

Mr. James A. Brigagliano  
Assistant Director  
Division of Market Regulation  
Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549  
United States of America

October 25, 2005

Our Ref            BR/TBS

Dear Mr. Brigagliano,

## **Tender Offer by Old Mutual plc for Försäkringsaktiebolaget Skandia (publ)**

We are writing on behalf of our client, Old Mutual plc, a public limited company incorporated under the laws of England and Wales ("**Old Mutual**"), to respectfully request that the Securities and Exchange Commission (the "**Commission**") issue an order granting an exemption from Rule 14e-5 under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), to Old Mutual, allowing it, and any person acting on its behalf, to make certain purchases of ordinary shares, nominal value SEK1 per share (the "**Skandia Shares**"), of Försäkringsaktiebolaget Skandia (publ) ("**Skandia**"), a public limited insurance company incorporated under the laws of Sweden, in connection with the tender offer (the "**Offer**") by Old Mutual for the entire issued and to be issued share capital of Skandia (as described more fully below). Old Mutual announced the Offer on September 2, 2005 and commenced the Offer for U.S. purposes by mailing the Swedish Offer document, the prospectus pertaining to part of the consideration being offered, the form of acceptance and other related ancillary documents (collectively, the "**Offer Documents**") on October 12, 2005.

## **Background Information**

### ***Old Mutual***

Old Mutual is a foreign private issuer as defined in Rule 3b-4(c) under the Exchange Act. Old Mutual has a primary listing on the London Stock Exchange and has secondary listings on the JSE Limited ("**JSE**"), the Malawi Stock Exchange, the Namibian Stock Exchange and the Zimbabwe Stock Exchange. Old Mutual does not have any class of equity securities registered under Section 12 of the Exchange Act and it claims an exemption from such registration requirements pursuant to Rule 12g3-2(b) thereunder (filer number 021-51329). As a result, Old Mutual does not file reports with the Commission pursuant to Section 13(a) or 15(d) of the Exchange Act; however, it does furnish information to the Commission pursuant to Rule 12g3-2(b). Old Mutual has an unsponsored American

A list of the names of the partners and their professional qualifications is open to inspection at the above office. The partners are solicitors, registered foreign lawyers or registered European lawyers. The firm is regulated by the Law Society.

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Depository Receipt (“**ADR**”) facility which is maintained by The Bank of New York, as depository; however, Old Mutual believes that such facility is currently inactive.

Old Mutual is an international financial services group headquartered in the United Kingdom. Old Mutual’s principal businesses comprise life assurance, asset management, banking and general insurance. Old Mutual’s largest markets, by revenue and operating profit, are South Africa and the United States. Old Mutual also has start-up businesses in the United Kingdom and other parts of the world. Old Mutual’s banking business is conducted principally through Nedbank, a JSE-listed subsidiary in which Old Mutual has a 50.4 percent interest, and its general insurance business is conducted through Mutual & Federal, a JSE-listed subsidiary in which Old Mutual has a 77.0 percent interest. Old Mutual’s adjusted operating profit for the six months ended June 30, 2005 was £554 million. As of June 30, 2005, Old Mutual Group’s embedded value (“**EV**”)<sup>1</sup> was £5.3 billion and it had funds under management of £158 billion, of which over £124 billion were managed outside South Africa. Old Mutual had an average of approximately 41,000 employees during 2004.

### **Skandia**

*Old Mutual has had limited access to non-public information of Skandia as part of the auction process (described in more detail below under “Interaction with Skandia”). However, on September 15, 2005, Skandia issued a public announcement detailing the material non-public information provided to Old Mutual during the auction process. As a result, while some of the information below was obtained directly from Skandia prior to that announcement, it is now in the public domain, unless otherwise noted below. However, the public information of Skandia has not been independently verified by Old Mutual.*

Skandia is a foreign private issuer as defined in Rule 3b-4(c) under the Exchange Act and the Skandia Shares are not currently registered under Section 12 of the Exchange Act. Although Skandia does not appear to have secured a Rule 12g3-2(b) exemption from registration under the Exchange Act as it is not included on the Commission’s “List of Foreign Issuers That Have Submitted Information Under the Exemption Relating to Certain Foreign Securities” dated June 21, 2005, based on all information sources available to Old Mutual, it does not believe that Skandia is currently required to be registered under Section 12 of the Exchange Act. In addition, to the best of Old Mutual’s knowledge, there is neither a sponsored nor unsponsored ADR deposit facility with respect to Skandia.

Skandia is a financial services group headquartered in Sweden and with a primary listing of its shares on the A-list of the Stockholm Stock Exchange. It also has a secondary listing of its shares on the London Stock Exchange. Skandia is a supplier of long-term savings products and pensions, and its largest markets, by revenue and operating profit, are the United Kingdom and Sweden. Skandia is also active in selected markets in other European countries, Asia, Latin America and Australia.

Based on Skandia’s published unaudited interim financial statements for the six months ended June 30, 2005, Skandia’s revenues for the six months ended June 30, 2005 were £584 million. As of June 30, 2005, Skandia and its subsidiaries (the “**Skandia Group**”) had an EV of SEK32 billion (£2.3 billion) and it had funds under management of SEK482 billion (£34.4 billion). The Skandia Group had an average of approximately 5,600 employees during 2004.

Based on publicly available information, as of October 24, 2005, Skandia had approximately 1,025.0 million Skandia Shares issued and outstanding (the “**Issued Share Capital**”). According to a

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<sup>1</sup> The embedded value is the sum of the adjusted net worth and the value of the in-force business (being an actuarially determined estimate of the economic value of a life assurance company, excluding any value which may be attributable to future new business).

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shareholder register of Skandia dated August 31, 2005, the disclosure on Skandia's website as at the date of this letter and other public information available at such date, there were no Skandia shareholders holding 10 percent or more of the Issued Share Capital. In addition, based on such information, Old Mutual estimates that U.S. shareholders own approximately 278.8 million Skandia Shares.

Based on the foregoing, Old Mutual estimates that approximately 27.2 percent of the Issued Share Capital is beneficially held in the United States. As a result, Old Mutual intends to rely on the exemption afforded by Rule 14d-1(d) under the Exchange Act in connection with the Offer.

### ***Interaction with Skandia***

In December 2004, discussions were initiated between Old Mutual and Skandia in order to investigate the potential benefits to each organisation arising from a potential combination of the two companies. Following the press becoming aware of these discussions, an announcement was made by Old Mutual on May 13, 2005, stating that it and Skandia were in discussions which might or might not lead to an offer. Thereafter, an auction process effectively commenced, with due diligence materials being made available to several parties (including Old Mutual) interested in acquiring the whole or part of Skandia Group. Old Mutual carried out due diligence on the Skandia Group during July and the first part of August 2005, and during the latter half of August 2005, submitted proposed terms to Skandia for an Offer for the entirety of the Skandia Group which, if accepted, would have been recommended by Skandia's board of directors (the "**Skandia Board**"). However, the Skandia Board felt unable to make a recommendation to its shareholders as to the merits of the proposed Offer without it first being made public. As a result, on September 2, 2005, Old Mutual published the terms of the Offer to allow the Skandia Board to make a recommendation. The Skandia Board committed publicly to state its position with respect to the Offer no later than September 23, 2005.

Following the announcement on September 2, 2005, representatives of Old Mutual and Skandia continued to meet, however the access and assistance from Skandia was limited. On September 15, 2005, Old Mutual announced that it would not be relying on Skandia's Board recommending the Offer in order to proceed.

On September 23, 2005, the Skandia Board announced that it would not be recommending the Offer to Skandia shareholders. However, it did announce that three members (out of a total of eleven) of the Skandia Board dissented from the "no recommendation" decision and instead recommended that Skandia shareholders accept the Offer. Skandia also publicly disclosed, in that announcement, that it had received a fairness opinion from its financial adviser opining that the terms of the Offer were fair from a financial point of view.

Following the announcement by Skandia's Board, Old Mutual announced that it would proceed in making the Offer to Skandia shareholders.

As a result of the foregoing events, a transaction which was being carried out by way of auction process during the first half of 2005 and expected to lead to a recommended offer in respect of which no purchases of Skandia Shares in the market would be required has, in the first weeks of October 2005, become one which is not recommended and where Old Mutual would like the ability to make such purchases of Skandia Shares outside the United States and in accordance with Swedish law so that it may pursue the Offer to the full extent permitted by the rules of the Stockholm Stock Exchange (the "**SSE Rules**") and the Swedish takeover rules (the "**Takeover Rules**").

### Proposed Offer Structure

As stated above, on October 12, 2005, Old Mutual commenced the Offer, which consists of a mixture of cash and Old Mutual ordinary shares, nominal value ten pence each (the “Old Mutual Shares”). The cash and Old Mutual Shares are being offered to eligible Skandia shareholders pursuant to the Offer, in consideration for the exchange of Skandia Shares. The Offer values each Skandia Share at SEK43.60, based on the closing price for Old Mutual Shares on September 1, 2005, the day before the Offer was announced.

Eligible Skandia shareholders are also being offered a “mix and match” facility allowing them to elect to tender a higher proportion of their Skandia Shares in return for the cash consideration or to tender a higher proportion of their Skandia Shares in exchange for the share consideration, in each case subject to matching elections from other Skandia shareholders.

Skandia shareholders who held in aggregate 1,000 or less Skandia Shares on September 1, 2005, will be guaranteed satisfaction of elections for the cash consideration under the mix and match facility.

Assuming the maximum number of 1,414 million Old Mutual Shares are issued pursuant to the Offer and Old Mutual obtains 100 percent acceptances, existing Old Mutual shareholders will own Old Mutual Shares representing approximately 74 percent of Old Mutual and its subsidiary undertakings following completion of the transaction and former Skandia shareholders will hold the remaining 26 percent. In addition, former Skandia shareholders will have received cash consideration, in aggregate, of approximately SEK17 billion (£1,243 million).

The Offer is conditional, *inter alia*, on (i) the approval of the proposed acquisition of Skandia by Old Mutual shareholders at an extraordinary general meeting to be held on November 14, 2005; (ii) Old Mutual receiving acceptances in the Offer such that Old Mutual becomes the owner of more than 90 percent of Skandia’s total issued ordinary share capital; and (iii) the receipt of regulatory approvals. The Offer is also subject to certain other conditions which are customary for a transaction of this type.<sup>2</sup>

Notwithstanding the foregoing, however, Old Mutual has reserved the right to waive, in whole or in part, any or all of the conditions and to complete the Offer at a lower level of acceptance.

The Offer will be made concurrently in Sweden, the United Kingdom, the United States and other jurisdictions where the offer may be legally extended. In accordance with customary practice in Sweden, the Offer in all jurisdictions will be made by Old Mutual directly.

The Offer will be structured to comply with (i) the Takeover Rules; (ii) the SSE Rules; and (iii) except as otherwise exempted, Section 14(e) of the Exchange Act and Regulation 14E thereunder. Old

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<sup>2</sup> The other conditions to the Offer are: (i) no other party announcing an offer to acquire shares in Skandia on terms which are more favourable than the Offer; (ii) necessary agreements to listing being obtained from the London Stock Exchange and Stockholm Stock Exchange so that the Old Mutual Shares following implementation of the Offer are admitted to listing on such exchanges (on the A-list in relation to the Stockholm Stock Exchange); (iii) Skandia not taking any measures which would have an adverse effect on the prerequisites for making the Offer or its implementation, including, without limitation, disposing of any material part of its business or assets or otherwise essentially changing the ordinary course of its business in conflict with past practice; (iv) neither the Offer nor the acquisition of the Skandia Shares being rendered partially or wholly impossible or significantly impeded as a result of legislation, regulation, any decision of court or public authority, or other comparable measures, including third party actions, beyond Old Mutual’s control in Sweden, the United Kingdom, the United States, South Africa or elsewhere; (v) no material adverse change in Skandia’s financial position or operations occurring after the announcement of the Offer; such material adverse change meaning an event that materially adversely affects Skandia’s liquidity or results and which could not have been reasonably known or anticipated by Old Mutual at the time of announcement of the Offer; (vi) no information made public by Skandia or disclosed by Skandia to Old Mutual being materially inaccurate or misleading, and Skandia not having failed to make public any matter which should have been made public by it prior to the date of announcement of the Offer; and (vii) Old Mutual receiving funds under its debt financing in connection with the Offer.

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Mutual's primary objective in structuring the Offer is to allow for participation by Skandia shareholders in Sweden, the United Kingdom and the United States to the greatest extent practicable, while also complying with the requirements applicable to the Offer in each such jurisdiction. The Offer Documents used in connection with the Offer have been prepared with a view to complying with the applicable SSE Rules and the Takeover Rules and, except as otherwise requested herein, Section 14(e) of the Exchange Act and Regulation 14E thereunder. Since neither Old Mutual nor Skandia has any class of equity securities registered under Section 12 of the Exchange Act, the Offer is not subject to compliance with Section 14(d) of the Exchange Act or Regulation 14D thereunder.

The Offer Documents will be mailed or made available to all Skandia shareholders in Sweden and the United Kingdom and to certain eligible shareholders in the United States that are "qualified institutional buyers" ("QIBs") (as defined in Rule 144A under the Securities Act).<sup>3</sup> The Offer will remain open for acceptance for a period of at least 20 U.S. business days (the "Initial Offer Period"). Pursuant to Rule 14e-1(a) under the Exchange Act, the Initial Offer Period cannot be less than 20 U.S. business days from the mailing of the Offer Document and can be extended for such additional period or periods as may be (i) determined by Old Mutual ("Voluntary Extensions") and (ii) required or necessary to comply in this respect with Section 14(e) of the Exchange Act and Regulation 14E thereunder or the Takeover Rules ("Mandatory Extensions").

Once the Offer becomes or has been declared wholly unconditional, Old Mutual will have acquired all Skandia Shares with respect to which it has received valid acceptances and will settle the cash and share consideration in respect of all such accepted Skandia Shares promptly thereafter.

### Statement of Applicable Regulation

#### *General Application of Rule 14e-5 to the Offer*

Under Swedish law, purchases of a target's securities by a bidder or a person acting for the account or benefit of the bidder outside an offer are permitted, subject to certain limitations, and such purchases are common in connection with offers for Swedish companies. Under the Takeover Rules, Old Mutual and its advisers and brokers are permitted to purchase Skandia Shares in the open market or otherwise prior to and during the conduct of, but outside, the Offer, subject to certain limitations, including as to price (as described more fully below).

Subject to certain exceptions, Rule 14e-5 prohibits a covered person from directly or indirectly purchasing or arranging to purchase any securities to be acquired in a tender offer for equity securities or any securities immediately convertible into, or 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 and its affiliates, (ii) the offeror's dealer-managers and any of their respective affiliates, (iii) any advisers 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 any subject securities or related securities. Purchases of Skandia Shares by Old Mutual or other covered persons acting for the account or benefit of Old Mutual outside the 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 have been prohibited since the date of

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<sup>3</sup> In connection with the Offer in the United States, Old Mutual has implemented certain procedures to ensure that the Offer is not considered to be a "public offering" within the meaning of Section 4(2) of the Securities Act and, on the basis of those procedures, we do not believe that registration of the offer or sale of the Old Mutual Shares under the Securities Act is required.

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announcement of the Offer on September 2, 2005 and such prohibitions would continue for the remainder of this Offer.

The Takeover Rules provide protections similar to those noted by the staff in prior requests by bidders seeking relief from the provisions of Rule 14e-5 in a number of different jurisdictions, making exemptive relief appropriate in the circumstances of the Offer.<sup>4</sup> For example, the Takeover Rules require that the Offer price be increased to the level of any higher purchase price outside the Offer. In addition, any purchases outside the Offer by any party to the transaction (including Old Mutual and any adviser, broker or other financial institution acting as its agent (collectively, the “**Prospective Purchasers**”) are, *inter alia*, required to be disclosed on a next-day basis through a press announcement under the Swedish Rules on Disclosures of Shareholdings (subject to certain thresholds).<sup>5</sup> Disclosures of these purchases attract significant publicity by their very nature and they are disseminated on dealers’ trading screens throughout the Swedish market.

### Basis for Exemption

Rule 14e-5 is designed to protect investors by “preventing an offeror from extending greater or different consideration to some security holders by offering to purchase their shares outside the offer, while other security holders are limited to the offer’s terms.”<sup>6</sup> The Commission has recognized that a strict application of Rule 14e-5 could disadvantage U.S. security holders in some situations. In this context, the Commission has noted that “flexible application of Rule 14e-5 is necessary and appropriate to encourage offerors for the securities of foreign private issuers to extend their offers to U.S. security holders.”<sup>7</sup> The Commission has enumerated certain factors that it considers important in ruling on a Rule 14e-5 exemption request, including (i) the degree of ownership of the target by U.S. holders; (ii) whether the offer will be made to U.S. holders on an equal basis to non-U.S. holders; (iii) whether the consideration will be cash or securities; (iv) the nature of the foreign regulation to which the offer is subject; and (v) whether the principal trading market for the target’s securities is outside the United States.

In the context of this transaction, U.S. holders of Skandia Shares who are QIBs (which Old Mutual believes to be a substantial majority of the U.S. shareholders) will be entitled to participate in the Offer on terms as favorable as those offered to holders in Sweden. The remaining U.S. shareholders will get cash for their Skandia Shares in the “squeeze-out” phase of the transaction pursuant to Swedish law if Old Mutual receives 90 percent or more acceptances of the Offer. Old Mutual will disseminate to the eligible holders of Skandia Shares who are in the United States all available information that is required by the SSE Rules and the Takeover Rules. We are of the opinion that the relief being requested is consistent with the relief granted in a number of prior letters.<sup>8</sup>

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<sup>4</sup> See Axel Springer AG Offer for ProSiebenSat.1 Media AG (September 12, 2005); Danaher Corporation Offer for Leica Geosystems Holdings AG (August 5, 2005); Compagnie de Saint-Gobain Offer for BPB plc (July 29, 2005); AFB Investment S.A. Offer for Forbo Holding AG (March 17, 2005); United Technologies Corporation Offer for Kidde plc (December 15, 2004); 91 Profi-Start 2004 GmbH Offer for P & I Personal & Informatik Aktiengesellschaft (June 24, 2004); UCB S.A. Offer for Celltech Group plc (May 19, 2004); SABMiller PLC Offer for Harbin Brewery Group Limited (May 10, 2004); Anheuser-Busch Companies, Inc. for Harbin Brewery Group Limited (May 7, 2004); Songbird Acquisition Limited Offer for Canary Wharf Group plc (April 22, 2004); BLB Investors, L.L.C. Offer for Wembley plc (March 31, 2004); CWG Acquisition Limited Offer for Canary Wharf Group plc (February 9, 2004); Twins Acquisition, Inc. Offer for IDS Group plc (June 25, 2003); and Serono France Holding S.A. Offer for Genset S.A. (May 14, 2003).

<sup>5</sup> The reporting thresholds in Sweden are at every 5 percent (up to 90 percent) and at 33.3 percent and 66.7 percent.

<sup>6</sup> Cross-Border Tender and Exchange Offers, Business Combinations and Rights Offerings, Release No. 34-42054, International Series Release No. 1208 (October 26, 1999), Section II.C.1.

<sup>7</sup> *Id.*

<sup>8</sup> See *supra* note 4.

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The Commission has provided for continued review of exemption requests, on a case-by-case basis, in situations, such as the instant case, where U.S. ownership exceeds (or is presumed to exceed) 10 percent. We believe the exemptive relief required from Rule 14e-5 with respect to the Offer is, in large measure, contemplated by or consistent with the exemptive relief granted in connection with other, similarly structured tender offers.

### **Requested Exemptive Relief**

Based on the foregoing, we respectfully request that Old Mutual and any other Prospective Purchasers be granted exemptive relief from the provisions of Rule 14e-5 in order to permit purchases, directly or indirectly, of Skandia Shares or any securities that are immediately convertible into, exchangeable for, or exercisable for Skandia Shares outside the 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, directly or indirectly, of Skandia Shares or any securities that are immediately convertible into, exchangeable for, or exercisable for Skandia 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, being included prominently in the Offer Document;
- (c) the Prospective Purchasers shall disclose in the United States information regarding such purchases to the extent such information is made public in Sweden pursuant to Swedish law;
- (d) the Prospective Purchasers shall comply with any applicable rules in Sweden, including the Takeover Rules and the SSE Rules;
- (e) upon request of the Division of Market Regulation (the "**Division**"), the Prospective Purchasers shall disclose to it a daily time-sequenced schedule of all purchases of Skandia Shares made by any of them during the Offer, on a transaction-by-transaction basis, including: (i) a description of the size, broker (if any), time of execution and purchase price; and (ii) if not executed on the Stockholm Stock Exchange, the exchange, quotation system or other facility through which the purchase occurred;
- (f) upon request of the Division, the Prospective Purchasers shall transmit to it the information specified in clauses (e)(i) and (e)(ii) above to the Division at its offices in Washington, D.C. within 30 days of its request;
- (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 in Washington D.C. or by telephone) to respond to enquiries of the Division relating to such records; and
- (i) except as otherwise exempted herein, the Prospective Purchasers shall comply with Rule 14e-5.

**Conclusion**

We respectfully request that the Commission issue the requested exemptive relief and confirmation as soon as practicable. If you require any further information or have any questions, please contact the undersigned at 011 44 20 7456 3370 or Thomas B. Shropshire, Jr. at 011 44 20 7456 3223. For your convenience, we may be contacted via e-mail at [brigid.rentoul@linklaters.com](mailto:brigid.rentoul@linklaters.com) and [tom.shropshire@linklaters.com](mailto:tom.shropshire@linklaters.com), respectively.

Yours sincerely,



Brigid Rentoul

cc: Martin Murray, *Old Mutual plc*  
John Deane, *Old Mutual plc*