

**IN THE HIGH COURT OF JUSTICE**  
**CHANCERY DIVISION**  
**COMPANIES COURT**  
**Mr. Justice Pumfrey** *Lindsay*

**No. 3570 of 2004**

**IN THE MATTER OF OXXON THERAPEUTICS LIMITED**

**AND IN THE MATTER OF THE COMPANIES ACT 1985**



**ORDER**



**UPON THE PETITION** of the above-named Oxxon Therapeutics Limited ("the Company") whose registered office is situate at 2<sup>nd</sup> Floor Park Gate, 25 Milton Park, Oxford, Oxfordshire OX14 4SH

**AND UPON HEARING** Counsel for the Company

**AND OXXON THERAPEUTICS HOLDINGS, INC. CONSENTING** to the Scheme of Arrangement referred to below and undertaking to fulfil the obligations which it has agreed to undertake pursuant to the said Scheme of Arrangement (Counsel for the Company being also Counsel for Oxxon Therapeutics Holdings, Inc. for this purpose)

**AND UPON READING** the Petition and the evidence

**THIS COURT HEREBY SANCTIONS** the Scheme of Arrangement set forth in the First Schedule hereto

**AND THIS COURT ORDERS** that the reduction of capital of the Company from £226,287.50 to £155,861.12 resolved on and effected by Special Resolution passed at an Extraordinary General Meeting of the Company held on 6<sup>th</sup> July 2004 be and it is hereby confirmed in accordance with the provisions of the above-mentioned Act

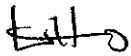
**AND THIS COURT HEREBY APPROVES** the Minute set forth in the Second Schedule hereto



**AND IT IS ORDERED** that:

- 1) This Order be produced by the Company to the Registrar of Companies and an office copy hereof be delivered to him together with a copy of the said Minute; and
- 2) Notice of the registration by the Registrar of Companies of this Order and of the said Minute be published once in the "Independent" newspaper within 21 days after such registration

**DATED** 29<sup>th</sup> July 2004

A handwritten signature in black ink, appearing to be 'E.H.' followed by a flourish.

**PART 8**

**THE SCHEME OF ARRANGEMENT**

**IN THE HIGH COURT OF JUSTICE**

**CH 2004 No. 3570**

**CHANCERY DIVISION**

**COMPANIES COURT**

**IN THE MATTER OF OXXON THERAPEUTICS LIMITED**

**and**

**IN THE MATTER OF THE COMPANIES ACT 1985**

**SCHEME OF ARRANGEMENT**

**(under section 425 of the Companies Act 1985)**

**between**

**OXXON THERAPEUTICS LIMITED**

**and**

**THE HOLDERS OF ITS SCHEME SHARES**

**(as hereinafter defined)**

**Preliminary**

- (A) In this Scheme, unless inconsistent with the subject or context, the following expressions bear the following meanings:

"Act"	the Companies Act 1985, as amended from time to time;
"Business Day"	a day, but not being a Saturday, Sunday or Bank Holiday, on which the clearing banks are open for business in the City of London;
"Cancellation Record Time"	5.00 pm on the Business Day immediately preceding the date of the Court Hearing;
"OTL"	Oxxon Therapeutics Limited, a company registered in England and Wales with Company Number 03671700;

<b>"Consideration Shares"</b>	1,063,888 shares of common stock, \$0.0001 par value, 2,275,000 shares of Class A common stock, \$0.0001 par value and 3,703,750 shares of Class B common stock, \$0.0001 par value of OTHI, each a <b>"Consideration Share"</b> ;
<b>"Court"</b>	the High Court of Justice in England and Wales;
<b>"Court Hearing"</b>	the hearing by the Court of the Petition to sanction the Scheme;
<b>"Court Meetings"</b>	the meetings of Shareholders convened by the Court to consider the Scheme, to be held on 6 July 2004, notices of which are set out on pages 42 to 44 of this document;
<b>"Court Order"</b>	the order of the Court sanctioning the Scheme under section 425 of the Act;
<b>"Effective Date"</b>	the date upon which the Scheme becomes effective in accordance with its terms;
<b>"holder"</b>	a registered holder and includes any person entitled by transmission
<b>"New OTL Shares"</b>	7,042,638 ordinary shares in OTL to be issued to OTHI pursuant to the Scheme;
<b>"OTHI"</b>	Oxxon Therapeutics Holdings, Inc., a corporation incorporated in Delaware, United States of America;
<b>"OTL Shares"</b>	ordinary shares of £0.01 each, A ordinary shares of £0.01 each, and B ordinary shares of £0.01 each in the share capital of OTL;
<b>"Scheme"</b>	the scheme of arrangement pursuant to section 425 of the Act which is set out at pages 29 to 33 of this document;
<b>"Scheme Consideration"</b>	the issue by OTHI of the following Consideration Shares in consideration for the cancellation of the Scheme Shares: one share of common stock, \$0.0001 par value for every ordinary share of £0.01 each; one share of Class A common stock, \$0.0001 par value for every A ordinary share of £0.01 each; and one share of Class B common stock, \$0.0001 par value for every B ordinary share of £0.01 each;

<b>"Scheme Record Time"</b>	5.00 pm on the Business Day immediately prior to the Effective Date;
<b>"Scheme Shareholders"</b>	the holders of Scheme Shares;
<b>"Scheme Shares"</b>	<ul style="list-style-type: none"> <li>(i) the OTL Shares in issue at the date of this document;</li> <li>(ii) any OTL Shares issued after the date of this document but prior to the Voting Record Time;</li> <li>(iii) any OTL Shares issued at or after the Voting Record Time but before the Cancellation Record Time on terms that the holders of such shares shall be bound by the Scheme or in respect of which their holders have undertaken to be bound by the Scheme</li> </ul>
<b>"Shareholders"</b>	holders of the OTL Shares; and
<b>"Voting Record Time"</b>	10.30 am on 6 July 2004.

- (B) The authorised share capital of OTL is £226,287.50 divided into 13,450,000 Ordinary shares of £0.01 each, 2,850,000 A ordinary shares of £0.01 each and 6,328,750 B ordinary shares of £0.01 each which as at 9 June 2004 (the last practicable date before publication of this document) 2,275,000 A ordinary shares, 3,703,750 B ordinary shares and 1,063,888 ordinary shares had been issued and were fully paid and the remainder were unissued.
- (C) The share capital of OTHI is 13,450,000 shares of common stock, \$0.0001 par value, 2,850,000 shares of class A common stock, \$0.0001 par value and 6,328,750 shares of class B common stock, \$0.0001 par value.
- (D) OTHI has agreed to be present by counsel at the Court Hearing to confirm its consent to the Scheme and its undertaking to fulfil the obligations which it has agreed to undertake pursuant to the Scheme.

## **THE SCHEME**

### **1. Cancellation of the Scheme Shares**

- 1.1 The capital of the Company shall be reduced by cancelling and extinguishing the Scheme Shares.
- 1.2 Forthwith and contingently upon the cancellation of Scheme Shares referred to in clause 1.1 taking effect (i) the authorised capital of OTL shall be increased by the creation of such number of ordinary shares of £0.01 each as shall have the same nominal value as the Scheme Shares cancelled pursuant to clause 1.1; and (ii) the credit arising in the books and records of OTL as a result of the cancellation of the

Scheme Shares shall be applied in paying up in full at par the new OTL ordinary shares of £0.01 created pursuant to the provisions of this clause 1.2 which shall be allotted and issued credited as fully paid to OTHI or its nominees.

- 1.3 Forthwith and contingently upon the issue of the New OTL Shares, OTHI shall, in consideration for the cancellation of Scheme Shares and the issue of the New OTL Shares and subject to clause 2.3, allot and issue to the holders of Scheme Shares (as appearing in the register of members of OTL at the Scheme Record Time) Consideration Shares credited as fully paid on the following basis:

- 1 share of common stock for every ordinary share of OTL;
- 1 share of class A common stock for every A ordinary share of OTL;
- 1 share of class B common stock for every B ordinary share of OTL.

## **2. Allotment and Issue of OTHI Shares**

- 2.1 Immediately after the Scheme becomes effective, OTHI shall make all such allotments of, and shall issue such OTHI Shares as are required to be issued by it to give effect to this Scheme to the persons respectively entitled thereto, such consideration to be settled as set out in clause 2.2.
- 2.2 Settlement of the Scheme Consideration shall be effected by the issue by OTHI to the relevant OTL Shareholder of a certificate in respect of such number of OTHI Shares as the OTL Shareholder is entitled to within two months of the Effective Date subject to clause 2.6 below.
- 2.3 The provisions of this clause 2 shall be subject to any prohibition or condition imposed by law. If, in respect of any holder of the Scheme Shares with a registered address outside the United Kingdom, OTHI is advised that the allotment and/or issue of OTHI Shares pursuant to this clause 2 to such holder (i) would infringe the laws of any jurisdiction outside the United Kingdom or (ii) would require OTHI to observe any governmental or other consent or any registration, filing or other formality with which OTHI is unable to comply or compliance with which OTHI regards as unduly onerous, OTHI may in its sole discretion determine that no OTHI Shares will be allotted and issued to such holder under this clause 2, but shall instead shall be allotted and issued to a nominee appointed by OTHI as trustee for such holder. In such an event, the nominee shall sell such OTHI Shares as soon as practicable after the Effective Date as is reasonable and allowable, at the best price which can reasonably be obtained, and shall account by cheque for the net proceeds of such sale (after the deduction of all expenses and commissions, including any value added tax payable thereon) by sending a cheque to the holder of such OTL Shares in accordance with the provisions of clause 2.4 of this clause 2 not later than 7 days following the sale of any relevant OTHI Shares pursuant to this clause 2.3.
- 2.4 All deliveries of notices, documents of title and cheques required to be made by this Scheme shall be effected by posting the same in pre-paid envelopes addressed to the persons respectively entitled thereto at their respective addresses as appearing in the relevant register of members (or, in the case of joint holders, to the address of that one of the joint holders whose name stands first in the said register of members in respect

of the joint holding) immediately prior to the date of their despatch or to such other addresses (if any) as such persons may respectively direct in writing.

- 2.5 Neither OTL nor OTHI nor any broker or agent of either of them shall be responsible for any loss or delay in the transmission of the documents of title or cheques posted in accordance with clause 2.4 which shall be posted at the risk of the addressee. The encashment of any cheque shall be a complete discharge to OTL for the monies represented thereby.
- 2.6 New certificates representing the OTHI Shares issued in the Scheme will be issued after the Effective Date and, with respect to a holder of the Scheme Shares, after such holder has delivered to OTL the original certificates representing their OTL Shares, duly endorsed. No certificate(s) for OTHI Shares will be issued until the corresponding certificate(s) for the OTL Shares has been received by OTL. After the Effective Date, certificates representing OTL Shares shall cease to have effect as documents of title to the OTL Shares and shall only represent the right to receive a certificate for OTHI Shares. If a certificate representing Scheme Shares has been lost or destroyed, the holder of the shares represented by the lost or destroyed certificate must execute and deliver to OTL and OTHI an indemnity agreement in a form satisfactory to OTL and OTHI.

### **3. Operation of this Scheme**

- 3.1 This Scheme shall become effective as soon as an office copy of the Order of the Court sanctioning this Scheme under section 425 of the Companies Act 1985 and confirming under section 137 of the said Act the reduction of capital provided for by this Scheme shall have been duly delivered to the Registrar of Companies for registration and registered by him.
- 3.2 Unless this Scheme has become effective on or before 31 December 2004 or such later date, if any, as OTL and OTHI may agree and the Court may allow, this Scheme shall never become effective.

### **4. Modification**

OTL and OTHI may jointly consent on behalf of all persons concerned to any modification of or addition to this Scheme or to any condition which the Court may approve or impose.

### **5. Costs**

OTL is authorised and permitted to pay all the costs and expenses relating to the negotiation, preparation and implementation of this Scheme.

Dated: 10 June 2004

## **SECOND SCHEDULE**

The minute approved by the Court

“The capital of Oxxon Therapeutics Limited was by virtue of a Special Resolution of the Company and with the sanction of an Order of the High Court of Justice dated 29<sup>th</sup> July 2004 reduced from £226,287.50 divided into 13,450,000 Ordinary Shares of £0.01 each, 2,850,000 A Ordinary Shares of £0.01 each and 6,328,750 B Ordinary Shares of £0.01 each to £155,861.12 divided into 12,386,112 Ordinary Shares of £0.01 each, 575,000 A Ordinary Shares of £0.01 each and 2,625,000 B Ordinary Shares of £0.01 each. The said Special Resolution further provided that upon the said reduction taking effect the capital of the Company shall be increased by the creation of 7,042,638 Ordinary Shares of £0.01 each. By virtue of the Scheme of Arrangement sanctioned by the said Order and of the said Special Resolution the capital of the Company at the date of the registration of this Minute is £226,287.50 divided into 19,428,750 Ordinary Shares of £0.01 each, 575,000 A Ordinary Shares of £0.01 each and 2,625,000 B Ordinary Shares of £0.01 each, of which 7,042,638 Ordinary Shares have been issued and are credited as fully paid and the remainder are unissued.”



No. 3570 of 2004

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

COMPANIES COURT

Mr. Justice Pumfrey

*Lindsey*

IN THE MATTER OF OXXON  
THERAPEUTICS LIMITED

AND IN THE MATTER OF THE  
COMPANIES ACT 1985

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ORDER

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Wilmer Cutler Pickering Hale and Dorr LLP  
Park Gate  
25 Milton Park  
Oxford  
OX14 4SH  
Tel: 01235 82 3201  
Fax: 01235 82 3030

**THIS DOCUMENT IS IMPORTANT AND REQUIRES YOUR IMMEDIATE ATTENTION.** If you are in any doubt as to the action you should take, you are recommended to seek your own personal financial advice immediately from your stockbroker, solicitor, accountant or other professional adviser authorised pursuant to the Financial Services and Markets Act 2000.

If you have sold or otherwise transferred all your shares please forward this document together with the accompanying Form of Proxy, as soon as possible to the purchaser or transferee, or the stockbroker, bank or other agent through whom the sale or transfer was effected, for transmission to the purchaser or transferee. If you have sold or transferred part of your holding of shares in Oxxon Therapeutics Limited you should immediately consult the stockbroker, bank or other agent through whom the sale or transfer was effected. The distribution of this document in jurisdictions other than the UK may be restricted by law and therefore persons into whose possession this document comes should inform themselves about and observe such restrictions. Any failure to comply with these restrictions may constitute a violation of the securities laws of any such jurisdiction.

## **Proposed Acquisition of**

### **OXXON THERAPEUTICS LIMITED**

**by**

### **OXXON THERAPEUTICS HOLDINGS, INC.**

**pursuant to a**

### **SCHEME OF ARRANGEMENT**

### **under section 425 of the Companies Act 1985**

Notice of Court Meetings, an Extraordinary General Meeting and Class Meetings of Oxxon Therapeutics Limited, all of which will be held at the offices of Wilmer Cutler Pickering Hale and Dorr, 2<sup>nd</sup> Floor, Park Gate, 25 Milton Park, Oxford, OX14 4SH on 6 July 2004 are set out at the end of this document.

Whether or not you intend to be present at all meetings convened by the above mentioned notices, shareholders are asked to complete and return the enclosed form of proxy in accordance with the instructions printed thereon as soon as possible, but in any event so as to be received by the Company Secretary of Oxxon Therapeutics Limited, 2<sup>nd</sup> Floor, Park Gate, 25 Milton Park, Oxford, OX14 4SH, not later than 48 hours before the relevant meeting. If Forms of Proxy for use at the Court Meetings (but not the Extraordinary General Meeting and Class Meetings) are not lodged by such time, they may be handed in to the Chairperson of the relevant Court Meeting at that meeting. Voting at the Court Meetings shall be by poll.

Neither this document, the stock of Oxxon Therapeutics Holdings, Inc. proposed to be issued pursuant to the Scheme of Arrangement, nor the Scheme itself has been approved by the United States Securities and Exchange Commission or any state securities commission. The stock of Oxxon Therapeutics Holdings, Inc. proposed to be issued pursuant to the Scheme of Arrangement will be issued in reliance upon an exemption from registration with the United States Securities and Exchange Commission provided by Section 3(a)(10) of the U.S. Securities Act of 1933, as amended.

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Notice of Extraordinary General Meeting

Notice of Class Meetings

Notice of Court Meetings

**Part 1**  
**EXPECTED TIMETABLE OF**  
**PRINCIPAL EVENTS**

2004

Latest time for lodging forms of proxy for the:

Court Meetings*	11.30 am, 4 July
Extraordinary General Meeting	11.00 am, 4 July
Class Meetings: Ordinary	11.05 am, 4 July
A Ordinary	11.10 am, 4 July
B Ordinary	11.15 am, 4 July
 Voting Record Time	 10.30 am, 6 July
Court Meetings	From 11.30 am, 6 July
Extraordinary General Meeting	11.00 am, 6 July
Class Meetings	From 11.05 am, 6 July
 Cancellation Record Time	 5.00 pm, 28 July
 Court Hearing of petition to sanction the Scheme	 29 July
 Scheme Record Time	 5.00 pm, 29 July
 Effective Date of the Scheme	 30 July

Unless otherwise indicated, all references to time in this document are references to British Summer Time (BST).

\*Forms of proxy for the Court Meetings not returned by this time may be handed to the Chairperson of the relevant Court Meeting at the meeting.

## Part 2

### DEFINITIONS

<b>"Act"</b>	the Companies Act 1985, as amended from time to time;
<b>"Board"</b>	the board of Directors of OTL;
<b>"Business Day"</b>	a day, but not being a Saturday, Sunday or Bank Holiday, on which the clearing banks are open for business in the City of London;
<b>"Cancellation Record Time"</b>	5.00 pm on the Business Day immediately preceding the date of the Court Hearing;
<b>"Class Meetings"</b>	the meetings of the holders of ordinary shares, A ordinary shares and B ordinary shares in OTL;
<b>"Consideration Shares"</b>	1,063,888 shares of common stock, \$0.0001 par value, 2,275,000 shares of Class A common stock, \$0.0001 par value and 3,703,750 shares of Class B common stock, \$0.0001 par value of OTHI, each a <b>"Consideration Share"</b> ;
<b>"Court"</b>	the High Court of Justice in England and Wales;
<b>"Court Hearing"</b>	the hearing by the Court of the Petition to sanction the Scheme;
<b>"Court Meetings"</b>	the meetings of Shareholders convened by the Court to consider the Scheme, to be held on 6 July 2004, notices of which are set out on pages 42 to 44 of this document;
<b>"Court Order"</b>	the order of the Court sanctioning the Scheme under section 425 of the Act;
<b>"Directors"</b>	the directors of OTL from time to time;
<b>"East Hill"</b>	East Hill University Spinouts Fund III, L.P. and East Hill University Spinouts Fund IV, L.P.;
<b>"Effective Date"</b>	the date upon which the Scheme becomes effective in accordance with its terms;
<b>"Explanatory Statement"</b>	the explanatory statement relating to the Scheme given pursuant to section 426 of the Act which is set out on pages 11 to 22 of this document;

<b>"Extraordinary General Meeting" or "EGM"</b>	the extraordinary general meeting of OTL to be held on 6 July 2004, notice of which is set out on page 34 of this document;
<b>"holder"</b>	a registered holder and includes any person entitled by transmission;
<b>"Meetings"</b>	the Court Meetings, the EGM and the Class Meetings;
<b>"MVM"</b>	MVM International Life Sciences Fund No. 1 LP and MVM Limited;
<b>"New OTL Shares"</b>	7,042,638 ordinary shares in OTL to be issued to OTHI pursuant to the Scheme;
<b>"Options"</b>	option over OTL Shares held by Optionholders;
<b>"Optionholders"</b>	the participants in the Share Option Scheme together with certain employees, directors and consultants holding options over OTL Shares pursuant to individual option agreements;
<b>"OTHI"</b>	Oxxon Therapeutics Holdings, Inc., a corporation incorporated in Delaware, United States of America;
<b>"OTHI Agreement"</b>	an agreement between OTHI and certain of its shareholders as set out on page 25;
<b>"OTHI Shares"</b>	shares of common stock, \$0.0001 par value, shares of Class A common stock, \$0.0001 par value and shares of Class B common stock, \$0.0001 par value;
<b>"OTL"</b>	Oxxon Therapeutics Limited, a company registered in England and Wales with Company Number 03671700;
<b>"OTL Shares"</b>	ordinary shares of £0.01 each, A ordinary shares of £0.01 each, and B ordinary shares of £0.01 each in the share capital of OTL;
<b>"Overseas Shareholders"</b>	holders of OTL Shares and Optionholders resident other than in the UK or citizens of jurisdictions other than the UK;
<b>"Proposal"</b>	the proposal made by this document for OTHI to acquire the entire issued share capital of OTL;
<b>"Scheme"</b>	the scheme of arrangement pursuant to section 425 of the Act which is set out at pages 29 to 33 of this document;

<b>"Scheme Consideration"</b>	the issue by OTHI of the following Consideration Shares in consideration for the cancellation of the Scheme Shares: one share of common stock, \$0.0001 par value for every ordinary share of £0.01 each; one share of Class A common stock, \$0.0001 par value for every A ordinary share of £0.01 each; and one share of Class B common stock, \$0.0001 par value for every B ordinary share of £0.01 each;
<b>"Scheme Record Time"</b>	5.00 pm on the Business Day immediately prior to the Effective Date;
<b>"Scheme Shareholders"</b>	the holders of Scheme Shares;
<b>"Scheme Shares"</b>	<ul style="list-style-type: none"> <li>(i) the OTL Shares in issue at the date of this Proposal;</li> <li>(ii) any OTL Shares issued after the date of this document but prior to the Voting Record Time;</li> <li>(iii) any OTL Shares issued at or after the Voting Record Time but before the Cancellation Record Time on terms that the holders of such shares shall be bound by the Scheme or in respect of which their holders have undertaken to be bound by the Scheme;</li> </ul>
<b>"Securities Act"</b>	U.S. Securities Act of 1933, as amended;
<b>"Share Option Scheme"</b>	The Oxxon Therapeutics Enterprise Management Incentive Scheme;
<b>"Shareholders"</b>	holders of the OTL Shares;
<b>"Shareholders' Agreement"</b>	the agreement between OTL and certain of its shareholders dated 8 April 2003;
<b>"UK"</b>	the United Kingdom, Great Britain and Northern Ireland;
<b>"UK Medical Ventures Fund"</b>	UK Medical Ventures Fund No 1 Limited Partnership;
<b>"U.S."</b>	the United States of America;
<b>"Voting Record Time"</b>	10.30 am, 6 July 2004;
<b>"Warrantholders"</b>	the registered holders of the Warrants;
<b>"Warrants"</b>	the warrants granted by OTL under a warrant instrument executed by OTL on 8 April 2003.

**Part 3**

**LETTER FROM THE CHAIRMAN OF OXXON THERAPEUTICS LIMITED**

**OXXON THERAPEUTICS LIMITED**

**(Incorporated in England and Wales with registered number 3671700)**

Directors: Dr Roger Brimblecombe (Chairman)  
Dr Alan Williamson  
Dr Deirdre Gillespie  
Mr Nicholas Cross  
Mr Iain Wilcock  
Dr John Brown  
Dr Martin Murphy  
Mr Jeffrey Garner

Registered Office  
Floor 2  
Park Gate  
25 Milton Park  
Oxford  
OX14 4SH

10 June 2004

To: Shareholders and, for information only, Optionholders and Warrantholders

Dear Shareholder

**Recommended proposals for the acquisition of all the issued and to be issued share capital of Oxxon Therapeutics Limited for stock in Oxxon Therapeutics Holdings, Inc.**

**1. Introduction**

For some months now, the Board has been considering whether the long-term interests of OTL would be best served by the relocation of OTL to the U.S.

For the reasons set out below, the Board has resolved to undertake such relocation by restructuring OTL as a wholly-owned subsidiary of Oxxon Therapeutics Holdings, Inc., a new Delaware corporation formed for this purpose, by means of a scheme of arrangement. Shareholders in OTL will be issued with stock in OTHI in consideration for the cancellation of their shares in OTL. Immediately following the implementation of the Proposal, each Shareholder will own the same proportion of OTHI as such Shareholder owned in OTL before the implementation of the Proposal.

The Proposal is subject to the approval of the Shareholders and of the Court, among other conditions.



I am writing to you to summarise the terms of the Proposal and the commercial benefits which the Board believes will arise out of the Proposal. This letter should be read in conjunction with the other sections of this document. Certain words and expressions have specific meanings and these are set out in the definitions section in Part 2, towards the front of this document.

The Board recommends that you vote in favour of the resolutions necessary to implement the Proposal. We draw your attention to the procedure for voting set out at page 10. Forms of Proxy must be received by the Company Secretary not later than 48 hours before the relevant meeting, although Forms of Proxy for the Court Meetings can be handed to the Chairperson of the relevant Court Meeting if not received by this date.

## **2. Reasons for and Benefits of the Proposal**

With its longer history of biotech activity, and having grown and established a number of very successful biotechnology companies, the U.S. offers major funding opportunities for companies such as OTL. In addition, OTL's focus on cancer and major chronic infectious diseases which are increasingly prevalent and for which there are currently no vaccines and only inadequate treatments, places it in a field for which significant U.S. government and not-for-profit funding is available. Thus relocating OTL to the U.S. is anticipated to address the following opportunities:

- (i) Any U.S. parent company of OTL will be required to adhere to the corporate law of the state in which it was incorporated. It will also adopt U.S. GAAP, U.S. constitutional documents and a U.S. employee stock option plan. Most board meetings would be held in the U.S. The board believes that these factors would make OTL far more attractive to private and institutional U.S. investors, as well as to key commercial partners. Unfamiliarity with "foreign" company corporate structure is removed as a bar to funding or partnership opportunities. The Board considers that enhancing access to the large, well-funded and relatively mature U.S. investor community will be beneficial for OTL.
- (ii) The U.S. Government offers a number of grants and incentives to early stage biotech companies, though many of them are open only to U.S. corporations. If it migrated to the U.S., OTL would be able to compete for such opportunities.

It is for these reasons, the Board has resolved to migrate OTL to the U.S. and to seek your support and co-operation with the legal and administrative tasks to allow it to do so.

### **3. Structure of the Proposal**

The migration of OTL to the U.S. shall be by way of acquisition of OTL by a new Delaware corporation (OTH), incorporated for this purpose. This acquisition is to be effected by a scheme of arrangement of OTL under section 425 of the Act and is subject to the conditions set out in Part 5 of this document. The Scheme is a procedure under which the Court approves the cancellation of the Scheme Shares and the issue to the Scheme Shareholders of the Consideration Shares in their place. Shareholders will receive the same proportion and class of Shares in OTH as they had in OTL, with the rights and conditions attaching thereto approximating as closely as is possible to the rights and conditions attaching to the Scheme Shares, subject to the provisions of Delaware law. Upon the cancellation of the Scheme Shares, new OTL Shares shall be created and issued to OTH, to enable OTL to become a wholly-owned subsidiary of OTH. The Scheme is explained in more detail in Part 4 of this document, and set out in full at Part 8 of this document.

### **4. Management and Employees**

The Board has received assurances from the directors of OTH that the existing rights, including pension rights, of all employees of OTL can and will be substantially safeguarded under relevant Delaware law. The directors of OTL when the Scheme becomes effective will be as follows:

Roger Brimblecombe  
Alan Williamson  
Deirdre Gillespie  
Nicholas Cross  
Iain Wilcock  
Martin Murphy  
John Brown  
Jeffrey Garner

The directors of OTH when the Scheme becomes effective will be as follows:

Roger Brimblecombe  
Alan Williamson  
Deirdre Gillespie  
Nicholas Cross  
Iain Wilcock  
Martin Murphy  
John Brown  
Jeffrey Garner

### **5. Overseas Shareholders**

Overseas Shareholders should refer to page 14 of this document for information on how the Proposal may affect them.

### **6. Action to be taken**

The Scheme will require approval at the Court Meetings to be held at the offices of Wilmer Cutler Pickering Hale and Dorr LLP, Park Gate, 25 Milton Park, Oxford OX14 4SH, the

passing of a special resolution to implement the changes required to effect the Proposal at the EGM to be held the same morning and the passing of the extraordinary resolutions at the Class Meetings to be held at the conclusion of the EGM. The Meetings have been convened to begin at 11 am on 6 July 2004 and the notices of the Meetings are set out on pages 34 to 44 of this document. For the Scheme to become effective it must be approved by a majority in number of the Scheme Shareholders representing at least 75% in value of the value of the Scheme Shares present and voting (either in person or by proxy) at the Court Meeting, and the special resolution which is to be proposed at the Extraordinary General Meeting and the extraordinary resolutions to be proposed at the Class Meetings must also be passed by the approval of at least 75% of the total shares for which votes are cast at such meeting. **If the Scheme becomes effective, it will be binding on all holders of Scheme Shares, including any holders who did not vote to approve the Scheme.**

**IT IS IMPORTANT THAT AS MANY VOTES AS POSSIBLE ARE CAST AT THE COURT MEETINGS SO THAT THE COURT MAY BE SATISFIED THAT THE OUTCOME FAIRLY REPRESENTS THE OPINIONS OF THE SCHEME SHAREHOLDERS.**

Whether or not you intend to be present at the Meetings in person, each Scheme Shareholder is requested to complete and sign the relevant proxy forms and return them in accordance with the instructions set out on such documents as soon as possible, but in any event to arrive with the Company Secretary at 2<sup>nd</sup> Floor, Park Gate, 25 Milton Park, Oxford, OX14 4SH, not later than 48 hours before the relevant Meeting. If the forms of proxy which relate to the Court Meetings are not lodged by then, they may be handed to the Chairperson of the relevant Court Meeting at that Meeting. However, if the proxy forms for the EGM and the Class Meetings are not lodged 48 hours before the relevant meetings, they shall not be valid. The return of Forms of Proxy will not prevent you from attending the Meetings and voting in person, should you wish to do so.

## **7. Recommendation**

The Directors having made a commercial assessment consider the terms of the Scheme to be fair and reasonable and in the best interests of Shareholders as a whole, and of OTL.

The Directors recommend Scheme Shareholders to vote in favour of the Scheme at the Court Meetings and to vote in favour of the resolutions to be proposed at the EGM and the Class Meetings to implement the Proposal.

The implementation of the Scheme has been unanimously approved by the Board of Directors.

Yours sincerely

ROGER BRIMBLECOMBE

Chairman, Oxxon Therapeutics Limited

## **PART 4**

### **EXPLANATORY STATEMENT**

**(in compliance with section 426 of the Companies Act)**

#### **PROPOSED ACQUISITION OF OXXON THERAPEUTICS LIMITED**

##### **Introduction**

On 27 May 2004, the Board of Directors of OTL unanimously resolved to implement the Proposal. Pursuant to the Proposal, the Scheme Shares will be cancelled and the New OTL Shares will be issued to OTHI. OTHI will thereby become the holding company of OTL and its subsidiaries. In consideration of the cancellation of the Scheme Shares, OTHI will issue the Consideration Shares to the former OTL Shareholders. The Proposal is to be effected by means of a Scheme of Arrangement under section 425 of the Act.

This Explanatory Statement is intended to explain the Scheme and to provide you with other relevant information. Statements made in this Explanatory Statement which refer to the benefits of the Proposal and intentions and expectations regarding the outcome of the Proposal reflect the beliefs of the Board of OTL at the date of this Explanatory Statement.

Your attention is drawn to the letter from Dr Roger Brimblecombe, the Chairman of OTL, set out in Part 3 of this document and the Definitions at Part 2 of this Document, which form part of this Explanatory Statement. Capitalised terms in this Explanatory Statement have the meanings given to them in Part 2 of this document. The letter contains, inter alia, a summary of terms of the Proposal, information on the reasons for the Proposal and the recommendation by the Board of OTL to Shareholders to vote in favour of the resolutions to be proposed at the Court Meetings.

The Proposal has been approved by the Boards of OTL and OTHI.

The Scheme of Arrangement is set out in full in Part 8 of this document.

##### **History of OTL**

OTL was incorporated on 20 November 1998 in England and Wales, with the name Oxxon Pharmaccines Limited. OTL changed its name to Oxxon Therapeutics Limited on 29 March 2004.

In May 2004, the Board of OTL determined it to be in the best interests of the Shareholders that OTL be incorporated in the United States rather than the United Kingdom. Pursuant to the advice of its financial and legal advisers, the Board caused OTHI to be incorporated in the State of Delaware to be the holding company of OTL. The Boards of OTL and OTHI have further concluded that the most appropriate and efficient method of achieving the purposes outlined above is pursuant to the Proposal, under section 425 of the Companies Act.

##### **History of OTHI**

OTHI was incorporated on 3 June 2004 in the State of Delaware, U.S. with the name Oxxon Therapeutics Holdings, Inc. OTHI has not traded and is not currently capitalised, having no issued shares of stock.

## Summary of the Proposal

### *Structure of the Proposal*

The Proposal is to be effected by way of a Scheme of Arrangement between OTL and the Scheme Shareholders under section 425 of the Companies Act. The Scheme of Arrangement is a procedure under which the Court will approve the cancellation of all of the Scheme Shares and the issue of New OTL Shares to OTHI with effect from the Effective Date. In consideration of the cancellation of the Scheme Shares, OTHI will issue the Consideration Shares to the former Scheme Shareholders. As a result of the Proposal, OTL will become a wholly-owned subsidiary of OTHI.

The Effective Date is expected to occur on or about 30 July 2004. The Scheme of Arrangement authorises OTL to pay all costs and expenses incurred in relation to the negotiation, preparation and implementation of the Scheme of Arrangement.

The Scheme of Arrangement is set out in full in Part 8 of this document. The Scheme of Arrangement does not involve any form of insolvency proceedings.

### *Approval of the Proposal*

The Scheme of Arrangement will become legally binding on all Scheme Shareholders whether or not they vote in favour of the Scheme if (i) the necessary majority of the Shareholders vote in person or by proxy in favour of the Scheme at the Court Meetings; and (ii) the Court subsequently approves the Scheme. To be approved at the Court Meetings, the necessary majority is a simple majority in number representing at least 75% of the members voting either in person or by proxy at the meeting. Implementation of the Proposal requires the approval of 75% of the members voting in person or by proxy for the special resolutions proposed at the EGM and the extraordinary resolutions proposed at the Class Meetings. Unless these approvals are obtained, the Proposal will not be put in place.

At the Court Meetings, voting will be by poll and each Scheme Shareholder entitled to attend and vote will be entitled to one vote for each share held, whether an ordinary share, A ordinary share or a B ordinary share.

**IN ORDER THAT THE COURT CAN BE SATISFIED THAT THE VOTES CAST CONSTITUTE A FAIR REPRESENTATION OF THE VIEWS OF SHAREHOLDERS, IT IS IMPORTANT THAT AS MANY VOTES AS POSSIBLE ARE CAST AT THE COURT MEETINGS, WHETHER IN PERSON OR BY PROXY. SHAREHOLDERS ARE THEREFORE URGED TO TAKE THE ACTION REFERRED TO ON PAGE 10.**

Notices of the Court Meetings, the EGM and the Class Meetings are set out at the end of this document.

### *Shareholdings in OTHI Immediately following the implementation of the Proposal*

Immediately following the implementation of the Proposal:

- OTHI will own all of the issued share capital and be the holding company of OTL;

- the former Scheme Shareholders will hold all of the issued and outstanding shares of stock in OTHI;
- each Scheme Shareholder will own the same proportion of OTHI as it owned of OTL immediately prior to the implementation of the Proposal; and
- each Shareholder will hold the same class of stock in OTHI as it held Shares in OTL, and each class of stock will carry rights approximately as close as possible to the rights carried by the Scheme Shares, subject to the provisions of Delaware law, but with the incorporation into the constitution of OTHI of certain provisions of the Shareholders' Agreement. No conversion of classes of shares shall be effected by the implementation of the Proposal.

The OTHI Shares to be issued pursuant to the Scheme will be fully paid. Your attention is drawn to Part 6 of this document setting out a comparison of the rights of the Scheme Shares and the rights of the OTHI Shares.

*Calculation of Number of OTHI Shares to be Received.*

The number of OTHI Shares that each Scheme Shareholder will receive as a result of the Proposal will be determined based on the number of Scheme Shares held immediately prior to the Proposal, as follows:

- 1 share of common stock in OTHI for every ordinary share held in OTL;
- 1 share of Class A common stock in OTHI for every A ordinary share held in OTL;
- 1 share of Class B common stock in OTHI for every B ordinary share held in OTL.

*Options and Warrants over OTL Shares*

OTL has granted options to certain of its directors, employees and consultants under the Share Option Scheme and certain individual option agreements entered into between OTL and the relevant individual.

Under the terms of the Share Option Scheme, all options will become exercisable in full on the Effective Date. Employees holding options will be offered replacement options of equivalent value over OTHI Shares at an option exercise price converted from sterling to U.S. dollars by reference to the closing spot rate on the Effective Date as published in the London edition of the Financial Times.

Identical offers of replacement options will be made to individuals holding options granted by way of individual option agreements.

OTL has also granted Warrants to certain of its shareholders who subscribed for shares in April 2003.

Under the terms of the instrument constituting the Warrants, the Warrants are exercisable for a period of four years from 8 April 2003. Warrantholders will be offered replacement warrants of equivalent value over OTHI Shares at an exercise price converted from sterling to U.S. dollars by reference to the closing spot rate on 8 April 2003 as published in the London edition of the Financial Times.

In order to ensure that OTL, following the Effective Date, will remain a wholly-owned subsidiary of OTHI, amendments to the articles of association of OTL will be proposed such that any OTL Shares issued after the Effective Date are exchanged automatically for an equal number of OTHI Shares.

In addition, OTHI intends to establish employee incentive arrangements to provide, on a discretionary basis, current and future employees of the OTHI group with equity incentives.

### *Overseas Shareholders*

The OTHI Shares are being issued without registration with the U.S. Securities and Exchange Commission in reliance on Section 3(a)(10) of the Securities Act. OTL will advise the Court that its sanctioning of the Scheme will be relied upon as an approval of the Scheme following a hearing on its fairness to Scheme Shareholders at which all Scheme Shareholders are entitled to attend in person or through a legal representative to support or oppose the sanctioning of the Scheme, and with respect to which notification has been given to all Scheme Shareholders.

The implications of the Proposal for Overseas Shareholders may be affected by the laws of the relevant jurisdiction. Overseas Shareholders should inform themselves about and observe all applicable legal requirements. This document has been prepared for the purposes of complying with English law and the information disclosed may not be the same as that which would have been disclosed if this document had been prepared in accordance with the laws of jurisdictions outside the United Kingdom.

It is the responsibility of each Overseas Shareholder to satisfy himself as to the full observance of the laws of the relevant jurisdiction in connection with the Proposal, including the observance of any governmental, exchange control or other consents which may be required and/or compliance with other necessary formalities which are required to be observed and the payment of any issue, transfer or other taxes due in such jurisdiction.

A provision is included in the Scheme so that if, in respect of any holder of Scheme Shares with a registered address outside the United Kingdom, OTHI is advised that the allotment and/or issue of OTHI Shares pursuant to the Scheme to such holder would infringe the laws of any jurisdiction outside the United Kingdom, or would or might require OTHI to observe any governmental or other consent or any registration, filing or other formality with which OTHI is unable to comply or compliance with which OTHI regards as unduly onerous, OTHI may in its sole discretion determine that no OTHI Shares will be allotted and issued to such holder under the Scheme, but shall instead be allotted and issued to a nominee appointed by OTHI as trustee for such holder. In such an event, the nominee shall sell such OTHI Shares as soon as practicable after the Effective Date as is reasonable and allowable, at the best price which can be reasonably obtained, and shall account by cheque for the net proceeds of such sale (after deduction of expenses and commissions, including value added tax) by sending a cheque to the holder of such OTL Shares.

### *Conditions*

The Scheme can only become effective if all conditions to the Proposal, including shareholder approvals and the sanction of the Court, have been satisfied or waived. The conditions to the Scheme are more fully set out in Part 5 of this document.

Provided all conditions to the Proposal have been satisfied, the Proposal will become effective upon the delivery to the Registrar of Companies in England and Wales of a copy of the order of the Court sanctioning the Scheme, which is expected to occur on 30 July 2004.

Unless the Scheme becomes effective by 31 December 2004 or such later date as the Board of OTL and the Board of OTHI shall agree and the Court may allow, the Scheme will lapse and the Proposal will not proceed. There can be no assurance that these conditions will be satisfied or waived or that the Proposal will actually be implemented.

### *Modification*

The Scheme contains a provision for OTL and OTHI to consent on behalf of all persons concerned to any modification of or addition to the Scheme, or to any conditions which the Court may approve or impose.

### **Certificates for OTHI Shares, Warrants and Options**

New certificates representing the Consideration Shares issued pursuant to the Scheme will be issued after the Effective Date by OTHI. The certificates shall bear the legends as required by the Securities Act and OTHI's certificate of incorporation. These certificates will be dispatched by first-class post in the name and to the address appearing in the register of members of OTL as of the Effective Date or, in the case of joint holders, to the holder whose name stands first in such register in respect of the joint holdings concerned, or in accordance with any special instructions regarding communications.

In order to receive a certificate for the Consideration Shares issued pursuant to the Scheme, holders of the Scheme Shares must deliver to OTL the original certificates representing their Scheme Shares, for cancellation. No certificate(s) for Consideration Shares will be issued until the corresponding certificate(s) for the Scheme Shares has been received by OTL. After the Effective Date, certificates representing Scheme Shares shall cease to have effect as documents of title to the Scheme Shares and shall only represent the right to receive a certificate for Consideration Shares.

If a certificate representing any Scheme Shares has been lost or destroyed, the holder of the Shares represented by the lost or destroyed certificate must execute and deliver to OTL and OTHI a deed of indemnity for such lost certificate in a form satisfactory to OTL and OTHI.

All documents and remittances sent by or to Scheme Shareholders, or as such persons shall direct, will be sent at their own risk and may be sent by post.

Certificates evidencing Options or Warrants shall be dealt with in the same way as the certificates for Consideration Shares. No certificate will be issued by OTHI until the existing certificate from OTL is returned or an indemnity for its loss provided.

Mandates in force at the Effective Date relating to the payment of dividends and other instructions given by Shareholders will, unless amended or revoked, be deemed as from the Effective Date to relate to the corresponding OTHI Shares.



## **OTL Extraordinary General Meeting**

The Extraordinary General Meeting has been convened on 6 July 2004 at 11 am to consider and, if thought fit, pass a special resolution (which requires a vote in favour of not less than 75% of the votes cast):

- (i) to approve the Scheme;
- (ii) to approve the cancellation of the Scheme Shares and subsequent issue of New OTL Shares in accordance with the Scheme; and
- (iii) to amend the articles of association of OTL in the manner described below.

In order that the shareholders can see that the implementation of the Scheme has not affected the rights attaching to their shares, the articles of association of OTL immediately before the implementation of the Scheme will be the same as the Certificate of Incorporation of OTHI after the Scheme. The Certificate of Incorporation of OTHI will include provisions (e.g. anti-dilution protection) which are not currently in the articles of association of OTL, but in the Shareholders' Agreement. Therefore, as an intermediate step, OTL will adopt new articles of association containing these provisions, prior to the implementation of the Scheme. The EGM resolution will adopt these new articles of association with immediate effect.

It is also proposed to amend the articles of association of OTL so that any OTL Shares issued to any person other than OTHI, its subsidiary undertakings or any person on behalf of any of them at or after the Cancellation Record Time will be automatically exchanged for shares in OTHI on the same terms as under the Scheme. This will avoid any person (other than OTHI, its subsidiary undertakings or any person on behalf of any of them) being left with OTL Shares after the Scheme. The resolution set out in the notice of Extraordinary General Meeting at the end of this document seeks OTL Shareholders' approval for such amendments.

## **Court Hearing**

Assuming that the requisite Shareholder approval is obtained, the Court will hold a hearing to sanction the Scheme and confirm the cancellation of Scheme Shares. All Shareholders are entitled to attend the Court sanction hearing in person or through a legal representative to support or oppose the sanctioning of the Scheme and the confirmation of the cancellation of Scheme Shares.

## **Board and Management**

The Board of Directors and management of OTHI will consist of the same individuals who currently serve on the Board of Directors and as management of OTL. The current Board of Directors and management of OTL are as follows:

### **Directors:**

<b>Name</b>	<b>Position</b>
Roger Brimblecombe	Chairman
Alan Williamson	Non-executive
Deirdre Gillespie	President and Chief Executive Officer
Nicholas Cross	Non-executive
Iain Wilcock	Non-executive

Martin Murphy	Non-executive
John Brown	Non-executive

### **Senior Management:**

<b>Name</b>	<b>Position</b>
Deirdre Gillespie	President and Chief Executive Officer
Frank Malinoski	Director of Development and Chief Medical Officer
Joerg Schneider	Vice President/Director of Research

### **The effect of the Scheme on the interests of the Board of Directors of OTL**

The material interests of the Directors of OTL are set out in Part 7 of this document. The effect of the Scheme on the interests of the Directors of OTL does not differ from its effect on the like interests of any other Shareholder or Optionholder or Warrantholder.

### **United Kingdom Taxation**

The comments set out below summarise the United Kingdom taxation treatment of the Scheme. They are based on existing law and what is understood to be current Inland Revenue practice. The comments are intended as a general guide and apply to persons resident (in the case of a corporate shareholder) or resident and ordinarily resident (in the case of an individual shareholder) for tax purposes in the United Kingdom who hold OTL Shares as an investment and not as securities to be realised in the course of a trade and who are the absolute beneficial owners thereof. The comments do not, therefore, apply to special classes of shareholders such as financial institutions. Accordingly, its applicability will depend upon the particular circumstances of individual shareholders. The summary is not exhaustive and does not generally consider tax reliefs or exemptions.

Future legislative, judicial or administrative changes or interpretations could alter or modify statements and conclusions set forth below, and these changes or interpretations could be retroactive and could affect the tax consequences to OTL Shareholders of the Scheme.

**The summary is not intended to provide specific advice and no action should be taken or omitted to be taken in reliance upon it. If you are in any doubt about your taxation position, or if you are resident or otherwise subject to taxation in a jurisdiction outside the United Kingdom, you should consult your own professional advisers immediately.**

#### *Capital gains tax*

For the purposes of UK taxation of chargeable gains, reorganisation relief should be available to OTL Shareholders in respect of the cancellation of their existing OTL Shares and the issue to them of OTHI Shares. Accordingly, such OTL Shareholders should not be treated as making a disposal of their OTL Shares for the purposes of UK taxation of capital gains, and the OTHI Shares issued should be treated as the same asset and as having been acquired at the same time as the OTL Shares. The OTHI Shares will therefore have the same base cost as the OTL Shares they replace.

OTL Shareholders are advised that clearance has been granted by the Board of the Inland Revenue under Section 707 of the Income and Corporation Taxes Act 1988 in respect of the

Scheme. OTL Shareholders who, either alone or together with persons connected with them, hold more than 5% of the shares in OTL are advised that clearance has been granted by the UK Inland Revenue under the provisions of Section 138 of the Taxation of Chargeable Gains Act 1992 in respect of the Scheme. Accordingly, the Board of the Inland Revenue has confirmed it is satisfied that the Scheme is effected for bona fide commercial reasons and does not form part of a scheme or arrangement of which the main purpose, or one of the main purposes, is an avoidance of liability to capital gains tax or corporation tax.

A subsequent disposal of all or any OTHI Shares acquired under the Scheme may result in a liability to United Kingdom taxation of capital gains depending on individual circumstances.

#### *Taxation of dividends*

UK resident corporate shareholders of OTL are not subject to UK tax in respect of dividends received from OTL. Such shareholders would however be subject to corporation tax in the UK in respect of dividends received from OTHI. Depending on individual circumstances, withholding tax levied by the U.S. authorities on dividends paid from OTHI to UK resident corporate shareholders should be available to reduce the UK tax liability on the dividend. Depending on individual circumstances, UK resident corporate shareholders owning more than 10% of the voting power in OTHI may also be able to make a claim to reduce UK corporate tax on dividends from OTHI based on the U.S. corporate taxes paid by OTHI.

UK resident individual shareholders in OTL are subject to UK income tax on any dividends received from OTL but are deemed to receive a tax credit that settles any basic rate income tax liability. Only shareholders paying higher rate tax will pay any additional income tax (at 25% of the net dividend). UK resident individual shareholders in OTHI will normally be subject to income tax (at either 10% or, for higher rate taxpayers, 32.5%) on any dividends received from OTHI. Depending on individual circumstances, any withholding tax levied by the U.S. authorities on dividends paid from OTHI to UK resident individual shareholders should be available to reduce the UK tax liability on the dividend.

#### *Stamp duty and SDRT*

No stamp duty or SDRT should be payable on the cancellation of OTL Shares or the issue of OTHI Shares under the Scheme of Arrangement.

#### *Other tax matters*

Venture capital trusts that hold OTL Shares are advised that advance assurance will be sought from the Board of the Inland Revenue that the provisions of paragraph 6(1) of the Venture Capital Trust (Exchange of Shares and Securities) Regulations 2002 S.I. 2002/2661 ("the Regulations") apply such that the provisions of Schedule 28B of the Income and Corporation Taxes Act 1988 ("TA") is satisfied and that shares issued by OTHI will be eligible shares and following the issue of a holding to any venture capital trust that holding will be regarded as a qualifying holding within Schedule 28B TA.

#### **United States Taxation**

The following is a summary of the material United States federal income tax consequences of the Scheme and the material United States federal income and estate tax consequences to

Non-U.S. Holders (as defined below) of holding and disposing of the Consideration Shares. The summary is based on current provisions of the Internal Revenue Code of 1986, as amended (the "Code"), currently applicable United States Treasury Regulations promulgated thereunder, and judicial and administrative decisions and rulings, which are subject to change, possibly on a retroactive basis. The summary does not discuss all aspects of United States taxation that may be relevant to the stockholders in light of their personal investment circumstances or to certain stockholders subject to special treatment under United States tax laws (such as securities dealers, tax-exempt entities (including qualified retirement plans) and insurance companies) and does not discuss the tax consequences under state, local, or foreign laws. The discussion below assumes that the Scheme Shareholders beneficially own Scheme Shares, and that the Shares and Consideration Shares are held as capital assets within the meaning of Section 1221 of the Code. Neither OTL nor OTHI has requested a ruling from the Internal Revenue Service (the "IRS") with respect to any of the matters discussed here, and there can be no assurance that the IRS will not challenge one or more of the tax consequences discussed here. Stockholders are urged to consult their own tax advisers regarding the federal, state, local, and other tax considerations of participating in the Scheme and of holding and disposing of the Consideration Shares.

For purposes of this discussion, the term "U.S. Holder" means a beneficial owner of the stock of OTHI that is for United States federal income tax purposes (i) a citizen or resident of the United States; (ii) a corporation or partnership created or organised in the United States or under the laws of the United States or of any State thereof; (iii) an estate whose income is includable in gross income for United States federal income tax purposes regardless of its source; (iv) a trust, administration of which is subject to the primary supervision of a United States court and one or more U.S. persons have authority to control all substantial decisions of the trust; or (v) a holder that has a valid election under applicable Treasury regulations to be treated as a United States person. The term "Non-U.S. Holder" means a beneficial owner of the stock of OTHI that is not a U.S. Holder. For United States federal income purposes, income earned through a domestic or foreign partnership or similar entity is generally attributed to its owners.

#### *Tax Treatment of the Scheme*

The Scheme should qualify as a reorganisation under Section 368(a)(1)(B) of the Code or should qualify for non-recognition treatment under Section 351 of the Code. In either case, the following federal income tax consequences will apply to the holders of the Scheme Shares:

- (i) No gain or loss will be recognised by the holders of the Scheme Shares with respect to the transfer to them of the Consideration Shares in exchange for their Shares pursuant to the Scheme, except for any gain or loss attributable to cash received in lieu of a fractional share of Scheme Shares.
- (ii) The tax basis of the Consideration Shares received by each Shareholder will be the same as the tax basis of the Scheme Shares exchanged therefor.
- (iii) The holding period of the Consideration Shares received by each Shareholder will include the period for which the Scheme Shares were held by such shareholder, provided that such Scheme Shares were held as a capital asset at the effective date of the Scheme.

#### *Consequences to U.S. Holders of Owning and Disposing of OTHI Shares*

*Dividends.* Generally, dividends paid to a U.S. Holder of the Consideration Shares will constitute dividends for United States federal income tax purposes to the extent of the current or accumulated earnings and profits of OTHI (if any) as determined under United States federal income tax law. Dividends paid to holders that are United States corporations may be eligible for the dividends received deduction. To the extent that a U.S. Holder receives dividends on Consideration Shares that would otherwise constitute dividends for United States federal income tax purposes, but that exceed the current or accumulated earnings and profits of OTHI, the distribution will be treated first as a non-taxable return of capital reducing the holder's tax basis in the Consideration Shares. Any distribution in excess of the holder's tax basis will be treated as capital gain.

*Sale of New Consideration Shares.* Generally, a U.S. Holder of Consideration Shares will recognise a capital gain or loss upon the sale, exchange, or other disposition of the Consideration Shares measured by the difference between: (i) the amount received in exchange for the Consideration Shares; and (ii) the U.S. Holder's tax basis in the shares.

#### *Information Reporting and Backup Withholding*

Backup withholding of United States federal income tax at a rate of 28% (subject to periodic reductions) may apply to payments received with respect to Consideration Shares by a U.S. Holder that is not an "exempt recipient" and that fails to provide certain identifying information (such as the holder's taxpayer identification number) and certification in the manner required. Generally, individuals are not exempt recipients and corporations and certain other entities are exempt recipients. Payments made in respect of the Consideration Shares must be reported to the IRS unless the U.S. Holder is an exempt recipient or otherwise establishes an exemption.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules from a payment to a U.S. Holder will be refunded, or credited against the holder's United States federal income tax liability, if any, provided that the required information or appropriate claim for refund is furnished to the IRS.

#### *Consequences to Non-U.S. Holders of Owning and Disposing of OTHI Shares*

*Dividends.* Generally, dividends paid to a Non-U.S. Holder of the Consideration Shares will be subject to United States withholding tax at the rate of 30% of the amount of the dividend,

or at a lower applicable treaty rate. Dividends paid to an address outside the United States are presumed to be paid to a resident of such country for purposes of determining the applicability of a treaty rate. A holder of the Consideration Shares who wishes to claim the benefit of an applicable treaty rate is required to file certain forms with OTHI or its agent. Such forms would contain the holder's name and address and other pertinent information certified by such holder under penalties of perjury.

A Non-U.S. Holder will be taxed in the same manner as a U.S. holder on dividends that are effectively connected with the conduct of a trade or business within the United States by the Non-U.S. Holder, unless an applicable treaty provides otherwise. Such dividends generally are not subject to the 30% withholding rate, provided that the Non-U.S. Holder timely files the appropriate form with OTHI or its agent. Moreover, in the case of a Non-U.S. Holder that is a corporation, a branch profits tax at the rate of 30% (or a lower applicable treaty rate) may be imposed on such corporation on its earnings (including dividends) that are effectively connected with a United States trade or business to the extent that such earnings are considered to be repatriated away from the United States trade or business.

*Sale of New Consideration Shares.* A Non-U.S. Holder will not be subject to United States federal income tax on any gain recognised upon the sale (or other disposition) of the Consideration Shares unless:

- (i) such gain is effectively connected with the conduct of a trade or business within the United States by such holder,
- (ii) such holder is an individual who has been present in the United States for at least 183 days during the taxable year of the disposition, the Consideration Shares constitute a capital asset in the hands of the holder and either (a) such individual's "tax home" for federal income tax purposes is in the United States or (b) the gain is attributable to an office or other fixed place of business maintained in the United States by such individual, or
- (iii) OTHI is or has been a "United States real property holding corporation" for federal income tax purposes and the Non-U.S. Holder owned directly or pursuant to certain attribution rules at any time during the five-year period ending on the date of disposition more than 5% of the Consideration Shares (assuming those shares are regularly traded on an established securities market). OTHI believes that it is not presently a United States real property holding corporation.

*Estate Tax.* The Consideration Shares owned (or treated as owned) by an individual who, at the time of death, is neither a citizen or a domiciliary of the United States will be includable in his or her gross estate for United States federal estate tax purposes and thus may be subject to United States estate tax, unless an applicable tax treaty provides otherwise.

#### *Information Reporting and Backup Withholding*

OTHI must report annually to the IRS and to each shareholder the amount of dividends paid to, and the tax withheld with respect to, each shareholder. These reporting requirements apply regardless of whether withholding was reduced by an applicable tax treaty or not required. Copies of these information returns may also be made available under the provisions of a specific treaty or agreement with the tax authorities in the country in which a Non-U.S. Holder resides.

Shareholders may be subject to backup withholding at the rate of 28% with respect to cash proceeds, if any, from the Scheme, gross proceeds from the sale of the Consideration Shares, or dividends paid on those shares, unless such holder (a) is a corporation or comes within certain other exempt categories or (b) provides a correct taxpayer identification number, certifies as to no loss of exemption from backup withholding, and otherwise complies with applicable requirements of the backup withholding rules. A stockholder who does not provide OTHI with the correct taxpayer identification number may be subject to penalties imposed by the IRS. United States backup withholding tax will generally not apply to payments to a payee at an address outside the United States unless the payer has knowledge that the payee is a United States person.

Payment to a Non-U.S. Holder of the proceeds of a sale of the Consideration Shares to or through a United States office of a broker will be subject to information reporting and backup withholding unless the holder certifies as to its status as a Non-U.S. Holder under penalties of perjury or otherwise establishes an exemption. Payment of the proceeds of a sale of Consideration Shares to or through a non-U.S. office of a broker generally will not be subject to backup withholding or information reporting. However, for information reporting purposes, certain brokers with substantial United States ownership or operations generally will be treated in a manner similar to United States brokers.

Any amounts withheld under the backup withholding rules will be credited against the shareholder's federal income tax liability, if any, or refunded, provided the required information is furnished to the IRS.

Non-U.S. Holders should consult their own tax advisers regarding the application of the information reporting and back-up withholding rules to them.

## PART 5

### CONDITIONS TO THE IMPLEMENTATION OF THE SCHEME

Implementation of the Scheme is subject to the following conditions being satisfied by not later than 31 December 2004 or such later date as the Board of Directors of OTL and OTHI shall agree and the Court shall allow:

- (a) the approval of the Scheme at the Extraordinary General Meeting by holders of at least 75% of the OTL Shares present and voting, either in person or by proxy;
- (b) the sanction (with or without modification) of the Scheme by the Court;
- (c) an office copy of the Order of the Court being delivered for registration to the Registrar of Companies in England and Wales in accordance with section 425(3) of the Companies Act;
- (d) registration of the Order of the Court cancelling the Scheme Shares in accordance with section 138 of the Companies Act;
- (e) each of the conditions set out below being satisfied and no matter arising which would render any such condition untrue or misleading or waived in accordance with this paragraph immediately prior to the Court Meeting:
  - (i) all authorisations, orders, grants, recognitions, confirmations, consents, clearances, certificates, licences, permissions and approvals ("**Approvals**") necessary or considered by OTL and OTHI to be necessary and appropriate for or in respect of the Proposal and the implementation of the Scheme having been obtained, in terms and in a form reasonably satisfactory to OTL and OTHI and, where the absence of any such Approvals would, in the opinion of OTL and OTHI, have a material adverse effect on OTL and OTHI and any of their respective subsidiaries taken as a whole, such Approvals remaining in full force and effect, and no intimation of an intention to revoke or not renew any of such Approvals having been received;
  - (ii) all necessary notifications and filings having been made and all necessary waiting periods (including any extensions thereof) under any applicable legislation or regulation of any jurisdiction having expired or having been terminated (as appropriate) and all necessary statutory and regulatory obligations in connection with the Proposal and the implementation of the Scheme in any jurisdiction having been complied with;
  - (iii) no central bank, government or governmental, quasi-governmental, supranational, statutory, investigative or regulatory body, trade agency, association, institution or professional or environmental body or court or any other similar person or body in any jurisdiction having taken, instituted, implemented or threatened any action, proceeding, suit, investigation or enquiry or enacted, made or proposed any statute, regulation or order, or taken any other step, which may adversely affect the Proposal or the Scheme;



- (iv) there being no provision of any arrangement, agreement, licences or other instrument to which OTL or OTHI or any of their respective subsidiaries is a party or by or to which OTL or OTHI or any of their respective subsidiaries may be bound or be subject which could or might result, to an extent which is material in the context of OTL and OTHI and their respective subsidiaries taken as a whole, in (A) any monies borrowed by OTL or OTHI or any of their respective subsidiaries being repayable or capable of being declared repayable prior to their stated maturity; (B) any such arrangement, agreement, licence or instrument being terminated or materially modified, or any material action or adverse effect being taken or arising thereunder; or (C) the interests of OTL or OTHI or any of their respective subsidiaries in, or the business of OTL or OTHI or any of their respective subsidiaries with, any person being terminated, modified or materially affected, in each case in consequence of the Proposal or Scheme;

OTL and OTHI may waive all or any of the conditions set out above in whole or in part to the extent they are able.

## PART 6

### COMPARISON OF THE SCHEME SHARES AND THE OTHI SHARES

In determining whether to approve the Scheme, Shareholders will want to consider the rights and obligations of a holder of the Scheme Shares as compared to those of a holder of the OTHI Shares. Generally speaking, the rights and obligations attaching to the OTHI Shares will remain substantially the same as those attaching to the Scheme Shares. The primary difference is that the OTHI Shares will have statutory rights under Delaware general corporate law, rather than English law. Accordingly, the contractual rights and obligations in some cases will be varied to comply with standard practice under Delaware general corporate law.

Currently, the contractual rights and obligations of the holders of the Scheme Shares are set forth in OTL's Articles of Association and the Shareholders' Agreement. After the consummation of the Scheme of Arrangement, the rights and obligations of the holders of the OTHI Shares will be primarily set forth in OTHI's Certificate of Incorporation and Bylaws. There will also be an agreement among OTHI and certain founder and investor shareholders (the "OTHI Agreement"), which will contain a voting agreement with respect to the election of the OTHI Board of Directors and certain other rights that mirror the current rights of the holders of the Scheme Shares.

Below is a description of the material rights and obligations setting out how they will be reflected upon the consummation of the Scheme.

#### *OTHI's Certificate of Incorporation*

Currently, under OTL's Articles of Association, the holders of OTL's A ordinary shares and B ordinary shares do not have the right to convert their shares into ordinary shares at their option. After the exchange of A ordinary shares and B ordinary shares for class A common stock and class B common stock, respectively, the holders of class A common stock and class B common stock will have the right to convert their shares into common stock at any time under the provisions of OTHI's Certificate of Incorporation.

This optional conversion provision works in conjunction with the anti-dilution protection provision in favour of the class B common stock contained in OTHI's Certificate of Incorporation. Currently, pursuant to the Shareholders' Agreement, the holders of B ordinary shares have the right to receive additional B ordinary shares if OTL issues securities at a price per share that is less than that paid for a B ordinary share. The effect of this anti-dilution protection provision is replicated in the OTHI's Certificate of Incorporation; however, the mechanism of achieving the anti-dilution protection is different. If OTHI issues securities at a price per share below the price paid for a share of class B common stock, rather than issue additional shares of class B common stock, the conversion price of the class B common stock into common stock is automatically adjusted such that, at conversion, the holders of class B common stock will receive additional shares of common stock. In this way, OTHI will not need to issue shares at each dilutive share issue but rather at such time that the class B common stock is converted. Until such conversion, many of the votes required of the stockholders are calculated on an "as-converted into common stock" basis.

In addition to the anti-dilution protection provision described above, two other provisions will be moved from the Shareholders' Agreement to OTHI's Certificate of Incorporation; however, the relocation of the provisions will not effect the underlying rights and obligations of the provisions. These provisions are (1) protective voting provisions that restrict OTHI and its subsidiaries from taking certain action without the approval of the holders of at least 50% of the class A common stock and class B common stock voting as one class on an as-converted basis and (2) a market stand-off provision which restricts each stockholder of OTHI from transferring any shares of OTHI for 180 days after OTHI's initial public offering.

#### *OTHI's Bylaws*

The Bylaws of OTHI will contain the general provisions of corporate governance for OTHI, which includes, among other things, calling and conducting of meetings of the stockholders and Board of Directors, election of the directors, and the duties of the officers. Accordingly, provisions with respect to general corporate governance that are currently set forth in OTL's Articles of Association or Shareholders' Agreement will be included in OTHI's Bylaws.

Currently, the Shareholders' Agreement sets forth provisions that govern the Board of Directors of each of OTL's subsidiaries (including provisions with respect to the number of directors and meetings required in a calendar year, limitation on the business transacted at Board meetings, notice obligations and quorum requirements). These provisions have not been replicated in OTHI's Bylaws. Rather, the OTHI Agreement provides that the holders of not less than 50% of the shares of class A common stock and class B common stock, voting together as one class on an as-converted basis, may require the Company to adopt charter documents for each of the Company's subsidiaries in the form requested by such holders. In this way, control of the Board of Directors of each of OTHI's subsidiaries remains the same.

#### *Omitted Rights and Obligations*

Currently, OTL's Articles of Association contain provisions with respect to alternate directors. These provisions have not been included in OTHI's charter documentation, as alternate directors are not allowed under Delaware general corporate law.

OTL's Articles of Association also contain compulsory transfer provisions that require a founder of OTL to transfer its shares back to OTL or its other shareholders if such founder ceases to be a director, employee or consultant of OTL. Certain shareholders, for whose benefit these provisions were originally inserted, have agreed with the founders that such provisions are no longer necessary. Accordingly, these provisions will be deleted in their entirety. The removal of such restrictions will be advantageous to the founders' tax position.

The confidentiality provision requiring all parties to the OTL shareholders agreement not to disclose any confidential information of OTL has not been replicated in the OTHI documentation.

## PART 7

### ADDITIONAL INFORMATION

#### 1. Responsibility

The directors of OTHI, whose names are set out on page 9 of this document accept responsibility for the information contained in this document relating to OTHI and the directors of OTHI. To the best of the knowledge and belief of such directors (who have taken all reasonable care to ensure that such is the case), the information for which they are stated in this paragraph to be responsible is in accordance with the facts and does not omit anything likely to affect the import of such information.

The Directors of OTL, whose names are set out on page 9 of this document, accept responsibility for the information contained in this document other than that for which the Directors of OTHI are responsible as stated in the paragraph above. To the best of the knowledge and belief of the Directors of OTL (who have taken all reasonable care to ensure that such is the case), the information for which they are stated in this paragraph to be responsible is in accordance with the facts and does not omit anything likely to affect the import of such information.

#### 2. Share Capital of OTL and OTHI

OTL has an authorised share capital of £226,287.50 divided into 2,850,000 A Ordinary Shares of £0.01 each, 6,328,750 B Ordinary Shares of £0.01 each and 13,450,000 Ordinary Shares of £0.01 each. At the date of this document, the issued share capital of OTL comprises 2,275,000 A Ordinary Shares, 3,703,750 B Ordinary Shares and 1,063,888 Ordinary Shares. In addition, 937,500 B Ordinary Shares are subject to warrants, save that warrants over 115,626 B Ordinary Shares may be satisfied by the issue of Ordinary Shares instead, at the election of the Warrantholder.

In addition, 616,770 Ordinary Shares are under option.

OTH I has an authorised share capital of 22,628,750 shares of which 13,450,000 are common stock, par value \$0.0001 per share, 2,850,000 are shares of class A common, par value \$0.0001 per share, and 6,328,750 are shares of class B common stock, par value \$0.0001 per share.

None of the shares of stock of OTHI are in issue.

#### 3. Disclosure of Directors' Interests

Name of Director	Number and Class of Shares Held in OTL	Number of Ordinary Shares in OTL over which options are held
Roger Brimblecombe	-	9,000
Alan Williamson	-	3,000
Deirdre Gillespie	-	225,000

Nicholas Cross	312,500 A Ordinary	-
Iain Wilcock	-	-
Martin Murphy	-	-
John Brown	-	-
Jeffrey Garner	-	-

#### 4. Miscellaneous

Save as disclosed in this document there is no agreement, arrangement or understanding (including any compensation arrangement) between OTHI and any Shareholder or Director of OTL having any connection with or dependence on the Scheme.

There is no agreement, arrangement or understanding whereby the beneficial ownership of any of the OTL Shares acquired by OTHI will, following the implementation of the Scheme, be transferred to any other person except another subsidiary of OTHI.

All communications, notices, share certificates, documents of title, other documents and remittances to be delivered by or sent to or from shareholders (or their agents) will be delivered or sent at their own risk.

The Scheme and all contracts arising therefrom and all actions taken or made or deemed to be taken or made under any of the foregoing shall be governed by and construed in accordance with English law, except with respect to the OTHI Agreement which is governed by the laws of the State of New York, the Certificate of Incorporation and Bylaws of OTHI which are adopted under Delaware General Corporation Law ("DGCL"), and all actions taken or made or deemed to be taken or made by OTHI which shall be under DGCL.

No acknowledgement of receipt of any remittances, share certificates and/or other documents of title will be given.

There are no outstanding rights to subscribe for Shares in OTL other than the Options and the Warrants.

#### 5. Documents available for inspection

The following documents are available for inspection at the Company's Registered Office up to the Effective Date:

Certificate of Incorporation of OTHI;  
 Bylaws of OTHI;  
 OTHI Agreement;  
 Existing Articles of Association of OTL; and  
 New Articles of Association of OTL.

**PART 8**

**THE SCHEME OF ARRANGEMENT**

**IN THE HIGH COURT OF JUSTICE**

**CH 2004 No. 3570**

**CHANCERY DIVISION**

**COMPANIES COURT**

**IN THE MATTER OF OXXON THERAPEUTICS LIMITED**

**and**

**IN THE MATTER OF THE COMPANIES ACT 1985**

**SCHEME OF ARRANGEMENT**

**(under section 425 of the Companies Act 1985)**

**between**

**OXXON THERAPEUTICS LIMITED**

**and**

**THE HOLDERS OF ITS SCHEME SHARES**

**(as hereinafter defined)**

**Preliminary**

- (A) In this Scheme, unless inconsistent with the subject or context, the following expressions bear the following meanings:

<b>"Act"</b>	the Companies Act 1985, as amended from time to time;
<b>"Business Day"</b>	a day, but not being a Saturday, Sunday or Bank Holiday, on which the clearing banks are open for business in the City of London;
<b>"Cancellation Record Time"</b>	5.00 pm on the Business Day immediately preceding the date of the Court Hearing;
<b>"OTL"</b>	Oxxon Therapeutics Limited, a company registered in England and Wales with Company Number 03671700;

<b>"Consideration Shares"</b>	1,063,888 shares of common stock, \$0.0001 par value, 2,275,000 shares of Class A common stock, \$0.0001 par value and 3,703,750 shares of Class B common stock, \$0.0001 par value of OTHI, each a <b>"Consideration Share"</b> ;
<b>"Court"</b>	the High Court of Justice in England and Wales;
<b>"Court Hearing"</b>	the hearing by the Court of the Petition to sanction the Scheme;
<b>"Court Meetings"</b>	the meetings of Shareholders convened by the Court to consider the Scheme, to be held on 6 July 2004, notices of which are set out on pages 42 to 44 of this document;
<b>"Court Order"</b>	the order of the Court sanctioning the Scheme under section 425 of the Act;
<b>"Effective Date"</b>	the date upon which the Scheme becomes effective in accordance with its terms;
<b>"holder"</b>	a registered holder and includes any person entitled by transmission
<b>"New OTL Shares"</b>	7,042,638 ordinary shares in OTL to be issued to OTHI pursuant to the Scheme;
<b>"OTHI"</b>	Oxxon Therapeutics Holdings, Inc., a corporation incorporated in Delaware, United States of America;
<b>"OTL Shares"</b>	ordinary shares of £0.01 each, A ordinary shares of £0.01 each, and B ordinary shares of £0.01 each in the share capital of OTL;
<b>"Scheme"</b>	the scheme of arrangement pursuant to section 425 of the Act which is set out at pages 29 to 33 of this document;
<b>"Scheme Consideration"</b>	the issue by OTHI of the following Consideration Shares in consideration for the cancellation of the Scheme Shares: one share of common stock, \$0.0001 par value for every ordinary share of £0.01 each; one share of Class A common stock, \$0.0001 par value for every A ordinary share of £0.01 each; and one share of Class B common stock, \$0.0001 par value for every B ordinary share of £0.01 each;

<b>"Scheme Record Time"</b>	5.00 pm on the Business Day immediately prior to the Effective Date;
<b>"Scheme Shareholders"</b>	the holders of Scheme Shares;
<b>"Scheme Shares"</b>	<ul style="list-style-type: none"> <li>(i) the OTL Shares in issue at the date of this document;</li> <li>(ii) any OTL Shares issued after the date of this document but prior to the Voting Record Time;</li> <li>(iii) any OTL Shares issued at or after the Voting Record Time but before the Cancellation Record Time on terms that the holders of such shares shall be bound by the Scheme or in respect of which their holders have undertaken to be bound by the Scheme</li> </ul>
<b>"Shareholders"</b>	holders of the OTL Shares; and
<b>"Voting Record Time"</b>	10.30 am on 6 July 2004.

- (B) The authorised share capital of OTL is £226,287.50 divided into 13,450,000 Ordinary shares of £0.01 each, 2,850,000 A ordinary shares of £0.01 each and 6,328,750 B ordinary shares of £0.01 each which as at 9 June 2004 (the last practicable date before publication of this document) 2,275,000 A ordinary shares, 3,703,750 B ordinary shares and 1,063,888 ordinary shares had been issued and were fully paid and the remainder were unissued.
- (C) The share capital of OTHI is 13,450,000 shares of common stock, \$0.0001 par value, 2,850,000 shares of class A common stock, \$0.0001 par value and 6,328,750 shares of class B common stock, \$0.0001 par value.
- (D) OTHI has agreed to be present by counsel at the Court Hearing to confirm its consent to the Scheme and its undertaking to fulfil the obligations which it has agreed to undertake pursuant to the Scheme.

## **THE SCHEME**

### **1. Cancellation of the Scheme Shares**

- 1.1 The capital of the Company shall be reduced by cancelling and extinguishing the Scheme Shares.
- 1.2 Forthwith and contingently upon the cancellation of Scheme Shares referred to in clause 1.1 taking effect (i) the authorised capital of OTL shall be increased by the creation of such number of ordinary shares of £0.01 each as shall have the same nominal value as the Scheme Shares cancelled pursuant to clause 1.1; and (ii) the credit arising in the books and records of OTL as a result of the cancellation of the



Scheme Shares shall be applied in paying up in full at par the new OTL ordinary shares of £0.01 created pursuant to the provisions of this clause 1.2 which shall be allotted and issued credited as fully paid to OTHI or its nominees.

- 1.3 Forthwith and contingently upon the issue of the New OTL Shares, OTHI shall, in consideration for the cancellation of Scheme Shares and the issue of the New OTL Shares and subject to clause 2.3, allot and issue to the holders of Scheme Shares (as appearing in the register of members of OTL at the Scheme Record Time) Consideration Shares credited as fully paid on the following basis:

- 1 share of common stock for every ordinary share of OTL;
- 1 share of class A common stock for every A ordinary share of OTL;
- 1 share of class B common stock for every B ordinary share of OTL.

## **2. Allotment and Issue of OTHI Shares**

- 2.1 Immediately after the Scheme becomes effective, OTHI shall make all such allotments of, and shall issue such OTHI Shares as are required to be issued by it to give effect to this Scheme to the persons respectively entitled thereto, such consideration to be settled as set out in clause 2.2.
- 2.2 Settlement of the Scheme Consideration shall be effected by the issue by OTHI to the relevant OTL Shareholder of a certificate in respect of such number of OTHI Shares as the OTL Shareholder is entitled to within two months of the Effective Date subject to clause 2.6 below.
- 2.3 The provisions of this clause 2 shall be subject to any prohibition or condition imposed by law. If, in respect of any holder of the Scheme Shares with a registered address outside the United Kingdom, OTHI is advised that the allotment and/or issue of OTHI Shares pursuant to this clause 2 to such holder (i) would infringe the laws of any jurisdiction outside the United Kingdom or (ii) would require OTHI to observe any governmental or other consent or any registration, filing or other formality with which OTHI is unable to comply or compliance with which OTHI regards as unduly onerous, OTHI may in its sole discretion determine that no OTHI Shares will be allotted and issued to such holder under this clause 2, but shall instead shall be allotted and issued to a nominee appointed by OTHI as trustee for such holder. In such an event, the nominee shall sell such OTHI Shares as soon as practicable after the Effective Date as is reasonable and allowable, at the best price which can reasonably be obtained, and shall account by cheque for the net proceeds of such sale (after the deduction of all expenses and commissions, including any value added tax payable thereon) by sending a cheque to the holder of such OTL Shares in accordance with the provisions of clause 2.4 of this clause 2 not later than 7 days following the sale of any relevant OTHI Shares pursuant to this clause 2.3.
- 2.4 All deliveries of notices, documents of title and cheques required to be made by this Scheme shall be effected by posting the same in pre-paid envelopes addressed to the persons respectively entitled thereto at their respective addresses as appearing in the relevant register of members (or, in the case of joint holders, to the address of that one of the joint holders whose name stands first in the said register of members in respect

of the joint holding) immediately prior to the date of their despatch or to such other addresses (if any) as such persons may respectively direct in writing.

- 2.5 Neither OTL nor OTHI nor any broker or agent of either of them shall be responsible for any loss or delay in the transmission of the documents of title or cheques posted in accordance with clause 2.4 which shall be posted at the risk of the addressee. The encashment of any cheque shall be a complete discharge to OTL for the monies represented thereby.
- 2.6 New certificates representing the OTHI Shares issued in the Scheme will be issued after the Effective Date and, with respect to a holder of the Scheme Shares, after such holder has delivered to OTL the original certificates representing their OTL Shares, duly endorsed. No certificate(s) for OTHI Shares will be issued until the corresponding certificate(s) for the OTL Shares has been received by OTL. After the Effective Date, certificates representing OTL Shares shall cease to have effect as documents of title to the OTL Shares and shall only represent the right to receive a certificate for OTHI Shares. If a certificate representing Scheme Shares has been lost or destroyed, the holder of the shares represented by the lost or destroyed certificate must execute and deliver to OTL and OTHI an indemnity agreement in a form satisfactory to OTL and OTHI.

### **3. Operation of this Scheme**

- 3.1 This Scheme shall become effective as soon as an office copy of the Order of the Court sanctioning this Scheme under section 425 of the Companies Act 1985 and confirming under section 137 of the said Act the reduction of capital provided for by this Scheme shall have been duly delivered to the Registrar of Companies for registration and registered by him.
- 3.2 Unless this Scheme has become effective on or before 31 December 2004 or such later date, if any, as OTL and OTHI may agree and the Court may allow, this Scheme shall never become effective.

### **4. Modification**

OTL and OTHI may jointly consent on behalf of all persons concerned to any modification of or addition to this Scheme or to any condition which the Court may approve or impose.

### **5. Costs**

OTL is authorised and permitted to pay all the costs and expenses relating to the negotiation, preparation and implementation of this Scheme.

Dated: 10 June 2004

## **OXXON THERAPEUTICS LIMITED**

### **NOTICE OF EXTRAORDINARY GENERAL MEETING**

Notice is given that an extraordinary general meeting of Oxxon Therapeutics Limited (the "Company") will be held at the offices of Wilmer Cutler Pickering Hale and Dorr LLP, 2<sup>nd</sup> Floor, Park Gate, 25 Milton Park, Oxford, OX14 4SH on 6 July 2004 at 11.00 am for the purpose of considering and, if thought fit, passing the following resolutions:

#### **ORDINARY RESOLUTION**

1. **THAT** the authorised share capital of the Company be increased from £134,500 to £226,287.50 by the creation of 9,178,750 new Ordinary Shares of £0.01 each;

#### **SPECIAL RESOLUTION**

2. **THAT** the new Articles of Association attached hereto be and they are hereby adopted as the new Articles of Association of the Company in substitution for and to the complete exclusion of its existing Articles of Association; and
3. **THAT:**
  - (i) the Scheme of Arrangement dated 10 June 2004 (the "Scheme") between the Company and the Scheme Shareholders (as defined in the Scheme), a print of which has been produced to this meeting and for the purposes of identification has been signed by the chairman of this meeting, be and is hereby approved in its original form or with any modification thereof, addition or condition thereto imposed or approved by the Court and the Directors be authorised to take all such action as they may consider necessary or appropriate for giving effect to the Scheme;
  - (ii) for the purpose of giving effect to the Scheme in its original form or with or subject to any modification, addition or condition approved or imposed by the Court:
    - (a) the share capital of the Company be reduced by cancelling all the Scheme Shares (as defined in the Scheme);
    - (b) forthwith and contingent on the reduction of capital taking effect:
      - (1) the share capital of the Company be increased by the creation of such number of new ordinary shares of £0.01 each as shall have the same aggregate nominal value as the aggregate nominal value of the Scheme Shares cancelled pursuant to paragraph (ii)(a) of this resolution; and
      - (2) the credit arising in the books of account of the Company as a result of the cancellation of the Scheme Shares shall be applied in paying up in full at par the new ordinary shares of £0.01 each referred to in paragraph (b)(1) above, the new ordinary shares to be allotted and issued credited as fully paid to Oxxon Therapeutics Holdings, Inc. and/or its nominee(s); and
  - (iii) the directors of the Company be authorised under section 80 of the Companies Act 1985 to give effect to this resolution and accordingly to allot the new ordinary shares

referred to in paragraph (b) above, provided that (i) this authority shall expire 5 years from the date of this resolution, (ii) the maximum aggregate nominal amount of shares which may be allotted hereunder shall be £70,426.38 and (iii) this authority shall be without prejudice to any other authority under section 80 granted before the date of this resolution.

**BY ORDER OF THE BOARD**

**Deirdre Gillespie**

.....  
Director

Registered Office:

2<sup>nd</sup> Floor  
Park Gate  
25 Milton Park  
Oxford  
OX14 4SH

Dated: 10 June 2004

**NOTE:**

1. A person entitled to attend and vote at the meeting is entitled to appoint a proxy to attend and on a poll vote instead of him. A proxy need not also be a member of the Company. Appointment of a proxy will not prevent a member from attending and voting at the EGM should he wish to do so.
2. A white form of proxy is enclosed with this document. Instructions for use are shown on the form.
3. To be valid, the instrument appointing a proxy, together with any authority under which it is executed or a copy of such authority certified notarially or in some other way approved by the directors must be deposited at the registered office of the Company not less than 48 hours before the time appointed for the EGM or the adjourned EGM.

## **OXXON THERAPEUTICS LIMITED**

### **NOTICE OF EXTRAORDINARY MEETING OF ORDINARY SHAREHOLDERS**

Notice is given that an extraordinary meeting of holders of Ordinary Shares of £0.01 in the capital of Oxxon Therapeutics Limited (the "Company") will be held at the offices of Wilmer Cutler Pickering Hale and Dorr LLP, 2<sup>nd</sup> Floor, Park Gate, 25 Milton Park, Oxford, OX14 4SH on 6 July 2004 at 11.05 am, or so soon thereafter as the EGM convened for the same place and date shall have concluded, for the purpose of considering and, if thought fit, passing the following resolution, which will be proposed as an extraordinary resolution:

### **EXTRAORDINARY RESOLUTION**

#### **THAT:**

This class meeting of holders of Ordinary Shares of £0.01 hereby sanctions the passing by the Company of the Resolutions set out in the notice dated 10 June 2004 convening the EGM of the Company (a print of which has been produced to this Meeting and has, for the purpose of identification, been signed by the Chairman of this Meeting), and sanctions each and every variation or subrogation or abrogation of the rights attached or belonging to the holders of Ordinary Shares of £0.01 each made or deemed to be made by the same.

#### **BY ORDER OF THE BOARD**

**Deirdre Gillespie**

.....  
Director

Registered Office:

2<sup>nd</sup> Floor  
Park Gate  
25 Milton Park  
Oxford  
OX14 4SH

Dated: 10 June 2004

#### **NOTE:**

1. A person entitled to attend and vote at the Ordinary Shareholder Class Meeting is entitled to appoint a proxy to attend and on a poll vote instead of him. A proxy need not also be a member of the Company. Appointment of a proxy will not prevent a member from attending and voting at the Ordinary Shareholder Class Meeting should he wish to do so.
2. A blue form of proxy is enclosed with this document. Instructions for use are shown on the form.
3. To be valid, the instrument appointing a proxy, together with any authority under which it is executed or a copy of such authority certified notarially or in some other

way approved by the directors must be deposited at the registered office of the Company not less than 48 hours before the time appointed for the Ordinary Shareholder Class Meeting or the adjourned Ordinary Shareholder Class Meeting.

## **OXXON THERAPEUTICS LIMITED**

### **NOTICE OF EXTRAORDINARY MEETING OF A ORDINARY SHAREHOLDERS**

Notice is given that an extraordinary meeting of holders of A Ordinary Shares of £0.01 in the capital of Oxxon Therapeutics Limited (the "Company") will be held at the offices of Wilmer Cutler Pickering Hale and Dorr LLP, 2<sup>nd</sup> Floor, Park Gate, 25 Milton Park, Oxford, OX14 4SH on 6 July 2004 at 11.10 am, or so soon thereafter as the Ordinary Shareholder Class Meeting convened for the same place and date shall have concluded, for the purpose of considering and, if thought fit, passing the following resolution, which will be proposed as an extraordinary resolution:

### **EXTRAORDINARY RESOLUTION**

#### **THAT:**

This class meeting of holders of A Ordinary Shares of £0.01 hereby sanctions the passing by the Company of the Resolutions set out in the notice dated 10 June 2004 convening the EGM of the Company (a print of which has been produced to this Meeting and has, for the purpose of identification, been signed by the Chairman of this Meeting), and sanctions each and every variation or subrogation or abrogation of the rights attached or belonging to the holders of A Ordinary Shares of £0.01 each made or deemed to be made by the same.

#### **BY ORDER OF THE BOARD**

**Deirdre Gillespie**

.....  
Director

Registered Office:

2<sup>nd</sup> Floor  
Park Gate  
25 Milton Park  
Oxford  
OX14 4SH

Dated: 10 June 2004

#### **NOTE:**

1. A person entitled to attend and vote at the meeting is entitled to appoint a proxy to attend and on a poll vote instead of him. A proxy need not also be a member of the Company. Appointment of a proxy will not prevent a member from attending and voting at the A Ordinary Shareholder Class Meeting should he wish to do so.
2. A red form of proxy is enclosed with this document. Instructions for use are shown on the form.
3. To be valid, the instrument appointing a proxy, together with any authority under which it is executed or a copy of such authority certified notarially or in some other

way approved by the directors must be deposited at the registered office of the Company not less than 48 hours before the time appointed for the A Ordinary Shareholder Class Meeting or the adjourned A Ordinary Shareholder Class Meeting.



## **OXXON THERAPEUTICS LIMITED**

### **NOTICE OF EXTRAORDINARY MEETING OF B ORDINARY SHAREHOLDERS**

Notice is given that an extraordinary meeting of holders of B Ordinary Shares of £0.01 in the capital of Oxxon Therapeutics Limited (the "Company") will be held at the offices of Wilmer Cutler Pickering Hale and Dorr LLP, 2<sup>nd</sup> Floor, Park Gate, 25 Milton Park, Oxford, OX14 4SH on 6 July 2004 at 11.15 am, or so soon thereafter as the A Ordinary Shareholder Class Meeting convened for the same place and date shall have concluded, for the purpose of considering and, if thought fit, passing the following resolution, which will be proposed as an extraordinary resolution:

### **EXTRAORDINARY RESOLUTION**

#### **THAT:**

This class meeting of holders of B Ordinary Shares of £0.01 hereby sanctions the passing by the Company of the Resolutions set out in the notice dated 10 June 2004 convening the EGM of the Company (a print of which has been produced to this Meeting and has, for the purpose of identification, been signed by the Chairman of this Meeting), and sanctions each and every variation or subrogation or abrogation of the rights attached or belonging to the holders of B Ordinary Shares of £0.01 each made or deemed to be made by the same.

#### **BY ORDER OF THE BOARD**

**Deirdre Gillespie**

.....  
Director

Registered Office:

2<sup>nd</sup> Floor  
Park Gate  
25 Milton Park  
Oxford  
OX14 4SH

Dated: 10 June 2004

#### **NOTE:**

1. A person entitled to attend and vote at the B Ordinary Class Meeting is entitled to appoint a proxy to attend and on a poll vote instead of him. A proxy need not also be a member of the Company. Appointment of a proxy will not prevent a member from attending and voting at the B Ordinary Shareholder Class Meeting should he wish to do so.
2. A green form of proxy is enclosed with this document. Instructions for use are shown on the form.

3. To be valid, the instrument appointing a proxy, together with any authority under which it is executed or a copy of such authority certified notarially or in some other way approved by the directors must be deposited at the registered office of the Company not less than 48 hours before the time appointed for the B Ordinary Shareholder Class Meeting or the adjourned B Ordinary Shareholder Class Meeting.

## **NOTICE OF COURT MEETING**

**IN THE HIGH COURT OF JUSTICE \_\_\_\_\_ No. 3570 of 2004**  
**CHANCERY DIVISION**  
**COMPANIES COURT**

Registrar Jaques.

### **IN THE MATTER OF OXXON THERAPEUTICS LIMITED**

### **AND IN THE MATTER OF THE COMPANIES ACT 1985**

**NOTICE IS HEREBY GIVEN** that by an order of the Court dated 8 June 2004 made in the above matters the Court has given liberty to convene a meeting ("the Ordinary Shareholder Court Meeting") of the holders of the ordinary shares of £0.01 each ("the Ordinary Shareholders") in the capital of Oxxon Therapeutics Limited ("the Company") for the purpose of considering and, if thought fit, approving (with or without modification) a Scheme of Arrangement ("the Scheme") proposed to be made between the Company and the Scheme Shareholders (as defined in the said Scheme of Arrangement) and that such meeting will be held at the offices of Wilmer Cutler Pickering Hale and Dorr LLP, 2<sup>nd</sup> Floor, Park Gate, 25 Milton Park, Oxford, OX14 4SH on 6 July 2004 at 11.30 am, or so soon thereafter as the EGM and Class Meetings convened for the same place and date shall have concluded, at which time and place all such Ordinary Shareholders are requested to attend.

A copy of the Scheme and the Explanatory Statement required to be furnished pursuant to section 426 of the Companies Act 1985 are incorporated in the document of which this Notice forms part.

The Ordinary Shareholders may vote in person at the Ordinary Shareholders Court Meeting or they may appoint another person, whether a member of the Company or not, as their proxy to attend and vote in their stead. A blue form of proxy for use in connection with the Ordinary Shareholder Court Meeting is enclosed herewith.

In the case of joint holders, the vote of the senior who tenders a vote, whether in person or by proxy, will be accepted to the exclusion of the votes of the other joint holder(s) and for this purpose seniority shall be determined by the order in which the names of the holders stand in the register of members.

It is requested that forms of proxy be lodged with the Company Secretary of Oxxon Therapeutics Limited, 2<sup>nd</sup> Floor, Park Gate, 25 Milton Park, Oxford, OX14 4SH not later than 48 hours before the date of the meeting but, if forms are not so lodged, they may be handed to the Chairman of the Ordinary Shareholder Court Meeting.

By the said Order, the Court has appointed Roger Brimblecombe or failing him Deirdre Gillespie to act as Chairman of the Ordinary Shareholder Court Meeting and has directed the Chairman to report the result thereof to the Court.

The Scheme will be subject to the subsequent sanction of the Court.

**DATED:** 10 June 2004

## **NOTICE OF COURT MEETING**

**IN THE HIGH COURT OF JUSTICE \_\_\_\_\_ No. 3570 of 2004**  
**CHANCERY DIVISION**  
**COMPANIES COURT**

Registrar Jaques.

### **IN THE MATTER OF OXXON THERAPEUTICS LIMITED**

### **AND IN THE MATTER OF THE COMPANIES ACT 1985**

**NOTICE IS HEREBY GIVEN** that by an order of the Court dated 8 June 2004 made in the above matters the Court has given liberty to convene a meeting ("the A Ordinary Shareholder Court Meeting") of the holders of the A Ordinary shares of £0.01 each ("the A Ordinary Shareholders") in the capital of Oxxon Therapeutics Limited ("the Company") for the purpose of considering and, if thought fit, approving (with or without modification) a Scheme of Arrangement ("the Scheme") proposed to be made between the Company and the Scheme Shareholders (as defined in the said Scheme of Arrangement) and that such meeting will be held at the offices of Wilmer Cutler Pickering Hale and Dorr LLP, 2<sup>nd</sup> Floor, Park Gate, 25 Milton Park, Oxford, OX14 4SH on 6 July 2004 at 11.35 am, or so soon thereafter as the Ordinary Shareholder Court Meeting convened for the same place and date shall have concluded, at which time and place all such A Ordinary Shareholders are requested to attend.

A copy of the Scheme and the Explanatory Statement required to be furnished pursuant to section 426 of the Companies Act 1985 are incorporated in the document of which this Notice forms part.

The A Ordinary Shareholders may vote in person at the A Ordinary Shareholders Court Meeting or they may appoint another person, whether a member of the Company or not, as their proxy to attend and vote in their stead. A red form of proxy for use in connection with the A Ordinary Shareholder Court Meeting is enclosed herewith.

In the case of joint holders, the vote of the senior who tenders a vote, whether in person or by proxy, will be accepted to the exclusion of the votes of the other joint holder(s) and for this purpose seniority shall be determined by the order in which the names of the holders stand in the register of members.

It is requested that forms of proxy be lodged with the Company Secretary of Oxxon Therapeutics Limited, 2<sup>nd</sup> Floor, Park Gate, 25 Milton Park, Oxford, OX14 4SH not later than 48 hours before the date of the meeting but, if forms are not so lodged, they may be handed to the Chairman of the A Ordinary Shareholder Court Meeting.

By the said Order, the Court has appointed Roger Brimblecombe or failing him Deirdre Gillespie to act as Chairman of the A Ordinary Shareholder Court Meeting and has directed the Chairman to report the result thereof to the Court.

The Scheme will be subject to the subsequent sanction of the Court.

**DATED:** 10 June 2004

## **NOTICE OF COURT MEETING**

**IN THE HIGH COURT OF JUSTICE \_\_\_\_\_ No. 3570 of 2004**  
**CHANCERY DIVISION**  
**COMPANIES COURT**

Registrar Jaques.

### **IN THE MATTER OF OXXON THERAPEUTICS LIMITED**

### **AND IN THE MATTER OF THE COMPANIES ACT 1985**

**NOTICE IS HEREBY GIVEN** that by an order of the Court dated 8 June 2004 made in the above matters the Court has given liberty to convene a meeting ("the B Ordinary Shareholder Court Meeting") of the holders of the B Ordinary shares of £0.01 each ("the B Ordinary Shareholders") in the capital of Oxxon Therapeutics Limited ("the Company") for the purpose of considering and, if thought fit, approving (with or without modification) a Scheme of Arrangement ("the Scheme") proposed to be made between the Company and the Scheme Shareholders (as defined in the Scheme) and that such meeting will be held at the offices of Wilmer Cutler Pickering Hale and Dorr LLP, 2<sup>nd</sup> Floor, Park Gate, 25 Milton Park, Oxford, OX14 4SH on 6 July 2004 at 11.40 am, or so soon thereafter as the A Ordinary Shareholder Meeting convened for the same place and date shall have concluded, at which time and place all such B Ordinary Shareholders are requested to attend.

A copy of the Scheme and the Explanatory Statement required to be furnished pursuant to section 426 of the Companies Act 1985 are incorporated in the document of which this Notice forms part.

The B Ordinary Shareholders may vote in person at the B Ordinary Shareholders Court Meeting or they may appoint another person, whether a member of the Company or not, as their proxy to attend and vote in their stead. A green form of proxy for use in connection with the B Ordinary Shareholder Court Meeting is enclosed herewith.

In the case of joint holders, the vote of the senior who tenders a vote, whether in person or by proxy, will be accepted to the exclusion of the votes of the other joint holder(s) and for this purpose seniority shall be determined by the order in which the names of the holders stand in the register of members.

It is requested that forms of proxy be lodged with the Company Secretary of Oxxon Therapeutics Limited, 2<sup>nd</sup> Floor, Park Gate, 25 Milton Park, Oxford, OX14 4SH not later than 48 hours before the date of the meeting but, if forms are not so lodged, they may be handed to the Chairman of the B Ordinary Shareholder Court Meeting.

By the said Order, the Court has appointed Roger Brimblecombe or failing him Deirdre Gillespie to act as Chairman of the B Ordinary Shareholder Court Meeting and has directed the Chairman to report the result thereof to the Court.

The Scheme will be subject to the subsequent sanction of the Court.

**DATED:** 10 June 2004