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BY EMAIL

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Mergers and Acquisitions
100 F Street, N.E.
Washington, DC 20549-3628

Attention: Michele M. Anderson
Perry J. Hindin
Tiffany Piland Posil

RE: Danaher Corporation – Exchange Offer

Ladies and Gentlemen:

We are writing on behalf of our client, Danaher Corporation, a Delaware corporation ("Danaher"), in connection with a potential exchange offer. Danaher, NetScout Systems, Inc., a Delaware corporation ("NetScout"), and certain other parties have entered into an Agreement and Plan of Merger and Reorganization, dated as of October 12, 2014 (the "Merger Agreement"), to implement a combination of Danaher's communications group business (the "Communications Business") with NetScout in a "Reverse Morris Trust" transaction (the "Transaction"). As part of the implementation of the Transaction, Danaher expects to commence an Exchange Offer (as defined below) in which it will offer holders of common stock of Danaher, par value $0.01 per share ("Danaher Common Stock"), the right to exchange all or a portion of their Danaher Common Stock for common units representing limited liability company interests ("Newco Common Units") in Potomac Holding LLC, a Delaware limited liability company ("Newco"), as described below (the "Exchange Offer"). Pursuant to the Transaction, each Newco Common Unit distributed in the Exchange Offer to holders of Danaher Common Stock will thereafter be converted into the right to receive common stock of NetScout, par value $0.001 per share ("NetScout Common Stock").

In the Exchange Offer, Danaher expects to adopt substantially the same pricing mechanism used by (i) Halliburton Company ("Halliburton") in its exchange offer (the "Halliburton Exchange Offer") with respect to the common stock of KBR, Inc., (ii) Weyerhaeuser Company ("Weyerhaeuser") in its exchange offer (the "Weyerhaeuser Exchange Offer") with respect to the common stock of Domtar Corporation, (iii) McDonald's Corporation

("McDonald's") in its exchange offer (the "McDonald's Exchange Offer") with respect to the Class B Common Stock of Chipotle Mexican Grill, Inc., (iv) PPG Industries, Inc. ("PPG") in its exchange offer (the "PPG Exchange Offer") with respect to the common stock of Georgia Gulf Corporation as part of a Reverse Morris Trust transaction, (v) Kraft Foods Inc. ("Kraft") in its exchange offer (the "Kraft Exchange Offer") with respect to the common stock of Ralcorp Holdings, Inc. as part of a Reverse Morris Trust transaction and (vi) Pfizer, Inc. ("Pfizer") in its exchange offer (the "Pfizer Exchange Offer") with respect to the common stock of Zoetis, Inc.[1] The proposed pricing mechanism for the Exchange Offer is also similar to the one used by (i) Bristol-Myers Squibb Company ("BMS") in its exchange offer (the "BMS Exchange Offer") with respect to the common stock of Mead Johnson Nutrition Company and (ii) Procter & Gamble Company ("P&G") in its exchange offer (the "P&G Exchange Offer") with respect to the shares of The J.M. Smucker Company as part of a Reverse Morris Trust transaction.[2] The Halliburton Exchange Offer, the Weyerhaeuser Exchange Offer, the McDonald's Exchange Offer, the PPG Exchange Offer, the Kraft Exchange Offer, the Pfizer Exchange Offer, the BMS Exchange Offer and the P&G Exchange Offer are collectively referred to herein as the "Similar Exchange Offers."

We respectfully request that the Staff confirm that it will not recommend that the U.S. Securities and Exchange Commission (the "Commission") take enforcement action pursuant to Rules 13e-4(d)(1), 13e-4(e)(3), 13e-4(f)(1)(ii) and 14e-1(b) under the Securities Exchange Act of 1934, as amended (the "Exchange Act") (requiring the specification of consideration offered, the specification of the total number of securities sought in the offer and the extension of the offer on a change in consideration, a change in the amount of securities sought in the offer, or a change in the percentage of the class of securities being sought in the offer), with respect to Danaher's use of the pricing mechanism described below (the "Pricing Mechanism") and with respect to Danaher's specification of the number of shares of Danaher common stock sought in the Exchange Offer in the manner described below. The issues presented are substantially identical to those to which the Staff did not object in connection with the exchange offers conducted by Halliburton, Weyerhaeuser, McDonald's, PPG, Kraft and Pfizer. The issues presented are also substantively similar to those to which the Staff did not object in the exchange offers conducted by BMS and P&G.

I. BACKGROUND

The parties to, and the terms of, the Transaction are described in more detail in (i) the Prospectus (the "Prospectus") included in Newco's Registration Statement on Form S-4 and S-1 (File No. 333-200711) filed on December 3, 2014, and amended thereafter and (ii) NetScout's Registration Statement on Form S-4 (No. 333-200704) filed on December 3, 2014, and amended thereafter. Set forth below is a description of the parties to, and main components of, the Transaction. Participation in the Exchange Offer is voluntary, and Danaher has not and will not make any recommendation about whether anyone should participate.

A. Danaher Corporation

Danaher is a publicly-held company organized under the laws of the state of Delaware. Danaher designs, manufactures and markets professional, medical, industrial and commercial products and services. Danaher's research and development, manufacturing, sales, distribution, service and administrative facilities are located in more than 50 countries. Danaher reported sales of over $19.11 billion for the year ended December 31, 2013.

Danaher is a well-known seasoned issuer, subject to the information reporting requirements of the Exchange Act. Accordingly, it files with the Commission periodic reports, proxy statements and other information relating to Danaher's business, financial results and other matters. As of May 1, 2015, there were outstanding 707,828,821 shares of Danaher Common Stock. Danaher Common Stock is listed on the New York Stock Exchange (the "NYSE").

B. NetScout Systems, Inc.

NetScout is a publicly-held company organized under the laws of the state of Delaware. NetScout provides high-quality performance analytics and operational intelligence solutions that facilitate new computing paradigms, including virtualization, mobility and cloud. NetScout manufactures and markets these products in integrated hardware and software solutions that are used by commercial enterprises, large governmental agencies and telecommunication service providers worldwide. NetScout reported sales of over $390 million for the year ended March 31, 2014.

NetScout is a well-known seasoned issuer, subject to the information reporting requirements of the Exchange Act. Accordingly, it files with the Commission periodic reports, proxy statements and other information relating to NetScout's business, financial results and other matters. As of May 1, 2015, there were outstanding 40,807,787 shares of NetScout Common Stock. NetScout Common Stock is listed on the NASDAQ Global Market ("NASDAQ").

C. Potomac Holding LLC

Newco was formed on September 29, 2014 as a Delaware limited liability company. Newco is a newly formed, direct wholly-owned subsidiary of Danaher that was organized specifically for the purpose of effecting the Separation (as defined below). Newco has engaged in no business activities to date and it has no material assets or liabilities of any kind, other than those incident to its formation and those incurred in connection with the Transaction.

D. RS Merger Sub I, Inc.

RS Merger Sub I, Inc. was formed on October 9, 2014 as a Delaware corporation ("Merger Sub"). Merger Sub is a newly formed, direct wholly-owned subsidiary of NetScout that was organized specifically for the purpose of effecting the Transaction. Merger Sub has engaged in no business activities to date and it has no material assets or liabilities of any kind, other than those incident to its formation and those incurred in connection with the Transaction.

E. RS Merger Sub II, LLC

RS Merger Sub II, LLC was formed on October 9, 2014 as a Delaware limited liability company ("Merger Sub II"). Merger Sub II is a newly formed, direct wholly-owned subsidiary of NetScout that was organized specifically for the purpose of effecting the Transaction. Merger Sub II has engaged in no business activities to date and it has no material assets or liabilities of any kind, other than those incident to its formation and those incurred in connection with the Transaction.

F. Terms of the Transaction

1. Separation of the Communications Business

Pursuant to the terms of the Separation and Distribution Agreement, dated as of October 12, 2014, by and among Danaher, NetScout and Newco, Danaher will (a) transfer (or cause to be transferred) to Newco or one or more subsidiaries of Newco certain assets and liabilities constituting the Communications Business, (b) cause any applicable subsidiary of Newco to transfer to Danaher or one or more subsidiaries of Danaher (other than Newco or any subsidiary of Newco) certain excluded assets and excluded liabilities that are not intended to be retained by the Communications Business in order to separate and consolidate the Communications Business under Newco and (c) contribute all the equity interests in each subsidiary of Newco to Newco in exchange for a number of Newco Common Units that will result in the desired capitalization of Newco prior to the Distribution (as described below) ((a) through (c), collectively, the "Separation").

2. Distribution of Newco Common Units

Following the Separation, Danaher will distribute Newco Common Units to holders of Danaher Common Stock pursuant to the Exchange Offer. In the Exchange Offer, Danaher is offering to holders of Danaher Common Stock the right to exchange all or a portion of their Danaher Common Stock for Newco Common Units. In the event the Exchange Offer is not fully subscribed, Danaher will distribute in a spin-off the remaining Newco Common Units owned by Danaher on a pro rata basis to Danaher stockholders whose shares of Danaher Common Stock remain outstanding after the consummation of the Exchange Offer (such spin-off, together with the Exchange Offer, the "Distribution"). However, on account of the discount described below, Danaher does not expect the Exchange Offer to be less than fully subscribed, as such discount acts as an inducement to holders of Danaher Common Stock who value the investment opportunity of receiving shares of NetScout Common Stock at a discount to the per-share value of NetScout Common Stock at the expiration of the Exchange Offer.

3. The Mergers

The Merger Agreement contemplates that following the consummation of the Exchange Offer, Merger Sub will merge with and into Newco, whereby the separate corporate existence of Merger Sub will cease and Newco will continue as the surviving company and as a wholly-owned subsidiary of NetScout (the "First Merger"). Immediately following the First Merger, Newco will merge with and into Merger Sub II, whereby the separate corporate existence of Newco will cease and Merger Sub II will continue as the surviving company and as a wholly-owned subsidiary of NetScout (the "Second Merger" and, together with the First Merger, the "Mergers").

The consummation of the transactions contemplated by the Merger Agreement is expected to result in Danaher stockholders and Newco employees, holding on a fully diluted basis approximately 59.5% of the issued and outstanding shares of NetScout Common Stock and existing NetScout equityholders holding approximately 40.5% of the issued and outstanding shares of NetScout Common Stock on a fully diluted basis. This result is due to the application of a formula set forth in the Merger Agreement:

(i) Each issued and outstanding Newco Common Unit (except Newco Common Units held by Danaher, NetScout, Newco or Merger Sub) will be automatically converted, at the effective time of the First Merger, into a number of shares of NetScout Common Stock equal to (x) 62.5 million shares of NetScout Common Stock plus the product of (A) 1.46 multiplied by (B) the number of shares of NetScout Common Stock issued in any acquisition by NetScout prior to the effective time of the First Merger divided by (y) the aggregate number of Newco Common Units issued and outstanding immediately prior to the effective time of the First Merger.

(ii) Prior to the consummation of the Exchange Offer, Newco will authorize the issuance of a number of Newco Common Units such that the total number of Newco Common Units outstanding immediately prior to the effective time of the First Merger will be a number that results in the formula set forth in (i) above equaling one.

(iii) Therefore, each Newco Common Unit (except Newco Common Units held by Danaher, NetScout, Newco or Merger Sub) will be converted into one share of NetScout Common Stock in the First Merger.

II. THE EXCHANGE OFFER

Danaher is adopting the Pricing Mechanism (as described below) for the Exchange Offer because Danaher believes the Pricing Mechanism is necessary to ensure the successful closing of the Transaction and allows investors to better predict the value they will receive in the Exchange Offer than they would in an offer using the traditional pricing method of a fixed-ratio offer. In fixed-ratio offers, the return to investors depends on the value at the expiration of the exchange offer of both the security offered and the security tendered. Both values fluctuate independently and without constraint during the offer period, and an investor only realizes the actual discount initially embedded in the exchange ratio if the prices of the underlying securities at the expiration of the exchange offer are equal to such prices at the commencement of the exchange offer. Sophisticated investors may attempt to lock in this discount at the commencement of the exchange offer through a variety of trading strategies that, when implemented, make them economically indifferent to subsequent changes in the trading prices of the applicable securities. However, less sophisticated investors (such as small retail investors) generally do not attempt to lock in the discount at the commencement of the exchange offer. Instead, their decision to participate in the exchange offer may be more heavily influenced by the relative trading prices of each applicable security toward the expiration of the exchange offer, which may not reflect the discount initially embedded in the exchange ratio.

As with the Similar Exchange Offers, the Exchange Offer does not set forth a fixed exchange ratio at the outset of the Exchange Offer. Rather, the Exchange Offer price will be expressed as a ratio of a specified dollar amount of Newco Common Units (which will be converted into the right to receive NetScout Common Stock in the First Merger) for each $100 of Danaher Common Stock tendered pursuant to the Exchange Offer (subject to the upper limit on the exchange ratio described below). This value relationship will reflect a discount to the estimated value of NetScout Common Stock (based on the value of the NetScout Common Stock that Newco Common Units will be converted into the right to receive) in order to encourage participation in the Exchange Offer. For example, if the discount were set at 7%, Danaher stockholders would receive approximately $107.53 of Newco Common Units (and ultimately NetScout Common Stock) for each $100 of Danaher Common Stock tendered. If the calculated per-share value of Danaher Common Stock was $84.2876 (based on the average of the VWAPs of Danaher Common Stock as of May 8, 11 and 12) and the calculated per-unit value of Newco Common Units was $41.5824 (based on the average of the VWAPs of NetScout Common Stock as of May 8, 11 and 12), then a tendering Danaher stockholder would receive approximately 2.1796 Newco Common Units per share of Danaher Common Stock tendered. Immediately following consummation of the Exchange Offer, the Newco Common Units will be converted into shares of NetScout Common Stock, as described above. No fractional shares of NetScout Common Stock will be delivered to holders of Newco Common Units. Instead, holders of Newco Common Units who would otherwise be entitled to receive a fractional share of NetScout Common Stock will receive in cash, upon conversion of their Newco Common Units in the First Merger, the dollar amount (rounded to the nearest whole cent) determined by multiplying such fraction by the closing price of NetScout Common Stock on NASDAQ on the last business day prior to the effective time of the First Merger (the First Merger is expected to occur promptly following the expiration of the Exchange Offer). The amount received by such holders of Newco Common Units will be net of any required withholding taxes. Fractional shares of NetScout Common Stock that holders of Newco Common Units would otherwise have been entitled to receive will remain unissued and part of NetScout's authorized share capital.

Consistent with the Similar Exchange Offers (other than the McDonald's Exchange Offer which used a two-day averaging period), the calculated per-share values for Danaher Common Stock and NetScout Common Stock will be determined based upon the volume-weighted average price ("VWAP") of each stock over a three-day averaging period (the "Valuation Dates"). Specifically, and consistent with the exchange offers conducted by Halliburton, Weyerhaeuser, McDonald's and Pfizer, the averaging period in the Exchange Offer will end on and include the expiration date of the Exchange Offer, unless the Exchange Offer is subject to a Mandatory Extension (as described below), in which case the averaging period of the Exchange Offer will not include the last two trading days of the Mandatory Extension period. Similarly, the exchange offers conducted by PPG and Kraft had a pricing mechanism that utilized the last three full trading days of the exchange offer period.[3] In the exchange offers conducted by BMS and P&G, the calculated per-share values were determined by reference to the daily VWAP of each stock during an averaging period ending on and including the second trading day preceding the expiration date of such exchange offer. The trading data to be used to set the value of Danaher Common Stock will be the trading data for Danaher Common Stock on the NYSE. The trading data to be used to set the value of Newco Common Units will be the trading data for NetScout Common Stock on NASDAQ. The daily VWAP for Danaher Common Stock or NetScout Common Stock will be the volume-weighted average price per share of Danaher Common Stock on the NYSE and NetScout Common Stock on NASDAQ during the period beginning at 9:30 a.m., New York City time (or such other time as is the official open of trading on the NYSE and NASDAQ, as applicable), and ending at 4:00 p.m., New York City time (or such other time as is the official close of trading on the NYSE and NASDAQ, as applicable), except that such data will only take into account adjustments made to reported trades included by 4:10 p.m., New York City time. The daily VWAP will be as reported by Bloomberg L.P. displayed under the heading Bloomberg VWAP on the Bloomberg pages "DHR UN<Equity>AQR" with respect to Danaher Common Stock and "NTCT UW<Equity>AQR" with respect to NetScout Common Stock (or their equivalent successor pages if such pages are not available). The daily VWAPs provided by Bloomberg L.P. may be different from other sources of volume-weighted average prices or investors' or security holders' own calculations of volume-weighted average prices.

The daily VWAP for each stock will be provided to Danaher by Bloomberg L.P. and Danaher will calculate, for each stock, the simple arithmetic average of the VWAP of each of the last three trading days. Danaher believes that a VWAP-based pricing mechanism minimizes pricing distortions in the exchange ratio that may arise as a result of share price volatility on any particular day. Danaher also believes that the three-day averaging period provides stockholders with a reasonable balance between the objectives of providing the most current pricing practicable, while reducing price distortions that could occur if prices were established at a single point in time. This practice is consistent with market precedent from the Similar Exchange Offers (other than the McDonald's Exchange Offer which used a two-day averaging period) and is consistent with the relief granted by the Staff with respect to those exchange offers.

In light of the Pricing Mechanism that has been adopted in the Exchange Offer, the Prospectus does not disclose a fixed number of shares of Danaher Common Stock that will be accepted for exchange in the Exchange Offer. Rather, the Prospectus discloses the manner in which the number of shares of Danaher Common Stock to be accepted will be determined. As noted in the Prospectus, the number of shares of Danaher Common Stock that will be accepted if the Exchange Offer is completed will depend on (1) the final exchange ratio, (2) the number of Newco Common Units offered and (3) the number of shares of Danaher Common Stock tendered. The maximum number of Newco Common Units receivable for tendered Danaher Common Stock will be subject to an upper limit expressed as a fixed ratio that will equal 2.2512, which represents a 10% discount for Newco Common Units based on the average of the daily VWAPs of Danaher Common Stock and NetScout Common Stock on the last three trading days ending on the second to last trading day before commencement of the Exchange Offer. This upper limit is intended to ensure that an unusual or unexpected drop in the trading price of NetScout Common Stock, relative to the trading price of Danaher Common Stock, will not result in an unduly high number of Newco Common Units being exchanged for each share of Danaher Common Stock accepted in this Exchange Offer. If the upper limit is in effect at the close of trading on the expiration date of the Exchange Offer, the final exchange ratio will be fixed at the upper limit and the Exchange Offer will be extended (a "Mandatory Extension") until 12:00 midnight, New York City time, on the second trading day following the originally contemplated expiration date of the Exchange Offer. No later than 4:30 p.m. on the expiration date of the Exchange Offer, Danaher will issue a press release to announce whether the upper limit is in effect and, if so, the extension of the Exchange Offer period. Danaher will also place this announcement on the website described in the Prospectus. The Exchange Offer will not include a minimum exchange ratio because, were such a limit to be triggered, it would provide tendering Danaher stockholders with a windfall return for Danaher Common Stock tendered and accepted.

If, upon the expiration of the Exchange Offer, Danaher stockholders have validly tendered and not properly withdrawn more Danaher Common Stock than Danaher is able to accept for exchange (taking into account the exchange ratio and the total number of Newco Common Units owned by Danaher), Danaher will accept for exchange the Danaher Common Stock validly tendered and not properly withdrawn by each tendering Danaher stockholder on a pro rata basis based on the proportion that the total number of shares of Danaher Common Stock to be accepted bears to the total number of shares of Danaher Common Stock validly tendered and not properly withdrawn (rounded to the nearest whole number of shares of Danaher Common Stock), subject to any adjustment necessary to ensure the exchange of all Newco Common Units being offered by Danaher in the Exchange Offer (other than with respect to odd-lot tenders).

The trading prices for NetScout Common Stock prior to the First Merger are, in Danaher's view, an appropriate representation of the anticipated trading prices for NetScout Common Stock following the First Merger, as (i) the Newco Common Units to be distributed to Danaher stockholders and converted into the right to receive NetScout Common Stock will be calculated on the basis of the number of shares of NetScout Common Stock that will be issued in the First Merger, where such Newco Common Units will be converted into the right to receive NetScout Common Stock based on a 1 to 1 merger conversion ratio and (ii) at the time of the Valuation Dates, it is expected that all the conditions to the consummation of the Mergers will have been satisfied or waived and the Mergers will be consummated shortly thereafter, such that investors should view one Newco Common Unit as economically equivalent to one share of NetScout Common Stock. Danaher believes that it is reasonable to use the public trading prices for NetScout Common Stock prior to the First Merger as an appropriate representation for how the securities markets are valuing Newco Common Units, taking into account the Exchange Offer and the Mergers.

The Exchange Offer is also subject to certain conditions, including a "minimum amount" condition, whereby Danaher's obligation to complete the Exchange Offer would be conditioned upon Danaher stockholders having validly tendered and not properly withdrawn shares of Danaher common stock in the Exchange Offer such that at least 90% of the issued and outstanding Newco Common Units are to be distributed in the Exchange Offer. If the minimum amount condition is not satisfied due to a low subscription rate in the Exchange Offer and the minimum amount condition is not waived by Danaher, Danaher would instead proceed with a spin-off distribution of the Newco Common Units to all Danaher stockholders (rather than proceed with an Exchange Offer that does not fully achieve its purpose). If the upper limit described above is in effect at offer expiration and the minimum amount condition is not satisfied (and is not waived) as a result of a low number of tenders by Danaher stockholders, the minimum amount condition would allow Danaher not to consummate the Exchange Offer and thereby prevent the exchange by tendering Danaher stockholders who may not have recognized or acted upon the underlying change in the economic benefits of the Exchange Offer resulting from the upper limit being in effect.

The Pricing Mechanism is disclosed in the Prospectus and will be constant throughout the Exchange Offer. Any change in the Pricing Mechanism (including in the upper limit described above) will be made no later than 10 business days before the expiration of the Exchange Offer and will be published by Danaher on the website described in the Prospectus and in a press release, which press release would also be included in an amendment to Danaher's tender offer statement on Schedule TO (the "Schedule TO") to be filed in connection with the Exchange Offer. In accordance with Rule 13e-4(e)(3), in the event the Pricing Mechanism changes, Danaher will disseminate promptly disclosure of such change in a manner reasonably calculated to inform Danaher stockholders of the change and the Exchange Offer will remain open for 10 business days following the date that material changes to the Schedule TO and any other tender offer materials are disseminated to Danaher stockholders.

To make pricing information available to the general public during the Exchange Offer, Danaher intends to maintain the website described in the Prospectus and publish pricing-related information as follows:

- Commencing after the close of trading on the third trading day of the Exchange Offer until the first Valuation Date, the website will show the indicative calculated per-share (or per-unit) value and exchange ratio, in each case calculated based on the three most recent, completed trading days. In other words, on any given day, the indicative calculated per-share (or per-unit) value will equal the simple arithmetic average of the daily VWAP on each of the three most recent completed trading days and the indicative exchange ratio will be calculated using such indicative calculated per-share (or per-unit) values.

- On each of the Valuation Dates, the indicative calculated per-share (or per-unit) value and exchange ratio will be calculated for purposes of the Exchange Offer. Such data will be provided as set forth below. The indicative calculated per-share value of Danaher Common Stock and the indicative calculated per-unit value of Newco Common Units, as calculated by Danaher, will each equal (i) on the first Valuation Date, the intra-day VWAP during the elapsed portion of that day, (ii) on the second Valuation Date, the intra-day VWAP during the elapsed portion of that day averaged with the actual daily VWAP on the first Valuation Date and (iii) on the third Valuation Date, the intra-day VWAP during the elapsed portion of that day averaged with the actual daily VWAP on the first Valuation Date and with the actual daily VWAP on the second Valuation Date. "Intra-day VWAP" means VWAP for the period beginning at the official open of trading on the NYSE and NASDAQ, as applicable, and ending as of the specific time on such day. On each of the Valuation Dates, the indicative calculated per-share (or per-unit) value and indicative exchange ratio calculated using such values will be updated at 10:30 a.m., 1:30 p.m. and 4:30 p.m., New York City time.

- The information agent for the Exchange Offer will also be able to provide the above data via a toll-free telephone number disclosed in the Prospectus on each day of the Exchange Offer period prior to the announcement of the final exchange ratio.

- The final exchange ratio (including an announcement about the extension of the Exchange Offer period, if the upper limit on the exchange ratio described above is in effect) will be published by Danaher on the website and in a press release no later than 4:30 p.m., New York City time, on the expiration date of the Exchange

Offer, and that information and the press release will also be included in an amendment to Danaher's Schedule TO filed that day.

Since the Exchange Offer is scheduled to expire at 12:00 midnight, New York City time, on the expiration date of the Exchange Offer (provided, that, if the upper limit is in effect at the close of trading on the expiration date of the Exchange Offer, the Exchange Offer will be extended until 12:00 midnight, New York City time, on the second trading day following the originally contemplated expiration date of the Exchange Offer), and the final exchange ratio will be announced by 4:30 p.m., New York City time, on the expiration date of the Exchange Offer, holders of Danaher Common Stock will be able to tender or withdraw shares of Danaher Common Stock after the final exchange ratio is determined. In this regard, we note the following:

- The Depository Trust Company ("DTC") is expected to remain open until 5:00 p.m., New York City time, on the expiration date of the Exchange Offer, enabling holders of Danaher Common Stock to tender or withdraw their shares in that system for at least one half hour after the final exchange ratio is published as described above.

- Between 5:00 p.m., New York City time, and 12:00 midnight, New York City time, on the date the Exchange Offer expires, holders of Danaher Common Stock will be able to tender by faxing notices of guaranteed delivery, and will be able to withdraw tenders by faxing notices of withdrawal to the exchange offer agent.[1] Such tenders and withdrawals will be reflected either on the exchange offer agent's system or on DTC's system when DTC's system reopens the following morning.

- Danaher will make available to investors forms of notice of guaranteed delivery and notice of withdrawal both in printed materials and via the website, and the Prospectus will explain the procedures for after-hours tenders and withdrawal, including the times and methods by which tenders and withdrawals must be made.

Even without the foregoing procedures, holders of Danaher Common Stock will at all times from the commencement of the Exchange Offer know the value offered for each share of Danaher Common Stock. They will also have free and ready access to information during the Valuation Dates that should enable them to make informed decisions about their participation in the Exchange Offer. Moreover, if the final exchange ratio is subject to the upper limit on the

[1] All holders of Danaher Common Stock will be able to have their shares of Danaher Common Stock tendered or withdrawn via these fax procedures. However, only DTC participants (i.e., brokers and similar institutions shown on a DTC security position listing as the owners of Danaher Common Stock) will be able to deliver such faxes. In order to facilitate use by beneficial holders of Danaher Common Stock who own their shares of Danaher Common Stock through a broker or similar institution of the notices of guaranteed delivery and withdrawal procedures applicable to tenders and withdrawals after 5:00 p.m., New York City time, on the expiration date of the Exchange Offer, the Prospectus will inform such beneficial holders that they must make arrangements with their brokers or similar institutions for such brokers or similar institutions to fax a notice of guaranteed delivery or a notice of withdrawal (as applicable) to the exchange offer agent on such beneficial holders' behalf prior to midnight, New York City time, on the expiration date of the Exchange Offer.

exchange ratio described above, investors will have two additional trading days during which to tender or withdraw their shares of Danaher Common Stock.

III. DISCUSSION

Given that Danaher is an issuer for purposes of Rule 13e-4 of the Exchange Act and the Exchange Offer constitutes an invitation for tenders of Danaher Common Stock, Danaher believes that the Exchange Offer is subject to Rule 13e-4 and Regulation 14E of the Exchange Act, which govern transactions whereby an issuer makes an issuer tender offer, meaning a tender offer for, or a request or invitation for tenders of, any class of equity security, made by the issuer of such class of equity security or by an affiliate of such issuer.

We respectfully request that the Staff confirm that it will not recommend that the Commission take enforcement action pursuant to Rules 13e-4(d)(1), 13e-4(e)(3), 13e-4(f)(1)(ii) and 14e-1(b) under the Exchange Act (requiring the specification of consideration offered, the specification of the total number of securities sought in the offer and the extension of the offer on a change in consideration, a change in the amount of securities sought in the offer, or a change in the percentage of the class of securities being sought in the offer) with respect to Danaher's use of the Pricing Mechanism described above and with respect to Danaher's specification of the number of shares of Danaher Common Stock sought in the Exchange Offer in the manner described in this letter. We further note that paragraph 16 of Schedule A under the Securities Act of 1933, as amended (the "Securities Act"), requires a prospectus for an exchange offer to specify "the price at which it is proposed that the security shall be offered to the public or the method by which such price is computed." For the reasons described in this letter, Danaher believes the disclosure in the Prospectus fully defines the method by which the price will be determined as required by paragraph 16 of Schedule A. Furthermore, we believe that the Pricing Mechanism is consistent with the protection of investors because it results in a fixed, constant dollar value exchange (subject to the limit on the exchange ratio described above) and provides greater certainty about the ultimate return to investors and absolute certainty about the maximum number of Newco Common Units receivable per share of Danaher Common Stock tendered. This approach is the same as the Similar Exchange Offers, which build on other traditionally available pricing structures, including formula-based and "Dutch auction" structures previously approved by the Staff, and provides investors with advantages not available in those offers.

A. Formula-Based Exchange Ratios and Pricing Structures

For various reasons, including to mitigate the disadvantages of fixed-ratio offers and to permit a more current market valuation of the securities involved in an exchange offer, market participants have sought, and the Staff has granted, relief under the tender offer rules when the exchange ratio is based on a formula using trading data over a specified period (typically 10 trading days).[4] In *Lazard Freres & Co.*, the first of these no-action letters, the Staff nonetheless required that the exchange ratio be set no later than the second full business day preceding the expiration of the exchange offer. The Staff has extended the relief granted in the *Lazard* no-action letter to other circumstances involving formula-based pricing, but in each case has continued to require that the final consideration be set no later than two trading days prior to the expiration of the exchange offer. For example, the Staff permitted AB Volvo to set the redemption price for Volvo common stock using a formula based on the daily VWAP of that stock on the Stockholm Stock Exchange on three specified days during a three-week period ending two U.S. trading days before the expiration of the U.S. offer.[5] Similarly, the Staff permitted TXU Corporation to offer to purchase certain equity-linked securities for a price fixed at least two trading days prior to the expiration of the exchange offer and indexed to the daily VWAP of TXU Corporation's stock for the 10-day period then ended.[6]

1. "Day 20" vs. "Day 18" Pricing Mechanisms

Consistent with the exchange offers conducted by Halliburton, Weyerhaeuser, McDonald's, PPG, Kraft and Pfizer, the Pricing Mechanism uses a "day 20" formula whereby the averaging period of the Exchange Offer ends on the last trading day of the Exchange Offer period. This is in contrast to the "day 18" formula used in the exchange offers conducted by BMS, P&G, Lazard, AB Volvo and TXU, whereby the averaging period ended on and included the second trading day preceding the expiration date of the exchange offer, thus providing for a two trading day window between pricing and expiration of the offer. While "day 18" formula-based exchange ratios provide benefits relative to traditional fixed-ratio offers, the values of both the securities offered and the securities tendered still fluctuate without limit during the last two trading days of the offer period. During that period, sophisticated investors may take steps, as they would in a traditional fixed-ratio offer, to lock in the value embedded in the exchange ratio, whereas less sophisticated retail investors may lack the know-how or means to do the same. The ability of sophisticated investors (such as market professionals) to extract value during that period has over the years increased in line with the sophistication of trading infrastructure that allows for rapid, program trade execution.

We understand that providing for a two trading day window between pricing and expiration of the exchange offer reflects an effort to balance potentially conflicting considerations: on the one hand, the need for adequate dissemination of information about the absolute consideration being offered to investors and, on the other hand, the desire to minimize the exposure to market risk resulting from the imposition of a time delay between pricing and expiration of the exchange offer.

In recent years, however, trading markets and investor behavior and expectations have changed dramatically due to the substantially increased penetration of the Internet, online brokerage services and high-speed trading among all classes of investors. We note in particular the following developments that have contributed to investors having immediate access to pricing and other material information:

- Investor trading behavior is now driven largely by free, widely available online quotation sources; free and/or readily available online brokerage account execution services (including for small "discount" customers); and free, online "real-time" financial news.

- Demand by retail investors for automatic, rapid trade execution has become not only more acute, as reflected by the clear success of online trading systems, but is now the basic expectation of investors who are accustomed to real-time quotation and execution.

In today's trading environment, new information is reflected in market prices almost instantaneously as professionals trading in significant volume are able to both access and act on information immediately. This ability did not exist to the same extent at the time the no-action letter was issued in *Lazard,* when the Internet was at its inception and electronic markets were only beginning to emerge. Thus, we believe the Pricing Mechanism's "day 20" formula is more appropriate for today's trading environment as opposed to the "day 18" formula adopted in the *Lazard* no-action letter.

2. Length of Averaging Period

Consistent with the Similar Exchange Offers (other than the McDonald's Exchange Offer which used a two-day averaging period), the Pricing Mechanism uses a three-day averaging period. For the same reasons stated above, we believe that the 10-day averaging period used in the exchange offers conducted by Lazard and TXU is not as favorable to investors as the three-day averaging period incorporated in the Pricing Mechanism. The underlying policy favoring a longer pricing period (such as a 10-day averaging period) is that, in principle, it protects investors against potential manipulation and other unusual price movements that could distort the value of consideration offered to investors. A lengthy averaging period, however, increases the likelihood that market-wide fluctuations may influence the calculation and that the prices of the underlying securities at the end of the averaging period will differ significantly from the value ascribed to them by the Pricing Mechanism – a result that could particularly affect less sophisticated investors who decide whether to participate in an exchange offer based on the values of the applicable securities toward the expiration of the exchange offer. The Pricing Mechanism uses more current pricing through a shorter, three-day averaging period, while still providing protection against the manipulation that could arise using "point in time" pricing, and should thus benefit investors as a whole. The Company believes that a three-day averaging period -- which has been successfully used in the Similar Exchange Offers (other than the McDonald's Exchange Offer which used a two-day averaging period) -- strikes the right balance between mitigating the impact of market-wide fluctuations on the calculation of the exchange ratio and protecting against price manipulation and other unusual price movements, on the one hand, and reflecting the values of the relevant securities as of a time reasonably close to the conclusion of the exchange offer, on the other hand, and therefore increases the likelihood of the Exchange Offer being fully subscribed.

Consistent with the exchange offers conducted by Halliburton, Weyerhaeuser, McDonald's, PPG, Kraft and Pfizer, the Pricing Mechanism enables investors to consider whether to accept or reject the Exchange Offer based on a fixed dollar value of Newco Common Units receivable per dollar of Danaher Common Stock tendered (subject to the upper limit on the Exchange Ratio described above). Although tendering holders of Danaher Common Stock will not know prior to the expiration of the Exchange Offer the precise number or dollar value of Newco Common Units they will receive per share of Danaher Common Stock tendered (unless the upper limit is triggered) as they would in a formula-based offer using "day 18" pricing, they will know the relative value relationship of the two stocks intended to be provided in the Exchange Offer. The Pricing Mechanism also offers significant advantages to investors in that it:

- minimizes the potential for pricing disparities between the announced exchange ratio and the final exchange ratio in offers using fixed exchange ratios;

- is simple to understand, since it focuses on the relative value relationship between two stocks (the central consideration for investors);

- relies on more current information about the value of the applicable stocks, since it uses a shorter averaging period, while at the same time incorporating protections against manipulation;

- incorporates communication methods to allow investors to access relevant and up-to-date pricing-related information; and

- incorporates procedures to permit investors to make last-minute tenders and withdrawals during a period that is consistent with, and in some cases better than, the comparable timeframes addressed by the Staff and, if the upper limit on the exchange ratio is in effect, gives investors two additional trading days during which they may evaluate the Exchange Offer and tender or withdraw their shares.

A review of Commission filings in precedent transactions suggests that smaller investors have participated effectively in offers using market-based pricing and that they would readily understand the simpler and more intuitive Pricing Mechanism. Although they arose in an employee compensation context, the issuer tender offers conducted by Comcast and Microsoft, among others,[7] demonstrate that tens of thousands of individual investors – some with no remaining connection with the issuer – were able to evaluate market-based offers where the exchange ratio was not fixed at the start of the exchange offer. It is noteworthy that neither employees nor former employees can be distinguished from other security holders in either their need for adequate and timely pricing information or their ability to analyze and act on market-based pricing. We also note, based on a review of Commission filings, that several of the Similar Exchange Offers were well oversubscribed. For example, the Weyerhaeuser Exchange Offer was approximately 4.5-times oversubscribed (25,490,196 shares accepted for exchange out of 114,204,244 shares validly tendered), the McDonald’s Exchange Offer was approximately 14-times oversubscribed (18,628,187 shares accepted for exchange out of 262,183,800 shares validly tendered), the PPG Exchange Offer was approximately 7-times oversubscribed (10,825,227 shares accepted for exchange out of 68,933,881 shares validly tendered), the Kraft Exchange Offer was approximately 12-times oversubscribed (46,119,899 shares accepted for exchange out of 568,543,287 shares validly tendered), the Pfizer Exchange Offer was approximately 4-times oversubscribed (405,117,195 shares accepted for exchange out of 1,674,974,996 shares validly tendered), the BMS Exchange Offer was approximately 2-times oversubscribed (269,285,601 shares accepted for exchange out of 499,484,935 shares validly tendered) and the P&G Exchange Offer was approximately 12.5-times oversubscribed (38,652,878 shares accepted for exchange out of 484,121,230 shares validly tendered).

Prior initiatives confirm the Commission’s recognition of the significant degree to which technological advances facilitate rapid dissemination of information and widespread access of investors to information via electronic means.[8] We believe that the Pricing Mechanism is entirely consistent with the initiatives of the Commission and its Staff to adapt the Commission’s rules to facilitate – and encourage – capital transactions in the U.S. public market in which the protections of the federal securities laws apply.

The Pricing Mechanism is also consistent with the relief granted in the *Lazard* no-action letter and its progeny in all other material respects: (i) the value relationship between the applicable securities is fixed and remains constant during the Exchange Offer (subject to the limit on the exchange ratio described above), such that holders of Danaher Common Stock will be able to determine the value receivable on tender of their shares; (ii) the final exchange ratio is based on readily observable average trading prices for securities listed on national securities exchanges over a specified period; (iii) Danaher will announce the final exchange ratio on the website described in the Prospectus and in a press release no later than 4:30 p.m., New York City time, on the expiration date of the Exchange Offer, and include such information and the press release in an amendment to Danaher's Schedule TO filed that day, allowing investors time for last-minute tenders and withdrawals; and (iv) holders of Danaher Common Stock will be provided with a toll-free number for Danaher's information agent and a freely-accessible website (as described in the Prospectus) with trading information relevant to pricing, including (a) indicative exchange ratios, enabling holders to predict whether the final exchange ratio will make participation in the Exchange Offer economically beneficial for them and (b) the final exchange ratio when it has been publicly announced.

B. The Number of Shares of Danaher Common Stock Sought in the Exchange Offer

Rule 13e-4(f)(1)(ii) and Rule 14e-l(b) prohibit an issuer from changing the percentage of the class of securities being sought (provided, that acceptance for payment of an additional amount of the shares not to exceed two percent of outstanding shares shall not be deemed to be an increase in the percentage of the class of securities being sought) unless the exchange offer remains open for at least 10 business days from the date the change is announced. As was noted in connection with the exchange offer commenced by Citizens Republic Bancorp, Inc. (the "Citizens Exchange Offer"),[9] this language restricts the way an issuer may amend an exchange offer and although this language does not explicitly dictate any required disclosure, the rule appears to imply that the exchange offer disclosure must define the precise amount of securities sought to be accepted by the issuer in order to determine when a change in the percentage sought would call the rule into play. The Prospectus discloses that the actual number of shares of Danaher Common Stock that will be accepted if the Exchange Offer is completed will depend (subject to the upper limit on the exchange ratio described above) on (1) the final exchange ratio, (2) the number of shares of Newco Common Units offered and (3) the number of shares of Danaher Common Stock tendered. Therefore, depending on the outcome of the three factors listed in the preceding sentence (subject to the upper limit on the exchange ratio described above), Danaher may or may not be able to accept all of the shares of Danaher Common Stock validly tendered.[10] As in the Citizens Exchange Offer, Danaher believes that defining the amount of securities Danaher may accept in the Exchange Offer as being subject to these three factors (and the upper limit on the exchange ratio described above), each of which is clearly and unambiguously described in the Prospectus, is consistent with the regulatory, disclosure and investor protection objectives of Rule 13e-4(f)(1)(ii) and Rule 14e-l(b) and is not coercive or unfair and should be permitted. In this regard, we note:

- The method by which the actual number of shares of Danaher Common Stock that Danaher will accept in the Exchange Offer, as well as the upper limit on the exchange ratio, will be described in detail in the Prospectus and made available to all Danaher stockholders on the date of announcement of the Exchange Offer in a simple, easy to understand manner. Assuming Danaher does not change that method, we do not believe that the application of that method at expiration is a "change" in the percentage of the securities being sought.

- We believe the disclosure in the Prospectus fully defines the material terms and features of the Exchange Offer as required by Item 4 of Form S-4 under the Securities Act.

- Pursuant to Rule 13e-4 under the Exchange Act, Danaher will provide withdrawal rights and allow withdrawals of tenders until the expiration of the Exchange Offer.

- Danaher will announce the final exchange ratio by 4:30 p.m., New York City time, on the expiration date of the Exchange Offer, which will give Danaher stockholders a better sense of the likelihood of proration. After that announcement, Danaher stockholders will still have until the expiration of the Exchange Offer to tender or withdraw their tenders.

We recognize the fact that the number of shares of Danaher Common Stock accepted in the Exchange Offer is subject to the three factors listed above (and the upper limit on the exchange ratio described above), which formulation may be viewed as raising issues under Rule 13e-4(d)(1), which requires the offer document to specify the terms of the offer, including the total number of securities sought in the offer. We believe that the disclosure in the Prospectus is consistent with such rule, principally because the Prospectus clearly discloses the manner in which the number of shares of Danaher Common Stock to be accepted in the Exchange Offer will be determined. The Pricing Mechanism is disclosed in the Prospectus and will be constant throughout the Exchange Offer. Additionally, the manner in which the number of Newco Common Units offered to holders of Danaher Common Stock will be calculated is disclosed in the Prospectus and will not change throughout the Exchange Offer, in that it is equal to 62.5 million shares of NetScout Common Stock plus the product of (A) 1.46 multiplied by (B) the number of shares of NetScout Common Stock issued in any acquisition by NetScout prior to the effective time of the First Merger.

We understand that, pursuant to Rule 13e-4(e)(3), if there is a change in the Pricing Mechanism and/or the upper limit on the exchange ratio, then such change would be viewed as a change in the amount of securities sought in the offer, thus requiring that at least 10 business days remain in the Exchange Offer period following the announcement of such change.

C. Other Precedents

The Staff also has an established interpretation of its tender offer pricing rules to permit modified Dutch auction tender offers, although these offers do not provide security holders with the final offer price, a specification of the total number of securities sought in the offer, or the number of shares that will be accepted in the offer until expiration of the offer, subject to certain conditions. We believe that the Pricing Mechanism and the method by which the number of shares of Danaher Common Stock that Danaher will accept if the Exchange Offer is completed is consistent with the Staff's position on Dutch auction tender offers and, indeed, provides certain advantages to investors. Like modified Dutch auction tender offers, the Exchange Offer provides for (i) pro rata acceptance with all securities participating equally in prorationing; (ii) withdrawal rights throughout the offer period; (iii) prompt announcement of the final exchange ratio; and (iv) the exchange of all accepted securities at the highest consideration paid to any security holder under the exchange offer.[11] Unlike the Pricing Mechanism, however, Dutch auction pricing provides significantly less visibility to investors about the value that they will receive, since it merely establishes a range of prices at the outset without providing any visibility during the offer as to likely outcomes. Indeed, we believe that this disadvantage of Dutch auction pricing in part led to the need for the relief granted in the case of "day 18" pricing mechanisms.[12]

Consistent with the Similar Exchange Offers, Danaher has not incorporated a minimum exchange ratio because, were such a limit to be triggered, it would provide tendering Danaher stockholders with a windfall return for Danaher Common Stock tendered and accepted. Indeed, incorporating a minimum exchange ratio in the Pricing Mechanism would not correlate to the low end of the range specified in a Dutch auction in which the final exchange ratio is determined independently of the values of the applicable stocks and, instead, is based on investor indications of interest in a process that is not transparent to the market generally.

D. Similarities and Differences from Precedent

1. Final Exchange Ratio Timing

The Pricing Mechanism is consistent with the exchange offers conducted by Halliburton, Weyerhaeuser, McDonald's, PPG, Kraft and Pfizer but differs from the pricing mechanisms used in the exchange offers conducted by BMS, P&G, Lazard, AB Volvo and TXU in certain respects. Whereas in the exchange offers conducted by BMS, P&G, Lazard, AB Volvo and TXU, the per-share values of the applicable stocks were determined by reference to the daily VWAP of each stock during an averaging period ending on and including the second trading day preceding the expiration date of the exchange offer, the averaging period of the Exchange Offer will end on and include the expiration date of the Exchange Offer, thus minimizing any exposure to market risk resulting from the imposition of a time delay between pricing and the expiration of the Exchange Offer.

2. Representative (Proxy) Pricing

Consistent with the exchange offers conducted by Weyerhaeuser, McDonald's, PPG, Kraft and P&G, the value of the distributed securities (i.e., Newco Common Units) will be determined by reference to the trading data of securities of the acquiring company (i.e., NetScout). In contrast, no such representative (proxy) pricing was used to determine the value of the distributed securities in the exchange offers conducted by Halliburton, Pfizer and BMS. In these exchange offers, the distributed securities were already listed and traded on a national stock exchange. Therefore, there was no need for representative (proxy) pricing.

3. Length of Averaging Period

The Pricing Mechanism is consistent with the exchange offers conducted by Halliburton, Weyerhaeuser, PPG, Kraft, Pfizer, BMS, P&G and AB Volvo but differs from the exchange offers conducted by McDonald's, Lazard and TXU in that the exchange ratio of the Exchange Offer is based on a three-day averaging period, while in McDonald's the exchange ratio was based on a two-day averaging period and in Lazard and TXU the exchange ratio was based on a ten-day averaging period.

IV. REQUESTED NO-ACTION RELIEF

Based on the foregoing, we respectfully request on behalf of Danaher that the Staff confirm that it will not recommend that the Commission take enforcement action pursuant to Rules 13e-4(d)(1), 13e-4(e)(3), 13e-4(f)(1)(ii) and 14e-1(b) under the Exchange Act (requiring the specification of consideration offered, the specification of the total number of securities sought in the offer and the extension of the offer on a change in consideration, a change in the amount of securities sought in the offer, or a change in the percentage of the class of securities being sought in the offer) with respect to Danaher's use of the Pricing Mechanism and with respect to Danaher's specification of the number of shares of Danaher Common Stock sought in the Exchange Offer. We note that the relief sought is consistent with the position previously taken by the Staff in the exchange offers conducted by Halliburton, Weyerhaeuser, McDonald's, PPG, Kraft and Pfizer. It is also consistent with the position previously taken by the Staff in the exchange offers conducted by BMS, P&G, Lazard and TXU and, to the extent that the Exchange Offer differs from the exchange offers conducted by BMS, P&G, Lazard and TXU, such differences are consistent with the position previously taken by the Staff in the exchange offers conducted by Halliburton, Weyerhaeuser, McDonald's, PPG, Kraft and Pfizer and do not affect the adequate dissemination of pricing-related information or the ability of Danaher stockholders to make informed investment decisions with respect to whether or not to participate in the Exchange Offer.

We respectfully request that the Staff issue the requested no-action relief as soon as practicable. If you have any questions or comments with respect to this matter, please call me at (212) 735-7886 or Brian V. Breheny at (202) 371-7180.

Sincerely,

/s/ Thomas W. Greenberg
Thomas W. Greenberg

cc: Brian V. Breheny

1 *See Halliburton Company* (avail. Mar. 23, 2007); *Weyerhaeuser Company* (avail. Feb. 23, 2007); *McDonald's Corporation* (avail. Sept. 27, 2006); *PPG Industries, Inc.* (avail. Dec. 21, 2012); *Kraft Foods Inc.* (avail. July 1, 2008); *Pfizer, Inc*. (avail. May 22, 2013).

2 *See Bristol-Myers Squibb Company* (avail. Nov. 16, 2009); *Proctor & Gamble Company* (avail. Oct. 8, 2008).

3 In each of PPG and Kraft, the exchange offer expired at 8:00 a.m. on the first business day following the three-day averaging period.

4 *Lazard Freres & Co.* (avail. Aug. 11, 1995). *See also BBVA Privanza International (Gibraltar) Limited* (avail. Dec. 23, 2005); *TXU Corporation* (avail. Sept. 13, 2004); *Epicor Software Corp.* (avail. May 13, 2004); *AB Volvo* (avail. May 16, 1997).

5 *AB Volvo* (avail. May 16, 1997).

6 *TXU Corporation* (avail. Sept. 13, 2004). *See also, e.g., BBVA Privanza International (Gibraltar) Limited* (avail. Dec. 23, 2005) (permitting BBVA Gibraltar to price a tender offer for preference shares based on a stated fixed spread over yield on a specified benchmark U.S. Treasury security on the second business day immediately preceding the expiration of the tender offer period); *Epicor Software Corp.* (avail. May 13, 2004) (permitting Epicor to determine the magnitude of an offer price adjustment by reference to the average closing price per share of Epicor common stock during the 10-day trading period ending two trading days before the expiration of the offer).

7 *See, e.g., Comcast Corp.* (avail. Oct. 7, 2004) (permitting transfers of options, more than 85% of which were "out-of-the-money," to a broker as part of an employee compensation mechanism, where the exact compensation to be paid to employees in respect of those options was determined after expiration of the transfer period); *Microsoft Corp.* (avail. Oct. 15, 2003) (similar option transfer program where all of the eligible options were "out-of-the-money").

8 *See, e.g.*, SEC Rel. Nos. 33-8732; 34-54302; IC-27444 (Aug. 11, 2006) (Executive Compensation and Related Person Disclosure) (permitting expanded use of Internet to make certain governance-related disclosures); SEC Rel. Nos. 33-8591; 34-52056; IC-26993; FR-75 (July 19, 2005) (Securities Offering Reform); SEC Rel. Nos. 34-55146; IC-27671 (Mar. 30, 2007) (Internet Availability of Proxy Materials); SEC Rel. No. 34-48745 (Nov. 4, 2003) (approving changes to listing standards to incorporate Internet-based disclosure requirements).

9 *See Citizens Republic Bancorp* (avail. Aug. 21, 2009).

10 This is similar to the scenario faced in the Citizens Exchange Offer, where, depending on the average VWAP of the applicable securities (and the resulting exchange ratios) as well as the percentage of the securities of each class validly tendered, the issuer was faced with the situation where the issuer might or might not have been able to accept 100% of the applicable securities of each class validly tendered. *See Citizens Republic Bancorp* (avail. Aug. 21, 2009).

11 SEC Rel. No. 33-6653 (July 11, 1986).

12 *See Lazard Freres & Co.* (avail. Aug. 11, 1995).