



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

DIVISION OF
MARKET REGULATION

January 5, 2006

Ashar Qureshi, Esq.
Cleary Gottlieb Steen & Hamilton LLP
55 Basinghall St.
London EC2V 5EH, England
United Kingdom

Re: Offer by Crucell N.V. for Shares of Berna Biotech AG
TP No: 06-28

Dear Mr. Quershi:

This is in response to your letter dated January 5, 2006. A copy of that letter is attached with this response. By including a copy of your correspondence, we avoid having to repeat or summarize the facts you presented. The defined terms in this letter have the same meaning in your letter, unless otherwise noted.

The United States Securities and Exchange Commission (Commission) hereby grants an exemption from Rule 14e-5 under the Securities Act of 1934 (Exchange Act) on the basis of your representations and the facts presented, but without necessarily concurring in your analysis, particularly in light of the following facts:

- The Offer is required to be conducted in accordance with Swiss law, in particular the Federal Stock Exchange and Securities Trading Act and the Swiss Takeover Board's Ordinance on Public Tender offers;
- Berna Biotech A.G. ("Berna"), a joint stock company incorporated pursuant to the laws of Switzerland, is a foreign private issuer as defined in Rule 3b-4(c) under the Exchange Act;

- All purchases of Berna Shares by the Affiliates and Departments of Citigroup Global Markets Limited, a corporation organized under the laws of England and Wales, ABN AMRO Bank N.V., a corporation organized under the laws of the Netherlands, and UBS AG, a joint stock company incorporated under the laws of Switzerland, (the "Financial Advisors") will be subject to Swiss rules, in particular all trades in the Shares, regardless of whether they have taken place on the SWX Swiss Exchange, are reported to the SWX Swiss Exchange in fulfillment of the reporting requirements of the Swiss Federal Banking Commission;
- The Affiliates and Departments of the Financial Advisors will voluntarily comply with the United Kingdom's City Code on Takeovers and Mergers (City Code);
- Citigroup Global Markets Inc., an affiliate of Citigroup Global Markets Limited, is registered under Section 15(a) of the Exchange Act;
- ABN AMRO Inc., an affiliate of ABN AMRO is registered under Section 15(a) of the Exchange Act;
- UBS Securities LLC, an affiliate of UBS AG is registered under Section 15(a) of the Exchange Act;
- Each of the Financial Advisors maintains and enforces written policies and procedures that are reasonably designed to prevent the flow of information to or from the Affiliates and Departments that might result in a violation of the federal securities laws through the establishment of information barriers;
- The Affiliates and Departments have no officers (or persons performing similar functions) or employees (other than clerical, ministerial, or support personnel) in common with the Financial Advisors that direct, effect, or recommend transactions in securities; and
- Purchases of Shares outside the Offer are permitted under applicable Swiss rules.

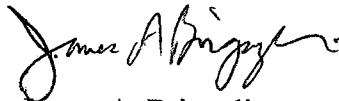
The Commission grants this exemption from Rule 14e-5 under the Exchange Act to permit the Financial Advisors' Affiliates and Departments to purchase or arrange to purchase Shares otherwise than pursuant to the Offer, subject to the following conditions:

1. No purchases or arrangements to purchase 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 Shares by the Affiliates and Departments;
3. The Financial Advisors shall disclose in the United States information regarding purchases of Shares to the extent such information is made public in Switzerland;
4. The Financial Advisors and the Affiliates and Departments shall comply with any applicable requirements under Swiss laws, including the Swiss Rules and rules of the SWX Swiss Exchange;
5. The Financial Advisors shall provide to the Division of Market Regulation (Division) upon request, a daily time-sequenced schedule of all purchases of Shares made by the Financial Advisors' Affiliates and Departments during the Offer, on a transaction-by-transaction basis, including:
 - a. size, broker(if any), time of execution, and price of purchase; and
 - b. the exchange, quotation system, or other facility through which the purchase occurred;
6. Upon the request of the Division, the Financial Advisors shall transmit the information specified in paragraphs 5(a) and 5(b) to the Division at its offices in Washington, D.C. within 30 days of its request;
7. The Financial Advisors 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 Financial Advisors 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 Financial Advisors and its Affiliates and Departments shall comply with Rule 14e-5.

The foregoing exemption is based solely on your representations and the facts presented in your letter dated January 5, 2006, and is strictly limited to the application of the rules and statutory provisions listed above to your proposed transactions. Such transactions should be discontinued, pending presentation of the facts for our consideration, in the event that any material change occurs with respect to any of those facts or representations.

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

Attachment

CLEARY GOTTlieb STEEN & HAMILTON LLP

NEW YORK	CITY PLACE HOUSE	FRANKFURT
WASHINGTON, DC	55 BASINGHALL STREET	COLOGNE
PARIS	LONDON EC2V 5EH	ROME
BRUSSELS	020-7614-2200	MILAN
MOSCOW	FACSIMILE 020-7600-1698	HONG KONG
	WWW.CLEARYGOTTLIEB.COM	TOKYO

January 5, 2006

VIA FACSIMILE

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

Attention: Mr. James A. Brigagliano
Assistant Director,
Division of Market Regulation

Re: Offer by Crucell N.V. for Shares of Berna Biotech AG

Dear Mr. Brigagliano:

We are writing on behalf of Citigroup Global Markets Limited, a corporation organized under the laws of England and Wales, and the Netherlands-based Corporate Finance department of ABN AMRO Bank N.V., a corporation organized under the laws of The Netherlands ("ABN AMRO"), who are acting as financial advisors to Crucell N.V. ("Crucell" or the "Bidder"), a limited liability company incorporated in The Netherlands, and on behalf of UBS AG, a corporation organized under the laws of Switzerland, who, through its Swiss-based operations, is acting as financial advisor to Berna Biotech AG¹ ("Berna" or the "Company"), a joint stock company (*société anonyme, Aktiengesellschaft*) incorporated pursuant to the laws of Switzerland (the three financial advisors together, the "Financial Advisors"). The advisory engagements relate to a public offer (the "Offer") by the Bidder to acquire all the issued ordinary shares (the "Shares") of Berna. We hereby request, on behalf of the Financial Advisors and their affiliates and separately identifiable departments ("Affiliates and Departments"), exemptive relief from the provisions of Rule 14e-5 ("Rule 14e-5") under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), with respect to certain trading activities of the Financial Advisors' Affiliates and Departments during the pendency of the Offer, as described below.

¹ As the Offer is being conducted in a cooperative fashion, UBS AG, who are acting as advisors to Berna rather than the Bidder, may be categorized as a "covered person" under Rule 14e-5(c)(3)(iv). This categorization is not free from doubt. We are, nonetheless, applying for exemption from the provisions of Rule 14e-5 on behalf of UBS AG to the extent and for the reasons set forth in this letter. This application does not, however, reflect a concession by UBS AG or the Financial Advisors that UBS AG is a "covered person" with respect to the Offer.

I. Background

A. Berna

According to information available to Crucell, Berna is a foreign private issuer as defined in Rule 3b-4(c) of the Exchange Act. Berna's Shares are not registered under Section 12 of the Exchange Act, listed on a U.S. national securities exchange, nor quoted on Nasdaq. Further, Berna 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. Berna does not have any sponsored ADR programs outstanding.

Berna develops, produces and markets vaccines and immunotherapeutics for private and public markets worldwide. Headquartered in Berne, Switzerland, with subsidiaries in Europe, Argentina and Korea, Berna is a fully integrated vaccines company, employing around 700 people. Berna's range of novel and validated proprietary technology platforms supports a strong product portfolio. The Company markets its core vaccine products in the field of hepatitis B/paediatric, respiratory and travel vaccines and has a broad development pipeline. Berna's development is supported through alliances with academic and commercial partners. According to its published 2004 consolidated financial statements, Berna generated CHF 204.6 million in total revenues in 2004, and at December 31, 2004, Berna had CHF 471.4 million in total assets.

The Shares of Berna are listed in the main segment of the SWX Swiss Exchange, which is the primary trading market for the Shares. Based on information published by the SWX Swiss Exchange, as of the date of this letter, Berna's share capital amounted to CHF 15,041,495.20, divided into approximately 37.6 million issued and outstanding Shares, being registered shares with a nominal value of CHF 0.40 per share, fully paid-in.

Swiss law requires that shareholders in public companies notify the SWX Swiss Exchange and the Company within four trading days of their share ownership in the Company if such shareholding reaches, exceeds or falls below certain thresholds, which are 5%, 10%, 20%, 33.3%, 50% and 66.6%. Based on publicly available information, as of the date hereof only one U.S. shareholder owned more than 5% of the shares of the Company. No other U.S. shareholder has communicated that it owns more than 5% of the shares in the Company as of the date of this letter. Given the nature of shareholdings in Swiss companies and Swiss law, the Financial Advisors do not have access to specific information regarding the Company shareholding or the addresses of its shareholders other than the information publicly available through the SWX Swiss Exchange. Based on publicly available information and information provided by the Company, to the best knowledge and belief of the Financial Advisors U.S. persons (not including the U.S. holder referred to above, which holds more than 10%) beneficially own more than 10% but substantially less than 40% of the Shares. Furthermore, to the best knowledge and belief of the Financial Advisors there are no non-institutional U.S. shareholders in Berna. Finally, the Financial Advisors believe that the number of U.S. shareholders is small. As a result, it appears that this transaction would be considered a Tier II tender offer within the meaning of Rule 14d-1 under the Exchange Act.

B. Crucell

Crucell is a biotechnology company developing vaccines and antibodies against infectious diseases. Its product programs comprise vaccines against influenza, West Nile virus, Ebola, malaria, and tuberculosis as well as an antibody product against rabies. Its programs are in various stages of pre-clinical development. Crucell may choose to alter or expand its pipeline to include products that, in some instances, it may co-develop and market through collaborations or strategic alliances with third parties to share risks and costs.

Crucell generates revenues from the licensing of its proprietary technologies to pharmaceutical and biotechnology companies, from grants and government subsidies obtained to support the development of its vaccines and from service fees earned under development contracts with its partners. Crucell's proprietary technologies may overcome the safety, efficacy, yield and/or scalability limitations inherent in many currently available products, emerging products and manufacturing processes and technologies. Crucell's primary geographic markets are the United States and Europe.

The shares of Crucell are registered pursuant to Section 12(b) of the Exchange Act and quoted on Nasdaq in the form of American Depositary Shares. The shares of Crucell are also listed on Euronext Amsterdam N.V.'s Eurolist by Euronext. As of the date hereof, Crucell had an issued share capital of €9,940,949.52, divided into approximately 41.4 million issued and outstanding ordinary shares, par value €0.24 per share.

In 2004, Crucell generated €22.6 million in total revenues. At December 31, 2004, Crucell had €98.9 million in total assets, and had 210 employees on a full-time basis, of which 171 were engaged in, or directly supported, research and development activities.

C. Offer Structure

The Offer is structured as an all-share offer at 0.447 ordinary shares of Crucell for each Share of Berna. The Offer is a single offer made concurrently in Switzerland, the United States and certain other jurisdictions in which the Offer may be legally extended.

The Offer is structured to comply with (i) the applicable rules and regulations of Swiss law, in particular the Federal Stock Exchanges and Securities Trading Act (*Bundesgesetz über die Börsen und den Effektenhandel*) (the "Stock Exchange Act") and the Swiss Takeover Board's Ordinance on Public Tender Offers (*Verordnung der Übernahmekommission über öffentliche Kaufangebote*) (the "TOO-TOB") (such regulations and rules, collectively referred to as the "Swiss Rules") and (ii) except as otherwise requested herein, the requirements of Section 14(e) of the Exchange Act and the rules and regulations promulgated thereunder. The Offer is not 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.

In order to allow participation by holders of the Shares in the United States while complying with applicable U.S. securities laws and regulations, the Offer will be open in the United

States only to Berna shareholders who are “qualified institutional buyers” as defined in Rule 144A under the Securities Act of 1933, as amended (the “Securities Act”), and a U.S. information document will be communicated directly to such shareholders. Tendering Berna shareholders in the United States will be offered and sold Crucell shares pursuant to an exemption from the registration requirements of the Securities Act.²

The Bidder has announced the Offer through the electronic media that distributes stock market information on December 1, 2005. The Bidder will commence the Offer by publishing the Prospectus (in German, French and English) on December 15, 2005 in compliance with the Swiss Rules. The initial acceptance period of the Offer will expire on January 20, 2006 at 4:00 pm CET (20 business days following publication), or for such longer period, to which the Bidder may extend the Offer in accordance with the terms thereof. Berna Shareholders in the United States who are qualified institutional buyers will be permitted to deliver acceptance forms to a receiving agent in the United States at any time during the 20 U.S. business days prior to and including January 20, 2006. In Switzerland, in accordance with the Swiss Rules, shareholders are not in general permitted to deliver acceptance forms in the 10 Swiss trading days following publication of an offer prospectus, the first 10 Swiss trading day period being a “cool off” period. When the initial publication of an offer prospectus is accompanied by a report and recommendation of the target board, as is the case for the Offer, this requirement is waived. The Offer will remain open for at least 10 business days following publication of any change in the offer price or of any change in any other material condition of the Offer, as mandated by the Swiss Rules and the provisions of Regulation 14E under the Exchange Act.

Under the Swiss Rules, a tender offer, once launched, is irrevocable, although a bidder is permitted to withdraw the offer if (i) another person or group publishes a more favorable competing offer to acquire the target company, or (ii) the conditions of the offer as provided for in the terms of the offer are not satisfied or waived by the offeror. In particular, an offer may be withdrawn if the minimum acceptance threshold provided for in the terms of the offer has not been reached at the expiration of the offer period. In the present case, the Offer provides for a minimum acceptance level of 67% of the total number of issued Shares of the Company on a fully diluted basis at the expiration of the offer period.

The Swiss Rules also regulate purchases of shares of a company which is the subject of an offer by the offeror or parties acting in concert with it. In particular, the Swiss Rules require the offeror to notify the Swiss Takeover Board (the “STOB”) and the stock exchange at which such shares are traded of any acquisition of such shares by noon CET on the first trading day following such acquisition (article 31(1) Stock Exchange Act; articles 37 et seq. TOO-TOB). Further, if the offeror acquires shares of the

² The Financial Advisors have advised us that, with respect to the discussions with such institutional holders located in the United States, (i) the Financial Advisors will only contact “U.S. institutional investors” and “major U.S. institutional investors” (as each such term is defined for purposes of Rule 15a-6 under the Exchange Act), (ii) such discussions will be conducted so as to comply with paragraph (a)(3)(iii)(B) of Rule 15a-6 and (iii) any resulting transactions with respect to the Shares held by such U.S. institutional investors and major U.S. institutional investors will be effected in accordance with the terms of the Offer.

Crucell shares will be offered and sold only to qualified institutional buyers in the United States under the Offer pursuant to a private placement exemption from the registration requirements of the Securities Act. Offers and sales to persons outside the United States will be made pursuant to Regulation S under the Securities Act.

target company at a price exceeding the price paid it pays under the offer, it has to increase the price under the offer to the price it has paid for shares acquired outside the offer (article 10(6) TOO-TOB). Finally, and as a general matter, all trades in the Shares, regardless of whether they have taken place on the SWX Swiss Exchange or another exchange, are reported to the SWX Swiss Exchange in fulfillment of the reporting requirements of the Swiss Federal Banking Commission.

II. Trading Activities

The Financial Advisors and their 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.

Historically, the Financial Advisors or their Affiliates and Departments may have traded in the Shares or derivatives (including futures, forwards, options, swaps or similar instruments) (collectively, the "Securities") on the SWX Swiss Exchange or otherwise. Upon announcement of the Offer, the Financial Advisors imposed trading restrictions throughout their global operations to comply with all applicable restrictions. Prior to the imposition of the trading restrictions, the Financial Advisors or their Affiliates and Departments may have engaged in, among others, the following trading activities in relation to the Securities and seek relief under Rule 14e-5 with respect to purchases or arrangements to purchase the Securities as related to the following activities (collectively referred to herein as the "Trading Activities") through Affiliates and Departments:³

- (1) market making activities in the Securities;
- (2) purchasing and selling the Securities as part of ordinary course portfolio and asset management activities (in which activities affiliates of the Financial Advisors would generally have discretionary trading authority) and as principal for their own accounts;
- (3) principal facilitation to buy the Securities to facilitate unsolicited client orders on the SWX Swiss Exchange;
- (4) creation of derivative products (including futures, forwards, options, swaps or similar instruments) and delta hedging and covering activities, short sales and other forms of hedging and covering, such as purchasing and selling the Securities with respect to positions in these newly created derivatives contracts that are in place after the announcement of the Offer on December 1, 2005, as well as such activities with respect to derivative contracts in place prior to the announcement, and any such positions as would be permitted pursuant to the relief requested herein;
- (5) index arbitrage activities (other than risk arbitrage trading) that are not to facilitate the Offer and are limited in scope, so that such index arbitrage activities

³ 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.

are consistent with such activities undertaken in the ordinary course of business prior to commencement of the Offer and which reflect the same balance and constituency as the index being hedged;

- (6) program trades on behalf of clients (other than Crucell) generally with respect to a basket of securities the composition of which has been proposed by the clients;
- (7) hedging activities, including dynamic hedging, short sales and other forms of hedging, such as purchasing and selling the Securities and Share options, with respect to the market making activities in derivative products described in paragraph (1) above;
- (8) purchasing the Securities for purposes of delivering securities upon exercise of call options or warrants or buying securities in respect of the exercise of put options or warrants in connection with the market making and related hedging activities described in paragraphs (1) and (7) above;
- (9) buying Securities to cover short positions entered into after the announcement of the Offer; and
- (10) purchases of Securities in a proprietary capacity.

All such activities may have historically, and if the requested relief is granted could continue to be, conducted by Affiliates and Departments that are separate from the merger and acquisition/corporate finance departments of the Financial Advisors. As noted, the Financial Advisors have ceased their participation in all Trading Activities inconsistent with the requirements of Rule 14e-5 in the Securities on the SWX Swiss Exchange or otherwise. The Financial Advisors now seek exemptive relief from Rule 14e-5 to be permitted to resume purchases or arrangements to purchase the Shares as related to the Trading Activities described above.

III. Rule 14e-5 Relief

A. Background

Rule 14e-5 under the Exchange Act, among other things, prohibits a person making a cash tender offer or exchange offer for an equity security from, directly or indirectly, purchasing or making any arrangement to purchase such security or any security which is immediately convertible into, exchangeable for, or exercisable for such security, other than pursuant to the offer, from the time the offer is publicly announced until its expiration. Rule 14e-5 applies to the offeror and its affiliates, its dealer manager and its affiliates, any advisor to such persons whose compensation is dependent on the completion of the offer and any person acting, directly or indirectly, in concert with any such persons ("Covered Persons").

Rule 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 Financial Advisors and their Affiliates and Departments are requesting relief to engage in purchases of or arrangements to purchase the Securities as related to the enumerated Trading Activities on the conditions set forth below. Without relief, the Financial Advisors 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 Financial Advisors are not able to make a market in the referenced trading markets, the markets and the Financial Advisors’ clients will be disadvantaged.

B. 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 Financial Advisors are presently acting as financial advisors to Crucell and Berna, and have not been designated as dealer managers, and because the Financial Advisors are not U.S. registered broker-dealers.⁴ However, the Financial Advisors are providing services of the ilk provided by dealer managers and have U.S. affiliates that are U.S. registered broker-dealers. The Financial Advisors believe that because they otherwise meet the conditions in Rule 14e-5(b)(8), they should be permitted to resume the Trading Activities.

Each of the Financial Advisors maintains and enforces written policies and procedures that are reasonably designed to prevent the transfer of information to or from the Affiliates and Departments that might result in a violation of the U.S. federal securities laws through the establishment of information barrier policies and procedures (the “Information Barriers”). These Information Barriers, some of which are also required by, *inter alia*, Swiss banking laws, are intended to prevent improper motives from influencing the purchasing activity of the Affiliates and Departments and to prevent the flow of confidential information between the trading and advisory arms of each of the Financial Advisors in order to permit unrestricted dealings in securities of clients of the advisory arms. In addition, while none of the Financial Advisors is registered under Section 15(a) of the Exchange Act, each of Citigroup Global Markets Inc., an affiliate of Citigroup Global Markets Limited, ABN Amro Inc., an affiliate of ABN AMRO, and UBS Securities LLC, an affiliate of UBS AG, is so registered and is thus subject to

⁴ The Financial Advisors may be deemed Covered Persons with respect to the Offer because their compensation will be affected by the consummation of the Offer.

the high level regulatory and reporting requirements of the U.S. federal securities laws. Consistent with the Information Barriers described above, the personnel in the Affiliates and Departments that direct, effect or recommend transactions in the Securities would not be the same personnel that are providing financial advisory services to Crucell. Furthermore, the Trading Activities would not be conducted in order to facilitate the Offer.

Moreover, the Swiss Rules and the rules of the SWX Swiss Exchange already offer shareholders involved in a tender offer protections consistent with those in Rule 14e-5, and include a number of the protections required by the Commission in previous relief letters under Rule 10b-13 and 14e-5. For example, the Swiss Rules would require the bidder in an offer to increase the offer price to the extent that the price paid by the bidder in any purchase outside the offer is higher than the offer price, which requirement is similar to the voluntary price increase conditions contained in some prior Commission no-action letters. The SEC has previously granted exemptive relief based on similar conditions, including the availability of protections under local laws and regulations. *See, e.g.*, the letter regarding the offer by Telefónica, S.A. for Telecomunicações de São Paulo S.A., et al. (available February 29, 2000); the letter regarding the offer by Telefónica, S.A. for Telecomunicações de São Paulo S.A., et al. (available February 4, 2000); and the letter regarding the offer by Vodafone AirTouch Public Limited Company for Mannesmann AG (available January 27, 2000).

The United Kingdom's City Code on Takeover and Mergers (the "City Code") is a U.K. 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 City Code provides shareholders involved in a tender offer with protections consistent with those in Rule 14e-5. The Commission is very familiar with the U.K. regulatory regime. In particular, it has included an exemption from Rule 14e-5(a) based on the applicability of the City 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 City Code is applicable.⁵ Although the Offer is not technically subject to the City Code because Berna is not incorporated in England, the Financial Advisors will voluntarily comply with the City Code. The SEC has previously granted relief under Rule 14e-5 based on voluntary compliance with the City Code. *See, e.g.*, the letter regarding certain trading activities by UBS AG, London Branch and J.P. Morgan Securities Limited during the issuer tender offer of Dairy Farm International Holdings Limited (available February 21, 2003) (the "2003 UBS Letter"). In the 2003 UBS Letter, the City Code did not apply because the offer in that case was an issuer tender offer and because the issuer was not incorporated in England; the Commission nevertheless granted relief under Rule 14e-5, relying, in part, on representations that during the transaction, UBS would voluntarily comply with the City Code. The SEC has granted no-action relief in other similar situations. *See, e.g.*, the letter regarding Gas Natural SDG S.A.'s proposed acquisition of Endesa S.A. (November 18,

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

2005); the letter regarding the proposed return of cash by National Grid Transco plc (available June 6, 2005); the letter regarding certain trading activities by J.P. Morgan Securities Limited during the issuer tender offer of Dairy Farm International Holdings Limited (available February 27, 2002); the letter regarding certain trading activities by UBS AG and UBS Warburg during the issuer tender offer of Hongkong Land Holdings Limited (available November 22, 2000); the letter regarding certain trading activities by UBS AG and UBS Warburg during the issuer tender offer of Allied Zurich (available September 13, 2000); the letter regarding certain trading activities by UBS AG and UBS Warburg during the issuer tender offer of Jardine Matheson Holdings Limited (available August 3, 2000); the letter regarding certain trading activities by Credit Suisse First Boston and Cazenove & Co. during the proposed recapitalization of BTR plc (available April 9, 1998); the letter regarding the proposed recapitalization by EMI Group plc (available July 17, 1997); and the letter regarding the proposed recapitalization by Thorn Plc (available June 18, 1997).

In the current transaction, each of the Financial Advisors will conduct itself as if it were a connected exempt principal trader, as defined in the City Code, during the Offer and voluntarily comply with the requirements of the City Code, except that trades will be reported to the SWX Swiss Exchange, as required by Swiss law and in lieu of the Panel. The interests of Berna shareholders, which Rule 14e-5 seeks to safeguard, should not be prejudiced by the Trading Activities of the Financial Advisors after the announcement and during the pendency of the Offer. The services provided by the Financial Advisors will be effected in the ordinary course of business, and the Financial Advisors will voluntarily comply with the City Code regulations (other than with respect to the notification of such trades to the Panel) that limit the likelihood that market-making transactions will promote the Offer as well as maintain the Information Barriers described above.

In its Trading Activities, each of the Financial Advisors and their Affiliates and Departments will comply with the applicable requirements under Swiss law, including the Swiss Rules, the applicable rules of the SWX Swiss Exchange, and, as described above, will voluntarily comply with the City Code, including regulations with respect to the establishment and maintenance of Information Barriers, conflict of interest provisions and other requirements. In light of (1) the presence of a comprehensive set of Swiss rules and regulations dealing with trading activities, (2) the protection under U.K. law, with which the Financial Advisors have voluntarily agreed to comply, against the types of abuses that Rule 14e-5 is designed to prevent, (3) the nature of the Offer, which is to be conducted principally under Swiss law, and (4) the nature of the Shares, which are listed only on the SWX Swiss Exchange and predominantly held by foreign-domiciled shareholders, we believe the likelihood of the occurrence of the abuses at which Rule 14e-5 is aimed is remote. The consideration of comity and the policy of promoting U.S. shareholder participation in cross-border transactions also make a compelling case for exemptive relief.

IV. Requested Exemptive Relief

Based on the foregoing, we respectfully request that each of the Financial Advisors be granted exemptive relief from the provisions of Rule 14e-5 to the limited extent necessary to permit it to engage in the Trading Activities in the Securities after the announcement and during the pendency of the Offer, subject to the following conditions:

- (1) All Trading Activities will be conducted outside the United States. No purchases or arrangements to purchase Securities, otherwise than pursuant to the Offer

will be made directly or indirectly on behalf of Crucell;

- (2) All purchases of the Securities by the Financial Advisors through the Affiliates and Departments during the Offer will be effected in the ordinary course of business and in compliance with (a) all Swiss laws and rules (including the Swiss Rules, the rules of the SWX Swiss Exchange and the City Code) applicable to such purchases and (b) to the extent described above, voluntarily with the pertinent provisions of the City Code and will not be undertaken for the purposes of promoting or otherwise facilitating the Offer, or for the purpose of creating actual, or apparent, active trading in, maintaining, or affecting the prices of the Securities;
- (3) 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 Securities and who are also involved in providing Crucell with financial advisory services or dealer manager services in the future;
- (4) The formal tender offer documents, will disclose the possibility that Affiliates and/or Departments of the Financial Advisors may purchase Securities outside the Offer;
- (5) The Financial Advisors shall disclose in the United States information regarding such purchases to the extent such information is required to be made public in Switzerland pursuant to applicable requirements in such jurisdiction;
- (6) The Financial Advisors will provide to the Division of Market Regulation, upon request, a daily time-sequenced schedule of all transactions in Securities made by Affiliates and/or Departments of the Financial Advisors during the Offer, on a transaction-by-transaction basis, including:
 - (a) the size, broker (if any), date and time of execution, and price of purchase; and
 - (b) the exchange, quotation system, or other facility through which the purchase occurred;
- (7) Upon the request of the Division of Market Regulation, each of the Financial Advisors shall transmit the information as specified in paragraph 7 to the Division of Market Regulation at its offices in Washington, D.C. within 30 days of its request;
- (8) The Financial Advisors shall retain all documents and other information produced pursuant to this exemption for a period of not less than two years from the date of the termination of the Offer;
- (9) Representatives of each of the Financial Advisors shall be made available (in person at the office of the Division of Market Regulation or by telephone) to respond to inquiries of the Division of Market Regulation relating to their records; and
- (10) Except as otherwise exempted herein, the Financial Advisors shall comply with Rule 14e-5 during the Offer.

The Financial Advisors expect that most trading in the Shares will take place on the SWX Swiss Exchange, while most trading in derivatives will take place in the OTC market.

V. Conclusion

As financial advisors to Crucell and Berna in connection with the Offer, each of the Financial Advisors has found itself in the position where it will be prohibited from engaging in the Trading Activities during the Offer. To the extent that the Financial Advisors are not able to make a market in the Securities on the SWX Swiss Exchange or otherwise, the markets and the Financial Advisors' clients may be disadvantaged. In light of the exemptive relief that the SEC has previously granted in similar circumstances, the Financial Advisors believe that relief is appropriate. Therefore, the Financial Advisors are requesting exemptive relief from Rule 14e-5 in order to allow their Affiliates and Departments to engage in the purchases and arrangements to purchase described in the Trading Activities enumerated above beginning on the date the SEC grants relief through the expiration of the Offer.

* * *

If you have any questions or require any additional information, please contact either of Ashar Qureshi of Cleary Gottlieb Steen & Hamilton LLP on 44-20-7614-2226 or Jason Manketo of Linklaters on 44-20-7456-4654. We respectfully request that you contact us prior to issuing a written response to the request for exemptive relief herein.

Sincerely,



Ashar Qureshi, Esq.

Jason Manketo, Esq.