



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

DIVISION OF  
MARKET REGULATION

March 23, 2006

Ms. Sarah Murphy, Esq.  
Freshfields Bruckhaus Deringer  
65 Fleet Street  
London EC4Y 1HS  
United Kingdom

Re: Possible Offer by Grupo Ferrovial, SA for BAA plc  
File No. TP 06-47

Dear Ms. Murphy:

This is in response to your letter dated March 17, 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 BAA plc ("BAA") Target Securities pursuant to the possible tender offer ("Offer"), particularly in light of the following facts:

- The Offer is required to be conducted in accordance with the City Code on Takeovers and Mergers ("Code") as well as the rules and regulations of the UK Listing Authority ("Listing Rules");
- BAA, a public limited company incorporated under the laws of England and Wales, is a "foreign private issuer," as defined in Rule 3b-4(c) under the Exchange Act;
- Any purchases of Target Securities of BAA by the Prospective Purchasers will be subject to the Code; and
- The existence of the Memorandum of Understanding on Exchange of Information between the Commission and the United Kingdom Department of Trade and Industry in Matters Relating to Securities and the United States Commodity Futures Trading Commission and the United Kingdom Department of Trade and Industry in Matters Relating to Futures dated September 25, 1991.

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

1. No purchases or arrangements to purchase Target Securities, otherwise than pursuant to the Offer, shall be made in the United States;
2. The Tender Offer Documents shall disclose prominently the possibility of, or the intention to make, purchases of Target Securities by the Prospective Purchasers during the Offer;
3. The Prospective Purchasers shall disclose in the United States information regarding purchases of Target Securities to the extent such information is made public in the United Kingdom pursuant to the Code;
4. The Prospective Purchasers shall comply with any applicable rules under the United Kingdom law including the Code and Listing Rules;
5. The Prospective Purchasers shall provide to the Division of Market Regulation ("Division"), upon request, a daily time-sequenced schedule of all purchases of Target Securities made by any of them 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 London Stock Exchange, the exchange, quotation system, or other facility through which the purchase occurred;
6. Upon the request of the Division, the Prospective Purchasers shall transmit the information as specified in paragraphs 5.a. and 5.b. above to the Division at its offices in Washington, D.C. within 30 days of its request;
7. The Prospective Purchasers shall retain all documents and other information required to be maintained pursuant to this exemption for a period of not less than two years from the date of the termination of the Offer;
8. Representatives of the Prospective Purchasers shall be made available (in person at the offices of the Division in Washington, D.C. or by telephone) to respond to inquiries of the Division relating to their records; and
9. Except as otherwise exempted herein, the Prospective Purchasers shall comply with Rule 14e-5.


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

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

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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, appearing to read "James A. Brigagliano". The signature is fluid and cursive, with a large initial "J" and a long, sweeping tail.

James A. Brigagliano  
Acting Associate Director  
Division of Market Regulation

Attachment



FRESHFIELDS BRUCKHAUS DERINGER

Confidential Treatment Requested

Mr. James A. Brigagliano
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March 17, 2006

Ladies and Gentlemen

Re: Possible Cash Bid for BAA Securities

We are writing on a confidential basis on behalf of our client, Grupo Ferrovial, S.A. (Grupo Ferrovial), a company (sociedad anonima) organized under the laws of the Kingdom of Spain, which, through its wholly-owned subsidiary Ferrovial Infraestructuras, S.A., plans, together with Caisse de depote et placement du Quebec (Caisse), a company constituted under An Act Respecting the Caisse de depote et placement du Quebec, and an affiliate of GIC Special Investments Pte Ltd. (GIC SI), a company organized under the laws of Singapore, (together, the Consortium), to form a special purpose company (Bidco) organized under the laws of England and Wales for the purpose of making a possible bid (the Possible Bid) for (i) all of the issued and to be issued ordinary shares (the Ordinary Shares) and (ii) all of the issued and to be issued convertible bonds (the Convertible Bonds) (together, the Target Securities) of BAA plc (BAA), a public limited company organized under the laws of England and Wales.

Grupo Ferrovial announced on February 8, 2006 (the Possible Bid Announcement) that it, as a member of a consortium, is considering launching a cash bid for all of the issued and to be issued share capital of BAA. The Possible Bid Announcement was not agreed with or recommended by BAA, and to date BAA's only public response to the Possible Bid Announcement was to issue an announcement on February 8, 2006 stating that, amongst other things, it "strongly advises shareholders not to take any action at this time".

There is currently no certainty as to whether the Possible Bid will be made or the form in which it will be made. Should the Consortium proceed with the Possible Bid, the bid would be structured as two separate transactions, one for the Ordinary Shares and one for the Convertible Bonds. Each transaction could be conducted as either a tender offer or as a scheme of arrangement (which is a court based statutory procedure in England and Wales, whereby BAA would request its shareholders or bondholders (as appropriate) to approve in court convened and general meetings various resolutions resulting in, amongst other things, the cancellation of the Target Securities, the payment of the cash consideration to holders of the Target Securities and the issue of new ordinary shares to Bidco). A loan note alternative to the cash consideration offered may be made available to

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BAA shareholders for UK tax purposes only (although this alternative would not be available to BAA shareholders in the United States and certain other prohibited jurisdictions).

Grupo Ferrovial has requested that we emphasize that the announcement of the Possible Bid was made under Rule 2.4 of the City Code on Takeovers and Mergers in the United Kingdom (the *City Code*). Under this rule, a bidder is permitted to announce that it is considering making a bid. However, such an announcement does not obligate a bidder to make a bid or constitute a bid under the City Code. Only upon the announcement of a firm intention to make a bid (which is not subject to pre-conditions) under Rule 2.5 of the City Code is a bidder obligated to proceed with a bid under the City Code.

Accordingly, and as is permitted for a Rule 2.4 announcement, the Possible Bid Announcement did not state that Grupo Ferrovial intended to make a bid, merely that it was considering such a bid.

As previously discussed with members of the staff (the *Staff*) of the Securities and Exchange Commission (the *Commission*), we, as US counsel to Grupo Ferrovial in connection with the Possible Bid and on behalf of the Consortium, are requesting exemptive relief from Rule 14e-5 (*Rule 14e-5*) promulgated under the Securities Exchange Act of 1934, as amended (the *Exchange Act*), allowing Bidco, members of the Consortium and any broker or other financial institution acting as their respective agents (including any financial institution acting as financial advisor to Bidco or members of the Consortium in connection with the Possible Bid) (collectively, the *Prospective Purchasers*) to purchase Target Securities outside the Possible Bid when otherwise permissible under the City Code and other applicable UK rules and regulations.

## BACKGROUND

### BAA

BAA is a foreign private issuer as defined in Rule 3b-4(c) of the Exchange Act. The Target Securities are not registered under Section 12 of the Exchange Act or listed on a US national securities exchange or quoted on NASDAQ. BAA does file reports with the Commission pursuant to Rule 12g3-2(b) under the Exchange Act and maintains a sponsored ADR program for its Ordinary Shares.

Originally established in the 1960s as British Airports Authority by HM Government in the United Kingdom and responsible for managing four airports in the United Kingdom, BAA was listed on the London Stock Exchange in 1987. Today, BAA is active in airport management in the United Kingdom (where it is the operator of seven airports: London Heathrow, London Gatwick, London Stansted, Southampton, Glasgow, Edinburgh and Aberdeen), Italy (where it has a 65% stake in Naples airport) and recently Hungary (where it has recently acquired a 75% stake, minus one share, in Budapest Ferihegy airport). BAA also manages and has minority stakes at a number of airports in Australia (Melbourne, Launceston, Perth, Darwin, Alice Springs and Tennant Creek). As well as being active in retail management at the airports which it operates, BAA has also secured retailing management contracts at a number of airports in the United States (Baltimore, Boston, Indianapolis and Pittsburgh) where it is not the airport manager. BAA also operates the Heathrow Express railway line which connects London Heathrow with London Paddington



The Ordinary Shares and the Convertible Bonds are listed on the London Stock Exchange. As at February 9, 2006, BAA's paid-in share capital amounted to GBP 1,079 million divided into 1,079 million ordinary shares with a nominal value of GBP 1.00 each, and BAA's market capitalization was GBP 8,391 million. As of March 31, 2005, BAA had £424 million of 2.94 percent convertible bonds due 2008 and £425 million of 2.65 percent convertible bonds due 2009 outstanding.

For the year ended March 31, 2005, BAA reported revenue of GBP 2,115 million, compared with GBP 1,970 million for the year ended March 31, 2004; group operating profit before tax of GBP 733 million, compared with GBP 539 million in the year ended March 31, 2004; and earnings per share of GBP 0.510 compared to earnings per share of GBP 0.355 in the year ended March 31, 2004. As of March 31, 2005, BAA had consolidated net assets of GBP 5,501 million.

Given the nature of holdings in the ordinary shares and bonds of English companies and English law, the Consortium does not have access to specific information regarding the holders of the Target Securities. However, based on public information available from Citywatch (an equity ownership database which identifies the beneficial owners behind nominee shareholdings in UK companies), the Consortium believes that US holders own approximately 11% of the Ordinary Shares and there are no shareholders owning more than 10% of the Ordinary Shares (although no information is available regarding shareholders who in aggregate hold approximately 19% of the Ordinary Shares).

The Convertible Bonds are in bearer form. Therefore, the Consortium does not have access to information regarding the residency of the holders of the Convertible Bonds. However, based upon the prospectuses issued in connection with the offerings of the Convertible Bonds, it does not appear that such offerings were extended to investors in the United States. Therefore, the Consortium believes that, at most, minimal amounts of Convertible Bonds are held by US holders.

### **The Consortium**

Bidco and the members of the Consortium are foreign private issuers as defined in Rule 3b-4(c) of the Exchange Act.

### ***Grupo Ferrovial***

Grupo Ferrovial is a Spanish company active in construction infrastructure concessions, real estate and services sectors. In the past decade, Grupo Ferrovial has become increasingly active in airport management through Ferrovial Aeropuertos S.A. with investments in four airports that handle collectively almost 35 million passengers per annum: Sydney Airport (20.9%), Belfast City Airport (100.0%), Bristol International Airport (50.0%) and Antofagasta Airport in Chile (100.0%). In October 2005, Ferrovial Servicios, S.A. (another member of the Grupo Ferrovial group) completed its acquisition of Swissport International A.G., a provider of ground-handling and cargo services to airlines and passengers globally. Ferrovial Aeropuertos S.A. is 99% owned by Ferrovial Infraestructuras S.A., one of the world's leading developers and managers of private infrastructure projects.

Ferrovial Infraestructuras S.A. manages transport infrastructures through different companies (airports through Ferrovial Aeropuertos; toll roads and car parking through Cintra Concesiones de Infraestructuras de Transporte, S.A.).



Grupo Ferrovial is listed on the Madrid, Barcelona, Bilbao and Valencia stock exchanges and in the Automated Quotation System of the Spanish stock exchanges. As at 30 September 2005, Grupo Ferrovial had 140.3 million ordinary shares outstanding with a nominal value of €1 each, and as of February 9, 2006, Grupo Ferrovial's market capitalization was GBP 9,180 million.

For the year ended December 31, 2004, Grupo Ferrovial reported net sales of €7,268 million, compared with €6,026 million for the year ended December 31, 2003; net profit of €557 million, compared with €341 million in 2003; and dividends per share of €0.82 compared to dividends per share of €0.60 in 2003. As of December 31, 2004, Grupo Ferrovial had a shareholders' equity of €2.253 million.

### *Caisse*

Caisse is a financial institution that manages funds for public and private pension and insurance funds. Founded by Quebec's legislature in 1965 to manage public pension funds, Caisse operates primarily through six investment groups: Equities, Fixed Income, Absolute Return, Real Estate, Private Equity and Investment Analysis and Optimisation. The Absolute Return investment group focuses on hedge funds and asset allocation. Caisse's real estate portfolio includes residential, retail and office buildings. Private Equity offers financing for businesses in such industries as technology, communications and Infrastructures.

Caisse is recognized as one of Quebec's leading financial institutions and is now the largest institutional fund manager in Canada with over C\$170 billion in assets under management as of December 31, 2005.

### *GIC SI*

GIC SI was set up in 1982 as the private equity investment arm of the GIC. It manages a diversified global portfolio of investments in private equity, venture capital and infrastructure funds, as well as direct investments in private companies. From providing capital to US leveraged buyout and venture capital firms in the early 80s, GIC SI's portfolio has since grown significantly. Today, operating out of offices in Singapore, London, New York, San Francisco and Beijing, GIC SI is one of the largest private equity investors worldwide.

GIC is a global investment management company established in 1981 to manage Singapore's foreign reserves. GIC invests internationally in equities, fixed income, money market instruments, real estate and special investments. Since inception, GIC has grown from managing a few billion dollars, to more than US\$100 billion today. GIC strives to achieve good long-term returns on assets under management, to preserve and enhance Singapore's reserves.

### **BACKGROUND TO THE POSSIBLE BID**

As indicated above, the form of the Possible Bid is not yet certain. Should the Consortium proceed by manner of tender offers for the Ordinary Shares and/or the Convertible Bonds, it expects that each offer would be structured as a single offer made concurrently under a single document in all jurisdictions in which it is extended. The Consortium's current intention would be to allow for participation by US holders of Target Securities in BAA. The tender offers would be structured to comply with (i) the rules and regulations of the UK Listing Authority and the London Stock



Exchange, (ii) the City Code and (iii) except as otherwise requested herein or subsequently requested from the Commission, the requirements of Section 14(e) of the Exchange Act and the rules and regulations promulgated thereunder. The offering documents (the *Tender Offer Documents*) would comply with the rules and regulations of the UK Listing Authority, the City Code and the Exchange Act.

In such circumstances, the Tender Offer Documents would be mailed to all holders of record of the Target Securities, as appropriate, including those with addresses in the United States. Language prohibiting the forwarding of the Tender Offer Documents by custodians, nominees, trustees and others to beneficial owners with addresses in the United States would not be included in the Tender Offer Document. In the absence of such a prohibition, it is expected that the record owner would forward the Tender Offer Documents to the beneficial owner. As a result, we would expect that each beneficial owner of the Target Securities that resides in the United States would, if the offer was made, receive the Tender Offer Documents and thereby the notice described below with respect to the possibility of purchases of the Target Securities outside of the offer.

The Tender Offer Documents would be mailed to all record holders of the Target Securities in the United Kingdom and the United States no later than 28 days after the date of the announcement of the tender offers (the *Announcement Date*), as required by Rule 30.1 of the City Code. The tender offers would remain open for acceptance for not less than 20 US business days after they were made (upon mailing the Tender Offer Documents) and for such additional period or periods as may be determined by the Consortium and as may be mandated by the provisions of Regulation 14E under the Exchange Act or the City Code. To comply with the City Code, however, a tender offer must lapse unless it becomes or is declared unconditional as to acceptances by midnight on the 60th calendar day after mailing or such later date as to which the Panel on Takeovers and Mergers (the *Panel*), which administers the City Code, may agree.

If the tender offers became or were declared unconditional as to acceptances, the offers would, in order to comply with Rule 31.4 of the City Code, be required to remain open for acceptances for at least 14 calendar days following the date on which they would otherwise have expired and could remain open for such longer period as the Consortium deems appropriate. In addition, Rule 31.2 of the City Code requires that notice of the termination of any subsequent offer period must be given not less than 14 calendar days prior to such termination. An institution operating in the United Kingdom would act as the UK receiving agent to receive tenders of Target Securities or Convertible Bonds pursuant to the tender offers.

Pursuant to Rule 31.7 of the City Code, the tender offers would have to become or be declared wholly unconditional (i.e., all conditions to the offer have been satisfied or, where permissible, waived), no later than 21 calendar days after the date the offers had become or been declared unconditional as to acceptances (unless the Panel agrees to a later date).

If the tender offers became or were declared wholly unconditional, all Target Securities validly tendered during the offers would be accepted and paid for by Bidco within 14 calendar days of the later of the date when the offer became wholly unconditional and the date of receipt of an acceptance which was complete in all respects.





**PURCHASES OUTSIDE THE TENDER OFFERS AND RULE 14E-5**

In the United Kingdom, purchases outside an offer are permitted, subject to certain limitations, and such purchases are quite common in connection with tender offers for UK companies. Under the City Code, the Prospective Purchasers would be permitted to purchase Target Securities in the open market or otherwise before and during the conduct of, but outside, the tender offers, subject to certain limitations including as to price (as described 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, exchangeable for or exercisable for such securities, except as part of the tender offer. This prohibition applies from the time an offer is publicly announced until it expires. Rule 14e-5 defines a covered person as (i) the offeror, its dealer-managers, and any of their respective affiliates, (ii) any advisors of the foregoing whose compensation is dependent on the completion of the offer and (iii) any person acting in concert either directly or indirectly with any of the foregoing (*Covered Persons*).

As indicated above, the Consortium wants to maintain the flexibility to allow US-based holders of the Target Securities to participate in the tender offers. At the same time, in the event that the Staff construes the Possible Bid Announcement as a "public announcement" within the meaning of Rule 14e-5, the Prospective Purchasers want to be in a position to purchase the Target Securities at any time they are permitted to do so under the City Code and other applicable UK rules and regulations. Since the publication of the Possible Bid Announcement, neither Bidco nor members of the Consortium have made any such purchases and no such purchases have been made on their behalf.

Purchases of the Target Securities outside the offer by the Prospective Purchasers would not fall within any of the excepted activities specifically outlined in Rule 14e-5. Accordingly, in the absence of exemptive relief, if the Staff takes the view that the Possible Bid Announcement constitutes the "public announcement" of an offer, purchases of the Target Securities outside such offer would be prohibited.

Rules 6.1 and 6.2 of the City Code provide protections similar to those provided by Rule 14e-5, making, we believe, exemptive relief appropriate in the circumstances of the tender offers, by requiring that each tender offer's price, if and when the offer is made, be increased to not less than the highest price paid outside the tender offer by Bidco or members of the Consortium or their concert parties, as defined in the City Code.

Under Rule 8.1 of the City Code, any purchases by Bidco or members of the Consortium outside the tender offers would be required to be disclosed on a next-day basis to the public through a Regulatory Information Service and to the Panel. Disclosures of these purchases attract significant publicity by their very nature and they are disseminated on dealers' trading screens throughout the London market.

The Commission has granted a number of exemptions from Rule 14e-5 and Rule 10b-13 (the predecessor to Rule 14e-5) to permit purchases by offerors and persons acting on behalf of offerors. We believe the exemptive relief requested herein under Rule 14e-5 is consistent with that granted by the Commission in similar situations in the past, including the letter regarding the offer by WPD Limited for Hyder plc (available May 31, 2000), the letter regarding the offer by Schlumberger



Limited for Sema Group plc (available February 15, 2001), the letter regarding the offer by Vinci for TBI plc (available August 23, 2001) and the letter regarding the offer by Cinven Limited for Fitness First Plc (available April 9, 2003). Further, we believe exemptive relief in the context of a possible offer is consistent with that granted by the Commission in the letter regarding the possible offer by Bank of Ireland for Abby National plc (available October 16, 2002) and the letter regarding the possible offer by Anheuser-Busch Companies, Inc. for Harbin Brewery Group Limited (available May 7, 2004).

In addition, we note the existence of the Memorandum of Understanding on Exchange of Information between the Commission and the United Kingdom Department of Trade and Industry in Matters Relating to securities and the United States Commodity Futures Trading Commission and the United Kingdom Department of Trade and Industry in Matters Relating to Futures dated September 25, 1991.

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 Prospective Purchasers made purchases of, or arrangements to purchase, Target Securities outside the United States. We nonetheless apply, on behalf of such persons, for exemptive relief for such purchases from the provisions of Rule 14e-5 pursuant to Rule 14e-5, on the conditions set forth below. We have been requested by the Prospective Purchasers to emphasize that this letter does not reflect an admission that Rule 14e-5 would apply to such a purchase of Target Securities outside the United States in the absence of such exemptive relief.

#### REQUESTED EXEMPTIVE RELIEF

Based on the foregoing, we respectfully request that the Prospective Purchasers be granted exemptive relief from the provisions of Rule 14e-5 in order to permit purchases of Target Securities outside of the possible tender offers 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 Target Securities, otherwise than pursuant to the tender offers, will be made in the United States;
- (b) disclosure of the possibility of such purchases by the Prospective Purchasers, otherwise than pursuant to the tender offers, will be included prominently in the Tender Offer Documents (when and if distributed);
- (c) the Prospective Purchasers shall disclose in the United States information regarding such purchases to the extent such information is required to be made public in the United Kingdom pursuant to the City Code;
- (d) the Prospective Purchasers shall disclose to the Division of Market Regulation of the Commission (the Division of Market Regulation) upon request, a daily time-sequenced schedule of all purchases of Target Securities made by any of them during the offer, on a transaction-by-transaction basis, including: (1) size, broker (if any), time of execution, and price of purchase and (2) if not executed on the London Stock Exchange, the exchange, quotation system or other facility through which the purchase occurred;



- (e) upon request of the Division of Market Regulation, the Prospective Purchasers shall transmit the information specified in (d)(1) and (d)(2) above to the Division of Market Regulation at its offices in Washington, D.C. within 30 days of its request;
- (f) the Prospective Purchasers shall comply with any applicable rules of UK organizations, including the City Code and the rules of the London Stock Exchange;
- (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 tender offers;
- (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.

**CONCLUSION**

Pursuant to Regulation 200.81, we respectfully request on behalf of the Consortium 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 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 Consortium for the reason that certain of the facts set forth in this letter have not been made public.

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

In view of the short timetable, we respectfully request that the Commission issue the requested exemptive relief as soon as practicable. If you require any further information or have any questions, please contact Sarah Murphy at +44 20 7832 7429 or Andrew Boyer at +44 20 7427 3580.

Very truly yours

Sarah Murphy