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September 12, 2005

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Axel Springer Aktiengesellschaft Offer for ProSiebenSat.1 Media AG

Ladies and Gentlemen:

We are writing on behalf of our client, Axel Springer Aktiengesellschaft, a German stock corporation (*Aktiengesellschaft*) ("Axel Springer" or the "Offeror"), which intends to commence a cash tender offer (the "Offer") for all of the issued and outstanding ordinary

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shares, with a notional value of €1 per share (the "Ordinary Shares"), and non-voting preference shares, with a notional value of €1 per share (the "Non-Voting Shares" and, together with the Ordinary Shares, the "Shares"), of ProSiebenSat.1 Media AG, a German stock corporation (*Aktiengesellschaft*) ("PSM" or the "Company").

As previously discussed with the members of the Staff of the Securities and Exchange Commission (the "Commission"), we hereby request that the Staff confirm that it will not recommend enforcement action under (i) Rule 14e-1(c) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), if the Offeror pays for, or returns, Shares tendered in the Offer in accordance with German law and practice, (ii) Rule 14e-1(d) under the Exchange Act if the Offeror issues a notice of extension of the initial offer period in accordance with German law and practice, and (iii) Rule 14e-1(b) under the Exchange Act if, in the event of a material change in the terms of the Offer, the Offeror keeps the initial offer period open for a period of two calendar weeks in accordance with German law and practice.

While we understand that the Staff has not previously granted the foregoing relief to a foreign issuer that does not qualify as a "foreign private issuer" as defined in Rule 3b-4(c) under the Exchange Act, we believe that such relief is consistent with the rationale for the relief granted by the Staff in connection with other cross-border tender offers as discussed below.

In addition, we hereby request exemptive relief from Rule 14e-5 under the Exchange Act in order to permit the Offeror to purchase Shares pursuant to the Purchase Agreement (as defined herein) outside of the Offer as described in this letter.

Background

The Company

PSM is one of Germany's largest television broadcasting companies. The Company was formed in 2000 by the merger of two of Germany's leading broadcasters. The Company currently has approximately 2,900 employees in Munich and Berlin. In fiscal year 2004, the Company had revenues of €1.835 billion. The Company's corporate governance structure includes two boards of directors: the Executive Board (*Vorstand*) and the Supervisory Board (*Aufsichtsrat*). The Offeror understands, based on information provided by the Company, that other than an arrangement with EchoStar, pursuant to which EchoStar distributes one of the Company's German language channels to EchoStar's subscribers in the United States, content license arrangements with programming companies in the United States and a two-person news gathering office in Washington D.C., the Company has no assets or operations in the United States.

Although the Company is incorporated in Germany and has most of its assets and operations in Germany, it does not qualify as a "foreign private issuer" as defined in Rule 3b-4(c) under the Exchange Act. Rule 3b-4(c) defines a "foreign private issuer" as any foreign issuer

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other than a foreign government except an issuer meeting the following conditions: (1) more than 50% of the issuer's outstanding voting securities are directly or indirectly held of record by residents of the United States; and (2) any of the following: (i) the majority of the executive officers or directors are United States citizens or residents, (ii) more than 50% of the assets of the issuer are located in the United States, or (iii) the business of the issuer is administered principally in the United States.

Although the record holders of the Ordinary Shares are non-U.S. persons, the beneficial owners of most of the Ordinary Shares comprise a small number of private equity investors (the "Controlling Shareholders") resident in the United States.¹ In addition, although most of the Company's assets are located in Germany and most of the Company's operations are in Germany, and all four members of the Company's Executive Board are not U.S. residents, a majority of the members of the Company's Supervisory Board are U.S. residents elected by the Controlling Shareholders at a shareholders' meeting. The Offeror understands that in accordance with the German Stock Corporation Act (*Aktiengesetz*) the affairs of the Company are managed by the Executive Board, with the Supervisory Board overseeing the actions of the Executive Board.

The Company has no securities registered under Section 12 of the Exchange Act, listed on a U.S. national securities exchange, or quoted on Nasdaq. The Company does not file reports with the Commission pursuant to Section 13(a) or 15(d) of, or furnish information to the Commission pursuant to Rule 12g3-2(b) under, the Exchange Act.

The Company's Share Capital

The Company has two classes of stock: the Ordinary Shares and the Non-Voting Shares. As of the date hereof, there are 109,398,600 Ordinary Shares and 109,398,600 Non-Voting Shares issued and outstanding. The Ordinary Shares are held in registered form and may not be transferred without the Company's approval. The Non-Voting Shares are held in bearer form and are traded on the Frankfurt Stock Exchange and trade over-the-counter on a number of other German stock exchanges. The Non-Voting Shares are held through the Clearstream Banking AG booking system (the "Clearstream System").

The Ordinary Shares are held as follows: (i) 82,155,400 shares (representing 75.1% of the outstanding Ordinary Shares) are held by P7S1 Holding L.P., a limited partnership organized under the laws of the Cayman Islands ("Parent") and (ii) 27,243,200 shares (representing 24.9% of the outstanding Ordinary Shares) are held by Sat.1 Beteiligungs GmbH, a limited liability company organized under the laws of Germany ("Holding"). Parent is owned by

¹ The Offeror understands that the Controlling Shareholders comprise entities controlled by Haim Saban, Hellman & Friedman LLC, Thomas H. Lee Partners L.P., Putnam Investment Holdings LLC, Bain Capital Investors LLC, Providence Equity Partners, Inc., Quadrangle Group LLC and Alpine Equity Partners LP.

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German Media Partners L.P., a limited partnership organized under the laws of the British Virgin Islands ("German Media Partners"). German Media Partners is beneficially owned by the Controlling Shareholders. Holding is owned 51.8% by Parent and 48.2% indirectly by the Offeror.

In addition to Ordinary Shares, Holding owns 27,243,200 Non-Voting Shares (representing 24.9% of the outstanding Non-Voting Shares) and Parent owns 138,343 Non-Voting Shares (representing 0.1% of the outstanding Non-Voting Shares). The remainder of the Non-Voting Shares are held by the public. Based upon the information available to the Offeror, 12.7% of the Non-Voting Shares outstanding (17% if Non-Voting Shares held by Holding are excluded from the calculation) are held by holders resident in the United States. There does not appear to be any holder of Non-Voting Shares (other than Holding) who holds Non-Voting Shares in an aggregate amount greater than or equal to 10% of the Non-Voting Shares. As the Non-Voting Shares are in bearer form, it is not possible to fully ascertain the location of ownership of all of the Non-Voting Shares. Accordingly, the Offeror does not have information with respect to holders of approximately 51% of outstanding Non-Voting Shares.

The Offeror has not performed a "look-through" analysis required for purposes of establishing the availability of the cross-border exemptions under Rule 14d-1(d) under the Exchange Act (the "Tier II Exemption"), because, given the limited information available as to the holders of bearer shares of German companies, it is unlikely to yield comprehensive or complete results. If the Company were a "foreign private issuer", however, based on the currently available information, the Offer might have qualified for the Tier II Exemption.

As discussed above, all of the Ordinary Shares are held by Parent and Holding and, accordingly, the majority of the Ordinary Shares are indirectly beneficially owned by the Controlling Shareholders who are U.S. persons. However, as discussed below, although the Offer will be made for the Ordinary Shares and the Non-Voting Shares, only the holders of the Non-Voting Shares other than Parent and Holding will participate in the Offer.

Based on the above information with respect to the U.S. ownership of Non-Voting Shares and based on prior informal guidance given by the Staff of the Commission with respect to offers subject only to Regulation 14E, if the Company did qualify as a "foreign private issuer," the Tier II Exemption from Rule 14e-1(c) and Rule 14e-1(d) could be available to the Offeror.

The Offeror

The Offeror was founded in 1946 and is one of the leading newspaper and magazine publishers in Europe. Based on circulation, the Offeror is the largest newspaper publisher and second-largest magazine publisher in Germany. In fiscal year 2004, the Offeror had revenues of €2.402 billion.

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The Offeror has no securities registered under Section 12 of the Exchange Act, listed on a U.S. national securities exchange, or quoted on Nasdaq. The Offeror does not file reports with the Commission pursuant to Section 13(a) or 15(d) of, or furnish information to the Commission pursuant to Rule 12g3-2(b) under, the Exchange Act.

Proposed Transaction

On August 5, 2005, Axel Springer announced that it had entered into a stock purchase agreement (the "Purchase Agreement") with Parent, pursuant to which Parent has agreed to sell (1) all of the Ordinary Shares and the Non-Voting Shares that it holds and (2) all of the shares of Holding held by Parent. The Purchase Agreement is unconditional except for the receipt of the required regulatory clearances from the German Federal Cartel Office, the Austrian Cartel Court and the German media control authorities and specified closing deliveries customary in German share purchase agreements.

It is anticipated that the aforementioned sale will occur after the commencement of the Offer but, if the regulatory clearances are obtained prior to the expiration of the offer period, then such sale may occur while the Offer is pending. Immediately upon completion of the aforementioned sale, the Company will be a "foreign private issuer" as defined in Rule 3b-4(c) under the Exchange Act. We note that the Purchase Agreement and similar contractual arrangements are permissible under applicable German law and under the German Securities Acquisition and Takeover Act (*Wertpapiererwerbs -und Übernahmegesetz*) (the "German Takeover Act").

Parent has agreed to deliver at closing the Ordinary Shares and the Non-Voting Shares held by Parent and Parent's shares of Holding to Axel Springer pursuant to the terms and subject to the conditions of the Purchase Agreement. Axel Springer will make the Offer for all of the issued and outstanding Ordinary Shares and Non-Voting Shares to satisfy German legal requirements, but given that there are no Ordinary Shares that are not subject to the Purchase Agreement, only holders of Non-Voting Shares (other than Parent and Holding) will participate in the Offer. After the closing of the Offer, PSM will merge (the "Merger") with Axel Springer, and the holders of Non-Voting Shares who do not tender their shares into the Offer will receive non-voting preference shares of Axel Springer (the "Merger Stock Consideration") in exchange for their Non-Voting Shares. The exchange ratio will be fixed by PSM and Axel Springer after an evaluation by a court appointed auditor and in accordance with German law and practice.²

² As an alternative, the parties are considering a merger of PSM and Axel Springer into a new holding company.

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Offer

Structure

Due to German legal requirements, the Offer will be made to the holders of all issued and outstanding Ordinary Shares and Non-Voting Shares, although only the holders of the Non-Voting Shares other than Parent and Holding will participate in the Offer. The Offer will be subject to, and will be structured to comply with, 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 Regulation 14D thereunder since no class of securities of the Company is registered under Section 12 of the Exchange Act.

The Offer 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 initial offer period is expected to remain open for approximately four weeks (or 20 U.S. business days, if longer) and will be followed by a two-week extended offer period. The tendering shareholders will have withdrawal rights during the initial offer period and the extended offer period and, if all conditions to the Offer have not been satisfied prior to the expiration of the extended offer period, tendering shareholders will also have withdrawal rights until such time as all such conditions have been satisfied. At such time, the Offeror will publicly announce the satisfaction of all conditions to the Offer by announcement made pursuant to Section 15 of the German Securities Trading Act (*Wertpapierhandelsgesetz*) and by press release, whereupon withdrawal rights will terminate. As discussed below, payment with respect to the tendered shares will be made within three to seven banking days after the satisfaction of all conditions.

There will be no condition with respect to the minimum number of Non-Voting Shares that need to be tendered into the Offer. The Offer will be subject to a condition that the required regulatory clearances from the German Federal Cartel Office, the Austrian Cartel Court and the German media control authorities are obtained. The only conditions that will be outstanding at the time of the expiration of the offer period are the required regulatory conditions. The Offeror anticipates that it could take approximately four to six months from the time of completion of the relevant filings for such clearances to be obtained and believes that such clearances will not be obtained prior to the expiration of the Offer. The Offeror will announce material developments with respect to the process of obtaining regulatory clearances as required by German law and will issue a press release with respect thereto in the U.S.

Offer Documents; Commencement

The Offer documents that will be provided or made available to the holders of the Non-Voting Shares will be prepared in accordance with the requirements of both the German Takeover Act and Section 14(e) of the Exchange Act and Regulation 14E thereunder, and will be available in either the German language (the "German Offer Documents") or as an English

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translation of the German Offer Documents (the "U.S. Offer Documents" and, together with the German Offer Documents, the "Offer Documents"), based on shareholders' requests. The Offer Documents will contain a summary of the material terms of the Purchase Agreement, including quantity, price and parties.

Following the approval by the German Federal Institute for the Supervision of Financial Services (*Bundesanstalt für Finanzdienstleistungsaufsicht*) ("BaFin") to publish the Offer Documents, the Offeror will publish a notice (*Hinweisbekanntmachung*) (the "Initial Announcement") announcing the commencement of the Offer in a German newspaper of general circulation, and in the U.S. national edition of The Wall Street Journal.

Under German law, an offer commences on the first day on which both the Offer Documents and the Initial Announcement are publicly available. The Offer will be communicated by means of the Offer Documents, which will be published on the website <http://www.axelspringer.de> in the German language and in an English language translation. The U.S. Offer Document will be mailed to those holders of Non-Voting Shares resident in the United States for whom the Offeror has information. The U.S. Offer Document will also be made available to U.S. holders in the English language upon the request of such holders (which request can be made through the website or by telephone or facsimile). The U.S. Offer Document will prominently disclose the delay in obtaining regulatory clearances and in payment following the expiration of the Offer.

Acceptance

Securities of listed German companies are frequently, as the Non-Voting Shares are in this case, uncertificated and held through the Clearstream System. Accordingly, once the Offer has commenced in Germany, the Company's shareholders will accept the Offer by delivering a declaration of acceptance to the custodian credit institution, bank, brokerage or financial services institution (a "Custodian Institution") through which they hold their Non-Voting Shares. The Custodian Institutions through which the Non-Voting Shares for which acceptances of the Offer have been received will effect a book-entry transfer in order to hold the tendered Non-Voting Shares under a separate designated German Securities Identification Number for tendered Non-Voting Shares within the Clearstream System until the settlement of the Offer.

"As Tendered" Trading Market

It is common market practice in German offers for tendered shares to trade on an "as tendered" basis on the Frankfurt Stock Exchange. Non-Voting Shares tendered during the initial offer period will be eligible for trading on an "as tendered" basis from the second trading day following commencement of the Offer until (i) the second trading day prior to the expiration of the initial offer period if all conditions to the offer have been satisfied or, if permissible, waived during the initial offer period, or (ii) the second trading day following the satisfaction of

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all conditions to the Offer if such conditions have not been satisfied prior to the expiration of the initial offer period. Non-Voting Shares tendered during the extended offer period will not be eligible for trading on an “as tendered” basis during the extended offer period but will be incorporated into the list of, and will trade with, Non-Voting Shares tendered during the initial offer period no later than five trading days after the expiration of the extended offer period. We understand that trading liquidity in tendered shares is difficult to predict and may depend on a number of factors, including the level of acceptances and the market’s assessment of the likelihood whether the offer will ultimately close and the timing of such closing.

Publication of Results

The German Takeover Act requires the announcement of exact and final results of an offer following the expiration of the initial offer period. Under German practice, this determination cannot be made until the second or third German banking day following the expiration of the initial offer period as shares may be traded and tendered on the last day of the initial offer period, and the book-entry transfer of such shares can only be effected within two or three banking days. While the same gap between tender and settlement occurs in the U.S. markets, it is addressed by the use of notices of guaranteed delivery, a procedure not used in the German markets. The German Takeover Act provides that the Offeror must then prepare and publish the final, official results of the tender offer in a qualifying newspaper, which takes approximately another two German banking days, depending on the applicable newspaper's publication deadlines.

Financing Confirmation

The German Takeover Act requires with respect to cash tender offers that a confirmation of available financing be filed with the Offer Documents. This confirmation of financing has to be issued by an independent securities services company (*Wertpapierdienstleistungsunternehmen*), typically a credit institution, which has to confirm in writing that the Offeror has taken the necessary steps to ensure that the amount of cash required to pay the offer consideration at closing of the Offer will be available.

Settlement

Payment of the purchase price to the Custodian Institution is to take place in exchange for (*Zug um Zug gegen*) the transfer of the tendered Non-Voting Shares into the deposit account of a designated German bank at the Clearstream System for transfer to the Offeror. The designated German bank will transfer the purchase price to the Custodian Institution promptly after the tendered Non-Voting Shares have been placed at its disposal, but no earlier than three banking days and no later than seven banking days in Frankfurt-am-Main following expiration of the Offer and satisfaction of the conditions precedent.

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Credit of the purchase price at the Custodian Institution will constitute fulfilment by the bidder of its obligation for payment of the purchase price. The Custodian Institution will be responsible for crediting the purchase price to each shareholder.

Extended Offer Period

The German Takeover Act requires that, following a successful offer, the Offeror must provide a two-week extended offer period during which shareholders may tender their shares for the same consideration offered in the initial offer period. This may begin only after the Offeror publishes the final, official results of the Offer. The extended offer period therefore typically begins the day after the fourth or fifth German banking day following the expiration of the initial offer period.

Extension to the Offer Upon Certain Changes

Under German law, a material change to the terms of the Offer (increase of the offer consideration, offer of additional consideration, reduction of the minimum acceptance condition, and waiver of conditions to the offer) occurring during the last two weeks of the initial offer period would require that the initial offer period remain open for an additional two calendar weeks from the end of the initial offer period. The applicable German law requires an extension of exactly two weeks. If such material change occurs and the initial offer period is extended, commencement of the extended offer period will be delayed accordingly.

Requested Relief

Rule 14e-1(c)

Rule 14e-1(c) under the Exchange Act prohibits a bidder from failing to pay the consideration offered or to return the securities deposited by or on behalf of security holders promptly after the termination or withdrawal of an offer.

As noted above, the Offer will be subject to a condition that the required regulatory clearances from the German Federal Cartel Office, the Austrian Cartel Court and the German media control authorities are obtained. The only conditions that will be outstanding at the time of the expiration of the offer period are the required regulatory conditions.

The initial offer period is expected to remain open for approximately four weeks (20 U.S. business days, if longer) and the extended offer period for a further two weeks. The Offeror anticipates that it could take approximately four to six months (from the time of completion of filings) for clearances from the regulatory authorities to be obtained. In accordance with German law, payment for the Non-Voting Shares tendered in the Offer will be made promptly, but no earlier than three banking days and no later than seven banking days, following expiration of the offer period and satisfaction of the conditions precedent to the Offer.

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If such conditions precedent are not satisfied and the Offer is terminated without acceptance for payment by the Offeror of any Shares, all tendered Shares will be returned within three banking days.

As noted above, the shareholders who tender their Non-Voting Shares during the initial offer period will be able to trade such shares on an “as tendered” basis on the Frankfurt Stock Exchange until the settlement of the Offer and, accordingly, could have liquidity with respect to their tendered Non-Voting Shares. Non-Voting Shares tendered during the extended offer period will be eligible to trade on an “as tendered” basis no later than five trading days after expiration of the extended offer period. In addition, the shareholders who tender their Non-Voting Shares in the Offer will have withdrawal rights during the Offer and, if all conditions to the Offer have not been satisfied prior to the expiration of the Offer, tendering shareholders will also have withdrawal rights until such time as all such conditions have been satisfied. As stated above, the only conditions that will be outstanding at the time of the expiration of the offer period are the required regulatory conditions.

In light of the foregoing, we do not believe that payment for, or return of, the Shares tendered in the Offer in the manner described above as required by German law constitute a fraudulent, deceptive or manipulative act or practice. If the Tier II Exemption was available, payment made in accordance with German law and practice would be deemed to satisfy the requirements of Rule 14e-1(c). In the proposed Offer, payment would be made in accordance with the law and practice of Germany, the home jurisdiction of PSM. However, as discussed above, the Tier II Exemption is not available as PSM is not a foreign private issuer.

While we understand that the Staff has not previously granted the requested relief to a foreign issuer that does not qualify as a “foreign private issuer” as defined in Rule 3b-4(c) under the Exchange Act, we believe that such relief is consistent with the rationale for the relief granted by the Staff in connection with other cross-border tender offers.

Prior to the adoption of the Tier II Exemption, the Commission confirmed in a number of transactions that payment for, or return of, tendered securities in accordance with the law and practice of the subject company’s home jurisdiction would satisfy the requirements of Rule 14e-1(c). See *Exchange Offer by Rhône-Poulenc S.A. for Ordinary Shares and ADSs of Hoechst AG*, File No. TP 99-205 (October 7, 1999); *Vodafone Airtouch Plc Offer for Mannesmann Aktiengesellschaft*, File No. TP 00-29 (December 22, 1999); *Proposed Exchange Offer by Crown Cork & Seal Company, Inc. for CarnaudMetalbox*, File No. TP 95-301 (December 20, 1995); and *Re Pechiney Privatisation* (December 6, 1995).

Subsequent to the adoption of the Tier II Exemption, the Commission has also provided relief from the requirements of Rule 14e-1(c) with respect to a number of transactions that did not satisfy the requirements of the Tier II Exemption. See *Offer by Alcan, Inc. for Common Shares, ADSs, Bonus Allocation Rights and OCEANEs of Pechiney*, File No. 5-52225 (October 7, 2003); *Serano S.A. Offer for All Outstanding Ordinary Shares, ADSs OCEANEs and*

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Warrants of Genset, File No. TP 02-95 (September 12, 2002); and *Proposed Exchange Offer by Technip, S.A. for all of the outstanding ordinary shares and American Depositary Shares of Coflexip S.A.* (August 20, 2001).

The rationale for the adoption of the Tier II Exemption was to facilitate cross-border transactions and particularly to minimize conflicts with foreign regulatory schemes. Although the relief granted in the past has been primarily with respect to offers involving foreign private issuers where the Tier II Exemption was not available because the U.S. ownership of the subject securities exceeded 40%, we believe that the relief from Rule 14e-1(c) requested with respect to the Offer is consistent with the relief granted in the past in that, although the Company does not qualify as a foreign private issuer, the U.S. interest in the Offer is not greater than in the offers where the Tier II Exemption was not available because of a large U.S. ownership of the subject securities. In that respect, given the direct conflict between the requirements of Rule 14e-1(c) and the German laws and regulations applicable to the Offer, we believe that the requested relief is consistent with the rationale for the adoption of the Tier II Exemption and the policy behind the adoption of the Commission's release "Cross-Border Tender and Exchange Offers, Business Combinations and Rights Offerings" (Release Nos. 33-7759, 34-42054, 39-2378; International Series Release No. 1208).

On behalf of the Offeror, we hereby request that the Staff confirm that it will not recommend enforcement action under Rule 14e-1(c) under the Exchange Act if the Offeror pays for, or returns, Shares tendered in the Offer in accordance with German law and practice notwithstanding that the Tier II Exemption is not available.

Rule 14e-1(d)

Rule 14e-1(d) under the Exchange Act prohibits a bidder from extending the length of a tender offer without issuing a notice of such extension by press release or other public announcement, which notice has to include disclosure of the approximate number of securities deposited to date and has to be issued no later than the earlier of (i) 9:00 a.m. Eastern time on the next business day after the scheduled expiration date of the offer or (ii), if the class of securities which is the subject of the tender offer is registered on one or more national securities exchanges, the first opening of any one of such exchanges on the next business day after the scheduled expiration date of the offer.

At the time of the expiration of the initial offer period, the Offeror will not be in a position to determine the approximate number of securities deposited in the Offer. As noted above, this determination cannot be made until the second or third German banking day following the expiration of the initial offer period as shares may be traded and tendered on the last day of the initial offer period, and the book-entry transfer of such shares into the appropriate securities identification number for tendered shares within the Clearstream System can only be effected within two or three banking days. While the same gap between tender and settlement occurs in the U.S. markets, it is addressed by the use of notices of guaranteed delivery, a

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procedure not used in the German markets. The German Takeover Act also provides that the Offeror must prepare and publish the final, official results of the tender offer in a qualifying newspaper, which takes approximately another two German banking days, depending on the applicable newspaper's publication deadlines.

In light of the foregoing, we do not believe that such delay in announcing the results of the Offer in connection with an extension of the initial offer period as required by German law constitutes a fraudulent, deceptive or manipulative act or practice. If the Tier II Exemption was available, notice of extensions made in accordance with German law and practice would be deemed to satisfy the requirements of Rule 14e-1(d). In the proposed Offer, notice of extension would be made in accordance with the law and practice of Germany, the home jurisdiction of PSM. However, as discussed above, the Tier II Exemption is not available as PSM is not a foreign private issuer.

While we understand that the Staff has not previously granted the requested relief to a foreign issuer that does not qualify as a "foreign private issuer" as defined in Rule 3b-4(c) under the Exchange Act, we believe that such relief is consistent with the rationale for the relief granted by the Staff in connection with other cross-border tender offers.

Prior to the adoption of the Tier II Exemption, the Commission provided relief from the notice requirements of Rule 14e-1(d) and confirmed that an announcement of amendment and extensions to an offer in accordance with the law and practice of the subject company's home jurisdiction would satisfy the requirements of Rule 14e-1(d). See *Vodafone Airtouch Plc Offer for Mannesmann Aktiengesellschaft*, File No. TP 00-29 (December 22, 1999); *Proposed Exchange Offer by Crown Cork & Seal Company, Inc. for CarnaudMetalbox*, File No. TP 95-301 (December 20, 1995).

Subsequent to the adoption of the Tier II Exemption, the Commission has also provided relief from the requirements of Rule 14e-1(d) in a number of transactions that did not satisfy the requirements of the Tier II Exemption. See *Offer by Alcan, Inc. for Common Shares, ADSs, Bonus Allocation Rights and OCEANEs of Pechiney*, File No. 5-52225 (October 7, 2003); *Serano S.A. Offer for All Outstanding Ordinary Shares, ADSs OCEANEs and Warrants of Genset*, File No. TP 02-95 (September 12, 2002); and *Proposed Exchange Offer by Technip, S.A. for all of the outstanding ordinary shares and American Depositary Shares of Coflexip S.A.* (August 20, 2001).

The rationale for the adoption of the Tier II Exemption was to facilitate cross-border transactions and particularly to minimize conflicts with foreign regulatory schemes. Although the relief granted in the past has been primarily with respect to offers involving foreign private issuers where the Tier II Exemption was not available because the U.S. ownership of the subject securities exceeded 40%, we believe that the relief from Rule 14e-1(d) requested with respect to the Offer is consistent with the relief granted in the past in that, although the Company does not qualify as a foreign private issuer, the U.S. interest in the Offer is not greater than in the

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offers where the Tier II Exemption was not available because of a large U.S. ownership of the subject securities. In that respect, given the direct conflict between the requirements of Rule 14e-1(d) and the German laws and regulations applicable to the Offer, we believe that the requested relief is consistent with the rationale for the adoption of the Tier II Exemption and the policy behind the adoption of the Commission's release "Cross-Border Tender and Exchange Offers, Business Combinations and Rights Offerings" (Release Nos. 33-7759, 34-42054, 39-2378; International Series Release No. 1208).

On behalf of the Offeror, we hereby request that the Staff confirm that it will not recommend enforcement action under Rule 14e-1(d) under the Exchange Act if the Offeror extends the initial offer period in accordance with German law and practice notwithstanding that the Tier II Exemption is not available.

Rule 14e-1(b)

Rule 14e-1(b) under the Exchange Act prohibits a bidder from increasing or decreasing the percentage of the class of securities being sought or the consideration offered or the dealer's soliciting fee to be given in a tender offer unless the tender offer remains open for at least ten U.S. business days from the date that notice of such change is first published or sent or given to security holders. Rule 14d-4(d)(2)(ii) under the Exchange Act requires that, in the context of a registered offer, in the event an offeror changes the offer price or makes a similarly significant change to the terms of the offer, the offeror must extend the tender offer by ten U.S. business days and disseminate the material change to the target shareholders. In Release No. 33-7760, the Commission stated that it believed these time periods represent general guidelines that should be applied uniformly to all tender offers.

As discussed above, a similar material change occurring during the last two weeks of the initial offer period would require that the offer period remain open for an additional two calendar weeks. In the event that such a change were to occur during the last few days of the initial offer period, and the resulting two-week extension occurred over a period that included U.S. federal holidays, Rule 14e-1(b) and compliance with the Commission's position regarding the applicability of Rule 14d-4(d)(2)(ii) would require a longer extension than that permitted by German law.

The Commission has granted relief from the requirements of Rule 14e-1(b) under similar circumstances. See *Offer by BCP Crystal Acquisition GmbH & Co, et al for Celanese AG*, File No. 5-57467 (February 3, 2004).

On behalf of the Offeror, we hereby request that the Staff confirm that it will not recommend enforcement action under Rule 14e-1(b) under the Exchange Act if in such circumstances the Offeror keeps the initial offer period open for a period of two calendar weeks in accordance with German law and practice.

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Rule 14e-5

Under the German Takeover Act, the Offeror is permitted to purchase Shares pursuant to contractual arrangements (i.e., the purchase of Shares contemplated by the Purchase Agreement) or otherwise prior to and during the pendency, but outside, of the Offer, subject to limitations.

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 the offer is publicly announced until the offer 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. Purchase of Shares by the Offeror pursuant to the Purchase Agreement may not fall within any of the excepted activities specifically outlined in Rule 14e-5, particularly the exception to Rule 14e-5 in clause (b)(7) thereof since there were conditions outstanding under the Purchase Agreement at the time of public announcement of the Offer.

We believe that the purchase of the Shares contemplated by the Purchase Agreement does not constitute a fraudulent, manipulative or deceptive act or practice intended to be prohibited by Rule 14e-5 and is consistent with the rationale for the exception to Rule 14e-5 contained in Rule 14e-5(b)(7). If the exception set forth in Rule 14e-5(b)(7) is not available, however, then such purchase, although permitted and regulated by the German Takeover Act, may be prohibited by Rule 14e-5.

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 Offeror to make available to all holders of the securities subject to the tender offer, any more favourable terms, including price terms, agreed to in connection with any purchases by the Offeror or any of its affiliates during the offer period, including any purchases under the Purchase Agreement. Under § 31 para. 4 of the German Takeover Act, the Offeror would be obligated to increase the Offer price to the level of any higher purchase price outside the Offer. In addition, pursuant to § 23 para. 2 of the German Takeover Act, any purchases by the Offeror during the offer period must be reported to BaFin and announced publicly immediately following such purchases. Any purchases of the Offeror prior to the commencement of the offer period must be disclosed in the German Offer Document.

Based on the foregoing, we request relief from Rule 14e-5 under the Exchange Act in order to permit the Offeror to purchase Shares pursuant to the Purchase Agreement outside of the Offer. The foregoing request for exemptive relief will be subject to the following conditions:

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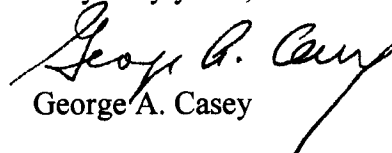
- (a) No purchases or arrangements to purchase Shares, otherwise than pursuant to the Purchase Agreement or the Offer, will be made in the United States;
- (b) Disclosure of the possibility of such purchases pursuant to the Purchase Agreement will be included prominently in the Offer Documents;
- (c) The Offeror shall disclose in the United States by delivering a press release to an electronic media organization that publicly distributes stock market information, to the extent such information is made public in Germany pursuant to the German Takeover Act, information regarding the purchase of Shares pursuant to the Purchase Agreement, including the date of such purchase, the number of Shares purchased, and the purchase price for such purchase;
- (d) Upon request of the Division of Market Regulation, the Offeror shall transmit the information specified in (c) above to the Division of Market Regulation at its offices in Washington, D.C. within 30 days of its request;
- (e) The Offeror shall comply with the applicable requirements under the German Takeover Act and other applicable German laws;
- (f) The Offeror 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;
- (g) Representatives of the Offeror 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
- (h) Except as otherwise exempted herein, the Offeror shall comply with Rule 14e-5.

We believe the relief requested herein under Rule 14e-5 is consistent with that granted by the Commission in *Offer by 91 Profi-Start 2004 GmbH for P & I Personal & Informatik Aktiengesellschaft*, File No. TP 04-63 (June 24, 2004).

* * *

If you require any further information, please contact the undersigned at 212-848-8787 or George Karafotias at 44-207-655-5576.

Very truly yours,


George A. Casey