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May 21, 2013

U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549  
Attention: Michelle M. Anderson, Chief  
Christina E. Chalk, Senior Special Counsel  
Office of Mergers and Acquisitions  
Division of Corporation Finance

RE: Request for No-Action Relief or Exemption from Section 14(d)(5)  
of and Rules 14d-7, 14d-4(d), 14d-11(c), 14d-11(d), 14e-1(c),  
14e-1(d) and 14e-5 under the Exchange Act

Dear Ms. Anderson and Ms. Chalk:

We are writing on behalf of Oak Leaf B.V., a private limited liability company incorporated under the laws of the Netherlands (the "Oak Leaf"), Acorn B.V., a private limited liability company incorporated under the laws of the Netherlands ("Acorn"), and Acorn Holdings B.V., a private limited liability company incorporated under the laws of the Netherlands ("Acorn Holdings") and, collectively with Oak Leaf, Acorn and Acorn Holdings, the "Bidders").

On April 12, 2013, Oak Leaf announced its intention to make a public offer (together with the Initial Offer Period (as defined below) and any Subsequent Offer Period (as defined below), the "Offer") to acquire all of the ordinary shares, nominal value of EUR 0.12 (the "Shares"), of D.E Master Blenders 1753 N.V., a public limited liability company incorporated under the laws of the Netherlands ("DEMB"). DEMB's Board of Directors (the "Board") has unanimously recommended the acceptance of the Offer to the shareholders of DEMB. The Bidders intend to structure the Offer to comply with applicable Dutch laws as well as with the U.S. federal securities laws, including Regulation 14D and 14E under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), except to the extent of any relief granted pursuant to this letter.

We respectfully request on behalf of the Bidders that the Staff (the "Staff") of the U.S. Securities and Exchange Commission (the "Commission") grant exemptive relief from:

(a) Section 14(d)(5) of and Rule 14d-7 under the Exchange Act, to permit the Bidders to terminate withdrawal rights in the Offer at the expiration of the Initial Offer Period (as defined below) and during the period, which will in no event last longer three Dutch trading days, between the expiration of the Initial Offer Period and the date on which it is determined that the Minimum Acceptance Condition (as defined below) has been reached and the Offer is declared unconditional and tendered Shares are thereby accepted, as permitted by Dutch law and practice;

(b) Rule 14d-11(c) and (d) under the Exchange Act, to permit a subsequent offering period where acceptance of, and payment for, the Shares tendered in, and announcements of the results of, the Initial Offer Period are effected in accordance with Dutch law and customary Dutch market practice;

(c) Rule 14e-1(c) under the Exchange Act, to permit the Bidders to pay for securities tendered during the Initial Offer Period in accordance with Dutch law and practice;

(d) Rule 14e-1(d) under the Exchange Act, to permit the Bidders to announce any extensions of the tender offer in accordance with the timing and notice requirements of applicable Dutch law and customary Dutch market practice; and

(e) Rule 14e-5 under the Exchange Act, to permit the Bidders to purchase, or arrange to purchase, whether directly or through any affiliates of the Bidders, or any broker or other financial institution acting as the Bidders' agent or any affiliates of any broker or other financial institution acting as the Bidders' agent (together with the Bidders, the "Prospective Purchasers"), Shares outside of the Offer in accordance with applicable Dutch securities laws.

In addition, we respectfully request on behalf of the Bidders that the Staff grant no action relief from Rule 14d-4(d) under the Exchange Act, to permit the Bidders to terminate withdrawal rights upon the expiration of the Initial Offer Period and reduce or waive the Minimum Acceptance Condition (as defined below) at a percentage in excess of 50% of DEMB's issued and outstanding ordinary share capital after the expiration of the Initial Offer Period at the time the Bidders declare the Offer unconditional, provided that the Bidders make the disclosures and follow the procedural safeguards described in Section IV below.

We are admitted to practice only in the State of New York and the District of Columbia. To the extent this letter summarized propositions of Dutch law, we have relied on advice from Stibbe N.V., Dutch counsel to the Bidders. Please refer to the letter from Stibbe N.V., dated May 21, 2013, attached hereto.

## **I. Description of the Bidders and DEMB**

### *The Bidders*

Oak Leaf was incorporated on March 27, 2013 under the laws of the Netherlands. Oak Leaf has been incorporated to complete the purchase of the Shares under the Offer and has not carried on any business prior to the date hereof, other than with respect to the Offer and related equity and debt financing arrangements.

Oak Leaf is a wholly owned subsidiary of Acorn, which is a wholly owned subsidiary of Acorn Holdings, and Acorn Holdings is a wholly owned subsidiary of JAB Forest B.V., a private limited liability company incorporated under the laws of the Netherlands.

Each of Forest JAB Holdings II B.V., a private limited liability company incorporated under the laws of the Netherlands, Donata Holdings B.V., a private limited liability company incorporated under the laws of the Netherlands, Donata Holding SE, an Austrian Societas Europaea, Joh. A. Benckiser s.à r.l., a Luxembourgian Société à Responsabilité Limitée and Parentes Holding SE, an Austrian Societas Europaea may be deemed to control the Bidders and beneficially own any securities acquired by the Bidders.

The Bidders are members of a privately-held affiliated group of companies, operating under the Joh. A. Benckiser Group (“JAB”) trade name. JAB is focused on long term investments in companies with premium brands in the fast moving consumer goods category. JAB’s portfolio includes a majority stake in Coty Inc., a global leader in beauty, a majority stake in Peet’s Coffee & Tea Inc., a premier specialty coffee and tea company, a majority stake in Caribou Coffee Company, Inc., a specialty retailer of high-quality premium coffee products and a minority stake in Reckitt Benckiser Group PLC, a global leader in health, hygiene and home products. Joh. A. Benckiser also owns Labelux, a luxury leather goods company with brands such as Jimmy Choo, Bally and Belstaff. In the ordinary course of its business JAB examines potential investments in or acquisitions of companies in the coffee and tea category.

### *DEMB*

According to publicly available information, DEMB is a leading, focused pure-play coffee and tea company that offers an extensive range of high-quality, innovative coffee and tea products that are well-known in retail and out of home markets across Europe, Brazil, Australia and Thailand.

We understand that DEMB is a “foreign private issuer” as defined in Rule 3b-4(c) under the Exchange Act. DEMB shares are listed for trading on NYSE Euronext in Amsterdam, under the symbol DE. There were 594,859,274 Shares outstanding as of April 12, 2013. The primary trading market for the Shares is NYSE Euronext in Amsterdam. Trading of the Shares in the U.S. is only done over the counter.

## II. Description of the Transactions

### *The Merger Protocol*

On April 12, 2013, Oak Leaf and DEMB entered into a merger protocol (the "Merger Protocol"), pursuant to which Oak Leaf agreed, subject to certain pre-commencement conditions, to commence the Offer.

### *The Offer*

As noted above, the Offer is structured as a single offer made concurrently in the Netherlands and the United States, in compliance with applicable Dutch securities laws as well as with the U.S. federal securities laws, including Regulation 14D and 14E under the Exchange Act, except to the extent of any relief granted pursuant to this letter.

In connection with the Offer, the Bidders plan to file with the Commission a tender offer statement on Schedule TO (the "Schedule TO"), to which an offer memorandum will be attached as an exhibit (the "Offer Document").

As described above, Oak Leaf will offer to purchase all of the outstanding Shares at a purchase price of EUR 12.50 per Share in cash. The offer will remain open for acceptance for an initial period of between eight and ten weeks, which in any event will be a minimum of 20 business days (the "Initial Offer Period"). The Offer will be subject to conditions customary for offers of this type (the "Conditions"), including, among others:

- (i) the number of Shares that are tendered in the Offer, (ii) the Shares that are directly or indirectly held by Oak Leaf or any of its affiliates and (iii) the Shares that are unconditionally and irrevocably committed to Oak Leaf or any of its affiliates shall represent at least 95% of all Shares on a fully diluted basis (the "Minimum Acceptance Condition");
- all notifications to all relevant competition authorities shall have been made and all waiting periods with respect to such notifications shall have expired or approval shall have been granted, as the case may be;
- the Board shall not have revoked or changed the recommendation in support of the Offer;
- the members of the Board shall not have taken any action or made any public announcement that prejudices or frustrates or may prejudice or frustrate the Offer, other than to the extent specifically permitted by the Merger Protocol;
- the extraordinary general meeting of DEMB shareholders shall have adopted certain resolutions;

- the tender agreements with holders of notes issued by DEMB's subsidiary DE US Inc. shall be in full force and effect and shall not have been amended or modified without the prior written consent of Oak Leaf;
- the supervisory board of DEMB's subsidiary Koninklijke Douwe Egberts B.V. shall not have revoked its approval of the financing of the Offer, including the refinancing of the notes issued by DEMB's subsidiary DE US Inc. or the contemplated new revolving credit facility of DEMB;
- no notification shall have been received from the Netherlands Authority for the Financial Market stating that the preparation of the Offer is in violation of chapter 5.5 of the Dutch Financial Supervision Act (the "Wft") and that, pursuant to section 5.80 of the Wft, investment firms (as defined in the Wft) would not be allowed to cooperate with the settlement of the Offer;
- no order, stay, judgment, decree, suit, action or proceeding is issued or initiated by any court, arbitral tribunal, government, governmental authority or other regulatory or administrative authority, or any statute, rule, regulation governmental order or injunction has been enacted, enforced or deemed applicable to the Offer, any of which prohibits or materially delays or could reasonably be expected to prohibit or materially delay the consummation of the Offer or the ability of Oak Leaf to acquire effective control of DEMB in any material respect; and
- since the Commencement Date no Material Adverse Change (as those terms are defined in the Merger Protocol) has occurred or become known.

Oak Leaf's purpose is to acquire control of, and ultimately the entire equity interest in, DEMB. If at the completion of the Offer (including any and all extensions), Oak Leaf does not acquire 100% of the Shares, Oak Leaf intends to enter into one or more transactions to enable Oak Leaf or an affiliate of Oak Leaf to acquire all shares not acquired pursuant to the Offer.

Oak Leaf reserves the right to use any permitted method to acquire 100% of the Shares.

If any Condition is not satisfied or waived at the conclusion of the Initial Offer Period, Oak Leaf may extend the acceptance period once for a period of at least two weeks and not more than ten weeks.

As soon as possible following the Offer being declared unconditional, Oak Leaf intends to procure that DEMB's listing on NYSE Euronext in Amsterdam will be terminated. Delisting may be achieved on the basis of 95% or more of the issued share capital of DEMB having been acquired by Oak Leaf or on the basis of a statutory merger.

If, following the settlement of the Offer, Oak Leaf and its affiliates, alone or together with DEMB, hold at least 95% of DEMB's aggregated issued share capital on a fully diluted basis, Oak Leaf may commence a statutory buy-out, in accordance with applicable Dutch law, in order to acquire the remaining Shares not tendered and not held by Oak Leaf or DEMB.

Subject to the Offer being declared unconditional, Oak Leaf may seek to effect or cause to effect any other restructuring of DEMB's group for the purpose of achieving an optimal operational, legal, financial or fiscal structure in accordance with the Exchange Act and Dutch law in general, some of which may have the effect of diluting the interest of any remaining minority shareholders of DEMB ("Post-Closing Restructuring Measures"), including:

- a subsequent public offer for any Shares held by minority shareholders;
- a statutory cross-border or domestic (bilateral or triangular) legal merger in accordance with applicable Dutch law between DEMB, Oak Leaf or one or more members of Oak Leaf's group;
- a statutory legal demerger of DEMB in accordance with applicable Dutch law;
- a contribution of cash or assets to DEMB in exchange for new shares issued (in which case the existing shareholders of DEMB may not have pre-emptive rights) on an arm's length basis and supported by a fairness opinion from a reputable corporate finance adviser;
- a sale of all, substantially all, or a substantial part of the assets of DEMB, which may or may not be followed by a distribution of proceeds to the shareholders DEMB, all in accordance with applicable Dutch law and the organizational documents of DEMB and all on an arm's length basis and supported by a fairness opinion from a reputable corporate finance adviser;
- a distribution of proceeds, cash or assets to the shareholders of DEMB;
- a sale and transfer of assets and liabilities by Oak Leaf or any member of Oak Leaf's group to any member of the DEMB's group on an arm's length basis and supported by a fairness opinion from a reputable corporate finance adviser, or a sale and transfer of assets and liabilities by any member of DEMB's group to Oak Leaf or any member of Oak Leaf's group on an arm's length basis and supported by a fairness opinion from a reputable corporate finance adviser;
- conversion of DEMB into a private limited liability company;
- any combination of the foregoing; or
- any transactions, restructurings, share issues, procedures or proceedings in relation to DEMB or one or more of its affiliates required to effect the aforementioned objective.

In the effectuation of any Post-Closing Restructuring Measure, due consideration will be given to the interests of minority shareholders of DEMB and all such minority shareholders, including any U.S. holders, will be treated equally in accordance with applicable laws. Any proposed Post-Closing Restructuring Measure which could reasonably be expected to disproportionately prejudice the value of, or the rights relating to the minority's shareholding in

DEMB, will require an affirmative vote of a non-executive member of the Board who is independent from Oak Leaf, its affiliates and any of its advisers.

*Tier II Exemption*

The relief requested by this letter would be available under Exchange Act Rule 14d-1(d) (the "Tier II Exemptions") if the Bidders qualified for the Tier II Exemptions. As you know, in order to qualify for the Tier II Exemptions United States residents may hold no more than 40% of the outstanding Shares calculated in accordance with the instructions to Rule 14d-1(d) (the "U.S. Ownership Calculation Rules").

To determine the residency of the holders of DEMB, the Bidders used the method of calculating record ownership required by the instructions to Rule 14d-1(d), including the application of Rule 12g3-2(a) under the Exchange Act. The shareholder register of DEMB is maintained by ABN Amro Group NV, with Computershare Limited maintaining a secondary register with respect to registered holders which are U.S. persons. The shareholder register maintained by ABN Amro Group NV reflects record ownership of Euroclear SA/NV and Computershare Limited on behalf of the holders for which it maintains the register. As a result, based on the Rule 12g3-2(a) method the percentage of U.S. holders of the Shares was estimated at approximately 11%. The Bidders, however, did not believe that this calculation was indicative of the U.S. ownership of the Shares.

As a result, the Bidders reviewed an analysis (the "Analysis") provided by DEMB as of March 21, 2013, which summarized shareholder identification research performed by King Worldwide based on a sample of approximately 78% of the Shares outstanding. The Analysis indicated that in a simulated extrapolation based on the sample, approximately 80% of the Shares are held by institutional investors, approximately 5% of the Shares are held by retail investors and approximately 15% of the Shares are held by the Bidders. Further, the Analysis reports that, in the simulation, approximately 57% of the Shares held by institutional investors are held by U.S. residents, and that substantially all of the Shares held by retail investors are held by U.S. residents. Based on the foregoing data, the Bidders estimate that the percentage of outstanding Shares held by U.S. residents who are institutional holders is approximately 45.6%, and that the percentage of outstanding Shares held by U.S. residents overall is 50.6%. Accordingly, after excluding Shares owned by the Bidders (as required by the U.S. Ownership Calculation Rules), the Bidders estimate that the percentage of outstanding Shares held by U.S. residents is approximately 59.5%. We recognize that this percentage exceeds the threshold for reliance upon the Tier II Exemption. However, the Commission has stated that, when U.S. ownership is greater than 40%, it would consider relief on a case-by-case basis when there is a direct conflict between U.S. laws and practice and those of the home jurisdiction.

*Rationale for Relief Requested*

As a result of the foregoing and to permit the global offer to be successful and comply with both Dutch and U.S. tender offer rules, on behalf of the Bidders, we respectfully request the relief described herein. In particular, we believe that the relief requested herein is necessary to permit the success of the Offer since there are direct conflicts between U.S. and Dutch law and

practice, specifically with respect to withdrawal rights and related procedures, the waiver of offer conditions, timing for payment of shares and announcement of offer results and the ability of the Prospective Purchasers to purchase or make arrangements to purchase the Shares otherwise than pursuant to the Offer.

The Commission has recognized that strict application of its rules could disadvantage U.S. securities holders in some situations. As described above, a condition to the settlement of the Offer is that the Bidders are able to obtain 95% of the Shares. Given the large premium offered to all shareholders of DEMB (a 36% premium to DEMB's volume-weighted average closing price for the 3 months up to and including March 27, 2013), improving the likelihood of reaching this threshold and declaring the Offer unconditional is in the best interests of all shareholders. As explained in more detail below, the Offer will be regulated by applicable Dutch law and NYSE Euronext in Amsterdam rules, and the Bidders plan to satisfy all conditions and take all precautions typically required where the Staff grants the relief requested or otherwise required by an exemption that the Offer does not qualify for because the Offer does not satisfy the requirements of the Tier II Exemptions.

### **III. Request for Relief from Section 14(d)(5) of and Rule 14d-7 of the Exchange Act**

Section 14(d)(5) of the Exchange Act provides that securities tendered in a tender offer but not yet accepted and paid for may be withdrawn at any time after 60 days from the date of the original offer. Rule 14d-7 under the Exchange Act requires that "any person who has deposited securities pursuant to a tender offer has the right to withdraw those securities during the period such offer, request or invitation remains open."

Following the expiration of the Initial Offer Period, the Bidders will determine within three Dutch trading days whether all conditions to the Offer have been met or waived, and if the Offer is declared unconditional, the Bidders will pay for all tendered Shares no later than three Dutch trading days after the Offer is declared unconditional (and the Bidders will not terminate withdrawal rights at the expiration of the Initial Offer Period if all conditions to the Offer, other than the Minimum Acceptance Condition, have not been satisfied or waived). To the extent that the Offer is deemed to "remain open" (within the meaning of Rule 14d-7) during the period between the expiration of the Initial Offer Period and the time at which the Bidders declare the offer unconditional and thereby accept the Shares tendered during the Initial Offer Period (the "Determination Period"), which may last up to three Dutch trading days, Rule 14d-7 would, in the absence of relief, require the Bidders to maintain withdrawal rights throughout the Determination Period for holders of such Shares. Moreover, if 60 days elapse between the date on which the Bidders first make the Offer and the date on which they declare the Offer unconditional and thereby accept the Shares tendered during the Initial Offer Period, Section 14(d)(5) would, in the absence of relief, permit the holders of such Shares to withdraw them during all or some part of the Determination Period.

Permitting withdrawals during the Determination Period would be inconsistent with Dutch law and practice and could frustrate the success of the Offer. Because the Bidders will use the Determination Period to determine the number of Shares tendered, permitting withdrawals during this period would conflict with the counting procedures envisaged under this transaction,

permitted under Dutch law and customary under Dutch market practice. If withdrawals from the Offer during the counting process were permitted, they could frustrate the success of the Offer by affecting whether or not the minimum acceptance condition is met.

The Bidders therefor request that the Staff grant exemptive relief from compliance with Section 14(d)(5) insofar as that section would permit holders of Shares who tendered into the Offer to withdraw their securities at any time which is both (a) after 60 days from the date of commencement of the Offer and (b) during the Determination Period, which in no event will last more than three Dutch trading days. The Bidders further request that the Staff grant exemptive relief from Rule 14d-7 to permit the Bidders to terminate withdrawal rights at the expiration of the Initial Offer Period and during the Determination Period, which will in no event last more than three Dutch trading days. Rule 14d-1(d)(2)(viii) under the Exchange Act provides that a bidder may suspend withdrawal rights at the end of the offer and during the period that securities tendered into the offer are being counted provided certain other conditions are met. All other conditions for the exemption provided in Rule 14d-1(d)(2)(viii) will be met except that the transaction does not qualify for the Tier II Exemptions. The Commission has granted relief under Rule 14d-1(d)(2)(viii) in other situations where the transaction did not qualify for the Tier II Exemption.<sup>1</sup>

#### **IV. Request for Relief From Rule 14d-11(c) and (d) of the Exchange Act**

Rule 14d-11(c) requires, as a condition to the subsequent offering period contemplated in the first paragraph of Rule 14d-11, that an offeror immediately accept and promptly pay for all securities tendered during an initial offer period. Rule 14d-11(d) requires that a bidder 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 U.S. business day after the expiration of an initial offering period and immediately begin the subsequent offering period.

During the Offer, the Bidders will pay for tendered Shares in accordance with Dutch market practice in the manner described in this Letter. The payment for the Shares pursuant to Dutch law and customary Dutch market practice would occur as soon as possible, but in any event within six Dutch trading days.

Dutch law requires the Bidders to announce whether the Offer has been declared unconditional and whether the Offer will be extended (the "Subsequent Offer Period") within three Dutch trading days after the expiration of the Initial Offer Period. Accordingly, the Offeror would announce whether the Offer will be extended and a Subsequent Offer Period will commence in accordance with Dutch law. This timing may not comply with the requirements of Rule 14d-11 to the extent that such announcement is not made on or prior to 9:00 a.m. Eastern

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<sup>1</sup> See Offer by Vimpelcom Ltd., Altimo Holdings & Investments Ltd. and Telenor ASA for all outstanding common shares, preferred shares and American Depositary Shares Vimpel-Communications (February 5, 2010); Offer by Kraft Foods Inc. Offer for all outstanding ordinary shares and ADSs of Cadbury plc (December 9, 2009).

time on the next U.S. business day after the expiration date of the Initial Offer Period. We do not believe, however, that this represents a material departure from Exchange Act requirements.

The Bidders respectfully request exemptive relief from: the provisions of Rule 14d-11(c) to permit the Bidders to accept and pay for Shares in accordance with Dutch law and customary Dutch market practice in the manner described in this letter; and from the provisions of Rule 14d-11(d) to permit the Bidders to announce the results of the Initial Offer Period in accordance with Dutch law and customary Dutch market practice in the manner described in this letter and commence the Subsequent Offering Period immediately following such announcement. In accordance with Rule 14d-11(e), the Bidders will immediately accept and promptly pay for all Shares as they are tendered in the Subsequent Offer Period.

In this regard, we note that Tier II Relief provides under Rule 14d-1(d)(2)(v) that an offer will satisfy the announcement and prompt payment requirements of Rule 14d-11(d) if the bidder announces the results of the offer and pays for tendered securities in accordance with the requirements of the local law or practice and the subsequent offering period commences immediately following such announcement. Although the Tier II Exemptions are not available for the Offer, we believe that the relief requested is consistent with the general exemption of Tier II.

We note that the Staff has permitted subsequent offering periods to be conducted in a similar manner in compliance with local law and market practice in the context of transactions that did not qualify for Tier II Relief.<sup>2</sup>

#### **V. Request for Relief From Rule 14e-1(c) of the Exchange Act**

Rule 14e-1(c) under the Exchange Act requires that the consideration offered in a tender or exchange offer be paid “promptly” after the termination of such offer.

The Tier II Exemptions provide an exemption from the requirements of Rule 14e-1(c) where payment is made in accordance with the requirements of the home jurisdiction law or practice. However, as discussed above, based on available information concerning the U.S. holders of the shares, the Tier II Exemptions are not available for the Offer.

Prior to the adoption of the Tier II Exemption, the Staff confirmed in a number of no-action letters that payment for, or return of, tendered securities in accordance with local law and customary local tender offer practice would satisfy the requirements of Rule 14e-1(c).<sup>3</sup>

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<sup>2</sup> See Offer by Harmony Gold Mining Company Limited for all outstanding ordinary shares of Gold Fields Limited (November 19, 2004); and Offer by Alcan, Inc. for outstanding common shares, ADSs, Bonus Allocation Rights and OCEANES of Pechiney (October 7, 2003).

<sup>3</sup> See Proposed Exchange Offer by Crown Cork & Seal Company, Inc. for CarnaudMetalbox (December 20, 1995); Re Pechiney Privatization (December 6, 1995); and Exchange Offer by Rhône-Poulenc S.A. Inc. for Ordinary Shares and ADSs of Hoechst AG (October 7, 1999).

Subsequent to the adoption of the Tier II exemption, the Staff has also provided relief from the requirements of Rule 14e-1(c) in respect of a number of transactions that did not satisfy the requirements of the Tier II exemption.<sup>4</sup>

As discussed above, in the Offer, payment would be made in accordance with Dutch law and customary Dutch market practice. The Offer would be declared unconditional within three Dutch trading days after the expiration of the Initial Offer Period and the consideration will be paid for tendered Shares within three Dutch trading days of the Offer being declared unconditional.

The payment for the Shares pursuant to Dutch law and customary Dutch market practice will occur as soon as possible and in any event within six Dutch trading days. However, Dutch market practice will govern such transactions and because the Offer will not qualify under the Tier II Exemptions, and in reliance on the no action and exemptive letters cited above, the Bidders respectfully request that the Staff grant an exemption from Rule 14e-1(c) if the Bidders pay the consideration in the Offer in the manner described above.

#### **VI. Request for Relief From Rule 14e-1(d) of the Exchange Act**

Rule 14e-1(d) under the Exchange Act governs the manner of announcements of extensions to an offer. The Tier II exemption under Rule 14d-1(d) provides an exemption from the requirements of Rule 14e-1(d) where notice of extensions is made in accordance with the requirements of the home jurisdiction law or practice.

In the Offer, notice of extensions will be made in accordance with Dutch law and practice. However, as discussed above, based on available information concerning the U.S. holders of the shares, the Tier II Exemptions will not be available for the Offer.

The Bidders will announce the results of the Offer, including the approximate number and percentage of securities deposited to date, within three Dutch trading days of the expiration of the Initial Offer Period, in accordance with Dutch law and to accommodate the determination of whether the Minimum Acceptance Condition has been met or waived (as more fully described in the other sections of this letter).

Prior to the adoption of the Tier II exemption, the Staff provided relief from the notice requirements of Rule 14e-1(d) and permitted the announcement of extensions to an offer effected in accordance with local country practice.<sup>5</sup> Subsequent to the adoption of the Tier II exemption, the Staff has also provided relief from the requirements of Rule 14e-1(d) in a number of transactions that did not satisfy the requirements of the Tier II exemption.<sup>6</sup>

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<sup>4</sup> See Harmony Gold No Action Letter, supra; and Alcan/Pechiney No-Action Letter, supra.

<sup>5</sup> See Crown Cork /CarnaudMetalbox No-Action Letter, supra.

<sup>6</sup> See Harmony Gold No Action Letter, supra; and Alcan/Pechiney No-Action Letter, supra.

On behalf of the Bidders we respectfully request that the Staff grant an exemption from Rule 14e-1(d) if the Bidders announce any extensions to the Offer in the manner described above.

#### **VII. Request for Relief from Rule 14e-5**

Dutch law allows purchases outside of a tender offer both prior to commencement of the Offer and after commencement, subject to certain conditions, which are described in detail below. If the relief sought herein is granted, the Prospective Purchasers plan to make purchases of Shares outside of the United States in compliance with such conditions, prior to or after the commencement of the Offer and either on the open market or through one or more privately negotiated transactions (collectively, the "Purchases").

Subject to certain exceptions, Rule 14e-5 prohibits a "covered person" from, directly or indirectly, purchasing or arranging to purchase any equity securities in the target company or any securities immediately convertible into, exchangeable for or exercisable for equity securities in the target company, except as part of the tender offer. This prohibition applies from the time of public announcement of the tender offer until the tender offer expires. "Covered person" is defined as (i) the offeror and its affiliates, (ii) the offeror's dealer-manager and its affiliates, (iii) any advisor to any of the foregoing, whose compensation is dependent on the completion of the offer and (iv) any person acting, directly or indirectly, in concert with any of the persons specified above. "Public announcement" is defined as any oral or written communication by the offeror or any person authorized to act on the offeror's behalf that is reasonably designed to, or has the effect of, informing the public or security holders in general about the tender offer.

The Prospective Purchasers would be considered covered persons under this definition, and after the public announcement of the Offer, the Prospective Purchasers are prohibited by Rule 14e-5 from purchasing any Shares outside of the Offer until the Offer is completed (to the extent any such purchase does not fall under the allowed exceptions under Rule 14e-5).

Rule 14e-5 is designed to prevent manipulative and deceptive practices whereby a person making a cash tender or exchange offer purchases (or arranges to purchase) shares otherwise than pursuant to the offer, and to prevent disparate treatment of shareholders so that U.S. target security holders are permitted to participate in the offer on terms at least as favorable as those afforded other target holders. Given the protections offered by Dutch law and the disclosures and other protective measures the Bidders plan to make, we do not believe such issues will be present in the context of the Purchases.

In this case, both the Offer and any Purchases will be regulated by Dutch securities laws, as both DEMB and the exchange on which its shares are listed are Dutch entities. Dutch law allows the Bidders to make the Purchases, subject to certain conditions meant to protect holders. For example, the Prospective Purchasers will generally be obligated by Dutch law to offer those

tendering in the Offer the highest price offered to sellers outside the Offer.<sup>7</sup> Dutch law also requires the Bidders to make public disclosure of any transactions in DEMB's shares after the public announcement of the Offer. The Bidders intend to publicly disclose their intention to make Purchases to both U.S. and non-U.S. holders prior to making such Purchases and will make public disclosure about the Purchases in the United States to the extent such disclosures are required to be made in the Netherlands.

As noted above, the Board has unanimously recommended the acceptance of the Offer to the shareholders of DEMB, pursuant to the fully negotiated Merger Protocol, which includes the express understanding that, subject to applicable law, the Bidders shall have the right to make the Purchases.

Rule 14e-5(b)(12) under the Exchange Act permits purchases or arrangements to purchase securities subject to a tender offer by an offeror and its affiliates to be made in accordance with the laws of the target company's home jurisdiction, subject to certain conditions (including that the covered person reasonably expects that the tender is subject to the Tier II Exemptions). In the present case, all conditions under Rule 14e-5(b)(12) would be met, except that the Offer does not qualify for the Tier II Exemptions. We note that: (i) DEMB is a foreign private issuer as defined in Rule 3b-4(c); (ii) no purchases or arrangements to purchase otherwise than pursuant to the Offer will be made in the United States; (iii) the Offer Document will disclose prominently the possibility of, or the intention to, make, purchases or arrangements to purchase the shares outside the Offer, and, if there will be public disclosures of purchases of Shares, the manner in which information regarding such purchases will be disseminated; (iv) there will be public disclosure in the United States, to the extent that such information is made public in the Netherlands, of information regarding all purchases of the Shares otherwise than pursuant to the Offer until the Offer expires; and (v) the offer price of the Offer will be increased to match any consideration paid outside the Offer. In addition, Purchases or arrangements to purchase Shares by an affiliate of any financial advisor of the Bidders will satisfy the following additional conditions: (i) the financial advisor and the affiliate will maintain and enforce written policies and procedures reasonably designed to prevent the transfer of information among the financial advisor and the affiliate that might result in violation of U.S. federal securities laws and regulations through the establishment of information barriers; (ii) the financial advisor will have an affiliate that is registered as a broker or dealer under Section 15(a) of the Exchange Act; (iii) the affiliate will have no officers (or persons performing similar functions) or employees (other than clerical, ministerial, or support personnel) in common with the financial advisor that direct, effect, or recommend transactions in the Shares or related securities who will also be involved in providing the Bidders of DEMB with financial advisory services or dealer-manager services; and (iv) the Purchases or arrangements to purchase will not be made to facilitate the Offer.

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<sup>7</sup> Although there is an exception under Dutch law to this best price rule for transactions executed in regular trading on a regulated market (as those terms are defined under Dutch law), this exemption is not commonly relied upon and the Bidders will not make use of this exception for the Offer.

The Staff has granted similar relief in respect of Rule 14e-5 with respect to offers that met all of the criteria set forth in Rule 14e-5(b)(12) with the exception that the offer qualifies for the Tier II Exemptions.<sup>8</sup> The Staff has also granted relief in respect of Rule 14e-5 under other facts and circumstances when the U.S. ownership percentages were higher than the Tier II ownership thresholds.<sup>9</sup> Bidders respectfully request that the Staff grant an exemption from Rule 14e-5 if the Prospective Purchasers make Purchases in the manner described above.

Please note that, in our view, it is doubtful that 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 any of the Prospective Purchasers made the Purchases, or arrangements to purchase, of Shares outside the United States. We nonetheless apply, on behalf of such persons, for exemptive relief for the Purchases from the provisions of Rule 14e-5, on the conditions set forth above. We have been requested by the Bidders to emphasize that this letter does not reflect an admission that Rule 14e-5 would apply to such purchases of Shares outside the United States in the absence of such exemptive relief.

#### **VIII. Request for Relief From Rule 14d-4(d) of the Exchange Act**

Rule 14d-4(d) provides that if a bidder makes a material change to the information published, sent or given to security holders about the tender offer, the bidder must publish, send or give the new information to security holders in a manner reasonably designed to inform them of such change. We understand that it is the Commission’s position that (a) the waiver or reduction of a minimum acceptance condition is a material change for purposes of Rule 14d-4(d), (b) the adequate dissemination requirement implies that security holders must have sufficient time after receiving the information to absorb it and make a decision as to whether to accept or withdraw from the offer and (c) as a general rule sufficient time requires a minimum of five U.S. business days.<sup>10</sup>

In the 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,<sup>11</sup> the Commission adopted an interpretation (the “Interpretation”) on the application of Rule 14d-4(d) to the reduction and waiver of a minimum

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<sup>8</sup> See Offer by UnitedHealth Group Inc. for all outstanding shares of Amil Participacoes S.A. (November 20, 2012); Offer by Vimpelcom Ltd., Altimo Holdings & Investments Ltd. and Telenor ASA for all outstanding common shares, preferred shares and American Depositary Shares Vimpel-Communications (February 5, 2010); Offer by Kraft Foods Inc. Offer for all outstanding ordinary shares and ADSs of Cadbury plc (December 9, 2009); Offer by Barrick Gold Corporation for all outstanding shares of NovaGold Resources Inc. (October 10, 2006).

<sup>9</sup> Offer by Repsol, S.A. for all outstanding shares of YPF, S.A. (June 30, 1999) (granting relief from Exchange Act Rule 10b-13, the predecessor to Rule 14e-5).

<sup>10</sup> See Interpretive Release Relating to Tender Offer Rules, Rel. No. 34-23296 (Apr. 3, 1987).

<sup>11</sup> 33-8957 (Oct. 9, 2008).

acceptance condition by a bidder eligible for the Tier II Exemptions. The Interpretation provides that the Commission will not object if such a bidder reduces or waives a minimum acceptance condition without holding an offer open for a minimum of five U.S. business days following the announcement of the reduction or waiver so long as it complies with all of the following conditions. At least five U.S. business days prior to the scheduled expiration date of the offering period, the bidder must announce that it may waive or reduce the minimum acceptance condition. The bidder must disseminate this announcement through a press release and by other methods reasonably calculated to inform U.S. holders of the possibility of a waiver or reduction, which may include placing an advertisement in a newspaper of national circulation in the United States, which press release must (1) state the exact percentage to which the minimum acceptance condition would be reduced, (2) state that a waiver is possible and (3) advise shareholders to withdraw their tenders immediately if their willingness to tender into the offer would be affected by the reduction or waiver of the minimum acceptance condition. The bidder must file this announcement with the Commission via the EDGAR filing system on the date that the announcement is made. The bidder must declare its actual intentions once it is required to do so under the regulations of its home jurisdiction. During the five-day period after the bidder makes the announcement described in this paragraph, the offer must be open for acceptances, and shareholders who have tendered their securities must be entitled to withdraw their securities. The bidder must then hold an offer open for five U.S. business days after the waiver or reduction of the minimum acceptance condition, which will occur through a subsequent offer period. The offer documents must also describe the procedure for waiving or reducing the minimum acceptance condition and the potential impact of the waiver or reduction of the minimum acceptance condition. The bidder also may not waive or reduce the minimum acceptance condition below the percentage required for the bidder to control the target company after the tender offer under applicable foreign law, and in any case, may not reduce or waive the minimum acceptance condition below a majority of the outstanding securities of the subject class.

The Bidders understand that in tender offers based in the Netherlands, it is common for holders not to tender their securities until the final two days of the tender offer. As a result, the Bidders do not expect to know whether they will need to reduce or waive the Minimum Acceptance Condition until after the Initial Offer Period has expired and the Bidders have had the opportunity to determine how many Shares have been tendered. Absent the relief requested herein, the Bidders would be required to extend the Initial Offer Period after the expiration of the Initial Offer Period when the Bidders have determined whether to reduce or waive the Minimum Acceptance Condition.

As discussed above, the Offer will not qualify for the Tier II Exemptions. The Bidders nevertheless, if granted the requested relief, would comply with all other conditions set forth in the Interpretation. At least five U.S. business days prior to the scheduled expiration date of the Initial Offer Period, the Bidders will announce that they may reduce or waive the Minimum Acceptance Condition. The Bidders will disseminate this announcement through a press release and by other methods reasonably calculated to inform U.S. holders of the possibility of a waiver or reduction, which may include placing an advertisement in a newspaper of national circulation in the United States, which press release will state the exact percentage to which the Minimum

Acceptance Condition may be reduced or waived and state that a reduction or waiver is possible and advise shareholders to withdraw their tenders immediately if their willingness to tender into the Offer would be affected by a waiver or reduction of the Minimum Acceptance Condition. The Bidders will file this announcement with the Commission via the EDGAR filing system on the date that the announcement is made. The Bidders will declare their actual intentions once they are required to do so under applicable Dutch law. For a period of at least five U.S. business days after the Bidders make the announcement of a reduction or waiver, a Subsequent Offer Period will be open for acceptances. The Offer documents will also describe the procedure for reducing or waiving the Minimum Acceptance Condition. Additionally, the Offer documents will include a discussion of the implications of the waiver of the Minimum Acceptance Condition, specifically, the implications of the Bidders' ownership of less than the Minimum Acceptance Condition, if the Minimum Acceptance Condition is reduced. The Bidders will also not waive or reduce the Minimum Acceptance Condition below the percentage required for the Bidders to control DEMB after the Offer under Dutch law — which is below a majority of DEMB's issued and outstanding ordinary share capital.

#### **IX. Conclusion**

On the basis of the foregoing, we respectfully request on behalf of the Bidders that the Bidders granted exemptive or no action relief from compliance with Section 14(d)(5) of and Rules 14d-7, 14d-4(d), 14d-11(c), 14d-11(d), 14e-1(c) and 14e-5 under the Exchange Act, allowing the Bidders to conduct a successful offer, as permitted by Dutch law and subject to the conditions described herein, purchase or arrange to purchase, directly or indirectly, Shares otherwise than pursuant to the Offer.

We appreciate the Staff's consideration of these matters. If you have any questions or require any further information, please contact me at (202) 371-7180, Paul T. Schnell at (212) 735-2322 or Sean C. Doyle at (212) 735-2554.

Very truly yours,



Brian V. Breheny

cc: Paul T. Schnell and Sean C. Doyle, Skadden, Arps, Slate, Meagher & Flom LLP

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Oudeweg 147  
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Attention: Joachim Creus

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Date  
21 May 2013

**RE: Request for No-Action Relief or Exemption from Section 14(d)(5) of and Rules 14d-7, 14d-4(d), 14d-11(c), 14d-11(d), 14e-1(c), 14e-1(d) and 14e-5 under the Exchange Act**

Dear Mr. Creus:

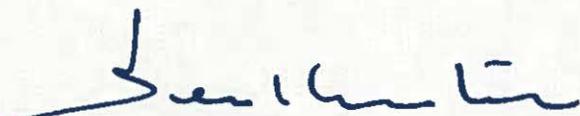
We are acting as counsel to Oak Leaf B.V., Acorn B.V. and Acorn Holdings B.V. in connection with the tender offer (the "Offer") for all outstanding shares of D.E Master Blenders 1753 N.V., as described in the Offer Memorandum and the related offering materials filed with the Netherlands Authority for the Financial Market.

In such capacity, we have reviewed the letter requesting exemptive and no action relief from the provisions of Section 14(d)(5) of and Rules 14d-7, 14d-4(d), 14d-11(c), 14d-11(d), 14e-1(c), 14e-1(d) and 14e-5 under the Securities Exchange Act of 1934, as amended, prepared by Skadden, Arps, Slate, Meagher & Flom LLP and dated as of May 21, 2013, and confirm that in our opinion the descriptions of Dutch law and takeover regulations contained therein are fair, accurate and, as relevant to the Offer, complete in all material respects.

The foregoing confirmation is limited to matters involving the laws of the Netherlands and is not intended to be read as extending by implication to any other matters not referred to herein.

We hereby consent to the inclusion of this letter with any request for relief submitted by you to the United States Securities and Exchange Commission.

Very truly yours,



Derk Lemstra



Björn van der Klip