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Institutional Shareholder Services Inc. (**ISS**)

RE: ISS Consultation Paper - General Share Issuance Mandates for Cross-Market Companies

Dear Sirs

Please find below our response to your recently published consultation paper titled "***General Share Issuance Mandates for Cross-Market Companies (U.S.-listed, non-U.S.-incorporated companies)***" (the **Consultation Paper**). Thank you for the opportunity to comment.

As you will be aware Perrigo Company plc ("Perrigo") is an Irish-incorporated, U.S.-listed, company. Accordingly the Consultation Paper is of significant interest to us and from recent discussions with our legal advisors, we understand that our comments broadly represent the sentiments of a large number of similar companies.

As you will already be aware companies incorporated in Ireland are required by law to seek separate authorities from shareholders to (i) issue new shares and (ii) dis-apply pre-emption rights in relation to certain such issuances; however, provided that these authorities are renewed at least once every five (5) years, and that they do not exceed the company's authorised but unissued share capital, there are no other Irish law restrictions imposed on the quantum or term of these authorities. Any such quantum and term are for the shareholders to set as they deem appropriate. Furthermore the local UK & Irish stock exchange listing rules requirements, as used by ISS to inform current UK & Irish Proxy Voting Guidelines, have no basis in Irish law, they simply reflect the expectations of the UK & Irish markets. In line with the views of similar companies and our advisors, we believe that these UK & Irish investor expectations (not being derived for any underlying Irish law), and the rules of local exchanges on which these companies are not listed are logically irrelevant to follow. We therefore welcomed ISS's stated intent with its proposed amendments (i.e. [to] "*better reflect U.S. listing rules and the expectations of investors in the U.S. market*"). However, as described in more detail below we do not see any basis or logic to ISS failing to fully reflect U.S. listing rules and the expectations of U.S. investors by simply applying its existing U.S. policies to these companies.

For the avoidance of doubt, as regards companies which have a listing on Irish and/or UK exchanges we believe that it is entirely appropriate that these policies should continue to apply. However, as appears to be recognised by ISS in the Consultation Paper, they are not appropriate for companies who have no such listing in these markets.

ISS Proposal

While we welcome the consultation, at a fundamental level we do not believe that this proposal go far enough and we do not understand the rationale for ISS imposing on non-U.S.-incorporated U.S. – listed companies a 20% limitation on non-pre-emptive issuances for cash, without imposing it on their U.S.-incorporated peers. Furthermore given that (i) Irish law allows for a general disapplication of pre-emption rights, (ii) that U.S. investors do not expect, nor do U.S. listing rules require them to have pre-emption rights and (iii) that local UK & Irish norms or exchange rules are logically irrelevant to apply in these circumstances, there does not seem to be any basis for treating U.S-incorporated companies listed on a US exchange differently to their Irish-incorporated peers. However, under ISS's current proposal such companies, (and to our mind for no objective reason) would remain at a competitive

disadvantage to their U.S.-incorporated counterparts. A Distinction we believe would be adverse to the interests of the shareholders of such companies.

There are many potential examples of the imbalance that would persist between U.S.-incorporated U.S.-listed companies and their Irish-incorporated peers following the implementation of the ISS proposal as outlined in the Consultation Paper. These include the ability of a U.S.-incorporated peers, in theory, to undertake a number of non-pre-emptive capital raises over a period of two to three years without the need for any shareholder approval. Those capital raises could be for an aggregate amount well in excess of the 20% cap currently proposed by ISS for Irish-incorporated companies. In practice, this would only enable an Irish-incorporated company to undertake annual non-pre-emptive share issuances for cash of 10% of issued share capital over a two year period, or 6.66% over a three year period – only a marginal improvement on the existing ISS UK & Irish policy of 5% of issued share capital annually.

The cumulative effect of these practical issues is that under the current ISS proposal such companies would have less flexibility to raise cash to take advantage of potential opportunities, and suffer from greater timing and execution risk in pursuing such opportunities. All of these outcomes are bad for the affected companies and bad for their shareholders whose interests ISS is seeking to protect.

Alternative proposal

We believe that ISS should instead, in line with Irish legal requirements, recommend voting in favour of resolutions of Irish-incorporated U.S.-listed companies, allowing for the *issue of shares for cash non-pre-emptively up to a maximum of up to 100% of current authorised but unissued share capital and for a duration of up to five years*. We believe that such a proposal is justified for (i) that a significant body of their shareholders expect them to follow customary U.S. capital markets practices and U.S. corporate governance standards and (ii) that such companies are legally required to comply with NYSE/NASDAQ rules (as applicable), the SEC rules and Irish domestic law.

We strongly believe that the laws of a country that have full application to the relevant companies are the correct and objective reference point for formulating ISS policy, rather than a set of local listing rules and practices that have no application to such companies. This approach largely reflects the position articulated by ISS in its 2015 European Proxy Voting Manual which states, at page 40, that "*If stock exchange listing requirements include adequate safeguards with respect to share issuances, ISS will approve the request unless there are specific concerns with the company*." In our view, NYSE/NASDAQ rules, the SEC rules and Irish law provide such adequate safeguards, particularly where is no other relevant listings rules on which to judge companies (e.g. those that are solely U.S.-listed).

In support of the above it is worth noting that analysis of a representative sample of Irish-incorporated U.S.-listed companies that sought to renew non-pre-emptive share issuance authorities in line with the alternative proposal, shows that despite negative voting recommendations from ISS such proposals were approved in each case by a significant majority of shareholders and, where such proposals failed to achieve the 75% of shareholders voting approval threshold required under Irish law to legally pass the relevant resolution, the margin of such failure was small. When one takes into consideration anecdotal accounts of certain investors being bound to follow ISS voting recommendations by their own internal governance rules, even where they are not personally concerned with a proposal, such large majorities in favour suggest that investors neither require, nor expect, non-U.S. standards or norms to apply. In the most recent Irish example, resolutions in line with our alternative proposal were passed by over 80% of the votes cast by shareholders notwithstanding a negative ISS recommendation. A table outlining this analysis is included below

Representative sample of shareholder votes of Irish-incorporated U.S. listed companies that sought approval from shareholders enabling non-pre-emptive share issuances for cash up to 100% of authorised but unissued share capital for a duration of five years

Company	Resolution to grant five-year authority to issue shares up to the amount of authorised but unissued share capital (50%+ approval)	Resolution to dis-apply pre-emption rights in respect of such share issuance (75% approval)	Year
Covidien plc	64.3%	63.9%	2014
Willis Towers Watson plc	79.2%	74.9%	2014
XL Group plc	78.9%	71.4%	2014
Horizon Pharma plc	71.1%	70.5%	2015
Jazz Pharmaceuticals plc	84.8 %	80.7%	2016

Conclusion

We are grateful for the opportunity to comment on the Consultation Paper and ISS's apparent acceptance that the UK & Irish Proxy Voting Guidelines are not appropriate for Irish-incorporated U.S.-listed companies is a welcome development.

However, we firmly believe that the current proposal does not achieve its stated objectives and that there are strong legal and commercial justifications for instead adopting the alternative proposal as outlined above.

It is our view that companies should be entitled to avail themselves of the maximum share issuance authorities allowable under their domestic law, subject to complying with the rules of the exchanges on which they are listed.

There does not appear to be any justification for ISS to seek to either (i) extend the applicable listing rules beyond their normal scope solely because a company is incorporated outside of that jurisdiction or (ii) impose rules and market norms from markets and jurisdictions not applicable to the companies or their listings.

Thank you once again for allowing us the opportunity to comment, we hope our views and their underling rational is helpful and clear.

Yours faithfully

Kind regards

Niall Kavanagh

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Niall Kavanagh
Assistant Company Secretary
Perrigo Company plc