THE TAKEOVER PANEL

NOTE TO ADVISERS IN RELATION TO CODE WAIVERS

The Panel Executive (the "Executive") has established a procedure pursuant to which it will agree not to apply the Takeover Code (the "Code") to a particular transaction where the company subject to the Code has very few shareholders and it would be inappropriate or unduly onerous to apply the Code – a so-called "Code waiver". A Code waiver will only be granted following consultation with the Executive so that the Executive can ensure that certain safeguards are observed. These safeguards include written confirmations from each of the shareholders in the Code company that their rights under the Code have been explained to them and that they consent to the Code being disapplied in respect of the transaction in question. A copy of the Executive's pro forma Code waiver letter is attached.

Circumstances in which a Code waiver will be granted

A Code waiver will generally only be available for companies with ten shareholders or fewer. If the company in question has more than one class of share capital in issue to which the Code applies, or has granted options, warrants or other rights to subscribe for equity share capital to which Rule 15 of the Code would normally apply, then the number of holders of such securities will also need to be taken into account for these purposes. Accordingly, a Code waiver will either need to be obtained from such persons or they must receive an offer or proposal in compliance with the Code.

The Executive will only consent to a Code waiver in respect of a specific transaction. It will not, for example, be possible to obtain a waiver of the Code in respect of all future transactions relating to a particular company, in the same way that it is not permissible for a company and its shareholders to agree to disapply the Code by including a provision to that effect in the company's articles of association.

A Code waiver will only be granted with the consent of the Executive. Accordingly, where advisers are involved in transactions in respect of which a Code waiver may be appropriate, they should consult with the Executive at the earliest possible opportunity. The Executive may request a company seeking a Code waiver to satisfy such other conditions as it may consider

appropriate. **Advisers should in no circumstances despatch Code waiver letters for signature without consulting the Executive.**

Procedure to be followed

1. The advisers to the company to which the Code applies should contact the Executive to inform the Executive of the transaction and seek the consent of the Executive for a Code waiver.

2. If the Executive agrees that it is appropriate for a Code waiver to be granted, the advisers to the Code company should amend the pro forma Code waiver letter to take account of the particular facts of the transaction in question. The pro forma Code waiver letter explains the relevant information which should be included. Once amended, the form of the Code waiver letter should then be sent to the Executive for approval prior to its despatch to the shareholders in the Code company.

3. Once approved, the Code waiver may be sent to the shareholders in the Code company. The shareholders must be given sufficient time to consider the terms of the letter and to seek independent financial or legal advice prior to signing it – seven days will normally be considered to be sufficient for these purposes.

4. The advisers to the Code company should collate the Code waiver letters and, once all the signed originals have been received, they should be returned in their entirety to the Executive. The Code waiver will only be granted if **all** shareholders agree. Once the Executive has received all the original letters and confirmed that they are in order, a member of the Executive will contact the advisers to the Code company by telephone to confirm that the Code waiver has been granted.

Pro forma Code waiver letter

[to be issued on the letterhead of the financial or legal adviser to the offeree company]

(For use with the Code as amended on 12 September 2016)

Dear [*name of shareholder, option holder, or holder of other convertible securities or subscription rights if applicable*[1]]

XYZ plc ("XYZ" or the "Company")

We act for [*XYZ/its shareholders*] in connection with [*brief summary of transaction*]. Further details of [*this transaction – define if appropriate*] are set out in Appendix A.

Ordinarily, the Takeover Code (the "Code") would apply to a transaction of this nature. However, if all of the shareholders of a company agree, the Takeover Panel (the "Panel") may be prepared to grant a waiver from the Code's application to a particular transaction. The purpose of this letter, therefore, is to ask all the shareholders in the Company to agree to an application being made to the Panel for a waiver of the Code in respect of the proposed transaction.

Brief details of the Panel, the Code and the protections given by the Code are described below. **Before consenting to a waiver of the Code you may want to take independent professional advice from an appropriate independent financial adviser.**

The Code

The Code is issued and administered by the Panel. XYZ is a company to which the Code applies and its shareholders are accordingly entitled to the protections afforded by the Code.

The Code and the Panel operate principally to ensure that shareholders are treated fairly and are not denied an opportunity to decide on the merits of a takeover and that shareholders of the same class are afforded equivalent treatment by an offeror. The Code also provides an orderly framework within which takeovers are conducted. In addition, it is designed to promote, in conjunction with other regulatory regimes, the integrity of the financial markets.

The General Principles and Rules of the Code

The Code is based upon a number of General Principles which are essentially statements of standards of commercial behaviour. For your information these General Principles are set out in Appendix B. The General Principles apply to all transactions with which the Code is concerned. They are expressed in broad general terms and the Code does not define the precise extent of, or the limitations on, their application. They are applied by the Panel in accordance with their spirit to achieve their underlying purpose.

[1] *References to shareholders throughout should be amended to include option holders or holders of other convertible securities or subscription rights as appropriate.*

In addition to the General Principles, the Code contains a series of Rules, of which some are effectively expansions of the General Principles and examples of their application and others are provisions governing specific aspects of takeover procedure. Although most of the Rules are expressed in more detailed language than the General Principles, they are not framed in technical language and, like the General Principles, are to be interpreted to achieve their underlying purpose. Therefore, their spirit must be observed as well as their letter. The Panel may derogate or grant a waiver to a person from the application of a Rule in certain circumstances.

Giving up the protection of the Code

A summary of key points regarding the application of the Code to takeovers generally is set out in Appendix C. **You are encouraged to read this information carefully as it outlines certain important protections which you will be giving up if you agree to a waiver of the Code.** Your attention is drawn in particular to [*key points in relation to the actual transaction proposed, including any which would otherwise not comply with the Code*].

Compliance with the Code inevitably imposes time constraints and additional costs. The board of directors of XYZ (the "Board") believes that in respect of the transaction described in Appendix A these costs and constraints are likely to outweigh the advantages to all parties. [*Details of any other arguments in support of waiving the Code to be included here*]. Therefore, if all shareholders agree, we will apply to the Panel on behalf of [*the Board/shareholders as appropriate*] for a waiver from the Code for the proposed transaction. If you agree to the application for a waiver being made please sign overleaf and return this letter [*to me*].

Yours faithfully

To: The Takeover Panel

I, the undersigned, confirm that I am a shareholder in the Company. I have read the attached letter and its appendices and in particular I have noted the General Principles and the relevant provisions of the Code. Having taken such independent professional advice as I believe necessary, I consent to the waiver of the Code in respect of the transaction described in Appendix A.

---------- Signature

---------- Name (print in BLOCK CAPITALS)

[*N.B. if signing on behalf of a trust, company or other similar body the signatory should make it clear that this is the case*]

---------- Date

You should ensure that this letter together with its attached appendices are all returned to [*the sender*] for onward transmission to the Panel (your return should include, therefore, pages 1 to [●]). You are encouraged to keep a copy for your records.

Practice notes (for information only and not to be included in the final letter)

- *The waiver letter should be drafted and issued only by advisers to the offeree company or its shareholders, and not by advisers to the offeror.*

- *Shareholders should be given* ***sufficient time*** *to consider waiving the protections afforded by the Code (and to take any independent professional advice). The Executive considers that shareholders should normally be given a minimum of* ***7 days*** *in this regard.*

- *Advisers should note that a waiver will only be granted if all shareholders consent in writing in the form set out in the pro forma.*

- *Signatures pursuant to a* ***power of attorney*** *are not normally acceptable – the signature of the registered shareholder is required.*

- *In the first instance the advisers requesting the waiver on behalf of the board should collect the letters returned by shareholders – the originals of these should be forwarded to the Executive only when a complete set is available.*

- *Advisers should note that a waiver will only be effective when all the shareholders have replied in the affirmative, the letters have been reviewed by the Executive, and a member of the Executive has contacted the adviser concerned in order to confirm the grant of the waiver. Confirmation will be given by telephone only.*

APPENDIX A

Details of the transaction

Details of the proposed transaction should be included here in order to provide sufficient information to shareholders for them to make an informed decision with regard to a waiver of the Code. ***It should be noted that the Executive will not normally grant a waiver in respect of a transaction for which terms have not been substantially agreed – it will therefore not be acceptable for the Appendix to refer to matters "to be agreed" or similar or, for example, to documents containing "standard terms and conditions".***

The following is a guide to what might be expected:

(a) where the Code company is to be acquired by another party:

- *the aggregate consideration proposed and what form it will take (e.g. cash/loan notes/shares in the offeror);*
- *the consideration per share;*
- *if it is proposed that any element of the consideration will be deferred, the basis on which this is proposed (including full details of any formula to determine the amount payable);*
- *likewise, if it is proposed that any element of consideration will be withheld (e.g. to cover potential warranty claims), the basis on which this is proposed;*
- *likewise, if it is proposed that any element of the consideration differs between shareholders this should be fully disclosed;*
- *if the acquisition is to be made by way of a sale and purchase agreement, an outline of its principal terms other than those above. In particular, the main warranties and indemnities to be sought from the shareholders should be disclosed, whether there is any cap on the potential liability under such warranties and indemnities (and the quantum of that cap), and whether those warranties or indemnities differ between shareholders;*
- *if the acquisition is to be made by way of an offer, an outline of its terms other than those above, including the conditions attaching to the offer and an indication of the likely timetable; and*
- *an outline explanation of any special arrangements between the acquirer and any shareholders, other than the proposed consideration as set out above (c.f. Rule 16.1). This might include details of service contracts, option schemes or other incentive arrangements for retained management (c.f. Rule 16.2).*

(b) where the transaction with regard to the Code company would generally fall within the remit of the Code (e.g. an acquisition of shares or interests in shares which would otherwise breach Rule 9, or an issue of new shares which would otherwise require a waiver of Rule 9 under Appendix 1 of the Code (a "whitewash")):

- *full details of transaction;*
- *an outline of the intentions of the new controller and background information on that person;*
- *the resultant percentage interests in shares of any person who would otherwise breach a Code threshold (e.g. acquire interests in shares carrying 30% or more of the voting rights of the company) and the resulting continuing Code implications;*
- *the price at which any shares or interests in shares are being transferred (and the Code implications which would otherwise arise);*
- *the ability of the new controller to pass or block ordinary or special resolutions of the company (if applicable); and*
- *further details as appropriate.*

Advisers should note that the above suggestions are not comprehensive – shareholders should be given sufficient information in order for them to make an informed decision as to whether to agree to a waiver of the Code. In order to do this, it is essential that they fully understand the practical and commercial implications of giving up the protections afforded by the Code. The fact that certain shareholders may be intimately involved in the negotiation of a transaction is not a substitute for full disclosure in this letter.

The Panel will not approve the sending of waiver letters to shareholders if it considers that the information provided in draft is inadequate – this inevitably results in delay and it is therefore advisable to provide full information at the outset.

APPENDIX B

The General Principles of the Code

1. All holders of the securities of an offeree company of the same class must be afforded equivalent treatment; moreover, if a person acquires control of a company, the other holders of securities must be protected.

2. The holders of the securities of an offeree company must have sufficient time and information to enable them to reach a properly informed decision on the bid; where it advises the holders of securities, the board of the offeree company must give its views on the effects of implementation of the bid on employment, conditions of employment and the locations of the company's places of business.

3. The board of an offeree company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the bid.

4. False markets must not be created in the securities of the offeree company, of the offeror company or of any other company concerned by the bid in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted.

5. An offeror must announce a bid only after ensuring that he/she can fulfil in full any cash consideration, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration.

6. An offeree company must not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities.

APPENDIX C

Detailed application of the Code

The following is a summary of key provisions of the Code which apply to transactions to which the Code applies. **You should note that, by agreeing to a waiver of the Code, you will be giving up the protections afforded by the Code.**

Equality of treatment

General Principle 1 of the Code states that all holders of securities of an offeree company of the same class must be afforded equivalent treatment. Furthermore, Rule 16.1 requires that, except with the consent of the Panel, special arrangements may not be made with certain shareholders in the Company if there are favourable conditions attached which are not being extended to all shareholders. [*Details of any potential breaches of General Principle 1 or Rule 16.1 should be included in the body of the letter. Note that any proposal which would constitute a breach of General Principle 1 or Rule 16.1 should be discussed with the Panel in advance and may cause the Panel to refuse to grant a waiver of the Code.*]

Information to shareholders

General Principle 2 requires that holders of securities of an offeree company must have sufficient time and information to enable them to reach a properly informed decision on a bid. In support of the latter requirement Rule 24 requires that a document setting out an offer must deal in detail with various matters, including the following:

(a) full details of the terms and conditions of the offer;

(b) the offeror's intentions with regard to the continued employment of employees and management and its strategic plans for the offeree company, and their likely repercussions on employment and the locations of the offeree company's places of business;

(c) detailed financial information regarding the offeror including the names of its directors, the nature of its business and its financial and trading prospects;

(d) detailed financial information on the offeree company for the past two years;

(e) a description of how the offer is to be financed and the source(s) of the finance;

(f) appropriate details of interests and recent dealings in the securities of the offeror and the offeree company by relevant parties;

(g) details of any special arrangements between the offeror or any person acting in concert with it and any of the directors, recent directors, shareholders or recent shareholders of the offeree company having any connection with or dependence upon the offer;

(h) certain Code requirements relating to acceptances of the offer, timing obligations, restrictions on offerors and provisions conferring rights on shareholders in the offeree company;

(i) confirmation by an appropriate third party that resources are available to the offeror sufficient to satisfy any cash payments under the offer;

(j) a statement as to whether or not any securities acquired under the offer will be transferred to any other persons;

(k) a statement to the effect that, except with the consent of the Panel, settlement of the consideration to which any shareholder is entitled under the offer will be implemented in full in accordance with the terms of the offer without regard to any lien, right of set-off, counterclaim or other analogous right to which the offeror may otherwise be entitled; and

(l) estimates of the fees and expenses expected to be incurred by the offeror in connection with the offer.

The opinion of the offeree board and independent advice

The board of the offeree company is required by Rule 3.1 of the Code to obtain competent independent advice as to whether the financial terms of an offer are fair and reasonable and the substance of such advice must be made known to its shareholders. Rule 25.2 requires that the board of the offeree company must circulate its opinion on the offer and its reasons for forming that opinion. That opinion must include the board's views on (i) the effects of implementation of the offer on all the company's interests, including, specifically, employment; and (ii) the offeror's strategic plans for the offeree company and their likely repercussions on employment and the locations of the offeree company's places of business.

The circular from the offeree company must also deal with the following matters (although in a recommended situation this information is usually contained in the same document as the offeror's information):

(a) appropriate details of interests and recent dealings in the securities of the offeror and the offeree company by relevant parties;

(b) whether the directors of the offeree company intend to accept or reject the offer in respect of their own beneficial shareholdings; and

(c) a summary of the principal contents of each material contract entered into by the offeree company and its subsidiaries during the period beginning two years before the offer was announced.

Rule 20.1 states that, except with the consent of the Panel or as provided in the Notes on Rule 20.1, information and opinions relating to an offer or a party to an offer must be made equally available to all offeree company shareholders and persons with information rights as nearly as possible at the same time and in the same manner.

Any major departures from the Code should be explained in the body of the letter.

Note: advisers may need to amend these notes to reflect other provisions of the Code which arise in other circumstances, for example where a circular to shareholders in respect of a whitewash would otherwise be required.