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Securities Exchange Act of 1934:  
Section 14(d) and Rules 14d-10, 14d-11  
Section 14(e) and Rules 14e-1, 14e-5

October 9, 2008

Proposed Cash Tender Offer in the United States by  
International Business Machines Corporation for ILOG S.A.

Ladies and Gentlemen:

We are writing on behalf of our client, International Business Machines Corporation, a New York corporation ("IBM"), in connection with its offers to acquire, through its indirect wholly-owned subsidiary CITLOI S.A.S., a *société par actions simplifiée* organized under the laws of the Republic of France ("Bidder"), the Securities (as defined herein) of ILOG S.A., a *société anonyme* organized under the laws of the Republic of France ("ILOG").

Bidder is seeking to acquire for cash all outstanding ordinary shares of ILOG, nominal value €1.00 ("Ordinary Shares"), including Ordinary Shares held in treasury by ILOG or its subsidiaries ("Treasury Shares") and Ordinary Shares represented by American Depositary Shares ("ADSs"), including any dividend for the fiscal year ended

June 30, 2008, as well as all outstanding warrants issued by ILOG (“Warrants”), through concurrent offers in the United States (the “U.S. Offer”) and in France (the “French Offer” and, together with the U.S. Offer, the “Offers”).

The Ordinary Shares and the ADSs are referred to collectively in this letter as the “Shares”, and the Shares and the Warrants are referred to collectively in this letter as the “Securities”.

In the U.S. Offer, Bidder is seeking to acquire all outstanding Ordinary Shares (the “U.S. Ordinary Share Offer”) and Warrants (the “U.S. Warrant Offer”) 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 (the “ADS Offer” and, together with the U.S. Ordinary Share Offer, the “U.S. Share Offer”) held by holders wherever located. Non-U.S. holders of Shares and Warrants who are permitted to participate in the French Offer pursuant to the laws and regulations applicable to those holders may tender their Shares and Warrants only into the French Offer. U.S. holders of Ordinary Shares and Warrants may tender their Ordinary Shares and Warrants only into the U.S. Offer.

The Offers are being made on substantially similar terms, and completion of each of the Offers is subject to the same conditions. The terms and conditions of the Offers are described in greater detail below.

Pursuant to a Memorandum of Understanding dated as of July 27, 2008, between IBM and ILOG (the “MOU”), subject to the terms and conditions set forth therein, IBM has agreed to acquire ILOG through the Offers made in France and in the United States. On July 28, 2008, IBM and ILOG issued a joint press release announcing the proposed acquisition. As described herein, Bidder made a filing with the French regulatory authority, the “*Autorité des Marchés Financiers*” (the “AMF”), of the draft offer document in respect of the French Offer on August 26, 2008. On September 12, 2008, the AMF granted its compliance decision on the French Offer, and approved the offer documents of Bidder and ILOG.

We hereby respectfully request that, with respect to the Offers, the staff (the “Staff”) of the Securities and Exchange Commission (the “Commission”) grant exemptive relief or confirm that it will not recommend enforcement action, as applicable, from the following provisions under the Exchange Act:

- Rule 14d-10(a)(1) (to permit the dual French Offer and U.S. Share Offer structure);
- Rule 14d-11 (to permit a subsequent offering period in excess of twenty U.S. business days);
- Rule 14d-11(c), Rule 14d-11(d) and Rule 14d-11(e) (collectively, to permit a subsequent offering period to be announced, commenced and conducted in

accordance with French Tender Offer Rules (as defined herein) and French practice);

- Rule 14e-1(c) (to permit the payment for, or return of, Warrants tendered in the U.S. Warrant Offer in accordance with French Tender Offer Rules and French practice);
- Rule 14e-1(d) (to permit any announcement of the extension of the U.S. Warrant Offer in accordance with French Tender Offer Rules and French practice); and
- Rule 14e-5 (to permit the purchase of Securities in the French Offer while the U.S. Offer is pending).

ILOG has represented to IBM that ILOG qualifies as a “foreign private issuer” (as defined in Rule 3b-4 promulgated under the Exchange Act). As described herein, we believe that U.S. holders hold less than 40% of ILOG’s Ordinary Shares and that the U.S. Share Offer for the Ordinary Shares and the ADSs therefore qualifies for Tier II exemptive relief pursuant to Rule 14d-1(d) promulgated under the Exchange Act.<sup>1</sup> We also believe that U.S. holders hold more than 40% of the Warrants and that, as a result, the U.S. Warrant Offer would not qualify for Tier II exemptive relief. In the release adopted by the Commission in October 1999 (Release Nos. 33-7759; 34-42054) (the “Cross-Border Release”), the Commission stated that to the extent that an offeror needs additional relief from that provided in Tier II, the Staff will consider applications for exemptions on a case-by-case basis, following the submission of a written request for relief, along with a discussion of the basis of the request.

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

### **IBM and Bidder**

IBM, a New York corporation, is a globally integrated enterprise that targets the intersection of technology and effective business. IBM seeks to be a partner in its clients’ success by enabling their own capacity for distinctive innovation. To help clients achieve growth, effectiveness, efficiency and the realization of greater value through innovation, IBM draws upon the world’s leading systems, software and services capabilities. IBM’s common stock is listed on the New York Stock Exchange, the Chicago Stock Exchange and various stock exchanges outside of the United States. IBM’s executive offices are located at New Orchard Road, Armonk, New York, 10504.

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<sup>1</sup> We are unable to conclude that U.S. holders do not hold more than 10% of ILOG’s Ordinary Shares and therefore we are unable to conclude that the U.S. Share Offer qualifies for Tier I exemptive relief pursuant to Rule 14d-1(c).

Bidder is an indirect, wholly-owned subsidiary of IBM that was established to make the Offers and to serve as a holding company for ILOG. Bidder is a *société par actions simplifiée* organized under the laws of the Republic of France. Bidder's registered office is located at Tour Descartes 2, Avenue Gambetta, La Defense 92066, Paris, France.

## ILOG

ILOG is a worldwide provider of enterprise software and services. ILOG develops, markets, sells and supports Business Rule Management Systems ("BRMS"), optimization-based decision tools and applications, as well as visualization software components that help organizations to make better decisions faster and manage change and complexity. ILOG's BRMS software gives the non-technical managers and policy makers of its corporate clients the ability to access data and rapidly implement changes to policies and procedures to address new market conditions or other business changes. ILOG's optimization software allows companies to optimize the allocation of their personnel and equipment resources. ILOG's visualization software components provide graphical user interfaces for software developers that create applications used in telecommunications network management, the airline industry and other businesses.

ILOG was incorporated in 1987 as a *société anonyme* organized under the laws of the Republic of France. Its executive offices are located in Gentilly, France and Sunnyvale, California. ILOG's ADSs and Ordinary Shares are registered under Section 12(b) of the Exchange Act. The depositary bank ("ADS Depositary") for the ADSs is JPMorgan Chase Bank.

The Ordinary Shares are traded on the *Compartment B* of the regulated market Eurolist by Euronext™ under the symbol "ILO" and the ADSs are traded on the Nasdaq Global Select Market under the symbol "ILOG".

An assessment has been undertaken of the level of U.S. ownership of Ordinary Shares and ADSs in order to determine the applicability of the U.S. tender offer rules to the U.S. Share Offer, and the availability of the exemptions set forth in Rule 14d-1(c) or (d) under the Exchange Act. The U.S. ownership calculations have been made in accordance with the Instructions to paragraphs (c) and (d) of Rule 14d-1.

According to ILOG's Form 6-K for the quarter ended March 31, 2008, as of such date, ILOG had 19,208,848 Ordinary Shares (including Ordinary Shares represented by ADSs) issued, including Treasury Shares. According to ILOG's Form 20-F for the year ended June 30, 2007, as of August 31, 2007, there were 2,016,530 ADSs outstanding.

ILOG has advised IBM that as of September 26, 2008, there were 19,208,848 Ordinary Shares (including Ordinary Shares represented by ADSs) issued, including 822,798 Treasury Shares.

ILOG has advised IBM that, like most French companies, ILOG does not maintain a register that identifies all record owners of its Ordinary Shares. ILOG

maintains, through an agent, BNP Paribas, a nominative register which covers a portion of the Ordinary Shares. The remaining Ordinary Shares are held in bearer form. In line with the practice in “friendly” cross-border tender offers involving French companies, IBM asked that ILOG request that Euroclear France conduct a survey known as a *Titres au Porteur Identifiables* (“TPI”) to attempt to determine the ownership of the Ordinary Shares held in bearer form. See, e.g., Serono S.A. Offer for all Outstanding Ordinary Shares, ADSs, OCEANEs and Warrants of Genset (September 12, 2002) (the “Serono No-Action Letter”); and Proposed Combination of Equant N.V. and France Telecom (April 18, 2005) (the “Equant No-Action Letter”). ILOG also engaged Capital Precision Limited to assist ILOG to determine the ownership of the Ordinary Shares by U.S. holders. As described herein, Capital Precision has conducted “look through” analyses to determine the beneficial ownership of Ordinary Shares and ADSs as prescribed by the Instructions to Rule 14d-1(c) and (d).

Capital Precision has performed two analyses to determine the ownership of Ordinary Shares and ADSs by U.S. holders. The first analysis was commenced in early July, prior to the announcement of the proposed acquisition on July 28, 2008. This was undertaken at such time to provide comfort to the parties as to the likely availability of Tier II exemptive relief. Moreover, in the MOU, ILOG represented to IBM that the U.S. Share Offer qualifies for Tier II exemptive relief pursuant to Rule 14d-1(d). ILOG requested a TPI with a reference date of July 7, 2008, as well as a nominative register and a report from the ADS Depository as to the ownership of the ADSs, including a list of non-objecting beneficial owners of ADSs (“NOBO list”). Capital Precision reviewed the TPI, the nominative register and the ADS information and made inquiries to determine whether nominees were holding Ordinary Shares on behalf of U.S. beneficial owners. Based on the results of the first analysis of Capital Precision furnished in August 2008, and applying the calculation set forth in the Instructions to Rule 14d-1(c) and (d), based on available information, U.S. holders represented approximately 10.4% of the ownership of the Ordinary Shares.

The second analysis was commenced in August 2008. For this analysis, ILOG requested a TPI with a reference date of August 20, 2008, a nominative register, an ownership report from the ADS Depository and the preparation of a NOBO list. Capital Precision reviewed the TPI, nominative register and ADS report and made inquiries of nominees to determine whether nominees were holding Ordinary Shares on behalf of U.S. beneficial owners. Based on the results of such second analysis, and applying the calculation set forth in the Instructions to Rule 14d-1(c) and (d), the ownership interest of U.S. holders is generally in line with the first analysis, and we are unable to conclude that the U.S. Share Offer qualifies for Tier I exemptive relief pursuant to Rule 14d-1(c).

ILOG’s Warrants are privately held by a total of twelve current or former directors of the ILOG Board of Directors or former members of the ILOG Technical Advisory Board. The Warrants were issued in six separate classes as a form of stock-based compensation, notably since under French law only employees and executive directors are permitted to be issued stock options or restricted shares. The Warrants are not publicly traded or listed on any stock exchange, and are not registered under Section 12 of the Exchange Act. Pursuant to the terms of the MOU, the ILOG Board of Directors

resolved to take such action as is required to amend the terms of the Warrants so that they could be tendered to Bidder in connection with the Offers. As of September 26, 2008, according to ILOG, there were a total of 254,000 Warrants outstanding. IBM has been informed by ILOG that, based on a review of its warrant register, an aggregate of 134,000 Warrants are owned by six U.S. holders; this aggregate amount represents approximately 52.75% of the total number of Warrants of all classes. In addition, U.S. holders own more than 40% of five of the six classes of Warrants.<sup>2</sup>

We are acting as U.S. counsel to IBM and Bidder. The statements contained in this letter with respect to French law and regulations have been reviewed by Gide Loyrette Nouel A.A.R.P.I., French counsel to IBM and Bidder, which counsel is submitting a separate letter to the Staff in respect of this request.

## II. Description of the Offers

### A. General

As described above, Bidder is seeking to acquire the Securities of ILOG through separate tender offers: the U.S. Offer and the French Offer. UBS Securities LLC will act as the dealer manager in the United States with respect to the U.S. Offer. The U.S. Share Offer will be conducted in accordance with the U.S. federal securities laws, including Regulations 14D and 14E under the Exchange Act, and the U.S. Warrant Offer will be conducted in accordance with the U.S. federal securities laws, including Regulation 14E under the Exchange Act, in each case except to the extent of any exemptive relief provided for by Rule 14d-1(d) (in respect of the U.S. Share Offer) or granted pursuant to this letter, as well as in accordance with applicable French law and regulations. Bidder will file a Tender Offer Statement on Schedule TO with the Commission on the date of commencement of the U.S. Offer.

The French Offer is subject to the provisions of the *Code monétaire et financier* (French Monetary and Financial Code) and of the *Règlement Général* (the “General Regulation”) of the AMF, which provide a comprehensive scheme for the regulation of French tender offers (collectively, the “French Tender Offer Rules”). In connection with the implementation in France of EU Directive 2004/25/EC dated April 21, 2004, on takeover bids, the rules and regulations relating to French tender offers were modified in 2006 through the *Loi n°2006-387* dated March 31, 2006 and the *Arrêté* dated September 18, 2006, which amended the General Regulation (effective as of September 28, 2006). Pursuant to the French Tender Offer Regulations, the French Offer will be presented to the public in France by UBS Securities France S.A., as presenting bank, and Natixis, as presenting bank and guarantor.

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<sup>2</sup> The Warrants were issued in six separate classes, at different dates and with different exercise terms. The percentage owned by U.S. holders for each class of Warrant is as follows: (i) 2003 Warrant N°1 (50% (16,000/32,000)), (ii) 2003 Warrant N°2 (50% (8,000/16,000)); (iii) 2004 Warrant (65.2% (30,000/46,000)); (iv) 2005 Warrant (66.7% (32,000/48,000)); (v) 2006 Warrant (50% (32,000/64,000)); and (vi) 2007 Warrant (33.3% (16,000/48,000)).

In France, the French Offer has been communicated by means of a filing notice published by the AMF (an *avis de dépôt*) summarizing the main terms and conditions of the French Offer, a regulatory press release published by Bidder also summarizing the main terms and conditions of the French Offer and a draft *note d'information*, or offer document (the "French Prospectus"). Bidder filed the draft French Prospectus with the AMF on Tuesday, August 26, 2008. The regulatory press release was made available on IBM's website ([www.ibm.com](http://www.ibm.com)) and was published in a daily French financial newspaper of general circulation. The draft French Prospectus was also made available to the public free of charge at the registered office of Bidder in France and the French premises of UBS and Natixis, in their capacities as presenting banks. The draft French Prospectus was also made available on the AMF's website ([www.amf-france.org](http://www.amf-france.org)) and on IBM's website ([www.ibm.com](http://www.ibm.com)). For the French Offer to proceed, the French Offer must be declared *conforme* by the AMF, indicating that the terms of the French Offer comply with applicable regulations, and the French Prospectus must receive the *visa* of the AMF, indicating that the French Prospectus complies with applicable regulations. On September 12, 2008, the AMF issued its *declaration de conformité* for the French Offer, including a *visa* for the French Prospectus. The AMF also granted a *visa* for the ILOG prospectus on that date. The French Offer will commence (or "open") when the following requirements are satisfied: (i) Bidder and the AMF receive a notification of the authorization of the French Offer from the French Ministry of Economy, (ii) Bidder and ILOG each publishes a *document d'autres informations* (other information document) which presents certain legal, financial, accounting and other information relating to Bidder (and its parent companies) and ILOG, respectively, and (iii) Bidder, ILOG and the presenting banks file certificates with the AMF confirming that all information required to be filed with the AMF has been filed, and that all information required to be published will be published. Bidder received a notification of the authorization of the French Offer from the French Ministry of Economy on October 3, 2008, and the French Offer will open on or about October 14, 2008. On the day before the opening of the French Offer, the AMF will publish a notice stating that the French Offer will "open" and that provides a timetable for the French Offer. The French Prospectus has been made available to the public at the registered office of Bidder in France and the French premises of UBS and Natixis, in their capacities as presenting banks. The French Prospectus has also been available on the AMF's website and on IBM's website. On the day before the opening of the French Offer, the AMF will publish a notice stating that the French Offer will "open" on the following day.

## **B. Financial Terms of the Offers**

In the U.S. Offer, Bidder will offer (i) €10.00 in cash, without interest, for each Ordinary Share, (ii) the U.S. dollar equivalent of €10.00 in cash, without interest, for each ADS, and (iii) an amount between €0.50 to €1.93 in cash, without interest, for each

Warrant, depending on the particular class of the Warrant.<sup>3</sup> The consideration paid to tendering holders of ADSs pursuant to the U.S. Offer will be converted to U.S. dollars on (or about) the day on which funds are received by the receiving agent (the “Receiving Agent”) for the ADS Offer at the then prevailing spot market rate and distributed to the tendering holders of ADSs. The consideration paid to tendering holders of Ordinary Shares or Warrants in the U.S. Offer is expected to be delivered to U.S. holders approximately four French Trading Days (as defined herein) after receipt from Euronext Paris.

### C. Bidder’s Rights to Withdraw the Offers

Under the General Regulation, a tender offer, once launched, may not be revoked by an offeror, except that an offeror may withdraw an offer:

- within five days during which the French stock exchanges are open for trading (“French Trading Days”) following the date of the publication by the AMF of the timetable for a competing offer or for an improved offer by a competing bidder (any competing offer or improved offer by a competing bidder must be filed with the AMF no later than five French Trading Days before the expiration date of the offer); or
- with the prior approval of the AMF, if the offer becomes irrelevant (“*sans objet*”) under French law or if the target adopts measures that modify the target’s substance (“*modifiant sa consistance*”) during the offer or prior to the time of the publication of the results of the offer.

In the case of the French Offer, with regards to the first withdrawal condition referred to above, the AMF will, after a competing offer or improved offer by a competing bidder has been filed, announce that the previously announced expiration date for the French Offer will no longer apply and that a new expiration date will be announced upon publication of the timetable for the competing offer. Under no circumstances would Bidder’s withdrawal right triggered by the filing of the competing offer or the improved offer by a competing bidder extend beyond the new expiration date.

With respect to the second withdrawal condition referred to above, the AMF retains the authority not to approve Bidder’s request to withdraw the French Offer.<sup>4</sup>

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<sup>3</sup> The offer prices for the different classes of Warrants will be as follows: (i) €0.50 per 2003 Warrant n°1, (ii) €0.50 per 2003 Warrant n°2, (iii) €0.65 per 2004 Warrant, (iv) €0.50 per 2005 Warrant, (v) €0.83 per 2006 Warrant and (vi) €1.93 per 2007 Warrant.

<sup>4</sup> The terms “*modifiant sa consistance*” and “*sans objet*” are subject to interpretation by the AMF. The term “*modifiant sa consistance*” is generally understood to refer to measures taken by a target company following a launch of a tender offer for its securities, such as the sale of material business segments, which result in a significant change in the target company’s business operations. The term “*sans objet*” is generally understood to refer to an offer that becomes totally or partly irrelevant and loses totally or partly its purpose.

Under the French Tender Offer Rules, if, during the period of the Offers, a competing offer for ILOG is approved by the AMF, any tenders of Securities into the French Offer will be null and void. In addition, if an improved offer (*surenchère*) by Bidder or a competing bidder is approved by the AMF, tenders of Securities into the French Offer may also be declared null and void by the AMF. If the tenders are null and void and the Offers remain outstanding, holders of Securities who wish to tender those Securities into the Offers will be required to re-tender their Securities.

#### **D. Conditions to the Offers**

Under the French Tender Offer Rules, an offeror is permitted to make an offer conditional on (i) the tender of a specified number of securities (expressed usually as a percentage of the share capital and/or voting rights on a fully diluted basis), (ii) receipt of certain anti-trust and competition law approvals and (iii) receipt of certain required French regulatory approvals, but is otherwise severely limited in its ability to condition its offer.

Bidder will not be required to accept for payment or to pay for any Securities tendered pursuant to the U.S. Offer and may terminate or amend the U.S. Offer, unless Ordinary Shares (including Ordinary Shares represented by ADSs) and Warrants validly tendered and not withdrawn prior to the expiration of the Offers represent at least 66.67% of ILOG's share capital and voting rights on a fully-diluted basis (the "Minimum Tender Condition").

For the purposes of determining whether the Minimum Tender Condition has been satisfied, the following will be taken into consideration:

- for the numerator, the sum of (i) Treasury Shares not required to satisfy, prior to the closing of the French Offer, rights under stock option plans and the allotment of outstanding restricted stock units granted by ILOG, and (ii) the total number of Ordinary Shares validly tendered in the French Offer and the U.S. Offer (including Ordinary Shares represented by ADSs) and the total number of Ordinary Shares to be issued upon exercise of Warrants validly tendered in the Offers, as of the date of the closing of the French Offer; and
- for the denominator, the sum of (i) the total number of outstanding Ordinary Shares on the date of the closing of the French Offer, including Ordinary Shares represented by ADSs and Treasury Shares, and (ii) the maximum number of Ordinary Shares to be issued upon the exercise of all stock options and Warrants, whether or not exercisable, as of the date of the closing of the French Offer.

Bidder may waive the Minimum Tender Condition at any time on or prior to the date that is five French Trading Days prior to the expiration date of the Offers. Under the French Tender Offer Rules, a waiver of the Minimum Tender Condition is deemed to be an improved offer and may cause the AMF to extend the offer period. In such case, tenders of Securities into the Offers may also be declared null and void by the AMF, in

which case holders of Securities who wish to tender those Securities into the Offers will be required to re-tender their Securities. Unless Bidder has waived the Minimum Tender Condition, if the Minimum Tender Condition is not satisfied, the Offers will not be completed. Neither Bidder nor holders of Securities will know whether the Minimum Tender Condition has been satisfied until the results of the Offers are published by the AMF following the expiration date of the Offers.

In addition, the Offers are conditional upon the authorization of the acquisition by the European Commission under Article 6(1)(b) of the European Union Council Regulation (EEC) No. 139/2004.

If the conditions are not satisfied, the Offers will not be completed successfully. If the Offers are not completed successfully, tenders of Securities will be null and void and any Securities that have been tendered in the Offers will be returned to the tendering holders without interest or any other payment being due. The date of return of Securities to the financial intermediaries will be determined by Euronext Paris S.A. (“Euronext Paris”). In accordance with customary French tender offer practice, this return of Securities should occur within one or two French Trading Days following the announcement of the failure of the Offers.

#### **E. Duration; Extension; Amendment**

The timetable and expiration date for the French Offer generally will be set by the AMF and Bidder may not extend the offer period of the French Offer.

Article 231-32 of the General Regulation provides that, where an independent expert is appointed, the French tender offer opens the day after making available to the public of the *note d'information en réponse* of the target, duly approved with the grant of the *visa* by the AMF, along with the *document d'autres informations* presenting the legal, financial, accounting and other information relating to the offeror and the *document d'autres informations* presenting the legal, financial, accounting and other information relating to the target and, where applicable, after the AMF has received any prior authorizations required by law (such as the prior approval of the French Ministry of Economy). The AMF determines and publishes the opening date of the offer.

In general, the expiration date for the French Offer will be the date that is twenty-five French Trading Days after the publication of the target's *note d'information en réponse* and no later than thirty-five French Trading Days after the opening date of the offer. When the offeror makes its offer conditional on receipt of anti-trust and competition law approvals, the expiration date of the offer is set by the AMF after it has received the documents evidencing these approvals.

The expiration date of an offer may also be suspended as a consequence of a decision of the *Premier Président* of the Paris Court of Appeal pending resolution of any ongoing litigation regarding the AMF's decisions concerning an offer and is generally voluntarily suspended by the AMF while the court is reviewing the matter.

Article 232-7 of the General Regulation governs the amendment of existing offers. To be declared “*conforme*” (i.e., to be allowed to proceed) by the AMF, the AMF must determine that a revised or amended offer significantly improves upon the terms of the prior offer.<sup>5</sup> In accordance with Article 232-7 and Article 232-8 of the General Regulation, in the event that Bidder materially amends the terms of the Offers, the AMF may decide to, but is not obligated to, extend the offer period. The AMF has the sole authority over whether to extend the French Offer period. Bidder may not itself unilaterally extend the offer period.

#### **F. Acceptance of Securities; Payment of Offer Consideration**

In general, holders of Ordinary Shares (other than Ordinary Shares represented by ADSs) will accept the Offers by notifying the appropriate authorized bank, financial institution, custodian, brokerage or other intermediary at which such holders maintain accounts for Ordinary Shares (collectively, the “Intermediaries”), at any time prior to the expiration time of the Offers, of the holder’s desire to tender. Holders of ADSs will accept the ADS Offer by delivering to the Receiving Agent in the United States their ADSs, together with an executed Letter of Transmittal and other documents required by such letter or by notifying the Intermediary through which they hold ADSs.

In principle, within three French Trading Days after the expiration of the Offers, the orders of holders of Securities will be “centralized” at Euronext Paris. This centralization process consists of the Intermediaries forwarding to Euronext Paris a list of holders of Ordinary Shares (other than Ordinary Shares represented by ADSs) who have elected to tender, along with the Ordinary Shares held by such persons. The Receiving Agent will instruct the ADS Depository to deliver to a French intermediary acting in conjunction with Euronext Paris all Ordinary Shares represented by ADSs that have been tendered in the ADS Offer. Securities will thus not be transferred to Euronext Paris or to Bidder until after the expiration of the Offers. As a result, a determination of whether the Minimum Tender Condition is satisfied will not be possible until after the expiration of the Offers. Article 232-2 of the General Regulation specifies that sale orders transmitted to Intermediaries can be cancelled at any time prior to, or on the date of, the expiration of the Offers and the terms of the U.S. Offer therefore permit a holder of Securities to withdraw any Securities tendered into the U.S. Offer at any time prior to the expiration of the U.S. Offer.

In compliance with Article 232-3 of the General Regulation, Bidder expects the AMF to publish the definitive results (*avis de résultat définitif*) of the Offers not later than nine French Trading Days following the expiration date of the Offers. However, upon determination that the Minimum Tender Condition has been met, the AMF will publish provisional results (*avis de résultat provisoire*) prior to its publication of the definitive results. The AMF’s publication of the definitive results of the Offers will

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<sup>5</sup> In the case of a revised or improved cash offer, to be declared *conforme*, the revised or improved offer must be at least 2% higher than the previous cash offer.

disclose the total number of Ordinary Shares, including Ordinary Shares represented by ADSs, and Warrants and the corresponding percentage of total share capital and voting rights of ILOG that have been validly tendered.

Following publication of the definitive offer results, Euronext Paris will, in accordance with the General Regulation and customary French tender offer practice, contact brokers or agents retained by Intermediaries and the ADS Depository to execute the settlement for the Offers. After registering the Ordinary Shares to be tendered in their records, such brokers and the Receiving Agent (through a French intermediary or agent) will “deliver” tendered Ordinary Shares to Euronext Paris for the account of the investment banks presenting the Offers on Bidder’s behalf and will receive in exchange the offer consideration for such delivered Securities. In turn, the brokers, agents or the Receiving Agent, in the case of the ADSs (through a French intermediary or agent), as applicable, will deliver the offer consideration to tendering holders of the Securities, generally four French Trading Days after receiving the consideration from Euronext Paris.

As a result, Bidder currently expects this settlement process to be completed within approximately twelve to fifteen French Trading Days following the expiration date of the Offers. Accordingly, under the French Tender Offer Rules, a period of approximately two to three weeks is expected to elapse from the expiration of the Offers to completion of the payment of the offer consideration. During the period from the expiration of the Offers to this final settlement date, tendering holders of Securities will not be able to withdraw their Securities; Bidder remains legally bound to purchase the tendered Securities during this period (subject to Bidder’s withdrawal rights described above under “C. Bidder’s Rights to Withdraw the Offers”).

As described above, if the Offers are not consummated (because any of the conditions is not satisfied or the Offers are withdrawn), tendered Securities will be returned to ILOG security holders within two French Trading Days following the announcement of the failure of the Offers (and the Receiving Agent will cause (through a French intermediary or agent) to be redeposited any Ordinary Shares represented by ADSs with the ADS Depository) without interest or any other payment being due.

### **G. Subsequent Offering Period**

If, as a result of the Offers, the Minimum Tender Condition is met, the French Offer will be re-opened within ten French Trading Days of the publication of the definitive results (*avis de résultat définitif*) of the Offers. The subsequent offering period must remain open at least ten French Trading Days under the French Tender Offer Rules. If the conditions for a subsequent offering period have been met, the AMF will publish the timetable for the subsequent offering period, which would ordinarily begin within one or two French Trading Days following the AMF’s publication of the timetable. In the event of a subsequent offering period, Bidder will offer the same consideration for the Securities that was offered during the initial offering period.

Because a subsequent offering period will be provided in the French Offer, Bidder intends to provide a subsequent offering period in the U.S. Offer. Bidder will issue a press release announcing the effect of the subsequent offering period on the U.S. Offer and advising the then remaining holders of Securities eligible to participate in the U.S. Offer that they may tender their Securities at any time until the expiration of the subsequent offering period. Bidder will also announce and provide that any Securities tendered during the subsequent offering period may be withdrawn at any time until the expiration of the subsequent offering period.

Bidder will accept any and all Securities validly tendered during the subsequent offering period and not withdrawn prior to the expiration of the subsequent offering period. Delivery of the cash to be paid to tendering holders of Securities as payment for the Securities tendered in the subsequent offering period will occur approximately twelve to fifteen French Trading Days following the expiration of the subsequent offering period and will follow the same settlement procedures set forth above.

As with the initial offering period, under the French Tender Offer Rules, the AMF will set the expiration date for the subsequent offering period. While the French Tender Offer Rules provide that any subsequent offering period must remain open for a minimum of at least ten French Trading Days, it does not establish a maximum duration for the subsequent offering period. Based on past practices, the duration of the subsequent offering period typically has been ten French Trading Days, although it has sometimes been longer. For example, in a recent French offer, the subsequent offering period had a length of nineteen French Trading Days.

#### **H. Withdrawal Rights**

Holders of Securities tendered during the initial offering period pursuant to the Offers may withdraw their Securities at any time prior to the expiration of the initial offering period. If there is a subsequent offering period, holders of Securities may withdraw their Securities tendered during the subsequent offering period at any time prior to the expiration of such subsequent offering period. However, under the Offers, Securities tendered during such periods may not be withdrawn between the applicable expiration date and the applicable settlement date. The settlements for Securities tendered during the initial offering period and any subsequent offering period are expected to take place approximately twelve to fifteen French Trading Days after the expiration of the applicable period.

#### **I. Mandatory Extensions of the Offer Period**

Pursuant to Commission policy, the minimum time period during which the U.S. Offer must remain open following material changes in its terms, other than a change in price or a change in percentage of securities sought, will depend on all the facts and circumstances, including the materiality of the changes. *See* SEC Release No. 34-23421 (July 11, 1986). The Commission has advised that a tender offer should remain open for a minimum of five U.S. business days from the date a material change is first published,

sent or given to shareholders. *See* SEC Release No. 34-24296 (Apr. 3, 1987). If material changes are made with respect to the price or the percentage of securities sought, pursuant to Rule 14e-1(b), an offer is required to remain open for a minimum of ten U.S. business days.

For the French Offer, the AMF has the sole authority to determine whether or not to extend the offer period, and Bidder may not extend the offer period at its own discretion.

### **III. Discussion and Relief Requested**

#### **A. Rule 14d-10(a)(1): Two Offers and a U.S. Offer made, with respect to ADSs, to all holders, wherever located**

There are several potential points of conflict between the U.S. tender offer rules and the French Tender Offer Rules and French practice. Bidder believes that the best method for reconciling these potential conflicts is a dual offer structure that permits holders of Ordinary Shares located in the United States to participate in the transaction through the U.S. Offer on substantially the same terms as holders located in France may participate in the French Offer.

The U.S. Share Offer will be open to all holders of ADSs, wherever located, and to U.S. holders of Ordinary Shares, the U.S. Warrant Offer will be open to all U.S. holders of Warrants, and the French Offer will be open to holders of Securities (other than ADSs) in France and other jurisdictions where holders of Securities are permitted to participate in the French Offer pursuant to local laws and regulations.

Rule 14d-10(a)(1) under the Exchange Act provides that no person shall make a tender offer unless the offer is open to all security holders of the class of securities subject to the tender offer. Rule 14d-1(d)(2)(ii) provides exemptive relief from this provision and allows a bidder that qualifies for Tier II relief to “separate the offer into two offers: one offer made only to U.S. holders and another offer made only to non-U.S. holders”. It is a condition of this relief that the “offer to U.S. holders must be made on terms at least as favorable as those offered any other holder of the same class of securities that is the subject of the tender offers”.

Notwithstanding the eligibility of the U.S. Share Offer for Tier II relief, a literal application of Rule 14d-1(d)(2)(ii) would not exempt the dual offer structure described herein from the application of Rule 14d-10(a)(1). First, Rule 14d-1(d)(2)(ii) contemplates a U.S. offer that is made only to U.S. holders and another that is made only to non-U.S. holders. Here, the U.S. Share Offer is made to holders of Ordinary Shares (other than Ordinary Shares represented by ADSs) who are located in the United States and to all holders of ADSs, wherever located.

We do not believe that this technical difference should disqualify the Offers from the exemptive relief available under Rule 14d-1(d)(2)(ii). The French Offer “is made only to non-U.S. holders”. Any U.S. holder of Ordinary Shares or ADSs (as well as non-

U.S. holders of ADSs) will be tendering in an offer that is conducted in accordance with the Exchange Act (with the exception of any specific relief granted pursuant to the requests herein). No Ordinary Shares held by U.S. holders or ADSs will be purchased except pursuant to the U.S. Offer, which will be conducted in accordance with the U.S. federal securities laws, including Regulation 14D (in the case of the U.S. Share Offer) (including Rule 14d-1(d)) and Regulation 14E under the Exchange Act, except to the extent of any exemptive relief granted pursuant to this letter.

We note that, on a number of occasions, the Staff has permitted other similar dual offer structures involving U.S. offers made for both ordinary shares held by U.S. holders and for ADSs held by holders, wherever located, even in cases where the Tier II exemption under Rule 14d-1(d) was not available due to the level of U.S. ownership. *See, e.g.*, Offer by Sanofi-Synthelabo for any and all ordinary shares, including ordinary shares represented by ADSs, of Aventis (June 3, 2004) (the “Sanofi No-Action Letter”); Offer by Alcan, Inc. for Common Shares, ADSs, Bonus Allocation Rights and OCEANES of Pechiney (Oct. 8, 2003) (the “Alcan No-Action Letter”); the Serono No-Action Letter; and Proposed Exchange Offer by Technip, S.A., for all of the outstanding ordinary shares and American Depositary Shares of Coflexip, S.A. (Aug. 30, 2001) (the “Coflexip No-Action Letter”).

Accordingly, on behalf of Bidder, we respectfully request exemptive relief from the provisions of Rule 14d-10(a)(1) to permit the Offers to be conducted according to the dual-offer structure described herein, notwithstanding that read literally Rule 14d-1(d)(2)(ii) contemplates Tier II exemptive relief only for a dual offer structure in which one offer is made “only” to U.S. holders and “another offer” is made only to non-U.S. holders.

#### **B. Rule 14d-11: Subsequent Offering Period**

If, as a result of the Offers, the Minimum Tender Condition is attained, the French Offer will be re-opened within ten French Trading Days of the publication of the definitive results (*avis de résultat définitif*) of the Offers and the subsequent offering period for the French Offer must be at least ten French Trading Days.

Pursuant to Rule 14d-11 under the Exchange Act, a bidder may elect to provide a subsequent offering period of between three U.S. business days and twenty U.S. business days after the expiration of the initial offering period during which additional tenders may be accepted. To be eligible to provide a subsequent offering period under Rule 14d-11, a bidder must, among other things:

- make the offer for all outstanding securities of the class that is the subject of the tender offer, and if the bidder is offering security holders a choice of different forms of consideration, there is to be no ceiling on any form of consideration offered;
- immediately accept and promptly pay for all securities tendered during the initial offering period;

- announce the results of the tender offer, including the approximate number and percentage of securities deposited to date, no later than 9:00 a.m. Eastern time on the next business day after the expiration date of the initial offering period and immediately begin the subsequent offering period;
- immediately accept and promptly pay for all securities as they are tendered during the subsequent offering period; and
- offer the same form and amount of consideration to security holders in both the initial and the subsequent offering period.

### **1. Subsequent Offering Period Longer than Twenty U.S. Business Days**

Under Rule 14d-11, a subsequent offering period must last a minimum of three U.S. business days and a maximum of twenty U.S. business days. As discussed above, under “II. G. Subsequent Offering Period,” the French Tender Offer Rules provide that (1) a subsequent offering period is re-opened within ten French Trading Days of the publication of the definitive results (*avis de résultat définitif*) and must last a minimum of ten French Trading Days but do not provide a maximum duration, and (2) the AMF sets the timetable for any subsequent offering period, including its expiration date. We understand that a subsequent offering period in excess of twenty U.S. business days could be acceptable to, and may be required by, the AMF.

We understand that one purpose of the subsequent offering period is to allow a bidder to achieve the ownership thresholds at which the bidder becomes entitled to make an all-cash *retrait obligatoire*, or compulsory acquisition under the French Tender Offer Rules (which Bidder would be entitled, but not obligated, to make if it acquires at least 95% of the total share capital and voting rights of ILOG). Under the French Tender Offer Rules, Bidder will also be allowed to acquire, on a compulsory basis, the remaining Warrants if the remaining Ordinary Shares and other securities giving rights to Ordinary Shares do not represent more than 5% of the total number of Ordinary Shares calculated on a fully diluted basis. Therefore, whereas in a typical tender offer for a U.S. company, 100% ownership may be achieved through a second-step merger once a majority (or sometimes a supermajority, if required pursuant to the subject company’s charter or the corporations law of its state of incorporation) of the subject company’s voting rights have been acquired, under the French Tender Offer Rules, Bidder must first acquire at least 95% of the voting rights and share capital of ILOG before it may benefit from the compulsory acquisition procedures.

Assuming the Minimum Tender Condition is met, Bidder may propose that the AMF set a timetable for the subsequent offering period that exceeds twenty U.S. business days in order to increase the likelihood that Bidder may achieve the ownership thresholds discussed above. In any event, the AMF, which has sole authority to set the timetable, may require a subsequent offering period in excess of twenty U.S. business days.

Accordingly, on behalf of Bidder, we hereby respectfully request exemptive relief from the provisions of Rule 14d-11 to permit a subsequent offering period that exceeds twenty U.S. business days for the reasons described herein.

We believe that such exemptive relief is consistent with relief previously granted. *See, e.g.*, Sanofi No-Action Letter; Serono No-Action Letter; Offer by RWE Aktiengesellschaft for Innogy Holdings plc (Mar. 22, 2002); Offer by Amerada Hess No-Action Letter (Dec. 13, 2000); and, Air Products and Chemicals, Inc. and L'Air Liquide S.A. Offer for the Outstanding Capital Stock of the BOC Group plc (Mar. 10, 2000).

## **2. Conduct of Subsequent Offering Period**

The Tier II Relief available under Rule 14d-1(d)(2)(v) provides that an offer will satisfy the announcement and prompt payment requirements of Rule 14d-11(d) if:

- the bidder announces the results of the tender offer, including the approximate number of securities deposited to date and pays for tendered securities in accordance with the requirements of the home jurisdiction law or practice; and
- the subsequent offering period commences immediately following such announcement.

Bidder intends to announce through a press release in the United States the results of the Offers (including the approximate number of securities deposited to date) (as determined and published by Euronext Paris and the AMF as described herein) and to pay for Securities tendered in the initial offer period in accordance with the law and practice of France, the home jurisdiction of ILOG. If the conditions for a subsequent offering period under the French Tender Offer Rules have been met, the French Offer shall be re-opened within ten French Trading Days of the publication of the definitive results (*avis de résultat définitif*) of the Offers and the subsequent offering period must remain open for at least ten French Trading Days. However, as described above under “Description of the Offers -- Subsequent Offering Period,” because the AMF must establish and publish the timetable for the subsequent offering period and such subsequent offering period customarily begins within a few days after the AMF’s publication of that timetable, there can be no assurance that the “subsequent offering period commences immediately following” Bidder’s announcement of the results of the Offers.

Accordingly, on behalf of Bidder, we hereby respectfully request exemptive relief from the provisions of Rule 14d-11(c) and Rule 14d-11(d) to permit Bidder to provide for a subsequent offering period in accordance with the French Tender Offer Rules and French practice in the manner set forth herein, notwithstanding that such compliance with the French Tender Offer Rules and French practice may not qualify Bidder for the exemptive relief from the “announcement and prompt payment requirements” of Rule 14d-11(d) available under Rule 14d-1(d)(2)(v). We note that the Staff has permitted subsequent offering periods to be conducted in a similar manner in compliance with the French Tender Offer Rules and French practice. *See, e.g.*, the Sanofi No-Action Letter; the Alcan No-Action Letter; and the Serono No-Action Letter.

Rule 14d-11(e) requires that shares tendered during the subsequent offering period be immediately accepted and promptly paid for. As described above under “Description of the Offers -- Subsequent Offering Period,” in the proposed Offers, Bidder will accept all Ordinary Shares and ADSs tendered during the subsequent offering period and will pay for such Ordinary Shares and ADSs in accordance with the French Tender Offer Rules and French practice following the expiration of the subsequent offering period, rather than on the rolling basis required by Rule 14d-11(e).

Accordingly, on behalf of Bidder, we respectfully request exemptive relief from the provisions of Rule 14d-11(e) to permit Bidder to accept and pay for Securities tendered during the subsequent offering period in accordance with the French Tender Offer Rules and French practice in the manner described herein. We believe that this relief is consistent with the general exemption of Tier II, which provides that “[p]ayment made in accordance with the requirements of home jurisdiction law or practice will satisfy the requirements” of Rule 14e-1(c). Such relief is also consistent with the position taken by the Staff with respect to the offer structure addressed in the Sanofi No-Action Letter and the Alcan No-Action Letter.

### **C. Rule 14e-1(c): Payment for, or Return of, Warrants**

Rule 14e-1(c) under the Exchange Act provides that a person who makes a tender offer may not fail to pay the consideration offered or return the securities deposited by or on behalf of security holders promptly after the termination or withdrawal of the tender offer. Under the Tier II exemption in Rule 14d-1(d)(2)(iv) applicable to the U.S. Share Offer for Ordinary Shares and ADSs, payment made in accordance with the requirements of the home jurisdiction law or practice will satisfy the requirements of Rule 14e-1(c). Bidder proposes to pay for Warrants tendered in the U.S. Warrant Offer on the same time schedule as it pays for the Ordinary Shares and ADSs tendered in the U.S. Share Offer. This will enable Bidder to determine whether the Minimum Tender Condition has been satisfied before accepting any tendered Securities and will facilitate payment in accordance with the French Tender Offer Rules and French practice. The relief requested in this letter, which would make the timing of payment for Warrants consistent with the timing of payment of Ordinary Shares and ADSs, is consistent with the relief granted by the Commission in a number of similar transactions. *See, e.g.*, the Serono No-Action Letter; the Coflexip No-Action Letter; and In the Matter of the Proposed Exchange Offer by Crown Cork & Seal Company Inc. for CarnaudMetalbox, File No. TP 95-301 (December 20, 1995) (the “Crown Cork No-Action Letter”).

We respectfully request the Staff to confirm that it will not take enforcement action under Rule 14e-1(c) if Bidder pays for Warrants tendered in the U.S. Warrant Offer in accordance with the French Tender Offer Rules and French practice in order to permit Bidder to pay for the Warrants tendered in the U.S. Warrant Offer on the same time schedule as it pays for Ordinary Shares tendered in the U.S. Share Offer.

#### **D. Rule 14e-1(d): Announcement of Extension of U.S. Warrant Offer**

Rule 14e-1(d) under the Exchange Act, among other things, prohibits a person making a tender offer from extending the length of the offer without issuing a notice of such extension by press release or other public announcement, which includes disclosure of the approximate number of securities deposited to date and which must be issued by 9:00 a.m., Eastern time, on the next business day after the scheduled expiration date of the offer. Under the Tier II exemption in Rule 14d-1(d)(2)(iii) applicable to the U.S. Share Offer for Ordinary Shares and ADSs, notices of extensions made in accordance with the requirements of the home jurisdiction law or practice will satisfy the requirements of Rule 14e-1(d). Bidder proposes to announce extensions of the U.S. Offer, if any, in the same way for all Securities — that is, to include the information it will have about tenders of ADSs to date and any information it may have about tenders of other Securities to date.

As noted above, except as required by applicable law and regulations, Bidder intends to consummate the U.S. Offer concurrently with the French Offer. As described under “II. Description of the Offers – E. Duration; Extension; Amendment”, the AMF can extend the offer period of the French Offer. As a result, it may be necessary to extend the expiration date of the U.S. Offer so that the Offers have the same expiration date. Similarly, while Bidder does not currently anticipate any such changes, material changes in the terms of the Offers or the information concerning the Offers may, under Rule 14e-1 or otherwise, require Bidder to extend the U.S. Offer. At the time that any such extension is announced, Bidder may not know the number of Warrants tendered to date as that information may only be in the possession of Intermediaries and Euronext Paris. If Bidder does announce any such extension, the press release announcing such extension will comply in all respects with the timing requirements of Rule 14e-1(d) and will include the information required by Rule 14e-1(d) with respect to the approximate number of ADSs deposited as of the date of such extension, but may not contain the information required by Rule 14e-1(d) concerning the approximate number of Warrants deposited as of the date of such extension.

We believe that announcements of extensions during the pendency of an offer that do not contain information about the approximate number of Warrants tendered to date are in accordance with the requirements of French practice and that granting the relief requested herein will thus facilitate the issuance of announcements of extension in the same manner of all Securities that are subject to the U.S. Offer. Moreover, the relief requested in this letter specifically relating to the offer for Warrants is consistent with the relief granted by the Commission in a number of similar transactions that were not eligible for the Tier II exemptions. *See, e.g.*, the Serono No-Action Letter; the Coflexip No-Action Letter; and the Crown Cork No-Action Letter.

We respectfully request the Staff to confirm that it will not take enforcement action under Rule 14e-1(d) if Bidder announces extensions, if any, to the U.S. Offer as described herein and does not include in such announcement the approximate number of Warrants tendered as of the date of such announcement.

### **E. Rule 14e-5: Purchases Outside the U.S. Offer**

Rule 14e-5 under the Exchange Act prohibits a person making a tender or exchange offer for an equity security from, directly or indirectly, purchasing or making any arrangement to purchase such security or any security which is immediately convertible into or exchangeable for such security except pursuant to such offer. The prohibition continues from the time of the public announcement of the offer until the expiration of the offer period, including any extensions thereof. There is an express exception for purchases or arrangements to purchase if the cross-border tender offer is exempted under Rule 14d-1(c) (often called “Tier I relief” available in the event, among other conditions, that fewer than 10% of the subject securities are held by U.S. holders) and certain other conditions have been met. *See* Rule 14e-5(b)(10). There is currently no such exemption for cross-border tender offers that qualify for Tier II relief under Rule 14d-1(d).<sup>6</sup> A literal application of Rule 14e-5 could be interpreted to prohibit Bidder’s purchase of Securities pursuant to the French Offer while the U.S. Offer is pending.

Paragraph (d) of Rule 14e-5 states that the Commission may grant an exemption from the provisions of Rule 14e-5, either unconditionally or on specified terms and conditions, to any transaction.

In the Cross-Border Release, the Commission provided for continued review of exemption requests, on a case by case basis, in situations, such as the instant case, where United States ownership exceeds 10%.

The Staff has granted frequent exemptions for tender offers conducted under the Tier II exemptions for relief to allow purchases and arrangements to purchase securities of a foreign private issuer pursuant to a non-U.S. tender offer where there are separate U.S. and non-U.S. offers. In 2006, the Staff granted an exemption from Rule 14e-5 under the Exchange Act to permit any offeror and its affiliates to purchase or arrange to purchase subject securities pursuant to a multiple offer that meets the following conditions:

1. The company that is the subject of the offer(s) is a “foreign private issuer” as defined in Rule 3b-4(c) of the Exchange Act;
2. The multiple offer qualifies for Tier II exemptive relief under Rule 14d-1(d) of the Exchange Act;
3. The economic terms and consideration in the offers are the same, provided that any cash consideration paid in the offer to U.S. securityholders may be converted from the currency to be paid in the non-U.S. offer(s) to U.S. dollars

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<sup>6</sup> We note that the Staff has recently amended Rule 14e-5 to provide such an exemption for cross-border tender offers that qualify under Tier II. *See* 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, 34-58597).

at the exchange rate disclosed by the offeror in the offering documents provided to securityholders;

4. The procedural terms of the U.S. offer are at least as favorable as the terms of the non-U.S. offer(s);
5. The intention of the offeror to make purchases pursuant to the non-U.S. offer(s) will be disclosed in the U.S. offering documents to securityholders participating in the U.S. offer; and
6. Purchases by the offeror in the non-U.S. offer(s) may be made solely pursuant to the non-U.S. offer(s) and not pursuant to open market or private transactions.

*See* In the Matter of Mittal Steel Co N.V., File No. TP 06-76 (June 22, 2006) (the “Mittal No-Action Letter”).

Applying the criteria set forth in the Mittal No-Action Letter to the Offers:

- The U.S. Share Offer and the French Offer for the Ordinary Shares satisfy the criteria.
- The U.S. Warrant Offer and the French Offer for the Warrants satisfy all of the above criteria, except the requirement to qualify for Tier II exemptive relief. As described above, Bidder believes that over 40% of the several classes of Warrants are held by U.S. holders.

We believe the exemptive relief required from Rule 14e-5 with respect to the Offers is, in large measure, contemplated by or consistent with the exemptive relief granted in connection with other, similarly structured tender offers. *See, e.g.*, Cash Tender Offer for Series B Shares and ADSs of Grupo Aeropotuario del Sureste, S.A.B. de C.V. (May 9, 2007); Mittal No-Action Letter; Gas Natural SDG, S.A.’s Exchange Offer for Shares of Endesa, S.A. (March 6, 2006); Offer by Movil Access, S.A. de C.V.’s for Grupo Iusacell, S.A. de C.V. (June 24, 2003); Offer by The Pepsi Bottling Group, Inc., Bottling Group LLC and PBG Grupo Embotellador Hispano-Mexicano S.L.’s for Shares, CPOs and GDSs of Pepsi-Gemex, S.A. de C.V. (October 14, 2002); The AES Corporation Offer for Shares and ADSs of Compañía Anónima Nacional Teléfonos de Venezuela (CANTV) (October 22, 2001); and, Offer by Ivax Corp. for Shares and ADSs of Laboratorio Chile S.A. (June 5, 2001).

*See also* the following letters, among others, where the Staff recognized that the interests of international comity may require an acquisition of shares to be conducted pursuant to two separate tender offers, each subject to the laws of a different country. In each case, the Staff provided the bidder with an exemption from Rule 14e-5 (formerly Rule 10b-13) so that the non-U.S. offers could be made during the pendency of the U.S. Offer. *See, e.g.*, Sanofi No-Action Letter; Alcan No-Action Letter; Serono No-Action Letter; Coflexip No-Action Letter, Offer by Banco Bilbao Vizcaya Argentaria, S.A. for Ordinary Shares and ADSs of BBVA Banco Frances (April 19, 2001); and Offer by

Banco Bilbao Vizcaya Argentaria, S.A. for Common and Preferred Shares and American Depository Shares of Banco Ganadero, S.A. (March 9, 2001).

In addition, while the U.S. Warrant Offer does not meet the criteria for Tier II exemptive relief, the Staff has previously granted exemptive relief under Rule 14e-5 to purchase ordinary shares, ADSs and warrants in dual offers, where the U.S. ownership level of the warrants caused in the offer for the warrants not to meet the Tier II exemptive criteria. *See* the Serono No-Action Letter.

Rule 14e-5 is designed to prevent manipulative and deceptive practices whereby an offeror purchases (or arranges to purchase) shares outside of a tender offer, either during the offer or promptly following it. Because the proposed dual offer structure involves purchases pursuant to a foreign tender offer, none of these concerns are relevant here.

Bidder's intention to make purchases pursuant to the French Offer during the period in which the U.S. Offer is open and the purchases themselves will be fully disclosed to holders of Securities who are located in the United States in the U.S. Offer to Purchase document, who will be assured the benefit of the same price paid in the French Offer. Holders of ADSs and U.S. holders of Securities will be entitled to participate in the U.S. Offer on terms at least as favorable as those offered to holders of Securities in the French Offers.

Accordingly, on behalf of Bidder, as the general relief provided by the Mittal No-Action Letter is unavailable, we respectfully request exemptive relief pursuant to Rule 14e-5(d) from the provisions of Rule 14e-5 with regard to purchases of Securities made pursuant to the French Offer.

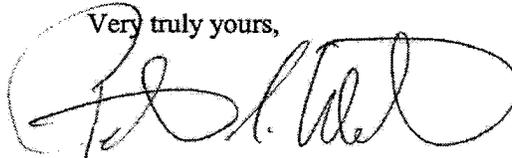
Please note that, in our view, there are serious doubts as to whether the jurisdictional predicate for the application of the Exchange Act, namely that there be a purchase of a security "by use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange", would be satisfied if Bidder made purchases of, or arrangements to purchase, Securities outside of the United States. We nonetheless have requested exemptive relief from the provisions of Rule 14e-5 with regard to purchases of Securities made pursuant to the French Offer and during any subsequent offering period for the French Offer. We have been requested by Bidder to emphasize that this letter does not reflect an admission that Rule 14e-5 would apply to such purchases of Securities outside the United States in the absence of such exemptive relief.

\* \* \*

In compliance with Securities Act Release No. 6269 (December 5, 1980), seven additional copies of this letter are enclosed.

Please do not hesitate to contact Peter S. Wilson ([pwilson@cravath.com](mailto:pwilson@cravath.com); 1-212-474-1767) or Mark R. Hageman ([mhageman@cravath.com](mailto:mhageman@cravath.com); 011-44-207-453-1030) with any questions regarding this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'P. S. Wilson', written in a cursive style.

Peter S. Wilson  
Mark R. Hageman

Mr. Daniel F. Duchovny, Office of Mergers and Acquisitions  
Ms. Michele Anderson, Chief, Office of Mergers and Acquisitions  
Ms. Christina E. Chalk, Senior Special Counsel, Office of Mergers and Acquisitions  
Mr. James A. Brigagliano, Associate Director, Division of Trading and Markets  
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