



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

DIVISION OF  
MARKET REGULATION

February 9, 2007

Thomas B. Shropshire, Jr., Esq.  
Linklaters  
One Silk Street  
London EC2Y 8HQ  
England

Re: Tender Offer by Hohenstaufen Zweihundertzweiundachtzigste (282.)  
Vermögensverwaltungs GmbH for REpower Systems AG  
File No. TP 07-40

Dear Mr. Shropshire:

This is in response to your letter dated February 8, 2007. 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 REpower Systems AG ("REpower") Shares otherwise than pursuant to the Offer, particularly in light of the following facts:

- The Offer is required to be conducted in accordance with the German Securities Acquisition and Takeover Act (*Wertpapiererwerbs- und Übernahmegesetz*, "WpÜG");
- REpower, a company organized under the laws of Germany, is a "foreign private issuer," as defined in Rule 3b-4(c) under the Exchange Act;
- Any purchases of REpower Shares by the Prospective Purchasers will be subject to the WpÜG, which among other things requires that the Offer price be increased to match any purchases made outside the Offer at a price per share higher than the Offer price;
- The existence of the Memorandum of Understanding on Exchange of Information between the Commission and the German Bundesaufsichtsamt für den Wertpapierhandel Concerning Consultation and Cooperation in the Administration and Enforcement of Securities Laws, dated October 17, 1997.

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

1. No purchases or arrangements to purchase REpower Shares, otherwise than pursuant to the Offer, shall be made in the United States;
2. The Offer Document shall disclose prominently the possibility of, or the intention to make, purchases of REpower Shares by the Prospective Purchasers during the Offer;
3. The Prospective Purchasers shall disclose in the United States information regarding purchases of REpower Shares to the extent such information is made public in Germany pursuant to the WpÜG;
4. The Prospective Purchasers shall comply with the applicable requirements under the WpÜG and other applicable German laws;
5. The Prospective Purchasers shall provide to the Division of Market Regulation ("Division"), upon request, a daily time-sequenced schedule of all purchases of REpower Shares made by any of the Prospective Purchasers during the Offer, on a transaction-by-transaction basis, including:
  - a. size, broker (if any), time of execution, and price of purchase; and
  - b. if not executed on the Frankfurt Stock Exchange, the exchange, quotation system, or other facility through which the purchase occurred;
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.

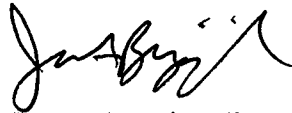
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In addition, we direct your attention to the anti-fraud and anti-manipulation provisions of the federal securities laws, including Sections 10(b) and 14(e) of the Exchange Act and Rule 10b-5 thereunder. The participants in the Offer must comply with these and any other applicable provisions of the federal securities laws. The Division expresses no view with respect to any other questions that the proposed transactions may raise, including, but not limited to, the adequacy of disclosure concerning, and the applicability of any other federal or state laws to, the proposed transactions.

For the Commission, by the Division of Market  
Regulation pursuant to delegated authority,



James A. Brigagliano  
Associate Director  
Division of Market Regulation

Attachment

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## Confidential Treatment Requested

Mr. James A. Brigagliano  
Associate Director  
Office of Trading Practices and Processing  
Division of Market Regulation  
Securities and Exchange Commission  
100 F. Street, N.E.  
Washington, D.C. 20549  
United States of America

February 8, 2007

Our Ref                    TBS/RBR

Dear Mr. Brigagliano,

### **Tender Offer by Hohenstaufen Zweihundertzweiundachtzigste (282.) Vermögensverwaltungs GmbH for REpower Systems AG**

We are writing on a confidential basis on behalf of our clients, Suzlon Energy Limited, a company organized under the laws of the Republic of India, including a wholly-owned subsidiary thereof yet to be designated (together, "**Suzlon**"), and Hohenstaufen Zweihundertzweiundachtzigste (282.) Vermögensverwaltungs GmbH, a limited liability company organized under the laws of the Federal Republic of Germany ("**Hohenstaufen**" and, together with Suzlon, the "**Offerors**"), to respectfully request that the Securities and Exchange Commission (the "**Commission**") issue an order granting an exemption from Rule 14e-5 under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), to the Offerors, allowing them and any person acting on behalf of any of them, to make certain purchases of ordinary shares with no par value (the "**REpower Shares**") of REpower Systems AG, a corporation organized under the laws of the Federal Republic of Germany ("**REpower**"), in connection with a potential unsolicited voluntary cash tender offer (the "**Offer**") by the Offerors for the entire issued and to be issued share capital of REpower (as described more fully below).

The Offerors expect to announce the Offer on or about February 9, 2007. Thereafter the Offer is expected to commence in early March 2007 and will do so for U.S. purposes by publishing the German Offer document (the "**Offer Document**") following approval of the Offer Document by the German Federal Institute for the Supervision of Financial Services (*Bundesanstalt für Finanzdienstleistungsaufsicht*) (the "**BaFin**").

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

Please refer to [www.linklaters.com/regulation](http://www.linklaters.com/regulation) for important information on the regulatory position of the firm.

## Background Information

### **Suzlon**

Suzlon is a foreign private issuer as defined in Rule 3b-4(c) under the Exchange Act. Suzlon has a primary listing on the National Stock Exchange of India and a secondary listing on the Bombay Stock Exchange. Suzlon does not have any class of equity securities registered, or required to be registered, under Section 12 of the Exchange Act or listed on any U.S. national securities exchange or quoted on NASDAQ.

Suzlon is a wind power solutions company headquartered in Pune, India. Suzlon integrates consultancy, design, manufacturing, operation and maintenance services to provide customers with total wind power solutions. Its principle activity is the manufacture of wind turbine generators and components which it does from manufacturing facilities located in India, China, Belgium and the United States. Suzlon has wholly-owned subsidiaries in India and in a number of other locations around the globe, including the United States. Prepared in accordance with Generally Accepted Accounting Principles in India, Suzlon's sales and profit after taxes for the six months ended September 30, 2006 were Rs. 3,156 crore (U.S.\$687.31 million) and Rs. 333 crore (U.S.\$72.52 million), respectively. Suzlon had approximately 8,681 employees as of September 30, 2006.

### **Hohenstaufen**

Hohenstaufen is a limited liability company organized under the laws of the Federal Republic of Germany and a foreign private issuer as defined in Rule 3b-4(c) under the Exchange Act. The issued and outstanding share capital of Hohenstaufen is 75% owned by Suzlon and 25% owned directly and indirectly by Martifer SGPS ("Martifer"), a company organized under the laws of Portugal. MTO SGPS, S.A. and MOTA-ENGIL, SGPS, both companies organized under the laws of Portugal, each hold 50% of the issued and outstanding share capital and voting rights of Martifer. Martifer has a 25.4% shareholding stake in REpower and a representative of Martifer has been appointed to the supervisory board of REpower by shareholder vote. The supervisory board is vested with supervisory authority over the managing board of REpower. Hohenstaufen was formed for the purpose of conducting the Offer and has not conducted any activities other than those incident to its formation and the Offer.

### **REpower**

*The Offerors have not had access to any non-public information of REpower. The information regarding REpower contained in this letter is based solely on publicly available information and has not been independently verified by the Offerors.*

REpower appears to be a foreign private issuer as defined in Rule 3b-4(c) under the Exchange Act and the REpower Shares are not currently registered under Section 12 of the Exchange Act. REpower appears to have a Rule 12g3-2(b) exemption from registration under the Exchange Act as it is included on the Commission's "List of Foreign Issuers That Have Submitted Information Under the Exemption Relating to Certain Foreign Securities" dated June 21, 2005, file number 82-34654. To the best of the Offerors' knowledge, there is neither a sponsored nor unsponsored ADR deposit facility with respect to REpower.

REpower is a wind power company that focuses on the development, production, and installation of multi-megawatt wind turbines. It is headquartered in Germany and has a primary listing of its shares on the Frankfurt Stock Exchange. Through subsidiaries, associates and licensing agreements,

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REpower is present in the European markets of France, Greece, Italy, Portugal, Spain, and the UK, in addition to overseas markets such as Australia, China, India, and Japan. REpower states that it holds interests in seven foreign marketing companies located in Europe and Australia for the sale of its wind turbines and has interests in three associated and stock companies located in Europe. It also states that it has an active joint venture in China and a licensing agreement and planned joint venture in India.

Based on REpower's published unaudited interim financial statements for the nine months ended September 30, 2006, prepared in accordance with International Financial Reporting Standards, REpower's revenues and net earnings for the nine months ended September 30, 2006 were €292.6 million and €1.0 million, respectively. REpower, together with its subsidiaries, employed approximately 740 people as of September 30, 2006.

### ***REpower's Outstanding Share Capital***

In proposing the Offer structure and conducting the Offer on the terms described in this letter, the Offerors are relying on Rule 14d-1(d) under the Exchange Act ("**Rule 14d-1(d)**"), which provides exemptive relief from otherwise applicable rules to persons conducting a tender offer provided that certain conditions are satisfied. In order for the Offerors to qualify for exemptive relief under Rule 14d-1(d) ("**Tier II**"), among other conditions, holders who are resident in the United States must not hold more than 40% of the outstanding REpower Shares.

As of the date hereof, the Offerors have not entered into an agreement with REpower related to the Offer. Accordingly, in determining that the Offer qualifies for the Tier II exemption, the Offerors concluded that less than 40% of the REpower Shares were held by residents of the United States ("**U.S. Holders**") because:

- (1) To the best of the Offerors' knowledge, REpower shares are not listed or traded on any national securities exchange in the United States or on NASDAQ. The aggregate trading volume of the REpower Shares, as reported on the over-the-counter market in the United States in the 12 calendar-month period ending approximately 30 days before the expected date of announcement of the Offer, was significantly less than 40% (near to nil) of the worldwide aggregate trading volume of the REpower Shares over the same period.
- (2) REpower does not file any annual reports with the Commission under the Exchange Act. However, based on information available from the commercial register in Germany as of January 11, 2007, REpower had 8,101,797 REpower Shares issued and outstanding (the "**Issued Share Capital**"). According to the disclosure on REpower's website as at the date of this letter and other public information available at such date, the Offerors believe that there are two shareholders that each hold in excess of 10% of the Issued Share Capital, including Martifer. Excluding REpower Shares held by those shareholders from the calculation, it appears from an analysis of publicly available information that U.S. Holders may not hold less than 10% of the Issued Share Capital, but do hold less than 40% of the Issued Share Capital.
- (3) The Offerors do not know and do not have any other reason to know that U.S. ownership exceeds 40% of the Issued Share Capital.

### **Proposed Offer Structure**

The Offer will be made to the holders of all issued and outstanding REpower Shares and will be structured as a single offer made concurrently in Germany, the United States and other jurisdictions in

which the Offer may be legally extended. The Offer will be subject to, and will be structured to comply with, the German Securities Acquisition and Takeover Act (*Wertpapiererwerbs -und Übernahmegesetz*) (the "**German Takeover Act**") and the applicable rules and regulations thereunder and, except to the extent permitted pursuant to the relief requested herein, Regulation 14E under the Exchange Act. The Offer will not be subject to Section 14(d) of the Exchange Act, or Rule 13e-3 or Regulation 14D thereunder since no class of equity securities of REpower is registered under Section 12 of the Exchange Act.

As noted above, the current expectation is that public announcement of the Offer will be made on or about February 9, 2007. The Offer will be made pursuant to the Offer Document which will comply with the rules and regulations of the German Takeover Act. In compliance with Rule 14(3) of the German Takeover Act, the Offer Document will be published on an Internet website established for the offer (the "**Offer Website**") in the German and English languages and will be made available in hard copy to U.S. Holders in the English language upon the request of such shareholders (which request can be made through the Offer Website or through a toll-free U.S. number). The Offer Document will also be made available to the public in hard copy in the German and English languages upon request through an entity to be specified in a notice published in the electronic Federal Gazette (*elektronischer Bundesanzeiger*) and in a notice published in the U.S. edition of *The Wall Street Journal*. The foregoing procedure for making available the Offer Document to U.S. Holders is customary in such offers in Germany.<sup>1</sup>

The draft Offer Document will be filed with the BaFin within four weeks of announcement. Obtaining approval of the Offer Document by the BaFin would normally take approximately two weeks. Upon approval, the Offerors will publish the Offer Document on the Offer Website. The Offerors will also publish notice of commencement of the Offer in the electronic Federal Gazette (*elektronischer Bundesanzeiger*) and in the U.S. edition of *The Wall Street Journal*. The Offer will commence on the first day on which the Offer Document is publicly available on the Offer Website, which is required to occur promptly after BaFin clearance. It is expected that the Offer will start in early March 2007.

The German Takeover Act provides that the offeror can determine the period of time during which the Offer will remain open to acceptance, though the acceptance period may not be less than four weeks or more than ten weeks after commencement of the Offer. In certain cases, such as a change of the terms of the Offer in the last two weeks of the acceptance period in accordance with Rule 21 of the German Takeover Act or a competing bid under Rule 22 of the German Takeover Act, the acceptance period will be automatically extended. In any event, the Offerors would ensure that the Offer would remain open for an initial period of not less than 20 U.S. business days.

Following the acceptance period, the Offer would be completed for the shares for which the Offer was accepted in the acceptance period. Closing would normally occur between three and seven German banking days after expiration of the acceptance period (assuming satisfaction of conditions precedent set forth in the Offer Document). An institution in Germany would act as the German central settlement agent administering the implementation of the Offer.

During the acceptance period, acceptance levels and the total shareholdings as of that date will be published weekly and, during the last week of the acceptance period, daily pursuant to Rule 23 of the German Takeover Act.

Pursuant to the German Takeover Act, after expiration of the acceptance period, and announcement of the results of the Offer, the Offerors must provide a two-week extended offering period during which

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<sup>1</sup> See, e.g., The Third Supplement to the SEC Manual of Publicly Available Telephone Interpretations, II.D Q.1, and letter regarding the Offer by Deutsche Telekom AG for T-Online International AG (available November 3, 2004).

shareholders may tender their shares for the same consideration offered in the Offer. This subsequent period begins with the formal announcement of the official results of the Offer after the acceptance period. Following this subsequent period, the Offer would be completed for the shares for which the Offer was accepted in the subsequent period. Closing would again normally occur between three and seven German banking days after expiration of the subsequent period (assuming satisfaction of conditions precedent set forth in the Offer Document). The institution in Germany would again act as the German central settlement agent administering the implementation of the Offer. If following the Offer the bidder holds 95% of the share capital entitled to vote at general meetings the Offer can be accepted for an additional period of 3 months from the end of the acceptance period.

### **Statement of Applicable Regulation and Basis for Exemption**

In Germany, purchases outside a tender offer are generally permitted under the German Takeover Act, subject to certain requirements. The Offerors, acting directly or indirectly and through parties acting in concert with them, would be permitted to purchase REpower Shares in the open market or otherwise prior to and during the conduct of, but outside the terms of, the Offer.

Subject to certain exceptions, Rule 14e-5 prohibits a covered person from directly or indirectly purchasing or arranging to purchase any equity securities in the target company or any securities immediately convertible into, exchangeable for or exercisable for equity securities in the target company, except as part of the tender offer. This prohibition applies from the time the offer is publicly announced until it expires. Rule 14e-5 defines a covered person as (i) the offeror and its affiliates, (ii) the offeror's dealer-managers and any of their respective affiliates, (iii) any advisers to the parties described in (i) and (ii) above whose compensation is dependent on the completion of the offer, and (iv) any person acting in concert either directly or indirectly with any of the foregoing in connection with any purchase or arrangement to purchase any subject securities or related securities.

Purchases by the Offerors of REpower Shares outside the Offer would not fall within any of the excepted activities specifically outlined in Rule 14e-5. Accordingly, in the absence of exemptive relief, such purchases would be prohibited from the date the Offer was announced, until the termination or expiration of the Offer.

The German Takeover Act provides protections similar to those provided by Rule 14e-5, making exemptive relief appropriate in the circumstances of the Offer, by requiring the Offerors to make available to all shareholders subject to the tender offer, any more favourable consideration agreed to in connection with any purchases by the Offerors or parties acting in concert with them, and their subsidiaries, during the acceptance period, including any purchases under contractual arrangements. In addition, any purchases by the Offerors or parties acting in concert with them, and their subsidiaries during the acceptance period must be reported to the BaFin and announced publicly immediately following such purchases. Any purchases by the Offerors or parties acting in concert with them, and their subsidiaries prior to the commencement of the Offer must be disclosed in the Offer Document. We are of the opinion that the relief being requested is consistent with the relief granted in a number of prior letters.<sup>2</sup>

The formal Offer Document when made publicly available will contain a statement that, subject to obtaining the relief requested in this letter, the Offerors or parties acting in concert with them, and their

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<sup>2</sup> See Offer by Dritte BV GmbH for Schering Aktiengesellschaft (available April 7, 2006); Offer by Axel Springer AG for ProSiebenSat.1 Media AG (September 12, 2005); Offer by Deutsche Telekom AG for T-Online International AG (available November 3, 2004); Offer by 91 Profi-Start 2004 GmbH for P & I Personal & Informatik Aktiengesellschaft (available June 24, 2004); Offer by DB Sechste Vermögensverwaltungsgesellschaft GmbH for Stinnes AG (available August 29, 2002).



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subsidiaries or their nominees or brokers (acting as agents) may make certain purchases of, or arrangements to purchase, REpower Shares outside of the United States during the period in which the Offer remains open for acceptances, but outside the terms of the Offer. The Offer Document will further state that in accordance with the requirements of Rule 14e-5 and with any exemptive relief that may be granted by the Commission, such purchases, or arrangements to purchase, must comply with applicable German rules, including the German Takeover Act.

Although there are, in our view, 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 Offerors, their advisors, or financial institutions acting on its or their behalf made purchases of REpower Shares outside the United States, we nonetheless apply, on behalf of such persons, for exemptive relief for such purchases from the provisions of Rule 14e-5 pursuant to Rule 14e-5(d), as set forth below. We have been requested by the Offerors to emphasize that this letter does not reflect an admission that Rule 14e-5 would apply to such purchases of REpower Shares outside the United States in the absence of such exemptive relief.

### **Requested Exemptive Relief**

Based on the foregoing, we respectfully request that the Offerors, their advisors, and any broker or other financial institution acting as its or their agent (collectively, the "**Prospective Purchasers**") be granted exemptive relief from the provisions of Rule 14e-5 in order to permit purchases, directly or indirectly, of REpower Shares or any securities that are immediately convertible into, exchangeable for, or exercisable for REpower Shares outside the Offer by any Prospective Purchaser that would otherwise be prohibited by Rule 14e-5, subject to the following conditions:

- (a) no purchases or arrangements to purchase, directly or indirectly, of REpower Shares or any securities that are immediately convertible into, exchangeable for, or exercisable for REpower Shares, otherwise than pursuant to the Offer, will be made in the United States;
- (b) disclosure of the possibility of such purchases by the Prospective Purchasers, otherwise than pursuant to the Offer, being included prominently in the Offer Document;
- (c) the Prospective Purchasers shall disclose in the United States, by means of postings to the English-language pages of the Offer Website, information regarding such purchases to the extent such information is made public in Germany pursuant to German law;
- (d) the Prospective Purchasers shall comply with any applicable rules in Germany, including the German Takeover Act;
- (e) upon request of the Division of Market Regulation (the "**Division**"), the Prospective Purchasers shall disclose to it a daily time-sequenced schedule of all purchases of REpower Shares made by any of them during the Offer, on a transaction-by-transaction basis, including: (i) a description of the size, broker (if any), time of execution and purchase price; and (ii) if not executed on the Frankfurt Stock Exchange, the exchange, quotation system or other facility through which the purchase occurred;
- (f) upon request of the Division, the Prospective Purchasers shall transmit to it the information specified in clauses (e)(i) and (e)(ii) above to the Division at its offices in Washington, D.C. within 30 days of its request;

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- (g) the Prospective Purchasers shall retain all documents and other information required to be maintained pursuant to this exemption for a period of not less than two years from the date of the termination of the Offer;
- (h) representatives of the Prospective Purchasers shall be made available (in person at the offices of the Division in Washington D.C. or by telephone) to respond to enquiries of the Division relating to such records; and
- (i) except as otherwise exempted herein, the Prospective Purchasers shall comply with Rule 14e-5.

In addition, we note the existence of the Memorandum of Understanding on exchange of information between the Commission and the German Bundesaufsichtsamt für den Wertpapierhandel Concerning Consultation and Cooperation in the Administration and Enforcement of Securities Laws, dated October 17, 1997.

Pursuant to 17 C.F.R. 200.81(b), we respectfully request on behalf of the Offerors 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 Commission is advised that all of the information in this letter has been made public. This request for confidential treatment is made on behalf of the Offerors for the reason that certain of the facts set forth in the letter have not been made public.

### Conclusion

We respectfully request that the Commission issue the requested exemptive relief and confirmation as soon as practicable. If you require any further information or have any questions, please contact the undersigned at 011 44 20 7456 3223 or Richard B. Riecker at 011 44 20 7456 4678. For your convenience, we may be contacted via e-mail at [tom.shropshire@linklaters.com](mailto:tom.shropshire@linklaters.com) and [richard.riecker@linklaters.com](mailto:richard.riecker@linklaters.com), respectively.

Yours sincerely,



Thomas B. Shropshire, Jr.