

**Securities Exchange Act of 1934
Rule 14d-11; Rule 14d-11(f)
Rule 14d-10(a)(2)
Rule 14e-1(b)**

No Action and Exemptive Letter: Bayer AG

**Response of the Office of Mergers and Acquisitions,
Division of Corporation Finance**



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549-0303

September 26, 2006

Via Facsimile 011 49 69 97103-199 and U.S. Mail

Ward A. Greenberg
Cleary Gottlieb Steen & Hamilton LLP
Main Tower
Neue Mainzer Strasse 52
60311 Frankfurt am Main, Germany

**Re: Offer by Bayer Aktiengesellschaft and Dritte BV GmbH (together, the
“Bayer Entities”) for Schering Aktiengesellschaft (“Schering”)**

Dear Mr. Greenberg:

We are responding to your letter dated September 26, 2006 to Brian V. Breheny and Christina Chalk, as supplemented by conversations with the staff of the Division of Corporation Finance, with regard to your request for exemptive and no-action relief. Our response is attached to the enclosed photocopy of your letter. Each defined term in this letter has the same meaning as in your September 26, 2006 correspondence, unless we indicate otherwise.

On the basis of the representations made and the facts presented in your September 26, 2006 letter, the United States Securities and Exchange Commission (the “Commission”) hereby grants exemptions from:

- Rule 14d-11 under the Securities Exchange Act of 1934 (“Exchange Act”). The exemption from Rule 14d-11 permits the Bayer Entities to include a Subsequent Offering Period from the 21st day following the Registration Announcement for so long as required to be extended under German law.
- Rule 14d-11(f) under the Exchange Act. The exemption from Rule 14d-11(f) permits the Bayer Entities to offer consideration during the Subsequent Offering Period which differs from that offered during the Initial Offer Period solely by virtue of the Statutory Interest accrued and any reductions as a result of Guaranteed Dividend payments made, as required under German law and described in your letter.
- Rule 14d-10(a)(2) under the Exchange Act. The exemption from Rule 14d-10(a)(2) permits the Bayer Entities to pay consideration which will fluctuate during the Initial Offer Period and the Subsequent Offering Period because of the Statutory Interest accrued thereon and any reductions thereof as a result of Guaranteed Dividend payments made, as required by German law and described in your letter.

Based on the representations made in your September 26, 2006 letter, the staff of the Division of Corporation Finance will not recommend enforcement action pursuant to Rule 14e-1(b) under the Exchange Act if the Bayer Entities pay consideration which will fluctuate during the Initial Offer Period and the Subsequent Offering Period because of the Statutory Interest accrued thereon and any reductions thereof as a result of Guaranteed Dividend payments made, as required by German law and described in your letter.

The foregoing exemptions and no-action positions are based solely on the representations and the facts presented in your letter, as supplemented by telephone conversations with the Commission staff. The relief 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 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 this transaction must comply with these and any other applicable

Ward A. Greenberg, Esq.

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provisions of the federal securities laws. The Division of Corporation Finance expresses no view on any questions that may be raised by the proposed transaction, including but not limited to the adequacy of disclosure concerning an applicability of any other federal or state laws to the proposed transaction.

Sincerely,

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

Brian V. Breheny
Chief, Office of Mergers and Acquisitions
Division of Corporation Finance

enclosure

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September 26, 2006

BY E-MAIL AND BY HAND

Brian V. Breheny, Esq.
Chief, Office of Mergers and Acquisitions
Division of Corporation Finance

Christina E. Chalk, Esq.
Special Counsel, Office of Mergers and Acquisition
Division of Corporation Finance

Securities and Exchange Commission
100 F Street, N.W.
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Ladies and Gentlemen:

We are writing on behalf of our clients Bayer Aktiengesellschaft, a German stock corporation ("Bayer"), and Dritte BV GmbH (the "Offeror" and, together with Bayer, the "Bayer Entities").

As of September 8, 2006, the Offeror owned approximately 95.112% of the ordinary shares with no par value (the "Ordinary Shares"), including Ordinary Shares represented by American Depositary Shares (the "ADSs" and, together with the Ordinary Shares, the "Shares"), of Schering Aktiengesellschaft, a German stock corporation ("Schering"), outstanding as of that date (excluding treasury shares). The Offeror acquired these Ordinary Shares pursuant to, outside of and following the earlier voluntary tender offer (the "Voluntary Tender Offer") for the Shares of Schering described in letters of Latham & Watkins filed with the Securities and Exchange Commission (the "Commission") on April 12, 2006 and June 12, 2006 and in the Offer Document filed as Exhibit (a)(1)(A) to the Schedule TO filed by the Bayer Entities on April 13, 2006, as amended. The Voluntary Tender Offer concluded on July 6, 2006.

We are writing to request that the staff (the “Staff”) of the Division of Corporation Finance of the Commission (the “Division of Corporation Finance”) grant to the Bayer Entities the exemptive and no action relief from the provisions of Rules 14d-10(a)(2), 14d-11, 14d-11(f) and 14e-1(b) promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”) described below.

Overview

On July 31, 2006, the Offeror and Schering entered into a domination and profit and loss transfer agreement (the “Domination Agreement”). As provided by German corporate law, the Domination Agreement provides that the management of Schering must follow the instructions of the Offeror in all respects relating to the management of Schering. All profits of Schering (other than those required to be added to statutory reserves) are transferred to the Offeror, and the Offeror must provide amounts to Schering to ensure Schering does not show a loss in its income statement.

Pursuant to the German Stock Corporation Act (*Aktiengesetz*, the “Stock Corporation Act”), the effectiveness of the Domination Agreement requires both the consent of the shareholders of Schering, which the Bayer Entities and Schering obtained at an extraordinary shareholders’ meeting of Schering held on September 13, 2006, and of Bayer in its capacity as sole shareholder of the Offeror, and the subsequent registration of the Domination Agreement in the Commercial Register (*Handelsregister*) of the Local Court (*Amtsgericht*) in Charlottenburg, Berlin, which is where the registered corporate office of Schering is located. The Domination Agreement will become legally effective on the day of such registration (the “Effective Date”).

Pursuant to the Stock Corporation Act, as a means of protecting the interests of the shareholders of Schering other than the Bayer Entities, the Domination Agreement must provide for (i) adequate compensation for unaffiliated shareholders by means of recurring payments in proportion to their share in the share capital (compensation payments), colloquially referred to as a guaranteed dividend (the “Guaranteed Dividend”) and (ii) an undertaking of the Offeror to purchase, during a certain period of time and at the request of any unaffiliated shareholder of Schering, its Shares for an adequate cash compensation (the “Put Price”) provided for in the Domination Agreement (the “Put Rights”). The Bayer Entities and Schering engaged, on a joint basis, KPMG Deutsche Treuhand-Gesellschaft (“KPMG”) as an independent expert to assist in determining the adequate amount of the Guaranteed Dividend and the Put Price to be paid. Pursuant to the Stock Corporation Act, the Domination Agreement, including the amount of the Put Price, is subject to examination by one or more court appointed qualified auditors. These court appointed auditors are required to issue a written report stating their findings.

Under applicable German law, the amount payable by the Offeror to any unaffiliated shareholder exercising its Put Right with respect to its Shares on any date is equal to the Put Price provided for in the Domination Agreement plus accrued interest thereon from but excluding the Effective Date of the Domination Agreement at a statutory interest rate (the “Statutory Interest”), which Statutory Interest is reduced by any Guaranteed Dividend payments that have been paid.

The initial offering period will commence on the date (the “Commencement Date”) on which the Offeror has published the means to exercise the Put Rights, which will promptly follow the date (the “Registration Announcement Date”) on which the registration

of the Domination Agreement in the Commercial Register is deemed publicly announced by the local court responsible for the Commercial Register in accordance with Section 10 of the German Commercial Code (*Handelsgesetzbuch*, the “Commercial Code”) and continue for 20 business days as required by Rule 14e-1(a) under the Exchange Act. We hereby request that the Staff of the Division of Corporation Finance grant the Bayer Entities exemptive relief from the provisions of Rule 14d-11 under the Exchange Act to allow a subsequent offering period which would begin on the day following the twentieth business day following the Commencement Date and end on the date that is two months after the Registration Announcement Date, subject to extension to the extent required by German law (the “Subsequent Offer Period”).¹ In addition, we request that the Staff of the Division of Corporation Finance grant the Bayer Entities exemptive relief from the provisions of Rule 14d-10(a)(2) and Rule 14d-11(f) under the Exchange Act to allow the required payment of Statutory Interest on the Put Price (and the related potential reduction of such Statutory Interest payment in connection with the payment of any required Guaranteed Dividend) and confirm that it will not recommend any enforcement action against any of the Bayer Entities under Rule 14e-1(b) under the Exchange Act, in connection with the payment of fluctuating offer consideration during the Initial Offer Period and the Subsequent Offer Period.²

The Offeror acknowledges that, to the extent the Put Rights remain outstanding after July 6, 2007, the last day of the one-year period following the termination of the Voluntary Tender Offer, it will be subject to the requirements of Rule 13e-3 under the Exchange Act. The Offeror does not request exemptive relief with respect to these obligations under Rule 13e-3 in this letter.

Background Information

A description of the terms and conditions of the Voluntary Tender Offer, as well as certain background information relating to the Bayer Entities, Schering and the Shares, is set forth in letters of Latham & Watkins filed with the Commission on April 12, 2006 and June 12, 2006 (the “Original No-Action Request Letters”), copies of which are attached hereto for the convenience of the Staff, and in the Offer Document filed as Exhibit (a)(1)(A) to the Schedule TO filed by the Bayer Entities on April 13, 2006, as amended.

Pursuant to, outside of and following the Voluntary Tender Offer completed on July 6, 2006, the Offeror acquired a total of 181,553,299 Shares, representing approximately 95.112% of the Shares (excluding treasury shares) outstanding as of September 8, 2006.

¹ We believe that the relief requested is virtually identical to the relief granted by the Commission in: Offer by BCP Crystal Acquisition GmbH & Co., et al for Celanese AG, File No. 5-57467 (Dec. 16, 2004); and consistent with the relief granted by the Commission in a number of similar transactions: Offer by Sanofi-Synthelabo for Ordinary Shares and ADSs of Aventis (June 10, 2004), Serena Software, Inc. Offer for Shares and ADSs of Merant plc (April 13, 2004), Schlumberger Limited's Offer for Sema plc (March 2, 2001); and Amerada Hess Corporation Offer for Shares and ADSs of LASMO plc (December 13, 2000).

² We believe that the relief requested is virtually identical to the relief granted by the Commission in the Offer by BCP Crystal Acquisition GmbH & Co., et al for Celanese AG, File No. 5-57467 (Dec. 16, 2004).

For the reasons described in the Original No-Action Request Letter dated April 12, 2006 under the caption “*Qualification for Tier II Relief*,” and because the shareholding structure has changed significantly due to the Voluntary Tender Offer, the Offeror has been unable to obtain reliable information as to the number or percentage of the remaining approximately 7.6% of the Shares outstanding that were owned by U.S. holders (as determined in accordance with Rule 14d-1(d) of the Exchange Act).

The Put Rights

Domination Agreement

On July 31, 2006, the Offeror and Schering entered into the Domination Agreement, pursuant to which Schering agreed to submit itself to the direction of, and to transfer its entire profits to, the Offeror, and the Offeror agreed to compensate Schering for any annual losses incurred during the term of the Domination Agreement. The Domination Agreement was approved by the shareholders of Schering at an extraordinary general meeting of Schering shareholders held on September 13, 2006. Bayer, in its capacity as sole shareholder of the Offeror, has also consented to the Domination Agreement. The Domination Agreement will become effective upon its registration in the Commercial Register (*Handelsregister*) of the Local Court (*Amtsgericht*) in Charlottenburg, Berlin, which is where the registered corporate office of Schering is located. Schering submitted the Domination Agreement for registration in the Commercial Register on September 14, 2006. However, in certain circumstances dissenting shareholders have the right to institute proceedings challenging the shareholders’ resolution and, based on prior cases, Bayer expects that such proceedings will be instituted in respect of this resolution. Under German law and practice, this may lead to a delay in registration of as long as one year or even longer. It is thus impossible to determine with certainty when the Domination Agreement will be registered.

Commencing on the Effective Date of the Domination Agreement, the Offeror will be obligated to purchase Shares at any unaffiliated shareholder’s request pursuant to such shareholder’s Put Rights against payment of the Put Price in accordance with applicable German law. According to the terms of the Domination Agreement and in accordance with applicable German law, the obligation of the Offeror to purchase Shares at any unaffiliated shareholder’s request pursuant to the Put Rights is limited to, but must remain available for, a period expiring two months following the Registration Announcement Date. However, if any legal proceedings concerning the adequacy of the amount of the Put Price or of the Guaranteed Dividend (*Spruchverfahren*) are commenced by shareholders of Schering, as is their right under the Stock Corporation Act and the Act on the Court Review of Shareholder Compensation (*Spruchverfahrensgesetz*, the “Review Act”), the obligation of the Offeror to purchase Shares at any unaffiliated shareholder’s request pursuant to the Put Rights must continue to exist until the expiration of two months after the date on which public announcement is made of the resolution of the last such proceeding. This can and usually does take a very long time, in excess of a year in most cases, and some proceedings have taken in excess of five years. The Put Right must remain in existence for all of this time. (These proceedings under the Review Act are separate from those referred to in the preceding paragraph and do not hinder registration of the Domination Agreement in the Commercial Register, but instead lead to a lengthening of the period in which the Put Rights remain available.)

Unaffiliated shareholder protections in connection with the Domination Agreement

As mandated by German law, the Domination Agreement includes provisions designed to protect Schering's unaffiliated shareholders. Section 304(1) of the Stock Corporation Act requires any domination and profit and loss transfer agreement to provide unaffiliated shareholders of the controlled company with compensation in the form of recurring payments (in lieu of dividends) in proportion to their share in the share capital. These payments to unaffiliated shareholders, which we refer to as "Guaranteed Dividends", must continue for so long as the domination and profit and loss transfer agreement remains in effect and the dominating company owns less than 100% of the outstanding shares (excluding treasury shares) of the controlled company. If the Effective Date is in 2006, the first such annual Guaranteed Dividend is expected to become payable to Schering's then unaffiliated shareholders pursuant to the Domination Agreement on the first business day following the annual general meeting of Schering shareholders to be held in mid-2007. In addition, Section 305(1) of the Stock Corporation Act requires any domination and profit and loss transfer agreement to provide, upon effectiveness thereof, for an obligation of the dominating company to purchase, at any unaffiliated shareholder's request, such unaffiliated shareholder's shares in the controlled company for "adequate cash compensation" (*angemessene Barabfindung*), which we refer to herein as the "Put Price." The Put Price is payable promptly upon such purchase. Under Section 305(3) of the Stock Corporation Act, the Put Price provided in a domination and profit and loss transfer agreement must take into consideration the condition of the controlled company at the time of the approval of the domination and profit and loss transfer agreement by the controlled company's shareholder meeting. The Put Price is payable together with an amount of interest, which we refer to as Statutory Interest, accruing thereon from but excluding the Effective Date to the date on which the Put Right is validly exercised, as described above. Any accrued Statutory Interest payable on the Put Price to any shareholder requesting the purchase of its shares by the dominating company is reduced by the amount of any Guaranteed Dividend that has been paid on that shareholder's Shares on or before the date the Put Price is paid.

The parties to a domination and profit and loss transfer agreement typically engage, on a joint basis, an independent expert to assist in determining the adequate amount of the Put Price and the adequate amount of the Guaranteed Dividend to be paid. The independent expert determines these amounts based on a valuation of the company's business and presents its findings in a report to both parties. German law provides that the management board of each party to a domination and profit and loss transfer agreement must produce a report, or the management boards of both parties may produce a joint report, which sets forth detailed information on the domination and profit and loss transfer agreement, including reasons for concluding the agreement and legal and economic explanations regarding the amounts of the Put Price and Guaranteed Dividend payments. In addition, the District Court (*Landgericht*) (in the jurisdiction where the controlled company has its registered seat), upon request by the parties to the domination and profit and loss transfer agreement, chooses and appoints by court order one or more duly qualified auditors (*Vertragsprüfer*) to review the agreement. These court appointed auditors are required to issue a written report stating their findings. This court-mandated audit and the related report are required before a domination and profit and loss transfer agreement can become effective.

KPMG served as the independent expert for the Offeror and Schering in connection with the Domination Agreement. In its report dated July 27, 2006 (the "KPMG Report"), KPMG determined that the adequate cash compensation for the Put Rights would

be €87.63 per Share. Nevertheless the Bayer Entities selected €89.00 as the Put Price in the Domination Agreement. The court-appointed auditor, Warth & Klein GmbH Wirtschaftsprüfungsgesellschaft ("W&K"), confirmed that the Put Price of €89.00 set forth in the Domination Agreement was adequate under applicable German law in a separate report dated August 2, 2006 (the "W&K Report"). If the weighted average price of the Shares for the three months preceding the extraordinary general meeting of Schering's shareholders held on September 13, 2006, as published by the German Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*) on its webpage for September 13, 2006, exceeds €89.00 per Share, the Put Price will be increased accordingly.

The Domination Agreement was executed on July 31, 2006. Also on July 31, 2006, the Management Board of Schering and the Managing Directors of the Offeror, issued their joint report (the "Joint Report") on the Domination Agreement. The Joint Report, along with the KPMG Report and the W&K Report, were made available to shareholders of Schering beginning on August 4, 2006. The Domination Agreement, the Joint Report, the KPMG Report and the W&K Report, among other documents, are included in a pre-commencement communication filed with the Commission by Bayer under cover of Schedule TO on August 7, 2006.

Structure of the Put Rights

The Put Rights are mandated by, subject to, and required and structured to be exercisable in accordance with, Section 305 of the Stock Corporation Act and the applicable rulings and interpretations thereunder. In addition, except to the extent permitted pursuant to the relief requested herein, they are subject to Sections 14(d) and 14(e) of the Exchange Act and the rules and regulations promulgated thereunder. Unlike the Voluntary Tender Offer, the Put Rights are not considered, from a German legal perspective, to constitute a takeover offer or a tender offer for any purposes. They are therefore not subject to regulation under the German Securities Acquisition and Takeover Act (*WpUG*, the "Takeover Code"). In line therewith and in contrast to the Voluntary Tender Offer, the Offeror is not required, for instance, to publish or disseminate an offer document in Germany or comply with other German takeover offer rules in connection with the Put Rights. Under German law and practice, the Offeror would simply notify depositary banks, promptly after the Registration Announcement Date, that the Domination Agreement had become effective, depositary banks would then send a short letter to clients making them aware of the availability of the Put Rights, and a shareholder would notify its depositary bank if it desired to request the Offeror to purchase its Shares against payment of the Put Price. In addition, it is also customary in Germany, although not legally required, for the Offeror to publish an advertisement in German newspapers to inform shareholders about the availability of the Put Rights. If an unaffiliated shareholder wishes to surrender Shares against payment of the Put Price, it could do so at any time from the Effective Date³ until two months after the Registration Announcement Date (the "Exercise Period") (the Exercise Period being subject to extension in the event of legal challenges to the adequacy of the amount of the Put Price or the

³ In practice, the shareholders are first placed in a position to exercise the Put Rights once the Offeror has made the notifications described above, which have the effect of publishing the means to exercise them

Guaranteed Dividend as described above) and receive the applicable Put Price within a few days. During the Exercise Period, the Offeror is required under applicable German law to accept Shares of any unaffiliated shareholder that requests the Offeror to purchase them and make prompt payment of the applicable Put Price.

In order to conduct the Put Rights in compliance with Sections 14(d) and 14(e) of the Exchange Act and the rules and regulations promulgated thereunder (except to the extent permitted pursuant to the relief requested herein) while still complying with the requirements of German law and practice, we intend to structure the Put Rights so that, from a U.S. securities law perspective, it initially runs 20 business days from its commencement on the Registration Announcement Date (the “Initial Offer Period”). Although under German law an unaffiliated shareholder can surrender its Shares and receive the Put Price very quickly, to comply with U.S. tender offer rules, we intend to grant U.S. shareholders who exercise their Put Right with respect to their Shares the right to withdraw during the Initial Offer Period by waiting to accept their Shares and pay the Put Price (plus the Statutory Interest mandated under German law from but excluding the Effective Date) until the expiration of the Initial Offer Period. The Put Rights will be consummated with respect to the U.S. shareholders on that date and those who have exercised their Put Right with respect to their Shares at any time before that date will receive their Put Price (together with the Statutory Interest accrued thereon) promptly thereafter. Following completion of the Initial Offer Period, we intend to commence the Subsequent Offer Period, during which payment of the Put Price (and Statutory Interest accrued thereon) will be made promptly as and when Shares are surrendered, but during which withdrawal rights will no longer be provided. Assuming the exemptive relief requested in this letter is granted, the Subsequent Offer Period will run until the Exercise Period expires under applicable German law.

The Offeror will make payments to the unaffiliated shareholders who surrender their Shares in the same manner and currency as in the Voluntary Tender Offer as described in the Original No-Action Request Letter. If, at any point during the Exercise Period, the Shares become eligible for deregistration under the Exchange Act, we expect that Schering would effect such deregistration. However, for the duration of the Exercise Period, the Bayer Entities would continue to comply with Sections 14(d) and 14(e) of the Exchange Act and the rules and regulations promulgated thereunder (except to the extent permitted pursuant to the relief requested herein), unless and until they request, and are granted, further relief from the Staff of the Commission.

As noted above, the Offeror currently owns more than 95% of the share capital of Schering. This enables it to effect a compulsory acquisition of all remaining Shares held by Unaffiliated Shareholders, or “squeeze-out” (the “Squeeze-out”), pursuant to Sections 327a *et seq.* of the German Stock Corporation Act (*AktG*). In the Squeeze-out, the Shares held by any Unaffiliated Schering Shareholders that continue to hold Shares on the effective date of the Squeeze-Out would be transferred by operation of law to the Offeror in exchange for adequate cash compensation (*Barabfindung*). The cash compensation would be set by a new procedure very similar to that which took place in connection with the Put Rights. The Squeeze-out would be subject to the approval of the holders of a simple majority of the votes cast at a general shareholders’ meeting of Schering, which approval would be assured due to the Offeror’s holding in excess of 95% of the Shares. This resolution would be binding upon all Unaffiliated Schering Shareholders remaining at that time, and no holder could choose thereafter to remain a securityholder of Schering. Following a Squeeze-out, the former remaining Unaffiliated Schering Securityholders would only have a right to receive the

adequate cash compensation, and their Shares would no longer represent an equity interest in Schering, but only such right to such compensation. We note that the transfer of Shares in a Squeeze-out would occur by operation of German law upon registration of such resolution in the Commercial Register, and accordingly would not involve a tender offer. Accordingly, we do not believe that the transfers of Shares in the Squeeze-out would be subject to U.S. tender offer rules.

To the extent the Offeror effects the Squeeze-out at a time at which the Put Rights continue to exist, the Shares of any remaining Unaffiliated Schering Shareholder that has not exercised its Put Rights with respect to those Shares at the time the Squeeze-out is effected would be transferred to the Offeror pursuant to the Squeeze-out, without regard to whether the adequate compensation to be paid to such Schering Shareholder in the Squeeze-out is higher or lower than the Put Price offered pursuant to the Put Rights. The Offeror has already announced, including through its filing of an amendment to its Schedule 13D filed with the Commission on September 12, 2006, that it owns enough Shares to effect a Squeeze-out. However, it is not yet certain when the Offeror will seek to effect the Squeeze-out and therefore whether the Put Rights will still be existing at that time. To enable any Unaffiliated Schering Shareholder remaining at that time to decide whether to exercise the Put Rights or await the Squeeze-out, Bayer and the Offeror have represented to us that, if the Squeeze-out would occur at a time when Put Rights continue to exist, the Offeror will announce, and file with the Commission under cover of Schedule TO, not fewer than ten days prior to the date on which the Squeeze-out will occur, the date on which the Squeeze-out will be effective, and a comparison of the Put Price to the adequate cash compensation to be paid in the Squeeze-out.

Extension of the Subsequent Offer Period

Rule 14d-11 under the Exchange Act allows an offeror to provide a subsequent offering period of three to twenty business days. Applicable German law and the terms of the Domination Agreement require, however, that unaffiliated shareholders be entitled to put their Shares against prompt payment of the Put Price for a period of at least two months following the date that the registration of the Domination Agreement in the Commercial Register is deemed to be publicly announced in accordance with Section 10 of the Commercial Code, subject to extension in the event that dissenting shareholders institute legal proceedings whereby the adequacy of the amount of the Put Price or the Guaranteed Dividend is challenged and then is subject to review by the German courts (*Spruchverfahren*). We are unable to predict how long it might take to resolve any challenges of the amount of the Put Price or the Guaranteed Dividend, but understand that they are quite likely and that their resolution could take years; in some cases, the resolution has taken more than five years. The Put Rights must under German law remain available throughout this time. Once all challenges have been finally resolved, whether by final judicial determination, settlement, withdrawal or otherwise, the Offeror remains obligated to purchase Shares at any unaffiliated shareholder's request pursuant to the Put Rights (at the higher price determined pursuant to the determination or settlement, if applicable; for purposes of this letter "Put Price" includes any such higher price), for two months after the date on which public announcement is made of the resolution of the last of such proceedings. This extension is required under German law so that unaffiliated shareholders can consider for a period of time following final resolution of these proceedings whether to put their shares. We are therefore respectfully requesting that the Staff of the Division of Corporation Finance grant to the Bayer Entities exemptive relief from Rule 14d-11 under the Exchange Act, to allow, in

accordance with German law and practice, the Offeror to provide a subsequent offering period that extends from the twenty-first day following the Registration Announcement Date for so long as the Offeror's obligation to purchase Shares at the request of any unaffiliated shareholder pursuant to the Put Rights exists pursuant to applicable German law. We believe the relief requested herein is virtually identical to the relief granted by the Commission with respect to: the Offer by BCP Crystal Acquisition GmbH & Co., et al for Celanese AG, File No. 5-57467 (Dec. 16, 2004); and consistent with that granted by the Commission in similar situations in the past, such as that granted with respect to: the Offer by Sanofi-Synthelabo for Ordinary Shares and ADSs of Aventis (June 10, 2004); the Offer by Serena Software, Inc. for Shares and ADSs of Merant plc (April 13, 2004); the Offer by Schlumberger Limited for Ordinary Shares of Sema plc (March 2, 2001); and the Offer by Amerada Hess Corporation for Shares and ADSs of LASMO plc (December 13, 2000).

Payment of Statutory Interest on the Put Price

As described above, the Offeror is obligated under German law to pay, in addition to the Put Price per Share determined in the Domination Agreement, Statutory Interest thereon from the day after the Effective Date, but subject to reduction to the extent of any Guaranteed Dividend payment that is paid.

Rule 14d-10(a)(2) provides that no bidder shall make a tender offer unless the consideration paid to any security holder pursuant to the tender offer is the highest consideration paid to any other security holder during such tender offer. The promulgating release (Releases Nos. 33-6653 and 34-23241; corrected in Releases No. 33-6653B and 34-23241B) indicates that the purpose of Rule 14d-10(a)(2) is to eliminate discriminatory treatment among security holders who may desire to tender their shares. The obligation of the Offeror to pay Statutory Interest on the Put Price during the Initial Offer Period and the Subsequent Offer Period, and any reduction thereof as a result of any Guaranteed Dividend payment made by the Offeror, would conflict with the provisions of Rule 14d-10(a)(2) as the consideration paid to unaffiliated shareholders of Schering who put their Shares would depend on when such Put Rights are exercised. We are therefore respectfully requesting that the Staff of the Division of Corporation Finance grant to the Bayer Entities exemptive relief under Rule 14d-10(a)(2) under the Exchange Act to permit the Offeror to pay consideration which will fluctuate during the Initial Offer Period and the Subsequent Offer Period because of the Statutory Interest accrued thereon and any reductions thereof as a result of Guaranteed Dividend payments being made. Because the difference in payments is solely in respect of the interest required to be paid under German law at the statutory rate, we believe that the requested relief is consistent with the purpose of Rule 14d-10(a)(2).

In addition, to the extent that Rule 14e-1(b) under the Exchange Act, which prohibits an offeror from, among other things, increasing or decreasing the consideration offered in a tender offer unless the tender offer remains open for at least 10 U.S. business days from the date that notice of such change is first published or sent or given to security holders, could be deemed applicable by virtue of the change in the Put Price payable during the Initial Offer Period or the Subsequent Offer Period due to the Statutory Interest payment requirements of German law, we are respectfully requesting that the Staff of the Division of Corporation Finance confirm that it will not recommend any enforcement action against any of the Bayer Entities under Rule 14e-1(b) to allow the Offeror to offer consideration which will fluctuate during the Initial Offer Period and the Subsequent Offer Period because of the

Statutory Interest accrued and any reductions thereof as a result of any Guaranteed Dividend payments being made.

Rule 14d-11(f) under the Exchange Act requires that the amount of consideration being offered during the Subsequent Offer Period be the same as that offered during the Initial Offer Period. By virtue of the daily accrual of the Statutory Interest, however, and the potential reduction thereof that will occur if Guaranteed Dividend payments are made, as required by applicable German law, this is not permissible under German law in the context of the Put Rights. We are therefore respectfully requesting that the Staff of the Division of Corporation Finance grant to the Bayer Entities exemptive relief under Rule 14d-11(f) to offer consideration during the Subsequent Offer Period which differs from that offered during the Initial Offer Period solely by virtue of the Statutory Interest accrued and any reductions thereof as a result of any Guaranteed Dividend payments being made.

We believe the relief requested herein with respect to the payment of Statutory Interest on the Put Price is virtually identical to the relief granted by the Commission with respect to the Offer by BCP Crystal Acquisition GmbH & Co., et al for Celanese AG, File No. 5-57467 (Dec. 16, 2004).

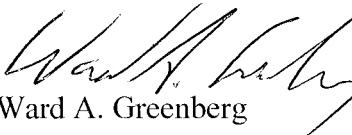
Request for Relief

Based on the foregoing, we respectfully request that each of the Bayer Entities be granted exemptive relief and no action relief from the provisions of Rules 14d-10(a)(2), 14d-11, 14d-11(f) and 14e-1(b) promulgated under the Exchange Act in order to grant and permit exercises of the Put Rights in accordance with mandatory German law.

* * *

If you have any questions or require any further information, please contact the undersigned at +49 69 97103-0. If for any reason you do not concur with any of the views expressed in this letter, we respectfully request an opportunity to confer with you before the issuance of any written response.

Very truly yours,


Ward A. Greenberg