Saïd Business School cases

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Introduction

Thinking back over the last three years, James Noble was just as excited about the prospects for Avidex today, as he had been when he was first contacted by his friend and fellow angel investor, Dr. John Gordon, to help get the company off the ground.

James knew that Avidex needed a fresh injection of cash to sustain the good progress made with its T Cell receptor programme, but the investment market was a lot tougher today than two years ago, when the company was able to secure £10 million - £3 million beyond its immediate requirements.

On his desk were drafts of the proposed subscription agreement and shareholder agreement relating to the funding round that James had been negotiating. Venture capitalists, including Avidex' existing investors, were now insisting on much tougher terms and the current state of the biotech market was far from favourable. James worried about the effects of the proposed new financing round on the founding shareholders, the founding research scientists and option-holders. All these parties were being disadvantaged with each round of funding and James wondered how long it would be before he had a motivation problem on his hands.

The initial financing of Avidex

Avidex was formed by Dr. Bent Jakobsen, the head of the T Cell Receptor Group at the Oxford University Institute of Molecular Medicine (a brief description of T Cell research is provided in Exhibit 1). Dr. Jakobsen's research into T Cell receptors had led to the successful filing of a patent through Isis Innovation, the technology transfer arm of the University of Oxford. Isis was established in 1988 and is a wholly-owned subsidiary of the University of Oxford. The University assigns its intellectual property to Isis, which then evaluates, protects, and markets the intellectual property. Isis provides researchers with funding for patent applications and legal costs, and advises on the negotiation of spin-out company agreements. Isis formed 37 spinouts between 1997 and 2003, many of which became quoted on the London Stock Exchange. Dr. Jakobsen understood the commercial implications of the research he was undertaking and spinning his company out of the University was a logical choice to capitalise on his findings.

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Exhibit 1: T Cell receptor technology.

There are two major recognition components to the human immune system, antibodies and T Cell receptors, which between them can spot all the foreign and potentially harmful pathogens, such as bacteria and viruses. Antibodies recognize whole proteins (generally proteins attached to the cell surface), whereas T Cells recognize fragments of protein, which are identified to the immune system by an infected cell to indicate that the cell is infected and prompting the immune system into action. This happens when a cell receptor, a special receptor, which is attached by two proteins linked to the main body of a T Cell, binds to the protein fragment displayed on the cell, triggering a chain reaction which leads to the destruction of the infected cell.

Monoclonal antibodies, which were first isolated in the 1980s, can be produced artificially in vast numbers and can be used as drugs to help cure patients by boosting their natural immune system. Sales of drugs based on monoclonal antibodies now run to billions of dollars worldwide.

For many years, researchers have sought to produce the equivalent monoclonal T Cell receptors, which could be used in a similar way, but which should be of even greater commercial significance because antibodies can only target proteins present on the cell surface (about 15%) whereas T Cells can target proteins with a much broader range of presentations.

Source: Company Reports

By the end of 1998, a major U.K. investor had been found and the terms of the deal had been agreed. As the deal was about to close, disaster struck: the investor changed its asset allocation policy - which required a reduction in its exposure to the biotechnology market- and pulled out of the deal leaving the spin-out without a funding partner.

This left Avidex, the University of Oxford and Isis in a quandary with no other investors engaged. No one had budgeted for this contingency and with £200,000 required just to maintain the status quo; the University and Isis focused their efforts on securing a new funding partner as quickly as possible.

One such partner was Oxford Technology Venture Capital Trusts[1], which, by March 1999, had agreed to provide £100,000 of funding. In addition to this, the University of Oxford agreed to invest £50,000 on the same terms, provided that two other investors could be found who were knowledgeable about the biotechnology sector.

John Gordon, a successful serial entrepreneur and chairman of the Oxfordshire BiotechNet network, was approached and agreed to provide a further £25,000 in financing. John Gordon then contacted James Noble, a friend and colleague with considerable experience in the biotechnology sector in the U.K. having held executive and non-executive board positions at

[1] The Oxford Technology VCTs look to invest between £100,000 and £150,000 in early stage and start-up technology companies that are generally within 60 miles of Oxford. Three separate VCTs were launched between 1997 and 2003 raising a total of £16.2 million from investors. The venture capital trust scheme was created by the U.K. government in 1995 to encourage individuals to invest in a range of early stage companies whose shares are typically not listed on a recognised stock exchange. The VCTs themselves are quoted on the London Stock Exchange and must invest 70% of the funds raised in qualifying companies (privately owned or quoted on the Alternative Investment Market of the London Stock Exchange) within three years. VCTs offer significant income tax and capital gains tax breaks to the individual investor.

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British Biotech plc, Powderject Pharmaceuticals plc and Oxford GlycoSciences plc. Over the course of this phone call, John secured the remaining £25,000 of funding and James subsequently became non-executive chairman of Avidex.

All investors bought ordinary shares at £6 per share, while the founding research scientists were able to buy shares at a cost of £0.01 per share. Most of the finance raised was used to pay monies owed to the University of Oxford in respect of research carried out on the T Cell receptor programme, but cash was also needed to keep the company operating.

Over the next few months James and John set about raising additional financing and, by the end of February 2000, had raised £450,000 of financing from their contacts in the Oxford angel investor network, from existing investors Oxford Technology VCT and from themselves. These shares were valued at a 50% premium to the previous round at £9.00 per ordinary share. This financing bought the company some time to establish itself and ensure that the researchers remained gainfully employed on their current projects (a summary of the share register at this point in time is provided in Exhibit 2).

To move the company out of the Institute and into its own premises a further £1million of financing was required. James had the choice of tapping the angel network again or partnering with a major pharmaceutical company. James had his own views on what was more appropriate:

> *"Partnering with a large pharma just doesn't work for a start-up company. They want the rights to all your patents and set onerous milestones on the success of the drugs to ensure further financing, but this business is about all-or-nothing drug research. If the primary drug research fails or the milestone is not met, then the funding is not provided, just at the point when the company needs it. Angel networks are much more flexible and just provide money and business support. This is much more appropriate for a start-up."*

Tapping the angel network again, the cash was raised from a variety of Oxfordshire investors, including the serial entrepreneurs Ian Laing and Nick Cross. Again all investors received ordinary shares, this time valued at £12.00 each (details of the term sheet for the initial funding phase are provided in Exhibit 3).

On June 30, 2000 the three Avidex employees closed the office doors at the Institute of Molecular Medicine and July 3, Avidex opened for business in a science park just outside Oxford with 15 employees and a bright future ahead of it.

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Exhibit 2: Shareholders in Avidex in March 2000.

Shareholder	Ordinary Shareholding
Oxford Technology VCT	23.3%
Oxford University	19.3%
Advent Venture Partners Quester Capital Management	
Scientists and initial Management	28.3%
John Gordon	8.7%
James Noble	8.7%
Nick Cross & Ian Laing	
Other Angel & small Investors	11.7%
Total	100.0%

Source: Annual Return for Avidex Limited, filed at Companies House.

Exhibit 3: Term sheet for the initial financing of Avidex.

Dates:	30th March 1999, 29th February 2000 & 31st March 2000
Amount raised:	£0.2m + £0.45m + £1m in quick succession at 3 different prices
Shares:	Ordinary
Price:	£6, then £9, then £12 per share (scientists paid £0.01 per share).
Subscribers:	Oxford Technology VCT, Oxford University, Angel Investors, Scientists and initial Management
Agreement/Principal Documents:	Combined subscription and shareholder agreement (17 pages) Articles of Association (6 pages)
Shareholder Rights:	Right to a Director Oxford Technology VCT and Oxford University
Other Terms:	University to transfer technology to Avidex, subject to royalties; Avidex has right to buy out royalties for 2,000 shares; Standard restrictions: subject to written approval from Investor Majority – no material change of business, no disposal of IPR, no loans, no purchase of shares, no new issues of shares, no new directors, no asset purchases above prescribed limit, no staff with salaries over prescribed limit, etc; Non-standard restrictions: must not use the word Oxford in company name; Standard information rights (accounts, etc.); Standard requirements (general insurance, key man insurance, etc.).
Warranties:	Given by the company, not the directors or founders; Apply for 3 years; Limited to litigation, proper filing of Companies' House documents etc.
Pre-emption:	Standard rights: every shareholder has right to subscribe pro rata to existing holding; Takeover rules similar to Takeover code for public companies.

Source: Company Reports.

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Expansion funding

The Avidex scientists pushed ahead at a great pace and expanded the research activities. With this accelerating progress, the company was burning cash at an increasing rate, and in the autumn of 2000 it was decided to seek funding from institutional venture capital, as the total sum required was almost certainly beyond the scope of the angel network.

A business plan was written showing that the company would require £7 million in order to sustain the current T Cell receptor programme and expand the headcount of the company from 15 to 30 people. Several biotechnology investors were approached, including the existing angel investors. The business plan valued the company at a pre-money valuation of £3.9 million, and proposed a share price of £45 per share. With investors hungry to put money into the biotechnology sector generally and with Avidex having great science, respected management and a credible share register, the company was in a strong negotiating position.

Avidex approached three potential venture capital investors and entered into initial negotiations with all of them. After several meetings, two of the investors dropped out of the process and Avidex entered into detailed negotiations with Advent Venture Partners.[2]

Jerry Benjamin from Advent Venture Partners and James Noble negotiated a final pre-money valuation of £3.5 million at a share price of £40 per share. Advent agreed to provide 50% of the funding at this price and both parties entered into detailed term sheet negotiations. The remaining 50% of the expansion funding came from two existing shareholders, Nick Cross and Ian Laing, who agreed to invest on the same terms as Advent Venture Partners. The expansion financing was much more formal than the initial rounds and this was reflected in the nature of the agreements and term sheets finally negotiated (see Exhibit 4).

By the time funding was secured, Avidex had negotiated a total of £10 million of funding and James Noble had accepted the position of CEO.

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[2] In 2004 the web site of Advent Venture Partners indicates that it invests in Technology and Healthcare and has funds under management of over £450 million. Advent can invest amounts up to £20 million and specialises in helping develop early stage businesses. Advent Venture Partners was formed in 1981 and was one of the first independent venture capital managers to be established in the United Kingdom. Over the past 23 years institutional funds under Advent's management have invested in some 150 companies, some 35 of which have achieved stock market flotations. Advent's team of thirteen investment executives is one of the most experienced in the U.K. with more than 200 years of investment and business experience between them. A key characteristic of the team is that most have worked at senior levels in their respective specialist industries.

Exhibit 4: Summary of Avidex expansion financing term sheet

Date:	5th December 2000
Amount raised:	£10 million
Shares:	Ordinary
Price:	£40 per share
Key Investors:	Advent Venture Partners Two entrepreneurs (the "Major Investors")
Agreements/Principal Documents:	Subscription Agreement, 54 pages Shareholder Agreement, 41 pages Articles, 15 pages Disclosure Letter Management questionnaires
Key terms:	Each of Advent and the Major Investors to subscribe [illegible] million
Key Terms of Subscription Agreement:	Full warranties (20 pages) on everything including IPR, the Business Plan, the environment etc; Resignation of one director; Mechanics of issuing shares/[illegible]olving money to business objectives.
Key Shareholder Rights/Company Obligations (Shareholder Agreement):	Board seats for Advent, each of the Major Investors, OTVCT, the University; Directors' fees payable; Accounting/budget timelines set out; Quarterly shareholder [illegible]ing; Remuneration/audit committees to be set up, with Advent representative on each; Major business decisions must be approved by Board, with a veto right for Advent and the Major Investors; Restrictive covenants on staff; Changes to Articles – approval required Advent and the Major Investors.
Key Changes to Articles:	Enhanced pre-emption restrictions; Compulsory transfers ("drag along rights") introduced, so that a simple majority, provided it includes Advent, can force a sale of the company; Bad leaver compulsory transfers.

Source: Company Reports.

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The proposed development funding

After the expansion financing had been secured, the company continued both its drug development programme and its commercial efforts such that, by early 2002, Avidex required a further round of funding to continue the development of its research, with a number of key research programmes reaching the initial stages of pre-clinical testing.

However, the stock market had fallen sharply since the last funding round, as had the NASDAQ biotech index (see Exhibit 5). James knew that this unfavourable fundraising environment would probably make the terms of the new round of funding far more demanding than had been the case previously.

The company's senior management developed a business plan to raise the capital and discussed the programme in detail with Advent Venture Partners through its Avidex Board representative. After extensive discussion, a round was structured to raise £11.6 million, at the same price as the previous round. The pricing reflected the significant progress made by the company, offset by the large fall in biotech valuations over the intervening period.

However, while the price remained the same, the new shares were proposed to be issued on terms to benefit the latest investors. This agenda is what would drive the negotiations and the final terms of the deal. Complicating the deal further was the introduction of new venture capital investors, including Quester.[3]

Inevitably, some of the original investors had exhausted their investment capacity for a single company and therefore there were concerns as to how to reconcile the interests of three different groups, namely:

1. The original shareholders who could no longer invest and who therefore saw the key issue as increased dilution if the price went down;
2. Major shareholders re-investing, who wanted both to get a good price and to protect their original holding; and
3. New investors, who simply wanted the best terms

This was also complicated by the fact that some of the original investors who were unable to re-invest formed the key management team.

[3] In 2004 Quester's website indicates that it is one of the U.K.'s leading independent venture capital groups specialising in the provision of finance and management support for growth companies at all stages of their life. The focus is on early stage investments in information and communication technology, healthcare and life science companies. Quester was founded in 1984 and currently manages approximately £300million of funds for institutional investors, leading U.K. universities and five quoted venture capital trusts for private individuals.

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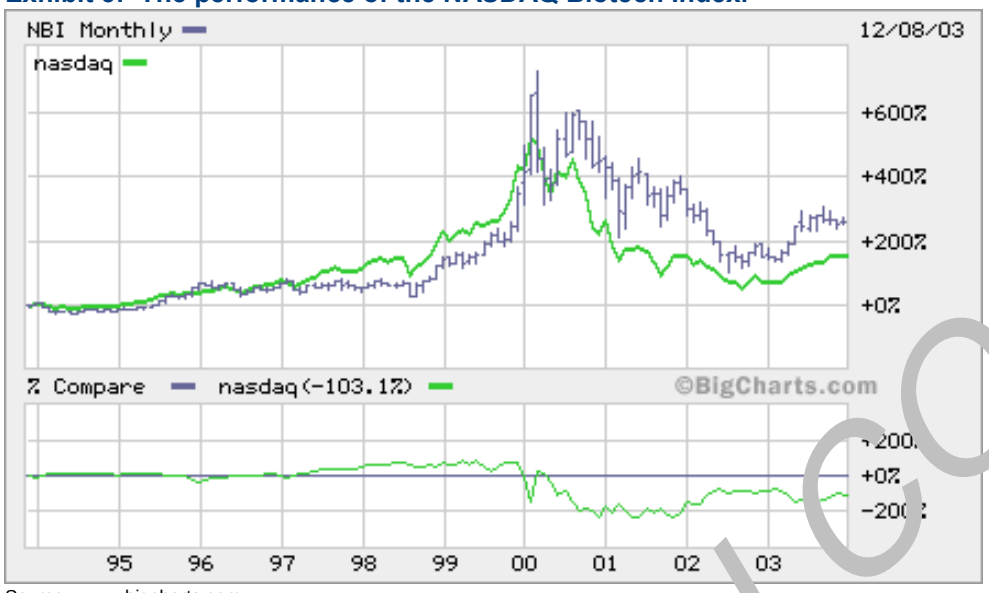
Exhibit 5: The performance of the NASDAQ Biotech Index.



Source: www.bigcharts.com.

Substantiation of this worry was provided in the terms sheet and proposed new articles of association that James was holding, emailed across that morning from the main investor group (see Exhibits 6 and 7). In common with typical venture terms at that time, the new shares now being sought were not the common shares of the previous rounds, but preference shares, which gave the shareholder protection if the company issued further shares at below £40 or the company was sold or liquidated at below £40 a share. In addition to this, the shareholders that provided the previous round of finance were being offered the right to switch their existing ordinary shares into preference shares at no cost, effectively giving them the same preferences as the new investors. This now left a position where the original investors would only see any return if the company's valuation was above £20 million, since, below this level, all of the value would be received by the Preference shareholders.

The shareholder agreement also contained "tag along" and "drag along" rights, meaning that no-one could sell their shares without allowing the venture capital firms a share of the sale and, if a purchaser for the whole company emerged, the venture capital firms essentially could force all shareholders to sell. The effect of these terms was more significant with the existence of Preferred shares.

As James thought about the deal he knew his options were limited. He could try to approach other investors, but they would probably insist on similar terms. But the deal seemed to give few benefits to the early investors, nor to the researchers who were critical to its future.

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Exhibit 6: Summary of the term sheet for the proposed financing round

Date:	7th December 2002
Amount raised:	£11.6 million
Shares:	Ordinary and Convertible Preferred
Price:	£40 per share for subscribers
Subscribers:	10 groups
Key Investors:	Advent Venture Partners Quester Capital Management The Major Investors
Agreements/Principal Documents:	Subscription agreement, 67 pages Shareholder agreement, 48 pages Articles of Assocation, 21 pages Disclosure Letter Management questionnaires
Key Terms of Subscription Agreement:	As previous agreement; plus VCT clearances for Quest Agreement to vote in favour of pri rotection (see below) in any shareholder vote; Due diligence cost payabl
Key Terms of Shareholder Agreement:	As previous ag ent; plu Quester e ective y gi ame rights as Advent and the Entrep ne r Grou
Key Changes to Articles:	Cr ion of s parate class rights for Preferred shares, rice protecti for Preferred shares; rice pr ection for Ordinary shares subscribed at £40; L uidati n preference for Preferred shares.

Source: Company Reports.

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Exhibit 7: Extracts from the proposed new Articles of Association of Avidex.

1) Preliminary

In these Articles the following words and expressions shall have the meanings set out below:

The Act	The Companies Act 1985
Investor Majority	each of Advent and Quester
The Investors	Advent, Ian Laing, Nicholas Cross, Quester
Liquidation Realised Surplus	the Liquidation Surplus divided by the total number of shares in the capital of the Company in issue on the date on which such surplus falls to be paid out
Liquidation Surplus	such cash sum as remains on a liquidation or winding up of the Company after all of its liabilities have been paid or provided for
Listing	a successful application being made in relation to all or any of the Ordinary Share Capital of the Company for admission to listing to the U.K. Listing Authority and admission to trading to the London Stock Exchange
Major Investors	Ian Laing and Nicholas Cross
Ordinary Share Capital	collectively, the Preferred Shares and the Ordinary Shares
Ordinary Shares	ordinary shares of 0.1p each in the capital of the Company, having the rights set out in Article 2.2
Preferred Shares	convertible preferred shares of 0.1p each in the capital of the Company, having the rights set out in Article 2.2
Privileged Relation	in relation to an individual member or deceased or former individual member, the husband or wife or the widower or widow of such member and all the lineal descendants and ascendants in direct line of such member and the brothers and sisters of such member and their lineal descendants and a husband or wife or widower or widow of any of the above persons and for the purposes aforesaid a step-child or adopted child or illegitimate child of any person shall be deemed to be his or her lineal descendant
Qualifying Holding	as such term is defined in Schedule 28B of the Income and Corporation Taxes Act 1988

2) Share Capital

2.1 Authorised Share Capital

The share capital of the Company at the date of adoption of these articles is £1,000,000 divided into £488,351 Preferred Share capital, and £511,649 Ordinary Share capital.

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2.2 Share Rights

The Preferred Shares and the Ordinary Shares shall entitle the holders thereof to the following rights:

a) as regards dividend:

(i) subject to articles 2.2(a)(ii) below, the Company shall apply any profits which the Directors resolve to distribute in any year, in paying a non-cumulative dividend to the holders of the Preferred Shares and the Ordinary Shares in respect of their holdings of such shares pari passu and pro rata to the number of shares held by them;

(ii) if, following a sale of all or substantially all of the assets of the Company a dividend is declared, or, if following a reduction of capital a dividend is declared, such dividend having only been made possible by virtue of that reduction of capital, then in such circumstances, the Company shall apply any profits which the Directors resolve to distribute on the same basis and in the order of priority set out in Article 2.2(a)(i);

(iii) no dividend payment shall be made to any member if as a result of such dividend payment being due any shareholding is thereby prevented from being or ceases to be a Qualifying Holding, but provided that if any part of the dividend payment which is due to any such member can be paid without the holding being prevented from being or ceasing to be a Qualifying Holding, so much of the dividend payment shall be paid as is possible without prejudicing the Qualifying Holding status of the relevant shares. Any dividend payment not paid to such member as a result of this article 2.2(a)(iii) shall, subject to the terms of this Article, be distributed amongst the other member rateably in proportion to the number of shares held by them respectively.

b) as regards capital:

(i) on a return of assets on a liquidation or winding up of the Company, the following order of priority shall apply to payments to holders of shares in the capital of the Company out of the Liquidation Surplus where the Liquidation Realised Surplus is less than £40:

(A) first, the holders of the Preferred Shares shall be entitled in respect of their Preferred Shares to payment of an amount per share equal to the Subscription Price paid or credited as paid per Preferred Share (including any premium); and

(B) second, the holders of the Ordinary Shares shall be entitled in respect of such shares to payment of an amount per share equal to the

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Subscription Price paid or credited as paid per Ordinary Share (including any premium); and

(C) thereafter any balance shall be paid to the holders of the Preferred Shares and the Ordinary Shares pari passu and pro rata to the number of such shares held by each of them

(ii) on a return of assets on a liquidation or winding up of the Company, if the Liquidation Realised Surplus is £40 or more then the Liquidation Surplus shall be paid to the holders of the Preferred Shares and the Ordinary Shares pari passu and pro rata to the number of such shares held by them;

c) as regards sale:

In the event of a Sale where the Sale Realised Price is less than £40 the Sale Proceeds shall be reallocated between the holders of the shares in the capital of the Company so as to ensure the following order of application of the Sale Proceeds:

(i) first, in paying to the holders of any Preferred Shares that are the subject of the Sale (if any) the Subscription Price on all such shares (or in the event of an insufficiency, then pro rata to the respective number of Preferred Shares held by each of them);

(ii) second, in paying to the holders of any Ordinary Shares that are the subject of the Sale (if any) the Subscription Price on all such shares (or in the event of an insufficiency, then pro rata to the respective number of Ordinary Shares held by each of them); and

(iii) thereafter, any balance shall be paid pro rata to the holders of the Preferred Shares and the Ordinary Shares which are the subject of the Sale (in proportion to the number of shares sold by each of them as if they together constituted one class);

d) as regards conversion

(i) the Preferred Shares shall automatically be converted into and redesignated as fully paid Ordinary Shares (A) immediately before the completion of a Listing which has been approved by an Investor Majority or (B) by notice in writing signed by an Investor Majority. The rate of conversion of Preferred Shares into Ordinary Shares shall be subject to adjustment on the occurrence of any consolidation, sub-division, reduction or other reorganisation of the Company's share capital;

(ii) the Ordinary shares arising on conversion and redesignation shall rank pari passu with the Ordinary shares then in issue and fully paid up;

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e) as regards voting in general meetings:

(i) each holder of Preferred Shares or Ordinary Shares shall be entitled to receive notice of, and to attend and vote at, general meetings of the Company. Every holder of Preferred Shares or Ordinary Shares shall have one vote for each Preferred Share or Ordinary Share held by him.

3) Issue of Shares

3.1 Subject to the provisions of the Act and Article 3.2, all unissued shares shall be at the disposal of the Directors and they may allot, grant rights, options or warrants to subscribe or otherwise dispose of them to such persons, at such times and on such terms as they think proper.

3.2 Any unissued shares or other equity securities to be issued, excepting equity securities to be issued:

a) to employees, consultants or directors of the Company in accordance with any employee share option plan of the Company from time to time approved by an Investor Majority;

b) pursuant to the conversion of Preferred Shares in accordance with Article 2.2(d); or

c) to holders of Preferred Shares and Qualifying Ordinary Shares pursuant to Article 3.4;

("New Shares") shall not be allotted to any person unless the Company has, in the first instance offered such New Shares on the same terms and at the same price as such New Shares are being offered to such other person, to all members of the Company pari passu and pro rata to the number of shares in the Ordinary Share Capital held by such members on the terms that in case of competition the New Shares shall be allotted to the acceptors of any such offer in proportion (as nearly as may be achieved without involving fractions or increasing the number allotted to any member beyond that applied for by him) to their existing holding of the Ordinary Share Capital. Any such New Shares shall rank pari passu with existing shares in the same class then in issue. Each such offer

d) shall stipulate a time not less than 30 days within which it must be accepted or in default will lapse; and

e) may in the sole and absolute discretion of an Investor Majority stipulate that any members who desire to subscribe for a number of New Shares in excess of the proportion to which each is entitled may in their acceptance state how many excess New Shares they wish to subscribe for and any shares not accepted by

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other members shall (in the event that any such stipulation is included in such acceptance(s)) be used for satisfying such requests for excess New Shares pro rata to the existing holdings of all shares held by any members making such requests and thereafter, such New Shares shall be offered to any other person at the same price and on the same terms as the offer to members.

3.3 The provisions of Article 3.2 may be varied by special resolution

3.4 In the event that any equity share capital or securities convertible into equity share capital (other then pursuant to (i) an employee share option or incentive scheme approved by an Investor Majority, or (ii) the Employee Options), is proposed to be issued by the Company following the date of adoption of these Articles ("Post-Adoption Shares") to any person (the "Subsequent Investor") at a price per share (the "Subsequent Price") which is less than £40 or on terms more favourable (including, but not limited to enhanced rights or additional protective provisions for a shareholder or a lower subscription price) than those attaching to the Preferred Shares and the Qualifying Ordinary Shares then:

a) the Company shall use its best endeavours to procure that the holders of the Preferred Shares and the holders of the Qualifying Ordinary Shares shall benefit from those more favourable rights or terms (including, where necessary, amending these Articles to reflect such terms or rights) in relation to the Preferred Shares and the Qualifying Ordinary Shares provided that any holder of Preferred Shares or Qualifying Ordinary Shares may waive his rights under this Article 3.4(a) as regards his own holding of such shares by notice in writing to the Company;

b) to the extent that the Post-Adoption Shares are issued at a price per share which is less than £40 the Company shall, in respect of those members who are, at the time of such issue, holders of Preferred Shares or holders of Ordinary Shares that were originally acquired either by subscription or transfer at a price of £40 or more ("Qualifying Ordinary Shares") (unless and to the extent that those holders of Preferred Shares and Qualifying Ordinary Shares shall have specifically waived their rights in writing as regards his own holding) offer (such offer, unless waived, to remain open for acceptances for not less than 28 days) to those holders of Preferred Shares and Qualifying Ordinary Shares the right to subscribe in cash for such number of new Preferred Shares or Ordinary Shares (as appropriate), or if the Post-Adoption Shares are issued on terms more favourable than the Preferred Shares and the Qualifying Ordinary Shares, such number of Post-Adoption Shares at par as will result in each holder of Preferred Shares and

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Qualifying Ordinary Shares having paid, in subscribing for his entire holding of such shares, on average, a price per share equal to the Subsequent Price. For the avoidance of doubt, this Article 3.4 shall be re-applied on each further issue of equity share capital which occurs to any Subsequent Investor at a price which is less than the previous Subsequent Price.

3.5 The provisions of Article 3.4 shall cease to have effect upon a listing.

4) Transfer of Shares

4.1 Any shares may at any time be transferred:

a) to any person with the prior consent in writing of holders of shares entitled to cast 95% of the votes exercisable on a poll at a general meeting of the Company; or

b) by any individual member to a Privileged Relation of such member; or

c) by any such member to trustees to be held upon Family Trusts related to such individual member; or

d) by any member being a company to a member of the same Group as the Transferor Company; or

e) by any person entitled to shares in consequence of the death or bankruptcy of an individual member to any person or trustee to whom such individual member, if not dead or bankrupt, would be permitted hereunder to transfer the same; or

f) by a holder of Preferred Shares or Ordinary Shares which is an Investment Fund or by its trustee, custodian or nominee:

(i) to any trustee, nominee or custodian for such fund and vice versa;

(ii) to any unitholder, shareholder, partner, participant, manager or adviser in any such fund;

(iii) to any other Investment Fund, or its trustee, nominee or custodian, managed or advised by the same manager or adviser as any such fund.

4.2 For the avoidance of doubt, any change in the partners, participants, shareholders, unitholders in any member which is an Investment Fund shall not be regarded as a transfer of shares or any interest in shares for the purposes of these Articles.

5) Tag Along

5.1 Article 5.2 shall not apply to any transfer of Ordinary Shares where the shares to be transferred represent less than 10 percent of the Proposing Transferor's total holding of Ordinary Shares nor to any transfer of Ordinary Shares in respect of which the

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Investor Majority shall have notified the Proposing Transferor in writing that the provisions of Article 5.2 are not to apply.

5.2 In the case of any transfer of Ordinary Shares held by the Proposing Transferor (other than Quester), the Proposing Transferor will not sell any such Sale Shares unless the proposed purchaser(s) of such shares:

a) shall have offered to purchase from each such holder of Preferred Shares (at the price per share to be paid by the proposed purchaser(s) to the Proposing Transferor in respect of the Sale Shares) such proportion of each class of the Ordinary Share Capital held by each such holder of Preferred Shares as is equal to the proportion which the Ordinary Shares being sold by the Proposing Transferor bears to the total holding of Ordinary Share Capital (including the shares to be sold) held by the Proposing Transferor; and

b) shall, in respect of any holder of Preferred Shares which wishes to take up the offer referred to in Article 5.2(a) above, acquire from such holder of Preferred Shares the shares in question at the relevant price simultaneously with the acquisition from the Proposing Transferor of the Sale Shares to be sold.

5.3 Article 5.4 shall not apply to any transfer of Preferred Shares in respect of which the Investor Majority shall have notified the Proposing Transferor that the provisions of Article 5.4 are not to apply.

5.4 In the case of any transfer (not being a transfer to which Article 5.4 does not apply) of Preferred Shares held by the Proposing Transferor, the Proposing Transferor will not sell any such Sale Shares unless the proposed purchaser(s) of such shares:

a) shall have offered to purchase from each other holder of Preferred Shares (at the price per share to be paid by the proposed purchaser(s) to the Proposing Transferor in respect of the Sale Shares) such proportion of each class of the Ordinary Share Capital held by each such other holder of Preferred Shares as is equal to the proportion the Preferred Shares being sold by the Proposing Transferor bears to the total holding of Ordinary Share Capital (including the shares to be sold) held by the Proposing Transferor; and

b) shall, in respect of any holder of Preferred Shares which wishes to take up the offer referred to in Article 5.4(a) above, acquire from such holder of Preferred Shares the shares in question at the relevant price simultaneously with the acquisition from the Proposing Transferor of the Sale Shares to be sold.

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6) Compulsory Transfers

6.1 If at any time any two of Advent, Quester and the Major Investors (the Major Investors being treated as one person for the purposes of this Article 6) (for the purposes of this Article "the Seller") intend(s) to sell all of its or their holding of shares in the capital of the Company (or any interest in such shares) (the shares to be sold by the Seller being referred to as "Selling Shares") to a proposed purchaser(s) ("the Proposed Purchaser") who has made a bona fide offer on arm's length terms for the entire issued Ordinary Share Capital, the Seller shall have the right to give to the Company not less than 14 days' advance notice before selling the Selling Shares. That notice ("the Selling Notice") will include details of the Selling Shares and the proposed price for each Selling Share to be paid by the Proposed Purchaser, details of the Proposed Purchaser, the place, date and time of completion of the proposed purchase being a date not less than 14 days from the date of the Selling Notice ("Completion").

6.2 Immediately upon receipt of the Selling Notice the Company shall give notice in writing (a "Compulsory Sale Notice") to each of the members (other than the Seller) (the "Other Members") giving the details contained in the Selling Notice, requiring each of them to sell to the Proposed Purchaser at Completion all of their holdings of shares on the same terms as those contained in the Selling Notice.

6.3 Each member who is given a Compulsory Sale Notice shall sell all of his shares referred to in the Compulsory Sale Notice at the highest price per Selling Share to be sold to the Proposed Purchaser on Completion by the Seller and on the terms set out in the Selling Notice.

Source: Company Reports.

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