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May 15, 2020

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Division of Corporation Finance
U.S. Securities and Exchange Commission
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Dear Mr. Yu, Ms. Chalk and Mr. Hindin,

Pursuant to our conversations with Ms. Christina Chalk and Mr. Perry Hindin of the staff (the "Staff") of the U.S. Securities and Exchange Commission (the "Commission"), we are writing to you on behalf of our client, Thermo Fisher Scientific Inc., a Delaware corporation ("Thermo

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Fisher”) and its wholly owned subsidiary, Quebec B.V. (the “Offeror” and together with Thermo Fisher, the “Offering Parties”).

On March 3, 2020 (the “Announcement Date”), Thermo Fisher announced its intention to commence, through the Offeror, an all-cash tender offer (the “Offer”) for all issued ordinary shares (the “Ordinary Shares”) of QIAGEN N.V., a public limited liability company (*naamloze vennootschap*) organized under the laws of The Netherlands (“QIAGEN”). The Offer will be made in accordance with the Business Combination Agreement (the “BCA”), dated March 3, 2020, between Thermo Fisher and QIAGEN.

As previously discussed with the Staff, we hereby request that the Staff grant exemptive relief to the Offering Parties under Section 14(d)(5) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and Rule 14d-4, Rule 14d-7, Rules 14d-11(c), (d) and (e), Rules 14e-1(b) and (d) and Rule 14e-5 under the Exchange Act. We further request that the Staff confirm that, based on the facts and circumstances described in this letter, it will not recommend any enforcement action to the Commission with respect to Rule 14e-1(c) under the Exchange Act if the Offering Parties conduct the Offer as described in this letter.¹

We are U.S. counsel to the Offering Parties in connection with the Offer. Certain lawyers from Hengeler Mueller, who are members of the German bar, have reviewed the representations in this letter concerning German law and practice and are submitting a separate letter to the Staff in respect of this request, and certain lawyers from NautaDutilh, who are members of the Dutch bar, have reviewed the representations in this letter concerning Dutch law and practice and are submitting a separate letter to the Staff in respect of this request.

¹ We believe that the relief requested in this letter is generally consistent with the relief granted by the Commission in similar transactions. *AIXTRON SE*, SEC No-Action Letter, File No. 5-84994 (Aug. 17, 2016) and *Bayer AG*, SEC No-Action Letter, File No. 5-59757 (April 28, 2006) (“Bayer I”). See also *Tender Offer by China National Chemical Corporation and CNAC Saturn (NL) B.V. for all Publicly-held Shares and ADSs of Syngenta AG*, SEC No-Action Letter (Mar. 21, 2016); *Oak Leaf B.V., Acorn B.V. and Acorn Holdings B.V. Offer for all Ordinary Shares of D.E. Master Blenders 1753 N.V.*, SEC No-Action Letter (May 21, 2013); *Cash Tender Offer by International Business Machines Corporation for Ordinary Shares and ADSs of ILOG S.A.*, SEC No-Action Letter (Oct. 9, 2008); *Axel Springer AG Offer for ProSiebenSat. 1 Media AG*, SEC No-Action Letter (Sept. 12, 2005) (“Axel Springer”); *Offer by BCP Crystal Acquisition GmbH & Co., et al. for Celanese AG*, SEC No-Action Letter, File No. 5-57467 (Feb. 3, 2004); *The Royal Bank of Scotland Group Plc Offer for Shares and ADSs of National Westminster Bank Plc*, SEC No-Action Letter, File No. 5-55229 (Dec. 30, 1999) (“Royal”); and *Vodafone Airtouch Plc Offer for Mannesmann Aktiengesellschaft*, SEC No-Action Letter, File No. TP 00-29 (Dec. 22, 1999). We also believe that the relief requested in this letter is consistent with the Commission’s guidance set forth in the Commission’s releases. See *Commission Guidance and Revisions to the Cross-Border Tender Offer, Exchange Offer, Rights Offerings and Business Combination Rules and Beneficial Ownership Reporting Rules for Certain Foreign Institutions*, Release Nos. 33-8957, 34-58597 (Sept. 19, 2008) (the “2008 Cross-Border Release”); *Cross-Border Tender and Exchange Offers, Business Combinations and Rights Offerings*, Exchange Act Release Nos. 33-7759, 34-42054, 39-2378, International Series Release No. 1208 (Oct. 22, 1999) (the “1999 Cross-Border Release” and, together with the 2008 Cross-Border Release, the “Cross-Border Releases”).

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Background Information

QIAGEN

QIAGEN is a Dutch public limited liability company having its corporate seat and registered office in Venlo, The Netherlands. QIAGEN is a leading global provider of technologies that glean molecular insights from biological samples. QIAGEN provides more than 500 core consumable products (sample and assay kits), instruments and automation systems, and digital insight solutions (or bioinformatics) for analysis and interpretation. It sells these products to two major customer classes: (1) molecular diagnostics, including healthcare providers engaged in patient care, and (2) life sciences, including academia and applied testing as well as pharma and biotechnology.

QIAGEN was incorporated on April 29, 1996 and completed an initial public offering on June 28, 1996, after which its Ordinary Shares traded on the NASDAQ Stock Market until 2018, when it transferred its U.S. listing to the New York Stock Exchange (the “NYSE”). In addition, QIAGEN has listed its Ordinary Shares on the Frankfurt Stock Exchange (the “FSE”) since 1997. QIAGEN operates through a global network of approximately 65 subsidiaries organized under the laws of the United States, The Netherlands, Germany, Australia, Denmark, Sweden, Switzerland, China, Luxembourg, Ireland, Malta, France, Canada, Japan, the United Kingdom and Italy.

Based on information contained in QIAGEN’s Annual Report on Form 20-F for the fiscal year ended December 31, 2019, filed with the Commission on March 2, 2020 (the “QIAGEN Form 20-F”), during the fiscal year ended December 31, 2019, QIAGEN generated total revenues of approximately \$1.5 billion and as of December 31, 2019, QIAGEN had 5,096 employees in over 35 locations worldwide.

The Ordinary Shares

QIAGEN’s Ordinary Shares are registered under Section 12(b) of the Exchange Act. The principal trading markets for the Ordinary Shares are the FSE, where the Ordinary Shares trade under the symbol “QIA,” and the NYSE, where the Ordinary Shares trade under the symbol “QGEN.” QIAGEN has represented to us that it is a “foreign private issuer” (as defined in Rule 3b-4(c) promulgated under the Exchange Act).

According to the QIAGEN Form 20-F, as of the close of business on January 31, 2020, there were 227,626,974 Ordinary Shares issued and outstanding and 106 shareholders of record.

The Offering Parties

The Offering Parties consist of the following entities:

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- The Offeror – a limited liability company that was organized under the laws of The Netherlands for the purposes of the Offer. The Offeror has not conducted any operations other than in connection with the Offer.
- Thermo Fisher – a Delaware corporation that directly owns all of the shares of the Offeror.

Thermo Fisher was incorporated in 1956 and completed its initial public offering in 1967. Thermo Fisher has been listed on the NYSE since 1980. Thermo Fisher serves more than 400,000 customers working in pharmaceutical and biotech companies, hospitals and clinical diagnostic labs, universities, research institutions and government agencies, as well as in environmental, industrial quality and process control settings. It delivers a unique combination of innovative technologies, purchasing convenience and pharmaceutical services through its industry-leading brands, including Thermo Scientific, Applied Biosystems, Invitrogen, Fisher Scientific, Unity Lab Services and Patheon. As disclosed in Thermo Fisher’s Annual Report on Form 10-K for the fiscal year ended December 31, 2019, filed with the Commission on February 26, 2020, during the fiscal year ended December 31, 2019, Thermo Fisher generated sales revenues of approximately \$25.5 billion and had more than 75,000 employees in approximately 50 countries worldwide.

Governing Law

As discussed above, QIAGEN is incorporated in The Netherlands and its Ordinary Shares are listed on the NYSE and the FSE. Because QIAGEN’s shares are listed on the FSE, the Offer is subject to the terms and conditions of the German Securities Acquisition and Takeover Act (*Wertpapiererwerbs- und Übernahmegesetz*) (the “German Takeover Act”) in addition to general Dutch corporate law. As a result, QIAGEN’s “home jurisdiction” under Section 14(d) of the Exchange Act and the rules and regulations promulgated thereunder is both The Netherlands, as its jurisdiction of incorporation, and Germany, as the principal foreign market where its securities are listed.

Tier I and Tier II Analysis

The Offering Parties have considered whether or not the Offer qualifies for the Tier I or Tier II exemptions codified in the tender offer regulations promulgated under the Exchange Act. Although QIAGEN is a foreign private issuer with foreign home jurisdictions in The Netherlands and Germany, based on the information and inquiries regarding U.S. ownership of Ordinary

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Shares summarized below, the Offering Parties believe that the Offer does not qualify for the Tier I or Tier II exemptions.

To determine the percentage of outstanding Ordinary Shares held by U.S. holders, the Offering Parties engaged D.F. King & Co. Inc. (“D.F. King”) to conduct an analysis of U.S. holders in accordance with the instructions to Rule 14d-1(d), including the application of Rule 12g3-2(a).

D.F. King reviewed QIAGEN’s shareholders’ register to determine, as of March 9, 2020, the total number of Ordinary Shares that were directly registered in the name of persons with registered addresses in the United States. D.F. King also performed a look-through analysis following the method prescribed by Instruction 2 to paragraphs (c) and (d) of Rule 14d-1 (“Instruction 2”), as of March 9, 2020, which is a date not later than 30 days following public announcement of the Offer. D.F. King conducted the look-through analysis by sending requests to all custodian banks and brokers holding Ordinary Shares of QIAGEN, wherever located, to obtain information regarding the registered addresses of the holders of such Ordinary Shares. D.F. King received responses from 100 custodian banks and brokers. Based on the responses of these custodian banks and brokers and the review of QIAGEN’s shareholders’ register, D.F. King was able to identify holders of Ordinary Shares that included certain brokers, dealers, banks and other nominees with U.S. registered addresses and principal places of business in the United States. In accordance with Instruction 2, D.F. King assumed that such holders were U.S. residents. With respect to each of the 62 custodians which did not respond to the request for information, D.F. King assumed in accordance with Instruction 2 that its customers are residents of the jurisdiction in which the nominee has its principal place of business. Based on this look-through analysis, D.F. King determined that 128,548,264 (or 55.69%) of the 230,829,218 issued Ordinary Shares are held by U.S. residents. The Offering Parties do not currently own any Ordinary Shares.

Accordingly, the Offering Parties estimate that the percentage of outstanding Ordinary Shares held by U.S. residents is approximately 55.69%.

We recognize that this percentage exceeds the threshold for reliance upon the Tier II exemption. However, the Commission has stated that, even when U.S. ownership is greater than 40%, it will consider exemptive and no-action relief on a case-by-case basis when there is a direct conflict between U.S. laws and practice and those of the home jurisdiction(s).

The Offer

Structure of the Offer

The Offer will be made to the holders of all issued Ordinary Shares at a cash price of EUR 39.00 per Ordinary Share (the “Offer Price”) in accordance with the BCA. The settlement procedures described in the Offer Materials (as defined below) will describe the process by which certain

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tendering holders may receive U.S. dollars upon settlement of the Offer. The Offer has been structured as a single offer made concurrently in Germany and the United States and to comply with the German Takeover Act and the rules and regulations promulgated thereunder and, except to the extent permitted pursuant to relief requested herein, Sections 14(d) and 14(e) of the Exchange Act and the rules and regulations promulgated thereunder. To the extent legally possible, given these different regulatory schemes, the Offering Parties intend to conduct the Offer in a manner that ensures equality of opportunity for, and treatment of, all holders of Ordinary Shares.

Backend Transactions

It is typical in friendly tender offers involving a target incorporated in The Netherlands that the bidder and the target agree on certain post-offer restructurings that may (or must) be implemented by the offeror after the settlement of the offer to obtain 100% ownership of the target or its business and for which all relevant approvals (including the target's shareholder approval) will be obtained prior to the settlement of the offer to permit the parties to implement one or more of these restructurings. The BCA includes arrangements that are intended to provide certainty to the Offering Parties that they can obtain 100% ownership of QIAGEN or its business following successful completion of the Offer and receipt of necessary regulatory approvals. The BCA provides that the Offering Parties may effectuate a corporate restructuring of QIAGEN and its subsidiaries following the settlement of the Offer, which restructuring may (or, if the Top Up Option (as defined below) is exercised, must) be undertaken by means of either (1) the Merger and Liquidation (as defined in the BCA), which includes a merger (the "Triangular Merger") of QIAGEN into a wholly owned indirect subsidiary of QIAGEN ("Company NewCo Sub"), with the shareholders of QIAGEN at that time receiving in exchange shares of the parent of Company NewCo Sub ("Company NewCo"), followed by a sale and transfer of the shares in Company NewCo Sub to the Offeror and/or an affiliate of the Offeror and a dissolution and liquidation of Company NewCo (the "NewCo Liquidation") or (2), if the Triangular Merger is not approved by the shareholders of QIAGEN at an extraordinary general meeting held following the settlement of the Offer (the "Subsequent EGM"), the Asset Sale and Liquidation (as defined in the BCA) which includes a sale and transfer of the business (including all assets and liabilities, with the exception of a limited number of excluded assets and liabilities) of QIAGEN to the Offeror and/or an affiliate of the Offeror followed by a dissolution and liquidation of QIAGEN (together with the NewCo Liquidation, the "Liquidation"). In addition, the BCA provides that, upon the terms and subject to the conditions thereof, an affiliate of the Offeror will have the right to subscribe on the date of the settlement of the Offer, at a price per share equal to the Offer Price, to a new issuance of such number of ordinary shares of QIAGEN such that the aggregate par value of the ordinary shares of QIAGEN held by the Offeror and such affiliate equals 80% of the aggregate share capital of QIAGEN plus one ordinary share (the "Top

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Up Option” and, collectively with the Merger and Liquidation and the Asset Sale and Liquidation, the “Backend Transactions”). The Backend Transactions will be governed by Dutch law.

Each of the Backend Transactions (other than the Triangular Merger) is subject to approval by QIAGEN shareholders at an extraordinary general meeting (the “EGM”) to be held during the Acceptance Period of the Offer, and receipt of approval for the Backend Transactions (other than the Triangular Merger) is a condition to the settlement of the Offer; approval for the Triangular Merger will be sought at the Subsequent EGM after the settlement of the Offer. If the Offeror implements either of the Merger and Liquidation or the Asset Sale and Liquidation, the liquidation distribution to be ultimately received by holders of Ordinary Shares who do not tender into the Offer, in a gross amount equal to the Offer Price, will be subject to applicable withholding taxes, including generally a 15% Dutch dividend withholding tax to the extent such liquidation distribution exceeds the average paid up capital recognized for Dutch dividend withholding tax purposes (which QIAGEN presently expects to be the case).

Commencement

The tender offer materials that will be provided and made available to the holders of Ordinary Shares will be prepared in accordance with the requirements of both the German Takeover Act and, except as described herein, Sections 14(d) and 14(e) of the Exchange Act and the rules and regulations promulgated thereunder, and will be made available in either the German language (“German Offer Materials”) or the English language (the “U.S. Offer Materials” and, together with the German Offer Materials, the “Offer Materials”), based on shareholders’ requests. The German Offer Materials and the U.S. Offer Materials will be substantively identical.

The Offer will initially remain open until the date that is ten (10) weeks following the commencement date of the Offer (such period, the “Acceptance Period”). If at the expiration of the Acceptance Period all of the conditions to the offer set forth in the BCA, other than the Antitrust Clearance Condition (as defined below), have been satisfied or effectively waived, there will be an additional acceptance period of two (2) weeks in accordance with the German Takeover Act, during which the QIAGEN shareholders that have not accepted the Offer within the Acceptance Period can still accept the Offer (the “Additional Acceptance Period”).

Conditions to the Offer

The settlement of the Offer is subject to satisfaction or effective waiver of the following conditions, which will be described in the Offer Materials:

1. Regulatory Approvals. The receipt of required antitrust clearances or approvals in the United States, the European Union, China and ten (10) other countries (the “Antitrust Clearance Condition”).

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2. Minimum Acceptance Threshold. At the expiration of the Acceptance Period, at least 75% of QIAGEN's issued and outstanding ordinary share capital (the "Minimum Acceptance Threshold") have been validly tendered and not withdrawn (including QIAGEN shares held by Thermo Fisher and its affiliates).
3. Adverse Recommendation Change. Between the date of the publication of the Offer document and the expiration of the Acceptance Period, neither the Supervisory Board nor the Managing Board of QIAGEN having adversely changed its recommendation of the Offer in relation to an intervening event or competing offer.
4. Outstanding Share Count. (a) At the expiration of the Acceptance Period, the number of Ordinary Shares issued and outstanding not exceeding a specified number and (b) between the date of the publication of the Offer document and the expiration of the Acceptance Period, no Ordinary Shares or rights to acquire Ordinary Shares having been issued or granted, subject to certain exceptions.
5. Approval of Backend Transactions. Between the date of the publication of the Offer document and the expiration of the Acceptance Period, QIAGEN shareholders having adopted certain resolutions to enable the implementation of the Backend Transactions (the "Backend Resolution") – this does not include approval of the Triangular Merger, which will be sought at the Subsequent EGM after the settlement of the Offer.
6. Absence of Legal Prohibition. The absence of any law or order issued between the date of the publication of the Offer document and the expiration of the Acceptance Period prohibiting the Offer, any of the Backend Transactions or the grant or exercise of the Top Up Option and that remains in force and effect before the expiration of the Acceptance Period.
7. No Insolvency. QIAGEN not being subject to any liquidation or insolvency proceedings between the date of the publication of the Offer document and the expiration of the Acceptance Period.
8. No Material Adverse Effect or Material Compliance Violation. Between the date of the publication of the Offer document and the expiration of the Acceptance Period, there having been no Offer Material Adverse Effect or Material Compliance Violation, in each case as defined in the BCA and measured against specified EBITDA thresholds (which

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are adjusted based on decreases in the S&P 500 Health Care (Sector) index), and as determined by a third-party independent expert.

Under Section 16 (1) 1 of the German Takeover Act, the Acceptance Period cannot exceed ten (10) weeks, subject to only two limited exceptions in the case of (a) a change of the terms of the Offer within two (2) weeks prior to the expiration of the Acceptance Period, in which case the expiration of the Acceptance Period will be extended by law by two (2) weeks from the then-scheduled expiration of the Acceptance Period pursuant to Section 21 (5) of the German Takeover Act, or (b) a competing offer being made within the Acceptance Period with an offering period that expires after expiration of the Acceptance Period, in which case the Acceptance Period will be prolonged by law until the expiration of the initial offering period of the competing offer pursuant to Section 22 (2) of the German Takeover Act. Further, the German Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*) (“BaFin”) cannot grant or permit an Acceptance Period that exceeds the maximum ten (10)-week period. As a technical matter, under German law, the Offeror does not “accept” tendered shares for payment. Instead, the contract of purchase and sale created when a holder of Ordinary Shares tenders its Ordinary Shares becomes binding, and the Offeror becomes obligated to pay for such Ordinary Shares, when the last of any conditions to the Offer is satisfied.

Accordingly, German law requires that the Acceptance Period expire even if the Antitrust Clearance Condition has not been satisfied at that time. In that circumstance, BaFin would permit the Offeror to delay payment for tendered Ordinary Shares for up to ten (10) Banking Days following the (i) expiration of the Additional Acceptance Period, and (ii) satisfaction of the Antitrust Clearance Condition (the later of such date, the “Expiration Time”). A “Banking Day” is any day on which banks in Frankfurt am Main, Germany, are open for general business. As described below, the Offering Parties will endeavor to make payment for the Ordinary Shares tendered during the Offer as promptly as practicable, and in any event no later than seven (7) Banking Days, following the Expiration Time.

Under German law, if the Antitrust Clearance Condition is not satisfied (or, if permissible, waived) by the end date of the transaction, the Offer will be terminated and the Offeror will promptly return all previously tendered Ordinary Shares.

As discussed below, the parties do not expect that the Antitrust Clearance Condition will have been satisfied at the expiration of the Acceptance Period or the expiration of the Additional Acceptance Period.

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“As-Tendered” Trading Market

It is common market practice in German offers for tendered shares to trade on an “as-tendered” basis on the FSE. Ordinary Shares that have been tendered into the Offer within the Clearstream Banking AG (“Clearstream”) system but that have not yet been accepted for payment (“Tendered Ordinary Shares”) are expected to be admitted to stock market trading on the regulated market (*Regulierter Markt*) of the FSE as soon as possible following the commencement of the Acceptance Period (in practice, on the third (3rd) day following the commencement of the Acceptance Period). The ISIN under which Tendered Ordinary Shares will be traded has already been procured. Trading in the Tendered Ordinary Shares is expected to end at the conclusion of regular stock exchange trading hours one (1) Banking Day following the date of the Expiration Time.

Although there is no market practice or process for any “as-tendered” trading market in the United States, holders of Ordinary Shares held in the Depository Trust Company (“DTC”) system will have the ability to transfer their Ordinary Shares to the Clearstream system in order to participate in the “as-tendered” FSE trading market. The parties expect a liquid “as-tendered” FSE trading market will develop. Trading liquidity in tendered shares generally depends on a number of factors, including the level of acceptances, the market’s assessment of the probability of completion of the Offer and the timing of completion. We have supplementally provided data to the Staff from certain precedent transactions involving “as-tendered” FSE trading markets. Given the relatively high Minimum Acceptance Threshold and the adverse Dutch tax consequences (described above) of the Merger and Liquidation or the Asset Sale and Liquidation, as the case may be, to holders of Ordinary Shares who fail to tender into the Offer, the parties expect the significant majority of trading volume in Ordinary Shares in Germany following the expiration of the Acceptance Period to occur in the “as-tendered” trading market.

Holders of shares may transfer Ordinary Shares to the Clearstream system prior to tendering them by instructing their bank, broker, dealer or other nominee to initiate a transfer. Because the Ordinary Shares trade on the NYSE and FSE under a single global certificate, the shares are transferable between the U.S. and German markets without the involvement of QIAGEN or its transfer agent. DTC acts as the U.S. custodian and Clearstream as the German custodian. There is a direct link between the DTC system and the Clearstream system that we understand will allow such transfers to be effected as soon as intraday and in any event within one or two business days. We understand that neither DTC nor Clearstream charge an incremental fee for movements of the Ordinary Shares from one system to the other. It is possible that a shareholder’s broker, dealer, bank or other nominee may charge a nominal fee in connection with such transfer depending on the terms of the individual brokerage arrangement between the shareholder and its brokerage firm. The Offering Parties will disclose to holders of Ordinary Shares in the Offer document that (i) only Ordinary Shares tendered through the Clearstream

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system will be able to participate in the as-tendered trading market on the FSE and (ii) a description of the process for transferring shares from the DTC system to the Clearstream system prior to tendering such shares to permit participation in the as-tendered trading market.

Extension of the Offer

Under Section 21 (5) of the German Takeover Act, a change to the terms of the Offer (*e.g.*, an increase in the Offer Price, offer of additional consideration, reduction of the Minimum Acceptance Threshold, and waiver of conditions to the Offer) occurring during the last two (2) weeks of the Acceptance Period would require that the Acceptance Period remain open for an additional period of two (2) calendar weeks from the expiration of the Acceptance Period. If such a material change occurs and the Acceptance Period is extended, commencement of the subsequent offering period will be delayed accordingly. This requirement may conflict with U.S. law that requires the Offer to remain open for at least ten (10) business days from the announcement of certain material changes in the event that a material change were to occur during the last two (2) weeks of the Acceptance Period and the resulting two-week extension occurred over a period that included U.S. federal holidays.

Additional Acceptance Period

Section 16 (2) of the German Takeover Act requires that if, prior to the expiration of the Acceptance Period, the conditions to the Offer (other than the Antitrust Clearance Condition) are satisfied or effectively waived, the Offering Parties must provide a two (2)-week Additional Acceptance Period during which holders may still accept the Offer. The Additional Acceptance Period may begin only after the Offering Parties publish the number of Ordinary Shares tendered during the Acceptance Period indicating that the Minimum Acceptance Threshold has been satisfied. Section 23 (1) No. 2 of the German Takeover Act requires the announcement of the official results of an offer following the expiration of the Acceptance Period, and, with respect to the Minimum Acceptance Threshold, the determination of such final results dictates whether the offer is successful or not. Under German practice, this determination cannot be made until the third (3rd) or fourth (4th) Banking Day following the expiration of the Acceptance Period. This is because Ordinary Shares may be traded and tendered on the last day of the Acceptance Period, and the book-entry transfer of such Ordinary Shares into the appropriate securities identification number for tendered Ordinary Shares within the Clearstream system can only be effected at or following settlement of the trade, which typically occurs on a T+2 settlement cycle. The German Takeover Act provides that the Offering Parties must then prepare and publish the official results of the Offer on the Internet and in the German Federal Gazette. Preparation for publication of those results typically occurs on the third (3rd) or fourth (4th) Banking Day following the expiration of the Acceptance Period, and publication itself typically occurs on the following Banking Day (*i.e.*, on the fourth (4th) or fifth (5th) Banking Day following expiration of the

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Acceptance Period). Therefore, the Additional Acceptance Period typically may not begin until the fifth (5th) or sixth (6th) Banking Day following the expiration of the Acceptance Period.

Settlement

Subject to the relief requested herein, settlement for Ordinary Shares tendered during the Offer will occur as promptly as practicable following, and in any event no later than seven (7) Banking Days following, the Expiration Time.

Immediately following the Expiration Time, Thermo Fisher will provide the lenders under the credit facilities it has obtained to finance the transaction (the "Credit Facilities") with three (3) U.S. business days' prior notice in accordance with the terms of the Credit Facilities, which are consistent with market practice for Euro-denominated LIBOR facilities. As soon as practicable, and in any event no later than the next Banking Day following receipt of funds (*i.e.*, the fourth (4th) Banking Day following the Expiration Time), the Offering Parties will deliver the funds in Euros to the settlement agent in Germany and initiate the conversion of Euros to U.S. dollars for payment to holders who have tendered shares through the DTC system or have tendered directly registered Ordinary Shares. No later than the fifth (5th) Banking Day following the Expiration Time, the German settlement agent will transfer the funds received from Thermo Fisher in Euros to Clearstream for settlement to holders who have tendered Ordinary Shares held on the Clearstream system, and the Offering Parties will also transfer the requisite amount in U.S. dollars to the U.S. settlement agent for settlement to Holders who have tendered shares through the DTC system or directly registered Ordinary Shares. No later than the sixth (6th) Banking Day following the Expiration Time, the U.S. settlement agent will transfer the U.S. dollar funds to DTC and commence making payments to holders who have tendered directly registered Ordinary Shares, which payments will be completed no later than the seventh (7th) Banking Day following the Expiration Time. The Offering Parties will endeavor to complete the foregoing steps as promptly as practicable following, and in any event within seven (7) Banking Days following, the Expiration Time.

Withdrawal Rights

Although the German Takeover Act does not require an offeror to provide shareholders with withdrawal rights except in certain limited circumstances involving a competing offer or an amendment to the terms of a tender offer, the Offering Parties intend to extend withdrawal rights through the Acceptance Period to all holders of Ordinary Shares in accordance with Section 14(d)(5) and Rule 14d-7, subject to the relief requested herein.

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Discussion and Requests for Exemptive Relief

Section 14(d)(5) and Rule 14d-7: Post-Expiration Conditions, Withdrawal Rights and Payment of the Offer Price

Background of Section 14(d)(5) and Rule 14d-7

Section 14(d)(5) of the Exchange Act provides that the securities tendered in a tender offer may be withdrawn at any time after sixty (60) days from the date of the original offer. Rule 14d-7 requires that “any person who has deposited securities pursuant to a tender offer has the right to withdraw any such securities during the period such offer request or invitation remains open.”

Application of Section 14(d)(5) and Rule 14d-7 to the Proposed Transaction

As described above, the Acceptance Period may not exceed ten (10) weeks under German law, subject to certain limited exceptions regarding amendments and competing offers. The Offer is subject to antitrust clearances in each of the European Union, United States, China and ten (10) other countries. The Offering Parties will provide a full ten (10)-week Acceptance Period to provide the maximum opportunity for the Antitrust Clearance Condition to be satisfied prior to the expiration of the Acceptance Period. However, the parties do not expect the Antitrust Clearance Condition to be satisfied prior to the expiration of the Acceptance Period. The Acceptance Period is expected to expire at the end of July 2020, which is approximately five (5) months following the date of the BCA, and the parties have publicly stated that the transaction is expected to be completed in the first half of 2021, though the parties will seek to obtain the necessary antitrust clearances expeditiously.

We therefore request exemptive relief from Section 14(d)(5) and Rule 14d-7 to enable the parties to suspend withdrawal rights for an initial period of forty-five (45) calendar days from the expiration of the Acceptance Period while the parties use their reasonable best efforts to obtain prompt satisfaction of the Antitrust Clearance Condition. If it appears that the Antitrust Clearance Condition will not be satisfied or effectively waived prior to the expiration of forty-five (45) calendar days from the expiration of the Acceptance Period, we respectfully request that the Staff consider a request for further relief based on the facts and circumstances in existence at such time.

The structure of the transaction will prevent holders of Ordinary Shares from receiving any meaningful benefit or protection from the provision of withdrawal rights during any period following the expiration of the Acceptance Period, assuming satisfaction of the Antitrust Clearance Condition. The Minimum Acceptance Threshold will be measured as of the expiration of the Acceptance Period and such condition to the Offer will be satisfied as of that time, even if shareholders subsequently withdraw Ordinary Shares tendered into the Offer. As described above, the BCA provides for the implementation of either the Merger and Liquidation or Asset Sale and Liquidation that will – subject to adoption of the Backend Resolution during

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the Acceptance Period (which itself is a condition to the Offer) and satisfaction of the Antitrust Clearance Condition – enable the Offering Parties to complete their proposed acquisition of QIAGEN following the settlement of the Offer, irrespective of the percentage of Ordinary Shares ultimately purchased by the Offeror in the Offer. Therefore, the provision of withdrawal rights during the period between expiration of the Acceptance Period and the receipt of the Antitrust Clearance Condition would not enable holders of Ordinary Shares to prevent such holder's shares from being liquidated in the Liquidation, if implemented, or to "reconsider" participation in the settlement of the Offer or the acquisition of QIAGEN by Thermo Fisher assuming satisfaction of the Antitrust Clearance Condition.

Moreover, the existence of withdrawal rights following the expiration of the Acceptance Period will expose holders of Ordinary Shares to the risk of financial harm. If the Offeror implements either the Merger and Liquidation or the Asset Sale and Liquidation, the liquidation distribution to be ultimately received by holders of Ordinary Shares who do not tender into the Offer in respect of such transaction, in a gross amount equal to the Offer Price, will be subject to applicable withholding taxes, including generally a 15% Dutch dividend withholding tax to the extent such liquidation distribution exceeds the average paid up capital recognized for Dutch dividend withholding tax purposes (which QIAGEN presently expects to be the case). The payment of the Offer Price by the Offeror to holders of Ordinary Shares who tender their Ordinary Shares into the Offer is generally not subject to Dutch dividend withholding tax. Under German law, holders who withdraw from the Offer are not able to re-tender into the Offer following the expiration of the Additional Acceptance Period. As a result, provided that the Merger and Liquidation or the Asset Sale and Liquidation is effected, while the holders of Ordinary Shares would ultimately be entitled to the same gross consideration per share, due to Dutch dividend withholding tax tendering shareholders that withdraw their Ordinary Shares from the Offer would ultimately receive a net amount per Ordinary Share in the Merger and Liquidation or the Asset Sale and Liquidation that is up to 15% less than the amount received by QIAGEN shareholders that did not withdraw their tendered Ordinary Shares.

We expect that Ordinary Shares that are not tendered and that continue to trade on the NYSE after the expiration of the Acceptance Period would trade at a discount to the Offer Price because the market price for such shares would reflect the amount of the additional withdrawal tax described above. In addition, such Ordinary Shares would likely trade at a discount to the Tendered Ordinary Shares available on the as-tendered market in Germany, because the ultimate holder of any Tendered Ordinary Share will generally receive the Offer Price without the application of the Dutch dividend withholding tax described above.

Furthermore, the existence of the as-tendered market will allow QIAGEN shareholders the option to retain their shareholder rights and provide holders with continuous liquidity for their tendered Ordinary Shares between the expiration of the Acceptance Period and the Expiration Time, ensuring that shares are not "tied up indefinitely" during such interim period. As described above under the heading "The Offer — As-Tendered Trading Market," German law

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and practice allows tendering shareholders to retain full beneficial ownership over their tendered Ordinary Shares during the Offer, with the ability to exercise their rights with respect to their tendered Ordinary Shares, including rights to vote and receive dividends, and to dispose of such Ordinary Shares in a liquid trading market. The Offering Parties intend to provide the SEC with trading data comparing the trading activity for tendered Ordinary Shares through the “as-tendered” FSE trading market with daily trading activity for non-tendered Ordinary Shares traded on the NYSE and the FSE on a weekly basis following the end of the Acceptance Period throughout the period when withdrawal rights are suspended.

Even though the Offer document will include clear and full disclosure to QIAGEN shareholders explaining the consequences of withdrawing their shares, we are concerned that the availability of withdrawal rights may cause QIAGEN shareholders to mistakenly believe that withdrawing tendered shares would provide them with a benefit, when instead such action could actually result in financial detriment to such shareholders. Accordingly, given the nature of this transaction, suspending withdrawal rights after the expiration of the Acceptance Period will ensure that all QIAGEN shareholders who tender their shares prior to the expiration of the Acceptance Period will ultimately receive the maximum offer consideration for the sale of their Ordinary Shares, rather than a lower amount resulting from the imposition of the Dutch dividend withholding tax.

We respectfully submit that the nature of the continued availability of shareholder rights, and, in particular, the existence of the “as-tendered” trading market serves the same purpose and function, consistent with the stated policy in underlying rulemaking releases, as withdrawal rights following the expiration of the Acceptance Period, without the potential for confusion and inadvertent withdrawals by QIAGEN shareholders.

Relief Requested from Section 14(d)(5) and Rule 14d-7

In light of the facts that QIAGEN is a Dutch company with a listing on the FSE, that withdrawal rights offer limited, if any, benefit to holders while exposing withdrawing holders to applicable dividend withholding taxes, that an “as-tendered” market for Ordinary Shares will be available from the expiration of the Acceptance Period until the Expiration Time to provide tender holders with continuous liquidity, and that the Offer is subject to the German Takeover Act, we respectfully request exemptive relief from the provisions of Section 14(d)(5) and Rule 14d-7 to permit the Bidder Entities to terminate withdrawal rights at the expiration of the Acceptance Period as follows:

- (i) if all conditions to the Offer have been satisfied or effectively waived prior to the expiration of the Additional Acceptance Period, during a period of no more than seven (7) Banking Days after expiration of the Additional Acceptance Period to permit the payment for such tendered Ordinary Shares in accordance with the

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settlement steps described above, German market practice and as permitted by BaFin;
or

- (ii) if all conditions to the Offer, other than the Antitrust Clearance Condition, have been satisfied or effectively waived prior to the expiration of the Additional Acceptance Period, until the earlier of:
 - a. the satisfaction or effective waiver of the Antitrust Clearance Condition and a period of no more than seven (7) Banking Days thereafter to permit the payment for tendered Ordinary Shares in accordance with settlement steps described above, German market practice and as permitted by BaFin; and
 - b. forty-five (45) days from the expiration of the Acceptance Period.

To the extent the conditions to the Offer fail or the Offer is otherwise terminated, the Offering Parties will promptly return all tendered Ordinary Shares.

Notwithstanding the foregoing, if it appears that the Antitrust Clearance Condition will not be satisfied or effectively waived prior to the expiration of forty-five (45) calendar days from the expiration of the Acceptance Period, we respectfully request that the Staff consider a request for further relief based on the facts and circumstances in existence at such time, including the trading data provided with respect to the “as-tendered” trading market.

Analysis of Relevant Precedent

The requested relief is generally consistent with the type of relief granted in *AIXTRON SE*, SEC No-Action Letter, File No. 5-84994 (Aug. 17, 2016) (“AIXTRON”) and *Bayer AG*, SEC No-Action Letter, File No. 5-59757 (April 28, 2006) (“Bayer I”).

In *AIXTRON*, the Staff provided exemptive relief to Grand Chip Investment GmbH and its affiliates Grand Chip Investment S.à r.l. and Fujian Grand Chip Investment Fund LP (the “AIXTRON Bidder Entities”) from Section 14(d)(5) of the Exchange Act and Rule 14d-7 thereunder to permit the AIXTRON Bidder Entities to suspend withdrawal rights for up to thirty (30) calendar days from the expiration of the acceptance period (subject to additional subsequent extensions) to enable the parties to pursue the satisfaction of regulatory offer conditions, if all regulatory offer conditions had not been satisfied or waived at the expiration of that period. In addition, the exemptive relief from Section 14(d)(5) of the Exchange Act and Rule 14d-7 promulgated thereunder permitted the AIXTRON Bidder Entities, once all conditions to the offer, including the receipt or waiver of regulatory approvals, had been satisfied or waived, to terminate withdrawal rights during a period of up to twelve (12) Banking Days to complete the payment process in accordance with the procedural requirements of German law and practice.

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In *Bayer I*, the Staff similarly provided exemptive relief to Bayer AG and one of its wholly owned subsidiaries (the “Bayer Offeror” and, together with Bayer AG, the “Bayer Entities”) from Section 14(d)(5) of the Exchange Act and Rule 14d-7 promulgated thereunder to permit the Bayer Entities to terminate withdrawal rights at the expiration of the acceptance period, if all conditions to the Bayer offer, other than the minimum tender condition and certain regulatory approvals, had been satisfied or waived, until the earlier of (i) the receipt or waiver of the regulatory approvals, the determination of whether the minimum tender condition had been met and a period of no more than eight (8) Banking Days after the receipt or waiver of the regulatory approvals to permit the payment for tendered shares in accordance with the procedural requirements of German law and practice or (ii) twenty-one (21) calendar days from the date of the expiration of the acceptance period. The exemptive relief from Section 14(d)(5) of the Exchange Act and Rule 14d-7 thereunder also permitted the Bayer Entities, once all the conditions to the offer, including the receipt or waiver of the regulatory approvals, had been satisfied or waived, to terminate withdrawal rights during a period of no more than eight (8) Banking Days to permit the payment for tendered shares in accordance with the procedural requirements of German law and practice.

Rule 14e-1(c) and Rules 14d-11(c) and (e): Payment of Offer Price and Subsequent Offering Period

Rule 14e-1(c) promulgated under the Exchange Act prohibits a person making a tender offer 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 such offer. Rule 14d-11 provides that an offeror in a tender offer may elect to provide a subsequent offering period if, among other things, the offeror immediately accepts and promptly pays for all securities tendered during the initial offering period and the offeror immediately accepts and promptly pays for all securities as they are tendered during the subsequent offering period.

As permitted by BaFin and except as described below, payment for Ordinary Shares will be made as soon as practicable, but in any event no later than seven (7) Banking Days following the Expiration Time.

If at the expiration of the Acceptance Period it is determined that any Offer conditions, other than satisfaction of the Antitrust Clearance Condition as discussed above, have not been satisfied or effectively waived by the Offering Parties, and the Offer is therefore terminated without the payment by the Offering Parties for any Ordinary Shares, all tendered Ordinary Shares would be promptly returned.

Given these facts, we are requesting relief on two levels.

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First, we request that the Staff confirm that it will not recommend enforcement action under Rule 14e-1(c) if payment is made in respect of tendered Ordinary Shares as soon as practicable, and in any event within no more than seven (7) Banking Days following the Expiration Time.

We believe that the Offer will comply with the plain wording of Rule 14e-1(c) promulgated under the Exchange Act. Rule 14e-1(c) provides that “no person who makes a tender offer shall . . . fail to pay the consideration offered or return the securities deposited by or on behalf of security holders promptly after the termination or withdrawal of a tender offer.” In the current case, the Offer will not terminate until satisfaction (or, if permissible, waiver) of all of the Offer conditions, even though the Acceptance Period and Additional Acceptance Period may have expired at an earlier date. Following termination of the Offer, the Offering Parties will accept the tendered Ordinary Shares and issue and deliver payment to the tendering shareholders as soon as practicable, within a maximum period of seven (7) Banking Days, in accordance with German law and market practice. Transfer of title and possession of the Ordinary Shares to the Offering Parties will only occur after satisfaction (or, if permissible, waiver) of all conditions to the Offer. Transfer of title and possession of the tendered shares will not occur at the expiration of the Acceptance Period or Additional Acceptance Period of the Offer. Accordingly, although there may be a delay between the expiration of the Acceptance Period or Additional Acceptance Period and termination of the Offer, there will not be more than seven (7) Banking Days between the Expiration Time and the payment to the tendering shareholders. If the Antitrust Clearance Condition is not satisfied and the BCA is terminated in accordance with its terms, the Offer will be withdrawn, and tendered Ordinary Shares will promptly be rebooked to their original ISIN and trade normally after such point.

The policy concerns embodied in Rule 14e-1(c) are also met. Rule 14e-1(c) was adopted to “protect investors by ensuring that deposited securities are not tied up for an unreasonable length of time.” *See* Exchange Act Release 34-16384 (Nov. 29, 1979). As noted in the final rulemaking release adopting Rule 14e-1(c), “a memorandum from the Division of Corporation Finance which was submitted to the Senate Committee considering the Williams Act amendment pursuant to the request . . . for examples of how the Commission proposed to implement the grant of rulemaking authority under Section 14(e), identified one area to be addressed by the rulemaking authority as the situation in which . . . [t]he person who makes a tender offer may fail (a) to pay for securities purchased, or (b) to return to their owner’s [sic] securities not purchased promptly upon the termination of the tender offer in accordance with the practices of the financial community for settlement of transactions, usually within five days.” *Id.* at n. 36. In a typical tender offer for securities issued by a corporation organized in the United States, Rule 14e-1(c) is important because, once securities are tendered and withdrawal rights cease to exist, the tendering shareholder no longer has the ability to sell or dispose of the tendered shares because such shares are deposited with a tender agent.

In contrast, under German law and market practice, as described above, tendered securities held in the Clearstream system are not actually “tied up” because the tendered security is not actually

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deposited and the holder of the tendered security retains all indicia of ownership in the tendered shares until the completion of the Offer, including voting rights, dividend rights, rights upon liquidation and the ability to dispose of their shares through a liquid “as-tendered” trading market on the FSE. The nature of the continued availability of these shareholder rights, and, in particular, the existence of the “as-tendered” trading market serves the same purpose and function as withdrawal rights because shareholders continue to have all indications of ownership in the tendered shares, including the ability to sell those shares in a liquid market. Therefore, in the Offer, the potential gap in time between the expiration of the Acceptance Period or Additional Acceptance Period and the settlement of the Offer should not raise the policy concerns that Rule 14e-1(c) was designed to address.

In *AIXTRON* and *Bayer I*, the Staff granted relief under Rule 14e-1(c) on facts similar to those present in the Offer to allow shares tendered during the acceptance period or the additional acceptance period to be paid no later than four (4) to twelve (12) Banking Days after the expiration of the acceptance period or additional acceptance period, respectively, in the case of *AIXTRON* and no later than eight (8) Banking Days after the expiration of the acceptance period or additional acceptance period, respectively, in the case of *Bayer I*, assuming all conditions were satisfied. In addition, the position taken by the Staff in *AIXTRON* and *Bayer I* pursuant to Rule 14e-1(c) allowed the respective offerors to pay for any shares tendered in the offer within four (4) to twelve (12) Banking Days, in the case of *AIXTRON*, and eight (8) Banking Days, in the case of *Bayer I*, after the receipt or waiver of the regulatory approvals if the regulatory approvals had not been received or waived by the expiration of the acceptance period. *See also*, *Prospectus of Alpha Beta Netherlands Holding N.V.*, File No. 333-173347 (May 11, 2011); *Deutsche Börse/NYSE Euronext Transaction*, Memorandum to SEC Staff, File No. 33-7759 (May 2, 2011); *Axel Springer AG Offer for ProSiebenSat.1 Media AG* (Sept. 12, 2005) (the Staff confirmed that it would not recommend enforcement action under Rule 14e-1(c) if the bidder did not pay for tendered shares pending receipt of required regulatory approvals following expiration of the initial offering period); *Exchange Offer by Rhone-Poulenc S.A. for Ordinary Shares and ADSs of Hoechst AG*, SEC No-Action Letter, File No. TP 99-205 (Dec. 20, 1999); *Royal Bank*; and *In the Matter of Central and South West Corporation, and Houston Industries Inc. Offer to Purchase the Ordinary Shares and American Depositary Shares of Norweb Plc*, Exchange Act Release No. 34-36285, International Series Release No. 861 (Sept. 27, 1995).

Second, we are also requesting exemptive relief from Rule 14d-11(c) and (e) to permit the payment for, or return of, Ordinary Shares tendered during the Offer in the manner described above, and further requesting that the Staff confirm that it will not recommend enforcement action to the Commission under Rule 14e-1(c) to permit payment for, or return of, Ordinary Shares in the manner described above.

In *AIXTRON* and *Bayer I*, on facts similar to those present in the Offer, the Staff granted relief under Rules 14d-11(c) and (e).

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In *AIXTRON* and *Bayer I*, the Staff granted relief under Rule 14d-11(c) and Rule 14d-11(e) to permit the offeror in each case (a) to pay for shares tendered during the acceptance period or additional acceptance period, as applicable, no later than four (4) to twelve (12) Banking Days, in the case of *AIXTRON*, and eight (8) Banking Days, in the case of *Bayer I*, after the expiration of such period and (b) to the extent that the regulatory conditions of the respective offers had not been satisfied during the applicable acceptance period or additional acceptance period (or previously waived), to pay for shares tendered during such period after the expiration of a four (4) to twelve (12) Banking Day period, in the case of *AIXTRON*, and a four (4) to eight (8) Banking Day period, in the case of *Bayer I*, after the satisfaction of each offer's regulatory conditions; provided that the offeror in each case returned any such shares without undue delay in the event such regulatory conditions were not satisfied.

In addition to the precedent cited above, the Commission has generally looked to the clearance and payment practices as well as the securities laws of the subject company's home country in determining whether the consideration in a tender offer was paid promptly. We believe that the relief requested is contemplated by or consistent with *AIXTRON*, *Bayer I*, *Axel Springer* and other relief granted by the Staff and with the Cross-Border Releases. See *Offer by BCP Crystal Acquisition GmbH & Co., et al. for Celanese AG*, SEC No-Action Letter, File No. 5-57467 (Feb. 3, 2004); *Rhone-Poulenc S.A.*, SEC No-Action Letter, File No. TP 93-89 (July 8, 1993); *Exchange Offer by Rhone-Poulenc S.A. for Ordinary Shares and ADSs of Hoechst AG*, SEC No-Action Letter, File No. TP 99-205 (Dec. 20, 1999); *Offer by Sanofi-Synthelabo for Ordinary Shares and ADSs of Aventis*, SEC No-Action Letter, File No. TP 04-30 (June 10, 2004); and *Royal Bank*.

Rule 14e-1(b) and Rules 14d-4(d)(2)(ii): Extension of Offer Upon Certain Changes

Rule 14e-1(b) promulgated under the Exchange Act prohibits an offeror 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 (10) 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) under the Exchange Act requires that, in the event an offeror changes the offer price or makes a similarly significant change to the terms of the offer, the offeror must extend the tender offer by ten (10) U.S. business days and disseminate the material change to the target shareholders. In Release No. 33-7760, the Commission stated that it believed these time periods represent general guidelines that should be applied uniformly to all tender offers.

Under German law, a similar material change occurring during the last two (2) weeks of the Acceptance Period would require that the Acceptance Period remain open for an additional two (2) calendar weeks from the then-scheduled expiration of the Acceptance Period. The applicable German law requires an extension of exactly two (2) weeks. In the event that such a change were to occur during the last two (2) weeks of the Acceptance Period, and the resulting two-

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week extension occurred over a period that included U.S. federal holidays, Rule 14e-1(b) and compliance with the Commission's position regarding the applicability of Rule 14d-4(d)(2)(ii) would require a longer extension than that permitted by German law. Accordingly, we hereby request exemptive relief from Rule 14d-4(d)(2)(ii) and Rule 14e-1(b) to allow, only in the event that the occurrence of a U.S. federal holiday creates a conflict between the U.S. and German requirements, the Offeror to keep the Acceptance Period open for an additional period of two (2) calendar weeks in accordance with German law.

In *Bayer I* and *AIXTRON* on facts similar to those present in the current Offer, the Staff provided relief from Rule 14e-1(b) and Rule 14d-4(d)(2)(ii) under the Exchange Act in order to allow the offeror in each case to extend the offer for a period of two (2) calendar weeks in the event of a material change in the terms of the Offer during the last two (2) weeks of the Acceptance Period. We believe the exemptive relief requested is contemplated by or consistent with *Bayer*, *AIXTRON* and other tender offers similarly structured. See, e.g., *Offer by BCP Crystal Acquisition GmbH & Co., et al. for Celanese AG*, File No. 5-57467 (Feb. 3, 2004).

Rule 14d-11(d): Commencement of Additional Acceptance Period

Rule 14d-11(d) under the Exchange Act provides that an offeror may provide a subsequent offering period if, among other things, the offeror "announces the results of the tender offer, including the approximate number and percentage of securities deposited to date, no later than 9:00 a.m. Eastern time on the next U.S. business day after the expiration date of the initial offering period, and immediately begins the subsequent offering period." Pursuant to U.S. practice, an approximate, rather than a final, number is announced, which number includes shares subject to guaranteed delivery procedures.

As described above, however, the applicable German requirement relating to the commencement of the Additional Acceptance Period requires the publication of exact and final results. For this reason, German practice is to allow two (2) to three (3) Banking Days following the expiration of the Acceptance Period in order to effect the book-entry transfers necessary for that determination. Preparation for publication of those results typically occurs on the third (3rd) or fourth (4th) Banking Day following the expiration of the Acceptance Period, and publication itself typically occurs on the following Banking Day (*i.e.*, the fourth (4th) or fifth (5th) Banking Day following expiration of the Acceptance Period). The Additional Acceptance Period would then commence on the Banking Day following publication (*i.e.*, the fifth (5th) or sixth (6th) Banking Day following expiration of the Acceptance Period).

We therefore request exemptive relief from Rule 14d-11(d) to permit, in accordance with German law and practice, the commencement of the Additional Acceptance Period as soon as practicable, but in any event on the Banking Day following the publication of the final results of the Offer (expected to be no later than the fifth (5th) or sixth (6th) Banking Day following the expiration of the Acceptance Period).

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The requested relief is consistent with the relief granted in *Bayer I*. In *Bayer I*, the publication of the final results of the Offer was expected to be a Banking Day no later than the fifth (5th) Banking Day following the close of the Acceptance Period in accordance with German law and practice. In that case, the Staff granted an exemption from Rule 14d-11(d) to permit the Bayer Entities to commence the Additional Acceptance Period on the day after the publication of final results of the Offer. *See also, Offer by BCP Crystal Acquisition GmbH & Co., et al. for Celanese AG*, File No. 5-57467 (Feb. 3, 2004).

Rule 14e-1(d): Delayed Notice of Extensions of Offer

Rule 14e-1(d) under the Exchange Act, among other things, prohibits an offeror from making a cash tender offer from extending the length of a tender offer without issuing a notice of such extension by press release or other public announcement, which notice must 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 Offering Parties will not be in a position to determine the approximate number of Ordinary Shares deposited in the Offer. As noted above, this determination cannot be made until the second or third Banking Day following the expiration of the Acceptance Period as Ordinary Shares may be traded and tendered on the last day of the Acceptance Period, and the book-entry transfer of such Ordinary Shares into the appropriate securities identification number for tendered Ordinary Shares within the Clearstream system can only be effected within two (2) to three (3) 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 regulation also provides that the Offering Parties must prepare and publish the final, official results of the tender offer in a qualifying newspaper. Preparation for publication of those results typically occurs on the third (3rd) or fourth (4th) Banking Day following the expiration of the Acceptance Period, and publication itself typically occurs on the following Banking Day (*i.e.*, the fourth (4th) or fifth (5th) Banking Day following expiration of the Acceptance Period).

In light of the requirements of German law, we do not believe that delay in announcing the results of the Offer in connection with an extension of the initial offering period in order to comply with 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 extension 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.

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We hereby request an exemption to Rule 14e-1(d) to permit the Offering Parties to extend the Acceptance Period in accordance with German law and practice. We believe that the relief requested herein is consistent with the relief granted by the Commission in *Bayer I* and *Axel Springer*, as well as additional cases with facts similar to those of the present Offer. See *Cash Offer for Ordinary Shares of Braas Monier Building Group S.A.* (Oct. 25, 2016), *KKR and Pennira Offer for ProSiebenSat.1 Media AG* (Jan. 30, 2007).

Rule 14e-5 and Rule 14e-1(b): Purchases Outside of the Offer

Rule 14e-5

Under the German Takeover Act, an offeror is permitted to purchase, directly or indirectly, shares that 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 under the Exchange Act 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.

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(s), 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 Ordinary Shares by the Offering Parties 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 Ordinary Shares outside of the Offer will be regulated by German securities laws. The German Takeover Act would allow the Offering Parties to make such purchases, subject to certain conditions meant to protect holders. The Offering Parties would be required to

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make available to all holders of the Ordinary Shares subject to the Offer any more favorable terms, including price terms, agreed to in connection with any purchases of Ordinary Shares by the Offering Parties during the Offer. In addition, any such purchases by the Offering Parties prior to the commencement of the Offer must be disclosed in the Offer Materials. Finally, pursuant to Section 23 para. 2 of the German Takeover Act, any such purchase by the Offering Parties during the Offer must be reported to BaFin and announced publicly immediately following such purchase.

Any such purchases would be subject to the following conditions:

- i. No purchases or arrangements to purchase Ordinary Shares except pursuant to the Offer will be made in the United States;
- ii. The Offer Materials will prominently disclose the possibility of outside purchases by the Offering Parties and describe 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 that such information is made public in Germany pursuant to the German Takeover Act, of information regarding all purchases of Ordinary Shares otherwise than pursuant to the Offer from the time of the public announcement of the Offer until its expiration;
- iv. The Offering Parties 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. The Offering Parties will not make any purchases or arrangements to purchase Ordinary Shares for consideration above the Offer Price after the expiration of the Acceptance Period;
- vi. If the Offering Parties purchase or make arrangements to purchase Ordinary Shares for consideration above the Offer Price during the Acceptance Period, (i) the Offer Price paid to shareholders that tender Ordinary Shares into the Offer will be increased to match the highest price paid outside the Offer without any further action on the part of the tendering shareholder and (ii) if the Merger and Liquidation or the Asset Sale and Liquidation is implemented, the gross amount of the liquidation distribution to be ultimately received by holders of Ordinary Shares who do not tender into the Offer will be equal to the (increased) Offer Price without any further action on the part of the non-tendering shareholder;
- vii. Upon request of the Division of Corporation Finance (the “Division”), Offering Parties will disclose to the Division a daily time-sequenced schedule of all purchases of Ordinary Shares made from the time of public announcement of the Offer until the expiration, on a

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- transaction-by-transaction basis, including (y) a description of the size, broker (if any), time of execution and purchase price; (z) if not executed on the FSE, the exchange, quotation system or other facility through which the purchase occurred;
- viii. Upon request of the Division, the Offering Parties will transmit the information specified in clauses (y) and (z) above to the Division at its offices in Washington, D.C. within thirty (30) days of such request;
- ix. The Offering Parties will maintain all documents and other information required to be maintained pursuant to this exemption for a period of not less than two (2) years from the date of the termination of the Offer;
- x. Representatives of the Offering Parties 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
- xi. Except as otherwise exempted herein, the Offering Parties will comply with Rule 14e-5.

We hereby request an exemption to Rule 14e-5 to permit purchases of Ordinary Shares outside of the Offer as described above. In the context of the Offer, we believe that the requested relief is consistent with relief the Staff has afforded to offerors in similar circumstances in the past, including in transactions that did not separately qualify for the Tier II Exemption. *See Offer by Stork Holdco L.P. for Songbird Estates Pie* (Dec. 19, 2014); *Oak Leaf B.V., Acorn 8.V. Offer for D.E. Master Blenders 1753 N.V.* (May 21, 2013); *Offer by UnitedHealth Group Inc. for all outstanding shares of Amit Participacoes S.A.* (Nov. 20, 2012); *Offer by BHP Billiton for all common shares of Potash Corporation of Saskatchewan Inc* (Aug. 26, 2010); *Offer by Vimpelcom Ltd., Altimo Holdings & Investments Ltd. and Telenor ASA for all outstanding common shares, preferred shares and American Depositary Shares Villpel-Communications* (Feb. 5, 2010); *Offer by Kraft Foods Inc. Offer for all outstanding ordinary shares and ADSs of Cadbury Pie* (Dec. 9, 2009); *KKR and Permira Offer for ProSiebenSat.1 Media AG* (Jan. 30, 2007); *Axel Springer AG Offer for ProSiebenSat.1 Media AG* (Sept. 12, 2005); *RWE Aktiengesellschaft Offer for Innogy Holdings* (July 22, 2002).

Rule 14e-1(b)

The request for relief from Rule 14e-5 above contemplates that in the event the Offering Parties make purchases of Ordinary Shares outside of the Offer pursuant to German law, the Offering Parties would increase the Offer Price to the level of any higher purchase price outside of the Offer. The Offering Parties do not currently anticipate making any purchases outside of the Offer at a price higher than the Offer Price but are requesting this exemptive relief from Rule 14e-1(b) in the event that changes. Rule 14e-1(b) promulgated under the Exchange Act prohibits an offeror from increasing or decreasing the consideration offered in a tender offer unless the

Mr. Ted Yu, Ms. Christina Chalk, Mr. Perry Hindin
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tender offer remains open for at least ten (10) U.S. business days from the date that notice of such change is first published or sent or given to security holders.

As described above, under Sections 21 (5) and (6) of the German Takeover Act, the Offeror may voluntarily increase the Offer Price and extend the Offer on only one occasion during the final two (2) weeks of the Acceptance Period, for a period of exactly two (2) calendar weeks. Under German law and practice, the purchase of shares outside of the Offer for a higher price than the Offer Price would result in an increase in the Offer Price to match the higher price but would not require an extension of the Offer.

Absent the prohibition under German law, the Offering Parties would amend the Offer to directly increase the Offer Price and, if necessary, extend the Acceptance Period by a period of ten (10) U.S. business days from the date the notice of such change is first published or sent or given to security holders. As described above, however, the direct conflict between German law and U.S. law would prevent the Offering Parties from extending the Offer on more than one occasion during the final two (2) weeks of the Acceptance Period and from extending the Offer for a period of more than two (2) calendar weeks in the event that the ten (10) U.S. business day period required under U.S. law occurs over a period longer than two (2) calendar weeks.

However, as described above, if the conditions to the Offer are satisfied prior to the expiration of the Acceptance Period, there will then be a two (2)-week Additional Acceptance Period during which all holders of Ordinary Shares who did not accept the Offer may accept the Offer and receive the highest price paid in purchases outside of the Offer. Accordingly, we respectfully submit that the spirit of Rule 14e-1(b) will be fulfilled because all holders of Ordinary Shares will have the right to tender into the Offer for a period of two (2) weeks following the end of the Acceptance Period, assuming the conditions (other than the Regulatory Condition) are satisfied or waived. If the two (2) week Additional Acceptance Period occurred over a period that included U.S. federal holidays the Offer may not be open for at least ten (10) additional U.S. business days, although, as described above, because the Additional Acceptance Period would not begin until the fifth (5th) or sixth (6th) Banking Day following the expiration of the Acceptance Period, holders will have a period of at least ten (10) U.S. business days between the end of the Acceptance Period and the end of the Additional Acceptance Period to decide whether to tender their shares into the Offer.

We therefore request exemptive relief from Rule 14e-1(b) under the Exchange Act in the event that purchases are made outside of the Offer prior to the expiration of the Acceptance Period for a purchase price above the Offer Price to allow the Offering Parties to increase the Offer Price payable to shareholders that tendered their Ordinary Shares during the Acceptance Period without extending the Acceptance Period by ten (10) U.S. business days.

If the exemption is granted, the Offering Parties will make the following disclosures:

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- i. Disclose in the Offer Document the possibility that purchases of Ordinary Shares may be made outside of the Offer; and
- ii. If Ordinary Shares are acquired at a price above the Offer Price, promptly disclose in the U.S. the resulting increase to the Offer Price.

We believe that the exemptive relief requested is consistent with the relief granted by the Commission in *Bayer I*. In *Bayer I*, the offering parties requested relief under Rule 14e-1(b) in order to make purchases outside of the offer in order to respond to market developments by making offers to purchase shares outside of the offer at prices higher than the offer price. In *Bayer I*, as in the present case, the direct conflict between German law and U.S. law prevented the offering parties from extending the Acceptance Period.

Finally, the requested relief will enable the Offering Parties to make purchases outside of the Offer in accordance with the conditions described above in request for relief from Rule 14e-5.

* * *

Based on the foregoing, we respectfully request that the Staff grant exemptive relief to the Offering Parties under Section 14(d)(5) of Exchange Act and Rule 14d-4, Rule 14d-7, Rules 14d-11(c), (d) and (e), Rules 14e-1(b) and (d) and Rule 14e-5 under the Exchange Act. We further request that the Staff confirm that, based on the facts and circumstances described in this letter, it will not recommend any enforcement action to the Commission with respect to Rule 14e-1(c) under the Exchange Act if the Offering Parties conduct the Offer as described in this letter.

If you have any questions or comments relating to this request, or if it would facilitate your response in any way, please do not hesitate to contact the undersigned at (212) 403-1341 or Brandon Price at (212) 403-1367.

Sincerely,



Matthew M. Guest
Wachtell, Lipton, Rosen & Katz

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Amsterdam, May 15, 2020

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

Attn: Mr. Ted Yu, Chief, Office of Mergers and Acquisitions
Ms. Christina Chalk, Senior Special Counsel, Office of Mergers and Acquisitions
Mr. Perry Hindin, Special Counsel, Office of Mergers and Acquisitions

Re: Proposed Cash Tender Offer by Quebec B.V., a Subsidiary of Thermo Fisher Scientific Inc.,
For All Issued Ordinary Shares of QIAGEN N.V.

Ladies and Gentlemen:

NautaDutilh N.V. (“we”) are writing on behalf of our clients Thermo Fisher Scientific Inc., a Delaware corporation (“**Thermo Fisher**”) and its wholly owned subsidiary, Quebec B.V., a private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*) organized under the laws of The Netherlands (the “**Offeror**”), in connection with the proposed all-cash tender offer (the “**Offer**”) by the Offeror for all issued ordinary shares of QIAGEN N.V., a public limited liability company (*naamloze vennootschap*) organized under the laws of The Netherlands (“**QIAGEN**”).

In our capacity as legal counsel as to Dutch law to Thermo Fisher and the Offeror in connection with the Offer, we have been requested to review the letter, dated as of the date hereof, prepared by Wachtell, Lipton, Rosen & Katz on behalf of Thermo Fisher and the Offeror requesting certain relief in connection with the Offer (the “**Letter**”) and to provide you this opinion letter (the “**Opinion Letter**”).

For the purposes of this Opinion Letter, we have exclusively examined and relied upon an electronic copy of the Letter and no documents have been reviewed by us in connection with this Opinion Letter other than the Letter. Accordingly, the opinions and views expressed in this Opinion Letter are limited to the Letter and certain Dutch legal matters and practices described therein. We have not investigated or verified any factual matter disclosed to us.

Based on the foregoing and subject to the terms and qualifications set out below, we are of the opinion that the descriptions of Dutch laws in the Letter are a fair, accurate and complete summary of the material Dutch laws applicable to the Offer that relate to the aspects of the Offer described in the Letter for which relief has been requested therein. Furthermore, we confirm that we believe the descriptions of Dutch public offer practices in the Letter are a fair, accurate and complete summary of the material Dutch public offer practices applicable to the Offer that relate to the aspects of the Offer described in the Letter for which relief has been requested therein.

This Opinion Letter is limited to the description in the Letter of Dutch laws and Dutch public offer practices, and may not be read as extending by implication to any matters not specifically referred to in it. In particular, we have not considered United States or German laws, rules, procedures or practices and we have not provided advice as to, or analysed, whether the relief requested in the Letter is appropriate, justified or complete with respect to United States and German laws, rules, procedures and practices.

This Opinion Letter is given on the basis of certain matters of law with general applicability in the Netherlands as at today's date and as presently interpreted under published authoritative case law of the Netherlands courts. In the absence of explicit statutory law, we based the opinions and views expressed in this Opinion Letter solely on our independent professional judgment. No undertaking is assumed on our part to revise, update or amend this Opinion Letter in connection with or to notify or inform you of, any developments and/or changes of Dutch laws or practices subsequent to today's date.

This Opinion Letter is addressed solely to you and solely in connection with the Letter, and may not be used or relied upon by any other person or for any other purpose. We accept no liability whatsoever in connection with the use or reliance upon this Opinion Letter, and no other person may be held liable in connection with this Opinion Letter. Except as set forth below, this Opinion Letter may not be reproduced, referred to or quoted in any offering materials, disclosure materials or other publication or document or otherwise disclosed.

The opinions and views expressed in this Opinion Letter are to be construed and interpreted in accordance with Dutch law. The competent courts at Amsterdam, the Netherlands, have exclusive jurisdiction to settle any dispute arising out of or in connection with this Opinion Letter. Any legal relationship arising out of or in connection with this Opinion Letter (whether contractual or non-contractual), including the above submission to jurisdiction and any relationship with third parties, is governed by Dutch law.

Sincerely yours,

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

NautaDutilh N.V.

HENGELERMUELLER

Hengeler Mueller • Leopoldstraße 8 - 10 • 80802 München

Division of Corporation Finance
U.S. Securities and Exchange
Commission
To the attention of:

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Munich, May 15, 2020
93511511v2

To the attention of:

Mr. Ted Yu, Chief, Office of Mergers and Acquisitions
Ms. Christina Chalk, Senior Special Counsel, Office of Mergers and Acquisitions
Mr. Perry Hindin, Special Counsel, Office of Mergers and Acquisitions

Public Takeover Offer to the Shareholders of QIAGEN N.V.

Dear Mr. Yu, Ms. Chalk and Mr. Hindin,

We are acting as German counsel to Thermo Fisher Scientific Inc., a corporation organized under the laws of Delaware (“**Thermo Fisher**”), and its wholly-owned subsidiary Quebec B.V., a private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*) organized under the laws of The Netherlands (“**Offeror**” and together with Thermo Fisher the “**Offering Parties**”), in connection with the intended all-cash takeover offer (the “**Offer**”) by the Offeror for all issued ordinary shares of QIAGEN N.V., a public limited liability company (*naamloze vennootschap*) organized under the laws of The Netherlands (“**QIAGEN**”).

In such capacity, we have been asked (i) to review the letter, dated May 15, 2020, prepared by Wachtell, Lipton, Rosen & Katz on behalf of the Offering Parties (the “**Letter**”) requesting relief from and non-enforcement of certain regulations under the Securities Exchange Act of 1934, as

amended, in connection with the Offer and (ii) to provide you this opinion letter regarding the description of German laws, regulations and practices described in the Letter (the “**Opinion Letter**”).

For the purposes of this Opinion Letter, we have only examined an electronic copy of the Letter and no documents have been reviewed by us in connection with this Opinion Letter other than the Letter. Therefore, the opinions and views expressed in this Opinion Letter are limited to the Letter and certain German legal matters described therein.

Based on the foregoing and subject to the qualifications set out below, we are of the opinion that the descriptions of the German public takeover laws and regulations as well as of the German public takeover practices in the Letter are an accurate, fair and complete summary of the material German public takeover laws and regulations and German public takeover practices applicable to the Offer that relate to the aspects of the Offer for which relief or non-enforcement has been requested in the Letter.

This Opinion Letter is confined to and given on the basis of the laws and public takeover practices of Germany applicable on the date hereof. Such laws and practices are subject to interpretation by the competent authorities, including the German Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*; BaFin) and the courts of Germany. Such interpretation is subject to change without advance notice and the competent authorities may disregard or abandon past precedents or practices. Furthermore, many provisions in the relevant laws are principle based and their application and interpretation leaves a wide range of discretion to the authorities. Where explicit statutory law does not exist or is not applicable, we base our opinion and view solely on our experience or independent professional judgment.

This Opinion Letter is limited to the description in the Letter of German public takeover laws and regulations and German public takeover practices. No confirmation or opinion shall be implied or inferred beyond that. The lawyers of our firm are members of the German bar and do not hold themselves out to be experts in any laws other than the laws of Germany. Accordingly, we are expressing herein opinions and views as to German law only and we express no opinion or view with respect to the applicability or the effect of the laws of any other jurisdiction to or on or in connection with the matters covered herein. In particular, we have not considered public takeover laws, rules, procedures or practices of the United States or the Netherlands nor provided advice as to, or analyzed, whether the relief requested in the Letter is appropriate, justified or complete with respect to the public takeover laws, rules, procedures and practices of the United States and the Netherlands.

We are writing you this Opinion Letter as of the date hereof and we assume no obligation to advise you of any changes in fact or in law that are made or brought to our attention hereafter.

This Opinion Letter is provided solely for the benefit of the addressee of this Opinion Letter and may not be used or relied upon by any other person or for any other purpose. We accept no liability whatsoever in connection with such use of or reliance upon this Opinion Letter.

This Opinion Letter is governed by and shall be construed in accordance with the laws of Germany. We confirm our understanding that all disputes arising out of or in connection with this Opinion Letter shall be subject to the exclusive jurisdiction of the courts of Germany, venue being the city of Munich, Germany.

Sincerely yours,

A handwritten signature in blue ink, appearing to read 'E. Strehle', is positioned below the text 'Sincerely yours,'.

Emanuel Strehle