



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

DIVISION OF  
MARKET REGULATION

December 20, 2006

Walter Van Dorn, Esq.  
Thacher Proffitt & Wood LLP  
Two World Financial Center  
New York, NY 10281

Re: Offer by Heat Beteiligungs III GmbH for Techem AG  
File No. TP 07-21

Dear Mr. Van Dorn:

This is in response to your letter dated December 19, 2006. A copy of that letter is attached with this response. By including a copy of your correspondence, we avoid having to repeat or summarize the facts you presented. The defined terms in this letter have the same meaning as in your letter, unless otherwise noted.

On the basis of your representations and the facts presented, but without necessarily concurring in your analysis, the United States Securities and Exchange Commission ("Commission") hereby grants an exemption from Rule 14e-5 under the Securities Exchange Act of 1934 ("Exchange Act") to permit the Prospective Purchasers to purchase or arrange to purchase Techem AG ("Techem") Shares otherwise than pursuant to the Offer, particularly in light of the following facts:

- The Offer is required to be conducted in accordance with the German Takeover Act (*Wertpapiererwerbs-und Übernahmegesetz*);
- Techem, a company incorporated under the laws of Germany, is a "foreign private issuer," as defined in Rule 3b-4(c) under the Exchange Act;
- Any purchases of Shares of Techem by the Prospective Purchasers will be subject to the German Takeover Act, which among other things requires that the Offer price be increased to match any purchases made outside the Offer at a price per Share higher than the Offer price;
- The existence of the Memorandum of Understanding on Exchange of Information between the Commission and the German Bundesaufsichtsamt für den Wertpapierhandel Concerning Consultation and Cooperation in the Administration and Enforcement of Securities Laws, dated October 17, 1997.

The Commission grants this exemption from Rule 14e-5 under the Exchange Act to permit the Prospective Purchasers to purchase or arrange to purchase Shares otherwise than pursuant to the Offer, subject to the following conditions:

1. No purchases or arrangements to purchase Shares, otherwise than pursuant to the Offer, shall be made in the United States;
2. The Offer Document shall disclose prominently the possibility of, or the intention to make, purchases of Shares by the Prospective Purchasers during the Offer;
3. The Prospective Purchasers shall disclose in the United States, to the extent such information is made public in Germany pursuant to German law, information regarding all purchases of Shares otherwise than pursuant to the Offer since the announcement date, including the dates of such purchases, the number of Shares purchased on any given date, and the average market price of such purchases;
4. The Prospective Purchasers shall comply with the applicable requirements under the German Takeover Act and other applicable German laws;
5. The Prospective Purchasers shall provide to the Division of Market Regulation ("Division"), upon request, a daily time-sequenced schedule of all purchases of Shares made by any of the Prospective Purchasers during the Offer, on a transaction-by-transaction basis, including:
  - a. size, broker (if any), time of execution, and price of purchase; and
  - b. the exchange, quotation system, or other facility through which the purchase occurred;
6. Upon the request of the Division, the Prospective Purchasers shall transmit the information as specified in paragraphs 5.a. and 5.b. above to the Division at its offices in Washington, D.C. within 30 days of its request;
7. The Prospective Purchasers shall retain 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;
8. Representatives of the Prospective Purchasers shall be made available (in person at the offices of the Division in Washington, D.C. or by telephone) to respond to inquiries of the Division relating to their records; and
9. Except as otherwise exempted herein, the Prospective Purchasers shall comply with Rule 14e-5.

The foregoing exemption from Rule 14e-5 under the Exchange Act expressed above is based solely on your representations and the facts presented, and is strictly limited to the application of this rule to the proposed transactions. Such transactions should be discontinued, pending presentation of the facts for our consideration, in the event that any material change occurs with respect to any of those facts or representations.

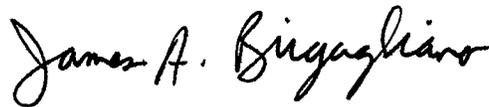
Walter Van Dorn, Esq.

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In addition, we 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. The participants in the Offer must comply with these and any other applicable provisions of the federal securities laws. The Division expresses no view with respect to any other questions that the proposed transactions may raise, including, but not limited to, the adequacy of disclosure concerning, and the applicability of any other federal or state laws to, the proposed transactions.

For the Commission, by the Division of Market  
Regulation pursuant to delegated authority,

A handwritten signature in black ink that reads "James A. Brigagliano". The signature is written in a cursive, flowing style.

James A. Brigagliano  
Acting Associate Director  
Division of Market Regulation

Attachment

December 19, 2006

James A. Brigagliano, Esq.  
Acting Associate Director, Division of Market Regulation  
Securities and Exchange Commission  
100 F Street, N.W.  
Washington, D.C. 20549

Dear Mr. Brigagliano:

Re: Offer by Heat Beteiligungs III GmbH for Techem AG

We are writing on behalf of our client, Heat Beteiligungs III GmbH (the "Bidder"), a limited liability company organized under the laws of Germany and indirect wholly-owned subsidiary of BC European Capital VIII, a private equity fund comprised of a series of limited partnerships organized under the laws of England and Wales (the "BC Funds") and advised by BC Partners Ltd., a global private equity group ("BC Partners"). On December 14, 2006, the Bidder commenced an offer (the "Offer") for Techem AG, a company incorporated as an Aktiengesellschaft in Germany (the "Company"). It publicly announced the Offer on November 22, 2006 (the "Announcement Date").

As previously discussed with members of the staff of the Securities and Exchange Commission (the "Commission"), we, as U.S. counsel to the Bidder and the BC Funds in connection with the Offer, are requesting exemptive relief from Rule 14e-5 ("Rule 14e-5") promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act").

The Bidder is making the Offer in cash to the holders of all the issued and outstanding no-par value bearer shares (*Stückaktien*) of the Company (the "Shares") at a price of €52.00 per share.

## BACKGROUND

### The Company

The Company has informed the Bidder that it is a "foreign private issuer" as defined in Rule 3b-4(c) of the Exchange Act. The Shares are not registered under Section 12 of the Exchange Act or listed on a U.S. national securities exchange. Further, the Company does not

file reports with the Commission pursuant to Section 13(a) or 15(d), or furnish information to the Commission pursuant to Rule 12g3-2(b), of the Exchange Act.

According to publicly available information, the Company is a leading European service provider for recording, distributing and billing data relating to energy and water consumption. It is also active in the planning, financing, installation and operation of energy-producing facilities and provides software for the housing industry. The Company is headquartered in Eschborn, Germany and is active throughout Europe. For the financial year ended September 30, 2006, the Company's worldwide consolidated turnover was approximately €523 million. The consideration offered by the Bidder in the Offer values the Company at €1.3 billion.

The Shares are listed on the segment of the Frankfurt Stock Exchange with the highest demands for transparency, known as the "Prime Standard", and are also traded on XETRA of the Frankfurt Stock Exchange, as well as on the unofficial regulated market of the stock exchanges Hamburg, Stuttgart, Düsseldorf, Berlin-Bremen and Munich. The Shares are included in the MDAX, a stock index containing the share prices of the 50 German companies that follow the top 30 companies (by size) that comprise the DAX index.

As of the date of this letter, the registered share capital of the Company was equal to €24,690,260 million divided into 24,690,260 no-par value bearer shares, or a proportionate amount of €1.00 per bearer share in the registered share capital.

As the Shares are in bearer form, it is not possible to ascertain fully the location of ownership of the Shares, and a "look through analysis" is unlikely to yield comprehensive or complete results due to the limited information available as to the holders of bearer shares of German companies. There does not appear to be any publicly available information concerning the number of holders of Shares located in the United States ("U.S. Holders"), however, based on information that D.F. King & Co., Inc. and Thompson Financial have provided, the Bidder believes that U.S. holders hold approximately 30% of the Shares. Accordingly, for purposes of this letter and the relief that we are requesting, we are assuming that U.S. Holders comprise more than 10% but less than 40% of the outstanding registered share capital of the Company and that the cross-border exemption under Rule 14d-1(d) of the Exchange Act (the "Tier II Exemption") is available to the Bidder.

### **The Bidder**

The Bidder is a foreign private issuer as defined in Rule 3b-4(c) of the Exchange Act. The initial registered share capital of the Bidder is €25,000, which will be increased in connection with capitalizing the Bidder for purposes of the Offer. The Bidder is an indirect wholly-owned subsidiary of the BC Funds, and, to date, the commercial activities of the Bidder have not extended beyond the administration of its own assets.

### **BC Funds and BC Partners**

The BC Funds are private equity funds that BC Partners advises. The BC Funds currently have approximately \$7.7 billion of assets under management. BC Partners is a leading

European private equity firm, with more than \$15 billion of assets under management. BC Partners advises five funds and operates out of offices in five countries in Europe.

## THE OFFER

The all cash Offer is structured as a single offer made concurrently in Germany, the United States and certain other jurisdictions in which the Offer may be legally extended. The Offer is structured to comply with (i) the applicable rules and regulations of the German *Wertpapiererwerbs- und Übernahmegesetz* (the German Securities Acquisition and Takeover Act or "German Takeover Code") and (ii) except to the extent permitted pursuant to the relief requested herein or otherwise as permitted under the Tier II Exemption, Regulation 14E promulgated under the Exchange Act. The Offer is not subject to Section 14(d) of the Exchange Act or Regulation 14D thereunder since no class of securities of the Company is registered under Section 12 of the Exchange Act.

The offer document with respect to the Offer (the "Offer Document") has been reviewed and approved by the German Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*, or "BaFin"). Upon approval by BaFin, the Bidder published a notice (*Hinweisbekanntmachung* or "Initial Announcement") announcing the commencement of the Offer in the *Börsen-Zeitung*, a German newspaper of general circulation, and in the U.S. edition of The Wall Street Journal on December 14, 2006.

The Offer is being communicated by means of the Offer Document, which is available on the website [www.heat-beteiligung.de](http://www.heat-beteiligung.de) in the German language, with an English language translation prepared exclusively for the convenience of the Company's shareholders. Printed versions of the Offer Document are also available upon request free of charge from Morgan Stanley & Co. Incorporated by e-mailing [heat@morganstanley.com](mailto:heat@morganstanley.com) or by faxing 212-507-3000.

The initial offering period will remain open until January 15, 2007 (the "Initial Offering Period") and may be followed by a two week subsequent offering period as mandated by the German Takeover Code.

The Offer is subject to a condition precedent that it be validly accepted within the Initial Offering Period in respect of at least 50.1% of the total number of Shares.

Securities of listed German companies are frequently, as in this case, held in book entry form through Clearstream Banking AG ("Clearstream"). Accordingly, once an offer has commenced in Germany, shareholders will accept the offer by informing the bank, financial institution, brokerage or other intermediary (an "Intermediary") at which the shareholder maintains an account for Shares, at any time prior to or on the expiration date of the Offer, of the shareholder's desire to tender the Shares and instruct their Intermediary to re-book such Shares into an account with a German Securities Identification Number at Clearstream.

Payment of the purchase price to the Intermediary is to take place in exchange for (*Zug um Zug gegen*) the transfer of the tendered Shares into the deposit account of Morgan Stanley Bank AG ("Morgan Stanley"), as exchange agent, for transfer to the Bidder. The designated

German bank will transfer the purchase price to the Intermediary promptly after the tendered Shares have been placed at its disposal, but no earlier than four banking days and no later than eight banking days in Frankfurt am Main following expiration of the Offer and satisfaction of the conditions precedent pursuant to the Offer Document.

Credit of the purchase price at the Intermediary shall constitute fulfillment by the Bidder of its obligation for payment of the purchase price. The Intermediary shall be responsible to credit the purchase price to each shareholder.

Shareholders of the Company who have accepted the Offer may, if the Offer is amended, or if a third party makes a separate offer for the Shares, withdraw from the agreement concluded by such acceptance at any time prior to the expiration of the Offer. Such withdrawal shall be effected by written declaration through the Intermediary of the relevant shareholder and prior to expiration of the Offer, and by re-booking withdrawn Shares into an account with a German Securities Identification Number at Clearstream.

#### **PURCHASES OUTSIDE THE OFFER AND RULE 14E-5**

Under the German Takeover Code, the BC Funds and the Bidder, acting directly and through their agents, financial advisors (including Morgan Stanley) and other nominees or brokers, or through one of their wholly-owned subsidiaries (collectively, the "Prospective Purchasers"), are each permitted to purchase Shares in the open market, pursuant to contractual arrangements or otherwise prior to and during the pendency, but outside, of the Offer, subject to certain limitations.

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 as part of the tender offer. This prohibition applies from the time the offer is publicly announced until the offer expires. Rule 14e-5 defines a covered person as (i) the offeror, its dealer-managers, and any of their respective affiliates, (ii) any advisors of the foregoing whose compensation is dependent on the completion of the offer, and (iii) any person acting in concert either directly or indirectly with any of the foregoing. Purchases of Shares by the Bidder, the BC Funds, and other covered persons acting on their behalf, 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, such purchases, although permitted and regulated by the German Takeover Code, may be prohibited after the public announcement of the Offer.<sup>1</sup>

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<sup>1</sup> In our view, there are serious doubts as to whether the jurisdictional predicate for the application of the Exchange Act -- namely that there be a purchase of a security "by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange" -- would be satisfied if the Bidder, the BC Funds, or financial institutions acting on their behalf, made purchases of, or arrangements to purchase, Shares outside the United States. We nonetheless apply, on behalf of such persons, for exemptive relief for such purchases from the provisions of Rule 14e-5 pursuant to Rule 14e-5, on the conditions set forth below. The

The German Takeover Code provides protections similar to those that Rule 14e-5 provides, making exemptive relief appropriate in the circumstances of the Offer, by requiring the Bidder to make available to all holders of the securities subject to the tender offer any more favorable terms, including price terms, agreed to in connection with any purchases by the Bidder or any of its affiliates during the offer period, including any purchases under contractual arrangements. Under § 31 para. 4 of the German Takeover Code, the Bidder would be obligated to increase the Offer price to the level of any higher purchase price outside the Offer. In addition, pursuant to § 23 para. 2 of the German Takeover Code, the Bidder must report to the BaFin and announce publicly any purchases outside the Offer during the offer period, immediately following such purchases. Any purchases of the Bidder prior to the commencement of the offer period must be disclosed in the Offer Document.

### **REQUESTED EXEMPTIVE RELIEF**

Based on the foregoing, we respectfully request that each of the Prospective Purchasers be granted exemptive relief from the provisions of Rule 14e-5 in order to permit open market purchases of Shares outside the Offer by any Prospective Purchaser (by or on behalf of the Bidder or the BC Funds) that Rule 14e-5 otherwise might prohibit. The foregoing request for exemptive relief will be subject to the following conditions:

- (a) no purchases or arrangements to purchase Shares, otherwise than pursuant to the Offer, will be made in the United States;
- (b) disclosure of the possibility of such purchases by the Prospective Purchasers, otherwise than pursuant to the Offer, will be included prominently in the Offer Document;
- (c) the Prospective Purchasers shall disclose in the United States, to the extent such information is made public in Germany pursuant to the German Takeover Code, information regarding all purchases of Shares otherwise than pursuant to the Offer since the Announcement Date, including the dates of such purchases, the number of Shares purchased on any given date, and the average market price of such purchases;
- (d) the Bidder shall disclose to the Division of Market Regulation of the Commission (the "Division of Market Regulation") upon request, (1) a daily time-sequenced schedule of all purchases of Shares made by any of the Prospective Purchasers during the Offer, on a transaction-by-transaction basis, including size, broker (if any), time of execution, and price of purchase; and (2) if not executed on the Frankfurt Stock Exchange, the exchange, quotation system, or other facility through which the purchase occurred;

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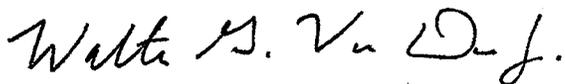
Bidder and the BC Funds have requested us to emphasize that this letter does not reflect an admission that Rule 14e-5 would apply to such purchases of Shares outside the United States in the absence of such exemptive relief.

- (e) upon request of the Division of Market Regulation, the Bidder shall transmit the information specified in (d)(1) and (d)(2) above to the Division of Market Regulation at its offices in Washington, D.C. within 30 days of its request;
- (f) the Prospective Purchasers shall comply with the applicable requirements under the German Takeover Code and other applicable German laws;
- (g) the Prospective Purchasers shall retain 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;
- (h) representatives of the Prospective Purchasers shall be made available (in person at the offices of the Division of Market Regulation in Washington, D.C. or by telephone) to respond to inquiries of the Division of Market Regulation relating to such records; and
- (i) except as otherwise exempted herein, the Prospective Purchasers shall comply with Rule 14e-5.

We believe the exemptive relief requested herein under Rule 14e-5 is consistent with that granted by the Commission in comparable situations. See, e.g., *Offer by Dritte BV GmbH for shares of Schering Aktiengesellschaft* (available April 7, 2006) *Offer by Deutsche Telekom AG for shares of T-Online International AG* (available November 3, 2004); *Offer by 91 Prof-Start 2004 GmbH for P&I Personal & Informatik Aktiengesellschaft* (available June 24, 2004); and *Offer by DB Sechste Vermögensverwaltungsgesellschaft mbH for Stinnes AG* (available August 29, 2002). In addition, similar relief has been granted under old Rule 10b-13 (the predecessor of Rule 14e-5) in *Vodafone Airtouch Plc Offer for Mannesmann Aktiengesellschaft*, File No. TP 00-29 (available December 22, 1999) and in numerous letters with respect to tender offers in other jurisdictions. In addition, we note the existence of the Memorandum of Understanding Between the Commission and the BaFin Concerning Consultation and Cooperation in the Administration and Enforcement of Securities Laws, dated October 17, 1997 and the Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information of the International Organization of Securities Commissions, dated May, 2002, to which both the Commission and BaFin are signatories.

If you require any further information or have any questions, please contact me at (212) 912-7446 or Laurence Schultz at (212) 912-7656.

Very truly yours,



Walter G. Van Dorn, Jr.