



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

August 17, 2016

**Response of the Office of Mergers and Acquisitions
Division of Corporation Finance**

Scott Saks
Paul Hastings LLP
200 Park Avenue
New York, NY 10166

Re: Cash tender offer for Shares of AIXTRON SE

Dear Mr. Saks:

We are responding to your letter dated August 17, 2016, addressed to Ted Yu, Christina Chalk and Daniel Duchovny, as supplemented by telephone conversations with the staff, with regard to your request for exemptive and no-action relief. To avoid having to recite or summarize the facts set forth in your letter, we attach the enclosed copy of your letter. Unless otherwise noted, capitalized terms in this response letter have the same meaning as in your letter dated August 17, 2016.

Section I

On the basis of the representations and the facts presented in your letter, the Division of Corporation Finance, acting for the Commission pursuant to delegated authority, by separate order is granting the Bidder Entities an exemption from:

- Exchange Act Section 14(d)(5) and Exchange Act Rule 14d-7 to terminate withdrawal rights for Shares tendered during the Acceptance Period and Additional Acceptance Period, under the circumstances described in your letter; and
- Exchange Act Rules 14d-11(c) and (e) to permit payment for Shares tendered during the Additional Acceptance Period between four and twelve Banking Days after the expiration of the Additional Acceptance Period or four to twelve Banking Days after the satisfaction or waiver of the Regulatory Offer Conditions, whichever is later.

Section II

Based on the representations in your August 17, 2016 letter, the staff of the Division of Corporation Finance will not recommend enforcement action under Exchange Act Rules 14e-1(b) and (c). The no-action position under Rule 14e-1(b) permits the Bidder Entities to extend the Acceptance Period for a period of two calendar weeks in the event of a change that would otherwise require an extension of ten U.S. business days, as required by German law. The no-action position under Rule 14e-1(c) allows the Bidder Entities to pay for tendered Shares four to twelve Banking Days after the expiration of the Acceptance Period and Additional Acceptance Period, as applicable, in accordance with the additional flexibility provided by BaFin for payment in this Offer. In addition, if some or all Regulatory Offer Conditions are not satisfied by the end of the Acceptance Period or Additional Acceptance Period, this relief allows for payment for tendered Shares within four to twelve Banking Days after satisfaction or waiver of all Regulatory Offer Conditions. If any Offer conditions other than Regulatory Offer Conditions are unsatisfied or waived at the expiration of the Acceptance Period, or if any Regulatory Offer Conditions are not ultimately satisfied or waived, the tendered Shares will be returned promptly.

In granting the exemptive and no-action relief described above, we note in particular:

- The Bidder Entities' representations that the Offer qualifies for the Tier II cross-border exemptions provided in Exchange Act Rule 14d-1(d);
- Your representation that German law does not permit the Acceptance Period to extend beyond ten weeks except in limited circumstances generally relating to a competing bid or a change in the terms of the Offer within the last two weeks of the Acceptance Period. BaFin cannot grant or permit an exception to this 10-week maximum offer period established by German law;
- Although German law does not require withdrawal rights except in limited circumstances, the Bidder Entities will provide withdrawal rights through the expiration of the Acceptance Period in accordance with Exchange Act Section 14(d)(5) and Exchange Act Rule 14d-7, subject to the relief described above;
- U.S. holders of Ordinary Shares (and all holders of ADSs who transfer their securities into direct share form) may participate in the "as tendered" trading market arranged in connection with this Offer as described in your letter;
- German practice permits a single settlement for all Shares tendered in the Offer after the expiration of the Additional Acceptance Period. However, the Bidder Entities will pay for tendered Shares in two settlement periods here, to the extent that all Offer conditions, including Regulatory Offer Conditions, are satisfied at the expiration of the Acceptance Period;

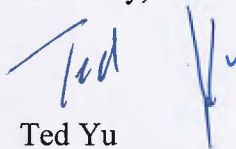
Scott Saks, Esq.
Paul Hastings LLP
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- The exemption from Exchange Act Section 14(d)(5) and Exchange Act Rule 14d-7 granted above suspends withdrawal rights for up to 30 calendar days from the expiration of the Acceptance Period only if all Regulatory Offer Conditions have not been satisfied or waived at the expiration of that period, plus a period of up to twelve Banking Days to complete the payment process from the time that all conditions are satisfied or waived; and
- German law mandates an extension of exactly two calendar weeks in the event of a material change in the terms of the Offer during the last two weeks of the Acceptance Period, which cannot be varied.

The foregoing exemptive and no-action relief is based solely on the representations and the facts presented in your letter dated August 17, 2016 and does not represent a legal conclusion with respect to the applicability of the statutory or regulatory provisions of the federal securities laws. The relief is strictly limited to the application of the rules listed above to this transaction. You should discontinue this transaction pending further consultations with the staff if any of the facts or representations set forth in your letter change. In addition, this position is subject to modification or revocation if at any time the Commission or the Division of Corporation Finance determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act.

We also direct your attention to the anti-fraud and anti-manipulation provisions of the federal securities laws, including Sections 10(b) and 14(e) of the Exchange Act and Rule 10b-5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws rests with the participants in this transaction. The Division of Corporation Finance expresses no view with respect to any other questions that this transaction may raise, including, but not limited to, the adequacy of the disclosure concerning, and the applicability of any other federal or state laws to, this transaction.

Sincerely,



Ted Yu
Chief, Office of Mergers & Acquisitions
Division of Corporation Finance

Enclosure

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

August 17, 2016

In the Matter of a Tender Offer for
Shares of AIXTRON SE

ORDER GRANTING EXEMPTION FROM
EXCHANGE ACT RULE 14D-7, 14D-11(C) AND
(E) AND EXCHANGE ACT SECTION 14(D)(5)

Grand Chip Investment GmbH submitted a letter dated August 17, 2016 requesting that the Securities and Exchange Commission ("Commission") grant an exemption from Exchange Act Rules 14d-7, 14d-11(c) and (e) and Exchange Act Section 14(d)(5) for the transaction described in its letter ("Request").

Based on the representations and the facts presented in the Request, and subject to the terms and conditions described in the letter from the Division of Corporation Finance dated August 17, 2016, it is ORDERED that the request for an exemption from Exchange Act Rules 14d-7, 14d-11(c) and (e) and Exchange Act Section 14(d)(5) is hereby granted.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Brent J. Fields
Secretary

Action as set forth or recommended herein APPROVED
pursuant to authority delegated by the Commission under
Public Law 87-592.

For: Division of Corporation Finance

By: Ted Y

Date: 8/17/2016

PAUL HASTINGS

1(212) 318-6311
scottsaks@paulhastings.com

August 17, 2016

Mr. Ted Yu
Chief, Office of Mergers and Acquisitions

Ms. Christina Chalk
Senior Special Counsel, Office of Mergers and Acquisitions

Mr. Daniel Duchovny
Special Counsel, Office of Mergers and Acquisitions

Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Dear Mr. Yu, Ms. Chalk and Mr. Duchovny:

Pursuant to our conversations with Ms. Christina Chalk and Mr. Daniel Duchovny of the staff (the "Staff") of the U.S. Securities and Exchange Commission (the "Commission"), we are writing to you on behalf of our clients, Grand Chip Investment GmbH, a German limited liability company (the "Offeror"), and the other Bidder Entities (as defined below).

On May 23, 2016 (the "Announcement Date"), the Offeror, an indirect wholly-owned subsidiary of Fujian Grand Chip Investment Fund LP ("FGC"), a limited partnership under the laws of the People's Republic of China (the "PRC"), announced its intention to commence an all cash tender offer (the "Offer") for all outstanding registered no-par value ordinary shares (the "Ordinary Shares"), including all Ordinary Shares represented by American Depositary Shares (the "ADSs" and, together with the Ordinary Shares, the "Shares"), of AIXTRON SE, a German stock corporation ("AIXTRON" and, together with its consolidated subsidiaries, the "AIXTRON Group"). The Offer commenced on July 29, 2016 and is being made in accordance with a Business Combination Agreement (the "BCA"), dated May 23, 2016, by and among: (i) AIXTRON; (ii) AIXTRON China Ltd., a Chinese limited liability company and a wholly-owned subsidiary of AIXTRON; (iii) Offeror; (iv) FGC; and (v) Mr. Zhendong Liu, FGC's general and managing partner and majority owner ("Mr. Liu"). On August 11, 2016, AIXTRON's Management Board and Supervisory Board, by way of a joint reasoned statement (the "AIXTRON Reasoned Statement") pursuant to Section 27 (1) of the German Securities Acquisition and Takeover Act (*Wertpapiererwerbs- und Übernahmegesetz, WpÜG*) (the "German Takeover Act"), held that the Offer is fair to and in the best interest of AIXTRON and its stakeholders and recommended that AIXTRON's shareholders accept the Offer.

As previously discussed with the Staff, we hereby request that the Staff grant exemptive relief to the Bidder Entities under Section 14(d)(5) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Rule 14d-7 and Rules 14d-11(c) and (e) under the Exchange Act. We further request the Staff to confirm that, based on the facts and circumstances described in this letter, it will not

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recommend any enforcement action to the Commission with respect to Rules 14e-1(b) or (c) under the Exchange Act if the Bidder Entities conduct the Offer as described in this letter.¹

AIXTRON has represented to us that it is a "foreign private issuer" (as defined in Rule 3b-4(c) promulgated under the Exchange Act). As described herein, we believe that U.S. holders hold less than 40% of the Ordinary Shares, including Ordinary Shares represented by ADSs, and that the Offer therefore qualifies for Tier II exemptive relief pursuant to Rule 14d-1(d) promulgated under the Exchange Act.²

We are U.S., German and international counsel to the Bidder Entities in connection with the Offer. Certain lawyers from our Frankfurt office, who are members of German bar, have reviewed the representations in this letter concerning German law and practice.

Background Information

The AIXTRON Group

The AIXTRON Group's business activities include developing, producing and installing equipment for the deposition of semiconductor and other complex materials, process engineering, consulting and training, including on-going customer support and after-sales service. According to information provided by AIXTRON, the AIXTRON Group is a leading provider of deposition equipment to the semiconductor industry. The AIXTRON Group's technology solutions are used by a diverse range of customers

¹ We believe that the relief requested in this letter is consistent with the relief granted by the Commission in similar transactions. *Bayer AG*, SEC No-Action Letter, File No. 5-59757 (April 28, 2006) ("Bayer I"). See also *Tender Offer by China National Chemical Corporation and CNAC Saturn (NL) B.V. for all Publicly-held Shares and ADSs of Syngenta AG*, SEC No-Action Letter (Mar. 21, 2016); *Oak Leaf B.V., Acorn B.V. and Acorn Holdings B.V. Offer for all Ordinary Shares of D.E. Master Blenders 1753 N.V.*, SEC No-Action Letter (May 21, 2013); *Cash Tender Offer by International Business Machines Corporation for Ordinary Shares and ADSs of ILOG S.A.*, SEC No-Action Letter (Oct. 9, 2008); *Axel Springer AG Offer for ProSiebenSat.1 Media AG*, SEC No-Action Letter (Sept. 12, 2005) ("Axel Springer"); *Offer by BCP Crystal Acquisition GmbH & Co., et al for Celanese AG*, SEC No-Action Letter, File No. 5-57467 (Feb. 3, 2004); *The Royal Bank of Scotland Group Plc Offer for Shares and ADSs of National Westminster Bank Plc*, SEC No-Action Letter, File No. 5-55229 (Dec. 30, 1999) ("Royal"); and *Vodafone Airtouch Plc Offer for Mannesmann Aktiengesellschaft*, SEC No-Action Letter, File No. TP 00-29 (Dec. 22, 1999). We also believe that the relief requested in this letter is consistent with the Commission's guidance set forth in the Commission's releases. See *Commission Guidance and Revisions to the Cross-Border Tender Offer, Exchange Offer, Rights Offerings and Business Combination Rules and Beneficial Ownership Reporting Rules for Certain Foreign Institutions*, Release Nos. 33-8957, 34-58597 (Sep. 19, 2008) (the "2008 Cross-Border Release"); *Cross-Border Tender and Exchange Offers, Business Combinations and Rights Offerings*, Exchange Act Release Nos. 33-7759, 34-42054, 39-2378, International Series Release No. 1208 (Oct. 22, 1999) (the "1999 Cross-Border Release" and, together with the 2008 Cross-Border Release, the "Cross-Border Releases").

² We are unable to conclude that U.S. holders do not hold more than 10% of the Ordinary Shares, and therefore, we are unable to conclude that the Offer qualifies for Tier I exemptive relief pursuant to Rule 14d-1(c) under the Exchange Act.

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worldwide to build advanced components for electronic and optoelectronic applications based on compound, silicon, or organic semiconductor materials. Such components are used in displays, signaling, lighting, fiber optic communication systems, wireless and mobile telephony applications, optical and electronic storage devices and computing, as well as a range of other applications.

Based on information contained in AIXTRON's Annual Report on Form 20-F for the fiscal year ended December 31, 2015, filed with the Commission on February 23, 2016 (the "AIXTRON Form 20-F"), during the fiscal year ended December 31, 2015, the AIXTRON Group generated total revenues of approximately EUR 197.8 million and had a net loss of approximately EUR 29.2 million. According to AIXTRON's Report on Form 6-K filed with the Commission at 15:36 on August 11, 2016 (the "AIXTRON August 11th Form 6-K"), during the first half of 2016, AIXTRON generated total revenues of approximately EUR 55.5 million and had a net loss of approximately EUR 26.6 million. According to the AIXTRON August 11th Form 6-K, as of June 30, 2016, AIXTRON had a total of 724 employees.

The Ordinary Shares and ADSs

According to its public filings, including the AIXTRON Form 20-F, AIXTRON's ADSs and Ordinary Shares are registered under Section 12(b) of the Exchange Act. The principal trading market for the Ordinary Shares is the Frankfurt Stock Exchange (the "FSE") where the Ordinary Shares trade under the symbol "AIXA." In addition, the Ordinary Shares are traded on the regulated unofficial market of the stock exchanges in Berlin, Düsseldorf, Hamburg, Munich and Stuttgart.³ The Ordinary Shares are, among other things, included in the TecDAX share index. ADSs issued under AIXTRON's sponsored American Depositary Receipt program with The Bank of New York Mellon ("BNY Mellon"), each evidencing one Ordinary Share, are listed on The NASDAQ Global Select Market ("NASDAQ") and trade under the symbol "AIXG." AIXTRON is subject to the listed company rules of the NASDAQ and the informational reporting requirements of the Exchange Act, in each case that are applicable to foreign private issuers.

All of AIXTRON's Ordinary Shares are registered shares and are freely transferable through the Clearstream Banking AG booking system (the "Clearstream System").

Based on information contained in the AIXTRON Form 20-F, as of December 31, 2015, (i) there were 112,720,355 Ordinary Shares issued, of which 1,138,572 Ordinary Shares were held as treasury shares; (ii) BNY Mellon, in its capacity as AIXTRON's depository bank, held 4,158,984 Ordinary Shares, represented by 4,158,984 ADSs, or 3.7% of AIXTRON's outstanding Ordinary Shares; (iii) AIXTRON had 137 registered ADS holders; and (iv) AIXTRON had an estimated 4,131 beneficial holders of ADSs. According to the AIXTRON Form 20-F, as of February 10, 2016, AIXTRON had 51,772 shareholders registered in its share register of Ordinary Shares. Based on information in the Reasoned Statement, as of August 11, 2016, there were 112,737,030 Ordinary Shares issued, and AIXTRON held 1,138,572 treasury shares as of June 30, 2016.

³ The Ordinary Shares are not traded on any U.S. securities exchange. Based on information reported in the over-the-counter trading system obtained by the Offeror's financial advisor, with respect to the twelve months preceding the Announcement Date, the Ordinary Shares traded very little in the United States and in very thin volumes (fewer than 30 days, with periods of up to 12 weeks where no trades occurred). On days that there was trading in the United States, on average fewer than 300 Ordinary Shares traded on each such day.

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The Bidder Entities

The Bidder Entities consist of the following entities:

- The Offeror - a limited liability company that was organized under the laws of Germany for purposes of the Offer. The Offeror has not conducted any operations other than in connection with the Offer.
- Grand Chip Investment S.à r.l. ("Intermediate Holding Company") - a limited liability company that was organized under the laws of Luxembourg for purposes of the Offer and owns all of the shares of the Offeror. Intermediate Holding Company has not conducted any operations other than in connection with the Offer and holding all of the shares of the Offeror.
- FGC - a limited partnership under the laws of the PRC that directly owns all of the shares of Intermediate Holding Company and indirectly, through Intermediate Holding Company, all of the shares of the Offeror.

FGC has two partners, a general partner and a limited partner. The general partner, Mr. Liu, has agreed to make a capital contribution of CNY 1,020 million (approximately EUR 139.6 million) and has an equity interest of 51% in FGC. The limited partner, Xiamen Bohao Investment Co., Limited (the "Limited Partner"), has agreed to make a capital contribution of CNY 980 million (approximately EUR 134.1 million) and has an equity interest of 49% in FGC. As of May 31, 2016, approximately EUR 257.6 million of the capital commitments of Mr. Liu and the Limited Partner had been received by FGC. Mr. Liu, as the general partner, has been appointed the managing partner of FGC pursuant to FGC's limited partnership agreement. As managing partner, Mr. Liu has the sole and exclusive right to conduct the affairs of FGC, including, without limitation, its investment and other business; the management, maintenance and disposal of its assets; the execution of agreements on its behalf; and the hiring other professionals, advisors and consultants to provide it services. Matters with respect to the fundamental issues of FGC also need the approval of the Limited Partner, such as the admission or withdrawal of the partners, the conversion of limited partner to general partner or general partner to limited partner and amending the limited partnership agreement.

Mr. Zhendong Liu (the General Partner of FGC)

Mr. Liu is a Chinese citizen. In addition to being the general and managing partner of FGC, Mr. Liu is also the sole managing director of the Offeror and the class A manager of Intermediate Holding Company. Mr. Liu is an investor with over 15 years of investment expertise, particularly in mining. Mr. Liu holds shares in several listed and unlisted mining companies in the PRC and other countries. An overview of the companies controlled by Mr. Liu (other than the Offeror, Intermediate Holding Company and FGC) is attached as Exhibit A hereto.

Xiamen Bohao Investment Co., Limited (the Limited Partner of FGC)

The Limited Partner is a limited liability company under the laws of the PRC. The shareholders of the Limited Partner are (i) Xiamen Jinyuan Industry Development Co., Limited ("LP Devco"), which is indirectly owned by Xiamen Municipal Bureau of Finance subordinated to Xiamen Municipal Government, the PRC, and (ii) Xiamen Youhong Trade Co., Limited ("LP Tradeco"), which is 55% owned by Mr.

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Zhongyao Wang and 45% owned by Mr. Wanming Huang. LP Devco owns 97.56% of the Limited Partner and LP Tradeco owns the remaining 2.44%; however, pursuant to the Limited Partner's articles of association, LP Tradeco is entitled to exercise all of the voting rights of LP Devco and is entitled to nominate, elect and/or appoint the Executive Director, Supervisor and Manager of the Limited Partner. LP Devco is, however, required to approve capital increases or deductions, mergers, divisions, dissolutions, liquidations, changes to the form of the Limited Partner, and changes to the articles of association of the Limited Partner.

Qualification for Tier II Relief

AIXTRON, the subject company of the Offer, is a foreign private issuer as defined in Rule 3b-4(c) under the Exchange Act. Therefore, the Offer will be eligible for the Tier II relief if U.S. holders do not hold more than 40% of the Ordinary Shares sought in the Offer, as calculated on the basis specified in Instruction 2 to paragraphs (c) and (d) of Rule 14d-1 under the Exchange Act.

The Offeror hired Orient Capital Ltd. ("Orient Capital") to conduct an analysis of U.S. holders in accordance with the Instructions to paragraphs (c) and (d) to Rule 14d-1 under the Exchange Act as of June 3, 2016, a date less than 30 days after the Announcement Date of May 23, 2016. According to AIXTRON's share register as of June 3, 2016 (the "Share Register"), there were 112,720,355 Ordinary Shares issued, including 59,647 treasury shares and 4,110,903 Ordinary Shares represented by ADSs. Accordingly, as of June 3, 2016, there were 112,660,708 Ordinary Shares issued and outstanding.

Based on the "AIXTRON SE US Beneficial Ownership Study," dated June 17, 2016 provided by Orient Capital (the "Ownership Study"), as of June 3, 2016, 23,935,350 Ordinary Shares (approximately 21.25% of the total issued and outstanding Ordinary Shares), including 3,845,077 Ordinary Shares represented by ADSs, were held by persons who are resident in the United States. According to the Ownership Study, these 23,935,350 Ordinary Shares were held by 244 U.S. beneficial owners.

Orient Capital used the following sources of information in conducting the Ownership Study:

- the Share Register;
- AIXTRON's American depository receipt DTC list as of June 3, 2016 (the "ADR DTC List"); and
- AIXTRON's signed Letter of Authority (the "LOA") referencing Section 67(4) of the German Corporation Act (*Aktiengesetz AktG*) authorizing Orient Capital to investigate beneficial ownership interest in its Ordinary Shares.

Using the Share Register as the main source to identify U.S. beneficial owners, initial disclosure requests containing the LOA were issued via email to 169 nominees and custodians on the Share Register and ADR DTC List. These notices requested details specifying the identity, domicile and shareholdings of underlying owners as of June 3, 2016.

Seventy-seven disclosure requests were sent to nominees and sub-custodians on the Share Register and a further 92 to DTC participants. Orient Capital did not contact beneficial holders directly and only contacted nominees, DTC participants and sub-custodians.

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All requests required the recipients to respond with shareholding information as of June 3, 2016. In the cases where responses were not received following the first disclosure request issued, a second request was issued a few days after the initial request. For entities believed to hold shares on behalf of U.S. residents, several emails and telephone follow-ups were required to elicit a response.

Responses received were fully analyzed and audited to ensure that all U.S. beneficial owners were identified, regardless of size of holding. The findings were then reviewed by an Orient Capital Analysis Manager.

In cases where no response was received by June 17, 2016 and Orient Capital was unable to obtain information about customer accounts of nominee or custodial holders after reasonable inquiry and good faith effort, in accordance with Instruction iv. to the Instructions to paragraphs (c) and (d) of Rule 14d-1 under the Exchange Act, Orient Capital presumed such accounts are held in the principal place of business of such nominee or custodial holder.

Of the 23,935,350 Ordinary Shares identified by Orient Capital as held by U.S. beneficial owners as of June 3, 2016, 3,845,077 Ordinary Shares were held by 101 U.S.-domiciled beneficial owners through ADSs. Of these Ordinary Shares represented by ADSs:

- 1,402,997 were identified as being held on behalf of retail investors by 24 brokers (none of these brokers provided a breakdown of underlying beneficial owners);
- 1,512,115 were identified as being held on behalf of 76 beneficial owners that were identified as institutional in nature; and
- 929,965 shares were unidentified but were allocated to U.S. Institutional for the purposes of the Ownership Study.

Of the Ordinary Shares listed on the Share Register, 20,090,273 Ordinary Shares were identified as being held by U.S. resident beneficiaries, of which 29,751 were held by at least 28 retail shareholders and 20,060,522 shares were held by institutional beneficial owners.

The following breakdown of U.S. Institutional versus U.S. Retail Investors that held Ordinary Shares and/or ADSs, as of June 3, 2016 was provided by Orient Capital:

<u>Investor Type</u>	<u>Number of Shares Held</u>	<u>Percent of Issued and Outstanding</u>
U.S. Institutional	22,502,602	19.97%
U.S. Retail	1,432,748	1.27%
Total	23,935,350	21.25%*

*Difference due to rounding

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The Offer

Structure

The Offer is being made to the holders of all of the issued and outstanding Ordinary Shares, including Ordinary Shares represented by ADSs, at a cash price of EUR 6.00 per Ordinary Share, including each Ordinary Share represented by an ADS tendered in the Offer (the "Offer Price"). BNY Mellon, acting as ADS Tender Agent (the "ADS Tender Agent"), will convert the Offer Price received for the Ordinary Shares that represent ADSs tendered in the Offer into U.S. Dollars by sale or in any other manner it may determine and will pay holders of ADSs in U.S. Dollars. All holders of Ordinary Shares, including U.S. holders of Ordinary Shares, tendered in the Offer will be paid the Offer Price in Euros. The Offer has been structured as a single offer made concurrently in Germany and the United States. The Offer has also been structured to comply with the German Takeover Act and the rules and regulations promulgated thereunder and, except to the extent permitted pursuant to the relief requested herein, Sections 14(d) and 14(e) of the Exchange Act and the rules and regulations promulgated thereunder. To the extent legally possible, given these different regulatory schemes, the Bidder Entities intend to conduct the Offer in a manner that ensures equality of opportunity for, and treatment of, all holders of Shares and that complies with generally applicable requirements in both Germany and the United States.

Commencement

The tender offer materials have been provided or made available to the holders of Ordinary Shares and holders of ADSs and were prepared in accordance with the requirements of both the German Takeover Act and, except as described herein, Sections 14(d) and 14(e) of the Exchange Act and the rules and regulations promulgated thereunder, and are available in either the German language (the "German Offer Materials") or the English language (the "U.S. Offer Materials" and, together with the German Offer Materials, the "Offer Materials"), based on shareholders' requests. The German Offer Materials and the U.S. Offer Materials are substantively identical.

The Offer was commenced in Germany by publication of the German Offer Materials on the Internet on July 29, 2016 and announcement that the German Offer Materials can be picked up free of charge at a specified location and will be mailed to investors free of charge upon request. The Offer was commenced in the United States by publication of a summary advertisement in *The New York Times (U.S. Edition)* on July 29, 2016, including a statement that the Offeror will mail the U.S. Offer Materials to holders of Ordinary Shares and ADSs upon request, in accordance with Rule 14d-4(a)(2) under the Exchange Act. In addition, the Offeror has mailed the U.S. Offer Materials to all holders of ADSs.

The initial offering period is to remain open for ten weeks (and in any event at least 20 business days from the publication of a summary advertisement as described above) (such period, as it may be extended, the "Acceptance Period") and, if certain conditions are met, to be followed by a two-week subsequent offering period (the "Additional Acceptance Period").

Conditions to the Offer

Completion of the Offer is subject to the following conditions, which are described in the Offer Materials:

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1. Regulatory Approvals. By February 28, 2017 (the "Termination Date"), the following must have occurred:
 - a. the German Federal Ministry of Economics and Energy (*Bundesministerium für Wirtschaft und Energie* – "BMW") shall have issued a clearance certificate (*Unbedenklichkeitsbescheinigung*) pursuant to the provisions of the German Foreign Trade Act (*Außenwirtschaftsgesetz* – "AWG") and German Foreign Trade Ordinance (*Außenwirtschaftsverordnung* – "AWV"), or the period during which BMWi may prohibit the acquisition of all Ordinary Shares, including all Ordinary Shares represented by ADS, at the Offer Price, in cash (the "Transaction"), or issue orders in relation to the Transaction under AWG and AWV has expired without any such action being taken; and
 - b. with respect to the Transaction, CFIUS Approval shall have been obtained. "CFIUS Approval" means (a) a written notification issued by the Committee on Foreign Investment in the United States ("CFIUS") that it has concluded its review (or, if applicable, investigation) pursuant to the Exon-Florio Amendment to the Defense Production Act of 1950, 50 U.S.C app. § 2170, as amended ("Exon-Florio"), and determined (1) that the Transaction is not a "covered transaction" pursuant to Exon-Florio or (2) that there are no unresolved national security concerns with respect to the Transaction, or (b) if CFIUS has sent a report to the President of the United States requesting the President of the United States' decision with respect to the Transaction, either (1) the period under Exon-Florio during which the President of the United States may announce his decision to take action to suspend or prohibit the Transaction has expired without any such action being announced or taken, or (2) the President of the United States has announced a decision not to take any action to suspend or prohibit the Transaction; and
 - c. with respect to the Transaction, the notification of project filing shall have been issued by the National Development and Reform Commission of the PRC or its competent local counterparts ("NDRC") by electronic, hardcopy certificate or other means to confirm the completion of the outbound investment filing process with NDRC; and
 - d. with respect to the Transaction, certificates evidencing the completion of the overseas investment foreign exchange registration and foreign exchange conversion and remittance shall have been issued by a qualified bank approved by the State Administration of Foreign Exchange of the PRC or its competent local counterparts ("SAFE") by electronic, hardcopy certificate or other means to confirm the completion of the SAFE proceedings necessary for outbound investment;⁴

(each Offer Condition pursuant to clauses a. through d. above, a "Regulatory Offer Condition" and collectively the "Regulatory Offer Conditions"), it being understood that (a) each Regulatory Offer Condition in clauses a. and b. shall only be fulfilled if there are no regulatory conditions, requirements, administrative rulings, orders or measures contained in the respective approval,

⁴ With respect to the approvals required by the NDRC and SAFE, none of the Bidder Entities nor any of their respective affiliates has the ability to control the timing of those approvals. In addition, the Bidder Entities have been seeking to obtain such approvals as soon as practicable.

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notification or certificate which would constitute a Regulatory MAE⁵ and (b) the Regulatory Offer Conditions pursuant to clauses c. and d. above shall only be fulfilled if at the point in time when the last notification or certificate pursuant to clauses c. and d. has been issued the respective other notification or certificate pursuant to clauses c. and d. and the enterprise overseas investment certificate, which has been issued with respect to the Transaction by the Department of Commerce of Fujian Province, PRC, on May 12, 2016, are still in full force and effect.

2. Minimum Acceptance Threshold. At the time of the expiration of the Acceptance Period, the aggregate number of Ordinary Shares (including the Ordinary Shares represented by ADSs) for which the Offer has been validly accepted without the acceptance having been validly withdrawn amounts to a total of at least 67,632,213 Ordinary Shares (including the Ordinary Shares represented by ADSs) (the "Minimum Acceptance Threshold"). This corresponds to an acceptance quota of at least 60 per cent of the 112,720,355 Ordinary Shares (including the Ordinary Shares represented by ADSs) issued on the Announcement Date.
3. No material adverse change in the closing quotations of DAX and TecDAX. On the trading day prior to the expiration of the Acceptance Period:
 - a. the closing quotation of the DAX, as determined by Deutsche Börse AG, or a successor thereof, and as published on its internet website <http://www.deutsche-boerse.com>, shall be at or above 6,941.21, and
 - b. the closing quotation of the TecDAX, as determined by Deutsche Börse AG, or a successor thereof, and as published on its internet website <http://www.deutsche-boerse.com>, shall be at or above 1,167.37.

As compared to the closing quotations of the respective indices on May 20, 2016, which was the last trading day prior to the Announcement Date, a closing quotation of either index below the above figures would mean a decline of the respective index of more than 30 per cent.

4. No Proscribed Transactions. Prior to or by the time of expiration of the Acceptance Period, other than to settle the issued and outstanding stock options which existed on the Announcement Date if and to the extent they are exercised ("Permitted Capital Increase"), no capital increase in AIXTRON shall have occurred. In particular, except for any Permitted Capital Increase, the Offer condition pursuant to this provision shall not be fulfilled in case AIXTRON issues any new shares by way of a regular capital increase or by using authorized capital, or increase its share capital based on issued contingent capital.

⁵ A "Regulatory MAE" means any regulatory condition, requirement, administrative ruling, order or measure made or rendered by any competent authority that would, individually or in the aggregate, according to an Expert Opinion of the Independent Expert (each as to be defined in the U.S. Offer Materials) to be delivered no later than 9:00 a.m. local time New York one U.S. Working Day (as defined below) after receipt of the respective approval, notification or certificate by the Bidder or an Additional Control Acquiror (as to be defined in the U.S. Offer Materials), result in a reduction of the consolidated sales of AIXTRON of 27.5 per cent or more compared to AIXTRON's forecast for the fiscal year 2016 current as of the Announcement Date. As defined in the Offer Materials, a "U.S. Working Day" refers to every day except for Saturdays, Sundays and U.S. federal public holidays.

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Under Section 16 (1) 1 of the German Takeover Act, the Acceptance Period cannot exceed 10 weeks, subject to only two limited exceptions in the case of (a) a change of the terms of the Offer within two weeks prior to the expiration of the Acceptance Period, in which case the offering period will be extended by law by two weeks pursuant to Section 21 (5) of the German Takeover Act, or (b) a competing offer being made within the Acceptance Period with an offering period that expires after expiration of the Acceptance Period, in which case the Acceptance Period will be prolonged by law until the expiration of the initial offering period of the competing offer pursuant to Section 22 (2) of the German Takeover Act. Further, BaFin cannot grant or permit an Acceptance Period that exceeds the maximum 10-week period. Accordingly, German law contemplates, and in some cases may require, that the Acceptance Period expire prior to satisfaction of all conditions precedent to the Offer. In that circumstance, German law would permit the Offeror to delay payment for tendered Ordinary Shares until satisfaction of the Regulatory Offer Conditions, at which point payment for the Ordinary Shares tendered in the Offer would be made promptly, but no earlier than four Banking Days⁶ and no later than twelve Banking Days⁷, following (i) expiration of the Acceptance Period or the Additional Acceptance Period, as applicable, and (ii) satisfaction of the Regulatory Offer Conditions.⁸ If all required Regulatory Offer Conditions are not satisfied or waived by the Termination Date, the Offer will be terminated and the Offeror will promptly return all previously tendered Ordinary Shares (including Ordinary Shares represented by ADSs). As discussed below, it is possible that the Regulatory Offer Conditions will not have been satisfied at the end of the Acceptance Period or the end of the Additional Acceptance Period.

Tender Mechanics for Ordinary Shares

Holders of Ordinary Shares in book-entry form within the Clearstream System (including such holders in the United States) can accept the Offer by delivering a declaration of acceptance to the custodian credit institution or financial services institution (a "Custodian Institution") that holds their Ordinary Shares. The Custodian Institutions that hold the Ordinary Shares for which acceptances of the Offer have been received will effect book-entry transfers in order to hold the tendered Ordinary Shares under a separate designated securities identification number for tendered Ordinary Shares within the Clearstream System until the expiration of the Offer.

⁶ As defined in the Offer Materials, a "Banking Day" is a day on which the banks in (i) Frankfurt am Main, Germany and (ii) New York City, United States, are open for general business with retail customers.

⁷ Normal practice in Germany is for payment to be made four to eight German banking days following expiration of the Acceptance Period or the Additional Acceptance Period, as applicable. However, the German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, "BaFin") has permitted longer periods of up to twelve Banking Days after publication of the results of the offer (which usually occurs three German banking days after the expiration of the acceptance period) where circumstances warranted a longer period. With respect to the Offer and assuming the Regulatory Offer Conditions are satisfied prior to the expiration of the Acceptance Period, the Offeror has requested, and BaFin has allowed, settlement of the Offer to take place four to twelve Banking Days following expiration of the Acceptance Period or the Additional Acceptance Period, as the case may be, because extra time is expected to be required for settlement in the event the financing guarantees are drawn on by the Bidder.

⁸ As a technical matter, under German law, the Offeror does not "accept" tendered Shares for payment. Instead, the contract of purchase and sale created when a holder of Ordinary Shares, including Ordinary Shares represented by ADSs, tenders its Shares becomes binding, and the Offeror becomes obligated to pay for such Shares, when the last of the conditions to the Offer is satisfied.

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Tender Mechanics for U.S. Holders of Ordinary Shares represented by ADSs

The Offeror will appoint BNY Mellon to act as ADS tender agent to receive tenders of Ordinary Shares represented by ADSs pursuant to the Offer. BNY Mellon is also the depository bank that administers AIXTRON's ADS program. In this regard, it is currently expected that the ADS Tender Agent will, among other things: (i) designate a book-entry account at DTC for the purpose of acceptances of the Offer in respect of Ordinary Shares represented by ADSs tendered by book-entry delivery; (ii) instruct its German custodian to effect book-entry transfers of the underlying Ordinary Shares under a separate designated securities identification number for tendered Ordinary Shares within the Clearstream System; (iii) examine the documents required to be delivered to effect a valid acceptance of the Offer; (iv) answer procedural questions from holders of ADSs with respect to the Offer; (v) upon the request of the Offeror, from time to time, report the number of ADSs for which valid acceptances have been received and not withdrawn and the number of ADSs which have been so withdrawn; and (vi) perform any other related record-keeping tasks associated with the acceptances of the Offer by holders of ADSs. Holders of ADSs are required to deliver the appropriate documentation, which is specified in the U.S. Offer Materials, to the ADS Tender Agent in order to validly accept the Offer, and any irregularities in acceptances of the Offer by holders of ADSs may only be waived with the consent of the Offeror.

"As Tendered" Trading Market

It is common market practice in German offers for tendered shares to trade on an "as tendered" basis on the FSE. Ordinary Shares that are tendered into the Offer, but have not yet been accepted ("Tendered Ordinary Shares") were admitted to stock market trading on the regulated market (*Regulierter Markt*) of the FSE as of August 3, 2016, the third trading day of the FSE following the commencement of the Acceptance Period on July 29, 2016. Trading in the Tendered Ordinary Shares on the regulated market of the FSE is expected to end no later than (i) after regular stock exchange trading hours on the last trading day of the FSE within the Additional Acceptance Period or (ii) unless determined otherwise by the FSE, after regular stock exchange trading hours on the day of the satisfaction of all conditions to the Offer (to the extent they have not been validly waived) is published, whichever is the later date. No stock market trading of Ordinary Shares tendered in the Additional Acceptance Period is planned during the Additional Acceptance Period. However, if all the conditions to the Offer have not been satisfied or validly waived by the end of the Additional Acceptance Period, beginning on approximately the fifth trading day after the Additional Acceptance Period, Ordinary Shares tendered during the Additional Acceptance period will be able to trade in the "as tendered" market along with the Ordinary Shares tendered during the Acceptance Period.

It is not feasible for holders of ADSs (and the Ordinary Shares represented thereby) to have the ability to trade ADSs or the underlying Ordinary Shares on an "as tendered" basis because all tendered ADSs will be blocked until the Offer is settled or terminated.⁹ Direct holders of Ordinary Shares in the United

⁹ With respect to ADSs, we understand:

- There is no market practice or process for any as tendered trading market in the United States. In fact, while it may be technically possible to establish an as tendered trading line for trading of tendered ADSs, standard U.S. market convention and practice call for the blocking of tendered securities to, in part, prevent their change of ownership after tendering, and that introducing a contrary process, without assurance of proper controls being in place and tested, creates risk of

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States, however, who tender such shares in Germany would have the ability to trade Ordinary Shares on an "as tendered" basis. Similarly, holders of ADSs have the right, pursuant to the terms of the ADSs to withdraw the underlying Ordinary Shares and tender such Ordinary Shares in Germany.

Extension of the Offer

Under Section 21 (5) of the German Takeover Act, a change to the terms of the Offer (e.g., an increase of the offer consideration, offer of additional consideration, reduction of the Minimum Acceptance Threshold, and waiver of conditions to the Offer) occurring during the last two weeks of the Acceptance Period would require that the Acceptance Period remain open for an additional period of two calendar weeks from the end of the Acceptance Period (as opposed to the U.S. requirement that the Offer remain open for at least ten business days from the announcement of certain material changes). If such a material change occurs and the Acceptance Period is extended, commencement of the subsequent offering period will be delayed accordingly.

Settlement

Section 23 (1) No.2 of the German Takeover Act requires the announcement of exact and final results of an offer following the expiration of the Acceptance Period, and, with respect to the Minimum Acceptance Threshold, the determination of such final results dictates whether the offer is successful or not. Under German practice and taking into account U.S. guaranteed delivery procedures, this determination cannot be made until the fourth Banking Day following the expiration of the Acceptance Period. This is because (i) Ordinary Shares may be traded and tendered on the last day of the Acceptance Period, and the book-entry transfer of such Ordinary Shares into the appropriate securities identification number for tendered Ordinary Shares within the Clearstream System can only be effected at or following settlement of the trade, which typically occurs on T+2 and (ii) because of U.S. guaranteed delivery procedures, the ADS Tender Agent will not be able to know the exact number of Ordinary Shares underlying ADSs to tender into the Offer until the end of the third business day following the expiration of the Offer. The German Takeover Act provides that the Offeror must then prepare and publish the final, official results of the Offer on the internet and in the German Federal Gazette, which takes up to another two German banking days, depending on the applicable newspaper's publication deadlines. Settlement for shares tendered typically occurs within one to three German banking days thereafter.

confusion among investors as well as significant issues as to the ADS Tender Agent's ability to proof and control tendered securities.

- In order to allow for orderly and prompt processing of withdrawal rights, it will not cancel the ADSs in exchange for underlying Ordinary Shares until the expiration of the Offer.
- Because the vast majority of tenders of ADSs will be made through the DTC system, which records the identity of the tendering party, the ADS Tender Agent must treat the DTC system as a single tendering party, thereby making it impossible for the ADS Tender Agent to match payments with DTC's original tender records if the identity of the tendering party were to change as a result of "as tendered" trading.

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Additional Acceptance Period

Section 16 (2) of the German Takeover Act requires that, if prior to the expiration of the Acceptance Period, the conditions to the Offer (other than the Regulatory Offer Conditions) are satisfied or waived, the Offeror must provide a two-week Additional Acceptance Period during which holders may tender their Shares for the same consideration offered in the Acceptance Period. The Additional Acceptance Period may begin only after the Offeror publishes the number of Ordinary Shares tendered during the Acceptance Period indicating that the Minimum Acceptance Threshold has been satisfied. Therefore, the Additional Acceptance Period typically may not begin until the day after the fourth or fifth German banking day following the expiration of the Acceptance Period.

German practice provides for a single settlement for all shares tendered during the Additional Acceptance Period, which, as with the Acceptance Period, typically occurs four to eight German banking days following the expiration of the Additional Acceptance Period. This is due to the logistical requirements of the tender procedures described above. Unlike the practice in the United States, where a bidder is required by Rule 14d-11(e) to "immediately accept. . . and promptly pay . . . for all securities as they are tendered during the subsequent offering period," the Offeror's financial advisors have advised us that they are not aware of any instance in German practice in which daily or periodic settlement has been made during an Additional Acceptance Period.

Withdrawal Rights

Although the German Takeover Act does not require a bidder to provide shareholders with withdrawal rights except in certain limited circumstances involving a competing offer or an amendment to the terms of a tender offer, the Offeror has extended withdrawal rights through the Acceptance Period to all holders of Ordinary Shares and ADSs, in accordance with Section 14(d)(5) and Rule 14d-7, subject to the relief requested herein.

Discussion and Requests for Exemptive Relief

Section 14(d)(5) and Rule 14d-7: Post-Expiration Conditions, Withdrawal Rights and Payment of the Offer Price

Section 14(d)(5) of the Exchange Act provides that the securities tendered in a tender offer may be withdrawn at any time after 60 days from the date of the original offer. Rule 14d-7 requires that "any person who has deposited securities pursuant to a tender offer has the right to withdraw any such securities during the period such offer request or invitation remains open."

Subject to certain exceptions relating to receipt of regulatory consents, we understand that the Staff has taken the position that a tender offer must become unconditional not later than its expiration date and that all conditions to the offer must be satisfied or waived and the offer must be declared wholly unconditional before a bidder can terminate the withdrawal rights of tendering security holders. We also understand the Staff's position that an offer that remains subject to a post-expiration condition might be deemed to "remain open" and therefore that security holders could be entitled to withdrawal rights under Section 14(d)(5) of the Exchange Act. See, e.g., *Manual of Publicly Available Telephone Interpretations, Third Supplement, II. Cross-Border Release, A. Tier II, Question I*, Exchange Act Release No. 33-7759 (July 2001).

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As described above, the Acceptance Period may not exceed 10 weeks under German law, subject to certain limited exceptions. The Bidder Entities have determined to provide a full 10-week acceptance period to provide the maximum opportunity for all of the Regulatory Offer Conditions to be satisfied prior to the expiration of the Acceptance Period and the Additional Acceptance Period. However, it is possible that the Regulatory Offer Conditions may not be satisfied prior to the expiration of Acceptance Period and the Additional Acceptance Period. For example, the CFIUS filing with respect to the Transaction was accepted by CFIUS on July 19, 2016. Accordingly, CFIUS clearance may not be obtained prior to approximately October 3, 2016, assuming the review moves into a 45-day investigation phase. Moreover, it is sometimes the case in the course of a CFIUS review that the parties determine to withdraw and resubmit the notice, in order to restart the statutory review deadlines. If this occurs with respect to the Transaction, CFIUS clearance could be deferred until sometime after October 7, 2016. In addition, we have been advised that NDRC approval is not currently expected to be received prior to the end of November 2016, and the SAFE approval may not be obtained until early 2017. The Offer launched on July 29, 2016, which, barring any unforeseen extensions, will result in an October 7, 2016 expiration date for the Acceptance Period. Accordingly, it very well may be that all the Regulatory Offer Conditions are not satisfied at the expiration of the Acceptance Period and the Additional Acceptance Period. In these circumstances, German law would permit the Offeror to delay payment for tendered Shares until all the Regulatory Offer Conditions are satisfied, at which point payment for Ordinary Shares, including those represented by ADSs, tendered in the Offer would be made promptly, but no earlier than four Banking Days and no later than twelve Banking Days, following expiration of the Acceptance Period or the Additional Acceptance Period, as applicable, and satisfaction of the Regulatory Offer Conditions.

For the reasons discussed below, we believe that the application of Section 14(d)(5) of the Exchange Act and Rule 14d-7 in the context of the Offer will result in significant risk to the Bidder Entities that they would not otherwise be required to take under German law and cause substantial harm to the Offer rather than providing meaningful protection to holders of Shares.

The equal treatment principle under the German Takeover Act does not, and BaFin has confirmed that it will not, allow the Offeror to extend withdrawal rights to U.S. holders of Ordinary Shares and ADSs, during the period following the expiration of the Acceptance Period if such withdrawal rights are not also made available to all holders of Ordinary Shares. We also believe that, to the extent there is a delay between the expiration of the Acceptance Period and the satisfaction of all required Regulatory Offer Conditions, BaFin will not permit the Offeror to condition its obligation to purchase Shares in the Offer on the satisfaction of the Minimum Acceptance Threshold at the time the Regulatory Offer Conditions are satisfied. Further, we believe that, under German "equal treatment" principles, BaFin will not allow the Offeror to exclude holders of ADSs or U.S. holders of Ordinary Shares from participating in the Offer.

As a result, if the Offeror is required to extend withdrawal rights to holders of Ordinary Shares and ADSs, in the United States pursuant to Section 14(d)(5) and Rule 14d-7 during the period between the expiration of the Acceptance Period and satisfaction of all the Regulatory Offer Conditions, it will be required to extend withdrawal rights to all holders of Ordinary Shares and ADSs. In that case, it is possible that holders of a sufficient number of Shares could withdraw their Shares after the expiration of the Acceptance Period so that the Minimum Acceptance Threshold would no longer be satisfied at the time of satisfaction of the Regulatory Offer Conditions.

The primary purpose of the Minimum Acceptance Threshold is to assure that the Bidder Entities acquire a sufficient number of Ordinary Shares so that the Offeror will be able to obtain a majority of the Ordinary

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Shares represented at AIXTRON's General Meeting. This is particularly true in light of the fact that the Bidder Entities do not currently intend on purchasing Ordinary Shares outside of the Offer.

Following the consummation of the Offer, if the Offeror obtained sufficient number of Ordinary Shares in the Offer, the Offeror may consider entering into a domination agreement (a "Domination Agreement") with AIXTRON under German law, with the Offeror as the dominating company and AIXTRON as the dominated company. Since the Minimum Acceptance Threshold is set at 60% of the total number of Ordinary Shares issued on the Announcement Date, however, there can be no assurance that the Offeror will be able to enter into a Domination Agreement with AIXTRON if it were to so elect. In addition, the Offeror has stated in the Offer Materials that it does not plan to enter into a Domination Agreement with AIXTRON.

The purpose of a Domination Agreement would be to allow the Offeror to give instructions to and direct the management of AIXTRON (which would otherwise be prohibited under the German stock corporation law) and to integrate AIXTRON into the fiscal structure of the Bidder Entities. In connection with the consummation of a Domination Agreement, the Offeror would be required to make a mandatory offer (the "Mandatory Offer") to acquire all of the remaining Ordinary Shares, including Ordinary Shares represented by ADSs, at an adequate price. The adequate price could be equal to the Offer Price, but it could also be higher or lower.

In addition, as disclosed in the Offer Materials, if the Offeror's shareholding of Ordinary Shares, upon completion of the Offer or at any given time in the future, reaches or exceeds the threshold of 90% of AIXTRON's share capital, the Offeror may consider, in connection with a merger of AIXTRON into the Offeror, to demand the exclusion of the holders of Ordinary Shares other than the Offeror in exchange for an appropriate cash compensation in accordance with German law. The amount of the cash compensation would be determined by reference to the circumstances existing at the time the general meeting of AIXTRON adopted the relevant resolution. The appropriateness of the amount of the cash compensation can be reviewed in a judicial appraisal procedure. The amount of the appropriate cash compensation could be equal to the Offer consideration, but it could also be higher or lower.

As also disclosed in the Offer Materials, if the Offeror's shareholding of the Ordinary Shares, upon completion of the Offer, reaches or exceeds the threshold of 95% of AIXTRON's share capital, the Offeror may consider submitting an application pursuant to Section 39a of the German Takeover Act within three months following the expiration of the Acceptance Period demanding the transfer of the remaining Ordinary Shares in exchange for appropriate compensation by court order (*i.e.*, a squeeze-out under the German Takeover Act). The consideration offered and paid under the Offer would be considered to constitute appropriate compensation for such purposes if, as a result of the Offer, the Offeror has acquired Ordinary Shares corresponding to at least 90% of AIXTRON's share capital at which the Offer was directed. If the Offeror is entitled to submit an application under Section 39a of the German Takeover Act, AIXTRON shareholders who did not accept the Offer would still be entitled to accept the Offer within a period of three months from the expiration of the Acceptance Period.

Finally, as disclosed in the Offer Materials, if the Offeror's shareholding of Ordinary Shares, upon completion of the Offer or at any given time in the future, reaches or exceeds the threshold of 95% of AIXTRON's share capital, the Offeror may consider to demand transfer of the Ordinary Shares from the outside holders of Ordinary Shares in exchange for an appropriate cash compensation in accordance with sections 327a et. seq. of the German Stock Corporation Act. The amount of the cash compensation

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would be determined by reference to the circumstances existing at the time the general meeting of AIXTRON adopted the relevant resolution. The appropriateness of the amount of the cash compensation can be reviewed in a judicial appraisal procedure. The amount of the appropriate cash compensation could be equal to the Offer Consideration, but it could also be higher or lower.

In light of the increasingly aggressive and sophisticated trading tactics by hedge funds in Europe and the United States relating to merger arbitrage, the benefits of requiring the Offeror to provide withdrawal rights in this circumstance do not outweigh the significant risk that the Offeror would be contractually required to purchase Ordinary Shares in the Offer even though the Minimum Acceptance Threshold is no longer satisfied. If a sufficient number of shares were to be withdrawn, the Offeror would not be able to obtain a majority of the Ordinary Shares represented at AIXTRON's General Meeting and it would reduce the likelihood the Offeror would obtain sufficient Ordinary Shares to enable it to enter into a Domination Agreement or consummate a merger or squeeze-out if it chose to do so, thereby depriving the Offeror of the economic benefits of the Offer (for which it has paid a significant control premium).

The application of withdrawal rights following the expiration of the Acceptance Period might actually increase the likelihood that AIXTRON shareholders would be treated disproportionately. Specifically, under German law, Offeror would be permitted, after one year, to make open market purchases of a sufficient number of additional Ordinary Shares to obtain a majority of the Ordinary Shares represented at AIXTRON's General Meeting, enter into a Domination Agreement or consummate a merger or squeeze-out without offering any higher price paid in such purchases to shareholders who tendered in the initial offer.

In addition, because the price to be paid in any Mandatory Offer, if the Offeror obtained sufficient Ordinary Shares in the Offer and was able, and elected, to enter into a Domination Agreement, would typically be set as the higher of a statutorily determined price and the average trading price for the Ordinary Shares for the three months prior to the announcement to enter into any such Domination Agreement, the availability of withdrawal rights could be used to engage in complex trading strategies that might drive-up the average trading price and, therefore, the price to be paid in the Mandatory Offer (which is not required to be paid to shareholders who tendered in the initial offer). These issues are only further complicated by the presence of dual markets for the Ordinary Shares (the "as tendered" market and the market for untendered shares).

Accordingly, we believe that not enforcing withdrawal rights after the expiration of the Acceptance Period will better ensure that all holders ultimately receive the same consideration for the sale of their Shares.

In light of the fact that the Offeror and AIXTRON are German companies, the Bidder Entities are non-U.S. entities, the primary trading market for the Ordinary Shares is the FSE, and that the Offer is primarily subject to the German Takeover Act, we respectfully request exemptive relief from the provisions of Section 14(d)(5) and Rule 14d-7 to permit the Bidder Entities to terminate withdrawal rights at the expiration of the Acceptance Period as follows:

- (i) with respect to Ordinary Shares, including Ordinary Shares represented by ADSs, tendered during the Acceptance Period:
 - a. if all conditions to the Offer have been satisfied or waived prior to the expiration of the Acceptance Period, during a period of no more than twelve Banking Days after expiration

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of the Acceptance Period to permit the determination of whether the Minimum Acceptance Threshold has been met and for the payment for such tendered Ordinary Shares in accordance with the procedural requirements of German law and as permitted by BaFin as discussed in footnote 7 above; or

- b. if all conditions to the Offer, other than the Regulatory Offer Conditions, have been satisfied or waived prior to the expiration of the Acceptance Period, until the earlier of:
 - i. the satisfaction or waiver of the Regulatory Offer Conditions and a period of no more than twelve Banking Days to permit the payment for such tendered Ordinary Shares in accordance with the procedural requirements of German law and as permitted by BaFin as discussed in footnote 7 above; and
 - ii. 30 calendar days from the date of the expiration of the Acceptance Period plus twelve Banking Days to permit the payment for such tendered Ordinary Shares in accordance with the procedural requirements of German law and as permitted by BaFin as discussed in footnote 7 above (the "Maximum Withdrawal Suspension Period");
- (ii) with respect to Ordinary Shares, including Ordinary Shares represented by ADSs, tendered during the Additional Acceptance Period:
 - a. if all conditions to the Offer have been satisfied or waived prior to the expiration of the Additional Acceptance Period, during a period of no more than twelve Banking Days after expiration of the Additional Acceptance Period to permit the payment for such tendered Ordinary Shares in accordance with the procedural requirements of German law and as permitted by BaFin as discussed in footnote 7 above; or
 - b. if all conditions to the Offer, other than the Regulatory Offer Conditions, have been satisfied or waived prior to the expiration of the Acceptance Period, until the earlier of:
 - i. the satisfaction or waiver of the Regulatory Offer Conditions and a period of no more than twelve Banking Days to permit the payment for tendered Ordinary Shares in accordance with the procedural requirements of German law and as permitted by BaFin as discussed in footnote 7 above; and
 - ii. the Maximum Withdrawal Suspension Period;
- (iii) with respect to Ordinary Shares, including Ordinary Shares represented by ADSs, tendered during either the Acceptance Period or Additional Acceptance Period that are not accepted for payment within the Maximum Withdrawal Suspension Period, during a period of no more than twelve Banking Days after the satisfaction or waiver of the Regulatory Offer Conditions to permit the payment for tendered Ordinary Shares in accordance with the procedural requirements of German law and as permitted by BaFin as discussed in footnote 7 above.

To the extent the conditions to the Offer fail or the Offer is otherwise terminated, the Bidder Entities will promptly return all tendered Ordinary Shares, including Ordinary Shares represented by ADSs.

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Notwithstanding the foregoing, if it appears that the Regulatory Offer Conditions will not be satisfied or waived prior to the expiration of 30 calendar days from the date of the expiration of the Acceptance Period, we respectfully request that the Staff consider a request for further relief based on the facts and circumstances in existence at such time.

The requested relief is consistent with the relief granted in *Bayer AG*, SEC No-Action Letter, File No. 5-59757 (April 28, 2006) ("*Bayer I*") and *The Royal Bank of Scotland Group Plc Offer for Shares and ADSs of National Westminster Bank Plc*, SEC No-Action Letter, File No. 5-55229 (Dec. 30, 1999) ("*Royal Bank*"). We believe that the *Bayer I* and *Royal Bank* letters illustrate that, in appropriate circumstances, such as those presented in this case, there is precedent for the requested relief. Specifically, as was the case in *Bayer I* and *Royal Bank*, regulatory approval may not be obtained prior to expiration of the Acceptance Period.¹⁰

In addition, as with *Bayer I* and *Royal Bank*, requiring withdrawal rights in our case would make it highly unlikely that the Offer can "succeed," *i.e.*, that the Offeror can be certain that if it commits to purchase the Ordinary Shares, it will acquire enough Ordinary Shares to obtain a majority of the Ordinary Shares represented at AIXTRON's General Meeting and to obtain the greatest number of Ordinary Shares possible to enable it to enter into a Domination Agreement or consummate a merger or squeeze-out if it chose to do so, without the risk of withdrawal of Shares after the initial satisfaction of the Minimum Acceptance Threshold. See also, *Oak Leaf B.V., Acorn B.V. and Acorn Holdings B.V. Offer for all Ordinary Shares of D.E. Master Blenders 1753 N.V.*, SEC No-Action Letter (May 21, 2013); *Exchange Offer by Barclays PLC for all Outstanding Shares and ADSs of ABN AMRO Holding N.V.*, SEC No-Action Letter (Aug. 7, 2007).

In *Bayer I*, the Staff provided exemptive relief to Bayer AG and one of its wholly owned subsidiaries (the "Bayer Offeror" and, together with Bayer AG, the "Bayer Entities") from Section 14(d)(5) of the Exchange Act and Rule 14d-7 to permit the Bayer Entities to terminate withdrawal rights at the expiration of the acceptance period, if all conditions to the Bayer offer, other than the minimum tender condition and certain regulatory approvals, had been satisfied or waived, until the earlier of (i) the receipt or waiver of the regulatory approvals, the determination of whether the minimum tender condition had been met and a period of no more than eight German banking days after the receipt or waiver of the regulatory approvals to permit the payment for tendered shares in accordance with the procedural requirements of German law and practice or (ii) 21 calendar days from the date of the expiration of the acceptance period. The exemptive relief from Section 14(d)(5) of the Exchange Act and Rule 14d-7 thereunder also permitted the Bayer Entities, once all the conditions to the offer, including the receipt or waiver of the regulatory approvals, had been satisfied or waived, to terminate withdrawal rights during a period of no more than eight German banking days to permit the payment for tendered shares in accordance with the procedural requirements of German law and practice.

¹⁰ The ADSs represent only a very small percentage of the outstanding Ordinary Shares. The Ordinary Shares are not traded on any U.S. securities exchange. Based on information reported in the over-the-counter trading system obtained by the Offeror's financial advisor, with respect to the twelve months preceding the Announcement Date, the Ordinary Shares traded very little in the United States and in very thin volumes (fewer than 30 days, with periods of up to 12 weeks where no trades occurred). On days that there was trading in the United States, on average fewer than 300 Ordinary Shares traded on each such day.

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In *Axel Springer AG Offer for ProSiebenSat.1 Media AG*, SEC No-Action Letter (Sept. 12, 2005) ("*Axel Springer*"), the Staff confirmed that it would not recommend enforcement action under Rule 14e-1(c) if the bidder did not pay for tendered shares pending receipt of required regulatory approvals following expiration of the initial offering period. Since the bidder in *Axel Springer* had entered into a binding agreement to acquire a majority of the target stock and the offer was not subject to any minimum tender condition, the bidder was able to extend withdrawal rights to tendering shareholders during this period. In the current case, however, like in *Bayer I*, it is necessary to have the Offeror be able to delay payment for the Shares without providing withdrawal rights for the same purposes as such relief from Rule 14e-1(c) was required in *Bayer I* and *Axel Springer* - to enable the acquisition of control of the subject company. See also, *Rhône-Poulenc S.A. Exchange Offer for Hoechst AG*, SEC No-Action Letter, File No. TP 99-205 (Dec. 20, 1999); and *In the Matter of Central and South West Corporation, and Houston Industries Inc. Offer to Purchase the Ordinary Shares and American Depositary Shares of Norweb Plc*, Exchange Act Release No. 34-36285, International Series Release No. 861 (Sept. 27, 1995).

We recognize that not requiring withdrawal rights after the expiration of the Acceptance Period could have adverse effects on tendering holders. Specifically, if a competing bidder were to make a higher offer after the expiration of the Acceptance Period, holders who tendered their Shares would not be able to tender into the higher offer. However, the Offeror announced the Offer on May 23, 2016. Accordingly, by the expiration of the 10-week Acceptance Period (and no less than 19 weeks from the Announcement Date), any party interested in considering a bid for AIXTRON will have had more than the maximum 10-week initial offering period allowed under German law to make an offer for the Shares.

In addition, we acknowledge that in some situations involving acquisitions of German companies, non-tendering holders of ordinary shares have been able to extract additional consideration from the bidder in the Mandatory Offer that follows the consummation of a Domination Agreement or through appraisal proceedings under German law. The procedures for any Mandatory Offer, merger or potential squeeze-out is described in the Offer Materials. At this time, the Offeror has no intention of paying any additional consideration and we acknowledge that, depending on the facts and circumstances, additional relief may be required under Rule 14d-10 if they desired to do so.

We also recognize that holders of ADSs who tender into the Offer would not be able to trade in the as-tendered market and might not have liquidity for a period through as late as the Termination Date, if withdrawal rights are not provided after the expiration of the Acceptance Period. However, this is a factor that is fully disclosed in the Offer Materials and one that holders can evaluate when determining whether or not to tender in the Offer and, if so, when to tender. Furthermore, U.S.-resident holders of Ordinary Shares will have the ability to tender through their Custodian Institution, in which case they would be able to trade their Ordinary Shares on the as-tendered market. Similarly, holders of ADSs have the ability to withdraw the Ordinary Shares underlying their ADSs and tender directly into the Offer as described in the Offer Materials.

Due to the German tender procedures described above, the Offeror will not know for approximately four German banking days following the expiration of the Acceptance Period whether the Minimum Acceptance Threshold has been satisfied and, therefore, whether it will pay for tendered Ordinary Shares, including those represented by ADSs. The Offeror is bound by the results of that determination and, except with respect to the satisfaction of the Regulatory Offer Conditions as discussed above, has no opportunity to rely on the failure of any other condition during the period the Offeror is determining whether the Minimum Acceptance Threshold has been satisfied. Permitting withdrawals during the period while the results of the Offer are being determined could render satisfaction of the Minimum Acceptance

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Threshold illusory. Accordingly, we respectfully request exemptive relief from the provisions of Section 14(d)(5) and Rule 14d-7 noted above.

We believe this requested relief is contemplated by or consistent with the exemptive relief granted in connection with other tender offers similarly structured. See, e.g., *Oak Leaf B.V., Acorn B.V. and Acorn Holdings B.V. Offer for all Ordinary Shares of D.E. Master Blenders 1753 N.V.*, SEC No-Action Letter (May 21, 2013); *Echo Pharma Acquisition Limited Offer for all Ordinary Shares of Elan Corporation, plc*, SEC No-Action Letter (May 1, 2013); *Bayer I; Gas Natural SDG, S.A.'s Exchange Offer for Endesa, S.A.*, SEC No-Action Letter, File No. TP 06-38 (Mar. 2, 2006); *Offer by BCP Crystal Acquisition GmbH & Co., et al for Celanese AG*, SEC No-Action Letter, File No. 5-57467 (Feb. 3, 2004); and *Offer by Sanofi-Synthelabo for Ordinary Shares and ADSs of Aventis*, SEC No-Action Letter, File No. TP 04-30 (June 10, 2004).

Rule 14e-1(c) and Rules 14d-11(c) and (e): Payment of Offer Price and Subsequent Offering Period

Rule 14e-1(c) promulgated under the Exchange Act prohibits a person making a tender offer from failing to pay the consideration offered or to return the securities deposited by or on behalf of security holders promptly after the termination or withdrawal of such offer. Rule 14d-11 provides that a bidder in a tender offer may elect to provide a subsequent offering period if, among other things, the bidder immediately accepts and promptly pays for all securities tendered during the initial offering period and the bidder immediately accepts and promptly pays for all securities as they are tendered during the subsequent offering period.

As permitted by BaFin and except as described below, payment for Ordinary Shares tendered during the Acceptance Period will be made approximately four to twelve Banking Days following expiration of the Acceptance Period and payment for Ordinary Shares tendered during the Additional Acceptance Period will be made approximately four to twelve Banking Days following expiration of the Additional Acceptance Period. As discussed above, it is possible that some of the Regulatory Offer Conditions will not be satisfied until after the expiration of the Acceptance Period and the Additional Acceptance Period, which would result in the delay in the payment for Shares as follows:

- (i) with respect to Ordinary Shares tendered during the Acceptance Period, payment would be made promptly, but no earlier than four Banking Days and no later than twelve Banking Days following the later of (a) expiration of the Acceptance Period and (b) satisfaction of the Regulatory Offer Conditions;
- (ii) with respect to Ordinary Shares tendered during the Additional Acceptance Period, payment would be made promptly, but no earlier than four Banking Days and no later than twelve Banking Days following the later of (a) expiration of the Additional Acceptance Period and (b) satisfaction of the Regulatory Offer Conditions.

If at the end of the Acceptance Period it is determined that any Offer conditions, other than satisfaction of the Regulatory Offer Conditions as discussed above, have not been satisfied or waived by the Offeror, and the Offer is therefore terminated without the payment by the Offeror for any Ordinary Shares, including Ordinary Shares represented by ADS, all tendered Ordinary Shares, including Ordinary Shares represented by ADS, would be promptly returned.

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Given these facts, we are requesting relief on two levels.

First, we request that the Staff confirm that (i) in the event that the conditions to the Offer are satisfied or waived at the time of the expiration of the Acceptance Period, it will not recommend enforcement action under Rule 14e-1(c) if the Ordinary Shares tendered during the Acceptance Period are not paid for until four to twelve Banking Days after the expiration of the Acceptance Period (or that such Ordinary Shares are promptly returned) and (ii) in the event that the Regulatory Offer Conditions are not satisfied or waived at the time of the expiration of the Acceptance Period, it will not recommend enforcement action under Rule 14e-1(c) to permit the Offeror to wait until the expiration of the four to twelve Banking Days period after the satisfaction or waiver of the Regulatory Offer Conditions to pay for any Ordinary Shares tendered during the Acceptance Period, provided that the Offeror would promptly return such Ordinary Shares in the event that the Regulatory Offer Conditions are not ultimately satisfied or waived.

In accordance with German practice, payment for Ordinary Shares, including Ordinary Shares represented by ADSs, tendered during the Additional Acceptance Period will, except as described below, be made approximately four to twelve Banking Days after the expiration of the two-week Additional Acceptance Period described above. In the event that the Regulatory Offer Conditions are not satisfied or waived at the time of the expiration of the Additional Acceptance Period, the Offeror will pay for Ordinary Shares tendered during the Additional Acceptance Period within four to twelve Banking Days after the satisfaction or waiver of the Regulatory Offer Conditions; provided that the Offeror would promptly return any such Ordinary Shares in the event the Regulatory Offer Conditions are not satisfied or waived.

Second, we are also requesting exemptive relief from Rule 14d-11(c) and (e) to permit the payment for, or return of, Ordinary Shares, including Ordinary Shares represented by ADSs, tendered during the Offer in the manner described above, and further requesting that the Staff confirm that it will not recommend enforcement action to the Commission under Rule 14e-1(c) to permit payment for, or return of, Ordinary Shares in the manner described above.¹¹

In *Bayer I*, the Staff granted no-action relief under Rule 14e-1(c) on facts similar to those present in the Offer to allow shares tendered during the acceptance period or the additional acceptance period to be paid no later than eight German banking days after the expiration of the acceptance period or additional acceptance period, respectively. In addition, the no-action position taken by the Staff in *Bayer I* pursuant to Rule 14e-1(c) allowed the Bayer Entities to pay for any shares tendered in the offer within eight German banking days after the receipt or waiver of the regulatory approvals if the regulatory approvals had not been received or waived by the expiration of the acceptance period. *See also, Axel Springer* (the Staff confirmed that it would not recommend enforcement action under Rule 14e-1(c) if the bidder did not pay for tendered shares pending receipt of required regulatory approvals following expiration of the initial offering period); *Exchange Offer by Rhone-Poulenc S.A. for Ordinary Shares and ADSs of Hoechst AG*, SEC No-Action Letter, File No. TP 99-205 (Dec. 20, 1999); *Royal Bank*; and *In the Matter of Central and South West Corporation, and Houston Industries Inc. Offer to Purchase the Ordinary Shares and*

¹¹ Without the relief requested in this paragraph, the Bidder Entities will not be able to comply with the procedural requirements of German law as permitted by BaFin as discussed in footnote 7 above with respect to payment for tendered Shares. Accordingly, our request for the relief described in this paragraph is not related to whether the Staff grants the relief requested under "Section 14(d)(5) and Rule 14d-7: Post-Expiration Conditions, Withdrawal Rights and Payment of the Offer Price" above.

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American Depositary Shares of Norweb Plc, Exchange Act Release No. 34-36285, International Series Release No. 861 (Sept. 27, 1995).

In *Bayer I*, on facts similar to those present in the Offer, the Staff also granted exemptive relief under:

- (i) Rule 14d-11(c) to permit the Bayer Entities (a) to pay for shares tendered during the acceptance period no later than eight German banking days after the expiration of the acceptance period and (b) to the extent that the regulatory conditions of the Bayer offer had not been satisfied during the acceptance period (or previously waived), the Bayer Entities were permitted to pay for shares tendered during the acceptance period after the expiration of the four to eight German banking day period after the satisfaction of such regulatory conditions; provided that the Bayer Entities returned any such shares without undue delay in the event such regulatory conditions were not satisfied; and
- (ii) Rule 14d-11(e) to permit the Bayer Entities (a) to pay for shares tendered during the additional acceptance period no later than eight German banking days after the expiration of such acceptance period and (b) to the extent that the regulatory conditions of the Bayer offer had not been satisfied during the Bayer additional acceptance period (or previously waived), the Bayer Entities were permitted to pay for shares tendered during the additional acceptance period after the expiration of the four to eight German banking day period after the satisfaction of such regulatory conditions; provided that the Bayer Entities returned any such shares without undue delay in the event such regulatory conditions were not satisfied.

In addition, the Commission has generally looked to the clearance and payment practices as well as the securities laws of the subject company's home country in determining whether the consideration in a tender offer was paid promptly. We believe the relief requested is contemplated by or consistent with *Bayer I*, *Axel Springer* and other exemptive relief granted by the Staff and with the Cross-Border Releases. See, *Offer by BCP Crystal Acquisition GmbH & Co., et al for Celanese AG*, SEC No-Action Letter, File No. 5-57467 (Feb. 3, 2004); *Rhone-Poulenc S.A.*, SEC No-Action Letter, File No. TP 93-89 (July 8, 1993); *Exchange Offer by Rhone-Poulenc S.A. for Ordinary Shares and ADSs of Hoechst AG*, SEC No-Action Letter, File No. TP 99-205 (Dec. 20, 1999); *Offer by Sanofi-Synthelabo for Ordinary Shares and ADSs of Aventis*, SEC No-Action Letter, File No. TP 04-30 (June 10, 2004); and *Royal Bank*.

Rule 14e-1(b): Extension of the Offer Upon Certain Changes

Rule 14e-1(b) under the Exchange Act prohibits an offeror from increasing or decreasing the percentage of the class of securities being sought or the consideration offered or the dealer's soliciting fee to be given in a tender offer unless the tender offer remains open for at least ten U.S. business days from the date that notice of such change is first published or sent or given to security holders. Rule 14d-4(d)(2)(ii) under the Exchange Act requires that, in certain registered exchange tender offers, in the event an offeror changes the offer price or makes a similarly significant change to the terms of the offer, the offeror must extend the tender offer by ten U.S. business days and disseminate the material change to the target

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shareholders. In Release No. 33-7760, the Commission stated that it believed these time periods represent general guidelines that should be applied uniformly to all tender offers.¹²

Under German law, a similar material change occurring during the last two weeks of the Acceptance Period would require that the Acceptance Period remain open for an additional two calendar weeks from the end of the Acceptance Period. The applicable German law requires an extension of exactly two weeks. In the event that such a change were to occur during the last few days of the Acceptance Period, and the resulting two-week extension occurred over a period that included U.S. federal holidays, Rule 14e-1(b) and compliance with the Commission's position regarding the applicability of Rule 14d-4(d)(2)(ii) would require a longer extension than that permitted by German law. Accordingly, we hereby request that the Staff confirm that it will not recommend enforcement action under Rule 14e-1(b) if in such circumstances the Offeror keeps the Acceptance Period open for an additional period of two calendar weeks in accordance with German law.

In a similar situations, the Commission has found it appropriate to grant such relief. See, e.g., *Bayer I; Offer by BCP Crystal Acquisition GmbH & Co., et al for Celanese AG*, SEC No-Action Letter, File No. 5-57467 (Feb. 3, 2004).

Requested Relief

Based on the foregoing, we respectfully request that the Staff grant exemptive relief to the Bidder Entities from the provisions of Section 14(d)(5) of the Exchange Act and the provisions of Rule 14d-7 and Rules 14d-11(c) and (e) under the Exchange Act, and confirm that it will not recommend any enforcement action against any of the Bidder Entities under Rules 14e-1(b), or (c) under the Exchange Act if the Offer is conducted as described in this letter.

We believe the relief requested herein is consistent with that granted by the Commission in similar situations in the past and also believe that the relief requested in this letter is consistent with the Commission's guidance set forth in the Cross-Border Releases.

* * *

¹² Regulation of Takeovers and Security Holder Communications, Release No. 33-7760 (October 22, 1999).

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If you have any questions or comments relating to this request, or it would facilitate your response in any way, please do not hesitate to contact the undersigned at (212) 318-6311 or my colleague, Keith Pisani, at (212) 318-6053.

Sincerely,



Scott R. Saks
of PAUL HASTINGS LLP

cc: Keith Pisani
Paul Hastings LLP, New York
Vivian Lam
Paul Hastings LLP, Hong Kong
Regina Engelstaedter
Paul Hastings LLP, Germany
Karl Balz
Paul Hastings LLP, Germany

Exhibit A

Xiamen Xiwang Development Co., Limited

Xiamen Xiwang Development Co., Limited is a limited liability company under the laws of PRC, registered with the Market Supervision Administration of Xiamen Municipality under the number 913502000583676653. The registered address of Xiamen Xiwang Development Co., Limited is at 588, Unit 604B, Yuntong Centre, No. 95 Xiangyunyi Road, Xiamen Area District, China (Fujian) Pilot Free Trade Zone, Fujian, China. Its business address is at Room 804, 348 Jiahe Road, Huli District, Xiamen, China.

Xiamen Zhui Investment LP

Xiamen Zhui Investment LP is a limited partnership under the laws of PRC, registered with the Market Supervision Administration of Xiamen Municipality under the number 913502033030794142. The registered address of Xiamen Zhui Investment LP is at Room 602, Block B, No. 533 Xianyue Road, Siming District, Xiamen, China. Its business address is at Room 6B602, 533 Xianyue Road, Siming District, Xiamen, China.

Xiamen Longwusheng Investment LP

Xiamen Longwusheng Investment LP is a limited partnership under the laws of PRC, registered with the Market Supervision Administration of Siming District, Xiamen Municipality under the number 913502033031522639. The registered address of Xiamen Longwusheng Investment LP is at Room 602, Block B, No. 533 Xianyue Road, Siming District, Xiamen, China. Its business address is at Room 303, 452 Xianyue Road, Siming District, Xiamen, China.

General Energy International Holdings Limited

General Energy International Holdings Limited is a limited company under the laws of the British Virgin Islands, registered with the register of corporate affairs of the British Virgin Islands under the number 1820884. The registered address of General Energy International Holdings Limited is at NovaSage Chambers, P.O. Box 4389, Road Town, Tortola, British Virgin Islands. General Energy International Holdings Limited was established as a special purpose investment company to hold a shareholding in Rand Mining Ltd., an Australian listed company which explores for and produces gold through its exploration projects in Western Australia.

Xiamen Jiaxin Investment Development Co., Limited

Xiamen Jiaxin Investment Development Co., Limited is a limited liability company under the laws of PRC, registered with the Market Supervision Administration of Xiamen Municipality under the number 91350200MA3464YQ91. The registered address of Xiamen Jiaxin Investment Development Co., Limited is at Room 605, Unit 2N5, Yungtong Centre, No. 95 Xiangyunyi Road, Xiamen Area District, China (Fujian) Pilot Free Trade Zone, Fujian, China. Its business address is at Taiwan village, 939 Xianyue Road, Siming District, Xiamen, China.