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Via Email policy@issgovernance.com

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RE: 2017 Benchmark Policy Consultation—General Share Issuance Mandates for Cross-Market Companies (US-listed, non-US-incorporated companies)

Dear Madam or Sir:

We are pleased to submit this letter in response to the request of Institutional Shareholder Services Inc. ("**ISS**") for comments regarding the proposed 2017 US policy update with respect to general share issuance mandates for US-listed cross-market companies (the "**Proposed Policy Update**"). Our comments on the Proposed Policy Update are informed by our experience as a public limited company incorporated in Ireland with ordinary shares listed exclusively on the NASDAQ Global Select Market. We are a US domestic reporting company under SEC rules—we are not a foreign private issuer.

Background of Applicable Laws, Rules, Regulations and Market Practices

Our board of directors has focused and will continue to focus on complying with all applicable laws, rules, regulations and standards and satisfying its fiduciary duties to our shareholders, including with respect to any share issuances we undertake.

As an Irish company, we are committed to complying with Irish law. As a matter of Irish law, our directors must comply with their fiduciary duties, acting in good faith and in the interests of the company when issuing any shares. In addition, our directors must have specific authority from shareholders to issue any of our ordinary shares (other than pursuant to employee equity plans). Further, when our directors determine that it is in the best interests of the company to issue shares for cash, we must first offer those shares on the same or more favorable terms to our existing shareholders on a pro-rata basis, unless this statutory pre-emption right is dis-applied, or opted-out of, by approval of our shareholders. We refer to these authorities together as our share issuance authorities. Because we are incorporated in Ireland, we are legally required to seek shareholder approval of our share issuance authorities at least once every five years.

As a company with shares listed in the US on the NASDAQ Global Select Market, we are also committed to complying with the NASDAQ rules and listing standards and the rules and regulations of the SEC. We believe that our shareholders expect us to, and we are committed to, follow customary US capital markets practices and US corporate governance standards. These standards, rules and regulations provide many protections for shareholders, including certain restrictions on share issuances designed to protect shareholders. For example, NASDAQ rules generally require shareholder approval prior to our issuing shares in connection with acquisitions, other than in public offerings for cash, when the number of shares to be issued is or will be equal to or in excess of 20% of the number of our ordinary shares outstanding before the issuance.

While not required by Irish law, we understand it has become market practice for companies whose share capital is listed on the Irish Stock Exchange, or ISE, to generally limit the size and duration of their requests to shareholders to approve their share issuance authorities to conform to a corporate governance framework that has evolved for companies whose share capital is listed on the ISE (regardless of whether such companies are incorporated in Ireland or elsewhere). Because our ordinary shares are listed exclusively in the US, we are not subject to ISE share listing rules or, most significantly in this case, governed by the corporate governance standards applicable to companies whose share capital is listed on the ISE. Instead, we follow customary US capital markets practices and US corporate governance standards.

Response to Proposed Policy Update

Irish company law allows our shareholders to approve our share issuance authorities for an authorization period of up to five years and an amount of up to 100% of our authorized but unissued shares. We believe that ISS should treat all companies that are listed solely in the US equally and, in this regard, we believe that ISS should generally support approving share issuance authorities up to the maximum amount and duration allowed under applicable law. To be clear, as outlined above, such authority would not mean that there would be no limits on share issuances. To the contrary, in addition to the board's fiduciary duties, US-listed companies incorporated in Ireland are and would continue to be subject to the same governance and share issuance requirements (such as the NASDAQ 20% rule described above) and US market practices as all other US-listed companies regardless of where they are incorporated. We do not believe that additional limitations derived from Irish market practice should apply to Jazz Pharmaceuticals or other Irish-incorporated companies listed solely in the US.

ISS' stated rationale for the Proposed Policy Update is to better reflect US listing rules and the expectations of investors in the US market. We agree with this goal and respect ISS' focused attention on this important issue for US-listed, cross-market companies like Jazz Pharmaceuticals. Nonetheless, we believe ISS' proposal to extend the NASDAQ requirement for shareholder approval of issuances above 20% to scenarios in which the listing rules do not currently apply would be inconsistent with ISS' own rationale. We believe that the proposed ISS policy update in its current form would create and apply a new and unnecessary hybrid position on acceptable limits on share issuance authorities – a position that would lie somewhere in between (a) ISS' current position under ISS' US Benchmark Policy Recommendations where the NYSE/NASDAQ rules suffice for share issuances by US-listed, US-incorporated entities and (b) ISS' current position that US-listed, Irish-incorporated companies must **also** meet standards (not rules) applicable to companies covered by ISS' United Kingdom and Ireland Proxy Voting Guidelines, which were developed to codify a market practice for companies whose share capital is listed in the UK and Ireland. This hybrid approach does not seem to achieve ISS' stated goal and would continue to leave us and companies like us disadvantaged as compared with our US-incorporated, US-listed peers in a manner that is not in the best interest of our shareholders.

Many strategic opportunities, such as potential acquisitions, are highly competitive, with multiple parties often offering comparable or even the same economics. Restricting our ability to issue shares could disadvantage us and other Irish-incorporated, US listed companies as follows:

- If a US-listed company is required to obtain shareholder approval prior to issuing any shares in connection with new strategic opportunities, *even if not otherwise required to obtain shareholder approval under the NASDAQ rules*, that company would be disadvantaged vis-à-vis many of its peers in competing for acquisitions and similar transactions. The restriction might make it difficult for that company to complete such transactions that are in the best interests of its shareholders. The uncertainty of whether a company could obtain shareholder approval for a specific issuance in the context of any transaction, as well as the delays it would experience in seeking and obtaining such approval, could make any submitted transaction bid less attractive, even if that bid was on economically better terms than competitive bids submitted by US-listed companies not subject to similar share issuance restrictions. In addition, the case-by-case approval approach ignores market window and other deal timing and competitive realities.

- Likewise, the requirement to first offer shares that a company proposes to issue for cash to all of its existing shareholders in time-consuming pro-rata rights offerings would considerably reduce the speed at which it could complete capital-raising activities undertaken in furtherance of its growth strategy, would increase its costs and otherwise might make it difficult for it to complete such transactions, and could put it at a distinct disadvantage vis-à-vis many of its peers in competing for acquisitions and similar transactions.

For the reasons set forth above, we believe that ISS should generally support approving share issuance authorities for the maximum amount and duration allowed under applicable law (which, in the case of companies incorporated in Ireland, is 100% of authorized and unissued shares for a period of up to five years). Doing so would be fully consistent with capital markets practice and governance standards in the US and the way in which ISS analyzes proxy proposals seeking capital authorization for US-listed, US-incorporated entities. Again, we believe that continuing to impose ISS' existing limitations and/or creating and applying a new and unnecessary hybrid position on acceptable limits on share issuance authorities would leave companies like us disadvantaged in a manner that is not in the best interest of our shareholders. With respect to share issuances, our shareholders are already adequately protected by Irish law, NASDAQ rules and listing standards, the rules and regulations of the SEC and US capital market practices.

We appreciate the opportunity to comment on the Proposed Policy Update and would be pleased to discuss any questions that ISS may have with respect to this letter.

Very truly yours,

Jazz Pharmaceuticals
Innovation that performs

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