

# CRAVATH, SWAINE & MOORE LLP

WORLDWIDE PLAZA  
825 EIGHTH AVENUE  
NEW YORK, NY 10019-7475

TELEPHONE: +1-212-474-1000  
FACSIMILE: +1-212-474-3700

CITYPOINT  
ONE ROPEMAKER STREET  
LONDON EC2Y 9HR  
TELEPHONE: +44-20-7453-1000  
FACSIMILE: +44-20-7860-1150

WRITER'S DIRECT DIAL NUMBER  
+1-212-474-1270

WRITER'S EMAIL ADDRESS  
wrogers@cravath.com

JOHN W. WHITE  
EVAN R. CHESLER  
KRIS F. HEINZELMAN  
B. ROBBINS KIESSLING  
ROGER D. TURNER  
PHILIP A. GELSTON  
RORY O. MILLSON  
RICHARD W. CLARY  
WILLIAM P. ROGERS, JR.  
JAMES D. COOPER  
STEPHEN L. GORDON  
DANIEL L. MOSLEY  
ROBERT H. BARON  
KEVIN J. GREHAN  
C. ALLEN PARKER  
SUSAN WEBSTER  
DAVID MERCADO  
ROWAN D. WILSON  
CHRISTINE A. VARNEY  
PETER T. BARBUR  
SANDRA C. GOLDSTEIN  
THOMAS G. RAFFERTY  
MICHAEL S. GOLDMAN  
RICHARD HALL  
JULIE A. NORTH

ANDREW W. NEEDHAM  
STEPHEN L. BURNS  
KEITH R. HUMMEL  
DAVID J. KAPPOS  
DANIEL SLIFKIN  
ROBERT I. TOWNSEND, III  
WILLIAM J. WHELAN, III  
SCOTT A. BARSHAY  
PHILIP J. BOECKMAN  
ROGER G. BROOKS  
WILLIAM V. FOGG  
FAIZA J. SAEED  
RICHARD J. STARK  
THOMAS E. DUNN  
MARK I. GREENE  
DAVID R. MARRIOTT  
MICHAEL A. PASKIN  
ANDREW J. FITTS  
MICHAEL T. REYNOLDS  
ANTONY L. RYAN  
GEORGE E. ZOBITZ  
GEORGE A. STEPHANAKIS  
DARIN P. MCATEE  
GARY A. BORNSTEIN  
TIMOTHY G. CAMERON

KARIN A. DEMASI  
LIZABETHANN R. EISEN  
DAVID S. FINKELSTEIN  
DAVID GREENWALD  
RACHEL G. SKAISTIS  
PAUL H. ZUMBRO  
JOEL F. HEROLD  
ERIC W. HILFERS  
GEORGE F. SCHOEN  
ERIK R. TAVZEL  
CRAIG F. ARCELLA  
TEENA-ANN V. SANKOORIKAL  
ANDREW R. THOMPSON  
DAMIEN R. ZOUBEK  
LAUREN ANGELILLI  
TATIANA LAPUSHCHIK  
ERIC L. SCHIELE  
ALYSSA K. CAPLES  
JENNIFER S. CONWAY  
MINH VAN NGO  
KEVIN J. ORSINI  
MATTHEW MORREALE  
JOHN D. BURETTA  
J. WESLEY EARNHARDT  
YONATAN EVEN

BENJAMIN GRUENSTEIN  
JOSEPH D. ZAVAGLIA  
STEPHEN M. KESSING  
LAUREN A. MOSKOWITZ  
DAVID J. PERKINS  
JOHNNY G. SKUMPIJA  
J. LEONARD TETI, II  
D. SCOTT BENNETT  
TING S. CHEN  
CHRISTOPHER K. FARGO  
KENNETH C. HALCOM  
DAVID M. STUART  
JONATHAN L. DAVIS  
AARON M. GRUBER  
O. KEITH HALLAM, III  
OMID H. NASAB  
  
SPECIAL COUNSEL  
SAMUEL C. BUTLER  
GEORGE J. GILLESPIE, III  
  
OF COUNSEL  
MICHAEL L. SCHLER

## CONFIDENTIAL TREATMENT REQUESTED

Securities Exchange Act of 1934  
Section 12(g)

Investment Company Act of 1940  
Sections 3(a) and 7

August 7, 2015

Re: Royal Dutch Shell plc Proposed Extension to Dividend Access Mechanism

Ladies and Gentlemen:

I am writing on a confidential basis on behalf of my client Royal Dutch Shell plc, a public limited company organized under the laws of England and Wales headquartered in The Hague, The Netherlands (“RDS”), in connection with the proposed extension to its dividend access mechanism established in 2005 (the “Existing Dividend Access Mechanism”), as described below.

In 2005, RDS entered into a transaction with the two former parent companies of the Royal Dutch Shell Group of companies (the “Group”) under which RDS became the single parent company of the Group. Part of the transaction involved a scheme of arrangement under English law (the “2005 Scheme”) under which RDS issued its B ordinary shares (“Class B Shares”) (and American depositary shares representing Class B Shares (“Class B ADSs”)) to former holders of ordinary shares of The “Shell” Transport and Trading Company, plc (now Shell Transport and Trading Company Limited (“Shell Transport”)). The 2005 Scheme was exempt from registration under the Securities Act of 1933, as amended (the “Securities Act”), pursuant to Section 3(a)(10) thereof as an issuance and exchange whose terms and conditions were approved by a court.

In order to allow for amounts received by holders of Class B Shares (the “Class B Holders”, which term includes holders of Class B ADSs) in respect of dividends declared by RDS to be treated as UK-sourced, rather than Dutch-sourced, for non-U.S. tax purposes, RDS established the Existing Dividend Access Mechanism, under which Shell Transport issued a dividend access share (the “ST Dividend Access Share”) to a trustee (the “Trustee”) acting pursuant to a trust deed constituted under the laws of England (the trust so constituted being the “Trust”). The issuance of the ST Dividend Access Share to the Trustee was exempt from registration under the Securities Act, pursuant to Section 4(a)(2) thereof as a transaction not involving a public offering and Regulation S thereunder as an offshore transaction. On May 17, 2005, the Staff (the “Staff”) of the Securities and Exchange Commission (the “Commission”) granted no-action relief (the “2005 No-Action Letter”) regarding the operation of the Existing Dividend Access Mechanism under Sections 12(b) and 12(g) of the Securities Exchange Act of 1934 (the “Exchange Act”) and under Section 7 of the Investment Company Act of 1940 (the “Investment Company Act”).<sup>1</sup>

It is now proposed that RDS acquire BG Group plc, which is organized under the laws of England and Wales (the “Target”), by way of a new scheme of arrangement under English law (the “2015 Scheme”) pursuant to which RDS would issue additional Class B Shares (and potentially, Class B ADSs). The issuance of Class B Shares and Class B ADSs pursuant to the 2015 Scheme will be exempt from registration under the Securities Act, pursuant to Section 3(a)(10) thereof as an issuance and exchange whose terms and conditions will be approved by a court (specifically, the High Court of Justice in England and Wales).<sup>2</sup> It is proposed that either (i) the Target will issue a dividend access share to the Trustee pursuant to the 2015 Scheme or (ii) one existing share in the Target held by the public will be converted into a dividend access share pursuant to the 2015 Scheme and transferred by operation of the 2015 Scheme to the Trustee (in either case, the “Target Dividend Access Share” and together with the ST

---

<sup>1</sup> *Royal Dutch Shell plc* (May 17, 2005).

<sup>2</sup> The interests of the Class B Holders in any dividends paid to the Trustee will arise out of the terms of the Class B Shares relating to the Extended Dividend Access Mechanism, as set out in Article 5 of the RDS Articles of Association. The issuance of the Class B Shares to the former Target shareholders will be provided for under the 2015 Scheme and the creation and issuance of the Target Dividend Access Share to the Trustee will be authorized pursuant to the 2015 Scheme. On the 2015 Scheme becoming effective, the Trust (as amended to reflect the Extended Dividend Access Mechanism) will be in full force and effect and no further steps will be required in order to establish the entitlements of Class B Holders who were formerly shareholders in the Target to any dividends paid pursuant to the Extended Dividend Access Mechanism. Accordingly, in our opinion the creation of the interests of the Class B Holders in any dividends paid pursuant to the Extended Dividend Access Mechanism will be exempt pursuant to Section 3(a)(10) of the Securities Act as part of an issuance and exchange whose terms and conditions will be approved by a court.

Accordingly, we are not requesting any relief with respect to the 2015 Scheme other than the confirmation requested with respect to (i) the absence of any requirement to register the Target Dividend Access Share issued or the Trust Arrangements relating to the Extended Dividend Access Mechanism under the Exchange Act and (ii) the absence of any requirement to register the Trust under the Investment Company Act.

Dividend Access Share, the “Dividend Access Shares”). The issuance of a Target Dividend Access Share or the conversion of an existing share in the Target into the Target Dividend Access Share and transfer thereof to the Trustee will be exempt from registration under the Securities Act pursuant to Section 4(a)(2) thereof as a transaction not involving a public offering and Regulation S thereunder as an offshore transaction. As explained below, the Trust will operate as it does today, except that the Trustee will hold two Dividend Access Shares, rather than one, and will be expected to receive dividends on each of those Dividend Access Shares.

We hereby respectfully request on behalf of RDS that the Staff of the Commission provide the relief requested below. The requested relief is the same as the relief that was granted with respect to the ST Dividend Access Share and the Trust in the 2005 No-Action Letter (except that, as explained below, we are not requesting relief under Section 12(b) of the Exchange Act because neither Dividend Access Share nor the Trust Arrangements (as defined below) will be separately listed on any National Securities Exchange (as defined in the Exchange Act)).

A. Relief under Section 12(g) of the Exchange Act for the Extended Dividend Access Mechanism.

We request on behalf of RDS that the Staff of the Division of Corporation Finance of the Commission confirm that the Staff will not recommend enforcement action if, subject to compliance with the undertakings set out below, neither the Target Dividend Access Share nor the Trust arrangements (the “Trust Arrangements”) relating to the Existing Dividend Access Mechanism, as revised to include the Target Dividend Access Share (as so revised, the “Extended Dividend Access Mechanism”), are registered pursuant to Section 12(g) of the Exchange Act.

B. Relief Under Investment Company Act of 1940.

We request on behalf of RDS that the Staff of the Division of Investment Management of the Commission confirm that it will not recommend that the Commission take any enforcement action under Section 7 of the Investment Company Act against the Trust if it continues to operate without registration as an “investment company”.

## **Background**

RDS is a “foreign private issuer” as defined in Rule 3b-4(c) under the Exchange Act. RDS has A ordinary shares (“Class A Shares”) and, together with the Class B Shares, the “RDS Shares”) and Class B Shares. The principal trading markets for Class A Shares are Euronext Amsterdam and the New York Stock Exchange (through the American depositary shares representing Class A Shares) and the principal trading markets for Class B Shares are the London Stock Exchange and the New York Stock Exchange (through the Class B ADSs). The RDS Shares are registered pursuant to Section 12(b) of the Exchange Act.

### ***The 2005 Scheme and the Existing Dividend Access Mechanism***

In order to establish the Existing Dividend Access Mechanism in 2005, Shell Transport, pursuant to the 2005 Scheme, issued the ST Dividend Access Share to the Trustee. The issuance of the ST Dividend Access Share to the Trustee was exempt from registration under the Securities Act, pursuant to Section 4(a)(2) thereof as a transaction not involving a public offering and Regulation S thereunder as an offshore transaction. It has been the practice that, upon RDS declaring any cash dividend on Class A and Class B Shares, Shell Transport declares a cash dividend on the ST Dividend Access Share in an equivalent amount to the dividend declared on the currently outstanding Class B Shares. Cash dividends on Class B Shares are paid, by default, in pounds sterling, although Class B Holders may elect to receive dividends in euros, except that cash dividends on the Class B Shares that underlie the Class B ADSs are paid in U.S. dollars to The Bank of New York Mellon as the Depository (the “Depository”) for the Class B ADS program under the relevant deposit agreement (the “Deposit Agreement”). Prior to the dividend payment date, Shell Transport deposits the cash dividend to be paid on the ST Dividend Access Share in accounts (the “Pre-Funding Accounts”) at banks in multiple jurisdictions (including non-U.S. banks that qualify as “foreign banks” under the International Banking Act of 1978) to facilitate prompt payment of the dividends on the dividend payment date. The Pre-Funding Accounts are administered by RDS’s Registrar, Equiniti Limited (the “Registrar”), which acts as paying agent for RDS dividends. These amounts are then transferred on the dividend payment date by book-entry transfer by the Registrar to trust accounts (the “Accounts”) at the banks which hold the Pre-Funding Accounts. The Accounts are administered by the Registrar for the benefit of Computershare Trustees (Jersey) Limited in its capacity as the Trustee of the Trust. Once the cash dividends are deposited into the Accounts, the Registrar, acting as paying agent, promptly disburses such amounts to Class B Holders. Cash dividends to be paid to holders of Class B ADSs are disbursed to the Depository, which subsequently disburses the funds to the Class B ADS holders pursuant to the Deposit Agreement. RDS’s obligation to each Class B Holder in respect of dividend amounts declared on the Class B Shares is reduced only upon, and only to the extent of, any payment actually made to such Class B Holder of such amounts from the Accounts. In no event are Class B Holders entitled to dividend payments, whether from RDS or the Existing Dividend Access Mechanism, that in the aggregate exceed or are less than the amount of the dividend declared by RDS (after giving effect to currency conversions).

The Trustee, in its capacity as the Trustee of the Trust, is the sole person identified as the owner of the ST Dividend Access Share on the records of security holders maintained by or on behalf of Shell Transport.<sup>3</sup> Class B Holders do not have any interest in, or rights with respect to, the ST Dividend Access Share, or any interest or other income earned on the funds paid into the Accounts. Nor do Class B Holders have any rights against Shell Transport, the issuer of the ST Dividend Access Share. Instead, the Trustee (a) holds the ST Dividend Access Share for the benefit of STT (DAS beneficiary) Limited, or another direct or indirect wholly-owned subsidiary of RDS (the “DAS Beneficiary”), and (b) holds any interest or other income earned on the funds in the

---

<sup>3</sup> Neither Shell Transport nor the Trust maintains a record of, or holds accounts for, individual Class B Holders.

Accounts for the benefit of Shell Transport. Class B Holders' only interests in the Trust are in, and their only rights against the Trustee are with respect to, the cash, if any, deposited in the Accounts in respect of dividends on the ST Dividend Access Share, pending disbursement thereof or (subject to forfeiture after 12 years) representing unclaimed funds; all disbursements have historically happened promptly following payment of cash dividends to the Trustee. Such interests and rights are extinguished upon payment of the cash dividend to the Class B Holders, which, under RDS's Articles of Association (the "RDS Articles"), is deemed to occur if a cheque or similar financial instrument has been properly dispatched to a Class B Holder or if a payment is made through a bank transfer or other electronic means.

RDS is and remains the sole obligor in respect of any dividend declared by it on the Class B Shares, and, except as stated in the next sentence, Class B Holders do not have any rights against the Trust, the Trustee or Shell Transport for any failure to receive in full any dividend declared on the Class B Shares. The only right of Class B Holders in respect of the Trust is the right to claim funds held for their benefit by the Trustee in the event the paying agent for the Trustee fails to disburse cash received in respect of dividends on the ST Dividend Access Share. Subject to the operation of the Existing Dividend Access Mechanism (as described below), RDS has a full and unconditional obligation to pay any dividend declared on the Class B Shares on the relevant dividend payment date (even if that amount has been paid to the Trustee). To take account of payments received by the Trustee under the Existing Dividend Access Mechanism and paid by the Trustee to Class B Holders, the RDS Articles provide that the entitlement of each holder of Class B Shares to be paid any dividend declared by RDS will be reduced by the corresponding amount that has been paid by the Trustee to such Class B Holder. Such entitlement is only extinguished upon full payment of the dividend declared to the Class B Holders and is not affected by any payment or non-payment of a dividend by Shell Transport on the ST Dividend Access Share or by any non-performance by the Trustee of its obligations under the Trust. As a result of these provisions, if RDS declares a cash dividend, whether or not Shell Transport declares a cash dividend or pays a cash dividend to the Trustee, and whether or not the Trustee has deposited the cash dividend into the Accounts, Class B Holders will retain the right to make a claim against RDS and may proceed against RDS for the full amount of the relevant dividend it has declared, less any corresponding amount that has actually been paid to Class B Holders under the Existing Dividend Access Mechanism. The rights that arise as a result of a payment on the Dividend Access Shares are not separable from the Class B Shares and are not separately reflected on the records of security holders maintained by or on behalf of RDS. While RDS has the obligation to pay any dividend amount owed (except to the extent reduced by payments by the Trustee to holders of Class B Shares), for non-U.S. income and withholding tax purposes all dividend amounts paid by RDS (other than amounts paid by the Trustee to holders of Class B Shares) are Dutch-sourced, while amounts paid by the Trustee pursuant to the Existing Dividend Access Mechanism are UK-sourced.

Before Shell Transport declares any dividend, the Shell Transport directors must consider Shell Transport's financial condition and their decision to declare such a dividend is based in part on the availability of sufficient distributable profits, the

immediate cash-flow implications of the distribution and the continuing ability of Shell Transport to pay its debts as they fall due. Accordingly, there is no certainty (although it is the intention) that Class B Holders will receive UK-source dividends via the Existing Dividend Access Mechanism. Class B Holders have no right to compel Shell Transport to declare or pay a dividend on the ST Dividend Access Share.

Under the Existing Dividend Access Mechanism, RDS has the right to require that the ST Dividend Access Share be redeemed at any time (including by the cancellation thereof) for nominal consideration, and, under any such circumstance, the Existing Dividend Access Mechanism would cease to exist and the Class B Shares would then be equivalent to the Class A Shares in all respects. (The effect of any redemption or repurchase of a Dividend Access Share under the Extended Dividend Access Mechanism is discussed below.)

Holders of Class A and Class B Shares forfeit their right to unclaimed dividends after twelve years, irrespective of the means by which such dividends are to be paid. Consequently, the Trust currently provides that any funds not disbursed within 12 years of the applicable dividend payment date will revert to Shell Transport.

***Proposed Modifications to Existing Dividend Access Mechanism in connection with the 2015 Scheme***

It is proposed that either (i) the Target will issue the Target Dividend Access Share to the Trustee pursuant to the 2015 Scheme or (ii) one existing share in the Target will be converted into the Target Dividend Access Share pursuant to the 2015 Scheme and transferred by operation of the 2015 Scheme to the Trustee. As a result, the Trustee would hold two dividend access shares, the ST Dividend Access Share and the Target Dividend Access Share.

It is the intention that whenever RDS declares a dividend on its Class B Shares, each of Shell Transport and the Target would declare dividends on their respective Dividend Access Shares in amounts that when aggregated equal the total amount of the dividend declared on the Class B Shares. The dividends paid by Shell Transport and the Target on the respective Dividend Access Shares will not exceed (i) in the case of Shell Transport, the amount payable to the Class B Shares issued in the 2005 Scheme still in issue, and (ii) in the case of the Target, the amount payable to the Class B Shares issued in the 2015 Scheme. In no circumstances will the aggregate amount paid on the two Dividend Access Shares exceed the aggregate dividends payable on the Class B Shares. If for any reason the aggregate amount is less than the aggregate amount of dividends payable on the Class B Shares on a particular dividend payment date, the Class B Holders will be entitled to receive their pro rata portion of the aggregate dividends, if any, paid on the Dividend Access Shares without regard to whether any particular Class B Share was issued in the 2005 Scheme or in the 2015 Scheme, and RDS will make up any shortfall (whether the shortfall results from any failure by Shell Transport or the Target to pay its full dividend, any failure by the Trustee to disburse amounts, any failure by the Registrar to perform its paying agency or other obligations or any other reason).

The terms of the Extended Dividend Access Mechanism, as they relate to the Target Dividend Access Share, would be the same in all material respects as the terms that currently apply to the ST Dividend Access Share except as described above. As a result:

- The Trustee will be the sole person identified as the owner of the Dividend Access Shares on the records of security holders maintained by or on behalf of Shell Transport and the Target. The DAS Beneficiary will be the sole beneficial holder of the Dividend Access Shares.
- Class B Holders will not have any interest in, or rights with respect to, either Dividend Access Share, or any interest or other income earned on the funds paid into the Accounts.
- Class B Holders will not have any rights against either Shell Transport or the Target. Instead, the Trustee (i) will hold the Dividend Access Shares for the benefit of the DAS Beneficiary and (ii) will hold any interest or other income earned on the funds in the Accounts for the benefit of Shell Transport and the Target.
- All amounts received by the Trustee as dividends on the Dividend Access Shares would be paid by the Trustee to the Class B Holders, on a pro rata basis, without regard to either the source of the cash or whether the payment is made to a Class B Holder in respect of a Class B Share issued in the 2005 Scheme or the 2015 Scheme.
- Class B Holders' only interests in the Trust will be in, and their only rights against the Trustee will be with respect to, the cash, if any, deposited in the Accounts in respect of dividends on the Dividend Access Shares, pending disbursement thereof or (subject to forfeiture after 12 years) representing unclaimed funds; all disbursements have historically happened promptly following payment of cash dividends to the Trustee. Such interests and rights will be extinguished upon payment of the cash dividend to the Class B Holders.
- RDS will remain the sole obligor in respect of any dividend declared by it on the Class B Shares, and, except as stated in the next sentence, Class B Holders will not have any rights against the Trust, the Trustee, Shell Transport or the Target for any failure to receive in full any dividend declared on the Class B Shares. The only right of Class B Holders in respect of the Trust will be the right to claim funds held for their benefit by the Trustee in the event the paying agent for the Trustee fails to disburse cash received in respect of dividends on the Dividend Access Shares. Subject to the operation of the Extended Dividend Access Mechanism (as described below), RDS will continue to have a full and unconditional obligation to pay any dividend declared on the Class B Shares on the relevant dividend payment date (even if that amount has

been paid to the Trustee). To take account of payments that may be made under the Extended Dividend Access Mechanism, the RDS Articles will continue to provide that the entitlement of a Class B Holder to be paid a particular cash dividend by RDS will only be reduced by the corresponding amount that has been paid by the Trustee to such Class B Holder pursuant to the Extended Dividend Access Mechanism. Such entitlement will only be extinguished upon full payment of the dividend declared to the Class B Holders and will not be affected by any payment or non-payment of a dividend by Shell Transport on the ST Dividend Access Share or by the Target on the Target Dividend Access Share, or by any non-performance by the Trustee of its obligations under the Trust.

- The rights that arise as a result of a payment on the Dividend Access Shares will not be separable from the Class B Shares and will not be separately reflected on the records of security holders maintained by or on behalf of RDS.
- RDS will have the right to require that either Dividend Access Share be redeemed (or be repurchased by the relevant issuer) at any time (including by the cancellation thereof) for nominal consideration. If both Dividend Access Shares were redeemed (or repurchased), the Extended Dividend Access Mechanism would cease to exist and the Class B Shares would then be equivalent to the Class A Shares in all respects. In the extremely unlikely event only one of the Dividend Access Shares was redeemed or repurchased, (i) the issuer of the remaining Dividend Access Share would continue to fund cash dividend payments through the Extended Dividend Access Mechanism, and (ii) amounts paid on the remaining Dividend Access Share would be transferred to the Accounts as described above and the aggregate amounts so held would be paid by the Trustee to the Class B Holders, on a pro rata basis, without regard to either the source of the cash or whether the payment is made to a Class B Holder in respect of a Class B Share issued in the 2005 Scheme or the 2015 Scheme. RDS will still have an obligation to pay any dividend amount owed (except to the extent reduced by payments by the Trustee to holders of Class B Shares).
- Any funds not disbursed within 12 years of the applicable dividend payment date will revert to Shell Transport and the Target.

As a result of these provisions, if RDS declares a cash dividend, whether or not Shell Transport or the Target declares a cash dividend or pays a cash dividend to the Trustee, and whether or not the Trustee has deposited the cash dividend into the Accounts, Class B Holders will retain the right to make a claim against RDS and may proceed against RDS for the full amount of the relevant dividend it has declared, less any corresponding amount that has actually been paid to Class B Holders under the Extended Dividend Access Mechanism.

Historically, all dividends paid on Class B Shares have been funded through the Existing Dividend Access Mechanism, and it is the intent that future dividends paid on Class B Shares will be funded through the Extended Dividend Access Mechanism. If that is not the case, for example, because a cash dividend in respect of one of the Dividend Access Shares is not declared by the board of directors of the issuer of such Dividend Access Share, or a cash dividend paid by one of the issuers of the Dividend Access Shares is not deposited into the Accounts by the Trustee, RDS will still have an obligation to pay any dividend amount owed (except to the extent reduced by payments by the Trustee to holders of Class B Shares), but for non-U.S. income and withholding tax purposes, any dividend amounts paid by RDS (other than payments by the Trustee to holders of Class B Shares) will be Dutch-sourced, while amounts disbursed from the Trust will be UK-sourced.

Before either Shell Transport or the Target can declare any dividend, the directors of each of those companies must consider the relevant company's financial condition and their decision to declare such a dividend is based in part on the availability of sufficient distributable profits, the immediate cash-flow implications of the distribution and the continuing ability of Shell Transport or the Target, as applicable, to pay its debts as they fall due. Accordingly, there is no certainty (although it is the intention) that Class B Holders will receive UK-source dividends via the Extended Dividend Access Mechanism. Class B Holders will have no right to compel either Shell Transport or the Target to declare or pay a dividend on either of the Dividend Access Shares.

### **Relief Requested**

A. Relief under the Exchange Act for the Extended Dividend Access Mechanism.

#### *Relief Requested*

We request on behalf of RDS that the Staff of the Division of Corporation Finance of the Commission confirm that it will not recommend that the Commission take any enforcement action under the Exchange Act if, subject to the undertakings of RDS set out below, neither the Target Dividend Access Share nor the Trust Arrangements relating to the Extended Dividend Access Mechanism are registered pursuant to Section 12(g) of the Exchange Act.

### *Discussion*

#### Section 12(b)

Section 12(b) of the Exchange Act requires registration under the Exchange Act of any security listed on a National Securities Exchange (as defined in the Exchange Act). As neither the Target Dividend Access Share nor the Trust Arrangements relating to the Extended Dividend Access Mechanism will be listed on any National Securities Exchange, neither would be required to be registered under Section 12(b) of the Exchange Act.

#### Section 12(g)

Section 12(g) of the Exchange Act requires an issuer with total assets exceeding \$10,000,000 to register thereunder a class of equity securities (other than exempted securities) held of record by either (i) 2,000 persons or (ii) five hundred persons who are not accredited investors (as such term is defined by the Commission).

#### *The Target Dividend Access Share.*

As described above, the Trustee will be the sole person identified as the owner of the Target Dividend Access Share on the records of security holders maintained by or on behalf of the Target for the purposes of Rule 12g5-1 of the Exchange Act. Class B Holders will have no rights in the Target Dividend Access Share, which will be held by the Trustee for the benefit of the DAS Beneficiary and RDS, through its right to procure redemption or repurchase of the Target Dividend Access Share, will control the ultimate disposition of the share. Accordingly, it is our opinion that the Target Dividend Access Share will be “held of record” by only one holder, and registration of the Target Dividend Access Share under the Exchange Act would not be required.

#### *The Trust Arrangements Relating to the Dividend Access Mechanism.*

The purpose of the Trust is to establish a procedure by which Class B Holders may obtain UK-source cash dividends (for non-U.S. tax purposes) in lieu of Dutch-source cash dividends (for non-U.S. tax purposes) on the Class B Shares. The terms of the Trust will be amended to provide for the Trustee to hold the Target Dividend Access Share but will otherwise remain materially unchanged. Accordingly, the terms of the Trust will continue to provide that the Class B Holders have no rights to modify the terms of the Trust, to maintain its existence or (subject to the right to claim funds held for their benefit by the Trustee) to direct in any specific manner how the dividends received by the Trustee, or other assets held by it, are held or handled. Moreover, as described above:

- The Class B Holders’ only interests in the Trust will be in, and their only rights against the Trustee will be with respect to, the cash, if any, deposited in the Accounts and held for their benefit in respect of dividends, pending disbursement thereof or (subject to forfeiture after 12

years) representing unclaimed funds (all disbursements are expected to happen promptly following payment to the Trustee).

- Pending disbursements, all funds paid to the Trustee will be held in one or more Accounts.
- Class B Holders will not have any interest in, or rights with respect to, either Dividend Access Share.
- Class B Holders will not have any right to any interest or other income on the funds held by the Trustee.
- The Trust will not have any purpose or engage in any activities relative to Class B Holders other than in respect of the Trustee's holding and paying out any funds received by the Trustee as cash dividends on the Dividend Access Shares, and completing any associated formalities<sup>4</sup>.
- All interests in the Trust, other than the interests of Class B Holders in the funds deposited in the Accounts and held for their benefit, will continue to be owned directly or indirectly by RDS.<sup>5</sup>
- RDS will be unconditionally obligated to pay the dividend declared on the Class B Shares on the relevant dividend payment date (even if that amount has been paid to the Trustee). To take account of the operation of the Extended Dividend Access Mechanism, the entitlement of each holder of Class B Shares to be paid any dividend declared by RDS will be reduced by the corresponding amount that has been paid by the Trustee to such Class B Holder.
- The rights that arise as a result of a payment on the Dividend Access Shares will not be separable from the Class B Shares and will not be separately reflected on the records of security holders maintained by or on behalf of RDS.

---

<sup>4</sup> These formalities will include, for example, receiving dividends, setting up the Accounts, interacting with paying agents, distributing interest received on the Accounts and dividends forfeited to the parties entitled thereto and providing Class B Holders information with respect to payments made under the Extended Dividend Access Mechanism for tax purposes.

<sup>5</sup> English counsel to RDS has advised that under English law, the Trust will not have a separate legal personality because it is, in essence, a fiduciary relationship between the Trustee and the beneficiaries of the Trust. However, the only beneficiaries of the Trust (and therefore the only persons with "interests" in the Trust) will be the Class B Holders (in relation to dividends paid on the Dividend Access Shares) and Shell Transport and the Target (in relation to interest or other income earned on the funds in the Accounts and in relation to the Dividend Access Shares). Shell Transport is, and the Target will be, 100% owned by RDS.

- RDS will have the right at any time to terminate the Extended Dividend Access Mechanism by causing the redemption (or repurchase by the relevant issuer) of the Dividend Access Shares.

In light of the foregoing, application of the disclosure requirements of the Exchange Act to the Trust, whose financial results are consolidated with RDS for financial reporting purposes, would not provide Class B Holders with any meaningful information about their investment in Class B Shares and would impose a meaningful burden on RDS and the Trustee in terms of the costs and efforts associated with Exchange Act filing requirements. This burden would result in large part from the need to provide information in Trust filings about Shell Transport and the Target, as issuers of the Dividend Access Shares, notwithstanding that those entities are not otherwise registrants under the Exchange Act. Instead, the interests of Class B Holders with respect to the Trust and the Extended Dividend Access Mechanism would continue to be addressed to the extent that, in its Annual Report on Form 20-F, RDS continues to provide all material information regarding the Trust, including the following disclosure:

1. A description of the material terms of the Extended Dividend Access Mechanism, including the Trust and the issuance of the Target Dividend Access Share.
2. Audited financial information regarding the assets of the Trust held for the benefit of Class B Holders for the year of the applicable Report on Form 20-F.
3. A discussion of the Trust assets held for the benefit of Class B Holders and movements therein during the year of the applicable Report on Form 20-F as part of the “Operating and Financial Review and Prospects” discussion pursuant to Item 5 thereof.
4. An assessment by RDS of the controls and procedures relating to the Trust, including an assessment by RDS’s management of such controls and procedures and an auditors’ attestation report on such assessment, in each case, in accordance with Item 15(b) of Form 20-F.

B. Relief under Investment Company Act.

*Relief Requested*

We request on behalf of RDS that the Staff of the Division of Investment Management of the Commission confirm that it will not recommend that the Commission take any enforcement action under Section 7 of the Investment Company Act against the Trust if it continues to operate without registration as an “investment company”.

*Discussion*

In general, all companies that qualify as issuers of securities and satisfy certain statutory criteria based on the composition of their assets or their business

activities are defined as “investment companies”<sup>6</sup> and are required to register and be regulated under the Investment Company Act unless an exclusion or exemption is available. We are of the opinion that the Trust does not constitute an “investment company” because we are of the opinion that the structure and operations of the Trust are insufficient to identify the Trust as an issuer separate from RDS and its subsidiaries.

In the 2005 No-Action Letter, the Staff granted the requested relief under the Investment Company Act for the operation of the Trust.<sup>7</sup> The extension of the Trust to include the Target Dividend Access Share does not alter the functioning of the Trust or its relationship to the Class B Holders. As explained above, the function of the Trust (i) will remain in substance ministerial, (ii) will not permit the Trustee to engage in investment activities with respect to the assets held for the benefit of the beneficiaries, (iii) will not impair the right of the beneficiaries to proceed directly against RDS for dividends, except to the extent amounts are actually paid by the Trustee to Class B Holders and (iv) does not alter the underlying economic relationship between RDS and the Class B Holders.

The Staff has granted relief similar to the relief requested in the context of other payment mechanisms where the role of the trusts interposed between the beneficiaries of such mechanism and the primary obligors in the applicable transaction was (i) in substance ministerial, (ii) did not permit the trustee to engage in investment activities with respect to the assets held for the benefit of the beneficiaries, (iii) did not impair the right of the beneficiaries to proceed directly against the primary obligors upon a payment default and (iv) did not alter the underlying economic relationship between the primary obligors and the beneficiaries. See, e.g. *Global Marine Drilling Company* (June 20, 1989) (“*Global Marine*”) as discussed below. See also *KRC Resources, Inc.* (February 22, 1988) (relief granted with respect to a passive trust established and functioning for the purpose of disbursing payments on a letter of credit to holders of trust interests, where the trustee, on behalf of the holders of the trust interests, could enforce payment against the issuer of the letter of credit as well as collateral securing such letter of credit subject to no defenses of these obligors against the trustee) and *Oxford Acceptance Corp.* (March 30, 1987) (relief granted with respect to a passive trust

---

<sup>6</sup> Under Section 3(a)(1) of the Investment Company Act, an “investment company” is defined as any issuer which:

(A) is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities;

(B) is engaged or proposes to engage in the business of issuing face-amount certificates of the installment type, or has been engaged in such business and has any such certificate outstanding; or

(C) is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer’s total assets (exclusive of Government securities and cash items) on an unconsolidated basis.

<sup>7</sup> Royal Dutch Shell plc (May 17, 2005).

established and functioning for the purpose of disbursing payments on bonds to holders of trust certificates, where such holders could enforce payment against the bond issuer subject to no defenses of the issuer against the trustee).

In *Global Marine*, the Staff granted the relief requested with respect to a trust established to hold a note, the proceeds of which were to service units issued to former unsecured creditors of the primary obligor on the note. The trustee's primary responsibility was to collect and disburse, on a timely basis, payments received with respect to the note directly to the holders of such units. The trustee could not engage in any investment activities with respect to the assets held for the benefit of the unit holders. Each unit holder retained the right (in addition to any rights it had against the trustee) to seek payment with respect to the unit by proceeding directly against the primary obligor, subject to no defenses that such primary obligor might have against the trustee (other than payment by the trustee). Furthermore, in the event the trustee failed to make payments to the unit holders, the indenture governing the units provided that the primary obligor could elect to pay the unit holders directly. Based primarily on these factors, the request for relief in *Global Marine* noted that the unit holder's rights were substantially the same as they would have been if the note had been issued directly to the unit holders.

The purpose and sole function of the Extended Dividend Access Mechanism, like the Existing Dividend Access Mechanism, and the Trust will be to provide a procedure for Class B Holders to receive UK-source dividends. The Extended Dividend Access Mechanism will be otherwise without substance and will have the characteristics present in the other payment mechanisms for which the Staff has granted the relief requested.

As in *Global Marine*, the Trustee's role in the transaction and the payment of dividends will be ministerial. Its primary responsibilities will be to deposit any cash dividend payments made by the issuers of the Dividend Access Shares on the Dividend Access Shares in one or more Accounts and promptly disburse such amounts to Class B Holders. All amounts paid on the Dividend Access Shares would be held in the Accounts and the aggregate amounts so held would be paid by the Trustee to the Class B Holders, on a pro rata basis, without regard to either the source of the cash or whether the payment is made in respect of a Class B Share issued in the 2005 Scheme or the 2015 Scheme. The Trust will not have any operations or perform any activities relative to Class B Holders other than holding and paying out any funds paid as cash dividends on the Dividend Access Shares, and completing any associated formalities<sup>8</sup>.

As in *Global Marine*, the Trustee will not be entitled to engage in investment activities with respect to the Trust assets held for the benefit of the Class B Holders. Rather, pending disbursement, the Trustee will hold the dividends paid on the Dividend Access Shares, in cash, for the benefit of Class B Holders in accounts at

---

<sup>8</sup> These formalities will include, for example, receiving dividends, setting up the Accounts, interacting with paying agents, distributing interest received on the Accounts and dividends forfeited to the parties entitled thereto and providing Class B Holders information with respect to payments made under the Extended Dividend Access Mechanism for tax purposes.

multiple banks (including non-U.S. banks that qualify as “foreign banks” under the International Banking Act of 1978) and will not otherwise invest any Trust assets.

As in *Global Marine*, the payment mechanism does not impair the right of the beneficiaries to proceed directly against the primary obligor upon a payment default. RDS will remain the sole obligor in respect of any dividend declared by it on the Class B Shares. In addition, subject to the operation of the Extended Dividend Access Mechanism (described below), RDS will have a full and unconditional obligation to pay any declared dividend on its Class B Shares to Class B Holders on a cash dividend payment date (even if that amount has been paid to the Trustee). In addition, if RDS declares a cash dividend, whether or not either one of the issuers of the Dividend Access Shares declares a cash dividend or pays a cash dividend to the Trustee, Class B Holders will retain the right to make a claim against RDS and may proceed against RDS for the full amount of the relevant dividend it has declared, less any corresponding amount that has actually been paid to Class B Holders under the Extended Dividend Access Mechanism. The foregoing right of Class B Holders to proceed against RDS for any dividends declared but not paid to Class B Holders is not subject to any defenses that RDS may have against the Trustee.

Furthermore, as in *Global Marine*, the Extended Dividend Access Mechanism will not alter the underlying economic relationship between the primary obligor in the transaction and the beneficiaries of the payment mechanism. Class B Holders will hold an equity interest in RDS equivalent to all other ordinary shares in RDS. RDS will remain the sole obligor in respect of any dividend declared by it on the Class B Shares until any amount is paid in respect thereof. Moreover, Class B Holders will not be entitled to dividend payments, whether from RDS or the Extended Dividend Access Mechanism, that in the aggregate exceed the amount of the dividend declared by RDS (subject to currency conversion).

In granting the no-action relief in *Global Marine*, the Staff noted that such relief was based, in particular, on four representations regarding the trust and its operations. We are of the opinion that these representations, or substantially similar representations, can be made with respect to the Trust and its operations, as noted below.

- 1) In *Global Marine*, the trust was to be created for the limited purpose of holding a note issued as part of a reorganization plan. As in *Global Marine*, the Trust has been established for a limited purpose--the Trust will not have any purpose or engage in any activities relative to Class B Holders other than holding and paying out any funds paid as cash dividends on the Dividend Access Shares, and completing any associated formalities.
- 2) In *Global Marine*, the trust was not a means of selling a class of securities to raise new funds but a means of resolving preexisting commercial relationships in a court-supervised bankruptcy context. As in *Global Marine*, the Trust is not being established or maintained as a means of selling a class of securities to raise new funds. Instead the sole purpose of

the Trust is to provide a means of providing UK-source dividends to Class B Holders.

- 3) In *Global Marine*, the trustee was required to pass through payments to unit holders and, to the extent of any failure by the trustee to do so, each such holder had the right to seek payment directly against the primary obligors on the note held by the trustee and the primary obligors could elect to pay such holders directly. As noted above, the Trustee will be required to disburse promptly any funds paid as cash dividends on the Dividend Access Shares to Class B Holders and, if such funds are not paid, Class B Holders will retain the right to make a claim against RDS and may proceed against RDS for the full amount of the relevant dividend it has declared, less any corresponding amount that has actually been paid to Class B Holders under the Extended Dividend Access Mechanism.
- 4) In *Global Marine*, the indenture governing the trust arrangements was to be qualified under the Trust Indenture Act of 1939, as amended (the “Trust Indenture Act”). In this case, the interests in the Trust are not securities to which the Trust Indenture Act applies. However, we note that RDS files periodic reports with the Commission, including an Annual Report on Form 20-F which includes the material information with respect to the Trust noted above in the final paragraphs under the heading “Relief under the Exchange Act for the Extended Dividend Access Mechanism.”

In addition to satisfying the *Global Marine* representations, we are of the opinion that allowing the Trust to continue to operate without registration as an “investment company” under the Investment Company Act would raise even fewer concerns than allowing the trust in *Global Marine* to so operate. In this regard, we note that, unlike in *Global Marine*, where the unit holders had a beneficial interest in the note deposited in the trust, Class B Holders will not have any interest in, or rights with respect to, either Dividend Access Share, or any interest or other income earned on the funds in the Trust. The only interest of the Class B Holders in the Trust will be in the cash paid on the Dividend Access Shares.

For the foregoing reasons, we are of the opinion that the structure and operations of the Trust will be insufficient to identify the Trust as an issuer separate from RDS and its subsidiaries, and consequently, it is our opinion that the Trust would not be required to register as an “investment company” under the Investment Company Act.

**Request for Confidential Treatment**

Pursuant to Regulation 200.81, we respectfully request on behalf of RDS that this no-action request and the response be accorded confidential treatment until 120 days after the date of the response to such request or such earlier date as the information in this letter has been made public. This request for confidential treatment is made on behalf of RDS for the reason that certain of the facts set forth in this letter have not been made public.

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

Very truly yours,



William P. Rogers, Jr.

Attention: Paul Dudek  
Mary Cascio  
Office of International Corporate Finance  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549

Attention: Erin Loomis  
Office of Chief Counsel  
Division of Investment Management  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549

Attention: Adam Turk  
Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549