



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

December 5, 2007

**Via Facsimile and U.S. Mail**

Eric S. Shube  
Allen & Overy LLP  
1221 Avenue of the Americas  
New York, New York 10020

**Re: Offer by SAP for any and all Ordinary Shares, including Ordinary Shares represented by ADSs, Warrants and Convertible Bonds, of Business Objects S.A.**

Dear Mr. Shube:

We are responding to your letter requesting exemptive relief dated December 4, 2007 and addressed to Mauri L. Osherooff, Josephine J. Tao, Christina Chalk, and Michael Pressman as supplemented by telephone conversations with the staff. To avoid having to recite or summarize the facts set forth in your letter, our response is attached to the enclosed photocopy of your correspondence. Unless otherwise noted, capitalized terms in this letter have the same meaning as in your December 4, 2007 correspondence.

On the basis of the representations made and the facts presented in your December 3, 2007 letter, the United States Securities and Exchange Commission ("Commission") hereby grants exemptions from:

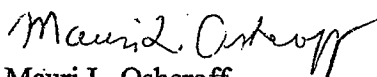
- Rule 14e-5 under the Exchange Act. The exemption from Rule 14e-5 permits SAP to purchase or arrange to purchase Business Objects Securities pursuant to the French Offer during the U.S. Offer. You do not request, and we do not grant, any relief regarding purchases or arrangements to purchase Business Objects Securities outside the U.S. Offer otherwise than pursuant to the French Offer. In granting this relief, we note that, except for the relief specifically granted herein, SAP will comply with Rule 14e-5; and
- Rule 14d-10(a)(1) under the Exchange Act. The exemption from Rule 14d-10(a)(1) allows SAP to make the U.S. Offer available to all holders of ADSs, wherever located, and to all holders of Business Objects Shares, Warrants and Convertible Bonds located in the United States. The French Offer will be open to all holders of Business Objects Shares, Warrants and Convertible Bonds located in France or who are located outside of France and the United States, if, pursuant to local laws and regulations applicable to such holders, they are permitted to participate in the French Offer.

The foregoing exemptions are based solely on the representations and the facts presented in your letter, as supplemented by telephone conversations with the Commission staff. Given the significant U.S. ownership of Business Objects Securities, and the fact that Business Objects does not qualify as a "foreign private issuer" as defined in Rule 3b-4(c) under the Exchange Act, we have limited the relief granted. The relief granted is strictly limited to the application of the rules listed above to this transaction. You should discontinue this transaction pending further consultations with the staff if any of the facts or representations set forth in your letter change.

We also direct your attention to the anti-fraud and anti-manipulation provisions of the federal securities laws, including Section 10(b) and 14(e) of the Exchange Act, and Rule 10b-5 thereunder. The participants in the transactions contemplated by this letter must comply with these and any other applicable provisions of the federal securities laws. The Divisions of Corporation Finance and Trading and Markets express no view on any other questions that may be raised by this transaction, including but not limited to, the adequacy of disclosure concerning and the applicability of any other federal or state laws to such transactions.

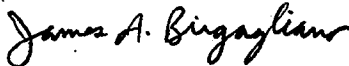
Sincerely,

For the Commission,  
By the Division of Corporation Finance  
pursuant to delegated authority,



Mauri L. Osheroff  
Associate Director  
Regulatory Policy

For the Commission,  
by the Division of  
Trading and Markets  
pursuant to delegated authority,



James A. Brigagliano  
Associate Director  
Division of Trading and Markets

# ALLEN & OVERY

Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Allen & Overy LLP  
1221 Avenue of the Americas  
New York NY 10020

Tel 212 610 6300  
Fax 212 610 6399

Attention: Christina Chalk, Esq.  
Senior Special Counsel  
Office of Mergers and Acquisitions  
Division of Corporation Finance

Michael Pressman, Esq.  
Special Counsel  
Office of Mergers and Acquisitions  
Division of Corporation Finance

Mauri L. Osheroff, Esq.  
Associate Director, Regulatory Policy  
Division of Corporation Finance

Josephine J. Tao, Esq.  
Assistant Director  
Office of Trading Practices and Processing  
Division of Trading and Markets

December 4, 2007

**Re: Offer by SAP for any and all Ordinary Shares, including Ordinary Shares represented by ADSs, Warrants and Convertible Bonds, of Business Objects**

Dear Ladies and Gentlemen:

We are writing on behalf of our client, SAP AG, a German stock corporation (*Aktiengesellschaft*), and its wholly owned subsidiary, SAP France S.A., a *société anonyme* organized under the laws of France (SAP France, and collectively with SAP AG, SAP). SAP France is seeking to acquire for cash all outstanding ordinary shares, nominal value €0.10 (**Business Objects Shares**), of Business Objects S.A., a *société anonyme* organized under the laws of France (**Business Objects**), including Business Objects Shares represented by American Depositary Shares (**Business Objects ADSs**), as well as the outstanding warrants (**Business Objects Warrants**) and convertible bonds called ORNANES (**Business Objects Convertible Bonds**) issued by Business Objects (**Business Objects Shares, Business Objects Warrants and Business Objects Convertible Bonds** are collectively

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referred to as the **Business Objects Securities**), through concurrent tender offers in the United States and France (the **Offers**).

On October 7, 2007, Business Objects and SAP AG entered into an agreement (the **Tender Offer Agreement**), pursuant to which, among other things, SAP AG agreed to make the Offers. The Tender Offer Agreement was amended on December 3, 2007.

Pursuant to the Tender Offer Agreement, as amended, SAP AG, through its subsidiary SAP France, will offer:

- for each Business Objects Share (other than Business Objects Shares represented by Business Objects ADSs) validly tendered and not withdrawn €42 in cash, without interest (the **Share Price**) and (ii) for each Business Objects ADS (each Business Objects ADS representing one Business Objects Share) validly tendered and not withdrawn an amount in U.S. dollars equal to the Share Price (as determined using the euro foreign exchange reference rate published by the European Central Bank on or about 2:15 p.m. CET on the business day following the expiration of the U.S. Offer, as defined below, or the business day following each tender of ADSs during a subsequent offering period of this offer, as the case may be), without interest,
- for each Business Objects Warrant validly tendered and not withdrawn a fixed price in cash, without interest, corresponding to each series of Business Objects Warrants as set forth in the Tender Offer Agreement (the **Warrant Price**), and
- for each Business Objects Convertible Bond validly tendered and not withdrawn €50.65 in cash, without interest (the **Convertible Bond Price**, and together with the Share Price and the Warrant Price, the **Offer Prices**).

SAP France's offer to acquire all of the outstanding Business Objects Securities will be made through two separate offers:

- in the U.S. offer, SAP France will seek to acquire (i) all Business Objects Securities (other than Business Objects ADSs and Business Objects Shares represented by Business Objects ADSs) held by U.S. holders (within the meaning of Rule 14d-1(d) under the Exchange Act (as hereinafter defined)) and (ii) all outstanding Business Objects ADSs wherever the holder is located (the **U.S. Offer**);
- in the French offer, SAP France will seek to acquire all Business Objects Securities (other than Business Objects Shares represented by Business Objects ADSs) held by (a) holders who are located in France and (b) holders who are located outside of France and the United States, if, pursuant to the local laws and regulations applicable to those holders, they are permitted to participate in the French offer (the **French Offer**);

The Offers will be made on substantially similar terms, with the exception that the U.S. Offer will close three French Trading Days (as defined below) after the closing of the French Offer. Completion of each of the Offers is subject to the same conditions. The terms and conditions of the Offers are described in greater detail below.

We hereby respectfully request that, with respect to the Offers, the Securities and Exchange Commission (the **Commission**) grant exemptive relief from the provisions of the following Rules under the United States Securities Exchange Act of 1934, as amended (the **Exchange Act**):

- Rule 14d-10(a)(1) (to permit the dual-offer structure); and

- Rule 14e-5 (to permit purchases of Business Objects Securities pursuant to the French Offer).

The information provided in this letter with respect to Business Objects and Business Objects Securities has been obtained from Business Objects' annual report on Form 10-K for the year ended December 31, 2006, from its quarterly reports on Form 10-Q, from its proxy statement on Schedule 14A and from its current reports on Form 8-K and from other information publicly disclosed by Business Objects. Additional information was provided by Business Objects regarding whether Business Objects would be eligible to be classified as a foreign private issuer within the meaning of Rule 3-b(4)(c) under the Exchange Act. Information relating to Business Objects has not been independently verified by SAP or its counsel.

## 1. Description of the Companies

### A. SAP

SAP AG was founded in 1972 and is today one of the world's leading providers of business software solutions and one of the world's three largest independent software companies based on market capitalization.

Today, SAP has around 32,000 customers with more than 100,000 installations in over 120 countries and employs more than 42,000 people in more than 50 countries in the Europe, Middle East and Africa, Americas, and Asia-Pacific regions.

SAP's core business is developing and licensing SAP business software solutions. The product portfolio includes the SAP NetWeaver platform, and the following software applications:

- mySAP Business Suite applications, which help enterprises improve business operations ranging from supplier relationships to production to warehouse management, sales, and all administrative functions, through to customer relationships;
- Qualified mySAP All-in-One partner solutions and the SAP Business One applications for small and midsize enterprises; and
- Specific solutions for more than 25 industries in industry sectors such as financial services, consumer products, public service, process industry, service industry and discrete industry sectors.

SAP also sells maintenance, consulting, and training services associated with its software products. Furthermore, SAP develops and markets products in close cooperation with business partners.

SAP AG shares are listed on several exchanges, including the Frankfurt Stock Exchange. American Depositary Shares representing SAP AG shares are listed on the New York Stock Exchange (NYSE) under the symbol 'SAP'.

### B. Business Objects

Business Objects was incorporated in 1990 as a *société anonyme* organized under the laws of the Republic of France. Business Objects' principal executive offices are located at 157-159 rue Anatole France, Levallois-Perret, France and 3030 Orchard Parkway, San Jose, California. Business Objects is the world's leading independent provider of business intelligence software and services solutions. Business Objects develops, markets, distributes and provides services for software that uses information to provide understanding and improve organizational performance. Business Objects' customers use its software to manage data across their

organization, use that data to gain better insight into their business, and use that insight to improve decision making and optimize organizational performance.

In 1994 Business Objects conducted an initial public offering in the United States. Business Objects ADSs have been listed on the Nasdaq National Market from 1994 until July 2006 and on the Nasdaq Global Select Market since July 2006. Business Objects Shares and Business Objects Convertible Bonds are also quoted on Eurolist by Euronext in Paris. The Business Objects Convertible Bonds are not quoted on the Nasdaq Global Select Market.

Only 25% of the Business Objects Shares outstanding were in the form of Business Objects ADSs as of October 31, 2007, according to Business Objects' most recent Form 10-Q. U.S. persons may also hold Business Objects Shares directly rather than as ADSs. SAP has been informed that it is Business Objects' experience that the percentage of Business Objects Shares held by U.S. persons typically fluctuates between 45% and 65%. Based on its surveys of institutional investors, custodians and nominees, Business Objects has advised SAP that it did not meet the criteria to be a foreign private issuer as of July 31, 2007 because more than 50% of the Business Objects Shares outstanding were held by U.S. persons and Business Objects met the criteria in Exchange Act Rule 3b-4(c)(2)(i) and (iii). As a result, although during certain periods Business Objects would likely have qualified as a 'foreign private issuer' as defined in Rule 3b-4 under the Exchange Act, since November 1997 (when Business Objects filed its first Form 10-Q) Business Objects has chosen to treat itself as a U.S. entity for reporting purposes regardless of whether it qualifies as a foreign private issuer. However, as a French company, Business Objects is also required to make public filings with the *Autorité des marchés financiers* (the AMF) in France, and trading in Business Objects Shares is subject to regulation by the AMF. While Business Objects has not formally investigated the U.S. ownership of the Convertible Bonds, the Convertible Bonds were sold in a private placement in France pursuant to Regulation S in May of 2007 and based on information available it is believed that the number held by U.S. persons is quite small. Based on a review of the Warrant register, it is believed that approximately 67% of the Warrants are held by U.S. persons.

Because it is a French company regulated by the AMF and subject to French corporate law, among other things, Business Objects files with the AMF annual and semiannual consolidated financial statements prepared in accordance with International Financial Reporting Standards and prepares annual unconsolidated statutory financial statements in accordance with generally accepted accounting principles as applied to companies in France.

## **2. Description of the Offers**

### **A. In General**

As described above, SAP France has structured its proposed acquisition of Business Objects as two separate tender offers - the U.S. Offer and the French Offer.

The U.S. Offer will comply with Regulation 14D and Regulation 14E of the Exchange Act, except to the extent permitted pursuant to the relief requested herein.

The French Offer is subject to and is structured to comply with the rules and regulations of the AMF, which provide a comprehensive scheme for the regulation of French tender offers and trading in French markets. In particular, the French Offer is subject to the *Règlement Général* (the **General Regulation**) of the AMF. Pursuant to French law, the French Offer was filed with the AMF on behalf of SAP France by its presenting investment bank, Deutsche Bank AG Paris Branch, which is serving as guaranteeing bank of the French Offer, on October 22, 2007.

The French Offer has been filed with the AMF together with the draft tender offer prospectus (*projet de note d'information*), the main terms of which have been published in a newspaper with nationwide circulation in France. The opening of the Offers is subject to (i) the decision by the AMF to clear the French Offer (*decision de conformité*), such clearance enclosing the formal approval (*visa*) by the AMF of the tender offer prospectus, and (ii) the receipt of the French Finance Ministry's authorization of the change of control of Business Objects in accordance with the French regulation on foreign investments (the **French Finance Ministry Authorization**).

## **B. Financial Terms of the Offers**

As described above, under the terms of the Offers, SAP France will offer:

- for each Business Objects Share (other than Business Objects Shares represented by Business Objects ADSs) validly tendered and not withdrawn the Share Price and for each Business Objects ADS (each Business Objects ADS representing one Business Objects Share) validly tendered and not withdrawn an amount in U.S. dollars equal to the Share Price (as determined using the euro foreign exchange reference rate published by the European Central Bank on or about 2:15 p.m. CET on the business day following the expiration of the U.S. Offer or the business day following each tender of ADSs during a subsequent offering period of the U.S. Offer, as the case may be), without interest,
- for each Business Objects Warrant validly tendered and not withdrawn the Warrant Price;
- for each Business Objects Convertible Bond validly tendered and not withdrawn the Convertible Bond Price.

The cash consideration paid to tendering holders of Business Objects Shares, Business Objects Convertible Bonds and Business Objects Warrants pursuant to the Offers will be paid in euros. The cash consideration paid to tendering holders of Business Objects ADSs pursuant to the U.S. Offer will be paid in U.S. dollars after being converted from euros at the euro foreign exchange reference rate published by the European Central Bank on or about 2:15 p.m. CET on the business day following the expiration of the U.S. Offer or the business day following tender of ADSs during a subsequent offering period of the U.S. Offer, as the case may be.

## **C. SAP France's Rights to Withdraw the Offers**

Under the General Regulation, a tender offer, once launched, may not be revoked by the offeror, except that an offeror may withdraw an offer:

- (i) within five days during which the French stock exchanges are open for trading (**French Trading Days**) following the date of the publication by the AMF of the timetable for a competing offer or for an improved offer (*surenchère*) by a competing bidder (any competing offer or improved offer by a competing bidder must be filed with the AMF no later than five French Trading Days before the expiration date of the offer); or
- (ii) with the prior approval of the AMF if, prior to the publication by the AMF of the definitive results (*avis de résultat définitif*) of the offer, the target adopts measures with unconditional effect that modify the target's substance (*modifiant sa consistance*) or if the offer becomes irrelevant (*sans objet*) under French law.

Under the terms of the Offers, SAP France will reserve the right to withdraw the Offers under either of these circumstances; *provided, however* that SAP has undertaken in the Tender Offer Agreement not to exercise such right with respect to the publication of a timetable for a competing offer or an improved offer by a competing bidder if Business Objects reissues its recommendation of the Offers and recommends that shareholders not tender into the competing offer.

In the case of the French Offer, in the context of the withdrawal event referred to in (i) above, the AMF will, after the competing offer or improved offer by a competing bidder has been filed, announce that the previously announced expiration date for the French Offer will no longer apply and that a new expiration date will be announced upon publication of the timetable for the competing offer. If SAP France does not withdraw the Offers, upon the AMF's announcement of the new expiration date for the French Offer, SAP France will extend the U.S. Offer to close three French Trading Days after such new expiration date.

In the context of the withdrawal event referred to in (ii) above, the AMF retains the authority not to approve SAP France's request to withdraw the French Offer if it does not believe that Business Objects' actions meet the stated criteria.

Under applicable French law and regulations, if, during the period of the Offers, a competing offer for Business Objects is approved by the AMF, any tenders of Business Objects Securities into the French Offer will be declared null and void by the AMF. In addition, if an improved offer by SAP France or a competing bidder is approved by the AMF, tenders of Business Objects Securities into the French Offer may also be declared null and void by the AMF. In each of these events, if the French Offer remains outstanding, holders of Business Objects Securities who wish to tender those securities into the French Offer will be required to re-tender their Business Objects Securities.

#### **D. Conditions to the Offers**

Under applicable French law and regulation, an offeror is permitted to make the closing of an offer conditional on (i) the tender of a specified number of shares, and (ii) receipt of certain antitrust and competition law approvals (the **Antitrust Condition**), but is otherwise severely limited in its ability to condition its offer.

SAP France will not be obligated to purchase any tendered Business Objects Securities pursuant to the Offers unless Business Objects Securities (including Business Objects Shares represented by Business Objects ADSs) representing at least 50.01% of the total voting rights in Business Objects, calculated on a fully diluted basis, are validly tendered and not withdrawn in the Offers, on a combined basis (the **Minimum Tender Condition**).

For purposes of determining whether the Minimum Tender Condition has been satisfied, the following will be taken into consideration:

- For the numerator, the sum of all the Business Objects Shares (including treasury shares held by Business Objects or by its subsidiaries, except those treasury shares that are specifically allocated to the fulfilment of stock options) and the Business Objects Shares that would result from the exercise of Business Objects Warrants and conversion of the Business Objects Convertible Bonds<sup>1</sup> validly tendered into the French Offer and the U.S. Offer (including Business Objects Shares represented by ADSs) by the closing dates of the Offers;
- For the denominator, all Business Objects Shares (including Shares represented by ADSs), on a fully diluted basis, after giving effect to the conversion and/or exercise of all the Business Objects Securities and all other outstanding options or rights exercisable or convertible into Business Objects Shares.

SAP France may waive or, upon AMF's prior acceptance, reduce the Minimum Tender Condition at any time on or prior to the date that is five French Trading Days prior to the expiration date of the French Offer. Under applicable French law and regulations, a waiver of the Minimum Tender Condition is deemed to be an improved

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<sup>1</sup> The Business Objects Convertible Bonds were issued in a registered public offering in France in May 2007 pursuant to Regulation S. The Business Objects Convertible Bonds are not currently convertible. Pursuant to the terms of the Business Objects Convertible Bonds and the Tender Offer Agreement, Business Objects has agreed to file a registration statement on Form S-3 to permit the conversion of such bonds.



offer and may cause the AMF to extend the offer period. In this case, tenders of Business Objects Securities into the Offers may also be declared null and void by the AMF, in which case holders of Business Objects Securities who wish to tender those securities into the Offers will be required to re-tender their Business Objects Securities. If the Minimum Tender Condition is satisfied, both Offers will be completed, and if it is not satisfied, unless SAP has waived the Minimum Tender Condition (in which case it would waive the Minimum Tender Condition for both Offers), neither Offer will be completed. Accordingly, either both Offers will be consummated, or neither Offer will be consummated.

For purposes of determining whether the Minimum Tender Condition is met, the receiving agent for the U.S. Offer (the **U.S. Receiving Agent**) will calculate the number of Business Objects Securities tendered into the U.S. Offer and Euronext Paris (**Euronext**) will calculate the number of Business Objects Securities tendered into the French Offer. The U.S. Offer will expire at 9:00 a.m. New York City time on the third French Trading Day after the expiration of the French Offer (the **U.S. Offer Expiration Date**), which is also the day on which Euronext is expected to complete its determination of the results of the French Offer. The U.S. Receiving Agent will promptly deliver to Euronext, by no later than 10:00 a.m. New York City time on the U.S. Offer Expiration Date, a report certifying the total number of Business Objects Securities tendered into the U.S. Offer (the **U.S. Tender Report**), and Euronext will compile the results of the U.S. Offer and the French Offer and communicate such combined results to the AMF around 5:00 p.m. Paris time (11:00 a.m. New York City time) on the U.S. Offer Expiration Date. The AMF is expected to announce the definitive results of the Offers later that same day. Whether the Minimum Tender Condition has been satisfied will only be known once the definitive results of the Offers are published by the AMF.

If either the Minimum Tender Condition (unless SAP has waived the Minimum Tender Condition) or the Antitrust Condition is not satisfied at the expiration date of the Offers, the Offers will not be completed successfully. In the event the Offers lapse as a result of a failure to satisfy the Antitrust Condition, SAP AG has agreed pursuant to the Tender Offer Agreement to continue to use its reasonable best efforts to obtain the authorization of the relevant antitrust authorities and, in the event such authorizations are obtained prior to June 30, 2008, SAP France will file new offers on terms that are identical to the initial offers, but excluding any antitrust-related conditions. If the Offers are not completed successfully, the Business Objects Securities that have been tendered in the Offers will be returned to the tendering holders without interest or any other payment being due. This should occur within two French Trading Days following the announcement of the failure of the Offers.

#### **E. Duration; Extension; Amendment**

In general, the timetable and expiration date for the French Offer will be set by the AMF, and SAP France may not extend the offer period of the French Offer.

Article 231-32 of the General Regulation provides that a tender offer opens following (i) the publication of the offeror's *note d'information* after clearance of the French Offer by the AMF and (ii) the receipt of the relevant regulatory authorizations that are required prior to the opening of the offer (in the present case, the French Finance Ministry Authorization). The AMF publishes the opening date of the offer.

Article 231-31 of the General Regulation also provides that, in general, the timetable for the offer is determined based on the date of publication of the target prospectus (*note d'information en réponse*) that must include the recommendation of the offer by the target's board of directors that all holders of the targeted securities tender such securities pursuant to the offer (such recommendation by the board of directors of Business Objects, the **Business Objects Board Recommendation**). In general, the expiration date for the offer will be the date that is 25 French Trading Days after the publication of the target prospectus and no later than 35 business days after the

opening date of the offer. The target must file its prospectus with the AMF within five French Trading Days after the French Offer has been cleared.

In accordance with the terms of the Tender Offer Agreement, however, the Business Objects Board Recommendation was made on October 21, 2007, and on October 22, 2007, SAP France filed the French Offer and Business Objects filed its prospectus with the AMF simultaneously. The expiration date of the French Offer will thus likely be the 25<sup>th</sup> French Trading Day following the opening of the Offers (or such other date as may be set by the AMF). The expiration date of an offer may also be suspended by the *Premier President* of the Paris Court of Appeals pending resolution of any ongoing litigation regarding the AMF's decisions concerning an offer and is generally voluntarily suspended by the AMF while the court is reviewing the matter. The U.S. Offer Expiration Date will be three French Trading Days after the closing of the French Offer and will in any event be more than 20 U.S. business days from the date of commencement of the U.S. Offer.

Articles 232-5 *et seq.* of the General Regulation govern the amendment of existing offers. In order to be cleared by the AMF, a revised offer must provide for an offer price that is increased by at least 2% of the previous offer price, or for a waiver (or upon AMF prior approval, a reduction) of the Minimum Tender Condition. In accordance with Article 232-9 of the General Regulation, in the event that SAP so improves the terms of the Offers, the AMF may decide to, but is not obligated to, extend the offer period. The AMF has the sole authority over whether to extend the offer period in the French Offer. If the AMF takes action to extend the offer period in the French Offer, SAP will extend the U.S. Offer such that the U.S. Offer will always close three French Trading Days after the scheduled closing of the French Offer. SAP may not itself unilaterally extend the offer period.

#### **F. Acceptance of Business Objects Securities; Exchange or Payment of Offer Consideration**

In general, holders of Business Objects ADSs and U.S. holders of Business Objects Shares and Business Objects Convertible Bonds will accept the U.S. Offer by delivering to the U.S. Receiving Agent their Business Objects Securities (either by delivery of American depository receipts or through book-entry transfer conducted through The Depository Trust Company, in the case of ADSs, or through book-entry transfer conducted through Euroclear France, in the case of Shares and Convertible Bonds), together with an executed Letter of Transmittal or Form of Acceptance, as appropriate, and other documents required by such Letter or Form, or by notifying the bank, broker or other nominee through which they hold Business Objects Securities with sufficient time for such nominee to complete the procedures described above by the U.S. Offer Expiration Date.

Business Objects' shareholders whose Business Objects Shares and/or Business Objects Convertible Bonds exist solely in pure registered form in the Business Objects' shareholders register (*nominatif pur*) must ask for them to be converted into administered registered form (*nominatif administré*) or into bearer form (*au porteur*) in order to tender them in the U.S. Offer.

U.S. holders of Business Objects Warrants will accept the U.S. Offer by delivering to the U.S. Receiving Agent an executed Warrant Form of Acceptance and other documents required by such Form by the U.S. Offer Expiration Date.

After the expiration of the French Offer, the orders of holders of Business Objects Securities tendering in the French Offer will be 'centralized' at Euronext. This centralization process consists of financial intermediaries forwarding to Euronext a list of holders of Business Objects Securities who have elected to tender in the French Offer, together with a description of the Business Objects Securities held by such persons. Euronext will then proceed to count the total number of Business Objects Securities tendered in the French Offer so that the results may be known. Euronext has agreed to expedite its usual procedures in order to complete this centralization and

counting process pursuant to the French Offer within three French Trading Days of the closing of the French Offer.

The U.S. Offer will be scheduled to close at 9:00 a.m. New York City time on the U.S. Offer Expiration Date. The U.S. Receiving Agent will provide the U.S. Tender Report to Euronext, in a form to be agreed between the U.S. Receiving Agent and Euronext and sufficient to satisfy any requirements of Euronext and/or the AMF, by no later than 10:00 a.m. New York City time (4:00 p.m. Paris time) on the same day. Euronext will combine the results of the U.S. Offer with the results of the French Offer and communicate the combined results to the AMF around 5:00 p.m. Paris time (11:00 a.m. New York City time) on the U.S. Offer Expiration Date. The AMF is expected to publish the definitive results of the Offers, including the success or failure of the Offers to meet the Minimum Tender Condition, later that same day.

Following publication of the final offer results, if the Offers are successful, SAP France will remit to the U.S. Receiving Agent funds sufficient for payment for Business Objects Securities tendered in the U.S. Offer. In turn, the U.S. Receiving Agent will deliver payment to tendering holders of the Business Objects Securities tendered in the U.S. Offer, generally three U.S. trading days after receiving the consideration from SAP France.

As set forth above, if the Offers are not consummated (because any of the conditions are not satisfied or the Offers are withdrawn), tendered Business Objects Securities will be returned to Business Objects security holders within two French Trading Days following the announcement of the withdrawal or lapse.

#### **G. Subsequent Offering Period**

In accordance with Article 232-4 of the General Regulations, subsequent offering periods are automatically opened by the AMF no later than ten French Trading Days following publication of the definitive results if there is a positive outcome. If the French Offer is reopened, the terms of the reopened offer will be identical to the terms of the Offers (except for the Minimum Tender Condition and the Antitrust Condition). In such case, the AMF will publish the timetable for the reopening of the Offer, which will last in principle at least ten French Trading Days. SAP expects that the AMF would publish the subsequent offer timetable and that the subsequent offer would be opened prior to 9:00 a.m. New York City time on the next U.S. business day after the publication of the definitive results of the initial Offers.

If a subsequent offering period is opened for the French Offer, SAP France intends to provide a subsequent offering period in the U.S. Offer. SAP France will issue a press release prior to 9:00 a.m. New York City time on the U.S. business day following the U.S. Offer Expiration Date announcing the opening of a subsequent offering period for the French Offer, announcing the effects of such opening on the U.S. Offer and advising the then-remaining holders of Business Objects Securities eligible to participate in the U.S. Offer that they may tender their Business Objects Securities at any time until the expiration of the subsequent offering period. Business Objects Securities properly tendered in the subsequent offering period for the U.S. Offer will be immediately accepted and promptly paid for in accordance with Rule 14d-11. The subsequent offering period for the Offers, if any, will expire concurrently.

As with the initial offering period, under applicable French law and regulations, the AMF will set the expiration date for the subsequent offering period. While French law provides that any subsequent offering period must remain open for a minimum of at least ten French Trading Days, it does not establish a maximum for the subsequent offering period. In this case, however, the AMF is expected to limit the length of any subsequent offering period to ten French Trading Days.

## **H. Withdrawal Rights**

In accordance with Article 232-2 of the General Regulation, holders of Business Objects Securities tendered during the initial offering period pursuant to the Offers may withdraw their Business Objects Securities at any time prior to the expiration of the initial offering period. If there is a subsequent offering period, holders of Business Objects Securities tendering in the French Offer will be permitted to elect either to be paid promptly for the Business Objects Securities tendered (in which case no withdrawal rights will be available) or to be paid after the closing of the subsequent offering period (in which case holders may withdraw their Business Objects Securities tendered during the subsequent offering period at any time prior to the expiration of such subsequent offering period). Any subsequent offering period under the U.S. Offer would comply with Rule 14d-11.

## **I. Rule 14e-1(b) and SEC Releases Concerning Mandatory Extensions of the Offer Period: Agreement of the AMF**

Pursuant to Commission policy, the minimum time period during which the Offer must remain open following material changes in its terms, other than a change in price or a change in percentage of securities sought, will depend on all the facts and circumstances, including the materiality of the changes. *See* SEC Release No. 34-23421 (July 11, 1986). The Commission has advised that a tender offer should remain open for a minimum of five business days from the date a material change is first published, sent or given to shareholders. *See* SEC Release No. 34-24296 (Apr. 3, 1987). If material changes are made with respect to the price or the percentage of securities sought, pursuant to Rule 14e-1(b), an offer is required to remain open for a minimum of ten business days.

SAP intends to request that the AMF agree that, pursuant to Article 231-34 of the General Regulation (which allows the AMF to extend the closing date of an offer at any time during the period the offer is open), the closing date of the French Offer will occur three French Trading Days prior to the closing date of the U.S. Offer.

As discussed above, the offer period in the French Offer will be automatically re-opened by the AMF following publication of the definitive results if there is a positive outcome following expiration of the initial offer period, and SAP may not itself extend the offer period.

## **3. Discussion and Relief Requested**

We believe that the relief requested herein is the minimum necessary to permit the Offers to proceed and constitutes less relief than has been granted by the staff of the Commission (the **Staff**) in connection with other cross-border tender offers. While (according to Business Objects' Form 10-Q for the period ended September 30, 2007) as of October 31, 2007, the outstanding Business Objects ADSs represented only 25% of the outstanding Business Objects Shares, Business Objects' most current view is that it does not qualify as a 'foreign private issuer' as defined in Rule 3b-4(c) under the Exchange Act because the most recent counting exercise it undertook, which was as of August 31, 2007, revealed that U.S. persons beneficially held approximately 54% of the outstanding Business Objects Shares (including Business Objects ADSs). As discussed above, the percentage of Business Objects Shares held by U.S. persons fluctuates, and while at various times it is possible that Business Objects could have qualified as a foreign private issuer, in recent years Business Objects has chosen as a matter of administrative simplicity to file with the Commission as a U.S. entity for reporting purposes. However, the conflicts between the U.S. and French systems faced by a bidder for Business Objects are functionally equivalent to those faced by a bidder for any U.S.-listed French company that is a foreign private issuer, and the relief requested here is less extensive yet entirely consistent with relief that has been routinely granted in the past to bidders for such companies. Bidders for Business Objects Shares are simultaneously subject to the laws of Business Objects' home jurisdiction, France, and to the Exchange Act, and

these requirements conflict in certain respects. The Staff has previously granted relief from certain rules under the Exchange Act in connection with tender offers for securities of a foreign issuer that did not qualify as a 'foreign private issuer' as defined in Rule 3b-4 under the Exchange Act when the relief was required to enable the transaction to proceed under the laws and customs of the home jurisdiction of the issuer and the home jurisdiction's laws and regulations provided adequate protection to U.S. holders. The Staff has also granted this relief in the past in connection with offers involving foreign private issuers with significant U.S. ownership that exceeded the Tier II threshold. Similar to those tender offers, any person seeking to make a tender offer for Business Objects Securities cannot avoid certain conflicts between the law and practice of France and specific rules under the Exchange Act.

We note the Staff has increasingly recognized the effectiveness of non-U.S. regulatory systems, particularly in well-established markets regulated on principles similar (although not identical) to those in the United States, and has been willing in appropriate cases to accommodate the non-U.S. regulatory system where there is a technical conflict between the U.S. rules and the other jurisdiction's rules and the interests of U.S. investors are adequately protected. With respect to French laws, regulations and customs in particular, the Staff has granted relief in the past in part because the protections afforded by the AMF were viewed as adequate to safeguard the interests of U.S. investors who invest in securities of French companies.

Further, we believe the relief requested in this letter is consistent overall with the rationale for relief granted in the past. Business Objects has since its inception only ever been a French company. It is not the successor to a U.S. legal entity, and the information that Business Objects was a French company subject to French law and regulation was publicly available at the time they invested in Business Objects.

As noted below, the relief requested is less extensive yet entirely consistent with relief the Staff has granted in the past. As further noted below, the Staff has granted relief in connection with two transactions involving a foreign issuer that did not qualify as a foreign private issuer. Given the unusual facts involved, the AMF and Euronext have agreed to modify their customary practices in order to reduce to the minimum the relief requested here. We address each of the relevant elements of the analysis in turn.

First, we are not aware of any other entities incorporated in France that have securities registered under Section 12 of the Exchange Act and yet that do not qualify as foreign private issuers. Accordingly, we do not regard the absence of prior relief involving a company in exactly the same situation as Business Objects to be indicative of an outstanding policy concern. Further, we note that investors in Business Objects have always been subject to the protections of the comprehensive system of securities regulation in France. As a result, there is no element of 'forum shopping' that should affect the Staff's analysis in this instance.

Second, we do not believe that granting relief in this case would create a 'slippery slope' of requests for relief that could undercut the investor protections the Exchange Act and the rules and regulations thereunder were designed to create. The requested relief represents the minimum we believe would be necessary in order to enable any bidder to make a tender offer for all outstanding securities of Business Objects in compliance with both French and U.S. requirements, reflects significant accommodations made by the AMF and Euronext and is consistent with like relief routinely granted to bidders for foreign private issuers whether or not eligible for Tier II. As noted above, at various times over the past ten years Business Objects may well have been a foreign private issuer because its level of U.S. share ownership was below 50%. The fact that Business Objects has for administrative convenience elected voluntarily to treat itself as a U.S. issuer, even when it was not required to do so, should not preclude consideration of this application for relief. Granting relief to SAP to permit it to make the Offers should not be construed as an indication that any future relief would be requested.

We respectfully suggest that the interests of U.S. investors would be better served by seeking to harmonize the French and U.S. requirements rather than effectively prohibiting the making of a tender offer for Business Objects Securities.

On this basis and for the reasons discussed below, we respectfully request that the Staff grant the relief requested.

**A. Rule 14d-10(a)(1): Two Offers and a U.S. Offer made, with respect to Business Objects ADSs, to all holders, wherever located**

There are several potential points of conflict between the U.S. tender offer rules and French law and practice. SAP believes that the best method for reconciling these potential conflicts is a dual offer structure that permits U.S. holders of Business Objects Shares to participate in the transaction through the U.S. Offer on substantially the same terms as holders located in other jurisdictions may participate in the French Offer.

The U.S. Offer will be open to all holders of Business Objects ADSs, wherever located, and to U.S. holders of Business Objects Shares, Business Objects Warrants and Business Objects Convertible Bonds; and the French Offer will be open to holders of Business Objects Shares (other than Business Objects Shares represented by Business Objects ADSs), Business Objects Warrants and Business Objects Convertible Bonds who are located in France or who are located outside of France and the United States if, pursuant to the local laws and regulations applicable to such holders, they are permitted to participate in the French Offer.

Rule 14d-10(a)(1) under the Exchange Act provides that no person shall make a tender offer unless the offer is open to all security holders of the class of securities subject to the tender offer. Rule 14d-1(d)(2)(ii) provides exemptive relief from this provision and allows a bidder that qualifies for Tier II relief to separate its offer 'into two offers: one offer made only to U.S. holders and another offer made only to non-U.S. holders' (emphasis added). It is a condition of this relief that the 'offer to U.S. holders must be made on terms at least as favorable as those offered any other holder of the same class of securities that is the subject of the tender offers.'<sup>18</sup>

We do not believe the technical differences between the proposed offer structure and the dual offer structure permitted by the Tier II rules should disqualify the Offers from exemptive relief. The French Offer is 'made only to non-U.S. holders.' Any U.S. holder of any Business Objects Security (as well as some non-U.S. holders of Business Objects ADSs) will be tendering in an offer that is conducted in accordance with the Exchange Act. We note that the Staff has permitted other similar dual offer structures involving U.S. offers made for both ordinary shares held by U.S. holders and for ADSs held by holders, wherever located, even where the Tier II exemption under Rule 14d-1(d) was not available due to the level of U.S. ownership. *See Offer by Alcan, Inc. for Common Shares, ADSs, Bonus Allocation Rights and OCEANES of Pechiney* (Oct. 8, 2003) (*hereafter, Alcan/Pechiney No-Action Letter*); *Serono S.A. Offer for All Outstanding Ordinary Shares, ADSs, OCEANES and Warrants of Genset, File No. TP 02-95* (Sept. 12, 2002) (*hereafter, Serono/Genset No-Action Letter*); *Saipem SpA Offer for Shares and ADSs of Bouygues Offshore S.A.* (July 29, 2002); *Proposed Exchange Offer by Technip, S.A., for all of the outstanding ordinary shares and American Depositary Shares of Coflexip, S.A.* (Aug. 30, 2001) (*hereafter, Technip/Coflexip No-Action Letter*); *In the Matter of the Exchange Offer by Banco Bilbao Vizcaya Argentaria, S.A. for ordinary shares and American Depositary Shares of BBVA Banco Frances* (Apr. 19, 2001) (*hereafter, Banco Bilbao Vizcaya Argentaria S.A. No-Action Letter*).

Accordingly, on behalf of SAP, we respectfully request exemptive relief from the provisions of Rule 14d-10(a)(1) to permit the U.S. Offer to be open to all holders of Business Objects ADSs, wherever located, and to U.S. holders of Business Objects Shares, Business Objects Warrants and Business Objects Convertible Bonds; and the French Offer to be open to holders of Business Objects Shares (other than Business Objects Shares represented by Business Objects ADSs), Business Objects Warrants and Business Objects Convertible Bonds

who are located in France or who are located outside of France and the United States if, pursuant to the local laws and regulations applicable to such holders, they are permitted to participate in the French Offer.

#### **B. Rule 14e-5: Purchases Outside U.S. Offer**

Among other things, Rule 14e-5 under the Exchange Act prohibits a person making a tender for an equity security from, directly or indirectly, purchasing or making any arrangement to purchase such security or any security which is immediately convertible into or exchangeable for such security except pursuant to such offer. The prohibition continues from the time of the public announcement of the offer until the date that the offer expires, including any extensions thereof (the **Restricted Period**). See Rule 14e-5(a). There is an express exception for purchases or arrangements to purchase if the cross-border tender offer is excepted under Rule 14d-1(c) (often called "Tier I Relief" available in the event, among other conditions, that fewer than 10% of the subject securities are held by U.S. holders) and certain other conditions have been met. See Rule 14e-5(b)(10). There is no such exemption for cross-border tender offers that do not qualify for Tier I Relief under Rule 14d-1(d). However, pursuant to Rule 14e-5(d), upon written application or upon its own motion, the Commission may grant an exemption from the provisions of Rule 14e-5.

A literal application of Rule 14e-5 could be interpreted to prohibit SAP's purchase of Business Objects Securities pursuant to the French Offer after the announcement of the U.S. Offer.

Please note that, in our view, there are doubts as to whether the jurisdictional predicate for the application of the Exchange Act, namely that there be a purchase of a security "by use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange," would be satisfied in the context of the French Offer, which is taking place outside the United States. We nonetheless apply, on behalf of SAP, for exemptive relief for SAP's purchases of Securities pursuant to the French Offer from the provisions of Rule 14e-5. This letter does not reflect an admission that Rule 14e-5 would apply to such purchases outside the United States in the absence of such relief.

We believe that SAP's purchase of Business Objects Securities after the U.S. Offer has already been publicly announced and before the U.S. Offer expires does not constitute a fraudulent, manipulative or deceptive act or practice intended to be prohibited by Rule 14e-5.

U.S. holders of Business Objects Securities will be entitled to participate in the U.S. Offer on economic terms as favorable as those offered to holders of Business Objects Securities in the French Offer. SAP has taken steps to ensure (i) that except as described herein the procedural terms of the Offers will be as equivalent as practicably possible, given the considerations of local law and customary local practice, and (ii) that the consideration in the Offers will be the same, except that cash consideration payable for tendered Business Objects ADSs will be converted from euros to U.S. dollars at the euro foreign exchange reference rate published by the European Central Bank on or about 2:15 p.m. CET on the business day following the expiration of this offer or the business day following each tender of ADSs during a subsequent offering period of this offer, as the case may be.

During the Restricted Period, the only offers to purchase and the only purchases of Business Objects Securities by SAP that are made outside the U.S. Offer will be made pursuant to the French Offer. Because the proposed dual offer structure involves purchases pursuant to a foreign tender offer, it does not present the same risks as would open market or private purchases, and we believe that the policies forming the basis for Rule 14e-5 will not be violated if the exemption requested is granted. Further, SAP's intention to make purchases pursuant to the French Offer will be fully disclosed in the U.S. offer documents, and pursuant to the U.S. Offer, holders who tender in the U.S. Offer will be entitled to receive the same consideration paid per Business Objects Security as will be paid pursuant to purchases under the French Offer. Lastly, we note that under applicable French law and

regulations, SAP is prohibited from effecting any market transactions in any equity securities of Business Objects (including convertibles) until the publication of the results of the Offers. See Article 232-14 of the General Regulation.

We believe that the exemptive relief requested in this Letter is consistent with the exemptive relief granted in connection with other tender offers similarly structured as dual offers that did not qualify for Tier II relief. See *Alcan/Pechiney No-Action Letter, supra*; *Serono/Genset No-Action Letter, supra*; *Technip/Coflexip No-Action Letter, supra*; *Banco Bilbao Vizcaya Argentaria S.A. No-Action Letter, supra*; *In the Matter of TotalFina S.A., Exchange Offer for Securities of Elf Aquitaine* (July 21, 1999) (granted pursuant to former Rule 10b-13, the predecessor rule to Rule 14e-5). The Staff has also previously granted this relief requested in connection with tender offers for the securities of a foreign issuer that did not qualify as a 'foreign private issuer' as defined in Rule 3b-4(c) under the Exchange Act. See *Lavena Holding 4 GmbH* (Jan. 30, 2007); *Axel Springer AG Offer for ProSiebenSat.1 Media AG* (September 12, 2005).

Accordingly, on behalf of SAP, we hereby respectfully request exemptive relief pursuant to Rule 14e-5(d) from the provisions of Rule 14e-5 with regard to purchases of Business Objects Securities made pursuant to the French Offer and during any subsequent offering period for the French Offer.

\* \* \* \* \*

We appreciate the Staff's prompt consideration of these matters. Please do not hesitate to contact the undersigned at (212) 610-6300 with any questions regarding this matter.

Very truly yours,



Eric S. Shube

cc: Paul M. Dudek  
(Securities and Exchange Commission)