



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

DIVISION OF
MARKET REGULATION

March 2, 2007

Jeffrey M. Oakes
Davis Polk & Wardwell
99 Gresham Street
London EC2V 7NG
England

Re: Cash Tender Offer by Sulzer AG for the Ordinary Shares of Bodycote
International plc
TP No. 07-48

Dear Mr. Oakes:

In your letter dated March 2, 2007, as supplemented by conversations with the staff of the Division of Market Regulation ("Division"), you request exemptive relief from Rule 14e-5 under the Securities Exchange Act of 1934 ("Exchange Act") in connection with purchases and arrangements to purchase shares of Bodycote International plc by Sulzer AG and certain persons acting on its behalf following public announcement of the tender offer for the Ordinary Shares of Bodycote International plc.

As you note in your letter, the Securities and Exchange Commission ("Commission") has granted relief on numerous occasions, similar to that requested by you on behalf of Sulzer AG, with respect to other purchases and arrangements to purchase subject securities or related securities in accordance with local law during a tender offer.¹

Rule 14e-5 under the Exchange Act prohibits a covered person from directly or indirectly purchasing or arranging to purchase subject securities or any related securities except as part of the tender offer. This prohibition applies from the time the tender 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-manager and its 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, directly or indirectly, in concert with any of the foregoing in connection with any purchase or arrangement to purchase any subject securities or any related securities.

¹ Rule 14e-5 does not explicitly include the term "exchange offer" as former Rule 10b-13 did because in Regulation 14E the term "tender offer" includes offers to exchange securities for cash and/or securities. The terms "subject securities" and "related securities" are defined in Rule 14e-5(c).

With regard to cross-border tender offers, local law of the target company jurisdiction may permit the offeror and its affiliates and/or agents to purchase subject securities or related securities outside of the tender offer under certain conditions. Application of Rule 14e-5 to such offers would prohibit such purchases where the purchases are outside of the tender offer and do 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 announcement of the offer notwithstanding the fact that such purchases are permitted under local law. Prohibition of such permitted purchases would run counter to the Commission's policy of encouraging issuers and bidders to extend tender and exchange offers, rights offerings and business combinations to the U.S. securityholders of foreign private issuers.²

Accordingly, we find that it is appropriate in the public interest and consistent with the protection of investors to grant, and hereby grant, an exemption from Rule 14e-5 under the Exchange Act to permit any "Prospective Purchaser"³ to purchase or arrange to purchase subject securities or any related security pursuant to a tender offer that meets the following conditions:

1. The company that is the target of the offer ("subject company") is a "foreign private issuer" as defined in Rule 3b-4(c) of the Exchange Act;
2. The offeror reasonably intends to rely on Tier II exemptive relief under Rule 14d-1(d) of the Exchange Act in connection with the tender offer;
3. The Prospective Purchasers comply with the applicable laws and regulations of the "home jurisdiction," as defined in Rule 14d-1;⁴
4. The laws of the home jurisdiction require that the tender offer price be increased to match any consideration paid outside of the tender offer that is greater than the tender offer price;⁵

² Cross-Border Tender and Exchange Offers, Business Combinations and Rights Offerings, Release No. 34-42054, International Series No. 1208 (October 26, 1999), Section II.C.1.

³ For purposes of our response, "Prospective Purchaser" refers to the offeror, its affiliates, and/or its agents. An "affiliate" is any person that directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, the offeror. An "agent" is any broker-dealer or financial advisor who acts on behalf of the offeror in an agency capacity to effect purchases of subject securities or related securities during the pendency, but outside, of the tender offer.

⁴ The term "home jurisdiction" is defined in the Instructions to paragraphs (c) and (d) of Rule 14d-1 as both the jurisdiction of the subject company's incorporation, organization or chartering and the principal foreign market where the subject company's securities are listed or quoted.

⁵ We note that raising the tender offer price may trigger obligations under Rules 13e-4(e)(3)(ii) and 14e-1(b), which requires that a tender offer remain open for at least ten business days following notice to security holders of an increase in the consideration offered. In addition, raising the tender offer price may give rise to amendment and dissemination requirements under applicable tender offer rules.

5. The Commission and the home jurisdiction are parties to a bilateral or multilateral memorandum of understanding (MOU) as to consultation and cooperation in the administration and enforcement of securities laws;⁶
6. No purchases or arrangements to purchase subject securities or related securities, otherwise than pursuant to the tender offer, are made in the United States;
7. The United States offering materials disclose prominently the possibility of, or the intention to make, purchases or arrangements to purchase subject securities or related securities outside of the tender offer by the Prospective Purchasers and disclose the manner in which information regarding such purchases or arrangements to purchase will be disseminated;
8. The Prospective Purchasers disclose in the United States, to the extent such information is made public in the home jurisdiction pursuant to applicable law, information regarding all purchases of subject securities or related securities otherwise than pursuant to the tender offer since the announcement date;
9. The Prospective Purchasers provide to the Division, upon request, a daily time-sequenced schedule of all purchases of subject securities or related securities made by the Prospective Purchasers from the announcement date until the tender offer expires, 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;
10. Upon the request of the Division, the Prospective Purchasers transmit the information as specified in paragraphs 9.a. and 9.b. above to the Division at its offices in Washington, D.C. within 30 days of its request;
11. The Prospective Purchaser retains 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;
12. Representatives of the Prospective Purchasers are 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

⁶ A list of jurisdictions with which the Commission has entered into bilateral MOUs is maintained on the Commission's Web site at http://www.sec.gov/about/offices/oia/oia_bilateral.htm. In addition, the Commission is party to the Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information of the International Organization of Securities Commissions, dated May, 2002. Information concerning the Multilateral Memorandum of Understanding can be found at <http://www.iosco.org>.

Jeffrey M. Oakes, Esq.

March 2, 2007

Page 4

13. Except as otherwise exempted herein, the Prospective Purchasers must comply with Rule 14e-5.

This exemption is subject to modification or revocation if at any time the Commission or Division determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, persons relying on this exemption are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 14(e), 10(b), and Rule 10b-5 thereunder. Responsibility for compliance with these and other provisions of the federal or state securities laws must rest with persons relying on this exemptive position. The staff expresses no view with respect to other questions that the proposed transactions may raise, including, but not limited to, the adequacy of disclosure concerning, and the applicability of other federal and state laws to, the proposed transactions.

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



James A. Brigagliano
Associate Director
Division of Market Regulation

Attachment

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March 2, 2007

Re: **Possible Cash Offer by Sulzer AG for the Ordinary Shares of
Bodycote International plc**

James Brigagliano
Associate Director
Division of Market Regulation
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Dear Mr. Brigagliano:

We are writing on behalf of our client, Sulzer AG, a stock corporation limited by shares organized under the laws of Switzerland ("Sulzer"). As described in more detail in this letter, Sulzer is considering commencing a cash tender offer (the "Offer") for all of the issued and to be issued ordinary shares, nominal value 10 pence sterling per share (the "Bodycote Shares"), of Bodycote International plc, a public limited company incorporated under the laws of England and Wales ("Bodycote").

We hereby request that the staff (the "Staff") of the Securities and Exchange Commission (the "Commission") grant exemptive relief from Rule 14e-5 under the Securities Exchange Act of 1934, as amended (the "Exchange Act") to permit Sulzer, any of its subsidiaries or subsidiary undertakings and any advisor, broker or financial institution acting as an agent or for the account or benefit of Sulzer (the "Prospective Purchasers") to purchase or arrange for the purchase of Bodycote Shares outside the United States other than pursuant to the Offer as described in this letter.

Although Sulzer is currently considering implementing the Offer by way of a cash tender offer, it may elect to implement the Offer by way of a scheme of arrangement (which is a court-based statutory procedure pursuant to the laws of England and Wales whereby Bodycote would request its shareholders to approve in a court-convened and general meeting various resolutions resulting in, among other things, the cancellation of the Bodycote Shares and the payment of the cash consideration to the holders of the Bodycote Shares).

In connection with the Offer, we are U.S. counsel to Sulzer and Slaughter and May is U.K. counsel to Sulzer. The descriptions in this letter of U.K. law are based on discussions with Slaughter and May.

Background

Sulzer. Sulzer operates in the machinery and equipment as well as the surfacing technology business. Sulzer operates in more than 120 locations and employs approximately 10,000 people worldwide. For the fiscal year ended December 31, 2006, Sulzer reported sales of approximately CHF 2,801.7 million, net income of approximately CHF 221.4 million and net assets of approximately CHF 1,544.3 million.

Sulzer is headquartered in Winterthur, Switzerland and is a "foreign private issuer" as defined in Rule 3b-4(c) under the Exchange Act. According to its latest report (dated December 31, 2005), Sulzer's issued and listed voting share capital consisted of 3,638,030 shares with a par value of CHF 0.03 per share ("**Sulzer Ordinary Shares**"). Each Sulzer Ordinary Share carries one vote at shareholder meetings. Sulzer has no class of securities registered with the Commission pursuant to Section 12(b) of the Exchange Act or any securities listed on a U.S. national securities exchange, nor is Sulzer, or has it ever been, subject to the periodic reporting requirements of the Exchange Act. Sulzer Ordinary Shares are traded on the SWX Swiss Exchange, which is the principal trading market for Sulzer Ordinary Shares.

Bodycote. Bodycote is a provider of specialist testing and thermal processing services, heat treatments, hot isostatic pressing, metallurgical coatings and testing services.

Bodycote is headquartered in Cheshire, England and is a "foreign private issuer" as defined in Rule 3b-4(c) under the Exchange Act. In Bodycote's notification to the U.K. market on December 20, 2006 (its most recent notification), Bodycote stated that its share capital consisted of 322,170,735 ordinary shares with a nominal value of 10 pence per share. Bodycote Shares are admitted to the Official List of the United Kingdom Listing Authority ("**UKLA**") and trade on the London Stock Exchange ("**LSE**"). Bodycote has no class of securities registered under Section 12 of the Exchange Act or any securities listed on a U.S. national securities exchange, and, to the best of our knowledge, Bodycote is not, nor has it ever been, subject to the periodic reporting requirements of the Exchange Act.

Sulzer, either directly or indirectly, has acquired Bodycote Shares in open market transactions and as of March 1, 2007 owned just under 1% of the outstanding Bodycote Shares.

Qualification for Tier II Relief. In conducting the Offer on the terms described in this letter, Sulzer currently expects to be able to rely on Rule 14d-1(d) under the Exchange Act, which provides exemptive relief from otherwise applicable rules to persons conducting a tender offer under certain conditions (“Tier II Relief”). In order for an offer to qualify for Tier II Relief, (i) the subject company must be a foreign private issuer as defined in Rule 3b-4 under the Exchange Act and not an investment company, (ii) no more than 40% of the securities of the subject company sought in the offer may be held by holders who are resident in the United States and (iii) the offeror must comply, subject to any applicable exemptions, with all applicable U.S. tender offer rules and regulations.

Pursuant to Rule 14d-1, the issuer of the subject securities will be presumed to be a foreign private issuer and U.S. holders will be presumed to hold 40% or less of such outstanding securities unless: (i) the tender offer is made pursuant to an agreement with an issuer of the subject securities; (ii) the aggregate trading volume of the subject class of securities on all national securities exchanges in the United States, over the 12-calendar-month period ending 30 days before commencement of the offer, exceeds 40%; (iii) the most recent annual report or annual information filed or submitted by the issuer with securities regulators of its home jurisdiction or with the Commission indicates that U.S. holders hold more than 40% of the outstanding subject class of securities; or (iv) the bidder knows or has reason to know that the level of U.S. ownership exceeds 40%.

If Sulzer decides to commence an Offer, a determination will be made under the applicable rules and regulations as to whether such Offer is made pursuant to an agreement with Bodycote. As noted above, Bodycote Ordinary Shares are not listed on any U.S. national securities exchange and, based on publicly available information, Sulzer currently does not know or have any reason to know that the level of U.S. ownership of Bodycote Shares exceeds 40%. In addition, on the basis of such publicly available information, Sulzer believes that U.S. beneficial holders hold less than 40% of the Bodycote Shares. More particularly, based on the most recent regulatory filings and other publicly available information in the United Kingdom, Sulzer estimates that U.S. holders owned approximately 59.5 million Bodycote Shares, which constitute approximately 20.5% of the total outstanding Bodycote Shares as of the date of such available information (assuming the currency of the source information). Such percentage calculation takes into account the exclusion of one holder that has reported aggregate ownership of approximately 10.0% (as of December 21, 2006). It also assumes that the shareholders shown on Bodycote’s share register with U.S. addresses are all holding for U.S. residents. On the basis of the foregoing, Sulzer intends to make the Offer in reliance on Tier II pursuant to Rule 14d-1(d) under the Exchange Act. If the Offer is made in agreement with Bodycote, Sulzer will perform the required analysis to determine whether it qualifies for relief under Rule 14d-1(c) or Rule 14d-1(d) under the Exchange Act.

Proposed Offer Structure

The Offer. As indicated above, it has not yet been determined whether the Offer will be made. Assuming such an Offer is made, it is currently expected that it will be made by Sulzer (or a wholly-owned subsidiary thereof) (the “**Offeror**”) and will consist of all cash. It is contemplated that a loan note alternative may be made available to certain non-U.S. holders of Bodycote Shares (as described further below). It is expected that the Offer will be structured as a single offer made concurrently in the United Kingdom, the United States and certain other jurisdictions where the Offer may be legally extended.

The Offer will be structured to comply with (i) the rules and regulations of the UKLA and the LSE, (ii) the City Code on Takeovers and Mergers of the United Kingdom (the “**City Code**”) and (iii) except as otherwise requested herein or at a later date, Section 14(e) of the Exchange Act (including Regulation 14E promulgated thereunder) as they apply to offers that satisfy the conditions of Rule 14d-1(d)(1). The Offer is not subject to Section 14(d) of the Exchange Act (or Regulation 14D promulgated thereunder) since Bodycote does not have any class of securities registered under Section 12 of the Exchange Act or listed on a U.S. national securities exchange. The offer document (the “**Offer Document**”) used in connection with the Offer will be prepared in compliance with the applicable rules and regulations of the UKLA and the LSE and with the City Code and the Exchange Act.

In such case, the Offer Document would be mailed to all holders of record of Bodycote Shares in the United Kingdom, the United States and certain other jurisdictions where the Offer may be legally extended within 28 calendar days of the date the Offer is announced, as required by Rule 30.1 of the City Code, or such later date as to which the Panel on Takeovers and Mergers (the “**Panel**”), which administers the City Code, may agree. Pursuant to Rule 14e-1(a) under the Exchange Act, the Offer will remain open for acceptances for not less than 20 U.S. business days from the mailing of the Offer Document and the Offer can be extended for such additional period or periods as may be (i) determined by the Offeror and (ii) required or necessary to comply in this respect with Section 14(e) of the Exchange Act and Regulation 14E promulgated thereunder or the City Code, but not while the Offer remains conditional as to the minimum level of acceptance beyond midnight on the 60th calendar day after mailing or such later date as to which the Panel, which administers the City Code, may agree.

Once the Offer becomes or has been declared unconditional as to the minimum level of acceptance, all conditions to the Offer must be satisfied or, where permissible, waived pursuant to Rule 31.7 of the City Code not later than 21 days after the date on which the Offer is declared unconditional as to the level of acceptance, whereupon that Offer will be wholly unconditional (the “**Initial Offer Period**”) and the Offeror will accept all Bodycote Shares that have by that

