

## Financial Markets Conduct (Invion Limited) Exemption Notice 2018

Pursuant to section 556 of the Financial Markets Conduct Act 2013, the Financial Markets Authority, being satisfied of the matters set out in section 557 of that Act gives the following notice.

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### Notice

#### 1 Title

This notice is the Financial Markets Conduct (Invion Limited) Exemption Notice 2018.

#### 2 Commencement

This notice comes into force on 12 November 2018.

#### 3 Revocation

This notice is revoked on the close of 11 November 2019.

#### 4 Interpretation

(1) In this notice, unless the context otherwise requires -

**Act** means the Financial Markets Conduct Act 2013

**CAT** means Chronic Airway Therapeutics Limited (ACN 628 608 113) a company incorporated in Australia and a wholly owned subsidiary of Invion

**Corporations Act 2001** means the Corporations Act 2001 (Australia)

**demerger** means the demerger of Invion of its respiratory assets to be effected by way of an in-specie distribution of all shares in CAT held by Invion to its eligible shareholders following a capital reduction in Invion

**eligible shareholder** means a person who:

- (a) is registered as a shareholder of Invion shares at as 7.00pm (AEST) on the record date;
- (b) has a registered address on Invion's share register in New Zealand; and
- (c) is eligible under all applicable securities laws to receive CAT shares

**explanatory memorandum** means the explanatory memorandum prepared by Invion and containing the information prescribed by clause 6(c)

**Invion** means Invion Limited (ABN 76 094 730 417) an Australian public company listed on the Australian Securities Exchange having its registered office at 722 High Street, East Kew, VIC 3102, Australia

**record date** means the date to determine eligibility to participate in the demerger, being 7.00pm (Melbourne time) on Friday 16 November 2018

**regulations** means the Financial Markets Conduct Regulations 2014

**specified securities** means shares in CAT to be distributed to Invion shareholders pursuant to the demerger.

- (2) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this notice has the same meaning as in the Act or the Regulations.

## 5 Exemptions

Invion and CAT are exempted from Part 3 of the Act in respect of the demerger.

## 6 Conditions

The exemption in clause 5 is subject to the following conditions:

- (a) the only persons to whom the specified securities have been offered in New Zealand are eligible shareholders; and
- (b) the explanatory memorandum has been distributed to Invion shareholders with the notice of meeting for the meeting of Invion shareholders at which approval for the demerger will be sought; and
- (c) the explanatory memorandum includes particulars of all matters that may be material to Invion shareholders in making a decision on whether to approve the demerger, including without limitation –
  - (i) a description of the rights attached to the specified securities; and
  - (ii) the purpose and effect of the demerger; and
  - (iii) the steps necessary to bring the demerger into effect; and
  - (iv) a statement as to why the directors of Invion believe that the demerger is in the best interests of shareholders; and
  - (v) a summary of the impact of the demerger, including any material advantages and disadvantages of the demerger; and
  - (vi) all information prescribed by the Corporations Act 2001; and
  - (vii) particulars of any material taxation liabilities of Invion shareholders who are Australian residents for tax purposes caused by the implementation of the demerger; and
- (d) Invion is the offeror of the specified securities; and
- (e) immediately prior to completion of the demerger, the only person who is a shareholder of CAT is Invion; and
- (f) the offer of the specified securities to persons in New Zealand is made in compliance with the laws of Australia and any code, rules, or other requirements relating to the offer of those securities that apply in Australia.

Dated at Wellington this 6<sup>th</sup> day of November 2018.



Garth Stanish  
Director of Capital Markets  
Financial Markets Authority

### Statement of Reasons

This notice, which comes into force on 12 November 2018 and is revoked on 11 November 2019, exempts Invion Limited (**Invion**) and Chronic Airway Therapeutics Limited (**CAT**), subject to conditions, from Part 3 of the Financial Markets Conduct Act (**Act**) in relation to the shares in CAT (the **specified securities**) that were offered by Invion to its eligible shareholders under a proposed demerger of Invion and CAT (**demerger**). At the time the exemption comes into force the offer has been made but it has not yet been able to be acted on by investors. For the avoidance of doubt, the exemption applies only from 12 November 2018 and does not provide relief for any breach that may have occurred prior to the exemption coming into force.

The Financial Markets Authority (**FMA**), after satisfying itself as to the matters set out in section 557 of the Act, considers it appropriate to grant the exemptions because—

- the offer has only been made to existing shareholders of Invion and therefore to persons who already have exposure to its respiratory assets business and may be expected to be familiar with its assets and business that will be transferred to CAT.
- Shareholders have been invited to a meeting to vote on whether to approve the demerger, to allow it to proceed. It is a condition of the exemption that shareholders are provided with an Explanatory Memorandum that contains all material information to enable them to make an informed decision in relation to the proposed demerger.
- Part 3 of the Act focuses on providing information about the financial products being offered including the assets and business of the issuer. However, in these circumstances, shareholders require information about the demerger, including its effects, in order to decide whether or not to approve it. Accordingly, the nature of the information that shareholders require to assess the offer is different from that prescribed by the Act. It would be unduly onerous to require Invion or CAT to prepare a product disclosure statement and register entry required under Part 3 of the Act in addition to the explanatory memorandum given the information required in product disclosure statement is not material to the eligible shareholders' decision on whether to approve the demerger.
- the exemption will allow New Zealand shareholders to participate in the demerger when it would not otherwise be extended to New Zealand shareholders due to the cost of compliance with the disclosure requirements of the Act.
- Invion and CAT will remain subject to the fair dealing provisions in Part 2 of the Act and therefore New Zealand shareholders will have protection against misleading or deceptive information being included in the explanatory memorandum.

- For these reasons, the FMA is satisfied that the exemption is desirable in order to promote the purposes of the Act, specifically for timely, accurate and understandable information to be provided to Invion shareholders to assist them to make a confident and informed decision on the demerger proposal. The exemptions will avoid compliance costs caused by having to prepare separate disclosure documents for the New Zealand shareholders only, which would not include the most relevant information in any event.
- The FMA is further satisfied that the exemption is not broader than is reasonably necessary to address the matters that give rise to it, given that the exemption applies only to the offer of specified securities to eligible shareholders in the context of the demerger and for a limited time period.