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November 20, 2006

U.S. Securities and Exchange Commission  
100 F Street NE  
Washington D.C. 20549

Attention: James Brigagliano, Acting Associate Director  
Office of Trading Practices and Processing  
Division of Market Regulation

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

Mara L. Ransom, Special Counsel  
Office of Mergers and Acquisitions  
Division of Corporation Finance

Re: The Nasdaq Stock Market, Inc.

Dear Messrs. Brigagliano and Breheny and Ms. Ransom:

We are writing on behalf of our client, The Nasdaq Stock Market, Inc., a Delaware corporation (the "Company"), which will make a cash tender offer (the "Ordinary Share Offer") for all the outstanding ordinary shares (the "Ordinary Shares") of London Stock Exchange Group plc, a public limited company incorporated under the laws of England and Wales ("LSE"). We are also writing this letter on behalf of Dresdner Kleinwort Securities Limited and its affiliates (the "Broker"), who has been retained by the Company to act as a broker in relation to the Offers (as defined below). In the United Kingdom, the role of the "broker" is to provide equity market related advice, and effect transactions in the market on behalf of the offeror.

Greenhill & Co. International LLP (the "Financial Advisor") is acting as the Company's financial advisor in relation to the Offers, including for purposes of the Takeover Code (as defined below). The Broker's role is contrasted with the role of the Financial Advisor, which has responsibility for providing strategic advice in relation to the Offers. A financial advisor has a series of specified obligations under the Takeover Code, including in particular, responsibility to

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ensure so far as it is reasonably able that the bidder and its directors are aware of their responsibilities under the Takeover Code and will comply with them, to confirm from time to time to the Takeover Panel that no material new information is made available to target shareholders selectively, to ensure that the bidder is able to implement the offer and, in the case of a cash offer, to confirm that resources are available to the bidder sufficient to satisfy the offer. Relief is not being requested hereunder by or on behalf of the Financial Advisor.

We note that the Company will separately make a cash tender offer (the "B Share Offer" and, collectively with the Ordinary Share Offer, the "Offers") for all the outstanding B shares of LSE (the "B Shares" and, collectively with the Ordinary Shares, the "Shares"). The Offers would be structured as a single offer by Nightingale Acquisition Limited ("NAL"), a wholly-owned subsidiary of the Company, for the Ordinary Shares and a single offer by NAL for the B Shares made concurrently in the United Kingdom, the United States and certain other jurisdictions where the Offers may be legally extended. The Company expects to formally announce the Offers in mid-November 2006 and currently anticipates commencing the Offers shortly thereafter.

In this letter, we respectfully request, on behalf of the Company, its Broker and their respective affiliates, that the U.S. Securities and Exchange Commission (the "Commission") grant exemptive relief from Rule 14e-5 under the Securities Exchange Act of 1934 (the "Exchange Act") to allow the Company and any person acting on its behalf to make arrangements to purchase and engage in purchases of Ordinary Shares, following public announcement of the Offers. In addition, we are herein requesting that the Commission confirm that it will not take enforcement action against the Company under Rule 14e-1(c) under the Exchange Act, if the Company pays for and returns tendered Shares in accordance with the Takeover Code.

## **Background**

### ***The Nasdaq Stock Market, Inc.***

The Company is headquartered in New York, New York and is a leading provider of securities, trading and information products and services. The Company's common stock trades on The Nasdaq Stock Market and is registered under Section 12 of the Exchange Act. The Company files reports pursuant to Section 13(a) of the Exchange Act.

### ***London Stock Exchange Group plc***

Given the unsolicited nature of the Offers, the Company has not obtained any of the following information from LSE and, as a result, all of the following information is based upon publicly available information that has not been independently verified by the Company or the Broker.

LSE is one of the world's leading equity exchanges and its principal business is providing a market for the issuing and trading of securities by assisting companies to raise capital through the issue of securities; providing platforms for investors and intermediaries to trade these and other financial investments; and collecting and distributing market information.

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LSE is headquartered in London, England and is a "foreign private issuer" as defined in Rule 3b-4(c) under the Exchange Act and has no class of securities registered under Section 12 of the Exchange Act. LSE's Ordinary Shares are admitted to the Official List of the United Kingdom Listing Authority ("UKLA") and trade on the London Stock Exchange (the "Exchange"), which is the principal trading market for the Ordinary Shares. LSE's Ordinary Shares are not listed on any stock exchange in the United States. Furthermore, LSE does not have a sponsored program in place for American Depositary Receipts evidencing Ordinary Shares.

Based on an analysis of publicly available information (including LSE's most recent Annual Report), the Company understands that (i) as of August 21, 2006, LSE had approximately 213.6 million Ordinary Shares issued and outstanding and approximately 8.2 million B Shares issued and outstanding; (ii) NAL is the single largest holder of the Ordinary Shares with approximately 25.4% issued and outstanding Ordinary Shares and does not own any B Shares; (iii) no other person holds 10% or more of the Ordinary Shares; (iv) according to Citywatch, a publicly available database, as of October 23, 2006, U.S. holders own approximately 7.2% of the outstanding Ordinary Shares, although the Company understands that certain hedge funds may have interests in Ordinary Shares that are not disclosed. As calculated in accordance with Instruction 2 to Rules 14d-1(c) and (d) of the Exchange Act, U.S. holders own approximately 9.6% of the outstanding Ordinary Shares. Based on such amounts and the closing price of the Ordinary Shares on the London Stock Exchange on November 17, 2006 of 1,218 pence, LSE's market capitalization is approximately £2.6 billion. There is no publicly available information regarding the ownership of the B Shares. However, based on the non-equity nature of the B Shares and the UK tax advantages that the B Shares provide to UK holders, the Company expects that the B Shares are primarily held by UK holders.

Based on the foregoing and calculated in accordance with Instruction 2 to Rules 14d-1(c) and (d) of the Exchange Act, the Company determined that U.S. persons own (i) less than 40% of the Ordinary Shares and (ii) less than 40% of the B Shares. While the Offers are not subject to Section 14(d) of the Exchange Act or Regulation 14D thereunder since LSE does not have any class of securities registered under Section 12 of the Exchange Act, as a result of the foregoing ownership levels, the Company believes that the Offers would be considered Tier II tender offers within the meaning of Rule 14d-1 under the Exchange Act and, as a result, seeks certain relief herein.

### ***Nightingale Acquisition Limited***

NAL is a wholly-owned subsidiary of the Company incorporated under the laws of England and Wales for the principal purpose of acquiring LSE. NAL is not listed on any stock exchange, and it has not entered into any obligations other than in connection with its ownership of Ordinary Shares, the Offers and the financing thereof. NAL currently owns approximately 25.4% of the outstanding Ordinary Shares of LSE.

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### ***Dresdner Kleinwort Securities Limited***

Dresdner Kleinwort is the investment bank of Dresdner Bank AG and a member of Allianz. Headquartered in London and Frankfurt, with an international network of offices, Dresdner Kleinwort provides a wide range of investment bank products and services to European and international clients through its Global Banking and Capital Markets business lines.

### **Proposed Offer Structure**

Each of the Offers would be structured as a single offer by NAL made concurrently in the United Kingdom, the United States and certain other jurisdictions where the Offers may be legally extended. The Company would offer to purchase all the Ordinary Shares for 1,243 pence per Ordinary Share and all of the B Shares for 200 pence per B Share (plus accrued interest). U.S. holders of Shares would be entitled to participate in the Offers on terms at least as favorable as those offered any other holder of the same class of securities that is the subject of the Offers.

The Broker may engage in principal purchases in accordance with its normal practices and procedures and the applicable provisions of the City Code on Takeovers and Mergers (the "Takeover Code") of the United Kingdom. These activities, if conducted, should be conducted in accordance with Rule 14e-5(b)(9) and no exemptive relief with respect thereto is being requested hereunder.

The Offers will be structured to comply with (i) the rules and regulations of the UKLA and the Exchange, (ii) the Takeover Code and (iii) Section 14(e) of the Exchange Act (including Regulation 14E promulgated thereunder). The Offers are not subject to Section 14(d) of the Exchange Act or Regulation 14D thereunder since LSE does not have any class of securities registered under Section 12 of the Exchange Act. The offer document used in connection with the Offers (the "Offer Document") will be prepared in compliance with the applicable rules and regulations of the UKLA and the Exchange and with the Takeover Code and, except as otherwise requested herein, the Exchange Act.

Each holder of Shares who resides in the United States would receive an Offer Document containing a statement that, subject to obtaining the relief requested in this letter, the Company or its nominees or brokers (acting as agents) may make certain purchases of, or arrangements to purchase, Ordinary Shares outside the United States during the period in which the Ordinary Share Offer remains open for acceptance. The Offer Document would 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 UK rules, including the Takeover Code, the rules of the UKLA and the rules of the Exchange. Any information about such purchases would be disclosed in the United States by way of an announcement by or on behalf of the Company.

The Offer Document would be mailed to all holders of Shares in the United Kingdom, the United States and certain other jurisdictions where the Offers may be legally extended within 28 calendar days of the date the Offers are announced, as required by Rule 30.1 of the Takeover Code. Pursuant to Rule 14e-1(a) under the Exchange Act, the Offers will each remain open for

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acceptance for not less than 20 U.S. business days from the mailing of the Offer Document and either or both of the Offers can be extended for such additional period or periods as may be (i) determined by the Company ("Voluntary Extensions") and (ii) required or necessary to comply in this respect with Section 14(e) of the Exchange Act and Regulation 14E thereunder or the Takeover Code ("Mandatory Extensions"), but not while the applicable Offer remains conditional as to the minimum level of acceptance beyond midnight on the 60<sup>th</sup> calendar day after mailing or such later date as to which the Panel on Takeovers and Mergers (the "Panel"), which administers the Takeover Code, may agree.

Once an Offer becomes or has been declared unconditional as to the minimum level of acceptance, all conditions to that Offer must be satisfied or, where permissible, waived pursuant to Rule 31.7 of the Takeover Code not later than 21 calendar days after the date on which that Offer is declared unconditional as to the level of acceptance, whereupon that Offer will be wholly unconditional (representing the end of the "Initial Offer Period") and the Company will accept all Ordinary Shares or B Shares, as applicable, that have by that time been validly tendered in acceptance of that Offer and will, in accordance with the Takeover Code, pay for all such accepted Shares within 14 calendar days after its Initial Offer Period.

If an Offer becomes or is declared wholly unconditional, that Offer must, in order to comply with Rule 31.4 of the Takeover Code, remain open for acceptance for at least 14 calendar days following the date on which it would otherwise have expired and may remain open for such longer period as the Company deems appropriate (the "Subsequent Offer Period"). If an Offer becomes or is declared wholly unconditional, all Shares validly tendered during the Subsequent Offer Period will be accepted and paid for within 14 calendar days. In addition, Rule 31.2 of the Takeover Code requires that notice of the termination of the Subsequent Offer Period must be given not less than 14 calendar days before such termination. An institution operating in the United Kingdom will act as the UK receiving agent to receive tenders of Shares pursuant to the Offers. If the Offers have not been declared unconditional as to acceptances 42 calendar days after publication of the Offer Document and in certain other limited circumstances, LSE shareholders who have accepted the Offers will be entitled to withdraw their acceptance. Otherwise, LSE shareholders would not be entitled to withdraw their acceptance.

The Offers will be subject to a minimum level of acceptance condition, regulatory approvals and various other conditions which would be generally customary for UK offers of this type.

### **Prompt Payment**

Rule 14e-1(c) under the Exchange Act requires that the consideration offered in a tender or exchange offer be paid "promptly" after the termination of such offer. As described above, payment would be made in accordance with the Takeover Code in the United Kingdom, the home jurisdiction of LSE. Under the Takeover Code, the Company is required to pay the consideration for securities tendered within 14 calendar days of the close of the Initial Offer Period and during any Subsequent Offer Period. In cases where either of the Offers were terminated or withdrawn, under the Takeover Code, the Company would also be required to return any Shares tendered into the Offers within 14 calendar days of the notice of termination or withdrawal. The 14 calendar

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day payment period is the maximum permitted by the Takeover Code and is well settled market practice in the United Kingdom.

In light of the foregoing, we do not believe that payment for, or return of, the Shares tendered in the Offers in the manner described above as required under the Takeover Code constitute a fraudulent, deceptive or manipulative act or practice. If the Offers were subject to Section 14(d) of the Exchange Act or Regulation 14D thereunder and, therefore, the Tier II exemption was available, based on the previously discussed ownership levels, payment made in accordance with UK law and practice would be deemed to satisfy the requirements of Rule 14e-1(c).

As discussed above, the Tier II exemption is not available because the Offers are not subject to Section 14(d) of the Exchange Act or Regulation 14D thereunder (since LSE does not have any class of securities registered under Section 12 of the Exchange Act). As a result of the previously discussed ownership levels regarding the Shares, the Company believes that the Offers would be considered Tier II tender offers within the meaning of Rule 14d-1 under the Exchange Act.

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), particularly in the United Kingdom.<sup>1</sup> 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 or where the availability of the Tier II exemption could not be ascertained.<sup>2</sup> Also, similar to the Offers, we note that the Commission has previously granted the relief with respect to an offeror for which the Tier II exemption was not available when the offer was not subject to Section 14(d) of the Exchange Act or Regulation 14D thereunder (because the subject securities were not registered under Section 12 of the Exchange Act).<sup>3</sup> We believe that the relief from Rule 14e-1(c) requested with respect to the Offers is consistent with the relief granted in the past by the Commission.

### **Purchases Outside the Offers**

In the United Kingdom, (i) the Company, acting directly and through their agents or other nominees or brokers, or through one of their wholly-owned subsidiaries (the "Prospective

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<sup>1</sup> See, e.g., Finalrealm Limited Offer for United Biscuits Holdings Limited (December 29, 1999); Anglo American plc Offer for Tarmac Limited (November 10, 1999); Lighthouse Holdings, Inc. Offer for Fitch plc (March 23, 1999); and Adecco SA Offer for Delphi Group plc (February 4, 1999). While we believe these letters illustrate the nature of the relief the SEC has previously granted, we do acknowledge that such letters were not given in the United Kingdom in the context where the exemption afforded by Tier II was unavailable.

<sup>2</sup> See, e.g., Nordic Telephone Company Aps Offer for TDC A/S (January 3, 2006); Harmony Gold Mining Company Offer for Gold Fields Limited (November 19, 2004); and Madison Dearborn Partners, LLC Offer for Jefferson Smurfit Group plc (July 9, 2002).

<sup>3</sup> Axel Springer Aktiengesellschaft Offer for ProSiebenSat.1 Media AG (September 12, 2005).

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Purchasers"), and (ii) the Affiliates and Departments (as defined below) of the Broker, are permitted to purchase Shares outside the Offers, subject to certain limitations, and such purchases are common in connection with offers for UK companies. Under the Takeover Code, the Prospective Purchasers and Affiliates and Departments of the Broker are permitted to purchase Shares in the open market or otherwise prior to and during the conduct of, but outside, the Offers, subject to certain limitations, including as to price (as described below).

### ***Trading Activities by the Broker and its Affiliates***

The Broker and its affiliates and separately identifiable departments ("Affiliates and Departments") offer a full range of banking and securities services to governmental institutions, corporate and other business enterprises and institutional and individual investors around the world. Such services include brokerage, research, trading, corporate finance, capital markets, underwriting, asset management and investment advisory services, including discretionary portfolio management for customers.

The Company has been informed by the Broker that it maintains and enforces written policies and procedures that are reasonably designed (i) to prevent the transfer of information to or from the Affiliates and Departments that might result in a violation of applicable law, including relevant U.S. federal securities laws and (ii) to ensure that activities such as those noted above are not affected by the knowledge and tactical activities of any affiliated company advisors through the establishment of information barrier policies and procedures (i.e., "Chinese/Ethical Walls"). The Broker has informed us that it implements these procedures on a regular basis in order to preserve their status as official exempt principal traders with respect to traded stocks, futures contracts and indices should their investment banking arm be advising a part to, or participating in, such a tender offer. Historically, the Broker or its Affiliates and Departments may have traded in the Shares or derivatives related to such securities (including futures, forwards, options, swaps or similar instruments) (collectively, the "LSE Securities") on the Exchange, or otherwise. Upon announcement of the Offers, the Broker anticipates imposing trading restrictions throughout its global operations to comply with all applicable restrictions (unless the relief requested by this letter is granted). Prior to the imposition of the trading restrictions, the Broker or its Affiliates and Departments may have engaged in, among other things, the following trading activities in relation to the LSE Securities and seek relief under Rule 14e-5 with respect to purchases or arrangements to purchase the LSE Securities as related to the following activities (collectively referred to herein as the "Trading Activities") through its Affiliates and Departments:<sup>4</sup>

- a) exempt principal trading activities in the LSE Securities;
- b) purchasing and selling the LSE Securities as part of ordinary course portfolio and asset management activities (in which activities the Affiliates and Departments would generally have discretionary trading authority) and as principal for their own accounts;

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<sup>4</sup> Certain activities that are clearly permitted under or exempted from Rule 14e-5 are not discussed below and exemptive relief is not being sought for any such activities.

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- c) principal facilitation to buy the LSE Securities to facilitate client orders on the Exchanges;
- d) creation of derivative products (including futures, forwards, options, swaps or similar instruments) and dynamic hedging and covering activities, short sales and other forms of hedging and covering, such as purchasing and selling the LSE Securities with respect to positions in these newly created derivatives contracts that are in place after the announcement of the Offers, as well as such hedging and covering activities with respect to (a) derivatives contracts in place prior to the announcement and (b) any such trading and positions as would be permitted otherwise pursuant to the relief requested herein;
- e) index arbitrage activities (other than risk arbitrage trading) that are not to facilitate the Offers and are limited in scope, so that such index arbitrage activities are consistent with respect to derivative contracts in place prior to commencement of the Offers, and any such trading and positions as would be permitted pursuant to the relief requested herein;
- f) index arbitrage activities (other than risk arbitrage trading) that are not to facilitate the Offers and are limited in scope, so that such index arbitrage activities are consistent with such activities undertaken in the ordinary course of business prior to commencement of the Offers and which reflect the same balance and constituency as the index being hedged, and hedging and covering activities, including dynamic hedging, short sales and other forms of hedging, such as purchasing and selling LSE Securities, with respect to such index related activities;
- g) program trades on behalf of clients (other than the Company) generally with respect to a basket of securities the composition of which has been proposed by the clients;
- h) hedging activities, including dynamic hedging and other forms of hedging, such as purchasing and selling the LSE Securities, with respect to the exempt principal trading activities in derivative products described in paragraph (a) above;
- i) purchasing Shares for purposes of delivering securities upon exercise of call options or warrants or buying LSE Securities in respect of the exercise of put options or warrants in connection with the exempt principal trading and related hedging activities described in paragraphs (a) and (h) above;
- j) buying LSE Securities to cover short positions entered into after the announcement of the Offers;
- k) stock borrowing and lending; and
- l) purchases of LSE Securities in a proprietary capacity.

All such activities may have historically been, and if the requested relief is granted could continue to be, conducted by the Affiliates and Departments of the Broker that are separate from the merger and acquisition/corporate finance departments of the Broker that are advising the



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Company in connection with the Offers. In addition, in the context of the Offers, the Broker has informed us that its "Chinese/Ethical Wall" procedures are in place and that it intends to continue to apply them to prevent the flow of confidential information between, at least, the trading and advisory arms of its organization. As noted, except to the extent that the relief requested in this letter is granted, the Broker will cease its participation in all Trading Activities inconsistent with the requirements of Rule 14e-5 in the LSE Securities on the Exchange or otherwise. In their Trading Activities, the Broker and its Affiliates and Departments will comply with the applicable requirements under UK and U.S. law, including the applicable rules and regulations of the Exchange and the Exchange Act. The Broker seeks exemptive relief from Rule 14e-5 to be permitted to continue purchases or arrangements to purchase LSE Securities as related to the Trading Activities above following the date the Offers are announced.

### ***Application of Rule 14e-5***

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 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 advisors 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 any related securities. Purchases of Shares by the Company or other covered persons acting for the account or benefit of the Company outside either of the Offers 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 after the announcement of the Offers.

Rules 14e-5, as with its predecessor rule, Rule 10b-13, is designed to prevent manipulative and deceptive practices whereby a person making a cash tender or exchange offer purchases (or arranges to purchase) shares otherwise than pursuant to the offer. Among the concerns that Rule 14e-5 is designed to prevent are avoidance of pro-rationing requirements, disparate treatment of persons who tender into the offer and persons who sell securities outside the offer, and holders of large blocks of the subject securities demanding greater or different consideration than that offered pursuant to the tender or exchange offer. None of these concerns are present here.

Rule 14e-5(b) provides certain exceptions to the general rule prohibiting a covered person from purchasing or arranging to purchase the subject security outside the terms of the offer. However, the Trading Activities described above are not technically covered by the exceptions to Rule 14e-5 and thus would be prohibited by the rule. Accordingly, the Broker and its Affiliates and Departments are requesting relief to engage in purchases or arrangements to purchase the Shares as related to the enumerated Trading Activities on the conditions set forth below. Without relief, the Broker would effectively be compelled to stay "out of the market" for a significant period of time due to the restrictions in Rule 14e-5, and to the extent that the Broker is not able to

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undertake exempt principal trading in the referenced trading markets, the markets and the Broker's clients will be disadvantaged.

***Rule 14e-5(b)(8)***

Rule 14e-5(b)(8) provides an exception for purchases or arrangements to purchase by an "affiliate of the dealer-manager" if (1) the dealer-manager maintains and enforces written policies and procedures reasonably designed to prevent the flow of information to or from the affiliate that might result in a violation of the U.S. federal securities laws and regulations, (2) the dealer-manager is registered as a broker or dealer under Section 15(A) of the Exchange Act, (3) the affiliate has no officers (or persons performing similar functions) or employees (other than clerical, ministerial or support personnel) in common with the dealer-manager that direct, effect or recommend transactions in the securities, and (4) the purchases or arrangements to purchase are not made to facilitate the tender offer.

Rule 14e-5(b)(8) may not, by its terms, apply to the Trading Activities because the Broker is presently acting as broker to the Company, and has not been designated as dealer-manager, and because the Broker is not a U.S. registered broker-dealer.<sup>5</sup> However, the Broker is providing services of the like provided by dealer-managers and has a U.S. affiliate, Dresdner Kleinwort Securities LLC, that is a U.S. registered broker-dealer. The Broker believes that because it otherwise meets the conditions in Rule 14e-5(b)(8), it should be permitted to continue the Trading Activities. In addition, the Broker has informed us that it intends to maintain and enforce its "Chinese/Ethical Walls" so as to prevent improper motives from influencing the purchasing activity of the Affiliates and Departments.

The Takeover Code is a UK regulatory framework which governs tender offers occurring in the United Kingdom, and similar to the Exchange Act, was established to ensure fair and equal treatment of all shareholders to provide adequate and timely advice and information, and to prevent the creation of false markets in securities subject to a tender offer. The Takeover Code provides shareholders involved in a tender offer with protections consistent with those in Rule 14e-5. The Commission is very familiar with the UK regulatory regime. In particular, it has included an exemption from Rule 14e-5(a) based on the applicability of the Takeover Code in Rule 14e-5(b)(9), and has granted no-action relief under Rule 14e-5 (or Rule 10b-13) in numerous transactions where the Takeover Code is applicable.<sup>6</sup>

The interests of LSE shareholders, which Rule 14e-5 seeks to safeguard, should not be prejudiced by the Trading Activities of the Broker after the announcement and during the

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<sup>5</sup> The Broker may be deemed a covered person with respect to the Offers because its compensation will be affected by the consummation of the Offers.

<sup>6</sup> The Rule 14e-5(b)(9) exemption is partly based on the status of a "connected principal trader" or "exempt principal trader" under UK law. Under UK law, there are two requirements for establishing such a status with respect to any particular stock. First, a firm must be recognized as a principal trader with respect to that particular stock by the FSA. Second, the firm must obtain approval from the Panel for exempt status. Before granting exempt status, the Panel must be satisfied with the internal procedures and controls of the firm (including its "Chinese/Ethical Walls").

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pendency of the Offers. The services provided by the Broker will be effected in the ordinary course of business, and the Broker will comply with the Takeover Code regulations applicable to exempt principal traders that limit the likelihood that principal trading transactions will promote the Offers as well as maintain the "Chinese/Ethical Walls" described above.

In its Trading Activities, the Broker and its Affiliates and Departments will comply with the applicable requirements under UK law and regulation, including the Takeover Code. As a result of the foregoing, we believe that the UK rules and regulations and our Broker's internal procedures provide protections similar to those noted by the staff of the Commission in prior requests by or on behalf of bidders and/or financial advisors seeking relief from the provisions of Rule 14e-5 in a number of different jurisdictions, making exemptive relief appropriate in the circumstance of the Offers.

### ***Basis for Exemption***

Paragraph (d) of Rule 14e-5 states that the Commission may grant an exemption from the provisions of Rule 14e-5, either unconditionally or on specified terms and conditions, to any transaction.

In Securities Act Release No. 7759 (January 24, 2000) (the "Cross-Border Release"), the Commission has provided for continued review of exemption requests, on a case-by-case basis, in situations, such as the instant case, where U.S. ownership exceeds (or is presumed to exceed) 10%. The exemption from Rule 14e-5 requires that (i) the offering document furnished to U.S. security holders prominently disclose the possibility of any purchases, or arrangements to purchase, or the intent to make such purchases, (ii) the offering documents disclose the manner in which any information about any such purchases or arrangements to purchase will be disclosed, (iii) the offer discloses information in the U.S. about any such purchases or arrangements to purchase in a manner comparable to the disclosure made in the home jurisdiction and (iv) the purchases comply with the tender offer laws of the home jurisdiction. We note that the Company intends to comply with the requirements described above. We believe the exemptive relief sought from Rule 14e-5 with respect to the Ordinary Share Offer is, in large measure, contemplated by or consistent with the exemptive relief granted in connection with other, similarly structured tender offers.<sup>7</sup>

Rule 14e-5 is designed to protect the investors by "preventing an offeror from extending greater or different consideration to some security holders by offering to purchase their shares outside the offer, while other security holders are limited to the offer's terms."<sup>8</sup> It is also designed to prevent manipulative and deceptive practices whereby an offeror purchases (or arranges to purchase) shares outside of a tender offer, either during the offer or promptly following it. For example, the Rule is aimed at preventing artificial increases of the market price of the target

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<sup>7</sup> See NYSE Euronext, Inc. Offer for Euronext N.V. (July 13, 2006), AstraZeneca plc Offer for Cambridge Antibody Technology Group plc (May 23, 2006), United Technologies Corporation Offer for Kidde plc (December 15, 2004), Twins Acquisition, Inc. Offer for IDS Group plc (June 25, 2003) and CIBER (UK) Offer for ECsoft Group plc (January 8, 2003).

<sup>8</sup> Cross-Border Release, Section II.C.1.

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company's stock, avoiding proration, taking advantage of the market's response to a tender offer and offering a higher price outside the offer. The Commission has recognized that a strict application of Rule 14e-5 could disadvantage U.S. security holders in some situations. In this context, the Commission has noted that "flexible application of Rule 14e-5 is necessary and appropriate to encourage offerors for the securities of foreign private issuers to extend their offers to U.S. security holders."<sup>9</sup>

The Commission has granted a number of exemptions from Rule 14e-5 and Rule 10b-13 (the predecessor to Rule 14e-5) to permit purchases by offerors and persons acting on behalf of offerors. We note that, with respect to offers conducted in the UK, the Commission granted exemptive relief under Rule 14e-5 in connection with the offer by United Technologies Corporation for Kidde plc (December 15, 2004). The Commission has enumerated certain factors that it considers important in ruling on a Rule 14e-5 exemption request, including (i) the degree of ownership of the target by U.S. holders, (ii) whether the offer will be made to U.S. holders on an equal basis to non-U.S. holders, (iii) whether the consideration will be cash or securities, (iv) the nature of the foreign regulation to which the offer is subject and (v) whether the principal trading market for the target's securities is outside the United States.

In the context of the Offers, we believe that (i) U.S. persons beneficially own less than 40% of each of the Ordinary Shares and B Shares, which is consistent with the level of U.S. shareholdings noted in prior letters requesting relief from Rule 14e-5,<sup>10</sup> (ii) each of the Offers is for all of the outstanding Ordinary Shares and B Shares, as applicable, (iii) the Offers will be made on the same basis to U.S. and non-U.S. holders of Shares, (iv) the consideration will consist entirely of cash, (v) the Panel will have primary regulatory authority over the Offers and it will be fully regulated under the Takeover Code and (vi) the principal trading market of LSE is outside the United States on the Exchange.

Rules 6.1 and 6.2 of the Takeover Code provide protections similar to those provided by Rule 14e-5, making exemptive relief appropriate in the circumstances of the Offers, by requiring that the price paid in each Offer be increased to the level of any higher purchase price for the applicable Shares outside that Offer. In addition, under Rule 8.1 of the Takeover Code, any purchases outside the Offers by any party to the transaction (including the offeror and any advisor, broker or other financial institution acting as its agent) are required to be disclosed on a next-day basis to a Regulatory Information Service, as set out in Appendix 3 (and supplemented in Rule 38) to the UK Financial Services Authority Listing Rules and the Panel. Disclosures of

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<sup>9</sup> *Id.*

<sup>10</sup> See NYSE Euronext, Inc. Offer for Euronext N.V. (July 13, 2006), Adecco, S.A. Offer for DIS Deutscher Industrie Service AG (January 9, 2006); Nordic Telephone Company ApS Offer for TDC A/S (November 30, 2005); Gas Natural SDG, S.A. Offer for Endesa, S.A. (November 18, 2005); United Technologies Corporation Offer for Kidde plc (December 15, 2004); UCB S.A. Offer for Celltech Group plc (May 19, 2004); Songbird Acquisition Limited Offer for Canary Wharf (April 22, 2004); BLB Investors, LLC Offer for Wembley plc (March 31, 2004); Twins Acquisition, Inc. Offer for IDS Group plc (June 25, 2003); Celltech Group plc Offer for Oxford GlycoSciences plc (March 3, 2003); CIBER (UK) Limited for ECsoft Group plc (January 8, 2003); Vinci Offer for TBI plc (August 23, 2001); and Schlumberger Limited Offer for Sema plc (February 15, 2001).

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these purchases attract significant publicity by their very nature and they are disseminated on dealers' trading screens throughout the London market. In addition, the Company and its Broker's intention to make purchases other than pursuant to the Ordinary Share Offer and the purchases themselves will be fully disclosed to U.S. shareholders who will be assured the benefit of the same price paid.

We have been advised by the Broker that any person executing purchases of Ordinary Shares outside of the Ordinary Share Offer on behalf of the Company will not avail themselves of the relief from Rule 14e-5 requested herein. Other than purchases as a Prospective Purchaser made on behalf of the Company or one of its subsidiaries, such person would not be making any other purchases of Ordinary Shares or related securities (as defined in Rule 14e-5) during the offer period. Furthermore, under applicable UK law, any such person would be prohibited from providing any information with respect to the Company's plans to purchase Ordinary Shares outside of the Ordinary Share Offer to any other person in the Affiliates and Departments.

We do not believe that it is necessary at this time to determine if a jurisdictional predicate for the application of the Exchange Act exists, namely that there be a purchase of a security "by use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange" would be satisfied if the Company, or financial institutions acting on its behalf, made purchases of, or arrangements to purchase, Shares outside of the United States. We, therefore apply, on behalf of such persons, for exemptive relief for such purchases from the provisions of Rule 14e-5, on the conditions set forth below. This letter does not reflect an admission that Rule 14e-5 would apply to such purchases of Shares outside the United States in the absence of such exemptive relief.

### **Requested Exemptive Relief**

Based on the foregoing, we respectfully request that the Prospective Purchasers and the Affiliates and Departments of the Broker be granted exemptive relief from Rule 14e-5 in order to permit (a) purchases of Ordinary Shares outside the Ordinary Share Offer by any Prospective Purchaser (including by or on behalf of the Company) that would otherwise be prohibited by Rule 14e-5, and (b) purchases by the Affiliates and Departments of the Broker such that they may continue to engage in ordinary course transactions with respect to the Ordinary Shares, subject to the following conditions:

- a) Unless otherwise exempted or permitted under Rule 14e-5, all trading activities will be conducted outside the United States. No purchases or arrangements to purchase Ordinary Shares by the Prospective Purchasers, otherwise than pursuant to the Ordinary Share Offer, or by the Affiliates and Departments of the Broker will be made in the United States;
- b) All purchases of LSE Securities by the Broker through its Affiliates and Departments during the Ordinary Share Offer will be effected in the ordinary course of business and will not be undertaken for the purposes of promoting or otherwise facilitating the Offers, or for the purpose of creating actual, or apparent, active trading in, maintaining or affecting the prices of the Shares;

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- c) Disclosure of the possibility of such purchases by the Prospective Purchasers, otherwise than pursuant to the Ordinary Share Offer, and disclosure of the fact that the Broker may be a principal trader in the Ordinary Shares, futures contracts and indices over the Ordinary Shares and that in such roles it may engage in purchases or make arrangements to purchase Ordinary Shares in the ordinary course of its business, otherwise than pursuant to the Ordinary Share Offer, will be included prominently in the Offer Document;
- d) The Broker will comply with any applicable rules in the United Kingdom, including the rules and regulations of the UKLA and the Takeover Code, and maintain "Chinese/Ethical Walls" throughout the period of the Offers;
- e) The Prospective Purchasers and Broker shall disclose in the United States information regarding such purchases to the extent such information is made public in the United Kingdom pursuant to the Takeover Code;
- f) The Prospective Purchasers and Broker shall comply with any applicable rules in the United Kingdom, including the Takeover Code and the rules and regulations of the UKLA and the Exchange;
- g) Each of the Affiliates and Departments that conducts the Trading Activities has no officers (or persons performing similar functions) or employees (other than clerical, ministerial or support personnel) who direct, effect or recommend transactions in the LSE Securities and who are also involved in providing the Company with financial advisory services or dealer manager services until such time as the Ordinary Share Offer is completed;
- h) Upon request of the Commission, the Prospective Purchasers and the Broker will disclose to it a daily time-sequenced schedule of all purchases of Ordinary Shares made by any of them during the Ordinary Share 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 Exchange, the exchange, quotation system or other facility through which the purchase occurred;
- i) Upon request of the Commission, the Prospective Purchasers and the Broker shall transmit the information specified in clauses (h)(i) and (h)(ii) above to the Commission at its offices in Washington D.C. within 30 days of its request;
- j) The Prospective Purchasers and Broker 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 completion of the Ordinary Share Offer;
- k) Representatives of the Prospective Purchasers and Broker shall be made available (in person at the offices of the Commission in Washington D.C. or by telephone) to respond to enquiries of the Commission relating to such records; and

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- l) Except as otherwise exempted herein, the Prospective Purchasers and Broker shall comply with Rule 14e-5.

Additionally, we hereby request that the Commission confirm that it will not take enforcement action under Rule 14e-1(c) under the Exchange Act if the Company pays for, or returns, Shares tendered in the Offers in accordance with UK law and practice.

Finally, we note the existence of the Memorandum of Understanding on Exchange of Information between the Commission and the UK Department of Trade and Industry in Matters Relating to Securities and the U.S. Commodity Futures Trading Commission and the UK Department of Trade and Industry in Matters Relating to Futures dated September 25, 1991.

### **Conclusion**

On behalf of the Company, 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 212-735-2204. Thank you in advance for your prompt consideration in this matter. In compliance with Securities Act Release No. 6269 (December 5, 1980), seven additional copies of this letter are enclosed.

Sincerely,



Eric J. Friedman

cc: Dresdner Kleinwort Securities Limited  
The Nasdaq Stock Market, Inc.  
Greenhill & Co. International LLP