



FRESHFIELDS BRUCKHAUS DERINGER

VIA FACSIMILE

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SECURITIES AND EXCHANGE COMMISSION
RECEIVED

JUN 11 2002

DIVISION OF MARKET REGULATION
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CLIENT MATTER NO.

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DOC ID Copy.001/0+
OUR REF SCM/AI

100562-0003

CONFIDENTIAL TREATMENT REQUESTED

May 17, 2002

Re: Confidential Submission by Kingfisher plc for Rule 14e-5 Exemptive Relief

Ladies and Gentlemen

Attached please find a letter requesting exemptive relief from the provisions of Rule 14e-5 of the Securities Exchange Act of 1934, as amended, on behalf of our client, Kingfisher plc (*Kingfisher*). We hereby request confidential treatment for the attached request, as well as for any related correspondence. This request for confidential treatment is made on behalf of Kingfisher for the reason that certain of the facts set forth in the attached request have not been made public.

This confidential treatment request is made under the Freedom of Information Act pursuant to Section 200.83 of the Securities and Exchange Commission's Rules of Practice. It is our understanding that, pursuant to this rule, (i) no determination as to the merits of our request will be made at this time, and (ii) if the staff receives a request for any of the documents subject to this request for confidential treatment, we will be notified and provided with the opportunity to substantiate our request for confidential treatment.

Pursuant to Section 200.81 of the Securities and Exchange Commission's Rules of Practice, we respectfully request on behalf of Kingfisher that the attached request and any related correspondence be accorded confidential treatment until 120 days after the date of the response to such request or such earlier date as the staff of the Securities and Exchange Commission is advised that all of the information in this letter has been made public.

Freshfields Bruckhaus Deringer are solicitors and registered foreign lawyers
A list of the partners and their qualifications is open to inspection at the above address

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Please direct any questions relating to this request for confidential treatment and any notices to the undersigned at 011 44 20 7832 7429 or at the above address.

Yours sincerely

A handwritten signature in black ink, appearing to read "Sarah Murphy".

Sarah Murphy

Copies to: Ms. Betty Lopez, Freedom of Information Act Officer (w/o enclosure)



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OUR REF SCM

YOUR REF

CLIENT MATTER NO. 100562-0003

31 May 2002

Ladies and Gentlemen

Re: Proposed Offer by Kingfisher plc for Castorama Dubois Investissements SCA

We are writing on a confidential basis on behalf of our client, Kingfisher plc (*Kingfisher*, and together with its subsidiaries the *Kingfisher Group*), a company incorporated in England and Wales, which has announced that it proposes to make an offer (the *Proposed Offer*), for Castorama Dubois Investissements SCA, a company incorporated as a société en commandite par actions in France (*Castorama*).

The Proposed Offer would be made in cash to the holders of all the issued and outstanding ordinary shares of €1 each of Castorama (the *Ordinary Shares*). The Kingfisher Group currently owns 55% of the issued and outstanding Ordinary Shares but, due to Castorama's structure described below, this does not give Kingfisher management control of Castorama.

Kingfisher announced on May 15, 2002 (the *Announcement Date*) that it was proposing to make an offer.

As previously discussed with members of the staff of the Securities and Exchange Commission (the *Commission*), we, as U.S. counsel to Kingfisher in connection with the Proposed 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*).



BACKGROUND

Castorama

Castorama is a foreign private issuer as defined in Rule 3b-4(c) of the Exchange Act. The Ordinary Shares are not registered under Section 12 of the Exchange Act or listed on a U.S. national securities exchange or quoted on NASDAQ. Further, Castorama does not file reports with the Commission pursuant to Section 13(a) or 15(d) of, or Rule 12g3-2(b) under, the Exchange Act.

Castorama is a holding company based in France. Through its subsidiaries, it operates in the home improvement, or "do it yourself" retail sector. Castorama trades in France through Castorama, Brico Depot and Casto L'Entrepot. It also has operations in the United Kingdom (through B&Q), Ireland, Italy, Germany, Belgium, Poland, Canada, Brazil, Taiwan, China and Turkey. Castorama is the largest home improvement retailer in Europe and operates 550 stores.

For the year ended January 31, 2001, Castorama reported consolidated net sales of € 9,520 million, compared with € 8,434 million for the year ended January 31, 2000; consolidated profit before exceptional items and income tax of € 672 million, compared with € 610 million in 2000; and earnings per share of € 2.6 compared to earnings per share of € 2.5 in 2000. At January 31, 2001, Castorama had consolidated net assets of € 2,303 million.

The principal trading market for the Ordinary Shares is the Premier Marché of Euronext Paris SA (*Euronext*). Castorama had a fully diluted market capitalization on May 14, 2002 of approximately € 10.7 billion. Castorama's SCA structure differs from the more conventional société anonyme structure typically found in France by materially restricting the influence of shareholders. As a result, most of the decision-making power lies in the hands of the partners (*commandités*) and management. Subsidiaries of Kingfisher comprise half of the *commandités*.

Under French law, Kingfisher does not have access to specific information regarding Castorama's shareholdings but based on public information, it believes that United States shareholders may beneficially own approximately 20% of the Ordinary Shares not owned by Kingfisher. Kingfisher is not aware of any shareholder of Castorama (other than Kingfisher) that holds in excess of 10% of the Ordinary Shares.

Kingfisher

Kingfisher is a foreign private issuer as defined in Rule 3b-4(c) of the Exchange Act. Kingfisher is an international retailer based in the United Kingdom, which in addition to its 55% interest in Castorama also operates in the electrical retail business. It operates home improvement stores in 12 countries and electrical retail stores in 9 countries and enjoys particularly strong market positions in the United Kingdom, France, Poland and Taiwan.



The Kingfisher Group had turnover of £11,328 million for the year ended February 2, 2002, compared with turnover of £12,134 million for the year ended February 3, 2001; profit before tax of £ 28 million, compared with € 691 million in 2001; and loss per share of £19.8 compared to earnings per share of £32.9 in 2001. At February 2, 2002, the Kingfisher Group had consolidated net assets of £3,963 million.

BACKGROUND TO THE OFFER

Kingfisher obtained its 55% economic stake in Castorama in return for merging its B&Q business into the Castorama group in 1998. Under the articles of association of Castorama (the *Articles of Association*) created in this merger, Castorama is co-controlled by a governing board (*conseil de gérance*) which currently comprises five partners (*commandités*) who were in place at the time of the 1998 agreement (the *Commandités A*) and five partners (*commandités*) who were appointed by Kingfisher.

The Articles of Association also set out a process for Kingfisher to obtain a casting vote on the governing board by making a cash offer for the minority interests. This mechanism was approved by the Castorama shareholders as part of the 1998 agreement. In compliance with this, Kingfisher has lodged a formal notice with the *commandités* initiating this process.

Kingfisher has since held extensive discussions with the *Commandités A* with a view to agreeing implementation steps for the cash offer process. To date, Kingfisher and the *Commandités A* have not been able to reach any agreement on this. The *Commandités A* are seeking legal clarification on the interpretation of Article 21 of the Articles of Association and are also requesting the appointment by a French Court of a mediator to assist with its implementation.

Article 21 of the Articles of Association includes a requirement for an independent bank to provide an opinion on whether the proposed offer price of €67 per share is fair. Accordingly, Kingfisher is seeking the immediate appointment of an independent bank to prepare this opinion.

Assuming the timely delivery of a satisfactory fairness opinion, the filing of the Proposed Offer with the French market authorities is conditional on approval by Kingfisher's shareholders, and clearance by the relevant competition authorities. As stipulated in Article 21 of the Articles of Association, the acquisition of the casting vote follows upon publication of approval (*avis de recevabilité*) of the offer by the Conseil des Marchés Financiers (*CMF*).

To avoid further delay to the process, however, Kingfisher decided to announce the initiation of the Proposed Offer on the Announcement Date.



PROPOSED OFFER STRUCTURE

Kingfisher expects that the Proposed Offer, when made, will be made in cash and will be structured as a single offer made concurrently in France, the United States and certain other jurisdictions.

The Ordinary Shares will be acquired by Kingfisher fully paid and free from all liens, equities, charges, encumbrances and other third party rights or interests and together with all rights then or thereafter attaching thereto, including the right to all dividends and other distributions (if any) declared, made or paid thereafter.

The Proposed Offer will be structured to comply with (i) the applicable rules and regulations of French law, in particular the General Regulation of the CMF and the regulations of the Commission des opérations de bourse (*COB*) (the *French Rules*) (which provide a comprehensive scheme for the regulation of French tender offers and trading in the French securities markets) and (ii) Regulation 14E of the Exchange Act and the rules and regulations promulgated thereunder. Kingfisher's primary objective in structuring the Proposed Offer is to allow for participation by holders of the Ordinary Shares in France and the United States, while complying with the generally applicable requirements in those jurisdictions to the greatest extent practicable. The offer document (*note d'information*) will comply with the applicable rules and regulations of the CMF, and the COB and the applicable requirements of the Exchange Act.

Following the filing of the Proposed Offer with the CMF, the CMF publishes on the same day the main terms of the Proposed Offer in an official notice (*avis de dépôt*).

In France, the Proposed Offer will be communicated by means of the note d'information, which will be published in a French financial newspaper of general circulation and made available to French shareholders upon request. The Proposed Offer will remain open for acceptance for not less than 25 French stock exchange days and 20 US business days after it is opened for acceptances and for such additional period as may be determined by Kingfisher, and approved by CMF, and as may be mandated by the provisions of Regulation 14E under the Exchange Act or the French Rules.

Under French law, an offer commences the day after the publication of the note d'information which must have been previously approved by the COB which grants a visa. The note d'information must be published in a French financial newspaper of national circulation no later than two French stock exchange days after the issuance by the COB of the visa.

Securities of listed French companies are uncertificated and held in book entry form through Euroclear France SA. Accordingly, once an offer has commenced in France, shareholders will accept the offer by informing the bank, financial institution, brokerage or other intermediary (an *Intermediary*) at which the holder maintains an account for shares, at any time prior to or on the



expiration date of the offer, of the holder's desire to tender. The Intermediary will not immediately tender such shares into the offer, but instead will hold such shares until the expiration of the offer. Following the expiration of an offer in France, the sale orders of holders of shares will be "centralised" at Euronext which, in accordance with French practice will act as agent for the Proposed Offer. This centralisation process consists of the Intermediaries' forwarding to Euronext a list of shareholders who have elected to tender along with (by book-entry transfer) the Ordinary Shares to be tendered by such persons within a period of time decided by Euronext. Shares are therefore not transferred to Euronext or to a bidder prior to the expiration of a French offer. Article 5-2-1 of the General Regulations of the CMF specifies that sale orders transmitted to Intermediaries by shareholders can be cancelled at any time prior to, or on, the expiration date of an offer.

Under French law, the CMF is responsible for supervising the "centralisation" process and publishing the number of securities tendered into an offer as well as determining whether the conditions to the offer have been fulfilled as of the time of the expiration of the offer.

Under the General Regulations of the CMF, a tender offer, once launched, is irrevocable, although a bidder is permitted to withdraw the offer if (i) the target company takes unconditional actions that modify the consistence, or fundamental nature of the company, and the CMF approves such withdrawal, or (ii) another person or group publishes the time schedule relating to a competing offer to acquire the target company. In addition, an offer may be withdrawn if the minimum acceptance threshold provided for in the terms of the offer has not been reached at the closing date. In the present case, no such minimum acceptance threshold will be provided for by Kingfisher.

The General Regulations of the CMF also regulate purchases of shares of a company which is the subject of an offer. Article 5-1-11 requires transactions in target shares to take place on the regulated market on which the shares are listed and prohibits block trades or other "off-market" complex transactions, and Article 17 of COB regulation no. 2002-04 requires public reporting to the CMF on a daily basis following closing of the stock exchange of transactions by bidders, targets, their directors and 5% shareholders with respect to target securities. Other provisions of French law and COB regulations prohibit fraudulent and manipulative practices.

PURCHASES OUTSIDE THE OFFER AND RULE 14E-5

Under the French Rules and in accordance with French practice, Kingfisher may make purchases of the Ordinary Shares outside the Proposed Offer on such terms as are agreed with the applicable sellers, if such purchases take place on market, are not purchased in a block trade and are reported to the CMF as described above, subject to the following restrictions. If the purchases take place after the Proposed Offer opens for acceptance and up to five stock exchange days before the closing date at a price higher than the initial offer price, the offer price will automatically be increased to 102% of the initial offer price or, if higher, to the purchase



price. During the last five days before the closing date, purchases cannot be made under Article 5-2-11 of the General Regulation of the CMF, at a price higher than the offer price.

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 it 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 by Kingfisher and other covered persons acting on its behalf of Ordinary Shares outside the Proposed Offer would 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 French Rules, would be prohibited after the public announcement of the Proposed Offer.

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 a member of the Kingfisher Group, or financial institutions acting on their behalf, made purchases of, or arrangements to purchase, Ordinary 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. We have been requested by Kingfisher to emphasise that this letter does not reflect an admission that Rule 14e-5 would apply to such purchases of Ordinary Shares outside the United States in the absence of such exemptive relief.

REQUESTED EXEMPTIVE RELIEF

Based on the foregoing, we respectfully request that Kingfisher and any member of the Kingfisher Group and any broker or other financial institution acting as their agent (the *Prospective Purchasers*), be granted exemptive relief from the provisions of Rule 14e-5 in order to permit purchases of Ordinary Shares outside the Proposed Offer by any Prospective Purchaser that would otherwise be prohibited by Rule 14e-5, subject to the following conditions:

- (a) No purchases or arrangements to purchase Ordinary Shares, otherwise than pursuant to the Proposed 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 Proposed Offer, will be included prominently in the note d'information;



- (c) The Prospective Purchasers shall disclose in the United States information regarding such purchases to the extent such information is required to be made public in France under French law;
- (d) The Prospective Purchasers shall disclose to the Division of Market Regulation of the Commission (the *Division of Market Regulation*) upon request, a daily time-sequenced schedule of all purchases of Ordinary Shares made by any of them during the Proposed Offer, on a transaction-by-transaction basis, including: (1) size, broker (if any), time of execution, and price of purchase; and (2) a statement that all purchases have been made on the Premier Marché of Euronext;
- (e) Upon request of the Division of Market Regulation, the Prospective Purchasers 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 French law;
- (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 Proposed 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.

The Commission has granted a number of exemptions from Rule 10b-13 (the predecessor to Rule 14e-5) and Rule 14e-5 itself, to permit purchases by offerors and persons acting on behalf of offerors. In response to the letter regarding the offer by Crown Cork & Seal Company Inc. for CarnaudMetalbox (publicly available December 20, 1995) (the *Crown Cork Letter*) exemptive relief was granted by the Commission for market purchases following announcement (but prior to commencement), and after expiration, of a French offer on the basis of compliance by the bidder with (i) French rules governing takeover offers and market purchases in connection with such offers and (ii) other conditions substantially identical to those listed above. The exemptive relief sought in the Crown Cork Letter was for the time period between public announcement of the offer and its commencement and for the time after the expiration of the offer. Relief for purchases following commencement, but before expiration, of the offer was not sought because the offer was an exchange offer and, under the French rules then applicable to exchange offers, market purchases were not permissible during that period. No such restrictions apply in a cash offer while the public reporting and other French rules regarding



market purchases that formed the basis for relief in that letter continue to apply. Accordingly, we believe that the same rationale for granting relief in the circumstances described in the Crown Cork Letter applies to exemptive relief for market purchases throughout the French offer period in connection with a cash offer provided that the applicable French rules governing offers and market purchases and the conditions listed above are complied with.

In the context of bids conducted under the United Kingdom City Code on Take-overs and Mergers (the *City Code*) exemptive relief has been granted for the full offer period. Like the *City Code*, the French rules require public reporting to the relevant authority (in France the CMF) on a daily basis of transactions (including purchases outside the offer) by bidders, their directors and 5% shareholders with respect to target securities. We refer to the letter regarding the offer by Glaxo plc for Wellcome plc (available 7 February 1995), the letter regarding the offer by PacifiCorp for The Energy Group PLC (available 23 June 1997) and the letter regarding the offer by Schlumberger Limited for Sema Group plc (available February 15, 2001) as representative examples of letters that have been granted in the context of UK offers. In addition, we note the existence of the Administrative Agreement between the United States Securities and Exchange Commission and the Commission des Operations de Bourse de France, dated December 14, 1989.

CONCLUSION

Pursuant to Regulation 200.81, we respectfully request on behalf of Kingfisher that this exemptive request and the response be accorded confidential treatment until 120 days after the date of the response to such request or such earlier date as the staff of the Commission is advised that all of the information in this letter has been made public. This request for confidential treatment is made on behalf of Kingfisher for the reason that certain of the facts set forth in this letter have not been made public.

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

In view of the short timetable, we respectfully request that the Commission issue the requested exemptive relief as soon as practicable. If you require any further information or have any questions, please contact the undersigned on +44 20 7832 7429.

Very truly yours

A handwritten signature in cursive script, appearing to read "Sarah Murphy".

Sarah Murphy