



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

DIVISION OF  
MARKET REGULATION

November 3, 2006

Richard D. Pritz, Esq.  
Clifford Chance US LLP  
31 West 52nd Street  
New York, NY 10019-6131  
USA

Re: MEIF II Tender Offer for Techem AG  
File No. TP 07-14

Dear Mr. Pritz:

This is in response to your letter dated November 3, 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 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*);
- The Company, 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 the Company 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 Materials 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 Bidder 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. if not executed on the Frankfurt Stock Exchange, the exchange, quotation system, or other facility through which the purchase occurred;
5. Upon the request of the Division, the Prospective Purchasers shall transmit the information as specified in paragraphs 4.a. and 4.b. above to the Division at its offices in Washington, D.C. within 30 days of its request;
6. The Prospective Purchasers shall comply with the applicable requirements under the German Takeover Act and other applicable German laws;
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.

Richard D. Pritz, Esq.

November 3, 2006

Page 3

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, reading "James A. Brigagliano". The signature is written in a cursive style with a large initial "J" and "B".

James A. Brigagliano  
Acting Associate Director  
Division of Market Regulation

Attachment

November 3, 2006

**CONFIDENTIAL TREATMENT REQUESTED**

James A. Brigagliano  
Acting Associate Director  
Division of Market Regulation  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

**Re: MEIF II Tender Offer for Techem AG**

Dear Mr. Brigagliano:

We are writing on behalf of our client, MEIF II Energie Beteiligungen GmbH & Co. KG, a German partnership (the "Bidder").

The Bidder intends to commence a cash tender offer (the "Offer") for all outstanding ordinary shares (the "Shares") of Techem AG, a German corporation (the "Company"). The Offer was publicly announced on October 23, 2006 (the "Announcement Date"). The Bidder expects to commence the offer later this month, depending on *Bundesanstalt für Finanzdienstleistungsaufsicht* (the German Federal Financial Supervisory Authority, or "BaFin") review and other factors.

As previously discussed with members of the Staff of the Securities and Exchange Commission (the "Commission"), we hereby request that the Commission grant exemptive relief to the Bidder from Rule 14e-5 promulgated under the Securities Exchange Act of 1934 (the "Exchange Act").

**Background Information**

The Company

According to publicly available information, the Company is a German service provider for recording, distributing and billing data relating to energy and water consumption. According to its own description as published on its website, the Company, since its formation in 1952, has grown into the largest and leading resource management and service company for reading and billing heat energy and water in Germany and one of the largest in Europe. In 2004, Techem serviced about 37 million devices throughout Europe. Techem provides services to about 611,000 customers with 6.7 million apartments across Europe.

Based on publicly available information, the Company is a foreign private issuer as defined in Rule 3b-4 under the Exchange Act.

# C L I F F O R D

## C H A N C E

Division of Market Regulation

November 3, 2006

Page 2

The Shares are not registered under Section 12 of the Exchange Act, listed on a U.S. national securities exchange or quoted on Nasdaq. The Company does not file reports with the Commission pursuant to Section 13(a) or 15(d) of the Exchange Act.

The primary market for the Shares is the Frankfurt Stock Exchange. The Shares are also admitted to trading on the German stock exchanges in Berlin-Bremen, Düsseldorf, Hamburg, München and Stuttgart.

The Company's share capital consists entirely of Shares. All of the Shares are in bearer form and are freely transferable. The Shares are held in book entry form through the Clearstream Banking AG booking system.

As the Shares are in bearer form, it is not possible to ascertain fully the location of ownership of the Shares.<sup>1</sup> According to the Company's Annual Report 2004/2005, as of September 30, 2005, 16.3% of the share capital is held in the United States. Based on the information available to it, the Bidder believes that U.S. ownership is well under 40%, calculated in accordance with the instructions to paragraphs (c) and (d) of Rule 14d-1.

### The Bidder

The Bidder is a German limited partnership wholly owned by a Luxembourg subsidiary of Macquarie European Infrastructure Fund II ("MEIF II"), a UK limited partnership managed by a subsidiary of Macquarie Bank Limited, an Australian bank. MEIF II is a wholesale infrastructure fund that seeks long-term investments in European infrastructure businesses. Macquarie Bank Limited is a diversified international provider of investment banking and financial services. It is listed on the Australian Stock Exchange and has a market capitalisation of approximately €8.9 billion.

The Bidder is a foreign private issuer as defined in Rule 3b-4 under the Exchange Act.

### **The Offer**

The Offer will be made to all holders of outstanding Shares. It is intended that the Offer will be structured as a single all cash offer made concurrently in Germany, the United States and certain other jurisdictions in which the Offer may be legally extended.

The Offer will be structured to comply with (1) the *Wertpapierwerbs-und Übernahmegesetz* (the German Securities Acquisition and Takeover Act or the "German Takeover Act") and the applicable rules

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<sup>1</sup> The Cross Border Release, 33-7759, October 26, 1999 includes as footnote 75: "The revisions from the proposal do not affect the treatment of bearer securities in determining U.S. ownership. Since neither a U.S. residence nor the name of an offshore nominee will appear on the records of the issuer for the holder of the bearer securities, these securities will not be treated as being held by U.S. residents, unless the offeror knows or has reason to know that these securities are held by U.S. residents."

# C L I F F O R D

## C H A N C E

Division of Market Regulation

November 3, 2006

Page 3

and regulations thereunder and (2) except to the extent permitted pursuant to the relief requested herein or it is otherwise inapplicable, Regulation 14E promulgated under the Exchange Act. The Offer will not be subject to Section 14(d) of the Exchange Act or Regulation 14D thereunder since the Shares are not registered under Section 12 of the Exchange Act.

The Offer will be commenced by publication on the Internet of the offer document (the "Offer Materials") prepared in accordance with the requirements of the German Takeover Act and the announcement that the Offer Materials can be picked up free of charge at a specified location and will be mailed to investors free of charge upon request. A press release will be issued in the US announcing the commencement of the offer and how the Offer Materials can be obtained free of charge. The Offer Materials will be available in substantially identical German and English versions.

The Offer will remain open for at least 20 business days from the announcement of the commencement of the Offer. Payment for shares tendered in the Offer will be made in accordance with the German Takeover Act.

### **Discussion and Request for Exemptive Relief from Rule 14e-5**

Under the German Takeover Act, the Bidder, acting directly and through agents, financial advisors and other nominees or brokers, or through one or more affiliates (collectively, the "Prospective Purchasers"), is 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 specified exceptions, Rule 14e-5 prohibits a covered person from directly or indirectly purchasing or arranging to purchase any equity securities to be acquired in a tender offer, 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 by the Bidder and other covered persons acting on its behalf of Shares 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 Act, may be prohibited after the public announcement of the Offer.<sup>2</sup>

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<sup>2</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 or financial institutions acting on its 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 on the conditions set forth below. We have been requested by the Bidder 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.

**C L I F F O R D**

**C H A N C E**

Division of Market Regulation

November 3, 2006

Page 4

The German Takeover Act provides protections similar to those provided by Rule 14e-5 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 Act, 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 Act, any purchases by or on behalf of the Bidder during the offer period must be reported to the BaFin and announced publicly following such purchases. Any purchases of the Bidder prior to the commencement of the offer period must be disclosed in the Offer Materials.

**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 purchases of and arrangements to purchase Shares outside the Offer by any Prospective Purchaser (by or on behalf of the Bidder) that would otherwise be prohibited by Rule 14e-5, including market transactions, privately negotiated transactions and block trades. 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 or arrangements by the Prospective Purchasers, otherwise than pursuant to the Offer, will be included prominently in the Offer Materials;
- 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 Act or the German Securities Trading Act (*Wertpapierhandelsgesetz, WpHG*), 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, 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 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;
- 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 Act and other applicable German laws;

**C L I F F O R D**

**C H A N C E**

Division of Market Regulation

November 3, 2006

Page 5

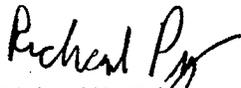
- g. The Prospective Purchasers shall retain all documents and other information required to be maintained pursuant to this exemption for a period of not less than two years from the date of the termination of the Offer;
- h. Representatives of the Prospective Purchasers shall be made available (in person 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, for example, the offer by Bayer Aktiengesellschaft for Schering Aktiengesellschaft (available April 7, 2006), the offer by Deutsche Telekom AG for shares of T-Online International AG (available November 3, 2004), and the offer by 91 Profi-Start 2004 GmbH for P&I Personal & Informatik Aktiengesellschaft (available June 24, 2004) and the letters cited therein. In addition, we note the existence of the Memorandum of Understanding 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 and the Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and Exchange of Information of the International Organization of Securities Commissions, dated May 2002, to which both the Commission and BaFin are signatories.

Pursuant to 14 C.F.R. 200.81(b), we respectfully request on behalf of the Bidder 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 the Bidder for the reason that certain of the facts set forth in this letter have not been made public.

If you require any further information or have any questions, please call me at 212-878-8220.

Very truly yours,



Richard D. Pritz