



DIVISION OF  
CORPORATION FINANCE

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

April 19, 2018

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

Gregory W. Hayes  
DLA Piper LLP (US)  
444 West Lake Street  
Suite 900  
Chicago, IL 60606-0089

**Re: Cash Tender Offer by Takeda for TiGenix**

Dear Mr. Hayes:

We are responding to your letter dated April 19, 2018, addressed to Ted Yu, Tiffany Posil, and Bryan Hough, as supplemented by telephone conversations with the staff, with regard to your request for exemptive and no-action relief. To avoid having to recite or summarize the facts set forth in your letter, we attach the enclosed copy of your letter and the accompanying letter from Belgian counsel. Unless otherwise noted, capitalized terms in this response letter have the same meaning as in your letter dated April 19, 2018.

Section I

On the basis of the representations and the facts presented in your letter, the Division of Corporation Finance, acting for the Commission pursuant to delegated authority, by separate order is granting an exemption from Exchange Act Rule 14d-11(e) to permit Takeda to pay for Ordinary Shares and ADSs tendered during any Subsequent Offering Period (including a Squeeze-Out Period) in accordance with Belgian law and practice, within ten business days following the publication of the results of each such Subsequent Offering Period, which payment may occur more than 20 business days after the date of tender.

In granting the exemptive relief described above, we note that in any Subsequent Offering Period, including any Squeeze-Out Period, Takeda will provide withdrawal rights through the term of such period for any Ordinary Shares or ADSs tendered during that period.

Section II

Based on the representations in your letter, as supplemented by telephone conversations with the staff, the Division of Corporation Finance will not recommend enforcement action under Exchange Act Rule 14d-11. This no-action position under Rule 14d-11 allows Takeda to

Gregory W. Hayes, Esq.  
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include multiple Subsequent Offering Periods (including a Squeeze-Out Period) in the U.S. Offer to coincide, except to the extent set forth in your letter, with such periods in the Global Offers, as described in your letter and permitted under Belgian law.

The foregoing exemptive and no-action relief is based solely on the representations and the facts presented in your letter dated April 19, 2018 and does not represent a legal conclusion with respect to the applicability of the statutory or regulatory provisions of the federal securities laws. The relief is strictly limited to the application of the rules listed above to this transaction. You should discontinue this transaction pending further consultations with the staff if any of the facts or representations set forth in your letter change. In addition, this position is subject to modification or revocation if at any time the Commission or the Division of Corporation Finance determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act.

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

Sincerely,

/s/ Ted Yu

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

Enclosure



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April 19, 2018

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

Attn: Ted Yu, Chief, Office of Mergers & Acquisitions  
Tiffany Posil, Special Counsel, Office of Mergers & Acquisitions  
Bryan Hough, Attorney Advisor, Office of Mergers & Acquisitions

Re: **Proposed Cash Tender Offer by Takeda for TiGenix NV**

Ladies and Gentlemen:

We are writing this letter (the "Letter") on behalf of our client, Takeda Pharmaceutical Company Limited, a company organized under the laws of Japan, with its registered office at 1-1, Doshomachi 4-chome, Chuo-ku, Osaka, Japan, registered under the Osaka Legal Affairs Register, Corporation Number: 1200-01-077461 ("Takeda"), in connection with its offer (the "Offer") to acquire all of the outstanding ordinary shares ("Ordinary Shares"), including Ordinary Shares represented by American Depositary Shares ("ADSs"), and warrants ("Warrants") issued by TiGenix NV ("TiGenix"), a public limited liability company (*naamloze vennootschap*) incorporated and existing under the laws of Belgium, and that are not yet owned by Takeda or its affiliates, for EUR 1.78 for each Ordinary Share and EUR 35.60 for each ADS (with each ADS representing twenty (20) Ordinary Shares) in each case in cash, without interest, less the amount of any withholding taxes that may be applicable (the "Offer Price"). The Offer Price payable to holders of ADSs will be paid in U.S. dollars converted at the then-current spot exchange rate at the time of payment and distributed, net of expenses, to the tendering holders of ADSs.<sup>1</sup>

The Offer will be comprised of: (i) two concurrent offers for the Ordinary Shares, including Ordinary Shares represented by ADSs, structured as (x) an offer to acquire all Ordinary Shares held by U.S. holders (within the meaning of Rule 14d-1(d) under the United States Securities Exchange Act of 1934, as amended (the "Exchange Act")), as well as all outstanding ADSs held by holders wherever located, in accordance with applicable U.S. law (the "U.S. Offer") and (y) an offer to acquire all outstanding Ordinary Shares held by holders wherever located in accordance with the applicable law of Belgium (the "Belgian Offer")<sup>2</sup>; and (ii) a single

<sup>1</sup> A \$0.05 per ADS fee for the cancellation of such tendered ADSs as contemplated by the Deposit Agreement for the ADSs will be paid by Takeda in connection with the U.S. Offer.

<sup>2</sup> Under Belgian law, U.S. holders of Ordinary Shares cannot be excluded from the Belgian Offer.



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offer for the Warrants in accordance with the applicable laws of Belgium and the United States (the "Warrant Offer," together with the Belgian Offer, the "Global Offers," and together with the U.S. Offer and the Belgian Offer, the "Offers").

The U.S. Offer will only be made pursuant to an offer to purchase and related materials, complying with the requirements of the Exchange Act and filed with the Securities and Exchange Commission (the "Commission"). At the time the U.S. Offer is commenced, Takeda will file, or cause to be filed, a tender offer statement on Schedule TO with the Commission and thereafter, TiGenix will file a solicitation/recommendation statement on Schedule 14D-9, in each case with respect to the U.S. Offer. The Global Offers will be made pursuant to a prospectus approved by the Financial Services and Markets Authority (the "FSMA"), the Belgian supervisory authority. The Offers will be made on substantially similar terms, except as further described herein, and completion of each of the Offers will be subject to the same conditions. The terms and conditions of the Offers are described in greater detail below.

Takeda intends to conduct the Offers in accordance with the Belgian Act of April 1, 2007 on takeover bids (the "Takeover Act"), Chapter II of the Belgian Royal Decree of April 27, 2007 on takeover bids (the "Takeover RD"), and Regulations 14D and 14E under the Exchange Act, as they apply to offers eligible for exemptive relief under Exchange Act Rule 14d-1(c) ("Tier I Relief"), with respect to the Warrant Offer, and Exchange Act Rule 14d-1(d) ("Tier II Relief") with respect to the U.S. Offer, and any relief granted by the Commission pursuant to this Letter, in each case, as applicable.

The Offers are being made pursuant to an Offer and Support Agreement, dated as of January 5, 2018, by and between Takeda and TiGenix (as it may be amended, modified or supplemented from time to time in accordance with its terms, the "Transaction Agreement"). On January 5, 2018, Takeda and TiGenix issued press releases announcing the Transaction Agreement. Pursuant to the Takeover RD, Takeda also filed with the FSMA a notice of its proposed offer and certain other mandatory documents on February 15, 2018. This notice was published on the same date by the FSMA, on its website.

On behalf of Takeda, we hereby respectfully request that the staff (the "Staff") of the Commission grant exemptive relief from the provisions of Exchange Act Rule 14d-11, or confirm that it will not recommend enforcement action, as applicable, in order for Takeda to conduct the U.S. Offer as described in this Letter, which will ensure that the U.S. Offer will be on terms at least as favorable as those offered under the Global Offers.

We are acting as U.S. counsel to Takeda. The statements made in this Letter with respect to Belgian law and regulations have been reviewed by DLA Piper UK LLP, Belgian counsel to Takeda, which counsel is submitting a separate letter to the Staff in respect to this request.



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## **I. Description of the Companies**

### **Takeda**

Takeda is the parent company of the Takeda group.

Takeda is a global, R&D-driven pharmaceutical company committed to bringing better health and a brighter future to patients by translating science into life-changing medicines. Takeda focuses its research efforts on oncology, gastroenterology (GI) and central nervous system therapeutic areas. It also has specific development programs in specialty cardiovascular diseases as well as late-stage candidates for vaccines. Takeda conducts R&D internally and with partners to stay at the leading edge of innovation. The pharmaceutical industry is undergoing changes and Takeda is moving forward with that trend. Innovation increasingly is coming from small biotech companies, not large pharmaceutical labs.

### **TiGenix**

TiGenix is an advanced biopharmaceutical company focused on developing and commercializing novel therapeutics from its proprietary technology platforms of allogeneic, or donor-derived, stem cells. On March 23, 2018, the European Commission approved Alofisel (darvadstrocel), previously Cx601, for the treatment of complex perianal fistulas in adult patients with nonactive/mildly active luminal Crohn's disease. This marks the first allogeneic stem cell therapy to receive central marketing authorization approval in Europe.

TiGenix is a reporting company under the Exchange Act and has advised us that it is a "foreign private issuer" as defined in Rule 3b-4(c) under the Exchange Act. The Ordinary Shares are listed on the Euronext Brussels (regulated market) and trade on Euronext Brussels in euros. The ADSs are listed on the Nasdaq.

## **II. Qualification for Tier I and Tier II Relief**

In conducting the Offers on the terms described in this letter, Takeda is relying on Rules 14d-1(c) (with respect to the Warrant Offer) and 14d-1(d) (with respect to the U.S. Offer) under the Exchange Act, which provides exemptive relief from otherwise applicable rules to persons conducting a tender offer under certain conditions.

### **A. Qualification for Tier I Relief**

TiGenix, the subject company of the Warrant Offer, has advised Takeda that it qualifies as a "foreign private issuer" as defined in Rule 3b-4 under the Exchange Act. Further, based on information received from TiGenix as further described below, Takeda reasonably believes that U.S. holders hold less than 10% of the Warrants sought in the Warrant Offer, as calculated on the



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basis specified in Instruction 2 to paragraphs (c) and (d) of Exchange Act Rule 14d-1 ("Instruction 2"), and, as such, the Warrant Offer therefore qualifies for Tier I Relief.

Takeda has been informed by TiGenix that as of December 24, 2017, a date within sixty (60) days of the public announcement of the Offers, Warrants to subscribe for 14,534,956 new Ordinary Shares were outstanding, and TiGenix's records reflected that as of such date, Warrants to subscribe for 316,600 new Ordinary Shares were held by Warrant holders who, according to TiGenix's records, had U.S. addresses. The Warrants are not publicly traded or listed on any stock exchange, and are not registered under Section 12 of the Exchange Act. Records with respect to the Warrants, including the number of Warrants outstanding and ownership of Warrants, are maintained by TiGenix. Based on this information, Takeda concluded that as of December 24, 2017, approximately 2.2% of the Warrants were held by U.S. holders for purposes of Rule 14d-1.

Takeda is not seeking any relief from the Staff in respect of the Warrant Offer.

#### **B. Qualification for Tier II Relief**

TiGenix, the subject company of the U.S. Offer, has advised Takeda that it qualifies as a "foreign private issuer" as defined in Rule 3b-4 under the Exchange Act. Further, based on information received, as further described below, Takeda reasonably believes that U.S. holders hold more than 10% but not more than 40% of the Ordinary Shares (including Ordinary Shares represented by ADSs) sought in the Offer, as calculated on the basis specified in Instruction 2, and, as such, the U.S. Offer therefore qualifies for Tier II Relief.

At Takeda's request, TiGenix engaged a third party (Ipreo) to conduct an analysis of ownership of the Ordinary Shares (including Ordinary Shares represented by ADSs) by U.S. holders in accordance with Instruction 2 as of January 30, 2018, a date less than 30 days after the announcement of the Offers. Ipreo reviewed TiGenix's shareholder register, which is maintained in Belgium, and reported that as of January 30, 2018, there were 295,654,573 Ordinary Shares issued and outstanding. 22,332,740 of these Ordinary Shares were represented by 1,116,637 ADSs.

Based on the look-through analysis performed by Ipreo, as of January 30, 2018 Takeda determined that there were (1) 154,938 Ordinary Shares held by U.S. holders as registered holders on TiGenix's shareholder register, (2) 13,788,968 Ordinary Shares held by U.S. holders as beneficial owners behind certain nominees located in the United States (other than Ordinary Shares represented by ADSs) and (3) 3,996,620 Ordinary Shares held by U.S. holders through ownership of ADSs, for a total of 17,940,526 Ordinary Shares. In addition, in accordance with Instruction 2, Takeda examined transparency reports filed publicly in accordance with the Belgium Law of May 2, 2007 disclosing major ownership and the articles of association of



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TiGenix (defined as greater than 3% ownership) of Ordinary Shares, as well as Schedules 13G and 13D filed with the SEC with respect to the Ordinary Shares. Based on this review, as well as information provided to TiGenix and Takeda from iPreo and certain holders of Ordinary Shares, Takeda determined that an additional 12,747,428 Ordinary Shares were held by U.S. holders for purposes of Rule 14d-1, for a total of 30,687,954 Ordinary Shares held by U.S. holders. Based on 284,002,795 Ordinary Shares (295,654,573 Ordinary Shares issued and outstanding as of January 30, 2018, less 11,651,778 Ordinary Shares owned by Takeda and its affiliates as of such date, in accordance with Instruction 2), Takeda concluded that as of January 30, 2018, approximately 10.8% of Ordinary Shares were held by U.S. holders for purposes of Rule 14d-1.

### **III. Proposed Offer Structure**

#### **A. General**

As described above, Takeda is seeking to acquire all the outstanding Ordinary Shares (including Ordinary Shares represented by ADSs) and Warrants not yet owned by it or its affiliates through separate tender offers: the U.S. Offer, the Belgian Offer and the Warrant Offer. The U.S. Offer will be conducted in accordance with the U.S. federal securities laws, including Regulations 14D and 14E under the Exchange Act, in each case except to the extent of any Tier II Relief provided for by Rule 14d-1(d) or granted pursuant to this Letter. Takeda will file a tender offer Statement on Schedule TO with the Commission on the date of commencement of the U.S. Offer.

The Belgian Offer will be conducted in accordance with applicable Belgian law and regulation, including the Takeover Act and the Takeover RD, which provide a comprehensive scheme for the regulation of Belgian tender offers, and will be subject to the review and approval of the FSMA.

The Warrant Offer will be conducted in accordance with Regulation 14E under the Exchange Act, except to the extent of any Tier I Relief, as well as in accordance with applicable Belgian law and regulation, including the Takeover Act and the Takeover RD, and will be subject to the review and approval of the FSMA.

The Offers will be made on substantially similar terms, except as further described herein, and completion of each of the Offers will be subject to the same conditions.



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## **B. Initial Acceptance Period**

The U.S. Offer will remain open for acceptance for not less than 20 business days,<sup>3</sup> and may be extended for such additional period or periods as may be determined by Takeda or as may be mandated by the provisions of Regulations 14D and 14E under the Exchange Act (subject to any exemptive relief granted) or Belgian law (as so extended, the "Initial Acceptance Period"). The Global Offers are currently scheduled to expire on the same day as the expiration of the Initial Acceptance Period. If the Global Offers are extended in accordance with Belgian law, Takeda intends to extend the U.S. Offer so that it will expire on the same day as the Global Offers.

The consummation of the Offers will be subject to the following two conditions (the "Offer Conditions"): (i) the tender (and not withdrawal) by holders of Ordinary Shares, Warrants and ADSs into the Offers, in aggregate, of a number of Ordinary Shares, Warrants and ADSs that, together with the Ordinary Shares, Warrants and ADSs owned by Takeda and its affiliates, represents or gives access to 85% or more of the voting rights represented or given access to by all of the outstanding Ordinary Shares, Warrants and ADSs on a fully diluted basis as of the end of the Initial Acceptance Period (the "Minimum Acceptance Condition") and (ii) no "Material Adverse Effect" (as defined in the Transaction Agreement) having occurred since the date of the Transaction Agreement (the "MAE Condition").

Security holders will have withdrawal rights during the Initial Acceptance Period, and Takeda is required to pay for Ordinary Shares and ADSs that were validly tendered and not withdrawn during the Initial Acceptance Period within ten (10) business days following the publication of the results of the Initial Acceptance Period (which publication shall occur within five (5) business days following the end of the Initial Acceptance Period, as discussed in section C.i., below), in accordance with Belgian law. However, Takeda expects to publish the results of the Initial Acceptance Period and to pay for any such validly tendered and not withdrawn securities within ten (10) business days following the expiration of the Initial Acceptance Period (though there can be no assurances that Takeda will actually be able to do so).

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<sup>3</sup> For purposes of the Offer and this Letter, "business day" shall mean any day on which the Belgian banks and the banks of the state of New York are open to the public, except Saturdays and Sundays, and otherwise as defined pursuant to Exchange Act Rule 14d-1(g)(3).





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### **C. Subsequent Offering Periods<sup>4</sup>**

Following the Initial Acceptance Period, unless the Offers have been terminated, one or more subsequent offering periods will be provided, each as described further below (each a "Subsequent Offering Period").

#### **i. Second Acceptance Period**

Assuming the Offers have not been terminated following the expiration of the Initial Acceptance Period due to an unwaived failure of an Offer Condition,<sup>5</sup> Takeda is contractually required under the Transaction Agreement to provide for a Subsequent Offering Period of at least ten (10) business days (the "Second Acceptance Period"),<sup>6</sup> during which security holders will be able to tender Ordinary Shares and ADSs not previously tendered into the U.S. Offer prior to the expiration of the Initial Acceptance Period. As discussed further in Section IV.A, under the Global Offers the Second Acceptance Period will commence on the tenth (10th) business day following the announcement of results of the Initial Acceptance Period. In order to comply with Exchange Act Rule 14d-1(d)(2)(v), under the U.S. Offer the Second Acceptance Period will commence immediately following the announcement of results of the Initial Acceptance Period. The expiration date of the Second Acceptance Period will be the same for each of the U.S. Offer and the Global Offers.

Pursuant to the Takeover Act and the Takeover RD, within five (5) business days following the end of the Initial Acceptance Period, Takeda will be required to publish in a notice: the results of the Offers; whether the Offer Conditions have been satisfied or waived; the number of securities it will hold following the acceptance of securities tendered during the Initial Acceptance Period; and the commencement date and time of the Second Acceptance Period and its duration. The notice must be published in one or more national Belgian newspapers, and will be published via press release in the U.S. in accordance with Exchange Act Rule 14d-11 and the accommodations of the Tier II Relief.<sup>7</sup> This publication will also be subject to the FSMA's prior

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<sup>4</sup> The U.S. Offer materials will describe in detail the Subsequent Offering Periods Takeda may elect, or may be required, to provide under Belgian law.

<sup>5</sup> Any waiver of the Minimum Acceptance Condition will be conducted in accordance with Section II.C.5 of Commission Guidance and Revisions to the Cross-Border Tender Offer, Exchange Offer, Rights Offerings, and Business Combination Rules and Beneficial Ownership Reporting Rules for Certain Foreign Institutions, Release Nos. 33-8957, 3458597 (Sept. 19, 2008) (the "2008 Cross-Border Release"). With respect to any waiver of the MAE Condition, Takeda plans to waive such condition prior to the expiration of the Initial Acceptance Period, and extend the Initial Acceptance Period for the Offers to the extent required under the U.S. tender offer rules.

<sup>6</sup> As used in this Letter, Second Acceptance Period shall also include any Subsequent Offering Period structured to satisfy the requirements of the Second Acceptance Period, as discussed in footnotes 9 and 11.

<sup>7</sup> Takeda also undertakes to publish in the New York Times or Wall Street Journal the results of the Initial Acceptance Period on or about the same date the results of the Initial Acceptance Period are published in a Belgian



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approval. As described herein, a similar publication will be required after the expiration of each Subsequent Offering Period.

Security holders tendering their securities during the Second Acceptance Period will have withdrawal rights during the Second Acceptance Period with respect to such tendered securities, and Takeda is required to pay for securities that are validly tendered and not withdrawn during the Second Acceptance Period within ten (10) business days following the publication of the results of the Second Acceptance Period (which publication shall occur within five (5) business days following the end of the Second Acceptance Period and will also be subject to the FSMA's prior approval), in accordance with Belgian law. However, Takeda expects to publish the results of the Second Acceptance Period and to pay for any such validly tendered and not withdrawn securities within ten (10) business days following the expiration of the Second Acceptance Period (though there can be no assurances that Takeda will actually be able to do so).

#### **ii. Mandatory Subsequent Offering Period**

If, following the expiration of the Initial Acceptance Period or the expiration of the Second Acceptance Period, Takeda holds, as a result of the Offers, at least 90% of the outstanding Ordinary Shares (including Ordinary Shares represented by ADSs), Takeda will be required under Belgian law to provide for a Subsequent Offering Period of at least five (5) business days and no more than fifteen (15) business days (the "Mandatory Subsequent Offering Period") during which security holders would be able to tender Shares and ADSs not previously tendered into the U.S. Offer prior to the expiration of the Initial Acceptance Period or prior to the expiration of the Second Acceptance Period, as applicable. If the 90% threshold is met, pursuant to the Takeover Act and the Takeover RD, within five (5) business days following the end of the Initial Acceptance Period or Second Acceptance Period, as applicable, Takeda will be required to publish in a notice: the results of the Initial Acceptance Period or Second Acceptance Period, as applicable; the number of securities it will hold following the acceptance of the securities tendered during the Initial Acceptance Period or Second Acceptance Period, as applicable; and, if applicable, the commencement date and time of the Mandatory Subsequent Offering Period and its duration. The notice must be published in one or more national Belgian newspapers, and will be published via press release in the U.S. in accordance with Exchange Act Rule 14d-11 and the accommodations of the Tier II Relief.<sup>8</sup> This publication will also be subject to the FSMA's prior approval.

Under Belgian law, the Mandatory Subsequent Offering Period must be commenced within ten (10) business days following the publication of the results of the Offers in the Initial Acceptance Period or Second Acceptance Period, as applicable. However, Takeda will

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national newspaper. This publication will specify that the results of any Subsequent Offering Period(s) will be published in the U.S. via press release.

<sup>8</sup> If the Mandatory Subsequent Offering Period follows the Initial Acceptance Period, the newspaper publication described in footnote 7 will be made.



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commence such Mandatory Subsequent Offering Period immediately following the announcement of results of the Initial Acceptance Period or Second Acceptance Period, as applicable.<sup>9</sup> The Mandatory Subsequent Offering Period, if any, would be applicable to each of the U.S. Offer and the Global Offers and the expiration date of the Mandatory Subsequent Offering Period will be the same for each of the U.S. Offer and the Global Offers. Security holders which tender during a Mandatory Subsequent Offering Period will have withdrawal rights during such Mandatory Subsequent Offering Period with respect to such securities, and Takeda is required to pay for securities that were validly tendered and not withdrawn during the Mandatory Subsequent Offering Period within ten (10) business days following the publication of the results of the Mandatory Subsequent Offering Period (which publication shall occur within five (5) business days following the closing of the Mandatory Subsequent Offering Period and will also be subject to the FSMA's prior approval), in accordance with Belgian law. However, Takeda expects to publish the results of the Mandatory Subsequent Offering Period and to pay for any such validly tendered and not withdrawn securities within ten (10) business days following the expiration of the Mandatory Subsequent Offering Period (though there can be no assurances that Takeda will actually be able to do so).

If, following the expiration of the Mandatory Subsequent Offering Period, Takeda holds less than 95% of the outstanding Ordinary Shares (including Ordinary Shares represented by ADSs), Takeda may, in its sole discretion, elect to provide for an additional Subsequent Offering Period(s) of at least five (5) business days, in the same manner and timing as the Mandatory Subsequent Offering Period<sup>10</sup> described above (each a "Voluntary Subsequent Offering Period"). For example, if Takeda holds 85% of the outstanding Ordinary Shares (including Ordinary Shares represented by ADSs) following the expiration of the Initial Acceptance Period, holds 91% of the outstanding Ordinary Shares (including Ordinary Shares represented by ADSs) at the expiration of the Second Acceptance Period, then provides a Mandatory Subsequent Offering Period at the expiration of which it holds 93% of the outstanding Ordinary Shares (including Ordinary Shares represented by ADSs), Takeda may then elect to provide a Voluntary Subsequent Offering Period in an attempt to bring its holdings of the outstanding Ordinary Shares (including Ordinary Shares represented by ADSs) to the 95% Squeeze-Out threshold discussed below. However, we also note that under Belgian law the period starting from the first day of the Initial Acceptance Period until the last day of any Subsequent Offering Period(s) other than a Mandatory Subsequent Offering Period or Squeeze-Out Period (as defined below), cannot exceed ten (10) weeks, making it unlikely that a Voluntary Subsequent Offering Period would be provided following the Second Acceptance Period and Mandatory Subsequent Offering Period.

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<sup>9</sup> If the Mandatory Subsequent Offering Period were required to be undertaken following the Initial Acceptance Period, Takeda would commence such Mandatory Subsequent Acceptance Period in accordance with the timing of the Second Acceptance Period, as described in Section 3.C.i, in which case such Mandatory Subsequent Offering Period would satisfy the requirements of the Second Acceptance Period.

<sup>10</sup> Assuming such Mandatory Subsequent Offering Period was not structured to satisfy the requirements of the Second Acceptance Period, as described in Footnote 9.



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### iii. Squeeze-Out

If, following the expiration of the Initial Acceptance Period or any prior Subsequent Offering Period, as applicable, Takeda holds, as a result of the Offers, at least 95% of the outstanding Ordinary Shares (including Ordinary Shares represented by ADSs) and Takeda acquired at least 90% of the Ordinary Shares subject of the Offers, Takeda may, in accordance with Belgian law, and is required under the Transaction Agreement to, proceed with a squeeze out (the "Squeeze-Out"), organized as an additional Subsequent Offering Period (the "Squeeze-Out Period"), during which security holders would be able to tender Ordinary Shares and ADSs not previously tendered into the U.S. Offer prior to the expiration of the Initial Acceptance Period or any prior Subsequent Offering Period, under the same conditions as in such previous offering period(s) and at the Offer Price.

Security holders will also have withdrawal rights during the Squeeze-Out Period, as required under Belgian law. However, pursuant to Belgian law, at the conclusion of the Squeeze-Out Period, any Ordinary Shares (including Ordinary Shares represented by ADSs) and Warrants not tendered in the Offers shall be deemed transferred to Takeda by operation of Belgian law for the Offer Price as further described below.

Under Belgian law, the Squeeze-Out Period must be commenced within three (3) months following the expiration of the Initial Acceptance Period, or any prior Subsequent Offering Period, as applicable, and must remain open for at least fifteen (15) business days. However, if the thresholds for a Squeeze-Out are met, Takeda would commence a Squeeze-Out Period immediately following the announcement of results of the Initial Acceptance Period, or prior Subsequent Offering Period, as applicable.<sup>11</sup> The Squeeze-Out Period, if any, would be applicable to each of the U.S. Offer and the Global Offers and the expiration date of the Squeeze-Out Period will be the same for each of the U.S. Offer and the Global Offers. Within five (5) business days following the end of the Squeeze-Out Period, Takeda must publish the results of the Squeeze-Out Period. The notice must be published in one or more national Belgian newspapers and will be subject to the FSMA's prior approval. Takeda will also publish the notice via press release in the U.S. and file the same with the Commission.

Takeda is required to pay for securities that were validly tendered and not withdrawn during the Squeeze-Out Period within ten (10) business days following the publication of the results of the Squeeze-Out Period, in accordance with Belgian law. However, Takeda expects to publish the results of the Squeeze-Out Period and to pay for any such validly tendered and not withdrawn securities within ten (10) business days following the expiration of the Squeeze-Out

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<sup>11</sup> If the Squeeze-Out could be undertaken following the Initial Acceptance Period, Takeda would commence the Squeeze-Out Period in accordance with the timing of the Second Acceptance Period, as described in Section 3.C.i, in which case the Squeeze-Out Period would satisfy the requirements of the Second Acceptance Period. If the Squeeze-Out follows the Initial Acceptance Period, the newspaper publication described in footnote 7 will be made.



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Period (though there can be no assurances that Takeda will actually be able to do so). The funds necessary to pay the Offer Price for any untendered securities will be deposited with the Bank for Official Deposits (*Deposito- en Consignatiekas / Caisse des depots et consignations*) for the benefit of security holders who did not previously tender into the Offers prior to expiration of the Squeeze-Out.<sup>12</sup>

#### **IV. Discussion and Requested Relief**

##### **A. Rule 14d-11: To permit the U.S. Offer to have multiple subsequent offering periods**

As noted above, the U.S. Offer will be comprised of the Initial Acceptance Period and at least one Subsequent Offering Period. We note that Regulations 14D and 14E and Exchange Act Rule 14d-11 do not expressly prohibit more than one subsequent offering period. However, the Staff has indicated that a request for relief on this issue is appropriate, and we are also aware of a recent transaction significantly similar to the Offers in which such relief was requested and granted by the Staff. *See Cash Tender Offer by Sanofi for Ablynx NV* (March 27, 2018) (the "Sanofi/Ablynx Letter"). As such, on behalf of Takeda, we respectfully request confirmation from the Staff that it will not recommend enforcement action if the U.S. Offer is conducted as described in the Letter with more than one Subsequent Offering Period to coincide (except to the extent set forth herein) with those of the Global Offers.

We also note that Rule 14d-11 does not provide for a maximum limit on how long a subsequent offering period can last (prior to 2008, the rule contained a maximum twenty (20) business day limit). Therefore, while having multiple subsequent offering periods is arguably not permissible under the language of Rule 14d-11, having a single subsequent offering period which would last for the duration of the Offers (including any Subsequent Offering Periods under the Global Offers) would be permissible. For the reasons discussed below, we believe that allowing multiple Subsequent Offering Periods in the U.S. Offer would be consistent with ensuring that the U.S. Offer would be on terms at least as favorable as those offered under the

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<sup>12</sup> Note that in addition to a Squeeze-Out Period, if following the expiration of the Initial Acceptance Period, or an prior Subsequent Offering Period, as applicable, Takeda holds at least 95% of the Ordinary Shares (including Ordinary Shares represented by ADSs), any holder of Ordinary Shares (including Ordinary Shares represented by ADSs) who has not tendered such Ordinary Shares (including Ordinary Shares represented by ADSs) can obligate Takeda to acquire such Ordinary Shares (including Ordinary Shares represented by ADSs) at the Offer Price, provided that Takeda acquired at least 90% of the Ordinary Shares through acceptance of the Offers (the "Sell-Out"). Any such holder of Ordinary Shares (including Ordinary Shares represented by ADSs) can exercise its Sell-Out right by requesting payment from Takeda for such securities within three (3) months of the last to expire of the Initial Acceptance Period, or any Subsequent Offering Period, as applicable, by registered mail with acknowledgment of receipt, provided that such security holder was not already squeezed out following the expiration of a Squeeze-Out Period.



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Global Offers, as required by Rule 14d-1(d)(2)(ii). The points covered below are also consistent with the relief request contained in the Sanofi/Ablynx Letter, which, like the Offers, related to a cash tender offer for securities of a Belgian public company, including ordinary shares, American depository receipts and warrants, with the offers related to the ordinary shares and American depository receipts subject to Tier II Relief.

First, we do not believe there is any material substantive difference between allowing for multiple subsequent offering periods or a single subsequent offering period lasting as long as the combined length of the multiple subsequent offering periods.

Second, having a single subsequent offering period under the U.S. Offer rather than multiple subsequent offering periods could disadvantage holders of ADSs and U.S. holders of Ordinary Shares because such holders would not be paid for their securities as quickly. Tier II Relief provides that payment for securities in a subsequent offering period may be made in accordance with local law and practice. Under Belgian law, a bidder must pay for securities that were validly tendered and not withdrawn during a subsequent offering period within ten (10) business days following the announcement of the results of the subsequent offering period. Therefore, if relief is not granted as requested herein and as a result the U.S. Offer has a single subsequent offering period equal in duration to the combined length of the multiple subsequent offering periods permitted by Belgian law, security holders tendering into the U.S. Offer would not receive payment for their securities until after such single subsequent offering period, while security holders tendering into the Global Offers would receive payment for their securities following each Subsequent Offering Period.

Third, having different subsequent offering periods in the U.S. Offer and Global Offers would significantly complicate the Offers because it may not be possible to calculate when certain ownership thresholds had been met due to the inability to calculate the results of the U.S. Offer prior to the expiration of a single subsequent offering period.

Fourth, with respect to the Squeeze-Out Period, in addition to the reasons set forth above, we believe that although Belgian law requires a subsequent offering period in connection with the Squeeze-Out, a Squeeze-Out is substantively similar to a compulsory acquisition of shares pursuant to a merger. As discussed above, any Ordinary Shares (including Ordinary Shares represented by ADSs) and Warrants not tendered during a Squeeze-Out Period are deemed transferred to a bidder by operation of law for the same consideration. Therefore, there is not an investment decision being made in this case, other than with respect to the timing of receipt of the consideration.

Finally, we do not believe that the relief requested in this Letter should be affected by having the Second Acceptance Period start earlier under the U.S. Offer than under the Global Offers. Takeda is obligated pursuant to the Transaction Agreement to commence the Second



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Acceptance Period on the tenth (10<sup>th</sup>) business day following the announcement of results of the Initial Acceptance Period, although the Transaction Agreement contemplates the possibility of modifying certain terms of the Offers if necessary to comply with SEC or FSMA requirements. We have been advised that this ten (10) business day period between the announcement of results of the Initial Acceptance Period and commencement of the Second Acceptance Period was requested by TiGenix to allow adequate time for holders of Warrants that were not tendered into the Initial Acceptance Period to exercise their Warrants (which in some cases will become vested and exercisable only upon acceptance and payment for securities tendered in the Initial Acceptance Period) and tender the related Ordinary Shares into the Offers, which may be more advantageous to certain Warrant holders than tendering their Warrants directly into the Warrant Offer. Following the Initial Acceptance Period, TiGenix will communicate with such Warrant holders regarding vesting and exercise mechanics, and Warrant holders wishing to exercise will then have to follow the necessary steps to exercise their Warrants and TiGenix will need to complete the corporate and Belgian law formalities required to issue them the corresponding Ordinary Shares resulting from such exercise. The ten (10) business day period between the announcement of results of the Initial Acceptance Period and commencement of the Second Acceptance Period will help ensure adequate time for TiGenix and Warrant holders to take these actions.

In order to comply with Rule 14d-1(d)(2)(v), under the U.S. Offer the Second Acceptance Period will commence immediately following the announcement of results of the Initial Acceptance Period. However, in accordance with the Transaction Agreement, under the Global Offers the Second Acceptance Period would not commence until the tenth (10<sup>th</sup>) business day following the announcement of results of the Initial Acceptance Period. The expiration date of the Second Acceptance Period will be the same for each of the U.S. Offer and the Global Offers.

As noted above, having a single subsequent offering period in the U.S. Offer and multiple ones in the Global Offers would significantly complicate the Offers because it may not be possible to calculate when certain ownership thresholds had been met due to the inability to calculate the results of the U.S. Offer prior to the expiration of a single subsequent offering period. However, simply allowing the Second Acceptance Period to commence earlier under the U.S. Offer would not give rise to such complications. In addition, Rule 14d-1(d)(2)(ii) does not require that all terms of the Offers be the same, but only that the U.S. Offer be on terms at least as favorable as those offered under the Global Offers. Commencing the Second Acceptance Period earlier under the U.S. Offer will provide participants in the U.S. Offer more time to tender their securities into the Second Acceptance Period and, if desired, exercise withdrawal rights with respect to securities tendered during such period. In addition, the Second Acceptance Period will expire, and acceptance and payment of securities tendered during the Second Acceptance Period will be made, at the same time under both Offers. Therefore, we believe the terms of the U.S. Offer are at least as favorable as those offered under the Global Offers.



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**B. Rule 14d-11(e): To permit prompt payment of the Offer Price in any subsequent offering period in accordance with Belgian law and practice**

Exchange Act Rule 14d-11(e) requires, as a condition to a subsequent offering period contemplated by the first paragraph of Rule 14d-11, that an offeror immediately accepts and promptly pays for all securities as they are tendered during the subsequent offering period. In addition, Exchange Act Rule 14d-1(d)(2)(iv) provides that where payment may not be made on a more expedited basis under home jurisdiction law or practice, payment for securities tendered during any subsequent offering period within 20 business days of the date of tender will satisfy the prompt payment requirements of §240.14d-11(e).

Pursuant to the Takeover Act and the Takeover RD, within five (5) business days following the end of the Initial Acceptance Period, or any Subsequent Offering Period, as applicable, Takeda will be required to publish the results of the applicable period. DLA Piper UK LLP has advised us that, since the results must be published in Belgian newspapers and such publication will also be subject to the FSMA's prior approval, in practice, offerors often require a few days in order to publish such results. As noted above, pursuant to Belgian law and practice, settlement for Ordinary Shares and ADSs that were validly tendered and not withdrawn must occur within ten (10) business days following the publication of the results of the Initial Acceptance Period or any Subsequent Offering Period, as applicable. DLA Piper UK LLP has further advised us that this ten (10) business day-period should allow the U.S. and Belgian tender agents time to coordinate payments pursuant to the Offers between U.S. and Belgian tender agents. Thus, it is possible that payment for Ordinary Shares and ADSs tendered during any Subsequent Offering Period may exceed 20 business days from the date of tender. Therefore, even if Takeda complies with the requirements of Belgian law and practice, there can be no assurance that all of the conditions for exemptive relief under Rule 14d-1(d)(2)(iv) will be met.

When adopting current Rule 14d-1(d)(2)(iv), the Commission noted that the reason for including a maximum 20-business day time limit to pay for tendered securities rather than simply deferring to local law was the related decision to eliminate the limitation on length of subsequent offering periods under Tier II relief (as noted in Section IV.A.), and the concern that during such periods no withdrawal rights would be available.<sup>13</sup> However, as noted above, under Belgian law and practice, withdrawal rights are provided during any Subsequent Offering Period (and they would also be made available in the U.S. Offer during any Subsequent Offering Periods), and as a result we believe that granting the relief requested herein is consistent with the best interest of participants in the U.S. Offer.

Accordingly, on behalf of Takeda, we hereby respectfully request exemptive relief from the provisions of Rule 14d-11(e) to permit Takeda to pay for Ordinary Shares and ADSs that are

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<sup>13</sup> 2008 Cross-Border Release at pgs. 62-63





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validly tendered and not withdrawn during a Subsequent Offering Period in accordance with Belgian law and practice in the manner set forth in this Letter, notwithstanding that such compliance with Belgian law and practice may not qualify Takeda for the exemptive relief from the "prompt payment requirements" of Rule 14d-11(e) available under Rule 14d-1(d)(2)(iv).

**V. Requested Exemptive/ No-Action Relief**

Based on the foregoing, we respectfully request that the Commission grant Takeda exemptive relief from the provisions of Exchange Act Rule 14d-11, or confirm that it will not recommend enforcement action, as applicable, to allow Takeda to conduct the U.S. Offer as described in this Letter:

- No-action relief from the provisions of Rule 14d-11 to permit the U.S. Offer to be conducted with more than one subsequent offering period; and
- Exemptive relief from Rule 14d-11(e) to permit prompt payment of the Offer Price in any subsequent offering period in accordance with Belgian law and practice.

We appreciate the Staff's prompt consideration of this matter. Please do not hesitate to contact the undersigned at (312) 368-2155 or Sanjay Shirodkar at (202) 799-4184 with any questions regarding this matter.

Sincerely,

**DLA Piper LLP (US)**

A handwritten signature in black ink, appearing to read 'Gregory W. Hayes', with a horizontal line extending to the right.

Gregory W. Hayes



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**Our reference**  
KS/KS/373757/1  
/5115297.1

Attn: Ted Yu, Chief, Office of Mergers &  
Acquisitions

Tiffany Posil, Special Counsel, Office of  
Mergers & Acquisitions

Bryan Hough, Attorney Advisor, Office of  
Mergers & Acquisitions

April 19, 2018

**Re: Proposed Cash Tender Offer by Takeda for TiGenix NV**

Ladies and Gentlemen:

We are writing on behalf of our client, Takeda Pharmaceutical Company Limited, a company organized under the laws of Japan, with its registered office at 1-1, Doshomachi 4-chome, Chuo-ku, Osaka, Japan, registered under the Osaka Legal Affairs Register, Corporation Number: 1200-01-077461 ("*Takeda*") in connection with its offer (the "*Offer*") to acquire all of the outstanding ordinary shares ("*Ordinary Shares*"), including Ordinary Shares represented by American Depositary Shares ("*ADSs*") and warrants issued by TiGenix NV, a limited liability company (*naamloze vennootschap / société anonyme*) under the laws of Belgium ("*TiGenix*") that are not yet owned by Takeda or its affiliates.

We are acting as Belgian counsel to Takeda in connection with the Offer, as described in and on the terms set out in an exemptive/no-action relief letter dated April 19, 2018, sent to the Securities and Exchange Commission (the "*Commission*") by Gregory Hayes of DLA Piper LLP (US) (the "*Letter*"). We understand that in connection with the Letter, the Commission has requested that we give our opinion as to certain Belgian law matters set out in the Letter.

#### Limitations

This opinion letter is strictly limited to the matters stated in it and may not be read as extending by implication to any matters not specifically referred to in it.

For purposes of this opinion, we have exclusively reviewed and relied upon the Letter. We have not reviewed any other document, nor have we investigated or verified any factual matter disclosed to us in the course of our review.

DLA Piper UK LLP is regulated by the 'Ordre des avocats à la Cour de cassation' of Belgium, the 'Ordre français des avocats' of the Brussels Bar, the 'Nederlandse Orde van Advocaten' of the Brussels Bar and the 'Orde van Advocaten' of the Antwerp Bar.

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This opinion letter sets out our opinion on certain matters of the laws with general applicability of Belgium, and, insofar as they are directly applicable in Belgium, of the European Union, as at today's date and as presently interpreted under published authoritative case law of Belgian courts, the General Court and the Court of Justice of the European Union. No undertaking is assumed on our part to revise, update or amend this opinion letter in connection with or to notify or inform you of, any developments and/or changes of the laws of Belgium and of the European Union subsequent to today's date. The opinions expressed in this opinion letter are to be construed and interpreted in accordance with Belgian law.

### **Opinion**

Based on and subject to the foregoing, we are of the opinion that the statements of Belgian law, regulation and practice included in the Letter insofar as such statements purport to summarize provisions of the laws of Belgium are a fair and accurate summary of such law, regulation and practice and, in our view, complete for the purposes of the Letter.

We hereby consent to the inclusion of this letter with the Letter.

The contents of this opinion letter may not be quoted or referred to in any public document or filed with anyone except as provided herein.

Yours sincerely,

  
**ERWIN SIMONS\***  
Partner

**DLA Piper UK LLP**

erwin.simons@dlapiper.com

**UNITED STATES OF AMERICA  
BEFORE THE  
SECURITIES AND EXCHANGE COMMISSION**

April 19, 2018

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In the Matter of TiGenix NV

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ORDER GRANTING EXEMPTION FROM  
EXCHANGE ACT RULE 14D-11(E)

Takeda Pharmaceutical Company Limited submitted a letter dated April 19, 2018 requesting that the Securities and Exchange Commission (“Commission”) grant an exemption from Exchange Act Rule 14d-11(e) for the transaction described in its letter (“Request”).

Based on the representations and the facts presented in the Request, and subject to the terms and conditions described in Section I of the letter from the Division of Corporation Finance dated April 19, 2018, it is ORDERED that the request for an exemption from Exchange Act Rule 14d-11(e) is hereby granted.

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

Brent J. Fields  
Secretary

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

For: Division of Corporation Finance

By: /s/ Ted Yu

Date: April 19, 2018