THE TAKEOVER PANEL

NOTE TO ADVISERS IN RELATION TO RE-REGISTERING A PUBLIC COMPANY AS A PRIVATE COMPANY

In order for a public company to re-register as a private company, it is necessary, as a matter of company law, for the company to pass a resolution to that effect. If the re-registration becomes effective, the Takeover Code (the "Code") will no longer apply to the company, provided it does not fall within one of the categories described in Sections 3(a)(ii)(A) to (D) of the Introduction to the Code.

In view of the Code protections that may be lost if the company is re-registered, the Panel Executive (the "Executive") expects shareholders, before voting on the re-registration, to be given an adequate explanation of the Code and the Code protections that they will be giving up if the re-registration becomes effective. To assist advisers, the Executive has prepared the attached pro forma drafting for inclusion in the re-registration circular or explanatory memorandum to be sent to shareholders before the relevant resolution is passed.

Advisers should note that the Code will continue to apply until the Registrar of Companies has issued a re-registration certificate to the company in accordance with the Companies Act 2006.

Recommended procedure to be followed

1. The advisers to the company to which the Code applies should contact the Executive to inform it of the proposed re-registration.

2. The advisers to the company should confirm with the Executive that the company does not fall within one of the categories described in Sections 3(a)(ii)(A) to (D) of the Introduction to the Code. If the company does fall within one of those categories, the Code will continue to apply, notwithstanding the re-registration.

3. Assuming that the confirmation referred to in paragraph 2 above has been given to the Executive, the advisers to the Code company should amend the pro forma drafting, as appropriate (i.e. to take account of the particular facts of any related transaction) and send it to the Executive for approval.

4. Once the circular or explanatory memorandum has been satisfactorily completed and approved by the Executive, it should be sent to shareholders in good time to ensure that they have an adequate opportunity to consider the Code implications of passing the resolution before the resolution is passed. Holders of convertible securities, options or subscription rights in the company (if any) should be sent a copy of the circular or explanatory memorandum at the same time.

5. Once the re-registration process has been completed, as evidenced by the issue of the re-registration certificate by the Registrar of Companies, the Code will cease to apply. Advisers should, as a matter of good practice, confirm to the Executive when the re-registration procedure has been completed.

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Suggested drafting to be included in a circular or explanatory memorandum to be sent to shareholders before a public company is re-registered as a private company

The Takeover Code (the "Code") currently applies to XYZ plc ("XYZ" or the "Company"). The Code does not apply to private companies (other than in certain limited circumstances) and would not apply to any offer made to XYZ shareholders to acquire their XYZ shares made subsequent to the re-registering of the Company as a private company.

XYZ shareholders should note that, if the resolution to re-register the Company as a private company becomes effective, they will not receive the protections afforded by the Code in the event that there is a subsequent offer to acquire their XYZ shares.

Brief details of the Takeover Panel (the "Panel"), the Code and the protections given by the Code are described below. **Before giving your consent to the re-registration of the Company as a private company, 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 Part 1 of Appendix A. 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.

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 Part 2 of Appendix A. **You are encouraged to read this information carefully as it outlines certain important protections which you will be giving up if you agree to the re-registration of the Company as a private company.** 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.] [Consider GP1, Rules 6, 9, 11, 14, 15, 16, 21 and 31. In particular, if, as a result of a proposed transaction, a mandatory bid obligation would arise under Rule 9 but for the re-registration, prominent reference must be made here to this fact and to the price at which the obligation would otherwise arise]*. Further details are set out in Appendix B.

[Details of any arguments in support of re-registering XYZ as a private company and giving up the protections of the Code.]

Appendix A

Part 1: 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.

Part 2: 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 the re-registration of the Company as a private company, 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 main part of the circular or explanatory memorandum.]*

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. Consequently, a document setting out full details of an offer must be sent to the offeree company's shareholders.

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 send to the offeree company's shareholders and persons with information rights 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 other matters such as interests and recent dealings in the securities of the offeror and the offeree company by relevant parties and whether the directors of the offeree company intend to accept or reject the offer in respect of their own beneficial shareholdings.

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.

[The following section should be included if the Company has more than one class of equity share capital.]

More than one class of equity share capital

Rule 14 provides that where a company has more than one class of equity share capital, a comparable offer must be made for each class whether such capital carries voting rights or not. *[Note: if as a result of a proposed transaction, a Rule 14 obligation would arise but for the re-registration, prominent reference must be made to this fact and to the price at which the obligation would otherwise arise.]*

[The following section should be included if the Company has convertible securities in issue or options or subscription rights outstanding.]

Optionholders and holders of convertible securities or subscription rights

Rule 15 of the Code provides that when a Code offer is made for voting equity share capital or other transferable securities carrying voting rights and the offeree company has convertible securities outstanding, the offeror must make an appropriate offer or proposal to the stockholders to ensure their interests are safeguarded. Rule 15 also applies in relation to holders of options and other subscription rights. If the re-registration takes effect, these protections will be lost. *[It may be appropriate to summarise the effect of the transaction for holders of convertible securities, options and subscription rights]*.

[Any major departures from the Code should be explained in the body of the circular or explanatory memorandum.]

IF THERE IS A TRANSACTION IN CONTEMPLATION

Appendix B

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.

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 incentivisation 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 give up the protections afforded by the Code by agreeing to re-register the Company as a private company. 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 the circular or explanatory memorandum.