reasonable grounds to suspect may relate to a current or future Competing Transaction;
- (d) any breach of this clause 11.3; and
- (e) any provision by Avexa or any of its employees, officers, advisers or agents of any information relating to Avexa or any of its related entities or any of their businesses or operations to any person in

connection with or for the purposes of a current or future Competing Transaction.

A notice given under this clause 11.3 must be accompanied by all relevant details of the relevant event, including the identity of the person or persons taking any action referred to in paragraphs (b) or (c) above and the terms and conditions of any Competing Transaction or any proposed Competing Transaction, to the extent known.

11.4 Avexa - limitations on obligations

Nothing in this clause 11:

- (a) requires Avexa to perform any obligation which, after receiving written advice from external legal advisers, would in the opinion of Avexa Board:
 - (i) involve a breach of the fiduciary duties owed by any Avexa director; or
 - (ii) would otherwise be unlawful;
- (b) restricts Avexa or the Avexa Board from taking or refusing to take any action with respect to a bona fide written proposal for a Competing Transaction (which was not solicited, invited, encouraged or initiated by Avexa or the Avexa Board in contravention of clause 11.1) provided that the Avexa Board has determined, in good faith, and after taking advice from its legal and financial advisers, that such bona fide Competing Transaction is a Superior Proposal; or
- (c) prevents Avexa or any of its employees, officers and agents from in the ordinary course of business:
 - (i) providing information to Regulatory Authorities; or
 - (ii) continuing to make normal presentations to brokers, portfolio investors and analysts.

11.5 Progen - no solicitation and no talk

During the Exclusivity Period, Progen must ensure that neither it nor any of its employees, officers, advisers or agents directly or indirectly:

- (a) solicit or initiate or invite or encourage any discussions, enquiries, negotiations, proposals or offers from any person concerning or in connection with or which may reasonably be expected to lead to a Defeating Transaction;
- (b) participate in any discussions, enquiries, negotiations, proposals or offers from any person concerning or in connection with or which may reasonably be expected to lead to a Defeating Transaction, whether or not solicited, initiated, invited or encouraged by Progen; or
- (c) communicate to any person an intention to do any of those things.

11.6 Progen - warranty and representation

Progen represents and warrants to Avexa that Progen has ceased or will cease any negotiations or discussions which it has, before the date of this agreement, been holding in respect of any Defeating Transaction.

11.7 Progen - notification of approaches

During the Exclusivity Period, Progen must notify Avexa promptly if Progen becomes aware of:

- (a) any Defeating Transaction;
- (b) any approach, inquiry or proposal made to, and any attempt or any intention on the part of any person to continue any negotiations or discussions with Progen or any of its employees, officers, advisers or agents with respect to, or that could reasonably be expected to lead to, any Defeating Transaction, whether unsolicited or otherwise;
- (c) any request for information (or any attempt or intention on the part of any person to request information) relating to Progen or any of its related entities or any of their businesses or operations or any request for access to the books or records of Progen or its related entities which Progen has reasonable grounds to suspect may relate to a current or future Defeating Transaction;
- (d) any breach of this clause 11.7; and
- (e) any provision by Progen or any of its employees, officers, advisers or agents of any information relating to Progen or any of its related entities or any of their businesses or operations to any person in connection with or for the purposes of a current or future Defeating Transaction.

A notice given under this clause 11.7 must be accompanied by all relevant details of the relevant event, including the identity of the person or persons taking any action referred to in paragraphs (b) or (c) above and the terms and conditions of any Defeating Transaction or any proposed Defeating Transaction Proposal, to the extent known.

11.8 Progen - limitations on obligations

Nothing in this clause 11:

- (a) requires Progen to perform any obligation which, after receiving written advice from external legal advisers, would in the opinion of Progen Board:
 - (i) involve a breach of the fiduciary duties owed by any Progen director; or
 - (ii) would otherwise be unlawful; or
- (b) prevents Progen or any of its employees, officers and agents from in the ordinary course of business:

- (i) providing information to Regulatory Authorities; or
- (ii) continuing to make normal presentations to brokers, portfolio investors and analysts.

12 Break fee

12.1 Background

This clause 12 has been agreed in circumstances where:

- (a) Progen and Avexa believe that the Proposed Transaction will provide significant benefits to Progen, Avexa and their respective shareholders, and Progen and Avexa acknowledge that, if they enter into this agreement and the Scheme is subsequently not implemented for a reason set out in this clause 12, then Progen and Avexa will have incurred significant costs;
- (b) Progen requested that provision be made for the payments outlined in clause 12.2, without which Progen would not have entered into this agreement;
- (c) Avexa requested that provision be made for the payments outlined in clause 12.3, without which Avexa would not have entered into this agreement;
- (d) each party's directors believe that it is appropriate for their entity to agree to the payments referred to in this clause 12 to secure each party's participation in the Proposed Transaction; and
- (e) each party's directors have received legal advice on this agreement and the operation of this clause 12.

12.2 Payment by Avexa to Progen

Avexa agrees to pay to Progen \$500,000 if the Proposed Transaction does not proceed because:

- (a) **(Competing Transaction)** on or before the End Date a Competing Transaction completes, or is recommended by the Avexa Board and has been the subject of a public announcement;
- (b) **(change of recommendation)** any one or more directors of Avexa fail to recommend the Scheme or withdraw their recommendation except if such Avexa director or directors change their recommendation following the receipt of the report of the Independent Expert where that report states that in the opinion of the Independent Expert the Scheme is not in the best interests of Avexa Shareholders other than because of a Competing Transaction;
- (c) **(Avexa Board recommendation)** the Avexa Board, as a whole, fails to recommend the Scheme or withdraws its recommendation at any time prior to the Implementation Date (except if such Avexa director or directors change their recommendation following the receipt of the report of the Independent Expert where that report states that in the

opinion of the Independent Expert the Scheme is not in the best interests of Avexa Shareholders other than because of a Competing Transaction);

- (d) **(Director voting)** any director of Avexa does not exercise any votes attached to any Avexa Shares which he or she holds or controls in favour of the Scheme at the Scheme Meeting;
- (e) **(material breach)** Progen validly terminates this agreement in accordance with clause 14.1(b)(iii);
- (f) **(Superior Proposal)** of a Superior Proposal (notwithstanding any other provision of this clause 12.2); or
- (g) **(Prescribed Event)** all of the following are satisfied:
 - (i) a Prescribed Event occurs in respect of Avexa prior to 8.00am on the Second Court Date; and
 - (ii) this agreement is terminated in accordance with clause 14; and
 - (iii) all of the following apply in relation to the Prescribed Event:
 - (A) the prevention of the Prescribed Event was within the reasonable control of Avexa; and
 - (B) had the Prescribed Event occurred prior to the date of this agreement, the Prescribed Event might reasonably be expected to have resulted in Progen not entering into this agreement; and
 - (C) Avexa has failed to rectify the Prescribed Event within 10 Business Days or such shorter period expiring at 8.00am on the Second Court Date after receipt of notice from Progen requiring Avexa to do so.

12.3 Payment by Progen to Avexa

Progen agrees to pay to Avexa \$500,000 if the Proposed Transaction does not proceed because:

- (a) **(Defeating Transaction)** on or before the End Date a Defeating Transaction completes, or is recommended by the Progen Board and has been the subject of a public announcement;
- (b) **(change of recommendation)** any one or more directors of Progen at any time prior to the Implementation Date fail to recommend the Proposed Transaction to Progen's shareholders or withdraw their recommendation except if such Progen director or directors change their recommendation following the receipt of a report on the Proposed Transaction of an independent expert appointed by Progen with the consent of Avexa under clause 6.2(g) where that report states that in the opinion of the independent expert the Proposed Transaction is not in the best interests of Progen's shareholders other than because of a Defeating Transaction;

- (c) **(Progen Board recommendation)** the Progen Board, as a whole, fails to recommend the Scheme or withdraws its recommendation at any time prior to the Implementation Date (except if such Progen director or directors change their recommendation following the receipt of a report on the Proposed Transaction of an independent expert appointed by Progen with the consent of Avexa under clause 6.2(g) where that report states that in the opinion of the independent expert the Proposed Transaction is not in the best interests of Progen's shareholders other than because of a Defeating Transaction);
- (d) **(Director voting)** any director of Progen does not exercise any votes attached to any Progen Shares which he or she holds or controls in favour of the Proposed Transaction at the Progen General Meeting;
- (e) **(Progen Outgoing Directors)** any one or more of the Progen Outgoing Directors has not provided an irrevocable notice of resignation to Progen, and/or the Progen Board has not accepted those resignations, both in accordance with clause 3.1(d), by 8.00am on the Second Court Date;
- (f) **(Avexa Incoming Directors)** the Progen Board, by 8.00am on the Second Court Date, does not resolve to appoint each of the Avexa Incoming Directors to the Progen Board (conditional on the Scheme Implementation occurring and where each Avexa Incoming Director has provided its consent to act), in accordance with clause 3.1(e);
- (g) **(Progen meetings)** Progen terminates this agreement because of the failure of the condition in clause 3.1(c);
- (h) **(material breach)** Avexa validly terminates this agreement in accordance with clause 14.1(b)(iii);
- (i) **(Prescribed Event)** all of the following are satisfied:
 - (i) a Prescribed Event occurs in respect of Progen prior to 8.00am on the Second Court Date; and
 - (ii) this agreement is terminated in accordance with clause 14; and
 - (iii) all of the following apply in relation to the Prescribed Event:
 - (A) the prevention of the Prescribed Event was within the reasonable control of Progen; and
 - (B) had the Prescribed Event occurred prior to the date of this agreement, the Prescribed Event might reasonably be expected to have resulted in Avexa not entering into this agreement; and
 - (C) Progen has failed to rectify the Prescribed Event within 10 Business Days or such shorter period expiring at 8.00am on the Second Court Date after receipt of notice from Avexa requiring Progen to do so.

12.4 No amount payable if Scheme becomes Effective

Notwithstanding the occurrence of any event under clauses 12.2 or 12.3, no amount is payable under clause 12.2 or clause 12.3 if the Scheme becomes Effective.

12.5 Timing of payment

A party must pay the other party an amount referred to in clause 12.2 or 12.3 within 10 Business Days of receipt by the paying party of a demand for payment from the recipient party.

12.6 Nature of payment

An amount payable under clauses 12.2 or 12.3 is an amount to compensate the recipient for:

- (a) advisory costs (including costs of advisers other than success fees);
- (b) costs of management and directors' time; and
- (c) out-of-pocket expenses,

but is without prejudice to and does not limit any rights which:

- (d) Progen or any Progen Indemnified Party may have against Avexa; or
- (e) Avexa or any Avexa Indemnified Party may have against Progen.

12.7 Compliance with law

If it is finally determined following the exhaustion of all reasonable avenues of appeal to the Takeovers Panel or a Court that all or any part of the amount payable under clauses 12.2 or 12.3:

- (a) is unlawful;
- (b) involves a breach of the duties of the paying party's directors; or
- (c) constitutes unacceptable circumstances within the meaning of the Corporations Act,

then the paying party's obligation to pay the amount payable under clauses 12.2 or 12.3, does not apply and if the recipient party has received any part of the payment due under clauses 12.2 or 12.3, it must refund it within ten Business Days of such final determination.

12.8 Survival

Any accrued obligations under this clause survive termination of this agreement.

13 Representations and warranties

13.1 Avexa's representations and warranties

Avexa represents and warrants to Progen (on its own behalf and separately as trustee or nominee for each of Progen's directors) that:

- (a) **(incorporation)** it is a valid existing corporation registered under the laws of its place of incorporation;
- (b) **(execution)** the execution and delivery of this agreement has been properly authorised by all necessary corporate action of Avexa;
- (c) **(corporate power)** it has full corporate power and lawful authority to execute and deliver this agreement and to consummate and perform or cause to be performed its obligations under this agreement in accordance with its terms;
- (d) **(binding obligations)** (subject to laws generally affecting creditors' rights and the principles of equity) this agreement constitutes legal, valid and binding obligations on it;
- (e) **(Avexa Information)** the Avexa Information provided in accordance with this agreement and included in the Scheme Booklet or Progen Notice of Meeting, as at the date of the Scheme Booklet or Progen Notice of Meeting, will comply in all material respects with the requirements of the Corporations Act, the Listing Rules and all relevant regulatory guides and other guidelines and requirements of ASIC;
- (f) **(reliance)** the Avexa Information contained in the Scheme Booklet and Progen Notice of Meeting will be included in good faith and on the understanding that Progen and its directors will rely on that information for the purposes of considering and approving the Progen Information in the Scheme Booklet and Progen Notice of Meeting before they are despatched, approving the entry into the Deed Poll and implementing the Scheme;
- (g) **(further information)** Avexa will, as a continuing obligation, provide to Progen all such further or new information which may arise after the date of the Scheme Booklet or Progen Notice of Meeting until the date of the Scheme Meeting which may be necessary to ensure that there would be no breach of clause 13.1(e) if it applied as at the date upon which that information arose;
- (h) **(disclosure)** Avexa has not deliberately withheld any information from Progen of which Avexa is aware as at the date of this agreement in respect of any event, occurrence or matter affecting it (which is not already in the public domain) which would constitute a Prescribed Event or would result in a Prescribed Event occurring;
- (i) **(continuous disclosure)** Avexa is not in breach of its continuous disclosure obligations under the Listing Rules and is not relying on the carve-out in Listing Rule 3.1A to withhold any information from

disclosure which has not been disclosed to Progen or which it believes would result in a Prescribed Event occurring;

- (j) **(complete and accurate)** all the information provided to Progen by Avexa in connection with this agreement, whether under due diligence or not, has been prepared and provided in good faith;
- (k) **(opinions)** any statement of opinion or belief contained in the Avexa Information is honestly held;
- (l) **(provision of information to Independent Expert)** all information provided by or on behalf of Avexa to the Independent Expert to enable the Independent Expert's report to be included in the Scheme Booklet to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's report;
- (m) **(securities)** Avexa's issued securities as at the date of this agreement are:
 - (i) 424,675,014 Avexa Shares; and
 - (ii) 21,390,000 Avexa Options,and it has not issued or agreed to issue any other securities or instruments which are still outstanding and which may convert into Avexa Shares; and
- (n) **(no encumbrances)** except as disclosed to Progen prior to the date of this agreement, there is no Encumbrance over all or a substantial part of its assets or revenues; and
- (o) **(intellectual property)** Avexa or its Subsidiaries own or has licensed to it all intellectual property rights necessary to enable the Avexa Group to conduct its business in the manner in which it is conducted, including the development and commercialisation of intellectual property rights associated with apricitabine, and is not aware of any activities of the Avexa Group which infringe or are likely to infringe any intellectual property rights of a third party and no substantive claim (excluding any claim Avexa considers, acting reasonably, is without merit) alleging such an infringement has been made or threatened.

13.2 No representation made on economic or future matters

Neither Avexa nor any of its representatives make any representation or warranty in relation to the achievability of:

- (a) any economic, fiscal or other interpretations or evaluations by Avexa or its representatives; or
- (b) future matters, including future or forecast costs, prices, revenues or profits.

13.3 Avexa's indemnity

Avexa indemnifies the Progen Indemnified Parties against all Losses incurred directly or indirectly as a result of any of the representations and warranties in clause 13.1 not being true and correct except to the extent that such Losses were contributed to by any breach by Progen of any of the representations, warranties and undertakings in clause 13.5 or fraud or wilful misconduct by the Progen Indemnified Party.

13.4 Avexa warranty certificate

Avexa must provide to Progen by 5.00pm on the Business Day immediately prior to the Second Court Date a certificate signed by a director of Avexa and made in accordance with a resolution of the Avexa Board stating, as at that date, that the representations or warranties given by Avexa in clause 13.1 remain true and accurate or, if any such representation or warranty is not true and accurate as at that date, providing complete particulars of the facts and matters which make the representation or warranty untrue or inaccurate.

13.5 Progen's representations and warranties

Progen represents and warrants to Avexa (on its own behalf and separately as trustee or nominee for each of Avexa's directors) that:

- (a) **(incorporation)** it is a valid existing corporation registered under the laws of its place of incorporation;
- (b) **(execution)** the execution and delivery of this agreement has been properly authorised by all necessary corporate action of Progen;
- (c) **(corporate power)** it has full corporate power and lawful authority to execute and deliver this agreement and to consummate and perform or cause to be performed its obligations under this agreement in accordance with its terms;
- (d) **(binding obligations)** (subject to laws generally affecting creditors' rights and the principles of equity) this agreement constitutes legal, valid and binding obligations on it;
- (e) **(solvency)** it is not Insolvent and will not become Insolvent as a result of performing its obligations under this agreement;
- (f) **(reliance)** the Progen Information provided to Avexa for inclusion in the Scheme Booklet will be provided in good faith and on the understanding that Avexa and its directors will rely on that information for the purposes of preparing the Scheme Booklet and proposing and implementing the Scheme in accordance with the Corporations Act;
- (g) **(Progen Information)** the Progen Information provided in accordance with this agreement and included in the Scheme Booklet or which is included in the Progen Notice of Meeting, as at the date of the Scheme Booklet or Progen Notice of Meeting, will not contain any material statement which is misleading or deceptive nor contain

any material omission having regard to applicable disclosure requirements;

- (h) **(disclosure)** Progen has not deliberately withheld any information from Avexa of which Progen is aware as at the date of this agreement in respect of any event, occurrence or matter affecting it (which is not already in the public domain) which would constitute a Prescribed Event or would result in a Prescribed Event occurring;
- (i) **(complete and accurate)** all the information provided to Avexa by Progen in connection with this agreement has been prepared and provided in good faith;
- (j) **(further information)** Progen will, as a continuing obligation, provide to Avexa all such further or new information which may arise after the date of the Scheme Booklet until the date of the Scheme Meeting which may be necessary to ensure that there would be no breach of clause 13.5(g) if it applied as at the date on which that information arose;
- (k) **(opinions)** any statement of opinion or belief contained in the Progen Information is honestly held; and
- (l) **(provision of information to Independent Expert)** all information provided by or on behalf of Progen to the Independent Expert to enable the Independent Expert's report to be included in the Scheme Booklet to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's report.

13.6 Progen's indemnity

Progen indemnifies the Avexa Indemnified Parties against all Losses incurred directly or indirectly as a result of any of the representations and warranties in clause 13.5 not being true and correct except to the extent that such Losses were contributed to by any breach by Avexa of any of the representations, warranties and undertakings in clause 13.1 or fraud or wilful misconduct by the Avexa Indemnified Party.

13.7 Progen warranty certificate

Progen must provide to Avexa by 5.00pm on the Business Day immediately prior to the Second Court Date a certificate signed by a director of Progen and made in accordance with a resolution of the Progen Board stating, as at that date, that the representations and warranties given by Progen in clause 13.5 remain true and accurate or, if any such representation or warranty is not true and accurate as at that date, providing complete particulars of the facts and matters which make the representation or warranty untrue or inaccurate.

13.8 Limitation on claims

Despite anything else in this agreement, a party will not make any claim against any officer of the other party for breach of any representation or warranty in this clause 13, and releases each officer of the other party from

liability in respect of such a breach, other than where the breach involves the officer's fraud, wilful misconduct or knowing withholding of material information which is required to be provided to the party under this agreement.

14 Termination

14.1 Termination events

Without limiting any other provision of this agreement (including clauses 3.9 and 10.1), this agreement may be terminated:

- (a) **(End Date)** by either party, if the Scheme has not become Effective on or before the End Date; or
- (b) **(recommendation)** at any time prior to 8.00am on the Second Court Date:
 - (i) by Progen if the Avexa Board changes its recommendation to the Scheme Participants that they vote in favour of the resolution to approve the Scheme, including any adverse modification to its recommendation, or otherwise makes a public statement indicating that it no longer supports the Proposed Transaction;
 - (ii) by Avexa if the Progen Board changes its recommendation to the Progen Shareholders that they vote in favour of the resolution to approve the Proposed Transaction at the Bidder General Meeting, including any adverse modification to its recommendation, or otherwise makes a public statement indicating that it no longer supports the Proposed Transaction; or
 - (iii) by either Progen or Avexa if the other is in material breach of any of its obligations in this agreement (including a warranty), taken in the context of the Proposed Transaction as a whole, provided that either Progen or Avexa, as the case may be, has, if practicable, given notice to the other setting out the relevant circumstances and stating an intention to terminate and, the relevant circumstances continue to exist 5 Business Days (or any shorter period ending at 5:00 pm on the day before the Second Court Date) after the time such notice is given;
- (c) **(not approved)** by either party if the resolution submitted to the Scheme Meeting is not approved by the requisite majority;
- (d) **(Progen General Meeting)** by Progen if the ordinary resolution proposed at the Progen General Meeting to approve the Proposed Transaction is not passed;
- (e) **(competing interest)** by Progen, if a person (other than Progen or its associates) has a Relevant Interest in more than 18% of the Avexa Shares (other than a shareholding of an Avexa shareholder existing as at the date of the agreement) and that person has publicly announced

or otherwise notified either Progen or Avexa that it intends to vote against the Scheme;

- (f) **(restraint)** by either party if a Court or other Regulatory Authority has issued a final and non-appealable order, decree or ruling or taken other action which permanently restrains or prohibits the Proposed Transaction;
- (g) **(consultation or appeal failure)** in accordance with and pursuant to:
 - (i) clause 3.9(a);
 - (ii) clause 3.9(b); or
 - (iii) clause 10.1;
- (h) **(Progen Liquid Assets)** by Avexa, if at any time after the date of this agreement (but before the second Business Day before the Second Court Date), Progen Liquid Assets fall below \$66 million;
- (i) **(Insolvency)** by either party if the other party becomes Insolvent;
- (j) **(Superior Proposal)** by Avexa, at any time prior to 8:00am on the Second Court Date, if:
 - (i) a Competing Transaction is publicly announced; and
 - (ii) the Avexa Board determines that it is a Superior Proposal and publicly announces its support for the Transaction; and
 - (iii) Avexa has made the payment to Progen contemplated by clause 12.2; or
- (k) **(Defeating Transaction)** by Progen, at any time prior to 8:00am on the Second Court Date, if:
 - (i) a Defeating Transaction is publicly announced; and
 - (ii) the Progen Board publicly announces its support for the Defeating Transaction; and
 - (iii) Progen has made the payment to Avexa contemplated by clause 12.3; or
- (l) **(agreement)** if agreed to in writing by Progen and Avexa.

14.2 Termination

Where a party has a right to terminate this agreement, that right for all purposes will be validly exercised if the party delivers a notice in writing to the other party stating that it terminates this agreement.

14.3 Effect of Termination

In the event that a party terminates this agreement, or if this agreement otherwise terminates in accordance with its terms, then in either case all

further obligations of the parties under this agreement, other than the obligations set out in clauses 10.3, 15 and 17 will immediately cease to be of further force and effect without further liability of any party to the other, provided that nothing in this clause releases any party from liability for any pre-termination breach of this agreement.

15 Confidentiality Agreement

15.1 Application

The parties confirm and agree that the provisions of the Confidentiality Agreement continue to apply to the parties.

15.2 Termination

This clause 15 will survive termination (for whatever reason) of this agreement.

16 Notices and other communications

16.1 Form - all communications

Unless expressly stated otherwise in this agreement, all notices, certificates, consents, approvals, waivers and other communications in connection with this agreement must be:

- (a) in writing;
- (b) signed by the sender (if an individual) or an Authorised Officer of the sender; and
- (c) marked for the attention of the person identified in the Details or, if the recipient has notified otherwise, then marked for attention in the way last notified.

16.2 Form - communications sent by email

Communications sent by email need not be marked for attention in the way stated in clause 16.1. However, the email:

- (a) must state the first and last name of the sender; and
- (b) will not be effective unless the sender has received a message that the email has been delivered to the recipient.

Communications sent by email are taken to be signed by the named sender.

16.3 Delivery

Communications must be:

- (a) left at the address set out or referred to in the Details;
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in the Details;

- (c) sent by fax to the fax number set out or referred to in the Details;
- (d) sent by email to the address set out or referred to in the Details; or
- (e) given in any other way permitted by law.

However, if the intended recipient has notified a changed address, fax number or email address, then communications must be to that address, fax number or email address.

16.4 When effective

Communications take effect from the time they are received or taken to be received under clause 16.5 (whichever happens first) unless a later time is specified.

16.5 When taken to be received

Communications are taken to be received:

- (a) if sent by post, three days after posting (or seven days after posting if sent from one country to another); or
- (b) if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent; or
- (c) if sent by email:
 - (i) when the sender receives an automated message confirming delivery; or
 - (ii) four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first.

16.6 Receipt outside business hours

Despite clauses 16.4 and 16.5, if communications are received or taken to be received under clause 16.5 after 5.00pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day and take effect from that time unless a later time is specified.

17 Goods and services tax (GST)

17.1 Consideration does not include GST

The consideration specified in this agreement does not include any amount for GST.

17.2 Recovery of GST

If a supply under this agreement is subject to GST, the recipient must pay to the supplier an additional amount equal to the Amount of the Consideration multiplied by the applicable GST rate.

17.3 Time of payment

The additional amount is payable at the same time as the consideration for the supply is payable or is to be provided. However, the additional amount need not be paid until the supplier gives the recipient a Tax Invoice.

17.4 Adjustment of additional amount

If the additional amount differs from the amount of GST payable by the supplier, the parties must adjust the additional amount.

17.5 Reimbursement

If a party is entitled to be reimbursed or indemnified under this agreement, the amount to be reimbursed or indemnified does not include any amount for GST for which the party is entitled to an Input Tax Credit.

17.6 Survival

This clause will survive termination of this agreement.

18 Miscellaneous

18.1 Discretion in exercising rights

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this agreement expressly states otherwise.

18.2 Partial exercising of rights

If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.

18.3 No liability for loss

A party is not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy under this agreement.

18.4 Approvals and consents

By giving its approval or consent a party does not make or give any warranty or representation as to any circumstance relating to the subject matter of the consent or approval.

18.5 Conflict of interest

The parties' rights and remedies under this agreement may be exercised even if it involves a conflict of duty or a party has a personal interest in their exercise.

18.6 Remedies cumulative

The rights and remedies in this agreement are in addition to other rights and remedies given by law independently of this agreement.

18.7 Variation and waiver

A provision of this agreement or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.

18.8 No merger

The warranties, undertakings and indemnities in this agreement do not merge on the Implementation Date.

18.9 Indemnities

The indemnities in this agreement are continuing obligations, independent from the other obligations of the parties under this agreement and continue after this agreement ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this agreement.

18.10 Enforceability

For the purpose of this agreement:

- (a) Avexa is taken to be acting as agent and trustee on behalf of and for the benefit of all Avexa Indemnified Parties; and
- (b) Progen is taken to be acting as agent and trustee on behalf of and for the benefit of all Progen Indemnified Parties,

and all of those persons are to this extent taken to be parties to this agreement.

18.11 Further steps

Each party agrees, at its own expense, to do anything the other party asks (such as obtaining consents, signing and producing documents and getting documents completed and signed):

- (a) to bind the party and any other person intended to be bound under this agreement; or
- (b) to show whether the party is complying with this agreement.

18.12 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this agreement or any part of it.

18.13 Costs

Subject to clause 12, the parties agree to pay their own legal and other costs and expenses in connection with the preparation, execution and completion of this agreement and other related documentation except for stamp duty.

18.14 Stamp duty

Progen agrees to pay all stamp duty (including fines and penalties) payable and assessed on this agreement or the Scheme and in respect of a transaction evidenced by this agreement or the Scheme.

18.15 Entire agreement

Except for the Confidentiality Agreement, this agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

18.16 Assignment

A party may not assign or otherwise deal with its rights under this agreement or allow any interest in them to arise or be varied in each case, without the consent of the other party.

18.17 No representation or reliance

Each party acknowledges that:

- (a) no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this agreement, except for representations or inducements expressly set out in this agreement;
- (b) it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this agreement; and
- (c) paragraphs 18.17(a) and 18.17(b) above do not prejudice any rights a party may have in relation to information which had been filed by the other party with ASIC or ASX.

18.18 Governing law

This agreement is governed by the law in force in the place specified in the Details. Each party submits to the non-exclusive jurisdiction of the courts of that place.

18.19 Counterparts

This agreement may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument.

EXECUTED as an agreement

Merger Implementation Agreement

Schedule 1 - Announcement (clause 9.1)

**A V E X A**

Avexa Limited
ABN 53 108 160 750
576 Swan Street Richmond
Victoria Australia 3121

Telephone 61 3 9208 4300
Facsimile 61 3 9208 4004
Website www.avexa.com.au

ASX Release

PROGEN PHARMACEUTICALS LIMITED AND AVEXA LIMITED AGREE TO MERGE

Conference call scheduled for today at 11:00 am (Sydney time)

- Creates one of Australia's leading biotechnology companies
- Balanced portfolio of infectious disease and oncology assets with a Phase III HIV program
- Progen shareholders to have the option to participate in AUD \$20M buyback
- Combined entity will have over AUD \$60M cash

Brisbane and Melbourne, Australia, 22 December 2008: Biotechnology companies Progen Pharmaceuticals Limited (ASX:PGL; NASDAQ:PGLA) and Avexa Limited (ASX: AVX) today announced the signing of an exclusive and binding Merger Implementation Agreement (MIA). Progen will propose to shareholders an AUD\$20 million share buyback option, to be completed prior to the merger. The combined entity will have over AUD\$60 million cash at transaction closing (assuming the AUD\$20 million Progen share buyback is fully subscribed). Shareholders from both companies will vote on the proposed merger in the first quarter of 2009.

The merger has been unanimously recommended by the Boards of Directors of both Progen and Avexa. The combined entity creates a well-funded, small molecule drug development company with a balanced portfolio of oncology and infectious disease programs in various stages of development. A key focus for the new company will be the continued development of the Phase III drug apricitabine (ATC), a new antiretroviral drug for the treatment of HIV-infected patients. ATC is one of only two new HIV therapies in Phase III clinical trials worldwide. To date, every HIV therapy that has previously commenced Phase III testing has successfully completed these trials and ultimately been approved in major markets. The merger will provide sufficient cash to fund the first pivotal Phase III trial of ATC through to its week 24 milestone, a key value inflection point and potential start of an NDA filing.

"This transaction provides a unique opportunity for Progen shareholders to invest in an integrated portfolio with near term milestones that include Avexa's exciting Phase III program," said Justus Homburg, Chief Executive Officer of Progen. "In early November, Progen's Board of Directors announced a proposed capital return that was subject to the consideration of a number of other proposals brought before the Board. After extensive deliberation of those proposals, we believe that a combination with Avexa, together with a share buyback of up to AUD\$20 million, offers the most potential to generate shareholder value."

"This merger not only gives the combined company sufficient financial resources to fund Avexa's Phase III study with ATC, it also provides a much broader pipeline for both sets of shareholders," said Julian Chick, Chief Executive Officer of Avexa. "We will not be the first company to jointly harness the therapeutic areas of oncology and infectious disease, as Gilead Sciences, Ardea Biosciences, and Anadys have similar synergistic strategies. As a result, the merged entity will have a higher quality portfolio of opportunities than either company individually."

**A V E X A**

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Facsimile 61 3 9208 4004
Website www.avexa.com.au

In addition to continuing ATC's development path towards commercialisation, both companies recognize the importance of developing a broad portfolio of assets. The new company will continue to progress selected programs in oncology and infectious disease based on likelihood of success to maximize shareholder value. The union also enhances the opportunity to seek partnerships for late and early stage product candidates.

Prior to the merger, Progen will propose to return up to AUD\$20 million in cash to its current shareholders through a share buyback at AUD\$1.10 per share. This share buyback offers Progen shareholders flexibility, within broad parameters, to choose how much cash and how many shares in the new entity they would prefer to own.

Under the terms of the MIA, Progen will issue Avexa shareholders one Progen share for every 12.857 Avexa shares¹. Based on Avexa's current share price of AUD\$0.105 per share, this ratio implies a value of AUD\$1.35 per Progen share, a premium of 49.6% to the current Progen share price of AUD\$0.90 per share. The implied value per Progen share of AUD\$1.35 is greater than the expected net cash backing per Progen share of between AUD\$1.10 to AUD\$1.15 per share at transaction closing, which reflects the value of Progen's oncology portfolio and the premium attached to cash in the current market. The merged entity will therefore be owned 56 percent by Progen shareholders and 44 percent by Avexa shareholders (assuming the \$20 million buyback is fully subscribed).

The merged company will be named Avexa Pharmaceuticals Limited with headquarters in Melbourne, Australia and offices in both Brisbane, Australia and the San Francisco Bay Area. The Board of Directors will comprise Nathan Drona (Chairman), David Bottomley and Dr John Sime from Avexa, and Dr. Mal Eutick, John Lee and Justus Homburg from Progen. Avexa's CEO, Dr. Julian Chick, will be Managing Director and Chief Executive Officer, and a member of the Board.

Progen and Avexa will host a joint conference call to discuss the merger proposal. The call will take place in Australia on Monday 22 December 2008 at 11:00 AM (Sydney time) and in the U.S. on Sunday 21 December at 4:00 PM PST / 7:00 PM EST. Participants may join the call by dialing from the following locations: Australia 0011-800-462-66666 (toll free); United States and Canada: (877) 407-8035 (toll free); non-U.S. +1 (201) 689-8035. Those interested in hearing the discussion may also access a live webcast of the conference call on the websites of both Progen: www.progen.com.au and Avexa: www.avexa.com.au.

A replay of this call will be available by dialling +1 (201) 612-7415 for Australian and non-US participants. For US participants dial (877) 660-6853. When prompted enter Account Number 286 and Conference ID Number 307901. The webcast will also be available via the companies' respective websites.

Transaction and timetable details

A copy of the MIA will be lodged on the ASX in conjunction with this release. The merger is subject to a number of conditions including regulatory approvals, court approvals, Avexa and Progen shareholder approvals and other conditions as set out in the MIA. The merger is unanimously recommended by the Boards of both Avexa and Progen, subject to no superior proposals and to an opinion from an independent expert that the transaction is in the best interests of Avexa shareholders. The MIA includes a commitment by each party not to solicit alternative transactions to the merger. Each party has agreed to pay a break fee of AUD\$500,000 under certain circumstances.

¹ This ratio may be adjusted under the terms of the Merger Implementation Agreement depending upon the level of liquid assets of Progen.

**A V E X A**

Avexa Limited
ABN 53 108 150 750
576 Swan Street Richmond
Victoria Australia 3121

Telephone 61 3 9208 4300
Facsimile 61 3 9208 4004
Website www.avexa.com.au

Progen will hold a meeting of Progen shareholders to approve the share buyback in late February 2009. In addition, Progen shareholders will have an opportunity at this meeting to approve the merger with Avexa and the change of name to Avexa Pharmaceuticals Limited. Progen shareholder documents are expected to be dispatched in late January 2009.

A Scheme Booklet, setting out the terms for the merger, the report from the independent expert, and the reasons for the Avexa Board of Directors' recommendation, is expected to be sent to all Avexa shareholders in early February 2009. A meeting of Avexa shareholders to approve the Scheme is expected to be held in March 2009.

Avexa has appointed Gresham Advisory Partners as its financial adviser and Mallesons Stephen Jaques as legal adviser. Progen has appointed PricewaterhouseCoopers as its financial adviser and Clayton Utz as legal adviser.

About Avexa

Avexa Limited is a Melbourne-based biotechnology company with a focus on discovery, development and commercialisation of small molecules for the treatment of infectious diseases. Avexa has dedicated resources and funding for key projects including its HIV integrase program and an antibiotic program for antibiotic-resistant bacterial infections. The Company's lead program is apricitabine (ATC), an anti-HIV drug which has successfully completed the 48 week dosing of its Phase IIb trial and is currently in Phase III trials worldwide. www.avexa.com.au

About Progen

Progen Pharmaceuticals Limited is a globally focused biotechnology company committed to the discovery, development and commercialization of small molecule pharmaceuticals primarily for the treatment of cancer. Progen has built a focus and strength in anti-cancer drug discovery and development. Progen targets the multiple mechanisms of cancer across its three technology platforms, angiogenesis, epigenetics and cell proliferation. Progen has operations in Australia and the United States of America. www.progen.com.au

For more information:

Avexa
Dr. Julian Chick
Chief Executive Officer
+61 3 9208 4300

Progen
T Justus Homburg
Chief Executive Officer
+61 7 3842 3333

AU: Investor Relations
Sabrina Antoniou
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US: Investor Relations
Remy Bernarda
Blueprint Life Science Group
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Merger Implementation Agreement

Schedule 2 - Timetable (clause 5.1)

Event		Date
Lodge Scheme Booklet with ASIC and ASX		23 January 2009
Application in respect of the Court hearing to be held on the First Court Date, filed with the Court, served on ASIC and delivered to ASX		6 February 2009
First Court Date		9 February 2009
Printing and despatch of Scheme Booklet		13 February 2009 (earliest)
Scheme Meeting held		16 March 2009
Gazettal notice published		17 March 2009
Second Court Date		24 March 2009
Lodge Court order with ASIC (Effective Date)		25 March 2009
Record Date (5.00pm on the date which is the Second Court Date plus 5 Business Days or such other date as Avexa and Progen agree)		1 April 2009
Implementation Date (Record Date plus 3 Business Days)		6 April 2009

Merger Implementation Agreement

Schedule 3 - Ratio Adjustment Formula (clause 4.2(c))

The following formula is to be used to calculate the adjusted Scheme Consideration Ratio in accordance with clause 4.2(c).

$$\text{Adjusted Scheme Consideration Ratio} = \frac{\text{Adjusted Progen Share Price}}{\text{Avexa Share Price}}$$

Avexa Share Price = 10.5 cents

$$\text{Adjusted Progen Share Price}^* = \frac{81,536,715 - (67,500,000 - \text{Progen Liquid Assets})}{60,570,131 \text{ shares}}$$

*The Adjusted Progen Share Price that is derived from the above formula will be rounded to the nearest cent.

Progen Liquid Assets = Actual liquid assets in Progen (as calculated below) 2 Business Days before the Second Court Date (plus the actual Buy Back amount if it is an outflow or a payable by that date).
(Where Progen Liquid Assets are greater than \$67.5m, Progen Liquid Assets are deemed to be \$67.5m for the purpose of this formula).

Liquid assets should be based on :

Actual Cash *(For the purpose of calculating the Australian Dollar value of cash held in US Dollars, the exchange rate to be used is USD 0.67 per AUD 1).*
Plus Trade and Other Receivables
Plus Prepayments and Deposits
Less Trade Payables
Less Provisions calculated in accordance with applicable accounting standards
Less Debt

Merger Implementation Agreement

Signing page

DATED:

EXECUTED by PROGEN
PHARMACEUTICALS LIMITED
ABN 82 010 975 612 in accordance
with section 127(1) of the
Corporations Act 2001 (Cwlth) by
authority of its directors:

.....
Signature of director

M. L. FENTON
.....
Name of director (block letters)

.....
Signature of director/company

secretary*

*delete whichever is not applicable

T. JUSTUS HOMBERG
.....
Name of director/company secretary*

(block letters)

*delete whichever is not applicable

EXECUTED by AVEXA LIMITED
ABN 53 108 150 750 in accordance
with section 127(1) of the
Corporations Act 2001 (Cwlth) by
authority of its directors:

.....
Signature of director

.....
Name of director (block letters)

.....
Signature of director/company

secretary*

*delete whichever is not applicable

.....
Name of director/company secretary*

(block letters)

*delete whichever is not applicable

Annexure E - Investigating Accountants' Report

28 January 2009

The Board of Directors
Avexa Limited
576 Swan Street
RICHMOND VIC 3121

Dear Members of the Board

Avexa Limited – Investigating Accountants' Report

Introduction

At the request of the Directors of Avexa Limited (Avexa or the Company) this report has been prepared for inclusion in a Scheme Booklet to be dated x January 2009 for a Scheme of Arrangement between Avexa and the holders of Shares in Avexa in relation to the proposed merger of Avexa and Progen Pharmaceuticals Limited (Progen).

On 22 December 2008, the Boards of Avexa and Progen announced a proposal to merge the two companies by way of a Scheme of Arrangement. Under the Merger, Avexa Shareholders will receive one Progen Share in exchange for every 12.857 Avexa Shares which they hold at the Record Date subject to adjustment as described in Section 3.4 of the Scheme Booklet.

A number of defined words and terms used in this report have the same meaning as set out in the Glossary contained in the Scheme Booklet.

Merged Entity Financial Information

You have requested that Deloitte Touche Tohmatsu (Deloitte) prepare an Investigating Accountants' Report reviewing the Merged Entity Financial Information set out in Section 6.11 of the Scheme Booklet comprising the unaudited:

- pro forma combined income statement for the Merged Entity for the year ended 30 June 2008 (Table A)
- pro forma combined balance sheet for the Merged Entity as at 30 June 2008 (Table B)
- pro forma combined statement of cash flows for the Merged Entity for the year ended 30 June 2008 (Table C)
- pro forma combined cash and cash equivalent balances for the Merged Entity as at 31 December 2008 and movements in cash balances for the six months then ended (Table D) and

- sensitivities of the Progen Share Buyback (Table E).

The above is collectively referred to as the "Merged Entity Financial Information".

The Merged Entity Financial Information has been derived from the audited financial statements of Avexa and Progen for the financial year ended 30 June 2008, and has been arrived at after adjusting for the pro forma transactions and/or adjustments described in Section 6.11(b) "Key Assumptions" of the Scheme Booklet.

The financial statements of Avexa and Progen for the financial year ended 30 June 2008 were audited by accounting firms other than Deloitte. Their audits were carried out in accordance with Australian Auditing Standards and the separate audit opinions issued to the members of Avexa and Progen relating to the financial statements were unqualified.

Directors' responsibility for the Merged Entity Financial Information

The Directors of the Company are responsible for the preparation and presentation of the Merged Entity Financial Information, including the determination of the pro forma adjustments.

The Merged Entity Financial Information is presented in an abbreviated form insofar as it does not include all of the disclosures required by Australian Accounting Standards applicable to annual financial reports prepared in accordance with the Corporations Act 2001.

Our responsibility

Scope for our review of the Merged Entity Financial Information

We have reviewed the Merged Entity Financial Information in order to report whether anything has come to our attention which causes us to believe that the Merged Entity Financial Information, as set out in Section 6.11 of the Scheme Booklet, is not presented fairly, in accordance with the basis of preparation as disclosed in Section 6.11(a) and the assumptions disclosed in Section 6.11(b) of the Scheme Booklet.

Our review of the Merged Entity Financial Information has been conducted in accordance with Australian Auditing Standard ASRE 2405 "Review of Historical Financial Information other than a Financial Report". We made such enquiries and performed such procedures as we, in our professional judgement, considered reasonable in the circumstances, including:

- a review of work papers, accounting records and other documents, including those dealing with the extraction of the balance sheet, income statement and cash flow statement of Avexa from the audited Avexa financial statements for the year ended 30 June 2008 and the extraction of the balance sheet, income statement and cash flow statement of Progen from the audited Progen financial statements for the financial year ended 30 June 2008
- a comparison of the accounting policies applied in the preparation of the Avexa financial statements for the financial year ended 30 June 2008 with those adopted in the preparation of the Progen financial statements for the year ended 30 June 2008 to

ascertain whether there were any significant differences in the accounting policies adopted

- a review of the pro forma transactions and/or adjustments described in Section 6.11(b) of the Scheme Booklet
- analytical procedures applied to the Merged Entity Financial Information and
- enquiry of the Directors and management of Progen and Avexa.

These procedures do not provide all the evidence required in an audit, thus the level of assurance we provide is less than given in an audit. We have not performed an audit and, accordingly, we do not express an audit opinion on the Merged Entity Financial Information.

Conclusion

Based on our review, which is not an audit, nothing has come to our attention which causes us to believe that the Merged Entity Financial Information as set out in Section 6.11 of the Scheme Booklet, is not presented fairly in accordance with the basis of preparation as disclosed in Section 6.11(a) and the assumptions disclosed in Section 6.11(b) of the Scheme Booklet.

Subsequent Events

Subsequent to 30 June 2008 and up to the date of this report, nothing has come to our attention that would cause us to believe material transactions or events outside the ordinary course of business of both Avexa and Progen have occurred, other than the matters dealt with in this report or the Scheme Booklet, which would require comment on, or adjustment to, the information contained in this report, or which would cause such information to be misleading or deceptive.

Independence and Disclosures of Interests

Deloitte does not have any interest in the outcome of the Scheme of Arrangement other than the preparation of this Report and participation in the due diligence procedures for which normal professional fees will be received.

Yours faithfully

Deloitte Touche Tohmatsu
DELOITTE TOUCHE TOHMATSU

G J McLean
G J McLean
Partner

Annexure F - Avexa ASX Announcements from 30 June 2008

Date	Headline	Number of Pages
11/02/2009	Progen and Avexa Shareholder Forums	2
11/02/2009	Response to inaccurate statement	2
09/02/2009	CYT and other PGL shareholders maintain call for meeting	2
05/02/2009	PGL: Progen-Avexa Merger Notice of Meeting	141
05/02/2009	PGL: Merger Notice of Meeting and Independent Expert Report	2
05/02/2009	Avexa Releases Independent Expert Report	63
05/02/2009	PGL: Progen Reaction to Requisition for General Meeting	3
29/01/2009	PGL: Response to Requisitioned General Meeting	1
29/01/2009	CYT Request for General Meeting of Progen Pharmaceuticals	55
29/01/2009	PGL: Progen and Avexa Merger Update	4
29/01/2009	CFO Resignation	1
29/01/2009	Appendix 4C	4
09/01/2009	PGL: Shareholder Support for Progen Board	2
06/01/2009	Avexa and Progen Merger Investor Forum Presentation	25
31/12/2008	Avexa and Progen Merger Update	2
29/12/2008	Appendix 3B	7
22/12/2008	PGL: Merger of Progen and Avexa Presentation	9
22/12/2008	Merger of Avexa and Progen presentation	9
22/12/2008	Avexa and Progen to merge	64
22/12/2008	PGL: Progen and Avexa to Merge	64
19/12/2008	Avexa Quarterly Shareholder Newsletter Dec 2008	4
25/11/2008	Results of 2008 Annual General Meeting - Avexa Limited	3
25/11/2008	Chairman's Address AGM 25 November 2008	3
25/11/2008	CEO Presentation AGM 25 November 2008	29
24/11/2008	Avexa Completes Recruitment for First Stage of ATC Phase 3	2
13/11/2008	Avexa presents data at 2 international conferences - amended	3
13/11/2008	Avexa presents data at two international conferences	3
05/11/2008	Response to ASX Price Query	3
27/10/2008	Appendix 4C	4
21/10/2008	Notice of AGM	8
21/10/2008	Annual Report 2008	48
07/10/2008	Initial Director's Interest Notice	2

Date	Headline	Number of Pages
07/10/2008	Initial Director`s Interest Notice	2
07/10/2008	Final Director`s Interest Notice	2
07/10/2008	Initial Director`s Interest Notice	2
06/10/2008	Avexa Bolsters Board and Appoints New Chairman	2
10/09/2008	Appendix 3B	7
29/08/2008	Avexa passes the 100 Phase 111 site mark	2
29/08/2008	Avexa Full Year Accounts for the year ending June 30 2008	43
29/08/2008	Appendix 4E	15
28/08/2008	Change in substantial holding	3
27/08/2008	Appendix 3B	7
26/08/2008	Avexa and Shire Renegotiate License Agreement for ATC	2
29/07/2008	Appendix 4C June 2008	4

Annexure G - Notice of Scheme Meeting

Avexa Limited

ACN 108 150 750

Notice of Court ordered meeting of Avexa Shareholders

Notice is hereby given that, by an order of the Court made on 13 February 2009 pursuant to section 411(1) of the Corporations Act, a meeting of Avexa Shareholders (other than Progen) will be held at Leonda by the Yarra at 2 Wallen Road, Hawthorn, Victoria, 3122, Australia.

Purpose of the meeting

The purpose of the meeting is to consider and if thought fit, to agree to a scheme of arrangement proposed to be made between Avexa and the Avexa Shareholders (other than Progen).

A copy of the Scheme is contained in the Scheme Booklet of which this notice forms part and which is the explanatory statement required to be sent to Shareholders under Part 5.1 of the Corporations Act in relation to the Scheme.

Resolution

The meeting will be asked to consider and, if thought fit, to pass the following resolution:

"That, pursuant to and in accordance with section 411 of the *Corporations Act 2001* (Cth), the scheme of arrangement between Avexa and the holders of its fully paid ordinary shares (other than Progen and its subsidiaries), as contained in and more particularly described in the Scheme Booklet of which the notice convening this meeting forms part, is approved (with or without modification as approved by the Supreme Court of Victoria)."

Required voting majority

In accordance with section 411(4)(a) of the Corporations Act, the resolution to approve the Scheme must be approved by a majority in number of Avexa Shareholders (other than Progen) present and voting at the meeting (whether in person or by corporate representative, proxy or attorney), being a majority whose shares in aggregate are at least 75% of the total of all Avexa Shares voted at the meeting.

Court approval

In accordance with section 411(4)(b) of the Corporations Act, the Scheme (with or without modification) is subject to the approval of the Court. If the resolution set out in this notice is approved by the requisite majority, and the other Conditions Precedent to the Scheme are satisfied or waived by the time required under the Scheme, Avexa intends to apply to the Court for the necessary orders to give effect to the Scheme.

Explanatory notes

Terms used in this Notice of Meeting (including in these explanatory notes) have the same meaning as set out in the glossary contained in section 10 of the Scheme Booklet of which this Notice of Share Scheme Meeting forms part.

This notice of Scheme Meeting should be read in conjunction with the entire Scheme Booklet of which it forms part. The Scheme Booklet contains important information to assist you in determining how to vote on the resolution, including factors for and against the Scheme (see the section 1 headed "Why you should vote in favour of the Scheme - advantages of the Merger" and section 2 "Disadvantages and risks associated with the Merger"). The Scheme Booklet also contains a copy of the Scheme of arrangement (Annexure B). Voting information is set out in section 7 of the Scheme Booklet.

Entitlement to vote

Pursuant to section 411 of the Corporations Act and all other enabling powers, the Court has determined that the time for determining eligibility to vote at the Share Scheme Meeting is 7.00pm (Melbourne time) on 18 March 2009. Only those Avexa Shareholders (other than Progen) entered on the Share Register at that time will be entitled to attend and to vote at the Scheme Meeting. Progen and its associates are restricted from voting on the Scheme.

Voting

Voting will be by poll. If you are an Avexa Shareholder entitled to attend and vote at the Share Scheme Meeting, you may vote by:

- attending the meeting and voting in person or, in the case of corporations, by corporate representative;
- appointing an attorney to attend and vote on your behalf; or
- appointing one or two proxies to attend and vote on your behalf, using the Proxy Form accompanying the Scheme Booklet of which this Notice forms part.

Avexa Shareholders or their representatives who plan to attend the Share Scheme Meeting are asked to arrive at the venue at approximately 10.30am on 20 March 2009 (that is, 30 minutes prior to the time designated for the commencement of the Avexa Scheme Meeting), so that their shareholding may be checked against the Share Register, or their power of attorney or appointment as corporate representative can be verified (as the case may be), and their attendance noted.

Jointly held securities

If the Avexa Shares are jointly held, only one of the joint shareholders is entitled to vote. If more than one shareholder votes in respect of jointly held Avexa Shares, only the vote of the shareholder whose name appears first on the Share Register will be counted, irrespective of whether the vote is cast in person, by proxy, or by attorney.

Voting in person

To vote in person at the Scheme Meeting, you must attend the Scheme Meeting. An eligible Avexa Shareholder who wishes to attend and vote at the Scheme Meeting in person will be admitted to the Scheme Meeting and given a voting card on disclosure at the point of entry to the Scheme Meeting of their names and addresses.

Voting by proxy

An eligible Avexa Shareholder is entitled to appoint a proxy. The proxy need not be a member of Avexa. The proxy will have the right to vote on a poll and also to speak at the Scheme Meeting.

If the member is entitled to cast two or more votes at the meeting, the member may appoint two proxies. Where two proxies are appointed, each proxy should be appointed to represent a specified proportion of the Avexa Shareholder's voting rights. If the proxy appointments do not specify the proportion of the Avexa Shareholder's voting rights that each proxy may exercise, each proxy may exercise half of the Avexa Shareholder's votes.

Where an Avexa Shareholder has appointed two proxies, only the proxy whose name is earlier in alphabetical sequence may vote on a show of hands.

To appoint a proxy, the Avexa Shareholder should complete, sign and deliver the Proxy Form accompanying this Scheme Booklet. Replacement Proxy Forms can be requested from the Registry. If an Avexa Shareholder wishes to appoint two proxies, the names of both proxies and the percentage of votes or number of securities that each proxy may exercise should be included in the space provided in Step 1 of the Proxy Form.

Avexa Shareholders should consider how they wish the proxy to vote. That is, whether the Avexa Shareholder wishes to vote 'For' or 'Against', or abstain from voting on, the resolution, or whether to leave the decision to the appointed proxy after discussion at the Scheme Meeting.

If a proxy is not directed how to vote on an item of business, the proxy may vote, or abstain from voting, as that person thinks fit. If a proxy is instructed to abstain from voting on an item of business, that person is directed not to vote on the Avexa Shareholder's behalf on a show of hands or on a poll, and the shares the subject of the proxy appointment will not be counted in computing the required majority.

Eligible Avexa Shareholders who return their Proxy Forms but do not nominate the identity of their proxy will be taken to have appointed the chairman of the meeting as their proxy to vote on their behalf. If a Proxy Form is returned but the nominated proxy does not attend the meeting, the chairman of the meeting will act in place of the nominated proxy and vote in accordance with the directions on the Proxy Form. Proxy appointments in favour of the chairman of the Scheme Meeting, the company secretary of Avexa, or any Avexa Director which do not contain a direction will be used to support the resolution to approve the Scheme.

A proxy will be admitted to the Scheme Meeting and given a voting card on providing at the point of entry to the Share Scheme Meeting written evidence of their name and address.

The appointment of a proxy will not preclude any eligible Avexa Shareholder from attending in person, revoking a proxy and voting at the Scheme Meeting.

The instrument appointing a proxy is requested to be in writing under the hand of the appointor or of that person's attorney and, if the appointor is a corporation, in accordance with the Corporations Act or under the hand of an authorised officer or attorney. Where two or more persons are registered as a member, each person must sign the Proxy Form.

If a Proxy Form is completed by an individual or a corporation under power of attorney, the power of attorney under which the form is signed, or a certified copy of that power of attorney, must accompany the completed Proxy Form unless the power of attorney has previously been noted by Avexa.

Completed Proxy Forms can be returned using the return addressed envelope provided with the Scheme Booklet of which this notice forms part. To be effective, Proxy Forms must be received by post or by facsimile at the Share Registry, in accordance with the directions on the back of the enclosed proxy form by no later than 11.00 am (Melbourne time) on 18 March 2009. Proxy Forms received after this time will be invalid.

Voting by corporate representative

In order to vote in person at the Scheme Meeting, an eligible Avexa Shareholder that is a corporation may appoint an individual to act as its representative. The appointment must comply with the requirements of section 250D of the Corporations Act, meaning that Avexa will require a certificate of appointment of corporate representative executed in accordance with the Corporations Act. A copy of such Certificate may be obtained from the Avexa Registry.

To be effective, the certificate appointing the corporate representative must be received by the Avexa Share Registry in the same manner, and by the same time, as outlined above for proxy forms. The Certificate will be retained by Avexa.

If a Certificate is completed by an individual or a corporation under power of attorney, the power of attorney under which the Certificate is signed, or a certified copy of that power of attorney, must accompany the completed Certificate unless the power of attorney has previously been noted by Avexa.

Voting by attorney

An eligible Avexa Shareholder is entitled to appoint an attorney to attend the Scheme Meeting on the shareholder's behalf. An attorney need not be a member of Avexa. Each attorney will have the right to vote on the poll and also to speak at the Scheme Meeting.

The power of attorney appointing the attorney in respect of the Scheme Meeting must be duly executed and specify the name of the applicable Avexa Shareholder, the company (that is, Avexa) and the attorney, and also specify the meetings at which the appointment may be used. The appointment may be a standing one.

To be effective, the power of attorney must be received by the Share Registry in the same manner, and by the same time, as outlined above for proxy forms.

An attorney will be admitted to the Scheme Meeting and given a voting card on providing at the point of entry of the Scheme Meeting written evidence of their appointment, their name and address and the identity of their appointor.

The appointment of an attorney will not preclude any eligible Avexa Shareholder from attending the Scheme Meeting in person and voting at the Scheme Meeting.

Corporate Directory

Avexa Limited

Registered Office
576 Swan Street
Richmond VIC 3121

Avexa Shareholder Information Helpline
(Australia) 1300 738 548
(Overseas) +61 3 9415 4393
Between 9.00am and 5.00pm (Melbourne time),
Monday to Friday

Avexa corporate website
www.avexa.com.au

Share Registry

Computershare Investor Services Pty Limited
Yarra Falls, 452 Johnston Street
Abbotsford VIC 3067

Financial adviser to Avexa

Gresham Advisory Partners Limited
Level 10, 1 Collins Street
Melbourne VIC 3000

Legal adviser to Avexa

Mallesons Stephen Jaques
Level 50, 600 Bourke Street
Melbourne VIC 3000

Tax adviser to Avexa

KPMG
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Melbourne VIC 3000

Investigating Accountant

Deloitte Touche Tohmatsu
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Melbourne VIC 3000

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