



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

DIVISION OF  
CORPORATION FINANCE

October 25, 2016

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

Krystian Czerniecki  
Sullivan & Cromwell LLP  
Neue Mainzer Strasse 52  
60311 Frankfurt am Main  
Germany

Re: Cash tender offer for ordinary shares of Braas Monier Building Group S.A.

Dear Mr. Czerniecki:

We are responding to your letter dated October 20, 2016, addressed to Ted Yu, Christina Chalk and Justin Kisner, as supplemented by telephone conversations with the staff, with regard to your request for exemptive and no-action relief. To avoid having to recite or summarize the facts set forth in your letter, we attach the enclosed copy of your letter. Unless otherwise noted, capitalized terms in this response letter have the same meaning as in your letter dated October 20, 2016.

Section I

On the basis of the representations and the facts presented in your letter, the Division of Corporation Finance, acting for the Commission pursuant to delegated authority, by separate order is granting an exemption from:

- Exchange Act Rule 14e-1(d) to permit the Offeror to issue any notice of extension of the Acceptance Period in accordance with German law and practice; and
- Exchange Act Rule 14e-5 to permit any of the Offeror Parties to purchase, or arrange to purchase, whether directly or through their affiliates, or through any advisor, broker, or other financial institution acting as their agent, Shares outside the Offer in accordance with German law and practice and under the circumstances and subject to the conditions described in your letter.

## Section II

Based on the representations in your letter, the Division of Corporation Finance will not recommend enforcement action under Exchange Act Rules 14e-1(b) and (c).

- The no-action position under Rule 14e-1(b) permits the Offeror to extend the Acceptance Period for a period of two calendar weeks in the event of a material change that would otherwise require an extension of ten U.S. business days, as required by German law.
- The no-action position under Rule 14e-1(c) allows the Offeror to pay for tendered Shares as promptly as practicable but no earlier than four and no later than eight German banking days after the expiration of the Acceptance Period or the Additional Acceptance Period, as applicable. If the Regulatory Condition has not been satisfied before expiration of either the Acceptance Period or the Additional Acceptance Period, payment for tendered Shares will be made as promptly as practicable but in no event earlier than four or later than eight German banking days after publication of notice of the satisfaction of the Regulatory Condition. If any Offer conditions other than the Regulatory Condition are unsatisfied and not waived at the expiration of the Acceptance Period, or if the Regulatory Condition is not ultimately satisfied, tendered Shares will be returned promptly and in no event later than within three German banking days.

In granting the exemptive and no-action relief described above, we note in particular:

- the Offeror Parties' representations that the Company qualifies as a "foreign private issuer" as defined in Exchange Act Rule 3b-4(c);
- that tendering shareholders will have withdrawal rights during the Acceptance Period and the Additional Acceptance Period and, if the Regulatory Condition has not been satisfied before the expiration of the Acceptance Period or the Additional Acceptance Period, tendering shareholders also will have withdrawal rights until such time as the Regulatory Condition has been satisfied;
- that German law mandates an extension of exactly two calendar weeks in the event of a material change in the terms of the Offer during the last two weeks of the Acceptance Period; and
- the relief requested from Rule 14e-5 would be available under Exchange Act Rule 14e-5(b)(12)(i) if the Tier II exemption was available in the context of this Offer.

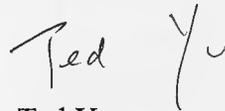
The foregoing exemptive and no-action relief is based solely on the representations and the facts presented in your letter dated October 20, 2016 and does not represent a legal conclusion with respect to the applicability of the statutory or regulatory provisions of the federal securities laws. The relief is strictly limited to the application of the rules listed above to this

Krystian Czerniecki, Esq.  
Sullivan & Cromwell LLP  
October 25, 2016  
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transaction. You should discontinue this transaction pending further consultations with the staff if any of the facts or representations set forth in your letter change. In addition, this position is subject to modification or revocation if at any time the Commission or the Division of Corporation Finance determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act.

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

Sincerely,

A handwritten signature in black ink that reads "Ted Yu". The signature is written in a cursive style with a large "Y" and a small "u" at the end.

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

Enclosure

UNITED STATES OF AMERICA  
BEFORE THE  
SECURITIES AND EXCHANGE COMMISSION

October 25, 2016

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In the Matter of a Tender Offer for  
Ordinary Shares of Braas Monier Building  
Group S.A.

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ORDER GRANTING EXEMPTIONS FROM  
EXCHANGE ACT RULES 14E-1(D) AND 14E-5

Standard Industries Inc. and Marsella Holdings S.à.r.l. submitted a letter dated October 20, 2016 requesting that the Securities and Exchange Commission ("Commission") grant exemptions from Exchange Act Rules 14e-1(d) and 14e-5 for the transaction described in the letter ("Request").

Based on the representations and the facts presented in the Request, and subject to the terms and conditions described in the letter from the Division of Corporation Finance dated October 25, 2016, it is ORDERED that the request for exemptions from Exchange Act Rules 14e-1(d) and 14e-5 is hereby granted.

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

Brent J. Fields  
Secretary

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

For: Division of Corporation Finance

By: Ted Yu

Date: 10/25/2016

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October 20, 2016

Division of Corporation Finance,  
Securities and Exchange Commission,  
100 F. Street, N.E.,  
Washington, D.C. 20549,  
United States of America.

Attn: Ted Yu, Esq., Chief, Office of Mergers and Acquisitions  
Christina Chalk, Esq., Senior Special Counsel, Office of Mergers and Acquisitions  
Justin Kisner, Esq., Attorney-Adviser, Office of Mergers and Acquisitions

Re: Standard Industries Inc.; Marsella Holdings S.à r.l. Offer for Ordinary Shares of Braas Monier Building Group S.A.

Dear Mr. Yu, Ms. Chalk and Mr. Kisner:

We are writing on behalf of Standard Industries Inc., a Delaware corporation (“Standard Industries Inc.”, and together with its subsidiaries, “Standard Industries”) and Marsella Holdings S.à r.l., a limited liability company (*société à responsabilité limitée*) organized under the laws of the Grand Duchy of Luxembourg and a wholly-owned direct subsidiary of Standard Industries Inc. (the “Offeror”, and together with Standard Industries Inc., the “Offeror Parties”). On September 15, 2016, the Offeror announced its intention to commence a voluntary public takeover offer to acquire each ordinary bearer share, nominal value €0.01 per share (the “Shares”), of Braas Monier Building Group S.A., a public limited liability company (*société anonyme*) organized under the laws of the Grand Duchy of Luxembourg (the “Company”) for €25.00 in cash per Share (the “Offer”). The Shares are listed and traded on the regulated market (*Regulierter Markt*) of the Frankfurt Stock Exchange in a sub-segment with additional admission requirements (*Prime Standard*). The Offeror commenced the Offer on October 14, 2016.

The Offer is structured as a single offer made concurrently in Germany, the United States, and other jurisdictions to which the Offer may be legally extended. The Offeror Parties are proceeding on the basis that the Tier II exemption (the “Tier II Exemption”) in Rule 14d-1 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”) is not available and, accordingly, are requesting relief under Regulation 14E in this Letter, as described below.

SC142263226 Sullivan & Cromwell LLP is a registered limited liability partnership established under the laws of the State of New York.  
The personal liability of our partners is limited to the extent provided in such laws. Additional information is available upon request or at [www.sullcrom.com](http://www.sullcrom.com).

A list of the partners' names is available for inspection at the above address.

On behalf of the Offeror Parties, we hereby respectfully request that the Staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") confirm that, based upon the facts and circumstances described herein, it will not recommend enforcement action to the Commission under any of:

(i) Rule 14e-1(c) under the Exchange Act, if the Offeror pays for, or returns, Shares tendered in the Offer in accordance with German law and practice; and

(ii) Rule 14e-1(b) under the Exchange Act if, in the event of a material change in the terms of the Offer, the Acceptance Period (as defined below) is extended for a period of two calendar weeks in accordance with German law and practice.

In addition, on behalf of the Offeror Parties, we respectfully request that the Commission grant exemptive relief, based upon the facts and circumstances described herein, from:

(i) Rule 14e-1(d) under the Exchange Act, to permit the Offeror to issue any notice of extension of the Acceptance Period (as defined below) in accordance with German law and practice; and

(ii) Rule 14e-5 under the Exchange Act, if any of the Offeror Parties purchases, or arrange to purchase, whether directly or through any of their affiliates, or through any advisor, broker or other financial institution acting as their agent (together with the Offeror Parties, the "Prospective Purchasers"), Shares outside of the Offer in accordance with German law and practice.

We are acting as United States and German counsel to the Offeror Parties in connection with the matters described in this Letter. The Offeror Parties have provided us with, and authorized us to make on their behalf, the factual representations set forth in this Letter. The statements contained in this Letter with respect to the application of German law and practice have been reviewed by certain lawyers of our Firm located in our Frankfurt office, who are members of the German bar.

## **I. Background**

### **a) *The Company***

The Company is a global manufacturer and supplier of pitched roof products, including both roof tiles and roofing components. It is managed by its board of directors (*Verwaltungsrat*), which currently consists of seven members, and its senior management, which currently consists of three members. Based on publicly available information, the

Offeror Parties understand that all members of the board of directors and the senior management are non-U.S. persons. According to the Company's annual report for the fiscal year ended December 31, 2015 (the "Annual Report"), annual consolidated revenues were €1,256.7 million and annual consolidated net profit was €55.1 million. 90% of consolidated revenues were generated in Europe, with Germany (26%) being the most significant single market, followed by the United Kingdom (13%), France (10%), and Italy (6%). The Company's main single market outside of Europe is Malaysia, which accounted for 4% of consolidated revenues. The Offeror Parties understand that the Company has no significant assets or operations in the United States.

The Company has no securities registered under Section 12 of the Exchange Act, listed on a U.S. national securities exchange. The Company does not file reports with the Commission pursuant to Section 13(a) or 15(d) of the Exchange Act.

The Offeror Parties believe that the Company qualifies as a "foreign private issuer" as defined in Rule 3b-4(c) under the Exchange Act. Although a majority of the Shares may be beneficially owned, for the reasons described below, by residents of the United States, the Offeror Parties understand, as discussed above, that all members of the Company's board of directors and senior management are non-U.S. residents, most of the Company's assets and operations are located in Europe, and the business of the Company is not administered principally in the United States.

i. Share Capital

The Company has a share capital of €391,666.67, represented by 39,166,667 Shares. The Shares are held in bearer form through the Clearstream Banking AG booking system (the "Clearstream System") and are listed and traded on the regulated market (*Regulierter Markt*) of the Frankfurt Stock Exchange in a sub-segment with additional admission requirements (*Prime Standard*). The Company is included in the SDAX index. The Offeror Parties understand that the Company does not hold any Shares in treasury.

ii. Ownership Structure

Based on information available on the Company's website before the public announcement of the Offer, the Shares were held as follows: (i) 11,400,000 Shares (representing 29.11% of the Shares) were held by 40N Latitude SPV-F Holdings S.à r.l., a limited liability company (*société à responsabilité limitée*) incorporated under the laws of the Grand Duchy of Luxembourg, which for German law purposes is deemed to be acting in concert with the Offeror ("40N Latitude"), (ii) 4,219,070 Shares (representing 10.77% of the Shares) were held by Monier Holdings S.C.A., a partnership limited by shares (*société en commandite par actions*) incorporated under the laws of the Grand Duchy of Luxembourg ("Monier"), (iii) 3,871,837 Shares (representing 9.89% of the Shares) were held by

Wellington Management Company, LLP, a Delaware limited liability partnership, and (iv) 1,978,439 Shares (representing 5.05% of the Shares) were held by Lucerne Capital Management LP, a Delaware limited partnership. 0.46% of the Shares were held by the Company's board of directors and senior management and the remaining 44.72% of the Shares were reported by the Company as remaining free float.

iii. Tier II Exemption Analysis

The Offeror Parties are requesting relief under Regulation 14E in this Letter because, for the reasons discussed below, they have reason to believe that U.S. ownership of the subject securities exceeds 40%. The Offeror Parties conducted the calculation of U.S. ownership of the Shares pursuant to Instruction 3 to paragraphs (c) and (d) of Rule 14d-1 (the "Alternate Test"), as opposed to the "look-through" method of calculation pursuant to Instruction 2 to paragraphs (c) and (d) of Rule 14d-1, because the Offer is not made pursuant to an agreement between the Offeror and the Company.<sup>1</sup>

Under the Alternate Test, a bidder may proceed on the presumption that U.S. ownership does not exceed 10% or 40%, respectively, if the average daily trading volume of the subject securities in the United States for a recent twelve-month period does not exceed 10% or 40% of the average daily trading volume on a worldwide basis, unless the subject company has disclosed a higher level of U.S. ownership or the bidder otherwise knows or has reason to know, before the public announcement of the offer, that the level of U.S. ownership exceeds the relevant percentage. The Offeror Parties believe, based on market share data retrieved from Bloomberg Finance, that the average daily trading volume of the Shares in the United States is negligible and disclosure by the Company indicates a level of U.S. ownership comfortably below the 40% threshold.<sup>2</sup> However, supplementary

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<sup>1</sup> Instruction 3 (first sentence) to paragraphs (c) and (d) of Rule 14d-1. Notwithstanding the 29.11% ownership by 40N Latitude of the Shares, the Offeror Parties do not believe that the Offeror is an affiliate of the Company because it does not have power to direct or cause the direction of the management and policies of the Company. 40N Latitude, for example, is not represented on the Board of Directors of the Company. Furthermore, on September 15, 2016, the Board of Directors of the Company rejected the proposed Offer and stated that it will not recommend to shareholders of the Company to accept the Offer.

<sup>2</sup> The Annual Report indicates that the percentage of "free float" of the Shares held by shareholders in "North America" was 20.25% according to a shareholder identification exercise conducted in September 2015. The "free float", as such term is used in the Annual Report, appears to include Shares held by all retail and institutional shareholders of the Company, except for controlling shareholders and management/directors. As of September 2015, the controlling shareholder of the Company was Monier, which, according to the Annual Report, held approximately 48.4% of the Shares as of that date, and the Annual Report does not identify Monier as a U.S. shareholder.

shareholder ownership data retrieved from Bloomberg Finance as of September 14, 2016, indicates an overall percentage of Shares owned by institutional U.S. holders of approximately 59.6%. Excluding Shares held by 40N Latitude, which for German law purposes is deemed to be acting in concert with the Offeror,<sup>3</sup> as required by Instruction 2(ii) to paragraphs (c) and (d) of Rule 14d-1, the level of U.S. ownership of the Shares based on Bloomberg Finance data amounts to approximately 43.0%. In addition, according to a voting rights notification form dated July 6, 2016, filed by Monier, which is treated as a Luxembourg shareholder in the Bloomberg Finance data, Monier is jointly controlled by certain fund managers, a majority of which appears to be controlled by individuals resident in the United States, and accordingly, a portion of Monier's 10.77% of the Shares may be deemed to be held by U.S. holders for purposes of the U.S. ownership calculation. Given the information available from third party information providers and voting notification forms filed in Germany of which the Offeror Parties are aware, the Offeror Parties believe that the Tier II Exemption is not available under the circumstances applicable to the Offer.<sup>4</sup>

b) *The Offeror Parties*

The Offeror is a directly wholly-owned subsidiary of Standard Industries Inc. To date, the Offeror has not conducted any material activities other than those incident to its formation and the matters contemplated by the Offer.

Standard Industries Inc. is a holding company with interests in building materials and aggregates, and investment businesses in public equities and real estate, including 69 manufacturing facilities and 97 sales offices in more than 80 countries. Standard Industries conducts its business of manufacturing and selling residential and commercial roofing and waterproofing products, insulation products, aggregates, specialty construction and other products through four subsidiaries, GAF Materials LLC, Specialty Granules LLC, Icopal Holding ApS, and Siplast, Inc. In North America, Standard Industries is a leading full line manufacturer of residential and commercial roofing products as well as a manufacturer of commercial insulation. In Europe, its business is primarily focused on the commercial roofing and waterproofing markets.

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<sup>3</sup> 40N Latitude is indirectly controlled by 40 North GP III LLC, which in turn is jointly controlled by David J. Millstone and David S. Winter, the Co-Chief Executive Officers of Standard Industries Inc.

<sup>4</sup> We note that a voting notification form was filed on September 20, 2016 by AIO IV S.à r.l. and AIO V S.à r.l., which appear to be beneficially owned by a U.S. individual, disclosing an ownership of 5.26% of the Shares. However, as this notification became known to the Offeror Parties after the announcement of the Offer, the Offeror Parties believe that this ownership interest would not be taken into account when calculating U.S. ownership pursuant to Instruction 3 (first sentence) to paragraphs (c) and (d) of Rule 14d-1.

Standard Industries Inc. is a privately held company. It has no securities registered under Section 12 of the Exchange Act, listed on a U.S. national securities exchange and does not file reports with the Commission pursuant to Section 13(a) or 15(d) of the Exchange Act.

c) *Proposed Transaction*

i. Overview

On October 14, 2016, the Offeror commenced the Offer. To the extent the Offer is successfully completed, and assuming the Offeror holds at least 50% of the Shares, the Company will be an indirect subsidiary of Standard Industries Inc. All shareholders of the Company will be permitted to participate in the Offer on equal terms. The Offer is being made pursuant to an offer document (*Angebotsunterlage*) that has been provided or made available to all holders of the Shares in connection with the Offer (the "Offer Document").

As permitted by German law and practice, the Offeror has entered into certain irrevocable undertakings pursuant to which 40N Latitude and Monier have committed irrevocably to tender their respective Shares into the Offer. Consistent with the strict requirements of the German Takeover Act (*Wertpapiererwerbs- und Übernahmegesetz*) in this respect, no additional compensation will be paid to these shareholders and they will receive the offer consideration at the same time as the other shareholders of the Company that accept the Offer. Accordingly, we are not requesting exemptive relief from Rule 14e-5 with respect to such shareholders entering into irrevocable undertakings in connection with the Offer.<sup>5</sup>

ii. Structure

The Offer is being made to the holders of all issued and outstanding Shares. The Offer is subject to, and complies with, applicable laws of the Federal Republic of Germany, including the German Takeover Act, the Grand Duchy of Luxembourg, including the Luxembourg Takeover Act (*Loi du 19 mai 2006 portant transposition de la directive 2004/25/CE du Parlement européen et du Conseil du 21 avril 2004 concernant les offres publiques d'acquisition*) and, subject to the confirmations requested in this Letter,

<sup>5</sup> See *Kraft Foods, Inc. Offer for Ordinary Shares and ADSs of Cadbury plc* (December 9, 2009); *AstraZeneca plc Offer for Cambridge Antibody Technology Group plc* (May 23, 2006); *UCB S.A. Offer for Celltech Group Plc* (May 19, 2004); *RWE Aktiengesellschaft Offer for Innogy Holdings plc* (July 22, 2002); *Celltech Group plc Offer for Oxford GlycoSciences plc* (March 3, 2003). See also Manual of Publicly Available Telephone Interpretations, Third Supplement, I Regulation M-A, L. 14e-5, Question 4 (SEC Division of Corporation Finance, July 2001).

Section 14(e) of the Exchange Act and Regulation 14E promulgated by the Commission thereunder.

The Offer is structured as a single offer made concurrently in Germany, the United States, and other jurisdictions to which the Offer may be legally extended. In accordance with the German Takeover Act, the Offer will remain open for an initial acceptance period (the "Acceptance Period") of ten weeks, commencing on October 14, 2016 and ending on December 23, 2016, unless extended (thus satisfying the requirement under Rule 14e-1(a) that the tender offer be open for at least 20 business days from the date it is first published or sent to security holders). The Acceptance Period will be followed by a statutory two-week additional acceptance period (the "Additional Acceptance Period"), unless the Offer Conditions (as defined below) can no longer be satisfied and are not waived, in which case the Offer will lapse.

The Offer is subject to the conditions precedent (the "Offer Conditions") set forth in the Offer Document, for example, the obtaining of required antitrust approvals by the European Commission and antitrust authorities in Russia and South Africa (the "Regulatory Condition") and the condition that prior to the expiration of the Acceptance Period there will be no material capital increase (as described in the Offer Document) exceeding 10% of the Company's share capital. There is no condition with respect to the minimum number of Shares that need to be tendered into the Offer. Under German law, the only condition to the Offer that may remain outstanding after the expiration of the Acceptance Period is the Regulatory Condition. Accordingly, none of the other Offer Conditions may remain outstanding after such time. The Offeror will announce material developments with respect to the Offer, including the status of satisfying the Offer Conditions, as required by German law and will issue press releases in relation thereto in the United States.

The tendering shareholders have withdrawal rights during the Acceptance Period and the Additional Acceptance Period, and, if the Regulatory Condition has not been satisfied prior to the expiration of the Acceptance Period or the Additional Acceptance Period, as the case may be, tendering shareholders will also have withdrawal rights until such time as such Regulatory Condition has been satisfied.

Once the Offer Conditions have been satisfied, the Offeror will publicly announce the satisfaction of such Offer Conditions by announcement made in accordance with the terms and conditions of the Offer Document. As discussed below, payment with respect to the tendered Shares (which have not been withdrawn) will be made (i) if the Offer Conditions have been satisfied before expiration of the Acceptance Period or the Additional Acceptance Period, as the case may be, as promptly as practicable within four to eight German banking days after expiration of the Acceptance Period for Shares tendered during

the Acceptance Period and four to eight German banking days after expiration of the Additional Acceptance Period for Shares tendered during the Additional Acceptance Period, or (ii) if the Offer Conditions are satisfied only after expiration of the Acceptance Period or the Additional Acceptance Period, as the case may be, as promptly as practicable within four to eight German banking days after publication of the satisfaction of the Offer Conditions.

iii. Offer Document

The Offer Document has been provided or made available to the holders of the Shares in connection with the Offer. It has been prepared in accordance with the requirements of the German Takeover Act, applicable laws of the Grand Duchy of Luxembourg, including the Luxembourg Takeover Act and, subject to the confirmations requested in this Letter, Section 14(e) of the Exchange Act and Regulation 14E promulgated by the Commission thereunder, and is available in the German language and as an English translation. The Offer Document prominently discloses that payment of the offer consideration may be made on a date that is significantly later than the expiration of the Acceptance Period or the Additional Acceptance Period, pending satisfaction of the Regulatory Condition.

iv. Commencement

Following approval by the German Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*) (“BaFin”) to publish the Offer Document, the Offeror has published a notice (*Hinweisbekanntmachung*) (the “Offer Notification”) announcing the commencement of the Offer. The commencement has been announced in Germany in the electronic version of the German Federal Gazette (*elektronischer Bundesanzeiger*) and in the United States by press release. The Offer is also being announced by placing an advertisement in the U.S. national edition of *The Wall Street Journal*.

Under German law, an offer commences on the first day on which the offer document is publicly available. The Offer Document has been published on the internet at <http://www.standardindustriesoffer.com> in the German language and as an English translation. Shareholders may also obtain the Offer Document from the settlement agent for the Offer upon request. These requests can be made by contacting the settlement agent by facsimile or email in accordance with instructions in the Offer Document and the Offer Notification.

v. Acceptance

Securities of listed German companies are frequently uncertificated and held through the Clearstream System, as is the case with respect to the Shares. Accordingly, the

Company's shareholders may accept the Offer by delivering a declaration of acceptance to the custodian credit institution, bank, brokerage or financial services institution (a "Custodian Institution") through which they hold their Shares. The Custodian Institutions through which holders of Shares have accepted the Offer will effect a book-entry transfer in order to hold such tendered Shares under a separate designated ISIN for tendered Shares within the Clearstream System until the settlement of the Offer.

vi. Extension of the Acceptance Period

The German Takeover Act does not provide for extension of the acceptance period of a tender offer, except in the case of a material change to the offer. Under German law, a material change to the terms of the offer (increase of the offer consideration, offer of additional consideration, reduction of a minimum acceptance condition, and waiver of the conditions to the offer) occurring during the last two weeks of the acceptance period and at the latest one German business day before expiration of the acceptance period, would require that the acceptance period remain open for an additional two calendar weeks from the stated end of the acceptance period. The applicable provision of German law requires an extension of exactly two weeks. If such a material change occurs with respect to the Offer and the Acceptance Period is extended, commencement of the Additional Acceptance Period will be delayed accordingly.

vii. Additional Acceptance Period

The German Takeover Act requires that, following the Acceptance Period, the Offeror must keep the Offer open for a two-week Additional Acceptance Period during which shareholders may tender their Shares for the same consideration offered in the Acceptance Period. However, as permitted by BaFin, in the Additional Acceptance Period the Offeror will not accept tenders of Shares issued from authorized capital of the Company after the expiration of the Acceptance Period. The Additional Acceptance Period starts to run only after the Offeror publishes the official results of the Offer after expiration of the Acceptance Period. The Additional Acceptance Period therefore typically begins the day after the fourth German banking day following expiration of the Acceptance Period, as explained above.

viii. Publication of Results

The German Takeover Act requires the announcement of exact and final results of an offer following the expiration of the Acceptance Period and the Additional Acceptance Period. Under German practice, the Offeror will not be able to make this determination until the second German banking day following the expiration of such periods, as Shares may be tendered on the last day of such periods and the book-entry transfer of such shares can only be effected within two German banking days. While the

same gap between tender and settlement occurs in the U.S. markets, it is overcome by the use of notices of guaranteed delivery, a procedure not used in the German market. The German Takeover Act provides that the Offeror must then prepare and publish the final results of the Offer, which takes approximately another one German banking day.

ix. “As Tendered” Trading Market

It is common market practice in German offers for tendered shares to trade on an “as tendered” basis on the Frankfurt Stock Exchange. Shares tendered during the Acceptance Period will be eligible for trading on an “as tendered” basis from the third trading day following commencement of the Offer until no later than (i) the close of regular stock exchange trading hours on the last trading day of the Frankfurt Stock Exchange within the Additional Acceptance Period, or (ii) unless determined otherwise by the Frankfurt Stock Exchange, the close of regular stock exchange trading hours on the day the satisfaction of the Regulatory Condition is published, whichever is later. No stock market trading of Shares tendered in the Additional Acceptance Period is planned during the Additional Acceptance Period. However, if the Regulatory Condition has not been satisfied prior to the expiration of the Additional Acceptance Period, beginning on approximately the fourth German trading day after the Additional Acceptance Period, Shares validly tendered during the Additional Acceptance Period will be able to trade in the “as tendered” market along with Shares tendered during the Acceptance Period. While we expect, based on our experience in similar transactions, that a liquid “as tendered” trading market will develop, trading liquidity in tendered shares depends on a number of factors, including the level of acceptances and the market’s assessment of the probability of the completion of the Offer and the timing of such completion.

x. Settlement

As permitted under the German Takeover Act, the Offer is structured to provide for two settlement dates, one for Shares tendered in the Acceptance Period and one for Shares tendered in the Additional Acceptance Period.

Payment of the purchase price to the Custodian Institution will take place in exchange for (*Zug um Zug gegen*) the transfer of the tendered Shares into the deposit account of a designated German bank at the Clearstream System for transfer to the Offeror. The designated German bank will transfer the purchase price to the Custodian Institution as promptly as practicable after the tendered Shares have been placed at its disposal. For Shares tendered in the Acceptance Period, this will occur no earlier than four and no later than eight German banking days following expiration of the Acceptance Period, provided that if the Regulatory Condition has not been satisfied prior to expiration of the Acceptance Period, it will occur no earlier than four and no later than eight German banking days

following publication of the satisfaction of the Regulatory Condition. For Shares tendered in the Additional Acceptance Period, the transfer of the purchase price to the Custodian Institution will be made no earlier than four and no later than eight German banking days following expiration of the Additional Acceptance Period, provided that if the Regulatory Condition has not been satisfied prior to expiration of the Additional Acceptance Period, it will occur no earlier than four and no later than eight German banking days following publication of the satisfaction of the Regulatory Condition.<sup>6</sup>

Once the purchase price for Shares tendered under the Offer has been credited at the Custodian Institution, the Offeror will have fulfilled its obligation to pay the purchase price. The Custodian Institution will then be responsible for crediting the amount of the purchase price to the account of each shareholder that has tendered Shares.

## II. Requested Relief

### a) *Rule 14e-1(c) under the Exchange Act*

Rule 14e-1(c) prohibits a bidder from failing to pay the consideration offered or to return the securities deposited by or on behalf of security holders promptly after the termination or withdrawal of an offer.

As noted above, the Offer is subject to the Regulatory Condition having been satisfied. The Acceptance Period will remain open for ten weeks, having commenced on October 14, 2016 and ending on December 23, 2016, unless extended, followed by the two-week Additional Acceptance Period. As discussed above, in accordance with German law and practice, payment for the Shares tendered in the Offer (which have not been withdrawn) will be made as promptly as practicable, but no earlier than four and no later than eight German banking days after expiration of the Acceptance Period or the Additional Acceptance Period, as the case may be, or no earlier than four and no later than eight German banking days after publication of the satisfaction of the Regulatory Condition if the Regulatory Condition has not been satisfied before expiration of the Acceptance Period or the Additional Acceptance Period. If the Offer Conditions have not been satisfied or waived and the Offer is terminated without acceptance for payment by the Offeror of any Shares, all

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<sup>6</sup> In the event of a capital increase from authorized capital of the Company after the Acceptance Period, and if the Regulatory Condition has been satisfied prior to the expiration of the Additional Acceptance Period, settlement of Shares validly tendered in the Additional Acceptance Period is expected to occur no later than eight German banking days, but in any event as soon as practically possible, after the expiration of the Additional Acceptance Period.

tendered Shares (which have not been withdrawn) will be returned within three German banking days.

As noted above, the shareholders who tender their Shares during the Acceptance Period and the Additional Acceptance Period will be able to trade such shares on an “as tendered” basis on the Frankfurt Stock Exchange until such time as the Offer is settled and, accordingly, will have liquidity with respect to their tendered Shares. The shareholders who tender their Shares in the Offer will have withdrawal rights during the Acceptance Period and the Additional Acceptance Period, and, if all Offer Conditions have not been satisfied or waived prior to the expiration of the Acceptance Period, as the case may be, tendering shareholders will also have withdrawal rights until such time as such conditions have been satisfied. As stated above, under German law, the only condition that may remain outstanding after the expiration of the period during which acceptances may be made under the Offer is the Regulatory Condition. Accordingly, none of the other Offer Conditions may remain outstanding after such time.

In light of the foregoing, we do not believe that payment for, or return of, the Shares tendered in the Offer in the manner described above as required by German law constitutes a fraudulent, deceptive or manipulative act or practice. In the Offer, payment will be made in accordance with German law and practice and all tendering shareholders will be treated equally. Moreover, payment for, or return of, Shares tendered in the manner described above would be permitted under the Tier II Exemption, if it were available, as it would be made in accordance with German law and practice.<sup>7</sup>

The Staff has on previous occasions granted relief similar to the relief requested herein. In particular, we believe that the relief from Rule 14e-1(c) requested with respect to the Offer is consistent with the relief granted in the context of Axel Springer’s offer and KKR’s and Permira’s offer for ProSiebenSat.1 Media AG,<sup>8</sup> which contemplated offer structures that are similar to the structure of the Offer. In addition, the Staff has granted relief from Rule 14e-1(c) in other transactions where U.S. ownership in the subject

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<sup>7</sup> We note, furthermore, that the Staff has not objected to Tier II-eligible German takeover offers subject only to Regulation 14E proceeding without withdrawal rights (at least to the extent such offers included a minimum acceptance condition) notwithstanding the potential delay in settlement that would occur if regulatory approval conditions have not been met prior to the expiration of the relevant acceptance period. *See Offer of Diebold Incorporated for all shares of Wincor Nixdorf AG*, Registration Statement on Form S-4, effective February 5, 2016 (File No. 333-208186); *Proposed Combination of NYSE Euronext and Deutsche Börse AG*, Registration Statement on Form F-4, effective May 3, 2011 (File No. 333-173347).

<sup>8</sup> *KKR and Permira Offer for ProSiebenSat.1 Media AG* (January 30, 2007); *Axel Springer AG Offer for ProSiebenSat.1 Media AG* (September 12, 2005).

securities exceeded 40%.<sup>9</sup> The rationale for the adoption of the Tier II Exemption was to facilitate cross-border transactions and particularly to minimize conflicts with foreign regulatory schemes. In that respect, given the direct conflict between the requirements of Rule 14e-1(c) and the German laws and regulations applicable to the Offer, we believe that the requested relief is consistent with the rationale for the adoption of the Tier II Exemption and the policy behind the adoption of Release Nos. 33-8957; 34-58597; File No. S7-10-08 (the “Cross-Border Release”).

On behalf of the Offeror Parties, we therefore request that the Staff confirm that it will not recommend enforcement action under Rule 14e-1(c) if the Offeror pays for, or returns, Shares tendered in the Offer in accordance with German law and practice.

b) *Rule 14e-1(b) under the Exchange Act*

Rule 14e-1(b) prohibits a bidder from increasing or decreasing the percentage of the class of securities being sought or the consideration offered or the dealer’s soliciting fee to be given in a tender offer unless the tender offer remains open for at least ten U.S. business days from the date that notice of such change is first published or sent or given to security holders. Rule 14d-4(d)(2)(ii) requires that, in the context of a registered offer, in the event an offeror changes the offer price or makes a similarly significant change to the terms of the offer, the offeror must disseminate the material change to the target shareholders, and the offer must remain open for ten U.S. business days from the date of such dissemination. In its release “Regulation of Takeovers and Security Holder Communications” (Release Nos. 33-7760, 34-42055; IC-24107), the Commission stated that it believed these time periods represent general guidelines that should be applied uniformly

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<sup>9</sup> See *Offer by Stork Holdco L.P. for Songbird Estates Plc* (December 19, 2014) (U.S. ownership of approximately 58.8%; payment within 14 calendar days); *Oak Leaf B.V., Acorn B.V. Offer for D.E Master Blenders 1753 N.V.* (May 21, 2013) (U.S. ownership of 59.5%; payment within six Dutch trading days); *Coca-Cola Hellenic Bottling Company S.A. and Coca-Cola HBC* (March 14, 2013) (U.S. ownership of approximately 50%; payment within five Greek business days); *Vimpelcom Ltd. Altimio Holdings & Investments Ltd and Telenor ASA Offer for all outstanding common shares, preferred shares and American Depositary Shares* (February 5, 2010) (U.S. ownership of approximately 44.4%; payment within 15 days); *Offer by Singapore Technologies Semiconductors Pte Ltd for STATS ChipPAC Ltd.* (March 15, 2007) (U.S. ownership of up to 54.80%; payment within 14 calendar days); *Offer by Alcan, Inc. for Common Shares, ADSs, Bonus Allocation Rights and OCEANES of Pechiney* (October 8, 2003) (U.S. ownership of approximately 35%-45%; payment within three weeks); *Serano S.A. Offer for All Outstanding Ordinary Shares, ADSs, OCEANES and Warrants of Genset* (September 12, 2002) (payment within 18 French trading days); *Proposed Exchange Offer by Technip, S.A. for all of the outstanding ordinary shares and American Depositary Shares of Coflexip, S.A.* (August 20, 2001) (U.S. ownership of 50.6%; payment within 15-21 French business days); *Exchange Offers by Telefonica S.A.* (June 5, 2000) (U.S. ownership of 54.3%; payment within 10 business days).

to all tender offers, including those subject only to Section 14(e) of the Exchange Act and Regulation 14E thereunder.

As discussed above, under German law, a similar material change occurring during the last two weeks of the Acceptance Period would require that the Offer period remain open for exactly two additional calendar weeks from the stated end of the Acceptance Period. As a consequence, while a two-week extension of the Acceptance Period required under German law may satisfy the ten U.S. business day extension required under Rule 14e-1(b), circumstances could arise, such as intervening U.S. federal holidays, that may result in the requirement under Rule 14e-1(b) of a longer extension than that permitted by German law.

On behalf of the Offeror Parties, we request that the Staff confirm that it will not recommend enforcement action under Rule 14e-1(b) if, in the event of a material change to the Offer in the last two weeks of the Acceptance Period, the Offeror keeps the Acceptance Period open for a period of exactly two calendar weeks from the stated end of the Acceptance Period in accordance with German law and practice. The Staff has granted relief from the requirements of Rule 14e-1(b) under similar circumstances with respect to the two-week extension under German law.<sup>10</sup>

c) *Rule 14e-1(d) under the Exchange Act*

Rule 14e-1(d) prohibits a bidder from extending the length of a tender offer without issuing a notice of such extension by press release or other public announcement, which notice has to include disclosure of the approximate number of securities deposited to date and has to be issued no later than the earlier of (i) 9:00 a.m. Eastern time on the next U.S. business day after the scheduled expiration date of the offer or (ii), if the class of securities which is the subject of the tender offer is registered on one or more U.S. national securities exchanges, the first opening of any one of such exchanges on the next U.S. business day after the scheduled expiration date of the offer.

At the time of the expiration of the Acceptance Period, the Offeror will not be in a position to determine the approximate number of Shares deposited in the Offer. As noted above, this determination cannot be made until the second German banking day following the expiration of the Acceptance Period as Shares may be tendered on the last day of the Acceptance Period, and the book-entry transfer of such Shares into the appropriate ISIN for tendered Shares within the Clearstream System can only be effected within two

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<sup>10</sup> See *KKR and Permira Offer for ProSiebenSat.1 Media AG* (January 30, 2007); *Axel Springer AG Offer for ProSiebenSat.1 Media AG* (September 12, 2005); *Offer by BCP Crystal Acquisition GmbH & Co, et al for Celanese AG* (February 3, 2004).

German banking days. While the same gap between tender and settlement occurs in the U.S. markets, it is addressed by the use of notices of guaranteed delivery, a procedure not used in the German markets. The German Takeover Act also provides that the Offeror must prepare and publish the final, official results of the Offer in the Federal Gazette, which takes approximately another one German banking day.

In light of the foregoing, we do not believe that such delay in announcing the results of the Offer in connection with an extension of the Acceptance Period as required by German law constitutes a fraudulent, deceptive or manipulative act or practice. In the proposed Offer, notice of extension will be made in accordance with the law and practice of Germany. Moreover, notices of extensions made in the manner described above would be permitted under the Tier II Exemption, if it were available, as they would be made in accordance with German law and practice.

On behalf of the Offeror Parties, we are hereby requesting an exemption to Rule 14e-1(d) to permit the Offeror to extend the Acceptance Period in accordance with German law and practice. We believe the relief requested herein is consistent with the relief granted by the Commission in similar cases.<sup>11</sup>

d) *Rule 14e-5 under the Exchange Act*

Under the German Takeover Act, an offeror is permitted to purchase, directly or indirectly, shares which are the subject of a tender offer pursuant to contractual arrangements or otherwise prior to and during the pendency, but outside, of the tender offer, subject to certain limitations that are further discussed below.

Subject to certain exceptions, Rule 14e-5 prohibits a “covered person” from directly or indirectly purchasing or arranging to purchase any securities to be acquired in a tender offer for equity securities or any securities immediately convertible into, exchangeable for or exercisable for such securities, except pursuant to such offer. The prohibition continues from the time of the public announcement of the offer until the date that the offer expires, including any extension thereof. Rule 14e-5 defines a “covered person” as (i) the offeror and its affiliates, (ii) the offeror’s dealer-managers and any of their respective affiliates, (iii) any advisors to the parties described in (i) and (ii) above whose compensation is dependent on the completion of the offer and (iv) any person acting in concert either directly or indirectly with any of the foregoing in connection with any purchase or arrangement to purchase of any subject securities or any related securities.

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<sup>11</sup> *KKR and Permira Offer for ProSiebenSat.1 Media AG* (January 30, 2007); *Offer by the Bayer Entities for all ordinary shares of Schering AG* (April 28, 2006); *Axel Springer AG Offer for ProSiebenSat.1 Media AG* (September 12, 2005).

Rule 14e-5(b)(12)(i) under the Exchange Act permits purchases or arrangements to purchase securities subject to a tender offer by an offeror or 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 offer is subject to the Tier II Exemption). In the present case, all such conditions will be satisfied, except that the Tier II Exemption is not available. Because the Tier II Exemption is not available in connection with the Offer, purchases of Shares by the Prospective Purchasers outside the Offer may not fall within any of the excepted activities specifically outlined in Rule 14e-5. Accordingly, in the absence of exemptive relief being granted, such purchases may be prohibited after the public announcement of the Offer.

Any purchases of Shares outside of the Offer will be regulated by German securities laws. The German Takeover Act allows the Prospective Purchasers to make such purchases, subject to certain conditions meant to protect holders. The Offeror will be required to make available to all holders of the Shares subject to the Offer any more favorable terms, including price terms, agreed to in connection with any purchases of Shares by the Prospective Purchasers during the Offer. Under Section 31 para. 4 of the German Takeover Act, the Offeror would be obligated to increase the Offer price to the level of any higher purchase price outside the Offer. In addition, any such purchases by a Prospective Purchaser prior to the commencement of the Offer must be disclosed in the Offer Document. Finally, pursuant to Section 23 para. 2 of the German Takeover Act, any such purchase by a Prospective Purchaser during the Offer must be reported to BaFin and announced publicly immediately following such purchase.

While the Offeror Parties do not currently intend to make any purchases of Shares outside the Offer either directly or through any advisor, broker or other financial institution acting as their agent that would otherwise be prohibited by Rule 14e-5, should they decide to do so in the future, such purchases would be subject to the following conditions:

- (i) No purchases or arrangements to purchase Shares except pursuant to the Offer will be made in the United States;
- (ii) The Offer Document prominently discloses the possibility of outside purchases by the Prospective Purchasers and describes the manner in which outside purchases are required to be publicly disclosed;
- (iii) There will be public disclosure in the United States, to the extent such information is made public in Germany pursuant to the German Takeover Act, of information regarding all purchases of Shares

otherwise than pursuant to the Offer from the time of public announcement of the Offer until its expiration;

- (iv) The Prospective Purchasers will comply with the applicable requirements under the German Takeover Act, including the rules against insider trading and the rules regulating market conduct/market abuse, and other applicable German laws;
- (v) If the Prospective Purchasers purchase or make arrangements to purchase Shares for consideration above the Offer price, the Offer price will be increased to match the highest price paid outside the Offer;
- (vi) Upon request of the Division of Corporation Finance (the "Division"), Prospective Purchasers will disclose to the Division a daily time-sequenced schedule of all purchases of Shares made from the time of public announcement of the Offer until the expiration, on a transaction-by-transaction basis, including (y) description of the size, broker (if any), time of execution and purchase price; (z) if not executed on the Frankfurt Stock Exchange, the exchange, quotation system or other facility through which the purchase occurred;
- (vii) Upon request of the Division, the Prospective Purchasers will transmit the information specified in clauses (y) and (z) above to the Division at its offices in Washington, D.C. within 30 days of such request;
- (viii) The Prospective Purchasers will maintain all documents and other information required to be maintained pursuant to this exemption for a period of not less than two years from the date of the termination of the Offer;
- (ix) Representatives of the Prospective Purchasers will be made available (in person at the offices of the Division in Washington, D.C. or by telephone) to respond to inquiries relating to such records; and
- (x) Except as otherwise exempted herein, the Prospective Purchasers will comply with Rule 14e-5.

We are hereby requesting an exemption from Rule 14e-5 in order to permit purchases of Shares outside the Offer as described above. In the context of the Offer, we believe the relief requested under Rule 14e-5 is consistent with relief the Staff has afforded

to bidders in similar circumstances in the past, including in transactions that did not separately qualify for the Tier II Exemption.<sup>12</sup>

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On the basis of the foregoing, we respectfully request on behalf of the Offeror Parties confirmation from the Staff that it will not recommend any enforcement action to the Commission under Rules 14e-1(c) or 14e-1(b) with respect to the matters described herein. We further request, on behalf of the Offeror Parties, exemptive relief from the provisions of Rules 14e-1(d) and 14e-5 as described herein.

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<sup>12</sup> See *Offer by Stork Holdco L.P. for Songbird Estates Plc* (December 19, 2014); *Oak Leaf B.V., Acorn B.V. Offer for D.E Master Blenders 1753 N.V.* (May 21, 2013); *Offer by UnitedHealth Group Inc. for all outstanding shares of Amil Participacoes S.A.* (November 20, 2012); *Offer by BHP Billiton for all common shares of Potash Corporation of Saskatchewan Inc* (August 26, 2010); *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 pie* (December 9, 2009); *KKR and Permira Offer for ProSiebenSat.1 Media AG* (January 30, 2007); *Axel Springer AG Offer for ProSiebenSat.1 Media AG* (September 12, 2005); *RWE Aktiengesellschaft Offer for Innogy Holdings plc* (July 22, 2002).

We appreciate the Staff's consideration of these matters. If you require any further information or have any questions regarding this request, please contact the undersigned at +49 69 4272 5525.

Sincerely yours,

/s/ Krystian Czerniecki

Krystian Czerniecki

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